

Written evidence submitted by Gertrude Chinegwundoh (WCS0008)**Is the Home Office managing to “right the wrongs” experienced by the Windrush generation through this Compensation Scheme?**

1. The Home Office is only partially managing to “right the wrongs” experienced by the Windrush generation because a sizeable number of Windrush victims who are overseas are being denied the opportunity to return to the United Kingdom (UK), although they were lawfully settled in the UK before 1st January 1973 and had Indefinite Leave to Remain. Their applications under the Windrush Scheme to regularise their status were refused for spurious reasons.
2. When I first heard about the Windrush Scandal in April 2018, I quickly realised that several of my relatives and family friends in Nigeria were Windrush Scandal victims. I called the Taskforce and confirmed this. I then embarked on this saga to help them obtain justice. I flew to Nigeria in the summer of 2018 to meet with six affected individuals. Out of those six, only my cousin was successful with her application and that is only because she happened to have a Visitor’s Visa when the scandal broke and was able to fly to the UK to submit her application. The remaining five applied from Nigeria and their Windrush Scheme applications were all refused – wrongly. Their Windrush Scheme applications were completed with meticulous detail and submitted with substantial corroborating evidence. These individuals had all been settled in the UK before 1973 and have strong family ties here. They have all suffered from isolation and family separation for over 30 years. Unfortunately, at least 3 other Windrush victims that I knew personally died in Nigeria before the scandal broke. These men had all been settled in the UK from about 1961. They never got their UK and/or occupational pensions.
3. Until the Home Office also “rights the wrongs” experienced by Windrush generation victims overseas, which includes granting status to eligible overseas applicants and tracing those non-Caribbean victims who could have been wrongly deported or refused re-entry to the UK, the historic injustices will continue to devastate lives. There should be a comprehensive review of the refusals of applications of overseas victims who are genuine and eligible applicants. The decision-making has been inconsistent, resulting in different outcomes for similar cases in different countries. The Returning Resident visa criteria should not be applicable to Windrush victims. The only criterion for overseas applicants must be whether they were settled in the UK before 1973. If other criteria are applied, this is discriminatory and the historic injustices that caused these particular victims to be refused re-entry to the UK in the first place will continue unabated. This is unconscionable.

Are you confident that the Windrush Compensation Scheme is fair?

4. I am not convinced that the scheme is fair because there are no awards that reflect the fact that many claimants had tried in vain to regularise their status over a period spanning many years and long before they even experienced

job loss, eviction, detention or deportation. The Home Office kept on rejecting their applications – until April 2018 when the Windrush Scandal broke. Suddenly, those very same individuals were then granted No Time Limit Biometric Residence Permits or British citizenship. The egregious violation of their human rights should warrant a special discretionary payment because the scandal was foreseeable and avoidable. According to the findings of Wendy Williams (Windrush Lessons Learned Review), there was a “culture of disbelief and carelessness when dealing with applications.”

5. The compensation scheme also does not adequately redress the losses of claimants who experienced confiscation of their British passports for very prolonged periods or experienced extreme difficulties in proving that they were British-born and, therefore, entitled to British passports. The focus of both the Windrush Scheme and the Windrush Compensation Scheme appears to be concentrated on victims born abroad who settled in the UK as adults or children. The Windrush Scandal is much wider than this.

Is the level of compensation being offered adequate? If not, in what areas is it inadequate?

6. There should be a prompt, flat initial “apology” payment made to every eligible/verified claimant eg. £50,000. There should then be an option for those claimants who want to continue with their claims and pursue losses in various categories. This “apology” payment would acknowledge the negligence of the Home Office. Some claimants, especially the elderly and the vulnerable, desperately want and need closure.
7. There are at least three major flaws with the compensation scheme: 1. the loss of access to employment category; 2. the impact on life category; and 3. there is no separate category for those who were exiled for years after being refused re-entry to the UK

Loss of Access to Employment

8. Compensating for loss of **access** to employment is not equivalent to compensating for actual losses. Loss of access to employment is much broader. It includes the loss of potential, curtailment of career progression and job mobility. There is also a possible human rights claim, involving Article 8 (private and family life).
9. **[Article 8 ECHR** provides:
 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, of the for the protection of the rights and freedoms of others.]

10. Under the current compensation scheme rules, to qualify for an award for actual earnings lost, the claimants must prove that they took **reasonable steps to resolve** their lawful status in the UK. This is an immaterial and offensive stumbling block. Windrush Scandal victims did not rub their hands with glee after being sacked and say “I think I’ll just sit here and be destitute for a few years.” or “Oh, I am delighted to be homeless and begging on the streets.” This is about **loss of access to employment and being deprived of all available employment opportunities** due to a **breach of duty of care** by the Home Office. **There was a breach of statutory duty to administer the right to work checks properly.** A memo was circulated in the Home Office in 2006 warning about long-term residents who were lawfully in the UK. The losses were foreseeable and avoidable.
11. The crux of the matter **is the negligence** of the Home Office. Wrongly informing employers that Windrush victims had no legal right to work in the UK caused the loss of access to employment. The onus is on the Home Office to rectify their mistakes and not put an onerous burden on the victims.
12. Claimants had **“difficulties demonstrating their lawful status”** due to catastrophic errors made by the Home Office thousands of times. It should not, therefore, be incumbent upon claimants to show that they **took reasonable steps** to resolve their status. Many claimants tried to regularise their status several years before they encountered difficulties with employment but their applications were refused time and time again. These claimants wanted to travel so they naturally applied for British passports. They were wrongly refused their British citizenship.
13. Lack of payslips should not be an excuse to deny claimants compensation for loss of access to employment. Whether a person was dismissed due to difficulties evidencing lawful status or unsatisfactory performance or voluntarily resigned to pursue studies or went on maternity leave is not the point. There will be claimants who would have been applying for their first jobs or were returning to work after a career break. They were prevented from working because of the **negligence** of the Home Office.
14. Many claimants actually discovered that they had no right to work after employment checks at the Jobcentre. They were actively seeking work and may, therefore, not have been in employment at the time. Some may have evidence of these employment checks by the Jobcentre but many have told me that they no longer have this evidence. They lost any opportunity to work.
15. **Future loss of earnings** has not been taken into account for those claimants with severe PTSD or other conditions and who may never work again.
16. **Loss of occupational pension growth** eg. if claimants lost several years’ worth of personal and employer contributions because their pensions were frozen when they were dismissed from their jobs, that is a considerable loss.

Impact on Life

17. In the Caribbean and African communities, there is a stigma associated with mental health and it remains a taboo subject, especially amongst the older generation - and men in general.
18. Men are much less likely to discuss psychological trauma with GPs (or family members). If they do, they may downplay the symptoms, resulting in no referral to a psychiatrist and no diagnosis. Claimants – men and women - might not have been able to articulate the helplessness, fear and chronic stress they were under for years. Many, in fact, are suffering from undiagnosed PTSD. They may not recover for many years to come because the compensation scheme is forcing them to relive the horrors that they faced. I have spoken to several claimants who are still experiencing nightmares, insomnia and depression. There is a long waiting list for CBT and Talk Therapy.
19. The compensation scheme caseworkers do not appear to be considering **longevity of suffering** when assessing claims. Martin Forde QC, who designed the compensation scheme, has clearly stated many times, that the figures in the Impact of Life tariff table apply to a period of suffering of up to approximately 18 months to two years only. If a person has suffered for 10 years, the tariff should, therefore, be multiplied by 5. The majority of claimants who suffered catastrophic and sustained impacts over several years would obviously be eligible for the level 6 tariff, which now starts at £100,000. What are the awards for severe PTSD, moderately severe PTSD and moderate PTSD? What is the upper limit of the Level 6 tariff? What about future loss of earnings for those unable to return to employment? (Blamire awards for future loss of earnings)

Windrush Returnees

20. Many returnees had/have been outside of the UK for decades through no fault of their own. There should be a specific loss category for these claimants. Being forced to live abroad (often in abject poverty) should warrant a generous award for each year stranded abroad. Refusal of re-entry to the UK cannot just be lumped into the Impact on Life category if it resulted in the claimant being exiled for more than one month. Some have been away for over 30 years. How will the loss of access to employment be calculated? They are highly unlikely to have any payslips so will the General Award sum be applied for every year that they were abroad eg. £13,764 x the number of years abroad? This group of claimants seems to have been overlooked. Being refused re-entry to your country of residence is somehow similar to being removed. In both instances, they could not return. The compensation for this should be calculated along similar lines. The same applies to the so-called Voluntary Departure.
21. I know of several people who were wrongly told that their ILR had lapsed in the mid to late 1980s so they were refused re-entry to the UK and refused visas multiple times. They remain in exile, having now been refused yet again under the Windrush Scheme. The refusal reasons are spurious and offensive. The caseworkers are clearly not following the caseworker guidance.

22. The rule about lapsed ILR after an absence from the UK for over 2 years stems from obsolete 1962 immigration legislation. The relevant section was not carried over into the 1971 Immigration Act because it contradicted section 1(5), which allowed the free movement of Commonwealth citizens. Unfortunately, these particular immigration rules from the 1962 legislation were put into subsequent immigration rules. This caused thousands of Commonwealth citizens who had been long-term UK residents before 1973 to be wrongly/unlawfully barred from the UK. This needs to be rectified. Immigration rules cannot override primary legislation.
23. I have been sent five refusal letters from Nigeria, including one from a woman who was born in London before 1973. I have known her all of her life. She has been trying desperately for the past 30 years to prove her British citizenship but the culture of disbelief at the Home Office is very firmly entrenched. No matter what evidence she submits, her applications are always rejected. There are mini scandals within the main Windrush Scandal, including the scandal of those born in the UK before 1983 but refused British passports. There are other victims who were born in the UK to settled parents after 1983 but have struggled to prove this.

How good is the Home Office at sharing information about the scheme and other support that is available?

24. Before the Covid-19 pandemic, there were regular face to face Windrush engagement events, which I attended, whenever possible. There would always be elderly victims attending these events. Most of them are not on social media and may not have email addresses. They relied on word of mouth to hear about these events.
25. With the restrictions, I feel that these elders are isolated and do not receive support. Their only means of communication with the Home Office is via the Taskforce. More could be done to reach them through local community groups and local outreach teams. There is not enough publicity on television eg. the BBC.

What could they do better to make sure people know about the schemes?

26. Public broadcasts on the BBC after the local news, flyers and posters, adverts in the Evening Standard and Metro. Leaflets in school reception areas and shops/salons.

What changes could make the Windrush Compensation Scheme, as a whole, work better?

27. The requirement to mitigate losses is offensive. The perpetrator is blaming the victim and looking for reasons to reduce the award. Many claimants cannot prove what they did to mitigate their losses as the law firms where they sought advice have closed or some of the community advice centres have shut down. Furthermore, some of the Subject Access Requests are not being processed correctly; some claimants are being sent incomplete files or nothing at all.
28. Page 30 of the decision maker's guidance: This page explains the grounds on which you can decide to reduce or decline an award where you consider that a claimant has

consciously failed to take steps to mitigate their loss or has taken conscious steps that have resulted in an increased or exacerbated loss.

You may decline or reduce an award if you consider that:

- the primary claimant or the deceased (in the case of an estate) has failed to take reasonable steps to resolve their lawful status
- the primary claimant, deceased or close family member has otherwise failed to take reasonable steps to mitigate losses or impacts
- the primary claimant, deceased or close family member has taken unreasonable steps that have resulted in increased losses, or
- there has been wilful default or lack of cooperation on the part of a primary claimant or deceased when attempting to resolve their lawful status ...

29. There is a publication entitled **NAO Briefing: Administration of time-limited compensation schemes** (2008). In 2007, a former PHSO published the Principles of Good Administration. "Although the Principles are generic to all forms of public administration, they are particularly relevant to the design and administration of compensation schemes." (p7).

30. Some pertinent points from the six main principles are: (in italics):

- *Taking proper account of established good practice*
- *Providing effective services, using appropriately trained and competent staff*

31. How are Windrush Compensation Scheme caseworkers trained and are their assessments moderated?

- *Informing customers what they can expect and what the public body expects of them*

32. From the Primary Claimant Guidance FAQs:

How long will it take to process my claim?

Processing times will vary depending on the complexity of your claim

It will take longer to process your claim if we need to ask for more information, if your claim is complex or if your claim covers many different areas.

We aim to consider claims as quickly as possible. We may pay some elements of your claim earlier than others

If you consider yourself to be a vulnerable person tell us and provide as much detail as possible to support what you say.

We will write to you with an offer as soon as a decision has been made on your claim. You will be asked to confirm your acceptance of this offer in writing and return it to us.

33. This is unacceptably vague and is not good practice. Some claimants have been waiting since the compensation scheme was launched. In the second quarter of 2019, 529 claims had been received but by the end of October 2020, only 226 claims had been paid (in full or a mixture of interim and full and final?). This means that up to 300 claimants must have been waiting since between April and June 2019. We know that, tragically, Paulette Wilson and Hubert Howard have died without receiving compensation. I suspect that many other Windrush Scandal victims have died without compensation. We will never know the true scale of the scandal.

34. NAO Briefing: Administration of time-limited compensation schemes – good practice:

Consider whether some categories of claimants should be subject to special procedures to expedite payment of compensation. Such procedures might apply, for example, to those who are elderly, ill, or particularly needy in some way.

Obtain assurance that sufficient capacity can be put in place to manage the likely volume of claims. Particular attention should be paid to identifying potential bottlenecks. The opening of the scheme to new applications is likely to prompt a large volume of applications in the initial stages. Explicit attention will need to be given to the service standards the Department wishes to achieve, for example in terms of median processing times and modelling the implications these standards will have for the required processing capacity. In some situations, it may not be possible to put in place the required capacity immediately in which case the Department will need to have a strategy in place for managing the expectations of claimants and other stakeholders.

35. Some (if not, most) claimants do not have direct access to their caseworkers eg. email and are still going through the Taskforce and leaving messages. They are not getting regular updates either.
36. Timescales must be stated to claimants. People have been waiting 19 months! This is an ageing cohort.
37. The Home Office cannot keep fobbing people off with excuses and faux concern about how each person's claim requires detailed consideration. This does not mean taking an unreasonable amount of time. The most complex cases should be handled by senior caseworkers and within six months.
- *Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances*
38. I know that in some instances, this is definitely not happening.
- *Being open and clear about policies and procedures and ensuring that information and advice provided, is clear, accurate and complete.*
 - *Operating an effective complaints procedure, which includes a fair and appropriate remedy when a complaint is upheld.*
39. Who looks at the complaints? How long does the complaints procedure take?
40. We know that information about the complaints procedure was not included in the claimants' guidance for the first 18 months of the compensation scheme, but I note that in the **October 2020** Primary Claimant Guidance, it reads:

What can I do if I am unhappy about the service I have received?

If you have a complaint about our service, you should email us at
 complaints@homeoffice.gov.uk
 If you are unable to email, you can also write to us at:
 Complaints Allocation Hub
 Customer Correspondence Hub
 7th Floor
 Lunar House
 40 Wellesley Road
 Croydon
 CR9 2BY

- *Stating its criteria for decision making and giving reasons for decisions*
 - *Treating people impartially, with respect and courtesy*
 - *Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests*
 - *Dealing with people and issues objectively and consistently*
 - *Providing clear and timely information on how and when to appeal or complain*
41. Claimants do not know when to complain because they do not know how long to wait for from the time they submit their claim until they get an offer. I have that some claims have been “lost”. How does a claimant who has submitted a claim by post or online know that it has been received?
42. Responsiveness is a major issue. What are the response standards? There must be reasonable timescales for both the Windrush Scheme and Windrush Compensation Scheme. For example, after acknowledgement of receipt, what happens next? Claimants cannot just be left in limbo.
43. Is there a team that deals purely with estate claims?
44. The Tier 1 and Tier 2 review processes are confusing and opaque. The role of the Independent Adjudicator is not entirely clear.

Do you believe that the culture in the Home Office is changing?

45. As long as overseas victims are being treated less favourably and attempts are not being made to trace non-Caribbean overseas victims or assist them in any way to return to the UK, then I cannot believe that the culture in the Home Office is changing. In 2018, the NAO identified 160,000 non-Caribbean historic cases that required review but to date, there has been little or no attempt to start the review. Furthermore, many of the overseas victims who applied under the Windrush Scheme have been wrongly refused. Will those same rejected applicants be able to apply for compensation?
46. I am cautiously optimistic about the changes to the scheme that were announced today but there is still a long way to go, especially with regards to overseas victims.

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