

Defending the Indefensible

A report by the Parliamentary Ombudsman on an investigation of a complaint about the Ministry of Defence and the Service Personnel & Veterans Agency

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Foreword

This is the report of my investigation of a complaint brought by Mr A (who has subsequently died) on behalf of himself and four of his siblings about the Ministry of Defence and the Service Personnel & Veterans Agency. Mr A complained of unfair treatment by these bodies, in particular for wrongly rejecting his and his siblings' applications to the 'injury to feelings' payment scheme. This was a scheme designed to acknowledge the impact of the application, by the British government, of an unlawful criterion in the original ex gratia compensation scheme which they had devised to compensate British prisoners of war and British civilian internees held captive by the Japanese during the Second World War.

I have upheld his complaint. Mr A and his siblings were indeed treated unfairly, and subjected to prolonged and aggravated distress by the British Government in relation to these matters. In Mr A's case, in the last years of his life. I have made recommendations for remedy, which the Ministry of Defence have accepted in full. That is commendable, but it does not excuse what has gone before.

This is the second time that I have investigated complaints about this scheme. In my first investigation, which led to the publication in July 2005 of my report, *A Debt of Honour*, I found injustice as a consequence of maladministration in the way the original ex gratia scheme was announced, devised and implemented. I made a number of recommendations for remedy, some of which the Ministry of Defence did not initially accept, but all of which were eventually complied with, following a report by the Public Administration Select Committee and a series of legal challenges.

When Mr A brought his complaint to me, I thought the indications of maladministration were so strong, and the consequent injustice so clear, that I should be able to persuade the Ministry of Defence to put things right without the need for a second investigation. I wrote to the then Permanent Under-Secretary, and my staff met with his officials to discuss the case, but the Ministry of Defence maintained their position. They continued to defend the indefensible and made a second investigation inevitable. If they had not done so, the matter might have been resolved before Mr A died.

I am laying this report before Parliament for two reasons: first because of its connection with my earlier report; but primarily because it is the worst example I have seen, in nearly nine years as Parliamentary Ombudsman, of a government department getting things wrong and then repeatedly failing to put things right or learn from their mistakes.

The Permanent Under-Secretary of State for Defence has assured me that she will look carefully at how best to embed the lessons from my report into the Ministry of Defence's internal processes and will review the implications of my report for the Ministry of Defence more generally. I will be interested to hear the outcome of that review. At the same time, there is learning here for government which goes well beyond the Ministry of Defence. This report should be required reading for every aspiring senior civil servant.

I am putting this report into the public domain in the hope that something positive will come out of this disgraceful story. The British Government should hang its head in shame at the way it treated Mr A and his siblings – say sorry – and then set about ensuring that nothing like this ever happens again.

British enough to be interned

Mr A was born in 1937 in Negeri Sembilan, Malaya, which was then a British protectorate. To understand his story we need to understand the events which led up to it. They begin with the attack on Pearl Harbour by the Japanese on 7 December 1941.

The attack on Pearl Harbour triggered the entry of the United States into the Second World War. It also presaged an attack by the Japanese Empire on the territories in Southeast Asia which at that time were colonies, protected states, protectorates or mandated territories of the UK, and of other western Allied nations. The British and Allied forces were roundly defeated. Singapore – the most important British military base east of Suez – surrendered to the invading Japanese forces on 15 February 1942. In his memoirs Winston Churchill described this surrender as the ‘*worst disaster*’ in British history.

Approximately 80,000 British, Australian and Indian troops became prisoners of war when Singapore fell, joining the 50,000 who had been taken prisoner during the fighting that had taken place since the Japanese invaded what was then Malaya on 8 December 1941.

The fall of Singapore – and the successful invasion and capture of other colonies of the UK and other western Allied nations – also had a terrifying impact on the local civilian population. It is estimated that over 130,000 Allied civilians were interned by the Japanese, between 15,000 and 20,000 of whom were British. Mr A and his family were amongst them.

British civilians were interned in specially designated camps controlled by the Japanese forces. Mr A and his family were taken to Singapore’s Sime Road

internment camp in March 1945. He was 8 years old at the time. They were liberated in September 1945, returned to Malaysia after the war and subsequently emigrated to Australia.

It is a matter of record that the treatment by the Japanese of Allied civilian internees and military prisoners of war was horrific. They were Allied nationals and thus deemed to be enemies of the Japanese Empire.

The ex gratia compensation scheme – a ‘debt of honour’

In 2000 the British Government decided to establish an ex gratia compensation scheme to make payments to surviving members of British groups interned by the Japanese. This followed a lengthy campaign by surviving internees for an official apology from Japan for the inhuman treatment that they had endured and for compensation to be paid by the Japanese Government in recognition of that treatment.

The scheme was announced by the then Parliamentary Under-Secretary of State for Defence, Dr Lewis Moonie (now Lord Moonie of Bennoch) in a Statement to the House of Commons on 7 November 2000. It provided for payments of £10,000 to be made to surviving members of British groups who were held prisoner by the Japanese during the Second World War, including ‘*British civilians who were interned*’, in recognition of the unique circumstances of their captivity.

Dr Moonie’s Statement included the following:

‘The Government recognises that many UK citizens, both those serving in the armed forces and civilians, have had to endure great hardship at different times and in different

circumstances, but the experience of those who went into captivity in the Far East during the Second World War was unique. We have said before that this country owes a debt of honour to them ... today something concrete has been done to recognise that debt.'

So it was clear from the outset that this compensation scheme was intended to provide tangible recognition of the 'debt of honour' that the UK owed to British prisoners of war and civilian internees. These were people who had been held captive because of their British status and who had experienced great suffering and hardship. It was incumbent on those designing and operating the scheme to 'get it right'. Sadly, for Mr A and for many other British civilian internees, they got it very wrong indeed.

British enough to receive compensation?

Not surprisingly, having read the Government's announcement about the scheme, Mr A and his siblings thought they met the eligibility criteria and duly applied. However, they were all refused payment on the basis of what was described as the '*bloodlink criterion*' – a test of the closeness of people's connection to the UK. This test had not been mentioned in the Minister's Statement in November 2000 and was introduced much later, many months into the operation of the scheme.

Following my first investigation the Ministry of Defence apologised and paid £500 compensation for the distress caused to those civilian internees who discovered long after the scheme had been announced, when the '*bloodlink criterion*' was applied, that they were '*British enough*' to have been interned, but not '*British enough*' to qualify for payment. Mr A and his siblings received that apology and that compensation payment.

But that was not the end of the matter. As a result of a legal challenge, the '*bloodlink criterion*' was found to be unlawful – it indirectly discriminated against applicants on grounds of national origin. So the Ministry of Defence had to redesign the original compensation scheme to make it lawful. They also decided – rather than face a series of individual legal claims – that they should design a further scheme to pay compensation for 'injury to feelings' resulting from their unlawful race discrimination.

The 'injury to feelings' compensation scheme

In January 2007 the Minister announced a further ex gratia compensation scheme, the 'injury to feelings scheme', with payments of £4,000 to compensate people, like Mr A and his siblings, whose applications to the original scheme had been rejected unlawfully on grounds of national origin.

The Service Personnel & Veterans Agency invited Mr A and his siblings to apply – although they had already decided by then, in accordance with criteria that they had not announced, and contrary to what the Minister had actually decided, that their applications could not succeed. The Service Personnel & Veterans Agency then proceeded wrongly to reject their application – on grounds of national origin; and in doing so they told them, wrongly again, that the previous apology and compensation payment they had all received had been made in error. Even if the Service Personnel & Veterans Agency believed that to be true – which it wasn't – that was an extraordinarily insensitive and offensive thing to do.

Mr A said that his prolonged correspondence with the Service Personnel & Veterans Agency between 2000 and 2007 had made him relive over and over again the terrible times he had

spent at the Sime Road Internment Camp. He described his dealings with the Service Personnel & Veterans Agency as *'not just mental anguish, but torture'*. He said that he and his siblings felt that they were *'being treated as outcasts'*.

Mr A brought his complaint to me after the final letter of rejection by the Service Personnel & Veterans Agency in 2008.

My findings

Maladministration

I have made six findings of maladministration, which are set out in full in paragraphs 162 to 168 of the report:

- First, the basis on which the Ministry of Defence devised the injury to feelings scheme was maladministrative, being inconsistent with court judgments, as well as the Minister's Statement announcing the scheme, and imposing a restriction on eligibility based on irrelevant considerations.
- Secondly, the design of the injury to feelings scheme was maladministrative, because it produced such unfair, inconsistent and even absurd outcomes.
- Thirdly, the actions of, and the literature distributed by, the Ministry of Defence following the Minister's announcement of the injury to feelings scheme constituted maladministration, being unclear and unfair, and failing to inform potential applicants of the full eligibility criteria.
- Fourthly, that the invitation by the Service Personnel & Veterans Agency to Mr A and his

siblings to claim under the injury to feelings scheme constituted maladministration, in that their expectations were raised on the basis of an incomplete statement of the scheme's rules, made many months after the Service Personnel & Veterans Agency had already decided that Mr A and his siblings were not eligible on its view of the scheme's rules.

- Fifthly, that the communication by the Service Personnel & Veterans Agency to Mr A and his siblings of its belief that the earlier apology payments had been made in error constituted maladministration, being incompatible with the true basis of those payments and constituting unnecessary action which could only reasonably have further, in Mr A's words, *'added insult to injury'*.
- Finally, that the Ministry of Defence and the Service Personnel & Veterans Agency consistently failed to be customer focused in their decision making, announcements and correspondence. Not only did they lose sight of the original intentions of the scheme, they lost sight of the people it was intended to compensate.

Injustice

I have found that Mr A and his siblings suffered injustice resulting from maladministration in two forms:

- First, by not receiving compensation for injury to feelings which they should have received; and
- Secondly, by being caused extreme outrage and distress by the way in which their claims were handled by the Ministry of Defence and the Service Personnel & Veterans Agency.

My recommendations

I have made the following recommendations for remedy, all of which have been accepted by the Ministry of Defence.

- The Ministry of Defence pay Mr A's widow, and each of Mr A's four siblings, the £4,000 injury to feelings payment to which they were entitled, together with interest from the date they were incorrectly denied this payment.
- The Ministry of Defence pay Mrs A on Mr A's behalf, and each of Mr A's four siblings, £5,000 in recognition of the outrage and distress they have suffered as a result of the Ministry of Defence and the Service Personnel & Veterans Agency's maladministration.
- The Secretary of State for Defence writes a personal apology to Mr A's widow and to each of his siblings, apologising for the shameful way that the Ministry of Defence and the Service Personnel & Veterans Agency have dealt with these matters, and for the impact of their maladministration on Mr A and his siblings; and outlining the Ministry of Defence's plans to ensure that other individuals in the same situation will be compensated appropriately.
- The Ministry of Defence review all other applicants under the injury to feelings scheme and, where it identifies individuals who are in the same position as Mr A and his siblings, that they should also receive the £4,000 payment, with interest.

I also said that I considered it essential that the Ministry of Defence launch a review of the internal mechanisms in place which allowed senior civil

servants to get things so wrong, for so long, with such a devastating impact on people who deserved so much better. The Permanent Under-Secretary of State for Defence has agreed to do that, and also to review the implications of this report for the Ministry of Defence more generally.

Conclusion

Lord Justice Mummery's judgment in the Court of Appeal in October 2006, upholding the High Court's finding of unlawful indirect race discrimination against the Ministry of Defence, included the following description of the Ministry of Defence's handling of the original ex gratia compensation scheme.

'An embarrassing administrative and legal muddle, personal pain, charges of incompetence, costly litigation and political apologies, accompanied by inquiries, investigations, reports, hearings and reviews. A cloud has been cast over what many people would agree was an honourable act of public benevolence.'

I think that is also an admirable description of the events that I have investigated – although, of course, that judgment preceded the redesign of the original scheme and the creation of the injury to feelings scheme. The *'administrative and legal muddle'* just went on and on.

Despite findings of maladministration and injustice by the Ombudsman, criticism from the Public Administration Select Committee, findings of indirect race discrimination by the courts, and numerous internal reviews, the Ministry of Defence and the Service Personnel & Veterans Agency failed time and time again to 'get it right' or 'put it right'. They repeated and compounded

their errors and as a result they compounded the distress caused to Mr A and his siblings.

Those failings were unacceptable in any context. In the context of a compensation scheme intended to recognise the unique circumstances and exceptional suffering of British people held captive in the Far East during the Second World War – people to whom Britain owed a debt of honour – they were unforgivable.

The final words should go to Mr A's family. Responding to the draft report, Mrs B, one of Mr A's sisters, wrote the following:

'It is clear that the most honourable intent of the "debt of honour" compensation scheme, in certain circumstances, devolved into an administrative quagmire that, over many years, simply lost sight of its intention.'

That seems to me to sum it up precisely.



Ann Abraham
Parliamentary and Health Service Ombudsman

September 2011

Introduction

Historical perspective

- 1 The events relevant to the subject matter of this report begin with the attack on Pearl Harbour by the Japanese on the morning of 7 December 1941.
- 2 That a Parliamentary Ombudsman report produced in the 21st century should begin with events which occurred nearly 70 years ago might seem remarkable.
- 3 The attack on Pearl Harbour triggered the entry of the United States into the Second World War. It also presaged an attack by the Japanese Empire on the territories in Southeast Asia which at that time were colonies, protected states, protectorates or mandated territories of the UK and other western allied nations. That attack was successful and the British and Allied forces were roundly defeated.
- 4 Singapore – the most important British military base east of Suez – surrendered to the invading Japanese forces on 15 February 1942. Approximately 80,000 British, Australian and Indian troops became prisoners of war when Singapore fell, joining the 50,000 who had been taken prisoner during the fighting that had taken place since the Japanese had invaded what was then Malaya on 8 December 1941. In his memoirs, Winston Churchill described this surrender as the ‘worst disaster’ in British history.
- 5 The fall of Singapore – and the successful invasion and capture of other colonies of the UK and other western Allied nations – was also to have a tremendous and terrifying impact on the local civilian population. The treatment handed out to many of those living in the territories that had become occupied by Japanese forces was extremely harsh.
- 6 In the territories which had formed part of the British Empire before occupation, those British civilians were singled out for special treatment, being interned by the Japanese in specially designated camps controlled by their military forces. The civilians of other Allied nationalities resident in the occupied colonies and other territories of those countries were similarly interned. They all endured extreme privations and hardship.
- 7 After the defeat of Japan and the end of the Japanese occupation of territories in Southeast Asia at the end of the war, some compensation was paid by western governments, derived from frozen Japanese assets located within the relevant countries, to certain prisoners of war and internees – both military and civilian – under the terms of the San Francisco Peace Treaty with Japan that had been signed in 1951.

Seeking compensation

- 8 Survivors and their families led a campaign over many decades for an official apology from Japan for the inhuman treatment that the prisoners of war and internees had endured, and for compensation to be paid by the Japanese Government in recognition of that treatment. To date, this campaign has been unsuccessful.
- 9 From 1998 onwards compensation arrangements began to be put in place by a number of western governments, including the UK Government, to recognise the special suffering which those interned by the Japanese had endured.
- 10 The complaints which I have considered when conducting the investigation which led to this report arose in relation to the arrangements for a compensation scheme which were put in place

by the UK Government. These arrangements were first announced in November 2000.

- 11 There were three ex gratia payment schemes implemented by the UK Government, which are relevant to the actions and events covered in this report. Each of the schemes was the administrative responsibility of the Ministry of Defence (MoD). I have outlined these schemes in greater detail in the investigation section of this report, and have included full transcripts of essential documents and key legal decisions pertinent to the formulation and implementation of those schemes in annexes to this report.
- 12 The first scheme – the original ex gratia scheme – was administered by the War Pensions Agency (the WPA), an executive agency of the then Department of Social Security (which became the Department for Work and Pensions in 2001). Responsibility for the WPA transferred to the MoD on 8 June 2001 and the WPA was renamed the Veterans Agency. It merged with the Armed Forces Personnel Administration Agency in April 2007 to form the Service Personnel & Veterans Agency. For simplicity, I will refer to them all as the ‘Agency’ in this report.

The original ex gratia scheme

- 13 The original ex gratia scheme (the original scheme) was announced by the then Parliamentary Under-Secretary of State for Defence, Dr Lewis Moonie (now Lord Moonie of Bennoch) on 7 November 2000. The scheme provided for payments of £10,000 to be made to surviving members of British groups eligible to receive compensation, to reflect

the ‘debt of honour’ that was owed to them by the UK due to the unique circumstances of their incarceration by the Japanese during the Second World War. One of these eligible groups was described as ‘*British civilians who were interned*’. There was no further qualification as to nationality requirements or bloodline.

- 14 Following Dr Moonie’s November 2000 announcement, there was considerable internal discussion between the departments involved in creating and implementing the original scheme about what would be the agreed understanding of the term ‘British’ for the purposes of identifying the eligible civilian internee applicants. I have outlined these discussions in greater detail in the chronology of events at Annex B of this report.
- 15 In June 2001, seven months after the original scheme was launched, Dr Moonie agreed a ‘clarification’ to the eligibility criteria for civilian claimants to the scheme. Claimants now had to demonstrate that they had been British subjects at the time of internment in a designated camp run by Japanese guards and that they possessed a close link to the UK; that is, either they, a parent, or a grandparent was born in the UK – the introduction of the ‘birthlink’ or ‘bloodlink’ rule.¹

- 16 The introduction of these previously unstated eligibility criteria led to numerous complaints and criticisms about the manner in which the MoD and the Agency administered the original scheme. Of particular concern was the post-announcement application of a definition as to what constituted ‘British’ at the time of internment and the way in which the requirement for a close link to the UK was being interpreted.

¹ Whilst these terms were used interchangeably by different agencies, for consistency I have referred to this as the ‘bloodlink’ rule throughout this document, unless I am quoting directly from the Agency or the MoD.

17 What followed was considerable legal and administrative action, stretched over a number of years, in an attempt to redress the errors in the original scheme. Sadly, despite my and others' extensive involvement in identifying the errors and proposing solutions, this is still ongoing. Below is a snap shot of those actions. There is more detail in the body of the report and in my chronology of events at Annex B of this report.

Legal and administrative action

18 In 2002 the Association of British Civilian Internees – Far East Region (ABCIFER) applied for a judicial review of the original scheme, arguing that the introduction of the 'bloodlink' criterion was illegal. ABCIFER were unsuccessful before the High Court, as was their appeal to the Court of Appeal in April 2003.

19 In December 2001 my Office received a complaint from Professor Jack Hayward that the introduction of these further 'criteria' was maladministrative. I awaited the outcome of ABCIFER's legal challenge to the original scheme prior to accepting the case for investigation in June 2003. I upheld Professor Hayward's complaint and identified considerable administrative shortcomings in the way that the original scheme was devised, announced and implemented. Of the four recommendations I made, the MoD initially accepted only the final two recommendations. So, on 12 July 2005 I laid a report before Parliament, using my powers under section 10(3) of the *Parliamentary Commissioner Act 1967*, on my investigation entitled *A Debt of Honour*.²

The full pre-publication response from the UK Government was included as an annex to that report.

20 As a result of the criticisms I made in *A Debt of Honour*, on 13 July 2005, the then Minister for Veterans, Mr Don Touhig (now Lord Touhig), issued an apology in the House of Commons for the distress caused by the maladministration I had identified. And, in October 2005, the Agency wrote to all of those individuals who had applied for and been declined compensation in the original scheme, and who had thought that they met the criteria but for the inclusion of the 'bloodlink' criterion. This letter offered a 'one off' payment of £500 and an apology for the distress caused.

21 In December 2005 the Public Administration Select Committee (PASC) held an inquiry into these events. During the hearing Don Touhig conceded that there appeared to be some inconsistency around the eligibility rules that applied pre and post the introduction of the 'bloodlink' criterion and confirmed that there would be a review of those rules. PASC published a report of their findings in January 2006 and concluded that:

'it is a source of regret, and shame, that the MoD received the Ombudsman's report a year ago, on 18 January 2005, and did nothing until our hearing meant that it had to address the report properly.'

22 In late January 2006 Don Touhig announced that a senior civil servant, Mr David Watkins, would undertake an independent investigation into how the use of inconsistent criteria had arisen and why it had not been exposed earlier.

² *A Debt of Honour* (laid before Parliament on 12 July 2005) is available at www.ombudsman.org.uk/improving-public-service/reports-and-consultations/reports/parliamentary/a-debt-of-honour-the-ex-gratia-scheme-for-british-groups-interned-by-the-japanese-during-the-second-world-war. Further detail about this report and findings can be seen in paragraphs 72 to 74 of this report.

Mrs Elias – court action

23 Also in July 2005 a former civilian internee, Mrs Diana Elias, challenged the legality of the ‘bloodlink’ criterion in the High Court.³ In order to win the case on the basis of discrimination Mrs Elias needed to show that she had been treated less favourably than someone of different racial or national origins, and that the treatment she received was because of, or on the grounds of, her race. It was also necessary to show that she had suffered some detriment or disadvantage as a result of this differential treatment in order to prove her claim for damages⁴ to redress that detriment.

24 In short, the High Court ruled in Mrs Elias’ favour, determining that while it was legitimate for the MoD to limit the original scheme to those with a close link with the UK, the introduction of the ‘bloodlink’ criterion was unlawful as it indirectly discriminated⁵ against people of non-UK national origins. The High Court judge ruled that Mrs Elias’ proper remedy was to seek damages for indirect race discrimination in the county court.⁶

25 The county court awarded Mrs Elias £3,000 damages plus interest under the Race Relations Act for injury to feelings, but rejected her claims for financial loss (she had also claimed

the £10,000 ex gratia payment) and aggravated and exemplary damages. Both Mrs Elias and the MoD appealed the county court judgment.

26 In October 2006 the Court of Appeal upheld the High Court and county court decisions. In his opening remarks on the legality of the scheme Lord Justice Mummery said:

‘The result of inadequate preparation has been an embarrassing administrative and legal muddle, personal pain, charges of incompetence, costly litigation and political apologies, accompanied by inquiries, investigations, reports, hearings and reviews. A cloud has been cast over what many people would agree was an honourable act of public benevolence.’

The second scheme – the revised scheme

27 In March 2006 Don Touhig announced two changes to the criteria for civilian internees to remedy the previous inconsistencies:

- the ‘20 year rule’ which required that claimants had resided in the UK for at least 20 years since the end of the Second World War, until November 2000 when the scheme was introduced; and

³ A detailed outline of the three stages to Mrs Elias’ court action is at Annex E of this report.

⁴ Damages attempt to measure in financial terms the extent of harm a plaintiff has suffered because of a defendant’s actions. The purpose of damages is to restore an injured party to the position the party was in before being harmed. Damages are defined in Mozley and Whiteley’s law dictionary (12th edition) as ‘*The pecuniary, ie monetary, satisfaction awarded by a judge or jury in a civil action for the wrong suffered by the plaintiff*’.

⁵ For further information pertaining to indirect racial discrimination see paragraph 83.

⁶ Under the *Race Relations Act 1976*, as amended, in England and Wales the sole jurisdiction to award damages for unlawful discrimination rests with county courts.

- that anyone who was rejected under the ‘bloodlink’ criterion but who would have met the Japanese asset criteria⁷ would be eligible. (The introduction of the ‘20 year rule’ meant that Mrs Elias became eligible to receive the £10,000 payment, which she duly received.)

28 In July 2006 the Watkins report was issued, finding that shortcomings and inadequacies of government officials’ actions had resulted in maladministration and distress.

The third scheme – the injury to feelings scheme

29 On 26 January 2007 the third scheme (the injury to feelings scheme) was announced by the then Parliamentary Under-Secretary of State for Defence, Mr Derek Twigg. This scheme offered payments of £4,000 to any person whose claim under the original scheme was rejected on ‘bloodlink’ grounds and who, like Mrs Elias, was of non-UK national origins.

30 The MoD explained that this payment was to recognise the adverse impact in the form of injured feelings that people had suffered when their claim to the original scheme had been rejected on discriminatory grounds that were unlawful.

31 Claimants who considered that they were entitled to the compensation payment were advised to write to the Agency setting out the basis on which they considered themselves to be entitled to make a claim for indirect discrimination under the Race Relations Act. The cut-off date for receipt of applications was 31 December 2008.

32 None of the three schemes was established in recognition of any legal liability on the part of the MoD to make payments; instead, they were administrative solutions to deliver policy decisions made by the UK Government.

Going forward

33 The failings in the administration of the original scheme and the establishment of the revised scheme are part of the backdrop to the subject matter of this report.

34 However, the focus of the complaints considered in this report is on the way that the MoD handled claims for payments under the injury to feelings scheme in recognition of the injury to their feelings that the complainants had suffered due to unlawful discrimination.

35 While the complainants were – and, at the time they complained to me, remained – aggrieved that they were denied a payment under the original scheme, it is the case that they do not qualify, and have never qualified, for a payment under the rules which have governed eligibility for the original scheme and those of the revised scheme.

36 However, as will be seen, the administration of the injury to feelings scheme cannot wholly be divorced from what went before, as it was established to remedy the effects of unlawful discrimination in the operation of the original scheme. And, Mr A’s overall experience of the MoD and the Agency cannot be isolated just to his dealings with them in relation to the injury to feelings scheme.

⁷ Under the separate Japanese Asset Registration Scheme modest compensation payments were made in the 1950s to some who had been imprisoned or detained by the Japanese, following the UK’s ratification of the 1951 San Francisco Peace Treaty. The British Government funded this from its share of the proceeds of liquidated Japanese assets.

Mr A's complaint to the Ombudsman

- 37 The complaints which are the focus of this report were made by Mr A on behalf of himself and four of his siblings (Mrs B, Mrs D, Mrs E and Mr F).⁸
- 38 Prior to the Japanese invasion of Malaya,⁹ which led to the fall of Singapore, Mr A and his family had lived in Negeri Sembilan, one of the Federated Malay States. The family were interned by the Japanese as British civilians in Sime Road internment camp in Singapore on 25 March 1945. They were liberated from that camp on 6 September 1945 and the whole family was subsequently reunited, returning to Malaysia after the war. In 1957 Mr A emigrated to Australia.
- 39 Mr A complained about the MoD and the Agency. Mr A was aggrieved that in 2007 both bodies refused him and some of his siblings a £4,000 payment to recognise the injury caused to their feelings by the rejection in 2001 of their applications for the £10,000 payment under the original scheme.¹⁰
- 40 Mr A believed that this constituted maladministration because the decision to refuse him and his siblings the £4,000 payment was taken on the basis that he, like his siblings on whose behalf he complained, had been a British protected person rather than a British subject when interned – when that was not relevant to the injury to feelings that he and they suffered. Mr A also complained about the way the Agency handled his correspondence with them since 2001.
- 41 Mr A said that the MoD and the Agency's actions had denied him and his siblings a £4,000 payment to which, he believed, they were entitled. He also said that he and his siblings had suffered outrage and distress at the way in which their cases had been handled.
- 42 Mr A wanted the MoD and the Agency to reconsider the decisions which were made in his case and the cases of his siblings who had been denied a payment. He believed that an apology was due for the injustice they had suffered. He also wanted the Agency to pay him (and his siblings) compensation for injury to feelings.
- 43 On 12 August 2010 Mr A very sadly passed away aged 73, having been seriously ill for some time.

⁸ Further detail about Mr A's family is set out in paragraphs 62 to 65 of the report, and in Annex B under the chronology entry for 1930 to 1943.

⁹ In the 19th and early 20th centuries, what is now Malaysia comprised the Crown Colony of the Straits Settlements (made up of Singapore, Penang and Malacca) and both the Federated (Perak, Selangor, Pahang and Negeri Sembilan) and Unfederated Malay States (Johor, Kedah, Kelantan, Perlis and Terengganu). The UK Government had entered into treaties with the rulers of these Malay States, under which those States had each become British Protectorates. In 1945, when the Second World War ended, Britain resumed control of these states until 1957. In 1961 the term 'Malaysia' came into being.

¹⁰ Those siblings born in Singapore received the injury to feelings payment as they were British subjects.

The Parliamentary Ombudsman's jurisdiction and role

- 44 My role is determined by the *Parliamentary Commissioner Act 1967*, which enables me to investigate action taken by or on behalf of bodies within my jurisdiction in the exercise of their administrative functions. Complaints are referred to me by a Member of the House of Commons on behalf of a member of the public who claims to have sustained injustice in consequence of maladministration in connection with the actions taken.
- 45 My approach when conducting an investigation is to determine whether maladministration has occurred that has led to an injustice that has yet to be remedied.
- 46 If there is an unremedied injustice, I will recommend that the public body in question provides the complainant with an appropriate remedy. These recommendations may take a number of forms such as asking the body to issue an apology, or to make a payment to compensate for any financial loss, inconvenience or worry caused. I may also make recommendations that the body in question reviews its practice to ensure that similar failings do not reoccur.

The basis for my determination of the complaints

My approach

- 47 In simple terms, when determining complaints that injustice has been sustained in consequence of maladministration, I generally begin by comparing what actually happened with what should have happened.
- 48 So, in addition to establishing the facts that are relevant to the complaint, I also need to establish a clear understanding of the standards, both of general application and those that are specific to the circumstances of the case, which applied at the time the events complained about occurred, and which governed the exercise of the administrative functions of those bodies and individuals whose actions are the subject of complaint. I call this establishing the overall standard.
- 49 The overall standard has two components: the general standard, which is derived from general principles of good administration and, where applicable, of public law; and the specific standards, which are derived from the legal, policy and administrative frameworks relevant to the events in question.
- 50 Having established the overall standard, I then assess the facts in accordance with that standard. Specifically, I assess whether or not an act or omission on the part of the body or individual complained about constitutes a departure from the applicable standard. If so, I then assess whether, in all the circumstances, that act or omission falls so far short of the applicable standard as to constitute maladministration. The overall standard which I have applied to this investigation is set out below – which, in this case, is wholly derived from the *Ombudsman's Principles*.

The *Ombudsman's Principles*

- 51 Since this Office was established we have developed and applied certain general principles of good administration in determining complaints. In February 2009 I republished my *Principles of Good Administration, Principles of Good Complaint Handling* and *Principles for Remedy*.¹¹ These are broad statements of what I consider public bodies should do to deliver good administration and customer service, and how to respond when things go wrong. The same six key Principles apply to each of the three documents. These six Principles are:
- Getting it right
 - Being customer focused
 - Being open and accountable
 - Acting fairly and proportionately
 - Putting things right, and
 - Seeking continuous improvement.
- 52 All six of the Principles of Good Administration are relevant, but the three that are most pertinent to the complaints made by Mr A are:
- 'Getting it right' – public bodies should plan carefully when introducing new policies and procedures; public bodies should provide effective services with appropriately trained and competent staff; decision making should take account of all relevant considerations, ignore irrelevant ones and balance the evidence appropriately.

¹¹ The *Ombudsman's Principles* is available at www.ombudsman.org.uk.

- *'Being customer focused'* – there must be accurate, complete and understandable information about a service; public bodies should aim to ensure that customers are clear about their entitlements; public bodies should communicate effectively; public bodies should treat people with sensitivity, bearing in mind their individual needs, and respond flexibly to the circumstances of the case.
- *'Acting fairly and proportionately'* – public bodies should always deal with people fairly and with respect; people should be treated fairly and consistently, so that those in similar circumstances are dealt with in a similar way.

The investigation

- 53 Prior to accepting Mr A's case for investigation, my Office spent over a year attempting to reach an informal resolution with the MoD. This involved much correspondence between us and the MoD and a meeting with them to discuss the issues at stake.
- 54 Our attempts to achieve such a resolution were informed by our wish to impose as little further distress on Mr A and his siblings as was possible in the circumstances: distress which a detailed investigation might cause them. Unfortunately, our attempts were unsuccessful and I felt that a full investigation was the only way to resolve Mr A's complaints satisfactorily.
- 55 That investigation began on 9 April 2009 when I wrote to the then Permanent Under-Secretary of State for Defence, Sir Bill Jeffrey, seeking his formal response to the allegations contained in the complaints. I wrote on the same date in similar terms to the Chief Executive of the Agency.
- 56 In the course of the investigation we have made enquiries of the MoD and the Agency, considered their responses and examined their files. We have also obtained evidence from other sources. My officers have obtained accounts from individuals relevant to the investigation by examining the evidence given in the court hearings as well as the judgments relating to Mrs Elias' case.¹²
- 57 We have also obtained accounts of events relevant to the investigation by examining the reports that have been written on the original scheme. One of my officers interviewed Ron Bridge, the Chairman of ABCIFER, who was consulted by the MoD at various stages of the development of all three schemes. Another one of my officers interviewed Mr and Mrs A at their home in Sydney, Australia.
- 58 I have not included in this report all the information we have considered during the course of the investigation. However, I am satisfied that nothing has been omitted which is of significance to my determination of the complaints made by Mr A on his own behalf and that of some of his siblings.
- 59 A full chronology of relevant events is set out in Annex B to this report. What follows is a summary of the key facts relevant to my findings. The full entries in the chronology for each relevant date contain further information about the facts and events summarised below.

¹² [2005] EWHC 1435 (Admin); County Court claim 5CL12683; [2006] EWCA Civ 1293.

The events leading to Mr A bringing the complaint to the Ombudsman

Internment during the Second World War

⁶⁰ In the aftermath of the attack on Pearl Harbour and the successful invasion and occupation by Japan of many of those colonies of the UK and other western countries which were located in Southeast Asia, it is estimated that a total of 132,895 Allied civilians were interned by the Japanese.¹³ The number of British civilians interned by the Japanese is variously estimated at between 15,000 and 20,000.¹⁴

⁶¹ It is a matter of record that the treatment by the Japanese of Allied civilian internees and military prisoners of war was horrific. It was extremely traumatic for those held in captivity because they were Allied nationals and thus deemed to be enemies of the Japanese Empire.

Mr A's personal experience

⁶² Mr A was born in February 1937 in Seremban, Negeri Sembilan, Malaya (footnote 9). Mr A was the second youngest of eleven children; the oldest six of whom had been born in Singapore (then a British colony); the other five were born in Malaya (then a British protected state).

⁶³ Mrs A very kindly provided my Office with some of her recollections of Mr A's wartime experience in the Sime Road internment camp. She and Mr A first met as children whilst being held in the camp. Mrs A explained that at 5am

one morning in March 1945, Japanese soldiers arrived in a lorry outside Mr A's family residence in Seremban. The Japanese soldiers ordered Mr A's father to have the family ready with bare essentials within one hour in order that they be taken to the police station in Seremban. They were held at the police station for up to seven hours without food and water prior to being transported by railway cargo truck from Seremban railway station to Singapore. When they arrived in Singapore, the family were taken in an open lorry to the Sime Road camp, and were initially placed in a hut which was bereft of basic facilities. They were moved to the main hut when space was made for the women and children. As Mr A was 8 years old at the time he was interned, he was billeted in the Women's hut. His four older brothers and his father were billeted in the men's accommodation, and were separated from the rest of the family for the duration of their internment.

⁶⁴ According to Mrs A's account, within a short time in the camp, Mr A's body, arms and legs were covered with scabies which required the Red Cross nurse to cut them each morning with a pair of scissors, following which a lotion was dabbed onto the infected parts and he, together with a number of other children, were required to stand naked in the sun for about half an hour each day outside the medical hut.

⁶⁵ The interned male population of the camp were required to march each day through the

¹³ Exact figures are difficult to establish, in part due to the conditions which prevailed at the time and the resulting destruction of many of the original records. These figures are taken from a leading academic historical work, *The Internment of Western Civilians under the Japanese 1941-1945*, by Bernice Archer (Hong Kong University Press, 2004). Of this figure, 50,740 were men, 41,895 were women, and 40,260 were children.

¹⁴ Giving evidence to PASC on 1 December 2005, Ron Bridge said, when asked to quantify the number of British civilians who had been interned by the Japanese:

[Estimates] vary from 15,012, which was the number of civilians the Japanese Government declared they had in custody in the surrender documents on September 3, 1945, to a figure of 16,586, which the Colonial Office had come out with as the number of civilians held in January 1945 ... and a figure of some post-war studies that were done in the 1950s, which suggested that there could be as many as 20,000.'

Women's Section to get to their various jobs. The prisoners were not allowed to communicate with each other and had to remain silent. However, following a signal from one of his four older brothers, Mr A would run between the marchers to grab a metal container filled with rice meant for him and his grandmother as they otherwise did not have enough food to eat. In the evening when the men were returning to their huts after a hard day's work, he would repeat the earlier exercise and return the empty metal container to his brother. By Mrs A's account this was a risky procedure, which Mr A was lucky to survive.

Post-war events

- 66 Following the defeat of Japan at the end of the war, a peace treaty between the Allied powers and Japan was signed at San Francisco in 1951. Under article 14 of that treaty, each of the Allied powers was given the right to '*seize, retain, liquidate or otherwise dispose of all property, rights and interests*' of Japan and Japanese nationals held on their territory or under their control. Article 16 of the treaty provided that such Japanese assets were to be liquidated and distributed for the benefit of former prisoners of war and their families.
- 67 In the UK, this led to payments being made to those held prisoner or interned by the Japanese under what came to be known as the 'Japanese asset scheme'. The eligibility criteria for that scheme were that a person must have been British and over 21, normally resident in the UK before the war, and resident in the UK in 1952. Widows would also qualify for a compensation payment, but no 'family unit' could receive more than 'one share'. Civilian internees received £48.50 under this scheme.

- 68 As I noted in the introduction to this report, at that time and for many years after, the surviving internees led a campaign for an official apology from Japan for the inhuman treatment that they had endured and for compensation to be paid by the Japanese Government in recognition of that treatment.

The original ex gratia scheme

- 69 The circumstances in which the UK Government decided to establish an ex gratia scheme to make payments to surviving members of British groups interned by the Japanese during the war were the subject of my July 2005 report entitled *A Debt of Honour*, to which I briefly referred in the introduction to this report (paragraph 19). The key point about the original scheme which relates to the subject matter of this report is the way in which eligibility for the original scheme was determined.
- 70 Eligibility for a payment under the original scheme required applicants to demonstrate three things: firstly, that they were British at the time of internment; second, that they had been interned in a designated camp run by Japanese guards; and third, that they possessed a close link to the UK. As will be seen, those considering applying to the scheme were not told clearly what these eligibility criteria were.

Criticism of the original ex gratia scheme: maladministration

- 71 I referred in the introduction to the many complaints and criticisms that were made about the way in which the MoD and the Agency administered the original scheme, in particular the introduction seven months after the scheme

was announced of a new eligibility criterion for civilian internee applicants – the ‘bloodlink’ criterion – without informing applicants that the eligibility criteria had been changed, and without any review being conducted to ensure that this did not lead to unequal treatment of claims decided at different times. As I touched upon in my introduction, these criticisms led to considerable legal and administrative review over a period of years.

72 In December 2001 my Office received a complaint from Professor Hayward about the operation of the original scheme. My investigation identified considerable shortcomings with the development and operation of the original scheme. I made four findings of maladministration:

- 1 the way in which the original scheme was devised – overly quickly and in such a manner as to lead to a lack of clarity about eligibility for payments under the scheme;
- 2 the way in which the original scheme was announced – in that Dr Lewis Moonie’s ministerial statement was so unclear and imprecise as to give rise to confusion and misunderstanding;
- 3 the failure to review the impact of the introduction of the ‘bloodlink’ criterion when it was introduced to ensure that it did not lead to unequal treatment; and
- 4 the failure to inform applicants that the criteria had been clarified when they were sent a questionnaire to establish their eligibility.

73 I found that the maladministration led to a significant injustice for Professor Hayward and others in a similar position to him, in the form

of outrage at the way the original scheme was operated and distress at being told that he was not ‘*British enough*’ to qualify for payment under the original scheme. To remedy that injustice I made four recommendations:

- 1 the MoD should review the operation of the original scheme;
 - 2 the MoD should review the position of Professor Hayward and those in a similar position to him;
 - 3 the MoD should apologise to Professor Hayward and to others in a similar position to him for the distress which the maladministration identified has caused them; and
 - 4 the MoD should consider whether it should express that regret tangibly.
- 74 The MoD initially accepted only two of my recommendations – recommendations three and four. I felt compelled to lay the report, *A Debt of Honour*, before Parliament on 12 July 2005, using the powers available to me under section 10(3) of the *Parliamentary Commissioner Act 1967*.

75 Whilst the maladministration by the MoD and the Agency that I have outlined above related to the original scheme, which was prior to the actions and events which gave rise to the complaints I have considered in this report, it should not be forgotten that this maladministration also had an impact on Mr A and his siblings, as well as on all the other applicants in the same position as them. This is a matter to which I will return.

76 The MoD's response to my *A Debt of Honour* report was to issue an apology in the House of Commons on 13 July 2005 for the distress caused by the maladministration in the implementation and clarification of the original scheme. And to write to all those individuals who had applied and been declined compensation in the original scheme, and who had thought that they met the criteria as set out in Dr Moonie's statement in November 2000, but for the 'bloodlink' criterion, offering them a 'one off' payment of £500 to express their regret and apologising for the distress caused by their maladministration.

77 On 1 December 2005 PASC held an inquiry into these events. When he appeared before the Committee, the Minister for Veterans Don Touhig announced a significant change in the position of the MoD, which he said was as a result of last minute evidence which had been uncovered during his preparation for the hearing. Don Touhig conceded that there appeared to be some inconsistency around the eligibility rules applied pre and post the introduction of the 'bloodlink' criterion and confirmed that there would be a review of those rules, to be completed by February 2006. In a further statement on 12 December 2005 Don Touhig refused to confirm whether a full review of the original scheme would take place. Nor did he provide a commitment to review the position of Professor Hayward and others in a similar position.

78 PASC published a report of their findings on 19 January 2006. They concluded that:

'it is a source of regret, and shame, that the MoD received the Ombudsman's report a year ago, on 18 January 2005, and did nothing until our hearing meant that it had to address the report properly. It has

been forced into conducting the review the Ombudsman recommended ... and should do so with the urgency and generosity of the scheme's original intention.'

79 In late January 2006 Don Touhig announced in a written ministerial statement to Parliament that a separate, independent investigation would be conducted by retired senior civil servant, Mr David Watkins, into how the use of inconsistent criteria had arisen and why it had not been exposed earlier.

The second scheme – the revised scheme

80 On 28 March 2006 Don Touhig announced the outcome of the internal MoD review he had initiated in December 2005, outlining two changes to the criteria for civilian internees to remedy the previous inconsistencies. He announced the introduction of a new '20 year rule' which required claimants to have resided in the UK for at least 20 years since the end of the Second World War, until November 2000 when the original scheme was introduced, in order to be eligible for the £10,000 payment. (A full statement about the 20 year residency rule was issued by the MoD in June 2006.) Don Touhig also announced that anyone who was rejected under the 'bloodlink' criterion but who would have met the Japanese asset criteria would be eligible.

81 In July 2006 the Watkins report was issued. David Watkins endorsed the point I made in my *A Debt of Honour* report that prior to the announcement of an ex gratia scheme all relevant issues should be examined. And, if there are any subsequent amendments to a scheme that these should be published and explained. David Watkins found:

'no evidence of culpable behaviour amongst officials involved: shortcomings and inadequacies certainly and things which, with hindsight, should have been done better, and these resulted in maladministration and distress to a group of people who had already suffered as a result of their internment.'

- 82 In August 2006 I wrote to the then Minister for Veterans and Parliamentary Under-Secretary of State for Defence, Tom Watson, and to Sir Gus O'Donnell in his capacity as Head of the Civil Service to confirm that all four recommendations from my *A Debt of Honour* report had finally been complied with. I was keen to ensure that the wider lessons from this affair could be learnt, and offered my assistance in taking this forward. Unfortunately, as can be seen in this report, my offer was not taken up and the learning does not seem to have been embedded.

Criticism of the original scheme: unlawful indirect race discrimination

- 83 As I touched on in my introduction, in July 2005 the High Court (and subsequently upheld by the Court of Appeal in October 2006) held that the introduction of the 'bloodlink' criterion constituted unlawful indirect race discrimination.¹⁵ In general terms, unlawful indirect race discrimination is caused by the application of a general principle, where the result is that some people are treated unfairly. The courts said that the 'bloodlink' criterion operated to exclude a greater proportion

of those applicants with non-UK national origins than those who had been born in the UK and possessed UK origins – and was thus indirectly discriminatory. Whether this indirect discrimination on the ground of national origins was justified was then assessed. The courts found that, although the 'bloodlink' criterion had had a legitimate aim – restricting the compensation payments to those with a 'close link' to the UK – that criterion was not proportionate to the aim to be achieved and was not objectively justified. Therefore, it was deemed unlawful.

- 84 The Court of Appeal, in its judgment of 10 October 2006, upheld both the finding of unlawful indirect race discrimination and the award of compensation for injury to feelings to Mrs Elias. As a result, the 'bloodlink' criterion was formally withdrawn.

The injury to feelings scheme – development and announcement

- 85 Following the decision of the High Court and the Court of Appeal, internal discussions in the MoD focused on the most appropriate way to deal with those other civilian applicants in a similar position to Mrs Elias. Annex C to this report contains the detailed discussions which preceded the MoD's decision and the considerations which the MoD took into account in reaching it. Annex C also includes the internal MoD documents which detail significant aspects of the decision making process in the development of the injury to feelings scheme.

¹⁵ This occurs when a provision, criterion or practice which, on the face of it, has nothing to do with race and is applied equally to everyone:

- puts or would put people of the same race or ethnic or national origins at a particular disadvantage when compared with others;
- puts a person of that race or ethnic or national origin at that disadvantage; and
- cannot be shown to be a proportionate means of achieving a legitimate aim.

(Note: this definition came from the Equality and Human Rights Commission.)

86 In summary, an internal submission from Jonathan Iremonger, the then Director of the Veterans Policy Unit, to the then Parliamentary Under-Secretary of State for Defence and Minister for Veterans, Derek Twigg, in December 2006 presented three options for responding to the additional cases that were being put forward for compensation following the Elias decision:

- Pay: a sum of £4,000 settlement for the existing claimants.
- Resist: legal counsel advised that the MoD had a 55 to 60 per cent chance of winning in the county court, as they could argue that:
 - many of the claimants were out of time; and
 - under EU law the discrimination was unintentional and the benefits concerned were not ones of a form giving a social benefit, therefore the inclusion of the 'bloodlink' criterion constituted indirect racial discrimination contrary to section 1(1)(b) of the Race Relations Act and was not a form of indirect racial discrimination for which hurt feelings damages can be paid.
- Negotiate: an out of court settlement for less than £4,000 per claimant.

87 Derek Twigg chose the first option – to make payments of £4,000 to those in a similar position to Mrs Elias. This decision was announced by way of a Parliamentary answer given by Derek Twigg to Mr Austin Mitchell MP on 26 January 2007 which said that the MoD:

'... is prepared to consider claims for compensation for injury to feelings resulting from discrimination on national origins grounds from any person whose claim was rejected on birthlink grounds and who, like Mrs Elias, was of non-UK national origins.'

Eligibility – British subjects and British protected persons

88 While the Elias litigation was underway and the MoD was considering its response to the outcome of that litigation, in May 2006 developments were occurring within the MoD, with assistance from the Foreign and Commonwealth Office (FCO), regarding its understanding of the complexity of the British nationality law that was applicable during the Second World War. The question arose as to the scope of 'British subject' status and, in particular, whether those former civilian internees who had possessed the status of a British protected person fell within the definition of 'British at the time of internment' for the purposes of the original scheme.

89 Specific questions were asked about the status of people born in Malaya. FCO advised that persons born within one of the nine British Protected States of Malaya (of which Negeri Sembilan – where Mr A and four of his brothers and sisters were born – was one) were British protected persons by birth, but persons born within the two colonies were British subjects by birth. FCO went on to say that:

'therefore in 1939 – 1945 you only acquired British subject status if you were born in Penang or Malacca. However, if you were born in a protected state and had a parent born in the UK or Colonies you were a British subject deemed by birth.'

90 The chronology of events at Annex B sets out the full background to the decision made by the MoD in July 2006, following its discussions with FCO from May 2006, that British protected persons **did not** fall within the definition of *'British at the time of internment'* for those purposes. Annex A of the report outlines the relevant changes to British nationality law.

The handling of the claims made by Mr A and his siblings

91 In what follows here and in the rest of this report, I have used the case of Mr A as an example. As can be seen from the chronology of events (Annex B), the specific dates relevant to his case sometimes differ slightly from those relevant to the claims of his siblings. In that sense alone, the detail of what follows relates only to Mr A's claim.

92 However, the MoD's correspondence with all of the members of Mr A's family who were denied a payment was largely based on exactly the same terms. And the letters sent by each family member to the MoD made the same or very similar points in reply. Given that all of their cases were also decided on identical grounds, I am satisfied that what I go on to say about the handling of Mr A's case applies equally in general terms to each of his siblings on whose behalf he complained. (Annex D includes full copies of the key correspondence referred to below, between Mr A and his family and the MoD and the Agency from 2000 to date.)

93 Mr A submitted an application to the original scheme on 28 November 2000, and in March 2001 Mr A and his siblings were sent requests for further information to help decide their applications – this was about their

nationality at birth and the place of birth of their parents and grandparents. In June 2001 Mr A received a rejection letter from the Agency, stating that he was not eligible for the ex gratia payment, and explaining that:

'those who are entitled to receive the payment are ... civilian internees who were British subjects, and were born in the United Kingdom or who had a parent or grandparent born in the United Kingdom.'

From this letter it was clear that Mr A's application was rejected because he did not satisfy the 'bloodlink' criterion. Mr A and his siblings wrote to the Agency upon receipt of this news expressing their disgust at the rejection of their claims, and the family members continued to pursue their claim for the £10,000 payment.

94 In late October 2005 Mr A received a letter from the Agency asking him to provide some further information in order for him to receive the one off £500 *'tangible apology payment'* which the MoD offered following the publication of my report *A Debt of Honour*. The letter explained that the Agency held sufficient information to confirm that Mr A satisfied most of the original scheme's requirements (other than the 'bloodlink' requirement) and needed merely to confirm that there had been no change in Mr A's position. Mr A wrote to the Agency in November 2005 accepting the payment and providing the additional information but noting that he did not want acceptance of the sum to prejudice his ongoing claim for the original £10,000 payment. Mr A received the £500 payment in January 2006.

95 In March 2007 the MoD sent Mr A a letter, responding to an earlier letter he sent them

asking why he had not received the £10,000 ex gratia payment. The MoD explained the qualifying criteria for the £10,000 payment and invited him to apply for it if he felt that he qualified. The letter also noted that the MoD were:

'prepared to consider claims for compensation for injury to feelings resulting from discrimination on grounds of national origins, from anyone whose [original] claim was rejected on birthlink grounds and who was of non-UK national origins ...'

The MoD invited him to apply for this payment if he considered that he was eligible.

- 96 Mr A's application for a payment under the injury to feelings scheme – which he made on 1 July 2007 – was rejected on 30 August 2007. This claim was rejected because he was deemed to have been ineligible under the original scheme as he had been, at internment, a British protected person. The rejection letter told him that:

'it has been discovered that you do not satisfy the nationality criteria of the Scheme, i.e. you were not a British subject at the time of your internment. Consequently, the £500 apology payment which you received in December 2005 [sic]¹⁶ was awarded to you in error.'

- 97 After his claim to the injury to feelings scheme was rejected, there followed a substantial amount of correspondence between Mr A and the MoD and the Agency. Mr A was furious with this outcome, and at the retraction of the earlier 'apology'. In these letters he made his feelings

very clear; he was deeply upset and outraged by the way in which his claims had been handled and by the reasons given for the rejection of those claims. In a letter he wrote to the then Minister for Veterans in September 2007, he summed up his feelings saying:

'your handling and treatment of this whole issue is despicable and disgraceful, and bereft of common decency and justice. So why don't you do the right thing now? I AM HOPEFUL THAT JUSTICE WILL PREVAIL – BEFORE I GO TO MY GRAVE.'

- 98 Another aspect of the handling of the claims made by Mr A and his siblings is that some of his family received a payment for injury to feelings (his six brothers and sisters who were born in Singapore received the payment – paragraphs 39 and 40), while he and his four other siblings did not. This difference in treatment – under the schemes said to have been devised either to recognise the circumstances of captivity, which the whole family had endured together, or to remedy indirect race discrimination, which they had all suffered for the same reason – further exacerbated Mr A's sense of grievance. This is an important aspect of my findings with regard to the general fairness of the treatment of Mr A and his siblings involved in this complaint, at the hands of the MoD and the Agency.

¹⁶ This payment was made in January 2006.

What my investigation found – ‘Findings of fact’

⁹⁹ What follows are a number of factual findings I have made, based on evidence; the facts; and inferences arising from those facts which I have identified during my investigation. I have used these ‘findings of fact’ as the basis for my findings of maladministration against the MoD and the Agency, and the resultant injustice to Mr A and his siblings that has flowed from that maladministration.

General findings of fact

Basis for the decision of the court

¹⁰⁰ My **first general finding of fact** is that the basis for the courts’ judgments in the Elias litigation was:

- that Mrs Elias had been subject to unlawful indirect race discrimination because the ‘bloodlink’ criterion was applied to her original claim for compensation;
- that Mrs Elias had suffered a detriment because of that discrimination. The form of that detriment was that she did not receive a payment under the original scheme and that her feelings had been injured by the discrimination she had suffered;
- that damages were due to Mrs Elias for injury to feelings **whether or not** she would have received a payment under the original scheme had no discrimination occurred in her case; and
- that the calculation of the amount of damages due to Mrs Elias was undertaken on the assumption that she would **not** have received a payment under the original scheme even absent the unlawful discrimination which had occurred in her case.

¹⁰¹ Both the High Court and the county court, in their consideration of what detriment Mrs Elias had suffered, focused on the fact that she had not received the £10,000 compensation under the original scheme. In paragraph 57 of its judgment, the High Court found that: *‘It is plain that Mrs Elias has suffered a detriment by not receiving the compensation’*. This view – that not receiving the compensation constituted a detriment – was not appealed or otherwise challenged subsequently. When assessing whether damages for injury to her feelings should be paid to Mrs Elias, the county court found that such damages were due – a finding which was upheld on appeal.

¹⁰² The Court of Appeal, however, focused on the detriment Mrs Elias suffered in the form of injured feelings. In the words of Lord Justice Mummery, in paragraphs 241 and 242 of the Court of Appeal judgment:

*‘I would not have placed much reliance on what the position would have been, if the compensation scheme did not contain the discriminatory birth link criteria and Mrs Elias had not suffered race discrimination ... In my judgment, what would have happened if the birth link criteria had not been introduced and the fact that the [Ombudsman] has found maladministration is of little or no relevance to the assessment of compensation for injury to feelings. **What matters is the injury to feelings which Mrs Elias undoubtedly suffered as a result of the indirect racial discrimination which did in fact occur and how that should be quantified.**’*
(My emphasis)

103 Whatever the differences between the courts on the detriment that Mrs Elias suffered, they shared the judgment that, absent discrimination, **Mrs Elias would not have received the £10,000 payment** under the original scheme.¹⁷

104 The county court judge proceeded on this basis, which informed the level of the award made. As the judge said (in paragraph 5 of his judgment):

'It is therefore probable that if the unlawful element had not been included in the scheme some other scheme would have been put in place which would still have excluded Mrs Elias ... So, on balance, she would not have received the payment in any case.'

105 The county court judge then set out the factors which he considered led to his making an award towards the lower end of the accepted scale of payments for injury to feelings caused by unlawful discrimination. The first of these considerations was that:

'once it is accepted that [Mrs Elias] probably would not have received payment in any event, the hurt which she undoubtedly felt is a hurt she would have experienced anyhow.' (My emphasis)

106 The High Court took the same view, although it did not preclude the issue of whether Mrs Elias would be eligible under a scheme revised to remove the unlawful discriminatory criterion. Mr Justice Elias said in paragraph 90 of his judgment:

'... this may, I fear, prove to be a pyrrhic victory for Mrs Elias, since it does not of course follow that any other unlawful

criteria which could be adopted would bring her within the fold. Indeed, if the government continues to choose to require the close link to be established at the time of internment and to ignore links established with the United Kingdom since that time, it is difficult to see how she would be likely to qualify whatever criteria are adopted, unless it is that all those interned because they were British subjects should be compensated after all.'

107 The basis on which the courts determined that Mrs Elias was entitled to compensation for injury to feelings was therefore unrelated to whether she would have received a payment under the original scheme, absent the discrimination which had caused that injury.

The injury to feelings scheme

108 My **second general finding of fact** is that the Minister for Veterans, Derek Twigg, decided to develop an administrative scheme to make payments to people in the same position as Mrs Elias, that is, people whose feelings had been injured by the application of the unlawful 'bloodlink' criterion. (Annex B, B83 – 26 January 2007 statement by the Parliamentary Under-Secretary of State for Defence and Minister for Veterans.)

109 The Minister took the decision to develop a compensation scheme rather than to seek to defend in the courts further legal claims made on an individual basis by each person claiming to have been discriminated against.

110 My **third general finding of fact** is that the Minister's statement to Parliament on 26 January 2007 said that eligibility for the injury

¹⁷ As noted in paragraph 27 of this report Mrs Elias did subsequently become eligible for the £10,000 payment following the introduction of the 20 year rule under the revised scheme.

to feelings compensation scheme would be based on the individual having had a claim to the original scheme rejected due to the ‘bloodlink’ criterion, and the individual being of non-UK national origins. The Minister did not announce any other criteria for the injury to feelings scheme.

111 My **fourth general finding of fact** is that the MoD’s internal guidance to staff on the implementation of the injury to feelings scheme was inconsistent, unclear and misleading and it did not accord with the Minister’s stated intention.

112 As I have outlined in my third general finding of fact, the Minister’s statement to Parliament on 26 January 2007 was clear – that the injury to feelings payment was to be made on the basis of the Elias judgment. There were no riders or caveats in this statement. However, in practice, the MoD staff reviewing applications to the scheme also required applicants to have been eligible for the original scheme but for the ‘bloodlink’ criterion. The actions of MoD staff were neither consistent with the Elias judgment, nor in-line with the Minister’s statement. The guidance that the MoD issued to staff implementing the injury to feelings scheme stated that:

‘To qualify for compensation, the claimant must also meet the other requirements of the scheme (i.e. that they were a British subject at the time of internment and that they were held in a specially designated camp controlled by the Japanese).’
(My emphasis)

113 This criterion – which was additional to those of having had a claim rejected on birthlink grounds and being of non-UK national origin – was

additional to those announced by the Minister and, in effect, thwarted the Minister’s intention.

114 The guidance also contained some worked examples to help staff identify people who would qualify for the compensation, using hypothetical family trees to illustrate the national origins of potential applicants.¹⁸ At least one of these examples appears to be at odds with the rest of the guidance.

115 The first example depicts a hypothetical claimant born in China, whose father had also been born in China and whose mother had been born in Russia. The paternal grandfather had been born in China, the paternal grandmother was possibly born in the UK, and both maternal grandparents were born in Russia. The document states that:

‘the claimant would qualify for payment of compensation on the basis of ancestors’ birth alone. The birthplace history on the maternal side gives a clear part-Russian national origin.’

116 The claimant in this example could not have been a British subject, and would not have fulfilled the requirements of the original scheme, but for the introduction of the ‘bloodlink’ criterion. No part of China or Russia was a British colony, although parts of China were under British influence or protection. The claimant, his father and paternal grandfather were all said to have been born in places that would not have qualified them or their children for British subject status at the relevant time. This claimant would – had the MoD followed the Minister’s statement – have been entitled to compensation, but that was not consistent with what the MoD

¹⁸ These illustrations are set out in Annex B in the entry for 19 July 2007 (paragraphs B88 to B92).

said elsewhere in their guidance. This is clear evidence that the MoD was in a complete muddle about the criteria to be applied.

117 Three other examples of hypothetical cases were given in this document. In all four of the examples, the guiding criterion used in determining whether the claim would succeed for an injury to feelings payment – assuming that their claim had been rejected due to the ‘bloodlink’ criterion – was whether the claimant was of non-UK national origins in whole or in part. These examples were, therefore, consistent with the Minister’s announcement but not with other elements of the MoD’s internal guidance.

118 Another example of the confused approach within the MoD as regards eligibility for an injury to feelings payment is found in *Key points regarding claims for compensation*, annexed to a document sent on 17 August 2007 by the MoD to the solicitors acting for Mrs Elias.

119 While stating that ‘*compensation is not available for simply being rejected under the “birthlink”*’ criterion, the document went on to explain that the MoD would consider claims:

‘for injury to feelings resulting from discrimination on national origins grounds from any person of non-UK, or non-exclusively UK, national origins whose claim was rejected as failing to meet the “birthlink”.’

This was in line with both the Elias judgment and the Minister’s statement. But the next point stated that:

‘Those who applied for an ex-gratia payment but were rejected because they were not interned by the Japanese

or were not British subjects at the time of internment will not be entitled to compensation on this basis.’

120 This confusion and inconsistency was further reflected in the template letters which were devised and approved by the MoD for issue to those individuals whose claims to the original scheme had been rejected on the grounds of the ‘bloodlink’ criterion, inviting them to apply for injury to their feelings that this discrimination had caused.

121 It can be seen from the full copies of these template letters at Annex C that, when discussing potential eligibility for a payment under the injury to feelings scheme, those template letters **made no mention** of any requirement that applicants had to satisfy all of the other eligibility criteria for the original scheme. That was in line with the Minister’s statement, but not with what the MoD was telling its staff to do. The letters were misleading for the recipients who were given the impression that they would be entitled to injury to feelings payments when, in fact, the MoD was applying additional, unannounced, criteria.

The definition of ‘British at the time of internment’ and British protected person status

122 My **fifth general finding of fact** is that it was not until 2006 that the MoD recognised for the first time that there was any difference between British subject status and British protected person status with regard to any of these three schemes. The first time the MoD asked about the nationality status of British protected persons was in May 2006 and it was still clarifying the position in July 2006. Therefore, it is clear that this **could not** have been a factor in the decision making in the original or the revised scheme.

123 Prior to this, the category of British protected person was apparently not known or recognised by those administering the original scheme. Claims from those former civilian internees holding British protected person status at the time of their internment, would have been treated as 'British' at that time for the purposes of determining eligibility for a payment under the original scheme. The very fact that Mr A received the £500 apology payment in January 2006, after the Agency had ticked the 'yes' box on an internal document in Mr A's file to say that it had '*proof of British Citizenship on file*', is strong evidence of this. (Annex B, B52 – 24 October 2005.)

124 Perhaps this finding can best be summed up in the words of the previous Permanent Under-Secretary of State at the MoD, Sir Bill Jeffrey, in his letter to me when he commented on the complaints made by Mr A:

'when these [original] payments were being made, the distinction between individuals born in a British Colony and a Protected State and the resultant effect on their nationality status had not been recognised.'

125 In July 2006 the MoD decided, retrospectively, that having the status of British protected person excluded a former civilian internee from eligibility for a payment under the original scheme – and also therefore precluded eligibility for the £500 apology payment. In other words, the MoD effectively imputed to itself knowledge which it did not possess in 2001 when deciding claims under the original scheme – and substituted what in its much later view was a more accurate basis for its decisions than that which had in fact informed those decisions. This approach would govern how the MoD would treat any issues which arose

after this date in relation to the original claims made by former internees who had held this status, regardless of how those claims had in fact been handled when they were first made, and regardless of the actual basis of the resulting decision on each claim.

Specific findings of fact

The handling of Mr A's claims

126 My first specific finding of fact is that Mr A's application to the original scheme was rejected on the basis of the 'bloodlink' criterion.

127 The papers on Mr A's file record that, when the Agency reviewed his case in January 2006 to establish whether he met the new 20 year residency criterion under the revised scheme, his original claim was said to have been rejected – in a section of a form entitled *Why was claim rejected?* – because the '*birthlink [was] not met*'. (Annex F, F2 – 9 January 2006.)

128 The email sent by an MoD official to Counsel on 6 November 2006, explained that the Agency had confirmed:

'that, when the birthlink was in operation, some claims were rejected because they did not meet the birthlink without checks first being made to see whether the applicants met the other criteria ... and in the period following the introduction of the birthlink this probably happened in the majority of cases.'

129 There are no papers on Mr A's file showing that the Agency checked if he had actually been interned in a designated camp run by the Japanese before 24 October 2005, when they

- were deciding if he was eligible for the £500 apology payment. This is the date when there is the first evidence that Mr A's internment in Sime Road camp was verified. (Annex F, F1 – *'Stage 6 Action sheet compensation authorisation civilian nationality claims'*, completed 28 November 2005.)
- ¹³⁰ My **second specific finding of fact** is that until at least as late as 23 May 2006 the Agency considered Mr A to have been British at the time he was interned.
- ¹³¹ On 24 October 2005 (and confirmed on 28 November 2005) the Agency completed its *Stage 6 action sheet: compensation authorisation* to approve the £500 'apology' payment for Mr A. In response to the question *'Have we proof of British citizenship on file?'*, the 'yes' box on the form was checked, with the evidence to support this assessment said to be Mr A's British passport (which had been submitted with his original application). This was despite the clear evidence on Mr A's file – not least his passport itself – which referred to him as a British protected person at the time of his internment.
- ¹³² On 23 May 2006 the Agency completed another internal form to determine if Mr A was eligible for the £10,000 ex gratia payment under the revised scheme. The Agency recorded on the form that Mr A might be eligible because he had received the £500 apology payment. On the form there were two options to check which identified that *'Evidence on file [exists] that claimant was not British at internment'* and/or that he had been *'Rejected as not eligible to claim'*. (My emphasis)
- ¹³³ Neither of these options on Mr A's form were ticked (Annex F, F3 – 23 May 2006), which indicates that the MoD still accepted at that time that Mr A met the criteria for being 'British'.
- ¹³⁴ My **third specific finding of fact** is that, between 21 June and 14 July 2006, the Agency decided that Mr A no longer fell within its definition of 'British at the time of internment' – solely because he had been a British protected person.
- ¹³⁵ As can be seen at Annex B, B69, on 21 June 2006 an internal note was put on Mr A's file by an Agency official which suggested this view and set out the writer's view that, as a result, the £500 apology payment had been paid in error to Mr A. This view was confirmed on 14 July 2006 by another Agency official (Annex B, B70).
- ¹³⁶ My **fourth specific finding of fact** is that even though the Agency appears to have decided in June 2006 that Mr A did not fall within its definition of 'British at the time of internment' (as outlined in my third specific finding of fact, paragraph 134), on 1 March 2007 the MoD invited Mr A to apply for a payment under the injury to feelings scheme. (Annex D, D7 – March 2007 MoD letter to Mr A.)
- ¹³⁷ The invitation sent to Mr A was based on one of the standard template letters (see my fourth general finding of fact at paragraph 111) which made no mention of the need for a former civilian internee to satisfy all of the original scheme eligibility criteria in order to qualify for this new payment. Mr A responded to this invitation by making an application to the injury to feelings scheme on 1 July 2007.
- ¹³⁸ My **fifth specific finding of fact** is that, on 30 August 2007, the Agency rejected Mr A's application for payment under the injury to feelings scheme because he had not been a British subject at the time of his internment.

At the same time the Agency told him that it considered the earlier £500 apology payment he had received had been made in error. (Annex D, D9 – 30 August 2007.)

¹³⁹ The Agency did this, while in possession of a letter from Mr A in which he said that the way in which his earlier correspondence had been handled had *'given me many traumas'*, that *'each occasion has not just been mental anguish but torture'*, that his health had suffered as a result, and that *'the misery you have made me undergo these past seven years is indescribable and impossible to adequately recompense'*.

¹⁴⁰ My **sixth specific finding of fact** is that the Agency's rejection letter of 30 August 2007 (with further detail given in subsequent related correspondence) was the first occasion when the full eligibility criteria for the original scheme – and the criteria used by the MoD to operate the injury to feelings scheme – were outlined to Mr A by the Agency or the MoD.

My findings of maladministration and injustice

¹⁴¹ Having set out my principal findings of fact, I now turn to consider whether maladministration occurred.

Maladministration

¹⁴² In the light of the evidence I have reviewed and my findings of fact, I consider that there are six areas in which the actions of the MoD and the Agency substantially departed from my Principles of Good Administration:

- 1 the basis of the injury to feelings scheme;
- 2 the fairness and consistency of the injury to feelings scheme;
- 3 the announcement of the injury to feelings scheme;
- 4 the invitation to apply for claims under the injury to feelings scheme;
- 5 the retraction of the earlier apology to Mr A and poor correspondence; and
- 6 the failure to deal with Mr A sensitively, bearing in mind his circumstances and the intentions of the original scheme.

The basis of the injury to feelings scheme

¹⁴³ The MoD devised the injury to feelings scheme on a basis that was not consistent with the Elias judgment or the Parliamentary answer given in January 2007 (paragraph 87). The judgments were based on the assumption that Mrs Elias **would not** have received a payment under the original scheme, even absent unlawful discrimination. By intending to limit eligibility under the injury to feelings scheme to those who **would** have

received a payment under the original scheme, but for the indirect discrimination embodied in the application of the ‘bloodlink’ criterion, the MoD failed to ‘get it right’. It misunderstood the court judgments and did not do what its Minister had directed.

¹⁴⁴ I have been unable to establish why the MoD chose to depart from the position the Minister had agreed but I can only assume that officials were unduly influenced by the legal advice that they had obtained before making their recommendation, despite the Minister subsequently deciding that he did not accept that recommendation.

¹⁴⁵ Mr A’s claim to the original scheme (and that of his siblings) was rejected purely on the ground that he (and they) did not satisfy the ‘bloodlink’ criterion. It follows that, like Mrs Elias’, Mr A’s feelings were injured because of the rejection on that ground, and he suffered a detriment by not receiving compensation under the original scheme. Mr A had non-UK national origins. This should have brought him properly within the scope of the injury to feelings scheme.

¹⁴⁶ The fact that Mr A would not have received a payment under the original scheme absent the ‘bloodlink’ criterion is not relevant to the question as to whether, in line with the Elias judgment, he was entitled to receive compensation for injury to feelings. Given all that I have said above, I can see no basis on which Mr A and his siblings were not entitled to the injury to feelings payment and I find that the MoD once again failed to ‘get it right’.

The fairness and consistency arising from the design of the injury to feelings scheme

- ¹⁴⁷ I consider that the way in which the injury to feelings scheme was devised failed to treat individuals in similar circumstances consistently or fairly.
- ¹⁴⁸ I accept that when devising any scheme there will be some individuals who unfortunately fall just outside the agreed parameters and this may engender calls of unfairness or bias.
- ¹⁴⁹ A line does have to be drawn. However, this should not lead to an absurd outcome. It is readily apparent that there was inconsistent treatment meted out to the members of Mr A's family when they applied for the injury to feelings payment. Mr A's siblings who were born in Singapore received the payment, yet those born in Malaya, including Mr A, did not. By any standards, this is an absurd outcome when they were all interned and were all unlawfully indirectly discriminated against. The feelings of the siblings born in Malaya were no less hurt by their rejection under the unlawful 'bloodlink' criterion than those born in Singapore.
- ¹⁵⁰ Any difference in treatment needs to be justified by the objective features or the individual circumstances of the case. The family experienced the same treatment at the hands of their Japanese captors, and they experienced the same unfairness when they were refused payment under the original scheme. Compensating only half of the family for the distress that they all suffered is absurd and patently was not 'acting fairly'.

The announcement of the injury to feelings scheme

- ¹⁵¹ The Minister announced the injury to feelings scheme as being '*on the same basis*' as Mrs Elias had been awarded compensation by the courts. The Minister said that the injury to feelings scheme was based on the individual having had a claim to the original scheme rejected due to the 'bloodlink' criterion, and the individual being of non-UK national origins. The template letters approved for issue to potential applicants about the scheme were also clear on this point.
- ¹⁵² However, the internal minutes I have seen clearly set out the MoD's decision to exclude from the scope of the injury to feelings scheme those claimants who could not satisfy all of the original scheme's eligibility criteria – in contrast to the Minister's statement and the template letters. I have been unable to establish why this happened, and can only suggest that the planning of the injury to feelings scheme was simply muddled.
- ¹⁵³ However it arose, the public announcement of the scheme and the means through which the Agency solicited applications from potential claimants – including Mr A and his siblings – failed to explain that the MoD had decided to make payments under the injury to feelings scheme only to those who, but for indirect discrimination, would have received a payment under the original scheme. This constitutes a failure to be 'customer focused' and a failure to be 'open and accountable'.

The invitation to apply for claims under the injury to feelings scheme

154 The way in which Mr A and his siblings were invited to make a claim under the injury to feelings scheme reinforced these serious departures from my Principles of Good Administration. They made their claims without knowledge of the eligibility criteria which would be applied to their claims. Mr A and his siblings applied in response to a letter which led them to believe that, as people who had been discriminated against and who possessed non-UK national origins, they would be eligible for a payment.

155 Mr A and his siblings were invited to apply to the revised scheme more than seven months **after** the Agency had decided internally that they no longer met the MoD's definition of 'British at the time of internment'. All this added to the earlier failures to 'get it right' and to be 'customer focused'.

The retraction of the earlier apology to Mr A

156 The retraction of an earlier apology is, in my experience, an unusual step for a government department or agency to take. The Agency's comment to Mr A and his siblings that they had been paid the £500 apology payment in error was incompatible with the true basis of those payments. It was also hugely insensitive and entirely unnecessary. Furthermore, at no point have the MoD or the Agency recognised or apologised for making such an insensitive remark.

157 I do not share the apparent view of the MoD that such payments – which were a response to a recommendation in my July 2005 report – were only to be made to those within the scope of the original scheme. Indeed, the apology which

I recommended might be made in tangible form was intended to reflect the distress caused to people who had been misled by maladministration to believe that they would be eligible **when they were not eligible.** (My emphasis)

158 But even if that were not the case, I can see no useful purpose in communicating this view. The MoD and the Agency should have known this insensitive comment was highly likely to further distress people already greatly incensed by the way in which their claims to both schemes had been handled. In the letters Mr A wrote to the Agency and the MoD, he was very clear that their handling of events had made him relive a past that he would have preferred to keep buried. In the last years of his life Mr A expected, and deserved, far better treatment at the hands of the British Government than he received.

The failure to deal with Mr A sensitively, bearing in mind his circumstances and the intentions of the original ex gratia scheme

159 Finally, it is my view, based on all that I have seen, that at no time since the original scheme was announced in November 2001 and in the subsequent schemes, have the MoD or the Agency considered the effect their actions will have, or have had, on the people they were meant to be compensating; they lost sight of the original honourable intentions of the scheme and became caught up in an ever increasing administrative muddle.

160 The recipients of this poor decision making and insensitive correspondence were people who had already suffered unimaginable hardship. I would have expected the MoD to have been alive to that context when establishing

schemes, setting the tone and message for any announcement, and devising correspondence to be sent to applicants.

¹⁶¹ I do not doubt that the MoD and the Agency felt they were acting proportionately and efficiently. But they nonetheless lost sight of the person on the receiving end of their actions. By failing to take into account their ‘customers’ and the very special circumstances surrounding the schemes, the MoD and the Agency were not ‘*Being customer focused*’. The result of which were schemes which caused considerable upset and distress to individuals, who in the later years of their lives deserved far better.

Findings: maladministration

¹⁶² In determining whether these six departures from my Principles of Good Administration fall so far short of the applicable standard as to constitute maladministration, I have considered the context in which the actions of the MoD and the Agency took place.

¹⁶³ These administrative errors were not isolated cases of departures from good administration. Lessons should have been learnt, but clearly were not, from the previous experience of the administration of the original scheme.

¹⁶⁴ As I have explained, the revised scheme was developed after my report, *A Debt of Honour*, was published and the MoD began an internal review once they had identified inconsistencies in their own approach. Concurrently, the courts found that the ‘bloodlink’ criterion was unlawful.

¹⁶⁵ Given the seriousness of a finding of unlawful indirect race discrimination on the part of a public body, the MoD needed to exercise

extreme care to ensure that its response to the findings of the courts was coherent, robust and fair. All the more so given the sensitivity of the matters with which it was dealing, and the MoD’s knowledge that the people affected by its decisions were vulnerable and already distressed. This was further underlined by the fact that the origin of the matters in hand was an already gruesome experience that those people endured.

¹⁶⁶ I am highly critical, therefore, of the failures I have identified in this report. I consider them to be significant departures from my Principles of Good Administration. I therefore make six findings of maladministration:

- first, that the basis on which the MoD devised the injury to feelings scheme constitutes maladministration, being inconsistent with the basis of the Elias judgments, and the Minister’s statement and imposing a restriction on eligibility based on irrelevant considerations;
- secondly, that the design of the injury to feelings scheme constitutes maladministration as it produced such unfair, inconsistent and even absurd outcomes with the entirely foreseeable circumstances of only **some** family members being compensated for the discrimination that they **all** suffered;
- thirdly, that the actions of, and the literature distributed by, the MoD following the Minister’s announcement of the injury to feelings scheme constitutes maladministration; being unclear and unfair, and failing to inform potential applicants of the full eligibility criteria which the MoD operated;

- fourthly, that the invitation by the Agency to Mr A and his siblings to claim under the injury to feelings scheme constitutes maladministration, in that their expectations were raised on the basis of an incomplete statement of the scheme rules made many months after the Agency had already decided that Mr A and his siblings were not eligible on its view of the scheme rules;
- fifthly, that the communication by the Agency to Mr A and his siblings of its belief that the earlier apology payments had been made in error constitutes maladministration, being incompatible with the true basis of those payments and constituting unnecessary action which could only reasonably have further, in Mr A's own words, '*added insult to injury*'. And further, at no point have the Agency apologised to Mr A for the insensitive remarks made in its correspondence with him in its letter in August 2008 when it said that he was paid the £500 in error; and
- finally, that the MoD and the Agency have consistently failed to 'be customer focused' in their decision making, announcements and correspondence. Not only did they lose sight of the original intention of the scheme, they lost sight of the people it was intended to compensate. They failed to deal with Mr A and his siblings sensitively, bearing in mind their individual circumstances, causing prolonged and unnecessary distress and upset in the later years of these individuals' lives.

167 I have made no detailed finding as to whether the way in which the MoD approached the question of British protected person status in relation to the definition of 'British at the time of internment' constituted a departure from my Principles of Good Administration.

Such a finding would only have been relevant to my determination of the complaints made by Mr A if I had found that the other aspects of the MoD's actions had been reasonable in the circumstances. Given what I have found above, it is not necessary to further consider this question.

168 I now turn to set out what injustice, if any, I consider resulted from this maladministration.

Injustice

169 I do not think that it can be doubted that Mr A and his siblings were caused extreme outrage and distress by the way in which the MoD and the Agency handled their cases. This much is evident from the terms of their correspondence with both bodies, which are set out in detail at Annex D.

170 Nor is it in doubt that Mr A and his siblings were correctly refused the original *ex gratia* payment and the revised payment. But they were then incorrectly refused a payment under the injury to feelings scheme which was to recognise the injury to feelings caused by the rejection of compensation claims on the basis of the unlawful 'bloodlink' criterion to which all of them were subject.

171 Do these consequences flow from the maladministration I have identified in this report? My answer to that question is an unequivocal 'yes'.

172 Failing to devise the revised scheme on a basis that would deliver the remedy for the discrimination identified in the Elias judgment to which Mr A and his siblings were entitled led to their claims being denied when, consistent with that judgment, they should not have been

denied. Not only did they not get what they were entitled to, but the manner in which they were denied it also caused them outrage and distress.

173 Inviting Mr A and his siblings to apply for the injury to feelings scheme when the Agency were aware they were not eligible, and then failing to properly inform them of the full basis on which the MoD intended to operate the new scheme led to them having to undergo further mental anguish and suffering when making their claim. The callous way the Agency rejected these claims exacerbated this anguish and suffering.

174 Failing to consider the potential impact on someone who is told, unnecessarily, that the apology (made in tangible form) which he had been given was not in fact due, was unfeeling and unthinking, and led to Mr A being treated in a way he found to be yet more insulting.

175 Failing to consider the implications of their decision making, announcements and correspondence, on a group of individuals who had suffered more than enough already caused unnecessary hurt, frustration and distress.

176 Mr A was subject to prolonged and aggravated distress in the last years of his life. He was repeatedly forced to relive the horrific events of 1945. This compounded all that had gone before.

Findings: injustice

177 I have found it impossible to conclude that these consequences do not constitute injustice or that they do not directly flow from the maladministration I have identified above.

In those circumstances, I find that Mr A and his siblings suffered injustice resulting from maladministration in two forms:

- first, by not receiving compensation for injury to feelings which they should have received; and
- secondly, by being caused extreme outrage and distress by the way in which their claims were handled.

178 Having found injustice resulting from maladministration, I uphold Mr A's complaints in full. I now turn to make recommendations to 'put right' the injustice which I have found resulted from maladministration on the part of the MoD and the Agency.

My recommendations for remedy

179 As I have explained, I have found that Mr A and his siblings suffered injustice in consequence of maladministration, and that that injustice has not been remedied. I have applied my Principles for Remedy in making my recommendations for remedy, which are set out below.

180 I have taken into account what Mr A and his siblings told us that they were seeking by way of remedy. Mr A, on behalf of his siblings, said that he wanted the MoD and the Agency to reconsider the criteria which it applied when deciding on the injury to feelings payments and that he would also like the MoD and the Agency to pay him and his siblings compensation for the injury to their feelings and apologise for the injustice they have suffered.

181 I believe that the MoD and the Agency were jointly responsible for the injustice experienced by Mr A and his siblings but I see no sense in trying to apportion the responsibility for '*Putting things right*'. I propose that the MoD should take the lead, on behalf of the Agency, in remedying the injustice. In framing my recommendations in this way, my aim is to ensure that Mr A's siblings, and Mr A's wife, who has suffered alongside Mr A and who is now acting on his behalf, are not further inconvenienced or distressed by the actions of these bodies.

Putting things right for Mr A and his siblings – injury to feelings payment

182 My Principles for Remedy clearly outline the good practice I expect of bodies under my jurisdiction when remedying injustice. The MoD and the Agency failed to meet them. I have found that Mr A and his siblings were each entitled to receive the £4,000 payment for

injury to feelings, but due to the MoD and the Agency's maladministration they were denied that payment.

183 To remedy this I recommend that within four weeks of the date of this report being finalised:

- the MoD pays Mrs A, on behalf of Mr A, and each of Mr A's siblings the £4,000 injury to feelings payment; and
- the MoD pays interest on each of those £4,000 payments, calculated from 30 August 2007 (the date Mr A and his siblings were incorrectly denied this payment), until the date the sum is finally paid to them.

Putting things right for Mr A and his siblings – further injustice suffered

184 The MoD and the Agency unnecessarily and offensively told Mr A and his siblings that the apology and payment of £500 they had received for earlier maladministration of the original scheme had been a mistake. Mr A had explained to both bodies previously that discussing his experiences during the Second World War caused him anxiety and distress; so, to add unnecessarily to his anxiety and distress was disgraceful, and callously disregarded the Principle of '*Being customer focused*'. The MoD and the Agency neither apologised for, nor properly explained their poor service; they failed to deal with Mr A and his siblings sensitively; and they showed no sign that they understood their needs.

185 These failures were further exacerbated because the MoD and the Agency had ample opportunity to 'put things right' when Mr A's complaint was first brought to my Office,

but they failed to do so. In my opinion this has demonstrated a lack of respect for the suffering Mr A and his siblings experienced during their incarceration. That lack of respect was manifested in the MoD's poor handling of the earlier schemes; their denial of the injury to feelings payments; and the unthinking and callous retraction of their earlier apology.

¹⁸⁶ To recognise the considerable injustice that Mr A and his siblings have suffered as a result of the MoD's and the Agency's maladministration, I recommend that within four weeks of the date of this report being finalised the MoD makes consolatory payments to Mrs A on Mr A's behalf and to Mr A's siblings of £5,000 each.

¹⁸⁷ As I have found that the actions of the MoD and the Agency have been so poor, and the nature of the events in question so exceptional, I consider that Mrs A on behalf of Mr A, and each of Mr A's siblings should receive an apology from the Secretary of State for Defence. I recommend that within four weeks of the date of this report the Secretary of State for Defence writes a personal apology to Mrs A on behalf of Mr A and also to each of Mr A's siblings:

- apologising for the shameful way that the MoD and the Agency have dealt with these matters;
- apologising for the impact of all of their maladministration on Mr A and his siblings; and
- outlining the MoD's plans to ensure that other individuals in the same situation will also be compensated appropriately.

¹⁸⁸ Within eight weeks of the date of this report being finalised, I further recommend that the MoD review all other applicants under the injury to feelings scheme, and where it identifies individuals who are in the same position as Mr A and his siblings, that they should also receive £4,000 each with interest payable from the date their own claim was refused.

¹⁸⁹ Finally, I am concerned that the MoD has failed repeatedly to learn from its mistakes. Despite findings of maladministration and injustice by the Ombudsman, criticism from the Public Administration Select Committee, an internal review and findings of indirect race discrimination by the courts, the MoD and the Agency failed repeatedly to 'get it right' or 'put it right'. They compounded their errors and as a result they compounded the distress caused to Mr A and his siblings. In the light of these events, I consider it essential that the Permanent Under-Secretary of State for Defence launches a review of the internal mechanisms in place which allowed senior civil servants to get things so wrong, for so long, and which have had such a devastating impact on individuals who deserved so much better.

Response from the Ministry of Defence

¹⁹⁰ I sent a draft of this report to the MoD on 4 May 2011. The MoD responded promptly and has accepted in full my findings and recommendations.

¹⁹¹ In addition, although we did not specifically ask it to do so, the MoD has told me that it also intends to review the cases of those deemed ineligible for the £500 apology payment in 2005. Where the MoD identifies individuals whose eligibility was assessed inappropriately, it will pay them the £500 payment. I welcome this initiative.

¹⁹² In her response to the draft report, the Permanent Under-Secretary of State for Defence said that she was disappointed that the failings in the departmental system allowed these errors to continue unchecked for so long and that the MoD missed a number of opportunities to re-assess their approach. She said that the MoD would look carefully at how best to embed the lessons of this report into its internal processes, explaining that she intends to review the implications of my report for the MoD more generally.

¹⁹³ The Permanent Under-Secretary said that she was particularly sorry that these issues were not resolved before Mr A passed away.

Response on behalf of Mr A and his siblings

¹⁹⁴ Following the MoD's response to the draft report, I shared the report with Mrs A and Mr A's siblings. Their responses all acknowledged the considerable struggle they had had in getting to this point and their pleasure that justice had finally been achieved, for them and for other individuals who had suffered in a similar manner at the hands of the MoD and the Agency.

¹⁹⁵ Mr A's siblings expressed their thanks to their late brother, and to Mrs A, for taking on and pursuing the complaint on their behalf. They told me that they are arranging for a memorial plaque to be placed on Mr A's tombstone, as a token of their love and gratitude.

Conclusion

¹⁹⁶ I have upheld Mr A's complaint about the MoD and the Agency, which I hope will now bring a lengthy and distressing complaints process to a close. I am sorry that my investigation has taken as long as it has and am grateful to Mrs A and to Mr A's siblings for their continued patience and the assistance they have provided during my investigation of this complaint.

¹⁹⁷ That Mr A and his siblings suffered at the hands of the UK Government is undeniable and it is good to see the MoD accepting that, at last. It is regrettable that Mr A did not live to receive that news personally and to see the injustice done to him and his siblings being remedied. I hope that my report, and the response to it from the MoD, will go some way towards giving Mrs A, and Mr A's siblings, a sense of satisfaction that, at the end of a long and sorry episode, the UK Government has finally managed to 'get it right'.

¹⁹⁸ The MoD has agreed to all my recommendations and the response I have received from the Permanent Under-Secretary of State and her officials to redress these serious failings has been heartening. Of course, the real test will be in how well the MoD learns lessons from its mistakes and applies them to prevent anyone else suffering in the way that Mr A and his siblings have done.

¹⁹⁹ I think the final words should go to the family. Responding to the draft report, Mrs B, one of Mr A's sisters, wrote the following:

'It is clear that the most honourable intent of the "debt of honour" Compensation Scheme, in certain circumstances, devolved into an administrative quagmire that, over many years, simply lost sight of its intention.'

That seems to me to sum it up precisely.



Ann Abraham
Parliamentary and Health Service Ombudsman

September 2011

Annex A: British nationality law: subjects, citizens and protected persons

A1 English law has always distinguished between the Monarch's subjects and aliens.¹⁹ Until 1914 British nationality law was uncodified. The *British Nationality and Status of Aliens Act 1914* codified existing common law and statute. Before 1949 birth within the Crown's dominions²⁰ automatically conferred British subject status.²¹

British subject status

A2 The *British Nationality and Status of Aliens Act 1914* came into force on 1 January 1915. British subject status was acquired in a variety of ways, including through:

- birth within His Majesty's dominions;
- naturalisation in the United Kingdom or a part of His Majesty's dominions which had adopted Imperial naturalisation criteria; and
- descent through the legitimate male line. (This was limited to one generation, although further legislation in 1922 allowed subsequent generations born overseas to be registered as British subjects within one year of birth.)

A3 Under section 2 of the *British Nationality and Status of Aliens Act 1943*, a person born in a place where, at the time of their birth, the Crown was exercising jurisdiction over British subjects,

was deemed to be (and always to have been) a natural-born British subject, if at the time of their birth their father was a British subject.

A4 The *British Nationality Act 1948*²² provided for a new status of 'Citizen of the United Kingdom and Colonies' (CUKC), consisting of all those British subjects who had a close relationship (either through birth or descent) with the UK and its colonies. Under this Act, CUKC status was acquired through:

- birth in the UK or a colony (except for the children of 'enemy aliens' and diplomats);
- naturalisation or registration in the UK or a colony or protectorate; and
- legitimate descent from a CUKC father for children born elsewhere.

British protected person status

A5 British protected person (BPP) status is not traditionally considered a form of British nationality. The term 'British protected person' emerged during the 1800s as a result of extending imperial protection to people and places outside the Crown's dominions. Persons indigenous to a protectorate, and subjects of the local ruler in a protected state, became

¹⁹ Under UK law, the term 'alien' is defined by exclusion: any individual who is neither a British citizen, nor a member of any one of several non-citizen 'privileged' groups in the UK, is considered an alien. The term 'alien' itself is ordinarily used to refer to a foreign national present in the UK.

²⁰ The term 'Crown's dominions' referred to all territories over which the British Crown had sovereignty or 'dominion'. All of the states and territories of the Empire came within the Crown's dominions excluding foreign states, whether protected or not, protectorates, mandated/trust territories.

²¹ Section 1(1)(a) of the *British Nationality and Status of Aliens Act 1914*. See the UK Border Agency website nationality instructions section for further information.

²² Until 1948 all Commonwealth countries, with the exception of the Irish Free State, had a single nationality status: 'British subject'. It was decided that the UK and the self-governing dominions would each adopt separate national citizenships, but retain the common status of British subject.

known as BPPs. At that time this status was conferred under the Royal Prerogative.²³

A6 Section 32(1) of the *British Nationality Act 1948* put BPP status on a statutory footing and that Act also gave the Home Secretary authority to define, by Order-in-Council, who should be BPPs. The 1949 *British Protectorates, Protected States and Protected Persons Order* did not confer statutory BPP status on all those who had previously been recognised as BPPs. The status of BPP by Royal Prerogative continued to exist (and in some circumstances, may still be conferred), alongside the new statutory status, with the Crown continuing to accept international responsibility for those who had BPP status by Royal Prerogative.

The Crown's dominions

A7 Certain parts of the British Empire were under British protection but did not become part of the Crown's dominions. These included:

- protected states;
- protectorates;
- mandated territories – for which Britain was given administrative responsibility by the League of Nations; and
- trust territories – similar to mandated territories, under the responsibility of the United Nations after 1945.

Protected states and protectorates

A8 Protected states were places in which there was a properly organised internal government and Britain controlled only the state's external affairs. Protectorates were protected territories in which there was no properly organised internal government, and Britain controlled not only external matters (such as the protectorate's defence and foreign relations), but also established an internal administration. The extent of the Crown's involvement in a protectorate was similar to its involvement in a colony but the territories concerned were not brought formally within the Crown's dominions.

Birth in a protectorate or protected state: subjects and citizens

A9 As protectorates and protected states were 'foreign' soil, birth in such a place could not, in general, confer British subject status (before 1949) or CUKC status (from 1949).

A10 Most people connected with protectorates and protected states did not acquire British subject status, although there were some exceptions; for example, persons born in a protectorate and some protected states with a British subject father were British subjects by birth.²⁴ And, governors of protectorates and some protected states had the right to register or naturalise persons as CUKCs by virtue of a connection to that protectorate or protected state.²⁵

²³ The Royal Prerogative is a body of customary authority, privilege, and immunity, recognised in common law and, sometimes, in civil law jurisdictions possessing a monarchy as belonging to the King or Queen alone.

²⁴ Section 2(1) of the *British Nationality and Status of Aliens Act 1943*.

²⁵ Sections 8 and 10 of the *British Nationality Act 1948*.

A11 In *Motala and another v Attorney-General* [1991] 3 WLR 903 the Lords held that:

'A person born in a British Protectorate was a British protected person by reason of s.32(1) British Nationality Act 1948 read in conjunction with s.9(1)(a) British Protectorates, Protected States and Protected Persons Order in Council 1940 SI.140. That status differed from that of a citizen of the UK and Colonies but one status added nothing to the other and it did not follow that one status was inconsistent with the other. Persons could be both citizens by descent and protected persons by birth.'

A14 The *British Protectorates, Protected States and Protected Persons Order 1949/140* formally identified the Malay states of Johor, Pahang, Negeri Sembilan, Selangor, Perak and Kedah as protected states. The Crown did not exercise extra-territorial jurisdiction²⁶ over these Malay states²⁷ (except during the period 1 April 1946 to 31 January 1948). On 31 August 1957 the Malay states ceased to be protected states.²⁸

Britain's relationship with Malaysia

A12 Britain has a long-standing relationship with Malaysia. Under the *Treaty of Federation of July 1895*, the Federated Malay States of Perak, Selangor, Pahang and Negeri Sembilan placed themselves under British protection and became known as the Protected Malay States, to be administered by the British Government.

A13 Until 1946 the administration of the Malay Peninsula under British rule was split amongst the British colony (the Straits settlements – Penang, Malacca and Singapore); the Federated Malay States, with central administration in Kuala Lumpur; and the five unfederated Malay states (Johor, Kedah, Kelantan, Perlis and Terengganu), each a separate British protected state.

²⁶ The legal ability of a government to exercise authority beyond its normal boundaries.

²⁷ There is dispute between the Foreign and Commonwealth Office and the UK Border Agency about this point. We have taken the dates for when the Crown exercised extra-territorial jurisdiction over the Malay States from the UK Border Agency website.

²⁸ See the UK Border Agency website section on protectorates and protected states for further information.

Annex B: chronology of events

1930 to 1943

B1 Mr A's parents were both from Iraq and migrated to Malaysia before their children were born. Mr A and his four siblings, Mrs B, Mrs D, Mrs E and Mr F, were the youngest 5 of 11 children born to their parents. They were all born in Negeri Sembilan, one of the Federated Malay States. They were born between 1930 and 1943. Their six older siblings were all born in Singapore. In her letter to the Agency in October 2007 Mrs B described her family's situation as follows:

'To be able to earn a liveable livelihood, my parents migrated to Malaysia. Having to support 11 children, caring for two elderly parents, a sick brother and two widowed sisters it was my Dad's responsibility being the eldest in his family.'

'There was little – or no – medical facilities at the time my six elder siblings were born and there was no alternative but for my Mum to travel to Singapore for their births. The five of us were born in Malaysia due to lack of finance.'

B2 At the time the family were interned by the Japanese, Mr A's father was a shop keeper.

7 December 1941

B3 The Japanese attacked Pearl Harbour.

8 December 1941

B4 The Japanese invaded what was then Malaya.

15 February 1942

B5 Singapore surrendered to the invading Japanese forces.

28 March 1945 to 6 September 1945

B6 Mr A and his family were amongst those interned by the Japanese. They were held in Sime Road internment camp in Singapore. Although Mr A and his siblings note the date they were interned as 25 March 1945, official records note that they were interned on 28 March 1945. After the end of the war it appears that the whole family moved back to Malaya.

10 May 1951

B7 Prior to the San Francisco Peace Treaty a motion in the House of Commons asked that the British Government should give consideration to compensating British Far East prisoners of war.

September 1951

B8 The San Francisco Peace Treaty between the Allied powers and Japan was signed.

21 October 1952

B9 It was announced on this day in the House of Commons that the Government had decided that the proceeds of Japanese assets in the UK should be distributed on a '*per capita basis*' to Far East prisoners of war in accordance with the 10 May 1951 motion. They said that:

'having regard to the smallness of the sum available, it was felt that qualifications for a grant [of compensation] must be narrow as otherwise individual payments might be derisory.'

The eligibility criteria were that a person must be:

- British;
- normally resident in the UK at the time of capture; and
- resident in the UK now (in 1952).

B10 Widows would also qualify for a compensation payment, but no ‘family unit’ could receive more than ‘one share’. Civilian internees received £48.50. Between 1952 and 1956 approximately 8,800 adult British internees received this sum.

1957

B11 In this year Mr A emigrated from Malaya to Australia. Most of his siblings did so as well.

1994

B12 In this year the surviving British internees founded the Association of British Civilian Internees – Far Eastern Region (ABCIFER).

25 October 2000

B13 In response to a question in the House of Commons, the Prime Minister indicated that a decision on compensating prisoners of war in the Far East would be made by 8 November 2000. On the same day the Prime Minister’s Office asked the Cabinet Office to arrange a meeting of the interested government departments to provide advice to ministers on the key issues including ‘*who would/should be covered?*’ by such a scheme.

27 October 2000

B14 A meeting, attended by officials from the Cabinet Office, the Treasury, the Ministry of Defence (MoD), the Department of Social Security (DSS – as it was known until

8 June 2001, when it became the Department for Work and Pensions – DWP), the Foreign and Commonwealth Office (FCO) and Inland Revenue (now HM Revenue & Customs), took place. One action point from the meeting was for FCO to seek legal advice on whether the Government had any potential obligation to make payments to ‘*civil internees who were Empire nationals*’.

B15 Following the meeting the Cabinet Office drafted advice for ministers and circulated it for comment from the officials who attended the meeting. An early draft of the advice (it is unclear whether this was a result of FCO’s legal advice) said:

‘civilian internees of former Empire countries would not have a legal basis for asking for a payment from HMG [Her Majesty’s Government] (the full rights and responsibilities of the British Government regarding members of the Empire having been transferred on the granting of independence).’

A manuscript note next to this paragraph in a later draft of the advice said ‘*which wd [would] have suggested paying those now UK citizens*’. The paragraph was removed from the final draft of the advice.

1 November 2000

B16 DSS wrote to the Cabinet Office with their comments on the draft advice. They suggested amendments to the draft which would:

‘emphasise ... the importance of tying entitlement to British taxpayers money ..., in the case of civilian internees, to British nationality and residence. The suggested criteria are largely based on that used in

Britain's distribution of liquidated Japanese assets in the 1950s.'

They went on to say that it seemed *'there has not been sufficient time to work up a detailed entitlement criteria that can withstand challenge and criticism from MPs, the Press and ex-FEPOWs [Far East prisoners of war]'*. The DWP suggested that the eligibility criterion for the original scheme should be *'surviving British civilians who were interned by the Japanese during the second world war'*.

2 November 2000

B17 The final paper, resulting from the 27 October 2000 meeting and the subsequent comments advised, in relation to civilians, stated that payments should be made to *'surviving civilians, who are UK nationals and were interned by the Japanese in the Far East during the Second World War'*. The criteria also permitted the inclusion of the surviving spouses of those civilians. The paper did not define what was meant by *'UK nationals'*.

3 November 2000

B18 The Private Secretary to the Secretary of State for Defence wrote to the Prime Minister's Office to record ministerial support for the option in the Cabinet Office's advice for *'a comprehensive ex gratia scheme'* including prisoners of war, merchant seaman, civilian internees and surviving spouses. The Private Secretary said that *'there is good sense in maintaining consistency of approach by including all categories of individuals eligible under the 1950s compensation scheme'*.

6 November 2000

B19 The Prime Minister agreed to go ahead with *'an ex gratia payment of £10,000 to Far East*

prisoners of war, Far East civilian internees, merchant seamen and the widows/widowers of these groups'. He also agreed that the scheme should be administered by the War Pensions Agency.²⁹ (For simplicity, I will refer to it throughout as the Agency.)

B20 Also on this day, in commenting on earlier drafts of the Agency's leaflet *Ex gratia payment for British groups who were held prisoner by the Japanese during World War Two: Notes for Guidance* and the draft press release, a DSS official had, in an unsigned manuscript note on a fax, suggested the removal of the phrase *'UK citizens'* because it was *'clear that we're dealing with payments to "surviving members of British groups" so that should suffice. We can interpret "British" as we want!'*.

7 November 2000

B21 In a statement in the House of Commons the Parliamentary Under-Secretary of State for Defence, Dr Lewis Moonie, announced that a single ex gratia payment of £10,000 would be made to each of the surviving members of the British groups who were held prisoner by the Japanese during the Second World War. Dr Moonie said that amongst those who would be eligible for the payment would be *'British civilians who were interned'*. The ministerial statement went on to say that:

'the government recognise that many UK citizens, both those serving in the armed forces and civilians, have had to endure great hardship at different times and in different circumstances, but the experience of those who went into captivity in the Far East during the Second World War was unique.'

²⁹ At the time an executive agency of the DSS. The Agency transferred to the MoD on 8 June 2001 and became the Veterans Agency. It merged with the Armed Forces Personnel Administration Agency in April 2007 to become the Service Personnel & Veterans Agency.

During the House of Commons debate that followed, Ms Jane Griffiths MP asked whether the Minister could ‘confirm whether compensation for civilians who were prisoners will be paid to those who were children at the time’. Dr Moonie said that ‘all prisoners are entitled to payment’. Mr David Rendel MP welcomed the:

‘fact that all members of families who were interned will receive the payment, and that there will not be just one payment per family. May I bring it to the attention of the Minister that it is in the nature of such families that many have not returned to Britain or may not live here?’

Mr Rendel asked the Parliamentary Under-Secretary to assure him that ‘where they are living will make no difference to whether they receive the payment’. The Parliamentary Under-Secretary assured Mr Rendel that ‘that is certainly the case’.

B22 A Q & A [Question and Answer] Pack attached to the press release accompanying the Parliamentary Under-Secretary’s statement did not distinguish between ‘British groups’. The pack included the question: ‘Are all those who are eligible to receive payments British nationals?’; the answer to which was ‘No. Foreign nationals who were members of the UK armed forces will also be eligible for this payment’.

B23 The Agency’s leaflet *Ex gratia payment for British groups who were held prisoner by the Japanese during World War Two: Notes for Guidance* identified the categories of persons who could make a claim for the payment.

One of the categories was ‘surviving British civilians who were interned by the Japanese in the Far East during the Second World War’.

13 November 2000

B24 The Agency’s project manager of the original scheme emailed a colleague in the Agency’s policy section with a query about the references to nationality in the published literature for the scheme. The project manager noted that the leaflet for claimants referred to civilians who ‘are a UK national’ (my emphasis), while the claim form made reference to a claimant having to be a civilian who ‘was a UK national’ (my emphasis). He asked at what point a claimant’s nationality was relevant: currently or ‘at the time of incarceration’. A manuscript note on the email said ‘use language from the announcement/press releases i.e. “British civilians who were interned” – consistency! All agreed’.

15 November 2000

B25 The Agency met bodies representing those imprisoned and interned. A number of issues concerning eligibility were raised, including nationality. The notes of the meeting included the question ‘what constitutes “British” and what is the impact of any change in nationality since imprisonment [?]’.

16 November 2000

B26 An internal policy paper addressed a number of issues raised within the Agency that ‘required clarification’. Amongst the issues raised, the paper said that ‘A clear definition of a “UK National” is required. Are children who were interned and are of British nationality

but were not born in Britain now covered [?].
The answer in the paper was:

'We favour the use of the term "British" to describe the qualifying group of former civilian internees. This is the term used in the Government's Statement of 7 November to Parliament on its decision to make ex gratia payments. We would like to see examples of any problem cases WPA encounter with the use of this term. We consider that the group referred to in your question is covered by the ex gratia scheme, particularly those born to British parents.'

22 November 2000

B27 A meeting took place at the Cabinet Office between the government departments with an interest in the original scheme. The participants agreed that:

"UK Nationals" should be defined as those civilian internees who were British at the time of their incarceration; those who became British citizens only subsequently would not be eligible for payment.'

There was no discussion of the definition of 'British'.

6 December 2000

B28 Following a Social Security Advisory Committee (SSAC) meeting on this day, a DSS official emailed the Agency to say that points raised at the SSAC meeting 'suggested we had been too loose in our description' of those entitled to the ex gratia payment. He asked the Agency what was meant by 'British civilian internees'. In particular, he asked 'are Malaysians who were interned but have since moved to Britain entitled? Or did they have to be British when interned?'. There is no evidence of the response to this question on the MoD's files.

7 December 2000

B29 The Agency faxed the MoD's army historian to ask for his comments on the definitions they proposed to use in their response to the chairman of the SSAC. Its definition of 'British civilian internees' was 'those who were British at the time of their incarceration'. The army historian wrote back on the same day. He agreed with the Agency's definition 'on the basis that we are using UK funds: in reality = to UK Article 14 assets, in 1950s we insisted on a UK nationality & residential qualification'.

15 December 2000

B30 In a minute to the Cabinet Office, a DWP official wrote to 'place on record our intentions regarding the interpretation of "British" in relation to civilian internees'. He recognised that 'nowhere do we define what we mean by "British"' and noted the definition of UK national that had been agreed at the meeting of officials on 22 November 2000. Before asking for views on the content of the note, he said:

'In many cases, claimants will have been born in the UK, worked in Malaysia for example for a few years, imprisoned by the Japanese, returned to the UK on release and lived here ever since. Their "Britishness" is not in doubt. However, claims are being received from people who were children or young adults when captured by the Japanese. Some of these people, although "British subjects", would not have been born in the UK but would reasonably consider themselves to have very strong links with this country in view of the birthplace of, for example, their parents ... We intend making ex gratia awards in these circumstances.'

29 December 2000

B31 A Cabinet Office official responded to DWP's minute of 15 December 2000. They agreed with DWP's proposed approach in respect of '*British civilians resident in the UK*'. They said that the question remained as to how they should treat '*British civilians resident overseas*'. They said that they understood the MoD's position to be that as war pensions were payable to former service personnel overseas so should the ex gratia payment. On that basis they thought there would be an inconsistency if civilian internees could not receive the payment. They agreed that ex gratia payments could be made to civilian internees resident abroad provided that the Treasury gave their authorisation.

December 2000

B32 Mr A and his siblings submitted claims to the Agency for ex gratia payments as ex Far East prisoners of war:

- Mr A's claim, dated 28 November 2000, was received by the Agency on 7 December 2000.
- Mrs B's claim, dated 12 December 2000, was received by the Agency on 18 December 2000.
- Mrs D's claim, dated 11 December 2000, was received by the Agency on 18 December 2000.
- Mrs E's claim, dated 7 December 2000, was received by the Agency on 12 December 2000.
- Mr F's claim, dated 16 December 2000, was received by the Agency on 29 December 2000.

B33 Mr A and his sister, Mrs E, both attached covering letters to their claim forms. These letters described the way in which the Japanese soldiers woke their family in the early hours of the morning, ordered them to pack bare essentials and then took them on a terrible journey to Sime Road internment camp in Singapore. The letters also described their memories of fear when witnessing violence towards other internees within the camp, lack of food and the prevalence of diseases such as scabies. The letter is attached in full at Annex D, D1.

12 January 2001

B34 The Agency provided the Cabinet Office with a written progress report on the original scheme. It explained that it had been unable to trace approximately 600 civilian internees who had applied for an ex gratia payment. It said that it had expected civilians would form the majority of cases that they were unable to trace because civilians under the age of 21 were not covered by the 1950s scheme and because a higher proportion of civilian internees would have been resident overseas and may not have claimed under the 1950s scheme. It said that it was working with ABCIFER to confirm the eligibility of these claimants.

1 February 2001

B35 The Agency issued a press notice saying that from that date over 14,000 payments of £10,000 would be issued to former prisoners of the Japanese or their surviving spouses in recognition of the unique circumstances of their captivity during the Second World War. In the press notice, the Agency referred to '*British civilians who were interned*' as being eligible for payment, without further qualification.

13 February 2001

B36 A further meeting of the government departments with an interest in the original scheme took place. The day before the meeting the Agency circulated a paper which listed the 'Definition of British' as an item for discussion at the meeting and that it needed to establish 'appropriate guidelines for the question of nationality'. We understand that there are no minutes of the meeting on 13 February 2001 but, following the meeting, the Agency wrote to the Cabinet Office to note that it had agreed to write to suggest an approach to nationality. That suggestion was:

'for the purposes of this scheme the definition of "Britishness" is defined as either being born in the British Isles or being born of one or more parents who were themselves born in the British Isles ... We would not propose to add any further qualifying criteria such as return to the British Isles.'

B37 However, later the same day the Agency submitted a further paper prepared by DSS suggesting that the criteria be extended to include civilian claimants who had a grandparent who was born in the British Isles. It was argued that this would bring the original scheme into line with what was being proposed for the non-statutory war pensions scheme for former civilian internees.

21 February 2001

B38 The Cabinet Office sent out a note asking the Cabinet Office, the MoD and DWP lawyers to 'get their heads together' and work through the options for defining the nationality criteria for civilian internees. DWP officials consulted their own lawyers, and one said in reply: 'I am

puzzled as to why we are uncertain now as to the meaning of "British" for the purposes of the policy announced in November last year'. She went on to stress that 'in terms of risk of challenge to the scheme, the key is to ensure that "British" is based on the legislation at the time'. DWP lawyers subsequently consulted a legal adviser in the Cabinet Office and Central Advisory Division (CAD) of the Treasury Solicitor's office.

8 March 2001

B39 Ron Bridge MBE AFC FRAeS FRIN, in his capacity as the Chairman of ABCIFER wrote to the Agency to say that some of his members were asking why they had not received payments while others had already been paid. He noted that staff of the Agency had indicated that verification of nationality was a problem. He explained that some former civilian internees who had not been born in the UK were feeling that some form of discrimination existed: he stressed that this was a sensitive area that required early action before it caused more distress. He went on:

'I believe you may be trying to get clarification of nationality questions from the policy makers so that you can progress blocks of claims rather than ask individuals for proof which they may find difficulty in obtaining. This sounds sensible, but it does not deal with the growing concerns of people some of whom are elderly and who have heard nothing further from you since the initial acknowledgement of their claim.'

Ron Bridge went on to suggest that the Agency might write to those affected to inform them of the position and to ask them to provide evidence of nationality where it existed.

13 March 2001

B40 The Cabinet Office and Central Advisory Division legal adviser replied to DWP lawyers on the question of nationality (in response to the request for advice in February 2001), proposing criteria based on the *British Nationality Act 1981*.

15 March 2001

B41 Based on the above advice, DWP wrote to the Cabinet Office to propose again that payment should be made to former civilian internees who could show that they had a parent or grandparent who was born in the UK (the 'bloodlink' criterion). The writer drew an analogy with the non-statutory war pensions scheme for civilians and said: *'this is a proposal which I am reasonably confident would be acceptable to ABCIFER'*.

21 March 2001

B42 The Cabinet Office said it had no difficulty with the DWP proposal, subject to DWP legal advisers being content. I have seen no evidence of any further correspondence on the matter. It would seem that the Agency started applying the 'bloodlink' criterion at about this time.

22 and 23 March 2001

B43 The Agency acknowledged Mr A and his siblings' claims of December 2000 by sending requests for further information to all of them. The further information requested was about their nationality at birth and the place of birth of both their parents and grandparents.

April 2001

B44 Mr A and his siblings all completed and returned the forms sent by the Agency in March 2001. The Agency received them all, except for Mrs B's forms, during April 2001. They received hers on 9 July 2001.

Regarding their nationality at birth, the siblings all said they were British subjects, except for Mrs B who said she was Malaysian and Mrs E who said she was British. Each said that their parents and grandparents were born in Baghdad, Iraq.

June 2001

B45 The Agency responded to Mr A and his siblings with identical letters to say they were not eligible for the ex gratia payments. (Mrs B received her letter in August 2001 due to a delay in her responding with the further information requested in March 2001.) I do not know the exact date in June that the letters were sent. The letter they sent to Mr A is attached in full at Annex D, D2.

2002

B46 ABCIFER applied for judicial review of the scheme, arguing that the decision of the government to introduce a 'bloodlink' criterion as a requirement for eligibility for certain claimants was illegal. ABCIFER argued that the decision was disproportionate, discriminatory, unfair and an abuse of power. ABCIFER was unsuccessful before the High Court. ABCIFER were also unsuccessful before the Court of Appeal on 3 April 2003.

7 July 2005

B47 On this date former civilian internee Mrs Diana Elias challenged the 'bloodlink' criterion in the High Court. The High Court judge ruled in her favour, saying that, while it was legitimate to limit the original scheme to those with a close link with the UK, the 'bloodlink' criterion was unlawful in that it indirectly discriminated against people of non-UK national origins. The judge ruled that her proper remedy was to seek damages for race discrimination in the county court.

B48 The MoD appealed this ruling. The appeal was to be heard in January 2006, and meanwhile the compensation scheme was suspended and a review of all 30,000 claims was ordered.

12 July 2005 – *A Debt of Honour*

B49 The investigation of a complaint that had been brought to my Office by Professor Jack Hayward about the original scheme led to that complaint being upheld. The final report of my investigation of that complaint became the special report,³⁰ *A Debt of Honour*, which highlighted the administrative shortcomings of the original scheme. That special report was published on this day. In my report I made four findings of maladministration. These were:

- 1 that the way in which the original scheme was devised constituted maladministration in that it was done overly quickly and in such a manner as to lead to a lack of clarity about eligibility for payments under the scheme;
- 2 that the way in which the scheme was announced constituted maladministration in that the ministerial statement was so unclear and imprecise as to give rise to confusion and misunderstanding;
- 3 that, at the time the ‘bloodlink’ criterion was introduced, the failure to review the impact of that introduction to ensure that it did not lead to unequal treatment constituted maladministration; and
- 4 that the failure to inform applicants that the criteria had been clarified when they were sent a questionnaire

to establish their eligibility constituted maladministration.

I found that the maladministration led to a significant injustice for Professor Hayward, and others in a similar position to him, in the form of outrage at the way the scheme was operated and distress at being told that he was not ‘British enough’ to qualify for payment under the scheme. To remedy that injustice I made four recommendations:

- 1 the MoD should review the operation of the original scheme;
- 2 the MoD should review the position of Professor Hayward and those in a similar position to him;
- 3 the MoD should apologise to Professor Hayward and to others in a similar position to him for the distress which the maladministration identified has caused them; and
- 4 the MoD should consider whether it should express that regret tangibly.

At this time the MoD accepted only two of my recommendations – recommendations three and four.

13 July 2005

B50 As a result of my criticisms in *A Debt of Honour*, the Minister issued an apology in the House of Commons. The apology was with respect to the distress caused to those applicants to the original scheme who were led by the terms of the original scheme’s initial announcement to expect that they might be eligible for an award, and in particular would

³⁰ A special report is one which the Ombudsman lays before Parliament on a rare occasion where it appears to the Ombudsman that injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been, or will not be, remedied.

have qualified but for the introduction of the ‘bloodlink’ criterion. In his apology he said:

‘I recognise that it’s [the original scheme’s] announcement and introduction were not well handled ... I regret that a number of people who at first thought that they would be compensated will not now be compensated, because of the issue of birthlink. I sincerely apologise for that. It was wrong and the Government made a mistake. I shall be giving some thought to the ombudsman’s [sic] recommendation that I should do more than apologise and consider some tangible response.’

The Minister announced in October 2005 that the Government would be making a tangible apology in the form of a £500 one off payment to compensate for the distress that the loss of expectation that their actions may have caused to applicants of the original scheme.

October 2005

B51 The Agency wrote to those who had applied to the original scheme whose claims had been declined, but who it thought may have met the criteria set out in the Minister’s statement and should receive a payment of £500. Mr A and his siblings were amongst those who received these letters on or around 28 October 2005. The letters explained that the £500 apology payment was:

‘with respect to the distress caused to those who were led by the terms of the scheme’s initial announcement to expect that they might be eligible for an award, and in particular would have qualified but for the introduction of the birthlink criterion.’

The letters to Mr A and his siblings were all identical. A copy of the letter in full is attached at Annex D, D4.

24 October 2005

B52 In Mr A’s case papers I have seen an internal Agency form entitled ‘Stage 6 action sheet compensation authorisation civilian nationality claims’ (attached in full at Annex F, F1). It seems that this form was used by the Agency when reviewing whether an applicant to the original scheme was entitled to the £500 apology payment. The form listed questions for completion by the person conducting the review, amongst which were: ‘Have we proof of British Citizenship on file?’ and ‘Internment verified?’. The person completing the form had ticked ‘yes’ to both of these questions, and dated and initialled the form on this day. This is the first instance that we have seen on Mr A’s file, of evidence indicating that the Agency checked if he had been interned by the Japanese.

November to December 2005

B53 Mr A and his siblings completed and signed the declarations for the £500 apology payment as requested and returned them to the Agency between 13 November and 2 December. As a result the siblings all received letters from the Minister for Veterans between 30 November and 30 December. (A full copy of the text of this letter is attached at Annex D, D5.) The letters were identical and renewed the apology the Minister had made in July 2005.

1 December 2005

B54 PASC held an inquiry into the original scheme. Whilst appearing before the committee Don Touhig, the Minister for Veterans, announced a significant change in the MoD’s position, which he said resulted from evidence uncovered at the last minute during his preparation for the hearing. Don Touhig conceded that there appeared to be some inconsistency around the eligibility rules the

MoD had applied pre and post the introduction of the 'bloodlink' criterion and confirmed that there would be a review of those rules, to be completed by February 2006.

December 2005

B55 The Agency authorised apology payments of £500 to Mr A on 5 December 2005; to Mrs E on 7 December 2005; and to Mrs D on 21 December 2005.

12 December 2005

B56 Don Touhig issued another statement to Parliament in which he refused to confirm whether a full review of the original scheme would take place. Nor did he provide a commitment to review the position of Professor Hayward and others in a similar position following the outcome of my investigation.

5 January 2006

B57 The Agency authorised apology payments of £500 to Mrs B and Mr F on 5 January 2006.

9 January 2006

B58 In Mr A's case papers I have seen an internal Agency form entitled '*Civilian Internees Pro-forma*' signed and dated on this date. The form appears to have been used to review claims to the original scheme. In part 4 of the form, which was to be completed '*for rejections only*', it asked '*why was claim rejected?*'. There were five options to choose from. They were: '*not interned; internment not verified; 3rd party not spouse; birthlink not met*' and '*other*'. The person completing the form had ticked the box '*birthlink not met*'. Additionally, at the bottom of the page was a '*notes*' section. In this section the person completing the form had written and initialled '*camp checked*'. (Attached in full at Annex F, F2.)

19 January 2006

B59 PASC published their report on my *A Debt of Honour*. In the report PASC said that I had acted appropriately in investigating the case. PASC also said that they were disturbed by the MoD's refusal to comply with some of my recommendations. PASC said that there was:

'ample evidence to support the Ombudsman's finding of maladministration. If it had always been intended to make a payment only to those civilians with close links to the United Kingdom at the time of internment, regardless of their subsequent history, there appears to be no clear indication of it in any contemporary papers, and no Minister was asked to decide the matter until long after the first payment had been made.'

30 January 2006

B60 Don Touhig, Minister for Veterans, announced in a written ministerial statement to Parliament that a separate, independent investigation would be conducted by retired senior civil servant David Watkins into how the use of inconsistent criteria had arisen and why it had not been exposed earlier.

23 February 2006

B61 Following the High Court ruling on 7 July 2005 that the 'bloodlink' criterion was unlawful, Mrs Elias' case was brought to the Central London County Court for the award of damages to be considered.

9 March 2006

B62 The judgment in the Elias case at the county court was handed down. With regard to whether Mrs Elias could recover in damages

the sum she says she should have received under the scheme, it said:

'if the unlawful element of the birth line criterion were stripped out, what remains may well disentitle her to payment. So, on balance she would not have received the payment in any case. This part of her claim in damages must fail.'

The judgment continued: *'The other question raised in the case is the level of damages which flow from the injury to her feelings. It is accepted that this claim should succeed'*. Mrs Elias was awarded £3,000 plus £900 interest for injury to feelings. Both Mrs Elias and the MoD appealed the county court judgment to the Court of Appeal. The county court judgment is attached in full at Annex E, E2.

28 March 2006 – the revised scheme

B63 Don Touhig, the Minister for Veterans, announced the outcome of the internal MoD review he had initiated in December 2005, outlining two changes to the criteria for civilian internees to remedy the previous inconsistencies. He announced the introduction of the new *'20 year rule'* criterion which required that claimants had resided in the UK for at least 20 years since the end of the Second World War, until November 2000 when the original scheme was introduced, in order to be eligible for the £10,000 payment. (A full statement of the rules for the 20 year residency criterion was issued by the MoD in June 2006.) Don Touhig also announced that anyone who was rejected under the *'bloodlink'* criterion but who would have met the Japanese asset criteria would also be eligible.

11 May 2006

B64 The Agency emailed FCO with enquiries concerning British subject status, which it said it required in order to assist it with administering the Far East prisoners of war ex gratia scheme. (In its response to a question from the Ombudsman in June 2009 about why it was asking these questions of the FCO, the Agency said that it was seeking clarification because it had begun to review cases for the revised scheme that was to be introduced in the summer of 2006.) In the email the Agency asked if FCO could:

'provide confirmation of British subject status for people born in Malaya and Malaysia and in particular Kuala Lumpur. I am interested in what their status was during World War two, i.e. 1939 to 1945.'

From the papers I have seen, it seems FCO advised the Agency that the *'Modern day federation of Malaysia (formerly the Federation of Malaya) comprises of the nine British Protected States of Malaya and the Colonies of Penang and Malacca'*. FCO advised that persons born within one of the nine British Protected States of Malaya (of which Negeri Sembilan was one) were British protected persons by birth, but that persons born within the two colonies were British subjects by birth. FCO went on:

'Therefore in 1939 – 1945 you only acquired British subject status if you were born in Penang or Malacca. However, if you were born in a protected state and had a parent born in the UK or Colonies you were a British subject deemed by birth.'

15 May 2006

B65 The Agency asked a further question in response to FCO's advice:

'Where you say "if you were born in a protected state and had a parent born in the UK or Colonies you were a British subject deemed by birth" – was this automatic or did the birth have to be registered at the consul, i.e. did the parents have to do anything for the child to be deemed British?'

FCO responded by email the next day saying *'British subject deemed by birth was automatic if your father was born in the UK or Colonies ...'*

23 May 2006

B66 I have seen in Mr A's case papers a form entitled *FEPOW RESIDENCY CRITERIA* which was completed and dated by hand on this date. The form was used to review whether Mr A might be eligible for a payment from the original scheme under the revised 20 year residency criteria which had been announced in March 2006. The form asked if the case could be identified as potentially eligible and the 'yes' box was ticked. In the comments box next to this the reason given was *'£500 apology paid'*.

B67 Below this was the 'no' box, which was not ticked. If it had been ticked there were then six options for why that may have been. They were: rejected on internment; rejected on service; rejected as not eligible to claim; evidence on file that claimant was not British at internment; evidence on file of payment received from another country; and other. None of these boxes were ticked.

May 2006

B68 Throughout the end of May 2006 the Agency sought further information from FCO about British subject status, specifically in relation to people born in Indonesia, and about how the status 'British subject by birth' and 'British subject by descent' were acquired.

21 June 2006

B69 I have seen internal Agency memos dated this day, in each of Mr A's siblings's file (except for Mr F's file), that question whether the £500 apology payments, made in December 2005 and January 2006, were made in error because of where Mr A and his siblings were born. All memos were identical. The memo stated:

'The claimant was born in Seremban, the capital of Negeri Sembilan, Malaysia. This is verified by the Birth Certificate. It has been confirmed by the Foreign & Commonwealth Office that persons born in this state were British Protected Persons ... In view of the above it is clear that the claimant was not a British Subject at internment. Do you agree that this apology has been paid in error and as such the file should be dealt with as a rejected apology case with no further action required at this time in respect of the preparatory work for the Residency Criteria.'

B70 Each memo referred specifically to one sibling and then listed three related siblings. Mr F's name was not listed on any of the memos, except on the memo specifically regarding Mr A, where he is mentioned. All the memos have a handwritten note at the bottom that states *'File checked – agree not British Subject at internment. No further action re 20 year residency'* and was dated 14 July 2006.

26 June 2006

B71 Following the MoD's review of the compensation scheme, which had been announced by Don Touhig, Minister for Veterans, on 1 December 2005, and which arose as a result of my investigation, and the MoD's preparation for the PASC enquiry, an extended £10,000 payment scheme was announced in the House of Commons. It was agreed that it would include *'those who were British subjects when interned and had lived in the UK for 20 years by 7 November 2000'* (further to the announcement in March 2006) – that is, they had maintained close links to the UK.

28 June 2006

B72 Over five years after the original scheme had been first introduced Mrs Elias received the £10,000 compensation payment under the revised scheme – Mrs Elias fell within the 20 year rule. Payments to other previously excluded claimants began late in July 2006.

7 July 2006

B73 Following the announcement by Don Touhig, Minister for Veterans, on 30 January 2006 that a separate, independent investigation into how the use of inconsistent criteria had arisen and why it had not been exposed earlier, on this date David Watkins delivered the full report on his *Investigation into Civilian Eligibility Criteria* with regard to the original scheme. In his report David Watkins made various criticisms of the original scheme, amongst which were: the haste with which it was created contributed to the failings of the scheme; there was insufficient thoroughness, including research, at several points; and there was no testing of the criteria for the original scheme to assess their likely impact, either initially or in March 2001 when the 'bloodlink' criterion was adopted.

2 August 2006

B74 The Ombudsman wrote to the then Minister for Veterans and Under-Secretary of State for Defence, Tom Watson, and to Sir Gus O'Donnell in his capacity as Head of the Civil Service to confirm that all four recommendations from my *A Debt of Honour* report had finally been complied with. The Ombudsman was keen to ensure that the wider lessons from this affair could be learnt and offered her assistance in taking this forward. This offer was not taken up.

10 October 2006

B75 The Court of Appeal upheld the earlier High Court finding in the case brought by Mrs Elias. The Court of Appeal upheld the county court decision to award Mrs Elias £3,000 plus £900 interest for injury to feelings. The extract of the judgment is attached at Annex E, E3.

6 November 2006

B76 The MoD sought Counsel's advice regarding a number of points, as it was considering how to respond to letters coming into the Agency from individuals who were refused a payment when the 'bloodlink' criterion was in operation. The first of which was:

'If an application from a person of non-UK national origins was rejected on the grounds that they did not satisfy the birthlink criteria, could they be entitled to claim damages for having had the unlawfully discriminatory criteria applied to their application even if they did not satisfy the internment criteria and/or were not British at the time of internment?'

B77 The enquiry continued saying that the Agency had stated that:

'when the birthlink was in operation, some claims were rejected because they did not meet the birthlink without checks first being made to see whether the applicants met the other criteria (i.e. being interned in a designated camp and, if so, being British at the time of internment) and in the period following the introduction of the birthlink this probably happened in the majority of cases.'

The MoD explained that it had viewed the process as having worked as follows:

'1. being British and interned were the first hurdles for claimants to cross. 2. the group that crossed those hurdles was then assessed under the birthlink. 3. it was assessment under the birthlink that resulted in indirect discrimination on grounds of national origins. 4. this means that only those who were British and interned could possibly claim to have had the unlawful discriminatory criteria (the "place of birth" requirement) applied to their applications and could therefore possibly claim to have been discriminated against and thus claim damages.'

B78 The MoD went on to say that its analysis breaks down:

'if, in fact, claims were considered under the birthlink first. Looking at the birthlink first and rejecting on this alone if it is not satisfied has the effect that the unlawfully discriminatory criteria are being applied in every case. This would appear to increase the pool of applicants who may have been discriminated against. It doesn't seem like a sufficient answer to a claim from an applicant of non-UK national origins who

was not interned or was not British at the time of internment but whose claim was rejected on birthlink grounds, without their nationality at the time of internment or the question of whether or not they were interned having been considered, to simply say that they are not entitled to damages because their claim would have been rejected on the other, non-discriminatory, grounds anyway. Isn't it the case that the damages for injury to feelings compensate for the damage caused by having had discriminatory criteria applied to their application rather than simply having had their application turned down? I would be grateful for your views on this.'

B79 Counsel responded to this email later the same day. Counsel's full response is attached at Annex C, C1 to this document. In summary, Counsel assessed the likelihood of successfully defending such claims and suggested resisting them.

5 December 2006

B80 The Director of the Veterans Policy Unit, Jonathan Iremonger, submitted to the Permanent Under-Secretary of State at the MoD, Sir Bill Jeffrey, a document advising on whether the MoD should resist claims for damages with respect to indirect racial discrimination in cases similar to that of Elias. (A full copy of this submission is attached at Annex C, C2.)

B81 In summary, Jonathan Iremonger set out the various options: pay; resist or negotiate. He recommended the middle option, advising the Permanent Under-Secretary *'on balance that, based on the financial issues and Counsel's advice as to the legal merits of our position we should resist full payment'*.

22 December 2006

B82 The Permanent Under-Secretary replied to Jonathan Iremonger's submission. The Minister did not accept the recommendation. He noted that the MoD could probably successfully resist the claims and the financial implications of the various options and decided, taking into account the reputational risks, that MoD should adopt the pay option as outlined in the submission of 5 December.

26 January 2007

B83 The Parliamentary Under-Secretary of State for Defence, Derek Twigg, announced that the MoD:

'was prepared to consider claims for compensation for injury to feelings resulting from discrimination on national origins grounds from any person whose claim was rejected on birthlink grounds and who, like Mrs Elias, was of non-UK national origins.'

The full Hansard transcript is attached at Annex C, C4.

B84 Around this time it would seem that Mr A and his four siblings sent letters to the Minister for Veterans regarding the ex gratia payment scheme. I have not seen copies of these letters and so do not know exactly when they were sent or what they said.

March 2007

B85 The Veterans Policy Unit responded to the letters written by Mr A and his siblings regarding their ongoing attempt to be paid the ex gratia payment. The responses were all worded similarly and first recognised that the conditions under which many prisoners of war and civilian internees were held by

the Japanese were harsh and that their treatment was cruel. The letters explained the background to the original scheme, detailed the 'bloodlink' criterion and its subsequent withdrawal and outlined the criteria that now needed to be met in order to receive the payment. They referred to the siblings' letters which said that the siblings expected to receive the ex gratia payment, and said that the award of the payment would depend on them meeting the original scheme's criteria which they listed.³¹ The letters invited the siblings to contact the Agency providing details as appropriate if they believed they may have met the criteria.

B86 The letters went on to state:

'You also mentioned "restitution for discriminatory action". Following the courts findings that the birthlink criterion involved unjustified indirect discrimination against those of non-UK national origins, we have confirmed that we are prepared to consider claims for compensation for injury to feelings resulting from discrimination on grounds of national origins, from any person whose claim was rejected on birthlink grounds and who was of non-UK national origins. Claimants who think that they are entitled to compensation in this way should write to the Veterans Agency setting out the basis on which they consider themselves to be a person of non-UK national origins or otherwise entitled to make a claim for indirect discrimination under the Race Relations Act 1976.'

(A full copy of the letter is attached at Annex D, D7.)

³¹ That is, 'you were British at the time you were interned, that you were held captive in a specifically designated camp controlled by the Japanese, that you can demonstrate a close link to the UK through meeting residence-based criteria'.

May, June and July 2007

B87 Mr A and his siblings sent letters to the Agency expressing their wish to claim compensation for injury to feelings. The letters were all very similar and set out the reasons why they believed they should be considered British, amongst which were; that they were ‘*singled out by the Japanese as British and taken by cattle truck from Seremban to Singapore*’; that they were held in the Sime Road internment camp; that they had provided the Agency with copies of their passports which clearly stated they were ‘*British Citizens of United Kingdom and Colonies*’; and that the Japanese listing at the time of their internment showed them as being British. A copy of Mr A’s letter is attached in full at Annex D, D8.

19 July 2007

B88 On this date the MoD issued internal guidance entitled *The FEPOW scheme – adjudicating claims for compensation* to help staff administering the original scheme to make decisions about who did or did not qualify for the scheme. The guidance stated that:

‘The Department should therefore consider favourably claims for compensation for injury to feelings resulting from discrimination on national origins grounds from any person whose claim was rejected on birthlink grounds and who is of non-UK national origins or who is not of exclusively UK national origins. To qualify for compensation, the claimant must also meet the other requirements of the scheme (i.e. that they were a British subject at the time of internment and that they were held in a specially designated camp controlled by the Japanese).’

B89 The guidance included flow diagrams showing examples of qualifying and non-qualifying cases of birthplace history of parents and grandparents that officers administering the original scheme could have come across. Those diagrams are re-created at Annex C, C6.

B90 Also contained within the guidance were template letters and a form to be used to gather additional information from people who had said that they believed they were entitled to claim compensation for injury to feelings resulting from discrimination on national origins grounds.

B91 There were two template letters provided, one to be used when writing to people who had previously made enquiries about compensation for injury to feelings, and the other for first time enquiries. Both letters stated that Mrs Elias had won her case on the grounds that the ‘bloodlink’ criterion unlawfully discriminated against her, a person of non-UK national origins, in favour of people of UK national origins. Both letters also stated that therefore:

‘the Ministry of Defence is prepared to consider claims for compensation for injury to feelings resulting from discrimination on national origins grounds from any person of non-UK, or non-exclusively UK, national origins whose claim was rejected as failing to meet the birthlink.’

B92 Both template letters then stated that the Agency needed to know whether the person considered themselves:

‘to be a person of non-UK, or non-exclusively UK, national origins and, if so, the reasons why you consider yourself to be of non-UK, or non-exclusively UK, national origins.’

We would therefore be grateful if you could complete the enclosed form and return to us.'

The template for the form was also provided in the guidance. It was called the National Origins Declaration Form. It firstly asked the recipient to state what they considered their national origins to be. The recipient could tick either (a) UK, (b) non-UK or (c) partly UK and partly non-UK. Second, it asked the recipient to *'please explain below the basis on which you consider your national origins to be as given above'*. The recipient then needed to sign, print their name and date the form. Both template letters are attached in full at Annex C, C5.

17 August 2007

B93 In response to a request from the solicitors, acting on behalf of Mrs Elias, the MoD provided information on its arrangements for compensating those refused payment under the original scheme. This information included the sentence:

'Therefore the Ministry of Defence is prepared to consider claims for compensation for injury to feelings resulting from discrimination on national origins grounds from any person of non-UK, or non-exclusively UK, national origins whose claim was rejected as failing to meet the "birthlink".'

30 August 2007

B94 The Agency responded to Mr A and his siblings' claims for compensation saying that it would not be appropriate. The letters were exactly the same. They said that Mrs Elias did not win her case because she should have been considered 'British enough' to qualify under the original scheme. Rather, she won her case and was awarded damages on the basis that the 'bloodlink' criterion unlawfully discriminated

against her. The letters went on to explain that the MoD was prepared to consider claims for compensation for injury to feelings resulting from discrimination on national origins grounds from any person of non-UK, or non-exclusively UK, national origins whose claim was rejected as failing to meet the 'bloodlink' criterion. However, the Agency's letter stated that to qualify for compensation the claimant must also meet the other requirements of the scheme (that is, that they were a British subject at the time they were interned).

B95 The letters said that having reviewed each sibling's case it had been discovered that each one did not satisfy the nationality criteria of the scheme, that is, they were not British subjects at the time of their internment. The letters said that: *'Consequently the £500 apology payment which you received ... was awarded to you in error'*. Additionally, the letters explained that although persons, like the siblings, who were born in one of the nine British protected states of Malaya were British protected persons, they were not British subjects. The letters said that a person born in a protected state could be a British subject deemed by birth if they had a parent born in the UK or colonies. But, as the siblings' parents were born in Iraq, their birth in a protected state did not give them British subject status. The Agency said that compensation would not be appropriate. A copy of the letter Mr A received is attached in full at Annex D, D9.

14 and 17 September 2007

B96 The siblings responded to the Agency's decision not to award compensation. They each argued that there should be no distinction between British protected persons and British subjects because the treatment they had received at the hands of the Japanese was no

different from that of their siblings born in Singapore, who were classed as British subjects. A copy of the letter Mr A wrote is attached in full at Annex D, D10.

17 October and 1 November 2007

B97 The Agency responded to the siblings' letters. The letters were identical and reiterated that, to qualify for compensation, a claimant must have been a British subject at the time of internment. The Agency said that whilst it appreciated that each sibling had:

'suffered greatly during the period of [their] captivity, unfortunately [their] circumstances are such that [they] did not have British Subject Status during the second world war. Consequently [they did] not meet the nationality criteria of the scheme.'

The Agency concluded by saying that it was unable to change the previous decision and confirmed that compensation was not appropriate. A copy of the letter Mr A received is attached in full at Annex D, D11.

1 November 2007

B98 Mr A wrote to the Agency on behalf of himself and his siblings in response to the Agency's decision not to offer compensation. In his letter he emphasised that his six older siblings were all entitled to compensation because they were born in Singapore and questioned how he and the other siblings could possibly be isolated from the others. A copy of the letter Mr A wrote is attached in full at Annex D, D12.

B99 Mr A sent a copy of this letter to the then Prime Minister, Gordon Brown, to draw his attention to the issue and seeking his assistance in the matter. Mr A also sent a copy

to the chairman of PASC, who referred Mr A's complaint to my Office shortly afterwards on 20 November 2007.

7 December 2007

B100 The Agency sent letters to Mr A and his siblings in response to their letter of 1 November 2007. In the response the Agency acknowledged that the treatment of prisoners of war and civilian internees by the Japanese was harsh and cruel. However, the Agency also said that it had always been a requirement of the scheme that to qualify for a £10,000 payment civilian internees must have held British subject status at the time of their internment. Also, with regard to the compensation for injury to feelings resulting from discrimination on national origin grounds, the MoD was prepared to consider claims from individuals who satisfied the fundamental internment and nationality criteria of the scheme but whose claim had been rejected as failing to meet the 'bloodlink' criterion. The Agency went on to say that as a result, unfortunately, as Mr A and his four siblings' place of birth did not give them automatic British subject status, unlike other members of their family who were born in a British colony, they were not eligible for the £4,000 compensation payment. In their letter the Agency said it recognised that:

'there may be feelings of unfairness when members of the same family who were interned together are treated differently under the scheme because some do and others do not meet the criteria. However it has been concluded that it must be right that there should be different decisions depending on whether or not an individual can satisfy the scheme's criteria.'

B101 In its letter the Agency also explained that the status of many individuals changed when the term British protected person was defined in the *British Nationality Act 1948*. The Agency also referred to the British protectorates, protected states and protected persons order that came into force on 28 January 1949, which the Agency said established for the first time a statutory basis for British protected persons status. The Agency said once again that the scheme required individuals to be British subjects during the Second World War, which, Mr A and his siblings had not been. The Agency ended the letter by saying it was *'sorry to, once again, send a disappointing reply but I hope it explains the position and answers your questions'*.

B102 After receiving Mr A's complaint on 20 November 2007, my officers and I attempted to reach a resolution with the MoD, rather than enter into a statutory investigation. This was with a view to ending quickly what had already become a prolonged and stressful complaints process for Mr A and his family. Our attempts included two rounds of correspondence between myself and the then Permanent Under-Secretary of State at the MoD, Sir Bill Jeffrey; further information requests by my officers and a meeting with the MoD to discuss the complaint in detail.

April 2009

B103 We began our investigation of Mr A's complaint in April 2009. During the investigation my officers have met with Ron Bridge, the Chairman of ABCIFER and Mr and Mrs A at their home in Sydney.

12 August 2010

B104 Sadly, on 12 August 2010 Mr A passed away after a long illness. Since that time my staff have been in regular contact with Mrs A. Mrs A is acting on behalf of Mr A and has kindly agreed to act as our contact point with Mr A's siblings.

Annex C: development and implementation of the injury to feelings scheme

C1 6 November 2006: Counsel's advice to the MoD on damages following the Elias case

1. Applicants who were not British subjects at internment and applicants who are of UK national origins Section 1(1)(b) of the RRA [Race Relations Act 1976] makes it a statutory tort to apply to person X a "requirement or condition" which he applies or would apply to persons not of the same racial group but (i) which is such that the proportion of persons of the same racial group as X who can comply with it is considerably smaller than the proportion of persons not of the same group as X who can comply it; (ii) which he cannot show to be justifiable; and (iii) which is to the detriment of that other because he cannot comply with it.

'Elias clearly satisfied sub-paras (i) and (iii). The only question in that case was under sub-para. (ii): justification. Elias is therefore authority for the narrow proposition that the birthlink is not justified. In the light of that finding, it would be unlawful to apply it to anyone, irrespective of their national origins. But that does not mean that anyone whose application was or is rejected on birthlink grounds is entitled to succeed in a claim under the RRA Sub-para. (i) will simply not be satisfied in a case where the claimant is of British national origins. Applying a discriminatory criterion will not give rise to a claim by a person who is of British national origins (unless such a person is a member of some other group to which s. 1(1)(b)(i) applies). Such a person has been rejected despite the application to him/her of a criterion which was disproportionately favourable in racial terms.

'The requirement of "detriment" in sub-para. (iii) was considered by the Court of Appeal in Coker v Lord Chancellor [2002] IRLR 321. In that case, two women brought complaints of indirect discrimination against the Lord Chancellor in respect of the process for appointment of a special advisor. The ET [Employment Tribunal] found that the Lord Chancellor had discriminated on grounds of sex against one of the complainants who, but for the discriminatory condition, would have been a realistic candidate for the job. The other applicant had suffered no detriment because, even though she had had the same discriminatory condition applied to her, she was "not remotely appointable". Although the precise meaning of "detriment" was left in some doubt, the CA [Court of Appeal] was in any event clear that the ET [Employment Tribunal] had been right to reject the claim by the unappointable candidate. It held as follows:

"It would be in obvious conflict with the legislative scheme if persons who were not qualified for the appointment, and thus not in the pool, were able to complain that they had suffered detriment as a consequence of the requirement or condition."

'That same reasoning would, in my clear view, mean in our case that applicants whose applications who were not British subjects at the time of internment are in no position to complain of discrimination, even if the reason why they were rejected was the birthlink. Even if they have had applied to them a discriminatory requirement, they have not suffered a detriment because of it because, like the unappointable complainant in Coker, they stood no chance anyway.

‘There is, as far as I a[m] aware, no case law on the slightly differently worded provisions of s. 1(1A) which requires the victim to have been put at a “disadvantage” rather than subjected to a “detriment”, a provision which may or may not apply to the facts of this case (depending on the correctness of the argument about the applicability of the Directive and the breadth of “social advantage” currently being taken in Mohammed). But, even if the Directive and s. 1(1A) do apply, I consider it likely that the courts would apply the same approach to s. 1(1A) as they have to s. 1(b)(iii) and hold that an applicant who had not been a British subject at the time of internment had not been put at a disadvantage whatever the actual basis on which his/her application. My view is shared by the authors of Tolley’s Employment Handbook (18h ed.), p. 172.

*‘2. **“National origins”** I would advise strongly against giving any sort of gloss on what constitutes “UK national origins” to unrepresented claimants. I regret that I see no way round having a lawyer consider each and every case where the applicant considers that he/she is of non-British national origins. From your suggested text for unrepresented applicants, I would remove the sentence beginning “Since the birthlink criteria were held to be biased ...” in its entirety and I would also remove the whole of the second paragraph. At the end of the last sentence in the first paragraph, I would add “or otherwise entitled to make a claim for indirect discrimination under the Race Relations Act 1976”.*

‘For the solicitors, the suggested text is admirable, though I would again remove the sentence starting “Since the birthlink criteria were held to be biased ...”

*‘3. **Defences** The first defence is that provided by s. 57(3). The argument we considered in Elias was actually a different one. We considered whether it could be argued that indirect discrimination attracted the s. 57(3) defence even if it was covered by s. 1(1A), provided that it was also covered by s. 1(1)(b). That argument would have been very difficult (if not impossible) because of s. 1(1C). What we did not consider was the impact of the ECJ [European Court of Justice] case law (Baldinger) on our ability to say that a scheme of this type is not covered by s. 1(1A) at all. I think the point (which we are in any event arguing in Mohammed in January 2007) has reasonably good prospects of success, which I would put at 65%. The failure to take the point in Elias would have no impact whatever on the prospects of our winning the argument.*

‘As to the prospects of making out the s. 57(3) defence, there are a number of imponderables and things could go wrong depending on who we (and they) called to give evidence. There is also the somewhat unpredictable nature of the county courts to contend with. That said, I have considered the evidence very clearly and my view is that we did not intend to discriminate on grounds of race. The best they have against us is [...]’s memo and I think if anyone had considered that he was making a legal point, they would have stopped the matter from proceeding. I would put the chances of success on the s. 57(3) point at about 60%.

‘It should be borne in mind that we have to succeed on both the inapplicability of the Directive and the s. 57(3) point to win.

‘The second defence is limitation. I think that there is a relatively strong argument of

principle that the courts should not permit parties to bring claims late simply because they were improperly advised (or not advised at all) on the state of the law. However, the county court has a wide discretion under s. 68(6) RRA to extend time if it considers it “just and equitable” to do so. It is therefore hard to predict what a county court would do. Doing the best I can, I would put our chances of success on an argument that claims made more than 6 months after the first instance judgment in Elias at about 55%.

‘4. **Damages** A cause of action for race discrimination passes to the personal representative of the deceased person. Thus, claims can be either started or continued by personal representatives on behalf of deceased persons.

‘5. **S.71 RRA** Compliance with the s. 71 duty will require the writing of a reasonably comprehensive report (preferably by a person with race relations and some legal experience) considering, in relation to each of the extant criteria for the civilian scheme (the military scheme will no doubt have to be considered i[n] the light of Mohammed);

- (a) the extent to which the criterion may disproportionately affect persons of particular groups – here, other aspects of “race” than national origins will need to be considered, but the starting point should be that a criterion designed to differentiate those who have a close connection to the UK from those who do not is bound to have a disparate impact on those of non-British race (in the narrow sense), non-white colour, non-British ethnic origins etc.;

- (b) the reason why statistics are not available and why (if this is the conclusion reached) it is thought not worthwhile getting them at this stage (i.e., presumably, that it the Govt is prepared to proceed on the basis that its criteria, even those extant after Elias, do have a strongly disparate impact);
- (c) the views of ABCIFER and others;
- (d) the degree to which the courts have said that the criterion (or criteria in its general class) is (are) justified;
- (e) other arguments for justification;
- (f) the degree to which such criteria may adversely affect the statutory objective of promoting equality of opportunity and good race relations even if they do not otherwise offend against the RRA.

‘Please come back to me if I can elaborate further on any of this.’

C2 **5 December 2006: Internal MoD paper to Permanent Under-Secretary advising on options around the potential payment of damages to civilian Far East prisoners of war subject to indirect racial discrimination as a result of the ‘bloodlink’ criterion**

DAMAGES FOR CIVILIAN FEPOWS

‘Reference:

- ‘A. My e-mails of 24 and 28 Nov
- B. PS/USofS e-mail 30 Nov

'Issue

'1. Following Minister's meeting with legal counsel on 30 November, you asked me to expand on my earlier advice (Ref A) regarding the potential payment of damages to civilian FEPOWs who were subject to indirect racial discrimination as a result of the birthlink criterion.

'Timing

'2. Priority. Claimants' lawyers are expected to have started preparing their cases and will be incurring costs. We should also make our position clear so that other claimants can decide what action they might wish to take.

'Recommendation

'3. Minister to note the arguments and indicate whether he accepts that on balance we should oppose the full payment of damages.

'Background

'4. The Minister is familiar with the outcome of the Elias case which found that the birthlink criterion had resulted in unlawful indirect discrimination and which upheld a county court judgment that we should pay damages to Mrs Elias of £3K plus interest. The extent of the liability is discussed below but, briefly, a total of 1194 claimants were rejected under the birthlink. Some of these will not have a case for discrimination and others are likely not to pursue the matter. However, we know that there is an expectation among some of those affected that they will be entitled to damages in the same way as Mrs Elias, and many of these are likely to pursue their claims for damages.

'The Legal Arguments

'5. Counsel's advice is that we have a better than evens chance of resisting payment. He has put forward two arguments which were set out for the Minister at the meeting on 30 November. To summarise:

- Out of time. A large number of the potential claimants are out of time to make a claim since they should have claimed within 6 months of it becoming clear that the birthlink criterion was discriminatory. This is vulnerable to arguments about when exactly it became clear and in any case the courts have the right to waive the time limit, which they may be sympathetic to doing given the age of the group involved. Counsel's view is that on balance the courts would not extend time – at least in relation to claims brought more than six months after the first instance decision in Elias.*
- Unintentional Indirect [sic] Discrimination. The second and stronger argument depends on a reading of cases heard in the European Court of Justice. A court could be expected to find that damages were not payable if it could be shown that: (a) the discrimination was unintentional; and (b) the benefits concerned were not ones of a form giving social benefit. The view of counsel is that we would be reasonably likely to succeed on both these arguments.*

'6. Overall, Counsel's assessment is that there is a 55 – 60% chance of winning on these arguments in the County Court. This is in the context that Counsel has also indicated that 80% is the percentage which (taking account

of inherent litigation risks associated even with strong cases) would apply in a case with very good prospects of success.

'The Financial Aspects

'7. We currently have an application from the solicitors that represented Mrs Elias for a similar payment of damages to eight other claimants that they represent. These are effectively lead cases and the approach we take with these will cascade through to others rejected under the birthlink.

'8. There are uncertainties regarding potential liability. First, the individual level of damages; Mrs Elias was awarded £3K plus interest (about £4K total). If we agree to pay, other claimants will expect the same. If we go to court, a judge is likely to order the same level; of damages but could order more (in the Court of Appeal, Lord Justice Mummery indicated that he would have done so). On the other hand, a much higher figure would be approaching the sum of the ex-gratia payment itself and the courts might feel that this was not appropriate. For the purposes of calculation we have assumed a figure of £4K for each successful claim.

'9. Second, the number of claimants; some of the 1194 rejected will have no claim because: they are unable to show that they were interned/that they were British at the time they were interned; or that they are unable to show discrimination on grounds of national origins. We are also aware from correspondence on other issues where financial benefit was in prospect (the £500 Apology Payment) that in a number of cases we would expect no response, probably because the claimant is deceased. ABCIFER and the media can be expected to encourage applications

but recent correspondence from the VA to the same potential group has resulted in around a 50% response rate from individual or next of kin. For the purposes of calculation we have assumed half of the potential claimants will come forward and have a case. It also seems unlikely that all of those responsible for the estate of deceased claimants would apply. On this basis, our best guess is that £2.4M would be the maximum liability.

'10. The position on legal costs is more certain. If we decide to pay now, we have just the minimal costs incurred by the solicitors. If we decide to resist, the costs begin in the low £10Ks for taking the lead cases to the County Court and could climb to £200K all in if we went to the Court of Appeal and lost. Costs are discussed further under each of the options below.

'Presentation

'11. Covered under the options below.

'Options

'12. There are three options:

- **PAY.** The solicitors are likely to agree a £4K settlement per existing claimant, following the Elias precedent, and may reveal that they are acting for other claimants. ABCIFER can be expected to publicise the decision in the FEPOW community, encouraging further applications. Likely financial liability estimated at £2.4M. There is a slight risk that the solicitors/ABCIFER will call for larger payment (ABCIFER have previously suggested that we should use the damages issue to pay everyone £10K as a way of achieving closure), but we do not think that such an argument is likely to be pursued/succeed. There would

be some media coverage which we would expect to be neutral to slightly negative (MOD accepts guilt in discrimination payouts/MOD race mistakes cost taxpayer £2.4M).

- **RESIST.** *If we resist the claims, the Department is certain to be criticised. The solicitors and ABCIFER are likely to lobby Parliamentarians (including the Public Administration Select Committee), the media and the Parliamentary Ombudsman in criticism of the decision. We can make the point that the discrimination was unintentional and that in law damages are not therefore appropriate; we can also point out that we are seeking to protect the UK taxpayer's money; however, we are likely to be seen both as inconsistent, having agreed to pay Mrs Elias, and as procrastinating in resisting settling our debt to this old and vulnerable group.*

The likely financial liability will depend on the extent to which we and the claimants pursue their case. If we were to win in the County Court and the solicitors did not appeal, liability would be limited to the low £10Ks. There is a chance that we would recover costs if we won in court, given that the other side would probably not be publicly funded, but that should not be assumed, given that costs are at the discretion of the judge. If we lost in the County Court, and decided to go no further we would have the other side's costs and the estimated £2.4M payout liability. If we pursued the case to the Court of Appeal, legal costs would climb to an estimated £200K for both sides. In either court, if we lost, we would face the possibility that the

court could award damages at more the £3K plus interest but we consider this unlikely.

There is also a possibility that officials involved in the relevant scheme decisions would be called as witnesses. There is some risk here in that some have previously made statements that could be argued to prejudice our position (notably a memo that you have now seen by an official at the Veterans Agency (who was neither involved in the policy definition nor legally qualified to give an expert view) that the race was a deciding factor for claims under the birthlink criteria),³² the other risks relate to statements by a previous witness that have subsequently been found to have been incorrect, specifically with regard to the position before the birthlink was introduced. These risks have been factored into counsel's assessment of success. Whilst the courts in Elias have not supported the implication that the criteria were directly discriminatory, the memo has the potential to attract media criticism. However, we would not expect a court to regard the memo as determinative in deciding the claims.

- **NEGOTIATE.** *This option is essentially a variation on resisting. It would involve putting the case to the other side for a settlement out of court at a figure less than £24K, reflecting the strength of our arguments for not being liable to pay compensation in these cases. Counsel advises that we would have to take the initial steps in litigation for the solicitors to take our offer seriously. For this reason, we would suffer the negative publicity outlined above were our position to become public – our willingness to negotiate might reduce the risk of this*

³² In the memo, the then Operations Manager at the VA (Veterans Agency) stated that 'It is true to deny that we are being racist, but we are in fact including race as a deciding factor as part of our eligibility criteria.'

assuming that the claimant recognised that our position had merit. Some costs would also be incurred by both sides but these would be expected to be below the cost of litigating assuming the negotiations succeeded. If they failed then the additional costs would be as for the “resist” or “pay” options, depending on the decision then taken on how to proceed.

The solicitors’ reaction to such an offer is hard to judge. Were they to reject it, we would anticipate pursuing our case to court (though we could decide to settle nonetheless at that stage and would expect this to be at the £4K level). Rejection would likely be accompanied by critical comment. Were the solicitors to accept, there would still be some risk that other claimants might pursue their case for an award at a higher level but we would seek to settle any other claims at the benchmark figure agreed for the solicitors’ cases.

‘The analysis above has been agreed by our junior counsel in this case....’

‘Conclusion

‘13. As I acknowledged in Ref A and have set out here, there are undoubtedly risks attached to contesting the claims, not least in PR terms, and we have also sought to give full weight to the Minister’s known concern about the number of cases taken to court. However, my advice remains on balance that, based on the financial issues and Counsel’s advice as to the legal merits of our position, we should resist full payment. I would propose that we pursue the negotiation option (i.e. that we indicate that we are prepared to resist the claims in the

County Court but negotiate with the solicitors for a lower payment – say no more than £1,500 per claimant who could make a case that he/she had been discriminated against. I would therefore be grateful to know the view of Minister in this matter.’

C3 **22 December 2006: The Permanent Under-Secretary’s response to the 5 December submission**

‘DAMAGES FOR CIVILIAN FEPOWS

‘Ref: SP/5.9. 19.2.4 dated 5 December D/PUS/15/63 (601), sent 22 December

‘1. The Minister has seen your the [sic] submission of 5 December (SP/5.9. 19.2.4) on whether the Department should resist claims for damages with respect to indirect racial discrimination in cases similar to that of Elias; he has also seen PUS’s advice circulated on 22 December (D/PUS/15/63(601)).

‘2. He notes that, while there is a reasonable prospect of our successfully resisting Elias-type claims, this is by no means assured and that, if we lost, we would end up paying more. He also notes that a decision not to resist these claims is most unlikely to have a significant effect on our ability to oppose those claims that could be expected to arise were we to lose Mohammed in the Court of Appeal.

‘3. On that basis, and taking account of the public criticism and reputational damage we would face if we fought the Elias-type cases, USofS has decided that the Department should settle those cases where there has been discrimination, as set out in the “Pay” Option in your submission.’

C4 **26 January 2007: House of Commons Hansard written answers**

'Japanese Internment

'Mr. Austin Mitchell: To ask the Secretary of State for Defence when he expects to pay the other claims for compensation to civilians interned by the Japanese associated with the class action against his Department won by Mrs Elias. [117025]

'Derek Twigg: Mrs Elias was awarded damages by the Court to compensate her for injury to her feelings caused by having been discriminated against on the grounds of her national origins when her claim for an award from the Ex-Gratia Payment Scheme for Far East Prisoners of War and civilian internees was rejected under the birthlink criterion. To date, the Ministry of Defence has received eight other claims for damages for injury to feelings from individuals whose claims under the scheme were also rejected on birthlink grounds and who claim to have been discriminated against on the grounds of their national origins. These claims are currently the subject of discussion between the Department and those representing the claimants.

'The Ministry of Defence is prepared to consider claims for compensation for injury to feelings resulting from discrimination on national origins grounds from any person whose claim was rejected on birthlink grounds and who, like Mrs Elias, was of non-UK national origins.

'Claimants who think that they are entitled to compensation on the same basis as Mrs Elias should write to the Veterans Agency setting out the basis on which they consider

themselves to be a person of non-UK national origins or otherwise entitled to make a claim for indirect discrimination under the Race Relations Act 1976.'

C5 **19 July 2007: Template letters**

'Compensation letter to those who have previously enquired

'I am writing to follow up our previous correspondence regarding a possible claim for compensation for injury to feelings resulting from discrimination on grounds of national origins.

'We asked individuals who think that they would be entitled to compensation on the same basis as Mrs Elias to set out the basis on which they consider themselves to be persons of non-UK national origins or otherwise entitled to make a claim for indirect discrimination under the Race Relations Act 1976.

'The basis on which Mrs Elias won her case and was awarded damages was not that she should have been considered "British enough" to qualify under the Scheme. The Court did not rule that, having been British enough to have been interned, she was British enough to have been paid, though some press reports of the case mistakenly stated that it did.

'The basis on which Mrs Elias won her case was the argument that the birthlink criteria unlawfully discriminated against her, a person of non-UK national origins, in favour of people of UK national origins because people of non-UK national origins were inevitably less able to comply with the UK birthplace requirements.

‘Therefore, the Ministry of Defence is prepared to consider claims for compensation for injury to feelings resulting from discrimination on national origins grounds from any person of non-UK, or non-exclusively UK, national origins whose claim was rejected as failing to meet the birthlink.

‘We note from the information that you have so far provided that you have not stated whether you consider your national origins to be non-UK or otherwise. In order for us to be able to properly consider your claim, we need to know whether you consider yourself to be a person of non-UK, or non-exclusively UK, national origins and, if so, the reasons why you consider yourself to be of non-UK, or non-exclusively UK, national origins. We would therefore be grateful if you could complete the enclosed form and return it to us.

‘Compensation letter to first-time enquiries

‘Thank you for your recent letter about the UK’s Ex-Gratia Payment Scheme for former Far East Prisoners of War and civilian internees.

‘It is well known that the conditions under which many Prisoners of War and civilian internees were held by the Japanese were harsh and that their treatment was cruel. The British Government felt that the suffering of those with a close link to the UK had, for too long, been overlooked. That is why the Scheme was established in November 2000 to allow a payment of £10,000 as a tangible recognition of the extreme and unique circumstances of those held captive in the Far East during the Second World War.

‘To qualify for a payment an individual must, in addition to meeting other eligibility criteria,

have a close link with the UK. The requirement that claimants should demonstrate this close link has always been a central principle of the Scheme, although we accept that this was not clearly articulated when the Scheme was announced.

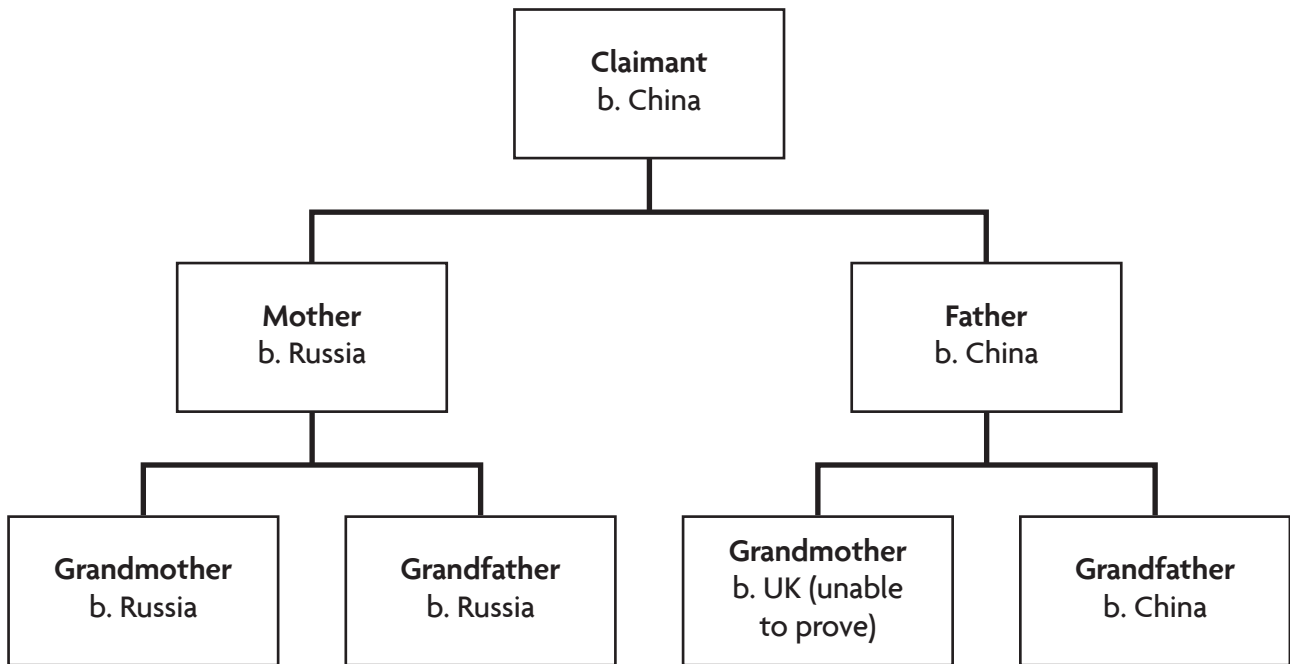
‘During much of the Scheme’s existence, former civilian internees were able to demonstrate their close link by having been born in the UK or having had a parent or grandparent that was (the ‘birthlink’ criterion). However, in October last year, the courts found in the case of Mrs Elias that, while, the birthlink did not directly discriminate on the grounds of race, and that the Government had a legitimate aim in seeking to limit payments to those with a close link to the UK, the criterion indirectly discriminated against her, a person of non-UK national origins, in favour of those of UK national origins and that the discrimination was not justified. This was not intentional – the introduction of the birthlink came about as the result of a benign intention to provide an administratively manageable method to admit more claimants into the scheme, not less. Nevertheless, following the court’s decision the birthlink has been withdrawn.

‘In your letter, you mentioned the issue of compensation. You should note that the basis on which Mrs Elias won her case and was awarded damages was not that she should have been considered “British enough” to qualify under the Scheme. The Court did not rule that, having been British enough to have been interned, she was British enough to have been paid, though some press reports of the case mistakenly stated that it did. The basis on which she won her case was the argument that the birthlink criteria unlawfully discriminated against her, a person of non-UK national

origins, in favour of people of UK national origins because people of non-UK national origins were inevitably less able to comply with the UK birthplace requirements.

‘Therefore, the Ministry of Defence is prepared to consider claims for compensation for injury to feelings resulting from discrimination on national origins grounds from any person of non-UK, or non-exclusively UK, national origins whose claim was rejected as failing to meet the birthlink. If you wish make a claim, we need to know whether you consider yourself to be a person of non-UK, or non-exclusively UK, national origins and, if so, the reasons why you consider yourself to be of non-UK, or non-exclusively UK, national origins. You should therefore complete the enclosed form and return it to us.’

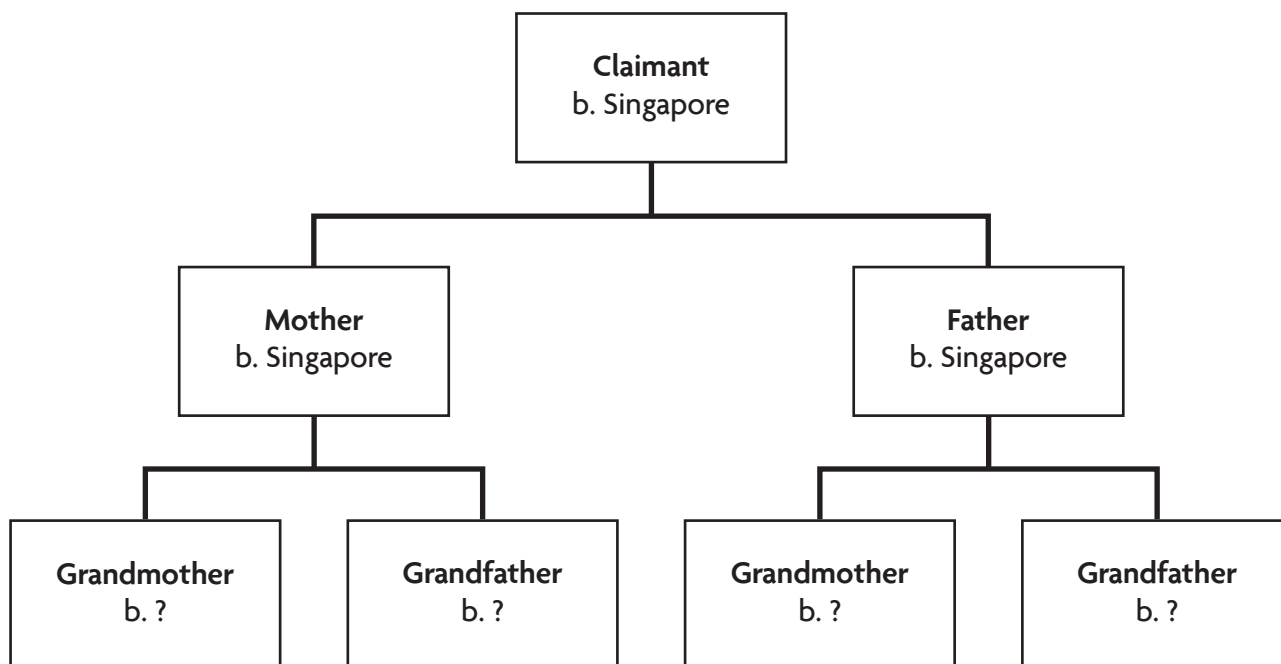
C6(a) 19 July 2007: FEPOW scheme guidance – diagrams



The guidance stated that this:

'claimant would qualify for payment of compensation on the basis of ancestors' birth alone. The birthplace history on the maternal side gives a clear part-Russian national origin.'

C6(b) 19 July 2007: FEPOW scheme guidance – diagrams

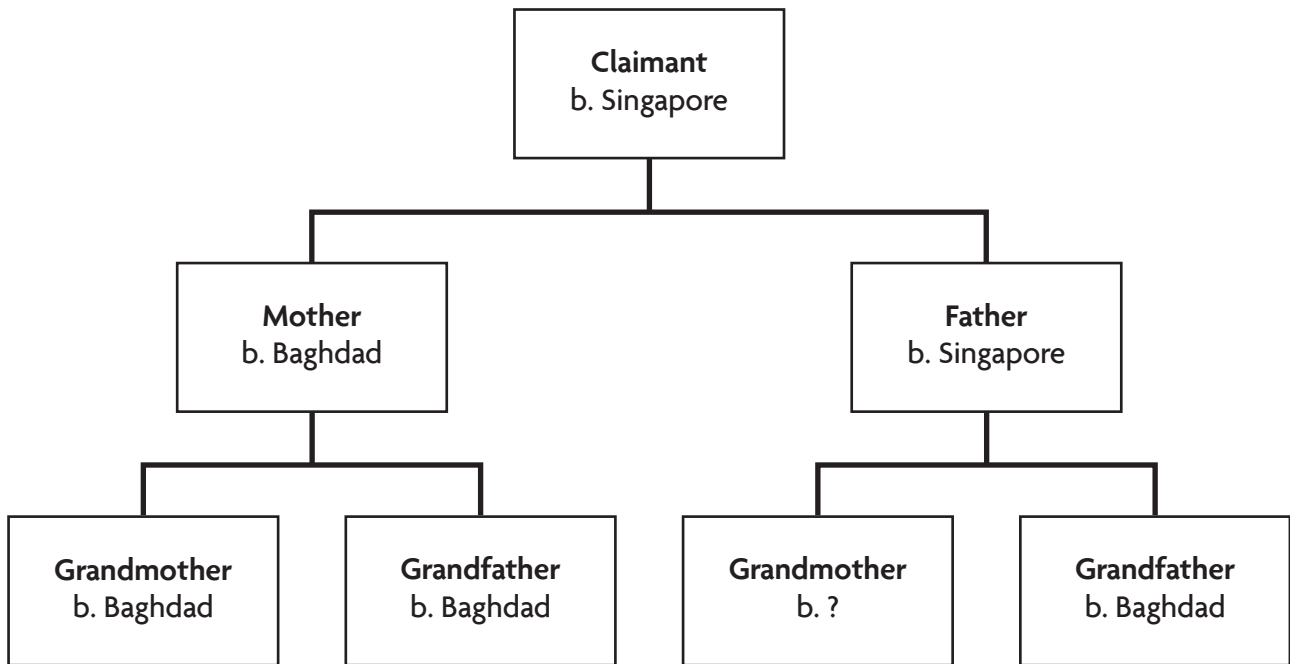


The guidance stated that this:

'claimant would not qualify for payment of compensation on the basis on ancestors' birth alone – this could be an example of a UK colonial family. The claim could succeed based on the claimant's assertion of their national origin and the reasons for it. The claimant might say that they consider

themselves to be either of non-UK or of part UK national origin. If they substantiated this in some way they would likely qualify for compensation. It would be appropriate to check the reason for the number of unknowns – does claimant not know or did they simply not return the RFI form? A case of this sort must be referred to VPU for confirmation of decision.'

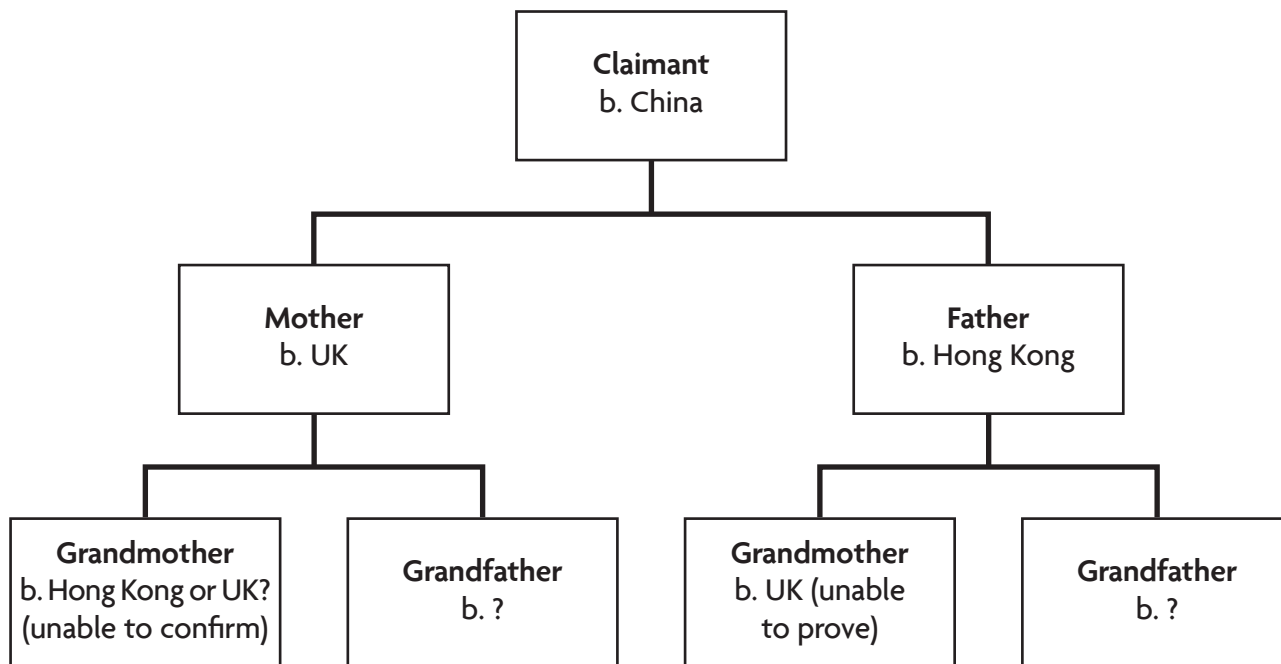
C6(c) 19 July 2007: FEPOW scheme guidance – diagrams



The guidance stated that this:

'claimant would qualify for payment of compensation on the basis of ancestors' birth alone. The birthplace history on the maternal side gives a clear part-Iraqi national origin.'

C6(d) 19 July 2007: FEPOW scheme guidance – diagrams



The guidance stated that this claimant:

‘would not qualify for payment of compensation on the basis of ancestors’ birth alone – this could be an example of a UK colonial family. The claim could succeed based on the claimant’s assertion of their national origin and the reasons for it. The claimant might say that they consider

themselves to be of part UK – part non UK national origin. If they substantiated this in some way – e.g. by saying that they considered themselves to have a part Chinese national origin from their birth and time spent in the country they would likely qualify for compensation. A case of this sort must be referred to VPU for confirmation of decision.’

Annex D: significant correspondence

D1 28 November 2000: Letter from Mr A to the Agency applying for the original scheme

'I attach completed claim form for an ex-gratia payment. In doing so I would like to tender the following additional information in support of my claim.

'(1) At 6 am one morning in March 1945, Japanese soldiers arrived in a lorry outside our home ... Seremban, Negri Sembilan, Malaya (now known as Malaysia).

'They ordered my father to have the family ready with bare essentials within one hour to be taken to the Railway Station in Seremban and from there to be transported by railway truck to an internment camp in Singapore – Sime Road Internment Camp.

'(2) When we were subsequently taken to the Railway Station we were held in the truck for three to four hours before proceeding to Singapore.

'(3) My memories of the internment camp include the fact that within a short time my body and arms and legs were covered with scabies which required a nurse to cut off the scabies each morning with a pair of scissors; following which a lotion was placed on the infected parts and I, together with a number of other children were required to stand naked in the sun for about half an hour each day outside the medical hut.

'(4) Because of my age (8 years at the time) I was interned in the Women's Section of the Camp. Boys over 12 years were in the Men's Section.

'(5) Our sleeping arrangement was on a grass mat placed over the sandy floor. I slept between my grandmother, Mrs L, aged 88, on one side and Mrs O (the elderly mother of Mr O, the first Chief Minister of Singapore) on the other side. Both these ladies took it upon themselves to look after me in the Camp (my mother had her hands full with my five sisters to look after).

'(6) I witnessed a woman being kicked for not bowing to a Japanese Officer who was some many meters away from her.

'(7) The men who had to work had to march each day through the Women's Section to get to their various jobs. We could not communicate with each other and had to remain silent. However, from a signal from one of my four brothers who marched with the others, I would run between the marchers to grab a metal container filled with rice meant for me and my grandmother. In the evening when the men were returning back to their hut after a day's work, I would repeat the earlier exercise and return the metal container to my brother. This was a very daring and risky procedure from which I was lucky to survive.

'(8) My happiest memories were of our congregating with each other on Orchard Day every Sunday where the men and women were free to mingle and listen to concerts performed by the internees.

'(9) The last memory was of catching the leaflets that were dropped from the sky into our camp by British forces. It was certainly a day to remember!

'The above facts will be borne out by other members of my family lodging similar claims.'

'Please accept my above statements as fact in determining my claim. Your assistance in this matter will be much appreciated.'

D2 (Undated copy) June 2001: Letter from the Agency to Mr A rejecting his application to the original scheme

'I am writing in response to your claim for the ex-gratia payment of £10,000.'

'The Government's decision announced on 7 November 2000 by Dr Lewis Moonie (Parliamentary Under-Secretary of State for Defence) on behalf of the Government, was that the payments would be made to surviving members of British groups who had been held captive by the Japanese during the Second World War. Where such a person has died, any surviving spouse will be entitled instead.'

'Those who are entitled to receive the payment are former members of HM Armed Forces who were made prisoners of war, former members of the Merchant Navy who were captured and imprisoned and civilian internees who were British subjects, and were born in the United Kingdom or who had a parent or grandparent born in the United Kingdom. Certain other former military personnel in the colonial forces, the Indian army and the Burmese armed forces who received payments in the 1950s under the United Kingdom auspices will also be eligible.'

'I am sorry to send you a disappointing reply but it would appear from the information held you are not eligible to receive the ex-gratia payment'

D3 23 July 2001: Letter from Mrs E to the Agency expressing disgust at being refused the ex gratia payment

'I am writing in disgust, at your rejection of my claim for the ex-gratia payment of £10,000.'

'I was a British civilian, living in Malaya, who was captured and interned by the Japanese during the war. I fulfilled your criteria for the payment – and although it was 55 years in the offing – I believed I was entitled to this reparation when your offer was made.'

'After more than a year of sending paperwork, checking family histories, and reliving painful moments I thought I had put behind me, it seems you have changed the rules on me.'

'I left Malaya in 1957 for Australia. I travelled on a British passport. I was then, and am now, a British subject. I was never domiciled in the UK – but I was part of the Empire on which you proudly proclaimed the sun never set.'

'I was a British subject during the Japanese invasion, you have evidence of this and I am still a British citizen. I gave details of my parentage, my grandparents and have given all details of the Japanese brutalities in the camps.'

'How can you now say that I am not British enough? I was British enough for the Japanese to perceive me and my family as a threat and intern us. I would like to be given reparation by the Japanese, I would like to see them pay for the atrocities they committed in war, but that isn't going to happen. What instead was promised and managed to bring some light to our suffering, was the British offer of compensation.'

'It has now been reneged upon. Why? I do not believe it could be because I did not meet the criteria you specified when you first offered compensation. After sending information and more information, I believe you have changed the rules on me mid-game.

'I am a UK national – my passport states British subject – I am eligible for residency, employment, and voting within the UK ... how much more national can I be? I reside in Australia, which too has been British – we still have the same Queen.

'It is a very cheap and un-British action of yours to refuse payment to the survivors of the Sime Road Internment Camp in Singapore. I strongly urge you to reconsider this decision and make reparation to the 200 or so British subjects interned here.

'I look forward to your speedy response. Just as the Government wished to clear this matter expeditiously, I wish just as quickly to forget those perilous and cruel times. Although compensation is not a complete cure it goes some way towards that.'

D4 28 October 2005: Letter from the Agency to Mr A alerting him to the £500 apology payment

'As I am sure you are aware, following criticisms in the report by the Parliamentary Ombudsman on the Ex gratia Payment Scheme for former Far East Prisoners of War and civilian internees, the Minister for Veterans issued an apology in a written Statement on 13th July 2005. This apology was with respect to the distress caused to those who were led by the terms of the scheme's initial announcement to expect that they might be eligible for an award, and

in particular would have qualified but for the introduction of the birthlink criterion.

'In his Statement, the Minister gave an undertaking to examine whether his apology should be given tangible expression, and he has recently announced that this will take the form of a £500 one-off payment. It appears from our records that you may meet the criteria set out in the Minister's Statement and should receive a payment of £500. This is to compensate for the distress that the loss of expectation may have caused you, which is deeply regretted. As you know, at the time the Ex Gratia Payment Scheme was introduced there was a concern on all sides to announce it quickly given the age of many of the internees; as a result, the criteria were not fully developed and were only spelled out in full some months later.

'We are required to confirm that you would meet the other criteria of the Scheme. We have sufficient information with respect to your claim to satisfy most of the scheme requirements but, before we can confirm that a payment is due, we need you to sign and date the attached declaration to confirm that there was no change to your position, and return it to the Veterans Agency in the pre-paid envelope provided.'

D5 17 November 2005: Letter from Mr A to the Agency accepting the apology payment

'I am writing to thank you and to accept your offer of £500 in compensation for the distress caused to those of us who were led by the terms of the scheme's initial announcement (re the Ex gratia Payment Scheme for former Far East Prisoners of War and Civilian Internees) to expect that we might be eligible for an award.

‘With due respect, I sincerely hope and trust that my acceptance of this offer will not prejudice my original and ongoing claim to the initial anticipated award of £10,000, subject to your review and consideration of the matter.’

D6 30 November 2005: Letter from MoD to Mr A – tangible apology payment

‘I am writing to you about the ex gratia payment scheme for former Far East civilian internees. You may be aware that I apologised publicly in July for the distress caused to people like yourself who were led by the announcement to expect that they might be eligible for an award. I renew that apology to you now.’

‘In October, I announced that a one-off payment of £500 would be made to each of those individuals to whom an apology was due. This payment is in recognition of the distress that the loss of expectation may have caused you.’

‘At the time the Ex Gratia Payment Scheme was introduced, all those involved in negotiating the scheme were concerned that it should be announced quickly, given the age of many of the former internees. As a result, the criteria were not completely developed and were only fully spelled out some months later.’

‘Although we did it with good intentions, our announcement was rushed and turned out to be inadequate, and for that I am very sorry.’

‘I hope this payment will provide a tangible expression of our sincere regret for the distress that may have been caused and I would like to apologise personally for the failings in the introduction of the scheme that gave rise to this.’

‘You should receive this payment within the next 21 days.’

D7 March 2007: Letter from MoD to Mr A inviting him to apply for the injury to feelings scheme

‘Thank you for your letter of [date] to Derek Twigg, the Minister for Veterans, about the UK’s Ex-Gratia Payment Scheme for former Far East Prisoners of War and civilian internees. I have been asked to reply.’

‘It is well known that the conditions under which many Prisoners of War and civilian internees were held by the Japanese were harsh and that their treatment was cruel. The British Government felt that the suffering of those with a close link to the UK had, for too long, been overlooked. That is why the Scheme was established in November 2000 to allow a payment of £10,000 as a tangible recognition of the extreme and unique circumstances of those held captive in the Far East during the Second World War. To date some 25,000 people have benefited from payments totalling £250 million under the Scheme.’

‘It might be helpful if I explained some of the background to the principles of the Scheme. To qualify for a payment an individual must, in addition to meeting other eligibility criteria, have a close link with the UK. The requirement that claimants should demonstrate this close link has always been a central principle of the Scheme, although we accept that this was not clearly articulated when the Scheme was announced.’

‘For a former civilian internee, the close link can be demonstrated by meeting residence-based criteria. It was also possible to qualify by having been born in the UK or having had a parent or grandparent that was (the ‘birthlink’ criterion). However a Court of Appeal judgment in October last year upheld an earlier finding that, while, the birthlink did not directly discriminate on the grounds of race, and that we had a legitimate aim in seeking to limit payments to those with a close link to the UK, the criterion involved unjustified indirect discrimination against those of non-UK national origins. This was not intentional – the introduction of the birthlink came about as the result of an entirely benign intention to provide an administratively manageable method to admit more claimants into the scheme, not less. Nevertheless, following the court’s decision the birthlink has been withdrawn.

‘We recognise that there remains a strong view among some that everyone who was British at the time they were interned should be paid. However, as an independent review of the Scheme has confirmed, it was never the Government’s intention that anyone who was British should qualify. Many of those who were British subjects in 1939 had, long before 2000, become members of independent countries which accepted legacy responsibilities for those people, including pension and compensation in respect of the War. Those who did not have a close link to this Country were not therefore regarded as reasonably falling under the Scheme introduced by the UK at that date.

‘In your letter you said that you expect to receive the ex-gratia payment. As I have indicated above, the award of an ex-gratia payment will depend on your meeting the

Scheme’s criteria. For former civilian internees, these are:

- that you were British at the time you were interned
- that you were held captive in a specifically designated camp controlled by the Japanese
- that you can demonstrate a close link to the UK through meeting residence-based criteria. That is, that you lived in the UK before the War and returned afterwards or that you have lived in the UK for at least 20 years between 1 January 1945 and 7 November 2000 (when the Scheme was introduced).

‘If you believe that you may meet these criteria, you should contact the Veterans Agency, providing details as appropriate.

‘You also mentioned “restitution for discriminatory action”. Following the courts findings that the birthlink criterion involved unjustified indirect discrimination against those of non-UK national origins, we have confirmed that we are prepared to consider claims for compensation for injury to feelings resulting from discrimination on grounds of national origins, from any person whose claim was rejected on birthlink grounds and who was of non-UK national origins. Claimants who think that they are entitled to compensation in this way should write to the Veterans Agency setting out the basis on which they consider themselves to be a person of non-UK national origins or otherwise entitled to make a claim for indirect discrimination under the Race Relations Act 1976.

‘I hope that this has been helpful in explaining the position.’

D8 1 July 2007: Mr A's application to the injury to feelings scheme

'Further to correspondence dated 1 March 2007 ... and following the courts findings that the birthlink criterion involved unjustified indirect discrimination against those of non-UK national origins, I wish to be considered for claim for compensation for injury to feelings resulting from discrimination on grounds of national origins, under the Race Relations Act 1976.

*'You will have copies of all correspondence since November 2000. I was a British person of Jewish Faith interned by the Japanese in the British Colony of Singapore because I was **British**.*

'May I further point out to you the following:

- (a) I was born a British Protected Subject in Seremban, Malaysia, as **British***
- (b) I provided the Veterans Agency with a copy of my **British** Birth Certificate to prove the above*
- (c) I was singled out by the Japanese as **British and taken by cattle truck from Seremban to Singapore***
- (d) I was held in a specially designated camp in the British Colony of Singapore – the **Sime Road Internment Camp controlled by the Japanese***
- (e) I have provided the Veterans Agency with a copy of my passport which clearly states that I am a **British Citizen of United Kingdom and Colonies***
- (f) The Japanese listing at the time of my internment shows me as **British***

'The British Prime Minister the Hon Mr Tony Blair, promised to settle "A Debt of Honour" on the 7 November 2000 because

*the British Government had not looked after my rights as **British**. Tony Blair's promise meant that at last the nightmares for being interned by the Japanese because I was **British** were going to be partly ended – the terrible experience can never be ended. After filling in many forms I am told that I am not British enough because I did not have a "Blood link to UK" although the Japanese in their open listing shows me as **British**.*

*'The Veterans Agency acknowledges that they had handled the matter badly as they paid me UK 500 pounds. This is a fraction of the so-called "ex gratia" that I was promised. To be kicked in the teeth and discriminated against because I was not a Gentile, has given me many traumas – what right have you got to remove my birthright as **British**?*

*'The Veterans Agency's constant letters enquiring and probing, has made me relive the terrible times I had at the Sime Road Internment Camp. Each occasion has not just been mental anguish but torture – as in addition to everything, you have accused me of being a criminal for making a fraudulent claim. I was in a Japanese Internment Camp in Singapore as **BRITISH and that is the truth**.*

*'My health has suffered and I have incurred doctors' and other medical bills and the misery that you have made me undergo these past seven years is indescribable and impossible to adequately recompense. I know that you have been forced to pay other Jewish People in UK High Court, damages to try and ameliorate the pain and suffering that you have caused by your insensitivity, your incompetence, and your discrimination to avoid your responsibility – and you tried to remove my birthright as **British**.*

'May I reiterate that I am entitled to make a claim of indirect discrimination – "Injury to feeling" – under the Race Relations Act 1976.

'Your response to this matter would be greatly appreciated and I look forward to have this claim settled as soon as possible.'

D9 30 August 2007: Letter from the Agency to Mr A rejecting claim for injury to feelings scheme AND saying £500 paid in error

'I am writing in response to your letter dated 1 July 2007, addressed to Derek Twigg, regarding a possible claim for compensation for injury to feelings resulting from discrimination on grounds of national origins.

'The basis on which Mrs Elias won her case and was awarded damages was not that she should have been considered "British enough" to qualify under the Scheme. The Court did not rule that, having been British enough to have been interned, she was British enough to have been paid, though some press reports of the case mistakenly stated that it did.

'Mrs Elias won her case on the argument that the birthlink criteria unlawfully discriminated against her, a person of non-UK national origins, in favour of people of UK national origins because people of non-UK national origins were inevitably less able to comply with the UK birthplace requirements.

'Therefore, the Ministry of Defence is prepared to consider claims for compensation for injury to feelings resulting from discrimination on national origins grounds from any person of non-UK, or non-exclusively UK, national origins whose claim was rejected as failing to meet the "birthlink". To qualify for compensation,

the claimant must also meet the other requirements of the Scheme (i.e. that they were a British subject at the time of internment and that they were held in a specially designated camp controlled by the Japanese).

'Following receipt of your letter we have reviewed your case. It has been discovered that you do not satisfy the nationality criteria of the Scheme, i.e. you were not a British subject at the time of your internment. Consequently the £500 apology payment which you received in December 2005 was awarded to you in error. [My emphasis]

'Although persons like yourself who were born in one of the nine British Protected States of Malaya were British Protected Persons they were not British Subjects. A person born in a protected state could be a British Subject deemed by birth if they had a parent born in the UK or Colonies.

'As your parents were born in Iraq your birth in a protected state did not give you British Subject status.

'For these reasons, an offer of compensation would not be appropriate.

'I am sorry to send what I know will be a disappointing reply but I hope it explains the position.'

D10 14 September 2007: Letter from Mr A to the Agency following rejection

'I refer to your letter dated 30 August 2007 in response to my letter addressed to Mr Derek Twigg with regard to claim for compensation for injury to feelings resulting

from discrimination on grounds of national origins.

‘You state in your third paragraph that Mrs Elias won her case “on the argument that the birthlink criteria unlawfully discriminated against her, a person of non-UK national origins, in favour of people of UK national origins because people of non-UK national origins were inevitably less able to comply with the UK birthplace requirements”.

‘I am absolutely fuming at the way you have reviewed my case, because you have reviewed my case incorrectly. My older brothers and sisters who have lodged separate claims with you were born in Singapore, and have been considered as British subjects. Because I was born in Malaya, I was considered a British-protected person.

*‘When the Japanese soldiers called at my home at 6.00 am to herd us into an open lorry for the ultimate purpose of sending us to an internment camp, they did not ask us to identify which of us were British Subjects and which of us were British Protected Persons. We were all thrown into “the melting pot” together because we were all considered **British Subjects**. I, as a British Protected Person suffered the same humiliation as my siblings who were considered British Subjects. We were taken by lorry to Seremban railway station and dumped into a cattle truck. We were made to stay in the truck for six hours without food or water before taking off at midday – destination – the Sime Road Internment Camp in Singapore. Where was the **protection** you were supposed to have given me? I was interned because I was a British subject supporting your cause in Malaya. I suffered humiliation, indignation, starvation and deprivation of natural rights on your behalf.*

*‘Please read the words of King George VI in his message after the war ... “I send to my people and to the people under my protection in the Far East, who have suffered the horrors of Japanese oppression ... ” Have a look also at what appears on the cover of my Australian Passport – “**Australian Citizen and a British Subject**”. At the time I was issued with my Passport I would not have been accepted as an Australian Citizen if I was not a British Subject, because at the time, Australia had the “White Policy”. In my dictionary, “British Subject” is also a “British Protected Person”. In the Australian Government’s dictionary, “British Protected Person” is also a “**BRITISH SUBJECT**”. You should study the history and **FACTS** before you play on words and whether you like it or not, **MY FAMILY AND I WERE ALL CONSIDERED BRITISH SUBJECTS!***

‘You have added insult to injury by stating that because of your interpretation of what constitutes a “British subject”, “the £500 apology payment received by me in December 2005 was awarded to me in error”. You have the bloody hide and audacity to state that especially when I have as much right as the others to receive a meagre compensation from you. If you were not all one-eyed Cyclops, then you should wake up to yourselves and open both your eyes, and read and understand and digest the information that is being given to you and information that has previously been given to you.

*‘I have no doubt that your Government has been handsomely compensated by the Japanese Government after the war and it is about time you share some of this compensation with us – after all we have only been waiting for **62 years** for you people to come to your senses. By this time the number*

*of ex-internees has been greatly decimated by the normal ravages of life and the present claimants are now only a handful. Not only am I asking for proper compensation, I am **demanding** it. You British have always prided yourselves in being the prime upholders of law in the western world, and therefore, would like to be known as always “doing the right thing”. However, your handling and treatment of this whole issue is despicable and disgraceful, and bereft of common decency and justice. So why don't you do the right thing now?*

‘I AM HOPEFUL THAT JUSTICE WILL PREVAIL – BEFORE I GO TO MY GRAVE.’

D11 17 October 2007: Letter from the Agency to Mr A

‘I am writing in response to your letter dated 14 September 2007 addressed to Derek Twigg, Veterans Minister, about your claim for compensation for injury to feelings resulting from discrimination on grounds of national origins. I have been asked to reply on his behalf.

‘In my previous letter I explained that in order to qualify for the compensation claimants must also meet the other requirements of the scheme; that they were a British Subject at the time of internment and that they were held in a specially designated camp controlled by the Japanese.

‘For a person born in a British Protected State to be considered a British Subject deemed by birth they must have parent born in the UK or Colonies. For person born in a British Protected State or, elsewhere in the world, to be considered a British Subject by descent they must have a British Subject father.

‘Whilst it is appreciated that you suffered greatly during the period of your captivity, unfortunately your circumstances are such that you did not have British Subject Status during the second world war. Consequently you do not meet the nationality criteria of the Scheme.

‘I am afraid that I am unable to change the previous decision and confirm that an offer of compensation is not appropriate.’

D12 1 November 2007: Letter from Mr A to the MoD (also copied to the Agency and the Prime Minister)

**‘CLAIM FOR COMPENSATION –
(Mr A – Veterans Agency Number: 15912)**

‘I am writing this letter on behalf of myself and my siblings, namely:

*Mrs B
Mrs D
Mrs E
Mr F*

‘I refer to the letter dated 17 October 2007 that I received from you signed on your behalf by Mrs R. A copy of this letter is attached. You have sent similar letters to my abovementioned siblings.

‘All 5 of us have been refused payment of a £4,000 Compensation that we believe we should be granted.

'Mr Twigg, please allow me to put to you some pertinent questions :-

- Have you ever had Japanese soldiers come knocking on your door at 6 am telling your father that your family was to be interned in a Japanese camp somewhere in Singapore and that you all had one hour in which to get ready (taking with you only clothing and loose sheets) to be picked up?*
- Have you ever been picked up in a lorry and taken to the railway station and deposited into a cattle truck and left there without food and water for six hours?*
- Have you then been railroaded for seven hours to the internment camp at Singapore (Sime Road Internment Camp) and, upon arriving, found men and boys over 12 years old were to be segregated to another section of the camp and that all boys under 12 would remain in the women's section?*
- Have you ever lived in attap huts with very little protection from the weather and made to sleep on bare floors, where you had to use your blanket or loose sheets as the base to sleep on, with the prospect of scorpions, cockroaches and other creepy crawlies attacking you while you try to catch some sleep with tremendous discomfort due to the unlevelled ground?*
- Have you ever eaten every day muck that we called "bubble and squeak" because that's what happened when we heated food which some claimed to contain cockroaches and other ungodly things to save yourself from starvation?*
- Have you ever eaten raw papayas which you risked your life to steal at night?*

- Did you ever have to have your scabies over your body cut away with scissors every morning by a red cross nurse and then have the body areas swabbed with disinfectant and then made to stand naked in the sun for an hour for the disinfectant to take effect?*
- Have you ever had to bow 20 to 50 times each day whenever any Japanese soldier passed you?*
- Have you ever witnessed women being slapped and then rolled on the ground and kicked simply because they had their backs turned and didn't notice a Japanese soldier passing by?*
- Have you ever witnessed Japanese soldiers being hanged in public after the war for torture and other brutal treatments they inflicted on the internees?*

'Remember I was only 8 years old when these things were happening and they still play on my mind.

'How many of the above questions have you answered with a "yes" and how many with a "no"?

'We were all subjugated to the same events, whether we were "British Subjects" or "British Protected Persons". There was no distinction between the two "subjects".

'Please let me point out another important fact to you. There were 11 of us in the family – one family – 6 were born in Singapore and were therefore known as "British Subjects", the other 5, namely my siblings and myself were born in Malaysia (Malaya at the time) and were called "British Protected Persons". If the other 6 were entitled to receive the £4,000 Compensation,

how could we possibly be isolated from the others? We cannot understand that the £4,000 Compensation has been paid to hundreds of others, and yet me and some of my siblings are being refused this Compensation.

‘We were all interned in the Japanese Internment Camp together and we all returned together. Neither the Japanese nor the British told us that we were not supposed to be interned because we were not British Subjects. We all suffered the same indignities in support of Great Britain, yet me and 4 of my siblings feel that we are now being treated as outcasts.

‘Given the suffering and treatment that me and all of my siblings endured while under the Japanese during WWII, it is not only incomprehensible but almost obscene to make a distinction between those of us officially known as “British Subjects” versus those of us officially known as “British Protected Persons”.

‘The photocopy that I sent you of my Passport (copy attached) showed on the front cover “British Subject”. As far as I understand it, one’s passport is as official a document that one can have. When I came to Australia in 1957 the Government had a “White” Policy – if I wasn’t a British subject the Government wouldn’t have let me in to stay here.

‘We cannot understand why there is even an issue regarding the Compensation payment that me and my 4 siblings are contesting (the total sum of £20,000), considering the fact that the money would be drawn from acquired “Liquidated Japanese Assets”.

‘In the light of what I have told you in the preceding paragraphs, I beseech you to please reconsider your decision and arrive at a positive one to grant us each the £4,000, which will be a fitting end to this nightmare that we have been through. We have in fact waited for 62 years since the end of the war for recognition and compensation – isn’t that long enough?

‘We look forward to your positive response and sincerely hope that you will send out the last five offers of Compensation to us as soon as possible.’

Annex E: court decisions: Mrs Elias

E1 7 July 2005: The summary of the High Court case

'There was no basis for saying that because the Government had agreed to make payments in a certain class of situations that it then became obliged to consider applications, from those who did not fall within the rules, in a different way than it would otherwise have done. The Government was not obliged to consider extending the scheme on a case-by-case basis beyond the scope that it had carefully delineated. The court's task was to give effect to the scheme established by the Crown in the same way as it would a scheme established by legislation. It was no more an unfair or unlawful exercise of power for the Crown, acting through the secretary of state, to refuse to consider exceptional cases under the common law scheme than it would have been under a statutory scheme. Further, there was no authority to make payments outside the terms of the scheme. (2) The scheme was not directly discriminatory, James v Eastleigh Borough Council (1990) ICR 554 distinguished. However, it was unlawful and indirectly discriminated against those of non-British origin. The desire of the Government to limit the category of those who could claim under the scheme to persons with a close link with the UK at the time of the internment was a legitimate aim. However, in adopting the criteria that assessed eligibility by reference to the place of birth of the applicant, parent or grandparent, the effect was markedly to reduce the proportion of those of non-British national origin compared with those whose national origin was British. Those provisions were not justifiable in all the circumstances, Orphanos v Queen Mary College (1986) CMLR 73 applied. (3) The secretary of state had breached his duties under s.71 of the Act.

Application granted.'

E2 9 March 2006: County court judgment

*'In the Central London County Court
Claim No: 5CL12683*

Between:

Diana Elias

-and-

The Secretary of State for Defence

Judgement

'1. Liability in this case has been determined in separate proceedings by Elias J. My task is to consider damages. I have discussed this case with my assessors. I have taken their advice. I have sent them a draft of this judgement. They agree with it.

'2. The first question is whether Mrs Elias can recover in damages the sum which she says she should have received under the scheme. That depends on whether it is probable that she would have received the sum if the government had not imposed that part of the criterion for entitlement that Elias J has ruled unlawful.

'3. To a large extent Elias J has already answered this question. He was asked to order the Secretary of State to pay this sum. He refused because the scheme which the Department might now put in place may lead to the same outcome. For example, it may put in place a scheme which requires residence immediately before the outbreak of the war. Or it may put in place a scheme which requires only that the applicant should have been born in the UK. Neither of those has been ruled unlawful. In either event, Mrs Elias would not qualify.

'4. But the question he had to decide is not precisely the same as the question I must decide, although the answer may be the same. I need to look back and judge as best I can what the outcome would have been when she was refused payment. Although the government did not make the criteria as clear as it should have, the evidence shows that they would have introduced a scheme which did not include all British citizens. The two schemes which appear to have been put in place involved proof of residence or connection by birth line. There is evidence that some applicants appear to have received the payment without needing to comply with either requirement, but I am satisfied that that was not the result of policy but as a consequence of aberrant processing by junior staff. It is therefore probable that if the unlawful element had not been included in the scheme some other scheme would have been put in place which would still have excluded Mrs Elias. And, of course, as Elias J pointed out, if the unlawful element of the birth line criterion were stripped out, what remains may well disentitle her to payment. So, on balance, she would not have received the payment in any case. This part of her claim in damages must fail.

'5. The other question raised in the case is the level of damages which flow from the injury to her feelings. It is accepted that this claim should succeed. The issue is how much the damages should be. On her behalf it is contended that I should not only make an award which falls within the highest band of the Vento decision, but I should also add further sums for aggravated and exemplary damages. On the other side it is argued that she should only receive damages which fall within the lower band.

'6. The contentions made on her behalf are in my view unrealistic. First, once it is accepted that she probably would not have received payment in any event, the hurt which she undoubtedly felt is a hurt she would have experienced anyhow. Secondly, it is clear from her statements that it was the rejection of her claim rather than the reasons for the rejection which upset her. She took the refusal as a slight on her Britishness. But that was largely caused by the failure of the government to make clear at the outset that not all British subjects would be eligible under the scheme ... Hopes were raised. That was an aspect of the maladministration which sadly occurred in this case and which has been rightly condemned by the Ombudsman and by the Select Committee. However, on any rational analysis the rejection has nothing to do with Britishness, but everything to do with where the line for entitlement is drawn, Elias J has ruled that the way the line was drawn in this case was not lawful. But he has expressly left open the possibility that other ways may well be lawful and would equally disentitle people in Mrs Elias' position. The lines have to be drawn somewhere. So, for example, I was told that British civilians interned in Europe are not entitled to compensation. And, so far as I know, no compensation has ever been paid to the tens of thousands of civilians who spent night after night in air raid shelters, often parted from their children, whilst their homes were being bombed and their relatives and friends killed and injured. Where to draw these lines is for the politicians not the judges – provided, of course, that they are lawfully drawn.

'7. The birth line criterion was introduced in good faith. As Elias J points out, it was introduced in a genuine endeavour to increase the pool of those eligible to make a claim.

It was not obvious that it was unlawful. Indeed the scheme was considered by many distinguished lawyers and judges before someone decided to make a challenge based on the Race Relations Act. It is true that evidence has emerged which shows that at least one official in the Department suggested that the scheme might fall foul of the Act and with the benefit of hindsight the government might be criticised for not taking this suggestion more seriously at the time. The discrimination against Mrs Elias and others in her position was entirely unintentional.

'8. Of course, given the policy that was adopted, it was inevitable that the claim would be rejected. But the rejection was made courteously, and Mrs Elias' further correspondence with the department was treated with consideration. Fortunately for her, others were willing and able to take up her cause and vindicate the stance she had taken.

'9. All of these features are relevant in considering the level of award and whether aggravated and exemplary damages should also be given. The discrimination here is not of the same order as a sustained and humiliating campaign involving repeated acts which were deliberately inflicted. As I pointed out in argument there is not much to distinguish this case from the thousands of decisions which Departments make every year in rejecting benefit applications which are overturned on appeal. The rejections may well have been hurtful. For example, no one likes to be told that they are not disabled when they clearly are. No one likes to be rejected on grounds of gender or nationality, though sometimes they are. Some of these decisions are made on the individual facts of the case. But some, like the decision in Mrs Elias' case, are made because

Departments apply policy criteria which tribunals and courts later declare to have been unlawful. The hurt inflicted in these cases do not attract any right to recompense – though where maladministration is established ex gratia payments (usually very modest) may be made.

'10. In my judgement this case falls fairly and squarely within the lowest band. I award £3,000. I reject the claim for aggravated damages. Although valid criticisms can be made of the way in which the department administered this scheme, that conduct is not so heinous as to aggravate the hurt which Mrs Elias felt. I reject the claim for exemplary damages. The conduct was neither arbitrary nor unconstitutional. It was not alleged that it was oppressive. In my view it would only be unconstitutional if every government policy later declared to be unlawful were to be so regarded. That is clearly not the case. Exemplary damages are reserved for conduct which is so outrageous that the court is impelled to mark its disapproval by imposing a monetary sanction. This case falls very short of that.'

E3 An extract from the Court of Appeal judgment

'HELD: (1) The discrimination complained of did not take the direct form of treatment "on racial grounds". The birth link criteria took an apparently neutral form, which would apply equally to all applicants to the compensation scheme. It was the application of the neutrally worded criteria that produced the disparate adverse impact and put persons of the same national origins at a particular disadvantage when compared with other persons. These were the distinguishing features of discrimination in its indirect form, Ealing v Race Relations Board (1972) AC 342, (1972) 1 WLR 71 applied. The eligibility criteria

did indirectly discriminate against E on racial grounds. (2) The question of legitimate aim had to be looked at in the round and the judge was right to conclude that overall the aim of confining the payments to those with close links to the UK was a legitimate one. The judge was also correct to find that the means used were not proportionate to the aim. It was more difficult for the secretary of state to justify the proportionality of his choice of the birth link criteria as a matter of discretionary judgment when he did not even consider whether he was indirectly discriminating on racial grounds. It was also relevant to take account of the fact that, as the compensation scheme was not properly thought out in the first place, the issue of discrimination was not properly addressed at the relevant time. As a result there was no proper attempt to achieve a proportionate solution by examining a range of possible criteria and by balancing the legitimate aim of confining the payments to those with close links to the UK with the seriousness of detriment suffered by individuals who were discriminated against. Accordingly although the eligibility criteria had a legitimate aim they were not proportionate to the aim or objectively justified and were therefore unlawful. (3) There was no unlawful fettering of the secretary of state's common law powers in refusing to depart from the eligibility criteria. Until the scheme was amended to bring E within it, the secretary of state was acting lawfully in insisting that payments were only made to those who satisfied the criteria. (4) The quashing of the eligibility criteria on the ground of indirect discrimination did not entitle E to payment of any compensation or to damages for race discrimination. The public law duty of the secretary of state was to apply lawful criteria to the application of

compensation. It was possible to replace the unlawful criteria with lawful criteria that would exclude E from the scheme without contravening the Act.'

Annex F: significant internal Ministry of Defence and agency documents

F1 **28 November 2005: Authorisation for £500.
Proof of British Citizenship**

<u>STAGE 6 ACTION SHEET COMPENSATION AUTHORISATION</u> <u>CIVILIAN NATIONALITY CLAIMS</u>				
REF NO:	15912	CLAIMANTS NAME:		[REDACTED]
OVERSEAS/ UK	YES	NO	FALLOUT/COMMENTS BOX	Date & Intls.
DOES CLAIM FALL WITHIN APPROPRIATE DATES FOR COMPENSATION?	<input checked="" type="checkbox"/>		28/11/05	P.W. 24/11/05
HAVE WE PROOF OF BRITISH CITIZENSHIP ON FILE?	<input checked="" type="checkbox"/>		Birth cert	P.W. 24/11/05
PROFORMA ISSUED?				
INTERNMENT VERIFIED?	<input checked="" type="checkbox"/>		Sine road	P.W. 24/11/05
PROFORMA ISSUED? E CERTIFICATE ISSUED? (OVERSEAS CASES)	<input checked="" type="checkbox"/>			
BRITISH DECLARATION ISSUED? (UK) PDCS-DCI ACCESSED/SCREEN PRINTS ATTACHED?)				
ADDRESS VERIFIED?				
<u>FURTHER ACTION</u>				
<u>COMPENSATION AUTHORISED</u>				
Signature... [REDACTED]		Dated... 28.11.05		
<u>COMPENSATION NOT AUTHORISED</u>			<u>REASON</u>	
1 st signature.....				
Dated.....				
2 nd signature.....				
Dated.....				

F2 **9 January 2006: Section of form completed when rejecting Mr A from second scheme – the revised scheme**

PART 3 – THIS QUESTION IS FOR CASES DECIDED BEFORE 21/03/2001

WOULD CASE HAVE SATISFIED BIRTLINK CRITERIA?

YES	<input type="checkbox"/>	23	NO	<input type="checkbox"/>	24	N/K	<input type="checkbox"/>	25
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PART 4 - COMPLETE BELOW FOR REJECTIONS ONLY

WHY WAS CLAIM REJECTED?

NOT INTERNED	<input type="checkbox"/>	26	INTERMENT NOT VERIFIED	<input type="checkbox"/>	27	3 RD PARTY NOT SPOUSE	<input type="checkbox"/>	28
BIRTLINK NOT MET	<input checked="" type="checkbox"/>	29						
OTHER (please state)							<input type="checkbox"/>	30

EXAMINED BY		DATE	9.1.06.
-------------	---	------	---------

CHECKED BY		DATE	12/1/06
------------	---	------	---------

ENTERED ON DATABASE	12 / 01 / 06
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NOTES

Camp checked ✓ D

FEPOW RESIDENCY CRITERIA

CASE REVIEWED FOR POSSIBLE ELIGIBILITY UNDER RESIDENCY

FILE REF:

Case identified as potentially eligible:

Yes Comment
No

If no tick reason:

Rejected on internment

Rejected on service

Rejected as not eligible to claim

Evidence on file that
claimant was not British at internment

Evidence on file of payment
received from another country

Other (state)

Reviewed By: Date:

F4 30 August 2007: Rejection for injury to feelings payment and £500 paid in error

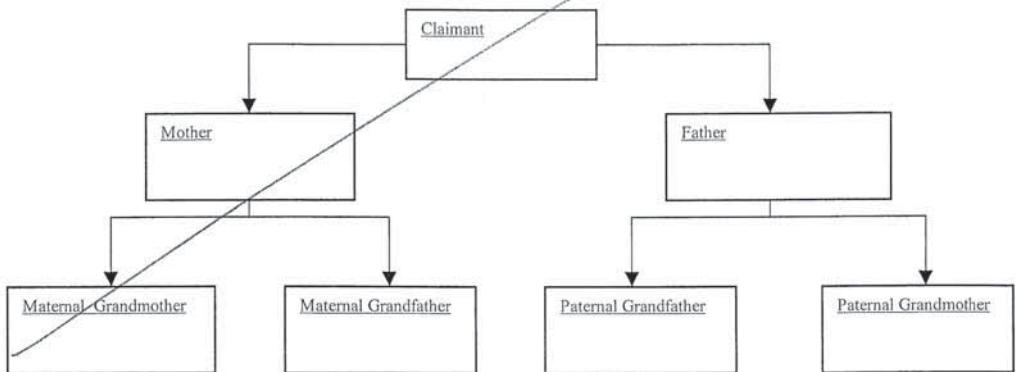
ADJUDICATION OF CIVILIAN NATIONAL ORIGINS COMPENSATION

Ref No : 15912

Name: [REDACTED]

National origins Declared as :

Family Tree Origins



Reasons For Adjudication Decision

Claimant not British at internment.
 Claimant born Negri Sembilan, one of the 9 protected states of Malaya. Parents born Iraq therefore British subject status not acquired.
 £500 apology paid in error.
 Compensation offer not appropriate.

Compensation to be offered:

Sign: _____ Date: _____

Compensation not appropriate:

Sign: [REDACTED] Date: 30.8.07

**Parliamentary and
Health Service Ombudsman**

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