



Submission to the Home Affairs Committee

Windrush Compensation Scheme November 2020

Amnesty International UK is a national section of a global movement. Collectively, our vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. Our mission is to undertake research and action focused on preventing and ending grave abuses of these rights. We are independent of any government, political ideology, economic interest or religion.

For further information contact:

Steve Valdez-Symonds
Programme Director – Refugee and Migrant Rights
steve.valdez-symonds@amnesty.org.uk

Introduction:

1. Amnesty International UK (AIUK) made a detailed submission to the Windrush Lessons Learned Review concerning the Windrush scandal,¹ engaged directly with Wendy Williams² and has given careful consideration to both the Windrush Lessons Learned Review report³ and practice and policy at the Home Office since April 2018. This has especial relevance to the following discrete matters within the Committee's terms of reference for this inquiry:
 - a. Is the Home Office managing to 'right the wrongs' experienced by the Windrush generation through this Compensation Scheme?
 - b. Have you noticed a change in the way the Home Office has responded to you? Do you believe the culture in the Home Office is changing?
2. We do not address the remaining questions presented in the terms of reference as we do not have direct experience of either the Windrush Compensation Scheme or the 'Windrush Scheme: support in exceptional circumstances' policy.
3. Below, we address in turn the two matters identified above.

Is the Home Office managing to 'right the wrongs' experienced by the Windrush generation through this Compensation Scheme?

4. The Home Office is not managing to do this. The reasons for that begin with a continued failure at the department (and more widely) to understand and acknowledge the relevant wrongs. This has two potentially fatal consequences for any effort to put right these wrongs – whether by the Compensation Scheme or any other means.

Failure to understand the relevant wrongs:

5. It is highly unlikely that effort to put something right can be successful if there is no or inadequate understanding of what is wrong. There are two critical aspects to this in relation to the Windrush scandal.
6. Firstly, there are continuing wrongs of this scandal that are not being addressed adequately or at all. For people who are victim of such injustice, the Compensation Scheme is or may be an irrelevance because it does not respond to the harms done to them. Nor are those harms being addressed elsewhere. This is not to discount the importance of the work of the Windrush taskforce in confirming and providing formal recognition of the settled status of many people and finally securing the British citizenship of many others. Rather, it is recognition that some people are wrongly excluded from the scope of that work and the Compensation Scheme. Of particular significance are the following:

¹ AIUK's submission to the Windrush Lessons Learned Review is here:

<https://www.amnesty.org.uk/files/Resources/AIUK%20to%20Home%20Office%20Windrush%20Lessons%20Learned%20Review.pdf>

² Wendy Williams was commissioned by the then Home Secretary as independent adviser to the Home Office Windrush Lessons Learned Review, and she is the author of the Windrush Lessons Learned Review report, HC 93, March 2020.

³ The Windrush Lessons Learned Review report is here:

<https://www.gov.uk/government/publications/windrush-lessons-learned-review>

- a. The Home Office has – as it has expressly informed the Committee⁴ – excluded investigation of its exercise of deportation powers; and excluded people who have been deported from the corrective measures to be implemented by the Windrush taskforce.⁵ This is despite statutory provisions that exempt many members of the Windrush generation from the exercise of these powers.⁶ Accordingly, the Home Office has not only declined to investigate what would be clear illegality on its part, it has excluded possible victims of its illegality from the corrective measures it has initiated.

- b. Of the restorative measures implemented by the Home Office, the offer of naturalisation made in April 2018⁷ is the closest to putting people in the position they would and should have been had the department not merely failed to respect and promote the citizenship rights of the Windrush generation but actively undermined these.⁸ Yet, this measure falls short – and the ways in which it does so reflect a continued refusal or failure to understand the wrongs that were done. Naturalisation is a discretionary measure, provided to enable, where the Home Secretary sees fit, adult migrants to the UK, who are connected elsewhere, to make their connection with this country where they have lawfully settled.⁹ Registration rights are measures, generally by statutory entitlement, intended to ensure that all persons whose prior connection is to the UK are able to secure the country’s citizenship.¹⁰ The Windrush generation were firstly deprived of their British nationality (ultimately by the passing of the British Nationality Act 1981) and then deprived of their right to register as British citizens under that Act (because Parliament time-limited their right; and the department then, far from encouraging people to exercise their right within time, as was said to be the purpose of the time-limit, proactively discouraged people from exercising that right). Naturalisation – even with the fee and other waivers introduced specifically for the Windrush generation¹¹ – is subject to requirements that were never requirements of registration.¹²

⁴ Update to the HASC on Windrush, 10 June 2019 is here:

<https://www.gov.uk/government/publications/update-to-the-hasc-on-windrush-10-june-2019>

⁵ See AIUK’s submission to the Windrush Lessons Learned Review (paragraph 41), *op cit*

⁶ Section 7 of the Immigration Act 1971 and section 33(1)(b) of the UK Borders Act 2007

⁷ *Hansard* HC, 23 April 2018 : Col 620

⁸ See e.g. Windrush Lessons Learned Review report (paragraph 59), *op cit*

⁹ Section 6 and Schedule 1 to the British Nationality Act 1981

¹⁰ The distinction between registration and entitlement is made express in the statutory language and was emphasised at the time of the passing of the British Nationality Act 1981 by the then Home Secretary, Rt Hon William Whitelaw: *Hansard* HC, 2 June 1981 : Col 855-856. For more on the parliamentary intention underpinning rights to registration, see the PRCBC commentary here:

https://prcbc.files.wordpress.com/2019/07/commentary_hansard-bna-1981-registration-aug-2018-2.pdf

¹¹ Immigration and Nationality (Requirements for Naturalisation and Fees) (Amendment) Regulations 2018, SI 2018/618; the power to waive the requirement to attend a ceremony was already generally available under section 42(6) of the British Nationality Act 1981

¹² Naturalisation, for example, includes requirements concerning absences, length of residence and good character. Whereas the first two of these (not the third) can be waived, the Windrush scheme casework guidance (last updated June 2019) indicates that these requirements are to be applied. A recently reported example of their application is provided here: <https://www.theguardian.com/uk-news/2020/nov/22/windrush-victim-refused-british-citizenship-despite-wrongful-passport-confiscation>

7. Secondly, and insofar as compensation can provide some redress, a failure to fully understand the wrongs is likely to be fatal to any proper and effective assessment of either: (a) for what compensation should be provided; or (b) what is an appropriate level of such compensation.

Failure to acknowledge the relevant wrongs:

8. A failure to fully acknowledge wrongs can fatally undermine efforts to right them. This is all the more so having regard to the nature of the Windrush scandal. The causes and effects of the scandal critically include racism. The many harms done critically include the deprivation of British people of their citizenship rights and thereby of their full and equal security and recognition in the UK because of their colour. The previous Prime Minister and successive Home Secretaries have offered apologies for the scandal.¹³ However, neither these nor any other public statement emanating from the Home Office has fully or effectively acknowledged this racism and deprivation.
9. It is hard to see how, given the nature of this scandal,¹⁴ any righting of wrongs can be complete without such acknowledgment having regard to the profound personal impact upon people subject to this racism and injustice. In summary, British people were emphatically – by the acts and statements of successive administrations – treated as not British and as without the shared connection to this country, the country of their home and (at least by right) citizenship, that was and is enjoyed by their peers; and this because of their colour. Moreover, the impact of this cannot properly be isolated from the racism that so many of the Windrush generation will have experienced and may still experience in their daily lives.

Conclusion:

10. In conclusion, therefore, the Compensation Scheme is necessarily insufficient for righting the wrongs of the Windrush scandal – quite apart from the several reported inadequacies and injustices in how the scheme is being managed. This is, in part, because more than compensation was and is required to right the injustice. It is, in part, because the foundation of a scheme for compensation on an inadequate assessment of the nature of the injustice done was always liable to make inadequate provision for compensating that for which it is possible to provide compensation.

Have you noticed a change in the way the Home Office has responded to you? Do you believe the culture in the Home Office is changing?

11. We have not experienced a change in the way the Home Office responds to us. This is not to say that response is always poor or unhelpful. Factors affecting when it is likely to be more defensive and less transparent concern the particular subject matter and from whom, particularly which part of the department, the response comes. However,

¹³ *Hansard* HC, 16 April 2018 : Col 27 *per* Rt Hon Amber Rudd; and the BBC report of the then Prime Minister's apology to Caribbean leaders here: <https://www.bbc.co.uk/news/uk-politics-43792411>; see also e.g. Rt Hon Theresa May's apology at *Hansard* HC, 19 March 2020 : Col 1159; and the present Home Secretary's apology, *Hansard* HC, 19 March 2020 : Col 1155 *per* Rt Hon Priti Patel

¹⁴ AIUK summarised this in its submission to the Joint Committee on Human Rights' recent inquiry into Black people, racism and human rights. That submission is here: <https://committees.parliament.uk/writtenevidence/11496/pdf/>

there are several, clearer indicators that the culture is neither changing nor likely to change.

12. Before addressing these indicators, it is necessary to reflect that the acknowledgement of at least some significant part of this culture long predates April 2018. For example, in March 2013, in a statement to the House, the then Home Secretary, Rt Hon Theresa May, identified “*a closed, secretive and defensive culture.*”¹⁵ Later that year, in giving evidence to this Committee, she made clear that changing this required time, leadership and a lot of work.¹⁶ That analysis cannot be faulted. However, nothing has changed. The absence of change does not merely highlight the depth of the cultural problem. It profoundly calls into question the will of successive Ministers (dating from long before Theresa May’s period in office to date) to change this culture – not merely to avoid the embarrassment that can occasionally be suffered by the Minister, but to fundamentally change a department so that, above all else, the people over whom it exercises exceptional powers have, at least, the safeguard that those powers are exercised in a way that is transparent and open to scrutiny and challenge.
13. Focusing on the Windrush scandal, there are two key features concerning the response to the scandal, which while they persist are profoundly undermining of any real prospect of cultural change:
 - a. The racism and injustices of Windrush span several decades and administrations. Not one of the political parties that has held power and improperly and harmfully exercised that power over this period has openly acknowledged its wrongdoing. None of the individuals holding ministerial positions (from Prime Minister down) has acknowledged their personal role or responsibility in this. While the Prime Minister and Home Secretary at the time the scandal effectively broke in early 2018 have formally offered apologies,¹⁷ even their recognition of the wrongdoing and their role in it has been limited. The current Home Secretary’s statement to the House on 21 July 2020 includes an apology, accepts the recommendations from the Windrush Lessons Learned Review report and acknowledges the injustices as spanning decades and several administrations.¹⁸ Nonetheless, it nowhere accepts racism as a motivation for any of the injustices that were done, does not articulate with any clarity what are accepted to be the injustices that were done and repeats previous references to things having ‘gone wrong’ – perpetuating the department’s presentation of it having made mistakes¹⁹ rather than accepting

¹⁵ *Hansard* HC, 26 March 2013 : Col 1501

¹⁶ Oral Evidence, 16 July 2013, Session 2013-14, HC 235-I, Q52-Q53

¹⁷ *Op cit*

¹⁸ *Hansard* HC, 21 July 2020 : Col 2020

¹⁹ The Home Secretary’s earlier statement and apology repeated the presentation of the injustices as “*unintended consequences*”, see *Hansard* HC, 19 March 2020 : Col 1155. This was also done in the original terms of reference for the Windrush Lessons Learned Review. It was, for example, the description given to the Committee by the then Director General for Borders, Immigration and Citizenship (see *The Windrush generation*, Sixth Report of Session 2017-19, HC 990, June 2018, p19); and the description given to the Joint Committee on Human Rights by the Director General and the then Home Secretary for that Committee’s inquiry into *Detention of Windrush generation*, see Oral Evidence, 6 June 2018, HC 1034.

that much of the injustice done and the harm caused was expressly intended²⁰ and other aspects of this were predicted and known outcomes of other intentional policy.²¹

- b. The department continues to treat the scandal as no more than an error – a serious one perhaps, but nonetheless a mistake. Ministers are among the many who either encourage or acquiesce in that. Yet changes to nationality and immigration law that ultimately deprived many black and Asian British people of their citizenship rights were not accidents and were expressly motivated by racism. Deterring and impeding many British people settled in the UK from acquiring British citizenship was deliberate and known to have especial impact on black and Asian people. The later change in the law to remove the indefinite guarantee of the right to return to the UK by any person settled in the UK prior to 1973 was intended and must have been known to have especial impact on black and Asian people. The many laws later introduced that effectively deprived people of their rights of residence and myriad basic rights attendant on these were also intended; and these were known to have impact on many people of the Windrush generation.²²

14. There are several indicators of the persistence of the culture. The following are but a few examples:

- a. The Home Office continues to obstruct and devalue rights to British citizenship, leaving thousands of people who are British in all but recognition of their citizenship wrongly subject to immigration rules, policies and powers. Just as the department wrongly encouraged members of the Windrush generation not to register as British citizens – saying that it was not necessary and would make no difference to them²³ – so the department continues to justify its policies and practices that impede and prevent thousands of British children and young people entitled to this country’s citizenship from exercising their right to register as British citizens on the basis that citizenship is not necessary.²⁴ This repetition of an injustice that was at the core of the

²⁰ As generally summarised in AIUK’s submission to the Joint Committee on Human Rights inquiry on Black people, racism and human rights, *op cit*; and more fully in AIUK’s submission to the Windrush Lessons Learned Review, *op cit*.

²¹ See Windrush Lessons Learned Review report (page 37) *op cit*; and also, for example, Home Office internal guidance on ‘No time limit’ from February 2014 which drew express attention to “a risk of adverse publicity” from any “mishandling” of the cases of people settled in the UK prior to 1 January 1973, (p24): <https://webarchive.nationalarchives.gov.uk/20140607190103/https://www.gov.uk/government/publications/travel-documents-no-time-limit>

Moreover, when Parliament passed the British Nationality Act 1981, Ministers had expressly emphasised the importance of take up of the rights to registration of British citizenship (the rights the Home Office then failed to promote and actively discouraged people from taking up) both for individuals and for race relations, see e.g. *Hansard* HL, 21 July 1981 : Col 173-174; *Hansard* HC, 24 February 1981 : Col 177-179.

²² See e.g. as summarised in AIUK’s submission to the Joint Committee on Human Rights inquiry on Black people, racism and human rights, *op cit*; and more fully in AIUK’s submission to the Windrush Lessons Learned Review, *op cit*.

²³ *op cit*

²⁴ This was e.g. stated in the evidence of the Home Office to the High Court in *R (PRCBC, O & A) v Secretary of State for the Home Department* [2019] EWHC 3536 (Admin), see paragraph 27 of the judgment. The judgment

Windrush scandal has been extended into the EU settlement scheme.²⁵ By this process many more British children and young people are being actively misled into formally adopting an immigration status rather than, in some cases, confirming the British citizenship they already possess or, in other cases, registering the British citizenship which is theirs by right.²⁶

- b. The Home Office response to the coronavirus pandemic remains marked by an unwillingness or incapacity to consider the situation of people who are subject to its rules, policies and powers.²⁷ This is in marked contrast to the Home Secretary's July 2020 statement where she was emphatic about the need for the department to put people, and consideration of people, at the heart of all the department's decision-making.²⁸ We, with Migrant Voice, have made submissions to the Committee concerning the Home Office response to the pandemic,²⁹ which include many specific examples of the way in which the Home Office has not done what the Home Secretary has called for. This failure continues. For example, on 1 December 2020, while the pandemic continues and in the knowledge that it has exacerbated many causes of homelessness, the Home Office is to introduce a general rule under which a person may have their leave to remain cancelled or an application for such leave refused solely on the basis that they have suffered any period of homelessness.³⁰
- c. The Home Office continues to make and implement policy without notice or consultation with the people affected or other relevant organisations, institutions or departments – such as evicting people without consultation with local authorities (thereby failing to consider e.g. the impact of and upon

also cites example of Ministerial statements to similar effect, see paragraphs 29 and 33. The error in this is material to the court's conclusion that the citizenship registration fee is unlawfully set without consideration and application of the 'best interests of children' duty, see paragraph 110. Nonetheless, since that judgment, this error remains repeated in Home Office letters refusing to register children as British citizens and Ministerial responses such as the letter of the Minister for Future Borders and Immigration to the Project for the Registration of Children as British Citizens (PRCBC) of 7 May 2020 available here:

<https://prcbc.files.wordpress.com/2020/06/letter-of-reply-may-2020-1.pdf>

²⁵ AIUK and PRCBC have drawn this matter to the attention of Ministers by correspondence of 5 September 2019 and (with others) of 3 February 2020. These letters are available at the following links:

<https://prcbc.files.wordpress.com/2019/09/joint-letter-to-the-minister-seema-kennedy-mp.pdf>

<https://prcbc.files.wordpress.com/2020/06/further-ministerial-letter-on-british-citizenship-eu-settlement-feb-2020.pdf>

²⁶ AIUK and PRCBC's submission to the Independent Chief Inspector of Borders and Immigration's inquiry into the EU Settlement Scheme addresses this:

<https://prcbc.files.wordpress.com/2020/10/icibisubmissionprbcamnestyeusettlemmentscheme.pdf>

²⁷ AIUK and Migrant Voice provided two submissions to the Committee's *Home Office preparedness for Covid-19* inquiry concerning this. There is no fundamental change in approach at the Home Office since the time of those submissions.

²⁸ *Op cit*, Col 2022

²⁹ *Op cit*

³⁰ Paragraphs 9.21.1 and 9.21.2 of the Immigration Rules are to be introduced by Statement of changes to the Immigration Rules, HC 813, 22 October 2020. We generally object to the introduction of this new power which constitutes an unjust penalty for severe misfortune (including where that misfortune arises from Home Office error). Nonetheless, the timing of its introduction is remarkable of itself.

homelessness or individual and public health during a pandemic); opening new places of detention without consultation with the Legal Aid Agency (a necessity for considering access to legal assistance and impact on the legal aid system).³¹ This is in marked contrast to the Home Secretary's July 2020 statement where she not only stated her expectation that officials would engage with stakeholders, civil society and communities, in part to ensure the department both understood the impact it had and secured the necessary evidence base. She also stated that she would be "*looking for evidence of that in every piece of advice that Ministers receive.*"³²

- d. Many of the harms done to people in the course of the Windrush scandal were done because personal data concerning their status in the UK was incorrect and was widely shared with private and public providers of vital services (e.g. housing, healthcare and welfare) and opportunities (e.g. employment, rented accommodation). Some people were harmed because correct data that was held and would have confirmed people's rights was ignored or withheld rather than being considered or acted upon. Many of the people harmed were able (though some were not, particularly if without effective legal assistance) to rely on subject access procedures to bring to light the injustice done to them and to end the harms being done. Yet, within barely a month after the scandal became widely reported and the formal apologies from the Prime Minister and the Home Secretary, the latter at the despatch box, Parliament passed the Data Protection Act 2018³³ granting the Home Office wide powers to exempt itself from basic data protections – including to ensure personal data it held for immigration purposes is accurate, lawfully held or used and the means available for people to access and correct the data held about them.³⁴

15. Part of the problem – as we indicated in our response to the Windrush Lessons Learned Review – comes from looking solely at the Home Office as the (rather than one vitally important) place where change is required:

*"...the lessons need to be learned not only by the Home Office. Ministers, parliamentarians and society more generally need to learn these lessons. While it seems difficult to imagine happening, the Home Office ought to regard itself as duty bound to play a significant role in this wider ambition. Societal and political awareness of the fullness of what has gone so terribly wrong would be beneficial in developing and sustaining a culture in which the same and similar injustices and harms are avoided."*³⁵

³¹ There are other aspects of the recent opening of new places of detention in response to people crossing the Channel by boat that indicate a continuation of longstanding culture. For example, reports of volunteers being required to sign confidentiality agreements to prevent their disclosing the conditions of people held at Napier barracks confirm the secretive and defensive culture, to which Theresa May had drawn attention when Home Secretary, remains firmly in place.

³² *Op cit*, Col 2021

³³ The Home Office was one of two sponsoring government departments of this legislation.

³⁴ Paragraph 4 of Schedule 2 to the Data Protection Act 2018.

³⁵ See AIUK's Windrush Lessons Learned Review submission, paragraph 38, *op cit*; and see also our submission to the Public Bill Committee, which considered what became the Data Protection Act 2018, available here:

<https://publications.parliament.uk/pa/cm201719/cmpublic/DataProtection/memo/dpb22.htm>

Summary conclusion:

16. It is not our intent to distract attention from the specific barriers and injustices that people eligible for compensation under the scheme are facing in accessing it.
17. However, it is vital – if the wrongs that were done are ever to be righted, their continuation ended and their repetition avoided – that far greater attention is given to understanding and acknowledging what those wrongs were and are. We deeply regret that for all the opportunity that has been given to achieve this – first and foremost by dozens of people who have relived the racism, injustice and many harms done to them (in several cases, relived this repeatedly and very publicly) – that understanding and acknowledgment remains outstanding.