

# Questions

From The Windrush National Organisation  
Engagement Meeting 20-05-2021  
with Home Office replies





**WNO PUBLIC ENGAGEMENT MEETING - Thursday 20 May 2021 7.00pm**

**Q Will commonwealth citizens' children in care prior to 1973 also be granted ILR? We all know of the case of the two brothers Darren and Darrell Roberts. What happened to their case and wouldn't they have come under the vulnerable shield as such?**

Anyone who meets the eligibility criteria of the Windrush Scheme can apply for documentation confirming their status, or apply for British citizenship, free of charge under the Scheme. This includes individuals who were in care as children.

Unfortunately, due to data protection requirements, we cannot comment on the cases of Darren and Darrell Roberts, however I said in the session that I would send on the statement which we made in response to queries regarding these cases. This addresses the status of UK-born descendants of Commonwealth citizens who settled in the UK pre-1973. Please see below:

The Immigration Act 1971 granted indefinite leave to remain to members of the Windrush generation that were settled in the UK on 1 January 1973. This guaranteed in law their right to continue to permanently live and work in this country. Some members of the Windrush generation subsequently had difficulties demonstrating their lawful status, and the Home Secretary has apologised unreservedly to victims and their families for the injustice, hardship and suffering they endured as a result.

The Home Office's priority has been to ensure that those who have struggled to demonstrate their status are supported to do so. The Windrush Scheme was launched in May 2018, to support members of the Windrush generation and their children to obtain documentation confirming their right to live and work in the UK. The Scheme also allows eligible individuals that are not yet British citizens to apply to register or naturalise as British citizens free of charge. Such individuals are not required to take a Life in the UK test or obtain an English language qualification.

Under most circumstances, UK-born direct descendants of members of the Windrush generation will be British citizens automatically from birth, if born prior to 1 January 1983 or after 1 January 1983 to at least one parent that was settled in the UK at the time of their birth. This can include a parent with indefinite leave to remain granted by the Immigration Act 1971, or a descendant of such a person who also held indefinite leave to remain or was a British citizen.

Due to historic legislation, a child born between 1 January 1983 and 30 June 2006 would only have acquired British citizenship through their father if their parents were married. The law changed on 1 July 2006 to allow a person to acquire citizenship through their father, irrespective of whether their parents were married. This change was not made retrospective, in part because some people born before 1 July 2006 would by then have



acquired foreign citizenships. Their entitlement to such citizenships might have been put at risk if they were deemed to have always held British citizenship.

Any person born prior to 1 July 2006, that would have become a British citizen automatically had their parents been married, may choose to register as a British citizen free of charge. The British Nationality Act 1981 (Remedial) Order ensures that any individuals in this position may register as British citizens without needing to meet the requirement to be of good character. This includes eligible descendants of members of the Windrush generation.

**Q. [In response to clarification that a person must be in the UK lawfully in order to be granted ILR under the Windrush Scheme] There's an obvious Catch 22 there - someone can be described as being here "unlawfully" on account of having had their status stripped from them \*by yourselves\*, remain here (bc of lack of options, £ to migration, lack of connections to the ancestral country). This person is then excluded from the Scheme because they are here "unlawfully". That is a disingenuous trap.**

**Alternatively, persons are deported by yourselves, then turned away from the Scheme because they are not eligible to make overseas applications. There are a number of these Catch-22 situations intrinsic to the rules, which jar quite forcefully with statements as to "case behind the face", "righting wrongs" etc.**

The purpose of the Windrush Scheme is to ensure that people who are lawfully settled here are able to apply, free of charge, for the documentation that they need.

The Windrush Scheme does not fundamentally alter immigration law or policy, and so only people who are in the UK lawfully are eligible for documentation under the Scheme.

Most Commonwealth citizens who settled in the UK by 1 January 1973 will have had indefinite leave to remain in the UK, or the right of abode. While we now know that some people suffered terrible injustices as a result of being unable to demonstrate their status, in law they will have remained settled in the UK and so would have continued to hold that status. They would not have lost their settled status as a result of being wrongly caught up in immigration controls, and may now apply for the documentation that they need under the Windrush Scheme.

**Q. How many of the 11,000 overseas applicants are actually eligible applicants who were lawfully settled here and what have close ties got to do with anything? Do the Windrush victims in the UK all have close ties?**

The published transparency data on the Windrush Scheme contains information regarding overseas applicants to the Windrush Scheme. This includes the number of refused applications. The transparency data is available at:

[www.gov.uk/government/publications/windrush-task-force-data-february-2021](http://www.gov.uk/government/publications/windrush-task-force-data-february-2021)



We do not publish data on the specific reasons for refusal of overseas applications. While some refused applications relate to Commonwealth citizens who were settled in the UK by 1 January 1973, but who do not meet the returning resident criteria, a significant number of refusals relate to without merit or ineligible claims from individuals who were not settled in the UK by 1973. Nevertheless, none of the refusal decisions have been made lightly, and all have had lengthy and detailed consideration. The decision to refuse in these cases has been checked and challenged extensively, and refusals are signed-off at Senior Civil Service level.

Where individuals were previously settled in the UK but are now living overseas, or are living in the UK with limited leave, they may apply to resume their settlement in the UK provided they meet the returning resident criteria. The extent of an individual's ties to the UK forms a part of that assessment. This is a long-established requirement for individuals who no longer have settled status in the UK, but who now wish to live here permanently. People who do have settled status are in a different position, and may apply directly for documentation confirming the status that they already hold.

**Q. [In response to clarification that people living overseas, who no longer have settled status, must meet the returning resident criteria in order to return to settle in the UK under the Windrush Scheme] What about those that were forced out with no criminal record? Had they not been they would still be living in the UK and would have said status.**

If a person does not now have settled status in the UK, they may apply to resume their settlement in the UK as a returning resident. In considering an application for a returning resident visa under the Windrush Scheme, caseworkers will look at a range of factors including the circumstances under which a person left and remained absent from the UK. If a person was wrongly prevented from continuing to live in the UK then this would absolutely be taken into consideration.

**Q. I was wrongly stripped of my ILR in 1985, had my son in Nigeria in 1988, should have been living in the UK at the time, I have now been granted citizenship, how can my son be assisted to get citizenship under the Windrush Scheme?**

In order for a person born in Nigeria in 1988 to obtain citizenship under the Windrush Scheme, they must be the child of a Commonwealth citizen who settled in the UK (even if they later spent time living overseas) by 1 January 1973. In addition, they must have arrived in the UK before the age of 18 and have remained continually resident here. If a person does not meet the Windrush Scheme eligibility criteria but nevertheless is eligible to naturalise as a British citizen, they may still apply to do so outside of the Windrush Scheme.

**End of Q & A**