

# Home Affairs Committee

Oral evidence: [The Windrush Compensation Scheme](#)  
, HC 1013

Wednesday 9 December 2020

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Members present: Yvette Cooper (Chair); Ms Diane Abbott; Dehenna Davison; Laura Farris; Andrew Gwynne; Adam Holloway; Stuart C McDonald.

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## Witnesses

[I](#): Jacqueline McKenzie, Solicitor and Immigration Adviser, McKenzie Beute and Pope, and Holly Stow, Senior Caseworker, North Kensington Law Centre.

[II](#): Martin Forde QC, Independent Adviser, Windrush Compensation Scheme.



## Examination of witnesses

Witnesses: Jacqueline McKenzie and Holly Stow.

**Q1 Chair:** Welcome to this evidence session for the Home Affairs Select Committee, evidence we are taking as part of our inquiry into the progress of the Windrush Compensation Scheme. As part of the evidence we have taken, we heard last week from members of the Windrush generation and others who were badly wronged by the Home Office and who are currently applying to the Windrush Compensation Scheme. Some of the stories and the experiences that we heard described of using the Windrush scheme were very troubling. We want to explore some of those issues further today, and we are grateful to the witnesses that we have before us.

In our first panel we have Jacqueline McKenzie, solicitor and immigration adviser, McKenzie Beute and Pope, and Holly Stow, senior caseworker at the North Kensington Law Centre, both of whom I know have been working with many people applying to the Windrush Compensation Scheme. I welcome both of you before us this morning. Can I start by asking you to give us a very brief overview of the experiences of those that you have been working with of the Windrush scheme?

**Jacqueline McKenzie:** The experience is very varied. We have seen possibly over 500 people and we are actively working with about 200 people in various different ways. Some of it is empowering people to submit their own claims with us—just checking over them—some of it is us doing the claims, some of it is us writing off to GPs, DVLA and HMRC for evidence. We do a variety of things.

For us, the major issue that we are finding is the access to justice or the access to law point, in that there is no support or very little support for people to be able to make these claims properly. I know there are organisations around the country doing this, and I know also that the Government gave a contract to CA, formerly the CAB, to assist people. But, as I understand it, just over 500 people have been referred to them. There must be some sort of issue there as to why people are not going.

The other thing that happens is that they have recently retendered that contract and it has gone to a company called We Are Digital, formerly Silver Training. I am still very concerned because, having looked at its history, I do not see much evidence that it has any experience of this sort of work or this cohort. It is perhaps going to see even less people than CA did.

We understand there is the potential of 12,000 claimants out there, possibly 50,000; some academics even believe much more than that if you factor in people who have been wrongly excluded from the UK or people who do not even know about the scheme. There is a major issue. There has to be factored into the scheme support for lawyers, either through legal aid or through some other one-off scheme in the way that they have done with the people who have lung infections, or as we have seen with the Shirley Oaks children's home in Lambeth or the Mary



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Magdalene children in the Irish abuse homes. All of these schemes are there as good examples as to how you involve lawyers or professionals to do this. The fact that people are out there languishing on their own is problematic.

The other very big issue that I am finding is that the scheme is problematic for historical reasons. We have these heads of claims and most of them are irrelevant to this cohort. For instance, because of the historical problems that people experienced trying to rent accommodation, very often they clubbed together and bought. There are high levels of home ownership in this cohort. People did not lose their jobs; people did not lose access to GPs because they have been in them for so long. Although we have seen the celebrated cases in the media where that has happened, that is very few.

Therefore, most of the heads of claim—access to university, losing a driving licence—are irrelevant. The biggest issue, therefore, or the area of claim that most people can apply to is going to be this impact on life. Impact on life is problematic. The tariffs are very low. It starts at £250; unimaginable what sort of impact on your life could be worth that low value. It goes up and there is an amount you can go above £10,000, but there was absolutely nothing in the guidance notes or in the guidance table that tells you how you get there.

From the sorts of correspondence we are seeing that people are getting back from the Windrush Compensation Scheme workers, it looks as though you need to have psychological or psychiatric reports to do that. There is no support for that. There is no funding available for actual professional support to be able to take you to the impact of life, to be able to assess that. We understand—what I saw in the guidance notes originally—the independent adjudicator had the ability to be able to not necessarily command but to suggest that there would be a report done. That has now been taken out of the guidance, possibly surreptitiously because I just spotted it by accident. It is problematic.

People cannot claim via them. That is why the whole thing about the numbers being low is a bit of a red herring. People cannot claim because the scheme is not designed to reflect this cohort of people because of how they came to the country and who they are. Wendy Williams talked about the institutional ignorance, and that is very much reflected here. It is extremely problematic. People do not have access to professional support either from medical or legal, and the scheme is not designed reflecting who these people are who should be claiming.

**Holly Stow:** I agree with everything that Jacqui has just mentioned. Ultimately, I have seen some claimants who are eligible and would like to claim but simply do not want to because they know the scheme is not working, they know it is not fit for purpose, and it is just going to cause them more trauma ultimately.

The impact on life tariffs are appalling. I have previously asked a team at the Windrush helpline, "How can we get a report commissioned at Home



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Office expense, as it says in their rules?" The person I spoke to did not know this was even in their rules. How are we meant to get good compensation from a team that is not even empathetic to the people that they are meant to be helping receive justice after all they have been through?

Jacqui covered a lot of what I completely agree with, but ultimately the way that people feel is that there should not have been a scheme administered by the Home Office. The caseworkers are not empathetic and that shows through these poor offers. The level of evidence that they have to supply: the scandal came about because of their lack of evidence. Why now, when they need to access justice? Are you asking for something that is basically the impossible?

There are issues both with design and implementation. One of the key issues as well is transparency. There is no communication or very severe lack of communication with the Home Office caseworkers and claimants.

**Chair:** We want to pursue a whole series of the different issues that you have just raised there.

**Q2 Dehenna Davison:** Thank you to both of our witnesses for being with us on this important topic today. Holly, you mentioned that there are issues with both design and implementation. I wonder if you could go into a little bit more detail on both of those aspects, just to outline what some of those key issues are. I know a lot has been touched on already but any more detail would be greatly appreciated.

**Holly Stow:** In terms of design, if there were not certain things like the low tariffs on impact on life, if there was not this beyond reasonable doubt standard of proof and so on in the design, then perhaps implementation would not have been so poor. If we had a solid, good design we may have seen a decent enough implementation. The implementation that we do have at the moment is not fit for purpose because the Home Office caseworkers do not have the empathy.

Is it a training issue? Is it a lack of learning and this culture of disbelief that we are seeing? Is it the institutional ignorance, like Jacqui mentioned? There is a whole factor of things in it. It is proving itself not to work when we are seeing serious delays. I have seen delays of over 18 months now and these poor offers. The design and implementation do go hand in hand.

**Jacqueline McKenzie:** One of the things, in terms of specific examples, is the quality of further evidence or the letters that people are getting requesting further evidence. One of the applications I submitted on 20 May 2020, a very good application, quite a straightforward one. We approach it by doing almost an impact on life statement, almost like a traditional witness statement, and he has had back a badly written letter from the Home Office of 34 bullet points requiring further evidence.

One of the bullet points—and it might sound trivial to you but it does say something about what is wrong—is a request for a receipt for £19.20 paid



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for a biometric. You go to the post office to do a biometric. That £19.20—part goes to the post office, part goes to the Home Office—shows up on their SID computer system. Who would keep a receipt for £19.20 for something that they did years ago—because these are people who are claiming for reimbursement for money that they spent prior to the scandal—when you have the product in your hand and you are satisfied with it; that is the biometric cards? Then it went on to ask him, “How did you feel when you were brought into a room at the enforcement centre and asked questions? How did you feel when you left?” It goes on and on, about eight questions asking the same thing in different ways. It is problematic.

Holly has hit the nail on the head. Is it a training issue? I used to say it is a contemptuousness issue, and probably all these issues that some of us want to look at, racism, disbelief, all that sort of stuff, is that what is going on here? I do not know but there is a problem and it may just be staff training. It is something that needs to be sorted out urgently.

We are lawyers and we are getting those letters and we are able to say, “See appendix 4, because we gave you that information”. But when most people are doing this on their own in their homes, when they get those letters they tear them up, put it in the bin and give up. That is one of the big problems here.

**Q3 Dehenna Davison:** You have both raised concerns with the actual caseworkers and potential lack of empathy there. Is it something that you have fed into the Home Office and, if so, what response have you had?

**Jacqueline McKenzie:** Yes, I have. The Home Office speaks to us about these things. We have something called the Windrush Advisory Group, which the Home Office set up. I do not necessarily think it is very proactive and very effective in that we meet and then there is no real—I do not know what happens in between. It is problematic. They do sometimes listen to things but what is not happening is we are not getting feedback.

For instance, on that case that I just mentioned with the 34 bullet points, I have referred that to Martin Forde. It has also been referred to the Home Office. They said they are looking into it. I have not heard a thing about it. Holly was right to mention the lack of communication. I do think that is a big problem. We understand that this is an unprecedented situation in that the Home Office is having to deal with historical issues that are not necessarily all of its own making. I understand that, but setting up a compensation scheme is not unprecedented. Communicating with people is not. That is one of the areas that I would like to see improved.

**Q4 Dehenna Davison:** Holly, is there anything you would like to add there in terms of contacting the Home Office with your concerns and any feedback you have received?



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**Holly Stow:** I have tried to contact them on many occasions with many different cases. It seems as though they have a script, "We cannot give you much information. The caseworker will get in touch with you" and when you try to raise it higher, going through their complaints process, it is like barrier after barrier. It is very hard to get through to them. It is very hard to communicate efficiently with them. This was a scheme designed for claimants to do it themselves without legal advice. If lawyers are having issues with it, how can we imagine claimants themselves dealing with this?

Q5 **Ms Abbott:** I wanted to talk to you about the level of compensation offered by the Home Office. Both of you referenced the low levels of compensation for impact upon life. Is there anything further that you wish to say about the levels of compensation you have seen?

**Holly Stow:** I have a lot of issues with the calculation of loss of wages. It seems as though the Home Office caseworkers are taking one random payslip from a random month in a random year, times that by the amount of months somebody was out of work, and saying, "Okay, this is how much you have lost", but this calculation is flawed. They are not taking into account potential overtime, people's ability to move up in their roles. For example, if somebody was working in the NHS, could they go from a band 5 to a band 6? It is their loss of opportunity. The loss of pension contributions are not included. There are a lot of heads of claim that either do not fit the scheme or that are simply not in the scheme. If you are going to put someone back into a position that they should have been in but for the Home Office intervention, they need to include things like the loss of opportunity and the loss of pension contributions, because these people are still in such dire states because of this rubbish compensation scheme, ultimately.

On top of that you have the poor impact on life, and the levels of evidence that you need to get a decent offer is just sometimes impossible. But the main issues I believe are the tariffs and the impact on life and how they calculate the loss of wages. We know that the caseworkers say these are complex cases and that is why they take time, but the offers and the decision letters we receive do not take in much complexity. They just state a simple sum, simple bullet points. It is not very complex from their side so what is the delay? What is the reason for such poor offers?

Q6 **Ms Abbott:** Jacqueline, on the question about the levels of compensation, you mentioned low levels of compensation for impact on life. Is there anything else you would say about the levels of compensation?

**Jacqueline McKenzie:** Most people will only qualify under that heading, so it is vital that we get that heading correct and that there is support for expert evidence to support that heading: expert reports, medical reports. I do not know how you adduce evidence of impact on life without it because the Home Office seems to be disregarding anything people say. Somebody says, "I was petrified of being detained, and my grandchildren



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were outside the enforcement centre waiting for me, and they were crying” and if that is not good enough, then you definitely need a psychologist or a psychiatrist to do it.

Holly is right to mention the employment because that is the only other major category that I am seeing claims coming under. The opportunity cost issue is important. This is another issue where lack of communication is important. We have raised with the Home Office the fact that people are not being properly assessed for loss of pension entitlements, loss of pension contributions, opportunity costs such as promotion, future loss of earnings. A live example is somebody who lost a job after 20-something years as a dinner lady at age 62. The scandal broke and she managed to get her biometric permit. “Has evidence of looking for another job”, it is going to be very difficult for her to get another job, but she has looked for another job and not been able to get it. She should get her compensation paid up to the age of retirement without a doubt and any additional pension factored in.

The Home Office says it is complicated, but it is not because that is the sort of job that the actuary has done. What I would like to know is how many millions has been spent on this scheme so far in terms of administering it, when you look at the very low level that has been paid out to anybody. Why are professionals not brought in, like actuaries, to work on what the Home Office says are very difficult questions?

**Q7 Ms Abbott:** Have you been told why there have been these low levels of compensation paid out to people?

**Jacqueline McKenzie:** I think it is because most people are only qualifying under the impact of life and the tariffs there are very low, and there is no methodology for taking people above the £10,000 threshold. That is the biggest problem. On employment, people have lost jobs. Not a lot of people but people have lost jobs, so that is why overall the numbers are low. In terms of the individual claims, they are very low because they are being assessed in an unconscionable way. You cannot just say to somebody, “Well, because you cannot prove this”, there are National Insurance records, there are all sorts of things that the Home Office can be using, and then with those records it should not be as straightforward a case as saying, “This is your actual loss”. You have to go beyond that. You have to look at what you would have earned had we not interrupted your life in this way and made this terrible error or committed this malfeasance. These are the sorts of questions the Home Office needs to be asking and assessing, and it is not doing that.

I have seen very few cases of people who did not get access to university but I have one; how is that going to be assessed? I do not think the methodology on how these things are assessed is very clear. I do think the problem for me is mostly implementation. I have some issues about liens of claim. Amber Rudd, to her credit, at the Commonwealth Heads of Government meeting in April 2018, when the scandal broke and she was the Home Secretary, and we all attended a meeting with her representing the different Caribbean countries—I represented Grenada—said that a



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good scheme would provide people with some sort of ex gratia or redress for the fact that the Home Office and the British Government have wronged them, and then they will be reimbursed on top of that for their actual losses. But all we ended up with is this reimbursement for actual losses and that is problematic because the formula for calculating these actual losses is wrong. Individual claims are going to be very low but overall the scheme is going to not pay out very much because not many people qualify.

**Q8 Andrew Gwynne:** Holly, as a senior caseworker I would be specifically interested to hear your views on evidence gathering, because our Committee has previously raised concerns with the level of evidence that is required of people who apply to the Windrush Compensation Scheme. Wendy Williams has raised concerns on this issue, too. What impact do you think the evidence thresholds are having on how applications are processed and, importantly, on how offers of compensation are determined?

**Holly Stow:** The evidence thresholds, to put it simply, are way too high. We have to gather evidence dating back 30, 40 years in some cases: a receipt of £19.20 that the Home Office would have a record of, going through years' worth of e-mails to create a 200-page bundle and then having to do a good witness statement to be able to show the impact on life, because not everybody goes to their doctor when they feel a bit depressed, not everybody seeks counselling. Showing impact on life can be very difficult. Getting a good witness statement from claimants, and also supporting statements from friends and family who essentially saw them deteriorate, is the only evidence sometimes we can have for impact on life. When you then receive an offer that does not reflect what the claimant has been through, it is just putting a barrier up to them and them saying, "My life was not worth it then".

I have had recently an offer and it included an offer for impact on life. The decision letter took wording from level 6, which is the highest tariff, so the caseworker said, "We can see that it had a clear, profound impact on your life", yet they offered the award in line with level 5. Is that an issue with training? Is that an issue with this kind of ignorance? You can clearly say that it has impacted you so profoundly but we are not going to reward you in line with that.

**Q9 Andrew Gwynne:** In your experience, what effect is the evidence-gathering process having on applicants to the scheme?

**Holly Stow:** It is tiring people. People get fed up with it, essentially. "Why do I have to do this?" The Home Office has records of this. The Home Office will say, "We spoke to the DWP and it does not have any records of you" or, "We tried to look for an application that you made back in 2005 but we no longer have records of this". How do you expect the claimant to find that themselves?

**Q10 Andrew Gwynne:** Is there any discretion being afforded to people who do not have the evidence that is requested?





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**Holly Stow:** I am aware of some discretion being made in a few cases but it is not being applied widely. There is discretion with the employment head of loss, people being awarded a general award rather than an actual award. That is not good enough. These people should be given compensation for the money they lost, but also the money they would have had with these further opportunities. Saying, "We will give you 12 months' worth of your wages" but you have been out of a job for 10 years is not good enough.

Q11 **Andrew Gwynne:** Absolutely. Thank you, Holly. Jacqui, you raised in opening the issue of legal assistance. The application form for the scheme says very clearly, "We do not believe you should need legal assistance to make a claim but there is nothing to prevent you from seeking this if you want to". Yet, as you have said, many people have approached you and others for assistance with their applications. Why do you think that so many people have required legal assistance to access the scheme?

**Jacqueline McKenzie:** Because it is a complicated process. Not necessarily the form; the form is quite straightforward. There is 46 pages of guidance and it is an 18-page form, but that is not the issue. It is about writing witness statements. If you are a layperson, why would you know what that means? Often these people have never even encountered any kind of court system or any sort of legal process in their lives. That is one of the issues. Even knowing how you go about getting evidence is an issue, and what is evidence? That is why legal assistance is needed.

The other thing to note is when applicants or claimants get letters back requiring further evidence and they see letters like some of the ones I have seen, 17 bullet points, 30-odd bullet points, they give up. They just think, "Oh, it is not worth it, don't worry". Even though we are working pro bono on this, you can imagine if they were having to pay. That is one of the issues that is happening. A lot of law firms are charging people quite a lot of money, in some cases 25% and 30% of their compensation. Others are doing it on an hourly rate so people get very frightened. They think, "All my compensation is going to go to the lawyers", so people give up.

I have seen a tier 1 review case where someone was just offered an actual award, which is only offered for one year for loss of employment, and I realised—she came to one of the surgeries I run—that she possibly could have put together evidence to have gotten—she got a general award, sorry. She could have shown what she had lost and for several years. She just gave up. She said, "The Home Office has asked me for this and that and the other, and I cannot do it".

Remember, one of the key things that has been forgotten about the Windrush scandal is that people are feeling traumatised by the experiences that they have had trying to go through the Home Office to get their immigration status sorted out. Some of them have been through enforcement. One person who had been here since the 1960s had been reporting and was detained twice during that period. I am dealing with somebody who had been removed from the country despite sending in 75



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pieces of evidence to the Home Office to show that she had been here since the age of six in the 1960s. These people are traumatised, in some ways in a very serious way. To be getting letters back asking for detailed evidence going back decades, they just cannot countenance that and they do not want to do it and they are giving up. People are giving up.

Q12 **Andrew Gwynne:** Given the complexities you have just outlined and also that there are so many people who are eligible who have not submitted a claim, and of those that have many have needed legal help, it sounds that this scheme is just not accessible at all. What do you think the Home Office needs to do to improve the accessibility of this scheme? How can we get this right?

**Jacqueline McKenzie:** There needs to be support for the lawyers to do this. Recently, the Home Office has appointed some Windrush ambassadors, about 40 people, for eight weeks. I have been asking them, "What is your role?" They said that they have to sign people to the Home Office. A couple of them that I have spoken to have not got any understanding of what is going on with the Windrush scheme. There is also a cross-Government departmental group that has just been set up. There is a chap who has been put in charge of Windrush. I can see already that he does not seem to understand the scheme.

There are real problems about how the Home Office seems to be reacting. They know there is a problem but they are just literally coming up with ideas that are not workable ideas and that are not going to shift the position that we are in at the moment. Firstly, it does need some serious outreach work into communities, into centres of influence, whether they are church organisations, faith organisations or community centres. There are a lot of places in the Caribbean, African and Asian community where elderly people go and meet and have dinner, social clubs and things. It needs that.

It almost needs the approach that the census takes to try to reach hard-to-reach people, as they are described, getting out there into the community and speaking to people and allaying their fears. Unfortunately, the other reason why people are not applying isn't so much—it is partly because the system is complex and when they realise that they do not meet most of the heads of claim they think, "Don't worry, I am not going to worry with this". It is because a lot of people are still very fearful of even getting to the first stage of going to get their status documents. In their minds—I do not know whether they are right or wrong—they see the narrative language coming out of the Home Office and around all sorts of things, whether it is deportation, how refugees are being treated, what is happening to the EU citizens, and they are fearful. In their minds, the hostile environment is still very much alive and kicking. They are frightened to come through.

The Home Office needs to do a more serious job about outreach into all communities because we know it is not just the Caribbean community affected. All communities who are affected need to put a programme together like all the other main compensation schemes that we know



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about. The Home Office had earmarked £500,000 for community organisations. There are some excellent community organisations around the country helping people to make claims to the Windrush Compensation Scheme. There was supposed to be some funding available to them and what has happened to it? We have not heard a thing. I understand some of it might have been diverted to some other piece of work that this cross-Government group is doing. That is totally unacceptable.

There needs to be some resources put in this area of work so that people can approach organisations, lawyers, community centres of influence that are relevant to them, where they will feel confident and comfortable to go along and discuss what are quite deeply personal issues. They are very embarrassed. It is a cohort of people who came here with lots of hopes and dreams and aspirations. They feel as though they have not done as well as they could have done for all manner of reasons. They are very embarrassed about the condition that they find themselves in now. To go and sit and talk to somebody from an IT training company about their experiences, they are just not going to do it. They do not even want to go to the CA service. They need to restructure who it is that is going to be providing support to people to make these claims.

**Q13** **Stuart C McDonald:** To what extent is this a fundamental problem here, that it is the Home Office that is in charge of this scheme and the impact that that has had on a number of folk who are reluctant to claim the lack of empathy that people are talking about in terms of how applications are treated and even danger around retraumatising people? Is it too late to fix that? Would the delay caused by moving it to a different organisation be worth it or is it still something we should think about?

**Jacqueline McKenzie:** I am of the view that perhaps it was not a good idea for it to be with the Home Office because, in many ways, people see them as the aggressor in this. They are judge, jury and executioner in their own malfeasance.

It is problematic. People are always asking me should it move. I know there are Departments within Government, there is the Ministry of Justice, there is BEIS, there are other organisations that have a lot more experience of handling compensation schemes, so perhaps it would have been better to go there.

I am a bit worried, though, that if we were to take it away—the scandal coming to public prominence has been around now for three years exactly, the Windrush Compensation Scheme for about 18 months—it would be very difficult to move it to a Department and get them up to speed because the major issue here is people are suffering in the interim. The delays are inordinate. I do not understand why the delays are so long and people are suffering. If you were to move it, what would happen, what assurances? Unless you were to say, from the moment we realise somebody has been affected by the Windrush scandal, we will process their immigration status documents—they are certainly going to have a claim, even if it is only under the impact on life tariff—and we are going to make them an interim payment almost straight away. Then you will



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have the time to sit down and design and implement something that works. I would be very worried about moving things so late in the day and leaving people without any resources.

**Q14** **Stuart C McDonald:** You spoke earlier in the same vein about the need for some sort of ex gratia payment and Amber Rudd having spoken about that, just to reflect the pure and simple pain and humiliation of what this entire cohort went through. How would you go about deciding what sort of sum could reflect that? You will never get a group of people to agree what is an appropriate sum. How has that been done in other cases, do you know?

**Jacqueline McKenzie:** In the Shirley Oaks Lambeth children's home, I know there is a payment of £10,000 just for having been in one of the children's homes. Then there is a methodology for calculating if there was abuse at various levels. I know people who are affected by the Windrush scandal have also given that figure. Amber Rudd had said £20,000. Just to be fair to her, she was throwing this out to diplomats as an idea. She had not come up with that as a scheme but it was an idea. It is difficult because no amount of money can compensate what has happened to people affected by the Windrush scandal at all, but it will go some way to say, "We got this wrong, here is a sum of money for that", whatever it is. Experts will sit down and work that out in consultation with those affected and with various experts who work across different areas such as trauma, economy, and loss of education. It needs a team of experts to sit down and work out what that figure will be.

I do not necessarily expect it to be a big figure, the millions that some people think it should be because of what has happened, because that does not happen. First, the country could not possibly afford it but, secondly, it does not happen even in court. It will be a reasonable figure. Then, on top of that, those who have actual losses should be reimbursed for those actual losses on top.

**Holly Stow:** I completely agree. There should be an initial award made while the caseworkers go and calculate the actual losses. What this figure would be, we do not know.

The issue with the Home Office administering it is that people do not trust the Home Office, and why would they trust the Home Office? Going to the Home Office to access justice after they have put you through years of trauma just creates a barrier and puts people off from putting in that initial claim. I have seen claimants who have basically said, "I do not want any contact with the Home Office" because them calling triggers people. It takes them back to some dark, horrible places.

**Q15** **Stuart C McDonald:** That brings me on to another question. Another thing that struck me last week, when some of us were lucky enough to meet and hear from people who are going through this process, was especially if you are assessing things like impact on life, how can people do that if they have no face-to-face contact or interview with the person who they are making that award for, if it is all just e-mails, lawyers,



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letters and so on? To what extent would the process be improved if the people making these awards had to meet the victims and perhaps members of their family? I suppose that then gets tied up with the fact that it is the Home Office. If it was a completely different organisation doing that, that might be a much more productive and easier thing to do, putting aside questions of numbers and so on.

**Holly Stow:** There is a serious need for the Home Office to meet with claimants and understand their stories, not just looking at the paperwork that they send in but understanding what they have gone through. They have set up these groups in order to do that. We have not seen much work done with them. I see clients all the time complaining that there is no contact with the caseworkers. You cannot get a real feel for the suffering the person has gone through on a piece of paper.

The lack of transparency as well, once a claim is put in with a caseworker, causes more anger, upset and frustration with the claimants. If they were aware, "Okay, your claim is now being processed. It is at this stage and we are doing X, Y and Z" so people knew exactly what was happening and there was this constant contact and communication, perhaps it would not be so terrible if we knew, "Okay, it is likely you are going to be made an offer in March, we cannot be sure, but we will work on this". Giving people a little bit of an idea what is happening with their lives essentially would help.

I had an e-mail this morning from a caseworker giving me an update on one of my cases, and it literally says, "You are notified that we continue to progress the claim and confirm that his claim has moved to the next stage". That is it. That is the update. I am aware it is still there because we put the claim in. What is this "next stage"? What are you doing? This is a claim we put in last year.

There needs to be engagement with the Windrush community. There needs to be clear transparency from the caseworkers and there needs to be increased communication.

Q16 **Stuart C McDonald:** To what extent would it be feasible for the person making an award, especially for impact on life, to have to sit down and hear from the victim? Are the numbers too difficult for that or is it something that should be done?

**Jacqueline McKenzie:** It should be an independent tribunal in the way it operates in other schemes. You have an independent tribunal with experts. Possibly a psychiatrist, psychologist or whoever needs to be there to do this work, not the Home Office. Report to the Home Office but it should not be the Home Office sitting down interviewing anybody. That would not be acceptable whatsoever.

Q17 **Stuart C McDonald:** Has there been precedent for something like that operating on this scale, if you could potentially have 10,000 or 15,000 people that would have to go through that process? Have we done that before?



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**Jacqueline McKenzie:** Sorry, I did not hear the question.

**Stuart C McDonald:** Just in terms of scale, how long would it take to get 10,000 or 15,000 people through that sort of process?

**Jacqueline McKenzie:** Of course, it could take a very long time. You are absolutely right, particularly if the figures go up even further than that. But I don't think everybody will require that. We are talking about claimants where we think that they reasonably, with some expert evidence, could go above the £10,000 threshold.

Q18 **Stuart C McDonald:** One change that was made was the removal of reference to the need for evidence beyond reasonable doubt from the guidance, which was good. To what extent has that made a difference in practice? Is it just a change of the words in the guidance? Secondly, particularly for Jacqui McKenzie, you spoke about legal aid as being one way to make sure folk were able to get the support they need, but you also mentioned some alternatives as well. I did not quite pick up what they were, so could you just say a little bit more about that as well?

**Jacqueline McKenzie:** Some firms are not legal aid firms—for instance, with the Lambeth scheme—and firms are not going to make any profit out of this. The fees paid usually are quite low. With the Lambeth scheme, lawyers get between £500 and £1,000 per claim, and the amount of work you are doing that is never going to cover, but it allows you to do this work and not do other work.

Legal aid, or people have a budget and they can go to a lawyer of their choice and get the work done, or you have all these wonderful community organisations around the country. They are in Manchester, Birmingham, Nottingham, a couple in London, Preston, Oxford, you name it. There are a good group of people who come together, community activists, lawyers, people from the cohort, people affected, who are able to do this. With a little bit of support they would be able to work much more effectively because people have to get on and do other things in order to make a living. If this was funded, they could concentrate on this area of work.

Q19 **Stuart C McDonald:** The “beyond reasonable doubt” change, has that made a difference?

**Jacqueline McKenzie:** I have not seen that trickle down yet because that is a recent change. I am hoping to see it but not yet, no. The last letter I have seen was asking for quite onerous evidence. There is a bit of a difference between beyond all reasonable doubt and asking for onerous evidence. I have not had too much of an issue with the beyond reasonable doubt level of evidence. It is just the amount of evidence that people have to supply.

Q20 **Stuart C McDonald:** Holly Stow, any final thoughts on those issues?

**Holly Stow:** Yes. Similar to Jacqui, we have not seen much change with the beyond reasonable doubt. A recent further evidence request asked if we had evidence of one of my clients trying to apply to open a bank



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account. This would have been early 2000s, if not beforehand. They are basically asking, "Did you take a letter from the bank when they said no?" That does not happen. Then it is saying, "What did you do next?" "Well, I got on with my life and had to use my partner's bank account for my wages." It is all there in front of them in the evidence that we give to them already.

The main issue we have seen with the beyond reasonable doubt has been with the loss of access to employment. We have had to go back to employers from years ago and ask them to write a specific letter saying, "This person was made redundant" or, "We had to let this person go because of their status on this date". In some cases, things like that are not possible to gather. Some employers no longer are around; some businesses no longer exist. It is a very welcome change and the whole scheme should be brought to that balance of probabilities, but it is a change that is in review, so it is slowly happening and hopefully we will see that being implemented soon.

**Q21 Chair:** Thank you. Can I follow up on a few of those points? On that employment point, how often are you looking at cases where people first came up against Windrush problems when they were applying for jobs or just being offered new jobs, as opposed to people who were in employment already? I was struck by somebody who we spoke to and heard from who was about to start a new job and that was the first point at which he became aware of problems but, of course, then did not have the proof and evidence and, therefore, was not awarded anything for employment. Have you come across that as a problem frequently?

**Holly Stow:** Yes, I have seen that a few times, where clients have gone to apply for a job but could not go with it because they did not have a British passport to show the prospective employer. Mostly I have seen those who have been in employment and then have been let go from that employment, but then the evidence that the Home Office caseworkers ask for once that happens is, "Okay, what did you do next? Did you apply for another job? What agency did you go to? Show me all these e-mails that you applied for". If you are being knocked down, you are not going to keep e-mails saying no. Nine times out of 10 employers who do not want to employ you will not inform you, you just simply do not get a call back.

It is that impossible evidence, then it entwines with the whole retraumatising claimants, because why would you have to keep going over and over again having to apply for jobs, not getting them, doing whatever you can to try to better your life, but things are constantly being put in your way? It sends people into depression, anxiety and whatnot to then be asked about that over and over again with these further information requests.

We have also then seen a caseworker has asked, "Okay, did you then sign on for benefits?" "I tried to, but I couldn't." You have a letter from DWP saying, "The law says we cannot pay you" but that is not enough to show that you did try. The mitigating factors—



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Q22 **Chair:** Just say that again. You had a case where somebody did have a letter saying they were not entitled to benefits, but that was not treated as sufficient?

**Holly Stow:** Yes. I have had a case where the claimant lost their job. They then applied for benefits—I can't remember the exact benefit—and we have a letter from DWP that is dated around the same year they lost their job. It just simply says, "The law says we cannot pay you" and the caseworker would not accept that as sufficient to their refusal of a benefit.

Q23 **Chair:** What evidence were they then asking for?

**Holly Stow:** The Home Office caseworker themselves said that they contacted DWP and the DWP said that their decision was correct and that there was nothing else that they could basically obtain. That was kind of the final decision. It is troubling, at least.

Q24 **Chair:** This is a case of somebody who had been told they could not apply for benefits because of their legal status and had a piece of evidence that showed that, but somehow, somewhere in the system between the Home Office and the DWP, the Home Office said that was insufficient; the DWP said, "We have told you everything we can"?

**Holly Stow:** Yes, so no award was made.

Q25 **Chair:** If there are any further details that you are able to send us or anything that your client obviously would be happy to send us on that case, that would be very helpful, because that does seem to get to the heart of—

**Holly Stow:** Yes, I can follow that up in writing.

Q26 **Chair:** That would be very helpful, thank you. Jacqui, your sense on the employment and the way the employment provisions are working.

**Jacqueline McKenzie:** One of the things that we are noticing is that employers themselves are frightened to write these letters of evidence because they think that there might be some sort of action taken against them. Most of the cases I have seen are ones where the person was in employment and an employer, because of the hostile environment, started checks and started sending people home because they could not prove their status. When you look at some of the cases and you do the witness statements that people use, it becomes difficult to understand whether the employer was really using the law to protect themselves or whether they just wanted to get rid of certain members of staff, because I have seen evidence of both of those things happening. I am speaking to employers all the time and they are saying, "We don't see why we should write a letter".

There is the issue, too, that a lot of these employers no longer exist. National Insurance records are available. We have joined-up Government. I have not quite understood what the issue is with the Home Office going to HMRC and looking at people's National Insurance





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records or DVLA and getting their records and being able to work back from it. Most of the Windrush generation are people who worked very, very hard and have been in employment nearly all of their lives in this country. In fact, there is no other way for them of surviving. If someone has been in employment, National Insurance will show the work record. If there is that gap, then you simply use those figures and extrapolate or do some sort of assessment, either through an actuary or somebody else. I do not understand what is really going on on this one.

**Q27 Chair:** Thank you. At the beginning, Ms McKenzie, you referred to a contract for advice with We Are Digital. Could you just tell us a bit more about that?

**Jacqueline McKenzie:** The Government or the Home Office responded to the fact that there was a need for some sort of professional support to help people make claims and awarded a contract to the CA services, the former CAB. That was not through a tender process because, as I understand it, they were not required to do a tender because they already had some sort of contracting arrangement with CA. I have issues with CA having that piece of work, but I also recognise that CA has a wonderful tradition of supporting people in debt and welfare issues and housing issues and so forth. I just do not know that it has the tradition in immigration and, therefore, understand this.

I do not know why they retendered, whether it was performance issues or whether they wanted to increase capacity. I do not know. As I understand it, they have had over 500 people go through CA since the scheme was launched or since CA was contracted with and just about two weeks ago that organisation—in fact, you just mentioned it, We Are Digital Training.

**Chair:** We Are Digital was what you said earlier, yes.

**Jacqueline McKenzie:** We Are Digital Training has won the contract, and before that it was called Silver IT Training. The CA also applied. I know there was a consortium of organisations, which included the Black Cultural Archives, and lots of the Windrush groups around the country applied. I must declare that I was also involved in that. My concern is that I have looked at this company and I cannot see that it has a background either working with the cohort—and that is a particularly important thing for this piece of work, that you have some understanding of the cohort—or that you have delivered some sort of compensation scheme before or some sort of claims programme before. I cannot see it. I might have missed something on its website or by doing a little bit of background research, but I cannot see it.

I have a feeling some 70 year-old Ghanaian or Pakistani or Jamaican woman who has a claim is not going to go off to that organisation to get any assistance. They are more likely to go along to the Preston Windrush group or the Manchester Windrush group to get some support or to just knock on the door of a lawyer of their choice. I could be wrong, but I am



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quite concerned that having seen one contract not work, I am not confident that this new contract is going to work.

**Q28 Chair:** The community fund I think you referred to earlier as well, the £500,000 that was announced for grassroots organisations to bid for, as far as you are aware, has that not ever been launched then?

**Jacqueline McKenzie:** No, and I have raised a specific question about it. I have been told that some of it has been redirected to the cross-governmental working group, but I don't know what that group is doing. I am not clear how it can assist with the Windrush Compensation Scheme in particular. As I understand it, it is looking at disparities across a whole range of things, education and health and economy and so forth. I think there is one person who I have seen from just social media, because we have not been formally introduced to him as the Windrush Advisory Group, which I sit on, but he has the Windrush task. From the social media profile I am not necessarily convinced that he has understood it yet, but he might get there in the end.

But we don't have confidence in any of that. That £500,000, it is not a lot of money to do this work, but it will make a huge difference. It should be put back into whatever fund it is sat in and be dispersed out to all those community groups who are effectively doing some of the Home Office's work for it.

**Q29 Chair:** Thank you. A final couple of questions then from me. Have you seen anybody have a good experience of the tier 1 review process?

**Jacqueline McKenzie:** No. I have only seen one and it has been so bad. It was the dinner lady I mentioned earlier on. She did her own claim and then we noticed that there was a problem when she came along with it, because she was a little bit concerned about the offer. We said, "Oh yes, there is a problem". We assisted her, submitted an application for a tier 1 review and she was told—I only have her word for it, but I have no reason to disbelieve her, and I have reported this to the Home Office—by the person, the case owner, caseworker, whatever he is called, "Don't worry with that. The lawyers don't know what they are talking about. You are not going to get any extra money". She then rang me up, very despondent, and said, "But you told me that I could look at this and I could look at that".

In the end, because she was destitute and had been made homeless, although not through the Home Office at all, that was something else that had happened in her life, so she had multiple issues and multiple traumas, she said, "Look, the sum that they have offered me", which was about £12,000—and this was a woman who had lost her job, was marched out of the building by her employers at a school—she decided, "Just accept. It will get me a bit of furniture and I am just going to accept it. I just don't want any more headache or any more stress".

**Q30 Chair:** Ms Stow, have you had any examples of cases that have had a positive experience from the tier 1 review?



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**Holly Stow:** No positive cases from the tier 1 review.

Q31 **Chair:** Have either of you had any positive cases at all where people have had a good experience and it has been resolved and people have been happy with the response they have had?

**Holly Stow:** In terms of resolution, no. We have seen some offers increase, but it is still not enough, there are still things missing. It gives you a slight hope, but in many cases there has been no resolution and the offers are nowhere near accurate.

**Jacqueline McKenzie:** We are still very much at the early stages of this because we are really struggling to get all the evidence together for people to do the witness statements and that sort of thing. No, but I have seen somebody who we helped, she submitted her own application and we helped her with it. She is very happy, although when I look at the offer and I know the circumstances, I would not have been happy if I was her, but she is happy. Yes, to answer your question, I have seen at least one person say that they are very happy.

Q32 **Chair:** A final question from me. Could you very briefly tell us your top two things that you would like to see change on the Windrush Compensation Scheme that you think would make the biggest difference, starting with Ms Stow?

**Holly Stow:** I would like to see a serious change in the communication and transparency from the Home Office caseworkers and also the evidence thresholds so as not to put claimants through any unnecessary retraumatisation at all.

**Jacqueline McKenzie:** I think there needs to be access to justice. People need to get support, whether it is from the community, whether it is from lawyers, however it is done. People need to be able to get proper help to do these applications. I think it will take a lot of pressure off. I think more people will come forward, particularly in their own communities. The communication point is an important one, but for me there needs to be some very quick interim payments because we are seeing people struggling. I am assured by people who have more expertise in this—I have worked on compensation schemes in the past, but I certainly bow to people who have much more experience of this than me—who tell me these things do sometimes take a very long time. Then what needs to happen in the interim is better communication and proper training for case owners so that we do not get 34 bullet points that are just repetitive, asking the same thing just in a different way, and there needs to be the interim payments.

**Chair:** Thank you both very much for your time this morning. We really appreciate it. If you have any further evidence or information that you want to send us in writing to follow up, we would very much welcome that. We are very grateful for your time this morning and also for the work that you are doing to help members of the Windrush generation, who have been so badly wronged by the Home Office. Thank you.



## Examination of witness

Witness: Martin Forde.

**Q33 Chair:** We are going to move on to our second panel now. I welcome Martin Forde QC, who joins us for our second panel. Martin Forde is the independent adviser to the Windrush Compensation Scheme. Mr Forde, we obviously want to ask you about your assessment of the scheme, about what is happening at the moment and so on. Could you talk to us about what your role was as part of the design process and what your role is now and how that works?

**Martin Forde:** Yes, of course. Good morning, everybody. I was appointed after the scandal broke in April 2018 by the then Home Secretary, Sajid Javid. My understanding is I was approached partly because I am of Caribbean heritage myself, but also because I am a compensation lawyer. That is what I do in my day job. They wanted somebody independent to look at the design of the scheme.

We then had a call for evidence, which lasted a month. We got 650 responses. That gave us a breakdown of the common issues that people had suffered. Pretty much top of the list—I think it is 62%—was impacts on life, so the mental stresses and strains of their status being doubted. Then there were perhaps less common occurrences, such as denial of access to NHS treatment, which did not feature a great deal, and obviously there are employment issues and denial of benefits. We then launched a consultation and—

**Q34 Chair:** Can I just interrupt you? When you say, “We launched a consultation” I am just interested in what your role was and what the Home Office role was.

**Martin Forde:** Yes. I am explaining—

**Chair:** Was it a Home Office role and were you overseeing it or were you launching the compensation?

**Martin Forde:** No, everything I say I had involvement in. I realised we needed a call for evidence, because you need an evidence base to design the scheme. I realised we needed to consult the affected communities. During the course of the four-month consultation, I probably attended upwards of 30 to 40 meetings countrywide. I went to Leeds, Manchester and Liverpool, I went to various parts of London, I went to Birmingham and I attended Bristol, so areas that I knew through my own cultural background had a high preponderance of Caribbean citizens. One of the unfortunate things about Windrush is the name because I think that a lot of people in other communities, predominantly the black Commonwealth, don't think this applies to them. I have had interaction with people from Nigeria, Ghana, India, Pakistan, the former Rhodesia, and in fact a white Canadian lady who came over and her parents died and she ended up in care and her status was doubted, so it is complex.



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The consultation was extended by a month. I spoke to Diane Abbott about that and said I had found that when I first went into the community, there was a lot of mistrust and I needed to assert my independence. Quite often I found if I went back more than once I got a much better attendance, so people kind of came to look at me to see if I was a Home Office lackey and a sell-out and were initially very suspicious. Then when I did my presentations and explained—and later I said to the Home Office, “I would actually rather do them without you because there are still rumours that this is a form of entrapment, ‘There are vans parked outside waiting to deport you’”—Diane was very helpful and said that had been her experience over many decades as a black MP. The reason I did that was because, understandably, the Labour Opposition was pressuring the Home Office, which is run under the auspices of the Tory Government, to act and act quickly. It seemed to me that it would be good to take the politics out of an extended consultation and just say, “Let’s get it right”.

That finished in November. I then was regularly involved with Home Office officials from various Departments. I spoke to people from border enforcement, because I wanted to understand the realities of detention. It was explained to me that immigration detention is a far worse experience than ordinary custodial prison sentences because of the anticipation. Every time the key goes into the door, you wonder whether you are going to be put on a flight. Every time you say goodbye to your family, if they visit you and can afford to make the trip, you wonder whether you are going to see them again.

At least even if you feel a burning sense of injustice about the length of your sentence or your conviction, you have a finite time—in most cases; obviously, there are some cases where the sentence is life—and at least you can plan, in a way, and you know that perhaps your first parole date will be at a particular date, “Your earliest date of release will be—” and the court specifies that. That sense of constant apprehension and fear isn’t as present in a custodial sentence. That was useful.

I then talked about interdepartmental issues. It struck me at the very beginning—and I emphasise this and I am very happy to tell you how I think it has worked in practice—that the Home Office would have to be very light touch on documentation. The reason for that is very simple. We all know if we slip over at work on a wet floor and injure ourselves badly or if we are run over by a careless driver that there is this thing called compensation. We have regular adverts on the television with various law firms advertising their services and no win, no fee. That is embedded in our psyche that where there is negligence, there is compensation.

With the Windrush scheme, the reason I wanted the Home Office to be light touch on documentation was that when a lot of people suffered their misfortunes, there was not a scheme. To give you a simple example, if I was driving my father to meet immigration bail every two weeks, that was costing me time possibly away from work and petrol and wear and tear on my car. There is absolutely no reason, if I was doing that in 2014



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or 2015, for me to keep the receipts because there was not the scheme. In that sort of instance, I was advising the Home Office it would need to take a lot on trust and maybe do a lot of legwork itself. It might say, "What was the capacity of your car? I will Google Map the distance from your home to the detention centre. It looks as if it would have been this mileage. Your car does this amount of miles to the gallon. We are offering you however many pounds per trip. Is that acceptable?" I thought there would be a process of negotiation as regards those kind of more minor issues.

I was also very aware that there is a lot of fear in the community and that people felt quite strongly the Home Office should not be marking its own homework by administering the scheme. I was very troubled by it being in charge of the scheme because it does not sit well with a lawyer that the tortfeasor, as we would describe it in law, the wrongdoer, isn't normally the compensator in terms of controlling the amount of compensation. It may have a liability to pay, but there is an independent adjudication or there are lawyers on each side who negotiate a settlement, so there is an objectivity about it.

What was very quickly made clear to me, because obviously there was political pressure, understandably, to get a scheme out there, was that the Government do not really work in terms of delegating to other Departments where you are a wrongdoer. There are issues around the Treasury; there are issues around governance. Around eligibility, the Home Office will always be the final arbiter. You could have had a situation where the Department for Digital, Culture, Media and Sport worked up a case and presented it to the Home Office for payment and the Home Office did its checks and said, "We don't think this person is eligible. They are an overstayer" and all that work would have been wasted.

There was another very important decision to make early on, which I advised upon, which was this: there were clearly instances, particularly around employment, where people had their employment terminated through misapplication of Home Office policy and guidance. In 2007 I think John Reid introduced the UK Borders Act, which rather cranked up the pressure on employers, the NHS, airlines, landlords and the DWP to effectively be delegated border police. That is when people began to run into problems. The NHS, for instance, terminated contracts of nurses who had been employed way before 2007 and should never even have questioned their right to work, as I understand the law, but did. It looked at all the brown faces in the room and effectively said, "Do you have immigration status? If you can't prove it, we risk a substantial fine and we have to let you go".

I was saying to the Home Office, "As a matter of law, where somebody else's negligence has caused the loss, in other words, the employer through misapplication of policy, they should have the legal liability". That was going to get amazingly complex, not least because some people were going to find that they were out of time to sue their employers for



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their loss of earnings in the intervening period. The Home Office said, "We won't be a signpost, in other words, we won't say, 'This is a DWP problem/this is your employer's problem'. This is a miscalculation of National Insurance. We will pick up the tab for everything". That is why it has been described as an ex gratia scheme, because there is no doubt that in strict legal terms the Home Office has taken on the liability to compensate, which no judge would force it to do.

I have identified 14 potential areas of compensation, or 13. Because I know how things work and lawyers like to give themselves wriggle room, the 14th category was entirely discretionary, so that was effectively everything we had not thought of, but the commonly occurring things, the deportation, which thankfully was not very common but had occurred, detention, which had occurred, loss of employment, loss of benefits, loss of access to NHS, loss of access to banking facilities, DVLA, loss of educational opportunities, because this is a generational thing. They are people of my generation whose parents did not have status, people of my children's generation whose parents and grandparents did not have status who were told they only go to university as a foreign student.

It is a generational problem and it has scarred the community I would say probably since the 1970s, looking at my own family makeup, where my parents, who came in 1953 and 1955, had to apply for naturalisation. They came here thinking they were fully British. My father's island, Barbados, became independent in 1966. The legislation then mandates he became automatically Bajan again, although he had been here by that time for 13 years and spent two years doing National Service. It was in 1975 that he naturalised, along with my mother. The rather chilling letter that they got—which I found because my father passed away in February, so I have been going through his stuff—in 1975 from the Home Office advised them that they were Barbadian and they would have to apply for naturalisation.

Pending their decision as to whether they wanted to, it would hold the applications for my brother and myself, who were born here, in abeyance, so it did not give my brother and myself what we were automatically entitled to. You wonder what was going on. I read that letter and it made me feel as if it was saying, "Can you all go home now? We have had 22 years of your labour and tax".

**Chair:** That was in the 1970s?

**Martin Forde:** That was in 1975, yes. This has been a longstanding problem, I am afraid, and big government has not worked for the Caribbean community on any level. I am very disappointed to hear Holly and Jacqui's experience in relation to how I expected the scheme to work.

Q35 **Chair:** We can come on to that because we do want to ask you about that. I want you just to clarify—perhaps very briefly because other members want to come in—what specifically your role has been in the



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process. You provided a lot of advice on the design of the scheme?

**Martin Forde:** Absolutely.

Q36 **Chair:** Was this a Home Office drawn-up scheme that you advised on or did you design the scheme? I will just ask you that question first.

**Martin Forde:** Yes. It was hybrid, in the sense that I identified the areas. I then discussed, with the benefit of my experience, which areas I was used to arguing for compensation in. For instance, loss of employment, loss of earnings are areas that I look at almost daily. I know what the average—

**Chair:** Sorry, I want to ask you for a very brief explanation of your role.

**Martin Forde:** I will just go through the heads. Benefits I am aware of. Psychological and psychiatric damage I deal with all the time. Once we identified the areas I was advising, there were bigger policy questions that I advised upon, things like mitigation of loss and criminality, which I can elaborate upon, where my advice was not followed and the advice I gave was that there was an element of irrationality.

Q37 **Chair:** Let's come back to the areas where you gave different advice.

**Martin Forde:** The final thing I would say—listening to the responses you got, because this is important—from my perspective, this scheme was always designed to operate on a balance of probabilities. The criminal standard should never have been any part of this scheme.

Q38 **Chair:** Can you briefly—so that we can come on to further follow-up questions—just tell us what your role has been since? Since the scheme was launched, what in practice do you do now?

**Martin Forde:** The scheme was launched on 3 April 2019. Between April and November I was involved in aspects of delivery, so I went to see the caseworkers in Leeds. I asked about their training. I visited Citizens Advice to see how people were being trained to deal with these things. I have advised on communications, and I have attended community events and the High Commissions, on a reasonably regular basis, to try to explain how the scheme worked basically and how people should make applications. My strong feeling is that logistically—

Q39 **Chair:** Before we ask you the content of your views, I am interested in your role. Are you formally putting submissions to Ministers at regular intervals? Do you have a roving brief or are you constrained on anything like that?

**Martin Forde:** No. I have meetings. I have had two or three meetings with the current Home Secretary. I have had meetings with Junior Ministers about implementation. That has often led to changes in the guidance, so they have been constructive at least. Occasionally, I have been saying, "I told you this was a problem and that has materialised".

I would say my role has diminished as the scheme has gone on. I get the statistics, as everybody else does. They are in the public domain. I





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sometimes query individual cases that are brought to my attention, as to how they are progressing.

**Q40 Chair:** Do you have the ability to look into individual cases? Do you sample individual cases to see how they are going?

**Martin Forde:** I have not been ascribed that role, which is interesting because my role, which was advertised—and I was told I was stepping down at the end of November but I am in communication with the Home Office still—was described as one that required skills in audit and risk. I did not think I had those skills. If there is somebody who is sampling and quality control proofing the delivery, I think that would be a very good thing indeed. My understanding is it is done internally but I am not sure with what rigour.

I was involved in an aspect of the procurement process for the new contract, not in the decision, and I emphasise two things: first, that I felt that anybody who got the contract had to have good community links and understanding of the cohort and, secondly, that it seemed to me that they would also need to understand that, in the implementation of the scheme, they would need to be light touch on documentation, because I think that is how we got into this mess, frankly.

**Q41 Ms Abbott:** You will know, Mr Forde, that the Home Office estimated that the overall cost of the Windrush Compensation Scheme would be £90 million to £250 million, based on a planning assumption of 11,500 eligible claims. In fact, at the end of October this year, there had only been 1,641 applications and over £2 million had been paid to just 226 claims. In your opinion, why has the scheme moved so slowly?

**Martin Forde:** Yes, that is a very important question. It is a tenth of what they modelled, and I certainly saw figures of between £200 million and £500 million. There are a number of reasons why the scheme appears to have moved slowly. The reality of the situation is that I do not think it was ready to deliver until about November/December of 2019, even though it was launched in the April. The first payments were made in the December and they tended to be payments of fees because they were on the Home Office database.

I think there has been quite a lot of misleading publicity. The first headline was, "You only get £10,000 for deportation", which was just wrong. A lot of things were written by people who clearly had not read the scheme or the guidance, so it did not get off to the most favourable or, I thought, fair treatment. I was denied a platform. I asked on many occasions if I could give a counter-narrative and explain the facts, but that was not deemed newsworthy.

Some of the media outlets trusted by the community have concentrated—and I am not criticising them because where cases have gone wrong they should be highlighted and the Home Office should be held to account, but I think a concentration on the bad news stories from the more trusted organisations than the Home Office, and from the point



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of view of the community that is pretty much every organisation because they do not trust the Home Office at all, puts people off.

My concern is that the critics are conflating delivery with the scheme itself. I think the scheme itself, properly implemented, is a perfectly fair and reasonable scheme, but the caveat is “properly implemented”. Because there are not many good news stories out there and the critics are not giving people an alternative, I am really concerned that people have found themselves expecting that there will be a public inquiry at some point, there will be a different type of compensation scheme or there will be grants and awards.

A lot of the lawyers that I have seen who are involved in this have been doing so on the basis of taking a percentage of that which they recover, which I am extremely unhappy about. I mean to the extent that I tried to engage the Law Society in a conversation about whether this was ethical, because it seemed to me that people had suffered enough without lawyers taking a percentage of their award. I also understand that people may have felt driven towards that expertise, and that comes back to one of Jacqui’s points that I agree with.

**Q42 Ms Abbott:** You are saying that there was nothing wrong with the structure of the scheme but it got some very poor publicity?

**Martin Forde:** It got some very inaccurate publicity, I think the day after £10,000 for deportation when, in fact, £10,000 was deportation simpliciter, which is what a court awards for deportation. Then, if you are out of the country you have loss of earnings and loss of benefits. You get your impact on life. Your close family members would get their out-of-pocket expenses if they were supporting you abroad. They would get their impact on life. When I designed the scheme I knew we had an elderly cohort—and I am thinking particularly of my father’s generation—and the scheme was designed to allow for claims to be inherited. There are complications around that as well, which I am happy to explain to you.

My idea was looking at the intergenerational dependency that our community has. My dad did a lot of childcare for me. I knew that if my dad had been threatened with deportation or if I had lost my job, my dad would have tried to step in. I also knew the way the families work, that if somebody was upset, distressed about the threat of deportation or actually detained, it would have a ripple effect throughout the family and extended family. That is why I wanted the close family members as well as primary claimants, and I wanted the claims to be inherited because I was acutely aware that a number of the cohort would be 70-plus.

**Q43 Ms Abbott:** You will also be aware that Alexandra Ankrah, who was head of policy in the Windrush Compensation Scheme, resigned very recently. One of her fundamental concerns was that the first Home Office officials to be responsible for implementing the hostile environment policies were now responsible for the compensation scheme and they had brought with them a culture of disbelief. Do you think there is any substance to that



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concern?

**Martin Forde:** I can see that that could be a valid concern. I ought to indicate that I worked alongside Alex and I found her to be a highly competent and excellent member of staff. The matters she complains of were not things that I witnessed, but I am also acutely aware that I am not an employee of the Home Office. I wasn't around people as much, and I think they probably knew if somebody expressed those sorts of views in front of me I would have had rather a lot to say about it.

For instance, I did ask whether the guidance could be Crystal Marked because I do think the guidance is fairly opaque to non-lawyers and to those who are not used to dealing with documentation. I think it runs to some 45 pages. That did not happen and I think that might be desirable to break it down more.

I asked at the very beginning whether legal aid could be granted for expert compensation lawyers to assist with claims. I think the current Home Secretary has admitted to you, actually, in a conversation I saw, that the claims were complex and they were hybrid and people suffered more than one type of loss. I agree with Jacqui, I still believe that would be a desirable position. I was told that there would be difficulty getting the legislation through and a change to the secondary legislation in time. In other words, by the April launch.

It seemed to me that this is the first issue involving migrant communities that has united the left and the right-wing press and the British public as a whole. I have 80 year-old neighbours who said, "Get them as much money as you can, please, Martin. We feel ashamed". I think that is the view of the average British citizen, so I do not see that there is any need for any political or institutional pushback. I think we all feel that these people should be treated fairly and they should be compensated generously, and everybody would be delighted if hundreds of millions was paid, if that was an appropriate assessment.

I think there is a following wind—and this is politics, it is not something that civil servants can necessarily influence—and I wondered why there could not have been cross-party support for a change to the Legal Aid Bill to allow for legal aid.

Q44 **Ms Abbott:** Finally, Alexandra Ankrah, apart from expressing concern about Home Office officials who were responsible for the hostile environment trying in a sense to make reparations or being responsible for administering reparations, also made the point that the Windrush Compensation Scheme officials were not supportive of people who had been victims and they don't acknowledge their trauma, but what you are saying is you never saw that?

**Martin Forde:** The people who I worked most closely with, including ethnic minority staff who were highly motivated to assist me—a couple were there at the beginning and weren't there later on, so I wasn't quite sure what happened to them—seemed committed to delivering a fair and workable scheme. I am not so naive as to know that that is how they



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would want to present to me. I think that is the most neutral way I can put it. I would be very surprised if people had demonstrated those attitudes in front of me.

I was fiercely protective of my independence. There were occasions where I made it clear that I was not happy that certain policy decisions appeared to have been made without my input. That led to further meetings. Things were then undone and my advice was followed, so I made it very, very clear that I was not going to be railroaded into certain aspects of the scheme, and where things went in that I disagreed with—and the main things were criminality and mitigation of loss—I made it very clear that I would speak out on the fact that my advice had not been followed.

**Ms Abbott:** Thank you very much, Mr Forde.

Q45 **Stuart C McDonald:** Thank you, Mr Forde. I want to come in on those two areas that you have just highlighted, in particular mitigation of loss. Could you briefly explain what your objections to that part of the scheme are? Do you know the extent to which the Home Office has been applying those provisions to reduce awards for people it says should have taken further action to fix their own situation?

**Martin Forde:** Yes. Mitigation of loss is a concept that I think is only known to lawyers, frankly. It is not the everyday stuff of conversations. I have middle-class clients who, for instance, have a hand injury, poorly operated on, a concert pianist earning substantial fees, and when I explain to them that the law requires them to go off and consider being a driving instructor or a road sweeper, they look at me absolutely horrified because they say, "But they have destroyed my career. Why should I do a more menial job?" But the law requires mitigation.

My objection was: this is not a concept that is known to non-lawyers. It is nothing that would have been explained to the Windrush generation at the time. If you lose your job for no good reason, you are so broken by the experience that you are unlikely to challenge big government. Equally, I see no reason why somebody who lost their job should have to prove that they went to the DWP and were told, "You have to put in 10 CVs and we are offering you a job as a cleaning lady when you are a qualified nurse". For a Government Department to see that as a reason to diminish your loss of earnings claim, "You should have been a cleaner all of this time; therefore, you are getting your nursing earnings less your cleaning earnings", I just thought that was wrong.

Criminality is completely irrational, I think. If I am a surgeon and I brain damage you, and you have an appalling record for armed robbery, I cannot get out of paying you damages because you have an appalling criminal record. I thought that including criminality criminalised a cohort who have been wrongly criminalised throughout their existence here—and that includes the number of times I have been stopped and searched, even in middle age—and I thought it sent entirely the wrong message.



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It is irrational to say that, if a Home Office policy has caused you loss, the fact that you have a criminal record means you should not get the compensation you are otherwise entitled to. That is the strong advice I have given. I have no doubt that if anybody has their claim diminished by criminality a judge would strike that down, and that is the advice I gave as well. It was ignored, I suspect because it is much easier, is it not, to say, "I stopped this horrible armed robber from getting damages, or tried to, as Home Secretary, and the judges, enemies of the people, allowed them the compensation". I made it very clear that I did not see that as anything other than a political decision rather than a compensation decision.

- Q46 **Stuart C McDonald:** Do you know the extent to which the Home Office has used either of those provisions, particularly the one about mitigating your own loss, in order to reduce compensation awards?

**Martin Forde:** I am not aware of any criminality case. The other point I made about that was that it wasn't consulted upon and that the Criminal Injuries Compensation Board gives you bands, "How naughty have you been? This is how much it will be diminished". There was nothing in the consultation about that, so again I think that would fall foul of the courts.

On mitigation of loss, I am aware of one case that was initially applied. That was the case that allowed me to explain how ludicrous it was to apply it in that situation. My understanding is that that particular individual then got an award calculated on a much more rational basis, so they have been restricted I think to a £13,000 award, which was supposed to be a light-touch little proof of loss, rather than a bespoke award, which is the number of years of unemployment times net likely income. I think that is now on offer. I do not think that case has been resolved. I think that is going for review, but at least the principle now appears to have been conceded that mitigation should play no part.

- Q47 **Stuart C McDonald:** To what extent are you able to get information like that readily from the Home Office? Should your role be beefed up, or whoever the next independent adviser is, so that they can, like the Independent Chief Inspector of Borders and Immigration does, sample cases and actually see in practice what is going on?

**Martin Forde:** Yes. That is why I wondered whether the audit and risk specification for my job was so prominent. I did not recognise the job description as being my job and I wasn't asked about the job description for my job. I said to the community, "If I can continue to help, I will do" and I met Jacqui and Holly on many occasions. They have done some amazing work.

I was at a meeting with the Preston Windrush group last night. Everybody feels it is a battle. It is a real battle and, although I understand that sometimes questions are asked for elucidation and to maximise claims—because I genuinely believe that the people I have met would like to maximise claims—it comes across as onerous.



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I reiterate the point I made before. The reason to be light touch in documentation and possibly lighter touch in a court is that it is failure to produce documentation that got us into this mess. If I told you that I worked for an employer and my HMRC NI records show that, about the time I say I lost my job, I ceased to pay tax or went on to benefits, or there isn't an audit trail of any income stream, to my mind that should be good enough.

Checking with the employer, I understand it but I am also aware that some employers saw this as an opportunity to get rid of longstanding staff without having to pay redundancy payments. You can argue that that was racially motivated. They are not going to write that letter. They are writing letters back saying, "It wasn't entirely immigration status. It was a bit of capability. It was a bit of insubordination". Of course, if you have a certain mentality you will say, "Well, that is not the entire reason why you lost your job. Therefore, you are not entitled to the full loss of earnings claim".

It is those sorts of decisions that I am beginning to hear about. I understand and there has been much talk about taxpayers' money but, as I said to you earlier, I feel this is the one issue that pretty much unites the British taxpayer, regardless of political hue. They want these people to be properly compensated.

**Q48** **Stuart C McDonald:** Thank you. That brings us on to the issue about requiring evidence beyond reasonable doubt, as was in some of the guidance that has now in a welcome change been taken out. I suppose the question becomes in practice whether that is happening because, if somebody gives a perfectly cogent and sensible witness statement and can provide one or two documents, there seems to be a suggestion that, well, that is not enough for the Home Office. It has to see every single conceivable document that could corroborate that. It seems to be multiple forms of corroboration that it requires.

**Martin Forde:** As I said earlier, the problem with adopting that attitude, if that is the attitude—as I have said, the people I have spoken to have assured me they are looking at it light touch. They are trying to maximise claims. They are asking these questions to enhance claims rather than to put up further barriers. I do understand because of Covid you cannot have face to face meetings to get this information, so rather impersonal letters have possibly come out. There are lots of pro forma letters where this is probably quite a bespoke service.

I do feel that the reaction of the community when they are questioned is, "You are big government. You are actually showing that you don't believe me by asking these questions. I have never been believed by big government. I have never been treated fairly by big government", so there is a disconnect there between what I think is the aspiration, which is to get more information to maximise claims, and the reaction to the questions.



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However, I do feel that what you were saying before about documentation is a mentality thing. If you are a civil servant you are looking for reasonable proof because it is taxpayers' money and you are worried about criticism by the National Audit Office and the Office for National Statistics and PAC, if you, say, have given somebody £10,000 and you've only got £7,500 worth of receipts. My argument is that there was no scheme for people to keep documents for.

If you come to see me and you say, "I have had an unfortunate outcome in an operation", I will say, "You now need to log all your trips to hospital, the mileage, the petrol. You need to get your partner to say how many hours they are up in the night because you are in pain, because there is a claim for care". People need to be directed as to how to formulate claims. This cohort are not professional litigants, which is why I think they need assistance.

The other point I would make about delivery is that I think measuring impact on life is really difficult. The scheme is more generous than the courts in that regard because it compensates for distress and anxiety, which is not a claim known to the law. In law you need a diagnosed psychological or psychiatric injury, but because the politicians talked about distress and anxiety, which is more low level, we designed the scheme to include that. I used existing High Court tariffs that I use in my everyday work, but lower because distress and anxiety is less than definite psychological injury.

My point, however, in terms of how that is applied, is I feel low-level distress and anxiety that is prolonged—because most of our claims resolve in 18 months to two years—should give you many multiples of the lowest figure, and I have been advising on that because if people have had prolonged distress and anxiety, it seems to me that that is a real issue.

My initial thought—because I am an ex-JAC commissioner—was to engage the JAC to get a tribunal that consisted of a senior lawyer, possibly somebody like myself, and a trained psychiatrist or psychologist, and if people were willing to explain what they had gone through in rather like a medical tribunal, you would then be able to make an assessment based on a lived experience. I think that aspect is very difficult to calculate on paper and I am not surprised that people are disappointed by how much they have been awarded for that head of loss. The law generally is not very good at assessing psychological and psychiatric injury because you literally cannot get inside somebody's head.

There are well-documented cases where I know people suffered greatly and went to their GP and were put on antidepressants, but not everybody would have gone to their GP. My own father saw admission of pain as weakness. That is what this cohort are like. He thought you could cure everything with TCP and ice. They don't go to GPs. They don't trouble them. Some of them have issues of prostate cancer—I mean black men—and they are hardworking and they do not access facilities, so their audit



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trail does not have this kind of middle-class neatness to it. I think you possibly have to ignore a few of the gaps and say, "We think it is pretty likely that you are genuine. Here is the payment".

**Q49 Stuart C McDonald:** Thank you very much. My final question, just going back to what Diane Abbott asked about the reasons why the numbers coming forward were not significant enough: to what extent is that simply a product of the fact that it is the Home Office that is administering this? Secondly, as matters stand, the scheme is due to close in April 2023. I am guessing, unless we see a significant uptick before then, you would support a significant extension of that deadline?

**Martin Forde:** I hope so because I think the whole Covid period should be added to 2023, personally. If I am asked about that, that is what I shall say, so I have said it now.

I think that there are issues with the Home Office and its image and its portrayal, fair or otherwise. As I said, the individuals as civil servants are doing a difficult job well, but the institution is tainted and has been in respect of all Governments, I suspect, for some time. The Home Office does not do anything illegal, it would say, in terms of matters such as the deportation flights, but there is no doubt that that is seriously undermining of process.

There are lots of people who are genuinely scared. If you look at somebody like the Anthony Bryan case, he only wanted a passport to go to visit his mum in Jamaica and he ended up being detained twice. I think there is a lot of fear in the community. I made it very clear that every time there is one of these flights it causes a problem in terms of people's confidence in the Home Office. That is a real issue. There is a lot of fear.

I am also aware that some of the people who are deported are not people we would regard as genuine Windrushers but I think, in terms of communication, there is poor communication about the scheme. I would have liked a public service broadcast. I think that the communications need to be done more enthusiastically. I have had a lot of people coming to me saying, "Look at what has been put into the EC naturalisation scheme compared with Windrush. We have been here for longer. We don't see the same amounts of money being spent" and so on, so they still feel lesser compared with almost every other migrant community.

We know that the white Commonwealth are treated more favourably than people from the Caribbean, in that they can get work permits. They can come here because they have a Welsh granny, even though they may have been born and brought up in Australia, so there is a massive disparity and this has been going on since 1948. This is a community who do not think big government works for them. They don't think that they are treated fairly and as soon as there is even a rumour of Home Office potential entrapment, deportation flights, "It is mean anyway", it really diminishes confidence and then people are not applying.





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There is a very, very clear message that again is around communication. I am assured that the taskforce server, which is to do with naturalisation and status, and the compensation server, there is a bit of interaction because the taskforce refer cases to the compensation scheme or advise people to apply when they try to help them get back on their feet at least. Those two servers cannot be accessed by border enforcement. Therefore, there is no risk, I am told—but people are sceptical—of border enforcement seeing that you have been refused compensation, or you have been refused status because maybe you were a juvenile when you came here and you are technically an overstayer and that will lead to you being taken to Heathrow Airport. That is a message that I think has got lost in translation.

Although I am told it is the fact, I am not sure that it is something that Home Secretaries are enthusiastic about putting into the public domain because it almost looks as if they are condoning illegality. My personal view is it is more important to give this generation, the majority of whom are clearly here legally and have been for 50 or 60 years, the reassurance that they will not be placing themselves in a position of jeopardy like Anthony Bryan. That message needs to be broadcast very loud and very clear.

**Q50** **Laura Farris:** I want to ask some questions about your comments about the tortfeasor determining the amount of any compensation and also about some of the claimants involving lawyers or feeling the need to involve lawyers who are then helping themselves to a cut of any compensatory award. I can see from the way you have designed this scheme that it borrows from employment and some personal injury type principles, particularly around the impact on life element.

**Martin Forde:** Correct.

**Q51** **Laura Farris:** It seems to be fairly user-friendly in that the layperson could understand naturally where they might fall in respect of certain categories and certain thresholds. Was it your intention that it would be something that somebody with no legal experience could use themselves or did you think the Home Office might provide an advisory service? Also, do you think that some sort of independent tribunal might be the better way of quantifying these claims?

**Martin Forde:** They are two very important points. The latter one on the tribunal, with representation and impartiality like a mini court, obviously all lawyers would favour that, but I am acutely aware that most cases I do are six or seven-plus years old so there was a lot of downward pressure to get something workable and accessible.

I think the scheme is accessible but not to all. People have varying talents and abilities and degrees of understanding. One of my concerns with the elderly cohort was I was getting a lot of e-mails, because my work e-mail is in the public domain, from children of people affected because they were in their 40s and their parents were not particularly computer savvy, and I had issues around access. When the form



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originally launched you could not save it as you went through, so we had to go to IT and say that people cannot sit down and write their traumatic life story in one go. They want to do 45 minutes, have a cup of tea and come back possibly two days later.

Tribunals I did float, certainly for impact on life, because I think it is hard to assess psychological and psychiatric damage, distress and anxiety on paper. The rest I felt it would be good if people had support but I hoped there would be fewer home-made forms and there would be a real publicity drive that would encourage people to go to CA. What I discovered yesterday that I had not appreciated was you cannot just wander into Citizens Advice and get its assistance pursuant to the contract. You have to phone the Home Office who then book you a slot, and I think that could certainly be outsourced.

The tortfeasor point I wrestled with because it does not feel right to a lawyer, but I had to be pragmatic. It seemed to me, with the pressure on launch and speed, to get another Department to take over the administration of this scheme was going to be well nigh impossible. I was told there could be difficulties with the Treasury, which was insistent the Home Office paid for its errors and the situation it had created, so you would not necessarily get another Department prepared to take on that burden with indemnities and so on. Reluctantly, with a combination of expediency and pragmatism, I said, "Right, fair enough, but there needs to be an independent element", which is why I said there had to be these two layers of appeal with the second one being the independent adjudicator.

**Q52 Laura Farris:** In relation to that, I can see the logic of not diverting it into the MoJ's remit or the court or tribunal service, but if there was something that we as a Committee could make as a recommendation, either for streamlining the assessment mechanism or improving the speed of delivery, are there one or two things that are outlying that could be dealt with in-house in the Home Office in a reasonably straightforward way?

**Martin Forde:** My idea of the independent senior lawyer or independent psychiatrist, all they would be responsible for is setting up times, places and payment of those individuals, and they obviously could ask people to tender for it so they have some control over costs. There would be a difficulty about where you had these tribunals because this is a countrywide issue. Would you have regional tribunals? You could maybe follow the tribunals model. You could maybe even have a Windrush chamber for two or three years if the judge in charge of tribunals was prepared to take something like that on.

The difficulty I always encounter with these bits of lateral thinking on my part was time. It is going to mean secondary legislation. It has to get through Parliament. We are preoccupied with Brexit, which is why I was saying I think you would get cross-party support for this. Can you get a Bill through in five minutes if people understand the importance of it? Possibly, with the benefit of hindsight, I am not a political animal but I



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should have been operating in this kind of arena a bit more. I was very grateful for the support that Diane and Bell in particular gave me because they were my touchstones and they were at a lot of the events I was at and showed a huge commitment to the problem.

**Q53** **Laura Farris:** Can I press you on two other answers you just gave to Stuart McDonald? First, I wanted to very quickly make sure I have understood correctly what you said about causation. The answer you gave was that you did not think it was right for the Home Office to contact a previous employer to determine the reason for termination. Can I ask you why that is? Surely it is plainly material to the decision about compensation and the use of public money if the employer says this person was sacked for gross misconduct completely unrelated to immigration status. Would that not be relevant? Would the taxpayer not expect the Home Office to undertake that exercise?

**Martin Forde:** Yes. Maybe I have been a bit too broad brush. Obviously, that is a legitimate concern. I had anxieties where there have been suggestions that the status was problematic but it was not the entire reason. In other words, this was somebody who was problematic at work or had capability issues and, as Jacqui was telling you, not all employers want to admit to that being the reason. The starting point should be to believe the claimant. Certainly, if their employer has disappeared you will have to take it on trust.

**Q54** **Laura Farris:** Of course, but in circumstances where they have not disappeared—

**Martin Forde:** If it is gross misconduct perhaps, but then I would question if the immigration status affected them in terms of reapplication for other jobs because a lot of people had quite secure employment with councils. People I met that worked for councils had lost their job, worked for the NHS, had not really worked in the wider private sector and were not going to get references once that happened.

I think it needs a slightly more sensitive inquiry but I agree with you. If there is that kind of break in the chain of causation, then you have to ask yourself why anybody would then not work at all and not claim benefits unless their status played a role, because most of us, even if sacked, particularly if we had dependants, would try to find another job. I feel if you had sensitive questioning you would find it had had some kind of an impact, maybe not with that employer but down the line.

There is an even more complex issue here that might also show the diminution in numbers. I suspect because the community is very resourceful and resilient and they had to make ends meet, some of them may well have worked cash in hand because that was the only job they could get. Although their status might now be settled, they are probably very wary of claiming compensation and I doubt the Home Office wants to condone illegality. But the pragmatic reality is even if they were working cash in hand, they were earning far less than a legitimate job and I would say most judges would set aside that degree of illegality and



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say they are still entitled to the net difference. But that may be another matter.

- Q55 **Laura Farris:** That brings me on to my final question. I was again interested by what you said about mitigation because I think your answer to Stuart was that principles of mitigation should not apply at all. I was quite surprised by your answer because I thought it was an issue that might resolve itself as the person might say, "I had my employment terminated because there was a view that I was not here lawfully when in fact I was. Then I obviously could not get any work apart from perhaps in an informal way because that became an issue".

You said you did not think people would be aware of their duty to mitigate, but it remains the case that even, for example, somebody who was dismissed from their employment outside of the Windrush context but in a very serious discrimination that had resulted in termination, they would still have some duty to mitigate. My question is: in a qualified form, should there not be a duty to mitigate in recognition of the fact that they would obviously have found it difficult to get employment, or not?

**Martin Forde:** The reason I am so strong on this is knowing the cohort. A lot of these people had so many knockbacks and often found themselves in employment that had been hard to come by anyway.

- Q56 **Laura Farris:** Could that not be assessed on a case-by-case basis or not?

**Martin Forde:** It could be assessed on a case-by-case basis. It would be quite resource-heavy. I am very struck by how many of my educated clients that you would expect to be aware of the concept of mitigation, if it means lesser employment and reduction in status, are surprised and infuriated by the idea that if they had been, as I said, a concert pianist and were told, "But you could now be a music teacher or retrain as a conductor" they do not see why on earth they should have to do something that is beneath their skill level.

I came across this most with NHS nurses. They said, "I was offered a job as a cleaner and I am now being told because I did not take it I will not get my full loss of earnings". I think that is demeaning for people who have spent quite a lot of their existence feeling demeaned.

- Q57 **Chair:** Can I ask some final questions to follow that up? Is the logic of what you are saying, then, that there should not be a one-year limit on the general earnings awards?

**Martin Forde:** This is again complex. The idea of the general earnings award was that where people were unable to demonstrate a proper audit trail you would give them the year. I reluctantly went along with that because I was concerned about documentation, but I felt that most claims should be capable of being calculated on an entirely bespoke and individual basis.

As Jacqui was saying, and it is a little bit like what lies at the nub of the Windrush scandal, if I look at my own family background, my father did



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National Service between 1956 and 1958. I was born in 1961. My brother was born in 1965. Both my parents had a GP. I had a National Insurance number on my 16th birthday. My brother had the National Insurance number, so we all have an audit trail and it is all held. Big data is held by big government and I felt that the digging should be done by the tall people.

My understanding is there is reciprocal data agreements enforced between HMRC, DWP and the Home Office, and the way I hoped the scheme would work is you would say, "I have worked for this period; I lost my job" and they would be able to go into the database, see what your net earnings were, see the length of time you have been employed, possibly say, "We have looked at the 10-year period you were fully employed. You were unemployed half the time. We think looking forward you would have had a similar work pattern" and then make the calculation. Maybe that was naive of me to think it could be done that simply, but I was really worried about putting the onus on the claimants to prove loss.

**Q58** **Chair:** But one group that contacted me suggested the majority of awards being given on employment were being given as general awards rather than actual earnings awards. I have not been able to check that information, but I have certainly seen cases where someone was clearly unable to work, was not able to verify the details but then clearly was unable to work for very many years. We are seeing cases of it just being capped at a year where, even if there might be a justification for putting a cap on the salary level because if there are not further details about the salary being paid some estimate has to be made, there seems to be no justification for only providing one year's award rather than four years or the length of time under which that person was unable to work because of their status.

**Martin Forde:** I agree and you could link that even to what you were doing before. The Office for National Statistics—these are what we use—produce earnings for every type of job and in all regions, so it is not difficult to say that if you were a plumber the average plumber in South Shields earned X; that is where you lived and you did not work for four years so you get four times X.

There is another issue about earnings that I should have mentioned but I will mention very quickly. I am concerned because of the age of the cohort about future loss of earnings. The scheme allows them three months beyond settlement as an additional payment, and I was arguing that if the cohort are middle to late 50s—and, in fact, quite a lot of the cohort worked beyond 70 so even looking at retirement age is not necessarily the right thing to do—I was concerned that if, for instance, you lost your job in your late 40s for six or seven years and you are now mid-50s, you might not be compensated for your loss of pension because of the time you were unable to pay in. That will have a future impact when you retire and future loss of earnings.



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The Home Office clearly does not want to have a continuing relationship with people beyond the date of settlement and I understand, but the point I was trying to get to them is if I am sitting as a deputy High Court judge and I have a loss of earnings claim and I have a 62 year-old claimant who would have worked until 67—I should make it clear I am not a deputy High Court judge but I am just giving you the analogy—that is five years. I may well say, “From the evidence you have given me, I do not think you will find another job because of your age.”

I as a judge have no idea whether having made that decision on a Friday and awarded you damages on that basis you are going to find a job on Monday. That is problematic but I think in the right cases, and I know Jacqui has a few, people should be awarded loss of earnings to retirement age and there should be somebody within the Government Actuarial Department who produce the figures I use that could calculate a lump sum loss of pension.

Q59 **Chair:** We are over time.

**Martin Forde:** I have time but you may not have.

**Chair:** Unfortunately, we do not and we have broadcasting restrictions and other members who need to go with other things happening in the Chamber. There are a few final questions I wanted to put to you. If you are able to answer these very quickly, do so. If there are things you then need to write and provide some further written evidence, that would be very helpful.

**Martin Forde:** I will do. I will make a note.

Q60 **Chair:** In your assessment of what is happening at the moment overall, have the average awards granted been at the level you would have expected given the work on designing the scheme?

**Martin Forde:** I would qualify it in this way. I think some areas have been made by dividing awards by number of claimants, because some are interim and some are awards that are subject to appeal. I know there are a few awards that have been six figures or more, but one of the difficulties I have had is in the way the information is presented. I would like the Home Office to present in bands so you can see who has £10,000 or less, who has £10,000 to £20,000; does anybody have over £50,000 and does anybody have over £100,000? It is difficult to average the way they present their figures.

Q61 **Chair:** Have you been able to make any assessment either looking at some individual cases or looking at overall numbers of how the award levels compare to the kinds of award levels you would have expected or those cases when you were involved in drawing up the scheme?

**Martin Forde:** The thing that struck me, and I know there is an ongoing discussion about this, is that quite a lot of people already have an impact on life claim and I feel there needs to be some tweaking around duration of suffering. Those bands I see as mirroring bands for either a resolved distress and anxiety or assumed to be resolving one and we usually work



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on 18 months to two years. I have said that somebody who is suffering low-level stress and anxiety for five years, that is two and a half times the level, and if it was 10 years that might be five times the level. I feel those impact awards should be more generous.

Q62 **Chair:** When you look at the length of time it is taking to do awards on average compared to what you would have anticipated when you were drawing up the scheme, is it taking the Home Office about the length of time you expected given the complexity of it or is it taking longer than you would have expected?

**Martin Forde:** One of the problems is that people always take the first year as delay and I do not think that is fair because it is 2018 to 2019. I do not think the next six months logistically was not in place. To my mind it has been going effectively since December. I think there have been increasing payments month on month. I think £500,000 was paid in the month of October. I am disappointed by the level of applications. If they had been 10 times what they have been I wonder whether the Department would have coped.

In terms of the length of time, I have some sympathy with the Home Office because I think the claims are hybrid and complex, but I also feel, and this is Jacqui's point, 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.

Q63 **Chair:** Is the Home Office spending more on running the scheme and implementing it than they are in paying money out?

**Martin Forde:** The last figure I was told about was about the level of the payments to date, so it has cost something in the region of £2 million to £3 million.

Q64 **Chair:** You have not seen figures on the amount of money they are spending on their own systems to run it, the bureaucracy systems?

**Martin Forde:** I know there is an IT system. I know they have to pay caseworkers. Some of those caseworkers have been moved from other posts so it is not an easy calculation to make. For instance, some Sheffield taskforce people who live on the other side of Leeds have gone to be caseworkers in Leeds.

Q65 **Chair:** If you do not have those figures that is absolutely fine. When you now reflect on where we are, do you think there would have been advantages in having a simpler scheme to make the payments more swiftly, given the ageing generation and in particular just having a lump sum payment to people for the fact that they have suffered a wrong



without having to go into the details of redress for individual things?

**Martin Forde:** I have read about that. Somebody said everybody affected by Windrush should get £10,000. My family would say I deserve £10,000 and I am sure Jacqui's family would say the same. We have both been affected by Windrush. I think the difficulty with that is it is a lovely concept but I do not know whether you would get it past the Treasury or PAC. There has to be some sort of evidence base where I do think, with the benefit of hindsight, professional assistance—

Q66 **Chair:** If you have evidence of being wronged, so there was clear evidence of being wronged and there was clear evidence of having had your status wrongly assessed or your passport denied and so on, would there be a case for having a distinct payment even if there might be further additional payments for those who had had extreme other circumstances?

**Martin Forde:** It would be a bit like a general damages claim, so you get compensation for the injury and then you get compensated for your loss of earnings and so on. It was never mentioned at the time, I think because there was anxiety first about what level you set that at. Some people have said to me that £1 million would not be enough for what they have been through, but we know we only give people £13,000 for bereavement if their baby is stillborn when it should not have been. That has always been a difficult one to assess what the level should be.

We looked at the criminal injuries compensation scheme that does pay general damages for injuries, but that is specifically for injuries. It was interesting about that scheme that it has been in existence since the 1960s. They say in terms these claims will take 12 to 18 months to process and that is a scheme that has been going for decades.

I do not think expectations were properly managed. I understand there was political pressure to get something out of the door quickly and announce it, but expectations should have been managed around the inevitable delay. Some of these claims involve people who lost homes having lost jobs, lost equity but would have been paying a mortgage. These are complex even for a compensation lawyer.

Q67 **Chair:** Thank you. The very final question if you can give a swift answer to this: what would be your top two changes you would make to the Windrush Compensation Scheme now?

**Martin Forde:** I am very much persuaded that the availability of legal aid would make the Home Office's job easier as well, and I think an aggressive publicity campaign that is also reassuring. It has been difficult to get people who have had good outcomes to come forward because some of them feel they will be subjected to external pressures because they received a substantial sum of money, so I do understand that. I feel that there has to be a more effective way of reaching this cohort. Some of them are very hard to reach, and Jacqui said quite reasonably that the people with the right approach might have more joy in rounding up the affected cohort by knowing where they go, going to where they play





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dominoes and where they go to bet on horses or wherever else they might be, but that means a very community-centred approach.

**Chair:** Mr Forde, thank you very much for your evidence today. We very much appreciate your time.