

Return to an Address of the Honourable
the House of Commons dated 19 March 2020 for

Windrush Lessons Learned Review

Independent review by Wendy Williams

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Any enquiries regarding this publication should be sent to us at Wendy.WilliamsWindrushIA@homeoffice.gov.uk

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CONTENTS

Executive Summary	7
Introduction	8
PART 1 What happened, when, and to whom	22
PART 2 Why the scandal happened	48
PART 3 The department's corrective measures	122
PART 4 Findings and recommendations	134
ANNEX A Terms of reference	154
ANNEX B Review methodology	158
ANNEX C Glossary of terms	166
ANNEX D The Independent Advisory Group	178
ANNEX E Call for evidence	180
ANNEX F Acknowledgements	182
ANNEX G Casefile review: the 164	186
ANNEX H Right to Rent case study	194
ANNEX I Corrective measures	246
ANNEX J Endnotes	266



EXECUTIVE SUMMARY

I was asked by the then Home Secretary to provide an independent assessment of the events leading up to the Windrush scandal (particularly from 2008 – March 2018) and to identify the key lessons for the Home Office. In carrying out this work, I have interviewed those affected and their families and representatives. I have also had access to departmental papers and have met with officials and ministers, past and present, to ask them about their recollections of the period.

Members of the Windrush generation and their children have been poorly served by this country. They had every right to be here and should never have been caught in the immigration net. The many stories of injustice and hardship are heartbreaking, with jobs lost, lives uprooted and untold damage done to so many individuals and families.

However, despite the scandal taking the Home Office by surprise my report sets out that what happened to those affected by the Windrush scandal was foreseeable and avoidable.

The causes of the Windrush scandal can be traced back through successive rounds of policy and legislation about immigration and nationality from the 1960s onwards, the aim of which was to restrict the eligibility of certain groups to live in the UK.

The 1971 Immigration Act confirmed that the Windrush generation had, and have, the right of abode in the UK. But they were not given any documents to demonstrate this status. Nor were records kept. They had no reason to doubt their status, or that they belonged in the UK. They could not have been expected to know the complexity of the law as it changed around them.

But over time those in power forgot about them and their circumstances, which meant that when successive governments wanted to demonstrate that they were being tough on immigration by tightening immigration control and passing laws creating, and then expanding the hostile environment, this was done with a complete disregard for the Windrush generation.

A range of warning signs from inside and outside the Home Office were simply not heeded by officials and ministers. Even when stories of members of the Windrush generation being affected by immigration control started to emerge in the media from 2017 onwards, the department was too slow to react.

The report identifies the organisational factors in the Home Office which created the operating environment in which these mistakes could be made, including a culture of disbelief and carelessness when dealing with applications, made worse by the status of the Windrush generation, who were failed when they needed help most.

The lessons are for both ministers and officials in the Home Office to learn. Ministers set the policy and the direction of travel and did not sufficiently question unintended consequences. Officials could and should have done more to examine, consider and explain the impacts of decisions.

While I am unable to make a definitive finding of institutional racism within the department, I have serious concerns that these failings demonstrate an institutional ignorance and thoughtlessness towards the issue of race and the history of the Windrush generation within the department, which are consistent with some elements of the definition of institutional racism.

This report makes 30 recommendations for change and improvement which can be boiled down to three elements: the Home Office must acknowledge the wrong which has been done; it must open itself up to greater external scrutiny; and it must change its culture to recognise that migration and wider Home Office policy is about people and, whatever its objective, should be rooted in humanity. I encourage the Home Secretary and the Home Office to implement my recommendations in full.

INTRODUCTION

Wendy Williams, Independent Adviser

In 2001, Nathaniel went on holiday to Jamaica with his daughter Veronica. Little did either of them know that Nathaniel would never see the UK again. When they set off to come home to the UK, immigration authorities told him he would not be allowed back into the country. The passport he had had for some 45 years, which declared him a citizen of the UK and Colonies, was no longer good enough, though it had been in 1985, when he last made the trip. And it had been in the mid-1950s, when he arrived in the UK as a young man, in common with thousands of other men, women and children, members of what we now know as the Windrush generation.

Nine years after his holiday, Nathaniel died in Jamaica, unable to afford treatment for prostate cancer. He and Veronica had decided not to fight the original decision against him. Instead, she had taken career breaks to look after him in Jamaica.

Nathaniel's story, and Veronica's, are part of what we have come to call the Windrush scandal. The UK government, through what it did and did not do, threw people into turmoil because it did not recognise their legal right to be in the UK. It prevented some, like Nathaniel, from coming back into the country from overseas. It removed and detained others. And through policies designed to combat illegal migration, it denied people access to work, housing and services, even though they were here lawfully and therefore lawfully entitled to access them. Some lost their jobs, their homes, and in many cases their sense of identity and well-being. Inevitably, their families also paid a price.

Early in the Windrush Lessons Learned Review, I was lucky enough to meet many of the people affected, including Veronica. I heard how their experiences left them scared and scarred. I heard how bewildered they felt that institutions could treat them so badly, and then compound this with insensitivity. As one person put it, "I can't believe I have been treated like this by my beloved England". Many felt an attachment to the UK and felt they had contributed to society, but had been treated unjustly despite this. Some also felt the government had not understood or acknowledged

what they had been through. I was struck at the same time by their dignity and calm, despite all that had happened; it was a humbling experience.

About the Review

The Home Office established the Windrush Lessons Learned Review on 2 May 2018.¹ I was appointed as Independent Adviser by the then Home Secretary, Sajid Javid, on 21 June.²

The review is asked to "identify the key lessons for the Home Office going forward". The Home Office, as a major department of state, covers:

- the Secretary of State, their Special Advisers and the Ministerial Team who head up the department, setting the political direction and priorities;
- the Permanent Secretary and the Senior Civil Service who lead and manage the department, advising ministers;
- civil servants at junior grades who perform the vast majority of policy and operational roles, developing and implementing policy proposals, and carrying out operational roles engaging with the public.

The issues that I identify in my report relate to all three of those levels in the Home Office, and, similarly, lessons must be learned at all levels. While the constitutional position is that the Secretary of State for the Home Department is accountable to Parliament for all the actions of their department, both ministers and officials, this cannot be an excuse for those who work in the department not to ensure they also learn from the events of Windrush. Similarly, ministers are responsible for setting the direction of policy and I have found no evidence that officials were acting beyond ministerial direction at any time.

The review's task was to investigate:

- the key legislative, policy and operational decisions that led to members of the Windrush generation becoming entangled in measures designed for illegal immigrants

- what other factors played a part
- why these issues were not identified sooner
- what lessons the organisation can learn to ensure it does things differently in future
- whether corrective measures are now in place and, if so, an assessment of their initial impact
- what (if any) further recommendations should be made for the future

The full terms of reference and methodology are in [Annex A](#) and [Annex B](#). A glossary of terms used in this report is in [Annex C](#).

The review has sifted nearly 69,000 official documents, from advice and briefing to ministers and their responses, to letters and emails, reports, Parliamentary papers and policy impact assessments. We have also analysed the 164 case files identified by the Home Office's historical cases review (see [Annex G](#) for details).

We have worked with a wide range of organisations, groups and people, principally through a call for evidence. They included immigration lawyers, local authorities, charities, think tanks and academics.

Through interviews, focus groups and open forums, we talked to around 450 government staff, officials and politicians. And in roadshows around the country, we spoke to approximately 270 people affected by the scandal. Separately, we also carried out ethnographic research with a smaller group to understand more deeply the effect of the scandal on their lives.

As we distilled the evidence, we tested findings and emerging themes with an Independent Advisory Group (details in [Annex D](#)), although the findings set out in this report are my own.

The report in summary

This report is the result of the review. In four parts, containing a conclusion at the end of each section, it documents how and why the scandal happened, and gives my recommendations for trying to avoid something similar happening in the future.

Part 1 shows who the scandal affected and how. It shows how it unfolded before and after it became public in April 2018 and describes the warning signs that emerged from both inside and outside the Home Office. It also puts the scandal in the context of black people's experience in the UK since the HMT Windrush brought the first post-war migrants from the Caribbean in 1948.

In part 2, the report discusses why the scandal happened. The reasons are a complex blend of institutional and cultural forces, though it is clear that the scandal was a long time in the making. Part 2 traces how policy and legislation have developed over nearly seven decades, in the context of changing attitudes to race and immigration. While migrants of the 1940s and 1950s arrived as citizens of the UK and Colonies, with equal rights to live in the UK to people born in the UK, that picture changed gradually due to successive rounds of immigration legislation in the 1960s, 70s and 80s, some of which have been recognised and were accepted at the time to have had racial motivations. The 1971 Immigration Act entitled people who had arrived from Commonwealth countries before January 1973 to the "right of abode" or "deemed leave" to remain in the UK. But the government gave them no documents to demonstrate this status. Nor did it keep records. This, in essence, set the trap for the Windrush generation.

Part 2 goes on to describe how political pressure to deal with the perceived problem of immigration continued through the 1990s and into the 2000s, leading to the "hostile environment" (later the "compliant environment"), a set of measures that evolved under the Labour, Coalition and Conservative Governments. They aimed to make life as difficult as possible for people with no legal status in the UK to encourage them to leave. But they also trapped members of the Windrush generation.

Part 2 then turns its focus to the Home Office, which developed and implemented most of these policies.

The report explores the culture and workings of the Home Office (its ministers and officials working on their behalf) and its agencies, set in the wider political context, during the critical time that created the conditions for the scandal. In the process, it shows how both policy makers and operational staff lost sight of people the

INTRODUCTION

department had a duty to protect. A failure to see how past legislation combined with evolving policy and to assess what impact this might have on vulnerable people and minorities, especially the Windrush generation, alongside a focus on meeting targets, made the crisis inevitable. Also, just when members of the Windrush generation most needed to confirm their immigration status, it became harder for them to do so. The Home Office demanded an unreasonable level of proof for them to be able to demonstrate their status. At times, staff asked people for evidence for each year that they had lived in the UK (which for the Windrush generation was often over 40 years), and in some cases more than one document. This was clearly excessive, particularly for people applying to confirm the right to be in the UK, rather than applying afresh.

In any case, people like Nathaniel felt a strong sense of Britishness and had no reason to doubt their status, or that they belonged in the UK. They could not have been expected to know the complexity of the law as it changed around them.

At these stages, the Home Office failed to take account of this ethnic group, who came, or whose direct ascendants came, from Caribbean nations to the UK between 1948 and 1973, who were of Caribbean ethnic and national origin, and most of whom were black. This was evident, from how it developed, implemented and evaluated policy, to how it dealt with individual people. This makes the scandal more than a case of bureaucratic bad luck. It makes it a profound institutional failure.

The way members of the Windrush generation were treated was wrong. They had the right to be in the UK. The difficulties they have had in

demonstrating this cannot be laid at their door. I have been provided with no positive justification for why they were treated in the way they were or why the department did not detect sooner that there would be a discrete group likely to be detrimentally affected by the hostile environment measures. They were not present unlawfully in the UK and should not have been, however unwittingly or unintentionally, swept up in measures aimed at those that were.

In a letter dated 7 March 2019, the then Home Secretary, Sajid Javid, asked me specifically to

consider the “Right to Rent Scheme” in light of the High Court judgment of Spencer J in the JCWI case.³ Spencer J concluded that there would be a breach of section 149 of the Equality Act in relation to the roll out of the scheme beyond England and Wales and a breach of Articles 8 and 14 of the European Convention on Human Rights (ECHR). The case is currently the subject of an appeal by the Home Office. In the meantime, I have been asked to consider the Scheme from an institutional level, and have done so in detail at [Annex H](#) and in summary in part 2 of the report.

General Group INSTRUCTION

Subject: PEOPLE SETTLED IN THE UK ON 1 JANUARY 1973
Sub-topic: ILR OR NTL APPLICATIONS
Ref: 103/326
Valid from: 16th January 2006
Expires: Ongoing
Author: [redacted]

INSTRUCTION

APPLICATIONS FROM PEOPLE WHO WERE SETTLED IN THE UK ON 1 JANUARY 1973

The Immigration Act 1971 came into force on 1 January 1973. Under Section 1(2) of the Act, anyone settled in the UK on that date and not having the right of abode or being exempt under the Act from the provisions relating to leave to enter or remain is to be treated as having been given ILE or ILR when the Act came into force. To benefit from Section 1(2), it was held in *Mughal* [1974] QB 313 that the person concerned must have been physically present in the UK on 1.1.73, and that the burden is on that person to prove s/he was settled here at the time.

2. We receive a steady trickle of applications from people who were in the UK on or before that date – either for settlement on the basis of long residence, or as returning residents, or for NTL. In most cases this is their first after-entry application; and some may be well beyond retirement age (in their 80s in a couple of recent cases). Such applications should be treated sensitively, as there is a significant risk of adverse publicity if they are handled inappropriately or wrongly refused.

...

10. Some of these applicants may have lived in the UK since World War 2 or longer. They may have difficulty in providing documentary evidence of their status on or before 1 January 1973 or continuous residence since then. Please be sensitive in dealing with this aspect. If there is no conclusive documentary evidence of settlement on 1 January 1973, they may be deemed to have been settled on that date if other evidence is reasonably persuasive (eg that they married here and raised a family before that date). **Under no circumstances should such applicants be regarded as overstayers and their applications sent to LSCU 6 without the authorisation of a Chief Caseworker.**

The limitations of this review

In this review I have been asked to include consideration of equalities legislation, policy, practice and principles as well as operational matters as part of my consideration of the factual history of key events and activities. The analysis I have conducted is not the same analysis that a court would engage in when deciding whether there had been a breach of either section 29 or 149 of the Equality Act 2010. Nor is it the same that the Equality and Human Rights

Commission would adopt during an investigation or assessment.⁴ Nor do I have the same remit as the Home Affairs Committee, National Audit Office, Public Accounts Committee or Women and Equalities Committee.

While I reviewed the files and quality of decision-making in relation to the 164 cases identified by the Historical Cases Review Team which involved Caribbean nationals who were adversely affected, I did not interview individual caseworkers to probe their individual reasoning process for each decision beyond the reasons they had given in writing. My focus was on the institutional factors. To encourage the participation of members of staff in the organisation in the institutional fact finding, I confirmed in a series of communications with all staff in the department that the objective of the review was not to “name and shame”, although I did intend to get to the bottom of what had happened. All interviews with more junior members of staff were carried out on a voluntary basis. These were mostly in focus groups, save for a couple of exceptions, where I wanted to understand the difference in approach on the part of caseworkers who, after the scandal was uncovered, granted status to those whose applications they might previously have refused. My interviews with more senior officials and with former ministers, which were also carried out on a voluntary basis, did not focus on the reasoning process of individual identified cases, but instead on organisational factors, broader policy, culture and history.

As my focus was on the Windrush generation it was not possible for me to meaningfully compare and contrast the decision-making by the Home Office in “Windrush” cases with “non-Windrush” cases, because the Home Office currently does not collect data based on the ethnicity of applicants. The exercise would have therefore required a much longer and more detailed investigation and would have fallen outside my remit. I have, nevertheless, made recommendations about the Home Office’s data collection, monitoring and review processes in this report so the impact of decision-making on racial groups and worrying trends can be better identified in future.

As set out below, I consider several of the institutional factors outlined in this report to have posed, and to continue to pose, a substantial risk of causing the Windrush generation (who can be defined as a racial group by reference to nationality and national origin, deriving from the Caribbean and having entered the UK, or their ascendant relatives having entered the UK, in the window between 1948 and 1973, and who almost all are black), to be treated both less favourably and suffer detriment as compared with those:

- a) who were born in the UK
- b) who arrived in the UK neither from the Caribbean nor within the window 1948-1973
- c) who are British passport holders, a much higher proportion of whom are not black

Whether that risk was borne out as compared with other comparator groups would require evaluation of evidence which fell outside of the Windrush generation focus of my terms of reference. I cannot know whether other people outside of the Windrush generation were treated as poorly. This report does, however, conclude that it is clear that those in the Windrush generation who were affected have faced very significant detriment in relation to access to housing, work, access to NHS care, and in some cases in their detention and removal from the UK and separation from family.

Equally, rather than being asked to consider whether all these institutional factors can be “objectively justified” in the legal sense (which would be required for me to make a determination as to whether members of the Windrush Generation were the subject of indirect discrimination in all of its formulations), I was asked to focus on the lessons that can be learned from what has happened to the Windrush generation.

Given my focus on institutional factors, race and equalities, I considered institutional racism as a concept to see whether further exploration was necessary. Also, because I have been asked to consider legal concepts, some sections of the report are written in ‘legalistic’ language.

INTRODUCTION

Part 3 of the report provides an assessment of what the government and in particular the Home Office have done to repair the damage since the scandal broke. These corrective measures include support for the people affected, including the Windrush Scheme and Taskforce to help them secure documents to confirm their status, and the Windrush Compensation Scheme, which aims to cover financial and other losses. The measures also include plans to reform policy and operational processes and action to cut the risk of the wrong people being caught up in compliant environment measures and immigration enforcement.

The report assesses whether these efforts go far enough and whether the department can do more. It also explores what wider lessons we can learn and what should be in place to create an environment which minimises similar risks in future.

Finally, in part 4 I set out my findings and recommendations. They boil down to three elements: the Home Office must acknowledge the wrong which has been done; it must open itself up to greater external scrutiny; and it must change its culture to recognise that migration and wider Home Office policy is about people and, whatever its objective, should be rooted in human dignity. Some of the recommendations relate specifically to the immigration system; others relate more broadly to the department as a whole and wider government. They all derive directly from my review of the Windrush scandal.

Summary of findings

What were the reasons why?

The reasons why this scandal occurred are complex and are detailed in part 2. Some can be directly traced back to the department, others cannot. As discussed in part 2, the “root cause” can be traced back to the legislation of the 1960s, 70s and 80s, some of which, as accepted at the time, had racial motivations.

What is clear to me is that operational and organisational failings of the department had a causative impact on the detrimental treatment received by the Windrush generation as a result of them being caught up in measures designed for people who have no right to be in the UK.

In particular, their history was institutionally forgotten. Accurate records were not kept, both in relation to individual cases and the development of relevant policy and legislation as a whole. The legal landscape related to immigration and nationality has become more complicated rather than less so and even the department’s experts struggled to understand the implications of successive changes in the legislation and the way they interacted with changes in the relationship between the UK and Caribbean countries and the resulting impact those changes had on individuals’ status in the UK. Opportunities to correct the racial impact of historical legislation were either not taken or could have been taken further. According to Home Office papers from the time, those administering the 1987 registration scheme said they intended the advertising to be informative but not “stimulate a flood of inquiries”. Publicity leaflets from the time also explained that there would be no consequences if people chose not to register at that time. It is unsurprising that some did not register.

This ought to have been identified as a risk which was likely to adversely affect those within the Windrush generation. While legislation is enacted by Parliament rather than the department, the department (both ministers and officials) cannot be absolved of any role in the policy development, drafting processes or its implementation.

In particular, warning signs and messages about the hostile environment policy were not heeded. Instead the policy was promoted because of a resolute conviction that it would be effective and should be vigorously pursued. Warnings by external stakeholders, individuals and organisations were not given enough consideration. In developing the hostile environment policy an incorrect assumption was made in the impact assessments for the 2013 and 2015 Immigration Bills that those who were in the country without the ability to demonstrate it with specific documents were here unlawfully. When, in 2017, the department did identify that there might be a settled but undocumented population there was little attempt to understand the make-up of this cohort. This was despite the department having identified a pre-1973 at-risk cohort over a decade earlier. Overall, I found the monitoring of the racial impact of immigration policy and decision-making in the department to be poor.

I also found that when the issue began to emerge at the end of 2017 and the beginning of 2018 there was a failure within the department to “join the dots” and identify the particular circumstances of the Windrush generation and their descendants.

In addition, I found that the department itself had increasingly become fragmented, and decision-making was separated between teams who operated in “silos”. This led to the risk of cases being processed without adequate quality control safeguards. I also found that within UK Visas and Immigration (UKVI) and Immigration Enforcement (IE) decision-making there was a “target-dominated” work environment and low-quality decision-making. For example, I found that some individual decision makers operated an irrational and unreasonable approach to individuals, requiring multiple documents for “proof” of presence in the UK for each year of residence in the UK. The department has accepted that there was no basis for doing this in its own guidance. I found that internal training had progressively become less thorough and joined up and that there was an absence of a “learning culture” in the organisation.

In the cases I considered I also found a lack of empathy for individuals and some instances of the use of dehumanising jargon and clichés. I found little evidence of an understanding of the fact that the department serves the public as a whole, and that those who are affected by individual decisions may be vulnerable and in need of assistance. I did not, however, encounter widespread use of racially insensitive language.

There were also other factors outside of the Home Office’s responsibility which contributed to what happened to those affected by the Windrush scandal including:

- the substantive content of primary legislation. While the Home Office is responsible for the development of policy and the drafting of legislation, historical legislation and the more recent 2014 and 2016 Immigration Acts were ultimately enacted by Parliament
- changes (reductions) to legal aid
- a history of prejudice towards black people in wider society
- “risk averse” landlords and employers, who considered employing or renting to a person who cannot easily demonstrate their right to remain in the UK as too risky

Given the parameters of the review, it is not possible for me to reach an accurate and fair conclusion regarding the department’s duty under section 29 of the Equality Act 2010. However, as well as the factors listed above playing a causative role in the harm suffered by the Windrush generation, I am also concerned that:

- an over-broad view was taken by policy officials of the scope of exceptions from the public sector equality duty when proposing the 2013 and 2015 Immigration Bills
- during my interviews with senior civil servants and former ministers, while some were thoughtful and reflective about the cause of the scandal, some showed ignorance and a lack of understanding of the root causes and a lack of acceptance of the full extent of the injustice done. In addition, some of those that I interviewed when asked about the perception that race might have played a role in the scandal were unimpressively unreflective, focusing on direct discrimination in the form of discriminatory motivation and showing little awareness of the possibility of indirect discrimination or the way in which race, immigration and nationality intersect
- while the department itself has a large BAME workforce at junior levels it does not at senior levels. There does not appear to be sufficient awareness of the potential for there to be hidden, potentially indirectly discriminatory barriers to career progression. The lack of awareness was surprising as the Supreme Court considered this issue in the context of the Home Office in *Essop v Home Office (UK Border Agency)* [2017] UKSC 27. In addition, there has been low take up of internal equalities and unconscious bias training
- Immigration Enforcement activity during this time included the racially insensitive “Go home or face arrest” advertising billboards and “go home” vans

I do not make a finding of indirect discrimination in part because my remit is not to conduct a comprehensive analysis of potential “objective justification”,⁵ and I did not operate a “court-like” process (although the evidence I have reviewed does not persuade me that the department’s failings, which put the Windrush generation to a particular disadvantage are justified). Nevertheless, I have concluded that race clearly played a part in what occurred,

INTRODUCTION

that some of the failings would be indicators of indirect discrimination if the department was not capable of establishing objective justification and that the department should therefore consider whether such justification exists and be alive to the risk of indirect discrimination. In relation to institutional racism, while I have not found on the evidence I have reviewed that the organisational failings within the department satisfy the Macpherson definition in full, I nonetheless have serious concerns that the factors that I identified demonstrate an institutional ignorance and thoughtlessness towards the issue of race and the history of the Windrush generation. These aspects were among those included in the elements of the definition of institutional racism considered in the Macpherson Inquiry. The department has failed to grasp that decisions in the arena of immigration policy and operations are more likely to impact on individuals and the families of individuals who are BAME, who were not born in the UK, or who do not have British national origins or white British ethnic origins. I discuss this further in part 2.

Why were these not identified sooner?

As set out in parts 1 and 2, the reasons these issues were not identified sooner stem from a combination of a cultural resistance to hearing a contrary view to the department's own, a lack of appropriate monitoring and record keeping processes and a lack of understanding of the history of those who entered the UK from the Caribbean between 1948 and 1973 in conjunction with the legislative landscape.

The department's corrective measures and their impact

Some progress has been made since the scandal first emerged and the department has been working hard to address some of the causative factors I have identified. However, there is a large amount of work still to do, the most important and difficult of which is likely to be the widespread cultural changes which will be necessary to avoid a similar scandal happening in future.

The lessons learned

There are many lessons for the department to learn from Windrush which are set out in full in part 4 alongside my recommendations. Ministers and senior officials must provide staff with a clear understanding of what effective

public administration looks like by establishing an organisational culture and professional development framework that values the department's staff and the communities it serves. Anything else risks not only exposing the department, its staff and leaders to further reputational damage, and harm to individuals and communities; it also risks further undermining public confidence.

The recommendations

My recommendations cover how the department interacts with the communities it serves, with its own people and with ministers and government. They appear here, and in part 4 of the report alongside the review's full findings.

The department and the communities it serves, including the Windrush generation

This first set of recommendations aims to make sure the government and the Home Office in particular fully appreciate and accept what went wrong, the scale of the injustice and its impact, and their own failings. Unless this happens, the risk remains that they will repeat their mistakes. These recommendations also focus on maintaining and extending the help currently in place for the people the scandal affected, including for nationalities other than Caribbean countries. With these measures, I urge the government and Home Office to:

- go further to right the wrongs
- look beyond the Caribbean
- tell the stories of empire, Windrush and their legacy
- assess and limit the impact of the hostile environment on the Windrush generation
- engage meaningfully with stakeholders and communities to develop, implement and evaluate policy
- better understand and provide internal training on the public sector equality duty (PSED) and its intersection with immigration and nationality law

Go further to right the wrongs

Recommendation 1 – Ministers on behalf of the department should admit that serious harm was inflicted on people who are British and provide an unqualified apology to those affected and to the wider black African-Caribbean community as soon as possible. The sincerity of this apology will be determined by how far the Home Office demonstrates a commitment to learn from its mistakes by making fundamental changes to its culture and way of working, that are both systemic and sustainable.

Recommendation 2 – The department should publish a comprehensive improvement plan within six months of this report, which takes account of all its recommendations, on the assumption that I will return to review the progress made in approximately 18 months' time.

Recommendation 3 – In consultation with those affected, and building on the engagement and outreach that has already taken place, the department should run a programme of reconciliation events with members of the Windrush generation. These would enable people who have been affected to articulate the impact of the scandal on their lives, in the presence of trained facilitators and/or specialist services and senior Home Office staff and ministers so that they can listen and reflect on their stories. Where necessary, the department would agree to work with other departments to identify follow-up support, in addition to financial compensation.

Recommendation 4 – The Home Secretary should continue the Windrush Scheme and not disband it without first agreeing a set of clear criteria. It should carry on its outreach work, building on the consultation events and other efforts it has made to sustain the relationships it has developed with civil society and community representatives. This will encourage people to resolve their situation, while recognising that, for some, a great deal of effort will be required to build trust.

Look beyond the Caribbean

Recommendation 5 – The department should accept and implement the National Audit Office's recommendation that, "The department should be more proactive in identifying people affected and put right any detriment detected. It should consider reviewing data on other Commonwealth cases as well as Caribbean nations", or such agreed variation to the recommendation as is acceptable to the National Audit Office. In doing this work, the department should also reassure itself that no-one from the Windrush generation has been wrongly caught up in the enforcement of laws intended to apply to foreign offenders. The department should also take steps to publicly reassure the Windrush generation that this is the case.

Tell the stories of empire, Windrush and their legacy

Recommendation 6 – a) The Home Office should devise, implement and review a comprehensive learning and development programme which makes sure all its existing and new staff learn about the history of the UK and its relationship with the rest of the world, including Britain's colonial history, the history of inward and outward migration and the history of black Britons. This programme should be developed in partnership with academic experts in historical migration and should include the findings of this review, and its ethnographic research, to understand the impact of the department's decisions; b) publish an annual return confirming how many staff, managers and senior civil servants have completed the programme.

Assess and limit the impact of the hostile environment on the Windrush generation

Recommendation 7 – The Home Secretary should commission officials to undertake a full review and evaluation of the hostile/compliant environment policy and measures – individually and cumulatively. This should include assessing whether they are effective and proportionate in meeting their stated aim, given the risks inherent in the policy set out in this report, and its impact on British citizens and migrants with status, with reference to equality law and particularly the public sector equality duty. This review must be carried out scrupulously, designed in partnership with external experts and published in a timely way.

INTRODUCTION

Engage meaningfully with stakeholders and communities

Recommendation 8 – The Home Office should take steps to understand the groups and communities that its policies affect through improved engagement, social research, and by involving service users in designing its services. In doing this, ministers should make clear that they expect officials to seek out a diverse range of voices and prioritise community-focused policy by engaging with communities, civil society and the public. The Windrush volunteer programme should provide a model to develop how the department engages with communities in future. The same applies to how it involves its staff in feeding back their information and knowledge from this engagement to improve policy and the service to the public.

Recommendation 9 – The Home Secretary should introduce a Migrants' Commissioner responsible for speaking up for migrants and those affected by the system directly or indirectly. The commissioner would have a responsibility to engage with migrants and communities, and be an advocate for individuals as a means of identifying any systemic concerns and working with the government and the Independent Chief Inspector of Borders and Immigration (ICIBI) to address them.

Recommendation 10 – The government should review the remit and role of the ICIBI, to include consideration of giving the ICIBI more powers with regard to publishing reports. Ministers should have a duty to publish clearly articulated and justified reasons when they do not agree to implement ICIBI recommendations. The ICIBI should work closely with the Migrants' Commissioner to make sure that systemic issues highlighted by the commissioner inform the inspectorate's programme of work.

Understand the public sector equality duty and immigration and nationality law

Recommendation 11 – The department should re-educate itself fully about the current reach and effect of immigration and nationality law, and take steps to maintain its institutional memory. It should do this by making sure its staff understand the history of immigration legislation and build expertise in the department, and by carrying out historical research when considering new legislation.

Recommendation 12 – The department should embark on a structured programme of training and development for all immigration and policy officials and senior civil servants in relation to the Equality Act 2010 and the department's public sector equality duty (PSED) and obligations under the Human Rights Act 1998. Every year, the department should publish details of training courses attended, and how many people have completed them.

Recommendation 13 – Ministers should ensure that all policies and proposals for legislation on immigration and nationality are subjected to rigorous impact assessments in line with Treasury guidelines. Officials should avoid putting forward options on the binary "do this or do nothing" basis, but instead should consider a range of options. The assessments must always consider whether there is a risk of an adverse impact on racial groups who are legitimately in the country. And consultation on these effects should be meaningful, offering informed proposals and openly seeking advice and challenge.

The department and its people

This group of recommendations aims to help the department clarify what it stands for and seeks to do. This will help it balance priorities, such as public protection and law enforcement, that can at times be in conflict. These recommendations also aim to make the department's culture less inward-looking, make its processes less complex for both its staff and the public, and to make it better at giving support to people who need it most.

By following these recommendations, the department will:

- clarify the department's purpose, mission and values
- develop a learning culture
- improve operational practice, decision-making and help for people at risk
- reduce the complexity of immigration and nationality law, immigration rules and guidance

Clarify the department's purpose, mission and values

Recommendation 14 – The Home Secretary should a) set a clear purpose, mission and values statement which has at its heart fairness, humanity, openness, diversity and inclusion. The mission and values statement should be published and based on meaningful consultation with staff and the public, and be accompanied by a plan for ensuring they underpin everyday practice in the department. The department should set its mission and values statement in consultation with its staff, networks and other representative bodies, the public, communities and civil society, and publish it online; b) translate its purpose, mission and values into clear expectations for leadership behaviours at all levels, from senior officials to junior staff. It should make sure they emphasise the importance of open engagement and collaboration, as well as valuing diversity and inclusion, both externally and internally. The performance objectives of leaders at all levels should reflect these behaviours, so that they are accountable for demonstrating them every day.

Develop a learning culture

Recommendation 15 – a) The Home Office should devise a programme of major cultural change for the whole department and all staff, aimed at encouraging the workforce and networks to contribute to the values and purpose of the organisation and how it will turn them into reality. It should also assure itself as to the efficacy of its organisational design. Outputs could include independently chaired focus groups to let staff of all grades and areas of work (particularly under-represented groups) describe their lived experience, including working within the department and suggest what needs to change in terms of the department's mission, values and culture; b) The Permanent Secretary and Second Permanent Secretary should lead the process, with the support of the senior leadership, who should commit to agreeing a programme with senior-level accountability, including clear actions, objectives and timescales; c) The workforce and staff networks should help devise the success criteria for the programme and a senior member of the leadership team should be the sponsor for the programme; d) The department should invest in, develop and roll out a leadership development programme for all senior, middle and frontline managers where leadership behaviours and values will be made clear.

Recommendation 16 – The Home Office should establish a central repository for collating, sharing and overseeing responses and activity resulting from external and internal reports and recommendations, and adverse case decisions. This will make sure lessons and improvements are disseminated across the organisation and inform policy-making and operational practice.

Improve operational practice, decision-making and help for people at risk

Recommendation 17 – The Home Office should develop a set of ethical standards and an ethical decision-making model, built on the Civil Service Code and principles of fairness, rigour and humanity, that BICS staff at all levels understand, and are accountable for upholding. The focus should be on getting the decision right first time. The ethical framework should be a public document and available on the department's website. A system for monitoring compliance with the ethical standard should be built into the Performance Development Review process.

Recommendation 18 – The Home Office should establish more and clearer guidance on the burden and standard of proof particularly for the information of applicants, indicating more clearly than previously how it operates and what the practical requirements are upon them for different application routes. The decision-making framework should include at least guidelines on when the burden of proof lies on the applicant, what standard of proof applies, the parameters for using discretion and when to provide supervision or ask for a second opinion. This should produce more transparent and more consistent decision-making.

Recommendation 19 – a) UK Visas and Immigration should ensure that where appropriate it builds in criteria for increasing direct contact with applicants, including frequency of contact, performance standards and monitoring arrangements; revises the criteria and process for assessing cases involving vulnerable applicants; and reviews its service standards and where appropriate provides new standards based on qualitative as well as quantitative measures; UKVI should ensure it revises its assurance strategy; disseminates the learning from recent Operational Assurance Security Unit (OASU) or internal audit reviews; identifies criteria and a commissioning model for OASU or internal audit reviews; contains clear mechanisms for reporting back casework

INTRODUCTION

issues to frontline staff, and criteria for supervision, including recording outcomes and learning for the wider organisation; b) the department should review the UK Visas and Immigration assurance strategy periodically to make sure it is operating effectively, and the reviews should consult practitioners as well as specialist staff to make sure the strategy changes if it needs to.

Recommendation 20 – The Home Secretary should commission an urgent review of the BICS complaints procedure. Options could include establishing an Independent Case Examiner as a mechanism for immigration and nationality applicants to have their complaints reviewed independently of the department.

Reduce the complexity of immigration and nationality law, immigration rules and guidance

Recommendation 21 – Building on the Law Commission's review of the Immigration Rules the Home Secretary should request that the Law Commission extend the remit of its simplification programme to include work to consolidate statute law. This will make sure the law is much more accessible for the public, enforcement officers, caseworkers, advisers, judges and Home Office policy makers.

The department's role in wider government

My third set of recommendations focuses on the internal systems that prevented the Home Office anticipating the scandal sooner, and stopped it anticipating the risks. The operational risks the department monitors need to include service delivery and protecting the public, as well as reputational damage to the department. And better-quality data, management information and performance measurement would have reduced these risks.

This group of recommendations also underlines the curiosity and constructive challenge that should characterise the relationship between ministers and officials.

Look for risks and listen to early warning signs

Recommendation 22 – The Home Office should invest in improving data quality, management information and performance measures which focus on results as well as throughput. Leaders in the department should promote the best use of this data and improve the capability to anticipate, monitor and identify trends, as well as collate casework data which links performance data to Parliamentary questions, complaints and other information, including feedback from external agencies, departments and the public (with the facility to escalate local issues). The Home Office should also invest in improving its knowledge management and record keeping.

Recommendation 23 – The department should revise and clarify its risk management framework, where officials and ministers consider potential risks to the public, as well as reputational and delivery risks.

Emphasise the role of ministers and senior officials

Recommendation 24 – The department should invest in training for the Senior Civil Service to ensure appropriate emphasis on the roles and responsibilities of officials to provide candid, comprehensive and timely advice to ministers.

Recommendation 25 – All policy submissions and advice to ministers should have mandatory sections on: a) risks to vulnerable individuals and groups and b) equalities, requiring officials to consider the effect of their proposals in these terms. The department should review the effectiveness of its current processes and criteria for escalating significant policy submissions for approval by the Permanent Secretary or Second Permanent Secretary. Where necessary new processes and criteria should be established.

Recommendation 26 – The department should put in place processes to support the use of the electronic archive to record all departmental submissions, minutes, and decisions centrally so there is a clear audit trail of policy deliberations and decisions. The department should ensure staff are provided with guidance on the knowledge and information management principles in respect of their work with/support for ministers. This archive should enable users to search for key terms, dates and collections on particular policy risks or issues.

Race

Recommendation 27 – The department should establish an overarching strategic race advisory board, chaired by the Permanent Secretary, with external experts including in relation to immigration and representation from The Network⁶ to inform policy-making and improve organisational practice.

Recommendation 28 – Subject to relevant statutory provisions, such as s10 Constitutional Reform and Governance Act 2010, the department should revise its Inclusive by Instinct diversity and inclusion strategy to include its aspirations for senior-level BAME representation and a detailed plan for achieving them. Action should form part of a coherent package with ambitious success measures and senior-level ownership and accountability. The department should publish comprehensive annual workforce data, so it can monitor progress.

Recommendation 29 – The department should:

- a) review its diversity and inclusion and unconscious bias awareness training (over and above the mandatory civil service online courses) to make sure it is consistent with achieving the objectives of the Inclusive by Instinct strategy and that it is designed to develop a full understanding of diversity and inclusion principles, and the principles of good community relations and public service
- b) produce a training needs analysis and comprehensive diversity and inclusion training plan for all staff
- c) provide refresher training to keep all current and new staff up to date
- d) involve other organisations, or experts in the field of diversity and inclusion in its design and delivery
- e) set and then publish standards in terms of its diversity and inclusion training aims and objectives
- f) monitor learning and development regularly to test implementation and whether it is achieving its strategic objectives
- g) carry out regular “pulse” surveys to test the effectiveness of the implementation of these measures

Recommendation 30 – the Home Office should regularly review all successful employment tribunal claims that relate to race discrimination, harassment or victimisation, and in particular a summary of every employment tribunal judgment finding against the Home Office of race discrimination should be emailed to all SCS within 42 days of the decision being sent by the tribunal together with a note stating whether an appeal has been instituted. The same arrangements should be made for Employment Appeal Tribunal, High Court, Court of Appeal or Supreme Court judgments within 28 days. It should use any learning to improve staff and leadership training, and to feed back to the senior civil service.

I hope these recommendations will prompt both swift action and deep reflection, leading to lasting systemic and cultural change.

Thank you

After over a year’s work, there are many people to thank. A full list appears in [Annex F](#), though here I would like to single out: the Independent Advisory Group, who gave their expertise and counsel; the review team, who tirelessly sifted thousands of documents and files, interviewed officials and, with me, pieced together the picture presented here; Home Office staff who volunteered to participate in the review; the officials, former ministers and other politicians we formally interviewed; the organisations who answered our call for evidence and took part in round table discussions; and, of course, the members of the Windrush generation, and their families, who shared their experiences with us.

CASE STUDY

GLORIA,

aged 59, travelled to the UK from Saint Kitts on her own passport when she was 10. Her mother had been working in the UK but died shortly after Gloria arrived and her elder sister brought her up. During this time social services were involved with the family because of their young ages and Gloria believes her passport was taken by them and not replaced. Before the immigration troubles Gloria worked as a caseworker for people with learning difficulties and mental health issues. In her family she was the breadwinner and her husband looked after the kids following an accident that affected his ability to work.

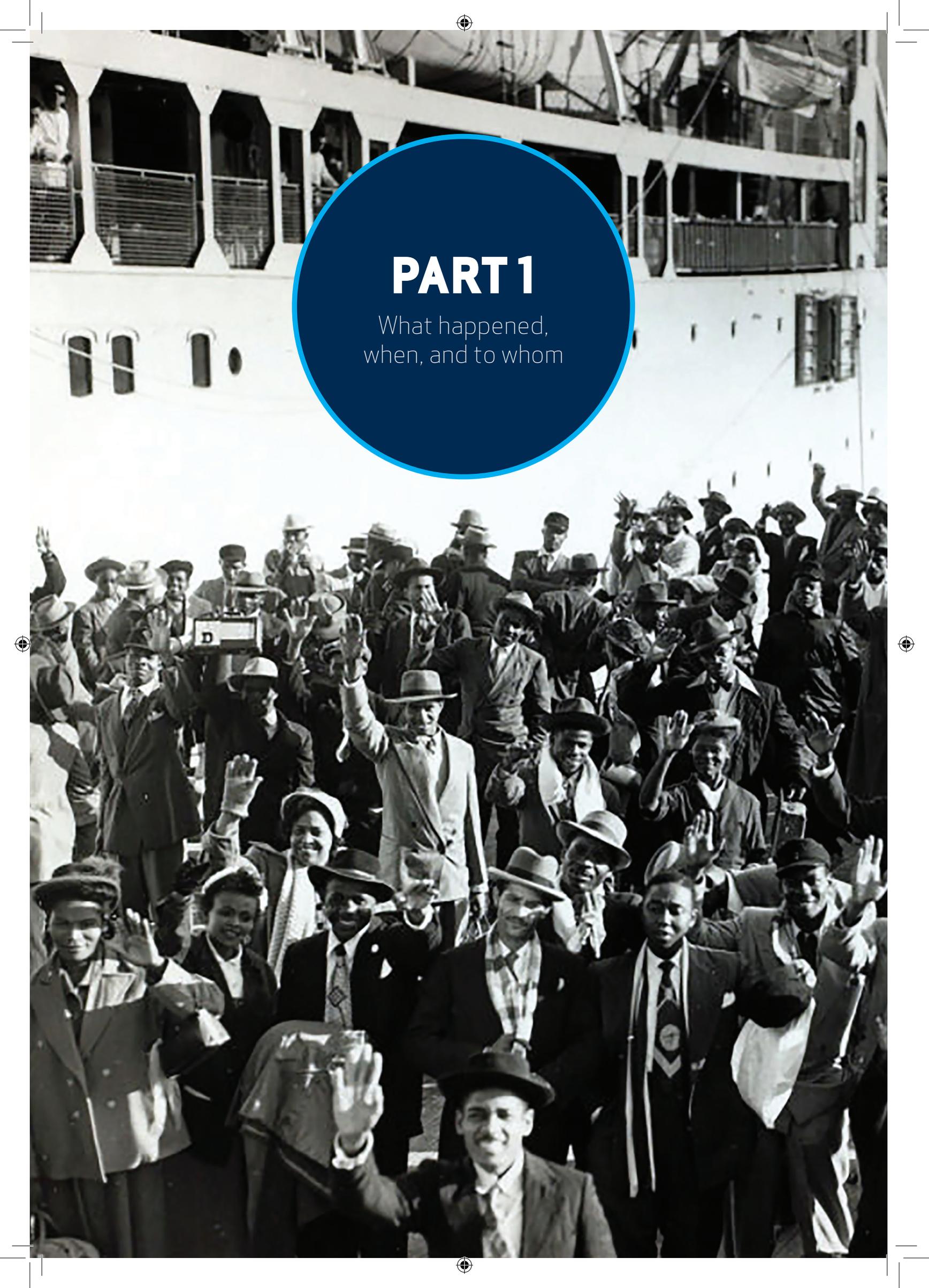
Gloria's Windrush experience started in 2011 when she tried to get a CRB check renewal for the company she had worked at for several years. She failed the check as she did not have a passport, which resulted in her losing her job. Gloria took the company to a tribunal but lost as the judge said the onus was on her to prove her status. Gloria contacted her MP who wrote to UK Visas and Immigration on her behalf to plead her case, and the Department for Work and Pensions wrote to the immigration department on her behalf, but to no avail. Her struggle to establish her identity took seven years. When, following the publicity related to the scandal, she finally went to see the Taskforce, she was astounded that everything was resolved in one hour. She was not required

to provide any additional documentation to obtain confirmation of her settled status.

Since losing her job and the tribunal case, and subsequently not being able to work, Gloria has visited her doctor on a number of occasions with stress-related problems and depression. As she had an NI number, she was able to claim unemployment benefits, but this meant a drastic reduction in income. Gloria has had to pawn rings to pay for items and has had to accept financial help from members of her family. Her daughter worked instead of going to university to help her parents pay their mortgage, but they nearly lost their house a number of times. Today Gloria mostly stays at home and watches TV. She says she smokes a lot more and had developed an unhealthy relationship with alcohol during the years that her immigration status was in question.

7 year struggle to prove her identity resolved within 1 hour by Taskforce, without additional documentation





PART 1

What happened,
when, and to whom

PART 1: What happened, when, and to whom

1.1 About part 1

In this part of the report, we define the “Windrush scandal”, and show who it affected, how and when. Alongside this, we share the stories of people caught up in the scandal. We also give an overview of the Windrush generation’s experience in the UK from the immediate post-war years onwards, emphasising the important contribution they’ve made to this country, to highlight the depth of the injustices that some of that generation faced. We then go on to identify the warning signs that started to emerge as long as 10 years before the scandal broke, including the point when the Home Office realised there was a problem.

Finally, we describe the events leading up to the scandal unfolding in the media and in the public’s consciousness, to the point when it became a political crisis in April 2018. By providing an account of what happened, and to whom, we set the scene for a detailed consideration of the reasons why it happened, and why it took so long for the government to do something about it.

1.2 Defining the scandal

First came headlines:

FIASCO THAT SHAMES BRITAIN

Daily Mail, 16 April 2018

Theresa May branded a “disgrace” over threat to Windrush immigrants who’ve been in Britain 50 years

Mirror, 16 April 2018

Amber Rudd “sorry” for appalling treatment of Windrush-era citizens

Guardian, 16 April 2018

Amber Rudd apologises for “appalling” treatment of Windrush generation as row threatens to overshadow Commonwealth meeting

Telegraph, 17 April 2018

The press described the treatment of those who had come from the Caribbean (many as “child migrants”) as “inhuman and cruel persecution” (Mirror 18 April 2018), while the Home Secretary expressed her deep regret.⁷

Coverage like this shocked the nation and generated public criticism of the government’s handling of the Windrush generation’s right to live in the UK.

Then an admission: Immigration Minister Caroline Nokes said some migrants from the Caribbean may have been removed – 50 years after their arrival in Britain – and acknowledged that, “We have made some mistakes, which we cannot continue to make.”⁸ Labour MP David Lammy called it a “day of national shame”, and said the government were trying to make a “hostile environment” for migrants.⁹

Then an apology: Home Secretary Amber Rudd apologised for the “appalling” treatment of Windrush citizens by her own department, which “has become too concerned with policy and strategy and sometimes loses sight of the individual”.¹⁰

And an announcement: Amber Rudd announced the Home Office would waive application fees for people affected and the establishment of a taskforce to give them urgent help to formalise their legal status.¹¹

Then a resignation: Amber Rudd stood down as Home Secretary on 29 April 2018, when it became clear there were immigration enforcement targets she said she should have been aware of.

Then a new appointment: Sajid Javid was appointed as Home Secretary on 29 April. He announced the Windrush Lessons Learned Review on 2 May and named me (Wendy Williams) as the Independent Adviser on 22 June.

What has been referred to as the “Windrush scandal” emerged between late 2017 and mid-2018. A succession of reports appeared in national media about people forced into crisis because the government didn’t accept their legal right to live in the UK.

They were from a group of British people who held what became CUKC (citizens of the UK and Colonies) citizenship, and their children, who came to the UK between 1948 and 1973, mostly from Caribbean countries. This group came to be known collectively as the Windrush generation, after the ship HMT Empire Windrush. It brought 1,027 official passengers, of which 802 stated their last country of residence was in the Caribbean, to the UK on 22 June 1948 on a journey that has come to symbolise post-war Caribbean migration to the UK at the end of the empire. They are a group who can be defined as sharing the protected characteristic of race (national origin, ethnicity, nationality and colour; the majority are black).

Although an Act of Parliament from 1971 entitled people from the Commonwealth who arrived before 1973 to the “right of abode” or “deemed leave” to remain in the UK, it hadn’t automatically given them documents to prove it. Nor had the Home Office consistently kept records confirming their status. So, without making a further application and paying a fee, they had no way to show the UK was their rightful home even though, in most cases, they’d known no other.

“The people caught up in the scandal felt the force of immigration enforcement measures”

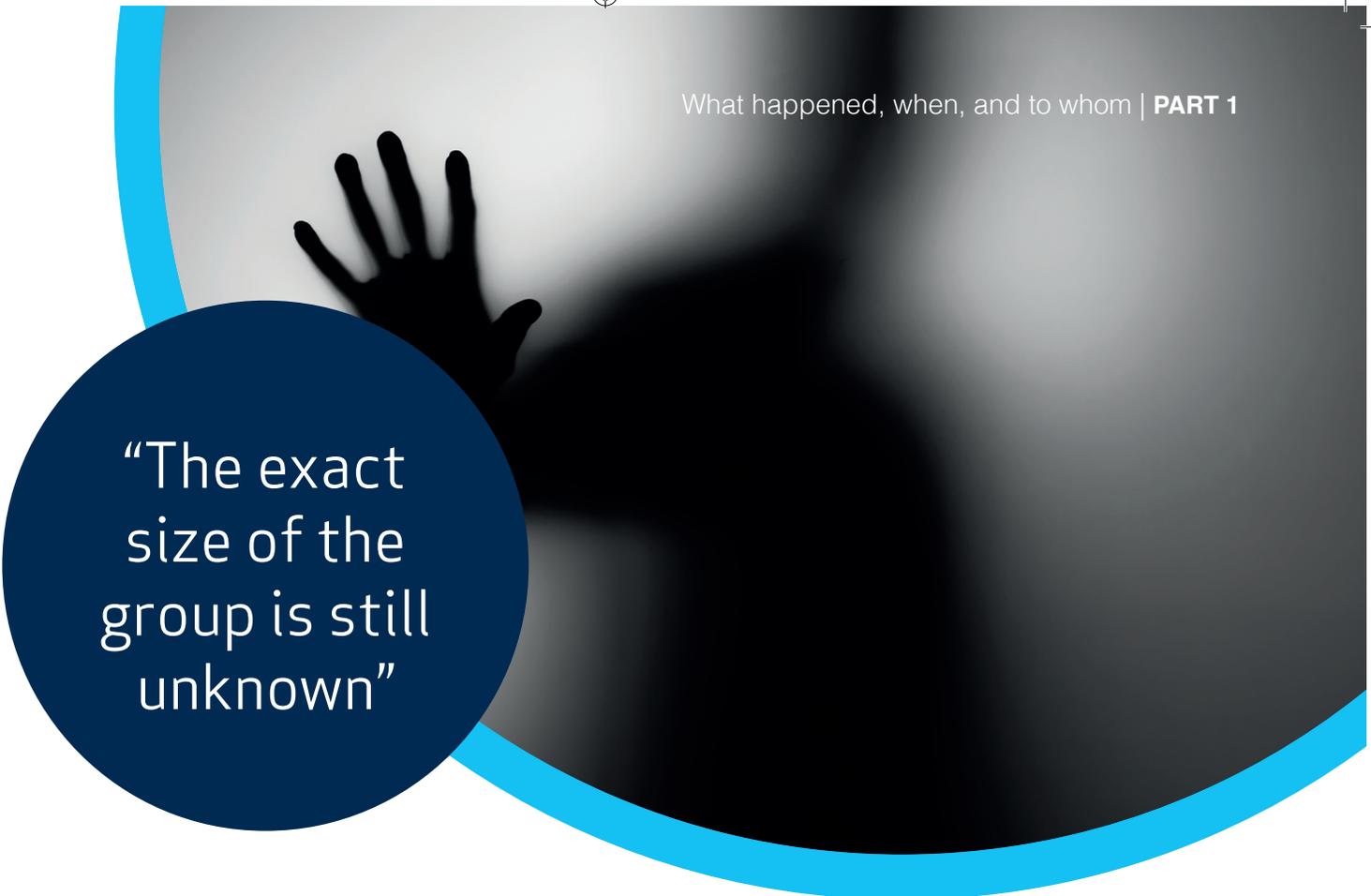
As a result, the people caught up in the scandal felt the force of immigration enforcement measures including the “hostile environment” (later called the “compliant environment”). This is a set of measures, introduced by different governments, to discourage migrants from entering the UK illegally, and encourage those already in the country without the required status to leave, by cutting off access to essentials like work, driving licences, housing and healthcare. The measures also target the employers and landlords who employ or rent accommodation to illegal migrants.

1.3 Who was affected, and how

In 2018 and 2019, the Home Office set out to review the cases of 11,800 people detained or removed from the UK. It looked at the cases of around 2,000 Caribbean nationals to assess whether they’d been in the UK before 1973 and been caught up in the compliant environment. It identified 164 people in the country before 1973 who’d either been detained or removed – or both – since 2002.¹² And it estimated it was most likely to have acted wrongfully in 18 of these cases by not recognising their right to be in the UK. Of these, 11 people left the country themselves after receiving enforcement letters, 9 after receiving a notice of refusal from the Home Office, while 2 were recorded as being removed as their status was misunderstood. Seven were held in immigration enforcement centres or police stations and later released.

The review was given full access to the Home Office case files of these 164 people and we discuss the findings later, focusing particularly on the quality of decision-making (see [Annex G](#) for a detailed breakdown of the 164). All these people were born in former British colonies in the Caribbean and had settled status. The majority (92) were from Jamaica, and most came to Britain in the 1950s and 1960s. Just over half (52%) were male. The review did not interview the individual case workers or decision makers.

These 164 individuals who were detained or removed (or both) are the cases that the department initially focused on. But they are without doubt part of a much larger group who were, or could have been, tangled up in measures intended to control illegal migration. We know, for example, that at the time of writing 8,124 people have been granted citizenship or had their



“The exact size of the group is still unknown”

settled status documented through the Windrush Taskforce.¹³ And the Home Office has identified 55 people from the Windrush generation who have been wrongly subjected to proactive compliant environment sanctions (where the Home Office has shared data with other departments).

These are the details as we currently understand them. Gaps in Home Office data and the department’s difficulties in contacting some of those affected mean the exact size of the group is still unknown. There is an unknown number of people who might have been wrongly subjected to other compliant environment measures, an unknown number of people who haven’t contacted the Taskforce and could be affected in the future and an unknown number of family and friends who the scandal has also touched.

The challenge of estimating the true number of people who might have been affected was noted by the National Audit Office (NAO) in its report into Windrush.¹⁴ The NAO refers to analysis conducted by the Home Office in 2014, which estimated that there could be 500,000 people in the UK who might struggle to document their status. The NAO reports that the Home Office expected this number to decline over time as people took up Biometric Residence Permits (BRPs), which it started to issue in 2008, but for it to remain in the hundreds of thousands well into 2019. Given that the Home Office never formally or systematically

issued documentation such as BRPs to this group, it is not possible to estimate the number who remain undocumented, and therefore the full scale of those who have been affected.

But what of the people behind the numbers?

The scandal has affected hundreds, and possibly thousands, of people, directly or indirectly, turning lives upside down and doing sometimes irreparable damage. They were essentially denied their rights: the right to live and work in the UK, to receive healthcare, to have a pension, claim state benefits and to re-enter the UK. At its most extreme, they were deprived of their liberty and ability to live in the UK, splitting families.¹⁵

Ms A, a 61-year-old grandmother who came to the UK as a 12-year-old in 1968, was told in 2015 that there was no record of her arrival or indefinite leave to remain. Just over two years later, she was held in a detention centre for 28 days before being taken to the immigration removal centre at Heathrow. Only the intervention of her MP and a charity stopped her being removed to Jamaica. This was despite her being able to show tax and National Insurance payments going back 34 years, most if not all of them working in the House of Commons.¹⁶

Mr A spent two spells totalling around five weeks in immigration detention centres. In December 2017 he was scheduled to be removed to Jamaica, a country the now 61-year-old grandfather hadn't seen for 52 years. In 2015, he'd applied for leave to remain but, despite producing evidence of being in the country for 40 years, the Home Office refused his application in December of that year, and told him he could no longer work in the UK. Because of problems with establishing his status, he lost his job as a decorator in 2015 and couldn't work for nearly three years. The struggle to prove his legal status has left him and his family heavily in debt, as well as counting a heavy emotional and psychological cost.¹⁷

Mr B, who'd been in the UK since 1968 and worked as a lorry driver for 40 years, lost his job in 2014 when he couldn't produce the photographic driving licence his employer had asked for. He needed a UK passport but couldn't get one despite providing his children's papers, pension records and wage slips. After losing his home, he had to live in a factory unit. Four years without earnings have forced him to access his pension early. "I'm weak. They've battered me," he told us.¹⁸

Ms B came to the UK in August 1966. In November 2014, she applied for no time limit (NTL) indefinite leave to remain, but in April 2015 was refused for not having enough evidence to show she'd lived in

the UK continuously. The Home Office shared her details with the Department for Work and Pensions (DWP), HM Revenue and Customs (HMRC) and the Driver and Vehicle Licensing Agency (DVLA). In August 2015, HMRC told her employers to make a right to work check. We don't know what action they took. In September 2015, Ms B applied again for NTL indefinite leave to remain, with the same result as before, and for the same reason. In August 2018, she applied for both NTL indefinite leave to remain and naturalisation. Within nine days, she was granted British citizenship.



Gloria, a married mother of three, came to the UK from St Kitts on her own passport as a 10-year-old. Her mother died shortly after Gloria's arrival and she was brought up by her older sister. During this time social services were involved with the family due to their young ages and Gloria believes her passport was taken from them at this time and not replaced. She worked as a care worker for people with learning difficulties and mental health issues. In 2011, she lost her job when her application to renew her criminal record check failed because she didn't have a British passport. Despite letters from her MP and the Department for Work and Pensions, it took seven years for Gloria to establish her identity. When she went to the Windrush Taskforce, she was astounded when everything was sorted out within an hour. She wasn't asked for any more documents to prove her status. Now 59, Gloria has suffered from stress and can't work. She has claimed benefits, but has come close to losing her home and relies on family handouts. Her daughter interrupted her university course to work to help pay Gloria's mortgage.



Joycelyn, aged 58, lost her passport, and because she didn't have the documents to get another she had to apply for leave to remain in the UK every

two years. This was despite being in the country since the age of six. She struggled to find work because employers weren't sure about her status. Then she saw posters urging people to accept voluntary removal. Not wanting to be a burden on relatives, and unaware of her rights, she did as the posters said and left for Grenada. Living in a women's refuge, and missing home, she became depressed. Joycelyn's brother contacted the Windrush Taskforce, who called her to say she could come back to the UK. Now, she lives in sheltered accommodation but can't afford to furnish it, or apply for a passport, though support from the Windrush hardship fund has paid for a fridge and cooker. She's applied for jobs, but staff at the Job Centre don't understand her status. Overall, she says she's lost trust in everyone.



Veronica blamed herself when her dad Nathaniel couldn't come back to the UK from Jamaica in 2001. They'd been on holiday, something Nathaniel had done in 1985 without any problems using his "black book" Citizen of the UK and Colonies passport.

Coming to the UK in the mid-50s, he'd worked for British Steel and British Sugar. He never applied for citizenship because he felt he'd been invited to the UK and was a British citizen already. But when he was prevented from coming back, he and Veronica didn't contest it; she thought perhaps it was because she'd overlooked something. Veronica took a career break to look after her father, missing out on income and promotion opportunities. She visited him until 2010, when he died of prostate cancer, for which he couldn't afford treatment.

Vernon went to Jamaica to visit the son he'd had there in the late 1990s. He stayed for just over two years. Although he didn't know it, that made the "indefinite leave to remain" stamp in his Jamaican passport worthless. He was refused a



UK visa, though he had three children here. In the UK since the age of six, Vernon had been going to Jamaica since his father moved back in the early 1990s and had never obtained British naturalisation. It was cheaper just to get a visa each time. But now he was stranded. A former amateur and professional boxer, he started coaching. But as money slowly ran out, he lived in his aunt's chicken coop and a disused shack, relying on small amounts his sister sent from the UK. Eventually, he contacted David Lammy MP, who took up his case. After the Guardian ran his story, the British Embassy got in touch with an airline ticket for his return. Now 63, he'd spent 13 years in Jamaica, destitute.

Pauline came to the UK as a 12-year-old in 1961, joining her mum and step-dad. She settled in Manchester, married, had seven children and qualified as a social worker. In 2005, she and her daughter went on a two-week holiday that became an 18-month nightmare. She was detained in Jamaica and refused re-entry to the UK. She'd always travelled on her Jamaican passport without any problems and never thought to apply for British citizenship, thinking of herself as British already. While in detention she nearly died after falling into a diabetic coma. She also lost her home and her livelihood.

An immigration solicitor helped her get back to the UK in 2007, after her family helped gather the documents she needed.



Ms C applied for no time limit (NTL) leave to remain in November 2012 but was refused because she hadn't included the fee. In June 2013, she applied again, saying she'd been in the UK over 41 years, but was refused the following February for not providing enough evidence. She applied for leave to remain on family/private life grounds in August 2014, but was refused three months later for the same reason. In June 2015, a council officer asked the Home Office for an immigration check on Ms C after getting data through the National Fraud Initiative. The Home Office said there was no evidence Ms B had status in the UK. The DWP suspended her pension credit claim, but lifted it when she gave evidence of how long she'd lived in the UK. In November 2015, another application for leave to remain on family/private life grounds was refused, this time because it didn't include a valid passport. Finally, in May 2018, she applied for NTL and was granted it later that month. The evidence included medical records from 1972 and DWP and HMRC records from 1971 to 2015.

Mr C came to the UK in 1966. Just over 30 years later, he applied for naturalisation, but was refused for not including the £150 fee. In June 2016, he applied again. This time the Home Office asked for more information to support an NTL biometric residence permit. He said his indefinite leave to remain was in the passport he'd arrived with as a six-year-old but since lost. The Home Office wrote three times in early 2017, asking Mr C for evidence of leave to remain, or proof he'd lived in the UK for 20 years. But a day after the first letter, they'd already shared his details with DWP, HMRC and DVLA. In May 2017, the Home Office told Mr C he was an illegal migrant, who could be removed. He started reporting to immigration officials, then in September handed over bank statements, school records, and employers' and HMRC letters to prove he had lived in the UK. In May 2018 the Home Office withdrew Mr C's illegal entry papers, granting him NTL in June.

Ms D spent over nine years attempting to prove her immigration status. She applied for NTL leave to remain in November 2007, but did not have the old Barbadian passport which she said showed her residency. Following a trip abroad she was given two-months' leave to enter. In 2012, Mrs D's local council checked her immigration status with the Home Office, who said her leave had expired in 2007. In 2012 Ms D's lawyers asked the Home Office to confirm her indefinite leave, sending old passports showing she'd come to the UK as a 12-year-old to join her mother and been classed as a returning resident after trips abroad. In August 2016, the Home Office told Ms D she had no valid leave and had to report to immigration officials, which she did not do. In January 2017, the Home Office told her she could be removed. Despite another letter from her lawyers, they shared her details with DWP, HMRC and DVLA. Only after her lawyers sent copies of her three UK-born children's birth certificates in March 2017 did the Home Office decide Ms D had indefinite leave to remain. Even after this, DWP stopped her benefits for six months. And HMRC told her to pay back over £4,000 in credits but reinstated them a month later.

These stories and many others, which are revisited throughout this report, make clear the depth and the scope of the injustice. People who had lived in the UK lawfully for decades were made to feel like criminals, made to question their identity, and in some cases, made destitute and separated from their family.

From 2014, cases started to emerge of members of the Windrush generation losing their right to benefits, healthcare or driving licences, rent homes or even access their bank accounts or pensions if they didn't have biometric residence permits or valid British passports.¹⁹

Some lost their jobs and livelihoods and, because of that, their homes. One man we spoke to, who had lived in the UK since 1972, lost his job with a local authority in 2011 after being told to prove his immigration status. He lost his job and was homeless for eight years. He told me the situation "broke" him. He stayed away from his children as he didn't want to be a burden, and his daughter told me she'd missed her dad.

As we've seen, others who'd visited relatives in the Caribbean were told they couldn't come back into the UK and faced destitution in countries they didn't recognise as their own or know how to navigate. Seventy were detained at the UK border, the majority for less than four hours, before being allowed to enter the country.

Their relatives have felt the knock-on effects. In some cases, the immediate families of those directly affected have been forced into hardship by the loss of income. Others have had to battle against institutions on their family members' behalf, support them financially or give them a roof over their heads.

Some couldn't establish their right to live in the UK because they'd arrived on their parents' passports, which were lost or discarded later. Others had been born after their parents arrived in the UK. When they took steps to establish their status, often presenting comprehensive paper trails, from school and GP records to tax and National Insurance documents, and even indefinite leave to remain stamps in passports, they still fell short of unduly onerous evidence requirements from government agencies. Several were told they "didn't exist".²⁰ One man had been to UK primary and secondary schools, registered with a GP and was given a National Insurance number on his 16th birthday. He had a driving licence and birth certificates for all five of his children. But whenever he contacted the Home Office, he was told there was "no trace" of him.²¹

Often, people's experiences left lasting mental scars. Gloria's seven-year battle to prove her status caused her so much trauma that at height of her stress she didn't recognise her own children.



For Windrush generation descendants, the results included not being able to get a passport and not being able to access further education or being denied the opportunity to take up university places.

The sense of injustice and betrayal felt by many of the people affected, and in our Caribbean population more widely, is all the stronger given the loyalty and affection that many felt for the Commonwealth, and all that the Windrush generation and their descendants have contributed to Britain. In the words of one man affected by the scandal: "People coming over here from the Caribbean and helping to build up the UK – to me, that's a brilliant idea. But, to come here, and then we're getting disrespected and told we're not British, is an insult."²²

As Paulette Wilson has said: "I don't feel British. I am British. I've been raised here, all I know is Britain."²³ Vernon feels exactly the same way. He told us: "Any way you take it, I'm British. Although I was born in Jamaica, but I was born under the British flag...I haven't been treated like a British citizen by the British Government."

1.4 The Windrush generation's experience

Rebuilding the mother country

After World War Two, Britain's infrastructure lay in ruins and the country needed labour to rebuild it and revive vital industries. The post-war Labour government was committed to creating a National Health Service (NHS) and reconstructing an effective public transport system. But in 1946, the British Cabinet Manpower Working Party estimated the hole in Britain's labour force at around 1.35 million.²⁴ Married women, and older people who'd put off retirement, were leaving jobs they'd held during the war. At the same time, in the late 1940s and 1950s, around 650,000 people left the UK for "old" Commonwealth countries such as Australia, New Zealand and Canada in search of a new life.²⁵



People from the Caribbean had arrived in Britain in small numbers in the years before the former troop ship HMT Empire Windrush brought 1,027 official passengers, of which 802 stated their last country of residence was in the Caribbean, to Tilbury on 22 June 1948. Although until 1952 only between 1,000 and 2,000 people per year would follow them, the event has come to be seen as the start of an era marked by many people migrating to and from the UK. In time, the ship gave its name to the Windrush generation – some 600,000 people from Commonwealth countries who arrived in the UK between the end of World War Two and 1973, and whose descendants made up the second, third and fourth generations to the present day.

This movement of people across the Commonwealth was part of wider encouraged migration to Britain from a range of countries outside of the Commonwealth. The open-door policy aimed to remedy post-war labour shortages, stabilise the Commonwealth system and present a liberal, progressive image of Britain. While there was migration from across the globe to Britain at this time, the review's task has been to focus on the particular experiences of those caught up in the Windrush scandal.

Searching for a new life

While people left Britain in the post-war years in search of a new life, this also motivated the people who arrived on the Windrush, and those who followed. "England lay before us, not as a place or a people, but as a promise and an expectation," said writer George Lamming, who came to Britain from Trinidad in 1950.²⁶ A sense of ambition also drove others: "Nursing was calling me, so I came to England to pursue the career I wanted so badly," a retired NHS nurse told the BBC.²⁷

In our interviews for this report, people wanted to share the stories of their own families in the wider context of the Windrush generation's collective experience. They talked extensively about how they and their families came to be in the UK in the first place and how those aboard the Windrush and others that came to the UK at that time felt they were answering a call from the "motherland" to help her in her time of need after World War Two. They volunteered and left their homes behind to perform their duty with a sense of optimism and excitement.



"Young men like my dad, he didn't just pick himself up one day and say oh, England sounds nice I'm gonna come – he felt it was his duty. He'd been invited here to come and contribute to the Commonwealth and build up the Mother Country"

Veronica



The 1948 British Nationality Act appeared to chime with these feelings, turning the implied contract of empire into a written one: until the rules changed in 1962, many Commonwealth citizens now had the right to live in Britain as citizens of the UK and colonies. With the empire still largely intact, this was a significant social and cultural status. Legally, therefore, these individuals weren't "aliens" and so were not subject to "immigration policy", at least until 1962. As such, their feelings of belonging to Britain weren't just a question of their identity or emotion, but of their legal status as citizens and of the institutions that shaped their cultural upbringing (i.e. the British state, then the British Empire).

Half the arrivals on the Windrush had been among the 10,000 Caribbean servicemen who had come to join the British forces in World War Two. Their experiences, too, strengthened the bonds with the mother country: "We were taught that we were British, and we accepted that without question," remembered one.²⁸

This sense of loyalty and belonging wasn't restricted to ex-service personnel, as George Lamming remembered: "There were adverts everywhere: 'Come to the Mother Country! The Mother Country Needs You!' That's how I learned the opportunity was here. I felt stronger loyalty towards England. There was more emphasis there than to your own island...It was really the mother country and being away from home wouldn't be that terrible because you would belong."²⁹

Although the decision to emigrate meant leaving close family and friends behind, many felt they were "'coming home', to join an imperial family to which they assumed they belonged".³⁰ They identified with Britain's struggle after the war, as they had done during it.³¹

Contributing to recovery

Manufacturing, construction, public transport and the fledgling were the sectors most in need. Men who arrived in the UK from the Caribbean in the 50s often accepted jobs that were beneath their skills and experience, like street cleaning or general labouring, or that involved shift work.³²

As the economy – and demand for skilled and unskilled labour – grew through the 1950s, employers started to recruit actively in the West Indies. London Transport recruited 3,500 Barbadians in the 10 years from 1956, paying their fares to the UK and recovering them from their wages.³³

The British Hotels and Restaurants Association also recruited in Barbados, and NHS managers went to parts of the Caribbean in search of nurses and other young women to train as nurses. By 1955, 16 British colonies had set up selection and recruitment agencies to create a supply of would-be nurses for a health service that would need overseas men and women to be able to meet demand for healthcare.³⁴

Adjusting to a new environment

The reality of life in a still-recovering post-war Britain and the need to adjust to a different environment were hard enough. The image of

Britain the new arrivals had been given often didn't match what they found. "When we came here, and I saw the houses in England, I was shocked. I'd seen better houses at home," remembered former nurse Myrtle Douglas, who came to Britain from Jamaica in 1960 as a 20-year-old.³⁵

Although Brixton's mayor "extended a particularly warm welcome to the new arrivals",³⁶ the host population wasn't always ready for them, or welcoming. "Being British, you feel like you are coming home, but when we came here it was like we dropped out of the sky. Nobody knew anything about us," said Alan Willmott, who had joined the Navy at 15 and came to live in Britain after the war.³⁷

Many described the weather and the welcome on arrival in the UK as cold, with our interviewees often on the receiving end of overt racism. Veronica recalls her parents sharing stories of being attacked by "teddy boys", while Pauline described being the only black girl in her school and people smiling at her with a "funny" kind of smile – one she didn't understand until she was adult, taking it to mean they didn't want her there.

Facing prejudice

For others too, there were discrimination and prejudice to endure, in both overt and less formal ways. A contemporary account tells us: "The new arrivals...faced a mixed reception from the resident white population, ranging from the welcoming to the openly hostile, with white landlords refusing to accept black tenants and white workers refusing to work alongside black colleagues."³⁸ In August 1948, barely two months after the Windrush docked, there was violence in Liverpool as 2,000 people attacked a hostel where black sailors lived. Police arrested the sailors inside, rather than the attackers.³⁹ Large-scale violence would flare again in 1958, with attacks on black communities in Nottingham and London's Notting Hill.⁴⁰

Racism and discrimination manifested themselves in various situations and walks of life in the 1950s and 60s, but most emphatically in housing, which provided an outlet for some of the most sensitive and politically explosive social issues associated

with what was then widely referred to as "coloured immigration". West Indian migrants became victims of Britain's chronic post-war housing shortages (investment in housing hadn't kept pace with population growth even before 1945). Yet they were quickly and unfairly blamed for the housing problem themselves. The competition for scarce but desirable social housing thus became part of society's racial division.

Everyday racism was a feature of life for many in other ways. Former nurse Jannett Creese said: "I found it extremely hard. When I was in my second year, as I was going to wash a patient, she said to me, 'take your black hands off me', and she said it with such venom that I just rushed to the toilet and cried."⁴¹



While anti-discrimination legislation of the 1960s and 1970s didn't quell racist attitudes, it did at least break down some of the formal barriers that had faced black people, for example in relation to employment, housing, justice and public services. Some, but not all. Informal discrimination was still common. In a typical example from 1973, staff at the Mecca Palais dance hall in Leicester refused Lorne Horsford entry, even though he was sober and had followed the dress code. The staff let his white girlfriend in. "All the members of staff refused to comment as to the reason why I was refused admission," said Lorne in his complaint to the Race Relations Board. Eventually, the case went to court in 1975, where the judge found that Mecca had breached the 1968 Race Relations Act. This was one of 366 cases the Board dealt with between 1968 and 1975.⁴²

Discrimination in its various forms would underline the sense of betrayal that the Windrush scandal served to highlight. For many, the scandal was just one instance in a long history of hostility towards them.

Negotiating identity

For many of the Windrush generation, their lives and education in the Caribbean had been so imbued with Britishness that they had taken their British status for granted. Quite comfortably, they felt simultaneously British and Jamaican or British and Trinidadian, for example. But arrival in Britain told them that regardless of how they saw themselves, they were seen by wider British society as "other"; as black and not British.

It became clear that for those arriving in the UK, particularly those from the "new" Commonwealth,⁴³ to establish an identity would involve the whole country reassessing "not only its own identity, and its history, but also what it meant to be British."⁴⁴

Jannett Creese, originally from St Vincent, described this journey, telling the BBC: "I'm a bit confused. When I left home I was a Vincentian. When I came here I was a West Indian. Then I was a Caribbean and now I'm an ethnic minority." Colleague Tryphena Anderson added: "I'm black British and that will do."⁴⁵

Another former nurse, Dorothea Turner, summed up her and her colleagues' experience: "Britain has given us what we didn't have, but we had to work very hard for it."⁴⁶

Their legacy, and that of others who answered the original call, is that today one fifth of the NHS workforce come from BAME backgrounds.⁴⁷

Enriching culture and society

Over the decades, the Windrush generation have defied many obstacles to make a life in the UK, contributing to its economy but also enriching its culture and daily life, shifting its social attitudes and helping to shape today's multi-racial Britain.

For some, the effort has been rewarded. Among the Windrush generation and their descendants, there have been pioneers across many fields. In 1948, Dick Turpin became the first black British boxing champion. In 1991, Sir Bill Morris became the first black general secretary of a British trade union. In 1987, Diane Abbott became the first black woman MP. In 1985, Wilfred Wood became the first black Church of England bishop. Jamaican-born Sam King, who served in the RAF in World War Two, came back on the Windrush and in 1983 became the first black mayor of the London borough of Southwark. In 1978, Viv Anderson became the first black footballer to play for England.

Others, too numerous to mention, have become loved and admired British national figures and less well-known individuals in the fields of arts, science, academia and the professions have made significant contributions to the nation's culture, history and infrastructure. And others have fought inequality. Thousands more people have contributed in less public ways, whether in public services, serving in the armed forces, business, charity or culture or simply by being part of communities as friends, neighbours and colleagues.

Reflecting on a mixed experience

Nevertheless, as the statistics from the government's Race Disparity Audit show, significant disparities in wealth, educational attainment, employment, housing and criminal justice outcomes persist to this day between black Caribbean Britons and white Britons. For example, black people are over three times as likely to be arrested than white people and over six times as likely to be stopped and searched. Black defendants at the Crown Court, particularly black men, are the most likely to be remanded in custody, and get longer-than-average custodial sentences.⁴⁸

"I don't feel
nothing anymore"

Joycelyn

The experience of black people in Britain over the last 70 years has been both positive and negative. There are more BAME MPs than ever,⁴⁹ and the proportion of BAME practising solicitors is similar to that in the working population.⁵⁰ School attainment is improving, along with the percentage of black people going to university.⁵¹ Black people staffed the emerging NHS, but some also emerged to lead healthcare institutions. Bernard Ribeiro was President of the Royal College of Surgeons until 2008 before going to the House of Lords. Beverly Malone was General Secretary of the Royal College of Nursing until 2007.

But the story of the Windrush scandal echoes these words from historian David Olusoga: "The word repeatedly used in the memoirs of the West Indian and African migrants who came to Britain in the post-war decades is 'disappointed'. They were disappointed that the nation they had been told was their 'mother country' treated them so badly, disappointed that skills and talents that the nation had found useful during the war years were disregarded in peace time, and that they were ushered into low status or menial jobs. They were deeply disappointed when they discovered how difficult it was to fulfil a basic human need and find somewhere to live... Many felt they had been lied to, not just by prospective employers... but by the British empire."⁵²

It's a sentiment those caught up in the Windrush scandal would be forgiven for sharing. Having confidently and proudly called themselves British, people we spoke to talked of now feeling "in limbo". Joycelyn told us about her old collection of poppies, memorial Oyster cards and strong sense of patriotism for the Royal Family. Since her experience, she has thrown out her collections and says she no longer feels at all patriotic.

1.5 Warning signs

While the scandal didn't fully emerge in the public consciousness until April 2018, our review has found there was a range of warning signs about the problem well before that. We found evidence that individual cases were coming to the attention of the Home Office well before the 2014 and 2016 Immigration Acts, with some predicting that long-term UK residents might struggle to prove or document their status and so could be affected by the measures in those Acts. There were also warning signs of the impact of these hostile environment measures after they came into force.

In this section, we describe these warning signs, which came from both within and outside the Home Office – in the order they emerged. Part 2 of the report looks at the reasons why the department acted, or failed to act, in the way it did, in response to these signs.

Early indicators

While most of the cases that we came across during the review involve people who were “caught up” in hostile environment measures, there's evidence that people were being affected by immigration policy before these measures were in place. As early as [January 2006](#), areas of the Home Office were aware of “a steady trickle of applications” from people who were in the UK on or before January 1973 on the basis of long residence, or as returning residents, or for No Time Limit. A Home Office “group instruction” from 2006 (reissued in 2010 and subsequent years) was clear about how such applications should be handled:

“In most cases this is their first after-entry application; and some may be well beyond retirement age (in their 80s in a couple of recent cases). Such applications should be treated sensitively, as there is a significant risk of adverse publicity if they are handled inappropriately or wrongly refused.

“Some of these applicants may have lived in the UK since World War 2 or longer. They may have difficulty in providing documentary evidence of their status on or before 1 January 1973 or continuous residence since then. Please be sensitive in dealing with this aspect. If there is no conclusive documentary evidence of settlement

“As early as 2007, the Home Office received complaints about people who'd lived in the UK since before 1973 but were being asked to prove their legal status”

on 1 January 1973, they may be deemed to have been settled on that date if other evidence is reasonably persuasive (e.g. that they married here and raised a family before that date).”⁵³

Despite this instruction people who'd lived in the UK since before 1973 were being asked to prove their legal status in connection with their rights to live and/or work in the UK.

For example, we learnt of a Jamaican woman who entered the UK in the 1960s and had a number of children, all of whom were born in the UK. In August 2008, aged 72, she made an application for a No Time Limit (NLT) endorsement to be placed in her Jamaican passport. She was unable to provide proof of her Indefinite Leave to Remain (ILR), as her previous passport had been stolen. She provided a letter from her doctor confirming regular attendance at their surgery. While the Home Office did not dispute her entry prior to 1973, she was refused her application due to the lack of proof of her ILR. After the refusal of her application the individual left the UK and was recorded by the Home Office as “removed”. Many years later, the individual was granted NLT by the Windrush Taskforce.

We also heard from staff working in Home Office contact centres that they could remember taking calls from people finding it hard to get work because they needed to provide documents proving legal status, from as far back as 2009. A call centre agent told us calls of this kind had

been coming in “for years”. Callers had been told by their would-be employers that they needed biometric cards to get work, and that they, in turn, needed an NTL, which took six months. One agent told us that some callers had arrived in the UK on parents’ passports, which they no longer had. We also found that in [February 2009](#), the department’s press office was asked about a 56-year-old man, born in Kenya to British parents, who had lived in the UK for 48 years. He’d been told he’d have to resign from his job at a local store because he couldn’t prove he was British.

Policy predictions

In [2012](#), the then Home Secretary outlined the government’s “hostile environment” policy, a set of measures to make living and working in the UK as difficult as possible for people without leave to remain.⁵⁴ The resulting 2014 and 2016 Immigration Acts would bring in measures to further control migrants’ access to NHS health services, welfare benefits, driving licences and bank accounts. They were meant to prevent illegal migration and put migrants off entering or staying in the UK illegally. We cover these developments in more detail in part 2.

In [July 2013](#), the Home Office published proposals to limit illegal migrants’ use of privately rented accommodation and asked for the views of people working in the sector.⁵⁵ Among the responses was a paper from the Immigration Law Practitioners Association (ILPA). It said that: “checks by landlords and landladies would be a new stage in the privatisation of immigration control.” It added that individuals and families would be prejudiced because of problems with record keeping, and that the proposals didn’t take account of people who didn’t have leave to remain but whose applications met the immigration rules. The ILPA felt the proposals increased the risk of homelessness and exploitation.⁵⁶

Three months later, in its October 2013 response to this consultation, the government recognised the widespread concern that the new proposals could lead to unlawful discrimination and outlined actions to mitigate the risks.⁵⁷

A [January 2014](#) House of Commons briefing paper on the Committee stage of the 2013 Immigration Bill – over 11 sittings between 29 October and 19 November 2013 – also reflected some significant concerns about the potential for the measures to lead to discrimination: “Several Members raised concerns about the new proposals on landlords’ obligations, arguing in particular that they would be unworkable and could lead to racial profiling in the letting of properties. Pete Wishart MP contended that the Bill ‘will turn race relations into a nightmare, bringing suspicion based on ethnicity into our social services and the housing market’. David Lammy MP suggested that some British citizens would also encounter difficulties proving their status and entitlements.”⁵⁸

We heard from Borders, Immigration and Citizenship System (BICS) staff that they began getting enquiries about hostile/compliant environment measures affecting people looking for work or trying to open a bank account soon afterwards. One member of staff told us they’d been given standard responses from the No Time Limit unit that they were to use with people “whether they’d been here 15 or 70 years”. There was no realisation, as yet, that the people were part of a distinct group rather than people needing help with their specific individual issues.

In [April 2014](#), a House of Lords briefing by Liberty on the Immigration Bill pointed out that many people could find it difficult to prove their legal status for various reasons, including the cost of getting new documents. In their view, clearly, this could have serious implications for someone looking for a job or home:

“Liberty has further concerns about the unintended consequences of the new regulatory schemes for vulnerable individuals that may have legal status but are unable – for whatever reason – to evidence it. The Bill somewhat naively assumes that all those with legal status to be in the UK will be able to produce timely evidence of this when they seek to rent property in the private sector.”⁵⁹

“The onus was on people themselves”

In [October 2014](#), the Legal Action Group published a report, *Chasing Status*, on the “‘Surprised Brits’ who find they are living with irregular immigration status”.⁶⁰ Answering a Parliamentary question (PQ) from Lord Taylor, Lord Bates said the Home Office was, “aware of the report and...considering its contents but that the responsibility for ensuring proper status lies with the individual”.⁶¹ He added that the government had for “many years” required people to show their right to work, claim benefits and use public services, so the number of people finding it hard to do so “should be small”. Several of the people interviewed for this review had arrived in the UK from Jamaica and other countries in the Caribbean before 1973 and were now looking for help from their MPs or specialist lawyers to establish or confirm their status, with no guarantee of success.

The report highlighted the practical, financial and emotional toll on those who’d realised they needed to do this. On 18 April 2018 Caroline Lucas MP asked if the department had followed up the report’s recommendations to create a unit to fast-track cases of people living in the UK before January 1973, restore Legal Aid for them and change the standard of evidence for proving residency. On 3 July, Immigration Minister Caroline Nokes, in response to this PQ, said that no specific action was taken as a result of this report.⁶²

A Joint Council for the Welfare of Immigrants (JCWI) briefing in [September 2015](#) said the legislation was “doomed to failure” because the measures were “unlikely to achieve their stated aims of reducing irregular migration and encouraging irregular migrants to leave the UK. Instead, they will impact on those legally residing in the UK, including temporary migrants, BAME groups and many British citizens, who will find it more difficult to live in the UK in a climate of hostility.”⁶³

The Home Office evaluation of phase 1 of the Right to Rent scheme was published on 20 October 2015.⁶⁴ This report looks in more detail at the Right to Rent scheme in a separate case study ([Annex H](#)). And in part 2, it looks at the policy-making process.

Signs of impact

By 2015, the department was still treating cases on an individual basis, and not making links between them. It also continued to insist that, as the law states the onus was on people themselves to find evidence of their legal right to be in the UK.

In [2015-16](#), cases involving people from the Windrush generation were coming to officials’ attention in relation to passport applications. Officials told us MPs had made several enquiries about passport applicants who believed themselves to be British and were shocked when their applications were refused. One member of staff said: “The NTL [no time limit] application process was explained to MPs to enable them to direct their constituents that they needed to make a citizenship application to the Home Office. There was little understanding in HMPO (Her Majesty’s Passport Office) about the status of Commonwealth citizens settled here pre 1.1.73.”

The Immigration Bill received Royal Assent in May 2016 (becoming law through the Immigration Act 2016). Immigration Minister James Brokenshire said: “The message is clear – if you are here illegally, you shouldn’t be entitled to receive the everyday benefits and services available to hard-working UK families and people who have come to this country legitimately to contribute.”⁶⁵

Also in May 2016, a diplomatic telegram from the Foreign and Commonwealth Office to a number of government departments, including the Home Office, after a UK Caribbean ministerial forum in the Bahamas included this note: “Several partners raised concerns about immigration deportees who have lived in the UK most of their life, and having been unable to legalise their residence or nationality status, had been deported.” Having looked into the context of this telegram in more detail we’re satisfied it was one of a large number routinely shared between the Foreign and Commonwealth Office and departments, and so may well have been missed.

In [February 2017](#), the *Passport Please* report⁶⁶ by the JCWI warned that both foreign nationals and British citizens without passports were being disadvantaged by Right to Rent measures.

The *Guardian* was the first newspaper to report on people having their entitlement to settled status questioned by the authorities. In August 2017, it publicised the story of Shane Ridge, a 21-year-old Australian. The Home Office told him he was in the UK unlawfully because, as his parents had never married, he had no automatic right to citizenship from his father, despite his maternal grandmother also being a British national. He was told to leave the UK voluntarily or risk a £5,000 fine.⁶⁷ His driving licence was also revoked. After extensive media coverage the Home Office apologised to Mr Ridge and he was granted Right of Abode. While this was not a Windrush case, it was a clear signal of a system which could result in seemingly harsh action against individuals.

In [October 2017](#), the BBC highlighted Paulette Wilson’s case, reporting on her release from a week’s detention at Yarl’s Wood immigration removal centre and her threatened removal.⁶⁸ She was released after representations from her family and MP.

In [November 2017](#) the JCWI’s earlier findings were echoed by the Residential Landlords Association. It found that 42% of landlords were reporting that they were now less likely to let to prospective tenants without a British passport because of the Right to Rent checks and the new criminal sanctions for landlords and agents introduced on 1 December 2016.⁶⁹

Also in [November](#), the House of Commons Public Bill Committee published its written evidence on the Immigration Bill, again referring to its complexity for landlords and the risks of discrimination: “We would urge that Parliament is given sufficient time to consider the findings of the government’s assessment of the ‘Right to Rent’ pilot scheme in the West Midlands in detail. We would call on the Committee to respond positively to any further legislative changes that might be needed to address the inevitable concerns of landlords that they are being put in a difficult position and to avoid them being accused of being discriminatory.... Also, Landlords are prepared to discriminate against those with a complicated immigration status and those who cannot provide documentation immediately.”⁷⁰

Realising the scale of the problem

The first signs that the department was starting to recognise a crisis focusing on the Windrush generation as a distinct group came in Autumn 2017 after the cases of Paulette Wilson and Anthony Bryan were highlighted by the *Guardian*. An email from the Home Office press office to UK Visas and Immigration (UKVI) on [30 November 2017](#) asked for information on Anthony Bryan. It also said the reporter looking into the case had previously asked about Paulette Wilson and was “collating case studies on those from Commonwealth countries who were about to be deported by the Home Office”. Responding the next day, an email from the Immigration and Borders Secretariat said they would need to think carefully about how to respond to cases where a person had deemed settled status, having arrived before January 1973, but couldn’t prove it.

[A few days later](#) (4 December 2017), an email from the BICS strategy unit to the Second Permanent Secretary’s private office referred to three cases that “seem to stem from the same cohort of people” who arrived in the UK before 1971 and were struggling to prove their status. The cases were Anthony Bryan and Paulette Wilson, and Edwin Burton, who had been in the UK for 53 years.

“They were ‘joining the dots’ about this being a more widespread problem”

This correspondence shows the Home Office beginning to recognise that the problems being brought to their attention by the media represented a pattern; they were “joining the dots” about this being a more widespread problem going beyond a few individuals.

On 1 December, the *Guardian* covered the case of Anthony Bryan, who had lived in the UK for 53 years but was told he was in the country illegally, detained at an immigration centre and booked on a flight to Jamaica.⁷¹

The *Guardian* reporters were uncovering a series of cases with a pattern that could no longer be interpreted as unique or a “one-off”. One member of staff at the Home Office told us it was becoming clear there by the end of 2017 that there was “something about Commonwealth cases”.

This realisation by some MPs also prompted questions in Parliament. On 5 December Lord Greaves asked the government: “For each of the last five years including this year to date, how many Commonwealth citizens have been detained following residence in the UK for over (1) 30, (2) 40, and (3) 50, years, (a) following a criminal conviction, (b) after failure to provide sufficient evidence showing proof of residence, and (c) for other reasons; and in each case how many were subsequently deported”. The Home Office’s response was that providing this information would require a manual check of individual records which could only be done at disproportionate cost.⁷²

On 6 December, Ben Lake MP asked the Home Office if people who had arrived before 1971 were considered “illegal immigrants” and how many had received deportation notices in the last five years. The Immigration Minister responded, citing the 1971 legislation’s designation of settled status, and by referring to the No Time Limit (NTL) guidance on Gov.uk for people who require confirmation of their status, and the guidance on becoming a British citizen.⁷³

1.6 How the story unfolded

The concern and correspondence gathered momentum as 2017 ended. For example, on 19 December *The Independent* reported an open letter from more than 60 MPs, academics and campaign groups warning the then Home Secretary (Amber Rudd) about the impact of hostile environment measures on bank account checks.⁷⁴



In January 2018, discussion of the scale of the problem became more widespread both in the media and Parliament. Between January and March, The *Guardian* ran a series of articles on more members of the Windrush generation who had been seriously affected by the hostile environment measures.⁷⁵ The reports said they'd been detained at the border or in the UK, been refused re-entry to, or removed from, the country and been denied access to public services.

On 12 January 2018, Paulette Wilson's MP, Emma Reynolds, told the *Guardian*, "This is not an isolated case and I have asked the Home Office to assess how many people in Paulette's situation are being treated in this appalling way."⁷⁶

On 15 January, Hywel Williams MP asked the Home Office what explanations it had given to people who had been incorrectly sent IS.96 notices⁷⁷ in the last five years yet hadn't had leave to remain applications refused. Immigration Minister Caroline Nokes said the information couldn't be retrieved without "disproportionate cost"⁷⁸ in accordance with Cabinet Office guidance in relation to answering parliamentary questions.⁷⁹

There was renewed correspondence within government about new cases and how to respond to queries about them. In response to a query from a journalist about individual cases, the Home Office statement was produced by the press office in February, with its emphasis on the responsibility of the individual to prove their status:

"Those who have resided in the UK for an extended period but feel they may not have the correct documentation confirming their leave to remain should take legal advice and submit the appropriate application with correct documentation so we can progress the case."

"Each application is considered on its individual merits but where the Home Office requires evidence of a person's residency, the onus is on the applicant to be able to provide this proof."⁸⁰

Queries to the Home Office press office peaked between February and March 2018. We were told by press office staff that once the Home Office began to see it might have an issue with "a few people", the press office's response to enquiries became: "We're taking a closer look." Cleared media lines to take on 2 March 2018 said:

"We value the contribution made by Commonwealth citizens who have made a life in the UK."

"Those who have resided in the UK for an extended period but feel they may not have the correct documentation confirming their leave to remain should take legal advice and submit the appropriate application with correct documentation so we can progress the case."

“When the Home Office is made aware of cases of this nature, we will make sure the applications are dealt with in a sensitive way.”

An Independent Chief Inspector of Borders and Immigration (ICIBI) report on the Right to Rent measures in [March 2018](#) described the concerns about its impact on racial and other forms of discrimination by landlords, exploitation of migrants and associated criminality, and homelessness. It said these had been “raised repeatedly, by the JCWI, Crisis, Migrants’ Rights Network and others”. The ICIBI recommended the Home Office: “develop and make public plans for the monitoring and evaluation of the Right to Rent measures, including (but not limited to) the impact of the measures (where appropriate alongside other ‘compliant environment measures’) on ‘illegal migrants’, on landlords, and on racial and other discrimination, exploitation and associated criminal activity, and homelessness.”⁸¹

A Home Office briefing note, dated [2 March 2018](#), on Commonwealth cases in the media said: “We believe the BICS (Borders, Immigration and Citizenship System) response thus far has gone a long way to mitigating this issue. We will, however, continue to take swift action on those that come forward having previously had an application refused or find themselves adversely affected by the compliant environment.”

The Home Office press office then began receiving more calls from various media outlets about Commonwealth cases. For example, on 9 April the BBC asked for a comment on an online petition calling for an immigration amnesty for Windrush residents and on the individual cases of Albert Thompson and Michael Braithwaite.

On [15 April 2018](#), the media reported that the government had refused a formal diplomatic request from representatives of 12 Caribbean countries to meet the Prime Minister to discuss the immigration problems facing some of the Windrush generation at a meeting of the Commonwealth Heads of Government.⁸² We were told that the reason for the initial refusal was that No. 10 were not aware of the nature of the concerns that the Heads of Government wanted to raise with the Prime Minister and that once

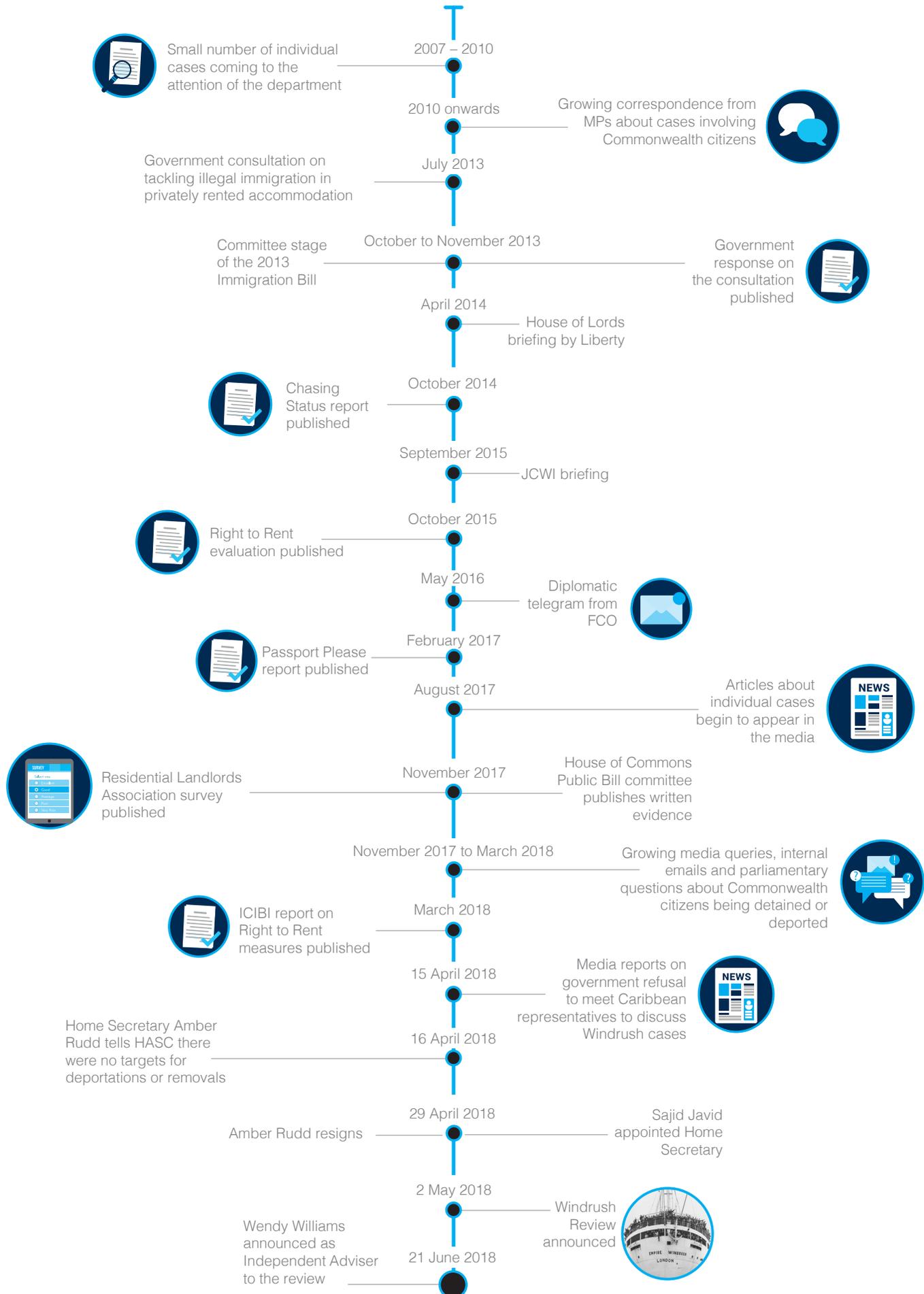
No. 10 became aware what the issues were, the Prime Minister held the meeting. The following day, Good Morning Britain asked for a comment on a meeting organised by the Jamaican High Commission about people facing removal and on the individual case of Anthony Bryan.⁸³

On [16 April](#), Home Secretary Amber Rudd told the Home Affairs Committee there were no Home Office targets for deportations or removals. On [29 April](#), she resigned after stating that she should have been aware of the targets.⁸⁴ A subsequent review by Sir Alex Allan concluded that: “The Home Secretary [was] never provided with briefing that might have allowed [her] to put the correct position on the record.”⁸⁵

Sajid Javid was appointed as Home Secretary on [29 April](#). The next day, he told the House of Commons: “My most urgent priority now, as I enter this Department, is to continue to build on the work set out by my predecessor to help the Windrush generation as quickly as I can, and in every way that I can.”⁸⁶

He announced the Windrush Lessons Learned Review on [2 May](#) and named me, Wendy Williams, as the Independent Adviser on [21 June](#).

How the story unfolded



1.7 Conclusion

The Windrush scandal did lasting damage to people in many ways. A combination of successive government policies, institutional amnesia and inadequate practice denied them their liberty. It denied them their freedom of movement. It denied them a normal life. And it did this to an identifiable group of people who had lived in the UK for decades, many since childhood.

The sense of injustice is all the more acute for a group of people who had answered a call from what they saw as the “mother country”. They made an immense contribution to the UK’s culture and communities as well as its economy. They settled, safe in the assumption that they were citizens with all the rights they would expect – until they were told they weren’t.

Gaps in official data mean we might never know exactly how many people were affected. But we do know that 164 people were either detained or removed from the UK, or both. We know they lost livelihoods and homes. We know they were forced to feel like criminals in a country where they’d lived lawfully for most of their lives. We also know many more were hit by measures designed to create a “hostile environment” for illegal migrants. And we know others – friends and family – were affected indirectly.

The sequence of events set out in this part of the report demonstrates there was a range of significant warning signs about the Windrush scandal, coming from both inside and outside of the Home Office. They showed that immigration control policies, including hostile environment measures, could, and later on did, have significant and traumatic effects on certain groups of people who had valid immigration status and who had lived in the UK for a long time.

Our evidence shows individual cases being brought to the attention of the Home Office, and people living in the UK legally feeling the force of Immigration Enforcement measures as far back as mid-2000s, well before the 2014 and 2016 hostile environment measures were in full effect. The stories in this part of the report show a toughening of immigration policy going back this far, and

even further: Pauline detained in Jamaica in 2005; Nathaniel told he couldn’t come back to the UK in 2001; and Vernon told the same in the late 1990s. We saw that in 2006 the department recognised that there was an at-risk cohort of Commonwealth citizens who had arrived in the UK on or before January 1973 who had right of abode. The Windrush generation were part of this cohort.

The 2014 hostile environment measures were being consulted on, and closely examined and discussed in Parliament, from 2013. Some politicians and civil society organisations alike predicted the potential for them to have negative consequences for groups other than those they were targeting. Once the measures were implemented, there were soon signs that these predictions were coming true.

Taken individually, it is arguable that the warning signs covered in this section might not have been enough to have identified the Windrush generation as a specific at-risk cohort. But these warning signs must be set alongside other factors, including the finding that the department had institutionally forgotten the implications of the 1971 Immigration Act. And, while the “group Instruction” (see section 1.5) demonstrates that there was some knowledge of the wider at-risk group, the evidence seen by this review (and detailed in part 2 and [Annex H](#)) shows the department paid insufficient attention to the warning signs that related even to this wider group; this information was not properly considered in the policy analysis for the hostile environment. Measures introduced to mitigate the risks were shown to be inadequate, as evidenced by the events which occurred.

Why did the government not pick up on these warnings and heed these predictions, and act to avoid the potential results? As the department of state with expertise in relation to its own legislation, it should have known that the 1971 Immigration Act had created a group of people who had deemed leave, and who therefore would have been affected by subsequent legislation. And why was it so slow to “join the dots” about the emerging impact of the measures? Then, once the department and others became aware of the implications of the measures for a specific group of people – from Autumn 2017 – why did

the government fail to act decisively in response? By this time, as some of our stories show, many had been writing to the Home Office for years. At the very least, ministers and senior civil servants should have recognised by November 2017 that there was something wrong and taken decisive action in response. A government department which exemplified the principles of good public administration might have been expected to have identified the problem much sooner. But until well into 2018, they continued to be treated with indifference. The department then reacted with surprise once the scandal became news and the public reacted with outrage.

Why did this happen? This question will be considered in part 2 of the report.

CASE STUDY 2

JOYCELYN,

aged 59, arrived in the UK with her mother in 1963, to join her father and four siblings in the UK. Her Windrush journey started when she lost her passport and did not have the documentation necessary to get another one. She needed to apply for temporary leave to remain every two years, which was something that she accepted, but caused a lot of stress. This impacted her ability to work, as employers were unsure about her status. Joycelyn was required to sign in at a detention centre due to her status and it was there that she saw posters urging people to take voluntary deportation. Unaware of her rights, as she did not want to be a burden on her remaining family following her mother's death, she decided to take voluntary deportation to Grenada. She thought she would receive resettlement money from the British government, but she did not receive any.

While in Grenada, Joycelyn's partner, who she was with in the UK before she left, met someone else and got engaged. Family relationships were strained, resulting in Joycelyn living in a women's refuge. She had traumatic experiences while in Grenada and was very depressed. Joycelyn missed her home in the UK and after an extended period away, was very pleased to receive a phone call from her brother telling her about the Windrush Taskforce. Not long after he contacted them, she received a call telling her that she was going to be able to come back to the UK.

She had only ever received letters from the immigration department before this and these letters had no continuity of contact person. She is now in regular phone contact with the Taskforce and has a caseworker that she trusts.

Joycelyn currently lives in sheltered housing in Watford. She likes her flat but cannot afford to furnish it herself, so all her furniture has been gifted from various sources. She applied to the Windrush Hardship Fund and did receive funding, which has been spent on a fridge and a cooker. Joycelyn does not have a job at the moment and she is receiving Universal Credit. She has applied for jobs but her status is not understood by the people at the Job Centre and she cannot afford to apply for a British passport yet. Most of her time is spent watching TV; she occasionally goes for walks to get out and about. She has one friend that she sees regularly, but says, overall, she has lost trust in people.

Unable to prove her status in the UK, Joycelyn voluntarily returned to Grenada to prevent her being a burden to family





PART 2

Why the scandal happened

PART 2: Why the scandal happened

2.1 About part 2

“That’s... been the shocking thing for me – just how many layers this went through, which is why, genuinely, I was horrified to read as this evolved and to see what had happened and the profound impact this had had on so many lives.”

Minister/former minister

Beyond the community directly affected, the scandal has left the public at large wondering how such injustices could have been allowed to happen. Part 2 of the report shows the complex interplay of historical, social, political, and organisational factors that contributed to the scandal. It uses evidence to separate symptom from cause and to identify the significant factors that led to members of the Windrush generation becoming entangled in measures designed to control illegal migration.

We have listened carefully to those directly affected by the scandal. They were understandably devastated by what they, and their families, have been put through. But there was no universal effect, or experience. The Windrush scandal affected different people in different ways at different times. We didn’t just ask people to describe *what* happened to them. We asked them to give us their view of *why* the scandal happened. These opinions appear in **Figure 1**.

The people affected came to two main conclusions: the first was that it was down to the incompetence of Home Office staff (someone not doing their job properly, or not being bothered enough to do it, depending on their mood on the day). The second was that it was a conspiracy and that, to meet their targets, the government took a conscious and unscrupulous decision to target people of the Windrush generation.

Organisations and people responding to our call for evidence also set out their views. Some echoed the belief that the incompetence of Home Office staff was to blame. Others cited the Home Office culture, the pressure on officials

to hit targets, the high cost of immigration applications and the implementation of hostile environment measures. Several submissions also discussed the issue of race, and how far the department’s negative view of migrants influenced how they treated people.

Some of the ministers/former ministers who spoke to the review reflected on an organisational structure, which rendered it unable to cope rather than any conspiracy or malice, while senior officials conceded that the department had “lost sight” of the Windrush generation, in part reflecting the complexity of the system. Some also reflected on the political context that the system operates within, while other staff mentioned the volumes of casework they were dealing with and the pressures that creates.

The review’s findings draw on the weight of this evidence and strong recurring themes from respondents. But they go beyond organisational processes and the actions of individuals to look at the broader historical, social and political backdrop, the development and implementation of key policies and legislation, and the influence of the culture of the Home Office. Many have been identified by earlier reports, including the National Audit Office⁸⁷ and Parliamentary committees.⁸⁸

I have not uncovered evidence of deliberate targeting of the Windrush generation by reason of their race or otherwise. Given the nature of the review, this does not mean that there is no evidence and that this might not have occurred, but, for example, I have not found evidence of stereotypical assumptions being made throughout the Home Office about those from the Caribbean or black people. What I have found, as set out below, is a generation whose history was institutionally forgotten.

The findings suggest that, driven by strong political intent, key elements of immigration policy were developed without adequate consideration of their possible impacts (including on those from a racial group, such as the Windrush generation) which, combined with Home Office processes and operating culture (explored in part 2.4), both heightened the risks faced by the Windrush generation and inured the department to mounting evidence of harm done.

Figure 1. Why it happened: the views of others

Those directly affected

“I don’t get it; you got it documented: marriage certificate...birth certificate, hospital certificates, everything. Your kids have been to school, you got this one, you got that...hello? Wake up! Who’s not doing the work, who’s not checking the paperwork? I don’t get it...it was deliberate...they had a certain amount of people that they didn’t want here. That’s how I feel. I’m not going to say that’s fact; that’s my opinion.”

Corinne, Pauline’s daughter

“I don’t think they did their job properly. They did not look at the papers. They did not look at the evidence. They had a quota to fill and it was just a case of yes, yes, no, yes, no, yes and I was a ‘no’. That’s what I think.”

Joycelyn

Call for evidence respondents

“Successive governments have formed the view that it is necessary to demonise migrants in order to counter the perceived public perception that being soft on immigration loses votes. This has led to political rhetoric targeting immigration, which in turn has led to legislation restricting the access to public services for immigrants which in turn has led to an attitude within the Home Office that those perceived as migrants are of no value.”

Greater Manchester Immigration Aid Unit

“The treatment of the Windrush generation is no accident. It is precisely what happens when a system is designed to be as hostile as possible, whatever the cost.”

Joint Council for the Welfare of Immigrants

Ministers/former ministers

“Total lack of proper administrative competence, basically.”

“You get the terrible human problems of things like Windrush if you have an organisational structure that is not able to cope with what it’s trying to cope with and more problems emerge from that than from any conspiracy or malice.”

“The slashing of that budget and the getting rid of that strategy [ID Cards]; Windrush was an accident waiting to happen.”

“I think my overriding reflection would be that this is a department that is constantly under pressure from every direction.”

“Somehow or another the political antennae that you would expect to have from your ministerial team, from your special advisers, didn’t seem to flag up that this was happening and it might potentially be a problem.”

Senior officials

“At a technical level, we had lost sight of that cohort; the people with that set of characteristics.”

“It’s a very contentious and politicised system and that has historically made it more difficult than it should be to get the social research and sort of sociological understanding of the populations we’re working with as close and right at the heart of the analysis and insight that we need to be doing the work.”

“It is really difficult, no matter how good the individuals you’ve got working the systems are. If that system is firmly chopped up into four, five different parts and you enforce the systems and mechanisms that require people to think on an individual case basis, within each one of those parts, sometimes simultaneously, then the likelihood that any one individual within that system is going to be able to see the person underlying all of that is diminished substantially.”

“If there was a single thing, I’d go after the complexity of the system because that means you don’t spot things when they go wrong, or you don’t spot them soon enough. The checks and balances don’t spot them either and you don’t, and you didn’t, understand. Because you’re dealing with so much complexity, you didn’t understand, in advance, that those consequences might have arisen.”

Home Office staff

Several members of staff mentioned the standard of proof on people to be able to establish their immigration status. They commented that they would struggle themselves to provide that degree of evidence of their own residence in the UK.

UK Visas and Immigration (UKVI) staff overwhelmingly believed that the pressure they felt as a result of “throughput targets” – numbers of decisions they were expected to make each day – meant there was no time to exercise the right level of judgement. This, and the fact that they never met the people face to face, had led to them suspending “common sense”.

There were no longer “adult conversations”. The process was viewed by many as a “tick-box exercise” focused on rules, not ethics.

Staff from both Immigration Enforcement (IE) and UK Visas and Immigration (UKVI) told the review they did not feel they had received adequate training; they also mentioned that the Home Office gave applicants minimal help, often referring people to the Gov.uk website, which staff themselves said they struggled to understand or navigate.

2.2 The impact of the social and political climate over time

“The stain that Windrush has left on our public life has been a very long time in the making.”

**Professor Andrew Thompson,
Exeter University**

Understanding current and recent immigration policy and decision-making means looking back at how debates on race and immigration have shaped policy over decades. Today’s policies, and how they’re implemented, are the product of this historical context.

This section looks at the impact of immigration and nationality policy on the Windrush generation. It shows how complex, overlapping (and sometimes speedily enacted) legislation set out to tighten eligibility rules in response to a hardening political, social and economic climate that saw non-white immigration as a problem to be solved.

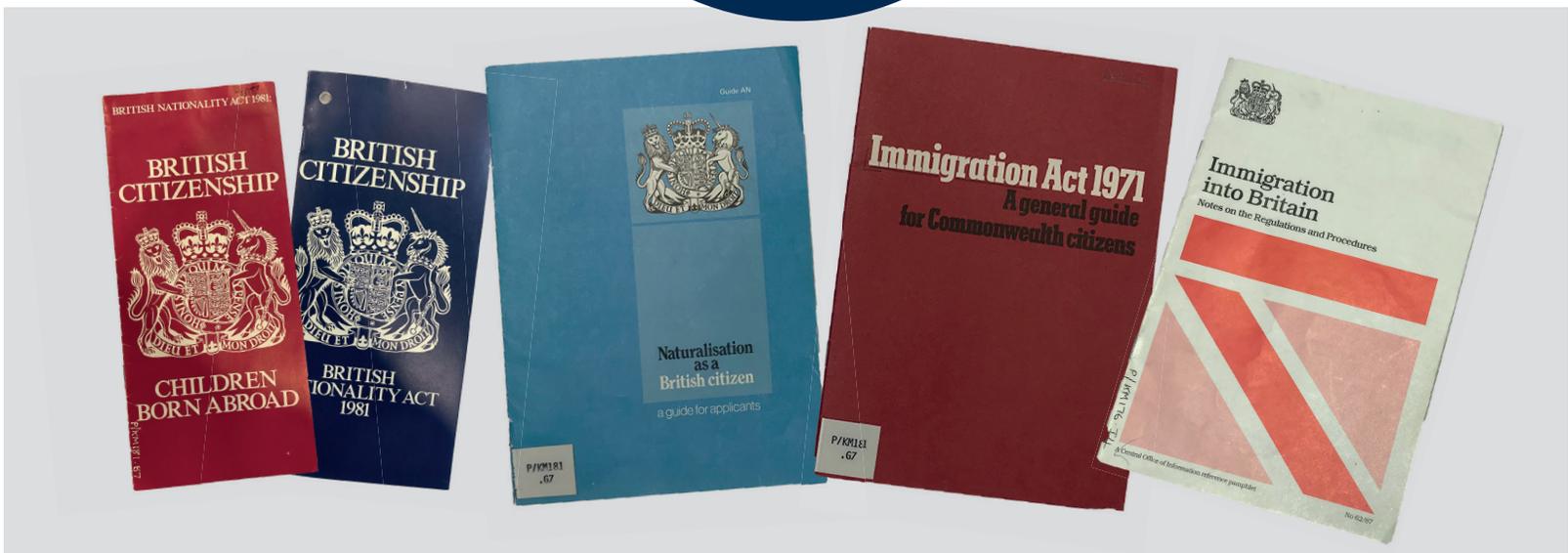
From the 1960s onwards, the dominant political discourse failed to challenge, and even encouraged, the association of immigration with negative social and economic outcomes. Both the major political parties positioned themselves as “tough” on the immigration of black, Asian and – over time – other disfavoured groups. At various stages, immigration became a major election issue. As a senior official reflected:

“People have a humane and compassionate attitude to individuals, who are in some cases at the sharp end of the immigration system. And yet when they look at the immigration system as a whole, say it isn’t tough enough. And so...there is that sort of tension, I think, within the public consciousness as well. And successive Home Secretaries of successive governments have wrestled with that.”

Some people we spoke to argue that the progressive tightening of immigration controls has “pandered” to anti-migrant sentiment in the media and that has at times been underpinned by racial stereotyping and by direct or indirect racial discrimination. Equally, it’s possible to see a parallel track in political thinking that saw tight migration controls as necessary to promote integration and harmonious race relations.

“It’s a politically hugely contentious environment. One half of the population never thinks you’re doing enough and the other thinks you’re doing too much.”

Senior official



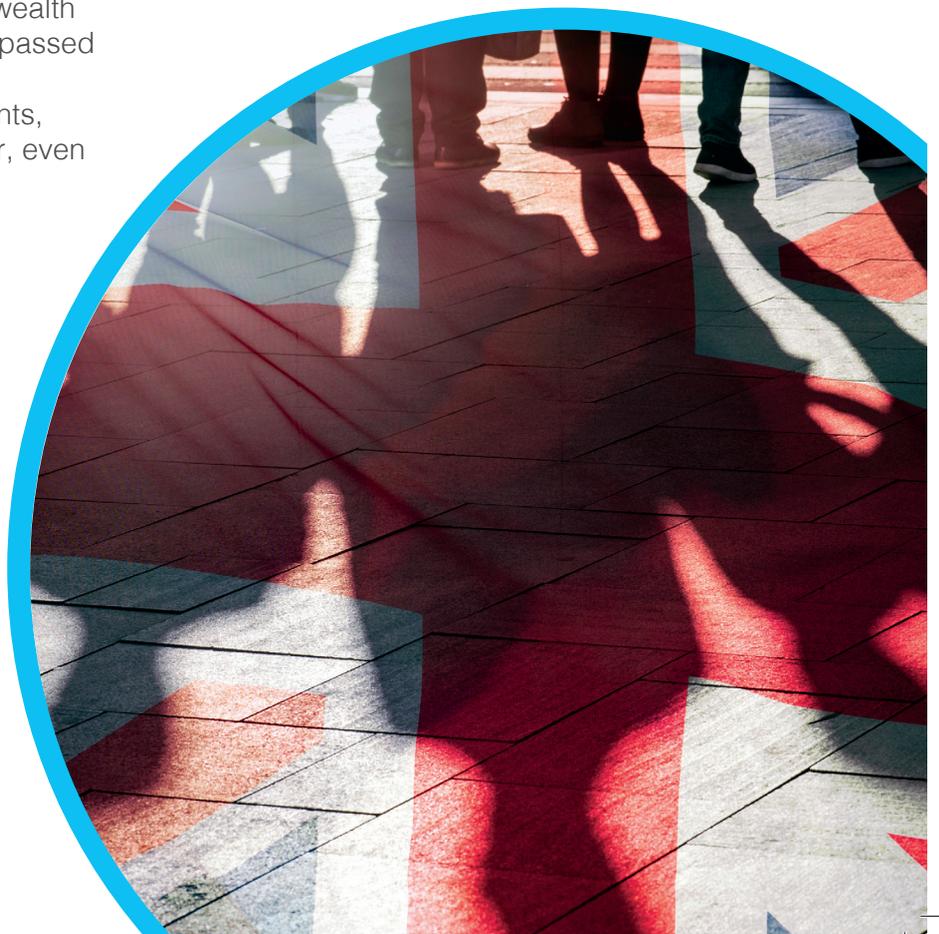
This historical legacy would culminate in the “hostile environment” (later the “compliant environment”) from the late 2000s, though some measures to address illegal working had been in place many years earlier. Some Windrush generation descendants had already been removed by this time or refused re-entry to the UK after holidays. But the expansion of the hostile environment from 2014 would increase the reach of immigration controls beyond the Home Office, including through increased demands for documentation to prove status, which would ultimately lead to British people being “caught up” in enforcement of the measures. As a senior official noted: “One of the attractions of the hostile environment policies was that [they] could reach where enforcement couldn’t otherwise reach.” It would appear that the political focus from ministers on demonstrating a system “getting a grip” on the “immigration problem” drove internal targets, priorities and behaviour in the Home Office immigration system, which will be discussed later in this part of the report.

2.2.1 Migration to the UK

In the aftermath of World War Two, Britain faced a transition from empire to nation state at the centre of the Commonwealth. As we saw in part 1, it also faced a labour shortage. Immigration from Europe and Ireland would only partially solve this problem, especially with UK citizens leaving the country at a steady rate to start new lives in Commonwealth countries. The [British Nationality Act 1948](#), passed as a response to Commonwealth countries legislating their own citizenship arrangements, made migration in the other direction easier, even if it wasn’t intended to enable it.⁸⁹

While migration to Britain from the empire had been sanctioned by convention before 1948, the Act gave it statutory protection. The effect was lasting, as one study of post-war immigration from 2000 argues: “Although it was not known at the time, the enactment of the British Nationality Act amounted to the creation of an institutional structure that would for several decades shape the evolution of British immigration policy and nationality law.”⁹⁰

Under the Act, people who came to the UK from then on and into the 1950s were citizens of the UK and Colonies (CUKC) if they had been born in or had a connection to one of the remaining colonies, or if their father was a CUKC at the time of their birth. They arrived and settled in the UK on their own or their parents’ CUKC passports, with the same rights to come and go as the resident population. As their former countries became independent, unless they had a UK-born father, they would become Commonwealth citizens who could register for UK and Colonies citizenship after living in the UK for 12 months. Since CUKC status included the legal right to come to the UK, no one needed, and nor did they get, legal documents. Many lived, went to school and worked in the UK without any official immigration record.



Arrivals from the Caribbean

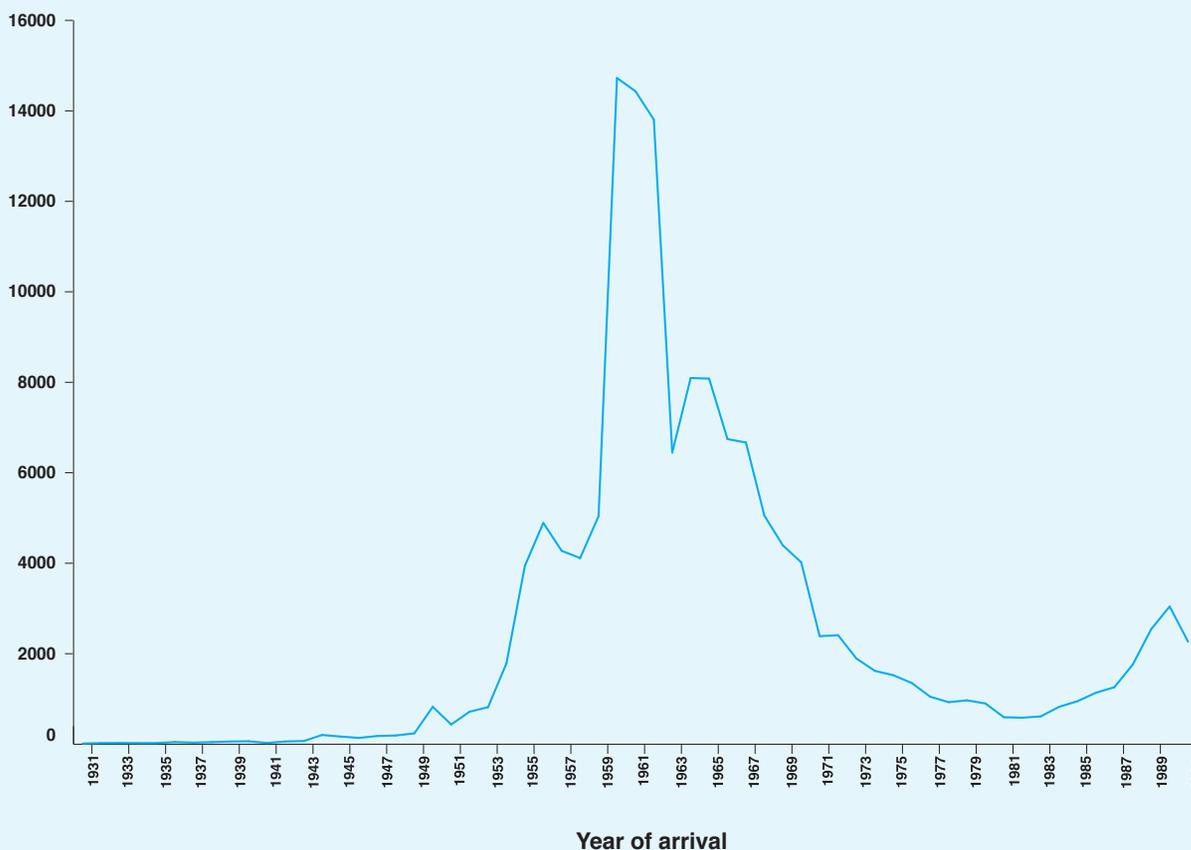
There was an increase in the number of people arriving from the Caribbean between 1953 (1,000) and 1956 (4,000). After a small dip in 1957 and 1958, there was an increase in 1960 (14,726 arrivals), up 192% from 1959. Numbers dropped significantly between 1962 and 1963 (53%) then declined gradually to 1982, when only 596 people arrived (see Figure 2).

Already, in the early 1950s, political debate was focusing on how to control these numbers without causing antagonism with the still-emerging Commonwealth. In 1950, James Griffiths, the Colonial Secretary, was asked to submit a Cabinet memorandum on problems arising from the

immigration of “coloured people” from the West Indies and other territories.⁹¹ The Cabinet then set up a committee looking at how to check “coloured immigration”.⁹²

The issue became more urgent after unrest in 1958 in Notting Hill and Nottingham, when young white men attacked members of black communities. Opinion polls on attitudes to race weren’t conducted in Britain until after this time, so it’s hard to be certain whether public sentiment was the impetus for policy. The British Election Study began asking the public their opinion on immigration in 1964, and throughout this period the majority of people in Britain agreed there were “too many immigrants in the UK”.⁹³

Figure 2. Arrivals from selected Caribbean countries present in 2011 census by year of arrival



Source: Home Office Analysis and Insight Unit

2.2.2 Restricting the number of migrants

The [1962 Commonwealth Immigrants Act](#) included a system of employment vouchers that restricted entry to people with a job offer or skills in short supply. The legislation capped vouchers at 20,000 per year. It also encouraged people already in the UK to stay, as the law would stop them re-entering if they did leave, and it let migrants bring their families to join them.

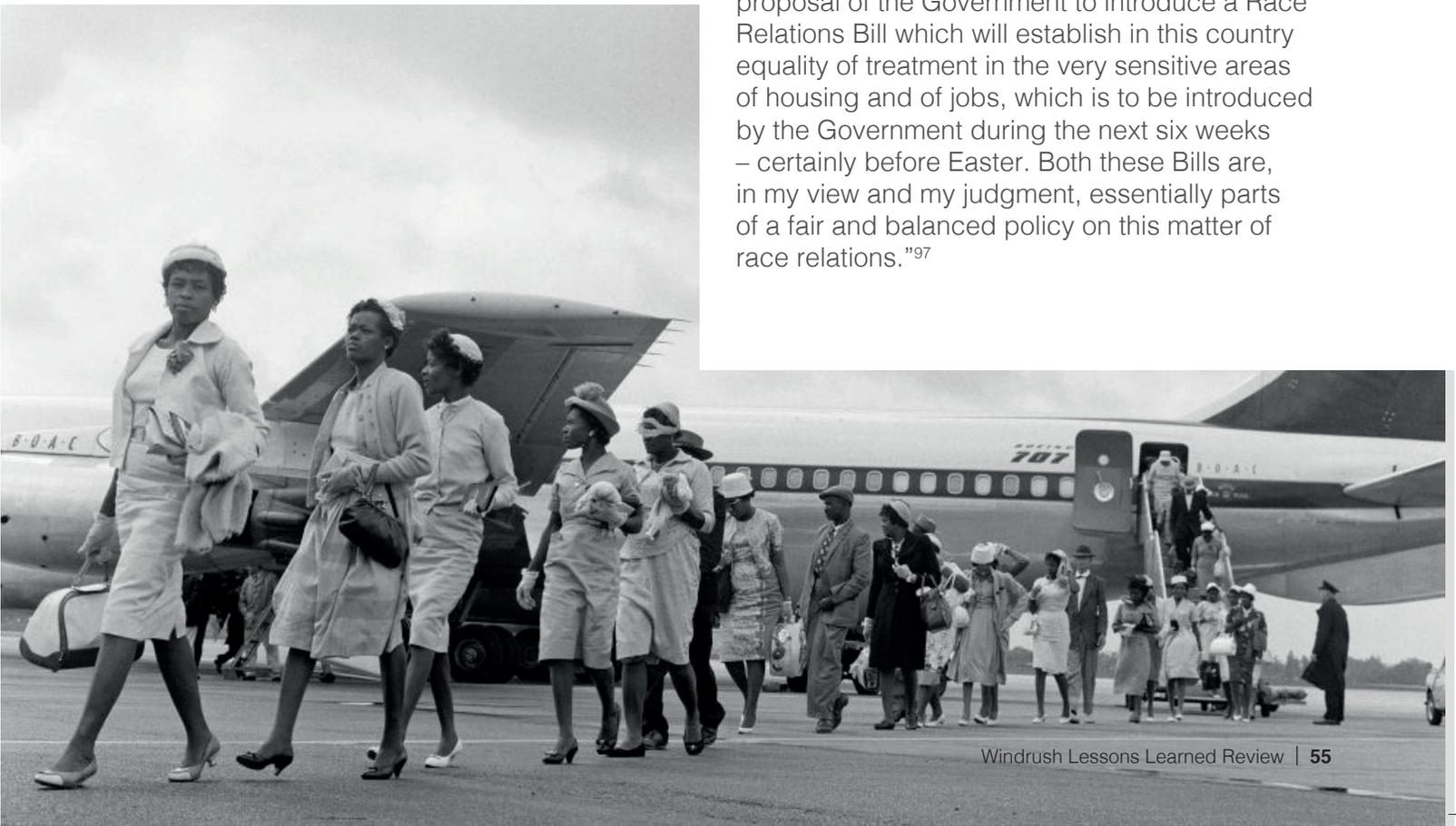
The Act nevertheless marked a sea-change, essentially ending free movement and setting a restrictive pattern for the decade. Anyone whose passport wasn't issued by the UK government would now be subject to immigration control. Also, Commonwealth citizens would now have to live in the UK for five years, not just one, before they could apply to register as citizens of the UK and Colonies. Many of the Windrush migrants arrived during the 1960s, and the contrast between the decade's developments and the previous arrangements had lasting effects on their rights and expectations.

Because of what it meant for the Commonwealth and citizenship, the Act was so controversial that it was reviewed annually. But politicians proved wary of making significant changes.⁹⁴

After 1964, the new Labour government – with cross-party backing – imposed more restrictions

on entry, often using immigration rules. It stopped issuing low-skilled permits, tightened the definition of “family members” and brought in a tougher standard of proof for family relationships. Administrative delays also slowed the number of arrivals.⁹⁵ A White Paper in 1965 then proposed bringing the employment voucher cap down sharply to 8,500.

An important factor in immigration policy was race relations. While the 1962 Act aimed to limit numbers of migrants, it was followed by policies to combat discrimination and encourage integration for migrants already in the UK. They included the [1965 Race Relations Act](#), which outlawed racial discrimination in public places and made it an offence to incite racial hatred. [The 1966 election underlined a cross-party consensus](#) on this. Labour's manifesto promised to “continue realistic controls...combined with an imaginative and determined programme to ensure racial equality”.⁹⁶ The Conservatives meanwhile proposed conditional entry, a register for dependants and voluntary repatriation alongside equalities legislation. [The 1968 Race Relations Act](#) built on the earlier law by banning racial discrimination in housing and employment. Introducing the second reading debate for the Commonwealth Immigrants Act 1968, Home Secretary James Callaghan said: “This Bill, however some may regard it, must be considered at the same time, and in accordance with, the proposal of the Government to introduce a Race Relations Bill which will establish in this country equality of treatment in the very sensitive areas of housing and of jobs, which is to be introduced by the Government during the next six weeks – certainly before Easter. Both these Bills are, in my view and my judgment, essentially parts of a fair and balanced policy on this matter of race relations.”⁹⁷



This apparently twin-track approach at the time would be echoed later in the idea that good race relations demand a tough immigration policy. The approach had its critics, who argued that tighter controls would make migrants already in the UK feel less secure, as well as promoting a negative image of minorities. Minutes of a Cabinet meeting on 5 January 1971, for example, including a discussion on the forthcoming Immigration Bill, record the Home Secretary Reginald Maudling stating that: “The success of our policies aimed at improving community relations was basically dependent on the Government’s maintaining firm and demonstrable control over the admission of immigrants.”⁹⁸

By the end of the 1960s, the bi-partisan consensus was fraying. Immigration was becoming more of a party-political election issue. In 1968, concerns in government about a sharp increase in the number of East African Asian people arriving from Kenya, where they faced discrimination, brought matters to a head. Under the [Commonwealth Immigrants Act 1968](#), passed in just three days under the Labour government, people from the Commonwealth could only enter the UK if they or a parent or grandparent had been born or adopted there.

The amendments to the 1962 Act in 1968 and 1969 were found by the European Commission of Human Rights in the case of *East African Asians v United Kingdom*⁹⁹ (Application number 4403/70) (1981) 3 E.H.R.R 76 to have discriminated on grounds of race. The 1968 Act had, as regards Commonwealth citizens in Tanzania, Kenya and Uganda, “racial motives” (at [199]). The Commission referred to statements made in the Houses of Parliament that referred directly to “most of the 200,000 Asians in East Africa would continue to be free to come here at will” and an admission by the government in proceedings that “it had racial motives” (at [200]).¹⁰⁰

A little under two months after the 1968 Act passed, Enoch Powell made his “rivers of blood” speech, calling for “non-white” immigration to end. In a survey the following year, 327 out of 412 Conservative constituency associations wanted all “coloured” immigration stopped indefinitely.¹⁰¹ The Liberal Party leader at the time called the 1968 Bill “a flagrant concession to Powellism, an insult to the Commonwealth and an attack on human rights”.¹⁰²

2.2.3 Redefining rights and citizenship

In the 1970 general election, immigration was among the biggest campaign issues.¹⁰³ The Conservatives promised, among other things, to replace employment vouchers for Commonwealth citizens with work permits that allowed only temporary residence. Under the 1971 Immigration Act, a Commonwealth citizen (who was not a CUKC) would have a “right of abode” in the United Kingdom if they were born to or legally adopted by a parent who was a CUKC born in the United Kingdom. People from “old” Commonwealth countries like New Zealand or Canada were much more likely to meet this qualification than those from “new” Commonwealth countries. For Commonwealth citizens who were CUKC this concept of “patriality” effectively meant that only CUKCs born in the UK could pass on their right of abode to their children and grandchildren, so excluding the vast majority of Windrush generation arrivals.

Commonwealth citizens already in the UK before [January 1973](#) were either entitled to right of abode or held deemed leave to remain.¹⁰⁴ They weren’t given proof of their status or asked to provide any. Later, under the British Nationality Act 1981, anyone who went on to naturalise and become a British citizen still risked having that citizenship stripped away by the Secretary of State if it became “conducive to the public good”.¹⁰⁵ This arguably created a second tier of citizenship.

The 1971 Act also firmly placed the onus on the person exercising their rights, rather than the Home Office, to prove their status. Section 3(8) of the Act stated that “When any question arises... it shall lie on the person asserting it to prove that he is”.

In Cabinet minutes of the time (released in 2002) Home Secretary Reginald Maudling said the new law was needed because, “we are expected by our supporters to take visible action further to reduce the number of immigrants”. Cabinet Secretary Sir Burke Trend said the main motive behind the Act was “to avoid the risk of renewed ‘swamping’ by immigrants from the new Commonwealth” and that such a “resurgence would inflame community relations in Britain”.¹⁰⁶ Nevertheless on average over 30,000 Commonwealth citizens a year were given the right to settle during the 1970s.

In the *East African Asians* decision, the Commission also noted (at [202]) that under the 1971 Immigration Act:

“persons who belong to the category of ‘patrials’, have a ‘right of abode’ in the United Kingdom, irrespective of whether they are citizens of the United Kingdom and colonies; such persons would normally be white Commonwealth citizens. The Asian citizens of the United Kingdom and colonies in East Africa, on the other hand, would not normally be ‘patrials’ and thus have no ‘right of abode’ in the United Kingdom, the State of which they are citizens...which would normally operate in favour of white people.”

Both main parties held on to their belief in tighter controls through the 1970s, a period that saw the growth of the anti-immigration National Front. The mould for the next 18 years would be set by the [1979 election of Margaret Thatcher](#), who had said the year before that British people feared being “swamped” by people with “a different culture”.¹⁰⁷

The new government’s first major piece of immigration legislation was the 1981 British Nationality Act, bringing nationality law into line with immigration law. It abolished CUKC status, replacing it with three new categories of citizenship: British citizenship, British Dependent Territories citizenship and British Overseas citizenship. It defined British citizenship more narrowly to match the situation of those with “right to abode”. Before the Act, anyone born in Britain was entitled to CUKC citizenship. But after it came into force, at least one parent of a child born in the UK had to be a British citizen or a permanent resident to claim British citizenship. This meant that some children had the potential for their status to be changed to “Overseas Citizen”, even though they’d been born and raised in the UK. Concern about the inequality of this was raised repeatedly during the passage of the Bill.¹⁰⁸ Good character was also introduced in the British Nationality Act 1981 under Schedule 1 requirements for naturalisation.¹⁰⁹



Around this time, unrest flared in several cities, including Manchester, Liverpool, Birmingham and London. The causes were a combination of growing unemployment, deprivation, and strained relations between black communities and police who were felt to be over-using their stop-and-search powers.



In his introduction to the second reading of the 1987 Immigration Bill, the then Home Secretary Douglas Hurd acknowledged the link between concern about the race-related social tensions and the tightening of immigration controls:

“The 1971 Act was the first comprehensive immigration statute and established a new system of immigration control for both Commonwealth and non-Commonwealth citizens. It sought to bring primary immigration by heads of households down to a level which our crowded island could accommodate. The Act was introduced in the belief that there is a limit to the extent to which a society can accept large numbers of people

from different cultures without unacceptable social tensions. That remains our view. It is not an anti-immigrant view; it is a realistic view. It would not be in the interests of the ethnic minorities themselves if there were a prospect of further mass inward movement. That prospect would increase social tensions, particularly in our cities. That is why we say that firm immigration control is essential if we are to have good community relations.”¹¹⁰

Hansard records of the Lords debates about the Bill in early 1988 reflect opposition to the proposed tightening of immigration controls. Particularly controversial was that people would lose their settled status if they stayed out of the UK longer than two years, and that the first clause of the Bill repealed an existing legislative protection for Commonwealth citizens.¹¹¹

For example, on 21 March 1988 Lord Pitt of Hampstead urged the government not to take rights away from the black community that the government had promised to safeguard in the 1971 Act, saying:

“I wish that the Government would think through these matters. We are talking about people who have been here for 15 years. During those 15 years they have been contributing to the state through taxes, rates, their work and their contributions to society. In 1971 the Government gave them a pledge. I ask them for Christ's sake to keep it.”¹¹²

The following day the Lord Bishop of Manchester referred to a briefing from the British Council of Churches that accused the Bill of being racist. He said: “I think that there is a point of principle at stake...we are faced with a situation in which, in implementing a policy of open access for EC nationals...and, at the same time, constantly putting the screws on those coming from Commonwealth countries who are related to British citizens in this country, inevitably the

implication of such legislation is racist. That is a very serious matter when we all know that we have racial tensions here in Britain and especially in our inner city areas.”¹¹³

Despite the concerns, the Bill was passed and became the 1988 Immigration Act, receiving Royal Assent in May 1988.

2.2.4 Change goes unnoticed

These developments progressively impinged on the rights and status of the Windrush generation and their children without many of them realising it. The government did try to explain the changes. In the late 1980s the government advertised that a time-limited scheme, included in the Nationality Act 1981, to register Commonwealth citizens who had arrived before 1973, was due to expire on 31 December 1987. When planning the publicity campaign for the scheme, Home Office officials said they were concerned about the department’s ability to cope with a deluge of applications, and according to Home Office papers from the time, wanted to develop advertising that was informative but didn’t “stimulate a flood of enquiries”.¹¹⁴

We were told that to manage the queues and numbers of applications, the Home Office informed a number of applicants they didn’t have to register and wouldn’t face removal if they withdrew their applications. We understand that some took that advice and did withdraw their applications.

The registration scheme had some success. From 1985 to 1987 there were more than 130,000 registration applications.¹¹⁵ However, as we now know many people did not register at the time. Parliamentary records of the time show that applications cost £60 (approximately £180 in today’s prices), with no dispensation for people on benefits. While there is evidence that there was publicity and guidance to inform individuals of the changes, and it is clear that many did register as a result of this, it is difficult to establish how far reaching or well understood it was. This review has heard that, some of the Windrush generation did not register their status at this time because they did not see the need to do so, as they already considered themselves as British.

This would be consistent with the messaging in government leaflets from the time. In one Home Office leaflet from 1987, under a bold heading “What happens if I don’t apply for British citizenship?” the advice stated:

“If you have the right to register but you don’t want to, you do not have to. Your other rights in the United Kingdom will not change in any way.

“You will not lose your entitlement to social benefits, such as health services, housing, welfare and pension rights, by not registering.

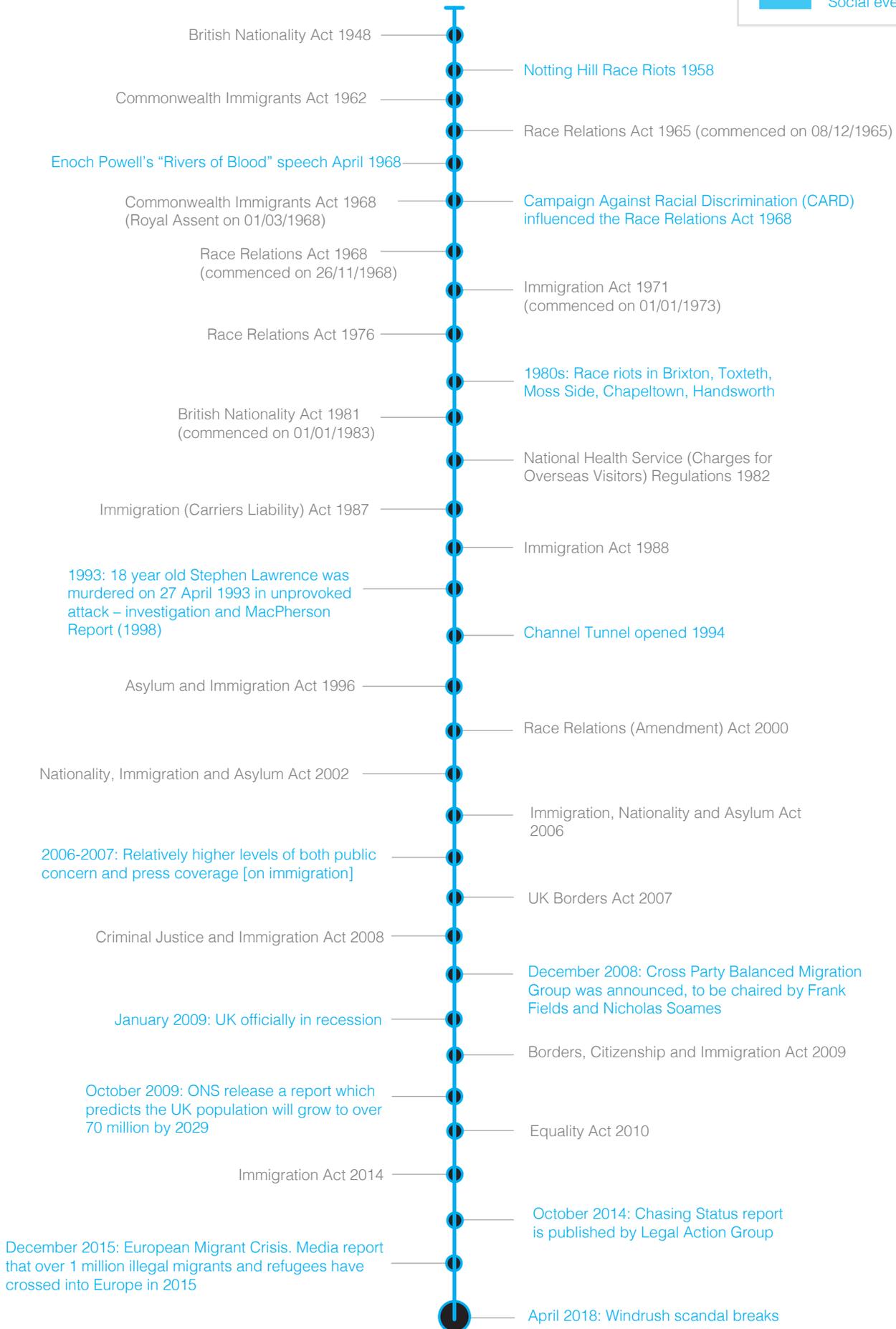
“Your position under immigration law is not changed.”¹¹⁶

It has been suggested that the Windrush generation’s deeply held sense of “Britishness” could also have made them less receptive to the message about changes to their status. As we saw in part 1, they’d arrived from countries where British culture was prevalent, and embraced. As historian Anne Spry Rush commented in 2011: “Middle-class West Indians...adopted Britishness as part of their own identity...[T]hey re-fashioned themselves as to fit British ideals” but also “recast Britishness in their own image, basing it on a British culture that they understood to be – in its ideal form – racially and geographically inclusive”.¹¹⁷ It is credible to conclude that these ingrained feelings made people less alert to the impact of changing legislation on their rights, and the need to act to clarify their status. It is not known how many people did not register at the time, but at a minimum 8,000 people could have been affected (Windrush Taskforce numbers), and the department still doesn’t know how many have been affected.

Key dates

Legislation

Social event



2.3 The hostile environment

“People being competed out of housing opportunities, out of employment opportunities and so on and [it] was less than evidential and sort of a behavioural issue and much more a political issue about the underlying fairness of a system, which addressed the question that people who sort of played by the rules weren't getting a fair deal. And that people who didn't play by the rules were, essentially, getting away with it.”

Senior official

This section looks at how the hostile environment emerged from concerns on both sides of the political spectrum that the immigration system was chaotic and “not fit for purpose”. And it shows how political intent hardened, with a stronger emphasis on enforcement. This, in turn, led to more people being affected, including the Windrush generation.

Some measures to restrict migrants' access to employment and public services were in place before the 2014 and 2016 Immigration Acts. For instance, in 1982, NHS charging regulations were first introduced, allowing hospitals to charge visitors and those without lawful status for NHS services. The regulations derived from legislation introduced in 1977, which imposed a charging regime for hospital treatment for overseas visitors unless the person was exempt. And under the Asylum and Immigration Act 1996, which came into force on 27 January 1997, employers could be fined for taking on illegal workers, while anyone subject to immigration control couldn't claim housing or child benefit.

Hostile environment measures, later renamed the “compliant environment”, were at the heart of government efforts to discourage illegal migration to the UK, as one senior official described: “What they really are after is dissuading people who might think...the streets of London are paved with gold”. By making it hard, or impossible, for

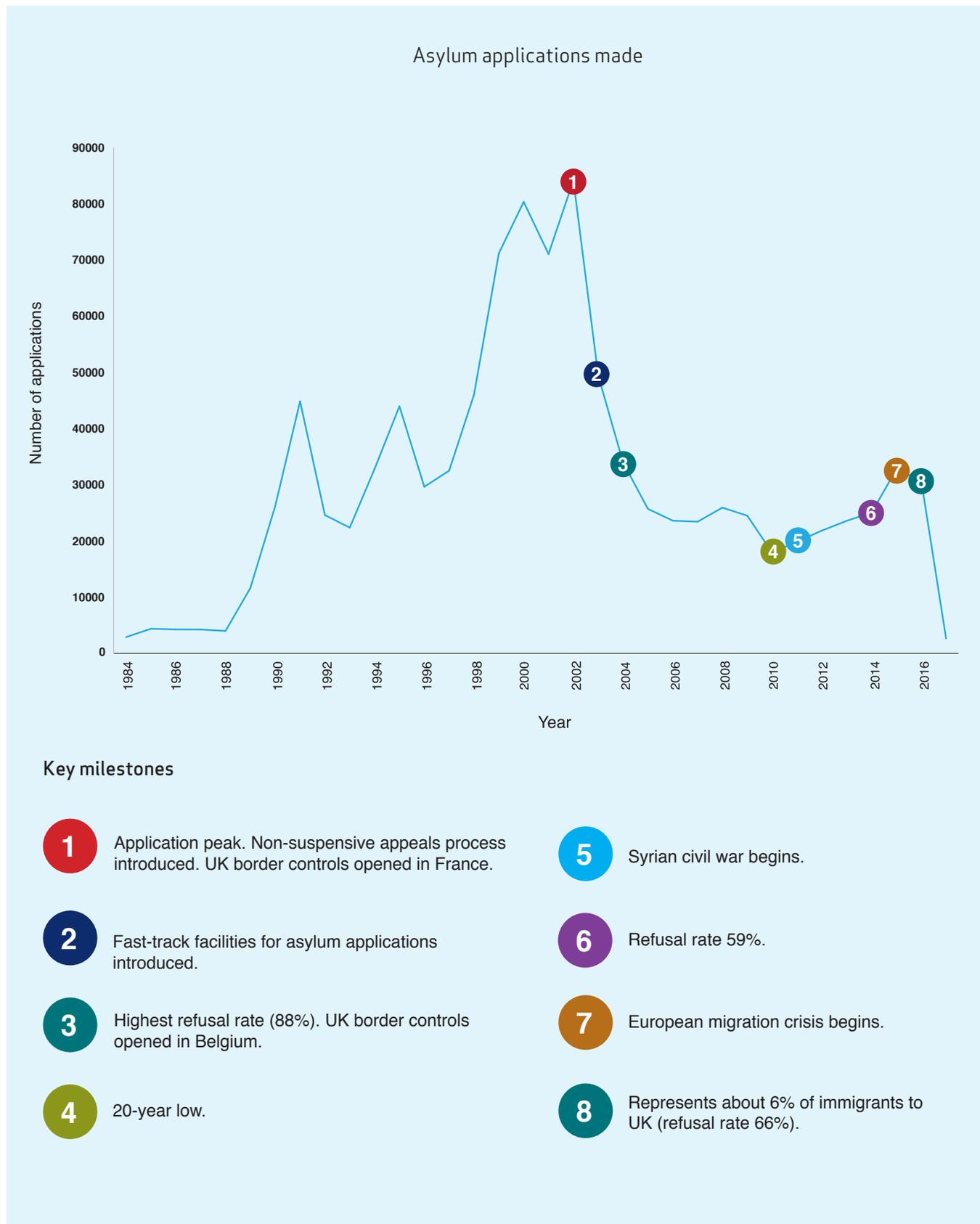
migrants without lawful status to do basic things such as work, open bank accounts, obtain driving licences, rent accommodation or access medical treatment, politicians attempted to put them off coming to the UK or encourage them to leave. As a former minister put it: “The whole principle of the compliant environment, of course, is that enforced returns are very hard, for everyone involved. So it is a reasonable approach to say, ‘if you are here illegally, it's hard for you, so don't bother to come here.’”

At the same time, it became increasingly difficult for people to prove their status. The standard of evidence became higher and the processes more complex and costly. The 1971 Immigration Act had first placed the onus on the individual to prove their status. This position continued and the standard of proof became progressively tougher.

Also, immigration control was extended beyond the Home Office and its agencies to include other government departments and wider public services. The same applied to private businesses and individuals as banks, employers and landlords all became part of the apparatus of immigration status checks. The aim, as one senior official put it, was: “to try to make the business of countering illegal migration something that was everybody's business to do. So private sector, public sector, across the public sector, whether it be in local government or central government that everybody had a responsibility for tackling illegal migration, not just Immigration Enforcement, and that the response was not just simply an enforcement response as in ‘go and arrest people’, it was about creating conditions, creating the environment.”

2.3.1 A changing debate

From the early 1990s onwards, asylum became more prominent in immigration debates as the number of potential cases rose from the former Yugoslavia and Soviet Union, and Somalia. Legislation in 1993 and 1996 was designed to put would-be asylum seekers off coming to the UK. Immigration and asylum were both electoral issues in the early 1990s and new language took hold in debates, with Britain described as a “soft touch” and “bogus refugees” identified as exploiting the system.¹¹⁸ Labour's 1997 election manifesto



said: “Every country must have firm control over immigration and Britain is no exception. All applications, however, should be dealt with speedily and fairly.” But there was no mention of increasing or decreasing immigration.

Between 1997 and 2002, asylum applications rose from 32,502 to 84,132.¹¹⁹ Simultaneously, net migration became a feature of political debate. In 1997, it stood at about 48,000 and by 1998 it had risen to 140,000, never to fall below 100,000 again. Ipsos Mori polls show a sharp rise in public concern about migration from the late 1990s.¹²⁰ This was heightened by growing numbers of migrants trying to enter the UK from northern France¹²¹ and media coverage from 1999 to 2002 of the Sangatte refugee camp in Calais,¹²² a highly visible signal of a system under pressure.¹²³

A senior official told us that the Labour government attempted a managed migration approach that balanced taking a tough stand on illegal migration with making a case for the benefits of migration overall. In late 2000, the Cabinet Office’s Performance and Innovation Unit produced a report saying that, “the foreign-born population in the UK contributed around 10% more to government revenues than it received from the state.”¹²⁴

By then, the Labour Government had abolished the “primary purpose” rule, fulfilling an election promise. This meant that for residency applications from foreign nationals married to a British citizen, the burden of proof was now on immigration officials, not the people applying. Then the Nationality, Immigration and Asylum Act 2002 opened up the possibility of citizenship for people denied it because their mothers couldn’t pass it on under the 1981 British Nationality Act. On the other hand, the 2002 Act gave the government power to take biometric data from people applying for leave to remain. It also gave a foretaste of later policies by saying local authorities, employers, police and banks had to share information with the Home Office for immigration control. And it widened the power to deprive people of citizenship.

The Labour government announced the so-called “tipping point” target in 2004 – Tony Blair promised that by the end of the following May, failed asylum seekers removed from the country

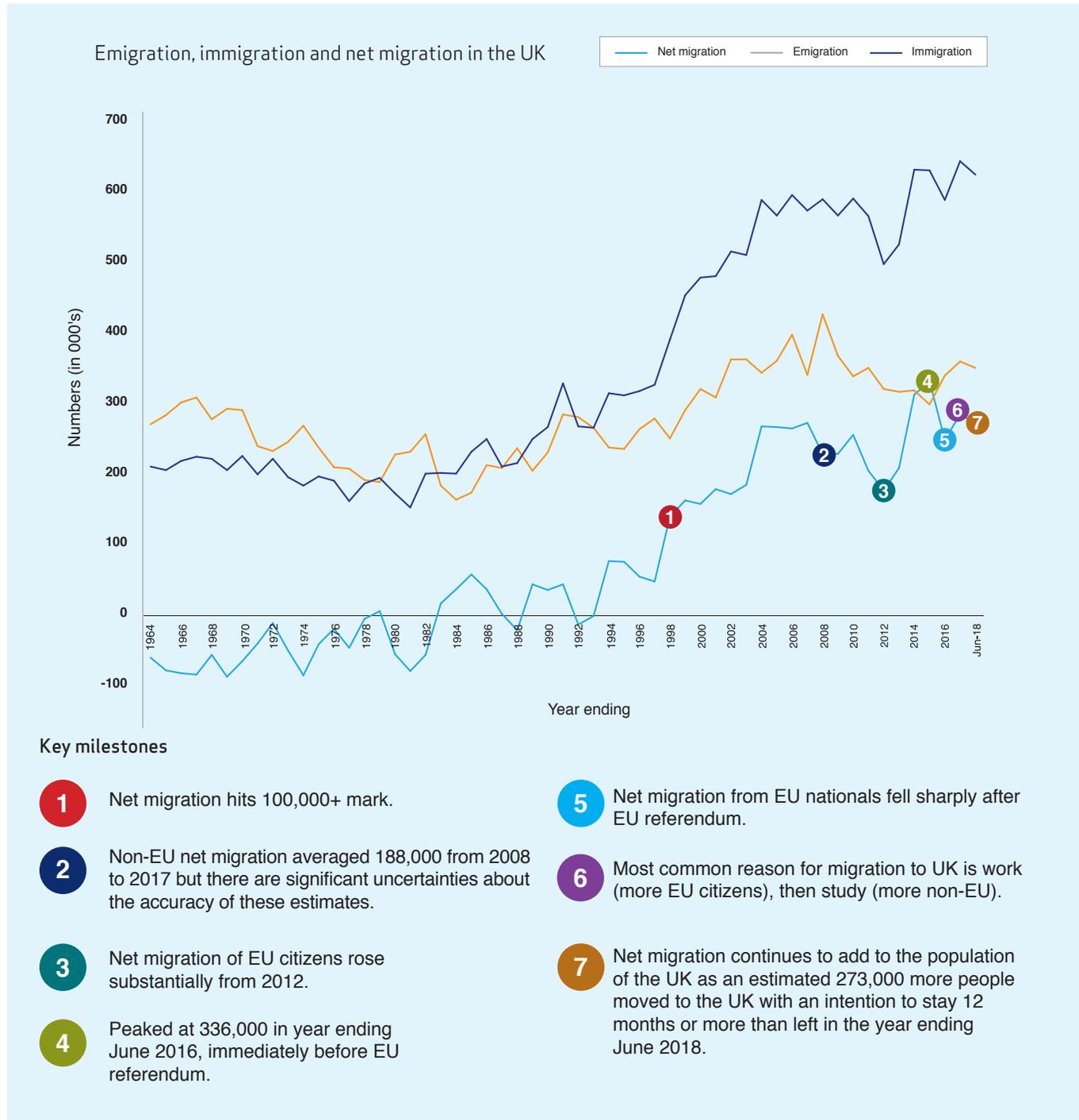
every month would outnumber those applying to live in the UK.¹²⁵ Asylum applications dropped considerably to 25,712 in 2005.¹²⁶ But after 23 Chinese illegal migrants controlled by illegal gang masters died while working as cockle pickers on Morecambe Bay in February 2004,¹²⁷ critics argued the government’s focus on asylum had distracted it from other areas.

The debate shifted to net migration, particularly in the wake of new countries joining the European Union in 2004. Net migration rose from 185,000 in 2003 to 267,000 by 2005.¹²⁸ A minister/former minister recalled:

“We had the Balkan Wars, which meant a flood of asylum seekers from that part of Europe...And, on top of that, there was the decision – uniquely among major Western European economies – to open up our borders completely from day one to the A8 countries...And very, very suddenly you were finding huge social pressures in parts of the country that you’d not seen before.”

In 2004, the then Home Secretary Charles Clarke published a strategy, *Controlling Our Borders: Making Migration Work for Britain*. Its plans included e-borders (electronic border gates), an Australian-style points-based system for migration and a commitment to a Migration Advisory Committee to advise the government on labour market and skills shortages.

Another change in policy came with the Identity Card Act 2006, the result of political debate going back to the 1990s, when John Major’s Conservative government had floated the possibility of voluntary cards. Labour opposed the idea in 1995,¹²⁹ but revived it in 2001 after the 9/11 attacks¹³⁰ and included proposals in its 2005 manifesto.¹³¹ A former minister reflected that: “I don’t believe that you can avoid a Windrush situation without a data identity management system. And I don’t believe you can have an effective identity management system without correlation of identity across government departments.” It was still highly contentious when the roll-out of compulsory cards for foreign nationals started in November 2008, and the incoming Coalition government repealed it in 2010.



2.3.2 “Getting a grip” on immigration

“Over the last 15 years immigration has grown as an issue of public concern in the UK, with opinion polls consistently placing it as one of the top five issues of importance to people in the UK.”

National Conversation on Immigration¹³²

Public confidence in immigration control had already been shaken in 2006 after it emerged that 1,013 foreign national offenders (FNOs) had been released since 1999 without consideration for deportation. After Charles Clarke resigned as Home Secretary, his successor John Reid was widely attributed as having labelled the Immigration and Nationality Directorate (IND) “not fit for purpose”, which a senior official told us prompted significant reform. This was set out in the 2006 strategy: Fair, effective, transparent and trusted. Rebuilding confidence in our immigration system.¹³³ In its foreword, the then Home Secretary and then Permanent Secretary said: “Above all, we need a system which protects the security of this country, prevents abuse of our laws, is fair to lawful migrants and the British public, and in which people have confidence.” The tough measures set out in this strategy show the hostile environment taking shape, with a commitment to increasing cross-government enforcement action intended to clamp down on illegal working, shut down “fraudulent access” to benefits, and increase the number of people removed.

After restructuring in 2007, the Home Office would focus on crime, immigration and terrorism (responsibility for prisons and offender management was transferred to the Ministry of Justice). Despite the changes, the political need to demonstrate tight control over illegal migration saw the emerging hostile environment policy initiatives become more conspicuous. The cross-government Enforcing the Rules strategy, published in March 2007,¹³⁴ foreshadowed what was to come. It set out to “block the benefits of Britain to those in the country illegally” by denying access to work, benefits and services.¹³⁵ In the introduction to the strategy, the then Home Secretary John Reid said: “We need to make living and working here illegally even more uncomfortable and constrained.”¹³⁶ The plans to “crack down” on trafficking gangs and employers included intelligence-sharing between the police and the Borders and Immigration Agency, and making it easier for legitimate employers to check workers’ immigration status.

The explicit intent and language of the hostile environment can be traced back to the Labour government of the late 2000s. In May 2007, Immigration Minister Liam Byrne told Parliament: “To strengthen the existing powers to prosecute and fine the employers of illegal migrant workers, we took action in the Immigration, Asylum and Nationality Act 2006 to introduce a system of civil penalties for careless employers and a criminal offence of knowingly employing illegal workers. That will come into force by the end of 2007.... We are working with a wide range of employers and the CBI, as well as with trade unions, to understand how we can come down much harder on the cause of illegal immigration, which is obviously not the great British weather, but the opportunity to work in a sustained and growing economy. That is not only why we are doubling the resources that we are investing in enforcement and removal, but why we are proposing a new package of measures, so that those employers who break the rules, undercut competitors and employ people illegally will now face not only civil penalties, but where necessary, unlimited fines and imprisonment.”¹³⁷



2.3.3 Curbing net migration

Migration was an important issue in the [2010 General Election](#), with the Conservatives campaigning on promises to set tighter limits. Their manifesto still acknowledged the complexity of the issue: “We want to attract the brightest and best people who can make a real contribution to our economic growth. But immigration is too high and needs to be reduced.”¹³⁸ The migration debate continued to be politically charged, as a former minister explains: “There were certain tabloid newspapers who would routinely phone up the Conservative party for comment when an asylum seeker committed a murder or a rape, and I wasn’t going to play that game because I could absolutely see what the purpose of that kind of comment was.”

There was also a political goal, not just for illegal migration, but net migration overall. On 10 January 2010, while Leader of the Opposition, David Cameron told Andrew Marr: “We would like to see net immigration in the tens of thousands rather than the hundreds of thousands.”¹³⁹ A minister/former minister summarised the intent of the target as, “to ensure that we, as a country, could continue to benefit from immigration, immigrants, all the skills and differences that they bring, while at the same time addressing what was a very real public concern which was leading to support for unpleasant extremist parties and politics, which was that the numbers were simply out of control.”

In a [March 2013](#) speech, Prime Minister David Cameron set out the historic benefits of migration to Britain, citing migrants from the West Indies, among others, who had “enriched our society by working hard, taking risks and creating wealth”. “Our migrant communities are a fundamental part of who we are,” he added. But he also criticised a “badly out of control system” that had made Britain a “soft touch” and re-affirmed the aspiration to cut net migration to tens of thousands, in part by “turning round the tanker that is the UK Border Agency”.¹⁴⁰

This typified the direction of political discourse, as shown in the parties’ election manifestos. Between 1997 and 2017, all the parties referred to the UK’s long history of migration in a positive way, using words like “welcoming” and “home”. They also characterised a good migration system as being “firm but fair”, but called the current system weak, inefficient and chaotic (particularly if they weren’t in power at the time). All parties referred to pressure on public services to legitimise their policies. And they referred to the late 1990s, when net migration rose sharply, as the point where migration became unsustainable. Discussion as to how to limit the number of migrants then became more prominent after 2005. And in 2015 the Conservative manifesto presented compliant environment measures as effective tools for tackling illegal migration.¹⁴¹

2.3.4 Taking a “zero tolerance” approach

The net migration target became a top cross-government priority, with the Home Office a key player in of devising measures to cut off access to services for people with no legal right to be in the UK and increase returns from the UK. The work was steered from the centre of government and as a minister/former minister noted: “It was made clear from the Prime Minister downwards that this is serious, we want to take this seriously. So they [the department] set about trying to achieve it.”

The language used to articulate policy goals became tougher. In 2012, the then Home Secretary, Theresa May, said: “The aim is to create, here in Britain, a really hostile environment for illegal migration...What we don’t want is a situation where people think they can come here and overstay because they’re able to access everything they need...HM Revenue and Customs is coming down hard on companies that employ illegal immigrants, the Department for Work and Pensions is taking a ‘zero tolerance’ approach to benefits claims, and local councils are closing impromptu shelters offering ‘beds in sheds’.”¹⁴²

In December 2012 the then Home Secretary wrote to the Prime Minister outlining her plans to “increase our efforts in tackling illegal migration”. As one former minister commented: “The Home Secretary sets the tone. If your prime objective is to reduce migration to 10,000s the department and civil servants will react to that tone.” She set out her thoughts on “how we can make it harder for illegal immigrants to stay in the UK”. These plans would be developed to become the [2013 Immigration Bill](#) and included the restriction of appeal rights. In the letter, the then Home Secretary referred to: “The ludicrous former position was that UKBA had to examine proactively every case for compassionate factors before they could begin to remove someone.” She set out the intention of “tightening access to employment” and “respond(ing) to public concern about controls on access to public services and benefits. This is both about reducing pull factors to the UK and about protecting taxpayers.” The then Home Secretary also expressed the desire to tighten access to NHS treatment, education, housing, driving licences and financial services. Some measures set out in the letter weren’t included in the later Bill, including to “restrict Commonwealth nationals’ ability to vote in UK elections”.¹⁴³

2.3.5 Encouraging radical ideas

Following this direction from ministers a number of different ideas were considered across government as part of the development of the hostile environment and there was a debate about how radical they should be. A senior official recalled cross-government discussions on the hostile environment measures:

“Within the measures, for example trying to prevent people in the country unlawfully having access to elective surgery, there were colleagues in the Department of Health that were very uncomfortable with that. A lot of that came from physicians working with the Department of Health and from interactions with physicians whose starting point was that everybody should have treatment irrespective of any entitlement.”

Within the Home Office officials were encouraged in line with ministerial direction to come up with radical, far-reaching plans. A special adviser¹⁴⁴ commenting on one plan said: “This is largely good. But I doubt it’s as radical as it can be.”¹⁴⁵ Staff at other government departments told us they thought the Home Office was very directive, with some officials in other government departments describing it as: “a big beast in Whitehall, used to getting its way”. They felt the principle of the government’s hostile environment policy was not up for question but that they were there to come up with solutions to make it happen.

As one senior official reflected:

“the overriding leadership style is pacesetting... I think this is a pacesetting organisation, going back your point about...what [effect] does the climate, you know the external climate have on the culture, what effect does it have? I think it very much creates pace, quite a demanding culture.”

At the same time, the word “hostile” made some in the Coalition government uncomfortable, with a Liberal Democrat minister commenting that “the ‘hostile environment’ term would go down extremely badly with the party. The focus should be on fairness, not hostility.”¹⁴⁶ According to politicians we interviewed, while there was a focus on reducing illegal immigration this was done within the context of trying to have a more rounded discussion about migration.

2.3.6 Prioritising the low-cost option

“The basic resource for the management of the immigration system is wholly inadequate and always has been. And the fundamental reason for that is if you’re the minister and you go to the Chief Secretary and you say, ‘I want more money for the immigration service,’ they say ‘you must be joking – you think the British public would support that?’”

Minister/former minister

Financial constraints caused by austerity led the government to explore options to make the immigration system less costly and more self-funding. The [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#) created the power to set a fee that “exceeds the administrative cost of determining or processing the application. Reflecting the benefits that are likely to accrue to the ultimate beneficiary.” Proposals were for charges that were “competitive with other countries offering similar opportunities”, like the USA, Australia and Canada, which charged between £500 and £1,000.¹⁴⁷

As the hostile environment took hold, the cost of applying to prove status rose at just the point where the Windrush generation needed to do it most.¹⁴⁸ We return to this later in the report.

The government was also drawn to “nudge” methods to encourage migrants to leave, rather than the much more costly option of detaining and removing them. From [July to October 2013](#), the Home Office piloted a communication campaign in six London boroughs. It encouraged illegal migrants to come forward to leave the UK voluntarily, but made it clear that they faced arrest and detention if they didn’t.

An Immigration Enforcement submission about the scheme said 7,292 people had left the UK voluntarily in 2011-12. But it said “potentially thousands more immigration offenders” would do so if they felt “enforcement activity was a near and present danger”, and knew about the “voluntary departure route”.¹⁴⁹ Another submission said the exercise would reassure the “British public” about the department’s “competence at enforcing immigration law”.¹⁵⁰ The campaign included postcards on show in local shops, advertising and leaflets. But the most conspicuous was “Go home vans”, or mobile billboards, with the message “Go home or face arrest”.¹⁵¹

While the department expected the campaign to generate “talkability” in communities, we have seen no evidence that it foresaw any risks to those same people. Among the risks the department did see was that the scheme could be seen as “soft”.¹⁵² Yet, as was reported at the time, the pilot made people feel threatened and frightened and created anger in communities. It also drew media criticism. Several former ministers who were interviewed raised concerns. One said:

“When you send vans round streets saying, ‘If you’re here illegally you’re going to go back’, and it’s communities that have been here for years that have settled, you create a tone and an atmosphere. I think that was part of the problem.”

The campaign generated a number of complaints to the Advertising Standards Authority (ASA), including on the grounds that it was offensive and distressing. While these broader complaints were not upheld, the ASA ruled that some of the wording was misleading (e.g. in relation to the claimed number of arrests), and that the adverts must not appear again as worded.¹⁵³ Ultimately, the Home Secretary announced that the “ad-vans” were “too much of a blunt instrument” and wouldn’t be used again.¹⁵⁴ But the Home Office evaluation referred only to “a number of concerns expressed about the ad-vans”.¹⁵⁵ It measured success based on the number of voluntary departures the campaign produced and the cost compared to forced departure. There’s little in the evaluation to suggest that the department learned any wider lessons from the episode about the possible impact on communities.

Financial constraints caused by austerity also played a part in promoting lower-cost policy options. A 2014 paper said that “under any funding scenario”, Immigration Enforcement (IE) capacity didn’t keep pace with the “demand for activity”. It added: “We will need to make choices between casework to drive overall removals and high-visibility action that contributes to a hostile environment.” The paper also speculated about the “opportunities to reduce stock [of immigration cases] through caseworking and data-led approaches” and asked, “do we understand the presentational implications of doing so?”¹⁵⁶ A former official told us: “as budgets reduced in the Home Office and the immigration budgets were reduced at the same time as the expectations were increased, people realised that they had to do something differently. So there wasn’t a lack of will to make that change, [but] I think there was just a feeling that people were being pulled in both directions. There was still a lot of pressure to remove people at the same time [as] changing [the] system and to do things differently.”

2.3.7 Strengthening the political impetus

The drive to make an impact and show results also saw the government try to strip away some of the checks and balances that cut the risk of policies’ unintended consequences. In late 2012 David Cameron promised to “call time” on equality assessments brought in by Labour in 2010 to make sure officials took account of disability, gender, gender reassignment, age, marriage or civil partnership, pregnancy and maternity, religion or belief, sex and sexual orientation and race in their decisions. This would leave policy makers “free to use their judgement”, he said.¹⁵⁷ This is considered later in the report.

In [May 2015](#), ahead of the Queen’s Speech, David Cameron reaffirmed the majority Conservative government’s commitment to a target of net migration “in the tens of thousands”, and to a cross-government approach to immigration control. “[It] isn’t just a job for the Home Office – it’s a job for health, employment, housing,



education, business – everyone.”¹⁵⁸ David Cameron took a personal interest in delivering the net migration target, including through chairing the cross-government Immigration Taskforce.¹⁵⁹

The message became ever clearer: “If you are not here legally, you are not welcome. We want you to leave the country – and would prefer it if you went home voluntarily. Where you do not, we will enforce your removal.”¹⁶⁰ Inevitably, this political momentum had an effect on priorities at the Home Office. A former senior official said:

“In the context of those very early Immigration Taskforce meetings, the concept and discussion about [the] hostile environment were very much talked about in terms of people in the country illegally. And it’s really important to keep stressing that this was not about the Windrush generation, who were lawfully in the country. This was about focus and tackling people that weren’t. And so, within that context, cross-government departments were tasked with working more closely together to fulfil the government ambition of reducing illegal migration and reaching the net migration target. So there were then a series of meetings, activities and events where cross-government departments were required and encouraged to cooperate with the aim of reducing illegal migration. So data sharing with HMRC, working with the Health Service, working across the private sector with landlords and banking etc, all of those measures with the sole aim of reducing the illegal population.”

The new majority Conservative government promised to be “tougher, fairer and faster” on immigration, with the [2015 Immigration Bill](#) building on the earlier hostile environment measures. That included widening the Right to Rent scheme which was first introduced in December 2014 and restricting access to private housing. David Cameron said: “For the first time, we’ve had landlords checking whether their tenants are here legally. The Liberal Democrats

only wanted us to run a pilot on that one. But now we’ve got a majority, we will roll it out nationwide, and we’ll change the rules so landlords can evict illegal immigrants more quickly.”¹⁶¹

2.3.8 Ignoring warnings

The potential for unintended effects in the hostile environment measures was clear to a number of politicians. In debates on the 2015 Immigration Bill, several raised warnings about the inherent risks of discrimination, misidentification and removal. David Smith MP was concerned for people already lawfully in the UK not having the right identity documents: “...groups of people who should have no reason to be concerned by this legislation at all may find themselves being put through checks that they cannot easily meet.”¹⁶²

Joint Council for the Welfare of Immigrants’ (JCWI) chief executive Saira Grant noted the potential effects of the hostile environment beyond unlawful migrants: “What we are concerned about, and what we have already seen happening, is that it targets all migrants: lawful migrants here and, indeed, citizens of this country. Our concern is that there will be many abuses of human rights. Many people will be unlawfully targeted and discriminated against and the Bill provides no redress.”¹⁶³

“It targets all migrants: lawful migrants here and, indeed, citizens of this country”

The political drive to implement new measures as soon as they came into force would have other effects, as policies were developed without the usual planning and evaluation. A Senior Civil Servant was challenged on this by the Chair of the Home Affairs Committee in May 2018: “You did not have any way of measuring the effectiveness of your strong-arm strategy.” They responded: “I would agree, Chair, that we need to put in place an evaluation scheme.”¹⁶⁴

2.4 The role of the Home Office

“There was a lot of soul searching about how we, as individuals, could have spotted this. What is it about the way we’re working which means that we didn’t bring this [up], we didn’t surface this earlier?”

Senior official

Virtually everyone we spoke to for this review has said – and it is widely accepted – that any sovereign nation should have control of its borders and determine its arrangements for immigration and nationality. All governments need to show their people they have a workable immigration system based on a robust migration policy. It’s not the role of this review to question the UK’s immigration policy.

We have looked at how historical, social and political influences combined with complex, overlapping legislation to create the problem that would effectively set the trap for the Windrush generation. In this section we look at the role of the Home Office in making policy intent a reality.

Responsibility for the contents of legislation cannot be laid wholly at the door of the Home Office. Legislation is typically drafted to implement the government’s policy and is then debated and approved by Parliament. The European Commission for Human Rights had expressly recognised the racial element to the 1968 and 1971 legislation, passed through Parliament; and there was a clear racial aim in actions of a specially established Cabinet Committee,¹⁶⁵ not in actions of the Home Office. However, this history framed the nature of the issue as one with a racial impact and with a racial element. When this was institutionally “forgotten”, as it was to such a significant extent inside the Home Office, it led to circumstances where the ongoing racial effects could continue unchecked. This was a key reason why so many of the Windrush generation were caught up by the hostile environment.



Undoubtedly, some of the reasons behind the Windrush scandal are connected to structures and processes in the department. Other reports have highlighted them, notably those by the National Audit Office, Public Accounts Committee and Home Affairs Committee.¹⁶⁶ But the reasons behind the scandal were also cultural.

Some of these cultural factors are specific to the department as a whole, and some to the Borders, Immigration and Citizenship System (BICS), while others are potentially broader still.

The section starts by looking at the function, mission and structure of the department, and the context and culture it operates in. It goes on to identify how these factors affected each stage of the policy process, starting with the design of immigration policies, moving into implementation through the immigration system, and then monitoring and evaluation.

2.4.1 The Home Office: function, mission and structure

“Immigration was always the issue which was politically the most contested and therefore, in that sense, was right at the top of the political agenda.”

Senior official

The Home Office, as one of the “four great offices of state”, is a major, long-established and sizable department. It has a complex structure and functions attracting a high degree of scrutiny, all of which are ultimately the responsibility of the Home Secretary. It is the lead department for immigration and passports, fire, counter-terrorism, policing, drugs policy and crime.¹⁶⁷ The goals of the department are to:

- cut crime and the harm it causes, including cyber-crime and serious and organised crime
- manage civil emergencies within the remit of the Home Office
- protect vulnerable people and communities
- reduce terrorism
- control migration
- provide world-class public services and contribute to prosperity
- maximise the benefits of the United Kingdom leaving the European Union

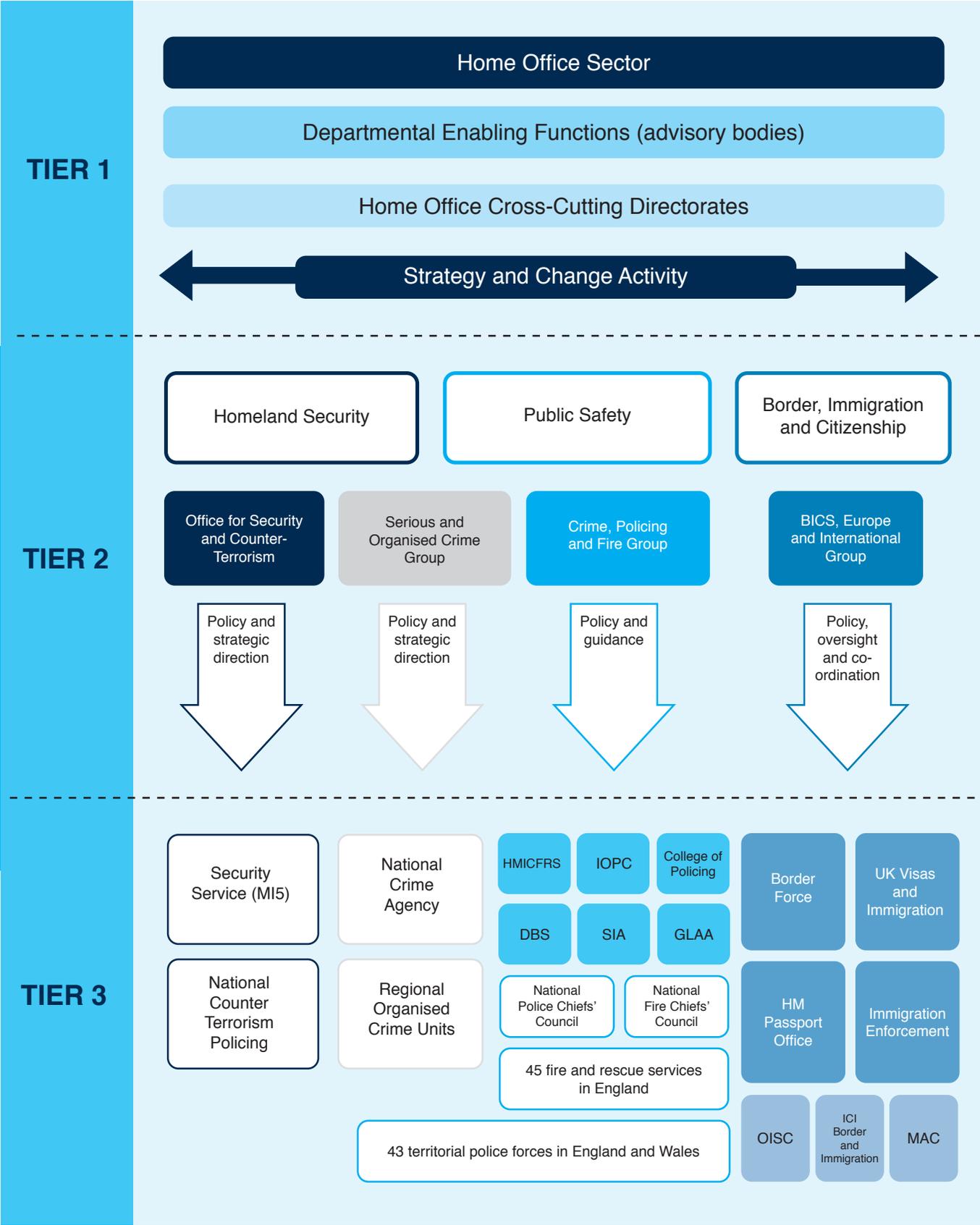
Immigration policy is designed and delivered within the Borders, Immigration and Citizenship System (BICS). This comprises a central policy function - BICS Policy and International Group - and the following operational groups:

- UK Visas and Immigration (UKVI) makes decisions about who can visit, work, study and settle/become citizens in the UK.
- Border Force (BF) secures the border and makes sure only those with the right approvals can enter the UK.
- Immigration Enforcement (IE) prevents abuse of the system and reduces the number of people who are in the UK illegally.
- Her Majesty's Passport Office (HMPO) issues UK passports.



The Home Office sector and its systems

The Home Office sector comprises three tiers: TIER 1 is sector-wide leadership and cross-cutting areas like enablers, international and strategy functions, TIER 2 is system leadership (including policy-setting and governance), and TIER 3 covers operations.



Staff numbers

BICS Director General command staff numbers	Total head-count	Total FTE
BICS Policy and International Group	614	596
Border Force	9,221	8,502
HMPO (Her Majesty's Passport Office) PB	4,165	3,620
Immigration Enforcement	5,287	4,998
Visas and Immigration	9,776	9,067
Total Home Office	34,982	32,537

Scale of BICS

In 2018, there were...

142.8 million

passenger arrivals, 5.7 million, or 4%, more than 2017.



Of these, 20.5 million were non-EEA (ie passenger arrivals excluding British, other EEA and Swiss nationals)

274,480

decisions on applications for extension of temporary stay, including dependants
Of these, 250,421 were grants (a grant rate of 91%)

94,690

decisions on applications for settlement, 38% more than 2017

Of these, 90,608 were grants (a grant rate of 96%)



2.9 million visas granted:

77% were to visit,
8% were to study (excluding short-term study),
6% were to work,
and 2% were for family reasons

29,380

asylum applications from main applicants



The UK offered protection to 15,891 people, up 8%. The Vulnerable Person Resettlement Scheme (VPRS) accounted for three-quarters (4,407) of the 5,806 refugees resettled in the UK in 2018

158,795

applications for British citizenship



5,209

foreign national offenders returned



9,474

enforced returns



(The fall coincides with changes across the immigration system following Windrush.) Enforced returns from immigration detention fell 17% to 8,578

6.8 million

passport applications



24,748

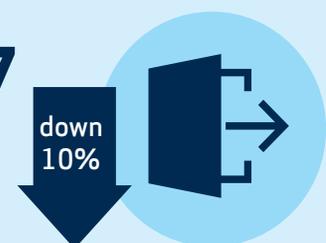
individuals entered the detention estate



(The lowest level since comparable records began in 2009)

25,487

left the detention estate



At the end of December 2018, there were 1,784 people held in the detention estate, a fall of 30% compared with the same date 12 months earlier and the lowest level since comparable records began in 2009.

The last two decades have seen numerous changes to how the immigration system is structured and managed, often as a political reaction to a crisis or scandal. In 2007, after the statement attributed to John Reid that the immigration system within the Home Office was “not fit for purpose” (in response to a crisis involving foreign national prisoners), management of the immigration system, then known as the Immigration and Nationality Directorate, was taken out of central Home Office control and the Border and Immigration Agency (BIA) was formed. Twelve months later, on 1 April 2008, that was succeeded by the UK Border Agency, itself a merger of BIA, UK Visas and the detection functions of HM Revenue and Customs. The decision to create a single border control organisation came after a Cabinet Office report on how to improve the UK’s security.¹⁶⁸ Border control functions were separated to form Border Force in 2008 as part of the UK Border Agency. In 2012 Border Force was removed from the agency and transferred back into the Home Office.

On 26 March 2013 the then Home Secretary, Theresa May, announced that the UK Border Agency would be abolished, and its work returned to the Home Office. This established UK Visas and Immigration (focusing on the visa system) and Immigration Enforcement (focusing on immigration law enforcement).

Once management of the immigration system came back into the Home Office, BF, IE, UKVI and the policy group operated initially as independent directorates. These groups were later brought together, along with Her Majesty’s Passport Office (HMPO) to form the current structure under the umbrella of BICS.



2.4.2 The operating environment

As we've seen, the immigration system sits within a highly politicised and complex area of public policy. It is an area where there are strongly held opinions. A recent report by the think tank British Futures concluded: "At a national level, the media debate about immigration has been polarised, with pro-migration voices from business and civil society pitted against an anti-migration tabloid press and politicians and public figures sharing hard-line views. Most members of the public have been largely absent from this noisy and adversarial discussion."¹⁶⁹

BICS operates under pressure to deliver high volumes of decisions and it operates in the face of societal and political pressures. This does not just affect the department's culture through the political will and intent coming from ministers; it also influences the work of staff whose experiences and views shape their actions. Many senior officials and politicians emphasised the scale of the immigration operation, the numerous pressures it faced and the perverse effects that this could have throughout the system. As one former minister reflected:

"Most people recognise that immigration is good for the country, but they want it controlled... Target of 10,000s but immigration continues to go up even where we have control... That leads to pressure on officials – get these figures down."

A politician painted a vivid picture of the volumes and the pressure on their staff, reflecting on the tens of thousands of unread emails in the official inbox when they started as one of a succession of Immigration Ministers over a relatively short period. While not a direct measure of the pressure on the system, it tells us something about the environment in which ministers and officials were working.

Given the scale of the operation and the complexity of the legislation, it is all the more important that the department is run by effective leaders according to the principles of good public administration (see Figure 3).

Figure 3. Good public administration

The Parliamentary and Health Service Ombudsman principles of good administration¹⁷⁰

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances.
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision-making and giving reasons for decisions.
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

The characteristics of good public administrators

The *Civil Service Code* sets out standards of behaviour expected of all civil servants, based on four core values set out in legislation:¹⁷¹

- *'integrity'* is putting the obligations of public service above your own personal interests
- *'honesty'* is being truthful and open
- *'objectivity'* is basing your advice and decisions on rigorous analysis of the evidence
- *'impartiality'* is acting solely according to the merits of the case and serving equally well governments of different political persuasions

The *Ministerial Code* sets out the standards of conduct expected of ministers and how they discharge their duties and should be read against the background of the overarching duty on Ministers to comply with the law and to protect the integrity of public life. They are expected to observe the Seven Principles of Public Life:¹⁷²

- *Selflessness* – Holders of public office should act solely in terms of the public interest.
- *Integrity* – Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- *Objectivity* – Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- *Accountability* – Holders of public office are accountable for their decisions and actions and must submit themselves to whatever scrutiny necessary to ensure this.
- *Openness* – Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for doing so.
- *Honesty* – Holders of public office should be truthful.
- *Leadership* – Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

2.4.3 Policy making

“We need a really good understanding not just of how policy could be turned into law but also its social impact and its economic impact – [a] really strong evidence base. And we should be willing to build evidence even in areas where it is politically unattractive. In fact, I would say it’s our duty as public officials.”

Senior official

The Civil Service is accountable to ministers and ministers are accountable to Parliament and the electorate. Governments bring forward legislative proposals, as in the case of the 2013 and 2015 Immigration Bills, reflecting the commitments made in their manifestos. Parliament then debates and votes on this legislation before it becomes law. Civil servants have a clear role to support these arrangements through the advice and briefing they provide. The duty of the Civil Service is to support the government of the day on the development and delivery of its policy. In doing so it should give ministers the facts as it understands them, and its best advice based on the facts, including alternative ways of achieving the objectives that they have been set. But it is the minister’s right to decide. Ministers set the direction of policy and it is the role of civil servants, once decisions have been taken and direction has been set, to dutifully carry out and implement that policy. In developing options for ministers to consider, officials should analyse the issue, including the implications of previous legislation, seek the opinions of experts, interested groups and affected people, and identify costs, benefits and risks. This analysis should also include advice on any legal obligations (including the PSED) and the financial implications of pursuing a particular course of action. Ministers can then consider the options against the political intent. As the Institute for Government puts it: “The role for policy makers is to achieve the best use of ‘ideas’ in government: to embrace the value politics can bring, while mitigating the damage it can do.”¹⁷³ This can be more challenging for officials when ministers also bring their own implementation proposals.

Figure 4 sets out the principles and characteristics of good policy development, which should be set in the context of ministerial direction-setting and decision-making. In the real world, it’s understandable that in developing and then implementing policies there often has to be some level of compromise between the benefits and disbenefits; as well as adjustments once the actual impact of policies is known, or in the face of external events. But given how closely immigration and nationality policy and race interact, as described in part 1 of this report, it would be good practice, if when developing policy, policy-makers sought to understand and consider the potentially disproportionate impacts of immigration and nationality policy on individuals, including whether they have a greater impact on those who are BAME. Given that immigration policy outcomes can be punitive, it’s essential that race equality impacts are considered at the heart of designing policy.

Figure 4. Good policy making

The Policy Profession Skills and Knowledge framework¹⁷⁴

Policy officials must bring together these three elements to deliver successful outcomes for government:

- the development and use of a sound evidence base
- understanding and managing the political context
- planning from the outset for how the policy will be delivered.

There are four areas of activity where these three elements of successful policy apply, although they don’t necessarily happen discretely or in a specific order and engagement happens throughout:

- understanding the context
- developing the options
- getting to a decision
- making it happen

The Institute for Government's characteristics of good policy-making¹⁷⁵

- Forward-looking: clearly defines outcomes and takes a long-term view.
- Outward-looking: takes account of external influencing factors, draws on experience in other countries, considers how the policy will be communicated to the public.
- Innovative, flexible and creative: questions established ways of doing things, encourages new and creative ideas, open to comments and ideas from others, manages risk.
- Evidence-based: bases decisions on the best available evidence from a wide range of sources, involves key stakeholders throughout the process.
- Inclusive: takes account of the impact on and/or meets the needs of all people affected by the policy.
- Joined up: takes a holistic view and works across institutional boundaries.
- Evaluation, review and learning: policies are evaluated to judge success, reviewed to ensure that they are tackling the problems they were intended to address and policy makers learn the lessons of past initiatives.

We were told, and we have seen evidence, that policy officials in the Home Office were under considerable pressure to develop and implement the hostile environment policy quickly. A senior official commented:

“We can't get away from the fact that a lot of this takes place in an environment of quite... heightened political sensitivity, and people working within the system that feel, consciously or otherwise, under a certain amount of pressure to achieve certain outcomes.”

This pressure can be at odds with the responsibilities of the department and its officials to examine fully and understand the impacts of the policy they develop. It can affect the nature and quality of the advice that they give to ministers.

Even in the face of such pressure, and strong public feelings on both sides of the debate on migration, the role of officials is to consider, advise ministers and ultimately evaluate the potential effects of these policies. However, it is important to note that, the review has seen no evidence of individual officials acting inappropriately (i.e. outside the Civil Service Code) due to pressure from ministers.

2.4.4 Assessing policy impact: losing sight of risks

Impact assessments consider the need for proposed government policies, and what effect they're likely to have. They are used by policy makers to help understand the consequences of proposed policy interventions. And they help government weigh, and present publicly, the relevant evidence on their likely impact.¹⁷⁶

The impact assessments for the Bills leading to the 2014 and 2016 Immigration Acts didn't go far enough to identify or address possible risks of the proposed hostile environment policies. A common feature of the impact assessments we've reviewed is that they compare one option with a “do nothing” approach, primarily in terms of costs and benefits. This is common practice. But the option of maintaining the status quo should also include an assessment of the people whose positions are likely to be adversely affected by the introduction of a new policy. For the overarching 2013 Immigration Bill and the individual measures, impact assessments looked at risks and benefits for the government or the department. But they didn't adequately consider the risks for members of the public, including the Windrush generation.

A senior official told us: “There was obviously parliamentary scrutiny of those Acts [and] public consultations ... before we implemented the measures under the Acts. There were impact assessments, and so on. Those did not flesh out, to the best of my knowledge, Windrush as a cohort and as an issue.”

While the Windrush cohort may not have been identified as a specific group which would be affected by the policies at this time, immigration policy makers knew about the undocumented settled population in the UK, which included many of the Windrush generation. Internal staff guidance



modified in 2010 clearly illustrates an awareness of individuals who “may not have any formal proof of their status (such as an indefinite leave stamp), in the UK” and recognised that “We cannot insist on such a person making an NTL application as it is not a legal requirement.”¹⁷⁷

The Home Office saw this group as diminishing over time and under the 1971 Act the people themselves were responsible for getting documentary proof of their status.

The roll-out of biometric residents permits (BRPs) was seen as one way to make sure the settled population had the documentation to access services, and so avoid the restrictions of the hostile environment. A submission to ministers on the roll-out of BRPs in 2014 recommended that:

“we should phase out older and less secure immigration documents held by the settled population and replace them with BRPs through a combination of early incentives to promote voluntary take up and a longer term mandatory approach, giving clear advance notice that the BRP will become the only acceptable evidence of lawful status and entitlement from a date to be agreed...”¹⁷⁸

The review has seen no evidence that officials considered how difficult this might be for people who had been settled here for more than 40 years. In any event, the full roll-out didn’t go ahead and it does not appear that the department saw that it had any responsibility for safeguarding their status or mitigating the impact of the hostile environment policy. But it’s reasonable to suggest that, if

they had been fully rolled out, BRPs could have helped provide a clear evidential basis for settled status, or at least exposed the issue before the full effects of the hostile environment were felt by some individuals. The reason for not rolling out BRPs is unknown. However, we were told by one senior official that the cost to the Home Office was at least as important a factor in this as the impact on people: “It involves saying to people... ‘you’ve got to get yourself a biometric residence permit’. That would have been a big communication effort...and it’s time and money for them, and for the Home Office in terms of processing these things and obviously [it’s] a diminishing cohort over time.”

The Permanent Secretary at the Home Office confirmed the inadequacy of the department’s impact assessments when he spoke to the Public Accounts Committee about the Windrush scandal on 17 December 2018:

“The department didn’t see that it had any responsibility for safeguarding their status or mitigating the impact of the hostile environment policy”

“I completely agree that we should have spotted this issue. It should have appeared in our impact assessments. We should have understood the potential adverse effect of these policies on this population. I completely agree with that.”¹⁷⁹

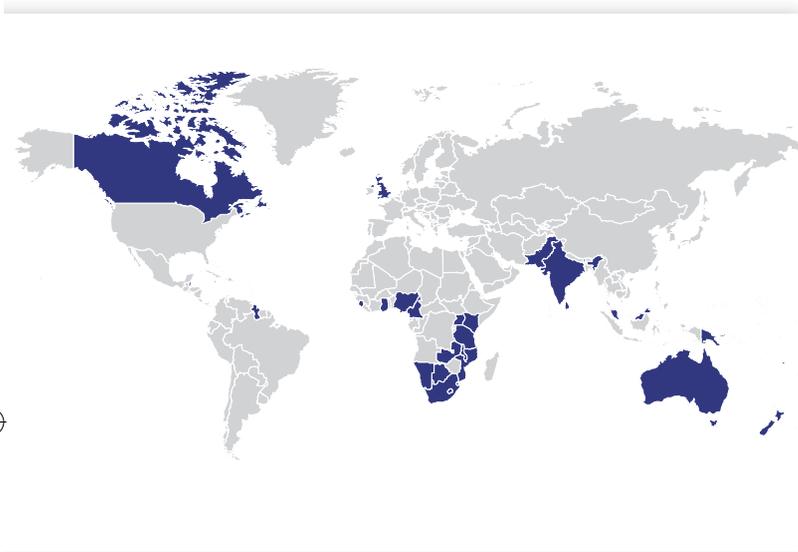
2.4.5 Assessing policy impact: losing sight of a cohort

Why this group of people?

During the course of this review, the view has been expressed that Windrush could have happened to “Australians, New Zealanders or Canadians”, and that therefore members of the Windrush generation, as a specific group, were not disproportionately affected. It is correct that the review has uncovered a very limited number of members of the old Commonwealth who have been affected, although this has not been the focus of this review. Therefore, in determining whether this view is correct it is important to understand the specific history and circumstances as they relate to members of the Windrush group as a result of the various legislative changes that were brought into effect since 1948.

We have found that people who are part of the Windrush cohort share many characteristics that made the scandal more likely to affect them.

Legislative measures over the past 50 years have created increasing burdens for people from the Commonwealth who wish to settle in the UK. But differences become clearer when we divide the group based on their historic connections to the UK through either the “old” Commonwealth – countries like Canada, Australia and New Zealand, or “new” Commonwealth countries, including the Caribbean.



The Commonwealth Immigrants Act 1968 extended immigration control to CUKC who didn't have a parent or grandparent who were born, naturalised, adopted or registered in the United Kingdom. People from the old Commonwealth were much more likely to stay exempt from this control and meet conditions for freedom of entry to the UK. This is because, historically, there was far more emigration from the UK to these countries. On the other hand, the Act meant some people from the newly independent Commonwealth countries of East Africa now found themselves citizens of the UK and Colonies, but with no right of entry to the United Kingdom.

The Immigration Act 1971 introduced a statutory Right of Abode in the UK. This right, which allows individuals who hold it to live or work in the UK without any immigration restrictions, was not held by all Commonwealth citizens. Right of Abode was held by CUKC citizens who had a connection to the UK (rather than to a colony) or who had a parent or grandparent with such a connection.

CUKC citizens born in the UK could pass on this right to their children and grandchildren. Many people who arrived from the new Commonwealth left behind family in their home countries, and, as they weren't born in the UK, they couldn't pass on the Right of Abode automatically to their children if the children weren't born in the UK. Again, this was likely to have had a greater impact on CUKC citizens who'd arrived from the new Commonwealth, as they were more likely not to qualify for Right of Abode via this ancestral route. This was a deliberate decision by the government of the time. The Cabinet Secretary, Sir Burke Trend, had made clear that the main motive behind the Act was, “to avoid the risk of renewed ‘swamping’ by immigrants from the new Commonwealth”, and that such a “resurgence would inflame community relations in Britain”.¹⁸⁰

The British Nationality Act 1981, abolished the status of CUKC and introduced British Citizenship. All those with Right of Abode at this time, if not automatically a British Citizen, could register for that citizenship. After the Act came into force, at least one parent of a child born in the UK had to be a British citizen or a permanent resident for the child to claim citizenship. This change meant that UK-born children of Commonwealth parents who hadn't registered wouldn't be entitled automatically to British citizenship. The take-up of registration under section 7 of the British Nationality Act, therefore, became important in deciding whether many Commonwealth citizens who'd settled in the UK were British citizens after the 1981 Act came into force. The registration scheme was time-limited to 7 years, there was a fee and many people didn't know about it, or that they wouldn't be seen as British if they didn't take it up. While people who had settled in the UK before 1 January 1973, and their family members, were entitled to live permanently in the UK, this was because of their immigration status rather than a right of citizenship.

Available data doesn't let us say very much about the impact of legislation and policies on the numbers of people born in Commonwealth countries coming to the UK or leaving. A report by the European Commission's Joint Research Centre in 2018 acknowledges that significant challenges mean it's difficult to study the effectiveness of policy in shaping migration.¹⁸¹ But it does say that existing studies, “tend to conclude that policies, albeit important, have a

less prominent role affecting the overall scale of migration when compared to other migration determinants, such as economic drivers, social networks, cultural and geographical proximity”.



This report also lists particular types of policy that might have an impact on numbers, with visa policies seen as “one of the most effective and immediate policy tools to affect migration flows”. One study cited¹⁸² concludes that imposing visas significantly decreases flows, but this effect is undermined by decreasing outflows from the same migrant groups. The relationship between volumes of migrants and rights granted to migrants once admitted is also discussed, but the evidence in this area is not strong.

The 1987 Immigration (Carriers Liability) Act put more responsibility on those bringing passengers to the UK to verify that their documentation was in order. The Act gave powers to fine carriers like airlines £1,000 for every inadmissible passenger. This fine was doubled in August 1991 and two years later extended to cover passengers who needed transit visas but didn't have them. This would have made foreign travel very difficult for any of the Windrush cohort. They wouldn't be able to board return flights to the UK without documentary proof of their status. This could either have stopped people travelling outside the UK or barred them from returning. Arguably, it might also have prompted some of the cohort to apply for documentation.

Social factors may have exacerbated the fragile situation into which the legislation placed this

group of people. A proportion of Windrush arrivals worked in low-paying jobs, often sending money to family in the Caribbean but not travelling outside of the UK themselves. This limited their interaction with the Home Office and meant they didn't know about their precarious immigration status until the hostile environment became more far-reaching after 2014.

2.4.6 Assessing policy impact: losing sight of equalities

Public authorities, such as the department, have a duty not to discriminate in the provision of services and the exercise of public functions under section 29 of the Equality Act 2010. This includes direct and indirect race discrimination.

Historically, public authorities were under duties in relation to services from 1976, but only in relation to “public functions” from 2001, following the implementation of recommendations of the Independent Inquiry into the Death of Stephen Lawrence, headed by Sir William Macpherson. In an earlier landmark case¹⁸³ the House of Lords had held that decisions of entry clearance officers fell outside of the scope of the Race Relations Act 1976. After the 2001 amendments the Home Office was found in *R v Immigration Officer at Prague Airport ex p European Roma Rights Centre* [2004] UKHL 55, [2005] 2 AC 1 to have acted unlawfully and in breach of the Race Relations Act 1976 in operating pre-board checks at Prague airport which discriminated against Roma, who were far more likely to be stopped.

The current Equality Act 2010 provides for a number of highly specific exceptions from the duty not to discriminate which apply to the Home Office (these are listed in the endnotes for completeness).¹⁸⁴ Two important points arise from this legislative structure:

- a) The formulation of immigration policy as a whole is not excluded from the scope of section 29 under Schedule 23 to the EA 2010.
- b) Schedule 23 to the EA 2010 does not exempt the Home Office from a duty not to discriminate directly or indirectly on grounds of colour, national origin or ethnic origin, even were that to be a requirement of a policy, condition or arrangement.

We asked the Home Office to comment on both (a) and (b) The Home Office helpfully set out the provisions from the Equality Act 2010 in correspondence and accepted that:

- in relation to (a) “there is no ‘blanket’ exception which expressly and automatically excludes the formulation of immigration policy as a whole”
- in relation to (b) “there is no ‘blanket’ exception which expressly and automatically excludes the functions and actions of the Home Office in their entirety”

Despite this acceptance it was noteworthy that when I interviewed officials, including those at a senior level, equality considerations, especially considerations as to whether the development of policy could have a particularly adverse impact on a definable racial group, whether by reference to colour, national or ethnic origins, seemed not to have occurred to the individuals concerned. There appeared, especially early on in my review, to be an implicit assumption both at junior and senior levels that the duties in the Equality Act 2010 did not apply to what they did on a day to day basis. I set out in part 3 how this has altered during the course of the last year and what steps the Home Office has been taking to ensure that these considerations are not forgotten.

This situation is of particular importance not only to good-quality decision-making, but also to the department’s duties under a different provision, the public sector equality duty (PSED) in section 149 of the Equality Act 2010 and its predecessor, section 71 of the Race Relations Act 1976, inserted following the recommendations of the Stephen Lawrence Inquiry.

Public authorities have a duty in carrying out their functions to have “due regard” to achieving the objectives in s149 of the Equality Act 2010, which are to:

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it

c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The protected characteristics set out in the Equality Act are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.¹⁸⁵

Schedule 18 of the Equality Act 2010 again provides for some highly specific exceptions to the second limb of this duty (details of which are contained in the endnotes for completeness).¹⁸⁶ There is no blanket exception for the Home Office from the public sector equality duty, in particular in relation to the development of policy as a whole, and the drafting of legislation. Indeed, had there been, this would have been most surprising given the history of the duty, arising out of the conclusions of police institutional racism in the Stephen Lawrence Inquiry.

Equality Impact Assessments (EIAs) were used across government since the early 2000s in evidence-based policy-making. They should have been an integral part of good decision-making. They were there to help public authorities fully understand the relevance and effect of policies and find the most proportionate and effective responses. This is because providing effective public services depends on understanding the diverse communities the services are there to help, and their needs.¹⁸⁷

On 19 November 2012, David Cameron announced that EIAs would not be required anymore, as there was too much “bureaucratic nonsense” and policy-makers should use “judgement” rather than “tick boxes”.¹⁸⁸

The interplay between immigration and nationality policy and race is complex. This makes the process of assessing and evaluating policy even more critical to make sure officials identify, understand and mitigate potential effects. There are examples in BICS where the equalities implications of proposed policies have been well-considered, for instance in relation to the policy on adults at risk in detention.¹⁸⁹ But there was insufficient care or concern to identify the consequences of policy options being developed for the 2014 and 2016 Immigration Acts. This is

clear from the impact assessments for individual measures and the overarching Bills. These did not expressly consider the potential impact on what turned out to be the hundreds of people directly (and possibly thousands or more indirectly) affected. As a result, the rights of so many who saw the UK as their home were not properly recognised or protected.

The overarching impact assessment for the 2013 Immigration Bill did not expressly cover the public sector equality duty although it did refer to the risk of discrimination by third parties (which it largely discounted).¹⁹⁰ There was also only limited consideration of equalities in the impact assessments for the Bill's specific policies. The impact assessment for fees and charges says: "We have liaised with the Home Office Strategic Diversity Action Team on producing a Policy Equality Statement (PES) in line with latest government guidance and a PES will be produced."¹⁹¹

While the earlier consultation documents from July 2013 do consider equalities issues (see the later section on Right to Rent), the impact assessment dated 25 September 2013 for "tackling illegal immigration in privately rented accommodation"¹⁹² does not refer to the public sector equality duty expressly (this was subsequently picked up in the consultation response which contained the PES). At page 19 it considered the potential for discrimination in the following terms:

"Heavier penalties may provoke discrimination against those perceived to be a higher risk based on an unfounded belief that the person may be a foreign national. Legal migrants and landlords will be supported by the Home Office through online guidance and advice services to minimise the risk that legal migrants might be viewed as a greater risk than prospective tenants from within the settled population. Migrants will be advised as to how to collate and present a package of appropriate documents that meets the requirements in advance of seeking accommodation. Landlords wishing to check that the requirements have been met will be supported through telephone advice.

"UK citizens without ready access to paperwork may find it more difficult to obtain accommodation. Landlords in the private rented sector routinely ask for documents to prove identity. Those without access to

such paperwork will already face difficulties in accessing the private rented sector. This proposal will not change this."

Later in this impact assessment, from page 32, the "illegal population" is considered.

"Reasons why people may not have legal residency status may include unauthorised entry to the UK, overstaying visas, breaching conditions of leave to remain and refusal of asylum.

"A recent review of irregular migration concluded that the Home Office and LSE studies provide the most robust estimates of the UK irregular migrant population, but notes that neither includes migrants who have breached their leave conditions (for example, through working or working longer hours than those permitted under their visa). It also comments on the difficulty of updating estimates based on the ten yearly Census. Another limitation of the residual method, noted by the Migration Observatory, is that it may incorporate an unknown "residual of the residual" that is an unknown number of falsely recorded or unrecorded people."

There are problematic assumptions underlying these passages:

- that those who could not show documentary proof of a right to reside would be presumed to be present in the UK unlawfully
- that the right to rent policy would not change anything for those who could not simply establish their right to reside through specific documents as they would already be having problems renting properties

The position of the Windrush generation, and those who have the right to reside, and proof of their identity, but not proof of their right to reside were forgotten in this analysis.

We explore this in more detail in the Right to Rent case study, summarised in section 2.5 and appearing in full in [Annex H](#), including the department's statutory non-discrimination code for landlords.

Equalities considerations are more apparent for the 2015 Immigration Bill (which became the 2016 Act) through Policy Equality Statements, although in the section entitled Equality Impacts, the overarching impact assessment for the Bill states:

“Schedule 18 to the 2010 [Equality] Act sets out exceptions to the equality duty. In relation to the exercise of immigration and nationality functions, section 149(1)(b) – advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it – does not apply to the protected characteristics of age, race or religion or belief.”¹⁹³

There is no further discussion of equalities in the document, although it does refer to the policy specific PES documents. In this particular document there is no reference to the other two limbs of the duty, or acknowledgement that colour is not excluded from the second limb of the PSED.

I have asked for comments on these documents from the Home Office legal advisers. They have informed me that they accept that the summary on page 16 of the 25 November 2015 document was incomplete, however race was considered in other documents. Therefore, they consider that the Home Office acted on a full and accurate understanding of the scope of the PSED (and not the summary of the exception on page 16 of the 25 November 2015 document). I asked to see all documents they wished me to consider which demonstrate compliance with the PSED. Other than the additional PES documents they have not sent me any further material. While it is not my role to adjudicate on the PSED for the reasons set out above, the documents I have been provided with appear to me to be:

- a) overly optimistic of the policy’s likely impact on those in the Windrush generation
- b) overly optimistic of the effectiveness of the proposed “mitigations”
- c) illustrative that the potential for indirect discrimination and for stoking harassment or direct discrimination by third parties was not presented in a balanced and rigorous manner

Quite apart from the PSED duty, as I have stated in the introduction, the Home Office was the department responsible for the 1971 Act. It ought to have appreciated that those who, prior to the introduction of that Act were British, and had been assured of such, were in a worse position than those who had entered the UK after that date, who would have required the Secretary of State’s permission to enter and remain (and so would be more likely to have proof of their right to reside).

Through the various stages of the 2015 Immigration Bill, the Equalities and Human Rights Commission (EHRC) raised numerous concerns about the lack of equalities considerations, particularly concerning the impact of Right to Rent provisions on non-British nationals and British people with ethnic minority backgrounds. A detailed PES was produced for the 2015 Bill during the Commons Committee Stage. In the sections covering driving provisions and bank accounts it said:

“In the exercise of immigration and nationality functions there is an exemption from the Public Sector Equality Duty so far as it relates to nationality and ethnic or national origins. It is likely the measures will have a disproportionate impact on particular nationalities due to the patterns of migration into the UK, including the patterns of immigration offending, but this will be an inevitable consequence of effective immigration control and is within the ambit of permitted action.”¹⁹⁴

Also, as for the 2013 impact assessment for the policy, page 7 of the PES seems to assume that the provisions will only affect those who are “unlawfully present” and not those, like the Windrush generation, who were lawfully present but did not have the required documentation to prove it.

In its briefing for the passage of the Bill through its various Parliamentary stages, the EHRC was still concerned:

“At Second Reading and in oral evidence to the Bill Committee, the Commission raised concerns about the overarching impact assessment accompanying the Bill, and highlighted requirements under the Equality Act 2010. At Commons Committee Stage, the Government published an equality statement in relation to the provisions regulating access to services, including the new criminal offence of renting accommodation to an individual disqualified from renting or occupying a property because of their immigration status. However, the statement failed to explore whether the offence is likely to lead to discrimination by landlords (or their agents) against non-British nationals and British people with ethnic minority backgrounds. In our view, this is a serious omission... The Government should fully consider the likely impact of the proposed new offence on non-British nationals and British people with ethnic minority backgrounds. In

particular, the Government should consider whether such experiences may become more common if the proposed new offence is introduced. The new offence should not be introduced until a satisfactory analysis has been carried out, and any negative impact has been mitigated to the extent possible.¹⁹⁵

Because of these concerns, the Home Office were invited to provide answers to a number of questions in correspondence. Home Office Legal Advisers provided a helpful response which supplied some of the information requested in relation to the legal position.

The department was also asked for any further materials demonstrating compliance with the public sector equality duty in correspondence. The Department has accepted that the impact assessment to the 2015 Bill is not complete in that it does not make clear that only certain aspects of race are excluded (i.e. only nationality and ethnic and national origins are excluded; colour remains included). Additionally, the department was asked whether it accepts that the hostile environment put those in the Windrush cohort at a particular disadvantage as compared with British passport holders in the same letter. The department accepted that there are those from the Windrush generation who have suffered detriment, as a result of the hostile environment, which would be unlikely to have happened had they been British passport holders or had their status documented in another way at that time.

It is striking in reading the documentation disclosed during this review and in conducting interviews that a very limited degree of focus was placed by senior policy officials on the public sector equality duty and the apparently limited understanding of the interrelationship between equality law and immigration law. I found it concerning that the department's analysis of equalities issues when developing these policies, and in the documents I have reviewed, lacked insight and, in my view, did not explore the potential impact on those with protected characteristics in sufficient depth.

It is not the role of this review to decide whether the department has complied with its duties either under section 29 or 149 of the Equality Act 2010. That is a matter for Courts and can be subject to

assessment (not binding on the Courts) by the Equality and Human Rights Commission. In the JCWI case, the High Court has already held that the Home Office would have breached section 149 of the 2010 Act in certain respects had roll out of the Right to Rent checks continued. That decision is currently subject to an appeal.

However, my terms of reference and methodology require me to consider equalities issues, including legislation, and I was specifically asked by the then Home Secretary in a letter dated 7 March 2019 to consider the judgment in the JCWI challenge (set out below and in the Right to Rent case study). Therefore, I record my concern based on the information that I have reviewed (including but not limited to the JCWI judgment) that, institutionally, the department appears to have lost sight of the equalities considerations within the period 2008-2018 and that I cannot conclude that this was not a material factor leading to the Windrush generation becoming entangled in the hostile environment measures.

2.4.7 Losing sight of the past

“We designed the [compliant environment] for the worst kind of offender if you like ... we had in our minds the determined people who were knowingly, overtly ... frustrating and abusing the system in a way that was very calculated. We did not have in our minds at all people who were caught up in a web of complexity that was really not of their making at all because of historical circumstances.”

Senior official

Immigration policy is highly complicated and ever-changing, and staff working in these areas turn over regularly. The operational areas deal with large volumes of people amid extremely complex legislation, rules and guidance. So, an understanding of what came before – the historical

legacy of our immigration law – is vital to policy-making that shapes the future.

Successive pieces of immigration legislation have created a layering effect that has shaped the complex and varied experiences of the people who the laws affect. This makes it essential to understand earlier legislation and its impact, and the difference that further legislation will make as it operates alongside what went before, if the previous legislation is not repealed.

Inevitably, problems arise. “Institutional memory” can be invaluable, but it tends to be lost – or at least diminished – in the high turnover of staff that we see in government departments with short-term postings.¹⁹⁶ There is also the risk of “memory gaps”.

As one senior official summarised: “The issue is that we fundamentally changed the circumstances that a cohort of people living in this country, who were British, found themselves in and didn’t, for whatever reason, over the years do enough to make sure the implications of that were understood and acted on.”

There is significant turnover in the Civil Service, so people might not gain expertise and knowledge of an entire policy area. When the institutional memory is missing, there is less understanding of the past to inform the policy of the future. The lack of corporate knowledge and understanding of the historical context was an issue staff at all grades raised repeatedly in interviews for this review. As one senior official said:

“One of the notable things... about when Windrush broke was [that] we all had to go and educate ourselves about historic legislation...No one knew off the top of their head what the 1971 Act said, what the rules [were] about British colonies that got independence and what happened to people from those colonies...all of that was 30,40 years ago. Well, it’s still live – it still matters but nobody had thought about that for a very long period of time.”

A politician commented: “There was an assumption that this was going to be really small numbers and ... that it was inconceivable that there could be thousands of people who weren’t properly documented, who hadn’t ever crossed

the border, who because they’d acquired their employment ... back in the 80s, 90s or early 2000’s or they were living in accommodation that was settled and static, they weren’t trying to move, they just weren’t having that trigger point. But at any point, going forward...when they got to pension age, [when] they had a health issue and suddenly came into contact with the NHS, that it was sort of stored up waiting to happen for them.”

2.4.8 Inadequate attention to early intelligence and warning signs

This review has sought to assess how well the Home Office monitors and evaluates the effectiveness and impact of its policies. This includes how it has responded to scrutiny and criticism, and how well equipped it has been with systems to enable it to anticipate and respond to early warning signs of problems.

The review has seen evidence that indicates that political pressure to demonstrate “toughness” on immigration impacted on the overall culture within the department and led to ways of working that treated some people harshly and made poor decisions more likely. However, it is important to note that the review has seen no evidence of political interference in individual cases or individual officials acting inappropriately (i.e. outside the Civil Service Code) due to pressure from ministers. A defensiveness borne of dealing with issues in the past, coupled with an inadequate comprehension of the potential scale and complexity of the problem, led to a lack of curiosity or willingness to learn or reflect. It also meant the department was unable, or unwilling, to heed warnings about the impending scandal and act before the situation became a national news story.

Even if the department had wanted to investigate the effects of, for example, the hostile environment on specific groups, it would have found it difficult to do so.

When we were looking for information about specific issues, we found it impossible to access all the complaints, correspondence, press queries, Freedom of Information requests and Parliamentary questions which came into the department before Windrush became a

departmental label. This information is held on disparate IT systems, and in no standardised format. The systems monitor response times and service standards rather than the emerging themes that might help the department more broadly as to the full extent of a risk once it's identified. It seems it's only been possible to identify Windrush-type correspondence since the issue became known, as it now has a specific flag to identify it, rather than by any salient features of the specific case.

It's a challenge to anticipate emerging issues in information entering the department. But the same applies to identifying new issues in information extracted from internal Home Office systems, such as the Casework Information Database (CID) and the Central Reference System (CRS). Extracting data from the systems is often limited to the specific queries posed which, in turn, makes it harder to trace previously unknown trends.

A senior official commented:

“The MI (management information) and IT systems are not sufficiently sophisticated to enable analysis around themes and patterns. And we continually see a squeeze on the IT and change budgets to protect frontline IO jobs, and now fund the Windrush compensation scheme, in finance discussions.”

Darra Singh made a similar observation in his DNA review:

“There is no BICS central business intelligence system to allow for effective forecasting, collation of management information, identification of trends and critical issues. There is management information provided by the Performance Reporting and Analysis Unit (PRAU) from CID and CRS, which is used to underpin a range of workflow and performance reports. However, these do not provide the level of management information needed. As a result, staff use locally managed spreadsheets as an attempt to collate the level of management information needed.”¹⁹⁷

An organisation's effectiveness depends on its ability to learn at the same pace as, or faster than, changes in its environment.¹⁹⁸ Without the necessary integrated systems, the Home Office would have to rely on sheer volume to anticipate issues manually rather than being able to identify more quickly the lower-volume but higher-impact issues bubbling under the surface.

Dismissing concerns about policy

Others have commented on the department's failure to adequately monitor and evaluate its compliant environment policies. In February 2019, the Public Accounts Committee concluded:

“It was a dereliction of duty for the Department not to monitor the impact of its compliant environment policy on vulnerable members of our society. The Department has essentially devolved the enforcement of its compliant environment policies on housing and employment to landlords and employers. Despite the risk of potential inconsistency and discrimination, the Department has not evaluated the impact of its compliant environment measures and acknowledges that it will struggle to do so. Its 2015 evaluation of a pilot of its Right to Rent scheme, which the Joint Council for the Welfare of Immigrants claimed had led to discrimination, was inadequate and the Independent Chief Inspector of Borders and Immigration concluded in 2018 that the Department's evaluation had simply dismissed concerns about negative impacts such as discrimination.”¹⁹⁹

Our case study on the Right to Rent scheme, summarised in section 2.5 and included in full in [Annex H](#), shows the department had no effective plans in place to monitor whether the policy caused or contributed to discrimination by third parties, or even achieved its aims.

Officials emphasised to the review team how hard it was to predict the effects of tightening immigration controls or the hostile environment, and how surprised the department was by the Windrush scandal. One told us that it was hard to see the extent to which it touched people's lives beyond the direct effects of a refusal at the border, or enforcement action leading to detention or removal.

Another official told us an analysis of around 15,000 cases of revoked driving licences showed no clear statistical link with voluntary removals. They added that they'd wanted to do follow-up research with migrants to help assess the policies' overall effectiveness: "We wanted to talk to migrants and we have submitted to ministers on a number of occasions seeking their support for evaluation for ... migrant research and we haven't had the agreement to do that."

Consultation: transmitting intent but not listening to warnings

When the department consulted on the hostile environment measures, it broadcast its intent and plans but did not actively listen to the feedback and warnings from external voices. A number of stakeholders we interviewed said the Home Office saw itself as a large department of state and wasn't always willing to listen to the views of others or justify its position. A senior official said:

"external collaboration, for instance, was discouraged...the Home Office may be a home affairs department but it is also an economic department, it is also an international department, it is a social policy department and actually other departments were very up for engaging with us on our agenda both from a policy design point of view but also from an implementation point of view. But that inward focus was a problem."

Our case study on the Right to Rent scheme shows how the government pressed ahead with the scheme despite very clear concerns from civil society organisations and trade bodies about the risk of discrimination. Members of the Landlords Consultative Panel (LCP) of housing sector representatives, formed to advise on the scheme, told us they felt their presence at these meetings didn't significantly alter the policy. The Independent Chief Inspector of Borders and Immigration's (ICIBI's) inspection of the scheme said the Home Office used the LCP more as a sounding board than an implementation board or steering group.²⁰⁰

The Chartered Institute of Housing's (CIH's) response to our call for evidence is revealing. They said they'd told the then Department for Communities and Local Government (responsible for housing policy) that the Right to Rent scheme would affect "legal migrants and existing UK citizens who might be mistaken for migrants". The CIH also said that would-be tenants who weren't "obviously British" were more likely to be rejected if landlords had to make further checks. And they said discrimination would be hard to uncover because landlords would be making other checks, like bank accounts and references, and could give any of these as grounds for rejecting tenants.²⁰¹

It does not follow that the department should act on all dissenting voices, as the review recognises that some of those voices may come from quarters whose policy aims conflict with the government policy of the day. However, if those voices are dismissed out of hand, simply because they come from those with different policy objectives, the department runs the risk of not acting on legitimate practical or legal risks that are raised. Where serious risks are raised – in this case the risk of discrimination and the risk of people who were not the target of the policy being subject to its force – the department has a responsibility to properly assess these risks alongside its own analysis, so as to be able to offer clear advice to ministers.

Defensiveness, lack of awareness and an unwillingness to listen and learn from mistakes

One senior official said the department "has got used to being beaten up". This sentiment goes some way to explaining how an overarching culture has emerged in immigration policy and operational areas at the Home Office that has lost sight of its role to serve and protect all UK citizens.

Given its sensitivity to public criticism, there is the sense that priorities and decisions have been driven by an overwhelming desire to defend positions of policy and strategy – often at the expense of protecting individuals from the impact of the policies. This approach unfortunately fits neatly into a broader organisational one of meeting external challenge with measured – but limited – responses in public and an unwillingness to acknowledge openly the potential scope and scale of problems that affect ordinary people.

A defensive deflection of blame onto the individual is reflected in the tone of the department's response to the June 2018 Joint Committee on Human Rights report.²⁰² Paragraph 4 says: "(Mr Bryan and Ms Wilson) did not require a document to prove their right to remain here but, like all residents of the UK, did require evidence of their status to access the employment and benefits to which they were entitled. They faced enforcement action, including detention, because their lack of documentation led the Home Office to believe they were not here legally and they should be returned to their country of origin. When evidence of their long residence in the UK was finally established, they were released and given documents to confirm their status."

By citing process and procedure, the department distances itself from the human impact of its decisions. There is an absence of empathy for the individual. This is telling, as it goes to the heart of the department's response to the Windrush scandal: it was a tragedy, and it shouldn't have happened. But (paraphrasing) it was the fault of the people caught up in it that they didn't get evidence of their status and, when they tried to, they didn't provide the right documentation. And as soon as *they* provided this evidence, their status was documented. If the department had better knowledge management or intelligence gathering it would, arguably, have been more aware of how difficult it would be for certain groups of people to prove their status and might not have spent so long arguing that this was all a matter of people producing the right documents.

It has long been recognised that blaming individuals can mask deeper institutional problems. Dr Robin Oakley, whose evidence was of great importance in the Stephen Lawrence Inquiry, noted²⁰³ that organisations with an institutionally racist organisational culture may adopt a "colour blind" approach and through this "do not readily appreciate the extent to which they themselves are prone to unconscious stereotyping simply as a result of their upbringing and socialisation and not through any 'fault' of their own." In turn, it can lead those in a minority racial group, who are used to unconscious prejudice to "detect unconscious racial stereotyping as second nature" and lose "confidence in the organisation." This can lead to "withdrawal from seeking the services" of the organisation and potentially where

"the victims rather than the organisation can be blamed for the differential outcome that results" by not reporting. Such an approach can only effectively be combatted by fostering a culture with the necessary awareness and understanding and a demonstrated commitment to provide an effective service to all who the organisation serves, including those from minority protected groups who may have needs that are different by virtue of history or circumstances. With this in mind, it is important that the department is alive to this risk.

In respect of engagement with the Home Office's services, when seen against the historical background explained in part 1, it is not surprising that many in the Windrush generation did not apply for a British passport or an NTL stamp after 1988. These were people who entered having been assured they were British.

Yet several of those interviewed seemed to be surprised that more of the Windrush generation had not applied for an NTL stamp or had not applied for a British passport before the hostile environment measures. I have discussed this earlier in the report. However, this fundamentally misunderstands the likely experience of these individuals since coming to the UK. A lack of insight into this community is likely to have delayed recognition by the department as to the extent of the problem.

Equally, while, for reasons which I have set out later in the report, I have not made a finding that the Home Office is "institutionally racist" in the way that Sir William Macpherson in the Lawrence Inquiry found the Metropolitan Police Force to have been, I note that an automatic reflexive defensiveness by the department and a lack of insight into the community's experience did delay an understanding of the problems being faced by the Windrush generation and led to opportunities being missed for resolving cases sooner. Reflexive defensiveness, even had it occurred without a lack of understanding of the likely lived experiences of those affected, can act as a barrier to good practice. If maintained it heightens the risk of a similar tragedy occurring in the future. As set out in part 4, I have been heartened by the increasing understanding and reflection shown at senior levels, during my review. However, there is still much more work to be done.

This defensive approach has prevailed throughout the government's response to the scandal until very recently and, indeed, associated policies such as the Right to Rent policy. As a picture of the scandal started to emerge through media coverage and the findings of important external reports, the department did little to link the impacts of the hostile environment with the plight of the Windrush generation. On 5 December 2017, when Lord Greaves asked in Parliament about Commonwealth citizens resident in the UK being detained, the reply was that providing the information requested could only be done at "disproportionate cost".²⁰⁴

Despite the amount of information in the public domain by March 2018, the Home Office responded to enquiries with inertia. As we saw in part 1, the general response was that the department was "taking a closer look". This revealed a fundamental lack of realisation within the department of the scale of the wrong which had been done. It was more evidence of a culture that's not consistent with a learning organisation, committed to protecting and serving its communities with objectivity and humanity, nor one committed to continuous improvement.

Some of those interviewed have suggested that the Home Office is good at operating in a crisis. But a former senior official said:

"As a whole it [the department] probably relies too much on there being a crisis to get the change. And then in a crisis it's not great. It's like any organisation in a crisis, with people running around wasting energy, winding each other up, having too little sleep. And I don't recommend that as a mode of operation for any organisation."

The Home Office has also been criticised for its failure to learn all lessons from external inspections.

The Independent Chief Inspector of Borders and Immigration's (ICIBI) purpose is to help improve the efficiency, effectiveness and consistency of the Home Office's border and immigration functions through unfettered, impartial and evidence-based inspection. The ICIBI also publishes an annual report. All reports are analysed by the department and advice is

provided to ministers on the recommendations and options to inform the department's formal response. Recommendations are either accepted, partially accepted or rejected. More recently, it would seem that the department is not fully accepting as many recommendations as it has in the past. The foreword of the ICIBI Annual report 2018-19 states:

"Of the 33 'new' recommendations, 48.5% (16) were accepted, 48.5% (16) were 'Partially accepted' and 3% (1) 'Not accepted'. This compares with 72%, 23% and 5% in 2017-18 and 85%, 13%, and 2% in 2016-17. The reasons for the partial acceptances varied. In some instances, it was clear that certain parts of a recommendation had been accepted and others not, while elsewhere the need for improvement was recognised but the recommended course of action was rejected. As before, in a few cases the **text accompanying the partial acceptance read more like a rejection**, while too often the Home Office's responses did not contain any commitments to specific actions or timescales, which makes it difficult to measure progress."²⁰⁵

Further on in his report the ICIBI states:

"Despite the staffing pressures and the complexity of some of the inspection topics, and notwithstanding some 'pushback' from the Home Office on particular findings and recommendations, I believe that ICIBI consistently met the high standards required of reports that are to be laid in Parliament."

While the department does accept or partially accepts the majority of recommendations, the ICIBI has expressed concern that implementation and learning from recommendations is not systematic across the department, and he repeatedly finds similar issues in different areas of the Home Office. In the ICIBI Annual report 2018-19 the ICIBI states:

“Overall, they painted a by now familiar picture of a system ... that does not have the capacity, and in some instances the capabilities, to do everything required of it all of the time, with the result that some things are not done well or not at all.

In the circumstances, it may seem harsh to continue to criticise the Home Office for its poor record keeping, quality management, and internal and external communications, all of which were evident again in inspections in 2018-19. But, unless these basics are addressed the over-stretched resources will find it hard to be efficient and effective.”

Similar concerns have been a feature of previous ICIBI annual reports. From our analysis it is also apparent that the deeper-rooted recommendations that refer to systemic or cultural issues, such as stakeholder engagement, or proper evaluation of the impact of policies on different groups of people, or staff training and development, as opposed to process-related recommendations, tend to be left unresolved. The department looks to “close” the recommendation rather than learn.

2.4.9 A lack of diversity

“I think it is unfortunate that most of the policymakers were white and most of the people involved were black.”

Senior official

The benefits of a diverse workforce are well understood. An organisation which encourages diverse ideas and approaches is more likely to be open to learning and improvement and challenging the status quo. Furthermore, where in a workforce, those at a very senior level, are made up from people who come from a narrow range of backgrounds and life experience, this can be more likely to lead to circumstances where mistakes, obvious to those with lived experience outside of that narrow range, are missed.

There is a lack of ethnic diversity at senior levels in the department, reflecting a pronounced disparity with the public it serves. Black, Asian and Minority Ethnic (BAME) staff are predominantly concentrated in lower grades, and in 2018 made up 26.14% and 26.33% of the lowest two grades respectively. It's a different story at the more senior levels, with only 7.18% of the Senior Civil Service in the department being BAME. Given the department has the highest representation of BAME staff across Whitehall, this is a stark disparity.

The lack of senior BAME representation contrasts sharply with the large internal pool of BAME people from which the department can draw. This pipeline of future talent needs careful consideration to ensure that the department's processes do not lead to disproportionate outcomes. This disparity was one of the issues before the Court in the *Essop v Home Office (UK Border Agency)* [2017] UKSC 27 [2017] I.C.R. 640 challenge in which the Supreme Court found that the test for Executive Officers to be promoted had a statistically significantly lower pass rate for BAME candidates. This type of potentially indirectly discriminatory barrier to promotion fell to be “objectively justified”²⁰⁶ (the Supreme Court did not carry out this exercise but remitted the matter to the Employment Tribunal to consider). A disparity of this scale between the top and bottom of an organisation calls for careful internal analysis as to whether there are hidden barriers within the organisation which are holding BAME candidates back from career developments. It does not prove that there is indirect discrimination but it raises the question. After the interviews I was left with the unfortunate impression that, despite some relatively small numbers of senior officials having undergone training, there was still a large amount of work to be done to ensure that the department, especially at a senior level, understands the nature of indirect discrimination. There appears to be too little understanding of the fact that that racial disparities caused by policies or practice, whether in the field of home office operations, services or public functions, or their own human resources, should trigger a closer look, so as to ensure that hidden indirectly discriminatory barriers, which cannot be objectively justified, do not remain in place.

Departmental performance on diversity and inclusion (D&I) training is low. It is improving but remains well below the departmental requirement for everyone to complete the two mandatory “e-learning” courses (Unconscious Bias and Equality and Diversity Essentials) every two years. Our analysis of internal data shows that completion rates for Unconscious Bias training were higher across all areas of the Home Office than for Equality and Diversity Essentials. The three operational areas of the immigration system (BF, IE and UKVI) all had higher completion rates than the rest of the Home Office – which includes the policy-making areas of the BICS system (for whom data couldn’t be identified separately). But while completion rates have been rising steadily since 2015, even the best-performing area (UKVI) only had a yearly completion rate of approximately 30% for Unconscious Bias training and 24% for Equality and Diversity Essentials for the first 11 months of the last reporting year.²⁰⁷ The figures for the rest of the Home Office excluding BF, IE and UKVI showed a completion rate of approximately 15% for Unconscious Bias, and 10% for Equality and Diversity Essentials over the same period.

The issue is just as pronounced among senior leaders. A briefing prepared for the Home Secretary in October 2018 said:

- “We are reviewing the mandatory learning offer to build greater governance, compliance and assurance.
- This will include targets to increase take up of mandatory induction learning on inclusion from the current baseline of 20% to 50% in 12 months, with the longer-term ambition to achieve 100% completion rates.”

The low completion rates for members of the Senior Civil Service (SCS) on mandatory D&I training in particular is a cause for concern, when the same briefing also identified the results of a test undertaken by a Chartered Psychologist at an SCS conference in 2018. Here, 59 out of 232 Home Office SCS were tested on unconscious bias, and for 13 (or 22%) the result suggested they had an ethnicity bias at a level affecting behaviour. Of those, nine had a bias in favour of non-BAME people, and four had a bias in favour

of BAME people. While these bias figures were higher than the police (19%) and professional service providers (18%), they were much lower than law (38%), academia (37%), and local authority and financial services (29%).²⁰⁸

The department’s current Diversity and Inclusion Strategy does refer to some of these disparities. But training alone does not address the disparity between those at lower grades and the diversity of those higher up. The strategy states that the Home Office will “widen representation and build a talent pipeline” of BAME people, people with disabilities, women, LGB individuals” but does not set out in detail how this “pipeline” will be created, save that it will be done through “positive action initiatives” including corporate talent programmes, The Network, BAME Champions and Shadow Race Board, and through developing a “BAME sponsorship programme.” This does not provide any meaningful detail. The policy does not set any targets to require training so as to seek to consider representation within its workforce. Nor does it set out how the department aims to challenge confirmation bias, unconscious bias or racism within the department. In addition, unlike its predecessor strategies, the strategy does not have enough of an external focus, with no consideration of the department’s connection and interaction with the public, in particular and its impact on different communities and cohorts.

These are significant omissions, particularly in light of the Windrush scandal and the fact that previous versions of the policy did address these areas. Equal opportunities in employment are a cornerstone of any department or organisation and are necessary to place that organisation in the best position to ensure any services or public functions are discharged in accordance with good standards of equalities practice, and with the law. However, a pure focus on internal human resources equalities issues is unlikely to ensure that the lessons from Windrush are learned. What is required are greater root and branch changes, and we return to this in part 3 which considers the department’s corrective measures.

Promisingly, the strategy’s title, Inclusive by Instinct, sets a high ambition for making inclusiveness second-nature across all of the department’s work. It also says the organisation’s aim is to encourage ideas and challenge. But it

doesn't say how it will achieve these objectives, an important point given the pace and depth of change the department needs.

The department has said recently that it plans to bring in various diversity and inclusion initiatives. These include mandatory training of all Senior Civil Servants in equalities and the public sector equality duty, as well as plans to review its activity in response to the government's Race Disparity Audit. This is, of course, welcome. But to be truly transformative, the department needs to demonstrate a genuine commitment to addressing these longstanding issues by having a coherent strategy, with clear and challenging measures for success, and clear accountabilities at a senior level. Otherwise, the department risks these actions being seen by its staff, and the public it serves, as no more than cosmetic. Following the judgment in *Essop v Home Office (UK Border Agency)* [2017] UKSC 27 [2017] I.C.R. 640 I would hope that the Department will focus on whether there are hidden barriers to progression and what can be done to ensure that careers of all of the department's civil servants can progress with equal opportunity.

2.4.10 Implementing the hostile environment: how policy affected people

Policy implementation is where the government puts designed and developed policies into effect. Policy and operational areas of a department translate agreed policy into guidance and processes (sets of instructions). These then dictate how operational processes and practices will combine to turn the policy intent into reality. It's here where the people of the Windrush generation felt the policies' impact, for example when making applications, paying fees, or looking for redress.

How successfully policy is implemented depends on how well policy-making is connected to the parts of the organisation that deliver the policies. Broadly, there are two ways to develop and implement policy in operational organisations like the Home Office. One is to embed policy experts in the operational areas. This brings policy and operations closer together but can limit strategic oversight. The other approach is to put policy experts at the core of the organisation, away from the operational teams. This gives a consistent strategic approach across the whole organisation,

but risks disconnecting the policy function from those who deliver its intention.

Over the last 15 years, the Home Office has taken both these approaches to varying degrees. The department also cut operational policy functions like this significantly in 2013 when it disbanded the UK Border Agency and brought immigration policy back into the policy group. In the process, it is possible that it lost some of its corporate knowledge, institutional memory and insight, and with them potentially some of its ability to avoid crises. One senior official reflected:

"So, it's not just policy and as part of that I think it would be legitimate to reflect on the consequences of breaking up the UKBA and re-fragmenting the system that had been brought together. The 2013 decision to do that had understandable reasons ... I understand all that but in reality it makes it harder in some ways to stay connected because we have been told to have a different organisation, to have different cultures, so we all go off and create our own strategy teams, our own customers plans, our estates, our teams, and you have to work doubly hard to reconnect."

In an organisation as large as the Home Office, it's unsurprising that, at times, the link between functions breaks down, particularly for those with differing or specialist roles. This fault-line was apparent in the May 2019 Independent Chief Inspector of Borders and Immigration inspection of the Home Office's approach to illegal working. It saw a persistent "disconnect" between Immigration Compliance and Enforcement (ICE) teams and Criminal and Financial Investigation (CFI) teams.²⁰⁹ Operational leaders from UKVI and IE told us they felt involved in planning how to deliver policy changes, but not always in developing the policy. This sometimes left them without a complete view of the policy's restrictions and limitations.

This perceived separation of the teams which design and agree the policy, and those which implement it on the ground does not facilitate a shared understanding of what the policy is meant to achieve and how it's delivered. This situation, accompanied by a lack of formal policy evaluation, makes unintended consequences less likely to be anticipated or tackled. A senior official describes what can happen as a result:

"We filter out all the bad stuff, [like a] frontline officer say[ing] something about the way policy is working. [So] by the time it reaches those that are in charge of changing it, they haven't heard all of that stuff, the colour that brings it to life...and somehow I think we just need to move all of that and let people see the reality."



Making applications

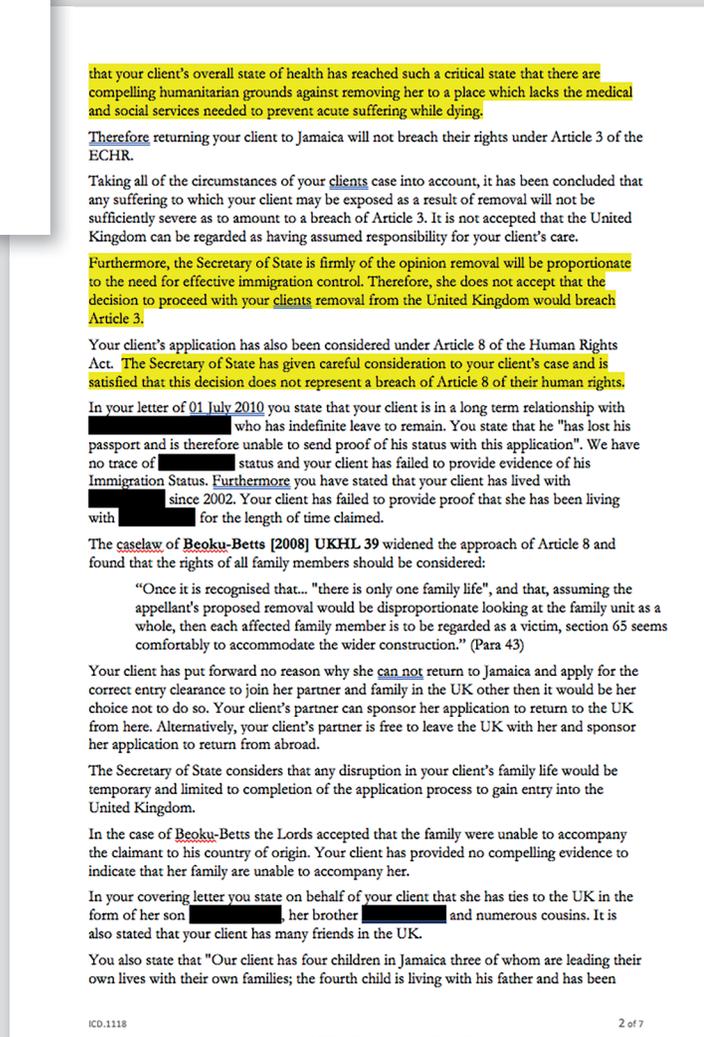
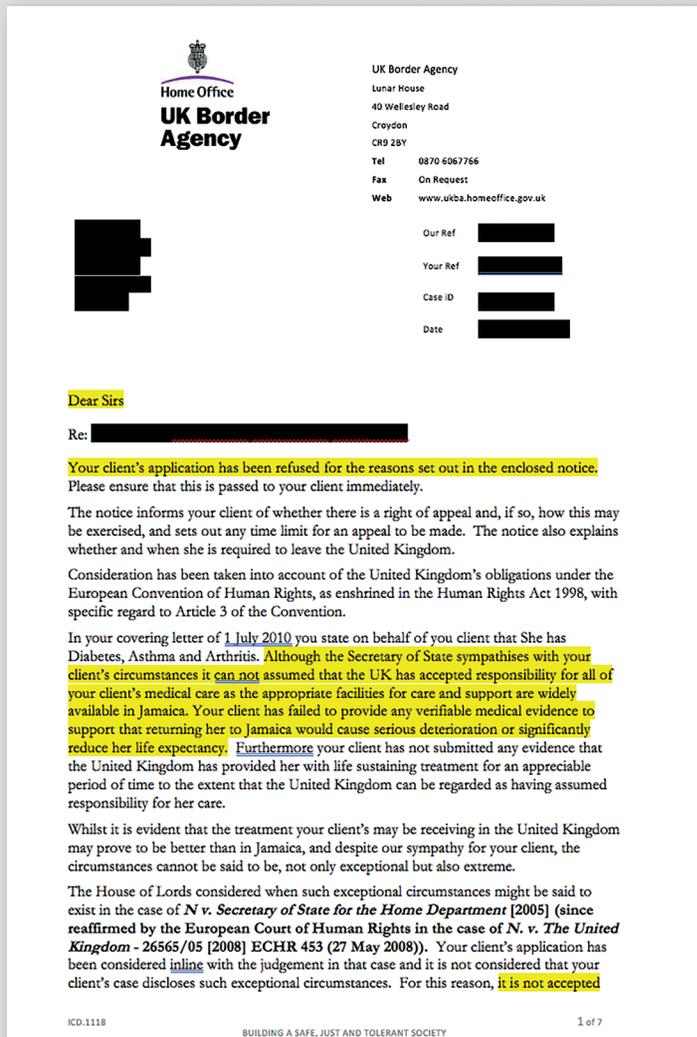
"Normal practice [is that] the department says, 'Thank you for your systems application, I'm sorry you don't meet the criteria...go away and work out what to do about it.' What we could do is say, 'Thank you for that application, we've looked at it, we've refused you on that, however we've decided that you merit this status instead.' That would be quite a big shift of approach."

Senior official

"For the Home Office in particular, there is a general presumption that people may be lying about their immigration status – even where there is no corroborating evidence to suggest that is the case. Indeed, the Windrush Britons often had compelling anecdotal and other evidence demonstrating their lengthy residence in the UK; it simply was not in the form required by the Home Office."

Chartered Institute of Housing, response to call for evidence

Many members of the Windrush generation have said how hard it was to understand what type of application they should be making, to navigate the system and to find the proof of residence the Home Office demanded. Even for those people who did have extensive records, often this was not enough. In part 1 we referred to a man who told us he'd been to primary and secondary school in the UK, been registered with a GP and had a National Insurance number since he was 16, yet still the Home Office told him there was "no trace" of him. A former serviceman told us that although he'd served in the UK armed forces, he was told he didn't have enough documentary proof of his status. He was so frightened of not being allowed back into the country that, for years, he'd refused his wife's requests for a holiday, telling her instead that he was afraid of flying.



There has been very little attempt to guide people and help them understand the application process. A senior official admitted: “My biggest reflection really, from the outside in, is what a difficult organisation we’ve been to seek help from.”

Automating application processes helps many, especially if they understand their status and needs and their applications are straightforward. It also saves money and should lead to greater consistency. But it’s a barrier for people who are less comfortable interacting online or need help to understand which application route best fits their status. The demographic of the Windrush generation makes them less likely to use online services often. And even when applicants had legal advice, their representatives often struggled to identify the right application route.

These difficulties are made worse by a lack of advice from contact centres or caseworkers. Letters to applicants don’t include caseworkers’ contact details to enable them to raise queries, and contact centre staff don’t offer advice, but instead simply refer people to published guidance. A senior official said: “It becomes very, very difficult to talk to anybody about your case... we haven’t got a system which allows those people who, frankly, merit a conversation or need that support.” Another senior official said: “We do make it very difficult for applicants to speak to us. We do not provide advice as we are terrified of litigation and we do not let people follow up on an application. Call centre staff can only reiterate what is on the website.”

Responsibility (the burden of proof) for providing the documents to support an application clearly lay with the person applying even though applicants already had the right to reside. The standard of proof which applies in immigration

cases is the civil standard: “on a balance of probabilities.” This means that the individual has to prove that it is more likely than not that they have been here for as long as they claim. In our analysis of the 164 case files there is evidence that the Home Office had set the standard much higher-asking people for evidence for each year that they had lived in the UK (which for the Windrush generation was often over 40 years), and in some cases more than one document per year. We also heard similar accounts from people who attended our roadshows. This is akin to the standard set in the criminal justice system of proving their status “beyond reasonable doubt”. This interpretation of the standard is wrong in law.

“The onus is not on them to tell us, it’s on us to find out, but we don’t know.”

Pauline

No one in the department knew the origin of this requirement, which a senior official confirmed to the Home Affairs

Committee wasn’t in the department’s guidance to caseworkers.²¹⁰

The fact that such a practice was adopted in parts of the organisation, yet its origins were unknown, is also indicative of the culture of the department.

This standard of proof was clearly unreasonable, especially considering that the Windrush group were confirming a right, rather than making a fresh application for status. The application of the standard of proof, and the department’s approach should have been much more sensitive to their circumstances. As Adrian Berry (Chair, Immigration Law Practitioners’ Association) stated in his evidence to the Home Affairs Committee:

“There is one thing to say: if you want a grant of something, the burden of proof is on the applicant who seeks to prove their entitlement. Even in that context, the question of what constitutes sufficient proof is a moot point, but where you have an automatic right, you are not asking for something to be granted to you... There is no need for it where people already have rights and can quite clearly evidence they have been living

ordinary lives in the UK for decades. It is a choice, ultimately. There is no stipulation. If you are asking me is there a rule that requires decision-makers to act in that way, no, there isn't."²¹¹

For many members of the Windrush generation, these documentary requirements became a huge and often insurmountable barrier, given how long they'd lived in the UK. Nonetheless, people showed us copious amounts of paperwork, evidence and correspondence they'd built up over the years. With the onus being on them, not the government, to prove their identity, applicants worked tirelessly on compiling their evidence.



The photograph shows crates filled with paperwork. Those being asked for it felt completely helpless. No matter how much proof they collected, the response was still the same:

"I gave them all my National Insurance number which I've had since 16, I'm 58. I've given them my hospital number, it says 9th January 1964...so I did everything by the book...I had school letters, doctors' letters, doctor's registration letters...letters from other family members... the medical report alone should have been enough, surely."

Joycelyn

Linked to these feelings of helplessness and frustration was a sense of disbelief. People couldn't understand how or why the government didn't already have the information or weren't communicating across departments to access it. For example, Gloria sourced all her school reports at the local library, alongside years of National Insurance contributions from HMRC, but was told that she couldn't be traced.

"I came to England on the 30/11/1970 and my mum took me to the doctors on the 31/12/1970. I sent them everything. I sent them my doctor's files...they just kept on and kept on...I wish that they had just said in the first place and been honest and says, 'Well, we can't locate you,' but I couldn't understand [why] they couldn't locate me? I went to the library...and I could locate myself there, they located all my reports, my school reports."



Gloria



"We even contacted HMRC and got a National Insurance contribution breakdown from 1976 to 2011. They said that wasn't enough."

Gloria's daughter, Chanince

While staff from other government departments told us they couldn't go back more than 25 years because records had been archived, the Home Office still expected people making applications to do so.



This approach also destroyed people's faith in the system. Veronica described her father, who couldn't read or write, as taking what he'd been told – that his original "black book" passport was all he needed – at face value and never questioning it.

"Daddy never took out British status because his contention was that he was already a British citizen. He'd been told that, he'd been invited here. He said he got his black book, his original passport and that was sufficient. My father was not a literate man. He's very much stuck in the world of what he was told. Who would know that all these years later, because of the decision that was made then, that it would have affected him and others so badly."

Veronica

For years, he'd travelled back and forth to Jamaica on these documents without a problem, so his assumption seemed reasonable. Nonetheless, when problems started, Veronica took on a sense of personal guilt and blame. As a professional woman who'd always been seen as "the sensible one" in the family, she felt that perhaps she should, or could, have done something before this became an issue.

"At that time, I wasn't blaming anybody or anything...I really didn't know what had happened, I was blaming myself... and, rightly or wrongly, I think I felt that my family was blaming me, because I'm supposed to be the 'brainy one', I'm the professional, I'm supposed to know, you know? I work in these systems, you know, and I'm not shabby, so I'm supposed to know what's going on!"

Veronica

She wasn't the only person to feel this way. Others reported feeling they'd failed in some way, and that perhaps they could have done something to prevent what was happening to them and their family. For some, the process began to undermine their sense of identity. After the Home Office repeatedly rejected her claim to status citing lack of evidence, despite the extensive paperwork she'd collected, Gloria began to question her history:

"I didn't know who I was...at one stage I thought, 'did my mother really have me, am I my sisters' sibling, or am I adopted?' So, you're lost, you don't know who you are."

Gloria

While the Home Office appeared confident in the decisions it was making, there was simultaneously an apparent lack of organisation. People we spoke to recalled that the department misplaced letters and information they provided. They also described being given conflicting messages from different members of staff. We heard examples of confusion over where responsibility lay, with some participants being passed back and forth between UK officials and officials from their country of origin. Gloria's daughter recalled trying to access her mother's records:

"We don't have your passport records, because you applied for your passport in Basseterre in St. Kitts. You have to contact the high commissioner of St. Kitts Barbados' ...They said, 'No. All those documents are in the United Kingdom; they're in London.' We went back to them: 'No, we don't have them. Contact St. Kitts embassy. It's got nothing to do with us.' ...and we were just going round in circles."

Gloria's daughter, Chanince

The combination of pressure to meet targets (discussed in detail later), decision-making based on checklists, and the high standard of proof expected of applicants led to a cultural tendency to reject applications based on an assumption that individuals weren't in the country legally. While standards may not have been explicit in the rules and guidance, their phrasing creates an environment for staff to reject rather than be proportionate or objective in each case.

Application fees

“What we've also done is put up all the fees for what we used to call permanent migration products, citizenship settlement, and that has failed to recognise that those are very different groups...you've got [a] businessman that's decided, well, actually I really like it here so I'm going to live here, and £1,500 I don't really have to think about very much, versus a Windrush generation person for whom even the £220 for the No Time Limit fee was a lot of money, let alone a four-figure sum for citizenship.”

Senior Official

Since 2013, application fees for naturalisation or registration as a British citizen have increased sharply by over 55%. When challenged about the level of fees in the House of Commons First Delegated Legislation Committee on 2 February 2016, the Immigration Minister said:

“We are looking to larger fee increases for what we consider to be the non-growth routes by up to 25%, which includes nationality and settlement fees. We believe these fees reflect the considerable benefits and entitlements available to successful applicants.”²¹²

This idea of linking cost to the perceived value of immigration status is supported by the Home Office's impact assessment for the Immigration and Nationality (Fees) Order 2015, which says:

- “that those who use and benefit directly from our immigration system (migrants, employers and educational institutions) contribute towards its costs, reducing the contribution of the taxpayer;
- that the fees system is simplified where possible, aligning fees where entitlements are similar;
- that fees are set fairly, at a level that reflects the real value of a successful application to those who use the service.”²¹³

Alongside these substantial fee increases, there's little evidence that the impact on people was effectively considered. Indeed, none of the Fees Orders or Regulations produced since 2016, nor any of the published supporting documents, appear to have considered the social or welfare impacts on people looking to become naturalised or register their entitlement to British citizenship.

A report by the Independent Chief Inspector of Borders and Immigration (ICIBI) from April 2019 asked for evidence from third-party organisations. It reported that the Project for the Registration of Children as British Citizens (PRCBC) and Amnesty told inspectors that the absence of a fee waiver trapped destitute and disadvantaged people and families in repeated cycles of leave to remain applications, where they might succeed in having the fee waived. The effect was to prevent them from establishing a firm and permanent connection to the UK, despite the fact that they were legally entitled to British citizenship.²¹⁴

Access to redress

“Those who stayed to fight their cases were met with the next horror, the crippling cost of fighting for your right to stay because of sweeping cuts to legal aid for immigration cases.”

Movement for Justice, response to call for evidence

The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 brought in significant changes to the Legal Aid regime in England and Wales. Led by the Ministry of Justice its aim was to fulfil the Coalition Government’s intention to make the system “work more efficiently”.²¹⁵

The changes were accepted as “contentious” in 2017 by then Minister of State for Courts and Justice Dominic Raab MP²¹⁶ and were widely criticised for restricting people’s right to access the justice system if they didn’t meet the new eligibility requirements for Legal Aid and couldn’t afford to use a lawyer themselves. For the Windrush generation, the changes meant that those facing problems with documentation often couldn’t access advice on how to resolve their situation.

The legal and voluntary sector responded to consultations on the proposed cuts to Legal Aid. Many said it would increase discrimination against all migrants and ethnic minorities and that the policy response and likely impact were disproportionate to the issue.

The impacts of the hostile/compliant environment were exacerbated by the lack of access to Legal Aid for those who would otherwise have been able to get advice to demonstrate their legal status with a relatively straightforward and comparably low cost “No Time Limit” application. This situation was made worse by the Home Office’s caseworkers not being empowered to give applicants advice and support with making applications. The reduction in the number of appeal routes for immigration decisions from 17 to five (with a further two recently created that relate to the EU Settlement Scheme), limiting the number of times someone’s circumstances could be re-examined, made it even more vital for individuals to make the right application and get the decision right the first time.

2.4.11 The organisational climate and its impact on casework

Making decisions

“You are asking people to do mutually contradictory things for the vast majority of applicants. You want them to be welcoming and efficient and say ‘welcome to Britain. Here’s a country that works well, that welcomes you, that wants you.’ For a very small minority you are asking the same people dealing with a similar-looking application to say, ‘no we don’t want you in this country’, and the individual pressure that puts on those decision-makers is huge. It is a very, very unusual job in that regard ... Certainly at the time I was Immigration Minister ... the immigration numbers were so high that the system was inevitably creaking [and] it couldn’t quite cope ... so I suspect that a combination of those factors meant that in individual cases bad decisions were made.”

Minister/former minister

Staff have commented that, over time, the drive has been to consider applications without speaking to people directly. While case workers used to do many more face-to-face interviews, the department moved away from this and has effectively taken the individual out of case management. Former Home Secretary, Amber Rudd recognised the disconnection between the system and the people at the centre of its work in a statement to Parliament in April 2018:

“This is absolutely about a change of culture, which I will be trying to ensure trickles down the Department. Let me be quite clear that I am not blaming anybody else. I am saying that I want to ensure that there is more time, focus and resources so that there can be more engagement with individuals, rather than just numbers.”²¹⁷

Cost per decision for all migration applications

Year	No. of decisions	Cost	Cost per migration decision
2016-17	3,967,102	£643,480,000	£162
2017-18	3,973,681	£612,768,818	£154

In-country visa products attracting a fee

	Fee 2016-17 (£)	Fee 2017-18 (£)	Fee 2018-19 (£)	Percentage change from 2017-18 to 2018-19 (%)	Estimated unit cost 2018-19 (£)
Naturalisation (British Citizenship) Single, Joint, Spouse	£1,156	£1,202	£1,250	4.0%	£372
Nationality (British Citizenship) Registration adult	£1,041	£1,083	£1,126	4.0%	£372
Nationality (British Citizenship) Registration child	£936	£973	£1,012	4.0%	£372
Nationality Right of Abode	£272	£321	£372	15.9%	£372
Nationality Reconsiderations	£272	£321	£372	15.9%	£372
Status / non-acquisition letter (Nationality)	£198	£234	£250	6.8%	£272
Indefinite Leave to Remain (ILR) – Postal – Applicant/Dependant	£1,875	£2,297	£2,389	4.0%	£243
No Time Limit Stamp Postal – Applicant/Dependant	£308	£237	£229	-3.4%	£228

A senior official reflected: “I think with [the] case working culture, what ... I used to rail against was they never met a migrant and somehow lived in a kind of bubble where the most important thing was how many files you got through.”

Caseworkers themselves were put under significant pressure to deal with high volumes of cases, often without the tools they needed to do an effective job. An internal review after the DNA scandal, which was later the subject of the Darra Singh review, said the casework system contained over 40,000 pieces of guidance over seven IT systems. A search for “immigration rules” on the Gov.uk website produced nearly 42,000 results and this information was supplemented by seven other types of local and national guidance tools.²¹⁸ Clearly, the current system is too complex, and caseworkers need better support to carry out their significant responsibilities.

Caseworkers also find themselves in a system that asks them to make a large number of often life-changing decisions but denies them the autonomy more senior staff would enjoy. A senior official said:

“They’ve got massive responsibility. They’re making decisions about people’s lives...they’re not treated like they are very senior in the organisation, so they might not feel like they’ve got much autonomy. Can’t take a day off without asking your boss and yet you’re making a decision about whether this person can stay in the UK.

“On a year-to-year, even month-to-month, basis, there was undoubtedly, and still is, pressure on the system to deliver more with less...in very simple terms, a case worker or a case working team needs to deliver more decisions every year over time.”

Meeting targets

“I think the staff at the Home Office, they should be trained properly, and it should not just be about targets...a quota of people that they’ve got to send back home because of the government’s policy. The law’s one thing, but then you need to look at the humanity of it as well.”

Pauline

BICS has a range of internally set performance standards. These have been set in different ways over time, depending on the organisational structure and the senior team in place at the time. Generally, senior managers have set the targets, though often in response to ministerial expectations to “do more”. These kinds of measures are not unusual in large organisations, particularly those that make volume decisions or process a large amount of information. Targets are not in themselves harmful; they can be helpful to improve the quality and speed of the service the public receives. They can also be used to drive internal performance against a desired outcome. Where targets have to be used cautiously is when they lead to unintended behaviour or outcomes.

For example, UKVI publishes “service standards”²¹⁹ with processing times for standard applications. Applications deemed complex are considered outside of these standards.

One person told the review of the way the pressure to meet the service standard influenced decision-making. In one case, they said they “hid the casefile” when they wanted to request more evidence for a citizenship application, though it would have been quicker and easier for them to refuse the application. They did this because they knew they might be challenged for not meeting a target for concluding cases. One member of staff said that “meeting service standards is like a religion”.

Like UKVI, IE's day-to-day work has been dominated by targets. In IE, the focus has been on the number of "returns" – people removed from the UK – both enforced and voluntary. IE monitors its performance through several activity and output measures. They include completed removals, raids on premises and identifying and arresting people living and working illegally in the UK.²²⁰

The review has received evidence that suggests that the need to demonstrate success against internal operational targets led to a search for the cases most likely to result in voluntary departure. A senior official serving in immigration during 2013 and 2014 recounts: "We would predict a number of removals that would be achieved. There'd be a whole range of targets including number of removals, number of voluntary departures, number of foreign national offenders that would be removed. So there'd be a...range of targets across the organisation." The official reflected that (in their view, with or without targets) staff would, "pick the low hanging fruit...because you go into... operations, the poor illegal immigrant has got his passport in his pocket, he's arrested and on a plane within 24 hours probably ... because there's no obstacle to get the person out the country...so that's the easy.... Low-hanging fruit if you like."

Targets also had an effect beyond how individual cases were dealt with. A former member of IE staff remarked that "because of the pressure felt on targets there was an unquestioning attitude towards hostile environment measures as anything that put pressure on migrants was seen as a good thing".

A culture like this makes it all the more important for staff to have the responsibility to challenge decisions if they believe they're inappropriate. Tellingly, in the Home Office People Survey²²¹ results, only 41% of respondents felt it was safe to challenge in the department. "Safe to challenge" scores were particularly low for BF and IE. Here, the scores were especially low among black and Asian respondents (BF: 34% Asian, 34% black; IE: 40% Asian, 32% black).

Senior officials noted the strains caused by the pressure to deliver. One said: "The Home Office had some of the lowest [People Survey scores]

... And because of what that meant for people's sense of commitment to the mission or missions and their engagement and their commitment to the organisation, and particularly against a backdrop of a very tough environment where people, it seemed, felt exposed, this was worrying." Another told us: "The people survey will show that there is bullying, harassment and discrimination issues of all sorts, way more than most departments, certainly way more than the world out there, in some areas to a very worrying level."

Bullying, harassment and discrimination is addressed through two questions in the department's People Survey: "During the past 12 months have you personally experienced (1) discrimination at work or (2) bullying or harassment at work?" Scores in the Home Office show that 16% of staff experienced discrimination and 14% were bullied or harassed at work in 2019, compared to the Civil Service averages of 12% and 11% respectively. These scores have improved from peaks during 2015 and 2016 at the Home Office; 19% of staff experienced discrimination at work in 2016 compared to 12% in the Civil Service, while 16% were bullied and harassed at work in 2015 compared to the Civil Service average of 10%.

Training

The pressure within the immigration system to meet targets often fell on caseworking staff, faced with ever-increasing guidance intended to help them navigate an increasingly complex system. They would have to deal with legislation that is challenging even to specialist professionals of many years' standing. Considering the importance and complexity of their work, we found no evidence of a consistent approach to training across caseworking teams. It appears from focus group discussions that each business area was responsible for developing its own training packages, despite senior managers from different caseworking areas raising concerns about the complexity of the environment in which caseworkers were operating.

Training for caseworkers is understandably focused on the current relevant legislation and policies that relate to the types of applications or cases that they will usually see and make decisions on. However, given the frequency of

amendments to the legislation, there is often very little focus on the impact of legislative changes or changes to its interpretation or application over time. This is central to the Windrush story as, without the proper historical context, it was likely that caseworkers would simply not have known how and why the Windrush generation were being negatively affected. Through the prism of the present they were not able to see how legislative changes in the past would come to mark them out as exceptional cases.

To magnify the issue, casework managers identified that there has been so much legislative change over the years that it has been difficult to identify what laws, policies or guidance were in force at any time, and that the Home Office has historically been poor in maintaining a “corporate memory” that would enable them to find out. Similarly, in the past and in a lot of areas, caseworkers have followed the guidance set out for them and have not been encouraged to challenge decisions where the guidance has led them to what they felt was the wrong outcome, or a decision made by another team that they felt was incorrect.

Lack of discretion

The pressure to resolve large volumes of cases also restricted the ability of staff to routinely exercise discretion in their decision-making. Our review of the Windrush case files shows decisions were made by completing a checklist rather than assessing or evaluating an application, and the rationale for the ultimate decision was rarely recorded. If case workers did ask for advice, or get it, in most cases this wasn't recorded on the system.

Examples of more effective practice from other organisations, including policing and the Crown Prosecution Service, show that informed use of discretion, guided by a framework or code of ethical decision-making, promotes better decisions.²²²

UKVI and IE both have a three-tiered quality assurance system. For UKVI this comprises: frontline assurance by line managers; assurance by the Operational Assurance Security Unit (OASU); internal audit and the ICIBI. Until relatively recently, these arrangements operated

on the basis of considering 2% of case files, irrespective of complexity or risk. We found evidence of quality assurance of decision-making, however, there was also little evidence of supervision being recorded, or of using the information to improve casework, which was noted in the recent reviews into DNA evidence.²²³ We would expect to see more evidence of line managers dip-sampling cases to check that decisions are correct, and the rationale to be adequately recorded – and more encouragement of case workers to seek support and advice in complex cases. More recently, the department has begun to adopt a more rounded approach to improving the quality of casework decisions, including establishing a Chief Caseworker Unit and how it manages risk (explored further in part 3), although there's still room for improvement.

Use of language

The choice and use of words undoubtedly reflects, and also influences, an organisation's culture. In a system focused on process and throughput rather than on individual applicants, it's even more important that language doesn't widen the gap between people and their experiences and those developing policy and deciding their cases.

The impact of “aggressive use of jargons and clichés”²²⁴ in government and the Home Office has previously been noted by David Faulkner, former Senior Civil Servant in the Home Office. He said: “Government regularly uses images and terminology of confrontation and warfare, with ‘criminals’ as an implied enemy who is of less value than the ‘law-abiding’ and ‘hard-working’ citizens and from whom they are to be protected.²²⁵...Such language can also be heard as an encouragement or justification of abuses of power and due process. Its effect can be to deepen social divisions and increase the anxiety which the government itself wishes to prevent.”²²⁶

Minutes from Net Migration Board meetings convey a sense that the Home Office was at times comfortable using language that might be seen as unsuitable in a professional working environment, including suggestions that migrants might be “playing the system”, and, during a presentation on Human Rights claims, suggestions that “we should be bringing the ‘guillotine’ down”. While this does not suggest anything about behaviour

towards individuals, it does highlight the need to consider the nuance of language, especially in the context of formal high-level meetings, which can set the tone for the organisation.

The term “hostile environment” has been controversial in the department, and in time it has been “softened” to become the “compliant environment”. Terminology such as “illegal immigrants” has also caused concern and debate.

“[W]e object to the use of the term ‘illegal immigrants’ which is both inaccurate and inflammatory. Only an act can be illegal. It is inaccurate to use the term ‘illegal’ to describe those who have crossed borders through unofficial routes, as it violates their right to due process before the law. To refer to a person as illegal suggests that their very existence is against the law.”²²⁷

Bail for Immigration Detainees, response to call for evidence

Government departments should be expected to use neutral language when dealing with the public. In the context of migration, in discussing the system the department usually refers to people as a group, rather than single cases or applications. For example:

- “... exit checks will all significantly increase the flow of cases with no lawful right to remain and ready for removal”²²⁸
- “... in the next year its capacity could be considered low given the potential stock of family cases”²²⁹

While we acknowledge that it is not unusual for organisations who deal with large volumes of people to use this kind of language, and we were informed that these terms are commonly used in international discussion on migration, words influence day-to-day culture, which, in turn, has an impact on the attitudes and behaviour of staff towards people with whom they come into contact. It is therefore important that their use is balanced by the use of empathetic language, and that steps are taken to guard against their use leading to losing sight of individuals.

A fragmented system

Fragmentation in the immigration system prevents case workers getting an overall sense of a person’s situation, as a senior official explained:

“The system isn’t set up to second guess the decision-making that has been done. Somebody makes an application to the Home Office for leave, or not, and they get it, or not. The consequences of not getting that leave flow from that in the way that a court convicts somebody of a criminal offence. If they’re sent to jail, the jail doesn’t second guess the conviction. It assumes the person is guilty.”

Teams across BF, UKVI, HMPO and IE deal with specific applications. This can result in caseworkers only considering the application at a specific point in time, rather than someone’s whole status or entitlement. A senior official said that the deliberate separation of visas from enforcement (announced by the Home Secretary in 2013), while beneficial in many respects, had meant that the “end to end” process was not “locked down”.

The Home Office’s emphasis on the case number rather than the individual as a person supports this way of working, as does the nature of its IT systems. One senior official said:

“There’s not many decisions of an enforcement nature that haven’t started somewhere else in the system and they’re on the back of some other decision taken somewhere else in the system and what you might find with quite a few of them is you know those connections didn’t work or the communications didn’t work or a correct decision wasn’t taken much earlier on.”



2.5 Right to Rent – a case study

As part of this review, the then Home Secretary, Sajid Javid asked that the terms of reference be extended to examine how the government's Right to Rent scheme came to affect the Windrush generation. This is important when considering the history of that generation and the significance of the experiences of those who were denied housing in past decades due to their colour or perceived lack of British nationality. Our examination appears in full in [Annex H](#), but is summarised here, as it exemplifies the issues covered in part 2 and shows how they played out in a specific scenario.

The Right to Rent scheme is part of the hostile or compliant environment – a set of government policies to curb illegal migration by cutting off access to essentials like bank accounts, driving licences, employment and, in this case, housing. It calls on landlords to check that prospective tenants have a right to rent and refuse accommodation if they do not.

2.5.1 The roots of Right to Rent

Consultation on the Right to Rent scheme started in July 2013, but its origins go back to a draft Home Office policy from 2006 to limit access to services and facilities for people with no legal right to be in the UK.²³⁰ At this time the Labour government was exploring different ways to make life more difficult for people in the UK unlawfully, including through ensuring there was a “hostile environment” for those without status seeking to access services.²³¹ By the time of the Coalition government in 2010 there was also growing concern about people living in sub-standard accommodation, often temporary structures or illegal conversions of garages or other outhouses. The housing proposals, which by 2013 were part of the Immigration Bill, were also a reaction to these “rogue landlords” renting so-called “beds in sheds” to vulnerable families, young people and migrants, both with and without status.

Under the 2013 proposals, tenants could show their right to rent by demonstrating their UK citizenship or right to reside, while renting a property to someone who couldn't do this would carry a civil penalty for the landlord concerned. In briefing ministers on the 2013 Bill, officials stated that the proposal on landlords was the most controversial of all the measures.

The consultation document considered some of the equality issues, such as the impact on race and ethnicity, and listed documents people could use to show their right to rent. The consultation response showed that around three-fifths of UK citizens and over half of non-EEA nationals disagreed with the principle. Of those who gave an opinion, 58% said it might result in more race discrimination in the housing market.²³² Some, like the Chartered Institute of Housing, were concerned that people living lawfully in the UK might find it hard to produce the documents they needed.²³³

The Home Office responded by promising a statutory non-discrimination code for landlords and broadening the range of documents that showed people's right to rent. It also published a Policy Equality Statement which, among other things, set out the issues that some groups with protected characteristics might face. but did not specifically mention the Windrush cohort or that there was a definable group (defined by

reference to national and ethnic origin who were most likely to be black) who would be particularly disadvantaged. Organisations such as the Runnymede Trust, an independent race equality think tank, stated that in their view the Home Office hadn't adequately considered the public sector equality duty, and the proposals' possible impact on ethnic minorities.²³⁴

2.5.2 Passing the Immigration Act 2014 and roll-out

The Immigration Bill was introduced to Parliament on 10 October 2013, though the Right to Rent sections faced opposition from MPs and Lords, along with organisations including Shelter, Crisis and the JCWI. Professional bodies like the Immigration Law Practitioners Association and the National Landlords Association, also opposed the measures.²³⁵ Despite these criticisms, the Immigration Bill passed its second reading in the Commons by the wide margin of 303 votes to 18, with the Opposition choosing to abstain. At the third reading of the Bill it passed by 296 votes to 16, with the Opposition abstaining again. The Bill passed the second and third readings in the House of Lords as well, and was granted Royal Assent, with minimal amendments, on 14 May 2014.

Right to Rent was rolled out in five West Midlands local authorities in December 2014. For this phase 1, the Home Office published a code of practice for landlords on the scheme²³⁶ and another on avoiding unlawful discrimination.²³⁷ It also provided the Landlords Checking Service and a helpline and recruited landlord and letting agent bodies for a Landlords Consultative Panel (LCP) to advise the minister and department on the scheme.

2.5.3 Evaluating Right to Rent

In May 2015, Prime Minister David Cameron said the scheme would operate nationwide, though at that stage it was only six months into phase 1.²³⁸ A new Immigration Bill went to Parliament later that year, before the Home Office had published its evaluation. The JCWI's evaluation *No Passport, No Home*,²³⁹ published in September, alleged that racial discrimination was happening in the phase 1 areas. The Home Office's own evaluation the following month disagreed but agreed that there was the potential for racial discrimination.²⁴⁰

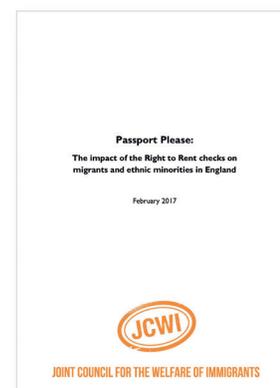
2.5.4 Passing the Immigration Act 2016

Opposition to the 2015 Immigration Bill centred on the requirements introduced in the 2014 Act, but also two new features: making it a criminal offence to lease a property to someone without the right to rent; and the ability of landlords to evict tenants with no right to rent without a court order. There was far more resistance to the 2015 Bill than to the 2014 Bill, with large turnouts in votes against it from the opposition parties, and more than 45 proposed amendments to the Right to Rent sections (see [Annex H](#)). Despite this markedly stronger opposition, none of these amendments succeeded and at the second reading the Bill still passed to the committee stage, with 323 in favour and 274 opposed, and at the third reading the Bill succeeded by 307 votes to 245. It then passed through the House of Lords and the Act received Royal Assent on 12 May 2016.

2.5.5 Raising fresh concerns

A second JCWI report on the now, England-wide, Right to Rent scheme appeared in February 2017.²⁴¹ "Passport Please" said over half of landlords surveyed were less likely to let to a non-EEA national, and 40% were less willing to let to anyone without a British passport. A mystery shopper exercise showed discrimination by prospective landlords towards both BAME people and foreign nationals. Also, the Landlords Checking Service (LCS) wasn't being used by agents or landlords to verify permission to rent, with 85% of the 150 enquiries in the mystery shopper exercise where landlords were asked to conduct a check with the LCS going unanswered.

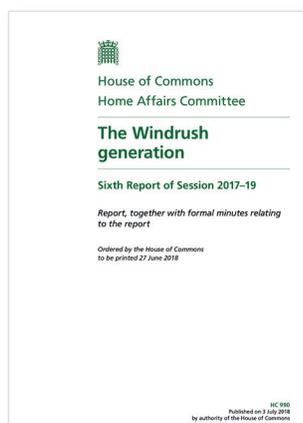
Also, of eleven landlords who had refused a tenancy because of the scheme, four refused because they didn't want to make a check, and five because the tenant couldn't produce satisfactory documents. Only one had used the LCS to get a negative response. The JCWI recommended scrapping the scheme or bringing in systems to monitor for racial discrimination and improve information for landlords, including clear guidance on the anti-discrimination requirements.



2.5.6 Mixed messages from monitoring and evaluation

In March 2018, the Independent Chief Inspector for Borders and Immigration (ICIBI) published a similarly critical report.²⁴² Alongside concerns over whether or not the scheme was achieving its objectives, it also highlighted stakeholders' concerns about racial discrimination. This included statements about the Home Office's commitment to monitoring unintended consequences. When the ICIBI asked what it was doing, the Home Office couldn't provide any data or reports detailing any monitoring.

The ICIBI recommended reconstituting the LCP with more representatives from civil society organisations, including ones focusing on migrants' rights and interests. He also recommended the department publish plans for monitoring and evaluating the scheme – including its effectiveness in achieving its objectives on illegal migrants, but also other impacts including discrimination. The Home Office rejected the LCP recommendation, and partially accepted the plans for monitoring and evaluation, committing only to evaluate the scheme's effectiveness.



In May 2018 the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Ms E. Tendayi Achiume, raised concerns about the impact of hostile environment policies, including the Right to Rent, on BAME households (see [Annex H](#) for details of these concerns).²⁴³

In June, the Home Affairs Committee report *The Windrush Generation*²⁴⁴ said outsourcing the running of Right to Rent made it impossible for the Home Office to know how many members of the Windrush generation had been affected. The Committee considered it was irresponsible to carry on relying on a scheme without knowing whether the hostile environment was meeting its

objectives or causing injustice. The Home Office acknowledged it wasn't possible to know the full impact, but then Home Secretary said officials would now be looking at ways to evaluate the hostile environment measures.²⁴⁵

2.5.7 Right to redress

One complaint about the scheme was that effectively outsourcing immigration control to private landlords made it harder to challenge any discrimination that might occur. There are a number of options for challenging government departments' decisions, albeit they are not necessarily straightforward or without cost. Options include the statutory right of appeal and making a complaint to requesting a judicial review, or referring a case to MPs or the Parliamentary and Health Service Ombudsman. Departments also have to explain decisions in writing.

For the Right to Rent, people would have to take legal action against a landlord or letting agent who they felt had discriminated against them, a complex and often costly process. In 2018 the Equality and Human Rights Commission (EHRC) launched an inquiry into whether Legal Aid enabled people to get justice if they raised a discrimination complaint in England and Wales. They pointed out the 60% drop in initial Legal Aid for all discrimination cases since the 2012 Legal Aid reforms, and significant falls in the number of people getting face-to-face advice or winning in court.²⁴⁶

The EHRC report²⁴⁷ said that, of 33,150 calls seeking Legal Aid, less than 5% got funding for help with casework, and only 43 people got funding for representation in court. More cases were closed through difficulties demonstrating eligibility (14%) than had a positive outcome (13%). Of those, BAME claimants had a lower success rate than white claimants (17% compared to 26%). Also, 66% of people who'd experienced discrimination said they didn't know how to seek legal redress. A third took no action, 42% of them because they didn't think anything could be done. Only 5% sought advice from a legal professional. These findings suggest that court action is an unrealistic solution for people who feel they've been discriminated against because of the Right to Rent scheme.

2.5.8 High Court finds Right to Rent unlawful

On 1 March 2019, the Home Office lost a judicial review of the Right Rent scheme, brought by the JCWI.²⁴⁸ The High Court found the scheme caused landlords to discriminate on the basis of race and nationality, that the Home Office didn't have a satisfactory monitoring process in place and that its online guidance and codes of conduct and practice were ineffective.

The Administrative Court made:

- a) an Order pursuant to s.4 Human Rights Act 1998 declaring that sections 20-37 of the Immigration Act 2014 are incompatible with Article 14 European Convention on Human Rights (ECHR) in conjunction with Article 8 ECHR ("a declaration of incompatibility")
- b) an Order declaring that a decision by the Defendant (Home Office) to commence the Scheme represented by sections 20-37 of the Immigration Act 2014 in Scotland, Wales or Northern Ireland without further evaluation of its efficacy and discriminatory impact would be irrational and would constitute a breach of s.149 Equality Act 2010

The Home Office has appealed the decision to the Court of Appeal. The case was heard on 15-17 January 2020 and the judgment is currently awaited.

This review does not have the same scope as those judicial review proceedings or the pending appeal. We, however, note the comments of the judge who observed similar features to those we have seen evidence of. The impact on those with protected characteristics, especially those of the Windrush generation, were not specifically considered when the Right to Rent scheme was being developed and legislation drafted. Nor were they apparently considered in Parliament. The policy, although applied to all, has put the Windrush generation at a particular disadvantage and we have not seen evidence sufficient to demonstrate that there are benefits to the policy which justify those disadvantages. The evidence we have reviewed disclosed an overoptimistic and narrowly focused review by officials, followed by a failure to appreciate the evidence of its discriminatory impact when rolled out. It seems to be entirely fanciful to expect

that a code of practice, to which a County Court would have regard when considering a landlord's appeal against a civil penalty, or a discrimination claim, would be an adequate deterrent against a temptation not to rent to those in the Windrush cohort who did not have documentary proof from the Home Office that they had the right to reside and right to rent.

The Home Office has since committed to more evaluations – one to look at concerns over discrimination, and one to look at the hostile/compliant environment measures as a whole, to see whether they're discouraging illegal migration. The LCP – now renamed the Right to Rent Consultative Panel – has been invited to help design the evaluation exercise for discrimination. The panel has recommended broadening its membership to include more representatives from civil society, such as the police, universities and groups representing migrants.

2.5.9 Conclusion on Right to Rent

The Right to Rent scheme was introduced to make it harder for irregular migrants to access accommodation, and to target the landlords exploiting them. A former minister told this review:

"my anger at things like, on the rental side, landlords just abusing, exploiting people in appalling conditions and how, in part, some of the work was to actually challenge rogue landlords and to get a stronger join-up so that we were looking firmly at where there was exploitation taking place in that way."

The Landlord's Checking Service has said it found people had no right to rent more than 2,500 times, with 567 enforcement visits prompted by a landlord's referral. But the evaluation of the scheme had only just begun at the time of writing. So far, 511 civil penalty notices have been issued against landlords (ten for repeat offences). There have been no criminal prosecutions. The Independent Chief Inspector said:

"Overall, the RtR [Right to Rent] scheme is yet to demonstrate its worth as a tool to encourage immigration compliance (the number of voluntary returns has fallen). Internally, the Home Office has failed to coordinate, maximise or even measure effectively its use. Meanwhile, externally it is doing little to address stakeholders' concerns."²⁴⁹

Given the link between irregular migrants and exploitative landlords, it's easy to see why the Home Office was motivated to try to change the system. But it has failed to assess whether the Right to Rent scheme has worked. At the same time, it's been given information about the policy's impact on ethnic minorities and people with legal status in the UK.

Right to Rent underlines the deficiencies in Home Office policy-making outlined elsewhere in part 2. The department didn't consider risks to ethnic minorities appropriately as it developed the policy. And it carried on with implementing the scheme after others pointed out the risks, and after evidence had arisen that those risks had materialised. The policy also exemplifies other issues raised by our review, notably the department's unwillingness to listen to others' perspective or take on board external scrutiny, which stemmed from an absolute conviction, rather than evidence, that the policy was effective.

2.6 Consideration of race issues within the parameters of the review

A key concern which was raised by many individuals from the Windrush generation and their descendants was their belief that their race had played a part in the way they were treated.

This is a lessons learned review, in which I have been asked to consider the factors (including the legislative, policy and operational decisions) which led to members of the Windrush generation becoming entangled in the hostile environment, why these issues were not identified sooner, what lessons can be learned, what corrective measures are now in place and what (if any) further recommendations should be made for the future. I have been asked to include scrutiny of equalities legislation, policy practice and principles as part of the factual scrutiny. This includes considering whether race played a causative role.

It is clear that the Windrush generation can be defined as a racial group (by virtue of having Caribbean ethnic and national origin and that they, or their direct ascendants, entered the UK between 1948 and 1973). Almost all members of this group are black.

This review does not:

- Look at comparator cases, to see how those who are not within the Windrush generation have been treated. This necessarily means that I cannot comprehensively compare the treatment of those in the Windrush generation with others who have made applications to the Home Office.
- Assess the reasons of individual decision makers, for example through testing with individuals in interview, in relation to:
 - a) decisions in individual cases
 - b) the reason for adopting a particular policy or practice
 - c) the reasons of the legislature in adopting certain legislation or statutory instruments

Therefore this review is not making an assessment similar to that which a Court would undertake, or a full inquiry with public evidence, subject to questioning, in assessing whether there has been a breach of section 29 or 149 of the Equality Act 2010 (although I have been asked to consider the judgment of Spencer J in the JCWI case). This review has instead been focused primarily on the department as an institution.

I recognise that an institution is of course made up by the people within it. I have considered individuals and individuals' decision-making processes in respect of the 164 relevant case files. I did not interview all of the case workers who worked on those files. It was not therefore possible to undertake an exhaustive exercise to determine whether the decisions made relevant to an individual's treatment were on grounds of their race within the meaning of the Equality Act 2010.

There is a further limitation on whether it is possible to consider whether race played a part in any institutionalised manner. It is not possible to consider equality or diversity data in relation to the department's decisions as they do not currently record an individual's ethnic origin or national origin or their colour (although they do have boxes on the CID system to record occupation and religion). This has meant that it has not been possible to see what proportion of refused NTL applications were made by black people of

Caribbean heritage and compare them with other racial groups. Without this information I am limited in the conclusions I can reach. The department is similarly limited by this lack of monitoring and data collection. While I appreciate that racial monitoring data can only be collected, processed and retained in limited circumstances, it is surprising that the department has not sought to engage in any monitoring exercise. Monitoring data can be particularly useful in identifying trends.

Taking the analysis in stages, I am able to conclude, in light of all the information gathered that members of the Windrush generation are a racial group, some of whom were treated appallingly. They had the right to remain but instead some were victims of the hostile environment measures. Some were removed from the UK, some spent time in detention, some lost jobs, homes, healthcare and precious time with their families. Many lost their very sense of identity.

The “reasons why” this occurred were complex. They contain elements with a racial aspect, for example, the development of legislation through the 1960s, 1970s and 1980s, under which the Windrush generation were simultaneously granted a right of abode, while also being deprived of some important means to demonstrate it. This racial aspect to the history of the legislation has been recognised both in case law (*East African Asians v United Kingdom* (1973) 3 EHRR 76) and in earlier parts of this report.

What is clear to me is that the following operational and organisational failings of the department had a causative impact on the detrimental treatment received by the Windrush generation as a result of their entanglement in measures designed for people who have no right to be in the UK:

- a) Their history was institutionally forgotten. Accurate records were not kept, both relevant to individual cases, and the development of policy and legislation as a whole.
- b) The legal landscape related to immigration and nationality has become more complicated rather than less so. Even the department’s experts struggled to understand the implications of successive changes in the legislation, the way they interacted with changes in the relationship between the UK and Caribbean countries and the impact those changes had on individuals’ status in the UK.
- c) Opportunities to correct the racial impact of historical legislation were not taken. Those administering the 1987 registration scheme said they intended the advertising to be informative but not “stimulate a flood of inquiries.” Publicity leaflets from the time also explained that there would be no consequences if people chose not to register at that time. It is therefore unsurprising that some did not register.
- d) This ought to have been identified as a risk which was likely to adversely affect those within the Windrush generation. While legislation is enacted by Parliament rather than the department, the department cannot be absolved of its role in the policy development or drafting processes.
- e) Warning signs and messages were not heeded. Instead the hostile environment policy was promoted because of a resolute conviction that the policy would be effective and should be vigorously pursued. Warnings by external stakeholders, individuals and organisations were not given enough consideration.
- f) An incorrect assumption seems to have been made in the impact assessments for the 2013 and 2015 Immigration Bills that those who were in the country without the ability to demonstrate it with specific documents were here unlawfully.
- g) When in 2017 the department did identify that there might be a settled but undocumented population there was little attempt to understand the make-up of this cohort. This was despite the department having identified a pre-1973 at-risk cohort over a decade earlier. Overall, I found the monitoring of the racial impact of immigration policy and decision making in the department to be poor.
- h) When the issue began to emerge at the end of 2017 and the beginning of 2018 there was a failure within the department to “join the dots” and identify the particular circumstances of the Windrush generation and their descendants.
- i) The department itself had increasingly become fragmented, and decision-making was separated between teams who operated in “silos”. This led to the risk of cases being processed without adequate quality control safeguards.

- j) There was a “target dominated” work environment within UKVI and IE, and some low-quality decision making.
- k) Some individual decision makers operated an irrational and unreasonable approach to individuals, requiring multiple documents for “proof” of presence in the UK for each year of residence in the UK. The department has accepted that there was no basis for doing this in its guidance.
- l) Internal training had progressively become less thorough and joined up and there was an absence of a “learning culture” in the organisation.
- m) The department displayed a lack of empathy for individuals and some examples of the use of potentially dehumanising jargon and clichés. While not directed at the Windrush group specifically, there was little understanding of the fact that the department serves the public as a whole, and that those who are affected by individual decisions may be vulnerable and in need of assistance. I did not however encounter widespread use of racially insensitive language against those from the Caribbean within the department.

These organisational failings took place against an historical backdrop with a racial aspect and contributed to the detrimental treatment of the Windrush generation.

There were also other factors outside of the Home Office’s responsibility which contributed to what happened to those affected by the Windrush scandal including:

- a) The substantive content of primary legislation. While the Home Office is responsible for the development of policy and the drafting of legislation, historical legislation and the more recent 2014 and 2016 Immigration Acts were ultimately enacted by Parliament.
- b) Changes (reductions) to legal aid.
- c) A history of prejudice towards black people in wider society.
- d) “Risk averse” landlords and employers who considered employing or renting to a person who cannot easily demonstrate their right to remain in the UK as too risky.

When officials were asked in interview about the perception of many in the Windrush generation that race played a part, some interviewees showed some understanding of why that perception may have been held by those affected while others were defensive and focused on denying that decision makers and the department were racist. There seems to be a misconception that racism is confined to decisions made with racist motivations, akin to bad faith. This is a misunderstanding both of the law, and of racism generally.

No official made any mention in answer to this question or elsewhere in their interviews, for example when asked about workforce representation, either expressly or in summary to an awareness of indirect discrimination.

The concept of indirect discrimination is well-known, has been present in English law since the 1970s under the Race Relations Act 1976 and Sex Discrimination Act 1975 and is a well-established principle of EU non-discrimination law. It recognises that there may be factually neutral provisions, criteria or practices applied generally, which put those from particular groups, with protected characteristics, at a particular disadvantage. It is a form of analysis which is of particular use when considering institutional obstacles or barriers. It does not require a racial motivation or for there to be a link between the provision, criterion or practice (often called the PCP) and the characteristic, in this case national origin, ethnic origin and colour:

- a provision, criterion or practice, puts those who share protected characteristics at a particular disadvantage (e.g. a racially defined group such as the Windrush generation),
- actually disadvantages individuals from that group, and
- cannot be objectively justified.

Therefore, the approach of those interviewed was surprising, especially at a senior official level, as the leading Supreme Court case concerning the Equality Act 2010 definition of indirect discrimination involved the Home Office as Respondent and was heard between 2016-2017 (*Essop v Home Office*. [2017] UKSC 27). The Home Office ultimately lost at the Supreme Court. That case concerned performance on a test for

Executive Officers to become Higher Executive Officers. There was a statistically significant disparity in pass rates for BAME candidates. The Supreme Court found that this disparity required “objective justification” of the test.²⁵⁰ The Supreme Court emphasised that, in indirect discrimination it is not necessary to establish a causal link between the provision, criterion or practice and the protected characteristic (i.e. race), but only between the disadvantage and the provision, criterion or practice. I say more about this in part 4 in my findings and recommendations section.

The above factors demonstrate that race clearly played a part in what happened to the Windrush generation.

I find that the factors listed earlier when applied across the board particularly affected those in the Windrush generation and contributed to the harm suffered by them.

I do not make a finding of indirect discrimination, in part because my remit is not to conduct a wholesale analysis of potential “objective justification”²⁵¹ and the review was not set up to operate a “court like” process. However, some of the failings set out above would be indicators of indirect discrimination if the department was not capable of establishing objective justification. The department should therefore consider whether such justification exists and be alive to the risk of indirect discrimination.

As well as the factors above playing a causative role in the harm suffered by the Windrush generation, I am also concerned that:

- a) an overbroad view was taken by policy officials of the scope of exceptions from the public sector equality duty when proposing the 2013 and 2015 Immigration Bills
- b) during my interviews with senior civil servants and former Ministers, while some were thoughtful and reflective about the cause of the scandal, some showed ignorance and a lack of understanding of the root causes and a lack of acceptance of the full extent of the injustice done. In addition, some of those that I interviewed when asked about the perception that race might have played a role in the scandal were unimpressively unreflective, focusing

on direct discrimination in the form of discriminatory motivation and showing little awareness of indirect discrimination nor the way in which race, immigration and nationality intersect

- c) the department itself has a large BAME workforce at junior levels; it does not at senior levels. There does not appear to be sufficient awareness of the potential for there to be hidden, potentially indirectly discriminatory barriers to career progression. The lack of awareness was surprising as the Supreme Court considered this issue in the context of the Home Office in *Essop v Home Office (UK Border Agency)* [2017] UKSC 27
- d) there have been low levels of take up of internal equalities and unconscious bias training
- e) Immigration Enforcement activity included the racially insensitive “Go home or face arrest” advertising billboards and “go home” vans

As a result of these concerns, I carefully considered whether the concept of “institutional racism” discussed by Sir William Macpherson in the Inquiry into the Death of Stephen Lawrence would be directly relevant to describe what occurred. This is not a concept defined in legislation.

Sir William Macpherson stated at 6.4-6.6:

“6.4 Racism in general terms consists of conduct or words or practices which disadvantage or advantage people because of their colour, culture, or ethnic origin. In its more subtle form it is as damaging as in its overt form.”

“6.5 We have been concerned with the more subtle and much discussed concept of racism referred to as institutional racism which (in the words of Dr Robin Oakley) can influence police service delivery “not solely through the deliberate actions of a small number of bigoted individuals, but through a more systematic tendency that could unconsciously influence police performance generally”

“6.6 The phrase “institutional racism” has been the subject of much debate. We accept that there are dangers in allowing the phrase to be used in order to try to express some overall criticism of the police, or any other organisation, without addressing its meaning. Books and articles on the subject proliferate. We must do our best to express what we mean by those words, although we stress that we will not produce a definition cast in stone, or a final answer to the question. What we hope to do is to set out our standpoint, so that at least our application of the term to the present case can be understood by those who are criticised.”

Sir William Macpherson defined Institutional Racism in the following terms at 6.34.

“The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.

“It persists because of the failure of the organisation openly and adequately to recognise and address its existence and causes by policy, example and leadership. Without recognition and action to eliminate such racism it can prevail as part of the ethos or culture of the organisation. It is a corrosive disease.”

That Inquiry found that a finding of Institutional Racism was supported in that case by:

- a) the lack of urgency in investigating the incident and failing to see its relationship with race (6.45(a))
- b) evidence of negative stereotyping of racial groups by staff fostered through workplace culture (6.45(b))
- c) underreporting to the organisation by BAME individuals due to a perception that their cases would not be taken seriously (6.45(c))
- d) the lack of training within the organisation of racism awareness and race relations (6.45(d))

- e) the failure of the organisation to unequivocally recognise, acknowledge and accept the problem (6.48, 6.51, 6.52, 6.58)
- f) the use of racially insensitive language and terms by officers/staff without understanding as to how such language could be offensive (6.3)

I found evidence of some, but not all, of these features to be present in Windrush. In relation to Sir William Macpherson’s limbs (a), (c) and (d) I am particularly concerned that:

- (a) as noted above, the Home Office was slow to identify the Windrush generation, definable by reference to race, plus the date of entry to the UK, was a cohort of significant size
- (c) there had been significant under reporting by that cohort for the reasons set out earlier. However, there was not the same level of under reporting to the Home Office as there was of underreporting of racist crimes identified by the Stephen Lawrence Inquiry. The reasons for the Windrush generation underreporting were either a lack of awareness that they needed to do anything, with, later on, a worry that by making an application they might make things “worse”. However, this factor is not capable of direct comparison
- (d) while the levels of training exceed those found in the Stephen Lawrence Inquiry, levels were low, and understanding of equality law and its exceptions remains low

I have not, encountered Sir William Macpherson’s limbs (b) or (f):

- (b) I do not find the “culture based” conception of institutional racism found to have existed in the police force by the Macpherson Inquiry to have been present in the Home Office in the relevant review period (March 2008-2018). Over and above my existing finding that the department had lost sight of individuals I found no evidence of stereotypical assumptions being made on a day to day basis by either senior or junior staff from the evidence I reviewed.
- (f) As noted earlier, there was evidence of a culture where some case workers expressed satisfaction at being able to reject an application or make a decision to remove, the use of targets was pervasive and detrimental to workplace culture and individuals were

required to surmount a sometimes impossible hurdle or standard of proof to establish existing rights. However, I found no evidence during my review of the Windrush Cohort being targeted specifically for less favourable treatment than individuals making applications for leave to remain or for NTL. This does not mean that it has never happened, as I have previously set out the parameters of my review, which did not include a review of “comparator” cases.

I would refer to the department’s responses in relation to the issue of race, set out above, in respect of limb (e).

The Home Office carries out different functions from the police, so it is not to be expected that these features would appear, if they do, in the same way in both organisations. In the current context I have not found, on the evidence that I have reviewed, that the organisational failings satisfy the Macpherson definition in full. Nevertheless, although the context for the Macpherson Inquiry was different to this lessons learned review, I have serious concerns that the factors that I set out in this section demonstrate an institutional ignorance and thoughtlessness towards the issue of race and the history of the Windrush generation. Institutional thoughtlessness towards race and institutional ignorance were found to have been elements of the definition of institutional racism considered in the Macpherson Inquiry. The department has failed to grasp that decisions in the arena of immigration policy and operations are more likely to impact on individuals and the families of individuals who are BAME, who were not born in the UK, or who do not have British national origins or white British ethnic origins. Therefore, positive care is required, from top to bottom, to ensure that policies and guidance are not adopted, and formal or informal practices do not develop which racially discriminate, either directly or indirectly. On an institutional level, the department must be alive to the need to take positive steps to ensure that individuals do not experience worse outcomes for reasons connected with their race, or which would be indirectly discriminatory. This is why I have made recommendations which address how the Home Office needs to change in respect of race issues.

2.7. Conclusion to part 2

While the Windrush scandal began to become public in late 2017, its roots lie much deeper. Successive rounds of legislation and policy effectively set traps for the Windrush generation – people who had come to the UK from the Caribbean and other parts of the Commonwealth between the late 1940s and January 1973. First, they were offered UK and Colonies citizenship in the immediate post-war period. The 1971 Immigration Act then gave anyone who had settled in the UK before 1973 indefinite leave to remain, but it didn't give them documents to prove it. Also, the Home Office kept no records of their status. Immigration controls then tightened progressively from one government to the next. Decades later, "hostile environment" measures set out to control illegal migration by making life in the UK extremely difficult for those who couldn't prove their right to be here. This included restricting their access to housing, public services and bank accounts. Some members of the Windrush generation suffered the as a result.

Over decades, legislation progressively eroded the rights of the Windrush generation, not least by narrowing the definition of British nationality. Not only did the bar become steadily higher, but it became harder for people to find the documents they needed to be able to establish their right to be in the UK. This would later make them vulnerable to immigration controls. Government compounded the effect of this by doing too little to tell people about the changes and how they affected them, and to help them take the steps needed to establish their status. The hostile environment was another step on the long road towards a more restrictive immigration regime, but it was also a departure in terms of the scale and seriousness of the effects which would be directly felt by individuals.

The department developed immigration policy at speed, impelled by ministerial pressure, with too little consideration of the possible impact of the measures, especially on those from minority and ethnic backgrounds. By focusing so closely on policy intent, the department also failed fully to assess the effect of policy including, crucially, on those who were legitimately and lawfully present in the UK.

Amber Rudd said on 17 April 2018 that she was, "concerned that the Home Office has become too concerned with policy and strategy and sometimes loses sight of the individual".²⁵² She said in an interview that she, "could not understand, why people would make a decision to treat people the way they had knowing they'd been here 30 or 40 years." It is difficult to disagree with this assessment. Indeed, the evidence shows there is an overarching culture in immigration policy and operational areas which has lost sight of its role to serve and protect the people whose applications it considers, as well as the wider public.

It's clear that, in developing the hostile environment policy, the Home Office did not specifically consider the position the Windrush generation were in. And when risks posed to people by the new policies were raised, policy makers did not respond adequately to address them. The Permanent Secretary of the Home Office conceded this to the Public Accounts Committee on 17 December 2018:

"Yes, it has been known in principle, but the clarity and focus on the point have varied a lot over time, and I think it clearly was lost sight of as these policies were developed and implemented. So we lost sight of that point. Why? I don't really know, in truth. I would love to know. I think probably that people's minds – their energy, their focus – were elsewhere. But it is absolutely clear that we lost sight of this point and of its significance – the scale of the population and the link between their exposure or vulnerability to the adverse effects of new policies being introduced, and the complexity of the regime."²⁵³

The result was that the Home Office lost sight of the fact that the Windrush generation were already adversely affected because of how earlier legislation had eroded their rights. By developing policy without this perspective, the department created significant risks for the Windrush generation.

Other factors made the situation worse, including the imposition by the legislation of the burden of proof, together with the department's requirement of a high standard of proof upon people applying to confirm, rather than establish, their status, the growing cost of these applications and the withdrawal of Legal Aid, and closure of law centres, which meant people would be much less likely to be able to access advice. Pressure on case workers to meet targets, a challenging operating environment and the complexity of immigration law, together with a lack of personal engagement with applicants, also combined to make poor decisions more likely.

Ultimately, the Windrush scandal was made possible by social and political pressure on a department that was already at risk of not understanding the full consequences of the implementation of its policies. The department tried to put policy intent into practice, which is its function, but did so relentlessly and without proper consideration of the impact of the proposals. By detaching policy design and development from implementation, it took away some of the means of anticipating the harm its policies could do. It made this harm more likely by not taking enough account of the built-in risks of its policies. And a lack of diverse perspectives at senior levels arguably made it less likely that emerging policy would be challenged, and staff across the organisation didn't feel confident enough to raise any doubts of their own.

Even though there were clear concerns about policy, there were only superficial measures in place to address and mitigate them. An example is the guidance on discrimination for landlords renting accommodation, a measure designed to address the effect rather than the cause. The material we have been provided with does not demonstrate that due regard was had to the need to eliminate (and not foster) discrimination. It does not establish that the policy was justified. In the wider context of extremely complex legislation, rules and guidance, and an internal culture that doesn't recognise individuals, this led to the Home Office making the wrong operational decisions. And these decisions led to appalling consequences that disproportionately affected the Windrush generation.

The Home Office is adept at responding to external crises, including threats such as terrorism, national security and disorder. In all cases it should ensure that it is also adept at dealing with crises that call for internal reflection and institutional soul-searching. Ultimately, the department failed to look, engage, listen and learn, across all stages of making and implementing the elements of immigration policy covered in this report. This, in turn, is the result of external social and political pressures, a rules-based operational environment and an inward-looking culture and the apparent disregard of the potential impact of decisions by some who were involved in policy development.

CASE STUDY 3

VERONICA,

aged 59, lives with her husband in Nottingham and is a social worker for local government. She has a very close relationship with her niece Cassie.

Veronica's father Nathaniel came to the UK in 1956 and worked at British Steel and British Sugar. He decided not to go for British Citizenship because he already had his "black book" (Citizen of UK and Colonies passport); he felt that he had been invited to the UK and was already a British Citizen. He was in the UK for over forty years, staying here where he had built his life up with his wife and three daughters. He left the UK to go to Jamaica in 1985 on his black book passport and came back to the UK without issues. However, when Veronica and her father left to go to Jamaica for a holiday in 2002, he was prevented from returning. They didn't contest it at the time, since Veronica felt perhaps that she hadn't done something that she needed to do and blamed herself.

Veronica came back to the UK alone and made arrangements to take a career break to spend time with her father who was becoming increasingly unwell. She spent a great deal of money on flights and also missed out on income and career opportunities while she was away. She was in Jamaica for three years initially, then went out a second time for a further four years and it was during this time that she met her husband, Joseph. Veronica was invited to undertake work at The University of the West Indies as a coordinator and lecturer of a number of social

work programmes. She took up the opportunity as she was delighted to use her expertise in a new context, however, she eventually decided to return to the UK conscious of her responsibilities, growing debt and gaps in NI contributions.

Veronica returned to the UK firstly without Joseph (while they applied for a spouse visa for him. She had sure her father would be properly cared for in her absence) and Joseph took a leading role during this time. Once Joseph was successful securing his visa, Veronica left provision for her father to be looked after by a live-in helper. Veronica and Joseph visited her father as often as they could until he died from prostate cancer in 2010. Veronica's father never returned to the UK; he could not afford the cost of treatment in Jamaica, and she believes he could have survived longer if he'd been in the UK with access to NHS treatment.

As a result of these experiences, there has been a long-term impact on Veronica's mental health as well as her career progression. She feels that partaking in the Review has helped her articulate and come to terms with the heavy burden of the fourteen-year struggle with the hostile environment, which at the time she didn't realise was also affecting others. Veronica now gets a lot of support from her church, where she also supports the local Windrush campaign.

She gave up her career in social work to care for her dying father in Jamaica, as he was unable to return to the UK

PART 3

The department's
corrective measures

HELP

SUPPORT

ADVICE

GUIDANCE

ASSISTANCE

INFO

PART 3: The department's corrective measures

3.1 Introduction

The Windrush Scandal has dealt a serious blow to the public's trust in the Home Office and the immigration system. This is particularly so for Britain's black African-Caribbean communities.

The causes of the Windrush scandal are not straightforward, as set out in part 2. They lie both in history and the modern day. And they lie in the decisions, actions and inactions of ministers, governments, Parliament and the Civil Service. Within the Home Office, they lie not just in one team, or one part of the Borders, Immigration and Citizenship System (BICS), but in shortcomings across the organisation, over time and across directorates.

This part of the report considers how far the Home Office has tried, and is trying, to right the wrongs of the scandal and address the issues that caused it.

3.2 The Home Office's corrective measures

Since the Windrush scandal emerged in spring 2018, the Home Office has launched measures to:

- put right the wrongs caused to individual members of the Windrush generation by providing direct support and compensation to those affected directly and indirectly (referred to by the department as the Windrush Reform Programme)
- ensure that something like this never happens again, by developing organisational reforms to policy and practice (referred to by the department as the "Human Face" work)

This section sums up the main features of the most relevant measures and offers a brief assessment of their individual and collective impact (or likely impact), considering the review's assessment of the causes of the scandal. We also assess the extent to which the department's activity since the scandal emerged reflects an acknowledgement of the causes of the problem, and a willingness to learn and apply lessons in response. It is understandable that the department has started to implement changes ahead of this report and we hope the comments in this section will help the process of continuous improvement.

The review has put the measures into five categories:

- righting the wrongs of the past
- safeguarding the Windrush generation and others
- improving leadership and culture
- improving policy-making
- improving operational practice.

A more detailed description of the most relevant measures is at [Annex I](#).

3.2.1 Righting the wrongs

On 16 April 2018, the government announced the **Windrush Scheme, run by the Windrush Taskforce**. The scheme sets out to remedy an issue at the centre of the scandal: the lack of documentary evidence of immigration status for members of the Windrush generation.

By setting up a helpline and running outreach surgeries across the UK, the Taskforce helps Commonwealth citizens and other nationalities demonstrate their right to live in the UK and obtain suitable documents. Taskforce caseworkers work with government departments to find records, and with local authorities and charities to help people access benefits, temporary accommodation and other support if it's needed. Staff from the wider Home Office have also volunteered to support this effort by going out into their local communities to provide help to those affected. Decision letters are clearer and simpler than before, and support for vulnerable people is provided by a dedicated Vulnerable Persons Team.

Decisions to refuse applications were initially signed off by ministers. From 5 August 2019 these decisions have been approved at Senior Civil Servant level following an increase in claims wholly without merit. Individuals can also ask for decisions to be reviewed by the Chief Casework Unit (CCU), an internal Home Office unit set up in response to Windrush with the aim of improving the quality of the department's casework. Apart from legal remedies, there is no external mechanism for having cases scrutinised.

By September 2019, 8,124 individuals had been issues with some form of documentation by the

Taskforce, granting citizenship and/or confirming their right to remain in the UK. Documentation confirming status includes people given Indefinite Leave to Remain (ILR) and No Time Limit (NTL).²⁵⁴

Overall, the Taskforce's quick mobilisation and more personalised ways of working is testament to what the department can achieve when highly motivated and adequately resourced to demand. The Taskforce was established in a matter of days and members of the team were clearly committed to providing a good quality service to people who needed their help, including the most vulnerable. We have heard from individuals that in some cases their status was clarified within a matter of days, or even hours. Our own assessment of a small sample of Taskforce cases suggests that caseworkers are applying a less onerous standard of proof, more in line with the civil standard (where it is more likely than not that the applicant is eligible), rather than the higher standard of evidence having to prove it beyond reasonable doubt. And caseworkers are themselves contacting other government departments for evidence.

However, some people told us their cases took longer to resolve than the Taskforce's two-week service standard, and this is supported by the Home Secretary's update to the Home Affairs Committee.²⁵⁵ There is also a question over whether the Taskforce's work, and ways of working, will produce wider benefits in the longer term. For example, we have seen no evidence that the department is harnessing the knowledge and experience of the Home Office volunteers to improve its day to day service, as opposed to relying on their goodwill, or that the approach of caseworkers is being incorporated into wider service standards and guidance. The department therefore risks undermining its positive achievements.

The **Historical Cases Review Unit** (HCRU) was set up in response to questions from Parliament to identify Caribbean Commonwealth nationals who had been removed, detained, and/or were subject to proactive compliant environment sanctions. The HCRU examined the immigration records of 11,800 individuals of Caribbean Commonwealth nationality, born before 1 January 1973, who had been removed and/or detained by the Home Office since 2002. It sought to identify individuals whose records indicate that they could have been in the UK before 1973. Individuals

who were believed to be involved in criminality were originally excluded from this review. Our own assessment of the 164 cases of individuals identified by the HCRU as having arrived before 1 January 1973 is at [Annex G](#). In total, 67 people identified by the HCRU received letters from the Home Secretary apologising for what happened to them.

While the review of historical case files originally excluded individuals involved in criminality, in November 2018 the then Home Secretary broadened the scope of the review to include cases being managed by Immigration Enforcement Criminal Casework where there was an indication in their record that they could have been in the UK before 1973. This part of the review identified 7 individuals who had been sentenced to prison for less than 12 months who were then detained under immigration powers at the end of their sentence while under consideration for deportation. These individuals were exempt from deportation under s7(1) of the Immigration Act 1971 (Exemption from deportation for certain existing residents), so should not have been detained under immigration powers. The then Home Secretary wrote to these 7 individuals offering a full and formal apology.

The criminality work undertaken by the HCRU excluded anyone meeting the definition of "foreign national offender" (FNO) as set out in sub-section (c)(i) of section 117D of the Nationality, Immigration and Asylum Act 2002. This states that "'foreign criminal' means a person who is not a British citizen and ... has been sentenced to a period of imprisonment of at least 12 months". Under the UK Borders Act 2007, the Home Office must make a deportation order where a foreign national has been convicted of an offence and received a custodial sentence of 12 months or more. This came up at roadshows, when some people said that they had not approached the Taskforce because they were, wrongly, worried that previous criminal convictions would put them at risk of deportation. However, the review was told that, irrespective of the length of sentence, members of the Windrush generation with criminal convictions would not be included in the enforcement of deportations due to the s7(1) exemption. Guidance issued by the Taskforce in June 2019 confirms this and is clear that anyone with a right of abode is not liable to deportation. As those with sentences over 12 months were

excluded from the HCRU work on criminality, it is not clear what the department has done to reassure itself that the law had previously been applied correctly in these cases and that no one from the Windrush generation had been subject to the enforcement of laws intended to apply to foreign offenders.

The Home Office commissioned an external professional services consultancy to provide independent assurance of the HCRU work in two stages. Stage 1 involved a review of the design and documentation of the HCRU's governance, structure, and programme of work, highlighting any identified risks, gaps and areas for improvement. Stage 2 was a review of a sample of cases assessed by the HCRU to consider whether it delivered its objectives as intended. The resulting report made five suggestions to the department (outlined in [Annex I](#)). The first three suggestions, which related to the department doing further work to look at a larger group of 254 individuals whose first arrival date was unclear and further data assurance, were accepted by the department. The other two were rejected by the department as they fell outside the scope of the review, which had been agreed with ministers and outlined to the Home Affairs Committee.

Given the limited scope of the review (set up in order to respond to queries about the cohort from Parliament), and the department's decision not to broaden the terms of it, the department has not maximised the opportunity to undertake a comprehensive process for identifying and supporting the fullest range of individuals that may have been affected. In fact, our review of the 164 cases suggests that the impact of the Windrush scandal on some of those individuals who have not been included in the HCRU work is arguably as severe as those who sit within it, for example those who may have lost their homes and livelihoods.

While precise numbers are not known (see part 1), some people faced acute crisis because of the Windrush scandal, losing their jobs and homes. They needed immediate support. The Home Affairs Committee recognised this, recommending a hardship fund in its report of June 2018, and again in its Windrush Children report the following month. The government announced an **“urgent and exceptional circumstances” policy**, managed by the Taskforce, in October

2018. The scheme was not officially launched until December.²⁵⁶

The delay in making the announcement and launching the policy, coming as it did about 10 months after the scandal became public, will have done little to help those who were in desperate need. Many applicants spoken to considered that the policy took too long to be set up, and that the payments made often did not adequately cover the extent of the hardships they faced. At 30 September 2019, the department confirmed the scheme had approved a full or part payment in 23 of the 118 cases where they had received eligible applications for help (73 were declined).²⁵⁷

The delay in implementing this policy is disappointing, particularly considering the dire circumstances in which some members of the Windrush generation found themselves. The department told us the low numbers and slow progress was the result of the complexity of assessing applications, and the high bar set for “exceptional” circumstances. They also sign-posted us to the work of the Vulnerable Persons Team (VPT) which was established to ensure that those in most urgent need could obtain support and advice (more detail in [Annex I](#)). By the end of September 2019, the VPT had provided support and advice to 987 individuals, with 91 cases ongoing.

In April 2019, the then Home Secretary announced the launch of the **Windrush Compensation Scheme** following consultation with people affected and a call for evidence.

Members of the Windrush generation, and in some cases their children, grandchildren and direct family, can apply for compensation if the scandal has had an impact on their life or caused them direct financial loss. The scheme covers losses suffered in relation to employment, immigration fees, detention and removal, housing, health, education, driving licences, banking, the impact on normal family life and a range of other circumstances at the Home Office's discretion.

Since the launch of the Windrush Compensation Scheme in April 2019, over 30 engagement events have taken place across the UK between April to December 2019 where members of the Taskforce and the Compensation Scheme have been on hand to explain what help and support is available to those affected and how to make a claim.

The Windrush Taskforce helpline can advise people on what compensation they might be entitled to. Some people affected by the scandal initially welcomed the scheme, and it's clear that a lot of hard work had gone into engaging with people affected by the scandal to make sure its design was well-informed.

However, the review heard concerns over how long it took to launch, whether enough money has been set aside to deal with the potential volume of claims and the fairness of some of the caps on the tariffs. Also, fees for successful citizenship applications are not recoverable and legal fees can only be claimed for some applications (with a £500 limit). There was also concern among those we have spoken to about the complex application process and the unreasonable levels of documentary proof required, both of which were prominent features of the scandal itself. It was also disappointing to hear about some applicants' personal email addresses being shared in breach of data protection requirements, soon after the scheme's launch.²⁵⁸

Clearly, such a large scheme (modelled on the premise that as many as 15,000 people could apply) requires rules and safeguards. However, given the nature of the scandal and what it says about the apparent failure to take account of the people who were affected, the department has missed an opportunity to adopt a more personalised and sensitive approach to claimants. The department should demonstrate more explicitly that it has recognised that in some circumstances applicants may find it difficult to evidence the true extent of aspects of their claims and make the process as simple and accessible as possible, for example by working with potential applicants and then publishing "how to" guides. The department agreed a contract with Citizen's Advice (CA) which allows claimants to receive help in completing the forms from their local CA. The Home Office announced on 6 February 2020 that they would soon be launching the procurement tender. In the meantime, CA will continue to provide the service for a further six months.

The department contracted with CA in the first instance, subject to a longer term competitive tendering process. This tendering process was due to start at the end of 2019 but was delayed due to the 2019 General Election. The Home

Office announced on 6 February 2020 that they would soon be launching the procurement tender. In the meantime, CA will continue to provide the service for a further six months.

The review heard from those affected by the scandal how important receiving an apology was them. It is therefore positive that claimants who receive an offer of compensation also receive an apology from the department. However, unlike those who received apology letters from the Home Secretary as a result of the Historic Cases Review, this apology comes from their caseworker on behalf of the department. The department should consider changing this practice so that all apology letters come from the Home Secretary.

At the time of writing, the scheme has been in operation for just over 10 months. The Home Office announced on 6 February 2020 that, as at 31 December 2019, 1,108 claims had been received, with 36 payments made totalling £62,198.²⁵⁹ These figures are well short of the numbers predicted. There were 3 cases where individuals who were eligible to apply received a "nil" award. Given the relatively low number of claims that have been made it is disappointing that only 36 payments have been made, and that more community-led support was not made available to those submitting applications, in addition to the support provided by CA. It is positive that there is independent oversight of both the scheme and individual decisions.²⁶⁰

We understand that the department will soon be launching a public appointments process to recruit a permanent Independent Adviser to the scheme. Martin Forde QC, who provided independent advice on the design of the scheme, will continue to service as Independent Adviser in the interim period.

The scheme was due to close to claims in April 2021. On 6 February 2020, the Home Office announced that they were extending the duration of the scheme by two years, so that people will be able to submit claims until 2 April 2023. This is to provide certainty to individuals who may be thinking about making a claim that they will have time to do so, and to give more time to reach people who are not yet aware of the scheme. This extension is welcome. When the scheme is due to close the department should publicise this widely and with reasonable notice.

3.2.2 Safeguarding the Windrush generation and others

After the Windrush scandal became public, the government brought in measures to reduce the risk of the Windrush generation, and other groups, being caught up in compliant environment measures, immigration enforcement and detention.

Prior to the Windrush scandal, the department proactively shared data with other government departments to support the enforcement of compliant environment controls. In July 2018, the Home Office said it had introduced a restriction on sharing the data of people over the age of 30 with other departments and “partner” agencies like HMRC, DWP and DVLA for three months (see [Annex I](#) for more detail). It had also restricted sharing data with the anti-fraud authority Cifas for those being deported after criminal activity. The Home Office has proposed starting to share data again once various safeguards are in place, including **new rules for quality assuring and sharing data with other government departments**.

The department has **promoted the helpline and changed guidance for landlords and employers**. The guidance now suggests they ask the department for advice if an applicant doesn't have the right documents, rather than refusing them outright. But it's still up to landlords and employers to read the new guidance and apply it.

The evaluation of the Right to Rent scheme said that two-thirds of landlords who responded felt poorly informed about the Right to Rent scheme.²⁶¹ JCWI's research report *No Passport, No Home* found 65% of landlords either hadn't read or hadn't fully understood the published guidance on the scheme, with 44% finding the anti-discrimination code difficult to understand. Almost one-third of landlord respondents in the pilot simply hadn't read the documents. This mirrored the findings in the Home Office's own evaluation, where only 42% of landlords read the code of practice, and less than one-third had read the anti-discrimination code. Guidance that's not read or used can't tackle discrimination effectively.

The department's actions indicate it has assumed that changing guidance, promoting a helpline for landlords and signposting the Taskforce and compensation scheme are enough to address the

concern that the Right to Rent policy will result in discrimination. This suggests it still seems not to accept that the policy itself has been found by the High Court to be discriminatory (subject to appeal), and that, as the present court judgment stands, these tools therefore aren't considered to be enough if they're not used or understood.

As an immediate response to the Windrush scandal, the department also amended its processes so that **senior civil servants (SCS) authorised immigration detention decisions**. This step provided a further safeguard, albeit a temporary measure, to ensure that the wrong people did not end up in detention. The more important consideration must be putting robust systems in place to make sure that decisions are right in the first place, and that the department learns from experience. At the time of writing, following an evaluation of the impact of mandating SCS sign-off, this requirement has been discontinued. It has been replaced by a sliding scale for authorisation, which is dependent on the circumstances of the individual to be detained.

Finally, the department is further developing **plans to identify and support “at-risk” or vulnerable individuals**, both within detention and more widely (see [Annex I](#) for more detail). Some of this work provides an important platform for the department to build its general approach to serving the public. Again, much of it is in its infancy, so its effectiveness cannot yet be measured.

Overall, the safeguards described within the department's “Human face” programme of work show the department has started to recognise the need to put the person at the heart of the service it provides. This is a positive step. However, many of the measures tend towards procedural or structural solutions that reduce the likelihood of error once policies are implemented. There is also a more fundamental need to examine the development of the policies.

Nor do they tackle the need for a cultural change that puts people, ethics and accountability at the centre of decisions about who is targeted for enforcement and why. This shift would make problems less likely to happen in the first place and help to create opportunities for learning across the immigration system to promote better results. To achieve this outcome, the department

would have to put in place better systems for data recording, information management and data security, as well as supervision, performance management and continuous improvement.

3.2.3 Improving leadership and culture

The Home Office's main strategy for creating a more inclusive culture across the department is its **Diversity & Inclusion Strategy: Inclusive by Instinct**. The strategy acknowledges that the department isn't representative of the communities it serves, and that it has some way to go in making sure BAME staff's experience matches that of their white counterparts. The department has set representation goals, for instance to increase the number and percentage of BAME and disabled Senior Civil Servants.

This strategy differs from previous ones, though, in not mentioning the department's public sector equality duty at all. It is also primarily internally focused and does not cover key aspects of ensuring diversity and inclusion, for example engaging with outside stakeholders and taking steps to ensure suppliers meet equalities duties. This is a concern, especially as the department published the strategy after the Windrush scandal became public.

This strategy, alongside the wider **People Strategy**, which sets out the department's vision for being "a truly great place to work", does not review progress since previous strategies were published. There is no sense of how they are building on previous work or how the department is evaluating and learning from progress, or the lack of which would be beneficial.

The aims of these strategies are positive, but I consider it would be helpful for the department to provide clearer information about how the relationship between the department, its people and the public informs these aims, and how it will achieve them. This could take the form of an evidenced-based plan for how the department will get the best from its people and build trust in communities by putting a public service ethos at the core of its work. It could also ensure that training for leaders focuses on how "inclusive by instinct" should translate into every day decision-making and behaviours and make sure they lead by example in promoting inclusivity and challenging the status quo. The low completion rates for diversity training over the past few years

(see part 2), and the lack of plans for achieving a systemic cultural change, suggest the department has some way to go to turn these plans into reality.

3.2.4 Improving policy-making

The main measure the department has introduced so far on immigration policy-making is a **Policy Assurance Framework (PAF)** and toolkit. This is a form for officials to complete when they introduce a new policy or change an existing one, which is accompanied by a nine-page "BICS Policy Toolkit" explaining how to use it. The toolkit contains questions policy makers would be expected to think through as part of developing policy and it is a positive step that the PAF prompts officials to consider the equalities implications of what they are proposing, making specific reference to the public sector equality duty.

But while the PAF is a welcome addition to the policy-makers toolkit, on its own it is not a sufficient response to the limitations of the immigration policy-making process. It is unlikely that the PAF would have flushed out issues concerning the Windrush generation any more than the checks and balances that existed at the time, nor would it have provided the necessary challenge to the policy intent and decisions that led to the scandal.

For the PAF to be effective, it should follow successful efforts by the department to tackle the cultural problems described in this report. It is, of course, important to make sure each element of immigration policy design is carried out properly, with effective quality assurance and robust accountability frameworks. Equally important is the need for the department to consider the way it responds to political pressure (see part 2), how it maintains and applies its corporate and legislative memory and how it learns and improves.

The **BICS Hub** was formed to "develop new ways of working to become better equipped to anticipate and respond to high profile issues". The Hub appears to serve a crisis management function, which activates in response to external stimuli to provide reassurance that the department is "gripping" high-profile problems. We have explored in part 2 the way the scandal unfolded and the opportunities that appeared to have been missed. The BICS Hub might have led to some of the issues we identified coming to light sooner than was the case at the time. However, on its

own, the existence of this function, given that it appears to be largely reactive and internally focused, is unlikely to have prevented the Windrush scandal from happening or to have led to it being identified much sooner. In addition to the factors identified above, improvements to data quality, analytical capacity and accountability across the system would be required.

3.2.5 Improving operational practice

The **Chief Casework Unit (CCU)** was set up in June 2018 as a response to the scandal. It aims to improve decision-making in relation to immigration cases, including using more discretion and sharing good practice across UKVI. The unit also undertakes independent reviews of Windrush refusals made by the Windrush Taskforce. Separately, a professionalisation hub linked to the CCU is developing a training and accreditation strategy for casework staff.

The CCU also works with BICS policy to identify gaps in published guidance and patterns or issues emerging from casework. The unit is also planning, piloting and evaluating work to help get decisions right the first time in asylum, refused case management and family and human rights applications, and developing a communication campaign to help staff understand the effect their decisions have on people's lives.

The work of the CCU is important and welcome. However it was concerning to hear some senior officials describing the CCU as a "short-term fix", the inference being that it is not intended to become a fundamental part of the way the department carries out its functions in future. We have not been made aware of any plans to evaluate the impact of the CCU. A link between policy and operations should be a permanent feature of how the department works. Among other things, it would help build up the department's corporate memory and identify emerging risks and issues – both features that would have helped avoid the Windrush scandal.

Another welcome addition is **Immigration Enforcement's "Safety Valve Mechanism"**, made up of a virtual group of experts from across IE who provide, advice, monitor trends and work with policy to learn from cases to improve future responses (see [Annex I](#) for more detail).

The department's **simplification programme** involves simplifying the Gov.uk website, application forms and letter templates and guidance for staff, following input from a range of stakeholders. This work is positive, and long overdue, although the scale of simplification, and the extent to which there are mechanisms in place to ensure all staff are aware of the changes, is not clear. Further, this work can only go so far until the immigration legislation and rules themselves have been simplified, so the biggest challenges for the department in this area remain.

Several measures acknowledge the importance of **providing applicants with the opportunity to have face-to-face advice and support** from Home Office officials if they require it, and many of these have already been implemented. From 2018, most people applying for immigration status through UKVI have been able to do so through **its Front-End Service points** across the UK. People submit their biometric information and supporting evidence like passports, which they can keep throughout the process. Seven Service and Support Centres, opened in March 2019, offer face-to-face help for vulnerable people, or others with complex needs.

The department has also piloted face-to-face **immigration help through Citizens Advice** for people who need more in-depth information for applications. To be able to assess its effectiveness, this measure would have to be monitored and evaluated, particularly regarding the types of cases handled and rate of success. It is unclear how well the pilot has been advertised by the department. If applicants are not aware of the service, then its effectiveness would be undermined. Such data would also help the department understand whether Citizens Advice is an appropriate provider of this kind of support.

More opportunities for people to speak directly to the Home Office, and involving users in the design of services, is a benefit for both them and for staff. While this approach might not have stopped the problems that led to the scandal happening, it might have reduced mistakes and have helped people affected resolve their cases sooner. This more personalised style, alongside UKVI's work to tackle "failure demand"²⁶² as part of its "customer and channel strategy", is likely to be instructive for the department as part of a "system-wide" approach.

The department's **status checking project** aims to make it easier for people – both those who are subject to checks and those who need to carry them out – by providing greater transparency and control over the information the Home Office holds on them (except for data covered by the Immigration Exemption under the Data Protection Act 2018).²⁶³ The department's ambition is to increase the number of individuals and groups of people who are eligible for this online service.

While automating the system is likely to have positive features for both applicants and staff, the department must take great care to ensure it eliminates the risk of mistakes being made that result in denying the wrong people access to essential services. This is particularly important considering the department's latest annual report for 2018/19, which confirms that special compensation payments made to individuals for wrong decisions have risen since the previous year (page 105). It has also identified 35 notified data breaches (page 46), which is more than last year. These results suggest that the risks are increasing.²⁶⁴

A priority for Immigration Enforcement is **to increase the number of people** with no leave to remain **leaving the UK voluntarily**. The Home Office has been looking at ways to support this outcome, recognising the need to avoid the experiences of the Windrush generation. An example is its "community engagement advocates", who work directly with community groups, and link up with the Service and Support Centres. They also exploring "auto-enrolment" as an alternative to detention (see [Annex I](#) for more detail).

The scandal has shown the considerable risk of identifying the wrong people as candidates for voluntary return, and that risk could potentially be heightened by auto-enrolment. No matter how outwardly humane and sympathetic the measures might be, they can only be successful if they are underpinned by a system which ensures that the right cases are passed for enforcement. Wider cultural issues and ways of working would first have to be dealt with successfully to encourage any confidence about a new approach to voluntary returns.

3.2.6 Overall assessment

The Home Office's programme of corrective reforms, introduced since the Windrush scandal, address some of the issues which led to the crisis. However, they do not sufficiently address the fundamental problems that exist.

The work of the Taskforce and Chief Casework Unit represent positive aspects that should be developed further. Simplifying application routes, providing more opportunities for applicants to be supported by officials and the learning applied to the development and implementation of the EU settlement scheme suggest the department has recognised the importance of taking a personalised approach within a volume system, and is finding ways to achieve it.

However, for the most part, the measures implemented by the department remain inward looking, procedural, reactive and focused on tackling operational decisions at the end of the system. Many measures are still in their formative stages and deal with the symptoms rather than the causes. These will be of short term benefit if the underlying issues with the policies and their development remain unaddressed, and if the department fails to recognise the need, and show a commitment, to shift towards more a more fundamental cultural change.



CASE STUDY 4

PAULINE,

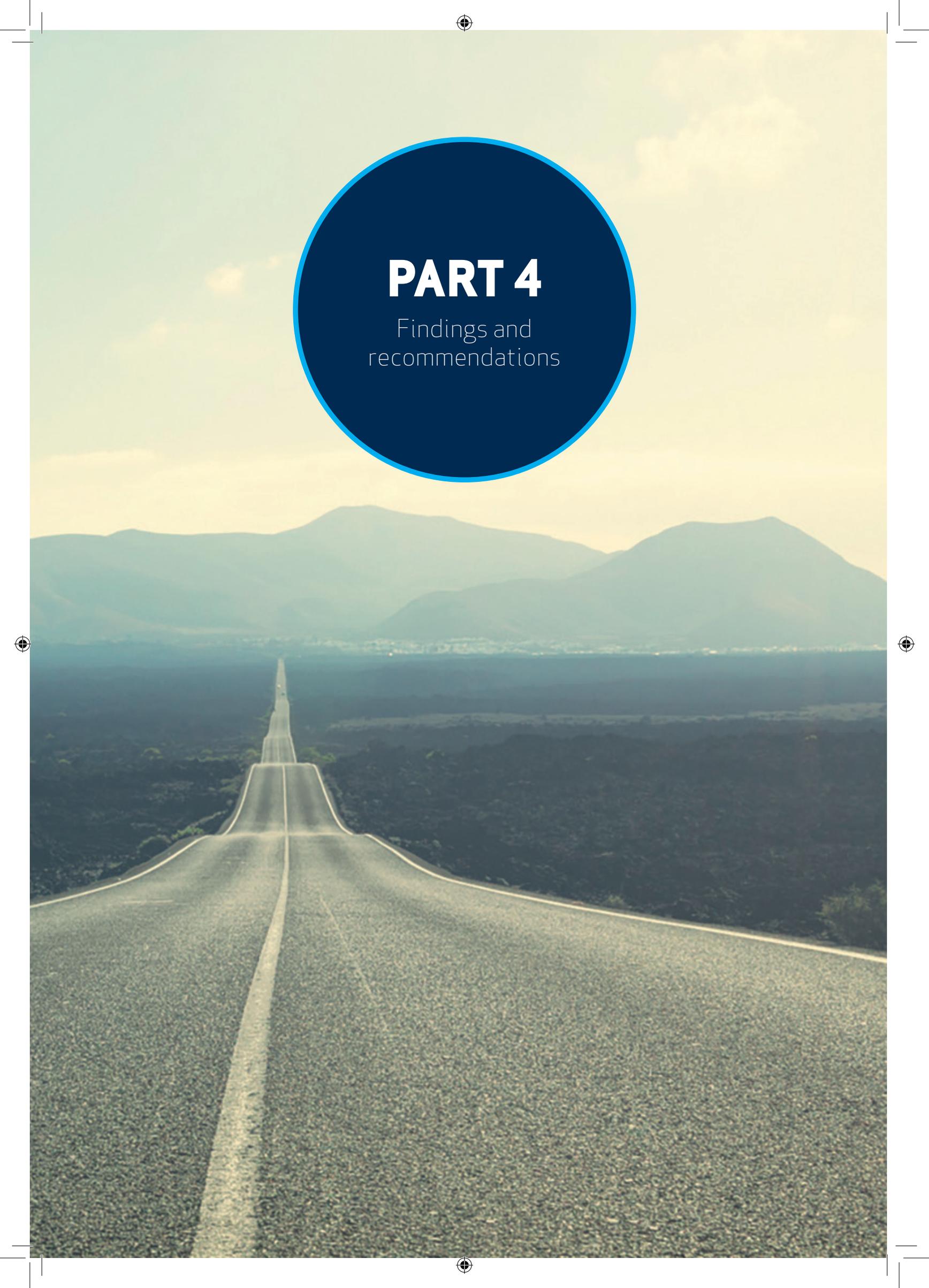
aged 70, was brought up by her grandmother and aunt in Jamaica. Her mother left for the UK when she was a baby and started a family in Manchester with a new partner. In 1961, when she was twelve, Pauline was invited by her mother and step-father to join them. Pauline was given a lot of household and childcare responsibilities once she arrived and was not able to complete her studies. When she was seventeen her mother and step father moved to Canada, leaving a pregnant Pauline behind. Following a divorce, she settled in the Rusholme area of Manchester and has been there ever since. She went on to form a relationship with another man, have three more children and qualified as a social worker.

Pauline was just about to buy her council house in 2005, when she went to Jamaica with her daughter on a two-week holiday that turned into an eighteen-month nightmare. She was detained in Jamaica and refused re-entry into the UK. Pauline had often travelled on her Jamaican Passport and never thought to get British citizenship herself, as she regarded herself as British already. She had travelled to other countries freely without a problem for years. When she was detained

in Jamaica, Pauline could not afford adequate medication for her diabetes and almost died after falling into a diabetic coma. Meanwhile in Manchester she lost her job and ultimately her house which she was unable to pay for. Her children, some of whom were in their teens, didn't have any resources to help and her youngest daughter ended up living in a hostel until Pauline's return. A solicitor who specialised in immigration issues helped her to eventually get back to the UK in 2007, following help from her former partner.

A two-week holiday to Jamaica with her daughter turned into an eighteen-month nightmare





PART 4

Findings and
recommendations

PART 4: Findings and recommendations

4.1 Introduction

The Home Office has been the subject of a number of internal and external reviews since the last Home Secretary commissioned me to carry out this review. The current Home Secretary announced a further, structural review of the Borders, Immigration and Citizenship System (BICS), which is underway. There is, therefore, a risk of members of staff at all levels of the department experiencing “review fatigue”.

The Home Office has already begun a programme of reform, which part 3 considers. A number of the measures the department is implementing are beginning to address some of the issues which led to the scandal. In particular, the work of the Windrush Taskforce is cause for optimism for the future, if it is resourced effectively and sustained into the future. The volunteers’ programme has demonstrated the power of working with, and learning from, frontline staff to help achieve significant changes. But, for the most part, the benefits of these measures will only be short-lived if the underlying issues remain unaddressed.

There may be a temptation for the department to produce a response to this report in rapid time, to demonstrate that it has already learned many, if not most, of the lessons set out here. Equally, it might seek to put off implementing other recommendations until the wider BICS review is complete.

Such an approach might be understandable in some respects. But it would, in itself, suggest that the department hasn’t learned the real lessons highlighted by the Windrush scandal, and indeed identified by the many other reviews which have exposed fundamental flaws in the department’s culture and way of working. The risk that the department will face yet more crises of the magnitude of Windrush would also be heightened. It is, in my view, extremely important that the department undertakes a period of profound reflection on the areas identified in this report, inviting the input of staff at all levels (including staff networks) to identify what they think needs to change, and how.

The department covers a broad remit, with responsibilities for public protection and enforcement, which require a balance of both punitive and supportive action. This can create tensions. It deals with high volumes of casework, successfully in the main, and has to deal with irregular migration swiftly and effectively. The complexity of the task, therefore, cannot be over-estimated. Striking the right balance is difficult, not least because, as this report has shown, immigration issues are highly politicised and highly contentious. This is an area, therefore, where there is not always a common view of what “good” looks like.

As one of the foremost departments of state, which engages with people at their most vulnerable, and because it is responsible for protecting the state from the most dangerous threats, the Home Office should aspire to lead the way as an exemplar of effective public administration.

There are thousands of staff at all levels of the department (many of whom I had the privilege to meet) and the vast majority of them are committed to public service and want to do the best possible job. Many of them demonstrate excellence in what they do on a daily basis, but currently that excellence has been overshadowed by the department’s wider organisational shortcomings.

Members of staff are likely to feel beaten down by relentless criticism, and demotivated if they feel that their efforts are not recognised. As such, it is all the more important that leaders across the department empower and support their staff, so they are in the best position to achieve a level of excellence consistently. Staff in the department need to be empowered and supported by senior leaders and ministers who are equally committed to embracing the wholesale changes in attitude and approach that are required. Leaders must provide staff with a clear understanding of what effective public administration looks like by establishing an organisational culture and professional development framework that values the department’s staff and the communities it serves. Anything else risks not only exposing the department, its staff and leaders, to further

reputational damage, and harm to individuals and communities; it also risks further undermining public confidence.

The recommendations in this section can be boiled down to three elements: the Home Office must acknowledge the wrong which has been done; it must open itself up to greater external scrutiny; and it must change its culture to recognise that migration and wider Home Office policy is about people and, whatever its objective, should be rooted in humanity. Some of the recommendations relate specifically to the immigration system; others relate more broadly to the department as a whole. They all derive directly from my review of the Windrush scandal.

While it may be possible to address some recommendations relatively quickly, the harder challenge will be for the department to accept, fundamentally, that a systemic and cultural change is necessary. That will call for some difficult discussions at senior levels and throughout the organisation, as well as personal reflection. It will call for commitment from the senior leadership to reinforce the behaviours they expect of each other, to model those behaviours and to hold each other and the leadership at all levels to account. It will require so much more than any defensive, technical or process solutions we have seen adopted in response to some other reviews and criticism.

What will make this review different is if, in 12 to 24 months' time, we can see evidence of deep cultural reform, with changes in behaviour at all levels and functions throughout the organisation – up and down, and from side to side. Positive indicators of significant cultural reform might include:

- more consistent messaging at senior levels about the behaviours expected at every level of the organisation, and more consistent evidence that these behaviours are modelled at the top
- a transparent system for rewarding positive, inclusive behaviours
- tangible evidence that diversity and inclusion are at the department's core, demonstrated by prioritising a meaningful learning and development programme, publishing completion levels and providing follow-up assessments of effectiveness by identifying what has changed

- positive language and messaging in all areas of the department's work
- celebrating success and embracing opportunities to learn from mistakes
- embracing the opportunities offered by the transformational change programme, by inviting more participation in its design by all levels of staff and managers and staff networks
- inviting more public scrutiny of the department's work and being open to challenge
- a community engagement programme which results in community-informed policy-making

Everyone should be able to see and feel that this time it is different. This will be because the department has looked beyond trying to explain Windrush as an unlucky series of mistakes, but instead recognises it as an historical series of events deeply embedded in current and past structures, policies and cultures.

These observations are not about the policy, for that is for government to decide. I make no comment on how open our borders should be or indeed whether immigration policy should be "lenient" or "strict"; my observations here are about behaviours and values in the department which should change regardless of the policy.

This will be a difficult journey, and it will take time, commitment and determination. But the department has a great opportunity to achieve the fundamental change its staff, leaders, ministers and the public deserve. It will take an ambitious plan with specific milestones and stretching measures for success. And these must be rooted not in process but instead must use process and structure as enablers rather than ends in themselves, along with an appropriate level of scrutiny.

My recommendations fall into four broad categories: the department's interaction with the communities it serves and with external stakeholders; the department's interaction with its people; the department's role in wider government; and the department's approach to race, diversity and inclusion.

4.2 Recommendations

The department and the communities it serves, including the Windrush generation

Some ministers and senior officials spoken to in the course of this review do not appear to accept the full extent of the injustice done to the Windrush generation. While all are rightly appalled by what happened, and regard it as a tragedy, many gave the impression that the situation was unforeseen, unforeseeable and therefore unavoidable. Whereas, the evidence clearly shows that the sequence of events which culminated in the scandal, while unforeseen, was both foreseeable and avoidable.

Warning flags about the potential consequences of the policy were raised at various stages, in various ways and by various interested parties. Yet ministers and officials were impervious to these warnings because of their resolute conviction that the implementation of the relevant policies was effective, should be vigorously pursued and would achieve the policy intent. Efforts to address concerns were superficial at best and served to deal with the symptoms rather than the root causes of the problem. The department should have been proactive in demonstrating its duty to promote good relations between different groups and eliminate unlawful racial discrimination.

Others have expressed the view that the responsibility really lay with the Windrush generation themselves to sort out their status. We see examples of this in responses to select committees, for example.

It is the responsibility of the department to keep track of the impact of the policies and legislation it has implemented and to make sure that, where members of the public are affected, particularly where they are at risk, it supports them appropriately. That did not happen here. Indeed, the department acknowledged that even its experts struggled to understand the implications of successive changes in the legislation and the way they interacted with changes in the relationship between the UK and Caribbean countries.

Without that understanding, it is perhaps unsurprising that the department did not then consider how difficult it might be for people to prove their status, prove when they arrived, or that they had been in the UK continuously some 30, 40 or even 50 years later. It is that lack of knowledge or understanding which meant the department could imagine it would be possible to create a “hostile environment” which would only affect those it was intended for, despite the warnings it had received to the contrary. The department’s failure to understand the risks and to evaluate the impact of the policies compounded the error.

Others have frequently referred to the “relatively small numbers” of people affected. They point out that, when the scandal eventually came to light, in the context of the numbers of cases dealt with by the immigration service (some three million each year, 97% of which are said to be dealt with effectively), these cases formed a very small minority. They add that it was therefore understandable that the department would fail to identify a pattern.

Three points arise directly from such a response. Firstly, the Home Office’s failure to keep accurate records makes it impossible to say how many people the scandal affected. Secondly, given the warning signs that were highlighted, and the department’s responsibilities to respond to them, it should have taken steps to avoid the issue happening in the first place. Thirdly, having failed to do so, the department should, at the very least, have been alert to the possibility of these cases arising and proactive in identifying and dealing with them promptly and properly. The principles of good public administration demand no less. But the department failed to identify with the particular circumstances of the Windrush generation and their descendants.

Here, it is useful to remember the comments of Dr Robin Oakley, which were considered by Sir William Macpherson of Cluny in his 1999 report on the murder of Stephen Lawrence.²⁶⁵ At paragraph 6.32 of the Macpherson report, he says: “Towards the end of his Note Dr Oakley says this:- ‘What is required in the police service therefore is an occupational culture that is sensitive not just to the experience of the majority but to minority experience also. In short, an enhanced standard of police professionalism to meet the

requirements of a multi-ethnic society' (Para 5.6)". This approach resonates powerfully here, where the racial element to the history was largely institutionally forgotten and those in the Windrush generation did not feature in the minds of those developing hostile environment measures

Without a fundamental acceptance of what went wrong, and why, any attempts by the department and government to right the wrongs done to the Windrush generation risk being viewed as hollow efforts to mollify the public, who have understandably sought answers. More importantly, without demonstrating a comprehensive understanding and acceptance of its failings, the department exposes itself to the continuing risk of repeating the mistakes that led to the scandal occurring in the first place.

Recommendation 1 – Ministers on behalf of the department should admit that serious harm was inflicted on people who are British and provide an unqualified apology to those affected and to the wider black African-Caribbean community as soon as possible. The sincerity of this apology will be determined by how far the Home Office demonstrates a commitment to learn from its mistakes by making fundamental changes to its culture and way of working, that are both systemic and sustainable.

Recommendation 2 – The department should publish a comprehensive improvement plan within six months of this report, which takes account of all its recommendations, on the assumption that I will return to review the progress made in approximately 18 months' time.

Go further to right the wrongs

In carrying out this review, I met people who were, even after receiving their documents from the Home Office, in severe financial and personal difficulties. Some were unable to find work after time away from the job market. Others were in temporary accommodation, having to live with families or facing eviction because of unpaid bills. Some were in serious debt. And many still had unmet physical and psychological needs. Many of the people affected had experienced a sense of loss and devastation which had fundamentally affected their ability to cope and undermined their sense of identity and feelings of self-worth.

The Home Office has put in place measures to provide redress for those affected through the Windrush Taskforce, including the Vulnerable Persons Team, the exceptional payments policy and the Windrush Compensation Scheme. While these measures will help to alleviate some of the practical issues faced by the Windrush generation, purely financial help will not be enough. There is, understandably, deeper personal hurt arising from the fact that people's lives had been turned upside down, to which the individual case studies included throughout the report attest. The impact of these experiences is difficult to assess. But the department should seek to help those affected to come to terms with their experiences, in light of this review.

Recommendation 3 – In consultation with those affected and building on the engagement and outreach that has already taken place, the department should run a programme of reconciliation events with members of the Windrush generation. These would enable people who have been affected to articulate the impact of the scandal on their lives, in the presence of trained facilitators and/or specialist services and senior Home Office staff and ministers so that they can listen and reflect on their stories. Where necessary, the department would agree to work with other departments to identify follow-up support, in addition to financial compensation.

Some people have still not come forward to the Home Office to document their status. I heard a number of times throughout the review that some have not approached the Taskforce because they are scared it could put them at risk of immigration enforcement action. Others are simply not aware that the risk applies to them. This means that, despite safeguards put in place by the Home Office, people are still vulnerable to immigration enforcement action and, in particular, compliant environment measures.

Recommendation 4 – The Home Secretary should continue the Windrush Scheme and not disband it without first agreeing a set of clear criteria. It should carry on its outreach work, building on the consultation events and other efforts it has made to sustain the relationships it has developed with civil society and community representatives. This will encourage people to resolve their situations, while recognising that, for some, a great deal of effort will be required to build trust.

Look beyond the Caribbean

The department's Historical Cases Review focused solely on people from the Caribbean, and excluded anyone with criminal convictions with sentences over 12 months. But we have seen that the legislative changes that applied to the Windrush generation also apply to other nationalities from the new Commonwealth. While the Windrush Scheme is open to all Commonwealth nationalities, the narrow focus of the Historical Cases Review meant that the Taskforce did not proactively contact non-Caribbean nationals in the same way as it did Caribbean nationals.

When the Public Accounts Committee (PAC) recommended that the department carry out a similar review in respect of non-Caribbean cases the Home Office's response was that "extending the review to other nationalities, since the Immigration Act 1971 granted ILR to all nationalities settled in the UK on 1 January 1973, would bring approximately 300,000 additional cases in scope and would take a substantial number of caseworkers and around 2 years to review at a significant cost."²⁶⁶

Nevertheless, the National Audit Office's (NAO) report on Windrush which informed the PAC report concluded that the department has not established whether those who applied through the Taskforce are representative of the underlying population who may have experienced, or be at risk of experiencing, detriment.²⁶⁷ The presentation of the Windrush scandal as an issue predominantly for the Caribbean-born community may have left other nationalities unaware that they should also contact the Windrush Taskforce, or that they could still be vulnerable to immigration enforcement measures.

Recommendation 5 – The Home Secretary should accept and implement the NAO's recommendation that "The department should be more proactive in identifying people affected and put right any detriment detected. It should consider reviewing data on: other Commonwealth cases as well as Caribbean nations" or such agreed variation to the recommendation as is acceptable to the NAO. In doing this work, the department should also reassure itself that no-one from the Windrush generation has been wrongly caught up in the enforcement of laws intended to apply to foreign offenders. The department should also take steps to publicly reassure the Windrush generation that this is the case.

Tell the stories of empire, Windrush and its legacy

The Windrush scandal was in part able to happen because of the public's and officials' poor understanding of Britain's colonial history, the history of inward and outward migration, and the history of black Britons. A lack of institutional memory or comprehensive understanding of the impact of the complex immigration situation created by successive legislative changes, set against an unwillingness or inability to learn from past mistakes, or to engage with experts and local communities, has compounded this situation. Officials need to understand the past to inform the present and the future of immigration policy.

Recommendation 6 – The Home Office should: a) devise, implement and review a comprehensive learning and development programme which makes sure all its existing and new staff learn about the history of the UK and its relationship with the rest of the world, including Britain’s colonial history, the history of inward and outward migration and the history of black Britons. This programme should be developed in partnership with academic experts in historical migration and should include the findings of this review, and its ethnographic research, to understand the impact of the department’s decisions; b) publish an annual return confirming how many staff, managers and senior civil servants have completed the programme.

Assess and limit the impact of the hostile environment on the Windrush generation

There are inherent risks in immigration and nationality policy. The decision to “create a hostile environment”, where immigration-related decisions were being taken by a range of public servants and private employers and landlords, exposed the Home Office to an even greater level of risk. There are well-established conventions in government to guide policy-making developed by the Policy Profession and as set out in Figure 4. These set out the stages that a policy should be taken through from design to consultation, implementation, monitoring and ultimately to evaluation. As set out in part 2 of this report, these conventions were not scrupulously observed in the case of the design and implementation of hostile environment policies. For example, there was a lack of depth in the analysis done by the department which meant that the impact of previous legislation and the impact on at-risk groups was not fully considered. And it did not consider the interaction between the measures, immigration enforcement action and wider government policy, particularly as it affected at-risk groups. Nor did it adequately address equalities issues, including the potential for discrimination, particularly in housing. It also did not properly monitor or evaluate the impact of the policies, despite the warning and risks raised as part of the consultation process.

The combination of the department’s failure to consider the historic legacy of immigration legislation, and failure to listen to warnings, resulted in it pursuing the implementation of hostile environment measures on the assumption that they would only affect people who were in the country illegally. It seems to have given little consideration to the possibility that the measures might unintentionally bear down on people for whom they were not intended. This was seemingly based on the mistaken assumption – mistaken because it was formed without evidence or testing – that those with settled status would have little difficulty in obtaining documentation.

This tells only part of the story: the department was aware of significant concerns about the potential for the hostile environment measures, and specifically the Right to Rent scheme, to result in discrimination. It was even aware that the data used to conduct its own proactive checks were flawed. The mitigating measures the department put in place to address these concerns, such as the code of practice, landlord’s guidance and helpline, were wholly inadequate, particularly considering the limited avenues for redress, namely through the courts. For most people, this is simply an unrealistic possibility that is both expensive and time consuming; a view shared by the Women and Equalities Committee in their recent report.²⁶⁸ In addition, a code of practice, guidance and a helpline would be ineffective if a significant proportion of those in the rental sector were unaware of them, as was the case here. Many had not read the documents and it was not mandatory for them to do so.

Despite the warnings, the department failed to monitor, or properly evaluate, the effectiveness and impact of the compliant environment measures. The department accepts that voluntary returns, originally seen as an indicator that the measures were working, had been declining at a significant rate (as at March 2018). There is therefore little evidence to support an assessment of the effectiveness of the compliant environment measures, and whether they are achieving the policy aims. Instead, the evidence suggests that the measures, especially in relation to the Right to Rent scheme, create the risk of exacerbating or increasing discrimination by landlords and agents.

Recommendation 7 – The Home Secretary should commission officials to undertake a full review and evaluation of the hostile/compliant environment policy and measures – individually and cumulatively. This should include assessing whether they are effective and proportionate in meeting their stated aim, given the risks inherent in the policy set out in this report, and its impact on British citizens and migrants with status, with reference to equality law and particularly the public sector equality duty. This review must be carried out scrupulously, designed in partnership with external experts and published in a timely way.

Engage meaningfully with stakeholders and communities

There are some positive examples of stakeholder engagement in parts of the department. These include, among others, the engagement carried out in designing policies related to the Syrian Vulnerable Persons Resettlement Programme. But in developing the measures in the 2014 and 2016 Immigration Acts, the evidence shows the Home Office did not actively listen to external voices or engage effectively with stakeholders or communities. There are various mechanisms for the department to connect with interested parties. But partners said they felt their views were largely ignored, or that the engagement was organised in a way that suggested the purpose was for the department to provide information about its pre-determined plans for implementing policy objectives, rather than to promote a genuine dialogue about policy design.

This lack of engagement is compounded overall by a defensive culture in the department, which often defends, deflects and dismisses criticism. It also has a detrimental effect on the quality of the department's analysis of the impact and effectiveness of its policies, which has led to it needing to rebuild the public's trust, particularly among minority communities.

For the BICS system, some independent oversight already exists, in the form of the Independent Chief Inspector of Borders and Immigration (ICIBI). But the department has failed to address his recommendations sufficiently, or to encourage

wider community scrutiny and involvement, and has given only limited routes for redress for anyone dissatisfied with its decisions, or the service it gives.

It has also been suggested to me that it is significant that the ICIBI did not submit any recommendations referring to the Windrush generation and therefore presumably did not identify a specific issue relating to this cohort, prior to the scandal emerging. The remit of the ICIBI is to help improve the efficiency, effectiveness and consistency of the Home Office's border and immigration functions through unfettered, impartial and evidence-based inspection. The ICIBI is reliant on the data and information provided by the department and does not investigate individual cases. It looks at parts of the Home Office, focusing on set teams/processes at one time. On this basis it would seem quite unlikely that the ICIBI would have received the sort of data that would have led to the Windrush generation being identified as an at-risk cohort.

Effective independent oversight of the system – including introducing the voice of individuals and communities – will be vital to improve the accountability, effectiveness and legitimacy of the system.

In responding to the Windrush scandal, the department recognised the need to work with stakeholders and communities to an extent. It has re-established the Landlords Consultative Panel (now called the Right to Rent Consultative Panel). It has also put in place a communication and outreach programme to encourage people to contact the Windrush Taskforce and to apply to the Windrush Compensation Scheme. These measures, combined with the positive examples provided elsewhere in the department, as well as the Windrush volunteers' programme and community engagement teams in Immigration Enforcement, suggest the department has recognised the need for a more sophisticated approach.

But it is not clear that the department has learned the wider lesson that it should be engaging meaningfully with the communities it serves. The true test will be whether stakeholders, including those considered to represent critical voices, are firstly invited to participate in developing the department's policies, and also in designing, implementing and evaluating them. And, while

acknowledging that consensus might not always be possible, the test will also be whether the range of stakeholders, including community groups, consider they have been heard.

Recommendation 8 – The Home Office should take steps to understand the groups and communities that its policies affect through improved engagement, social research, and by involving service users in designing its services. In doing this, ministers should make clear that they expect officials to seek out a diverse range of voices and prioritise community-focused policy by engaging with communities, civil society and the public. The Windrush volunteer programme should provide a model to develop how the department engages with communities in future. The same applies to how it involves its staff in feeding back their information and knowledge from this engagement to improve policy and the service to the public.

Recommendation 9 – The Home Secretary should introduce a Migrants’ Commissioner responsible for speaking up for migrants and those affected by the system directly or indirectly. The commissioner would have a responsibility to engage with migrants and communities, and be an advocate for individuals as a means of identifying any systemic concerns and working with the government and the ICIBI to address them.

Recommendation 10 – The government should review the remit and role of the ICIBI, to include consideration of giving the ICIBI more powers with regard to publishing reports. Ministers should have a duty to publish clearly articulated and justified reasons when they do not agree to implement ICIBI recommendations. The ICIBI should work closely with the Migrants’ Commissioner to make sure that systemic issues highlighted by the commissioner inform the inspectorate’s programme of work.

Understand the public sector equality duty as it applies to immigration and nationality law

It is the responsibility of the elected government to decide who can and cannot visit, live and work within the country’s borders. Decisions on migration policy more broadly are political decisions which will take account of factors such as economic and labour needs, international agreements, historical links, cultural links and wider risks. These choices mean there will not be equal access and opportunity for every migrant who wants to come to the UK.

While some decisions are excluded from the scope of the Equality Act 2010 by virtue of Schedules 3, 23 and 18, the Home Office is not entirely excluded from the scope of the Act in relation to the development of policy or its implementation, either in respect of its duty not to discriminate in the exercise of public functions or in relation to the public sector equality duty. From the documents I have reviewed and interviews I have conducted I conclude that an assumption by policy officials seems to have taken root that these exemptions to the Equality Act 2010 are broader than they, in fact, are. Knowledge of equality law and discrimination analysis generally was poor in the interviews I conducted. Monitoring of the impact of policies or decisions on racial groups was barely carried out. Ethnicity and colour are not tracked on the department’s CID system (whereas there are boxes for occupation and religion).

The department is also subject to the Human Rights Act 1998, in which race is a protected “status” under Article 14. This can be specifically engaged by a decision which engages Article 8 (private and family life), Article 5 (liberty and security, including immigration detention) and Article 1 of the First Protocol (protection of property). As we have seen, given the close links between nationality, race and immigration policy, the Home Office should in the future be particularly vigilant to the potentially discriminatory impact of its policies and operations.

I have not made a finding of breach of the Human Rights Act or Equality Act 2010 during this review as this is not my function, and this is not how my terms of reference see my role. I have not engaged in the same processes that a court would, or that the Equality and Human Rights

Commission would if conducting an assessment of the public sector equality duty or an investigation into potential unlawful acts.

However, from the evidence seen it would appear that the department could have done much more in the case of the Windrush generation to have regard to the potential to foster discrimination and to result in them, as a racial group, facing disadvantages and detrimental treatment. There was a move towards de-regulation from 2012 onwards, which led to the scaling back of equality impact assessments and the procedures for analysing policy developments and equalities issues.

The department may have interpreted these factors as signalling that equalities issues were not an important part of policy-making or designing a service. But to have formed this view would have been wholly wrong.

Recommendation 11 – The department should re-educate itself fully about the current reach and effect of immigration and nationality law, and take steps to maintain its institutional memory. It should do this by making sure its staff understand the history of immigration legislation and build expertise in the department, and by carrying out historical research when considering new legislation.

Recommendation 12 – The department should embark on a structured programme of learning and development for all immigration and policy officials and senior civil servants in relation to the Equality Act 2010 and the department’s public sector equality duty and obligations under the Human Rights Act 1998. Every year, the department should publish details of training courses attended, and how many people have completed them.

Recommendation 13 – Ministers should ensure that all policies and proposals for legislation on immigration and nationality are subjected to rigorous impact assessments in line with Treasury guidelines.²⁶⁹ Officials should avoid putting forward options on the binary “do this or do nothing” basis, but instead should consider a range of options. The assessments must always consider whether there is a risk of an adverse impact on racial groups who are legitimately in the country. And consultation on these effects should be meaningful, offering informed proposals and openly seeking advice and challenge.

The department and its people

Clarify the department’s purpose, mission and values

One of the Home Office’s priorities is “to protect vulnerable people and communities”. At the time when the hostile/compliant environment policies were being developed, its statement of purpose was, “Building a safe, just and tolerant society”. These are worthy aims which must be balanced with the department’s responsibilities as a law enforcement body. Yet, if they are to have resonance, the department must take care to know who are “the vulnerable” and what is “just”. It follows that the public will expect the department to be highly aware if it may be creating a vulnerability or could be acting unjustly.

To balance its competing priorities successfully, it is essential that the department, and all who work in it, have a strong sense of its purpose, mission and values. It follows that without this clear articulation and explanation of how the department’s mission, values and purpose translate into the everyday responsibilities of all members of the organisation, the prospects of the department achieving that successful balance are placed at risk. The risks to human rights are self-evident, given that, on a daily basis, members of the organisation are making decisions on cases that will have far-reaching consequences for the people concerned.

The department’s priorities are defined by the government of the day. But the department is responsible for determining how it will achieve

those priorities, including the knowledge, behaviours and shared values that it expects of its staff across the organisation. It is noteworthy that many of the department's top-level objectives, as set out in its business plans, are restrictive in tone: examples include the terms "reduce" and "control". While the department has a responsibility to carry out duties which may be punitive, if it carries them out fairly and humanely, and grounds them in respect for the individual, it is possible to achieve a balanced and effective system.

The situation is not helped by the fact that different parts of the department have different missions.²⁷⁰ Those differences do little to foster a joined-up approach and a culture of shared values across the department as a whole.

Recommendation 14 – The Home Secretary should a) set a clear purpose, mission and values statement which has at its heart fairness, humanity, openness, diversity and inclusion. The mission and values statement should be published, and based on meaningful consultation with staff and the public, and be accompanied by a plan for ensuring they underpin everyday practice in the department. It should establish robust plans for making them central to everything it does. The department should set its mission and values statement in consultation with its staff, networks and other representative bodies, the public, communities and civil society, and publish it online; b) translate its purpose, mission and values into clear expectations for leadership behaviours at all levels, from senior officials to junior staff. It should make sure they emphasise the importance of open engagement and collaboration, as well as valuing diversity and inclusion, both externally and internally. The performance objectives of leaders at all levels should reflect these behaviours, so that they are accountable for demonstrating them every day.

Develop a learning culture

Throughout the report, I have highlighted concerns about how the scandal exposed aspects of the department's culture. We have seen an organisation characterised by a focus on volumes and targets, which manifests itself in sometimes unsuitable, impersonal language when dealing with cases and performance, and which has lost sight of the person at the centre of each case.²⁷¹ The department has been the subject of significant criticism in the past, and since this review was commissioned. Given the many contested areas of public policy with which it deals, it is essential that it is open to challenge and positive learning, as well as continuous improvement, to make sure it gets these difficult areas of practice right. That challenge should come firstly from its own staff, who will have knowledge and experience of what works and what does not. But for that to happen, the workforce must feel able to challenge the status quo.

The department's staff survey results give an insight into its openness to continuous improvement. Despite improvements in recent years, its staff engagement scores remain in the lower quartile compared to other government departments, and well below the scores of high-performing teams.²⁷² As a first step, therefore, the department will want to focus on an internal cultural change, given that improving how colleagues treat each other is a critical prerequisite to improving how the department treats the public.

While the review was underway, the department announced that because it had to make savings, it was disbanding its continuous improvement unit (a small team now remains). Also plans to shut down the department's staff suggestions scheme were only recently reversed. Steps like these leave the department open to future risks if there are no alternative arrangements to replace them.

It is encouraging to hear that, recently, the department has begun to develop a programme of internal staff engagement – "Our Home Office" – which involves senior leaders engaging with middle managers and above. The aim is to share experiences and information about different parts of the department to generate suggestions for making the department a better place to work. This is a positive step

and, if it is sustained and forms part of a wider programme of communication, engagement and performance improvement, should form a basis for positive outcomes.

But for any activity truly to make a difference, the department would have to commit to a major programme of cultural change, with senior-level oversight and accountability.

Recommendation 15 – a) The Home Office should devise a programme of major cultural change design for the whole department and all staff, aimed at encouraging the workforce and networks to contribute to the values and purpose of the organisation and how it will turn them into reality. It should also assure itself as to the efficacy of its organisational design. Outputs could include independently chaired focus groups to let staff of all grades and areas of work (particularly under-represented groups) describe their lived experience, including working within the department, and suggest what needs to change in terms of the department’s mission, values and culture; b) The Permanent Secretary and Second Permanent Secretary should lead the process, with the support of the senior leadership, who should commit to agreeing a programme with senior-level accountability, including clear actions, objectives and timescales; c) The workforce and staff networks should help devise the success criteria for the programme and a senior member of the leadership team should be the sponsor for the programme; d) The department should invest in, develop and roll out a leadership development programme for all senior, middle and frontline managers, where leadership behaviours and values will be made clear.

Recommendation 16 – The Home Office should establish a central repository for collating, sharing and overseeing responses and activity resulting from external and internal reports and recommendations, and adverse case decisions. This will make sure lessons and improvements are disseminated across the organisation and inform policy-making and operational practice.

Improve operational practice, decision-making and help for people at risk

The department has a responsibility to make any application process as straightforward as possible and give people clear instructions and help. This responsibility is even greater where the legislative picture is complex, with numerous possible application routes and limited opportunities to obtain specialist advice, as was the case for some members of the Windrush generation.

Equally, staff making the decisions should do so based on a clear framework, which sets out their responsibilities with rules and guidance, as well as principles for them to apply. These principles should promote fairness, openness and effective care, and embed the idea that people will always be treated with respect and dignity. This was not the experience of those affected by the Windrush scandal.

When some members of the Windrush generation attempted to make applications to document their status, applied for passports or tried to challenge immigration enforcement action they were met with a system which was difficult to navigate and distant, and put barrier upon barrier in front of them. Some had made repeated attempts to document their status; others found that cases took a long time to be resolved, often unsatisfactorily.

The onus was on individuals to prove their status, arrival date and continuous residence for a number of years, despite the fact that they were applying to confirm a right and therefore should have been treated with more discretion and sensitivity. Others were in a vulnerable situation, yet found the system couldn’t differentiate between their circumstances, which needed more care, time and attention, and other cases that

could be dealt with more easily. The department accepted that, apart from its telephone service, which tended to refer callers to the Gov.uk website, there were few, if any, opportunities for applicants to have direct contact with an individual caseworker who might be able to help them.

The case files showed evidence of poor record-keeping, decisions made by relying inappropriately on checklists, little use of discretion and lengthy and confusing decision letters to applicants. Given the complexity of the underpinning legislation and its history, there is a clear need for a greater focus on effective training and supervision for caseworkers, yet we found this to be inconsistent. Instead, there was more emphasis on achieving targets, which caseworkers felt did not encourage them to question decisions or raise difficult cases with supervisors.

Reducing the number of immigration appeal routes from 17 to 5 (with a further 2 recently created that relate to the EU Settlement Scheme) will have done little to provide adequate safeguards in the system. Without a transparent system of complaints handling, or arrangements for greater external scrutiny, the system will continue to be seen as imbalanced. Other government departments have independent case examiners to give an extra degree of assurance.

The fragmentation of the immigration system meant that cases were passed through it with few safeguards to check that the right decisions were being made in the cases referred for enforcement measures.

Recommendation 17 – The Home Office should develop a set of ethical standards and an ethical decision-making model, built on the Civil Service Code and principles of fairness, rigour and humanity, that BICS staff at all levels understand, and are accountable for upholding. The focus should be on getting the decision right first time. The ethical framework should be a public document and available on the department's website. A system for monitoring compliance with the ethical standards should be built into the Performance Development Review process.

Recommendation 18 – The Home Office should establish more and clearer guidance on the burden and standard of proof particularly for the information of applicants, indicating more clearly than previously how it operates and what the practical requirements are upon them for different application routes. The decision-making framework should include at least guidelines on when the burden of proof lies on the applicant, what standard of proof applies, the parameters for using discretion and when to provide supervision or ask for a second opinion. This should produce more transparent and more consistent decision-making.

Recommendation 19 – a) UK Visas and Immigration should ensure that where appropriate it: builds in criteria for increasing direct contact with applicants, including frequency of contact, performance standards and monitoring arrangements; revises the criteria and process for assessing cases involving vulnerable applicants; and reviews its service standards and where appropriate provides new standards based on qualitative as well as quantitative measures. UKVI should ensure it revises its assurance strategy; the learning from recent Operational Assurance Security Unit (OASU) or internal audit reviews; identifies criteria and a commissioning model for OASU or internal audit reviews; contains clear mechanisms for reporting back casework issues to frontline staff, and criteria for supervision, including recording outcomes and learning for the wider organisation; b) The department should review the UK Visas and Immigration assurance strategy periodically to make sure it is operating effectively, and the reviews should consult practitioners as well as specialist staff to make sure the strategy changes if it needs to.

Recommendation 20 – The Home Secretary should commission an urgent review of the BICS complaints procedure. Options could include establishing an Independent Case Examiner as a mechanism for immigration and nationality applicants to have their complaints reviewed independently of the department.

Reduce the complexity of immigration and nationality law, immigration rules and guidance

It is widely accepted that immigration and nationality law is very complex. The Law Commission has pointed out that at least 16 statutes have been passed since the Immigration Act 1971 that wholly or partly concern immigration or nationality. Currently, immigration law requires that considerably more than 10 statutes be kept in mind and, since 2010, for example, there have been 19 statements of changes to the Immigration Rules which underpin them. This makes it difficult for applicants, legal advisers and caseworkers to navigate the system. It also increases the risk of getting it wrong.

The role of the sponsoring department in such situations should be critical. It ought to know its area of law in detail, from a contemporary and historical perspective. The public expect it to retain a full knowledge of its area of law, for the very reason that the public cannot be expected to understand the immigration process, especially as the complexity grows. Indeed, a new Immigration Bill is currently making its way through Parliament.

Over recent years, the Home Office has started, but not completed, various programmes aiming to simplify the immigration landscape, the last in 2009. The benefits of a simplified immigration system have been recognised and the Law Commission announced a consultation programme for simplifying the Immigration Rules. The Commission's remit was, "to review the Immigration Rules to identify principles under which they could be redrafted to make them simpler and more accessible to the user, and for that clarity to be maintained in the years to come". The Law Commission published its final report and recommendation on 14 January 2020²⁷³ and recommended that the "immigration rules be overhauled" with the aim of simplifying them

and making them more accessible for applicants. The report also recommended that the Home Office consider introducing a less prescriptive approach to evidence required from applicants. In the circumstances, it would be immensely helpful if the Law Commission embarked on a more fundamental exercise, which also considered simplifying the legislative framework.

Recommendation 21 – Building on the Law Commission's review of the Immigration Rules the Home Secretary should request that the Law Commission extend the remit of its simplification programme to include work to consolidate statute law. This will make sure the law is much more accessible for the public, enforcement officers, caseworkers, advisers, judges and Home Office policy makers.

The department's role in wider government

Look for risks and listen to early warning signs

The department missed opportunities to anticipate the Windrush scandal sooner. The internal information systems, processes and technology lacked the capability to identify and link information across different areas of business, which would have alerted it to early warning signs and led to action to tackle trends as they emerged. Put simply, the department was looking at the wrong risks. Its corporate risk register gives us a telling insight. The principal strategic risks understandably relate to security and political priorities. But while the principal operational risks in the register do relate to matters that might cause reputational damage, with the exception of child sexual abuse and exploitation, these do not cover risks in relation to service delivery or public safety concerns, such as those which applied to the Windrush scandal. It was significant that, neither immediately before nor after the last but one Home Secretary had resigned in April 2018, had the scandal and its aftermath been escalated to the department's corporate risk register as a principal risk.

I have, for the most part, deliberately refrained from making specific structural observations. But the evidence suggests that the department would be better placed if the governance arrangements for performance and risk oversight were sufficiently revised to provide a genuine opportunity to confront and challenge risk and performance issues across directorates. Under the process for escalating risks, responsibility for the decision falls to the relevant directorate. A picture therefore emerges where officials gave insufficient consideration to an emerging set of circumstances which might have triggered action to address potential problems for the department, until it was too late.

Risks raised during the passage of the 2014 and 2016 Immigration Acts and after their enactment should have surfaced in the relevant directorates' risk registers in the first instance. Outsourcing responsibilities for implementing its policies – which resulted in the Home Office delegating functions to third parties like landlords and employers, over whom it had no control – should only have happened with a full understanding of potential risks and the need for clear instructions, as well as careful engagement and evaluation. Well-focused and sophisticated early warning systems, and being alive to risks, are essential in an operating environment as complex as the immigration system. Also, risks raised as the Bill passed should have been itemised and addressed as the Bill went through its stages. The remaining risks should have been covered in post-implementation reviews and by research which was more comprehensive than what the department obtained.

The department is already giving thought to these areas and we have discussed in part 3 the efforts made to introduce a system which anticipates early warning signs and alerts the business to risk. Those arrangements, together with others, if brought together coherently, and with senior level accountability and challenge, should put the department in a stronger position to avert issues before they escalate.

Recommendation 22 – The Home Office should invest in improving data quality, management information and performance measures which focus on results as well as throughput. Leaders in the department should promote the best use of this data and improve the capability to anticipate, monitor and identify trends, as well as collate casework data which links performance data to Parliamentary questions, complaints and other information, including feedback from external agencies, departments and the public (with the facility to escalate local issues). The Home Office should also invest in improving its knowledge management and record keeping.

Recommendation 23 – The department should revise and clarify its risk management framework, where officials and ministers consider potential risks to the public, as well as reputational and delivery risks.

Emphasise the role of ministers and senior officials

Good policy advice tells ministers about the evidence and tells them about the risks. It then suggests how best to implement their ideas, taking account of both. The reality is that governments are keen to make progress on policy objectives; after all, that is why they have been elected. The onus then falls on officials to work conscientiously, within the parameters of the Civil Service Code, and in accordance with departmental responsibilities, to give effect to policy objectives. Senior officials should ensure that ministers have before them adequate and appropriate information so as to enable them to make decisions both lawfully and effectively. Especially in the context of the PSED, this may include specifically drawing their attention to a particular group who will be adversely affected by a decision. Overly optimistic advice does not produce sound decision-making. The occasions when an official seeks a ministerial direction will be rare and the relationship between ministers and officials should be characterised by mutual respect for their different roles, and also by proactivity, curiosity and constructive challenge.

As officials have a responsibility to raise risks, equally ministers have a responsibility to consider risks of policies, including risks to the public as well as to the government, as soon as possible in the policy-making process, and on an ongoing basis. In this review the evidence shows that for the hostile environment measures ministers and officials did not fully consider risks and, after the measures were implemented, gave inadequate attention to understanding their effect, including whether discrimination had occurred. The review also found that mitigating action was insufficient and that ministers and officials neither considered nor requested a broader range of policy options. Arrangements for senior oversight were unclear and unstructured, as were the levels of approval for decisions.

Recommendation 24 – The department should invest in training for the Senior Civil Service to ensure appropriate emphasis on the roles and responsibilities of officials to provide candid, comprehensive and timely advice to ministers.

Recommendation 25 – All policy submissions and advice to ministers should have mandatory sections on: a) risks to vulnerable individuals and groups; and b) equalities, requiring officials to consider the effect of their proposals in these terms. The department should review the effectiveness of its current processes and criteria for escalating significant policy submissions for approval by the Permanent Secretary or Second Permanent Secretary. Where necessary new processes and criteria should be established.

Recommendation 26 – The department should put in place processes to support the use of the an electronic archive to record all departmental submissions, minutes and decisions centrally so there is a clear audit trail of policy deliberations and decisions. The department should ensure staff are provided with guidance on the knowledge and information management principles in respect of their work with/support for ministers. This archive should enable users to search for key terms, dates and collections on particular policy risks or issues.

Race

As set out above, the Windrush generation are a racial group. The department lost sight of the potential for them, as members of a racial group, to be particularly disadvantaged by immigration policies. Equalities considerations were more broadly lost sight of. During the period of my review the department has begun to take these issues more seriously. There has been a push to introduce training and to ensure that those at a senior level are better educated in terms of the department's and their legal duties.

However, the department has not historically tracked the racial impact of its policies and decisions. This has made it harder both for the department and for me in conducting this review, to see where troubling trends lie. It has made it more difficult to investigate comparator cases to Windrush, and has made it more difficult to identify cases where individuals have been affected by what has happened. I have set out in part 2 my specific concerns about race and discrimination, and the further action that the department should take to address those concerns. Acceptance of the need to change, coupled with action which demonstrates a clear commitment to do so, could transform the department's position and standing with its partners and communities.

The department's diversity and inclusion policy focuses on internal human resources diversity rather than the broader base of the department's duties in providing services and public functions. Where it focuses on workforce diversity it contains laudable aims to improve diversity, but it is distinctly lacking in specificity

as to how those aims are to be achieved. There are references to Corporate Talent Programmes, The Network, BAME Champions and BAME access programmes, but this does not say what precisely is planned. There is an intention to use “positive action programmes” and the need to eliminate unconscious bias at interview and positive action statements in targeted recruitment for grades AA-SCS, but no detail of what this means in practice. There is also reference to “hot spots of disproportionality” but no assessment of where these arise or what barriers currently in existence are considered to be potentially indirectly discriminatory and unjustified. The policy makes no reference to learning from grievance investigations or the outcome of tribunal or court proceedings where the department has been found to have discriminated.

Recommendation 27 – The department should establish an overarching strategic race advisory board, chaired by the Permanent Secretary, with external experts including in relation to immigration and representation from The Network²⁷⁴ to inform policy-making and improve organisational practice.

Recommendation 28 – Subject to relevant statutory provisions, such as s10 Constitutional Reform and Governance Act 2010, the department should revise its Inclusive by Instinct diversity and inclusion strategy to include its aspirations for senior-level BAME representation and a detailed plan for achieving them. Action should form part of a coherent package with ambitious success measures and senior-level ownership and accountability. The department should publish comprehensive annual workforce data, so it can monitor progress.

Recommendation 29 – The department should:

- a) review its diversity and inclusion and unconscious bias awareness training (over and above the mandatory civil service online courses) to make sure it is consistent with achieving the objectives of the Inclusive by Instinct strategy and that it is designed to develop a full understanding of diversity and inclusion principles, and the principles of good community relations and public service
- b) produce a training needs analysis and comprehensive diversity and inclusion training plan for all staff
- c) provide refresher training to keep all current and new staff up to date
- d) involve other organisations, or experts in the field of diversity and inclusion in its design and delivery
- e) set and then publish standards in terms of its diversity and inclusion training aims and objectives
- f) monitor learning and development regularly to test implementation and whether it is achieving its strategic objectives
- g) carry out regular “pulse” surveys to test the effectiveness of the implementation of these measures

Recommendation 30 – the Home Office should regularly review all successful employment tribunal claims that relate to race discrimination, harassment or victimisation, and in particular a summary of every employment tribunal judgment finding against the Home Office of race discrimination should be emailed to all SCS within 42 days of the decision being sent by the tribunal, together with a note stating whether an appeal has been instituted. The same arrangements should be made for Employment Appeal Tribunal, High Court, Court of Appeal or Supreme Court judgments within 28 days. It should use any learning to improve staff and leadership training, and to feed back to the senior civil service.



CASE STUDY 5

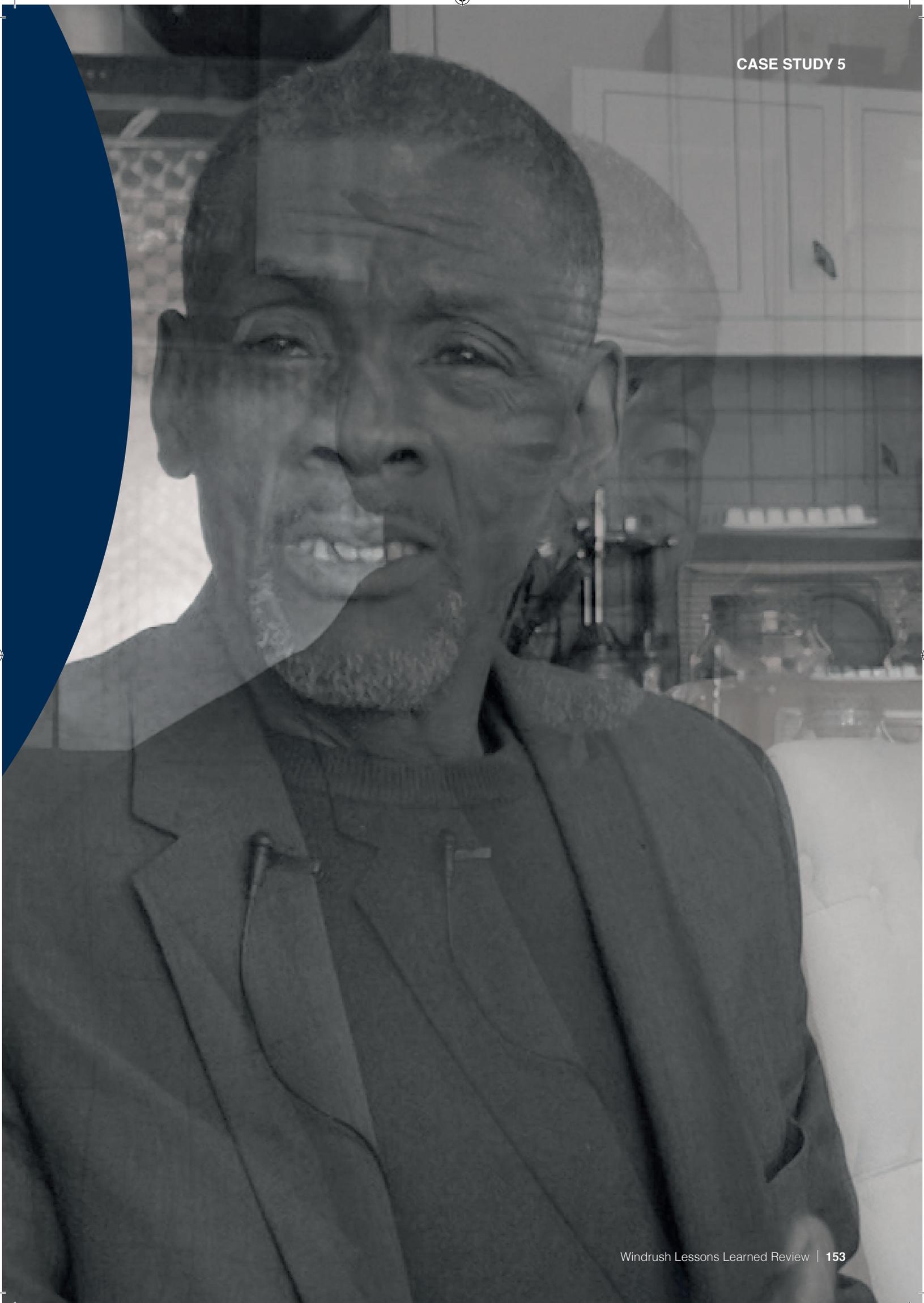
VERNON,

aged 63, came to the UK from Jamaica at the age of seven with his four siblings and mother. His father had come with the early wave of migrants. His memory of Jamaica is limited – he says he never felt Jamaican, as Britain was all he knew. In the UK he first lived in Hackney before moving to Tottenham where he started school. After leaving school, he began an electrical engineering apprenticeship and, at the same time, began boxing at amateur level. He went on to set-up his own electricians' business and became professional in boxing.

Vernon's dad moved back to Jamaica in 1992, and he would often visit. He never thought of getting British naturalisation as it was cheaper to keep his Jamaican passport and get a visa each time he went over. His passport had "indefinite leave to remain" stamped which he thought was enough. In the late nineties he had a short relationship in Jamaica, which resulted in him having a son. Wanting to spend time with him, Vernon went to visit and spent just over two years there. He tried to get a new visa to return to the UK, but was refused because he had stayed longer than two years and that broke the conditions of his right to remain. He had no idea about the two-year rule.

Vernon tried to find a way to get back via the Jamaican authorities and his sister, but both told him that the British government had tightened the rules and others were stranded like him. He accepted this but, eventually, slowly ran out of money. During this time, he lived in his aunt's chicken coop, a disused shack, and even a hospital waiting room, living off the small amounts of money his sister would send him. Finally, in 2018, he decided to try to see if there was a way back to Britain again and contacted David Lammy MP, who took up his case. David Lammy also told the Guardian about his story (which resulted in them visiting him). Once his story broke he was contacted within a few months by the British embassy with an airline ticket for his return. He spent a total of thirteen years in Jamaica.

Unaware of the 2-year rule, Vernon was unable to return to UK and was forced into destitution in Jamaica



ANNEX A

Terms of reference

Aim

1. To provide an independent assessment of the events leading up to the Windrush issues (particularly from 2008 to March 2018) and to identify the key lessons for the Home Office going forward.

Objectives

2. The objectives of the independent review are to establish:
 - i. What were the key legislative, policy and operational decisions which led to members of the Windrush generation becoming entangled in measures designed for illegal immigrants.
 - ii. What other factors played a part.
 - iii. Why these issues were not identified sooner.
 - iv. What lessons the organisation can learn to ensure it does things differently in future.
 - v. Whether corrective measures are now in place, and if so, an assessment of their initial impact.
 - vi. What (if any) further recommendations should be made for the future.

Timing

3. The timescale for the review will be six to nine months from the appointment of the Independent Adviser to completion. The aim is to publish the report by 31 March 2019.

Outputs

4. The Independent Adviser will provide a full analysis of the issues and a final report that addresses the objectives at para 2 to the Home Secretary.

Approach and conduct of the review

5. The Independent Adviser will independently lead the review, with support from a small team drawn primarily from the Home Office, headed by a Home Office Director who is external to immigration. Senior level team resources will not be abstracted from the review team without the Independent Adviser's prior agreement in writing.
6. The Independent Adviser will require a small team to provide her direct support in carrying out her functions. Composition of this team will be determined by the Independent Adviser and recruitment will be supported through the Home Office team.
7. The Independent Adviser will also be supported by an Independent Advisory Group, that will be set up and led by the Independent Adviser. The composition of this advisory group will be determined by the Independent Adviser.
8. The Independent Adviser, through the review team, will be given full access to all relevant policy, operations, casework documents and information, subject to the requirements of the law (including GDPR), national security and any pre-existing constraints with information management.

Annex – Roles and Responsibilities

The Independent Adviser will:

1. Provide an independent assessment of the events leading up to the Windrush issues (particularly from 2008 to March 2018). This includes:
 - a. Determining and agreeing the proposed scope, terms of reference and methodology.
 - b. Setting the direction for the review for the period of its duration.
 - c. Supporting the internal review team in obtaining key documents, evidence and information that will feed into the review.
 - d. Analysing the issues and addressing the review objectives.

2. Set up an Independent Advisory Group that will be responsible for providing assurance and validation for the review. This includes:
 - a. Deciding the appropriate membership of the advisory group, taking into consideration relevant skills, expertise and experience, representations and diversity.
 - b. Setting the terms of reference for the advisory group.
 - c. Sharing, where appropriate, emerging findings with the advisory group for their consideration to further assure the quality and credibility of the review.
 - d. Ensuring that the advisory group provides scrutiny, challenge and validation for the review.
3. Lead internal and external engagements, including but not limited to:
 - a. Devising the communications and engagement strategy, with the support from the internal team and Home Office Communications Directorate.
 - b. Leading engagements with the Windrush generation.
 - c. Conducting internal interviews and/or focus groups with officials if deemed necessary.
4. Provide an independent view of the corrective measures that have been put into place by the department, including:
 - a. An assessment of the corrective measures to ensure that this cannot happen again.
 - b. Leading the Home Office's internal review team to recommend any additional corrective measures required.
5. Support the Home Secretary to publish the review and its findings, ensuring that this is done with integrity and credibility. This includes but is not limited to:
 - a. Enabling the department to follow due processes in regard to Maxwellisation, defamation and GDPR, and any other HR and legal considerations.
 - b. Enabling the department to fact check the report and agree factual amendments where appropriate (but the Independent Adviser's conclusions remain a matter for the Independent Adviser).
 - c. Supporting the Home Secretary to discuss jointly the findings of the review with those affected by Windrush prior to publication.

Support

6. The Independent Adviser will receive adequate support and training both in preparation for, and following the announcement of the appointment, as well as in relation to matters concerning the conduct, handling and publication of the review.
7. The Independent Adviser will also receive, where possible, advance notice of all public statements, which are to be made by the department in connection with the review.



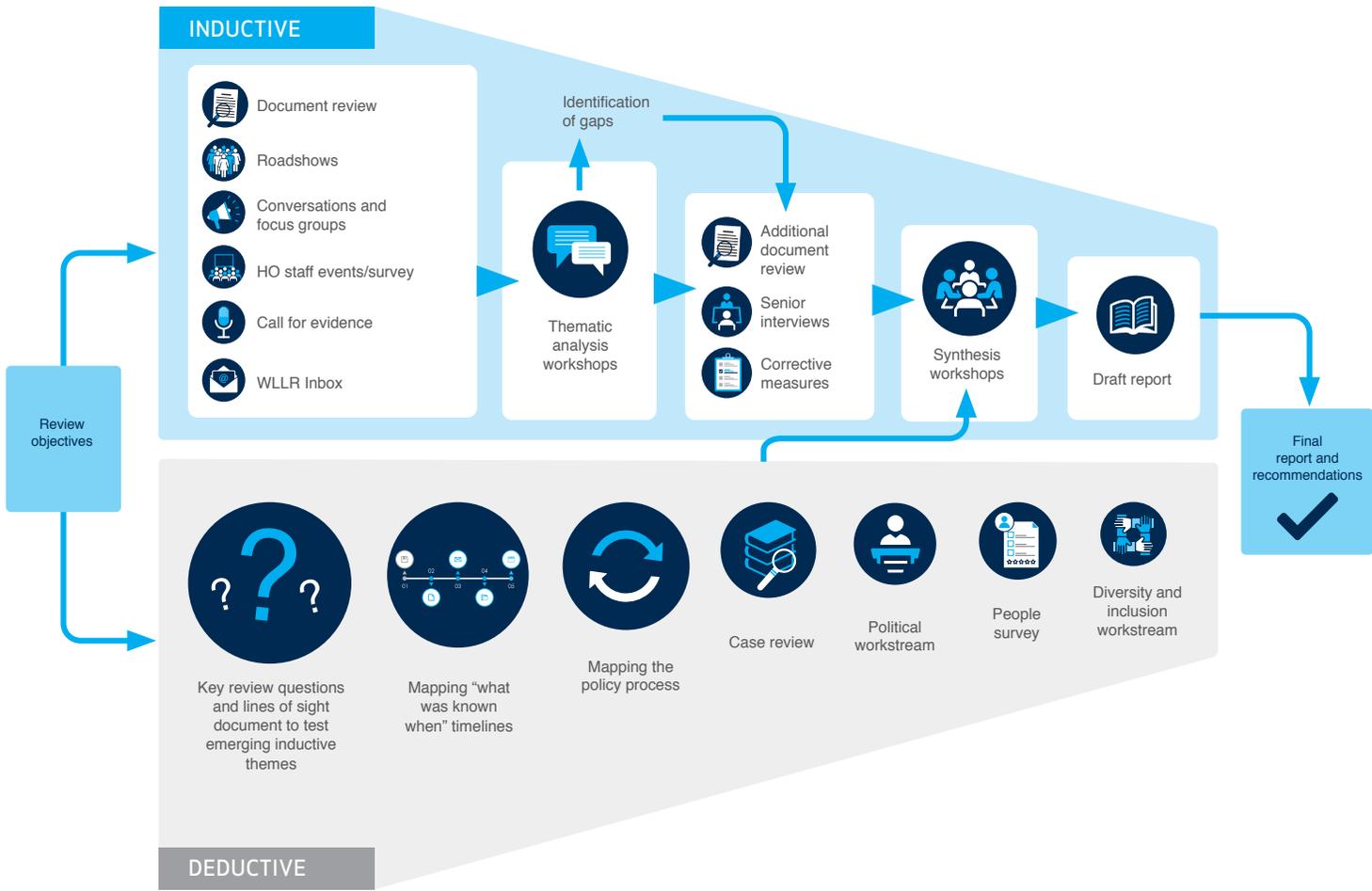
ANNEX B

Review methodology

Introduction

This annex sets out the broad range of methods used to carry out this review. The review began with an extensive search for evidence, including documents held within the Home Office, documents submitted by external organisations and individuals through a “call for evidence”, and other publicly available material. Documentary evidence was supplemented with the views and reflections of Home Office staff and other government departments who engaged with the Home Office, past and present ministers, and the experiences as told by people directly affected by the scandal.

All the evidence was brought together and considered by the review team in thematic analysis workshops, which in turn led to further evidence gathering as gaps were identified. This iterative approach to evidence and analysis was concluded through a process of distillation and triangulation from which findings were crystallised. The end-to-end process is visualised in Figure 1.



Evidence gathering

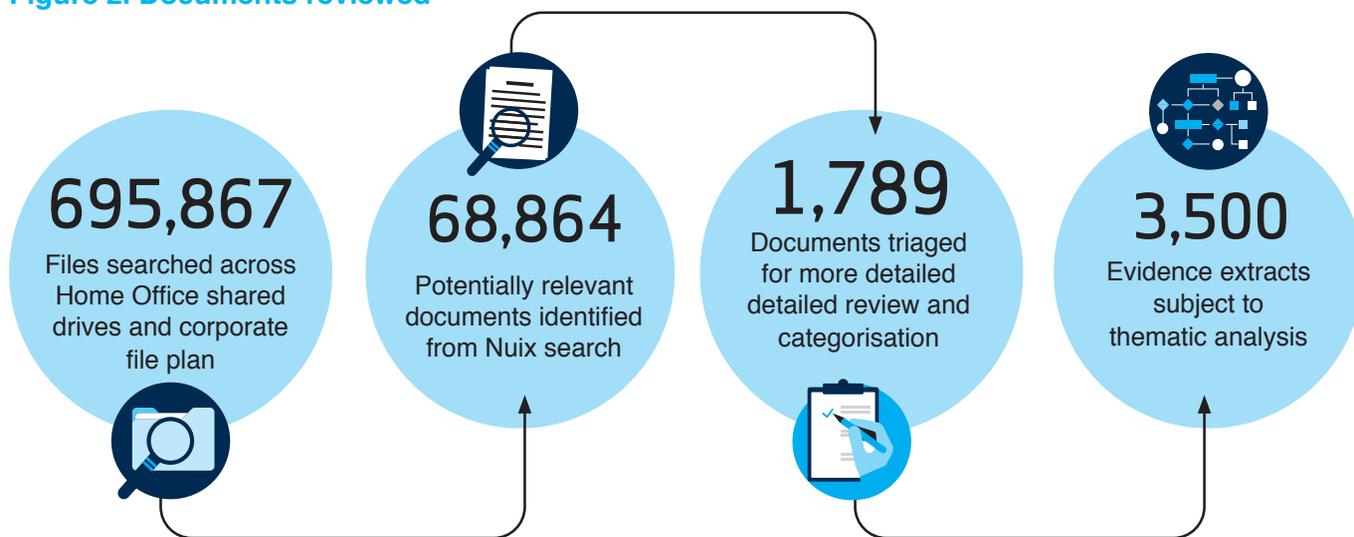
The review team gathered and analysed a wide range of evidence on which the report is based. Sources ranged from internal Home Office official documents, through to interviews and focus groups with staff, and a formal call for evidence from external partners.

Documents

A range of documentary evidence which is not publicly available was obtained through digital searches of Home Office file stores (both current and archived) using the Nuix e-Discovery platform and a robust search methodology. In addition, targeted requests to individuals and teams within the department were made as the review progressed and gaps were identified. The documents obtained included ministerial submissions and briefings; external correspondence; and internal emails. Publicly available sources were also searched, including reports from the Independent Chief Inspector of Borders and Immigration; Parliamentary committee papers, questions and reports; and legislation, policy and impact assessments.

Each document found as a result of digital NUIX search was triaged for relevance to the review objectives (including the removal of duplicate documents). Dip samples of excluded documents were taken by senior reviewers for assurance purposes. A robust approach to cataloguing the relevant documents was adopted and reviewers within the team worked to formal guidance to ensure a standardised approach to coding. Every document deemed relevant for review was logged in a spreadsheet with a unique identification number and a descriptor, and as reviewers went through each document they captured all items of interest and/or relevant passages (evidential extracts) within the spreadsheet. Overall, 3,500 evidential extracts were produced through the document review and taken forward into the analysis phase. The process is summarised in Figure 2.

Figure 2. Documents reviewed



The 3,500 extracts were subject to second pair of eyes assurance and were then grouped according to the thematic categories shown in Figure 3, which were agreed with Government Social Research analysts based in the Home Office.

Figure 3. Thematic categories



Through the analysis phase around 800 further documents were received from the department following targeted requests to fill known gaps.

Engagement

We engaged directly with individuals and groups who were personally affected by the Windrush scandal to understand the scale of what happened and the impact it had. This engagement included a programme of roadshows; face-to-face meetings; and “day in the life” videos of those directly affected, produced by Policy Lab using “Video Ethnography”.

The review ran a number of roadshows (along with Martin Forde QC, Independent Adviser to the design of the Windrush Compensation Scheme) to hear directly from people who had been affected. Members of the Windrush Taskforce were also present to support those needing help with documenting their status. Around 270 people attended these events at the following locations.

London	Thursday 6 September 2018 13:00 to 16:00	Willesden New Testament Church of God, 165-167 High Road, Willesden, London
Nottingham	Tuesday 11 September 2018 12:00 to 15:00	The Pilgrim Church, Queens Walk, The Meadows, Nottingham, NG2 2DF
Bristol	Monday 17 September 2018 12:30 to 15:15	Bethel Church, 254 Church Rd, Bristol, BS5 8AF
Birmingham	Wednesday 3 October 2018 13:00 to 16:00	Assemblies of the First Born Church, 23 Lozells Road, Birmingham, B19 2TQ
Leeds	Monday 8 October 2018 16:30 to 19:00	The Reginald Centre, Chapeltown Road, Leeds, LS7 3EX
Manchester	Tuesday 9 October 2018 10:00 to 13:00	The West Indian Sports & Social Club, Moss Side, Manchester, M14 4SW

We also consulted current and former Home Office staff (including junior and front-line officials, middle managers and senior leaders), and ministers to gather relevant information. This engagement has included preliminary conversations (informal interviews); focus groups; and structured interviews with politicians, past and present, and senior officials. The number of people engaged is summarised in Table 1.

Table 1. Numbers engaged

Engagement type	Number	People engaged
Informal interviews with staff	56	56
Informal interviews/focus groups with external agencies	23	35
Formal interviews with senior officials and politicians	33	33
Staff focus groups	29	c.240
Staff open forums	14	c.100
Correspondence from staff	84	82
Roadshows with individuals affected	6	c.270
Total	245	c.816

A process of extracting evidential extracts similar to that used in the document review was applied to the material collected through these various engagement activities, and the evidential extracts were fed into the analysis phase.

Call for evidence

The review also worked with a wide range of other interested parties, including legal representatives and relevant non-governmental organisations, both directly and indirectly through a formal call for evidence, which invited people to give their personal and/or organisational views. The call for evidence ran from 20 August to 19 October 2018. The call for evidence was focused on organisations outside of government, including: immigration lawyers, local authorities, charities, think-tanks and academics. The review received 77 submissions which were separately reviewed by the team and the results fed into analytical phase. More details are provided in [Annex E](#).

Ethnographically informed research

The review wanted to hear from people who had been directly affected by the scandal, so that their lived experience could inform the lessons and the recommendations in this report. In addition to the Roadshows, the review commissioned Policy Lab to conduct in-depth and ethnographically informed research with five individuals and their families in order to gain a multi-sided perspective for future learning.¹

These methods allowed researchers to explore someone's whole experience in a rich, empathic and sensitive manner, to build a picture of their lives as holistically as possible. This involved spending one full day with each participant as they went about their daily life. During this time, the Policy Lab team observed and discussed the impact policies had on them, their families and their communities. They also explored their experiences of interacting with citizenship services and wider government services.

Participants were briefed on the research methodology and purpose, and kindly gave consent for their stories to be told through short thematic films informed by the analysis process. The people with whom Policy Lab engaged had one or more of the following characteristics:

- they had been refused public services
- they had attempted to travel and been stranded on return
- they had felt afraid, and were aware of the issues
- someone whose parents had been affected, and on whom it's had a huge and emotional or practical impact
- someone who had documented their status

These are personal stories collected by Policy Lab as a separate piece of research to inform the wider work of the review.

¹ <https://openpolicy.blog.gov.uk/2015/03/27/ethnography-in-policymaking/>

Home Office case files

The review team were given the details of the 164 cases of individuals identified by the Home Office through its Historic Cases Review Unit (HCRU).² The review team was given full access to the paper files (in 102 cases), and to the case management system CID (Casework Information Database) to assess the electronic files. The case files reflected a broad spectrum of encounters with the Home Office and provided a snapshot of performance at the time the Windrush scandal broke.

The objective of the casework review was to evaluate how effectively the Home Office managed casework with particular reference to the 164, including:

- the quality of and recording of decision-making, and whether decisions are robustly quality assured
- the quality of communication with individuals
- case management including the effectiveness of case management systems
- case progression

The file sample was assessed against set criteria and the descriptive data from the file examination is presented in [Annex G](#).

The experience of each of the 164 individuals was recorded through the preparation of chronologies drawn from the entries on CID and the information contained in paper files, where they exist.

The review team also assessed 55 electronic cases files identified by HCRU where the individuals had been subject to hostile/compliant environment sanctions following proactive data sharing by the Home Office and 10 electronic case files identified by HCRU of individuals with criminal convictions who had found themselves subject to enforcement action.

Additionally, the review team spoke with immigration judges, presenting officers and observed proceedings in Manchester, Birmingham and London Immigration Tribunals. The review team has observed a demonstration of the new case management system, Atlas.

To complete the analysis a dip-sample was taken of cases which had been recently finalised through the Windrush Taskforce. The review team assessed 15 cases where applications had been successful, and 15 cases which resulted in refusals. This gave the review team a snapshot of the effectiveness of revised guidance and operational practice.

Data

The original material collected through the review was supplemented with contextual information on different aspects of the review. Data types included caseload numbers, workforce numbers and other Home Office demographics; people survey results; financial data; and general background data covering the immigration system.

² See the Home Secretary's update to the Home Affairs Committee at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819848/Windrush_update_to_HASC_to_end_of_June.pdf

Thematic analysis

The review team, with support from professional Government Social Research analysts from the Home Office's Analysis and Insight team established a robust and iterative approach to analysis and synthesis of all the information collected to produce the evidence that informed the findings of the review.

A combination of inductive and deductive approaches was applied. The inductive approach (or reasoning), often referred to as “bottom-up”, ensures a consistent and thorough review of all the evidence gathered, without any preconceptions about what a particular piece of evidence may say, to identify themes and patterns as they emerge, about which explanations (or theories) are then developed.

This approach was balanced by a series of deductive hypotheses and questions which were developed based on contextual knowledge and expertise. This approach, often referred to as “top-down”, aims to reach conclusions, and enabled the team to incorporate the voice of those affected into the design of the review, as well as into its findings. These complementary approaches enabled the review team to triangulate, test and challenge assumptions against the review's objectives at each stage.

Evidence reviewers in the team were responsible for identifying evidence which was then analysed through a series of workshops in order to draw out initial themes. This “iterative” workshop approach was a systematic and repetitive process that provided a consistent approach to interpreting the data and helped to create visual tools and timelines that represent patterns (themes) in the data. This approach also enabled the team to identify new lines of enquiry to fill gaps in the evidence and through this refine the analysis. The iterative workshop approach also encouraged critical challenge and ensured that sufficient evidence was gathered against each of the review's objectives.

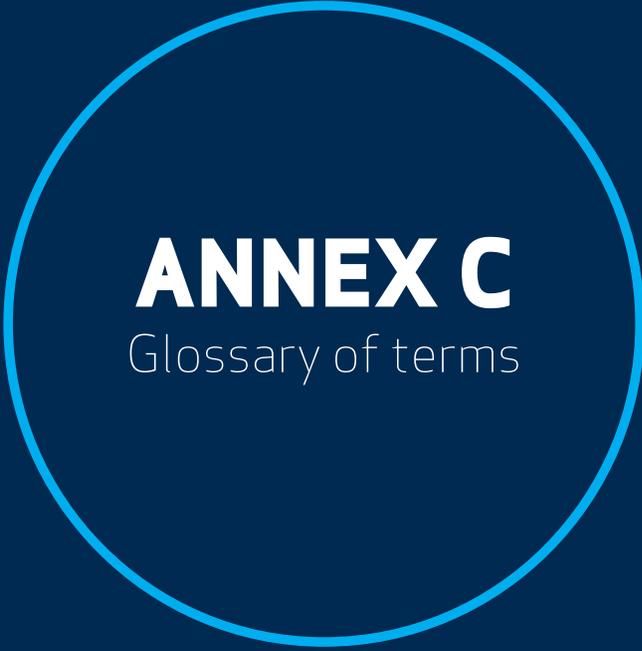
Synthesising the evidence

Synthesis is the process of condensing and distilling the themes that emerged from the analysis phase and triangulating these to shape the emerging findings and lessons (and recommendations), in line with the review's objectives. The synthesis process involved different work strands, including:

- triangulating evidence to ensure findings were robust and weighted accordingly, including giving a sense of the scale of the different types of evidence that applied to each theme
- ensuring findings were linked to lessons and recommendations (as appropriate), and vice versa
- checking and challenging findings against the robustness of the evidence on which they were based
- documenting the way in which the review gathered, analysed and synthesised evidence and translated these into review findings

During the synthesis stage of the review, the review team drew heavily on the expertise of Independent Advisory Group (IAG) members – both collectively and individually – as part of this process (details of the IAG are provided in [Annex D](#)). The IAG meetings were used as a forum for testing the emerging themes, findings, lessons and recommendations over this stage of the review. IAG members also supported discrete thematic “Check and Challenge” panels, in line with their own areas of expertise.

The synthesis process was closely linked to the drafting of the final report so that the structure and aims of the review were kept clear and the conclusions are supported by strong evidence.



ANNEX C

Glossary of terms

Acronym / abbreviation / term	Meaning	Explanation
Act		A law made by the UK Parliament. Also called a statute.
AR	Active review	A process whereby applicants can pay for unsuccessful immigration applications to be reviewed by the Home Office to see whether the decision was correct.
Atlas		A Home Office IT system in development, intended to replace the existing caseworking databases.
BAME	Black, Asian and minority ethnic	Term used to refer to members of non-white communities in the UK.
BBC	British Broadcasting Corporation	British public service broadcaster.
BHD	Bullying, harassment and discrimination	
BIA	Border and Immigration Agency	Former Home Office agency responsible for the management of border and immigration functions, created in 2007 before being absorbed by the UK Border Agency in 2008.
BICS	Border, Immigration and Citizenship System	Overarching term for UK Visas and Immigration, Immigration Enforcement, Border Force, HM Passport Office, and BICS Policy and International.
BICS P&I	Borders, Immigration and Citizenship System Policy and International	A department within the Home Office that provides the policy and strategic structure which underpins the rest of BICS.
BICS PSG	Border, Immigration and Citizenship System Policy and Strategy Group	The previous name for BICS P&I
Bill		A document setting out a proposed new Act.
BIS	Department for Business, Innovation and Skills	Government department, now known as the Department for Business, Energy, and Industrial Strategy.
BME	Black and minority ethnic	Term used to refer to members of non-white communities in the UK.
BOTC	British Overseas Territories citizens	British Overseas Territories (formerly known as British dependent territories) citizenship is a category of citizenship that was created by the British Nationality Act 1981, which came into force on 1 January 1983.

Acronym / abbreviation / term	Meaning	Explanation
BRP	Biometric residence permit	A Home Office issued card proving a migrant's lawful residency in the UK, required for all non-EEA migrants granted leave in excess of 6 months.
CCP	Chief Crown Prosecutor	Head of 1 of the 14 Crown Prosecution Service regional areas.
CID	Case Information Database	A Home Office database containing details of foreign nationals with whom the Home Office has come into contact, either through applications or enforcement action.
Cifas		A not for profit fraud prevention membership service.
CIH	Chartered Institute of Housing	Professional body for those working in the housing sector.
Civil servants		Career public servants who work in central government departments, agencies, and non-departmental public bodies. Also referred to as "officials".
Civil Service Code		A set of values and behaviours civil servants are required to adhere to.
Civil society		Civil society is a term used to describe a wide range of organisations, groups and networks in society distinct from the private sector and government.
Committee stage		Parliamentary stage where a bill is considered line-by-line, and is normally the next stage after a bill's second reading. It is an opportunity for changes to be made to the wording or for new clauses to be added.
Commonwealth, the		The Commonwealth of Nations, a political association of currently 54 countries, predominantly made up of former territories of the United Kingdom.
Corrective measures		Actions taken to prevent the recurrence of an event that caused the problem initially.
CPFG	Crime, Policing and Fire Group	A non-BICS Home Office business area that provides leadership to the public safety system (particularly police and fire services), protecting the public from mainstream and domestic harms.
CPS	Crown Prosecution Service	A non-ministerial government department, responsible for prosecuting criminal cases that have been investigated by the police and other investigative organisations in England and Wales.
CRG	Capabilities and Resources Group	A non-BICS Home Office business area that supports the delivery of departmental objectives through the provision of support functions such as HR, finance and estates, science and technology, and project management.

Acronym / abbreviation / term	Meaning	Explanation
CUKC	Citizens of the UK and Colonies	A category of citizenship introduced by the British Nationality Act 1948, which allowed holders free movement in the UK and its colonies. Also known as Commonwealth Citizenship.
DCLG	Department for Communities and Local Government	See MHCLG
Deport		The removal of an individual whose presence is deemed “non-conducive” to the public good or whose removal has been recommended by a sentencing judge following criminal conviction.
DVLA	Driver and Vehicle Licensing Agency	Government agency responsible for maintaining the details of drivers and vehicles in Great Britain and the United Kingdom respectively.
DWP	Department for Work and Pensions	Government department responsible for welfare and benefits.
EC	European Community	European regional organisation which aimed to bring about economic integration among its member states. Known as the European Economic Community from 1957 until 1993. It was absorbed into the European Union in 2009.
ECtHR	European Court of Human Rights	An international court that hears claims regarding breaches of the European Convention on Human Rights.
EEA	European Economic Area	A free trade area consisting of European Union states and Iceland, Liechtenstein and Norway.
EHRC	Equalities and Human Rights Commission	A non-departmental public body responsible for promoting and upholding equality and human rights ideals and laws across England, Scotland and Wales.
EIA	Equality Impact Assessment	A process designed to identify and mitigate against any potential discrimination against any disadvantaged or vulnerable people in a policy, project or scheme.
Enforced removal		Where the Home Office returns an individual who requires leave to remain in the UK but does not have it, to their country of origin or another country where they have residency rights.
EU	European Union	A political and social union of 28 European states.
FCO	Foreign and Commonwealth Office	Government department responsible for promoting and protecting British interests and citizens across the world.
First reading	First reading	First Reading is the formal introduction of a bill to the House of Commons or the House of Lords. The bill is not debated at this stage, but a date for its second reading in that House is set, a bill number is allocated and an order is made for it to be printed.

Acronym / abbreviation / term	Meaning	Explanation
FLR(O)		A now obsolete form used to apply to the Home Office for an extension of leave in the UK.
FNO	Foreign national offender	Home Office term for a non-UK citizen convicted of a criminal offence who may be liable for deportation.
FOI request	Freedom of information request	A request that can be made to public sector organisations to access recorded information they hold.
GIAA	Government Internal Audit Agency	Government agency that supports departments in managing public money effectively by developing better governance, risk management and internal controls.
GP	General practitioner	Community based doctor who treats patients with minor or chronic illnesses and refers those with serious conditions to a specialist.
HAC / HASC	Home Affairs (Select) Committee	House of Commons committee that examines the policy, administration and expenditure of the Home Office and its associated bodies.
Historical Cases Review		A review of 11,800 individual case files of migrants of Caribbean Commonwealth nationality who could have been born before 1 January 1973, who have been removed and / or detained by the Home Office since 2002, which identified 164 individuals.
HMCPISI	Her Majesty's Crown Prosecution Service Inspectorate	The independent inspectorate for the Crown Prosecution Service and other prosecuting agencies.
HMICFRS	Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services	The independent inspectorate for police forces, and fire and rescue services.
HMPO	Her Majesty's Passport Office	Department of the Home Office responsible for the issuing of passports, and civil registration services through the General Register Office.
HMRC	Her Majesty's Revenue and Customs	A non-ministerial government department responsible for the collection of taxes, the payment of some forms of state support, and the administration of some financial regulatory regimes.
HOAI	Home Office Analysis and Insight	A Home Office team that provides professional analytical support, behavioural insight and similar disciplines to ministerial, policy and operational teams.
Hostile environment		A series of policy interventions intended to make it progressively harder for irregular migrants to live, work and access services in the UK, and to emphasise individuals' responsibility to prove that they are in the UK legally. Now known as the "compliant environment".

Acronym / abbreviation / term	Meaning	Explanation
IA	Independent Adviser	A non-civil servant appointed by the Home Secretary to provide independent oversight of the Windrush Lessons Learned Review. The Independent Adviser is Wendy Williams.
IAG	Independent Advisory Group	An advisory group of experts selected by the Independent Adviser, to provide scrutiny, challenge and validation for the Windrush Lessons Learned Review. A list of members and their biographies can be found in Annex D of this report.
ICE	Immigration Compliance and Enforcement	Front line teams within Immigration Enforcement, made up predominantly of warranted officers with powers of arrest, who undertake home and community-based compliance and arrest visits.
ICIBI	Independent Chief Inspector for Borders and Immigration	The independent inspectorate for the Home Office's borders, immigration and citizenship functions.
IE	Immigration Enforcement	A Home Office directorate that is responsible for preventing abuse of, and increasing compliance with, immigration law and pursuing immigration offenders.
IfG	Institute for Government	An independent think tank specialising in analysis and research of governmental effectiveness.
Illegal immigration		The migration of people into a country in violation of the immigration laws of that country, or the continued residence of people without the legal status to live in that country.
ILPA	Immigration Law Practitioners Association	Professional association for lawyers and academics working or interested in the immigration law field.
ILR	Indefinite leave to remain	An immigration status granted to a person who does not hold the right of abode in the United Kingdom, but who has been admitted to the UK without any time limit on his or her stay and who is free to take up employment or study.
IND	Immigration and Nationality Directorate	Former Home Office directorate responsible for the borders and immigration system, created in 1995 and subsequently incorporated into the Borders and Immigration Agency in 2007.
Independent Case Examiner		A free independent complaints review service for the Department for Work and Pensions (DWP) and their contracted services, which acts as an independent referee if a customer considers that they have not been treated fairly or have not had their complaints dealt with in a satisfactory manner; and supports service improvements by providing constructive comment and meaningful recommendations.

Acronym / abbreviation / term	Meaning	Explanation
IPA	Infrastructure and Projects Authority	The UK government's centre of expertise for infrastructure and major projects, working with government departments and industry to ensure infrastructure and major projects are delivered efficiently and effectively, and to improve performance over time.
IRC	Immigration Removal Centre	Holding centres for foreign nationals awaiting removal or deportation, or decisions on outstanding applications. Commonly known as detention centres.
Irregular migrant		A migrant who lacks legal status in their current country of residence or transit.
ISD	Interventions and Sanctions Directorate	A directorate within Immigration Enforcement. ISD has operational responsibility for much of the hostile/compliant environment.
IT	Information technology	The use of any computers, storage, networking and other physical devices, infrastructure and processes to create, process, exchange, secure, and store all forms of electronic data.
ITF	Immigration Task Force	A cabinet committee set up by the then Prime Minister David Cameron in June 2015, focusing on immigration.
JCHR	Joint Committee on Human Rights	A select committee with members from both the House of Lords and House of Commons, which scrutinises the work of government and its adherence to human rights laws.
JCWI	Joint Council for the Welfare of Immigrants	A UK charity that campaigns for justice in immigration, nationality and refugee law and policy.
LASPO Act	Legal Aid, Sentencing and Punishment of Offenders	2012 Act that significantly overhauled the legal aid system, including reducing the availability of legal aid for immigration and housing, and introducing new systems for accessing legal aid for discrimination cases.
Law Commission		A statutory independent body that seeks to keep the law of England and Wales under review and to recommend reform where it is needed.
LCP	Landlords Consultative Panel	A group set up to advise the Home Office on the implementation of the Right to Rent scheme, consisting primarily of professional landlord, letting agent and housing organisations, as well as representatives from local authorities, other government departments and civil society organisations.
LCS	Landlord's Checking Service	Home Office provided service that enables landlords to check whether prospective tenants have the right or permission to enter into a private residential sector tenancy.

Acronym / abbreviation / term	Meaning	Explanation
MAC	Migration Advisory Committee	An independent, non-statutory, non-time limited, non-departmental public body that advises the government on issues around the economic impact of immigration, limits of immigration under the points-based system, and skills shortages within occupations.
MATBAPS	Migrant Access to Benefits and Public Services	Initially a ministerial group, then a cabinet committee, created in 2012 to work on better enforcing the immigration system. Initially called the "Hostile Environment Working Group."
MHCLG	Ministry for Housing, Communities and Local Government	A government ministry.
Ministerial Code		A code setting out the standards of behaviour expected of government ministers, and how they are expected to discharge their duties.
MP	Member of Parliament	Elected politician who sits in the House of Commons.
MRP	Migration Refusal Pool	Collection of CID records compiled by the Home Office to enable enforcement action against migrants who do not have status (e.g. those who have had applications refused or rejected, those who have overstayed their leave), and who are not known to have left the UK.
MSP	Member of the Scottish Parliament	Elected politician who sits in the Scottish Parliament.
NAO	National Audit Office	An independent parliamentary body that scrutinises government spending.
NGO	Non-governmental organisation	A non-profit organisation that operates independently of government, usually seeking to address a social or political issue.
NHS	National Health Service	Publicly funded healthcare system in the UK.
NI	National Insurance	UK tax system funded by workers and employers that pays for state benefits and pensions.
NTL	No Time Limit application	Application by someone who is already a permanent resident to have an endorsement in their passport or BRP which demonstrates that there is no time limit to their stay OR an application to transfer an indefinite leave to remain status onto a biometric residency permit.
Officials		A term used to refer to civil servants, to differentiate them from Ministers or Special Advisers (e.g. "Home Office officials" or "senior officials").

Acronym / abbreviation / term	Meaning	Explanation
OSCT	Office for Security and Counter Terrorism	Home Office department that works to counter terrorism, co-ordinating domestic and some overseas work on these issues across government.
PAC	Public Accounts Committee	House of Commons select committee that scrutinises the economy, efficiency and effectiveness of public spending and holds the government and its civil servants to account for the delivery of public services.
PC	Privy Councillor	A member of Her Majesty's Most Honourable Privy Council (more commonly known as simply the Privy Council of the United Kingdom, or just the Privy Council), a formal body of advisers to the Sovereign of the United Kingdom.
Permanent Secretary		Commonly used term to describe the most senior civil servant in a government department. The full title is Permanent Under-Secretary of State.
PES	Policy Equality Statement	A document often used to demonstrate government departments have had due regard to their requirements under the public sector equality duty.
PHSO	Parliamentary and Health Service Ombudsman	An independent, statutory complaints handling body accountable to Parliament, that deals with claims of maladministration against the NHS and government departments.
PQ	Parliamentary Question	A question put formally to a government minister either orally during ministerial question time, or in writing, about a matter they are responsible for by an MP or a member of the Lords. They are used to seek information or to press for action from the government.
PRCBC	Project for the Registration of Children as British Citizens	An organisation that focuses on the rights of children to register as British citizens.
Private Secretary		A civil servant working in a minister or Senior Civil Servant's private office, responsible for the flow of briefings and information, diary management, and communications with other officials.
PRS	Private rental sector	Classification of housing in the UK, whereby a property is owned by a private landlord and leased to a tenant.
PSED	Public Sector Equality Duty	The requirement for public sector organisations to have due regard to the need to achieve the objectives set out under s149 of the Equality Act 2010.
Race Disparity Audit		A report published in 2017 examining how people of different backgrounds are treated across areas including health, education, employment and the criminal justice system.
RAF	Royal Air Force	The UK's aerial warfare force.

Acronym / abbreviation / term	Meaning	Explanation
RC	Reporting centre	Home Office location where immigration offenders on bail are required to report on a periodic basis.
Returning Resident status		An application for a visa for an individual who had previously held indefinite leave to remain, but has been outside of the UK for more than two years.
Right of Abode		An individual's freedom from immigration control in a particular country. British citizens automatically have the right of abode in the UK.
RLA	Residential Landlords Association	One of the landlord associations that sits on the Home Office's Right to Rent Panel.
ROM	Reporting and Offender Management	The Home Office system for maintaining contact with individuals who are required to report either in person, or subject to electronic tagging or other monitoring procedures.
Royal Assent		Royal Assent is the Monarch's agreement that is required to make a bill into an Act of Parliament.
RP	Returns Preparation	The part of Immigration Enforcement responsible for progressing cases in the non-detained, non-asylum illegal population, working to encourage unlawful migrants to return voluntarily or, failing that, prepare cases for their enforced return.
RtR	Right to Rent	One of the strands of the hostile environment policy, which requires prospective tenants to demonstrate they have the right or permission to enter into a tenancy in the private rental sector.
SCS	Senior Civil Servant	Very senior managers within the civil service, making up approximately 0.8% of all civil servants.
Second reading		The second reading is normally the first opportunity for a bill to be debated in either House and is the stage where the overall principles of the bill are considered. If the bill passes second reading it moves on to the committee stage.
SNP	Scottish National Party	A Scottish political party.
SpAds	Special Advisers	Party political appointees who provide political, media or policy advice to ministers.
SSAC	Social Security Advisory Committee	An independent statutory body that provides impartial advice on social security and related matters, and scrutinises most of the secondary legislation that underpins the social security system.
Status		Refers to the permissions that an individual may or may not hold in respect of their legal immigration status, and therefore their right to remain in the UK. May also be referred to as "leave".

Acronym / abbreviation / term	Meaning	Explanation
Syrian Vulnerable Persons Resettlement Scheme		A scheme whereby Syrian nationals already recognised by the UN High Commissioner for Refugees are resettled from third countries to the United Kingdom.
Third reading		Third reading is one of the stages that a bill must pass in each House before it can become law. It is normally the final opportunity for the Commons or the Lords to decide whether to pass or reject a bill in its entirety.
TUC	Trades Union Congress	A federation of over 50 English and Welsh trade unions.
UKBA	UK Border Agency	Former Home Office agency responsible for the management of border and immigration functions from 2008 until 2013, when it was abolished.
UKVI	UK Visas and Immigration	A Home Office department that is responsible for deciding applications for status from foreign nationals, including on human rights, nationality and citizenship, and asylum grounds.
Urgent and Exceptional Payments Policy		A scheme to make payments to members of the Windrush generation who required urgent financial assistance prior to the launch of the formal compensation scheme, or since its launch, to those who cannot wait for a claim to be processed.
UN	United Nations	An intergovernmental organisation of currently 193 countries, tasked with maintaining international peace and security, developing friendly relations among nations, achieving international co-operation, and being a centre for harmonising the actions of nations.
Windrush Compensation Scheme		A scheme intended to provide financial payments to members of the Windrush generation, or their descendants, heirs or close family members, who did not have the right documentation to prove their lawful right to live in the UK and suffered losses or impacts on their life as a result.
Windrush generation		A Home Office team set up to provide documentation, including citizenship to those eligible under the Windrush Scheme.
Windrush Scheme		A term used for people who were invited to the UK between 1948 and 1971 from Caribbean countries. Named after the ship the first migrants arrived on, MV Empire Windrush, which arrived at Tilbury in Essex on 22 June 1948.
Windrush Taskforce		A Home Office team set up to offer support and guidance to individuals on the Windrush Compensation Scheme and how to apply.
WLLR	Windrush Lessons Learned Review	An internal review commissioned by the Home Secretary, to provide an independent assessment of the events leading up to the Windrush issues (particularly from 2008 to March 2018) and to identify the key lessons for the Home Office going forward.



ANNEX D

The Independent
Advisory Group

A small panel of experts was invited to form an Independent Advisory Group (IAG) to help inform the review's focus and approach. The IAG met regularly during the review to bring a diverse range of perspectives, experience and specialist expertise across a range of areas including immigration law, leading public bodies and equality, diversity and inclusion. The IAG was an important mechanism in helping to ensure that key issues were fully considered during the review. The membership of the IAG was as follows.

Dame Ursula Brennan

Professor Dame Sandra Dawson

James Hanratty RD

Sir Peter Housden

Dr Omar Khan

Lorraine Martins MBE

Jacqueline McKenzie

Dr Mike Phillips

Dr Seamus Taylor CBE

Detailed biographies of the members are available on the Windrush Lessons Learned Review pages on [GOV.UK](https://www.gov.uk).

ANNEX E

Call for evidence

An online call for evidence was opened on 20 August and closed on 19 October 2018; there were 75 responses, including members of the public, academics, MPs, individuals working in the voluntary and community sector, churches, businesses and legal professionals. Responses were also received from the following organisations:

Amnesty International UK
Asylum Matters
Bail for Immigration Detainees
Bhatt Murphy Solicitors
Black Solicitors Network
Chartered Institute of Housing
Doctors of the World UK
Downs Solicitors
Equality and Human Rights Commission
Freedom from Torture
Garden Court Chambers
Greater Manchester Immigration Aid Unit
Greater Manchester Law Centre
Immigration Law Practitioners' Association
Immigration Marriage Fraud UK
International Care Network
Joint Council for the Welfare of Immigrants
Kent Law Clinic
Liberty
Local Government Association
McGill & Co Solicitors
Migration Observatory
Movement for Justice
National Aids Trust
NRPF (No Recourse to Public Funds) Network
Plymouth City Council
Praxis Community Projects
Refugee & Migrant Forum of Essex and London
Slough Immigration Aid Unit
The Children's Society
The Mayor of London
The Runnymede Trust
Trades Union Congress
Unison



ANNEX F

Acknowledgements

I would like to extend my thanks to The Right Honourable Sajid Javid MP for commissioning this review and The Right Honourable Priti Patel MP for publishing it.

I would like to thank those members of the Windrush generation that I spoke to throughout the review. This report is about and for them. I would particularly like to thank those that agreed to have their stories included in the report – Gloria, Pauline, Vernon, Veronica and Joycelyn. I would also like to acknowledge those individuals affected by the Windrush scandal who have sadly passed away and offer condolences to their families.

I would like to thank Sir Philip Rutnam, Permanent Secretary at the Home Office for his assistance with the review and his leadership across the department which meant that, where available, the review had access to the information and resources it required.

I would like to thank the 46 Home Office staff who worked on the different phases of the review. In particular I would like to remember Sam Lewis who sadly passed away shortly after working on the review. I am also grateful for the support the review received from Home Office Analysis and Insight. I am especially grateful for the support provided to me by the Director of the Windrush Lessons Learned Review and my Staff Officer and Executive Assistant.

I would like to thank the members of the Independent Advisory Group (IAG). The Independent Advisory Group was made up of individuals with a wide range of perspectives and experience and I have found their guidance and advice invaluable. There was no requirement for the IAG to come to a collective or consensus view. The report, its final findings and recommendations are mine alone and should not be attributed to members of the IAG.

I would like to thank those that I interviewed for the review. This included former and current ministers and former and current Home Office Senior Civil Servants.

I am also grateful to the wider group of civil servants from inside and outside the Home Office who provided me and members of the review team with their insights on how and why the Windrush scandal happened. I would especially like to thank those officials who provided “teach-ins” and shared their expertise with the review.

I would like to thank those organisations and individuals who submitted evidence to the Windrush Lessons Learned Review Call for Evidence. See [Annex E](#) for the full list.

I would also like to thank the following:

Allan Wilmot

Members of Windrush Action

Rev Clive Foster (The Pilgrim Church)

Rev Desmond Jaddoo

Bristol Council

Leeds Council

Brent Council

Former Special Advisers

High Commissioners from the Caribbean Community (CARICOM)

Councillor Callton Young OBE

First-tier Tribunal Judge Chohan

First-tier Tribunal Judge Campbell

Senior Immigration Judge Martin

First-tier Tribunal Judge McClure

Jill Rutter and Joe Owen (Institute for Government)

Arten Llazari (The Refugee and Migrant Centre)

Jill Rutter (British Future)

Peter Schofield (Department for Work and Pensions)

Adrian Berry (Immigration Law Practitioners Association)

Sue Langley (Home Office Non-Executive Director)

Arthur Torrington (The Windrush Foundation)

The Black Cultural Archives

The National Archive

Chai Patel (Joint Council for the Welfare of Immigrants)

Leroy Logan

Lucy Moreton (The Union for Borders, Immigration and Customs)

Dr Mike Slaven (University of Lincoln)

Professor Andrew Thompson (Exeter University)

The various academics and writers quoted in the report

Anne Abel Smith

Jan Dekker

Anne Power

I would also like to thank those who provided legal advice to the review.



ANNEX G

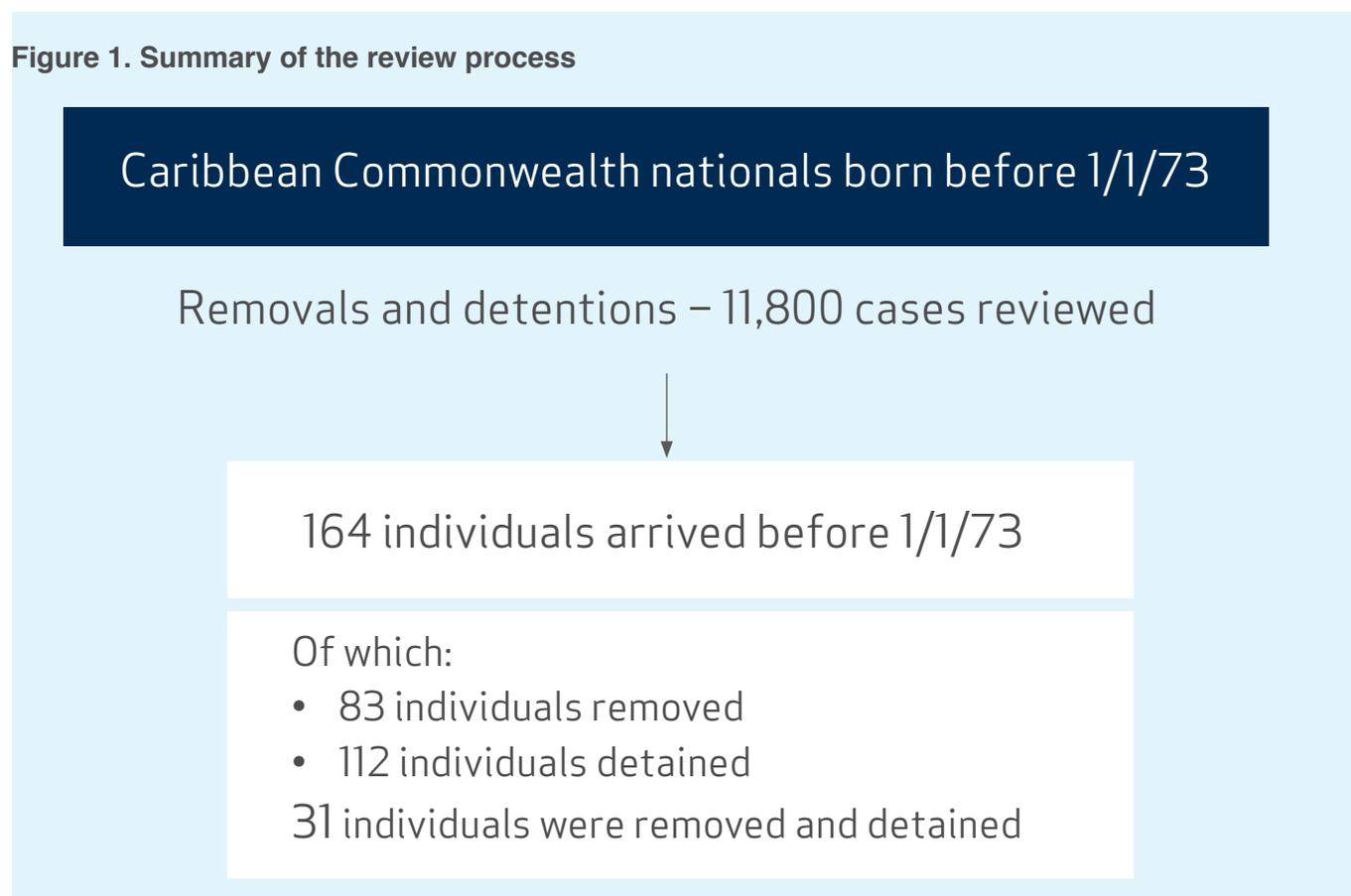
Casefile review: the 164

This annex describes the work of the Home Office Windrush Historical Cases Review and provide a breakdown of the 164 Caribbean Commonwealth Nationals born before 1/1/73 who were removed and/or detained, so that we might highlight any trends or discrepancies that could reveal further information on the plight of the Windrush generation.

The Home Office Historical Cases Review Unit (HCRU) was established and tasked with improving the process to extract data, review cases and make referrals to the Windrush Taskforce. HCRU initially examined the immigration records of 11,800 individuals of Caribbean Commonwealth nationality, born before 1 January 1973, who had been removed and/or detained by the Home Office since 2002. The process is summarised in Figure 1.

HCRU sought to identify individuals whose records indicate that they could have been in the UK before 1973. Individuals who were believed to be involved in criminality were excluded from the unit's initial review.

Figure 1. Summary of the review process



There are individuals within the 164 who were detained or removed on more than one occasion; the first detention and/or removal has been captured in the data.

All the files and records of the 164 individuals have been examined in detail by the Windrush Lessons Learned Review.

Cases identified by HCRU were referred to the Windrush Taskforce, which was created to support individuals who are eligible under the Windrush Scheme.

HCRU did go on to review 322 criminal cases (removals and detentions) and 1977 compliant Environment cases. Ten criminal cases were identified and 55 individuals who had been subject to compliant environment measures.

Overall 221 Caribbean Commonwealth nationals who were born before 1/1/73 were identified. There are 8 crossovers between the compliant environment cases and the other cohorts. The Home Secretary continues to provide updates on the circumstance of the cases identified to the Home Affairs Committee. The June, July and October 2019 updates provide the following details with regard to these cases.

As illustrated in Figure 1, of the 164 removals and detentions cases, 83 individuals faced removal and 112 faced detention, with 31 facing both removal and detention. All 10 individuals identified in the criminal cases reviewed faced detention, leading to a total of 83 individuals who faced removal, 122 individuals who faced detention, and 31 individuals who faced both removal and detention. From the 55 individuals who faced compliant environment sanctions, 47 faced only 1 sanction. Nine individuals faced more than 1 sanction, with 65 sanctions being faced in total.

In total, apology letters have been written to 67 individuals, with 4 individuals due to receive 2 apologies. 18 individuals from the 164 removals and detentions cases have apology letters written, 7 individuals from the 10 criminal cases received apologies,¹ and 46 individuals from the 55 compliant environment cases will receive apologies. Of the 164 individuals who were detained and/or removed, 141 have been traced. They either have status, are in contact with the taskforce, or are deceased (24 individuals).²

Of the 83 individuals removed, contact has been made with 55. These 55 are a subset of the 141 individuals with whom contact has been made. From the 83 individuals, 14 are deceased, and the department has been unable to contact the remaining 14. The Taskforce has granted ILR/other leave to remain to 11 individuals, 5 were granted a 10-year visitor visa, 11 were granted right of abode/citizenship, 9 will submit an application under the Windrush Scheme, 12 are awaiting a decision on their application and 7 confirmed they will not make an application.³

Demographics of individuals within the 164

Tables 1-4 provide detailed information regarding the demographics of the 164 individuals who were removed and/or detained. As can be seen from the data, the group draws from a wide variety of people of different nationalities, ages and backgrounds.

Table 1. Nationality and gender

Nationality	Male	Female	Total
Jamaica	44	48	92
St. Lucia	6	6	12
Barbados	12	10	22
Dominica	5	1	6
Grenada	8	2	10
Trinidad & Tobago	6	7	13
St. Vincent & Grenadines	0	3	3
St. Kitts & Nevis	3	1	4
Guyana	2	0	2
Total	86	78	164

1 Home Office, "Letter to the Chair of the Home Affairs Committee", 10 June 2019

2 Home Office, "Letter to the Chair of the Home Affairs Committee", 22 October 2019

3 Home Office, "Letter to the Chair of the Home Affairs Committee", 22 October 2019

Table 2. Age on initial arrival in UK

Nationality	Adult	Minor	Not Known
Jamaica	35	43	14
St. Lucia	6	6	0
Barbados	13	9	0
Dominica	1	5	0
Grenada	4	5	1
Trinidad & Tobago	5	5	3
St. Vincent & Grenadines	2	1	0
St. Kitts & Nevis	2	2	0
Guyana	1	1	0
Total	69	77	18

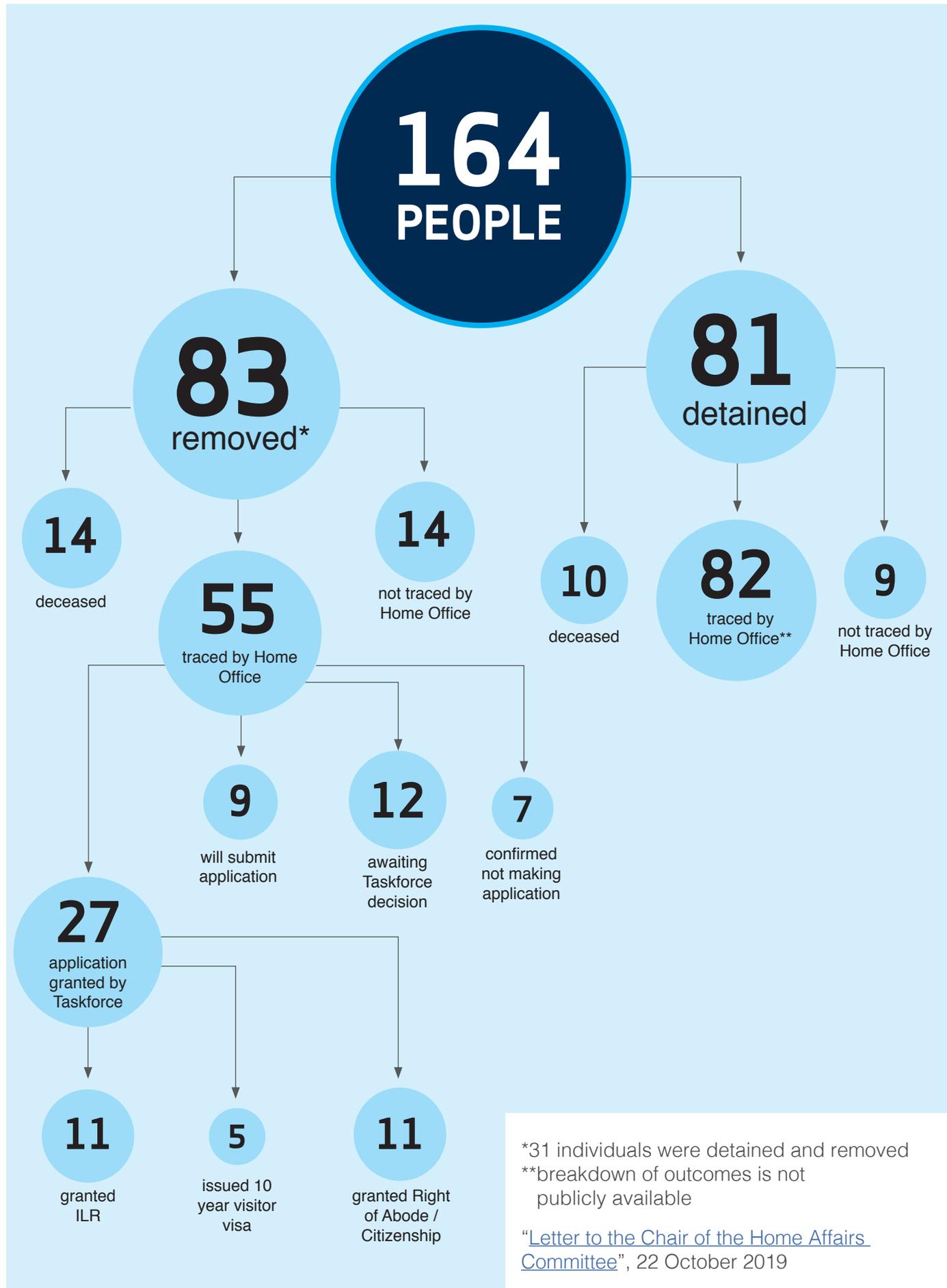
Table 3. Year of arrival in UK breakdown

Year of First Arrival	Number	Adult	Minor	Not Known
1940s	1	0	1	0
1950s	29	18	10	1
1960s	101	42	55	4
1970s	16	6	10	0
Not Known	17	3	1	13
Total	164	69	77	18

Table 4. Time in UK breakdown

Length of Time in the UK	Number
Under 10 years	18
10 - 20 years	36
20 - 30 years	21
30 - 40 years	15
Over 40 years	49
Not Known	25
Total	164

Historic cases review – number of people contacted and associated actions



*31 individuals were detained and removed
 **breakdown of outcomes is not publicly available

["Letter to the Chair of the Home Affairs Committee"](#), 22 October 2019

Contact with the Home Office

One thing that unites the 164 is that they have all had some interaction of some sort with the Home Office, and that interaction has resulted in their detention and/or removal from the UK. The Home Office's systems contain the electronic records of applications made to them either at visa posts abroad or while within the UK from approximately the year 2002. However, many grants of "leave to enter" at ports of entry made by non-visa nationals were not recorded electronically as it is not Home Office practice to retain records for the majority of visitors. The Home Office paper records have been examined and analysed alongside the computer records to establish the details of the applications recorded from the 164.

Table 5. First recorded contact with the Home Office:

Initial Contact	Initial Contact	Percentage
Leave to Remain Application	4	2.4%
Visit Visa	34	20.7%
Port – Visitor	62	37.8%
Port – Returning	23	14.0%
Status Request	3	1.8%
No Time Limit Application	7	4.3%
Indefinite Leave to Remain Application	10	6.1%
Port – other	2	1.2%
Naturalisation	3	1.8%
Unknown application	2	1.2%
Enforcement Action	3	1.8%
Returning Resident Visa	3	1.8%
Adult Registration	1	0.6%
Passport Application	1	0.6%
Right of Abode	3	1.8%
Asylum	1	0.6%
Other	2	1.2%

Table 6. Initial contact resulted in a negative outcome for the individual

Initial Contact	Number of individuals	Number with negative outcome	Percentage of application with negative outcome
Leave to Remain Application	4	3	75%
Visit Visa	34	2	6%
Port – Visitor	62	22	35%
Port – Returning	23	3	13%
No Time Limit Application	7	6	86%
Indefinite Leave to Remain Application	10	6	60%
Naturalisation	3	3	100%
Unknown application	2	2	100%
Adult Registration	1	1	100%
Right of Abode	3	2	67%
Asylum	1	1	100%

Negative outcomes include applications which were either rejected by the Home Office or refused.

Negative outcomes to applications made by individuals within the 164

The experiences of the individuals who have been included in the 164 group vary dramatically. This report has already detailed the suffering and detriment suffered by individuals within the Windrush generation, many of whom are not included in the 164 group.

The data and files for the 164 shows that 33% did not have a negative decision on applications made to the Home Office. The majority were included in this group as they were detained on arrival at airports, while Immigration Staff sought evidence of their status. However, 9% had over 3 applications, made while in the UK or from overseas, refused or rejected as they repeatedly sought leave or proof of their legal status in the UK.

Table 7. Number of negative outcomes

	0	1	2	3	4	5	6	7	8
Jamaica	23	35	13	11	7	2	0	0	1
St. Lucia	4	6	2	0	0	0	0	0	0
Barbados	11	7	3	1	0	0	0	0	0
Dominica	3	1	1	1	0	0	0	0	0
Grenada	5	2	2	0	0	1	0	0	0
Trinidad & Tobago	4	4	3	0	0	2	0	0	0
St. Vincent & Grenadines	1	1	1	0	0	0	0	0	0
St. Kitts & Nevis	3	1	0	0	0	0	0	0	0
Guyana	0	0	1	0	0	0	1	0	0
Total	53	58	26	13	7	5	1	0	1
Percentage of individuals with number of negative decisions	33%	35%	16%	8%	4%	3%	1%	0%	1%

From January 2003, Jamaican nationals required visas to visit the UK. Some of the 164 were impacted by this change in travel requirements and arrived without the required visa, which resulted in them being refused entry and in some cases returned to their place of embarkation.

Conclusion

While there are no major trends that can be drawn from the data of the 164, the impact on this group of individuals is clear. These cases are examples that have been echoed in so many of the cases that have been described earlier in this report. Negative impacts and outcomes are not restricted to the 164.

What is clear is that this group of individuals did not understand their own status and options as, rather than seeking right of abode, returning resident status or other confirmation of their settled status, they sought leave to enter as a visitor. Indeed, over 20% of this group made applications for a visa as a visitor to the UK. This may well be illustrative of the reality that it was easier to apply for a visitor visa, even if this was a short-term option. However, it is noted that many had left the UK for longer than two years and therefore may not immediately have been entitled under the rules to enter as a returning resident.

A number of Jamaican nationals, who are included in the 164 travelled to the UK without a visa of any sort, when they were required to do so. This demonstrates a lack of understanding for some regarding the documentary requirements for travel to the UK.

There are examples within the 164 cases of pragmatic decision making by Immigration Officers and caseworkers who understood the legal position of the individual. Officers sought to support individuals to obtain confirmation of their status by, for example, granting leave to enter at the airport – technically outside of the rules – to enable the individual to make a suitable application. There are also examples that demonstrate a lack of consistent decision-making and advice provided to individuals. One applicant had inconsistent advice through her journey to obtain proof of her settled status in the UK. She initially made an indefinite leave to remain application as the dependant of her UK resident child, this application was refused as she was financially self-sufficient and could not be classed as a dependent. She was advised that she should apply as a returning resident. However, when she did this her application was subsequently refused. Six years after making a voluntary departure from the UK she was granted a returning resident visa.

The variety seen in application types and outcomes for individuals within the 164, a small proportion of the affected persons, demonstrates the complexity of the system for the individuals and for the Home Office in identifying them as a group facing a common issue.

ANNEX H

Right to Rent case study

As part of the Windrush Lessons Learned Review, the Home Secretary asked that we examine the government's Right to Rent scheme to see how it came to affect the Windrush generation. This case study looks at the scheme, a policy designed to restrict irregular migrants' access to the private rental sector. This is part of the government's hostile (now compliant) environment – a set of measures to discourage migrants from entering the UK illegally and encourage those already in the country to leave, by cutting off access to essentials such as work, housing and healthcare.

The Right to Rent has been one of the most contentious aspects of the hostile environment. It has attracted criticism from landlord bodies, migrant groups, and legal practitioners, for the restrictions it places on access to one of the most fundamental human needs – shelter. In particular, it was claimed that the scheme affected legal migrants, and British citizens from ethnic minority backgrounds, and that they've found it more difficult to access rental properties because of the scheme.

This is important when considering the history of the Windrush generation and the significance of the experiences of those who were denied housing in the past decades due to their colour or perceived lack of British nationality.

This study aims to give a clear and comprehensive timeline of the scheme's development, looking specifically at its impact on the Windrush generation, long-standing settled UK residents and citizens, who found themselves caught up in a web of policies intended to increase compliance with the immigration rules by making life extremely difficult for people who didn't have immigration status to continue to live in the UK.

Background

The link between housing and migration came to wider public attention in 2011 because of reports of people living in sub-standard accommodation. Often, this would be temporary structures such as sheds, or illegal conversions of garages or other outhouses, or just four walls of breezeblocks with a roof. People found renting these "beds in sheds" were usually some of the poorest in society, including vulnerable families and young people on the verge of homelessness, and migrant workers – both legal and illegal. They would commonly be paying relatively high sums for accommodation with significant issues, such as dangerous electrical or gas fixtures (if any at all), damp, lack of heating, or overcrowding.

The government's work on "rogue landlords" and "beds in sheds" suggested that a high proportion of people living in the very worst privately rented accommodation were migrants. So by 2013, the issue formed part of the wider discussion of the hostile environment. This is a set of measures implemented by the Home Office, later renamed the compliant environment, to increase compliance with the immigration rules. The measures removed incentives for people to stay in the UK illegally through interventions and sanctions systematically applied to deny benefits and services to people not entitled to them. For instance, the hostile environment aims to limit illegal migrants' access to health, housing, banking facilities, and driving licences as well as targeting those who facilitate the employment or accommodation of illegal migrants.

Development of the policy

As far back as 1996, the Home Office was exploring different ways to target irregular migrants by making life more difficult for them. Employing people with no legal right to be in the UK was made a criminal offence in 1996. Then in 2006, civil penalties were launched for employing people without status. In the same year, the Home Office began a transformation programme of the Immigration and Nationality Directorate, where in the initial stages the aspirations were:

“We will double our enforcement and compliance effort and we will remove the riskiest overseas nationals first.

We will penalise those who employ illegal workers.

- Fine employers and seize assets.
- Disbar employers being directors for two breaches.

We will limit access to bank account, non-emergency healthcare, education, driving licences, housing and other benefits for all illegal immigrants (after consultation).

We will make immigration a truly cross-Government issue with shared targets.”¹

However, the final version, launched by the Labour Home Secretary John Reid, was less ambitious, omitting the plans to limit access to services.² On 18 December 2006, Borders and Immigration Minister Liam Byrne wrote to Cathy Jamieson MSP about preparations for a Bill on border and immigration matters, a key milestone in implementing the 2006 Review. He said the Bill would:

“present a forward-looking package to help the new Border and Immigration Agency better to police the border, tackle immigration crime and ensure a hostile environment for those who abuse our hospitality.”³

These ideas continued to be discussed and developed, with the Home Office signing up to anti-fraud organisation Cifas in June 2008.⁴ By 2010 the hostile environment was taking shape, with the Home Office’s Preparing for the Future: Enforcement paper saying:

“Building an environment which makes it difficult to live in the UK illegally remains the cornerstone of our enforcement strategy. The main thrust of this effort remains making it harder to work illegally. Civil penalties for employers of illegal migrants in combination with help for employers to ensure they don’t employ illegal migrants will be expanded and developed.”⁵

We will also continue to work with our partners across Government and beyond to ensure that:

- NHS services are denied to illegal migrants;
- “No recourse to public funds” means what it says;
- Illegal access to benefits is effectively identified through UKBA-HMRC-DWP data matching;
- Driving licences are only issued to those here lawfully;
- UKBA becomes a full participant in CIFAS to ensure that illegal migrants cannot access financial services.”

1 Home Office, Internal draft paper “Making Immigration Fit for the Future”, July 2006

2 Home Office, “[Fair, effective, transparent and trusted: Rebuilding confidence in our immigration system](#)”, July 2006

3 Home Office, Letter from Liam Byrne MP to Cathy Jamieson MSP, 18 December 2006

4 Home Office, Press Notice “Local Immigration Teams to be introduced across the UK”, 19 June 2008

5 Home Office, Internal paper “Preparing for the future”, 26 April 2010

In 2010, the Conservatives went into the general election with a manifesto pledge to cut net migration to the tens of thousands, rather than the hundreds of thousands.⁶ But the election unexpectedly resulted in a coalition between the Conservatives and the Liberal Democrats. Conversations between officials and ministers broadly supported the proposed measures, although some Conservatives and Liberal Democrats disliked the term “hostile environment”, preferring “fairer” or “smarter”.⁷ By October 2011, the Home Office was canvassing opinions from other government departments on possible options for restricting non-EEA migrants’ access to benefits and services. By October 2012, the plans were sufficiently developed for ministers to look at bidding for space in the parliamentary timetable for an immigration bill which included the requirement for landlords to check immigration status.⁸ By the end of 2012, the vision behind the hostile environment was also becoming clearer, with the Chief Executive of UKBA setting out the benefits of the measures:

“For example, the systematic application of the elements of a “hostile environment” may not drive up numbers of removals as quickly as would an exclusive focus on removing those we can. But there is likely to be more value for the UK, and more visibility, for measures that see the systematic denial of privileges/services applied to hundreds of thousands of people rather than merely the removal of tens of thousands of people.”⁹

An inter-ministerial group focused on migrants’ access to benefits and public services provided oversight of policy development during 2012 and 2013. This Group, which was chaired by the Prime Minister, was established to examine the rules and administrative arrangements in place across government to regulate migrant access to benefits and public services. On 14 March 2013, the Prime Minister’s Private Secretary wrote to David Laws (Minister of State at the Cabinet Office), setting out the aspirations for new legislation to restrict access to the private rental sector, which included:

- requiring landlords and letting agents to check and record the immigration status of prospective tenants
- giving local authorities and the UKBA the authority to require landlords and agents to produce the evidence of their checks
- introducing a civil penalty for landlords who had not made the correct checks
- developing proposals for a new criminal offence of knowingly letting a property to an illegal migrant
- issuing guidance and offering helplines to help landlords and letting agents understand what they needed to do¹⁰

The Queen’s Speech on 8 May 2013, which set out the government’s legislative priorities for the parliamentary session, said:

“My government will bring forward a Bill that further reforms Britain’s immigration system. The Bill will ensure that this country attracts people who will contribute and deters those who will not.”

In a submission to the Home Secretary and Immigration Minister,¹¹ Home Office officials said:

“The proposal on landlords is currently the most controversial measure. The level of opposition will be dependent on the detail of the proposal including the ease with which landlords can satisfy the requirements and the level of enforcement we write into the Bill. The Business Secretary has raised concerns.”

6 Conservative Party, Manifesto “[Invitation to join the Government of Britain](#)”, April 2010

7 Home Office, Internal emails 8 July 2010, 20 September 2010, 6 November 2012, 15 November 2012, 20 November 2012, 10 January 2013

8 Home Office, Internal paper, “Future immigration legislation”, 24 October 2012

9 Home Office, Internal paper, “Improving UKBA’s performance”, 12 December 2012

10 No 10, Letter from the Prime Minister to David Laws MP, 14 March 2013

11 Home Office, Internal paper “Delivering the Immigration Bill”, 13 May 2013

The 2014 Immigration Act contained many other controversial proposals, including the significant reduction of appeal rights and it's not difficult to see why officials felt the landlord provisions would be some of the most difficult to pass. But the concern from the Home Office appears to relate to how easy the system would be for landlords to implement. While a straightforward system would arguably be less likely to lead to discrimination, from the evidence that the review has seen this didn't appear to be a significant concern at the time.

The consultation

The formal public consultation on the scheme was launched on 3 July 2013 and ran for seven weeks until 21 August. The proposals were to restrict access to the private rental sector for illegal migrants by requiring landlords to check whether a person had the "right to rent", which they could show by demonstrating their UK citizenship or lawful status in the UK. Letting to someone who didn't have the right to rent would result in a civil penalty. In the consultation document, the government set out its position that, while the policy was aimed at making life more difficult for those here illegally, it also sought to target those who exploited them:

"The Government is also determined to get an effective grip on illegal immigration and to take a tougher approach to dealing with those who have either entered the country illegally or overstayed their visa. Some illegal migrants are exploited and, in the worst cases, they can end up living in overcrowded and poor housing conditions whilst generating significant profits for unscrupulous landlords. This can have a corrosive effect on communities and individuals and undermine the availability of homes and jobs for people who are legitimately in the UK."¹²

Identifying the link between migration and housing, the consultation referred to research by the Department for Communities and Local Government (now the Ministry of Housing, Communities and Local Government) and the Housing and Migration Network. This found that 55% of non-British or Irish residents lived in the private rented sector, and that just over a quarter of people living in the private rented sector were non-British, and that most new migrants lived in the private rental sector.¹³

The consultation set out the need for a Policy Equality Statement (PES)¹⁴ to feed into the overarching Impact Assessment. In terms of equality considerations, the document identified several impacts on groups with certain protected characteristics. They included:

"93. Race – nationality. The policy will apply to all new tenants regardless of nationality. Those foreign nationals who have the right to reside in the UK will in most cases have documentation used to gain entry or documentation issued when they were granted settlement. EEA nationals will commonly be in possession of a passport or a national identity card. Non-EEA nationals staying for longer than six months are issued with a Biometric Residence Permit, which will include the date the card and its entitlements expire. To prevent any detriment to UK citizens who do not have passports, other documents or combinations of documents will be allowed.

"94. Race - national and ethnic origins and colour. The policy will apply to all new tenants regardless of nationality or ethnic origin. There is a risk that misinterpretation of the rules or guidance may lead landlords to exclude prospective tenants on the basis that they are perceived to be foreign nationals on the basis of actual or perceived national or ethnic origins or colour. The guidance and rules will be formulated to make the procedures as simple as possible and to provide advice to both landlords and tenants on how to easily establish legal status and identity."¹⁵

12 Home Office, Public consultation "[Tackling Illegal Immigration in Privately Rented Accommodation](#)", 3 July 2013 p3

13 Home Office, Public consultation "[Tackling Illegal Immigration in Privately Rented Accommodation](#)", 3 July 2013 p4

14 A document which summarises the evidence considered in demonstrating due regard to the public sector equality duty

15 Home Office, Public consultation "[Tackling Illegal Immigration in Privately Rented Accommodation](#)", 3 July 2013 p37

The consultation set out the documents the Home Office considered acceptable to demonstrate a person's right to rent:

- For British citizens, a UK passport, a naturalisation or right of abode certificate, or a birth or adoption certificate alongside a national insurance number or UK driving licence.
- For European Economic Area (EEA) and Swiss citizens, an EEA or Swiss passport, a national ID card, or a European Union Laissez Passer (a travel document that can be issued to European Union officials and their dependants).
- For non-EEA nationals with status in the UK, a Biometric Residence Permit (BRP) held by temporary and permanent residents, a visa or passport stamp held by short term visitors, a Home Office letter confirming the person has an outstanding immigration application or appeal which permits them to remain (but only if verified by contacting the Home Office enquiry service), or other documents showing the person is exempt from immigration control.
- For non-EEA family members of EEA nationals exercising EU Treaty Rights in the UK, a residence certificate or card issued by the Home Office, or a Certificate of Application (but only if verified by contacting the Home Office enquiry service).
- For Non-EEA nationals without leave to remain, an Application Registration Card (ARC) held by asylum seekers or a Home Office letter of authorisation (both of which would require verifying by the Home Office enquiry service).

Aside from the Home Office consultation, the Department for Communities and Local Government (which is responsible for housing policy) also wrote to notify interested parties of the proposals. In their response to the Windrush Lessons Learned Review (WLLR) call for evidence, the Chartered Institute of Housing (CIH) said they responded to the then Housing Minister Mark Prisk, saying:

“right to rent checks would affect ‘the housing options of legal migrants and existing UK citizens who might be mistaken for migrants’. We then said:

‘It seems likely that if a prospective tenant is not obviously British, landlords may simply reject them, given the pressures in the sector at the moment, the competition for tenancies and the potential delay if further checks are needed.

‘Such discrimination will be very difficult to uncover given that landlords will be making simultaneous enquiries about bank accounts, references etc., which will give them other grounds for rejecting an application.’¹⁶

16 Chartered Institute of Housing, [Response to WLLR Call for Evidence](#), October 2018

The CIH also mentioned a meeting they attended with the Home Office on 22 August 2013, during the consultation, where:

“.....we reiterated these points. Our note of the meeting shows that we raised with officials the issue of people legally in the UK who lack paperwork and we noted that we were ‘not sure they were particularly engaged with this’. We also noted that ‘Government is definitely doing this [scheme] regardless of the number of dissenting voices...’.”

Discussions between Home Office officials after this meeting indicated the CIH were not the first to raise the impact this could have on people lawfully in the UK.¹⁷ On 10 October 2013 the government published its response to the consultation, alongside a Policy Equality Statement for the scheme¹⁸ and the European Convention on Human Rights Memorandum for the entire Bill.¹⁹ The consultation revealed a general lack of support for the policy from respondents, alongside a clear concern that the policy would result in an increase in race discrimination in the private rental sector.

“• Disagreement with the principle of the policy

While between one third and two-fifths of respondents supported the proposal to include the three accommodation types (a. properties rented out for one or more person to live in as their main or only home, b. homes which are not buildings, including caravans and houseboats, if they are rented as the tenants only or main home, c. homes which were not built for residential purposes), slightly more than half of all respondents disagreed with the proposals. UK respondents were more likely to disagree with the proposals to include the different types of accommodation, compared with the non-EEA nationals who responded. Around three-fifths of UK citizens disagreed, compared with one-half of the non-EEA citizens.

“• Discriminatory behaviour.

There was concern either that the policy would provoke discriminatory behaviour or that landlords would be perceived to be acting in a discriminatory manner. Of all those who expressed an opinion on the policy 58% thought that it might result in more race discrimination. 51% were concerned that the policy might lead to religious discrimination. One-third of the respondents who wrote to raise concerns about the impacts of the proposals (108 respondents) were concerned about the potential for judgements on the basis of race, or race in combination with one or more other protected characteristics, most often faith.”²⁰

The results of the consultation clearly showed there was widespread concern about the proposals exacerbating an already discriminatory market. The evidence of this discrimination wasn't hard to find – four days after the response was published, the BBC ran a story revealing some letting agents were willing to discriminate against African-Caribbean people on landlords' instructions.²¹

17 Home Office, Internal email, 23 August 2013

18 Home Office, Response to Public Consultation “[Tackling illegal immigration in privately rented accommodation](#)”, October 2013

19 Home Office, [European Convention on Human Rights Memorandum](#) for the Immigration Bill, October 2013

20 Home Office, Response to Public Consultation “[Tackling illegal immigration in privately rented accommodation](#)”, October 2013, p12

21 BBC News “[London letting agents 'refuse black tenants'](#)”, 14 October 2013

On the concerns about race discrimination, the government's response said:

“The consultation clearly expressed that discrimination against foreign national tenants will be unacceptable. Particular concern was raised by respondents that the scheme would result in discrimination motivated not because of overt prejudice but because of administrative convenience where some people are more likely than others to have readily available documentation. The Government is equally concerned to address the risk that the new checking duty will inadvertently result in unlawful discrimination.

“The legislation will include provision for a statutory non-discrimination code providing clear guidance on the steps landlords must follow to avoid unlawful discrimination, which may be taken into account by tribunals considering claims of unlawful discrimination. In addition, the Government will put into place administrative support and guidance for landlords and will continue to work across the sector to embed the new procedures and raise confidence among landlords that they can continue to provide accommodation without risk.”²²

The government clearly considered the statutory non-discrimination code was sufficient mitigation, despite the strong concerns raised. The consultation did result in the Home Office agreeing a broader set of documents to be seen as sufficient evidence of a person's right to rent, adding evidence such as an employer's reference, letter from an educational establishment, a credit check, a reference from a UK national, or a letter from the Prison or Probation Service, or the Armed Forces, to be provided alongside a birth or adoption certificate, or a police report confirming personal documents had been stolen.²³

The Home Office published a PES as part of its consultation response, which reiterated the proposals for a statutory code of conduct, and a code of practice to help landlords make the checks by listing suitable documents. There was a similar response to the risk identified that some older people might find it difficult to provide original documents. Again, the government sought to mitigate this by agreeing a range of documents which could demonstrate the right to rent. It did not specifically mention the Windrush cohort, or that there was a definable group (defined by reference to national and ethnic origin, who were most likely to be black) who would be particularly disadvantaged.²⁴

²² Home Office, Response to Public Consultation “[Tackling illegal immigration in privately rented accommodation](#)”, October 2013, p6

²³ House of Commons Public Bill Committee, [Immigration Bill, oral evidence session 29 October 2013](#)

²⁴ [The Equality Act 2010 Chapter 1: Public Sector Equality Duty](#)

The Runnymede Trust, an independent race equality think tank, in its response to the consultation said:

“6.2 Runnymede does not believe there has been adequate consideration of the Equality Duty and due regard has not been given to the impact of these potential changes on ethnic minorities. Unfortunately we have now come to the view that Government consultations are increasingly unable or unwilling to address race equality or show due regard to the need to foster good relations.”²⁵

By the same token, the European Convention on Human Rights (ECHR) memorandum²⁶ acknowledged there was a potential engagement of Articles 8 and 14 (respect to family and private life, and prohibition of discrimination). But this only identified an impact on those who the policy was intended to affect, and their immediate families, ignoring the potential interference with the lives of those the policy was not aimed at. Despite a lack of support from respondents and very clear concerns over the risk posed by the scheme, the government proceeded to introduce the Bill.

The Immigration Act 2014

The Immigration Bill was laid before Parliament²⁷ on 10 October 2013, the same day as the government’s response to the consultation was published.²⁸ The Home Secretary said during the debate:

“We will make it easy for homeless and vulnerable people to prove their entitlement through simple documentary requirements. We will have a statutory code of practice, making it clear that if landlords racially discriminate they will be breaking the law.”

MPs weren’t persuaded, though, and raised a number of concerns in the second reading in the House of Commons.²⁹ Labour MP Heidi Alexander said:

“Where the Bill is undoubtedly ugly is in its unworkable and unrealistic proposals to outsource the job of immigration officials to letting agency staff and private landlords up and down the country. Such a change in the law may or may not contribute to creating the Home Secretary’s ‘hostile environment’, but it undoubtedly risks inflaming racial tensions and smacks of the era in which landlords in the UK put signs above their doors proclaiming ‘No blacks, no Irish’.”

SNP MP Pete Wishart said:

“However, it is also inventive, because it covers social services and health and tells landlords to become immigration officers. This Bill will turn race relations into a nightmare, bringing suspicion based on ethnicity into our social services and the housing market.”

25 Runnymede Trust response to “[Tackling illegal immigration in privately rented accommodation](#)” 19 August 2013

Labour MP Diane Abbott:

“The effect of the Bill will be that when people such as my son and the children of some of my colleagues go to see a flat, they will be told that the flat is taken. Landlords will not want to take the chance of letting to someone who ‘might be’ an illegal immigrant. I do not believe Ministers understand how it feels to knock on a door and be told, blatantly wrongly, that the flat or room is taken. That is what will happen as a consequence of the Bill.”

Liberal Democrat MP Sarah Teather:

“Perhaps the most absurd proposal in the Bill is that on landlords’ checks. I have listened to some of the discussion on that and there is some naivety about the property market in London in terms of understanding what it means to try to rent a property and the difficulty of getting in there first. If there is any doubt whatever about someone’s immigration status, there is no way they can rent in my constituency. Many people find it difficult to prove their documentation.”

Labour MP and Chair of the Home Affairs Committee Keith Vaz:

“I am concerned that ordinary landlords who are not trained in immigration policy will simply not know the difference between leave to remain, indefinite leave and other Home Office statuses placed on non-British passports. Most landlords, when they grant tenancies, already ask for copies of people’s passports. The risk is that the only people who will be able to get accommodation are those with British passports. That means that a lot of people with a perfect right to remain here will not be able to get accommodation because landlords are too scared or do not understand the law.”

Despite these criticisms, the Immigration Bill passed its second reading in the Commons by the wide margin of 303 votes to 18, with the Labour Party expressing opposition in debates, but choosing to abstain from voting. The Bill moved on to the committee stage.

Further concerns were raised in written submissions to the MPs examining the Bill during committee stage.³⁰ The Immigration Law Practitioners Association said:

“The consultation paper stated:

‘34. Many landlords will meet a number of prospective tenants. There is no requirement to check the immigration status of all of them—only the people with whom the landlord actually proceeds. Checks should be performed on a non-discriminatory basis (ie without regard to race, religion or other protected characteristics as specified in the Equality Act 2010) on all adults who will be living at the property.’

“This paragraph perfectly encapsulates the risk that racial profiling will take place before a tenancy is offered.

“The higher the stakes on compliance the more landlords and landladies are likely to take a risk adverse approach and discriminate against migrant tenants, black and ethnic minority tenants and persons, including British citizens, who do not hold a UK passport.

30 House of Commons Public Bill Committee, [Immigration Bill written evidence](#), November 2013

“As to discrimination on the grounds of race, this may be very difficult to prove unless advertisements bar particular nationalities as there are a multitude of reasons that an individual can advance for not sharing their home with another person and the burden of proving that it was not one of these but the lodger’s nationality that led to the refusal of a particular lodger or licensee (or tenant) is a heavy one. A claim against a landlord or landlady for discrimination is brought in the county court but no statistics are available to show how often such cases succeed. We suggest the Home Office obtain and publish information on whether there have been any and/or any successful claims against landlords and landladies of small premises under the Equality Act 2010.”

The review has seen nothing to indicate, however, that the government took on board ILPA’s suggestion to look at how successful legal action was. But there was some evidence that alternative mechanisms for challenging race discrimination in the housing market weren’t working. The *Guardian* reported in October 2013 that, over the previous three years, the Property Ombudsman (an alternative dispute resolution service for consumers and property agents) had undertaken only two investigations into complaints of racism and upheld neither.³¹

The trade union UNISON raised several concerns:

“21. UNISON’s migrant worker and BME members have expressed concerns that whatever their immigration status, they will come under increasing scrutiny and pressure when accessing any number of services as a result of the Immigration Bill. They are already likely to face discrimination when trying to access decent housing but private landlord checks will worsen their situation. Whether the documentation is readily available or not it all rests upon the confidence of landlords that they can assess these documentation [sic] as legitimate and the willingness of landlords to accept them as tenants. Landlords who choose to accept tenants by pre-screening them for nationality and race will not face any penalty or challenge.

“22. While the Home Office proposes to formulate rules and guidance to avoid this and help landlords and tenants ‘easily establish legal status and identity’, UNISON is deeply concerned that landlords will be rewarded and not penalised by the Home Office proposals for not renting accommodation to anyone merely perceived as being foreign nationals.

“23. The Home Office acknowledges the risk posed to women escaping domestic violence but states that the Home Office advice service would “assess the need to allow a tenancy to proceed pending production of evidence”. This means that any woman fleeing violence and without access to her papers would have to disclose this fact to private landlords. It is likely that the landlord would exclude such tenants for all the reasons outlined above, particularly the risk that if papers are not obtained, they would have to undertake the letting process again. While women’s refuges are exempt, the crisis being experienced by women’s services across the UK, particularly those specialist services aimed at BME women means that such support is less and less accessible to the women who require them.

“24. One of the stated aims of the proposals is to end the exploitation of migrants of irregular status by unscrupulous landlords. However, it is highly likely that these proposals will exacerbate this, not just for migrants of irregular status but for all migrants and any people perceived to be migrants who might now find it harder to access housing.”

31 The *Guardian*, “[Estate agents discriminate against black people, finds BBC investigation](#)”, 14 October 2013

In its evidence, the homelessness charity Shelter referred to the BBC investigation mentioned above:

“Racial discrimination in accessing rental accommodation already happens. A recent investigation carried out by the BBC showed that Letting agents in London are prepared to discriminate against would-be tenants on the grounds of race.”

A number of witnesses also gave evidence in person to the committee about their concerns.³² Caroline Kenny, of the UK Association of Letting Agents, said:

“We are concerned that it might have an impact on ethnic minorities, irrespective of their immigration status. That is a major concern for us.”

Carolyn Uphill, Chair of the National Landlords Association:

“I think what you are inquiring about is whether there will be any racial discrimination, which would be a very sad consequence of the Bill.

“If people do not have a passport there will need to be consideration of other documents. The greatest risk is that you have to remember that landlords are in business to let their property as quickly as possible, because while it is empty they are running up overheads. So the landlord is going to be tempted to take the easiest option.

“In a situation where there is high demand for rented property and several people are after that particular property, if people come round for viewing holding out their indigenous British passport, and there is obviously nothing else to inquire about, that person is going to get priority for that property.”

Katharine Sacks-Jones, Head of Policy and Campaigns at homelessness charity Crisis:

“We have concerns overall around the Bill. The provisions relating to access to housing will make it more difficult for homeless people to find accommodation and could lead to discrimination by landlords against people who appear to be non-British. That could be that they do not have a British accent or they are not white. We would be concerned, particularly in buoyant property markets where properties get let incredibly quickly and where landlords have the option of letting to different tenants, that they will favour the tenants whom they can immediately identify as being British. So we have general concerns. We do think that there are steps that can be taken and amendments brought that would improve the provisions in the Bill.”

Rachel Robinson, Policy Officer for Liberty:³³

“The Bill would bring immigration control into our communities. We are concerned about the implications of that for everybody, but particularly for people with certain characteristics that, in the minds of some, make them appear less likely to be British. We are concerned about the impact of the proposals, particularly the landlord provisions, on race relations. In a difficult rental market, where landlords are trying to cover their backs or get the quickest, most hassle-free rental, anybody who has certain characteristics that landlords associate with not being British will effectively be overlooked for housing. We should not underestimate the kind of tensions that that could create in our communities.”

³² House of Commons Public Bill Committee, [Immigration Bill oral evidence session](#), Hansard 31 October 2013

³³ House of Commons Public Bill Committee, [Immigration Bill, oral evidence session](#), 29 October 2013

Saira Grant, Legal and Policy Director for the Joint Council for the Welfare of Immigrants:

“The Government, in their response to the consultation, accept that the provisions have the potential to cause significant discrimination and that vulnerable groups will be affected. What they say in response, however, is that a code of conduct will be created, but that code will have no civil or criminal liability attached. If there is to be one change, and if you accept that provisions will cause discrimination and that people are meant to follow a code, that code must have teeth. Expecting people to adhere to a code for which there are no consequences for failing to adhere to is a meaningless proposal.”

During the committee stage, there were also criticisms from MPs.³⁴ Labour MP David Hanson referred to evidence from the Residential Landlords Association:

“It [The RLA] has concerns about unintended discrimination against individuals who are not British citizens but have a right of abode in the United Kingdom. The Minister helpfully told me that some 49 million British citizens have a passport. That means that some 11.5 million British citizens do not. Again, if I were—dare I say it?—a black Briton who did not have a passport, although there is a draft code of practice on discrimination, would not a landlord find it easier to rent to a white Briton with a passport than to me? Those are serious issues that need to be tested in a pilot, not in a phased roll-out. I want the Minister to address those concerns.”

Labour MP Meg Hillier said:

“There is no real guidance at all on how the Home Office will evaluate the proposal’s impact practically, or, from my point of view more seriously, on how it will evaluate whether there are landlords who discriminate on race grounds. There are so many caveats in that code that one can ride a coach and horse through it. Landlords will continually discriminate against people, but who will complain? For those who are vulnerable and trying to find a home, it is probably not at the top of their list to go through all the processes to complain about race relations. A lot of people just live with it. They should not, but they do—though if they find me I will take it up for them.”

“Colleagues have already expressed concern that landlords and agents will simply discriminate between prospective tenants. Ethnic minorities already find it difficult to rent housing and they could be further discriminated against. We know that demand for rental properties is going up.”

Concerns about the potential for race discrimination were also raised by the Parliamentary Joint Committee on Human Rights, who in their eighth report for the session said:

“88. We welcome the draft Codes of Practice and the Government’s commitment to monitor for evidence of discriminatory behaviour in the private rented sector. However, we are aware of recent reports that, under the current law, letting agents continue to discriminate on racial grounds notwithstanding the legal prohibition on such discrimination contained in the Equality Act. A Runnymede Trust survey found that more than a quarter of black and Asian respondents have felt discriminated against when trying to rent private accommodation and a BBC investigation (for the ‘Inside Out London’ programme) found that a number of estate agents in London were willing to cooperate with a landlord who professed a racist desire to ensure that their property was not rented to black people.

34 House of Commons Public Bill Committee, [Immigration Bill committee stage](#), 7 November 2013

“89. In our view, the provisions in the Bill on access to residential tenancies heighten the risk of such discrimination on racial grounds against ethnic minority prospective tenants, both UK citizens and foreign nationals with permanent residence, who are entitled to rent, notwithstanding the fact that such discrimination is unlawful under the Equality Act. We ask the Government not to commence these provisions until the Equality and Human Rights Commission and the Government Equalities office are satisfied that there are sufficient safeguards in place to prevent such discrimination from arising in practice. We recommend that the EHRC work closely with the Government Equalities Office, landlords' representatives and local authorities to monitor for evidence as to whether such unintended consequences of the provision are materialising in practice, and that the Government keep the provision under careful review in the light of the evidence produced by such monitoring.”³⁵

Once the Bill was out of committee stage and back for its third reading in the House of Commons, Diane Abbott said:

“But has she [Home Secretary] given no thought to the effect that her measures that are designed to crack down on illegal immigrants could have on people who are British nationals, but appear as if they might be immigrants?”³⁶

However, at the third reading, the Immigration Bill passed by 296 votes to 16 with Labour abstaining again, and moved to the House of Lords,³⁷ where Lord Taylor of Holbeach introduced the bill on behalf of the government, saying:

“We will protect the vulnerable. We recognise that vulnerable people often possess less documentation to demonstrate a right to rent, so we have broadened the documents which prospective tenants can provide to manage this. We have exempted hospitals, hospices and care homes for the elderly as well as hostels and refuges for victims of violence and homeless people; they are all exempt. We will have a statutory non-discrimination code to ensure compliance with equality laws. Finally, we have committed to a phased rollout so that we do this safely and learn as we go.”

Nevertheless, the promise of a statutory code of conduct and the phased roll-out did not ease the fears of parliamentarians. Cross-bench peer Lord Best said:

“There is a series of dangers and hazards in giving landlords these new responsibilities. Many private sector landlords will turn away legal migrants because they do not want the hassle and delay of having to make these extra checks. As I understand it, it will not be an offence simply to fail to check someone's status, but only to fail to check the status of someone subsequently discovered to be an illegal immigrant. So if the potential tenant is very obviously not a migrant, no extra checking will be carried out. Many landlords will play safe and avoid all applicants who just might be migrants, including the legitimate ones. Indeed, UK citizens without a passport—not an uncommon position for those on low incomes—may be rejected by landlords not wishing to take any chances. Already we know that nearly three-quarters of all landlords will not let to anyone in receipt of benefits. So this measure means even greater pressure on vulnerable tenants, many of whom are likely to end up with the exploitative landlords who all of us want to see driven out of business but who will ignore the law on this, as on many other counts.”

35 Joint Committee on Human Rights, “[Eighth Report, Legislative Scrutiny: Immigration Bill](#)”, December 2013

36 House of Commons [Third reading of the Immigration Bill](#), Hansard 30 January 2014

37 House of Lords [Second reading of the Immigration Bill](#), Hansard 10 February 2014

Labour peer Baroness Warwick of Undercliffe said:

"Private landlords are not immigration lawyers and I am concerned that, faced with a very wide range of documents, they will simply let accommodation to people who appear to be British. This could lead to discrimination on racial grounds which could affect a wide range of people who are lawfully in this country."

Labour peer Baroness Lister of Burtersett stated:

"The Joint Committee on Human Rights, of which I am a member, has likewise cautioned that a disqualification from renting or occupying private sector accommodation on grounds of immigration status will heighten the risk of wider, even if unintentional, racial discrimination in lettings. Moreover, it could give rise to homelessness in the case of people who have no right to remain in the UK but who face genuine barriers to leaving. This potentially risks breaches of the right not to be subject to inhuman or degrading treatment under Article 3 of the European Convention on Human Rights."

Liberal Democrat peer Baroness Hussein-Ece said:

"I have been told that many landlords who will be asked to do the job of immigration officials may well bypass taking part in the bureaucratic checks—they might be too expensive or time-consuming, or the landlords may not want to risk fines. If someone looks or sounds like a person from an ethnic minority or a migrant of dubious background we could well end up with a situation of ethnic profiling that our long-standing equalities legislation was designed to end. This would be extremely damaging to race relations and community cohesion."

There were more than 30 amendments proposed during the passage of the Bill to the Right to Rent scheme. They included one tabled by Labour Peer Lord Rosser that sought to remove a whole section and replace it with one that would enable the Home Secretary to run a pilot, and require primary legislation for any further expansion of the scheme. This amendment was unsuccessful, and the Bill passed the second and third readings in the House of Lords as well, being granted Royal Assent, with minimal amendments, on 14 May 2014.

Phase 1

On 1 December 2014, phase 1 of the scheme came into effect, rolling out the Right to Rent provisions of the 2014 Act to the five local authorities of Birmingham, Dudley, Sandwell, Walsall and Wolverhampton. The civil penalty level was set at £80 per person without the right to rent found lodging in a private household, and £1,000 per person in privately rented accommodation – rising to £500 and £3,000 if the landlord had already had a civil penalty.

A code of practice was published to support the scheme which again included a broader range of documents than after the consultation. Foreign nationals could use an endorsed passport or non-biometric immigration status document, for instance, while EEA nationals could use a Home Office registration certificate. British nationals could use letters from government departments or local authorities, a Disclosure and Barring Service Certificate, or a firearm or shotgun certificate, or a passport showing that the holder has the right of abode in the UK.³⁸ This guidance was alongside the statutory code of practice on avoiding unlawful discrimination,³⁹ accompanied by the Landlord's Checking Service, and helpline. A communication plan raised awareness, heavily promoted by the five local authorities involved and the landlord and letting agent bodies on the Landlords Consultative Panel (LCP). Indeed, one LCP member told this review that they felt the professional bodies were brought in to communicate, rather than to shape the direction of, the policy. Phase 1 was intended to “test” the scheme to allow lessons to be learned before rolling out to a wider area following an evaluation.

The coalition

The Immigration Bill was introduced to Parliament during an unusual time for UK politics – a coalition government, the first since World War II and the Chamberlain and Churchill War Ministries. The 2010 election did not produce a single party with overall control of the House of Commons, resulting in the largest party – the Conservatives, with 306 seats – entering a coalition agreement with the Liberal Democrats, with 57 seats. Inevitably, the differing political ideologies led to some tensions in policy development and implementation. During the development of the Right to Rent scheme, Liberal Democrat ministers David Laws MP (Minister of State at the Cabinet Office) and Vince Cable MP (Secretary of State for Business, Innovation and Skills) raised concerns. They covered how the scheme would affect vulnerable people who might find it hard to provide the necessary documentation, and the impact of those in social housing taking in lodgers to avoid the impact of the loss of the spare room subsidy (also known as the “bedroom tax”). These concerns appear to have been shared by Conservative Immigration Ministers, who sought to reassure their coalition partners, albeit not entirely successfully, and discussions and correspondence between ministers was frequent.⁴⁰ Even among the Conservatives, though, strength of feeling varied, with one Special Adviser telling Home Office officials in 2012 that their proposals were not as radical as they would like.

38 Home Office, “[Code of practice on illegal immigrants and private rented accommodation for tenancies which started before 1 February 2016 in Birmingham, Dudley, Sandwell, Walsall or Wolverhampton](#)” (archived for reference only), May 2016

39 Home Office, “[Code of Practice for Landlords Avoiding unlawful discrimination when conducting ‘right to rent’ checks in the private rented residential sector](#)”, October 2014

40 For example, between the Conservative Immigration Minister and the Liberal Democrat Minister of State at the Cabinet Office

Conversely, according to David Laws, during one discussion the then Secretary of State for Communities and Local Government, Conservative MP Eric Pickles, was explicit about the risks of the proposals:

“In [his book], [Laws] recalls that just before a meeting at Downing Street, an official warned him: ‘The PM is unhappy with Eric Pickles [the then Communities Secretary and boss of then housing minister Grant Shapps] over his proposals on private landlords which he doesn’t think are nearly tough enough’.”

“Laws said Pickles told Cameron: ‘Prime Minister, can I be blunt with you?’

‘This is a seriously bad idea. Checking immigration papers is really hard. Many of them, you will be shocked to know Prime Minister, are frankly forged.

‘What are we asking private landlords to do – act as an arm of the immigration service?’

‘I am very dubious. We could end up in a situation where anyone foreign-looking cannot get into private rented accommodation because landlords won’t risk getting it wrong.

It could be very dangerous and divisive.’

“Laws said he had exactly the same concerns. Few took Cameron’s side, even Tories.”⁴¹

Laws’ recollection is supported by the paper submitted by Grant Shapps MP to the Inter-Ministerial Group on Migrants’ Access to Benefits and Public Services, Tackling Illegal Migration in Privately Rented Homes of 8 February 2013. The proposed option was “strongly not recommended”, with two concerns being that the scheme would bring:

- “Additional burdens for tenants – having to produce evidence of their status – impacts on labour mobility for working households and on vulnerable households;
- Equalities issues: landlords may look less favourably on tenants who are not ‘obviously British’, because it means more work / cost / risk;”⁴²

In March the Prime Minister gave a speech announcing that private landlords would be required to check the status of their tenants.

There was also disagreement between the coalition partners on how the scheme should be rolled out. The Liberal Democrats wanted expansion after phase 1 to follow the affirmative procedure (meaning it is always subject to a vote in Parliament) while the Conservatives wanted it to follow the negative procedure (where it becomes law when the Minister signs it and lays it in Parliament, unless parliamentarians “pray” against it to force a debate and a vote). Initially the Liberal Democrats supported the need for the affirmative process after the evaluation. This would make sure the scheme could be fully debated in Parliament. One Home Office official complained that Vince Cable’s concern about phase 1 being a pilot rather than the first stage of a national roll-out (as well as the location chosen for phase 1)⁴³ “effectively blocks the roll out.”⁴⁴ But the Liberal Democrats were broadly satisfied with the proposed evaluation methodology, although noting more detail would be provided as the plans developed.

41 Property Industry Eye “[It was the PM himself who wanted Right to Rent checks](#)”, 21 March 2016

42 Cabinet Office, Internal paper, Inter-Ministerial Group on Migrants’ Access to Benefits and Public Services, held 8 February 2013

43 Department for Business Innovation & Skills, Letter from the Secretary of State to the Immigration & Security Minister, 30 June 2014

44 Home Office, Internal email, 1 July 2014

Ultimately, the roll-out from phase 1 to phase 2 was subject to the negative procedure, with the Home Office concluding the affirmative process would be disproportionate, and “would undermine the Prime Minister’s strong public commitment to proceed with the scheme.”⁴⁵

In trying to use the affirmative process, the Liberal Democrats did – unsuccessfully – try to secure more parliamentary scrutiny of the scheme. That might have allowed a stronger challenge to the outcomes from the Home Office evaluation and those from other organisations (of which more later). But even if the affirmative procedure had been used, it’s difficult to establish whether anything would have turned out differently.

The Landlords Consultative Panel

One of the commitments given during the passage of the 2014 Act was the creation of the Landlords Consultative Panel (LCP). It was a forum made up primarily of representatives from the housing sector, the local authorities where phase 1 of the scheme would take place, other government departments, Universities UK, the Equality and Human Rights Commission, and the homelessness charity Crisis. University College London joined in January 2015, with the London Borough of Newham and the Greater London Authority, homelessness charity Shelter, and Your Move estate agency joining after the publication of the phase 1 evaluation and the announcement of the roll out to the rest of England. One notable omission from the panel was any organisation that specialised in immigration and migrant issues, with the overwhelming majority being private rental sector trade bodies. This indicates that the concern about the operation of the scheme was to avoid interfering with the normal operation of the private rental sector. The LCP was co-chaired by the Minister for Immigration, and Lord Best, a crossbench (independent) member of the House of Lords with extensive experience in the housing sector.

LCP members expressed mixed views when they spoke to our review. One felt that panel meetings were “okay”, and that they could “find out what was going on, say things and press your views on ministers”. But most were more negative. Several members commented that no-one on the panel (other than the Home Office) was in favour of the scheme but felt it was necessary to be a part of it to try and make the argument for being pragmatic, and to highlight areas where they could see anomalies. However, none who submitted evidence to the review thought their presence significantly altered the policy, with one saying the only real change they could see was in the list of documents that people could use to demonstrate the right to rent. Stronger criticism included one member saying the other government departments present “might as well have not been there”, with the Home Office very “clearly running the show”. Similarly, representatives of the private rental sector felt the Home Office’s interest in them was very much linked to helping with the communications, rather than influencing the elements of the scheme. One person also said that concerns were raised by members that the proposals would exacerbate an already discriminatory market. Another one felt that the Home Office simply didn’t understand the rental sector, thinking it was simpler than it was, and that they didn’t really appreciate the enormity of what they were proposing, despite their panel of experts.

⁴⁵ Home Office, Internal paper “Options for phased implementation landlords”, 27 September 2014

The role of the LCP was also examined in the Independent Chief Inspector for Borders and Immigration's inspection of the Right to Rent scheme. This said the LCP was neither an implementation, governance nor steering group, but acted more as a sounding board for the Home Office.⁴⁶ The ICIBI did not think this, in itself, was necessarily an issue, but the report identified what seems to be a significant gap between the aspiration of the LCP and the reality, with members' views not really being listened to on issues like the outcomes of the evaluation of phase 1, and the roll-out of phase 2. One member of the LCP quoted in the report identified the announcement of the roll-out of phase 2 and the introduction of the criminal sanction as demonstrating the Home Office's determination to proceed as it saw fit.

This is reflected in the minutes of the LCP. The standard format was for Home Office officials to present on a number of topics – such as communications, enforcement, evaluation, or guidance – and the panel to ask questions or raise concerns. The Home Office would answer questions, but there is nothing in the minutes of meetings until the end of 2016 to show a particular shift on anything in relation to the concerns raised. The minutes do reflect work done in subgroups (for which there are no minutes), in particular concerning the design of the evaluation scheme and the guidance documents, which mirrors what participants have said.

The workings of the LCP also lacked transparency. On 15 August 2016, the Joint Council for the Welfare of Immigrants (JCWI) submitted a Freedom of Information Act request,⁴⁷ which included a request for copies of ministerial minutes on the Right to Rent scheme. The request was initially refused because providing the information would have exceeded the permitted costs. But it was acknowledged that copies of the Landlords Consultative Panel minutes were held and providing them would not exceed the cost limit. However, the Home Office declined to release them, as they were due to be published imminently, although the Home Office could not say when. The Independent Chief Inspector for Borders and Immigration's inspection into the Right to Rent scheme also recommended this, yet ministers rejected this recommendation, deciding not to publish the minutes. It's unclear why the Home Office would undertake to publish them imminently, thus exempting them from the FOI request, and then not do so.

Joint Council for the Welfare of Immigrants' report No Passport, No Home

On 3 September 2015 the JCWI published their own evaluation of the impact of the Right to Rent scheme phase 1, called No Passport, No Home.⁴⁸ Their evaluation included these headline figures:

- 42% of landlords said the scheme had made them less likely to consider someone who does not have a British passport, and 27% were reluctant to engage with those with foreign accents or names. At the same time, checks were not being made for all tenants, but were directed at people who appeared "foreign"
- 50% of respondents who had been refused a tenancy felt discrimination was a factor in the landlord's decision
- 65% of landlords hadn't read or hadn't fully understood the Codes of Practice, which were the Home Office's "panacea" to the issue of race discrimination

46 Independent Chief Inspector of Borders and Immigration, "[An inspection of the "Right to Rent" scheme](#)", March 2018

47 Home Office response to Freedom of Information request "[Operation and monitoring data of the 'right to rent' scheme](#)", 15 August 2016

48 The Joint Council for the Welfare of Immigrants, "[No passport, no home](#)", September 2015

The JCWI was explicit that their research demonstrated instances of discrimination against tenants, including BME tenants, who did have the right to rent in the UK, and that the safeguards against discrimination were insufficient. The JCWI's first recommendation was to rethink the scheme. Others included a full and public evaluation before expanding the scheme, broader consultation and more phased roll-outs to test the scheme in different housing markets. They also recommended putting in place policies to mitigate the impact on certain groups, and make sure there were appropriate avenues for redress where there was discrimination, highlighting the cost and difficulty of litigation under the Equality Act 2010 (an issue more recently considered by the Woman and Equalities Committee⁴⁹). As this evaluation was published before the Home Office's, and before the laying of the Immigration Bill 2015, parliamentarians relied heavily on it in parliamentary debates to challenge the government's need to expand the scheme and introduce new powers.

Home Office Evaluation of Phase 1

The Home Office's evaluation of phase 1 of the Right to Rent was published on 20 October 2015. This was the first day of the House of Commons Public Bill Committee's first sitting of the next Immigration Bill, and coincided with the laying of a Written Ministerial Statement extending the scheme to the rest of England.⁵⁰ The evaluation was conducted by Home Office Science, drawing on research by themselves, and private research agencies.

The evaluation:

“reports primarily on the impact of the scheme (on illegal migrants' access to housing, actions against landlords who rent to illegal migrants, the impact on landlords and agents, impacts on the rental market and any unintended consequences) and includes content on the process of implementation.”

And the outcome was broadly positive. Of particular interest were the headlines on discrimination:

“The mystery shopping research found that there were no major differences in tenants' access to accommodation between phase one and the comparator area.

“However, a higher proportion of Black and Minority Ethnic (BME) shoppers were asked to provide more information during rental enquiries in the phase one area.

“Despite these differences during rental enquiries, BME shoppers in the phase one area were more likely to be offered properties, compared with White British shoppers.

“Together this suggests there was no evidence of any difference regarding the final outcome from rental search.

“However, comments from a small number of landlords reported during the mystery shopping exercise and focus groups did indicate a potential for discrimination.”⁵¹

49 Woman and Equalities Committee, “Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission”, July 2010

50 Home Office, Written Ministerial Statement, “[Extension of the Right to Rent scheme](#)”, Hansard HCWS253, 20 October 2015.

51 Home Office, Research Report 83, “[Evaluation of the Right to Rent scheme](#)”, October 2015 p5

The evaluation reported concern about the required documentation checks:

“A small number of stakeholders being interviewed raised a concern that a potential unintended consequence of the scheme may be that the documentation requirements could present difficulties for some British citizens with limited documentation, for example if not having a passport or driving licence. One housing association respondent in an interview reported experiences of where this issue had occurred.”⁵²

Alongside evidence from a panel of experts (presumed to be the LCP), the evaluation was presented by the Minister of State for Immigration, James Brokenshire, in the Written Ministerial Statement as sufficient justification for the decision to expand the scheme to the rest of England.

From the outset, the government specified that the evaluation had to look at whether or not the scheme caused discrimination. Indeed, when Home Office Science put up a submission on how they proposed to evaluate phase 1 on 6 June 2014, the Immigration Minister’s main concern was whether it would capture robust enough data to assess the scheme’s impact on discrimination and vulnerable groups, indicating this was certainly at the forefront of his mind.

Similarly, in August, when the evaluation was taking shape, the Minister sought reassurance that all steps had been taken to prevent discrimination, and to make sure landlords weren’t allocating properties on the basis of “risk and colour”. The advice from civil servants focused on the positive outcome of the evaluation, revising the guidance for landlords, including tenants in the communications strategy to direct them to sources of help if they felt they’d been discriminated against, as well as revising the list of acceptable documents to prove a person’s right to rent. The advice also included the code of conduct on avoiding discrimination. It was sent to the Equality and Human Rights Commission and Northern Ireland Human Rights Commission for comments and saw significant amendments as a result. What is not clear though is whether these two organisations were satisfied that a code of conduct was enough to mitigate against discrimination.

Home Office Science tried to reassure the Minister about the usefulness of the mystery shopper element of the evaluation in spotting discrimination, showing how it had been used before by the Home Office and elsewhere, including where it helped to identify discriminatory behaviour. They also explained the benefits and limitations of the focus groups exercises, again with examples of where they’d been used previously to evaluate immigration activities.

The department’s commissioned evaluation looked to use a sample of 60, which, according to Home Office Science, would be large enough to identify a statistically significant difference of 17 percentage points. So, if in the control area five “activities” out of 100 were found to demonstrate evidence of discrimination, the phase 1 evaluation would need to see more than 22 “activities” demonstrating discrimination to be certain it was not caused simply by random chance in the sample used. Using a larger sample size of 160 would have reduced the required percentage point difference to 10 – so 15 “activities” would be enough to show a statistically significant difference, rather than 22 (albeit further research would still be needed to show the Right to Rent scheme caused the difference – correlation not being the same as causation). However, this would have increased the cost of the evaluation from £52,000 to £88,000. The lower number, which required a larger difference to be observed for it to be statistically significant, was chosen to keep the cost of this element of the research to a minimum, while still being able to give an indication if it provided evidence of discrimination.

52 Home Office, Research Report 83, “[Evaluation of the Right to Rent scheme](#)”, October 2015 p6

Particularly interesting was Home Office Science saying that one group likely to be considered “vulnerable” under the evaluation methodology was “older people who arrived in the UK many years before and do not hold a passport or current immigration documentation” – very much a description of the Windrush generation. But the evaluation looked at this through the eyes of the landlord:

“Overall, 83 per cent of landlords (95 of 114 responses) said they were not aware of any concerns by tenants about the Right to Rent scheme. Of the 19 landlords who indicated that there might be some concerns for tenants they specified that vulnerable groups might be disadvantaged because of not having the required documentation (9 out of 18).⁵³

“And:

“In total, 52 per cent (59 of 114) of respondents to the landlords survey said they had concerns about the scheme. These concerns included vulnerable groups being disadvantaged because they did not have the required information (25 out of 59);”⁵⁴

We heard from some of those involved that the evaluation of phase 1 was the one area where LCP members felt they’d had a real impact, and that if they hadn’t been so forceful, the evaluation would have been much less visible. Generally, though, some LCP members who spoke to this review considered that it wasn’t independent enough, and that, in their view, it brushed aside evidence of discrimination. Nor did it necessarily focus on the right things. One member said the success criteria used in the evaluation didn’t actually measure whether the scheme achieved its aim of effectively restricting access to the private rental sector market. Another expressed the view that Home Office staff didn’t know anything about the sector and had little experience of running mystery shopper-based research, and so had to seek advice from Crisis. This particular criticism was amplified in the Independent Chief Inspector for Borders and Immigration’s inspection into the Right to Rent:

“9.24 Responding to the inspection’s ‘call for evidence’, the Chartered Institute of Housing (CIH) questioned the value of the Phase 1 ‘mystery shopper’ exercise. CIH pointed to the fact that Crisis had pulled out of advising the Home Office on the ‘mystery shopper’ activity because of its concerns about comparing the experience of a vulnerable migrant applying for a tenancy with, for example, a ‘middle class’ black person of British nationality.”⁵⁵

Not all criticism was aimed at the evaluation itself. LCP members also raised concerns at the time that phase 1 was too short to draw any useful conclusions, that the pilot area wasn’t diverse enough to flush out all the potential issues and that it didn’t test renewals (where a landlord or agent has to recheck the right to rent of a person with limited leave). And they feared that, regardless of how phase 1 turned out, the expansion of Right to Rent was “a done deal” – a point with which it was difficult to argue when the expansion was announced.

53 Home Office, Research Report 83, “[Evaluation of the Right to Rent scheme](#)”, October 2015 p30

54 Home Office, Research Report 83, “[Evaluation of the Right to Rent scheme](#)”, October 2015 p36

55 Independent Chief Inspector of Borders and Immigration, “[An inspection of the “Right to Rent” scheme](#)”, March 2018.

A briefing for the Race Equality Foundation in 2015 also took issue with the department's evaluation. It said the terms of reference, research questions, the way the research was undertaken, the evidence it collected and the review report itself were all deficient. And it said the evaluation didn't pay enough attention to the Public Sector Equality Duty arising from the Equality Act 2010.⁵⁶ The briefing also highlighted that the evaluation didn't consider the evidence already available, which would have included the JCWI report published the previous month, as well as the Legal Action Group's report *Chasing Status: If Not British, Then What Am I?*⁵⁷ published in October 2014. This included case studies of long-term lawful migrants caught by the requirement to show status to access employment. At the time, the Home Office's response was defensive, according to the *Guardian*:

"When these people are brought to our attention we will consider their immigration status," said a spokesman. "However, it is up to anyone who does not have an established immigration status to regularise their position, however long they have been here. All applications are considered in line with the immigration rules and nationality legislation, taking account of any compelling or compassionate circumstances."⁵⁸

The Immigration Law Practitioners Association raised similar concerns in their evidence to Parliament during the passage of the Immigration Act 2016. They cited small sample sizes, adding that those samples included a high number of landlords who hadn't taken on new tenants during phase 1, and tenants who hadn't moved properties, and so hadn't had to operate under the new scheme. They also highlighted that, in the evaluation, only 29% of landlords had read the Code of Conduct on avoiding discrimination, calling into question its usefulness in making sure landlords acted lawfully. Specific concerns on the evaluation's treatment of discrimination were:

"The report inadequately addresses the risk of discrimination. The analysis is based primarily on a mystery shopper exercise with an unclear methodology, unclear aims and small sample size. The exercise only looked at discrimination on the grounds of race, which is limited.

"There is no adequate assessment of the Government's obligations or the obligations of Local Authorities under the Public Sector Equality Duty to have due regard to the need to eliminate discrimination and foster good relations in carrying out their functions.

"Evidence of discrimination reported is downplayed, despite having occurred. Given the gravity of discrimination in this sphere, and the risk of discrimination acknowledged by the Government, these issues must be addressed and evaluated properly before any extension of the scheme."

However, the Home Office stood by their evaluation, with one senior official telling the review:

"This was a comprehensive evaluation involving techniques, such as a mystery shopping exercise, undertaken by independent research contractors, the methodology of which we would argue was more rigorous than that of the Joint Council for the Welfare of Immigrants. The mystery shopping research did not find evidence of systemic discrimination against black, minority ethnic, would be renters. Moreover, none of the BME mystery shoppers felt discriminated against as a potential renter in the 166 paired encounters that took place during the research."

56 Equally Ours, "[The residential tenancies provisions in the Immigration Bill 2015/16 and the review of the Right to Rent scheme](#)", October 2015

57 Legal Action Group, "[Chasing Status](#)", October 2014

58 The *Guardian*, "[Tighter immigration laws catching out long-term legal migrants](#)", 15 October 2014

As we've seen, the roll-out of phase 2 used the negative procedure, meaning it would become law without further debate, unless a "prayer" was made to annul it. Such a prayer was made by Liberal Democrats, with Tim Farron MP and Baroness Hamwee lodging motions to annul in the House of Commons and Lords respectively. In the House of Lords debate on 24 February 2016⁵⁹, concerns were raised that the roll-out of the scheme had been announced before the evaluation had been completed (undermining its usefulness), that the evaluation used very small sample sizes which itself meant the results were "indicative" rather than "definitive", and the Home Office seemingly hadn't considered the evidence and evaluations many other organisations had produced. Nevertheless, Lord Best – the co-chair of the LCP – who had been wary of the scheme during the passage of the bill in 2014, defended the Home Office's evaluation:

"First, has the Home Office taken the whole process seriously? I can say definitively that this exercise has been taken very seriously by the Minister and the army of civil servants working on its implementation. I cannot claim technical knowledge of research methodologies, but I have been impressed by the Home Office team responsible for the evaluation of the West Midlands pilot, led by (X). As far as I can tell, the different techniques deployed by the in-house and external researchers—surveys, focus groups, mystery shopping, comparisons with a control area where the right to rent was not in force—have all been conscientiously carried out. I fully recognise the limitations of any pilot evaluation process: it may take years, not months, for effects to work through; larger-scale surveys or surveys at different times of the year could produce fuller results; and so on. However, within the obvious constraints of this exercise, I think the team did a pretty good job."

Ultimately, the motion to annul the statutory instrument failed, and phase 2 went ahead, with the Right to Rent scheme being rolled out across England from 1 February 2016. The expansion came with a revised set of guidance documents following feedback from phase 1. This included a more user-friendly short guide to the scheme⁶⁰ and more communications targeted at landlords, including a significant number of face-to-face engagements by Home Office Local Partnership Managers⁶¹ at local and regional forums. Again, there were some changes to the documentation list – a firearms and shotgun certificate was removed, the requirements for a referee were more stringent, and a new document was added - a letter from a public authority or charitable organisation working with the person to find a private rental property to prevent homelessness.⁶²

The Immigration Act 2016

Following the general election victory in May 2015, Prime Minister David Cameron gave a speech on 21 May, where he announced:

"Now we're on our own in government, we can be stronger. Our 'one nation' approach will be tougher, fairer and faster.

"For the first time we've had landlords checking whether their tenants are here legally. The Liberal Democrats only wanted us to run a pilot on that one. But now we've got a majority, we will roll it out nationwide, and we'll change the rules so landlords can evict illegal immigrants more quickly."⁶³

59 House of Lords debate, "[Immigration Act 2014 \(Commencement No. 6\) Order 2016](#)", Hansard 24 February 2016, col 332

60 Home Office, "[Right to rent immigration checks: landlords' code of practice](#)", February 2016 and Home Office, "[A short guide on right to rent](#)", June 2018

61 A function of the Interventions and Sanctions Directorate of Immigration Enforcement – responsible for much of the compliant environment – whose role was to engage with the various sectors delivering compliant environment measures, such as local authorities, NHS trusts, etc

62 Home Office, "[Code of practice on illegal immigrants and private rented accommodation](#)", May 2016

63 Prime Minister's Office, "<https://www.gov.uk/government/speeches/pm-speech-on-immigration>" "PM speech on immigration", 21 May 2015

The Home Office had given a clear commitment to evaluate the findings and outcomes of phase 1 so that any lessons learned could be applied before decisions were made on any further roll-out⁶⁴. The Prime Minister's speech drew back from that undertaking, made as it was before the six-month test period of phase 1 completed, with no "headlines" expected from the evaluation until July 2015 at the earliest. Despite having convened this panel of experts, the LCP minutes suggest that no discussion about the new bill and the powers it contained took place in this forum until after it was introduced. The new Immigration Bill had its first reading in the Commons on 17 September 2015.⁶⁵

The Bill introduced two new features. The first was to make it a criminal offence to lease a property whilst knowing or having "reasonable cause to believe" the tenant did not have the right to rent. It was punishable by a fine or up to 12 months in prison, or both, if heard at a Magistrates' Court, or by an unlimited fine, or up to five years in prison, or both, if heard at the Crown Court. The second gave landlords the power to take possession of their property and evict tenants without a court order, once they received a "Notice of Letting to a Disqualified Person" from the Home Office, confirming that the tenants didn't have the right to rent. This notice would let the landlord end the tenancy with 28 days' notice and could be enforced as if it were a High Court order. It meant that if tenants refused to leave, the landlord could apply to a County Court for a warrant of possession and eviction could then be enforced by a High Court enforcement officer or bailiff.

By this point, the arguments against the Right to Rent scheme were well-rehearsed, and opposition in Parliament was increasingly strident, particularly since the evaluation of phase 1 of the Right to Rent from the 2014 Act was yet to be published. In the second reading of the Bill in the House of Commons on 13 October 2015,⁶⁶ Shadow Home Secretary Andy Burnham was one of several Labour MPs to raise a number of criticisms:

"A number of organisations—Amnesty International, the United Nations High Commissioner for Refugees, the Equality and Human Rights Commission, Justice, the TUC and the Joint Council for the Welfare of Immigrants—have expressed serious reservations about the Bill. They believe it could damage social cohesion, force children into destitution, undermine efforts to tackle human trafficking and modern slavery, erode human rights and civil liberties, and lead to widespread discrimination....."

"Secondly, given all that, is it really proportionate to threaten them with jail, and will not that have a major impact on the housing market and the way it works?..."

"We know that right to rent could cause widespread discrimination, not just against migrants but against British citizens. In the absence of the Government's study, an independent survey was carried out by the Joint Council for the Welfare of Immigrants. It found that in the West Midlands, the pilot area, 42% of landlords said that right to rent had made them less likely to consider someone who does not have a British passport, while 27% were now more reluctant—as my hon. Friend the Member for Brent North (Barry Gardiner) has said—to engage with those with foreign accents or names. Those are very serious findings. Why on earth is the Home Office not presenting its own information to the House so that we can establish whether it is correct?..."

"Thankfully, the days when landlords displayed unwelcoming notices in the windows of their lodgings are gone, hopefully for good, but these document checks could legitimise a new wave of discrimination which, by being hidden, could be far harder to challenge..."

64 The Joint Council for the Welfare of Immigrants, "[No passport, no home](#)", September 2015, p7

65 The full text of the [Immigration Bill](#) as introduced

66 House of Commons [Second reading of the Immigration Bill](#), Hansard 13 October 2015

The Scottish National Party were similarly vocal in their concerns. Anne McLaughlin MP:

"Despite the Government's codes of practice, which they assured us would stop any discrimination, it is clear from the joint council's report that there was an increase in discrimination in those areas in which the pilot was undertaken. Some 42% of landlords said that they were less likely to consider those without a British passport and 65% of landlords said that they were less likely to consider tenants who could not provide documents immediately. The Government are creating a culture of fear.

"Although landlords do not wish to discriminate, the Residential Landlords Association said: "Whilst the Residential Landlords Association condemns all acts of racism"— as it should— "the threat of sanctions will inevitably lead many landlords to err on the side of caution and not rent to anyone whose nationality cannot be easily proved."

"Clearly, it is fearful that this Bill will force landlords to act in a way that could be racist. What it is also clearly saying is that it does not want to do that, but the fear of being criminalised or even jailed may leave landlords with no other choice. The Government need to listen to their concerns."

"In practical terms, this Bill will make it much harder for those legally resident in the UK, originally from elsewhere, to rent a property here. It will leave some with no choice but to turn to unscrupulous landlords, which brings with it uncertainty and sometimes danger."

Scottish National Party spokesperson Stuart C. McDonald MP:

"The shadow Secretary of State referred to the helpful study by the Joint Council for the Welfare of Immigrants. Its findings are absolutely stark, and include poor compliance and widespread ignorance among the unfortunate landlords and landladies who are supposed to police the right to rent. More significantly, those findings suggest that landlords are—perhaps understandably—less likely to consider someone who does not have a British passport, which includes more than one in six of the UK population. There were also increased feelings of discrimination among people who have been refused a tenancy. We therefore object strongly to these proposals as they can only exacerbate such problems."

Green Party MP Caroline Lucas:

"The Joint Council for the Welfare of Immigrants, for example, found that the pilot forced landlords to make poor decisions and that discrimination clearly occurred against both migrants and British citizens, including making landlords less likely to rent to anyone with a 'questionable' immigration status—in other words, as other hon. Members have said, anyone with a name that sounds foreign.

"We have heard much this afternoon about the serious flaws in the Bill. More than anything else, there is a complete lack of evidence for its proposals, and a large number of experts have highlighted their potentially damaging effects. It risks compromising community and social cohesion, putting individuals at risk in the process. I am particularly concerned about the impact of outsourcing enforcement functions to private third parties that are not subject to adequate levels of public scrutiny."

Some from the government benches also sounded a note of caution, with Conservative MP Richard Fuller saying:

"the problem is that it is very difficult for someone to see that a person is an illegal immigrant. What they see is someone who is different. Does she [Home Secretary] not accept that, within this law, there is the potential for discrimination to be increased if this is pursued too aggressively?"

Despite facing markedly stronger opposition than the 2014 Act, at the second reading the Bill still passed to the committee stage, with 323 in favour and 274 opposed.

Midway through the House of Commons committee stage, the government published a PES for the Access to Services section of the bill. This identified a number of protected characteristics that might be affected by the bill – race, age, disability, and children and families. Addressing race, the PES relied on the evaluation published three days earlier, and the Home Office codes of conduct, focussing on how the latter and associated guidance would assist landlords avoid the risk of discrimination. It also stated that non-EEA migrants who did not hold a BRP would be able to seek confirmation from the Home Office of their right to rent.⁶⁷

The Bill also saw the Public Bill Committee consider a number of written submissions in opposition to extending the Right to Rent scheme.⁶⁸ The Scottish Federation of Housing Associations said:

"3.5 The SFHA is concerned that Clause 12, creating offences, will acutely increase the incidence of direct and indirect discrimination upon potential and existing tenants in the UK. In lieu of the delayed publishing of the UK Government's report on the 'Right to Rent' pilot, the SFHA refers to an independent report by the Joint Council for the Welfare of Immigrants (JCWI)."

The London Chamber of Commerce and Industry said:

"11. Measures to prosecute landlords who rent properties to individuals unlawfully resident in the [UK] risk having a similar impact. As with employers, landlords may not possess the means or the experience to be able to confirm a prospective tenant's immigration status as valid. Even more so than employers, landlords are likely to be single entities who possess one, or a small number of properties, without the support or financial resource of a business.

"12. Similarly, as above, landlords may fear that renting to migrants carries additional risk. The creation of an offence of renting a property to a person illegally in the UK, risks landlords becoming reluctant to rent to migrants, including legitimate economic migrants. Such a development risks further hindering London's ability to recruit and retain skills from overseas where these do not exist within the domestic labour market."

Tai Pawb (Housing for All), a Welsh organisation promoting equality and social justice in housing, said:

"1.11 We are concerned about the risk of discrimination. Independent evaluation issues by JCWI and partners shows clear evidence of discrimination against BME applicants and tenants as well as those unable to present documents and of failure of the policy to reach the poorest parts of the PRS [private rented sector] (these parts were not really part of the Home Office evaluation). Home office evaluation of potential discrimination is interesting in itself. For example the mystery shopping exercises showed that much more BME people were informed about fees in the Phase 1 area, but that actually more BME people were offered to register than non-BME.

67 Home Office, "Policy Equality Statement Immigration Bill 2015 – Access to services", October 2015

68 House of Commons Public Bill Committee, "[Immigration Bill: written evidence](#)", November 2015

The problem with this evidence is that even if we compare Phase 1 area to other areas, the evaluation does not provide any information on whether the landlords subjected to mystery shopping were actually aware of Right to Rent (it is possible that they weren't).

“1.12 We note that there is also significant risk of discrimination against British Citizens who do not hold the correct documents. For example 17% of British population do not have passports. These are often people who are vulnerable, elderly people or people who are in care. We note that both NLA and RLA stated that landlords are significantly more likely to award a tenancy to people who can provide documentation quicker.”

The Country Land and Business Association said:

“6. Tenants who have the right to rent but do not have the appropriate documentation will be adversely affected by this legislation, it is only natural to expect landlords to accept those tenants who can present the correct identity papers. This was why the CLA advocated Local Authorities issuing prospective tenants with a certificate that would demonstrate their right to rent.”

The Immigration Law Practitioners Association said:

“The basis for the extension of the ‘right to rent’ provisions contained in the Immigration Act 2014 has no factual or evidential basis. On the contrary, there is clear evidence that the provisions have already caused discrimination and have not achieved their stated aims. They should be repealed and the extension of the scheme, which will worsen the discrimination already caused, should be removed from the Bill.

“Both the Home Office evaluation of the right to rent scheme introduced by the Immigration Act 2014 and the independent evaluation undertaken by the Joint Council for the Welfare of Immigrants (JCWI) have shown that the provisions have caused discrimination against BME tenants and people with whose [sic] names or accents are not perceived as British’ or who do not have a British passport. Furthermore, the Home Office evaluation does not adequately assess the duty of public authorities to combat discrimination under the public sector equality duty.

“In addition, the Home Office’s own evaluation of the scheme demonstrates that enforcement as a result of the provisions has been extremely low and any evidence that the scheme has achieved its stated aims is inconclusive.

“The threat of criminal penalties in this Bill will only serve to heighten discrimination against those from a black and ethnic minority (BME) background as well as British nationals who do not own a passport. Landlords will not want to risk a prison sentence as a result of renting to someone with the incorrect immigration status, as has already been the case under the civil penalty scheme. This will result in many landlords and landladies taking the ‘easy’ option of accepting white, British tenants over others perceived as more of a ‘risk’.”

The Housing Law Practitioners Association said:

“3. We have the following concerns:

“(a) There is no appeal mechanism for either the landlord or the tenant against the service of either notice. What happens if the Secretary of State has made an error? The only remedy that we can see would be for (i) the landlord to seek judicial review of the Secretary of State; or (ii) the tenant to seek an injunction (probably in the High Court) to prevent the landlord acting on his own notice. Both of these are likely to be expensive and, frankly, largely inaccessible to the majority of landlords and tenants.”

Crisis said:

“Crisis has long had concerns about the Right to Rent scheme introduced by the Immigration Act 2014. We are a member of the Home Office panel to advise on the roll out of the scheme and we have been successful in increasing the routes available to people who don't have a passport to prove their identity.

“Crisis is extremely concerned that the new eviction routes proposed in the Bill will undermine the protections for tenants who do have the right to rent and set a dangerous legal precedence [sic] to move eviction cases out of the court system and make tenants more vulnerable to rogue landlords.

“We are also concerned that the harsh penalties for landlords who fail to evict tenants who don't have the correct immigration status will compound the effect of the previous Immigration Act and make landlords much more 'risk averse' and less likely to rent to people who are may not [sic] have easily recognisable documentation, such as homeless people, as well leading to increased discrimination against foreign nationals and people of black and minority ethnic backgrounds.”

The Law Society of England and Wales remarked:

“15. Law Society concerns:

“Risk of promoting unlawful discrimination There are reportedly over 400 relevant documents that are issued by countries within the European Economic Area. An obligation to check the immigration status of a tenant would seem likely to result in some landlords only being willing to rent to British passport holders, notwithstanding the Code of Practice issued by the Home Office in an attempt to mitigate the risk of unlawful discrimination.

“16. The Bill appears to assume that all prospective tenants who were born in the UK will hold a valid passport, but many people do not, so the proposed new offence would put some UK citizens at risk of being refused accommodation unjustifiably.

“17. A person might have a right to rent property without being able to evidence it (for example 'Zambrano' carers of British citizens⁶⁹). A person's immigration status can also change. The likelihood is that faced with the complexity of whether a person has the right to rent, a landlord is likely to choose not to rent to any perceived foreign national. The obligation to undertake such checks seems likely to increase the risk of claims being pursued against landlords under the Equality Act 2010.”

⁶⁹ A 'Zambrano' carer is a person from a non-EEA state whose residence is required in order to enable a child or dependant adult, who is British, to live in the UK (or rest of the EEA).

“22. As the government has just announced that the West Midlands Right to Rent pilot of the Immigration Act 2014 civil provisions is to be extended across England from 1 February 2016, it is unclear why, if that pilot was as successful as is claimed, additional criminal sanctions are now required.

“23. Our view is that the success of the pilot has not been established – the scale and duration of the pilot, and its timing, did not permit a proper assessment. There have been suggestions of evidence of discrimination.

“24 It is of some concern that the decision to extend the pilot was taken while the Bill is still going through Parliament, which seems a missed opportunity for scrutiny.”

Shelter said:

“[Shelter’s own research in 2015] also revealed over a third (37%) of landlords admit that ‘It’s natural that stereotypes and prejudices come into it when I decide who to let to’, even before the ‘right to rent’ is rolled out UK wide.

“We believe that the impact of these stronger sanctions will lead to landlords being more likely to discriminate against BME renters, people with English as a second language and British nationals without proof they have a right to rent. This could compound the problems already faced by families on housing benefit, who already face discrimination in the private rental market: close to two-thirds (63%) of landlords either refuse, or prefer not to, let to benefit claimants.”

Hanson Palomeres Solicitors working with Citizens UK, on existing racial discrimination in the private rented sector, wrote:

“7.1 We have gathered data on the incidence of discrimination in the private rented sector by comparing responses by landlords and/or agents to ‘mystery shoppers’ likely to be perceived as British or non-British enquiring about the availability of properties for rent. The nationality of the enquirers was not provided and responses were therefore on the basis of appearances, names and/or accents.

“7.2 Up to now we have carried out 75 tests in London and the Midlands:

7.2.1 24% (18 tests) showed straight forward unlawful discrimination. Properties were offered for viewing to the person who appeared to be British but not to the person who appeared not to be British.

7.2.2 An additional 11% (or 8 tests) showed more subtle discrimination. For example, a promise of a call back was only made to the person who appeared to be British and not to the person who appeared not to be British, or the apparently non-British person was asked about receipt of benefits whereas the apparently British person was not.

7.2.3 Therefore, in 35% of the tests (or 26 tests) there appeared to be evidence of unlawful discrimination.”

And finally, Saira Grant, Policy and Legal Director of the JCWI, gave oral evidence:⁷⁰

"I would add that the entire target of the Bill, as of the 2014 Act, is to create a hostile environment, purportedly for unlawful migrants, but, actually, what we are really concerned about and what we have already seen happening is that it targets all migrants: lawful migrants here and, indeed, citizens of this country. Our concern is that there will be many abuses of human rights. Many people will be unlawfully targeted and discriminated against and the Bill provides no redress. That is completely lacking for those people who are unlawfully targeted by the provisions."

"Many measures of this Bill are targeting and creating a hostile environment that is unnecessary and will have so many repercussions on regularised black and minority ethnic community members and British citizens, and it will have an impact on our social cohesion."

After the Bill moved out of committee stage and to the third reading in the Commons on 1 December 2015,⁷¹ Andy Burnham reiterated:

"I remain concerned that the threat of imprisonment to landlords who rent flats or houses to people without immigration status could lead to discrimination in the housing market, and a greater sense among black and Asian young people that they are being victimised."

The SNP's Anne McLaughlin said:

"Right to rent will not provide the Government's desired 'happy ever after'. It simply will not work, but it will increase discrimination and racism."

At the third reading, the Bill succeeded nevertheless, by 307 votes to 245. It then moved to the House of Lords. At the second reading on 22 December 2015,⁷² a number of peers raised similar concerns. Liberal Democrat Baroness Ludford:

"On the subject of access to services, the right-to-rent scheme, making landlords into immigration officers on pain of criminal sanctions, is objectionable on several grounds. There is a danger of discrimination against people who do not look or sound British but who have the right to rent that British and other nationals do."

Labour peer Baroness Kennedy of the Shaws:

"As others have mentioned, there is serious concern about discrimination. People with a foreign name who apply for housing and approach letting agencies already face problems even getting on to lists and seeing premises."

Labour Lord Ahmed:

"There are long-established historic and Commonwealth links between some of these minority communities within the UK. These communities and their countries of origin have contributed tremendously to the UK, but they are now unfairly being punished."

Liberal Democrat Baroness Hamwee:

"Landlords may not set out to discriminate—most will not—but I would not fancy your chances of easily finding accommodation if your name is 'Afshar', 'Ahmed', 'Janke' or 'Hamwee'."

70 House of Commons Public Bill Committee, [Immigration Bill, oral evidence session](#), Hansard 22 October 2015

71 House of Commons [Third reading of the Immigration Bill](#), Hansard 1 December 2015

72 House of Lords [Second reading of the Immigration Bill](#), Hansard 22 December 2015

Liberal Democrat Baroness Janke:

"Another point that people make to me about this Bill is on discrimination. Many noble Lords have already referred to the right to rent scheme, which makes it an offence for landlords to rent accommodation to illegal immigrants in this country. All the evidence we have read on the Home Office pilot implies that this will make an acceptable situation of discrimination."

Labour Lord Kennedy of Southwark:

"There is also concern that by not striking the right balance, the Government run the risk of landlords just deciding to play it safe and renting only to people with British passports, thereby creating a whole new area of discrimination and injustice, whereby people with foreign names, foreign paperwork or foreign passports are routinely refused accommodation."

At the third reading, on 12 April 2016,⁷³ Baroness Lister of Burtersett (Labour) said:

"Here, though, we have a scheme under which the Home Secretary can decide whether or not a person—and, potentially, their entire family—is made homeless. I emphasise to noble Lords that this is no exaggeration. To take the example that the noble Baroness referred to, we have been made aware of the case of a man with a wife and two young children who have every right to be in this country and possess the right to rent but, because he does not have the paperwork to evidence that, he is unable to find housing for his family. They have come to the end of a tenancy and have now been forced, as a family of four, to live with relatives while the Home Office processes his paperwork."

The Bill passed its third reading and then entered into law. There was far more resistance to the 2016 Act than to the 2014 Act, with large turnouts in votes against the Bill from opposition parties, and more than 45 proposed amendments to the Right to Rent sections. They included attempts to repeal the whole scheme dating back to the 2014 Act, put the evaluation of the scheme on a statutory footing, with special attention for people with a protected characteristic under the Equality Act 2010 or British citizens without a passport or driving licence. There was also an attempt to limit any roll-out beyond England by requiring the consent of the devolved legislatures. None of these amendments succeeded, and the Act received Royal Assent on 12 May 2016.

73 House of Lords [Third reading of the Immigration Bill](#), Hansard 12 April 2016

Home Office data and decisions

Many of the concerns raised during the passage of the legislation were about the risk of landlords and letting agents – consciously or not – discriminating against prospective BAME tenants. The Home Office responded by publishing the landlord’s code of conduct and guidance, providing support for landlords including a Landlords Helpline, and setting up the Landlord’s Checking Service. The latter service enabled landlords to contact the Home Office to verify whether or not a migrant had the right to rent. But the accuracy of the information they received would depend on the accuracy of the Home Office’s own data and the quality of its decision making – both of which have frequently been problematic for the department.

In a separate inspection of the hostile environment, the Independent Chief Inspector for Borders and Immigration (ICIBI) looked at the provisions relating to bank accounts.⁷⁴ Here, in a sample of 169 cases of people disqualified from having a current account because of their immigration status (another power introduced by the 2014 Act), 10% were incorrect. This included a Jamaican man who, having been granted leave in 2013 until 2016, applied to vary his conditions of leave in April 2014. The variation was refused in June of the same year, but his leave remained valid for another two years. But shortly after the variation was refused, his details were passed to the fraud prevention service Cifas as a disqualified individual. In the same report, the Chief Inspector found that people’s records on the Home Office Case Information Database (CID) were incomplete, or had been completed incorrectly, with staff reporting that it could take months for information to be recorded on the system. This poor-quality data can result in landlords being given wrong information about a migrant’s status, and so denying them a tenancy. The concerns were shared by the National Audit Office in their report *Handling of the Windrush situation*. One of the key findings identified:

“15 Issues with the Department’s data management increased the risk of action being taken against people who had a legal right to be in the UK. When the Department identifies someone it believes should not be in the UK, for example because it refuses that person’s visa application, it places them automatically in a ‘migration refusal pool’. Immigration Enforcement uses these data to target its work on removals and detention. The Department also shares these data with other public bodies, which may then apply other sanctions. Both we and the Inspectorate have raised concerns several times since 2014 about the quality of the data and controls underpinning this system. The Department declined to cleanse its database as recommended by the Inspectorate in its review of compliant environment measures on driving licences and bank accounts in 2016. The Department has now paused some of this data-sharing with other departments. It has also paused the automatic ‘pull’ of selected visa refusal cases into the migration refusal pool. It has not decided when, or if, it will resume these activities.”⁷⁵

Similarly, migrants may not always get the right decision. NGOs and pressure groups have all raised concerns over the quality of the Home Office’s decision making, alongside similar concerns raised by the ICIBI. In his asylum inspection in 2017 for example, the Chief Inspector highlighted that 25% of asylum decisions did not meet the “satisfactory” standard of the Home Office’s own quality assurance framework.⁷⁶ An inspection in the Administrative Review (AR) process (introduced by the 2014 Immigration Act, whereby a large number of immigration applications would no longer attract a right of appeal) also revealed concerns about the quality of decision making. Home Office figures said 8% of “in-country” applications where leave was refused and an AR was submitted resulted in the decision being overturned, with another 3% being maintained but with errors identified in the decisions.

74 Independent Chief Inspector of Borders and Immigration, [“An inspection of the ‘hostile environment’ measures relating to driving licences and bank accounts”](#), October 2016

75 National Audit Office, [“Handling of the Windrush situation”](#), December 2018

76 Independent Chief Inspector of Borders and Immigration, [“An inspection of asylum intake and casework”](#), November 2017

Where an AR challenged the conditions of a granted decision, 81% were successful. During the inspection, however, the ICIBI sampling of 140 cases saw another 11 decisions that should have been overturned by the AR process, on top of the seven identified by the Home Office, and another 11 where errors weren't picked up.⁷⁷ Finally, despite reduced appeal rights, figures reported by the *Guardian* showed that 36% of Home Office decisions that went to court were overturned.⁷⁸ A more detailed examination of the Home Office's decision-making will feature in the forthcoming paper by Freedom from Torture, *Lessons not Learned*.

Similarly, in their evidence to Parliament on the 2016 Act, the Immigration Law Practitioners Association drew on examples where employers used the Employers' Checking Service to highlight the consequences of the Home Office's poor record keeping:

"A worker was suspended by their employer because an application was still not showing on the database against which the Home Office makes its checks despite the payment for the application having been taken more than three years previously. The employer was told that she did not have permission to work.

"In March 2014 a man made an application on form FLR(O) for further leave to remain. The application was rejected shortly afterwards as being invalid because the Home Office said that it was made on the wrong form. It was however the correct form so, after correspondence failed to resolve the issue, his legal representatives issued a pre-action protocol letter. As a consequence of that letter the Home Office conceded the application had been made on the correct form and would be considered. However the Home Office computerised records did not show that the client's application was pending until the beginning of September by which time the man's employer had made a check with the Employment Checking Service which stated that he had no right to work. He lost his job.

"A family member of an EEA national was refused a certificate confirming permanent residence, in circumstances where there should have been no doubt that she had a right of residence under European Union law. She was told by the Home Office that she had no status.

"The Parliamentary and Health Service Ombudsman upheld a complaint by an EEA national who was unable to prove his right to work whilst UK Visas and Immigration dealt with his application for a permanent residence card after exercising EU treaty rights in the UK as a worker for five years. After submitting his application in May 2012, the individual was sacked from his job in July 2012 when the Employer Checking Service told his employer that it could not confirm his right to work."⁷⁹

77 Independent Chief Inspector of Borders and Immigration, "[An inspection of the Administrative Review processes introduced following the 2014 Immigration Act](#)", May 2016

78 The *Guardian*, "[Home Office loses 75% of its appeals against immigration rulings](#)" 3 September 2018

79 House of Commons Public Bill Committee, "[Immigration Bill: written evidence](#)", November 2015

The JCWI also highlighted the same issue in their report with Liberty, *Windrush: Dossier of Failure*⁸⁰ where they raised concerns about decision-making:

“5. The Home Office is error-prone and its decision making is often arbitrary.

- Gap year students making life and death decisions as Home Office caseworkers [reported in 2016]
- Large variations in appeal success rates in different appeal centres between 2012-2016.
- Sir Henry Brooke CMG PC described in 2017 that one of the 'most depressing aspects' of the evidence received by Lord Bach's Commission on Access to justice was about "The poor quality of decision-making...within government departments (as in immigration cases)".
- Whistleblowers in 2018 describe decision making in the Home Office as a 'lottery' with 'cut and paste' decisions.
- Between 2012 & 2014 80% of refusals of entry clearance were successfully appealed/reviewed.
- The Parliamentary and Health Service Ombudsman upheld more complaints against the Home Office than any other department.”

These concerns were summed up by the Home Affairs Committee in their report *The Windrush Generation*:

“84. The Home Office also needs to take a more robust approach to the accuracy of data that underpins the hostile/compliant environment. We welcome the Home Secretary suspending the freezing of bank accounts. He must fully satisfy himself that the data on which such orders are based are accurate. Given the high success rates of immigration appeals and ongoing concerns over the accuracy of Home Office decision-making, bank accounts should only be completely frozen once individuals have exhausted their limited appeal rights.”⁸¹

Since the Right to Rent scheme became operational, over 2,500 enquiries to the Landlords' Checking Service have resulted in a landlord being told a prospective tenant was disqualified from renting – all based on Home Office data.⁸²

80 The Joint Council for the Welfare of Immigrants, “Windrush dossier of failure”, April 2019

81 House of Commons Home Affairs Committee, “[The Windrush Generation Sixth Report of Session 2017–19](#)”, June 2018

82 Home Office, Internal email, 26 April 2019

Further scrutiny

On 14 November 2016, the *Guardian* published a story with the headline: “Britons with no passport struggling to rent due to immigration checks”.⁸³ It highlighted research from the Residential Landlords Association which revealed 43% of landlords surveyed said they were now less likely to rent to someone without a British passport as a result of the Right to Rent scheme. Possibly reflecting the culture of the department at the time, when private office asked whether there was much weight behind the story, the department responded to private office that “these are not really issues in the real world”, citing the evaluation of the initial phase of roll out which did not find any concerns.

But the Home Office had already stopped monitoring the impact after the evaluation of phase 1 and were no longer looking to see whether the policy had affected anyone. It also failed to take account of concerns raised during the passage of the 2014 and 2016 Acts about the difficulty in proving that the lack of documents was the reason for being refused tenancy, given there were many other possibilities. Also, the Home Office has no clear mechanism for migrants to raise the fact they feel discriminated against – and the means of seeking redress was to take the matter to court, which was for most people a costly, time-consuming and therefore unrealistic option.

In February 2017, the JCWI published their second report on the now England-wide Right to Rent scheme, as introduced by the 2014 Act. Their findings in *Passport Please*⁸⁴ were critical, showing that over half of landlords surveyed were now less likely to let to a non-EEA national, and over 40% were less willing to let to anyone without a British passport, regardless of nationality. In mystery shopper exercises, BAME British people were less likely to get responses to enquiries than white British people, except where both could show a British passport. BAME British people were more likely to get positive responses than BAME foreign nationals, even those settled in the UK with clear documentary evidence of their status.

The report criticised the operation of the “permission to rent” procedure, where someone who would ordinarily be disqualified from renting can ask the Home Office for permission which could then be verified by landlords by contacting the LCS. However, landlords seemed unwilling to use the service, with the report noting that 85% of enquiries in the mystery shopper exercise where landlords were asked to conduct a check with the LCS went unanswered. Although a higher percentage than for phase 1, still just under half of landlords surveyed hadn’t read the codes of practice. This perhaps reveals why, out of the 11 landlords who had refused a tenancy because of the scheme, four refused because they didn’t want to make a check, and five because the tenant couldn’t produce satisfactory documentary evidence. Only one had used the Landlord’s Checking Service to get a negative response.

⁸³ The *Guardian*, “[Britons with no passport struggling to rent due to immigration checks](#)”, 14 November 2016

⁸⁴ The Joint Council for the Welfare of Immigrants, “[Passport Please: The impact of the Right to Rent checks on migrants and ethnic minorities in England](#)”, February 2017

The report recommended scrapping the scheme. But, as an alternative, the JCWI also recommended that the government bring in systems to monitor the scheme for racial discrimination and provide landlords with better information, including clear guidance on the anti-discrimination requirements. The JCWI also said the government should commission an independent evaluation of the scheme across England, and that authorities should take more account of the scheme when considering their statutory duties.

In March 2018, the ICIBI also published a report on the scheme. It showed a lack of understanding in the Home Office of how the scheme was running, with poor sharing of information between the frontline Immigration Enforcement teams and the Interventions and Sanctions Directorate responsible for issuing the civil penalties. Beyond the initial push for joint operations, the ICIBI found little evidence of effective partnership working between the Home Office and other agencies, which had been a key requirement of the scheme and its wider remit to tackle rogue landlords. Also, the Home Office had failed to demonstrate it had listened to, and acted on, the concerns of landlords, NGOs and other bodies.

One particular concern was related to monitoring the scheme for racial discrimination. The report quoted from the minutes of the LCP meeting from January 2016:

“The Minister explained there were no formal plans as there had been for the pilot, but the department did keep all policies under review. There were formal gatekeeping mechanisms by which all legislation was reviewed. He would like this panel to provide feedback about unexpected issues that may surface. Lord Best told the meeting he did raise this in the House of Lords, and Lord Bates [the Home Office Minister in the Lords] said the government would continue to monitor the effects, particularly in relation to discrimination. Lord Best agreed that continuing the Panel meetings would be helpful.”⁸⁵

This matched a similar commitment given by Lord Bates to Lord Rosser by letter on the 8 January 2016:

“Lord Best, Baroness Ludford and Baroness Sheehan asked about the plans for future evaluation of the Right to Rent scheme. As we roll out the Right to Rent scheme in 2016 we will continue to monitor its effects particularly in relation to discrimination.”⁸⁶

When asked by the ICIBI how the Home Office was doing this, their response was:

“We continue to monitor the impact and effectiveness of the Right to Rent scheme and this includes having regard to matters relating to discrimination. The scheme is subject to a code of practice on avoiding unlawful discrimination which sets out that anyone who believes that they have been discriminated against, either directly or indirectly, by a landlord or an agent on the grounds of race may bring a complaint before the courts. This code also provides links to the Equality and Human Rights Commission and the Equality Commission for Northern Ireland.

“We also provide for individuals to contact the Home Office on matters relating to the Right to Rent scheme and their immigration status.

“We maintain contact with members of the Landlords Consultative Panel which met regularly to oversee the roll out of the scheme across England and then prepare for the bringing into force of the Immigration Act 2016 residential tenancies measures in England on 1 December 2016.

“We have also carefully considered reports and surveys conducted by third parties, including the Joint Council for the Welfare of Immigrants.

⁸⁵ Independent Chief Inspector of Borders and Immigration, “[An inspection of the “Right to Rent” scheme](#)”, March 2018

⁸⁶ Independent Chief Inspector of Borders and Immigration, “[An inspection of the “Right to Rent” scheme](#)”, March 2018

“We do not hold any data or reports relating to monitoring.”⁸⁷

The LCP minutes show the intended extent of this monitoring. The March 2016 minutes record:

“The Minister thanked the Panel for the input it had provided, and said that the department would continue to monitor the impact of the scheme through data available at the Home Office such as in relation to immigration outcomes and volumes. The monitoring would inform the Home Office’s decisions over the extension of the scheme across the other parts of the UK. He was also keen to see whether there was hard evidence of instances of discrimination. Referring to the mystery shopping exercise in the West Midlands, the Minister said that if any cases of discrimination did emerge he was keen to see them dealt with firmly and robustly.”⁸⁸

As the LCP went dormant, from late 2016 until October of 2018, during this period there were no opportunities for the LCP to discuss the planned monitoring and whether it was adequate or implemented.

In the report on the Right to Rent inspection the ICIBI made four recommendations:

“1. Produce a SMART Action Plan to ensure that all areas of the Home Office that need to understand fully and engage with Right to Rent measures in order for them to work as effectively and efficiently as possible are briefed, trained, supported, and have appropriate performance measures/targets in place, backed up by quality assurance checks.

“2. Engage with other central government departments and agencies, and with Local Authorities, the police and other local agencies, to produce a multi-level England-wide strategy for the deployment of Right to Rent measures, including specific multi-agency actions such as Operation Lari.

“3. Recognise that the success of Right to Rent measures relies on private citizens more than public authorities by creating a new ‘Right to Rent Consultative Panel’, inviting Landlords Consultative Panel (LCP) members and stakeholders concerned with the rights and interests of migrants who were not previously LCP members to join. The remit of the new Panel should include raising and agreeing how to tackle issues and concerns about the working of the Right to Rent measures. Minutes of meetings and outcomes should be published on GOV.UK.

“4. With the new Consultative Panel, develop and make public plans for the monitoring and evaluation of the Right to Rent measures, including (but not limited to) the impact of the measures (where appropriate alongside other ‘compliant environment measures’) on ‘illegal migrants’, on landlords, and on racial and other discrimination, exploitation and associated criminal activity, and homelessness.”⁸⁹

87 Independent Chief Inspector of Borders and Immigration, “[An inspection of the “Right to Rent” scheme](#)”, March 2018

88 Home Office ‘Landlords Consultative Panel’ meeting minutes March 2016

89 Independent Chief Inspector of Borders and Immigration, “[An inspection of the “Right to Rent” scheme](#)”, March 2018

The Home Office fully accepted the first two recommendations, but rejected the third and only partially accepted the fourth. The justification for rejecting the third recommendation was set out in a submission to the minister:

“Option D: Accept the recommendation and create an entirely new national panel - Not Recommended.

“The ICIBI pointed out that the majority of UK landlords are not members of the landlord trade associations. But this misses the point that many private landlords let their properties through lettings agents who are represented by their professional bodies on the current Landlords Consultative Panel. It would be unmanageable to try to form a national panel drawn from the thousands of citizens who let their properties privately. We could instead commit to formally reviewing the composition of the panel, or adjust our whole approach and convene an entirely fresh body, co-chaired by you and the Housing Minister to examine how the Government can tackle the spectrum of rogue landlord activity, with the Right to Rent scheme forming part of a wider agenda.”⁹⁰

It is not clear why the advice focused on these grounds for rejecting this recommendation, given the aim of the recommendation wasn't to bring on board representatives of landlords who weren't part of a trade body, but stakeholders concerned with the rights and interests of migrants.

There was also some apparent confusion as to what exactly was agreed about the alternative to the third recommendation. In a House of Lords session on 6 June 2018, Lord Kennedy of Southwark asked the Home Office Minister Baroness Williams of Trafford:

“My Lords, recommendation 3 of the independent inspector's report called on the Government to establish, “a new ‘Right to Rent Consultative Panel’”, with a remit to tackle the very issues the noble Earl [Cathcart] raised in his question. Why have the Government not agreed to that?”

2. The response to the question was:

“My Lords, we have agreed to that and we are planning to reconvene the landlords consultative panel this year, in response to the noble Earl's question.”

In October 2018 at the first meeting of the LCP in nearly a year-and-a-half – then Immigration Minister Caroline Nokes suggested asking the JCWI to join. The JCWI declined to do so, citing the outcome of their judicial review, the refusal of the Home Office to discuss that at the meeting and concerns that the panel was wrongly used by the Home Secretary to demonstrate meaningful evaluation of the scheme. The Home Office's reason for not being able to discuss the judicial review at the meeting was that it was the subject of live litigation. The EHRC also declined to attend further meetings, citing the judicial review. Panel members, meanwhile, suggested asking a university representative, a group representing BAME interests, the police, and an EU citizens group to join. At the same meeting, the group was renamed the Right to Rent Consultative Panel – the wording previously recommended by the ICIBI. Then, at the April 2019 meeting, the minister recommended inviting someone from spareroom.co.uk to join the panel to represent those who take in lodgers.

⁹⁰ Home Office, Internal paper “Submission on Recommendations from ICIBI” 27 February 2018

The decision to only partially accept the fourth ICIBI recommendation was based on the difficulty in finding a “control area” in England given the scheme was now fully rolled out. The Home Office said this would make it difficult to identify whether any discrimination was caused by the scheme. Also, an England-wide evaluation would cost considerably more than that for the phase 1 area and wouldn’t significantly develop the department’s understanding beyond what they’d learned from phase 1. Instead, the department committed to:

“Continue to monitor key related indicators including homelessness figures and levels of landlord non-compliance (i.e. numbers of civil penalties and prosecutions). It will also explore how best to further assess awareness and take up of the scheme to fill gaps in understanding.”

Yet, as far back as 2013, when the proposals were put to the rest of government for discussion, the Home Office committed to:

“conduct a review of the effectiveness and impact of the policy after **two years**, as part of the normal impact assessment procedures.”⁹¹

The evaluation of phase 1 was published ten months after the scheme went live. Phase 2 has been running for over three years, yet this review has seen no evidence of the department meeting the commitment it gave at the time.

Further concerns were raised in May 2018, when the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Ms E. Tendayi Achiume, undertook a mission to the United Kingdom. In her speech at the end of mission, she said:

“Consider the racialized impact of the Right to Rent requirement, through which the government requires landlords and agents to check the immigration status of all potential tenants, and to deny tenancy to certain categories of immigrants, or risk civil and criminal penalties. Research shows that “BME households are more likely than White households to be in private rented accommodation.” These communities are therefore more likely to be required to produce immigration documentation than their white counterparts. A survey found that 51% of landlords said the scheme would make them less likely to let to foreign nationals, while 48% stated that the fine made them less likely to rent to someone without a British passport. The survey also found that racial and ethnic minority citizens may be subject to increased racial profiling as a result of the scheme, as landlords stated it made them less likely to rent to individuals with “foreign accents or names.” Of great concern, asylum seekers or trafficking victims do not have a Right to Rent and must gain “permission to rent” from the Home Office, which can further deter landlords from renting to these groups.

“The hostile environment described above will remain in place for as long as the legal and policy frameworks rooted in the 2014 and 2016 Immigration Acts remain in place. Shifting from the rhetoric of a hostile environment to one of a compliance environment will have little effect if the underlying legislative framework remains intact. Efforts such as eliminating deportation targets can achieve only slight cosmetic changes to an immigration enforcement regime that has permeated almost all aspects of social life in the UK. I wish to underscore that a hostile environment ostensibly created for, and formally restricted to, irregular immigrants is, in effect, a hostile environment for all racial and ethnic communities and individuals in the UK. This is because ethnicity continues to be deployed in the public and private sector as a proxy for legal immigration status. Even where private individuals and civil servants may wish to distinguish among different immigration statuses, many likely are confused among the various categories and thus err on the side of excluding all but those who can easily and immediately prove their Britishness, or whose white ethnicity confer upon

91 Home Office, Internal paper, “Right to Rent”, 7 August 2013

them presumed Britishness. And finally, both unconscious bias and even conscious racial prejudice remain alive and well and will further compound the physical, socio-economic, and political expulsion of racial and ethnic minority communities and individuals from the British nation.

“As a start, **I strongly recommend** that the government repeal the aspects of its immigration law and policy framework that deputize immigration enforcement to private citizens and civil servants responsible for vital public and social services.”⁹²

Finally, the Home Affairs Committee published their report *The Windrush Generation* on 27 June 2018.⁹³ One of their concerns was that because the operation of the Right to Rent had been outsourced, it was impossible for the Home Office to know how many members of the Windrush generation had been affected:

“17. The Home Office has also not been able to answer our questions about how many people have been wrongly refused access to services such as healthcare, or who have suffered from losing their jobs or social security. The Home Secretary explained:

Many of the compliant environment checks are conducted by other agencies and bodies, for example landlords and letting agencies will conduct right to rent checks and employers or employment agencies will conduct right to work checks... It is therefore not possible to say how many of the Windrush generation may have been inadvertently affected by the compliant environment.”

The Committee went on to find:

“82. We welcome the changes outlined by the Government, particularly with regard to the reduction in data-sharing between the NHS and immigration enforcement. However, we are unconvinced that the Government’s actions are sufficient to address the problems we have identified. That the Government has been unable to say how many members of the Windrush generation have been affected adversely by employment checks, loss of rental accommodation, checks on NHS treatment, driving licences or bank accounts, demonstrates a serious weakness in the policy. The Home Office has no way to assess the accuracy of the policy, the scale of errors being made or the number of people each year who may be losing their home, job or access to services unlawfully. It is irresponsible for the Government to rely on a policy when it lacks information on whether that policy is leading to injustice or abuse or even achieving its aims.”

The Home Office, through the formal government response to the Committee’s report, addressed this concern by reiterating what the Home Secretary had said in front of the Committee about the checks being completed by other agencies and bodies, before going on to say:

“We have already strengthened safeguards to ensure that those who are lawfully here are not disadvantaged by measures put in place to tackle illegal migration and are considering whether further action is necessary. We are also reviewing historical proactive sanctions, where the Home Office has instigated the action taken by a partner of a third party to deny or revoke a service to an individual, or it has taken action to penalise a third party for employing or housing an unlawful migrant; a final figure of those affected will not be available until this review is complete.

92 The Office of the High Commissioner for Human Rights (UN Human Rights), “[End of Mission Statement of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance at the Conclusion of Her Mission to the United Kingdom of Great Britain and Northern Ireland](#)”, 2018

93 House of Commons Home Affairs Committee, “[The Windrush Generation Sixth Report of Session 2017–19](#)”, June 2018

“We recognise the need to fully understand the impact of the compliant environment; that it is meeting our aim to deter immigration offending, and vitally, that safeguards are effective in ensuring it is not capturing those who are entitled to access work, benefits and services in the UK. I have asked my officials to look at the best ways of evaluating the compliant environment, to ensure this policy is right.”⁹⁴

While this is being considered, the Right to Rent scheme remains in place.

The Case of JCWI vs the Home Office

On 1 March 2019, Mr Justice Martin Spencer handed down a judgment in the High Court, following a judicial review brought by the JCWI (with Liberty, the EHRC, and the RLA intervening) against the Home Office in relation to the Right to Rent scheme.⁹⁵ The claim alleged that the provisions of the Immigration Act 2014 that gave rise to the scheme were unlawful, as they were incompatible with Articles 14 (Prohibition of Discrimination) and 8 (Right to respect for private and family life) of the European Convention on Human Rights and thus a declaration of incompatibility under section 4 of the Human Rights Act 1998 should be made. JCWI sought an order quashing the decision of the Secretary of State to extend the Scheme to Scotland, Wales and Northern Ireland on the grounds that the scheme gives rise to an inherent and unacceptable risk of illegality and because the decision breaches section 149 of the Equality Act 2010. They also sought an alternative declaration that the decision to commence the scheme in Scotland, Wales and Northern Ireland was irrational and a breach of section 149 of the Equality Act 2010. Spencer J summarised the nature of the claim at [6] in the following way:

“The nature of the challenge is that the net has been cast too wide and the effect of the Scheme has been to cause landlords to commit nationality and/or race discrimination against those who are perfectly entitled to rent with the result that they are less able to find homes than (white) British citizens. This is said to have been an unintended effect of the Scheme and that, in implementing the Scheme, landlords are acting in a way which is discriminatory on grounds of both nationality and race, not because they want to be discriminatory but because the Scheme causes them to be discriminatory as a result of market forces. This challenge has been brought because, so it is said, the Defendant Department has refused to carry out its own evaluation of the Scheme or put in place any effective system for monitoring it in the face of what is said to be compelling evidence gathered by the Claimant and other non-governmental organisations of the discriminatory effect of the Scheme. The challenge is said to be brought in the public interest to ensure that the rule of law is vindicated in an area of obviously pressing public interest.”

The Home Office (the defendant to proceedings being the Secretary of State) had argued that the legislation and the decision to extend implementation beyond England were both lawful. Among other arguments they sought to argue that a non-discrimination code was issued with the aim of avoiding unlawful discrimination. The Home Office sought to argue that:

“the Government cannot be responsible for any discrimination which is occurring in association with the Scheme because such discrimination, if it exists, arises from the voluntary intervention of third party landlords acting independently and inconsistently with the requirements of IA 2014 together with the codes and guidance issued under that legislation. Thus, it is asserted that the legislation itself contains no requirement to provide a UK passport, or indeed any passport and the statutory Codes specifically tell landlords how not to discriminate and warn them not to treat less favourably those who have a right to rent but no passport.”

94 House of Commons Home Affairs Committee, [“The Windrush generation: Government Response to the Committee’s Sixth Report of Session 2017–19”](#), September 2018

95 [\[2019\] EWHC 452 \(Admin\)](#), [\[2019\] WLR\(D\) 149](#)

2. The Home Office also sought to argue that:

“the scheme did not fall within the ambit of Article 8 ECHR. If the scheme was not within the ambit of Article 8, article 14 ECHR would not apply

none of the mystery shopper exercises relied on by JCWI justified the conclusion that there is discrimination on the grounds of nationality or ethnicity

even if Articles 8 and 14 applied, the legislation was proportionate and that due regard to the duty under section 149 of the Equality Act 2010 had been had been taken by the relevant decision maker”

Relying on evidence provided by the JCWI from – among others – Shelter, Crisis, and the RLA, the judge found when taken together, it “powerfully shows” not only that landlords are discriminating against potential tenants on grounds of nationality and ethnicity but also that they’re doing so because of the scheme. He found that there is a consistency through the surveys and the mystery shopper exercises that this is happening. And the causal link with the scheme was not only asserted by the landlords but is a logical consequence of the scheme for the reasons “convincingly submitted” by, in particular, the RLA.

The extent of the discrimination, said the judge, is such that it is a short further step to conclude that this is having a real effect on the ability of people in the discriminated classes to get accommodation. This is either because they cannot get it at all or because it’s taking them significantly longer to do so. Highlighting the following anecdotal evidence from Crisis, the judge found this was likely to be a typical example of how the scheme operates:

“We have anecdotal evidence from our services that Crisis clients have struggled to find private rented sector accommodation because landlords would not accept them without a British passport. This includes people from the Windrush generation, even those who have naturalisation documents. For example, Crisis has been working with a client from the Windrush generation who was forced to find new accommodation after there was a fire in her house. The client had a right to rent, however new landlords would not accept her as a tenant, because she did not have a British passport.”

The judge also found that the government was responsible for this discrimination, despite attempts by the Home Office to argue that it had fulfilled its responsibilities by providing the non-discrimination code of conduct, and that the discrimination was the fault of landlords. The judge found that “the scheme does not merely provide the occasion or opportunity for private landlords to discriminate but causes them to do so where otherwise they would not. The State has imposed a scheme of sanctions and penalties for landlords who contravene their obligations and, as demonstrated, landlords have reacted in a logical and wholly predictable way.” He also found that the safeguards used by the government to avoid discrimination, like online guidance, telephone advice and codes of conduct and practice, have proved ineffective. In those circumstances, said the judge found that “the government cannot wash its hands of responsibility for the discrimination which is taking place by asserting that such discrimination is carried out by landlords acting contrary to the intention of the scheme.”

Finally, the judge had to consider whether, even taking all this into account, the discrimination could be justified by the aim the scheme sought to achieve.

He stated at [121]:

“the State is entitled to a large margin of appreciation in relation to the Scheme for all the reasons set out above:

The Scheme derives from primary legislation which has therefore enjoyed the support of Parliament and in particular Members of Parliament elected through the democratic process;

The subject matter of the legislation is socio-economic policy which is archetypically the domain of the Government and not the courts;

A fair and workable immigration system will involve many different parts or strands which will often, or usually, together form a coherent whole, intended to complement each other and work together: thus, for the court to interfere with one aspect potentially causes havoc to an overall strategy devised by the Government in accordance with its democratic mandate;

The European Court of Human Rights is loath to interfere with the right of a State to control immigration where there is no consensus across the Council of Europe as to what is or is not acceptable as a means of controlling immigration;

Control of immigration must be recognised as a political issue which features near the top of highly charged political issues which are of concern to voters whether voting in a general election, by-election or a referendum.”

Against those factors the judge noted at [122] that:

“Whilst, therefore, I recognise that the above factors carry the Government a long way towards justification of the Scheme, they are at least partly counter-balanced by the particular abhorrence with which racial discrimination is regarded and the recognition of this both domestically and in Strasbourg. In my judgment, it is of particular significance that recognition of such discrimination did not feature as part of the cost accepted by the Government as necessary in order to achieve the aim of the Scheme as part of the “hostile environment”. On the contrary, all the indications are that, when introducing the Scheme, the Government was anxious to avoid such discrimination and put in place measures to avoid it. If those measures have proved ineffective, as I have found, then a declaration of incompatibility might in fact be welcomed by the Government so that it can re-think its strategy and see how the same aims can be achieved without the unwanted and unwelcome effect of discrimination.”

Weighing those factors the judge came to a “firm conclusion” that the Scheme was not justified “indeed it has not come close to doing so” [123]. The judge said:

“On the basis that the first question for the court to decide is whether Parliament’s policy, accorded all due respect, is manifestly without reasonable foundation, I so find. On that basis, there is no balancing of competing interests to be performed. However, even if I am wrong about that, I would conclude that, in the circumstances of this case, Parliament’s policy has been outweighed by its potential for race discrimination. As I have found, the measures have a disproportionately discriminatory effect and I would assume and hope that those legislators who voted in favour of the Scheme would be aghast to learn of its discriminatory effect as shown by the evidence set out in, for example, paragraph 94 above. Even if the Scheme had been shown to be efficacious in playing its part in the control of immigration, I would have found that this was significantly outweighed by the discriminatory effect. But the nail in the coffin of justification is that, on the evidence I have seen, the Scheme has had little or no effect and, as Miss Kaufmann submitted, the Defendant has put in place no reliable system for evaluating the efficacy of the Scheme: see paragraphs 111 and 112 above, which, again, I accept.”

He made a declaration of incompatibility under section 4 of the Human Rights Act 1998, a process which puts in place the mechanism for the government to propose an amendment to the legislation through tabling a statutory instrument. At [133] the judge found that:

“In my judgment, the experience of the implementation of the Scheme throughout England has been not that there will be merely a risk of illegality should the Scheme be extended to the devolved territories but a certainty of illegality because landlords in those territories will have the same interests and will take into account the same considerations as their counterparts in England. In my consideration of the application for a declaration of incompatibility, I have considered whether the evaluation before the extension of the Scheme to all of England was detailed, thorough and conscientious and I have found that it was not. It seems to me that a further evaluation exercise would be essential before the Home Secretary could possibly justify any further roll-out of this Scheme and any decision to do so without such further evaluation would be irrational and a breach of Section 149 of the Equality Act 2010. In those circumstances, the Claimant is entitled to the order sought.

2. He made a decision that he would make orders:

pursuant to s.4 Human Rights Act 1998 declaring that sections 20-37 of the Immigration Act 2014 are incompatible with Article 14 ECHR in conjunction with Article 8 ECHR;

and declaring that a decision by the Defendant to commence the Scheme represented by sections 20-37 of the Immigration Act 2014 in Scotland, Wales or Northern Ireland without further evaluation of its efficacy and discriminatory impact would be irrational and would constitute a breach of s. 149 Equality Act 2010.”

At the time of writing this decision is currently under appeal at the Court of Appeal. The appeal was heard at the Court of Appeal in January 2020 and the judgment is expected in February.

Right of redress

One of the complaints made about the scheme was that outsourcing the function to private landlords and away from the Home Office made it more difficult to challenge any discrimination. As the Home Office is a large government department, there are routes to challenge its decision-making. While not always straightforward or without cost, they range from requests for reconsideration, complaints, judicial reviews and contacting MPs, to the Parliamentary and Health Service Ombudsman. At the same time, the Home Office will usually produce written reasons for behind its refusal of an application, service or product (albeit there have been criticisms of both the Home Office's routes of redress, and quality of its decisions).

The same cannot be said for private landlords. Larger ones may have a complaints procedure, or belong to a professional body which will investigate allegations of discrimination against members. But most of the private rental sector is made up of small landlords who don't belong to a professional body and own a small number of properties. And given that, in many cases, landlords or letting agents may also be running credit checks and references, there are many reasons why a tenant might be refused – with no legal right to be told exactly why.

The *Code of practice for landlords: avoiding unlawful discrimination when conducting 'right to rent' checks in the private rented residential sector*⁹⁶ did not create any new civil or criminal liabilities in the event of discrimination occurring. This raises the question of whether or not it had any “teeth”, as Saira Grant, of the JCWI, said during the passage of the 2014 Act. Similarly, the ILPA was concerned that while the remedy was to take legal action in County Court, there was no evidence about how often such claims succeeded. The JCWI's 2015 report raised concerns over the cost of taking legal action under the Equality Act 2010, and in debates on the 2016 Act, MPs Meg Hillier and Caroline Lucas both raised concerns over appropriate routes of redress.

One of the issues affecting the Windrush generation was the loss of Legal Aid for many types of immigration cases as part of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Legal Aid for housing issues was also significantly affected. At the same time, a new process was introduced to access Legal Aid on discrimination cases. In 2018, the Equality and Human Rights Commission launched an inquiry into whether Legal Aid enables people to obtain justice if they raise a discrimination complaint in England and Wales. Specifically, it asked:

- how discrimination cases are funded by Legal Aid
- how many people receive Legal Aid funding for discrimination claims
- whether there are barriers to accessing Legal Aid
- whether some people experience specific difficulties in accessing Legal Aid
- about the operation of the telephone service as the access point for most discrimination advice
- if Legal Aid provides effective access to justice for people who complain of discrimination
- whether improvements could be made to lower barriers and improve access to justice

⁹⁶ Home Office, "[Code of Practice for Landlords: Avoiding unlawful discrimination when conducting 'right to rent' checks in the private rented residential sector](#)", October 2014

The ECHR became concerned about the effectiveness of Legal Aid-funded discrimination claims because:

- initial Legal Aid for discrimination cases dropped by nearly 60% after the telephone service was introduced
- despite the telephone service dealing with over 18,000 discrimination cases since 2013, only 16 people were referred for face-to-face advice between 2013 and 2016
- no-one was referred for face-to-face advice between 2016 and 2017
- the telephone service might not always be accessible for disabled people and those with limited English language skills
- despite over 6,000 calls to the service in 2013 to 2014, only four cases were recorded as receiving an award from a court or tribunal
- very few cases receive Legal Aid to go to court⁹⁷

The EHRC's investigation uncovered further concerns, as out of the 33,150 calls about discrimination received between 2013/2014 to 2017/2018:

- only 1,646 received casework assistance (which can include specialist assistance in writing to the alleged perpetrator, negotiating a settlement, drafting court documents, and helping the claimant prepare for a court hearing)
- only 43 received funding that would cover representation in court, with only 45% of applications for funding succeeding – less than half the success rate of applications for funding for judicial reviews
- only 13% of cases resulted in a positive outcome at the point the file was closed by the legal provider – with a higher percentage of white claimants (26%) than ethnic minority claimants (17%) securing a positive outcome
- 14% of cases are closed as a result of service users failing to provide proof of financial eligibility, which may be because providing evidence of eligibility is complex and onerous, particularly for certain groups – a concern raised about the Right to Rent documentation requirements as well
- 66% of people responding to the English and Welsh Civil and Social Justice Survey who had experienced discrimination said they do not know how to seek legal redress for it. More than a third took no action about the discrimination they experienced, of who 42% took no action because they didn't think anything could be done. Only 5% sought the advice of a legal professional
- even those living below the poverty line were not necessarily eligible for legal aid, making the risk of taking legal action expensive and off-putting for many claimants⁹⁸

The EHRC remains concerned that victims of discrimination are not getting the help they need to enforce their rights in the courts, with too many barriers in their way. With this in mind, it is difficult to see how relying on a discrimination claim is a realistic or effective remedy for individuals who have been unlawfully discriminated against as a result of the Right to Rent scheme.

97 Equality and Human Rights Commission, "[Legal aid for victims of discrimination: our inquiry](#)", 2018

98 Equality and Human Rights Commission "[Access to Legal Aid for Discrimination Cases](#)", June 2019.

Where now?

Pages relating to Right to Rent on the Gov.uk website were updated in 2018 with links saying:

“Check how the Home Office can help you if a prospective tenant is a Commonwealth citizen (known as ‘Windrush’ cases) who has the legal right to live in the UK but does not have the documents to prove it.”

At the time of writing, though, these links went to a page on the Windrush Scheme.⁹⁹ This advises Windrush migrants on how to obtain documentation to demonstrate their immigration status and apply to the Windrush Compensation Scheme – something that doesn’t seem relevant to landlords and letting agents themselves.

Discussions on further evaluation have been ongoing for some time, with submissions going up as early as January 2018 on the need to evaluate the impact on the irregular migrant population, including research among irregular migrants themselves,¹⁰⁰ however to date ministers have failed to sanction such research. It appears there has now been a recognition by both ministers and officials of the need to take stock of the policy, with a submission from 3 July 2018 stating:

“You (Minister) met policy officials recently to discuss the Right to Rent scheme and requested advice on evaluating the policy now it has been rolled out nationally, and in light of concerns arising from the Windrush Critical Incident. The Independent Chief Inspector’s report also asked about whether the Right to Rent scheme was working as intended and whether there were any unintended consequences on vulnerable groups.

We think there are several steps we could take to address those ICI recommendations which we have accepted ([official’s] submission of 27 February). In particular, we could seek to address the current evidence gap regarding the extent of landlord awareness of the Right to Rent Scheme and their responsibilities under it.

Whilst the potential for discrimination in the scheme was addressed in the first phase evaluation, it would be much more difficult to measure and attribute discrimination to the scheme now that it has been rolled out across England. However, one option would be to look at potential discrimination against both migrants and BAME members of the population in the housing sector as a whole. This would not be an insignificant task and we would need to discuss any proposals with other departments, principally MHCLG. **Would you like us to develop this option further?”**

⁹⁹ Home Office, “Landlords: Immigration right to rent check”, accessed 10 October 2019

¹⁰⁰ Home Office, Internal paper, “Research proposal to increase our understanding of the behaviour, attitudes and motivations of immigration offenders”, January 2018

Having been unsuccessful in defending the policy before the High Court, the Home Office has recently committed to another evaluation of the Right to Rent scheme across England. Members of the LCP have been invited to be part of an evaluation sub-group alongside Home Office analysts, operational and policy staff, to inform the design of the next evaluation. We understand that the proposed evaluation's approach will involve a call for evidence to landlords and letting agents to understand how the scheme is functioning currently. It will assess how easy it is to make checks and any possible areas for improvement. It will include a mystery shopping exercise, which is seen as the most effective way to identify issues around discrimination. And it will feature panel surveys to gauge landlords' attitudes to renting to different tenant groups over time. The evaluation is expected to take around a year. Alongside that we understand a broader evaluation of the compliant environment policies has been proposed, which will include:

- a literature review of current knowledge, which is due to report shortly and will help inform decisions on future research activity
- a look at how best to use Home Office data to gain more insight into existing sanctions and how to develop more consistent monitoring procedures
- tracking the outcomes for people subject to compliant environment sanctions, to see if they regularise their stay, leave the UK, are subject to enforcement action, or disappear

We have been told that the evaluation may also involve working with partners to see how they apply sanctions, what action they take if they discover someone who isn't eligible for the service they're trying to access, and their views on their enforcement role. Similarly, working with stakeholders who work directly with people subject to the sanctions or restrictions would focus on the impact it has on people. The organisations would speak for migrants, who understandably are unlikely to want to deal directly with the Home Office. We understand that both the elements are subject to ministerial approval, and no decision has yet been made.

The Home Office is yet to complete its work in response to the Independent Chief Inspector's report, acknowledging that they needed to take on board the Windrush generation's experiences. But they had aimed to finish the action plan by the end of 2018 (to fulfil recommendation 1) and produce a draft strategy for wider engagement by the end of March 2019. For recommendation 4, more evaluation work is happening as set out above, including on the parts of the recommendation the Home Office initially rejected, such as discrimination.

In November 2018, the Home Office commissioned an independent contractor to undertake an assurance review of the Interventions and Sanctions Directorate's processes. One of the findings and recommendations from this review was:

"It was recognised that ISD is ultimately responsible for processes that it cannot assure or control itself; HMRC and SVEC (Banking) are examples of this.

Recommendation: ISD must work with any organisation or unit outside itself that forms an integral part of a process to ensure equal assurance processes are in place and must monitor that assurance remains in place."

This would seem to indicate the Home Office accepts it has a greater responsibility to ensure the Right to Rent process works fairly than has been seen so far – however to date there has been nothing to indicate any such assurance or monitoring has been put in place for the Right to Rent scheme.¹⁰¹

101 Home Office, Internal paper, "ISD assurance review", November 2018

Conclusion

The Right to Rent scheme was introduced to affect both irregular migrants, making it harder for them to access accommodation, and the landlords who exploited them.

With regard to irregular migrants, the Landlord's Checking Service has said it found people had no right to rent more than 2,500 times, with 567 enforcement visits prompted by a landlord's referral. But the work to evaluate its success and that of the wider compliant, or hostile, environment has only just begun. Similarly, in terms of tackling rogue landlords, 511 civil penalty notices have been issued (10 for repeat offences) with a value of over £325,000, of which £163,000 has been collected. There have been no criminal prosecutions so far. The Independent Chief Inspector said:

“3.16 Overall, the RtR scheme is yet to demonstrate its worth as a tool to encourage immigration compliance (the number of voluntary returns has fallen). Internally, the Home Office has failed to coordinate, maximise or even measure effectively its use. Meanwhile, externally it is doing little to address stakeholders' concerns.”¹⁰²

Over a year later this conclusion appears to remain true, and while the Home Office expected the scheme to take time to develop and take effect, the adverse consequences for those of the Windrush generation came far sooner. Given the strong link between migration and housing, and in particular between irregular migrants and landlords seeking to exploit their lack of status, it is understandable that the Home Office sought to change the system. However, to date there's been no real assessment of whether the scheme has worked, but substantive evidence of adverse consequences. The impact on ethnic minorities and those with status in the UK was identified by many interested parties and made plain to the Home Office. We have heard that the Home Office felt that they were responding to this. For example, a former minister told the review that:

“we sought to reflect on some of the things that were being said to us. Whether we went far enough, whether things were surfaced acutely enough – that will be for others to judge, but it wasn't a sense of not wanting to listen.”

Various criticisms, including from the Home Affairs Committee, and the Independent Chief Inspector, were made clear to the department. They raised concerns with clear recommendations, which the department initially failed to address, only to implement them further down the line. Much of the department's energy has seemingly been in defending the scheme, rather than considering criticism, seeing whether there was a better way to deliver the desired outcome, and doing more to mitigate against the unintended consequences.

102 Independent Chief Inspector of Borders and Immigration, ["An inspection of the "Right to Rent" scheme"](#), March 2018

Key dates

- 14 March 2013 – Prime Minister’s Private Secretary writes to Cabinet Minister David Laws, setting out the aspirations for new legislation to restrict irregular migrants’ access to the private rental sector.
- 8 May 2013 – Queen’s Speech announces a new Immigration Bill.
- 3 July 2013 – government consultation on the private rental sector provisions of the proposed bill opens.
- 21 August 2013 – government consultation on the private rental sector provisions of the proposed bill closes.
- 10 October 2013 - government response to the consultation published. Immigration Bill receives first reading in Parliament.
- 14 May 2014 – Immigration Act 2014 given Royal Assent.
- 1 December 2014 – phase 1 of the Right to Rent scheme goes live in Birmingham, Dudley, Sandwell, Walsall and Wolverhampton.
- 21 May 2015 – Prime Minister David Cameron gives a speech announcing nationwide roll-out of the Right to Rent scheme, and intent to introduce new eviction powers.
- 3 September 2015 – JCWI publish evaluation of phase 1 of Right to Rent, No Passport, No Home.
- 17 September 2015 – Immigration Bill has its first reading in Parliament.
- 20 October 2015 – Home Office publishes its evaluation of phase 1 of Right to Rent.
- 1 February 2016 – phase 2 of Right to Rent launched, with the scheme rolled out across England.
- 12 May 2016 – Immigration Act 2016 given Royal Assent.
- February 2017 – JCWI publish their second report on the operation of the Right to Rent scheme, Passport Please.
- 28 March 2018 – Independent Chief Inspector for Borders and Immigration publishes his report on the Right to Rent scheme.
- 27 June 2018 – the Home Affairs Committee publish their report *The Windrush Generation*.
- 1 March 2019 – High Court finds the Right to Rent provisions of the 2014 Immigration Act unlawful. The Home Office lodges an appeal.
- 30 April 2019 – 87 MPs write a letter requesting the Equalities and Human Rights Commission investigate the Home Office’s hostile environment policies.





ANNEX I

Corrective measures

Introduction

Objective (v) of the Windrush Lessons Learned Review's terms of reference is to establish *whether corrective measures are now in place, and if so, make an assessment of their initial impact*. The Home Office gave the review team details of a range of measures introduced in response to the Windrush scandal (some which were already in development); the majority are detailed in this annex.

The review defined a “corrective measure” as: *actions taken to recognise and put right the wrongs done to members of the Windrush generation when they became entangled in measures designed to combat illegal migration. In this way, the government can right the wrongs of the past and ensure it does things differently in future.*

The measures within the scope of this definition include remedial actions the department put in place by supporting and compensating members of the Windrush generation who the scandal affected. These measures are the Windrush Taskforce (managing the Windrush scheme),¹ the Historical Cases Review, exceptional payments policy and the Windrush Compensation Scheme.

The department has also identified a range of organisational reforms designed to make sure that something like the Windrush scandal does not happen in future, all of which come under the Borders and Immigration Citizenship System's (BICS) “Human Face” work. Measures include safeguards to stop other people being affected, and changes to policy-making and operational practice.² The department's vision for this work is “a Borders, Immigration and Citizenship system which is accessible to everyone it interacts with and which fairly addresses their individual needs”. The work is split into these strands:

- *“Customer service:* Provide a world class service to our customers, ensuring we make the right decision first time.
- *Safeguarding and vulnerability:* Support vulnerable individuals who interact with the system by ensuring that it is accessible, and safeguards are built in to protect them.
- *Listening organisation:* Be a listening organisation that constantly seeks to understand our customers' experience, improving the way we interact with the public.”

Finally, we give detail about two major programmes of work set up since the Windrush scandal to assess how far lessons are already being learned by the department.

Righting the wrongs of the past

On 23 April 2018, the then Home Secretary, Amber Rudd, acknowledged that, “an apology is just the first step we need to take to put right these wrongs. The next and most important task is to get those affected the documents they need. But we also do need to address the issue of compensation.”³

Windrush Scheme and Taskforce

On 16 April 2018, the government established the Windrush Scheme, in which a Taskforce would help people evidence their right to be in the UK and access services.⁴

1 Home Office, “[Windrush scheme](#)”, 10 June 2019

2 Six work strands associated with the spending review also come under the Human Face umbrella: the Future Borders and Immigration System (FBIS), High Needs, caseworking, compliance and enforcement, goods and security, and funding, all of which will contribute to the design of the future BICS system (in 2025). The work also includes reforms on the welfare of vulnerable people in detention. These measures are beyond the scope of this review, but the most recent progress report following Stephen Shaw's review is available here: Stephen Shaw, “[Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#)”, July 2018

3 Home Office, Oral Statement, “[Windrush](#)”, Hansard, 23 April 2018

4 Home Office, Oral Statement, “[Windrush Children \(Immigration Status\)](#)”, Hansard, 16 April 2018

Taskforce eligibility criteria⁵**Windrush guidance**

Referrals should be made to the Taskforce if the indication is that the migrant falls into one of the following three groups:

- a Commonwealth citizen* who was either settled in the UK before 1 January 1973 and has been continuously resident in the UK since their arrival or has the Right of Abode
- 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 and who has strong ties to the UK
- a child of a Commonwealth citizen* parent, 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, and the parent was settled before 1 January 1973 or has the Right of Abode (or met these criteria but is now a British Citizen)
- a person of any nationality, who arrived in the UK before 31 December 1988 and is settled in the UK

* For the Windrush scheme, citizens of Commonwealth countries mean citizens of the following:

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	Malaysia	Malawi	Maldives
Malta	Mauritius	Monserrat	Namibia
Nauru	New Zealand	Nigeria	Pakistan
Papua New Guinea	Pitcairn, Henderson, Ducie and Oeno Islands	Saint Helena, Ascension and Tristan da Cunha	Saint Lucia
Samoa	Seychelles	Sierra Leone	Singapore
Soloman Islands	South Georgia and the South Sandwich Islands	South Africa	St Kitts and Nevis
St Vincent and The Grenadines	Sri Lanka	Swaziland	Tonga
Trinidad and Tobago	Turks and Caicos Islands	Tuvalu	Uganda
Tanzania	Vanuatu	Virgin Islands	Zambia
Zimbabwe			

⁵ Taken from internal guidance to Home Office staff.

The Taskforce held outreach surgeries across the UK. These started on 28 April 2019, and 65 events have been held or were scheduled to have been held by the end of June 2019. The department enlisted staff who volunteered to support its response by helping to rebuild trust in the communities and localities most affected.

The Taskforce included a telephone helpline to offer support and guidance on the Scheme and how to apply. Each applicant was allocated a caseworker to work with them to build a picture of their life in the UK. They worked with other government departments to find records if necessary, and with local authorities and charities to get access to benefits, basic provisions and temporary accommodation where they needed it. The government made assurances that no information passed to the Taskforce would be passed to Immigration Enforcement.

A dedicated Vulnerable Persons Team (VPT) was established to make sure that people in most urgent need could get support and advice through a single point of contact. The VPT has worked to resolve individual issues and build trust, receiving positive feedback from applicants. By the end of September 2019, the VPT has provided support to 987 individuals with 91 cases ongoing. They continue to receive approximately 9 new referrals each week. It made 361 referrals to DWP in relation to fresh claims and reinstatement of benefits, with 252 individuals given advice and support on issues relating to housing.⁶

Since 6 August 2018, the Taskforce has been piloting a dedicated debt-advice service through Citizens Advice. Citizens Advice identify take-up for this service through their drop-in provision and caseload. In March 2019 the pilot was expanded from Citizens Advice Bolton to include Portsmouth and Kent Citizens Advice offices to aid data collection and the evaluation of the demographic that has used the service to date.

All decisions to refuse Windrush Scheme applications were initially checked and signed off at ministerial level. From 5 August 2019 these decisions have been approved at Senior Civil Servant level following an increase in claims wholly without merit. All applicants can request a review of the Taskforce decision to refuse all or part of their application, including those applicants refused because they were not eligible under the Scheme. The Chief Casework Unit reviews all refusals. There is no mechanism for external review of these decisions.

By October 2019, 8,124 individuals had been granted some form of documentation confirming their right to remain in the UK by the Taskforce. Documentation confirming status includes people given Indefinite Leave to Remain (ILR) and No Time Limit (NTL).

As of September 2019, the Taskforce had made 9,284 refusals to individuals who had submitted applications under the scheme (7,783 from overseas applications). By the end of September 2019, they received 264 requests for a review of a refusal decision; 223 decisions have been upheld, 38 were in progress, and 3 had been overturned.

The published data shows that 19.5% of cases were not finalised within 2-week service-standard set by the Taskforce. The Home Office describes the reasons for this variation as being due to additional evidence being submitted outside the 2-week period, or the complexity of a particular case.⁷

6 Home Office, "<https://www.parliament.uk/documents/commons-committees/home-affairs/Correspondence-19-20/19-10-22-Windrush-update-from-Home-Secretary-Sept.pdf>" "Letter to the Chair of the Home Affairs Committee", 22 October 2019

7 Home Office, "<https://www.parliament.uk/documents/commons-committees/home-affairs/Correspondence-19-20/19-10-22-Windrush-update-from-Home-Secretary-Sept.pdf>" "Letter to the Chair of the Home Affairs Committee", 22 October 2019

Windrush Historical Cases Review⁸

The Historical Cases Review Unit (HCRU) was tasked with improving the process to extract data, and to review individual cases. The HCRU identified Caribbean Commonwealth nationals who had been removed, detained, and/or subject to proactive compliant environment sanctions (where the Home Office has shared data with other departments), told the Home Office they came to the UK before 1 January 1973, and were not foreign criminals. Other Commonwealth nationalities were not considered. Relevant cases of those who appeared to have arrived before 1 January 1973 were referred to the Windrush Taskforce, who would try to contact people to help them, if appropriate, to regularise their status in the UK.

The Historical Case File Review looked at 11,800 cases of removals and detentions. This identified 164 people who had arrived before 1 January 1973. A detailed breakdown of the 164 cases is provided in [Annex G](#). The unit also reviewed 322 criminal cases (removals and detentions), with 10 people identified. It reviewed 1,977 compliant environment cases, identifying 55 people. In total, 67 people identified by the HCRU received letters from the Home Secretary apologising for what happened to them.

An external professional services consultancy was commissioned by the Home Office to give independent assurance of the work of HCRU in two stages. Stage 1 involved a review of the design and documentation of the HCRU's governance, structure, and programme of work, highlighting any identified risks, gaps, and areas for improvement. Stage 2 was a review of a sample of cases assessed by the HCRU, to consider whether it delivered its work as it intended to.

The review's report made five suggestions to the Home Office, the first three of which it accepted. It rejected the final two on the grounds that they fell outside the scope of the review as agreed with ministers and outlined to HAC:⁹

1. that the department does further work on a group of 254 individuals whose first arrival date is unclear, to ascertain their arrival date, or that all 254 individuals should be passed to the Taskforce
2. that the department considers if additional assurance is required over the data extraction and filtering used to produce the cohort of individuals reviewed by HCRU
3. that the department considers reviewing the cases of individuals whose only removal and/or detention took place before 2002 and is recorded on CID
4. that the department considers reviewing the cases of individuals on CID without a date of birth or nationality, or with "unspecified" or "unknown" as their nationality
5. that the department considers reviewing the cases of individuals who appear in data obtained from Interventions and Sanctions but who do not have a record in CID – to determine whether any may have been tangentially impacted by the compliant environment

Windrush urgent and exceptional payments policy

On 13 June 2018 the Home Affairs Committee (HAC) published its report detailing the need for a Windrush Hardship Fund to provide immediate, sustainable government support, targeted to meet people's specific needs, before the rollout of the Compensation Scheme.¹⁰ This recommendation was reiterated in their subsequent report on their Windrush Children Inquiry, published on 3 July 2018.¹¹

8 Home Office, "[Letter to the Chair of the Home Affairs Committee](#)", 23 July 2019

9 Recommendations and HCRU response

10 Home Affairs Committee, "[Windrush: the need for a hardship fund](#)", June 2018

11 Home Affairs Committee, "[The Windrush generation](#)", June 2018

The government announced its “urgent and exceptional circumstances policy” in October 2018,¹² although the scheme was not officially launched until December 2018.¹³ At the time of writing, full or partial payments had been approved in 23 of the 118 eligible applications. Also, three exceptional payments for return flights to the UK were made before the official launch of the scheme. Fourteen cases are under consideration, 73 declined and 8 withdrawn.¹⁴

Windrush Compensation Scheme

On 3 April 2019, the Home Secretary announced the launch of the Windrush Compensation Scheme (WCS). He said: “Nothing we will say or do will ever wipe away that hurt, the trauma, the loss that should never have been suffered by the men and women of the Windrush generation, but together we can begin to right the wrongs of Windrush.”¹⁵

The WCS¹⁶ was launched after nearly a year spent designing the proposals, led by Martin Forde QC, an Independent Adviser. The work included extensive consultation with people affected and their representatives. The department received more than 2,000 responses to its call for evidence and consultation.

Eligibility for the scheme is broadly aligned with that of the Windrush Taskforce. Almost everyone originally from a Commonwealth country who arrived before 1 January 1973 is eligible to apply to the WCS. If someone has a “right of abode”¹⁷ or “settled status”¹⁸ (or is now a British citizen) and arrived to live in the UK before 31 December 1988, they are also eligible to apply regardless of their nationality when they arrived – even if they were not a Commonwealth citizen. The scheme is also open to: children and grandchildren of Commonwealth citizens in certain circumstances; the estates of those who have died but who would otherwise have been eligible to claim compensation; and close family members of eligible claimants where there has been a significant impact on their life or where there is evidence of certain direct financial costs. People convicted of serious criminal offences are not eligible for compensation.¹⁹ Eligible applicants can claim for losses related to employment, immigration fees, detention and removal, housing, health, education, driving licences, banking the impact on normal daily life and a range of other circumstances at the Home Office’s discretion. The 45-page rules contain more information about the design of the scheme.²⁰

Since the launch of the Windrush Compensation Scheme in April 2019, over 30 engagement events have taken place across the UK between April to December 2019 where members of the Taskforce and the Compensation Scheme have been on hand to explain what help and support is available to those affected and how to make a claim. By the end of July 2019, funding of up to £1,000 per event was provided (with a total budget of £40,000) was approved for local paid media, social media (Facebook) and printed assets to advertise the engagement events. Spend to date on paid media has been £4,827. A budget of approximately £40,000 was also approved to reimburse stakeholders who hold events to raise awareness of the Windrush Schemes. Spend to date has been £6,001.84.²¹

12 Home Office, “[Windrush compensation scheme consultation extends](#)”, 11 October 2018

13 Home Office, “[Windrush Scheme: support in urgent and exceptional circumstances](#)”, 17 December 2018

14 Home Office, “<https://www.parliament.uk/documents/commons-committees/home-affairs/Correspondence-19-20/19-10-22-Windrush-update-from-Home-Secretary-Sept.pdf>” “*Letter to the Chair of the Home Affairs Committee*”, 22 October 2019

15 Home Office, Oral Statement “[Windrush Compensation Scheme](#)”, Hansard, 3 April 2019

16 Home Office, “[Windrush Compensation Scheme](#)”, 18 July 2019

17 Having right of abode means you’re allowed to live or work in the UK without any immigration restrictions. More information is available at: “[Prove you have right of abode in the UK](#)”

18 Gives migrants the right to live and work in the UK

19 The WCS defines serious criminality as a conviction that received a sentence of imprisonment of four years or more, and “that the offending was of such a nature that makes it inappropriate to make an award in whole or part

20 Home Office, “[The Windrush Compensation Scheme Rules](#)”, April 2019

21 When considering spend to date, it is important to note that during the pre-election period, most engagement and related costs were put on hold.

The Taskforce helpline continues to give advice and support to help people to understand their entitlement to make a claim. Each application is subject to a triage process, which looks at eligibility, and whether it is a straightforward or complex claim, and there are two types of compensation: “actuals” (payments reflecting the actual loss) or “tariff based” (payments based on different categories of loss or harm). As the scheme was only launched in April 2019, the application numbers are still low.

While some of those affected, and their representatives, initially welcomed the scheme, there have been criticisms about its delayed launch, and concerns about its operation. These concerns include the fact that successful application fees for citizenship are not recoverable. Legal fees can only be recovered for certain applications (up to a £500 limit).²² Some people may have considerable difficulty providing the evidence required to submit a claim, mirroring the difficulties experienced by the Windrush generation in the past.²³ Claimants must also provide evidence that they took “reasonable steps to resolve their lawful status” and “mitigate the losses” they experienced. The Home Office can decline or reduce a compensation award in these respects.²⁴

There have also been questions about the fairness of the compensation levels offered for different types of loss or enforcement action and the caps on certain categories of loss. Following publication of the compensation scheme guidance on 3 April 2019, some MPs described the sums that individuals may be entitled to as “derisory” and “insultingly low”.²⁵ Martin Forde QC has argued that many of the concerns are based on a misunderstanding of how compensation would be calculated (individuals may be eligible under multiple heads of claim) and urged those affected not to seek the advice of no-win no-fee lawyers.²⁶

Separate to the role held by Martin Forde QC during the development phase of the scheme, as the independent reviewer, the government has appointed an independent person to provide oversight and scrutiny 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.²⁷ In addition, we understand that the department will soon be launching a public appointments process to recruit a permanent Independent Adviser to the scheme. Martin Forde QC, who provided independent advice on the design of the scheme, will continue to serve as Independent Adviser in the interim period.

At the start of the scheme, the department agreed a contract with Citizen’s Advice (CA) which allows claimants to receive help in completing the forms from their local CA. We understand that until 31 December 2019, 280 people have been referred by the Windrush Compensation Scheme to Citizen’s Advice. The department contracted with CA in the first instance, subject to a longer term competitive tendering process. This tendering process was due to start at the end of 2019 but was delayed due to the 2019 General Election. The Home Office announced on 6 February 2020 that they would soon be launching the procurement tender. In the meantime, Citizen’s Advice will continue to provide the service for a further six months.

Claimants who receive an offer of compensation also receive an apology from the department.

22 This approach stems from the government’s position on legal advice in immigration applications. As described in the Home Office response to the Windrush consultation: 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.

23 For example, the evidence that will be accepted by the Home Office from people attempting to claim for loss of their actual earnings where they were offered a job but were unable to take it up because of their supposedly precarious immigration status, and from those people who were unable to demonstrate their status in the UK and therefore returned to their country of birth voluntarily Home Office, “[Windrush Compensation Scheme casework guidance](#)”, 10 April 2019

24 The caseworker guidance states that it would “normally” expect to see the following evidence to demonstrate the “reasonable steps” taken: a letter from the Home Office in response to an enquiry about their lawful status; or confirmation from the department’s records that such contact was made. Home Office, “[Windrush Compensation Scheme casework guidance](#)”, 10 April 2019

25 House of Commons, “[Urgent Question debate on Windrush Compensation Scheme](#)”, Hansard, 9 April 2019

26 The *Guardian*, “[MPs call for review of ‘derisory’ Windrush compensation scheme](#)”, 9 April 2019

27 Home Office, “[Windrush Compensation: response to consultation](#)”, April 2019

At the time of writing, the scheme has been in operation for just over 10 months. The Home Office announced on 6 February 2020 that, as at 31 December 2019, 1,108 claims had been received, with 36 payments made totalling £62,198. These figures are well short of the numbers predicted. There were 3 cases where individuals who were eligible to apply received a “nil” award. Given the relatively low number of claims that have been made it is disappointing that only 36 payments have been made, and that more community-led support was not made available to those submitting applications, in addition to the support provided by CA.

The scheme was due to close to claims in April 2021. On 6 February 2020, the Immigration Minister announced that they were extending the duration of the scheme by two years, so that people will be able to submit claims until 2 April 2023. This is to provide certainty to individuals who may be thinking about making a claim that they will have time to do so, and to give more time to reach people who are not yet aware of the scheme.

Safeguarding the Windrush generation and others

In response to the Windrush scandal, the government put in place several safeguarding measures to reduce the risk of members of the Windrush generation, and potentially other groups, being caught up in compliant environment measures, including immigration enforcement and detention. This section describes those safeguards and the wider work being done to support vulnerable people who interact with the system.²⁸

Compliant environment safeguards

The Home Secretary, in an update of the department’s response on Windrush to Home Affairs Committee chair Yvette Cooper on 10 July 2018, said: “We have paused pro-active data sharing with other government departments and delivery partners on data for all nationalities over 30 years old for a period of three months. This covers HMRC, DWP and the DVLA.”²⁹ He added that the department had “significantly restricted pro-active data sharing with banks and building societies via Cifas (the specified anti-fraud authority), to persons subject to deportation action due to criminal activity”.³⁰ The department also paused several compliant environment activities, including the NHS debtors process, issuing of notices of letting to a disqualified person, and No Recourse to Public Funds responses. Temporary restrictions were also put in place on nudge letters to employers, and the data sharing memorandum of understanding with NHS Digital (from which NHS Digital have now withdrawn).

Data sharing with other government departments and Cifas is still suspended, but the other workstreams have now resumed. The Home Office has set out proposals to restore full data sharing measures once extra sustainable safeguards are in place, both before and after it shares information.³¹

Between August and October 2018, the department commissioned an independent review of its compliant environment measures, including assessing the safeguards in place when the measures are triggered.³² The aim of the review was to demonstrate that the processes for the Immigration Enforcement’s Interventions and Sanctions Directorate (responsible for supporting the compliant environment) are fit for purpose and consistent, that assurance practices are adequate and capable of maintaining quality standards, and that the safeguards minimise the risk of error and potential incidents. The review identified several risks to effective assurance, including “silo working”,³³ a failure to share lessons, a lack of ownership, complex IT, lack of change control processes and a lack of structured processes and documents. The report referred to one of the department’s largest operational

28 The department is instituting several safeguarding measures focussed on detention, in response to the Shaw report. I have not considered these as part of the assessment as they do not sit within the scope of the review (which focuses on why members of the Windrush generation got caught up in the first place)

29 Home Office, “Letter to the Chair of the Home Affairs Committee”, 10 July 2018

30 Home Office, Internal paper, “ISD safeguards and de-risking presentation”, May 2019

31 Home Office, Internal paper, “ISD safeguards and de-risking presentation”, May 2019

32 Home Office internal paper, “ISD assurance review”, November 2018

33 When people or teams with the same objective do not talk to each other or share information, to achieve that objective in the most effective and efficient way

centres, saying that it, “exemplifies practices that have been developed organically and that respond to business need; as such, documentation of practices and documents are either missing or could be improved”.

The review made recommendations on formalising processes, assessing staff performance, assuring staff output, extra checks on data before it is sent to partners, and creating an Assurance Management System. There were also recommendations aimed at making human error less likely. The review has informed the department's subsequent safeguarding measures.

A “triple lock” measure involves introducing rules for sharing data with other government departments (OGDs), including a refining processes to quality assure the data before sharing, and a manual status check on all “matched” individuals before partners take action (described as the “Windrush status check”).

The department is also revising instructions and processes on arrangements with OGDs more widely, including introducing manual status checks for high-risk cases. The department believes these safeguards will “mitigate the risk of any individual with leave to remain in the UK from being impacted by our sanctions, regardless of age or nationality. Therefore, the need for an arbitrary cut-off based on age is no longer required. It is proposed that this restriction now be lifted to allow us to close the gaps and effectively enforce the access to work, benefits and services.”

The department is also reviewing routes of redress for proactive compliant environment measures so the resumed measures are accompanied by “a simple route to redress, allowing them to rectify errors and, where necessary, signpost routes to establishing status” (where certain people face significant difficulties in navigating the system).³⁴ A report setting out proposals considers several routes on the basis that the Taskforce may not be sustainable in the longer term, and that sustainable reforms may not yet have been established. The report says that driving licence and banking measures have enough routes in place (e.g. a leaflet with Home Office contact details) but need better signposting about regularising status. The report advises the same for government-led measures. It acknowledges that routes for redress for people affected by private sector-led measures (e.g. landlords and employers) are less clear.

The department has revised the guidance it issued to landlords and employers – encouraging employers and landlords to get in touch with the Home Office Checking Service if a Commonwealth citizen does not have the documents they need to demonstrate their status, rather than simply refuse an applicant outright. Operational guidance and a quality assurance marking system for Home Office staff have also been produced to improve decision-making, and the department points to new IT investment and changes to data specifications as a safeguarding measure.

Enforcement safeguards

The department set out to “de-risk” Immigration Enforcement (IE) activity after the Windrush scandal by introducing several safeguarding measures under the umbrella term of “Operation Tarlo”. It reviewed the IE caseload and flagged potential Windrush cases to the Taskforce. It also issued new guidance and revised the requirements for authorisation on case decisions. For example, from 27 April 2018 most cases referred to the Detention Gatekeeper³⁵ would need to be authorised by a Senior Civil Servant to approve or reject their recommendation, This was discontinued in November 2019 when a sliding scale for authorisation of detention was introduced, which is dependent on the circumstances of the individual to be detained. Also, all returns and charter flights to the Caribbean now need to be authorised by the Immigration Minister.

³⁴ Home Office, Internal paper, “Routes to redress”, March 2019

³⁵ A person who decides whether or not someone enters the detention estate following a referral from another unit

Identifying and supporting at-risk individuals

The department has commissioned the Independent Chief Inspector of Borders and Immigration to report each year on whether and how its “Adults at Risk in Immigration Detention” policy³⁶ is improving the way vulnerable people are identified to make sure they are not detained inappropriately and are detained for as short a time as possible.

Immigration Enforcement’s vulnerability strategy sets out how it will meet its responsibilities to protect vulnerable people, children and communities, alongside its vision to reduce the size of the illegal population. The strategy describes a “person-centred” approach that sees the person first, regardless of their current immigration status.

The strategy sets out the intention to change the culture of the department by looking beyond the immediate circumstances and encouraging staff to exercise their professional curiosity to understand the needs of vulnerable adults and children. The vulnerability strategy focuses on four principles: professional curiosity, health-check mechanisms, engagement and culture, all of which are underpinned by the principle of taking a “person-centred” approach. The strategy includes a range of early interventions and signposting for vulnerable adults and children that may reduce their exposure to compliant environment measures, having taken steps to regularise their stay or return at the earliest opportunity. A common curriculum and training programme are now in place for frontline staff, and while slightly delayed, the new “person-centric” IT systems will be fully rolled out during the first half of 2020.

Work is also underway to develop a *BICS-wide safeguarding and vulnerability strategy* – the purpose of which is to improve how BICS supports vulnerable people who interact with all parts of the system by making it accessible and building in safeguards. The department describes this work as an iterative process, which includes reviewing the objectives that sit under the BICS goal of “protecting vulnerable people and communities” and improving the way vulnerability issues are managed across the system, including clarifying information sharing arrangements where individuals are at risk. As the department plans to develop it further in response to the findings of this review, there is no implementation date as yet.

Improving leadership and culture

The department has strategies to develop an inclusive culture across the Home Office, including recognising the important role that leaders at all levels play in role modelling the behaviours it expects.

Home Office Diversity and inclusion strategy: inclusive by instinct

The Home Office’s diversity and inclusion strategy sets out the department’s corporate ambition to 2025, and seeks to mark “a step change in putting Diversity and Inclusion at the heart of who we are as an organisation to create a better Home Office.”³⁷ The strategy acknowledges that the Home Office is not representative of the communities it serves and needs to make more progress in building an inclusive culture. There are persistent disparities across a range of important measures, including performance appraisal outcomes, People Survey results and BAME representation at senior grades.

The strategy recognises that creating a diverse and inclusive department is imperative to achieving its wider objectives and emphasises the importance of representing modern Britain in all its diversity to deliver the best outcomes for the UK. The department says it is setting ambitious objectives in increasing representation particularly for BAME and disabled Senior Civil Servants (SCS). This includes a target of increasing BAME SCS representation from 7.1% currently to 12% by 2025 (stating that this reflects the UK’s economically active population) while maintaining the overall BAME staffing composition at 24%.

36 Home Office, “[Immigration Act 2016: Guidance on adults at risk in immigration detention](#)”, July 2018

37 Home Office, “[Diversity and inclusion strategy 2018 to 2025: Inclusive by instinct](#)”, 11 September 2018

The current strategy differs markedly from previous ones in focusing entirely on workforce issues and is essentially a supplement to the People Strategy. Previous strategies³⁸ put considerable emphasis on the public sector equality duty (PSED) and have also included a focus on external factors such as stakeholder engagement and taking steps to ensure suppliers meet equalities duties.

On 7 June 2019, the Independent Adviser received an email from the Permanent Secretary setting out a range of initiatives the department has introduced to strengthen policy-making and its approach to diversity and inclusion. They included:

- Work to improve the department's capability to identify, understand and analyse impacts on equality. This includes raising the quality and impact of Policy Equality Statements.
- Mandatory training for all SCS on equalities including around the PSED. This is to make sure SCS are all aware of the legal framework and can provide effective, inclusive and fair leadership to a diverse workforce.
- A refreshed and reinforced Race Action Plan, aiming for the department to become an employer of choice across the civil service, where all employees (regardless of their ethnicity) can succeed and fulfil their potential.
- A stock-take of action in response to the Race Disparity Audit to be considered by both SCS and ministers.
- Work on outreach to communities across the UK, focusing on improving the department's ability to build robust and effective links with communities that are particularly affected by the department's work.
- Increasing analytical capability to help understand the department's impact on different customer groups and in turn improve the development of policy and operational practices.

Also in June 2019,³⁹ the Chief People Officer wrote to all Home Office SCS about a series of workshops planned to give them an opportunity to share their experiences of, "leading the way as positive role models, consciously thinking about representation and how you as a leader can create an inclusive environment, with a full understanding of the benefit a diverse Home Office has on our ability to deliver for the UK public...[including] not just looking inwardly but also encouraging us to think about the Public Sector Equality Duty and what it is like to receive our services as a citizen and to deliver better services to citizens."

And later, in June 2019, an internal Home Office blog also described a "listening circle" event⁴⁰ (based on a similar event 20 years ago) where the department's executive team met with staff from different BAME backgrounds, so they could "listen – without speaking – to what they had to say about being BAME in the Home Office".

Home Office People Strategy

The Home Office's People Strategy sets out the department's vision, "to be a truly great place to work for our people, engaging, enabling and empowering them to best serve society, while achieving our business objectives. To be an employer of choice not only in the Civil Service, but in the broader marketplace, with an 'Inclusive by Instinct' culture which recognises the value of each individual in creating a Brilliant Home Office. To be a future-focused and digitally-enabled organisation with leadership visibility of the right people data to make the right decisions at the right time, simply and efficiently."⁴¹

38 Home Office, "[2013-2016 Diversity and Inclusion Strategy: Making the most of our diversity](#)", December 2013 and "[2010-2013 Diversity Strategy](#)", June 2010

39 Home Office, Internal email, 5 June 2019

40 Home Office, Internal intranet blog, "The Listening Circle", June 2019

41 Home Office, Internal paper, "People Strategy 2018 – 2023: A Brilliant Home Office", 2018

The strategy says that, for Home Office staff, the vision should mean:

- “A more diverse, inclusive culture where we can all be ourselves, with inspiring, empowering leaders at all levels
- An environment which enables us to perform at our best and fulfil our potential, supporting business objectives while best serving society
- A collaborative, connected and open workplace, where working in digitally-enabled teams with the right mix of skills, capabilities and strengths is second nature”.

The strategy goes on to talk about establishing strong “foundations” (identified as an “enhanced workforce planning approach”, “embracing data and digital”, “the basics, done well” and “the people offer”) that will enable what are described as “strategic shifts” (including “resourcing”, “growth” and “employee experience”). The strategy acknowledges that “to best serve the public, we need to put our people at the heart of our organisation, becoming a truly great place to work, ready to respond, to adapt, and to always evolve.”

Improving policy-making

The only significant corrective measure the department has identified regarding improving policy-making is the creation of a Policy Assurance Framework and accompanying toolkit.

Home Office Policy Assurance Framework (PAF)

Over the years, the Home Office’s internal audit teams have made several recommendations for improving the audit and assurance processes for developing and implementing policy. Similarly, the internal DNA review completed in October 2018 highlighted the key role of operational teams in informing the development of policy and guidance, and the need for policy-makers to better understand those operational practices and take ownership of policies’ implementation and guidance from start to finish. The department acknowledged this need when both the Permanent Secretary and Second Permanent Secretary gave evidence to the Public Accounts Committee on 17 December 2018. The Second Permanent Secretary said: “We need to continue to improve our assurance”, and the Permanent Secretary said: “We want to be testing the submissions we receive and ideas that are around for, among other things, the risk of inadvertent consequences”⁴²

On 11 April 2019, the Home Office launched its Policy Assurance Framework (PAF), a tool intended to support all policy-making and policy change across BICS. The framework consists of two documents – the PAF form itself, which policy officials complete when introducing a new policy or making changes to an existing one, and the nine-page BICS Policy Toolkit, which shows how to use the PAF. The PAF is in six parts: the submission (to ministers on the policy proposal); contacts (for internal and external consultation); due diligence (policy making including consultation, Policy Equality Statement, discrimination and vulnerability, legal advice and reference to Windrush and other reviews); delivery planning; monitoring and evaluation.

The PAF form contains links to existing sources of guidance for policy-makers, prompting them to make sure they have read and applied it appropriately. The BICS Policy Toolkit section on the PAF contains the questions policy makers will be expected to have considered and be able to evidence as part of their policy development.

42 Public Accounts Committee, Oral Evidence “[Windrush generation and the Home Office](#)” 17 December 2018

Improving operational practice

This section looks at the operational improvements the department is undertaking in response to the scandal under the “Human Face” banner. This includes a programme to simplify guidance and correspondence and creating mechanisms to support people interacting with the system – including the most vulnerable – and to improve decision-making and feedback loops across the system.

Simplification programme

BICS has established a simplification steering group to give strategic oversight of the BICS simplification programme, which includes simplifying the Gov.uk website, application forms and letter templates, as well as guidance for staff.

Work has already begun on developing a single website for applicants on Gov.uk using simple language, consistent design and structural improvements. The department is also working to simplify application forms, which are nearly all now online, with standard sections agreed. Letter templates have also been reduced and simplified where possible. This came after input from a range of stakeholders, including members of the judiciary, legal practitioners and interested organisations such as Justice and the Law Society, and organisations who support migrants, to get more insight into applicants’ experiences.

Internal guidance for staff has also been updated, with redundant guidance removed and some redrafting underway. Guidance across BICS is being assessed to determine who is responsible for it, and where the biggest risks lie, and to identify opportunities to improve and simplify it. The new Atlas casework management system, already in use for some application routes and due to be fully operational by the end of the financial year 2019/20, should also support more structured and timely decision-making.⁴³

In January 2019 the Law Commission published a consultation paper⁴⁴ setting out its intention to review the Immigration Rules, identify the underlying reasons for their complexity, and lay down principles for redrafting them to make them simpler and more accessible. The consultation closed in May 2019 and the Law Commission published its final report and recommendation on 14 January 2020. In their report the Law Commission recommended that the “immigration rules be overhauled” with the aim of simplifying them and making them more accessible for applicants. The report also recommended that the Home Office consider introducing a less prescriptive approach to evidence required from applicants. The aim of the work is to publish a revised, simplified set of rules from January 2021, with a consolidated set of rules laid in late 2020 to facilitate the borders and immigration system of the future from 2021. The Home Office has set up a Simplification of Rules Taskforce (SORT) to deliver the changes.

Rather than trying to legislate for all eventualities, revising the rules and accompanying guidance should give decision-makers more scope to exercise judgment and discretion in individual cases for how to meet a requirement. Meanwhile, new teams in UKVI and IE are helping caseworkers use appropriate discretion across BICS and contribute to identifying where it arises and provide insight into the implications of providing more, or less, discretion under different circumstances.

43 Atlas is the Home Office’s new digital immigration caseworking system. Driven by biometric details, the system will provide staff with all the data on a person’s immigration history in one place, including what evidence has already been provided, so staff can focus more on consideration and decision-making, cases can be resolved quicker, and so there is no need to request the same supporting evidence every time an applicant makes an application. There has been some analysis on how long it took to complete an application on the previous caseworking system compared to Atlas. The department noted a 500% increase in productivity (e.g. a caseworker can close 40 visa cases on Atlas in the time it took to complete eight visa cases on the old database).

44 Law Commission, “[Simplification of the Immigration Rules](#)”, January 2019

Chief Casework Unit

The Chief Casework Unit (CCU), set up in June 2018, works to support and improve decision-making on cases – including the use of discretion – and to encourage and share good practice across UKVI. The team was set up in response to the Windrush scandal, but will advise on any complex case, and has a network of “embedded leads” across UKVI to act as a link between the CCU and individual teams. The unit also undertakes independent reviews of Windrush refusals made by the Windrush Taskforce. Separately, a professionalisation hub linked to the CCU is developing a new training and accreditation strategy for casework staff. As of April 2019, the unit had reviewed almost 100 Windrush Taskforce decisions, supported the delivery of “human face” training to all nationality decision-makers to promote a more “customer-centric approach”, and given advice on 95 cases.

The CCU works with BICS strategy and policy to identify and resolve gaps in published guidance, and with operational commands through their embedded leads, Casework Forums and communications with senior caseworkers across UKVI. The Unit is developing a video and poster campaign to bring the “human face” to life for staff, by hearing from service users about life-changing moments. They will review the use of non-suspensive appeal (NSA) certification to make sure casework systems and processes are effective and explore options for accrediting decision-makers.

The unit is also planning, piloting and evaluating a range of activity at various stages in asylum, refused case management and family and human rights applications, under a wider programme of work called *Making better decisions*, focused on getting decisions right first time. The pilot work aims to improve early communication and engagement with service users – particularly the most vulnerable – and find ways to gather information and evidence as early as possible in the process, including improving feedback loops and opportunities for reviewing cases while they are waiting for appeal. The department tells us that, after evaluation, the pilots with proven benefits will be rolled out more widely.

IE Safety Valve Mechanism

The Safety Valve Mechanism (SVM) – formed in response to the Windrush scandal – is a virtual community of experts from across Immigration Enforcement (IE) who give advice, monitor trends and work with policy to learn from cases to improve future responses. Its aim is to encourage a culture in which staff see the person and not just the case. The SVM does not replace the expertise that already exists in teams; it supports it by providing more safeguards and another avenue for advice when people feel uncomfortable about the decision they are making. It is accessible to all IE areas and does not focus solely on caseworkers.

BICS Hub

After the scandal, the Borders, Immigration and Citizenship System (BICS) Hub was formed to “develop new ways of working to become better equipped to anticipate and respond to high profile issues”. The hub has four functions:

- *Rapid Response* – enhanced secretariat support, modernising and improving the quality and standard of briefing material/ media queries etc.
- *Warning and Reporting* – identification and escalation of cross-cutting issues that may have a reputational, financial or political impact on BICS. To achieve this, the team analyses media reporting, PQs, FOIs, MP and official correspondence, litigation, and performance data to identify emerging patterns and trends. It also monitors external reports and recommendations from the ICIBI, HAC, and other stakeholders to identify areas for review.
- *Internal Review* – flexible capacity to investigate and analyse emerging issues across the immigration system (from team 2), and commissions directly from Ministers and BICS Directors General on high-profile issues requiring semi-independent review.
- *Briefing and Corporate Memory* – to supplement the activity above, this team will maintain a core narrative on key immigration issues and ensure there is a corporate record of key decisions and developments, maintaining an up-to-date, structured narrative around developments in policy and legislation.

UKVI Customer and channel strategy

UKVI developed a high-level strategy in March 2019 which outlines its customer and channel aspirations (channel referring to channels of communication). The UKVI customer and channel strategy has been developed based on the department acknowledging that UKVI does not comprehensively or consistently understand its customers or their needs. This results in sustained levels of “failure demand”,⁴⁵ higher costs, lower satisfaction and potentially fewer repeat travellers. It also means the department misses opportunities to develop its services to meet people’s evolving needs, which creates risks and undermines its ability to realise UKVI’s mission to deliver World Class Customer Service (WCCS).

UKVI has been consulting across BICS to make sure it is in step with emerging Future Borders and Immigration System principles, including creating seamless end-to-end journeys. The priorities for establishing a customer centric UKVI are:

- “Differentiate and rationalise our customer offer (straightforward vs high-needs)
- Eliminate failure demand
- Futureproof our channels
- Strengthen our customer insight
- Build a customer centric people offer.”

At the time of writing, the strategy was still very high-level – amalgamating new and existing objectives – and UKVI was moving into a “design” phase, developing more detailed proposals in line with the priorities.

UKVI's Front End Customer Service (FES) points

From October 2018, the majority of UKVI service users could complete their immigration application at new Front End Services (FES) points across the UK. People can submit their biometric information (photo, fingerprints, and signature) and supporting evidence (which they can keep throughout the application process, including passports). The new FES UK service will transfer all application data (supporting evidence and biometric data) digitally to UKVI – to minimise the volume of paper coming into, and moving around, the system. UKVI decision-makers will see digital images of the evidence collected at FES UK service points.

Alongside FES UK, since March 2019, seven Service and Support Centres (SSCs) opened across the UK. The centres, operated by UKVI staff, give a free service for people who may have greater needs, be in a vulnerable position, or have complex circumstances, and who would benefit from face-to-face help with their application.

The department tells us that the new service offers applicants several benefits:

- “Face-to-face time with trained UKVI staff, to understand more about their circumstances, enriching their application to enhance the quality of evidence and information we receive and identify any further needs the service-user may have
- Reducing the number of instances when we must ask an applicant for further information following their application submission; as we are more likely to have the right information and evidence, on the right route, first time
- For service-users who may have higher needs or be in a position of vulnerability there will be enhanced support for through a range of travel assistance and mobile services.”

In its first month, the Service and Support Centre Appointment Line (SSAL) took over 4,000 calls to book appointments, and (at the time of writing) SSCs have held over 1,800.

⁴⁵ Failure demand is ‘demand caused by a failure to do something or do something right for the customer’. See John Seddon, “Systems thinking the public sector: the failure of the reform regime...and a manifesto for a better way”, ISBN 08601404431036, Triarchy, 2008

Citizens Advice immigration advice

Although not specific to Windrush, from 6 August 2018 the department has also been piloting a dedicated service through Citizens Advice Bolton and their Croydon Contact Centre for applicants who need more in-depth information for their immigration applications. Take-up for this service is identified by Citizens Advice through their drop-in provision and caseload. In March 2019, the pilot was expanded to include Portsmouth and Kent Citizens Advice offices to aid data collection and evaluation of the demographic that has used the service so far.

Status checking

The ability to check people's status is fundamental to BICS. Status checks inform decisions on who can enter the UK, what they can or cannot do when here, and what action the department and others should take. The department's "status checking" project aims to make it easier for people – both those who are subject to checks and those who carry them out – by providing more transparency and control over the information the Home Office holds on them. In the case of right to work and rent checks, the service will allow users to see their information, query it with the Home Office if they think it is inaccurate or out of date, and share relevant information securely with their employer or landlord if they want. The service gives the checker only the information that is proportionate and necessary for their purposes and gives them more certainty in meeting their legal obligations around right to work and right to rent checks. To obtain a full information disclosure a Subject Access Request would need to be submitted, which would provide a full account of the data held by the department on an individual, except for data covered by the Immigration Exemption.⁴⁶

The right to work checking service is live, and the guidance to employers about how to conduct checks makes clear that using the online service is entirely voluntary, and that any job applicant who is unable or unwilling to use the service should have their documents checked in the normal way. Right to rent will have similar guidance when it goes live. Both services will be limited to only Biometric Residence Permit or Citizenship holders, and those granted status under the EU Settlement Scheme. Use of the services is entirely voluntary – people can still choose to rely on physical documents. Any applicants who face issues using the online service are advised to rely on their physical documents, and there is an exception route if the employer wants to use this to check the information with the Home Office. The department's ambition is to increase the number of people who this online service covers.

January 2019's ICIBI report of its inspection of Home Office (Borders, Immigration and Citizenship System) collaborative working with other government departments and agencies mentions the status checking project.⁴⁷ In the wake of this report, some media outlets and campaigners expressed concerns about the status checking project. A *Guardian* article in April 2019 included comment from Liberty that such a system would "make it easier to deny people access to essential goods and services".⁴⁸ The department described the project as "making the information we hold about people more open and transparent to those people", and said it "will enable the sharing of that information in a more modern and efficient way.... we take our data protection obligations very seriously, and all Home Office activity must be compliant with data protection legislation". The department told us the work would let OGDs query status information directly when they need to, rather than the Home Office pushing status information to those departments.

Voluntary returns

One of the priorities for IE is to increase the number of voluntary returns, and the department has been looking at how to do this while being mindful of the needs of people interacting with the system. An example of work in this area is using new marketing materials supported by a network of "Community Engagement Advocates" who engage directly with community diaspora groups, providing opportunities to promote voluntary returns where this is a realistic option (these community pilots are being rolled

46 See the Information Commissioner's Office for more details on the Data Protection Act 2018 Immigration Exemption

47 Independent Chief Inspector of Borders and Immigration, "[An inspection of Home Office \(Borders, Immigration and Citizenship System\) collaborative working with other government departments and agencies](#)", January 2019, p17

48 The *Guardian*, "[Government immigration database 'deeply sinister', say campaigners](#)", 10 April 2019

out in phases). In reporting centres, the rollout of automated reporting will let teams spend more time having quality conversations with people who might benefit from returning voluntarily. As well as looking at digital solutions, IE is also reviewing all immigration decision letters and other correspondence to make sure they take every opportunity to promote voluntary returns, as part of the wider effort to simplify letters after the Windrush scandal.

IE is also exploring the feasibility of “auto-enrolment” into the voluntary returns system. Under auto-enrolment, an applicant who has exhausted all appeal rights and therefore liable to enforcement action will be expected to take proactive steps to return voluntarily. If they do not return within a specified period, this will activate enforcement activity. The department describes this approach as offering “the most clear, humane and incentivised alternative to detention and other enforcement measures”. IE is considering providing more support, such as education, help with business start-ups and temporary accommodation for people returning voluntarily (known as “enhanced reintegration packages”).

Compliance Engagement Framework

At the time of writing, the Compliance Engagement Framework programme, which aims to identify and co-ordinate compliance and enforcement activity across all BICS commands, was still being developed. The framework addresses the interplay between compliant environment measures, the promotion of voluntary returns and the different groups of people who interact with the system at different points (referred to as “migrant intervention points”). The focus is particularly on people described as being “in limbo” (those without status but who cannot be removed for safeguarding reasons, for example) and introducing “active engagement windows” to avoid the “cliff edge” between someone being in the UK lawfully and being here unlawfully, for instance after their application is refused. It aims to balance compliance with the Immigration Rules, and considered application of compliant environment measures, to make sure outcomes are fair to people and to wider society, in support of immigration objectives.

Learning lessons

This section looks at two major Home Office reforms developed since the Windrush scandal to assess how far the department is already learning lessons.

The EU Settlement Scheme

The government reached an agreement with the EU that will protect the rights of 3.5 million EU citizens and their families living in the UK. The EU Settlement Scheme – launched on 30 March 2019 - is the new application system for granting status. To secure their rights, EU citizens will need to apply for immigration status through the scheme.

The scheme, designed in consultation with EU citizens, employers and community groups, is designed to make it straightforward for EU citizens and their families to stay after the UK leaves the EU. EU citizens need to complete three steps – prove their identity, show they live in the UK, and declare any criminal convictions. Settled status applications will not be refused on minor technicalities; the focus is on helping EU citizens through the application process to a successful conclusion.⁴⁹ The scheme is expected to grant either full or limited leave, depending on the application or circumstances.⁵⁰ Applications can only be rejected on eligibility or suitability grounds, under the EU Immigration Rules.⁵⁰

The department ran a £3.75 million advertising campaign – tested with EU citizens – to create widespread awareness of the scheme, and the need to apply.⁵¹ Translated guidance in all EEA languages is available online. The department also did outreach work with communities, and events with consulates, charities and campaign groups, churches, local authorities, employer groups and universities, hospitals and other stakeholders.

49 Home Office, [Letter from Rt Hon Caroline Noakes MP to all MPs](#), 12 February 2019

50 Home Office, [“Immigration Rules Appendix EU, other EEA and Swiss citizens and family members”](#), 1 August 2019

51 Home Office, [“Home Office launches nationwide campaign for EU Settlement Scheme”](#), 25 March 2019

The department is also offering phone support, with contact details available on Gov.uk for the EU Settlement Resolution centre.⁵²

A £9 million fund was set aside for groups to help vulnerable people with their applications. Those who may benefit include victims of human trafficking or domestic abuse, those with severe mental health conditions, those without a permanent address, and the elderly and isolated. Extra support is available for people who do not have the appropriate access, skills or confidence to apply. This includes over 200 assisted digital locations across the UK to support people through their application.

Leave granted to applicants will be recorded on a standalone digital system. The department has likened this approach to paperless tax discs, where there is a digital record, but the person concerned does not necessarily have a paper document.

The EU Settlement Team will continue with full publicity until towards the end of the scheme and beyond, and the department has told us that for those who have not applied, there will be a light touch approach with a view to granting status, with no blame attached for not applying earlier.

Nevertheless, there have been concerns about the scheme having, “the potential to create a situation with similar hallmarks to the Windrush scandal – but on a much bigger scale” through people either not being aware, or choosing not to apply.⁵³ A May 2019 report on the scheme by the Home Affairs Committee⁵⁴ reflects on how far it shows government learning from the Windrush scandal. The report reiterates the potential consequence of the government’s choice to make citizens’ rights conditional on the settlement scheme, namely that those who fail to acquire citizen’s rights may become unlawfully resident and lose the accompanying rights. This would also put these EU citizens at risk of criminalisation, which could heighten the risk of automatic removal. The report goes on to make recommendations for how the scheme might address this and other concerns.

Future Borders and Immigration System

On 19 December 2018 the Home Secretary made a statement to Parliament on the Future Borders and Immigration System that would operate from 2021,⁵⁵ based on the following three principles:

- “Free movement will come to an end.
- It will be a single immigration system for all nationalities (no automatic preference for EU nationals, but it will protect the rights of those here already).
- It will be a skills-based system, giving priority to those with the skills we need.”

The Home Secretary described the benefits of the system and emphasised it would enable net migration to be reduced to more sustainable levels. He announced the scheme would be kept under review by the MAC, to ensure a smooth transition, and that it would be phased to give people, business and the government time to adapt. He described it as “the biggest change to our immigration system in a generation”.

The Home Secretary described the statement as “the starting point for a national conversation on our future immigration system”, a year-long programme of engagement across the UK to make sure a wide range of views are heard. He said: “We are building a fair and sustainable immigration system that answers the concerns people have rightly had about free movement. An immigration system that is designed in Britain, made in Britain and that serves our national interest.”

The engagement programme will seek input from employers and other stakeholders on design of the future system, including an advisory group on vulnerability which met for the first time in March 2019. More information on the programme, which has been predominately with business stakeholders, with other workstreams for the Devolved Administrations, Parliamentary and international, is available on theGov.uk website.⁵⁶

⁵² [Contact UK Visas and Immigration about your application](#)

⁵³ Institute for Government, “[Managing Migration after Brexit](#)”, March 2019

⁵⁴ Home Affairs Committee, “[EU Settlement Scheme](#)”, May 2019

⁵⁵ Home Office, Oral Statement, “[Future immigration](#)”, Hansard, 19 December 2018

⁵⁶ Home Office, “[The UK’s future skills-based immigration system: engagement programme](#)”, 17 June 2019

The future borders and immigration system White Paper says: “We are working to ensure the immigration system, both today and in the future, is humane, in particular in its treatment of vulnerable people.”⁵⁷ The paper identifies work in this area includes the Windrush Lessons Learned Review and immigration detention reforms. Specifically, it emphasises the need to “ensure that people who are here lawfully are not inadvertently disadvantaged by policies put in place to tackle illegal migration”. It goes on to say that “we will treat everyone who comes into contact with the immigration system with dignity and respect, including implementing the recommendations of Stephen Shaw’s review of the welfare of vulnerable people in detention”. It says the government is “committed to a fair and humane immigration policy which welcomes people here legally, and which distinguishes effectively between those with lawful status and those here illegally.” The paper also:

- Describes the work underway to right the wrongs of the Windrush scandal, including the Taskforce, the Compensation Scheme and the review of existing safeguards to make sure that people lawfully in the UK are not inadvertently disadvantaged by policies put in place to tackle illegal immigration. This includes temporarily restricting some compliant environment measures proactively applied through the government sharing data on known immigration offenders.
- Emphasises the work the department has done to see that the new EU Settlement Scheme gives people clear status and safeguards against what happened to the Windrush generation, including working with “delivery partners” to make sure the government is not denying work, housing, benefits and services (including access to the NHS) to those lawfully in the UK, including the Windrush generation.
- States that the Windrush Lessons Learned Review will give the government clear picture of why the scandal happened, and how it should take this forward to make the immigration system more fair and humane. The paper notes that the BICS review, with independent oversight, will be set up to look at how BICS operates “to ensure the structures and process deliver in a way which is fair and humane and fully compliant with the law at all times”. It mentions safeguards to protect vulnerable people and those who are otherwise lawfully in the UK but cannot demonstrate it in this context.

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ANNEX J

Endnotes

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 - b. For race discrimination on grounds of nationality, ethnic or national origins (but not colour) in decisions made in the exercise of listed immigration decisions (Schedule 3 paragraph 17). This includes decisions made under the Immigration Acts 2014 and 2016 in relation to the hostile environment but not decisions under the British Nationality Act 1981.
 - c. For discrimination on grounds of nationality or ordinary residence (but not colour, ethnic or national origin) in relation to anything done in pursuance of an enactment, statutory instrument or a requirement or condition imposed by a member of the executive or minister of the Crown (Schedule 23).
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