

Windrush Compensation: Response to Consultation

April 2019

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Windrush Compensation: Response to Consultation

Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

April 2019



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Foreword by Home Secretary



When I became Home Secretary I made clear that my priority is to right the wrongs suffered by those from the Windrush generation who had difficulties demonstrating their lawful right to live in the UK

Since April 2018, the Government has put in place a number of measures to put things right. I am pleased to report that since this date, the Commonwealth Citizens Taskforce has helped over 2,400 people get documentation to prove their existing right to be in the UK under arrangements put in place prior to the establishment of the Windrush Scheme. A further 796 people have subsequently been supported through the Windrush Scheme application process. Over 3,600 people have successfully applied to become British nationals since the scheme began. Wendy Williams is conducting a lessons learned review for the department to provide an independent assessment of the events leading up to the Windrush issues and to identify the key lessons for the Home Office going forward.

Launching the Windrush Compensation Scheme is an important stage in the process of rectifying the mistakes that were made and recognising the losses faced by individuals. Through the consultation process we have derived a lot of value from listening to those who have been directly affected and I am committed to putting things right for the Windrush generation.

Following the 650 responses to the Call for Evidence, I am pleased that almost 1,500 people and organisations came forward to share their views. All of these opinions and experiences have been vital in shaping the design of the scheme to ensure it is comprehensive, fair and accessible. With this response, I am pleased to announce the Government's proposals on the remit and design of the scheme.

We have listened carefully to the views of those affected and most of our proposals are in line with what respondents wanted to see in the scheme. I believe the scheme will be broad enough on eligibility, ensuring those who have been affected are able to claim for the losses they faced and receive the compensation they can expect. Our proposals on how the scheme will operate are also in line with what I believe is expected from the scheme. It will be

an accessible and fair scheme. In putting forward these proposals, I have also ensured the scheme balances the need of individuals affected, by ensuring appropriate levels of compensation, but also making the best use of taxpayers' money.

The Government is now embarking on delivering this scheme. We will publish details on gov.uk and through outreach engagement with communities and individuals, to ensure the scheme is accessible to those who believe they are eligible, and that they understand how to submit an application.

There has been a significant response to the consultation and I am grateful to all the individuals and organisations who have taken the time to respond and contributed their experience and insight. I would like to give particular thanks to Martin Forde QC who has provided invaluable advice in the design of the compensation scheme to ensure a full range of views have been considered.

A handwritten signature in black ink, appearing to read 'S. Javid', with a small comma at the end.

Rt Hon Sajid Javid MP
Home Secretary

1. Executive Summary

- 1.1 In April 2018, the Home Secretary announced a suite of measures to right the wrongs suffered by the Windrush generation who have faced difficulties in demonstrating their lawful status under the immigration system. This included establishing a compensation scheme as quickly and carefully as possible.
- 1.2 This response paper and the policy published within, is presented by the Home Office. This document follows on from and is in response to the Call for Evidence published on 10 May 2018 and the Windrush Compensation Consultation which ran between 19 July and 16 November 2018. The response sets out the Government's proposals on who is eligible to apply, what losses will be eligible for compensation and how the scheme will operate.
- 1.3 As to who is eligible to apply to the scheme, the Government proposes to broadly align eligibility with the Commonwealth Citizens Taskforce. This means that Commonwealth citizens settled in the UK before 1973, those of any nationality with indefinite leave to remain in the UK before 1988, and children of Commonwealth citizens who were settled in the UK before 1973, are able to apply if they have losses to claim for. We also propose to accept claims from additional groups that have been impacted, including grandchildren of Windrush individuals, the estates of deceased individuals who would have been eligible, and close family members of an eligible person. The Government proposes to retain the discretion to withhold or reduce an award if someone has a record of serious criminality.
- 1.4 As to what losses are eligible for compensation, the Government proposes to compensate the categories that we put forward in the consultation. This includes losses relating to difficulties accessing employment and services such as housing, health and education. We also propose to refund fees for unsuccessful immigration applications and compensate for detention, removal and where there has been an impact on daily life. In exceptional cases, we will consider discretionary payments for losses which are not covered in other categories.

- 1.5 When considering each loss claimed, claimants will be required to submit evidence of the loss, of action they took to rectify their immigration status with the Home Office, and that the loss was directly related to difficulties demonstrating immigration status. We recognise that some claimants will need assistance in obtaining the evidence, so we intend to work with claimants, other government departments, public bodies and third parties, where possible.
- 1.6 The remedies provided by the scheme will include an apology and ex gratia payments. This means that the Government will make these compensation payments voluntarily, without necessarily establishing a formal legal obligation. We want to avoid the need for those affected to have to pursue costly and lengthy legal proceedings. We propose to implement a hybrid scheme, which will offer a mix of payments, reflecting the actual loss suffered (for certain evidenced, direct losses), refunds (where these can be evidenced, and a refund is deemed appropriate) and awards¹ (reflecting the scale of impact or loss). The Government proposes that a set award approach will be used for most categories, where possible, but each case will individually be considered. We believe this approach is right, and ensures that claims can be considered fairly, accurately and as quickly as possible.
- 1.7 We are working to ensure the scheme will be accessible and easy to apply to, and we will accept applications via post and email. We also intend to provide a telephone helpline to assist claimants in locating the application form, and for any queries about it. Assistance for claimants will be provided by an independent, third party organisation.
- 1.8 To protect the integrity of the scheme, and ensure effective management of public money, conditions of payment will apply, including not reapplying to the scheme to claim the same losses, the Home Office reserving the right to recover any payments where fraud is identified and the prevention of double recovery².
- 1.9 We recognise there may be occasions where a claimant does not agree with a decision and propose a review mechanism will be included.

¹ See Glossary

² See Glossary

- 1.10 The Government will publish further details on the scheme. This will include detailed information to support the operation of the scheme and claimants, including rules, guidance and the application form. The opening of the scheme is the final step towards putting things right and ensuring those who have been impacted, are compensated and able to move on with their lives.
- 1.11 We thank all respondents who have taken part in this consultation and the Call for Evidence. We value all the contributions and are grateful for the stories which have helped to shape the policy and scheme.

2. The Consultation

- 2.1 A Call for Evidence was published on 10 May 2018 and was the first stage in the process of setting up a compensation scheme to address issues arising from difficulties encountered by those who suffered losses as a result of being unable to demonstrate their immigration status. On the same day, the Home Secretary announced that Martin Forde QC had been appointed to give independent advice to the Home Office regarding the design of this compensation scheme. Responses to the call for evidence were invited up to the 8 June 2018. Responses were received from 650 people and organisations, and analysis of their evidence and concerns was included in Part 2 of the consultation document.
- 2.2 On 19 July 2018 the Home Office published its consultation document 'Windrush Compensation Consultation' which sought public views on proposals for the design of the Windrush Compensation Scheme. The consultation ran for 12 weeks and was then extended for a further five before closing on 16 November 2018. The consultation was extended on the basis of a recommendation from Martin Forde QC, the independent adviser appointed to oversee the development of the scheme, who advised that the consultation process would benefit from giving people more time to respond.
- 2.3 The consultation document outlined the key features of the Home Office's proposed compensation scheme to help redress the impact on the Windrush generation who have faced difficulties in demonstrating their lawful status under the immigration system. The consultation document was available online to the general public on the Government website: <https://www.gov.uk/government/consultations/windrush-compensation-scheme>.
- 2.4 Over 1,000 leaflets highlighting the consultation were delivered via volunteers and community groups. Broadcast emails were also sent to over 2,500 individuals and there were nine posts about the consultation on Home Office social media channels. Over 2,500 paper copies of the consultation document were distributed and twelve focus groups were held, involving a total of over 300 participants.
- 2.5 A helpline number and email address were provided for those who may have required assistance completing their response. Responses could be submitted online, by email or in hard copy to a freepost address.

- 2.6 The consultation document asked people a number of questions about the scheme. Some were closed questions (requiring respondents to select a response option from those provided) whilst others were free response questions where participants were able to write a narrative response. These free response questions were analysed and coded in order to identify key themes.
- 2.7 In addition to the written consultation responses, 12 focus groups were held across the UK. These took place in: Croydon, Birmingham, Cardiff, Newport, Walsall, Woolwich, Leicester, Brixton, Wolverhampton, Reading, Coventry and Telford. The dates and number of attendees at each focus group is set out in Annex A. The focus groups focused on four main areas: eligibility of claimants, calculating payments, types of loss eligible for compensation and non-financial remedies. The findings from the focus groups have been considered alongside the narrative responses to the consultation questions.
- 2.8 This document summarises the responses to the consultation and findings from the focus groups, and the Government's proposals in light of them. It should be noted that those responding to consultations or attending focus groups are self-selecting and may not therefore be representative of the population as a whole.

3. Analysis of Responses

About the consultation respondents

- 3.1 A total of 1,435 responses were received: 81% (1,165) via an online survey, 13% (198) by post and 5% (72) by email. Of the 270 post and email responses, 35 were in the form of narrative responses, which have been analysed alongside the free response questions.
- 3.2 Respondents were asked whether they were responding on behalf of themselves, another individual or an organisation, and 90% (1,340) either provided this information or we were able to identify this information from their email responses:
- 76% (1016) were responding on behalf of themselves;
 - 17% (222) were responding on behalf of an individual;
 - 8% (102) were responding on behalf of an organisation.
- 3.3 Respondents were also asked what best described their organisation. More people (111) responded to this question than those who declared they were responding on behalf of an organisation. Of those, 26% (29) were from a charitable organisation, 12% (13) were from a representative body, 6% (5) were from legal organisations and 2% (2) from academic institutions or a think tank. A quarter (23%, 25) selected 'other' whilst a third (33%, 37) preferred not to say.
- 3.4 Individual responses were asked to provide information³ relating to their country of birth, passports held (as a proxy for nationality), age, gender, and about their interest in the compensation scheme.
- Of those who responded to the question about their **country of birth** (1,237), 46% (572) were born in the UK and 46% (563) were not. A further 8% (102) preferred not to say. Of those born outside the UK (563), 46% (260) were born in Jamaica, 6% (36) were born in Barbados, 5% (27) were born in Nigeria, 4% in (22) Trinidad and Tobago and 4% (21) in St Vincent and the Grenadines. Over a third (35%, 197) of respondents were born in other countries (with no other countries being mentioned by more than 20 respondents).

³ Responses made on behalf of another individual were asked to provide details of that individual.

- Of those who stated what **year they first arrived in the UK to live** (557), 73% (404) said before 1973, 14% (79) said 1973-1988 and 13% (74) said from 1988 onwards.
- Of those who responded to the question about which **passports** they hold (1,221), 52% (639) stated that they held a UK passport only, 13% (158) held a non-UK passport(s), 10% (126) held a UK passport and other(s) and 10% (122) did not hold any passport. A further 14% (176) preferred not to say.
- Of those who provided information relating to their **current place of residence** (1,245), most (92%, 1,148) were currently living in the UK, 3% (42) were not living in the UK and 4% (55) preferred not to say.
- Of those who responded about their **age** in their response (1235), almost half (47%, 579) were aged 50-64, 19% (232) were aged 35-49, 14% (175) were aged 65+, 10% (124) were aged 25-34 and 3% (36) were aged 16-24. A further 7% (89) preferred not to say.
- Of those who responded about their **gender** in their response (1,230), 53% (657) were female, 38% (465) were male and 9% (108) preferred not to say.
- Of those who responded to the question about whether their parents or grandparents were part of the **Windrush generation** (1,237), half (50%, 620) stated that their parents were part of the Windrush generation and under a tenth (8%, 99) said that their grandparents were part of the Windrush generation. Almost a third (29%, 361) said neither their parents or grandparents were part of the Windrush generation while 11% (130) preferred not to say, and 2% (27) did not know.
- Of those who indicated their **main interest** in the compensation scheme (1,240), 44% (549) of respondents describe themselves as an interested member of the public, 35% (430) thought they may be eligible for compensation and 12% (150) knew someone who may be eligible for compensation. A further 9% (111) were interested in the compensation scheme for 'other' reasons.

Analysis of consultation responses and focus group findings

3.5 Consultation respondents may not have answered every question or only partially completed some questions. The total number of responses is reported after each question. Ranges are given when some parts of the question are answered but not others. Percentages given for each consultation question relate only to the number of

responses to that particular question. Responses to each question and total responses are presented in Annex B.

3.6 **Question 1** asked:

- *‘do you think that eligibility for the compensation scheme should be aligned with those who are eligible for help through the Windrush Scheme?’* (1,301 responses)
- *‘if no, are there additional groups that you think should be eligible?’* (118 responses)
- *‘if no, are there groups that you think shouldn’t be eligible?’* (68 responses)

3.7 The majority of respondents to this question (84%, 1,090) thought eligibility should be aligned with those who are eligible for help through the Windrush Scheme⁴, 10% (135) thought it should not and 6% (76) said that they did not know.

3.8 Consultation respondents mentioned a number of groups who should be eligible in addition to those under the Windrush Scheme. These included: children and grandchildren of those in the Windrush generation (particularly those born after 1 January 1983), carers of those in the Windrush generation, legal guardians and family members/ estates of the deceased. Some respondents suggested that the compensation scheme should have broader criteria and suggested anyone affected by the Home Office’s compliant environment policy should come within its scope. Children of British mothers born outside the UK (pre-1983) was also suggested by some respondents, as well as children of other nationalities who were brought to the UK at a young age and who subsequently entered the care system.

3.9 A small number of respondents felt that eligibility should be further limited to those from the Caribbean.

3.10 The views of focus group participants were largely in line with those of consultation respondents. They also thought that the compensation scheme should have broader criteria and additionally suggested it should include anyone born before their country gained independence and anyone who has paid into the UK economy for more than five years, regardless of when they arrived in the UK.

⁴ <https://www.gov.uk/government/publications/undocumented-commonwealth-citizens-resident-in-the-uk>

3.11 **Question 2** asked:

- *'do you think claimants should be able to apply for compensation for: Home Office fees for unsuccessful applications, incidental costs relating to an unsuccessful application, legal costs relating to an unsuccessful application?' (1,301-1,308 responses⁵)*

3.12 The majority of respondents thought that claimants should be able to apply for Home Office fees for unsuccessful applications (95%, 1,237), incidental costs relating to an unsuccessful immigration application (92%, 1,197) and legal costs relating to unsuccessful applications (92%, 1,203).

3.13 **Question 3** asked:

- *'do you think compensation should be given when the following losses can be demonstrated as a result of being unable to demonstrate immigration status: direct loss of income through termination of employment, direct loss of income through inability to secure employment, lost opportunities such as career progression or future employment?' (1,307 – 1,314 responses)*

3.14 The majority of respondents thought that compensation should be given: when an individual can demonstrate a direct loss of income through the termination of employment (1,281, 98%), where an individual suffered a direct loss of income through an inability to secure employment (1,250, 96%) and as a result of lost opportunities such as career progression or future earnings (1,211, 93%).

3.15 **Question 4** asked:

'do you think compensation should be given for the following impacts resulting from an inability to demonstrate immigration status: removal, detention, voluntary departure from the UK due to imminent enforcement action, voluntary departure from the UK due to refused immigration decision?' (1,305 – 1,319 responses)

3.16 The majority of respondents thought that, when resulting from an inability to demonstrate immigration status, compensation should be given for removal (96%, 1,260), detention (95%, 1,254) voluntary departure from the UK due to imminent

⁵ A range of responses are cited as responses were not provided for each category.

enforcement action (89%, 1,162) and for voluntary departure from the UK due to a refused immigration decision (88%, 1,144).

3.17 **Question 5** asked:

'do you think compensation should be given for the following impacts resulting from an inability to demonstrate immigration status: denial of re-entry to the United Kingdom, anticipation of denial of re-entry to the United Kingdom preventing travel?' (1,309-1,310 responses)

3.18 The majority of respondents (95%, 1,242) thought that compensation should be given for the denial of re-entry to the United Kingdom resulting from an inability to demonstrate immigration status, and that compensation should be given for anticipation of denial of re-entry to the United Kingdom preventing travel (87%, 1,144).

3.19 **Question 6** asked:

- *'do you think compensation should be given to those who have been prevented from doing the following due to difficulties demonstrating their immigration status: accessing free National Health Service care, accessing social housing, accessing private housing, accessing post 18 education, obtaining a driving licence, opening a bank account?' (1,310 – 1,320 responses)*

3.20 The majority of respondents thought that compensation should be given where individuals have been prevented from doing certain things as a result of their difficulties to demonstrate their immigration status. Specifically:

- accessing NHS care (97%, 1,279);
- accessing social housing (96%, 1,263);
- accessing private housing (93%, 1,224);
- accessing post-18 education (94%, 1,239);
- obtaining a driving licence (93%, 1,214); and
- opening a bank account (95%, 1,249).

3.21 **Question 7** asked:

- *'do you think the compensation scheme should include the impact on normal daily life as a loss?' (1,314 responses)*

- *‘how should the compensation scheme take account of the different experiences of individuals in terms of the type and severity of loss?’ (902 responses)*
- 3.22 The majority of respondents (94%, 1,241) thought that that the compensation scheme should include impact on normal daily life as a loss.
- 3.23 Consultation respondents made a number of suggestions relating to how the compensation scheme should take account of the different experiences of individuals in terms of the type and severity of loss. These ranged from considering all claims on a case by case basis, having a grading system or benchmarking, through to equal compensation for all. A formula for indirect losses was proposed as well as a sliding scale or tariff. Suggestions also included having an independent tribunal or panel system. Respondents stressed the importance of considering an individual’s circumstances and the emotional impact that the difficulty demonstrating their immigration status has had on them, with some proposing that an individual could be assessed by a medical professional to determine this.
- 3.24 The views of focus group participants were largely in line with those of consultation respondents. They additionally thought that losses should be calculated from the point at which the loss first experienced and that compensation payments should not be means-tested.
- 3.25 **Question 8** presented the different types of loss that may be eligible under the scheme and asked respondents:
- *‘to give each a rating from 1 (not important) to 5 (very important) based on how important you think it is that the scheme covers this loss (1,380 - 1,385 responses)*
 - *do you think the proposals contained in this section have captured the correct types of losses? (1,300 responses)*
 - *are there any additional losses that you think should be included? (223 responses)*
 - *are there any losses that you think should not be included?’ (136 responses)*
- 3.26 The 14 losses asked about are detailed below and all were rated as important with an average rating of between 4-5 for each.

- Fees from unsuccessful immigration applications to the Home Office
- Incidental and legal costs from unsuccessful immigration applications
- Employment
- Benefits
- Detention or removal
- Voluntary departure from the UK
- Denial of re-entry to the UK
- Denial of travel
- Denial of access to free NHS care
- Denial of access to housing
- Denial of post-18 education
- Loss/denial of a driving licence
- Loss/denial of access to a bank account
- Impact on normal daily life

3.27 The majority (70%, 904) felt that the correct type of losses had been captured, 16% (210) felt that they had not and 14% (186) did not know.

3.28 A number of suggestions were made by respondents relating to additional losses that might be compensated. Respondents cited: fees for unnecessary successful applications, breakdown in family relationships, inability to marry, anxiety and distress, impact on personal dignity and self-respect, loss of state pension, loss of property or personal belongings, a lack of medical treatment or medical fees for those who had been removed from the UK, confiscation of assets, loss of pension and the cost of confirming their status in the UK through the Windrush Scheme.

3.29 In response to whether there were losses that should not be included, in general respondents stated that all losses should be included and nothing should be out of scope for the compensation scheme.

3.30 The views of focus group participants were largely in line with those of consultation respondents. They additionally thought that damage to credit rating and the impact on social mobility should be included, as well as lost pensions or pension rights.

3.31 **Question 9** asked:

- *'do you think losses experienced at any time point in the past should be covered by the compensation scheme?'* (1,317 responses), and
- *'please explain the reasons for your response'* (1,002 responses).

3.32 The majority (91%, 1,202) thought that losses experienced at any time point in the past should be covered by the compensation scheme, 3% (42) thought that they should not and 6% (73) said that they did not know.

3.33 Respondents felt that a loss does not have less impact because it occurred a long time ago. They felt that issues confirming immigration status had caused an ongoing and emotional impact for many individuals who may still be living with the consequences. A number of respondents also commented that long-term impacts have occurred due to government processes and that the Government should, therefore, take responsibility and not limit claims to within a certain time period. Other comments suggested that compensation should be calculated from the time people started to have their immigration status questioned and only paid if a loss is a direct result of a person's inability to demonstrate their lawful immigration status.

3.34 **Question 10** asked:

- *'do you think the scheme should accept both postal and online compensation claims?'* (1,313 responses)
- *'do you think claimants should be offered assistance in completing their application?'* (1,323 responses), and
- *'if yes, who should be offered assistance and what assistance should be provided?'* (1,213 responses)

3.35 The majority (97%, 1,273) of respondents believed that the scheme should accept both postal and online compensation claims, that claimants should be offered assistance in completing their application (96%, 1,274) and that everyone should be offered assistance (92%, 1,116).

- 3.36 Of those who thought assistance should be limited to certain groups, the groups mentioned included: elderly claimants, those with learning difficulties, those with disabilities, those with mental ill health, overseas claimants, illiterate claimants, those who are terminally ill, people in detention or those who may not speak English as a first language.
- 3.37 Suggestions for the type of assistance that should be provided included: assistance with the application form, assistance gathering evidence, free legal advice, and help understanding the process. Suggestions for means of providing such assistance ranged from online and telephone support, as well as face to face advice (drop in centres, home visits) for those needing extra support. Some respondents also specified that counselling or other emotional support should be available to address the potential emotional strain on claimants. Practical support such as access to administrative resources (e.g. free photocopying), and interpretation services were also mentioned by respondents. Some respondents felt that the assistance should be independent from the Home Office while others felt it should be from someone who is familiar with the process.
- 3.38 **Question 11** asked:
- *'do you think it is right that the compensation scheme uses a combination of different calculation methods for determining compensation payments?' (1,304 responses)*
- 3.39 Three quarters of respondents (75%, 977) thought that the compensation scheme should use a combination of different calculation methods for determining compensation payments, 11% (138) thought that it should not and 15% (189) did not know.
- 3.40 **Question 12** asked:
- *'do you think compensation for a known value of loss should be considered where the claimant has: lost their job and can evidence salary and pension foregone, been denied access to benefits, incurred costs and fees that are eligible to be compensated?' (1,312 – 1,318 responses), and*
 - *'if you have answered no to any of the losses, please explain why'. (14 - 21 responses)*

- 3.41 The majority of respondents thought that a known value of loss should be considered where the claimant has: lost their job and can evidence salary and pension foregone (96%, 1,269), been denied access to benefits (95%, 1,248), or has incurred costs and fees that are eligible to be compensated (97%, 1,272).
- 3.42 Amongst the small proportion who thought that a known value of loss should not be considered where the claimant has lost their job and can evidence salary and pension foregone (2%, 21), there was a view that such losses were an issue between the worker and employer, and therefore should not be eligible under the compensation scheme. There were also concerns that using the known value approach for this type of loss would be susceptible to fraud. Amongst the small proportion who thought that a known value of loss should not be considered where the claimant has been denied access to benefits (2%, 24), there was a view that losses of this type should not be eligible. There were again some concerns over susceptibility to fraud and accordingly, some respondents felt that claimants should have to demonstrate that they were eligible for benefits at the time the loss was experienced. Respondents also commented that claimants should not be able to receive compensation for both loss of benefits and loss of salary where this would mean compensating twice for the same loss.
- 3.43 Amongst the small proportion (1%, 19) who thought that a known value of loss should not be considered where the claimant has incurred fees and costs in relation to those that are eligible to be refunded, respondents felt that compensation on this basis should not be paid.
- 3.44 The views of focus group participants were largely in line with those of consultation respondents. They additionally thought that compensation based on a known value of a loss should be broader than set out in the consultation paper and suggested a wider range of known losses including solicitor's fees, air fares and other 'out of pocket' expenses. The focus groups also considered the range of evidence that might be needed and stressed that it could be hard for claimants to evidence known losses if they have not kept receipts.
- 3.45 **Question 13** asked:
- *'do you think compensation should be calculated on a tariff style approach where the claimant has: foregone rights and opportunities a claimant would otherwise have been able to pursue or take up, been detained or removed, been denied*

free NHS care, been denied access to other services, experienced an impact on normal daily life?’ (1,296 - 1,299 responses), and

- *‘if you have answered no to any of the losses, please explain why’.*

3.46 Three quarters of respondents (72%, 926-929) agreed that compensation should be considered on a tariff style approach in response to all categories in this question.

3.47 For those who responded that a tariff would not be appropriate for these categories (17-18%, 219-229), this was largely attributed to the need to consider an individual’s circumstances on a case by case basis.

3.48 In relation to detention, some respondents said compensation should vary depending on the impact and length of detention. Similarly, with regards to removal some respondents stated that the impact and circumstances of removal should be considered. The severity of an individual’s illness, and the impact of denial of health care, were mentioned as key factors to consider when compensating for denial of free NHS care.

3.49 **Question 14** asked:

- *‘should the scheme have a discretionary element to make payment for circumstances not covered by the scheme rules?’ (1,319 responses) and*
- *‘if yes, what circumstance should a discretionary element apply to?’ (878 responses)*

3.50 The majority of respondents (86%, 1,132) thought that the scheme should have a discretionary element to make payment for circumstances not covered by the scheme rules, 5% (69) did not and 9% (118) did not know.

3.51 Respondents suggested that a discretionary element could be applied where, on a case by case basis:

- an individual’s circumstances do not fit the rules,
- the rules do not recognise the impact on an individual,
- an individual has insufficient evidence to show a specific loss.

3.52 Additionally, respondents commented that a discretionary element should take into account when the individual first started to experience the loss, and could be considered when a loss of opportunity, mental or physical health issues, loss of family life or problems with grandchildren’s status in the UK have been experienced.

3.53 **Question 15** asked:

- *'do you think the compensation scheme should have a minimum claim amount?' (1,334 responses) and*
- *'if yes, what do you think the minimum amount should be?' (347 responses)*

3.54 Over half of respondents (57%, 760) thought that the compensation scheme should not have a minimum amount, just under a third (31%, 413) thought that there should be a minimum amount and 12% (161) did not know.

3.55 Suggestions (202) for a monetary value minimum amount ranged widely. The amount suggested most often was £1,000 (12%, 25) £5,000 (12%, 24) and £10,000 (12%, 24)

3.56 **Question 16** asked:

- *'do you think the compensation scheme should have a maximum claim amount?' (1,345 responses) and*
- *'if yes, what do you think the maximum amount should be?' (263 responses)*

3.57 Two thirds of respondents (68%, 908) believed that the compensation scheme should not have a maximum amount, a quarter (23%, 303) thought that it should and 10% (134) did not know.

3.58 Suggestions (117) for a monetary value maximum amount ranged widely up to £20million. The amounts suggested most often were £50,000 (13%, 15 respondents) and £500,000 (12%, 14 respondents).

3.59 **Question 17** presented a number of factors that may be taken into account when calculating compensation and asked respondents to:

- *'rate different factors that may be taken into account when calculating the amount of compensation awarded from 1 (not important) to 5 (very important)' (1,373-1,375 responses), and*
- *'provide any comments on the factors that may be taken into account when calculating the amount of compensation awarded' (561 responses).*

3.60 The six factors are detailed below and were all viewed as important, with a rating between 3.5 and 4.5 for each.

- *date of entry to the UK,*

- *claimant had previous contact with the Home Office,*
- *quality of previous applications,*
- *loss attributable to immigration status,*
- *misapplication of immigration rules, costs or expenses otherwise incurred.*

3.61 Additional factors that respondents suggested should be taken into account when calculating a compensation payment included: an individual's age, ability to secure future employment, serious illness, the impact the loss has had on their marital status or family life, treatment by other public bodies, lost earnings and emotional stress. Some respondents stated that an additional sum should be added as an apology and that the Government should take responsibility for what has happened.

3.62 **Question 18** asked

- *'do you think claimants should be offered non-financial recompense in addition to a financial award?' (1,305 responses) and*
- *'if yes, which of the following non-financial recompense should be offered: counselling, letter of apology, exploring reinstatement of employment where possible and applicable?' (630-1,025 responses) and*
- *'do you have any comments on non-financial recompense?' (661 responses).*

3.63 The majority (80%, 1,040) of respondents thought that claimants should be offered non-financial recompense in addition to a financial award. Of the suggested forms of non-financial recompense set out in the consultation document, 93% (949) thought that counselling should be offered, 94% (960) thought a letter of apology from the Home Office should be offered and 96% (977) thought that exploring reinstatement of employment where possible and applicable. Two thirds (68%, 428) of respondents thought that other forms of non-financial recompense should be offered.

3.64 Suggestions of other forms of non-financial recompense included: a public apology from the Government, a formal investigation or explanation into what happened, assistance with housing, correction of credit ratings, and help and support to get those affected back into the workplace.

- 3.65 A number of respondents also suggested some form of community-based recompense to improve the lives of the Windrush community, for example: targeted funding for community projects, funding for youth projects or a form of memorial.
- 3.66 The views of focus group participants were largely in line with those of consultation respondents. They additionally suggested that children should be taught Black history as part of the national curriculum, to increase understanding of the importance of the contribution made by the Windrush generation and raised the possibility of grants or scholarships for higher education for those from Windrush communities.
- 3.67 **Question 19** asked:
- *‘do you think conditions of acceptance should be applied to the final compensation payment?’* (1,312 responses) and
 - *‘if yes, do you think the following conditions of acceptance should be offered:*
 - *any compensation award is made in full and final settlement of claim – reapplications will not be permitted, (733 responses)*
 - *a claimant cannot be compensated more than once for the same loss, (731 responses)*
 - *payments will be recovered if it’s subsequently found that the claim was fraudulent’* (733 responses), and
 - *‘if you disagree with any of these conditions of acceptance, please state why for each condition’, and*
 - *‘are there any other conditions of acceptance you think should be considered?’* (278 responses)
- 3.68 Over half of respondents (55%, 717) thought that there should be conditions applied to the final compensation payment. A third (32%, 420) thought that conditions should not be applied and 13% (175) did not know. The majority thought that each of the three conditions in the consultation paper should be applied: 71% (519) thought that any compensation award is made in full and final settlement of a claim and that reapplications should not be permitted, 88% (644) thought a claimant should not be compensated more than once for the same loss, and 95% (698) thought that payments should be recovered if it is subsequently found that the claim was fraudulent.

3.69 Additionally, respondents suggested that compensation payments should be collected in person to prevent fraud and that claimants should be able to access independent legal advice before accepting a compensation award, and that they should be given time to consider their offer.

3.70 **Question 20** asked:

- *‘do you think the claimant should be able to request a review of the compensation scheme decision if they do not agree with the outcome?’* (1,314 responses) and
- *‘if yes, which parts of the compensation scheme decision should a claimant be able to request a review of: eligibility of claimant, assessment of evidence provided, amount of financial award offered?’* (639 - 1,250 responses)
- *‘if yes to 20a, do you agree with the compensation scheme decision review process set out in the consultation?’* (1,238 responses) ‘and
- *‘if no (to decision review process), please explain why’* (152 responses)

3.71 The majority of respondents, 97% (1,271), thought that a claimant should be able to request a review of the compensation scheme decision if they do not agree with the outcome. The majority thought that claimants should be able to request a review of each part of the compensation scheme: eligibility of claimant (97%, 1,201), assessment of evidence provided (97%, 1,205) and amount of final award offered (97%, 1,212). In addition, 51% (327) indicated that another element should be open to review. These elements included: a review of the factors taken into account, the ability to provide further evidence, the quality of the compensation process and the support the individual has received. Additionally, some respondents stated that only the discretionary component should be open to review.

3.72 Over half (58%, 720) of respondents stated that they agree with the compensation scheme decision review process set out in the consultation, 12% (148) said they do not agree with it and 30% (370) did not know. Reasons given for not agreeing with the review process included: that it has the potential to be costly, that the review should be independent, that the review panel should include members of the Windrush generation and that the process for review should be clear at the outset.

3.73 **Question 21** asked:

- *'do you have any further comments on the proposals for the compensation scheme set out in this consultation document?'*

3.74 This question gave respondents the ability to make any further comments about the proposals including: the eligibility criteria, the losses that should be compensated, how the scheme should run, and any other comments. Responses were focused on the latter and a number of people stressed the need for the scheme to be active as soon as possible allowing compensation to be available quickly to redress the impact losses are having on potential claimants. A number of respondents commented on how the scheme should be run, stressing that it should be fair, simple to understand and transparent.

3.75 **Question 22** asked:

- *'are there impacts, positive or negative, on people with protected characteristics (age; disability; race; religion or belief; sex; sexual orientation; gender reassignment; pregnancy and maternity) which should be taken into account when designing and implementing the compensation scheme?' (1,271 responses)*
- *'if yes, please specify'. (565 responses)*

3.76 Two thirds (65%, 821) of respondents thought that there were impacts on people with protected characteristics that should be taken into account when designing and implementing the compensation scheme, 11% (144) thought that there were not and a quarter (24%, 306) said that they did not know.

3.77 In addition to the protected characteristics referred to in the question, respondents also mentioned consideration for those with mental health conditions and or learning difficulties, and those for whom English may not be their first language.

4. Government response

- 4.1 As a starting point, the Government wishes to set out the overarching proposals on the remit and objectives of the scheme. It is noted that respondents gave varying views on who should be eligible to apply for the ‘Windrush Compensation Scheme’. Section 4A sets out the detail of our proposals on eligibility. When referring to ‘the Windrush generation’, this most usually refers to pre-1973 Commonwealth citizens who arrived from the Caribbean. However, the remit of our support has gone beyond this group. We have also supported those of any nationality who would have had deemed leave who arrived and settled in the UK before 1 January 1973 and may have been similarly affected. The Government has put in place measures to help these people but took it wider than the Windrush generation (pre-1973 Commonwealth citizens) and announced measures to assist anyone in the UK pre-1989 who eventually settled, and certain children of those Commonwealth citizens here pre-1973. Although the Government proposes to call the scheme the ‘Windrush Compensation Scheme’, the cohort of people eligible will be wider than the Windrush generation.
- 4.2 The main purpose of the scheme is to provide a form of remedy to those who have suffered financial losses or other negative impacts as a result of being unable to demonstrate their lawful immigration status. A suitable remedy may include an apology and ex gratia payment. Our scheme will be an ‘ex gratia scheme’, which means monetary payments paid voluntarily, without any legal requirement to do so. The scheme will offer a mix of payments reflecting the actual loss suffered (for certain evidenced, direct losses), refunds (where these can be evidenced, and a refund is deemed appropriate) and award⁶ payments (reflecting the scale of impact or loss).
- 4.3 The scheme design has been guided by the public consultation, advice from the independent adviser (Martin Forde QC), the guidance contained in the Parliamentary and Health Service Ombudsman’s (PHSO)⁷ ‘Principles for Remedy’⁸, National Audit Office briefing on establishing time-limited compensation schemes⁹ and good practice from the Home Office and other government departments’ existing compensation and ex

⁶ See Glossary

⁷ See Glossary

⁸ <https://www.ombudsman.org.uk/about-us/our-principles/principles-remedy>

⁹ https://www.nao.org.uk/wp-content/uploads/2008/07/compensation_schemes_briefing.pdf

gratia schemes. In line with Treasury guidance on Managing Public money¹⁰, we have also taken into account the need to ensure that public money is being spent in the best way. The way Government money is spent should, in other words, make good sense for affected individuals and it should make good sense for the taxpayer.

4A Scheme Eligibility – Who will be able to apply for compensation

- 4.4 As noted in the consultation document, the Government has already established the Windrush Scheme¹¹, operated by the Commonwealth Citizens Taskforce¹², to help people with obtaining immigration status documents and access to services. We think the fairest and simplest approach is to broadly align eligibility with those who are eligible for help through the Windrush Scheme. The consultation responses overwhelmingly support this approach, with 84% saying eligibility should align. In light of respondents broadly agreeing with our proposals, the Government intends to take this approach.
- 4.5 However, the Government recognises that the impact and losses have been felt by wider groups of people, with some of these groups being cited by respondents. For example, we are aware that some grandchildren of the Windrush generation have faced difficulties. We therefore propose to accept claims from grandchildren of Commonwealth citizens where the parent and grandchild was either born in the UK or arrived in the UK before the age of 18 and the grandchild has been continuously resident in the UK since their birth or arrival, and the grandparent was a Commonwealth citizen settled in the UK before 1 January 1973 or has the right of abode (or met these criteria but is now a British citizen).
- 4.6 We are also aware that other groups may have been impacted. We recognise that there are a number of individuals who have, sadly, passed away but faced a range of difficulties as a result of not being able to prove their status. We therefore propose to accept claims from the estates of those who would have been eligible.
- 4.7 We also recognise that some family members of ‘Windrush’ individuals have subsequently faced additional distress as a result. We therefore propose to accept claims from close family members, of an eligible claimant, in relation to impacts on their life due to the difficulties experienced with immigration status. This may include family

¹⁰ <https://www.gov.uk/government/publications/managing-public-money>

¹¹ See Glossary

¹² See Glossary

separation which has a lasting, and detrimental impact on family members. In some circumstances, we will also consider claims where there is evidence of certain direct financial losses suffered by close family members.

4.8 We therefore propose to expand the eligibility beyond the Windrush Scheme. The list of eligibility will be as follows:

For those in the UK:

- A Commonwealth citizen who was settled in the UK before 1 January 1973 and has been continuously resident in the UK since their arrival (or who satisfied this provision and is now a British citizen); or
- A Commonwealth citizen who was settled in the UK before 1 January 1973, whose settled status has lapsed because they left the UK for a period of more than 2 years, and who is now lawfully in the UK (including as a British citizen); or
- A Commonwealth citizen who has a right of abode and was ordinarily resident in the United Kingdom on 1 January 1973 (or who satisfied this provision and is now a British citizen); or
- A child of a Commonwealth citizen who either (i) was settled in the UK before 1 January 1973, or (ii) has a right of abode (or did and is now a British citizen) and was ordinarily resident in the UK on that date (including a citizen who satisfied one of those requirements and is now deceased), where the child was born in the UK or arrived in the UK before the age of 18 and has been continuously resident in the UK since their birth or arrival; or
- A grandchild of a Commonwealth citizen who either (i) was settled in the UK before 1 January 1973, or (ii) has a right of abode (or did and is now a British citizen) and was ordinarily resident in the UK on that date (including a citizen who satisfied one of those requirements and is now deceased), where the grandchild and their parent were born in the UK or arrived in the UK before the age of 18 and the grandchild has been continuously resident in the UK since their birth or arrival; or
- A person of any nationality who arrived in the UK before 31 December 1988 and who either is lawfully in the UK or is now a British citizen.

For those overseas:

- A Commonwealth citizen outside the UK who was settled in the UK before 1 January 1973 who has a right of abode or settled status or who is now a British citizen, or whose settled status has lapsed because they left the UK for a period of more than two years.

We also propose the following groups are included:

- The estate of a person who would have been eligible.
- A close family member of an eligible person, where there has been an impact on life due to the difficulties experienced with immigration status and/or where there have been certain direct financial losses.

Evidence of eligibility

- 4.9 The scheme will be open to those with confirmed lawful status in the UK. For the purposes of this scheme, lawful status means Limited Leave to Remain, Indefinite Leave to Remain (ILR), Right of Abode or British Citizenship. Before being considered eligible for compensation, if they have not already obtained evidence of their status, claimants will be expected to seek support from the Commonwealth Citizens Taskforce to obtain confirmation of their lawful status. For overseas claimants, they will be asked to provide evidence of their identity and information to confirm they have right of abode or settled status or had settled status that has lapsed because they left the UK for a period of more than two years.

Remit of the scheme

- 4.10 Some respondents have suggested that anyone affected by compliant environment measures should be compensated. However, the Government response is that the Windrush Compensation Scheme will not be for all individuals who may have suffered difficulties as a result of these measures. Rather, it is for the specific cohort as set out in the proposed eligibility. The Government has a duty to consider how we manage public funding and the proposals ensure those who have been most affected are adequately compensated.

Criminal convictions

- 4.11 Although the Government did not consult on criminality in the consultation, we have considered whether criminal convictions should be factored in when considering an

individual's entitlement to compensation. We recognise that criminality is (in most circumstances) an unrelated matter and some may consider that compensation should be awarded, irrespective of criminality, to recognise the difficulties a person has experienced.

- 4.12 In considering the importance of effectively managing public money, and mindful of the government's obligations towards taxpayers' money, the Government proposes to retain the discretion to withhold or reduce an award if a claimant has a record of serious criminality.

4B Scheme Eligibility – What losses will be eligible for compensation

- 4.13 This section sets out what categories of compensation will be included in the scheme.

Fees for unsuccessful applications and legal costs relating to unsuccessful applications

- 4.14 In light of 95% of respondents supporting refunds of unsuccessful immigration fees, the Government proposes to refund, in full, all fees for certain categories of unsuccessful immigration applications.
- 4.15 The Government recognises that paying for legal advice in the course of making an unsuccessful immigration application represents a loss incurred by claimants under the compensation scheme. The Government's position is that obtaining legal advice is not necessary in making an immigration application and that no advantage in the application process should accrue to people who choose to access, and are able to afford legal advice, over those who cannot. Therefore, the Government proposes to make a contribution towards legal fees up to a fixed amount and not to reimburse for fees higher than that amount.
- 4.16 The consultation did not ask about reimbursement of fees for historical successful applications, although this was suggested as an option by some respondents, where they cited having made applications (and paid fees) in the past, that would subsequently not have been necessary had they applied to the Commonwealth Citizens Taskforce. Respondents argued that this therefore represents a loss. While it is true that the fees paid would not have been required under a subsequent application to the Taskforce, successful applicants nevertheless received what they paid for (unlike unsuccessful applicants). The fact that the Government took the decision, subsequently, to waive the fee for certain groups of people, does not provide sufficient reason to refund successful

application fees paid potentially many years ago. The Government therefore proposes not to reimburse for successful applications.

- 4.17 The consultation document said that, in line with the scope of the Commonwealth Citizens Taskforce, the Government would not reimburse any fees associated with any unsuccessful passport applications. The consultation responses did not highlight any significant objections to this and so the Government proposes not to make payments in respect of any passport fees, whether in relation to successful or unsuccessful applications.

Loss of access to employment

- 4.18 In light of the majority of respondents saying that compensation should be given where there was a direct loss of income through termination of employment or inability to secure employment, the Government proposes to compensate this category.
- 4.19 Those who can demonstrate an employment history (in most cases, this will be evidenced through the claimant's income tax records) and that they lost access to employment on account of their inability to demonstrate their immigration status, will receive compensation. Where the evidence clearly demonstrates the claimant's employment history and that the claimant lost access to employment due to their inability to demonstrate their immigration status, and where the claimant attempted to mitigate their loss by taking steps to obtain documentary evidence of their lawful immigration status, the compensation payment will be calculated by reference to a claimant's actual earnings prior to their loss of access to the labour market. Where the evidence of the claimant's employment history and the reason for their loss of access to employment is less clear, and the claimant attempted to mitigate their loss by taking steps to obtain documentary evidence of their lawful immigration status, a general award will be offered. People who are unable to demonstrate an employment history will not receive compensation for lost income through denial of access to employment. All payments for loss of income will take account of whether claimants are receiving compensation under other heads of claim so as to avoid double recovery. They will also address tax liabilities. Where a claim is accepted under loss of access to employment or benefits, the Government will seek to ensure that the individual's National Insurance position is corrected so that the period of the loss does not impact their State Pension entitlement.

Denial of access to benefits

- 4.20 As set out in the Consultation document, the Government proposes to address cases where someone may have been denied access to benefits as a result of being unable to demonstrate their lawful immigration status.
- 4.21 For claimants who were receiving benefits and whose benefits were stopped as a result of an inability to demonstrate their immigration status, as well as for claimants who applied to receive benefits and whose application was refused for that same reason, the Department for Work and Pensions (DWP) and HM Revenue and Customs (HMRC) will process claims in accordance with their usual rules which allow, in certain circumstances, for reinstatement and back-payments of benefit. The compensation scheme will work with DWP and HMRC to facilitate this process.

Detention, removal, deportation and inability to return to UK

- 4.22 The Historical Cases Review by the Home Office indicated that there were cases (albeit relatively small in number) of people who had been detained and/or removed from the UK and/or deported from the UK as well as people who had gone abroad of their own volition and found that they were unable to return to the UK all on account of an inability to demonstrate their immigration status. The responses to the consultation were significantly in favour of such people detained and/or removed from the UK receiving compensation. The Government proposes to compensate claimants who were detained and/or removed wrongly from the UK on the basis that they were unable to demonstrate their immigration status. Individual cases will be assessed by reference to an award that reflects the scale of the impact in each case.
- 4.23 For claimants deported from the UK who were unable to demonstrate their immigration status, but who should have been exempt from deportation under provisions in the Immigration Act 1971, the Government proposes to provide an award. However, any foreign national offenders who were correctly deported because of their criminal convictions in the UK will not receive compensation for their deportation.
- 4.24 The Government does not propose to give a specific compensation payment for those who were unable to return to the UK due to their immigration status. It is difficult to determine whether inability to return to the UK is a loss that should be compensated separately from other payments. However, where the claimant qualifies, compensation

payments for other direct losses will be paid, including loss of employment, and the refunding of unsuccessful application fees.

Inability to access services: housing, health services, education, driving licence and banking services

- 4.25 As a high proportion of respondents (over 90% for all questions) believe people should be compensated for inability to access these services, the Government proposes to provide financial compensation. This will only apply for those who were unable to access services as a result of difficulties with immigration status. Where an award is proposed that award will take into account existing government precedents and Ombudsman¹³ recommended payments to ensure they are fair, transparent and easy to understand. We will work with other government departments, and local government to ensure the process is easy and if relevant, to ensure records can be obtained as evidence.
- 4.26 For housing, we believe many claimants will have already used the Commonwealth Citizens Taskforce to establish contact with local authorities for assistance in accessing social housing and homelessness assistance. Where a claimant applies to the compensation scheme and still requires access, we will ensure the claimant is put in contact with the relevant local authority. The Government proposes to compensate claimants whose housing situations have significantly been impacted due to their immigration status difficulties and have faced homelessness. These payments will be a monthly payment, in line with the amounts the Local Government Ombudsman¹⁴ recommends in guidance¹⁵.
- 4.27 The Government recognises that there are some people who will have faced other housing issues, including in the private sector, including difficulties securing or retaining accommodation and right to buy (difficulties accessing mortgages for example) and some may have been at risk of eviction. To compensate these people, an award may be appropriate, which will reflect the nature and duration of the housing problem. Evidence will be required to show lack of immigration status caused the issues.
- 4.28 For health, the Government proposes to work with the NHS to support people who wrongly had NHS healthcare withheld pending payment and ensure that healthcare is

¹³ See Glossary

¹⁴ See Glossary

¹⁵ <https://www.lgo.org.uk/information-centre/reports/guidance-notes/guidance-on-remedies>

provided. Furthermore, we propose to liaise with NHS Trusts and health bodies, to ensure any charges that should not have been applied, are reimbursed in full. Where payments have not been made, but debts have arisen, we will work with the relevant Trust to get these cancelled. Furthermore, where there is clear evidence that someone has been denied free healthcare, as a result of inability to demonstrate they were entitled to free NHS secondary care in the UK, the Government proposes to award a payment by way of recognition.

- 4.29 For any claims seeking refunds for private healthcare, we will only refund these in limited cases and in particular, where a person was unable to access free NHS care because they had been removed or deported from the UK, or had been refused re-entry to the UK. The Government proposes to take this approach as for persons resident in the UK, NHS healthcare is always available, irrespective of residence or immigration status, except that a charge is applied for secondary healthcare to people who are assessed as not being lawful, settled residents of the UK, where no exemption from charge category applies. Therefore, a person resident in the UK is unlikely to have accessed private healthcare due to personal choice.
- 4.30 For denial of access to higher education as a home student, the Government proposes to compensate with an award. This payment will only be provided if the claimant can demonstrate they had an intention to access higher education.
- 4.31 The Government recognises that there may be some people who were able to access educational opportunities, such as university, but were charged 'international' rather than 'home' fees, due to inability to demonstrate immigration status. Where clear evidence is provided, the Government proposes to reimburse the difference between the international student fees and the home student fees.
- 4.32 For driving licences, the Government proposes to work closely with the Driver and Vehicle Licensing Agency (DVLA) to enable them to administer consolatory payments in line with their existing complaints procedures.
- 4.33 For banking, the Government proposes to award a one-off payment for denial of access to banking services as a result of inability to demonstrate immigration status. Direct financial losses such as interest or overdraft charges (due to the closure of an account) will also be compensated where evidence is provided.

Impact on normal daily life

- 4.34 94% of respondents who expressed a preference said that the compensation scheme should include impact on normal daily life as a loss. These impacts are difficult to translate into monetary awards where the impacts can be both financial and non-financial. The range of experiences that could be considered for an award under impact on daily life runs from minor inconvenience and injury to feelings to significant anxiety and distress, family separation, to serious and lasting diagnosed mental and physical health issues. The Government proposes to make payments in respect of an impact on normal daily life. Payments for successful applications will be made on the basis of awards, taking into account all the circumstances of the individual claimant, with more significant impacts offered a higher payment where this is supported by clear evidence.

Discretionary awards

- 4.35 It is noted that 86% of respondents believe discretionary awards should be included, particularly because this will ensure compensation can be paid where an individual's circumstances are not covered in the scheme. The Government notes that most of the circumstances raised by respondents, such as loss of opportunity, and impact on mental and physical health, will already be compensated in existing categories listed at section 4B. As such, there is limited evidence that many people will require additional compensation. However, we recognise there may be a small number of claims that may not be covered and may require discretionary payments, and therefore we propose to include discretionary awards for those who meet the eligibility criteria. We expect these to be exceptional and rare, and any request for a discretionary award will need to be supported by appropriate evidence.

4C Scheme Operation – How the compensation scheme will operate

General points

- 4.36 In establishing whether compensation is appropriate, the Government proposes to consider whether claimants have taken proactive action to address their lack of immigration status by attempting to remedy their situation with the Home Office. This will be taken into account when considering certain losses claimed for, and claimants will be expected to provide evidence of their attempts to obtain documentary evidence of their lawful immigration status. The Government is taking this approach as we believe it is reasonable to expect that individuals took some action to resolve their situation once

they encountered difficulties. Where an individual has not previously contacted the Home Office to seek to resolve their situation, they will have an opportunity to explain why they did not do so.

- 4.37 We will also require evidence that losses were experienced as a direct result of difficulties with immigration status.

Duration of loss

- 4.38 As noted in the Consultation document, the Government proposes to accept compensation claims for losses experienced at any point in the past (91% of respondents agree). We have listened to respondents, and communities, and recognise that people have faced losses, and difficulties, over many years.

Applications

- 4.39 It is noted that 97% respondents believe online and postal applications should be accepted. The Government believes the application process should be simple. We recognise that many people in the Windrush generation who have been affected may not have immediate access to technology such as the internet, printing facilities or email. The Government proposes to keep the process simple by only accepting applications in the post (a freepost service will be provided) and by email. If necessary, application forms can be requested via a telephone helpline, and they will be posted to claimants.

Assistance

- 4.40 We note respondents consider some form of assistance with the application process would be useful. The Government will provide a free telephone helpline for assistance with access to application forms, and queries on the application form. Claimants will also be able to continue to contact the Commonwealth Citizens Taskforce with queries about status and access to services. Assistance for claimants will be provided by an independent, third party organisation.

Evidencing claims

- 4.41 The Government proposes that before being deemed eligible for compensation, claimants will be expected to seek support from the Commonwealth Citizens Taskforce to obtain confirmation of their lawful status, if they have not already obtained confirmation of their status. To establish eligibility, claimants will be asked to provide

evidence of their identity and information to confirm their lawful status. This will be important to ensure claims and payments are only awarded to genuine claimants.

- 4.42 We expect claimants to provide evidence to demonstrate their impacts and losses, particularly where the losses claimed are a significant financial amount. This includes losses which may have occurred some time ago.
- 4.43 Evidence will also be required for each loss claimed. Claimants will be required to explain the loss and provide documentary evidence to demonstrate the loss. A high level of evidence will be required for some losses, particularly where full financial losses are being claimed, such as a salary for loss of employment. The scheme rules and guidance will set out examples of the types of evidence we will require. These will be published separately. We recognise that some evidence will not be available, and therefore we will take a fair and balanced approach. We are committed to working with claimants, other government departments and third parties, to identify evidence and to make the process as simple and quick as possible.

Non-financial remedies

- 4.44 As 94% of respondents believe an apology should be offered, the Government proposes to do this for all eligible claimants who have experienced difficulties or losses and are granted an award under the Scheme.

Calculating payments

- 4.45 Some payments will be easier to work out (as there will be a clear financial loss), whereas others will not. Respondents generally agree that a combination of different calculation methods are required (75% of respondents).
- 4.46 The Government proposes that set awards¹⁶ will be used for most categories, where possible, but each case will be considered individually by reference to the criteria set out in the scheme rules. We believe this approach is right, and ensures that claims can be considered fairly, accurately and as quickly as possible.
- 4.47 In considering whether the scheme should have a maximum and minimum compensation amount, the Government notes that 57% do not believe there should be a

¹⁶ See Glossary

minimum amount and 68% do not believe there should be a maximum. The Government does not propose to apply an overall minimum or maximum amount.

- 4.48 As set out in the consultation document, the Government will consider claims for a range of losses and impacts and will manage any associated risks of double recovery – see double recovery section.
- 4.49 As set out at section 3.67 of the consultation, and in question 17, various factors may be considered when determining payments. This includes: any previous contact the person has had with the Home Office; whether a person has submitted applications to the Home Office; what caused a loss; whether it is linked to lack of immigration status; and how the Home Office has dealt with any immigration applications. In general, respondents believe these factors are relevant when calculating the amount of compensation.
- 4.50 Some payments under the scheme would ordinarily be subject to taxation. The Government intends to exempt any payment from income tax, Capital Gains Tax and Inheritance Tax as well as making the sum not count towards the calculation for income-related benefits, in line with other compensation schemes. Compensation for loss of employment will be paid less an amount calculated to reflect the fact that claimants would have been taxed on that income had they received it at the time. This is to ensure that successful claimants do not benefit to a greater extent than other taxpayers.

Acceptance of awards

- 4.51 In light of respondents broadly agreeing with our proposals on ‘conditions of payment’, the Government proposes the following will apply:
- Acceptance of an award will be full and final settlement of a compensation claim. We note some respondents have asked for time to consider their offer. We therefore propose to set out a clear and reasonable timescale for a claimant to consider and accept the payment.
 - Once a claimant has accepted an award, they cannot reapply to the scheme for the same losses.
 - The scheme reserves the right to recover any payment in part or in full, if any information of evidence emerges that indicates a claimant has misled or

knowingly provided incorrect, or fraudulent details. Any fraudulent claims would be referred to the police for prosecution.

- 4.52 We believe these conditions are important to protect the integrity of the scheme and ensure public money is directed towards genuine claimants.

Double recovery¹⁷

- 4.53 As set out in the consultation document, we believe it is fair to consider other compensation payments that have already been made to an individual as a result of not being able to demonstrate status, such as by the Home Office, another government department or organisation. These must be disclosed during the application process. We will disallow a claim in part or in full, where this has happened.
- 4.54 In addition, after a payment has been made by the Windrush Compensation Scheme, compensation (on the same basis) must not be sought from the Home Office, another government department or organisation.
- 4.55 The Government proposes to work with other government departments or organisations to ensure that double recovery does not occur. We believe this approach is fair, protects public funds and prevents abuse of government compensation schemes.
- 4.56 The Government also proposes to manage any risks of double recovery within the Windrush Compensation Scheme by considering payments within, and across categories. For example, a payment of loss of income and a payment of loss of benefits covering the same period would amount to double recovery and would not be appropriate. Any previous Windrush related payments, such as any support provided under the policy on urgent and exceptional support for those eligible for help under the Windrush Scheme¹⁸, will also be taken into account.

Reviews

- 4.57 We recognise there may be occasions where a claimant does not agree with a decision, and believe it is important that review mechanisms are in place in the scheme. Respondents (97%) agree with this. In line with respondent's views, we propose a review mechanism will be included for eligibility and assessment of final award. Over half of respondents agreed with our proposal for an internal review, performed by a

¹⁷ See Glossary

¹⁸ See Glossary and <https://www.gov.uk/government/publications/windrush-scheme-support-in-urgent-and-exceptional-circumstances>

different or more senior member of staff, and then an independent review of the decision by someone outside of the scheme. We therefore propose this process will apply in the scheme with eligibility reviews limited to the internal review only. The independent reviewer will be appointed in due course.

- 4.58 If claimants have complaints after our review process has concluded, claimants could consider asking their Member of Parliament (MP) to refer their complaint to the Parliamentary and Health Services Ombudsman (PHSO)¹⁹.

Independent oversight of the scheme

- 4.59 Separate to the role held by Martin Forde QC during the development phase of the scheme, and the independent reviewer, the Government will appoint an independent person to provide oversight and reassurance of the compensation scheme. This will also include reporting on performance, providing challenge on effectiveness and recommending improvements if they believe that the scheme is not serving the interest of claimants and the public.

¹⁹ See Glossary

5. Conclusion and Next Steps

- 5.1 In taking forward our proposals, we will ensure that our data protection and privacy obligations are met. An Impact Assessment has also been produced, through which we have taken account of the potential economic impact of our proposals and is published separately.
- 5.2 We note that respondents have stated it is important for compensation to be available quickly because of the impact on potential claimants. Further documents on the scheme, including the Scheme Rules, Application Form and guidance will be available online. A helpline for applicants will also be available.
- 5.3 We would like to thank all respondents to who have taken part in this consultation and the Call for Evidence. We value your contributions and are grateful for your stories which have helped to shape the policy and scheme.

6. Glossary

Term	Definition
Commonwealth Citizens	<p>For the Windrush Scheme, citizens of Commonwealth countries mean British nationals from the Overseas Territories and citizens of the following Countries (including both former and current members of the Commonwealth):</p> <p>Anguilla, Antigua and Barbuda, Australia, The Bahamas, Bangladesh, Barbados, Belize, Bermuda, Botswana, British Antarctic Territory, British Indian Ocean Territory, Brunei, Canada, Cayman Islands, Cyprus (excluding the Sovereign base area), Dominica, Falkland Islands, Fiji, The Gambia, Ghana, Gibraltar, Grenada, Guyana, Hong Kong, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Montserrat, Namibia, Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, Pitcairn, Henderson, Ducie and Oeno Islands, Saint Lucia, Samoa, Seychelles, Singapore, Sierra Leone, Solomon Islands, South Africa, South Georgia and the South Sandwich Islands, Sri Lanka, St. Helena, Ascension and Tristan da Cunha, St Kitts and Nevis, St Vincent and The Grenadines, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Turks and Caicos Islands, Tuvalu, Uganda, Vanuatu, Virgin Islands, Zambia, Zimbabwe.</p> <p>In addition, the following people are included: citizens of the UK and colonies by virtue of a connection to a country or territory on the above list; and British subjects without citizenship under the law on 1 January 1973.</p> <p>The application of the term “Commonwealth citizens” to those from Hong Kong has no application outside of the compensation scheme, given that Hong Kong is not part of, and has never formed part of, the Commonwealth</p>
Double recovery	Where a claimant is compensated for the same loss more than once
Ombudsman	An official appointed to investigate individuals' complaints against a company or organisation, especially a public authority
Local Government and Social Care Ombudsman	<p>The body that considers complaints about councils, all adult social care providers (including care homes and home care agencies) and some other organisations providing local public services.</p> <p>https://www.lgo.org.uk/</p>
Parliamentary and Health Service Ombudsman (PHSO)	<p>The independent complaint handling service for complaints that have not been resolved by the NHS in England and UK government departments.</p> <p>https://www.ombudsman.org.uk/about-us/who-we-are</p>
Award	A fixed payment
'Windrush scheme: support in urgent and	The Home Secretary announced this policy on 11 October for urgent and exceptional cases where it would be right to consider whether individual circumstances mean a payment can be made

exceptional circumstances'	to those from the Windrush generation before a compensation scheme is in place.
Windrush Scheme	New application route launched on 30 May 2018 to provide a streamlined process by which affected individuals can secure their valid immigration status
Commonwealth Citizens Taskforce	Home Office operational team set up to assist affected individuals to secure proof of their immigration status

Annex A: Windrush Consultation Focus Groups

Location	Date	Number of attendees
Croydon	30 September 2018	25
Birmingham	5 October 2018	19
Cardiff	24 October 2018	6
Newport	24 October 2018	19
Walsall	25 October 2018	19
Woolwich	31 October 2018	19
Leicester	1 November 2018	16
Brixton	6 November 2018	60
Wolverhampton	8 November 2018	108
Reading	13 November 2018	22
Coventry	14 November 2018	24
Telford	15 November 2018	12
TOTAL		349

Annex B: Data tables setting out the quantitative responses to the consultation questions

	Summarised questions	Total number of respondents = 1,435		
			Count	Percentage
1a	Do you think that eligibility for the compensation scheme should be aligned with those who are eligible for help through the Windrush Scheme?	Yes No Don't know Total	1090 135 76 1301	84% 10% 6% 100%
2	Do you think claimants should be able to apply for compensation for Home Office fees for unsuccessful immigration applications?	Yes No Don't know Total	1237 38 33 1308	95% 3% 3% 101%
	Do you think claimants should be able to apply for compensation for incidental costs relating to an unsuccessful immigration application?	Yes No Don't know Total	1197 53 51 1301	92% 4% 4% 100%
	Do you think claimants should be able to apply for compensation for legal costs relating to unsuccessful immigration applications?	Yes No Don't know Total	1203 50 52 1305	92% 4% 4% 100%
3	Do you think compensation should be given when the following losses can be demonstrated as a result of being unable to demonstrate immigration status: direct loss of income through termination of employment?	Yes No Don't know Total	1281 17 16 1314	98% 1% 1% 100%
	Do you think compensation should be given when the following losses can be demonstrated as a result of being unable to demonstrate immigration status: direct loss of income through an inability to secure employment?	Yes No Don't know Total	1250 23 34 1307	96% 2% 3% 101%
	Do you think compensation should be given when the following losses can be demonstrated as a result of being unable to demonstrate immigration status: lost opportunities such as career progression or future employment?	Yes No Don't know Total	1211 46 52 1309	93% 4% 4% 101%
4	Do you think compensation should be given for the following impacts resulting from an inability to demonstrate immigration status: removal?	Yes No Don't know Total	1260 32 27 1319	96% 2% 2% 100%
	Do you think compensation should be given for the following impacts resulting from an inability to demonstrate immigration status: detention?	Yes No Don't know Total	1254 32 28 1314	95% 2% 2% 99%

	Do you think compensation should be given for the following impacts resulting from an inability to demonstrate immigration status: voluntary departure from the UK due to imminent enforcement action?	Yes No Don't know Total	1162 64 79 1305	89% 5% 6% 100%
	Do you think compensation should be given for the following impacts resulting from an inability to demonstrate immigration status: voluntary departure from the UK due to refused immigration decision?	Yes No Don't know Total	1144 73 91 1308	88% 6% 7% 101%
5	Do you think compensation should be given for the following impacts resulting from an inability to demonstrate immigration status: denial of re-entry to the United Kingdom?	Yes No Don't know Total	1242 35 32 1309	95% 3% 2% 100%
	Do you think compensation should be given for the following impacts resulting from an inability to demonstrate immigration status: anticipation of denial of re-entry to the United Kingdom preventing travel?	Yes No Don't know Total	1144 73 93 1310	87% 6% 7% 100%
6	Do you think compensation should be given to those who have been prevented from doing the following due to difficulties demonstrating their immigration status: accessing free National Health Service care?	Yes No Don't know Total	1279 19 22 1320	97% 1% 2% 100%
	Do you think compensation should be given to those who have been prevented from doing the following due to difficulties demonstrating their immigration status: accessing social housing?	Yes No Don't know Total	1263 30 28 1321	96% 2% 2% 100%
	Do you think compensation should be given to those who have been prevented from doing the following due to difficulties demonstrating their immigration status: accessing private housing?	Yes No Don't know Total	1224 40 47 1311	93% 3% 4% 100%
	Do you think compensation should be given to those who have been prevented from doing the following due to difficulties demonstrating their immigration status: accessing post 18 education?	Yes No Don't know Total	1239 31 43 1313	94% 2% 3% 99%
	Do you think compensation should be given to those who have been prevented from doing the following due to difficulties demonstrating their immigration status: obtaining a driving licence?	Yes No Don't know Total	1214 51 48 1313	93% 4% 4% 101%
	Do you think compensation should be given to those who have been prevented from doing the following due to difficulties demonstrating their immigration status: opening a bank account?	Yes No Don't know Total	1249 32 35 1316	95% 2% 3% 100%
7a	Do you think the compensation scheme should include the impact on normal daily life as a loss?	Yes No Don't know	1241 28 45 1314	94% 2% 3% 99%

		Total		
8a	Please give a rating from 1 (not important) to 5 (very important) based on how important you think it is that the scheme covered this loss: fees from unsuccessful immigration applications to the Home Office.	Average	1384	4.37
	Please give a rating from 1 (not important) to 5 (very important) based on how important you think it is that the scheme covered this loss: incidental and legal costs from unsuccessful immigration applications.	Average	1384	4.36
	Please give a rating from 1 (not important) to 5 (very important) based on how important you think it is that the scheme covered this loss: employment.	Average	1385	4.60
	Please give a rating from 1 (not important) to 5 (very important) based on how important you think it is that the scheme covered this loss: benefits.	Average	1384	4.45
	Please give a rating from 1 (not important) to 5 (very important) based on how important you think it is that the scheme covered this loss: detention or removal.	Average	1383	4.57
	Please give a rating from 1 (not important) to 5 (very important) based on how important you think it is that the scheme covered this loss: voluntary departure from the UK.	Average	1380	4.12
	Please give a rating from 1 (not important) to 5 (very important) based on how important you think it is that the scheme covered this loss: denial or re-entry to the UK.	Average	1383	4.50
	Please give a rating from 1 (not important) to 5 (very important) based on how important you think it is that the scheme covered this loss: denial of travel.	Average	1383	4.43
	Please give a rating from 1 (not important) to 5 (very important) based on how important you think it is that the scheme covered this loss: denial of access to free NHS care.	Average	1384	4.58
	Please give a rating from 1 (not important) to 5 (very important) based on how important you think it is that the scheme covered this loss: denial of access to housing.	Average	1383	4.54
	Please give a rating from 1 (not important) to 5 (very important) based on how important you think it is that the scheme covered this loss: denial of access to post-18 education.	Average	1385	4.43
	Please give a rating from 1 (not important) to 5 (very important) based on how important you think it is that the scheme covered this loss: loss/denial of a driving licence.	Average	1384	4.27
	Please give a rating from 1 (not important) to 5 (very important) based on how important you	Average	1384	4.43

	think it is that the scheme covered this loss: loss denial of access to a bank account.			
	Please give a rating from 1 (not important) to 5 (very important) based on how important you think it is that the scheme covered this loss: impact on normal daily life.	Average	1385	4.48
8b	Do you think the proposals contained in this section have captured the correct type of losses?	Yes No Don't know Total	904 210 186 1300	70% 16% 14% 100%
9a	Do you think losses experienced at any time point in the past should be covered by the compensation scheme?	Yes No Don't know Total	1202 42 73 1317	91% 3% 6% 100%
10a	Do you think the scheme should accept both postal and online compensation claims?	Yes No Don't know Total	1273 19 21 1313	97% 1% 2% 100%
10b	Do you think claimants should be offered assistance in completing their application?	Yes No Don't know Total	1274 24 25 1323	96% 2% 2% 100%
10c	Who should be offered assistance?	All Specific groups Total	1116 97 1213	92% 8% 100%
11	Do you think it is right that the compensation scheme uses a combination of different calculation methods for determining compensation payments?	Yes No Don't know Total	977 138 189 1304	75% 11% 15% 101%
12a	Do you think compensation for a known value of loss should be considered where the claimant has: lost their job and can evidence salary and pension foregone?	Yes No Don't know Total	1269 21 28 1318	96% 2% 2% 100%
	Do you think compensation for a known value of loss should be considered where the claimant has: been denied access to benefits?	Yes No Don't know Total	1248 24 40 1312	95% 2% 3% 100%
	Do you think compensation for a known value of loss should be considered where the claimant has: incurred costs and fees that are eligible to be compensated?	Yes No Don't know Total	1272 19 25 1316	97% 1% 2% 100%
13a	Do you think compensation should be calculated on a tariff style approach where the claimant has: been detained?	Yes No Don't know Total	929 225 145 1299	72% 17% 11% 100%

		Total		
	Do you think compensation should be calculated on a tariff style approach where the claimant has: been removed?	Yes No Don't know Total	926 223 147 1296	72% 17% 11% 101%
	Do you think compensation should be calculated on a tariff style approach where the claimant has: been denied free NHS care?	Yes No Don't know Total	929 229 138 1296	72% 18% 11% 101%
	Do you think compensation should be calculated on a tariff style approach where the claimant has: been denied access to other services?	Yes No Don't know Total	932 219 145 1296	72% 17% 11% 100%
	Do you think compensation should be calculated on a tariff style approach where the claimant has: experienced an impact on normal daily life?	Yes No Don't know Total	935 222 140 1297	72% 17% 11% 100%
14a	Should the scheme have a discretionary element to make payments for circumstances not covered by the scheme rules?	Yes No Don't know Total	1132 69 118 1319	86% 5% 9% 100%
15a	Do you think the compensation scheme should have a minimum claim amount?	Yes No Don't know Total	413 760 161 1334	31% 57% 12% 100%
16a	Do you think the compensation scheme should have a maximum claim amount?	Yes No Don't know Total	303 908 134 1345	23% 68% 10% 101%
17a	Please give a rating from 1 (not important) to 5 (very important) based on how important you think it is that these factors are considered: date of entry to the UK.	Average	1374	3.89
	Please give a rating from 1 (not important) to 5 (very important) based on how important you think it is that these factors are considered: claimant had previous contact with the Home Office.	Average	1374	3.66
	Please give a rating from 1 (not important) to 5 (very important) based on how important you think it is that these factors are considered: quality of previous applications.	Average	1375	3.21
	Please give a rating from 1 (not important) to 5 (very important) based on how important you think it is that these factors are considered: loss attributable to immigration status.	Average	1375	4.33

	Please give a rating from 1 (not important) to 5 (very important) based on how important you think it is that these factors are considered: misapplication of immigration rules.	Average	1373	4.12
	Please give a rating from 1 (not important) to 5 (very important) based on how important you think it is that these factors are considered: costs or expenses otherwise incurred.	Average	1374	4.36
18a	Do you think claimants should be offered non-financial recompense in addition to a financial award?	Yes No Don't know Total	1040 121 144 1305	80% 9% 11% 100%
18b	Which of the following non-financial recompense should be offered: counselling?	Yes No Don't know Total	949 18 54 1021	93% 2% 5% 100%
	Which of the following non-financial recompense should be offered: letter of apology from the Home Office?	Yes No Don't know Total	960 24 41 1025	94% 2% 4% 100%
	Which of the following non-financial recompense should be offered: exploring reinstatement of employment (where possible and applicable)?	Yes No Don't know Total	977 13 33 1023	96% 1% 3% 100%
	Which of the following non-financial recompense should be offered: other?	Yes No Don't know Total	428 12 190 630	68% 2% 30% 100%
19a	Do you think conditions of acceptance should be applied to the final compensation payment?	Yes No Don't know Total	717 420 175 1312	55% 32% 13% 100%
19b	If yes, do you think the following conditions of acceptance should be applied: any compensation award is made in full and final settlement of a claim – reapplications will not be permitted?	Yes No Don't know Total	519 115 99 733	71% 16% 14% 101%
	If yes, do you think the following conditions of acceptance should be applied: a claimant cannot be compensated more than once for the same loss?	Yes No Don't know Total	644 37 50 731	88% 5% 7% 100%
	If yes, do you think the following conditions of acceptance should be applied: payments will be recovered if its subsequently found that the claim was fraudulent?	Yes No Don't know Total	698 10 25 733	95% 1% 3% 99%

20a	Do you think the claimant should be able to request a review of the compensation scheme decision if they do not agree with the outcome?	Yes No Don't know Total	1271 22 21 1314	97% 2% 2% 101%
20b	If yes, which parts of the compensation scheme decision should a claimant be able to request a review of: eligibility of claimant?	Yes No Don't know Total	1201 16 23 1240	97% 1% 2% 100%
	If yes, which parts of the compensation scheme decision should a claimant be able to request a review of: assessment of evidence provided?	Yes No Don't know Total	1205 14 22 1241	97% 1% 2% 100%
	If yes, which parts of the compensation scheme decision should a claimant be able to request a review of: amount of final award offered?	Yes No Don't know Total	1212 10 28 1250	97% 1% 2% 100%
	If yes, which parts of the compensation scheme decision should a claimant be able to request a review of: other?	Yes No Don't know Total	327 30 282 639	51% 5% 44% 100%
20c	If yes to 20a, do you agree with the compensation scheme decision review process set out in the consultation?	Yes No Don't know Total	720 148 370 1238	58% 12% 30% 100%
22	Are there any impacts, positive or negative, on people with protected characteristics (age; disability; race; religion or belief; sex; sexual orientation; gender reassignment; pregnancy and maternity) which should be taken into account when designing and implementing the compensation scheme?	Yes No Don't know Total	821 144 306 1271	65% 11% 24% 100%

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