

Questions

From The Windrush National Organisation

Meeting For The Home Office

17th December 2020





1. Spoke to the #Windrush Taskforce today, they confirmed that persons outside the UK who apply to the scheme are being refused & treated differently. Victims are denied & told to make paid applications many cannot afford this.

It's a further Scandal

Windrush claimants outside the UK are being shut out of the scheme for not being present in the UK. Although the scheme provides for a person who arrived in the UK after 1973 and up to 1988 If that person has been left outside of the UK as a result of the Windrush Scandal. Their applications are being denied under the scheme and told to make a paid application outside of the scheme. This is a further scandal as the British government is the reason where they are outside of the UK after being denied entry to the UK. A person who has a right of abode in the UK has that right no matter where they are in the world. Right of Abode is equal to British Citizenship.

The Windrush Scheme is open to applications from members of the Windrush generation that were settled in the UK prior to 1973 but who are now outside the UK. These are people that came to the UK before the Immigration Act 1971 came into force, and who would not have been subject to the immigration controls which that Act introduced on individuals entering the UK from 1973 onwards.

People living overseas that have a right of abode in the UK may apply for documentation confirming this. In addition, members of the Windrush generation who previously held indefinite leave to remain in the UK, and have retained strong ties to the UK, may apply for a Returning Resident visa if they would like to return to live in the UK permanently.

Overseas applications are free of charge and are considered in the same way, and by the same case working team, as applications from individuals inside the UK. Where an individual's application has been refused, they may request a review or make another application free of charge. Reviews are considered by an independent caseworker who is not a member of the Windrush Help Team.

2. Why is the HMO not using Barristers to deal with Quantum? To take in loss of earnings, impact on life etc??

The Windrush Compensation Scheme is an ex-gratia scheme designed to compensate members of the Windrush generation and their families for the losses and impacts they have suffered as a result of being unable to demonstrate their lawful immigration status.

The Scheme was set up and designed with the independent oversight of Martin Forde QC, in close consultation with those who were affected by the scandal. 650 responses to a call for evidence and nearly 1,500 responses to a public consultation informed our approach. We also held several public events.



We also considered guidance contained in the Parliamentary and Health Service Ombudsman's 'Principles for Remedy', National Audit office briefing on establishing time limited compensation schemes, and good practice from the Home Office and other government departments' existing compensation and ex gratia schemes. The Scheme has thirteen different categories which include Loss of Access to Employment and Impact on Life and compensation is awarded according to both actual losses and tariff based awards. Where individuals can evidence specific losses, they will be reimbursed for these e.g., immigration fees.

The changes announced in December are in recognition of the severity of impacts some individuals have suffered and will ensure that everyone who qualifies under the terms of the scheme receives an appropriate payment that is more aligned to the Judicial College Guidelines for the assessment of general damages in personal injury cases – particularly psychiatric damage and post-traumatic stress disorder.

3. Why can't close family members get the Level 1 pay-outs of £10k?

The Scheme is primarily designed to compensate victims of the Windrush Scandal but, to ensure the Scheme is as inclusive as possible it additionally allows for claims from family members who have been affected as a result of their principal family member's suffering.

Close family members have always had to reach level 2 on the Impact on Life scale in order to receive a payment under the scheme. Close family members entitled to a payment for Impact on Life will benefit from the increased value of awards across the scale and we will seek, where possible, to prioritise pending close family member claims for a full and final offer under the scheme.

4. In my opinion, raising the amounts can be paid, does it make any easier to have your claim accepted as eligibility? Please explain the "balance of probabilities" methods to be used by the same people who have been evidenced trained?

To be awarded compensation individuals must first show that they meet the Scheme's eligibility criteria, as set out in the Scheme rules. This is unaffected by the recent changes to the scheme.

Individuals must then show they are entitled to compensation, i.e. that they have suffered a loss or impact as a result of being unable to demonstrate their lawful status. Here the scheme operates on the balance of probabilities which means caseworkers must be satisfied it is more likely than not that the loss or impact being claimed for was incurred.



5. What does fast track mean by the Home Secretary?

Preliminary level 1 Impact on Life payments will be paid as soon as someone applying on their own behalf or on behalf of someone who has sadly passed away, and who is eligible for the Scheme can show any impact on their life under the terms of the Scheme. They won't have to wait for their whole application to be assessed.

We have already started to make offers of payments and expect to have considered the vast majority of cases that are currently pending for either a final or a preliminary payment in the first 3 months of 2021.

6. Why should one be penalised, because of a past wrong you've already been punished for? Theresa May promised status claim responses in short time once all documents submitted, but this has not been true. Are we to take this Home Secretary's word for a promise of fast track of compensation claims?

Applications to register or naturalise as a British citizen must meet the 'good character' requirement set out in the British Nationality Act 1981. This is a mandatory requirement, set out in statute. Windrush Scheme applications for citizenship are carefully considered in line with this requirement, taking all factors into account. Members of the Windrush generation that are not eligible for citizenship may still apply free of charge for documentation confirming their indefinite leave to remain or right of abode.

Our priority has always been to ensure that individuals that have had difficulty demonstrating their status are supported to obtain the documentation they need. The Windrush Taskforce (now known as the Windrush Help Team) was quickly put into place once the Windrush events came to light, and we continue to process applications as quickly as possible. To the end of August 2020, we had provided over 13,300 documents to over 11,500 individuals confirming their status or British citizenship.

Please see question 9 for how an individual's criminality may affect a claim for compensation. See question 5 for detail on preliminary payments.

7. The Home Office accepts WLLR Recommendation 1 that the Windrush Generation are British so why are British people being subject to Immigration law and refused citizenship if they have been out of the country for more than two years. People who have been refused re-entry to the UK for more than two years are refused citizenship when brought back to the UK although it was not their fault.

While many members of the Windrush generation subsequently registered or naturalised as British citizens after coming to the UK, others have remained lawfully settled in the UK as Commonwealth citizens with indefinite leave to remain or a right of abode. Where an



individual has remained outside the UK for two years or more their indefinite leave to remain will lapse. Individuals with strong ties to the UK may apply free of charge for a Returning Residents visa should they wish to resume their settlement in the UK.

We are committed to ensuring that members of the Windrush generation that are eligible for British citizenship are supported to naturalise under the Windrush Scheme. Applications are free of charge and members of the Windrush generation are accepted as satisfying both Knowledge of Life in the UK and English language requirements.

8. Can overseas people apply for compensation if they were settled here before 1973 or must they get their status first? A lot of people abroad are being refused status but they lived here before 1973 and had ILR. My aunt lived here and has British children in London but has been refused. This is wrong. She may die without meeting her youngest grandchildren

Commonwealth citizens who are currently overseas and who settled in the UK before 1 January 1973 are not required to have lawful status in the UK to apply for compensation.

Individuals that were settled in the UK by 1 January 1973 and are now living overseas may no longer have indefinite leave to remain if they have remained outside of the UK for longer than two years. The Windrush Scheme ensures that individuals with strong ties to the UK are able to apply for a Returning Residents visa for free should they wish to return to live in the UK permanently. Individuals that are not eligible for a Returning Residents visa under the Windrush Scheme remain free to apply for another visa in order to visit or live with family members in the UK.

9. Why should someone have their comp. payments reduced? Especially when that criminality is a result of the Hostile Environment making them homeless, jobless, and penniless.... I'm not going to stand by and let this happen.

The Windrush Compensation Scheme is designed to compensate individuals for the impacts and losses they experienced as a result of being unable to demonstrate their lawful status.

In most instances an individual's criminality will not impact on the compensation they are to be awarded. However, we have a duty to manage taxpayers' money properly and be considerate as to whether it is appropriate to give this to people whose severe criminal behaviour has negatively impacted the lives of victims and wider society.

Where individuals have received sentences of imprisonment of four years or longer for offences such as murder, rape or sex/sexual offences with a minor, any award for Impact on Life will likely be declined.



Where this is the case, we will consider whether there are circumstances since the individual's release from prison which mean a reduction in their award for Impact on Life may be more appropriate, rather than declining it, e.g. community or charity work.

If such evidence is forthcoming, we will consider reducing the award for Impact on Life by 50% rather than declining it.

A precedent for the modification of compensation where an individual has unspent criminal convictions exists in the Criminal Injuries Compensation Authority (CICA).

10. Could Rev Webley please let us know when is he going to meet directly with victims so we have a clearer understanding of what the WWCG role is as representations of the Windrush?

We can pass on this request.

11. Those who paid for their British Nationalisation, will they be entitled to re-claim the funds back?

Immigration fees paid for applications which were unsuccessful because of issues demonstrating lawful status at the time will be compensated under the Scheme. Immigration fees paid for applications which were successful at the time will not be compensated under the Scheme.

12. Right of abode does not lapse... they can be out for any length of time

It is important to clarify that right of abode is a distinct immigration status from indefinite leave to remain. Individuals with a right of abode are not subject to immigration control. Their right to live in the UK is not subject to any restrictions and will not lapse after any length of time spent outside the UK.

People with a right of abode may apply free of charge for documentation confirming this under the Windrush Scheme. Individuals may apply for documentation of their right of abode whether they are currently in the UK or overseas.

Where a person has, or has had, indefinite leave to remain, this will lapse automatically after two years outside the UK. Members of the Windrush generation whose indefinite leave to remain has lapsed may apply for a Returning Residents visa for free should they wish to resume their settlement in the UK.



13. I know 5 people in Nigeria who were refused under the Windrush Scheme. They were all settled here before 1973.

Commonwealth citizens that were settled in the UK by 1 January 1973, but who are now no longer settled and are living outside the UK, may apply for a Returning Residents visa under the Windrush Scheme provided they have retained strong ties to the UK. The individual circumstances of every application are considered carefully, and the case working team will take into account a wide range of factors including family ties, property and business interests and length of residence in the UK.

14. People were trying to come back way before 1988 but the people at the British High Commission kept telling them that their ILR had lapsed when it hadn't. The 2- year absence rule should not have applied to Commonwealth Citizens who had freedom of movement until 2 years after 1 August 1988

We understand that there are a variety of reasons why members of the Windrush Generation may have remained overseas, and people that have retained strong ties to the UK may apply for a Returning Residents visa under the Windrush Scheme. Where there is evidence that an individual has been wrongly advised or made efforts to return to the UK but was unable to do so this will absolutely be taken into account as part of the consideration of their Returning Residents application.

15. Is the compensation subject to tax.

No, Windrush Compensation Scheme payments are exempt from taxation according to Schedule 15 of Finance Act 2020.

16. My brother was refused on the 2-year absence rule. We all came here on Blue British passports in 1962!

Where a person has remained outside of the UK for two or more years, their indefinite leave to remain will lapse automatically as a matter of law. This does not apply to individuals that have British citizenship or who have a right of abode in the UK.

17. Is the Impact on Life tariff for a period of 2 years only as Martin Forde said. Will multipliers be used? So if impact is 8 years multiply tariff by 4?

The Impact on Life category is awarded in a series of fixed levels with payments ranging from £10,000 for detriment where the effect on an individual was fairly short-lived, up to £100,000 plus where the effect on an individual was profound and likely to be irreversible.



The level awarded will depend on an individual's personal circumstances and experiences, and the severity and duration of impacts but compensation is not multiplied by the length of time an individual suffered.

18. The Windrush Compensation Scheme (Expenditure) Act 2020 received royal assent on 8 June 2020. The Act enables payments to be made under the Windrush Compensation Scheme. The scheme was launched on 3 April 2019 and provides compensation for claimants who have suffered loss as a result of being unable to demonstrate a lawful right to stay in the UK. Schedule 14 to Finance Bill 2020 provides that payments from the scheme will be exempt from income tax, CGT and also IHT (subject to one exception). Can this be confirmed?

This is correct; Windrush Compensation Scheme payments are exempt from taxation according to Schedule 15 of Finance Act 2020.

19. Will there be an official meeting from the HO with groups, lawyers and organisations - who are assisting claimants - be given the chance to ask any questions or express concerns? and explain these new changes that have been announced and how it will all work?

The Home Office has held several briefing sessions with key stakeholders following the changes announced in December to inform and update as well as to provide an opportunity for questions and concerns to be expressed. Additionally, we have attended and continue to attend stakeholder-led events for this purpose.

Revised rules and guidance have also been published and are available on gov.uk.

As part of our ongoing engagement strategy we are committed to continued dialogue with all our key stakeholders to provide information on further updates to both the Windrush Scheme and Compensation Scheme through briefing sessions as and when changes occur.