



Legal Aid
Agency

Disregard of compensation payments made to claimants of the Windrush compensation scheme

Guidance for providers

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Summary

Compensation payments provided to claimants of the Windrush compensation scheme can now be disregarded from civil and criminal legal aid eligibility assessments.

We have amended the legal aid legislation to ensure that claimants of the Windrush compensation scheme are not disadvantaged in applying for legal aid because of any payments that they receive under the scheme (including any Windrush connected payments).

Disregarded payments

The Legal Aid (Financial Resources and Contribution Orders) (Amendment) Regulations 2019 amends the means testing rules governing eligibility for civil and criminal legal aid. The changes allow payments made by or in connection with the **Windrush compensation scheme** to be disregarded from the civil and criminal legal aid eligibility assessments. This will ensure that the receipt of such compensation payments will not affect an individual's eligibility for legal aid or liability to pay contributions.

The new statutory instrument which has now come into force amends the:

- Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013; specifically, Regulation 24 (payments to be disregarded when assessing gross income or disposable income) and Regulation 40 (payments to be disregarded when assessing disposable capital).
- Criminal Legal Aid (Financial Resources) Regulations 2013; specifically, Regulation 11 (deductions from disposable income), Regulation 13 (deductions from disposable capital), Regulation 20 (assessment of gross annual income) and Regulation 33 (assessment of gross annual income).
- Criminal Legal Aid (Contribution Orders) Regulations 2013; specifically, Regulation 10 (calculation of gross annual income) and Regulation 28 (calculation of disposable specified capital).

The legislation provides for a **mandatory** disregard of the Windrush compensation scheme payments and Windrush connected payments.

What Are Windrush Connected Payments?

Individuals who make a claim under the Home Office compensation scheme may have been adversely impacted across a wide range of Government services and there is a clear commitment from Government to correct their position.

Where: a) an individual has made a Windrush compensation claim and, b) a request is included in that claim that has been referred by the Home Office to another body such as the Department of Work and Pensions or Her Majesty's Revenue and Customs, and c) a payment is made to the individual as a result of that referral – e.g. backdated payments of state benefits or tax credits, or the repayment of a charge levied by an NHS body – these are Windrush *connected payments* and are to be disregarded. **(Note: current payments of state benefits and tax credits will not be subject to a disregard, unless it is in any event listed as a disregarded payment under the relevant civil or criminal legal aid regulations).**

The Windrush payments disregard will apply to all types of civil and criminal legal aid applications where eligibility is means tested.

Delegation

Responsibility for means assessment decisions for (civil) controlled work and family mediation and (crime) advice and assistance and advocacy assistance is delegated to providers. Where eligibility is subject to a determination of financial eligibility, providers must disregard any payments made by or in connection with the Windrush compensation scheme under the regulations set out earlier in this document.

The usual evidence requirements for the respective civil or criminal legal aid schemes will apply to these cases; payments to be disregarded should be verified, e.g. retain a copy of the Home Office letter which confirms payments made by or in connection with the Windrush compensation scheme.

Background Notes on the Compensation Scheme:

Details of the Home Office Windrush compensation scheme can be found at <https://www.gov.uk/guidance/windrush-compensation-scheme>. 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 will be able to apply if they meet the criteria set out by the scheme. Claims will also be accepted 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 schemes intention is to compensate claimants for the following categories: unsuccessful immigration fees; detention, deportation, removal and return; loss of access to employment; loss of access to child benefit, child tax credit or working tax credit; denial of access to services (housing, health, education and banking); homelessness; and impact on daily life. In exceptional circumstances discretionary payments may also be made for losses which are not covered by the above.