



# HOUSES OF PARLIAMENT

## Joint Committee on Human Rights

### Oral evidence: Detention of Windrush generation HC 1034

Wednesday 6 June 2018

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Members present: Ms Harriet Harman (Chair); Fiona Bruce; Ms Karen Buck; Alex Burghart; Joanna Cherry; Baroness Hamwee; Jeremy Lefroy; Baroness Prosser; Lord Trimble.

Questions 20–29

Witness[es]: **Rt Hon Sajid Javid MP**, Secretary of State for the Home Office; **Glyn Williams**, Director-General, Border Immigration and Citizenship System, Home Office.

**Q20 Chair:** Thank you very much, Home Secretary and Mr Williams, for joining us. We are half House of Commons and half House of Lords and our Committee's focus is on human rights. In this inquiry, our particular focus is the right not to be detained by the state without lawful justification. Obviously we regard as very important the right not to be detained by the state without justification.

I very much thank you, Home Secretary, and the Home Office for releasing to Anthony Bryan and Paulette Wilson their case files. Paulette Wilson and Anthony Bryan arrived here as children as part of the Windrush generation and they have lived here continuously ever since. They came to give evidence to us a few weeks ago about how they came to be locked up despite having done nothing wrong. We asked on their behalf to see their case files.

I am grateful that the Home Office did not say, "Fill in this form, and fill in that form. Somebody else has to ask". The transparency was very encouraging when the Home Office said that it would give them their case files. They have given us their case files to help us understand what actually happened in the system. We have their case files here so that we can see what was going on behind the scenes that led to Anthony and Paulette being detained. Thank you very much for letting us have the files, and thank you to Paulette and Anthony for letting us use them as part of this inquiry.

My first question, to set the scene, is to ask that the Home

Secretary and Mr Williams place on the record that being at liberty and not being locked up unless there is a reason—for the state not to take you away from your home and work and family and lock you up—is a very important human right.

**Sajid Javid MP:** Yes. Thank you very much, Chair, especially for your opening remarks.

Before I get to that question, since it is my first appearance before the Committee I want to take this opportunity to thank the Committee for the role it plays in holding the Government to account and, in particular on this occasion, in holding my department to account and scrutinising its activities. That is very welcome. Scrutiny is essential.

I understand that the Committee's focus today is on human rights and detention policy. There might be some particular questions on the cases of Miss Paulette Wilson and Mr Anthony Bryan. Let me say at the outset that, when I first heard about those cases, I was appalled by what had happened to both Miss Wilson and Mr Bryan. I learned more about the cases, including when they were in front of the Committee and you heard detailed testimony from them. I listened to that evidence and then looked again at the transcript and I found it very moving and thought-provoking as to what lessons we can learn from that, which we can perhaps get to later.

I want to take the opportunity to add my apology to that already given by the Immigration Minister. I put on record publicly that I am very sorry for what has happened to Miss Wilson and Mr Bryan. As you have just said, no one should be treated like that, not in a democracy like ours. What happened was profoundly wrong and I am pleased that you are scrutinising it, because that will help us.

We still have lessons to learn from it. I think I said on the first day I became Home Secretary that I felt this personally. My parents were Commonwealth citizens. The country they arrived from was not the Caribbean, but I felt that it could have been my parents, my aunt or my uncle. I felt it very personally: how can someone who has been in this country for such a long time be treated in this way?

We want to ensure that both Miss Wilson and Mr Bryan get the compensation they deserve. I am not pretending that that in any way makes up for what happened, but I want to see what we can do to try to put some things right. I also want to make sure that we draw all the right policy conclusions by learning the lessons.

**Chair:** Thank you. I hope that us having asked for the files and you having had a chance to read them will give you a different insight than Home Secretaries normally get. It gives you an insight into all that has happened to these two individuals in the department that you now lead.

I will hand over to Fiona Bruce for the first questions. We will give you a summary of the key points in each of the two files for you to refer to so that you can see what Fiona is asking you about. Anthony Bryan has given permission for his summary to be handed out to the press and anybody else who wants to see a copy. This is so that we can go through real-life cases, not policies, procedures or protocols, to see what happened and to hear from you what you, Mr Williams, thought happened and what you, Home Secretary, make of what happened.

**Q21 Fiona Bruce:** My first questions are to Mr Williams and are about the processes relating to consideration by your department of these applications. To ask these questions, I need briefly to set the scene for these cases. The case files have been provided and I have them in front of me. They are lengthy, going over several years.

Let me set the scene regarding Anthony Bryan's application, which was first made in 2014. It was supplemented by a letter from his solicitors in May 2015, when they sent to the Home Office a large amount of information confirming what Mr Bryan had said. His account of his situation has been consistent throughout. He arrived here in the UK in 1965, aged about nine, so he has been here over 50 years. He has never been out of the country since.

Right at the beginning of his application, the solicitors provided a lot of information. What is perhaps most concerning is that they provided his national insurance number. His national insurance records go right back to 1975, which HMRC has now confirmed. You have that information, of course. They also provided information about his school, his primary school, his medical records, his Jamaican passport and number, his children's birth certificates, pay slips and so on.

Over time, as your department raised further inquiries, more information was supplied—evidence from friends regarding his residence here; from his partner; from his primary school; even a letter from his MP, although staggeringly, under data protection, that was thought not necessarily to be taken into account because it came from his partner.

Notwithstanding all that information, he was detained in September 2016. Further information was supplied, but he was detained again in November 2017 and nearly deported. Even going as far as January 2018, the Home Office was still writing to his solicitors asking for another interview, despite all this information.

I will ask our question now and close with a letter from one of his sons. It is quite a poignant letter that was sent in August 2015.

How can it be, and how can you explain, that with all this information on file your staff did not make the right decision that this was his home, and should have been treated as his home by them, and deal with his application expeditiously, despite all the information on file, so that he ended up being detained twice and almost deported?

I will, if I may, read from his son's letter. He says: "I'm writing this letter on behalf of Anthony Bryan, my father. Anthony's been in my life for as long as I could remember. My father has lived in this country over 45 years. In this time he has always maintained employment and always taught me wrong from right. I am currently 31 years old, married and have two lovely boys. I'm currently employed as Bus operator for the Original tour company which was established over 60 years ago. Since leaving school I've always maintained work. I have never been in trouble with the law and have a clean criminal record. This is all down the way I was raised by my parents. Words can't express what my father has done. The relationship he has with my children is fantastic. I hope this letter will give you an insight into what my father is about. If you need to contact me for any reason feel free to".

I will make one final point. When Mr Bryan was at the point of being deported, he was asked which airport in Jamaica he wanted to fly to. He replied, rather tellingly: "I don't know any airports in Jamaica. I don't know Jamaica".

This is my question to you, Mr Williams. I will address Mr Javid later.

**Glyn Williams:** Thank you very much. Before I answer your question, could I respond to the Chair's initial comment about Article 5 and the Home Office's position on that, and place on the record that the Home Office, in its policies and its practices, has to be compliant with our obligations under the European Convention on Human Rights as enacted under the Human Rights Act in this country. We absolutely strive to respect those obligations in full. Detention should always be a last resort for us and we will seek to avoid it wherever possible.

Secondly, I also put on record that I am director-general for immigration policy in the Home Office. I have been co-ordinating the response to the Windrush scandal since early April. I am not responsible specifically for detention per se, but I shall do my best to answer those questions.

As regards Mr Bryan, my understanding—we have the file here, which we got yesterday, so I am in no better position than you in terms of the time I have had to go through it—is that his initial application to us was for a right to remain pursuant to a human rights application on the basis of his long residency in the UK. Actually, given his circumstance, he could have

applied for a no-time-limit confirmation that he enjoyed deemed leave under the 1971 Act as a member of the Windrush generation.

In some ways, the task force is now taking in such applications and not taking them for what they are but advising Windrush people of the best option for them. However, UKVI treated this application on its merits as an application to remain in the UK on the basis of his long residence and his private life. They came to the view that insufficient evidence was provided to establish his continuous residence over a 20-year period. Before you react to that, I am not seeking to say that that was the right decision. I am just seeking to explain to you the thinking and the workings of the Home Office on that point.

You have just quoted quite a lot of evidence. I am not quite clear whether all that was presented in May 2015 or whether it was presented over the following couple of years.

**Fiona Bruce:** I thought I had said that, but I will say it again: his national insurance number was submitted by his solicitors in May 2015, which would have enabled the Home Office to ascertain that he had been here for well over the period of time that you have just indicated.

**Glyn Williams:** Thank you.

**Chair:** Mr Williams, if you look down the left hand side of the chart before you, you will see the timeline of when the assertion was made and when the evidence was put in. Then you will see "Home Office detention" further on the right hand side. We are struggling with matching the two.

**Glyn Williams:** I think the position that we took in May 2015 was that, first, we did not have evidence that Mr Bryan had entered the UK in 1965 and, secondly, that there was insufficient evidence of his long residency over a 20-year period subsequent to that.

The task force today would take and is taking the initiative to contact HMRC and the DWP directly, so they would have acted on the national insurance number to get records. That is what they have been doing for the last six weeks. I do not think that was UKVI practice at the time, so they did not take the national insurance in and of itself as sufficient proof.

**Fiona Bruce:** That seems very concerning, because surely there would be records. There are records; we have now been shown them. It would not have taken a great deal of time for them to have used that national insurance number reference and checked his employment position. Then, all the next three years, all the trauma

and the stress that he endured, including being detained twice, once just after one of his sons had died, would have been unnecessary. Why could they not even have told him that, from what you are saying now, his application was completely unnecessary in the first instance?

**Glyn Williams:** That would have been a better course of action.

I would just like to emphasise that I am not seeking to say that the actions that were taken were the correct actions. I am just seeking to explain to you the thinking and the thought processes that UKVI went through. As I say, we have now recognised that that approach is not appropriate in the case of Windrush generation people, who are in the pretty unique position of the 1971 Act conferring indefinite leave to remain upon them.

But they were given no documentation at the time, and obviously many of them have lived in the UK probably unaware of their actual legal position. They have not sought documentation from us in many cases, and they have not been aware of the rules and the possible need to store up documentation and evidence for the future, which has left them in a difficult position. That is what we are now seeking to address in the way the task force is now going about its business—reaching out to people and taking a proactive approach to help them build up the evidence picture and satisfy the rules that we have.

**Q22 Fiona Bruce:** Thank you. I turn to Paulette Wilson's case and will relay perhaps more briefly some of her circumstances.

The argument put forward was that you did not have enough information regarding Mr Bryan's application, yet we have established that a lot of information was supplied at a very early stage. It is similar for Paulette Wilson. Paulette came to this country in 1968 at the age of 10. Again, information was supplied at an early stage of her application. Indeed, the Jamaican High Commission in March 2017 confirmed: "Miss Wilson entered the UK as a small child approximately 10 years old. She has a daughter and granddaughter and a large family in the UK. She has no ties with Jamaica and no recollection of Jamaica".

Indeed, Miss Wilson spent some time as a child in a children's home, and I am sure there are public records on this. She had 35 years of national insurance records. Her daughter and a childhood friend provided evidence of her being here. Despite all that, and after the evidence had come through from the Jamaican High Commission and elsewhere, she was detained twice, in August

2017 and October 2017, on the basis that “there was no current evidence of her lawful entry”. What do you make of that?

**Glyn Williams:** Ms Wilson first submitted an application to the Home Office in 2003, which is what first brought her on to our radar. I think that the application was not decided. It was rejected because it was not on a particular form and I do not think a fee was paid. Then there was a hiatus until 2014, when the Home Office was going through the exercise, via the company Capita, of trying to track down people who might be in the country without leave, to trace those people, and to see who had departed and who was still in the country. That is how Capita came to be in contact with Paulette Wilson, and then the case was passed to the Home Office.

Again, the Home Office’s position was that we knew she was not British as far as we could tell. Therefore the assumption was made that she needed leave to be in the UK and that she did not have such leave. That was clearly a mistake in judgment, because she did because of the 1971 Act. There was then a two-year interaction with Paulette Wilson. She was invited to submit evidence to us via a so-called no-time-limit application. That is the document that we give people who have an immigration status, as she does, to confirm that it exists.

It is true that Ms Wilson provided various pieces of evidence to us—I am summarising now—over that two-year period. Unfortunately, and I accept that this is where this case has gone wrong, because that was not done on an NTL application form and because a fee was not paid, we did not take a holistic view of the evidence—again, this is what will be happening now in the task force—and help her to build the picture of her residence in the UK and therefore her status under the 1971 Act.

Again, I do think that was a mistake by us and that we should have engaged more proactively and sympathetically with her. Clearly, I can see from the record that she was probably bewildered by the situation that she found herself in. She obviously did not consider herself to be in any way a migrant in this country, so she was not in a position to respond to what must have seemed to her to be the legalistic and bureaucratic requirements asked of her by the Home Office.

**Fiona Bruce:** You are quite right. She was a vulnerable person. She wrote at one stage a one-line letter, giving her daughter’s phone number and saying, “Please help me. This is my home”.

**Glyn Williams:** I think the clerk raised that with us. In the file, because of the way it was copied, it looks as though that was a sole piece of paper. We believe that it was on the back of a note that she sent to Emma Reynolds MP. It was not just given to the Home Office.

**Chair:** However, it came in with Emma Reynolds' submission, so it was in the Home Office file: "Please help me. This is my home".

**Glyn Williams:** Yes. I accept that.

Q23 **Fiona Bruce:** It is very interesting and concerning to us on this Committee that, in both these cases, MPs had got involved and yet still the files had not been picked up and looked at in a way that you now acknowledge they should have been. Interestingly, and I will close with this, there is not a scintilla of evidence in any of the files casting doubt on what these applicants had said right from the start. Their stories have been consistent and holistic. That is particularly concerning when one looks at this: that they were persistently challenged rather than accepted and verified.

My final question is to the Home Secretary, and we accept that you are new to the post. What do you think of what we have just heard, Mr Javid?

**Sajid Javid MP:** "Please help me. This is my home" says it all, really. She was asking for help. This is the case of Miss Wilson, but it obviously applies in both cases. She did not get it. Obviously it was her home. It was the only home she knows.

I am new to the job and I hope to use that as an advantage to bring a fresh set of eyes to what happened and what went wrong in these cases, because obviously something went massively wrong. Why did it happen and what lessons can we learn from it? What has happened has happened. We are all sorry for it, but how can we make sure that nothing like this happens to others?

One of my early lessons from it is that it seems to me—this is the most fundamental point from what I have seen so far of the system—that the whole immigration enforcement system is not set up for a situation where people have deemed leave. Those people had deemed leave under the 1971 Act. I do not think that has been taken into account in the system. There is not much evidence that it was thought through. I can see why and how that happened. It applies to successive Governments as they have implemented different policies, such as the compliant environment policies and the different checks to prove your status check and so forth. There is more reason for people to be asked to prove their right to be in the country. When that came into contact with people who have deemed leave, the system was not able to respond to it.

Linked to that is something that you touched on, Ms Bruce: even when that individual comes into contact with the system and says, "Okay, I need to get some documentation to prove my status", the system puts

the entire burden of proof on the individual. In both the examples you have given, of Miss Wilson and Mr Bryan, they sent in applications and letters. You have good examples here: Miss Wilson's daughter wrote in a number of times to say how long her mum had been here and an MP wrote in. The system says, "You've got to prove that". The Home Office is obviously a big part of the public sector and has easy access to DWP records, school records and, as you say, the Treasury and HMRC. It does not do that; it puts the entire burden on you.

The problem with that approach just as it is is that the system is not set up for those with deemed leave, which means that it is set up much more for those who would already have had to have proved their status. It means that if you are a more recent migrant to the country—you have been here 10, 15 years or whatever—if you are legally here you would have had to get some status to prove that.

You might also, quite rightly, think that in five years' time or something you will want leave to remain, so you will keep your documentation. You may have a habit of keeping, or you might have been advised to keep, your bank records and things like that. There is absolutely no reason why anyone from the Windrush generation who had deemed leave would have to do that. Why should they have to do that, because as far as the law is concerned they are absolutely rightly here?

That is why I think that in many cases people were asked for proof that they could not possibly provide, and even once they had been asked for the proof no help was provided. Some of those lessons have been learned, but not all of them. I still think that we have a lot of lessons to learn from this, and we are in the process of starting a full review of lessons learned, which will take time and will have proper independent oversight to make sure that it is done properly.

The Windrush task force has now been established to make sure that we are doing everything we can to help everyone in that generation, and there are now over 150 full-time people in various locations working with anyone who approaches them from the Windrush generation. With what is happening now, if it had happened before, Ms Wilson and Mr Bryan would not have gone through any of this, because now you approach the task force and the caseworkers are instructed to be sympathetic and proactive and to use the entire public estate to gather information on their behalf to make it as easy as possible.

We are finding that when they do that, when someone has an interview—that person calls up or emails the task force and is invited in for an interview. They can come in for a face-to-face interview if they want it face to face, or they can do it over the phone. Many are choosing to come

in and do it face to face—that person can be issued with their documentation, they can get the letter, within a couple of days. That is possible because the caseworker can contact HMRC immediately, or schools.

We have had individuals who have said, for example, “I went to such and such a school for 10 years when I was a child”. I have seen old cases where the caseworker would say, “Well, prove it”, and the individual would say, “Well, I can’t, because the school doesn’t exist any more. It’s merged with this school, and that’s happened”. Under the old system, the caseworker would say, “Well, that’s up to you. You’ve got to come up with some proof”. Now you can just call up the DfE or the local education authority and find it. It has changed too late for that generation, but at least it has happened. It is a big difference.

The last point I would make on that is that we have also put in place what we are calling the Windrush scheme, so now all the individual has to do is fill in one quite straightforward form and they do not have to decide which one to fill in. This was part of the problem in the case of Ms Wilson, as I understand it. In her original application, she applied for the right to stay. Actually, it was not straightforward to her which route she was applying for, and obviously she was unaware that she had deemed leave. So you can say that it was the wrong type of application, but why would she have known?

It is the same for Mr Bryan. I think he originally tried to use the human rights route—

**Glyn Williams:** Yes.

**Sajid Javid MP:** —which he did not need to use. Now, in order to deal with that problem, under the Windrush scheme you fill in just one form and the caseworker works out the best route for you, advises you on it, goes away, works with you and gets the proof.

That is what is happening now. It did not happen before, and those lessons are being learned.

**Ms Karen Buck:** Can I just go back a second? Mr Williams, you were talking about Paulette having deemed leave and about the original dragnet, in a sense, with the Capita contract that was catching people. If that had not happened, the whole subsequent chain of events would not have happened. Can you clarify for me the specification of that Capita contract, because the way you have just described it it comes across as being entirely binary—everybody who is not British would be caught up in that?

Was there anything in the Capita contract that required staff to be trained to understand where people might have deemed leave and where they would seek to apply a test that would have prevented people like Paulette being caught up in the first place?

**Glyn Williams:** First, I should just say that I am not a specialist in that contract. The actual caseworking and all the decisions would have been taken by Home Office caseworkers. Capita's only job was to take Home Office records of people with whom we had had contact where the case appeared to be unresolved and to seek to trace those people and see if they had left the UK, or, if they were in the UK, what their position was. They would then pass that information back to the Home Office.

**Ms Karen Buck:** Should there not have been a filter in that? That is what I am saying.

**Glyn Williams:** Capita were not making any judgments. In the case of Paulette Wilson, for example, they were not passing the file back to the Home Office making any judgment as to her status.

**Ms Karen Buck:** But they caught her wrongly at that initial point. If the specification had required Capita to be trained to understand immigration law, she should not have been caught in the first place. I am just interested to know what was in that contract and whether Capita were dragnetting a much larger group of people than they should have been legally.

If you cannot answer that now, and I completely accept that you may not be able to, could you write to the Committee and give us a brief on the specification of the Capita contract and whether any of the people involved in that were actually trained?

**Glyn Williams:** Of course, I would be very happy to write to the Committee and give full information on that point. I just say again that we were not expecting Capita to make any caseworker make a legal judgment.

**Ms Karen Buck:** I am not sure that matters for this purpose, to be honest. In a sense, a whole load of people who were perfectly legally entitled to be here and who should have had no reason ever to have to worry about proving their status were caught up in this because of an exercise that did not screen out people who had that legal right. Therefore, that contract seems to me to have been potentially either written much too widely and with a lack of specificity or exercised in a way that was not line with the original specification. I am interested to know which.

**Glyn Williams:** It should have been for the Home Office to have screened out Paulette Wilson once the case came back to the Home Office.

**Ms Karen Buck:** In a sense I do not mind whether it is Capita or the Home Office, but the point stands.

**Glyn Williams:** Clearly establishing Ms Wilson's position under the 1971 Act, which is a matter of law and evidence, is not the most straightforward thing to do, and I do not think we would ever have expected a company like Capita to do that for us. We should have done that, except that we did not. I will most certainly write and give you further information.

Q24 **Joanna Cherry:** Good afternoon, Home Secretary and Mr Williams. I think it is important to remind ourselves that the main thing we are concerned with this afternoon is the human right not to be detained and an inquiry into why these two individuals were detained. I am afraid I am still not clear why it was felt necessary or proportionate to detain either of these people in the face of the evidence that Fiona Bruce has taken us through.

Home Secretary, you said at the beginning that nobody should be treated like this in a democracy, but the reality is that they were, and it is very important for us to establish why so that it does not happen again. Do you appreciate that?

**Sajid Javid MP:** Yes.

**Joanna Cherry:** Those of us who are Members of Parliament have constituents who are in this situation. I saw a lady at my surgery last week in Edinburgh who is in a similar situation to this. She came to see me because she is very worried about what has happened to people like Anthony and Paulette. Do you understand that this Committee is trying to work out why these two individuals were detained in the face of all the evidence, so that we can prevent it happening again?

**Sajid Javid MP:** Yes, Ms Cherry. You are right.

**Joanna Cherry:** I wonder then if we can look a little more closely at Anthony's file. You have the grid there, and, Mr Williams, I think you have the file in front of you. Could you look first at his initial application, from 27 April 2014, which starts at page 15 of the file and goes on to page 66? I do not need you to go through it in detail, but I think you will agree with me that at page 46 he stated that he has lived in the United Kingdom for 50 years and that he

has been here since he was aged nine. It says, "I do not know any country Jamaica".

**Chair:** "I do not know my country Jamaica"

**Joanna Cherry:** So we have the gentleman saying that he has been here for 50 years, he does not know Jamaica and he came to the UK when he was nine. Then, a month later, if you turn to page 67, is the letter from his solicitors, and I think Fiona referred you to that. It encloses pay slips and national insurance records: do you see that?

**Glyn Williams:** I am sorry. The pages I have do not have numbers.

**Chair:** Basically you can follow the points Joanna is making by going through the summary. It does not matter if you can find it, for reference we have paginated it.

**Joanna Cherry:** You can take it from me that this letter, dated 18 May 2015, has Anthony's national insurance number in it. It also contains his national insurance records. On page 215, we can see a letter from HM Revenue & Customs, dated 27 February 2013, addressed to Mr Bryan saying: "Our records show that you currently have 13 qualifying years up to 5 April 2012. This includes 24 national insurance contributions paid or credited in the years up to 5 April 1975". So at that stage, back in May 2015, the Home Office had evidence from another government agency that this gentleman had been here prior to 1975. That is right, is it not?

**Glyn Williams:** It sounds like it from what you are saying.

**Joanna Cherry:** And there is nothing in this file to contradict that, is there?

**Chair:** I think the answer to that is no, Mr Williams.

**Joanna Cherry:** What I am trying to get at and understand is: why, in the face of this evidence, including evidence from government departments, supporting the fact that this gentleman had been here working and contributing to this society for so long, your department thought it was necessary and proportionate to detain him under threat of being deported to a country he said he did not know?

**Glyn Williams:** The detention decision arose from the UKVI refusal. The one flows from the other. The initial mistake here was in the UKVI

assessment of the evidence. I will take your word for it. I have not had the chance to go through it in detail. I understood there was an issue as to whether it established 20 years of continuous residence but I am not here to dispute that. The process is that UKVI, having come to the view on that application that Mr Bryan did not meet the rules, refused the application and the position then was that he had no leave to remain in the UK. His case was passed to immigration enforcement and things went from there.

**Joanna Cherry:** That still does not explain why it was felt necessary to detain him when there was evidence of a family connection here, a work record here and a whole life in the United Kingdom. Why was it necessary to detain him? Let us be clear what detention means. It means that a van comes to your house and takes you away from your loved ones and locks you up. That is something that, in this country, we usually only do to criminals after due process of law. Why was it felt necessary to do it to Mr Bryan when the Home Office had written evidence from another government department that he had been making national insurance contributions in this country prior to 1975 and up to 2012?

**Glyn Williams:** It was a mistake, not least because eventually we come to February 2018 when we accepted that he had leave under the 1971 Act, on the basis of the same evidence. I do not know if he provided further evidence in the meantime, but obviously the position is that Mr Bryan—this is the view that we came to in the end—had leave to remain in the UK. The initial view that we took was a mistaken one, I cannot say any better than that.

**Joanna Cherry:** The mistake explanation might, with all due respect to Mr Bryan, just about be acceptable if only one person had been affected. But the two people who we have heard evidence from, Mr Bryan and Miss Wilson, are just the tip of the iceberg. They are exemplars of what has happened to other people.

**Chair:** I would just like to add that I would not want you, Mr Williams, to run away with the idea that there was an initial mistake and that everything flowed from that. There was a mistake every single day. All the evidence was in the file. Anybody who looked at the file at any time would see, as we have all done, the very moving letter from the son and the information sent in by the solicitors and from Mr Bryan's former partners—people who are not always notable for coming to your support after a relationship breakdown—cataloguing it. That was in the file for every single day. As the machine ground forward, that material was in the file for anybody

to read when they locked him up, having, as Joanna said, put a van at the end of his road, banged on his windows and doors, and taken him away and locked him up. So could we ask you to move beyond the idea of there having been an initial mistake? There was no one initial mistake. There was a mistake by every single person who took this file to the next stage, which ended up with Mr Bryan being locked up.

**Glyn Williams:** Yes, Chair, absolutely. Sorry if I gave the wrong impression. I am not seeking to say that mistakes were not made throughout the course of this. I was just saying that the first step in this was the application to UKVI and that was the first decision.

**Chair:** Can I just make another point to you? It sounds as though this is a benign process, with solicitors' letters and all that. There was extreme distress evidenced here. As Fiona said, the letter was there: "Please help me. This is my home". My Bryan was asking how he could choose an airport in Jamaica given that he did not know anything about Jamaica. There was also extreme distress for relatives. This is documented by your own department, because Paulette Wilson's daughter, who has been something of a heroine in this situation on behalf of her mother, was remonstrating with the Home Office; "This is my mum". In fact, her remonstrations lead to her being banned from being with her mother in the Home Office. Basically, instead of asking, "What's going on here? Let's look at the file", their response was to ban her and to report—this is on page 168; you will be able to see it—that they are banning the daughter from attending with the mother.

I must say that when I saw what this daughter had done on behalf of her mother, it was all I could do not to stand up and cheer for this woman. She was doing what any daughter would do if their mother was subjected to a terrible injustice. This is the file note from the Home Office: "I advised her mother that her daughter would not be allowed into the building in future. The daughter started to swear, stating, 'You are an effing B. You can P off. It's my mum'". You can understand why she would say that? This is what was going on. There was extreme distress. There was a pile of evidence and lawyers, but there was this other strand of extreme distress. Instead of responding to that, the department banned the daughter and locked her mother up. What do you think of that?

**Glyn Williams:** I think it was a very badly handled case. I agree.

**Joanna Cherry:** Do not these files for both Anthony and Paulette show a repeated refusal to engage with the facts being presented,

not just by the individuals but by their solicitors, their Members of Parliament and other government departments? That is what they show, is it not: repeated failures to engage with those facts?

**Glyn Williams:** I think they do show an unwillingness to reach out and work with what you might call a witness of credit to help them to establish their position, yes.

**Joanna Cherry:** But there were plenty of witnesses of credit. There was another government department. Before I became a Member of Parliament I worked in the courts of law for years. When we were trying to establish people's employment records, the records of HM Revenue & Customs were accepted by a court of law. Why would the Home Office not accept the evidence of HM Revenue & Customs regarding Mr Bryan's residency in the United Kingdom? Why not?

**Sajid Javid MP:** May I answer that, or try to? This shows the process in these two cases—and obviously as we go through this and learn more, possibly in other cases—from when Miss Wilson and Mr Bryan first came into contact with the Home Office and they and others tried to make their case. Obviously, as the Chair and others have said, absolutely it is incredibly distressing and the anxiety is real. It has a huge impact not just on the individuals but on their family and friends. That is why I started by saying that I was appalled to see what had actually happened here. I am trying to get to the why so that we can learn from it.

During the whole process, not enough common sense has been applied by the individual caseworkers involved in looking at things like the letter from HMRC, and from the daughter in the case of Miss Wilson, and just thinking, "Hold on a minute. I can contact HMRC now and get verification of this". There has not been a thoughtful and sympathetic approach to saying that this individual has good reasoning and has provided what looks like convincing evidence, with the caseworker taking the initiative to try to learn and find out more. Instead of doing that, which I would say is a more common-sense approach, because it does not tick all the boxes it has been decided that they do not have the right to be here and that we must start the process of removal.

**Joanna Cherry:** I hear what you are saying, Home Secretary, but when the Home Office has an official letter from another government department, HM Revenue & Customs, setting out national insurance contributions, what need is there to contact HM Revenue & Customs, unless you think it is a forgery submitted by a solicitor? It looks pretty genuine to me.

I do not understand the explanation that they needed to be proactive and make contact. It seems to me that they were not

even engaging with the letter; they were not engaging with the prima facie evidence they were being given, never mind following it up. They were ignoring the evidence that this man had a long employment record here.

**Sajid Javid MP:** Obviously each case will be different, but what you have said is concerning. As we look through the file now, as Mr Williams has said it seems that there has been a series of mistakes over a period of time.

**Joanna Cherry:** People might be forgiven for thinking that this is either gross incompetence or a deliberate course of conduct ignoring evidence in order perhaps to reach some target for detention and deportation.

**Sajid Javid MP:** I would say, certainly from my time at the Home Office, that I have seen no evidence of that. I find it very hard to believe that anyone would deliberately ignore any evidence. The explanation probably lies much more in what we have discussed and what I have tried to articulate about the general approach not being personal enough, not applying enough common sense and not being sympathetic and more trusting of the information received.

**Joanna Cherry:** We know from the circumstances of your predecessor's departure and you coming into the Home Office that targets were set in order to meet the overall net migration target. Is it not just possible that when Home Office officials are under pressure to reach targets, they will ignore evidence and proceed in the face of evidence in order to meet those targets? That is the worry, isn't it?

**Sajid Javid MP:** I have seen no evidence of that.

**Ms Karen Buck:** When you say that caseworkers should exercise common sense where they might want to follow up information with another agency, does that ever get done? Within the department, are there examples of where a caseworker will contact the DWP or HMRC to establish that information? Has that happened?

**Glyn Williams:** It is happening now through the task force.

**Ms Karen Buck:** I am not asking whether it is happening now. Did it ever happen prior to the last couple of months?

**Glyn Williams:** I think I said earlier that it would not have been standard practice at all.

**Ms Karen Buck:** So we are not talking about a question of common sense, we are talking about a question of policy. Is that right? Either it happened or it did not happen. Do all your caseworkers lack common sense?

**Sajid Javid MP:** Well, I cannot tell you about historic cases. I have not been in the department long enough.

**Ms Karen Buck:** Perhaps Mr Williams can answer the question. Prior to this becoming a public scandal in the last couple of months, either all the caseworkers lacked common sense in dealing with cases, which I doubt, or it was the policy of the department not to do this. I would like to be clear which it was.

**Sajid Javid MP:** As I said before, the burden of proof has been on the individual. Therefore it could well be that, in these cases, as information is provided to the caseworker, instead of the caseworker thinking either that it is enough or that it pushes them in a direction where they can get information from another part of the public sector, it has been left. That is what I mean by applying a bit more common sense.

**Ms Karen Buck:** I am really quite worried about this, because if it was left to common sense it is likely that somewhere along the line some caseworkers would have exercised some discretion in this case. I have a feeling that none ever did, which leads me to believe that it was not a question of caseworkers making judgments, it was the policy of the department not to do this.

Possibly that was written down and possibly it was not, and I am keen to note which. The answer to that—Mr Williams may be able to answer this, either now or by writing to us—will be whether a caseworker would ever seek information from another government department.

**Glyn Williams:** There is a vast number of immigration routes in which this might come up, so it is difficult to generalise. I think that, as a general point, probably not. The guidance for the NTL application, for example, which is the one that most of the Windrush people would have done, says you must provide evidence of continuous residence in the UK during the period in question such as, "council tax letters, letter(s) from a GP confirming dates of attendance, letter(s) from a school/college confirming dates of attendance, electricity, gas or water bills, letter(s) from employers confirming employment".

That is an illustrative list. It does not say that you have to provide those for every year. It is probably true to say that our interpretation and application of this guidance became rigid over the years. When applied in particular to Windrush people who have been here for 30, 40, 50 years, if

you apply that rigidly over that time period, it becomes almost impossible. That is the mistake that has been made and that is what we are now seeking to—

**Chair:** Can I just pick you up there? It is not rigidity, is it? It is perverse. It is not just that they are inflexible but that detention flies in the face of all the evidence in the file of their arriving in the country as a child and their continuous residence, and indeed shouting relatives and letters from MPs. That is not rigidity. It is perversity if you then lock somebody up, is it not?

**Glyn Williams:** Chair, in my mind there is a separation between the UKVI process and the Immigration Enforcement process. I had in mind the guidance I referred to—

**Chair:** Just have in mind somebody being locked up, not the processes, and work back from there.

**Glyn Williams:** I was quoting to you guidance in respect of applications to the UKVI. I agree that before we go on to detain there should be a further process of inquiry and due diligence, and I regret that in these cases that did not happen.

**Lord Trimble:** Before we come to the question of detention and the legality of that, I want to come back to the approach that has been adopted when considering whether persons are entitled to be in the United Kingdom. The note we have refers to Section 3(8) of the Immigration Act 1971. It reads: "When any question arises under this Act whether or not a person is British citizen, or is entitled to any exemption under this Act, it shall lie on the person asserting to prove that he is".

So the question of the onus of proof was put in the 1971 Act. Now, I do not think that was a sensible thing to do, because the framers of the 1971 Act must have realised that a lot of people who came in before 1971 would not have had any documentation to show that they were entitled to be in. The problem stems to a large extent from the way that clause was put into the 1971 Act.

**Chair:** Fortunately they did prove it in the evidence in the file.

Q25 **Alex Burghart:** One of the things that my colleagues have kept coming back to is whether we are looking at a bad process or whether there was a perfectly good process that was being very poorly used. I feel as though we are getting closer to an answer but that we are not quite there yet.

Mr Williams, you have talked about the refusal to consider information that was not on an NTL, that it was a mistake, that there was a better course of action, that there have been mistakes of judgment, that there was an unwillingness perhaps to use the evidence presented in case files that people had been here for a long time.

Was it the department's policy not to use information that was not presented in the form of an NTL? Was that departmental policy?

**Glyn Williams:** Somebody who has leave under the 1971 Act does not need to get a document from the Home Office. They may find it convenient to do so to be able easily to evidence their status, which is why the NTL route is available to them.

Looking at Paulette Wilson's file, one of the many mistakes that we made was that we kept on asking her to make an NTL application, which costs £229. I do not think she was obliged to make an application to prove her status. It would have been sufficient for her to amass the evidence and present that to us.

**Alex Burghart:** She did. She wrote to the department explaining that she had been in a children's home and that she had lived and worked here pretty much all her life. So even within the confines of the 1971 Act that Lord Trimble quoted, she had provided evidence that she had been here.

**Glyn Williams:** Yes, I agree, and I regret that that was not brought together by us and treated in a sympathetic and holistic way. That is what we should have done.

**Alex Burghart:** So are you telling us definitively that there was not a policy of ignoring this information when it appeared in someone's case file?

**Glyn Williams:** Sorry, ignoring in what sense?

**Alex Burghart:** In Paulette Wilson's case file, there is information that she had been in the country long enough that she was part of the Windrush generation. Yet she was still detained. Given that there was information in her case file that showed that she should not be detained, why was she? Was it an error of judgment by an individual case officer, or was there a policy that said, "We do not consider this information, because it has not been presented to us in a particular form"?

**Glyn Williams:** No, I do not think there is a policy. I think that before detention took place there should have been a more searching and rigorous examination of the evidence.

**Alex Burghart:** In which case, who is responsible for the fact that that was not done, if the right thing was that somebody with responsibility for the case file should have looked at it and said, "This lady is a British citizen and should be allowed to carry on with her life as per usual"? Who made this disastrous error of judgment?

**Glyn Williams:** It would have been a person in Immigration Enforcement.

**Alex Burghart:** And are they still in post?

**Glyn Williams:** Sorry, I just need to be clear that I am not saying that there was a wilful approach on the part of the department in this case to ignore or malevolently act. I think they acted sincerely.

**Alex Burghart:** I understand, and I am prepared to accept at face value your statement that there was no departmental policy, but if that is the case, an individual working within the Home Office has made a grievous professional error that has had the most profound impact on someone's life. Surely there must be some system to hold that person to account.

**Glyn Williams:** You are basically asking me whether we should take disciplinary action against somebody.

**Alex Burghart:** Or would you expect there to be procedures in place in the Home Office to make sure that, when this sort of thing happened, people were held to account?

**Glyn Williams:** Yes, and there are procedures for quality assurance and disciplinary action where it is merited. The issue here, though, is that, as Lord Trimble has said, it is clear that the burden of proof is on the person claiming the status. It is also clear that when we detain someone, there is a burden of proof on us to assure ourselves that we are meeting our legal obligations and are not exceeding our powers of detention. That then brings us to what level of inquiry is needed by us in order to discharge that burden of proof before we detain. In this case, I suspect that we fell short of an acceptable level of inquiry, because we did not carry out any urgent inquiry to that effect.

**Alex Burghart:** Okay. You say that at some stage "we fell short", so somebody, some team in the department, has fallen short.

Would you accept that it is reasonable that there would be some consequence of such a terrible breakdown in decision-making? How can we hope that other people in the future dealing with the Home Office can be reassured that it is not staffed by people who make the sort of wrong judgments that lead people to be illegally detained?

**Glyn Williams:** I am saying to you that in my reading of this file, which I have had for a day, like you, I basically agree with you. I have said that. It would be wrong for me, though, without having for example spoken to the relevant caseworkers involved, read that file more thoroughly, gone into it in more detail, heard their point of view and looked at all the relevant guidance to reach a view that someone in the department has acted in an unprofessional way or in a way that falls short of a professional standard. I do not want to go that far in this Committee.

**Alex Burghart:** Can we take it as read that your department will look into this and other cases in that way?

**Glyn Williams:** Yes. As the Home Secretary said, we are embarking on a lessons-learned exercise. So far, we have been concentrating on trying to set up the task force and sort out the immediate issues. Clearly there are many issues for us to learn from in respect of Windrush and possibly more widely.

Q26 **Alex Burghart:** Thank you. I think we have covered part of the next question, so I might move on.

Home Secretary, we are obviously pleased that there is a task force in place and that you have rapidly made changes that will hopefully see this situation addressed. You have said that lessons learned will take time. What are your milestones in making sure that we have a fully functioning service in this area?

**Sajid Javid MP:** When I became Home Secretary, my most immediate priority was the whole Windrush issue and to focus on that. Top of the list was the task force to make sure that for those who still need assistance and help to get the documentation they need it is done in a proper, compassionate way where they get the maximum help and support as speedily as possible. That is the kind of thing I talked about earlier with Miss Bruce.

At the same time we have to look at the fees and cost structure. In almost all cases we have eliminated the fees, including for citizenship and for some of the tests that are required. I am also setting up the Windrush scheme, which will be one simple application with the caseworker taking on a lot more of the burden to help and assist and use the rest of the

public estate to get together the correct information and to do so as speedily as possible.

Also, I looked at what might be required to help members of the Windrush generation that has not been thought of. So, for example, some people might have left—in some cases they have voluntarily left—and heard about this and might want to return. How can we help them? We worked with all the High Commissions and the respective Governments in the Caribbean to make sure that we are providing information locally, so people can call the helpline from Jamaica and other Caribbean countries. Also, for example, there might be members of the Windrush generation who voluntarily left and have retired in their country of origin as a choice but might have family and friends here and want to visit. At the moment, I have found that coming from those countries you would have to apply for a visitor's visa each time and pay for it. I am in the process of introducing a new 10-year single application visa at low cost so that they can keep coming back as they wish to see their friends and family. I have been trying to work with the team to think of other ways that we can help.

I have also had the team look at deportations to see if there have been any wrong deportations of people from the Windrush generation, and I can talk more about that later if the Committee wants me to. More widely we are looking at detentions. We have a whole group of people working on that. Obviously we are talking about two cases here but I want to get to the bottom of whether there have been other similar cases of people from the Windrush generation who were wrongly detained. That work is still ongoing and has not been completed yet. I have set a task for the team to complete it by the middle of July, because I thought it was right to start by helping the people that we need to help now by looking at the deportations, which is critical, and then at any other detentions. That work is going on as well.

Lastly, the whole lessons-learned exercise is important. As I said, I want independent oversight, so we are talking to an individual at the moment and we are about to agree that they will be the independent person. We do not have complete agreement from that person yet, so I cannot say exactly who it is but I hope to be able to in the next day or so.

There is also the compensation process. I have talked about compensation for Miss Wilson and Mr Bryan, but it is for anyone else who has been affected in some way. We have all heard stories, as have MPs who I have talked to, about people who have lost income and could not get a job or who have lost their benefits. Given the distress and anxiety that has been caused in certain cases, I want to make sure that people are properly compensated. To do that, I want a process that is led by the

individuals who have been affected. That is why I started with a call for evidence. I want independent oversight of the compensation scheme, so we appointed Mr Martin Forde QC to oversee that process. His parents were Windrush generation. Then, after the call for evidence, I want to as quickly as possible do a full consultation on the back of that and get the proper input. So it will be a compensation scheme that the people most affected have helped to put together, rather than my department thinking of something themselves.

**Alex Burghart:** Thank you. That is extremely helpful. By the middle of July, would you expect your department to have told you how many people were wrongly detained?

**Sajid Javid MP:** I hope so. That is what I have asked for and I believe they are on track. It is a complex process because there are thousands of records to go through and lots of issues in each case. They have begun that work and I have set them the task to do it by the middle of July.

**Alex Burghart:** Would you mind writing to the Committee outlining the cases where people are being wrongly detained once you have that information?

**Sajid Javid MP:** Yes, I will. I have also promised to keep the Home Affairs Select Committee informed as well.

**Q27 Chair:** Home Secretary, before you saw these files you gave evidence to the Home Affairs Select Committee on the Windrush generation. You said, "I would not describe it as a systemic problem in the Home Office". Could you revisit that thought, because what we have here are two separate files with two completely separate teams dealing with them all the way through? There is no connection between these two people or between the teams that dealt with them, and yet exactly the same outrageous abuse of human rights occurred. They gave piles and piles of evidence and yet they were wrongly locked up. Do you really think that the Home Office is so populated with people making wrong decisions, cruel decisions that have terrible consequences for people? Surely it has got to be, in the light of just these two files, too much of coincidence. It is a systemic problem, is it not?

**Sajid Javid MP:** Chair, I want to be led by the evidence. We would all agree that that is the appropriate way. I have said right from the start that what happened in these cases is appalling and wrong in so many ways. That is why, again, I welcome the work that the Committee has done to help bring that to light, which is helping us. But I do not just want to take a couple of cases and a few others that we are aware of where

things have certainly gone wrong and say that that applies generally. To say that something is systemic you have to say that it is a general issue in the department.

So, for example, I have been asking questions at the Home Office and getting more and more information. I have asked for information on all NTL applications that they have received from Commonwealth nationals between when electronic record-keeping began in 2002 through to 2017. They have received 202,000 applications. By year, I have asked them to go through and tell me what percentage were granted and what percentage were refused. We can provide the Committee with more detailed information on this later, but to give you a sense of it, starting in 2002, 90% were granted and in 2003 it was 86%. Between 80% and 90% are granted and between 1% and 5% are refused each year. When you have rejections, it is usually because no fee is enclosed with the application and the person then does not want to pay the fee. My point is that if you look at the application process and at what is granted and what is not, it does not at all feel like a systemic issue.

If you look at detention, which you have done, 95% of those who are liable for removal are managed in the community. In other words, they do not go to detention centres. That indicates that there is not some kind of policy to automatically reach for detention. Detention should be a last resort when all alternatives have been exhausted. Where there have been problems in detention there are other reviews. My predecessor started work, and Stephen Shaw has done a follow-up review, which we have just received and will be responding to shortly. There is the ongoing Lampard review into the Brook House IRC. Where we have identified other problems there is work going on.

As I told the Home Affairs Select Committee, I have seen no evidence of a systemic problem. That said, I will be driven by the evidence and am happy to share that evidence. As I have said, there is more work ongoing as we speak.

**Q28 Baroness Hamwee:** One thing that should be systemic—and Mr Williams has mentioned quality assurance—is internal processes to ensure that policy, the law, guidance and common sense are all being applied. Mr Williams, could you say more about what that looks like? Perhaps you could do that in two stages because as we have discussed there are two separate issues here. There is the decision on the application for leave and there is also detention.

**Glyn Williams:** As regards detention, the initial decision to detain will be taken by one member of Immigration Enforcement. Anybody going into the detention estate will have to go through the so-called detention

gatekeeper, who will take a view on whether they think that person is suitable to be detained.

At the moment, about 4% of detentions are being rejected by the gatekeeper. Then, upon entry into detention, obviously there is a process of so-called induction and making people aware of their rights and their ability to apply for bail.

**Baroness Hamwee:** Are you satisfied that is a successful process and that people are able to understand what is going on?

**Glyn Williams:** I suspect you are going to tell me that on the basis of these two files it is not. That is something that we will have to look at. As the Home Secretary said, Mr Stephen Shaw reported on this in 2016. He has also submitted a further report to us now, which we are considering. I do not think we are saying that there is no room for improvement in that system.

**Baroness Hamwee:** What happens when problems are found? Does the quality assurance mean that there is training and more guidance to ensure that there is compliance with the processes?

**Glyn Williams:** Yes. We are subject to external assurance as well. The detention estate is inspected by HM Inspector of Prisons and the Independent Chief Inspector of Borders and Immigration. We are constantly looking to update our guidance and to act on their recommendations.

**Baroness Hamwee:** I know that the Chair will not want me to stray beyond the pretty specific issues that we are looking at, so I will not, but in both cases Members of Parliament for the two individuals raised issues with the Home Office and asked what was going on. They were given a pretty dusty answer and were just brushed off on the basis of data protection. I have always found case work very difficult, because clearly Peers have no status or locus as representing constituents. I had always thought that MPs do. How are MPs' representations treated?

**Glyn Williams:** I am aware of the reply to Emma Reynolds MP in the Paulette Wilson case, which seemed quite a full statement of the situation. In fact, one of the things that I find a little troubling is that that letter talks about deemed leave under the 1971 Act being relevant in this context, which made me wonder why we did not then act on what we had said to Emma Reynolds. I do not know whether you are referring to other letters in the file that I have not seen, but it seems to me that we take MPs' representations seriously and seek to answer them.

**Baroness Hamwee:** Kate Osamor wrote on the half of Anthony Bryan. That seemed to help with immediate release but did not stop subsequent detention. Then there was a response to her in October. This is our summary. HO responds to Kate Osamor thanking her and saying, "In order to safeguard an individual's personal information and comply with the Data Protection Act, we are limited in what information we can provide so we cannot provide any further information about Mr Bryan". It must have been pretty obvious that he had consented to the disclosure of data. Perhaps I had better just leave it at that.

**Glyn Williams:** It is our policy to disclose data to MPs where we consider that they have the consent of the person concerned. I am sorry if in that case we were mistaken in that judgment. It is our policy to disclose to MPs.

**Sajid Javid MP:** May I say something on MPs' representations? Of course they should be taken seriously. If any constituent has had to approach their MP then potentially something has gone wrong already. If the system is working well you should not have to go to an MP, but all the MPs here will know, as I do for my own constituency, that not everything goes right all the time with the public sector. Sometimes people approach their MP but if the MP has then taken the effort to get into the case and contact the relevant department—in this case obviously the Home Office—then we should look at that seriously. What I always endeavour to do and will do in this department if any MP contacts me directly—I think I can speak for any of my Ministers—is we would want to personally take a look into it. I would like to reassure you that when MPs get involved it is at a very important point and it should be taken seriously.

**Ms Karen Buck:** Do you happen to know, or could you find out, whether MPs or possibly other representatives of the Windrush cohort would ever have asked the department to check with another government department to establish information that was missing? If so, what would the reply have been? I am still trying to find out whether a decision was made within the department not to go to a third department.

**Sajid Javid MP:** I am sure we can find out, but let me check what it is that you want to find out about. You have asked whether, in general, if an MP contacts the department regarding an immigration application by their constituent, who they say has been here for X number of years and that there is, for example, a tax record, then could the department check with HMRC and let them know something. We will find out for you.

**Ms Karen Buck:** Yes. Would there have been a policy in the department to say, "Yes, we can do that", or, "No we can't"?

**Sajid Javid MP:** Let us find out.

**Chair:** Do you think therefore, Home Secretary, following the points you have responded to Sally Hamwee on, that one of the things you will need to satisfy yourself is that there are two things in place that are properly working? The first is internal surveillance, monitoring and checking so that everything is going right and that that is satisfied internally, and then the correct opportunities for external intervention, whether that be courts or MPs? Do you agree that when you are dealing with somebody's human rights you have to get it right? You cannot just leave it to the department to grind through; you have to have a checking system. Do you agree that those systems should include internal checking—you have to be satisfied that is right—but also external checks and how those are responded to within the system?

**Sajid Javid MP:** Yes I do. As you have correctly broken it down, you can have these internal checks. Speaking in general about the whole immigration process—at any one time we were dealing with millions of cases and they can each be different—you also need in some cases, for the right protection of that individual, to have someone external look at it. To give an example, with the Windrush scheme that I talked about earlier and the people currently approaching us through the task force, I also wanted to make sure that—we are accepting almost all the cases coming to the task force, the vast majority of which are accepted very quickly, but even in some cases where somebody is turned down—they have at least an internal right to get it reviewed. I have asked a different part of the department, so someone who has had no involvement with the original case, to come to the task force and be available to go through the file independently to see what decision they reach.

Talking about external oversight, as the committee might know, if someone is taken into detention and all proper processes are followed, they must be made aware that they have the right to see a legal adviser. They can go to meetings of at least 30 minutes each time, I believe. They can do that any number of times without limit. Of course, they can apply for bail at any time. In 2016, I believe, the law was changed to make it a requirement that you are automatically put forward for bail after four months—is that right?—and then every four months thereafter. Obviously most people are not detained that long, but if necessary.

Obviously that bail process is completely independent; there is a tribunal, a legal process, judges are involved, and they would look at the file. But

those kind of external checks are also required. After we have looked at Stephen Shaw's report, as Mr Williams has alluded to, I want to make sure that just because those processes exist it does not mean that improvements cannot be made. I want to see what can be done.

Q29 **Lord Trimble:** Coming to the question of detention again, I take it, Mr Williams, you would now be of the view that the detention of Anthony and Paulette was not lawful, or do you want to try to justify it?

**Glyn Williams:** I am not a lawyer, but it is certainly wrongful and I do not think it was lawful.

**Lord Trimble:** I think you are right.

**Chair:** Do you want to ask about the detention threshold?

**Lord Trimble:** I have broached it by asking whether Mr Williams accepted that it was unlawful.

**Chair:** The point that lies behind that is one of the things in the file that slightly baffled us. How could anybody in the Home Office think that they had justified the high bar that is set for a detention threshold? Even if it is decided that somebody needs to be deported, there is still a threshold that has to be passed to justify detention, which is that there is a risk of absconding. It seems to be that the risk of absconding was simply correlated with the fact that they were going to be deported. Therefore, by definition, if you are going to be deported, you are obviously at a high risk of absconding and you are put in detention. Is that what has happened: they have missed out the separate assessment about whether or not there is a high risk of absconding? It is quite hard to see how these two people represented a high risk of absconding.

**Glyn Williams:** Yes. I do not think they represented a high risk of absconding. The position from the Home Office's point of view was that they did not have leave to be in the UK, therefore they should leave the UK. They were not taken into detention immediately—a couple of years went by in the case of Paulette Wilson and one year went by in the case of Mr Bryan. So there was an opportunity during that time to provide further evidence or to leave the UK. Then the Home Office was faced with the fact that they had not left the UK and had been put on reporting. The final step in the removal process is enforced removal, which entails detention for redocumentation purposes.

**Baroness Hamwee:** Ms Wilson was detained, I think I am right in saying, when she went to report as she was required to. That seems to me to show a pretty fair intention to comply with what she was being told to do. How does the way that you have described the process align with the comments in the letter from you, Home Secretary, to the Chair, which says that decisions to detain are taken on the basis of, "careful consideration of the facts of the individual circumstances of each case"? It sounds as though in the unstoppable progress which the Chair described, which you do not agree with, assumptions were made that apply to everybody and not to the individuals that the Home Office is dealing with. Am I wrong about that?

**Sajid Javid MP:** The general policy is clearly that detention should only come about when all other alternatives have been looked at. Also, other requirements have to be met. There has to be a realistic prospect of removal within a reasonable period. If the individual is applying for bail, there has to be a presumption in favour of immigration bail. As I mentioned earlier, anyone can apply for bail at any time but there is an automatic process of four months. All that is taken together.

I am generalising, because I have shown that the overall system is working. I think I mentioned earlier that 95% of people who are liable for removal are managed in the community. Most people who are subject to removal are not going into detention. It is a small minority. That takes nothing away from the cases of the two people we are discussing today because clearly lots of mistakes were made and it should never have happened. That is why those were wrongful detentions. But many detentions take place, which we would have no proper reason to discuss in this Committee, that are perfectly lawful and correct and are part of having an immigration policy that is effective in maintaining immigration controls.

**Chair:** If it were systemic, the system would need to be sorted out, but you think that it is not systemic. If it is lots of mistakes, as you think, surely the people making these mistakes need to be identified and retrained, and there are lots of them in there. Do you expect that to happen? It has to be one or the other: it has to be a bad system or bad individuals.

**Sajid Javid MP:** We need to understand better. I have not seen enough to know what the exact changes are that need to be made. Clearly part of the lessons learned is that this will lead to a set of changes that will make the whole system work better. In those cases where mistakes were made in the judgment of caseworkers, we need to understand why that happened. Why was a mistake made and then layered with another

mistake? I will not sit here today and pretend that I have all the answers to why this happened. We need to look at it in more detail and understand, in the work we are doing, what detentions might have happened to others from the Windrush generation. When we have that information, we will have more to work on.

**Baroness Prosser:** First, I apologise for arriving late. I hope that the question I am going to ask was not covered in any introductory comments. It follows the point made by the Chair. In recent years there has been an enormous reduction in staffing levels across the Civil Service and its agencies. Do you think that there have been, and are now, enough people employed who are sufficiently trained and experienced to be able to deal with all these issues? It sounds to me, from talking about the file and the information that was missed, that it might be that those persons were not malevolent but just did not quite know what they were doing or realise the importance of noting lots of information? Do you feel confident about that? You talked to us about the processes you are now putting in place, which all sound pretty good and are welcome. But do you think you have enough staff of sufficient experience and calibre to be able to do that work?

**Sajid Javid MP:** I could not answer that question at this point, because part of the process of learning lessons from all this is to answer that question. I do not want to prejudge it.

**Baroness Prosser:** We look forward to hearing the answer.

**Ms Karen Buck:** I have two questions, one of which is a follow-up. What do we define as a mistake in this context? This is critical. I am struggling, and I think a lot of us are struggling, with where the decision-making process falls down on an error of judgment: either by not reading the file, not exercising judgment or not deciding the case in line with the Government's own policy. I am still at a loss to know what the answer to that is and how you are seeking to assess it.

**Sajid Javid MP:** From what I know at the moment, and sticking to the two cases that we have discussed, when someone says, "I have been here since the age of 10, having arrived in 1968", a judgment can be applied. If you have been here that long, clearly there has to be some public records to back it up, either through national insurance, schools or otherwise. The caseworker then asks: what can I do to help to establish that? Clearly that has not happened in these cases. As we have said, the burden has always been on the individual. Some judgment could have

been applied there, notwithstanding the rule that the burden of proof is on that individual.

So you could imagine a case when you say, "I hear you, but it's up to you to prove that". I just think that things need to be much more carefully looked at. I have talked about what I have called a fairer, more compassionate immigration policy, and in my mind, when I say that, I am thinking of how you can bring a bit more common sense into the approach and work with that individual.

**Ms Karen Buck:** I accept that. Absolutely for the future that is clearly what everybody would want to do. How much flexibility was there in the system, Mr Williams, to allow caseworkers to exercise that judgment?

**Glyn Williams:** I think the proof is that the task force is now operating according to the same guidance, the same Immigration Rules and the same laws now as were in place previously and is taking a different view. I think it is more of a cultural issue, if you like, in that respect. As regards Windrush, I just want to come back to the fact that I think that the Windrush generation are in a special position as regards their legal status. I think it is something that the Home Office had lost sight of and our processes were simply not set up to deal with this kind of case.

**Chair:** Are they in a special position in respect of the fact that the evidence on a file is completely ignored? That is the position they were in: the evidence was on the file, it was not cognised and they were locked up. Is it special just to Windrush that they were selected for this treatment, or is there a more general problem of evidence being on a file that is then ignored?

**Glyn Williams:** The special position that they are in is that they had deemed leave under the 1971 Act and had no documentation of that fact. All other migrants coming to this country have leave to enter—apart from Europeans entering under free movement, but that is different. Immigration Enforcement would not have come across that kind of case very frequently. They would have been coming across cases where, most of the time, there is no dispute; they are dealing with someone who does not have legal status.

**Ms Karen Buck:** The suspicion will have to be, taking your point about culture, that these people were the low-hanging fruit. This was a cohort of people who it was relatively easy to act against, because there was ambiguity in the position. A lot of people will not have good supporting information, so you can up your performance

by acting against people who are very vulnerable. You can understand why people feel like that.

**Glyn Williams:** Yes I can, but what has happened is that the Home Office has just applied standard procedures to a non-standard situation where we should have differentiated and adapted our actions to the circumstances of this case. I do not recognise the low-hanging fruit or targeting accusation, I am sorry.

**Ms Karen Buck:** I have one last question. There will be some people who, having found themselves in this situation—we have heard from people who have been detained, lost their jobs or become homeless as a consequence of Home Office actions—will have taken a decision, a wrong decision but possibly an understandable one, to obtain and work with false documents.

Are you aware of any cases where people from the Windrush cohort may have been arrested, charged or even imprisoned for using false documents when actually, if the case had been processed properly and they had not been pursued in this way, that would not have happened?

**Glyn Williams:** No such cases have come to my attention.

**Ms Karen Buck:** But there are cases of people who are detained because of using false documents, for example? People will be in that position.

**Glyn Williams:** If they have used forged documents, such as travel documents, and have gained entry into the UK or further leave by deception, then yes, that is an immigration crime.

**Ms Karen Buck:** Is anybody cross-referencing that against the Windrush cohort?

**Chair:** I think Karen is saying that they are not people who have gained entry on forged documents, they are people who have been denied their continued right to stay here, so their response has been—this is the supposition—to borrow somebody else's national insurance number or passport. Then they have committed an offence and have been put in prison.

Obviously nothing justifies committing a criminal offence, but it would be worth knowing whether some of the people who committed this offence were in that position because they were

being challenged to produce documents that they did not have, so they produced somebody else's documents and went to prison.

**Glyn Williams:** Yes. It is a perfectly fair point.

**Chair:** Perhaps you could look at it.

**Glyn Williams:** Yes, we can look at it, but I would have thought that, with all the attention upon Windrush, if that had happened it would have come out over the last six to eight weeks.

**Chair:** Thank you for agreeing to look at it.

**Joanna Cherry:** Home Secretary, Mr Williams just said that the problem with the Windrush generation was that they were in a special category because they had the right to be here and no documents to evidence that. He then corrected himself and said that EU citizens will soon be in the same position.

I sit on the Committee on Exiting the EU as well as this Committee, and we took evidence this morning from the 3million, which represents EU citizens in the United Kingdom, and from Irish in Britain, which represents Irish EU citizens in the UK. Witnesses from both groups said to us in terms that the Windrush scandal has "dented their confidence" in the reassurances given by the British Government about the rights of EU nationals in the UK after Brexit. Can you understand why they feel that way, after the evidence we have heard today?

**Sajid Javid MP:** Yes, I understand that.

First, in relation to what Mr Williams said, and it is important to be clear about this, it is a unique situation in the sense that because the 1971 Act gave all Commonwealth citizens who were here before 1 January 1973 that deemed status, for years by definition there was no documentation issue because of that deemed status.

We will obviously go through a proper lessons learned exercise, but I think that partly what has happened over time is that, since the 1980s and 1990s when the time period was closer to when that deemed status was given, many people, including those working in Immigration Enforcement, may have lost sight of that and what that was and may then have applied the judgment that we have been talking about.

I can understand from what you have said that Europeans who are here post exit day might think, "Could that happen to me?" I do not think there is any possibility of that, because we will very shortly set out how the EU

settlement scheme will work. It will not be a deemed status system. It was all looked at, and partly as a result of learning the lessons from Windrush it will be a scheme whereby you will need to register.

That registration obviously needs to be made as simple and straightforward as possible and enough time needs to be given, not just during the implementation period but possibly beyond that, for those who are already here and for those who arrive during the implementation period—they will have every right to arrive during that period, as we know—to have a settlement scheme that works properly and properly registers them.

My understanding is also that the EU countries will operate a similar scheme for British citizens in their respective countries, so I would be concerned about British citizens being caught up in something in their countries. It is something that I have taken account of and we will shortly introduce to Parliament the settlement scheme and how it will work. I want to pilot it before exit day to ensure that we get it right, and I think it will take account of the lessons learned from Windrush.

**Chair:** Thank you very much indeed.

Home Secretary, in the evidence to the Home Affairs Select Committee, you talked about these people not being documented, but we have felt that they were documented; they had all these documents in their files. It was not that they were not documented, it was that the Home Office was not responsive. We need to think again about what we mean by “not documented”.

**Sajid Javid MP:** I can be clear. When I say not documented I am referring to the fact that, when the 1971 Act came into force, everyone concerned was given deemed leave. They were not issued with a document at that point in time.

**Chair:** Thank you very much indeed, Home Secretary and Mr Williams, for your time. Thank you for allowing us to look at the files. I apologise to the members of the public here that you have not been able to ask questions. I know that many of you had many questions to ask. I am thankful to the witnesses for answering our questions and wish you well in your important future work.

**Sajid Javid MP:** I thank the Committee for all your work and efforts.