



Home Office

# Windrush Compensation Scheme

**Version 15.0**

Guidance for decision makers considering cases under the Windrush Compensation Scheme.

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# About this guidance

This document tells caseworkers how to consider cases under the Windrush Compensation Scheme.

Those who wish to be considered under the Windrush Scheme, should refer to the information about the [Windrush Scheme on GOV.UK](#).

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors, then email the Windrush Policy team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

## Publication

Below is information on when this version of the guidance was published:

- version **15.0**
- published for Home Office staff on **15 January 2024**

## Changes from last version of this guidance

Updates to:

- [Close Family Member](#)
- [Initial Assessment and Preliminary Award](#)

### Related content

[Contents](#)



# Initial case work checks

This page lists the initial checks you must undertake in stages, or you must be satisfied that they have been undertaken. Before resolving a claim for compensation, you must:

- [establish identity](#)
- [establish eligibility](#) and [lawful status](#)
- [establish entitlement](#)
- [determine appropriate compensation](#)

## Related content

[Contents](#)

# Identity: procedure

This page tells you the procedure for checking identity.

You are responsible for checking identity. You must make sure you have followed the relevant guidance when doing so.

## Identity: verification checks procedure

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### **Official – sensitive: start of section**

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### **Official – sensitive: end of section**

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If you are still in doubt about the claimant's identity once you have completed your checks, you must seek authority from your team leader to return the documents to the claimant because the claim cannot be progressed.

You should write to the claimant to inform them that their claim cannot be progressed based on inability to establish identity.

### **Related content**

[Contents](#)

# Identity: evidence

This page tells you what documents are acceptable to prove identity and address.

The documents must show the claimant's name and current address and must be from a recognised company or organisation on an official letterhead and have been issued within the last 3 months. Claimants must provide at least one document from each group which cannot be the same document. Proof of identity and address verification cannot be from the same source. Photocopies are acceptable. These are not exhaustive lists.

## Group 1

Proof of identity: list of acceptable documents:

- current, valid passport
- biometric residence permit (BRP)
- current, valid full UK photocard driving licence with signature or 'old style' driving licence - claimants who provide an 'old style' driving licence must also submit an additional form of photo ID from this list
- current, valid UK photocard provisional licence
- Northern Ireland Voter's Card showing claimant's current address
- HM Revenue and Customs (Inland Revenue) tax document, for example tax assessment, statement of account, notice of coding
- original notification letter from the relevant benefits agency confirming the right to benefits or state pension
- overseas national identity document

## Group 2

Proof of address: list of acceptable documents:

- household utility bill (for example, gas, electric, water or fixed line telephone but not a mobile phone bill)
- current, valid full UK photocard driving licence with signature or 'old style' driving licence - provisional licences are not acceptable as proof of address
- bank, building society or credit card statement - electronic statements are acceptable provided they bear the official stamp of the bank in question.
- local authority tax bill (for example, council tax)
- local authority rent book
- solicitor's letter confirming recent house purchase or land registry confirmation
- HM Revenue and Customs (Inland Revenue) tax document, for example tax assessment, statement of account, notice of coding
- original notification letter from the relevant benefits agency confirming the right to benefits or state pension
- Northern Ireland Voter's Card showing claimant current address
- letter from the Home Office

You must carry out a [verification check](#) if you have reasonable doubts about the authenticity of any document.

**Related content**

[Contents](#)

# Eligibility: criteria

This page tells you who is eligible for compensation.

There are 3 types of claimants:

- primary claimant
- deceased estates
- close family members

You are responsible for checking [eligibility](#) which includes [lawful status](#). You must make sure you have followed the relevant guidance when doing so.

You should check that the claimant falls into one of the eligible categories in the [table](#). This defines each category and shows you the range of statuses they may have.

You should consider all the information and evidence provided or available to you and refer to relevant guidance to make your decision. Relevant guidance is either contained within this document, or in separate published guidance, in which case links are provided.

You must refuse the claim if the claimant is not eligible and does not have lawful status.

The claimant has the right to apply for a [review](#) of the decision to refuse the claim on this basis.

## Eligibility: table

Who is eligible	Eligibility route	Relationship route
<a href="#">Commonwealth citizen</a>	Settled in the UK before 1 January 1973 and either: <ul style="list-style-type: none"><li>• continuously resident in the UK</li><li>• settled status lapsed but now lawfully in the UK</li></ul>	-
Commonwealth citizen	<ul style="list-style-type: none"><li>• right of abode</li><li>• ordinarily resident in the UK on 1 January 1973</li></ul>	-
British citizen	Route to citizenship: settled before 1 January 1973	-

Who is eligible	Eligibility route	Relationship route
British citizen	Route to citizenship: Right of abode and ordinarily resident in the UK on 1 January 1973	-
British citizen	Route to citizenship: arrived before 31 December 1988	-
Child of a Commonwealth citizen.	<p>Either:</p> <ul style="list-style-type: none"> <li>• born in the UK</li> <li>• arrived in the UK before the age of 18</li> </ul> <p>was not automatically a British citizen or a citizen of the United Kingdom and Colonies from birth</p> <p>and been continuously resident in the UK since birth or arrival</p> <p>Or</p> <ul style="list-style-type: none"> <li>• born in the UK</li> <li>• arrived in the UK before the age of 18</li> </ul> <p>is a British citizen, and automatically became a citizen of the UK and Colonies / British citizen at birth</p>	<p><b>Parent</b></p> <p>Either:</p> <ul style="list-style-type: none"> <li>• settled before 1 January 1973</li> <li>• has a right of abode and was ordinarily resident in the UK on 1 January 1973 (or satisfied this provision and is now a British citizen)</li> <li>• who satisfied one of these provisions but is now deceased</li> </ul>
Grandchild of a Commonwealth citizen	<p>Grandchild and parent either:</p> <ul style="list-style-type: none"> <li>• born in the UK</li> <li>• arrived in the UK before the age of 18</li> </ul> <p>was not automatically a British citizen or a citizen of the United Kingdom and Colonies from birth</p> <p>and grandchild has been continuously resident in the UK since their birth or arrival</p>	<p><b>Grandparent</b></p> <p>Either:</p> <ul style="list-style-type: none"> <li>• settled before 1 January 1973</li> <li>• has a right of abode and was ordinarily resident in the UK on 1 January 1973 (or satisfied this provision and is now a British citizen)</li> </ul>

Who is eligible	Eligibility route	Relationship route
	<p>Or</p> <ul style="list-style-type: none"> <li>• born in the UK</li> <li>• arrived in the UK before the age of 18</li> </ul> <p>Grandchild is a British citizen, and automatically became a citizen of the UK and Colonies / British citizen at birth</p>	<ul style="list-style-type: none"> <li>• who satisfied one of these provisions but is now deceased</li> </ul>
Any nationality	<p>Arrived in the UK before 31 December 1988 and either:</p> <ul style="list-style-type: none"> <li>• has settled status</li> <li>• has a right of abode</li> <li>• is now a British citizen</li> </ul>	-
Commonwealth citizen outside the UK	<p>Settled in the UK before 1 January 1973 and:</p> <ul style="list-style-type: none"> <li>• has a right of abode</li> <li>• settled status</li> <li>• is a British citizen</li> <li>• settled status has lapsed because they left the UK for a period of more than 2 years</li> </ul>	-
British citizen outside the UK	<ul style="list-style-type: none"> <li>• Route to citizenship: settled in the UK before 1 January 1973</li> </ul>	-
Deceased estate	<ul style="list-style-type: none"> <li>• Eligible person: any one of the above</li> </ul>	-
<a href="#">Close family member</a>	<ul style="list-style-type: none"> <li>• Eligible person: any one of the above</li> </ul>	<p>Close family member must have certain lawful status if applying in country: settled / have right of abode or limited leave to remain but on a route to settlement</p>

**Related content**  
[Contents](#)



# Eligibility: evidence

This page tells you what evidence a claimant must submit to prove eligibility.

## Commonwealth citizens settled in the UK before 1 January 1973

Claimants, regardless of their nationality, who were settled in the UK on 1 January 1973, were treated as having indefinite leave to enter or remain (ILE / ILR) by virtue of the [Immigration Act 1971](#). This includes those of the Windrush generation. What this means is that they were lawfully entitled to live in the UK but were not given a document confirming their right to enter or remain nor were they required to apply for one. Some of the Windrush generation will never subsequently have applied for a document to prove their right to be in the UK. Some may have left the UK.

Where these claimants obtained confirmation of their status either prior to the establishment of the Windrush Scheme or through the Windrush Scheme you should expect to see evidence in the form of a No Time Limit Biometric Residence Permit (NTL / BRP).

## Commonwealth citizens who have right of abode

Under the Immigration Act 1971, some of the Windrush generation have right of abode (RoA) in the UK or are British citizens.

RoA means a person is free from any immigration restrictions, with no limit on the length of time they can spend in the UK. All British citizens automatically have RoA. Some Commonwealth citizens may also have RoA.

RoA can be evidenced by the following documents:

- a UK passport describing the person as a British citizen
- a UK passport describing the person as a British subject with the right of abode in the UK
- a certificate of entitlement affixed to a current or expired foreign national passport

## Claimant is the child of a Commonwealth citizen

### Eligibility: parent's status

You must check the status of the parent in the [eligibility table](#).

You must then consider all the information and evidence provided or available to you, such as passports, BRPs or letters from the Home Office to show the status of the parent. Where the parent obtained status or confirmation of their status with the help of the Windrush Help Team you should check Home Office records.

Once you have satisfied yourself that the parent has the correct status you must check the evidence provided in support of the relationship.

## Eligibility: proof of relationship

Documents that may assist you could include for example:

- claimant's full unabridged birth certificate
- passport / birth certificate of the parent who is a Commonwealth citizen and from who they derive their eligibility
- correspondence from other government departments such as Department for Work and Pensions (DWP) or HM Revenue and Customs (HMRC)

Once you have established the claimant is eligible you must check the claimant has [lawful status](#).

## Eligibility: proof of lawful status

You must consider all the evidence provided or available to you such as passports, certificates of naturalisation or registration, BRPs, returning resident visas or letters from the Home Office.

You must consider all evidence the claimant has provided of their date of arrival or birth in the UK and time spent in the UK. This could be, for example, visa or entry stamps in previous passports.

Where the claimant obtained confirmation of status with the help of the Windrush Help Team you should check Home Office records.

## Claimant is the grandchild of a Commonwealth citizen

### Eligibility: proof of status

You must check the eligibility criteria for the parent and the grandparent in the [eligibility table](#).

Once you have satisfied yourself that the parent and grandparent have the correct status you must check the evidence provided in support of the relationship.

### Eligibility: proof of relationship

Documents that may assist you could include for example:

- claimant's full unabridged birth certificate
- full unabridged birth certificate of the parent through whom they derive their eligibility
- current or expired passport of grandparent which may show their status
- correspondence from other government departments such as DWP or HMRC

## Claimant arrived before 31 December 1988

As outlined above, claimants, regardless of their nationality, who were settled in the UK on 1 January 1973, were treated as having indefinite leave to enter or remain (ILE / ILR) by virtue of the Immigration Act 1971.

Meanwhile claimants (of any nationality) who arrived after 1 January 1973 and before 31 December 1988 were required to hold formal grants of leave.

These primary claimants must have a right of abode (RoA), settled status or have become British citizens.

Where these claimants obtained confirmation of their settled status either prior to the establishment of the Windrush Scheme or through the Windrush Scheme you should expect to see evidence in the form of a No Time Limit Biometric Residence Permit (NTL BRP).

RoA can be evidenced by the following documents:

- a UK passport describing the person as a British citizen
- a UK passport describing the person as a British subject with the right of abode in the UK
- a certificate of entitlement affixed to a current or expired foreign national passport

See below for evidence of British citizenship.

## British citizens

Claimants who have become British citizens must have done so through one of the routes shown on the [eligibility table](#). You must check the [eligibility table](#) to see which eligibility route the claimant has followed.

You must check any correspondence which the claimant may have received from the Home Office such as UK Visas and Immigration, the Windrush Help Team or HM Passport Office for evidence of the route the claimant followed to become a British citizen. Some claimants may have automatically acquired British citizenship such as those who were born in the UK before 1 January 1983 and those who were born in the UK after 1983 but to a settled person. The evidence of how the claimant acquired British citizenship does not appear on passports or certificates.

Evidence of British citizenship:

- British passport
- certificate of naturalisation or registration
- nationality status document

## Related content

[Contents](#)

# Lawful status

This page explains the concept of lawful status.

You must check that the claimant has lawful status.

Lawful status means a right of abode or settled status in the United Kingdom (UK) and includes limited leave to remain on a route to settlement for close family members.

A separate status requirement applies to close family members in that they must have been lawfully in the UK when certain (not all) losses occurred and if they are bringing their claim in the UK (they can be overseas) they have to be here lawfully.

For this purpose, lawful status means a right of abode or settled status but also includes limited leave to remain on a route to settlement.

## Lawful status: evidence

The claimant is responsible for providing evidence of their lawful status.

This evidence can be, but is not limited to, the following documents:

- valid and current British passport
- certificate of entitlement to the right of abode in a valid and current or expired foreign national passport
- indefinite leave to enter vignette in a valid and current foreign national passport
- NTL / BRP (No Time Limit Biometric Residence Permit)
- LLTR / BRP (limited leave to remain biometric residence permit) if applying in country as a close family member

## Lawful status: no evidence

Claimants who do not have evidence of lawful status, although on the face of it are eligible Windrush generation claimants, are expected to seek support from the Windrush Help Team to obtain confirmation of their lawful status.

In such circumstances you must contact the claimant to advise them what to do.

## Overseas claimants

These claimants will either have right of abode, settled status (if they have been absent from the UK for 2 years or less) or their settled status may have lapsed due to their absence from the UK for more than 2 years. They may also be British citizens.

Claimants must supply evidence of their lawful status or evidence that they were settled in the UK prior to 1 January 1973.

Relevant evidence will include, but is not limited to, the following:

- valid and current British passport
- a certificate of entitlement to the right of abode in a current or expired foreign national passport
- NTL BRP
- vignette in a current or expired foreign national passport which shows that the claimant had settled status before 1 January 1973
- correspondence from the Home Office which shows that the claimant had settled status before 1 January 1973

The claimant must be given every reasonable opportunity to provide information and evidence to support their claim.

### **Related content**

[Contents](#)

# Commonwealth citizen: meaning

This page tells you the meaning of a Commonwealth citizen for the purposes of the Windrush Compensation Scheme.

Commonwealth citizen means citizens of the following:

- Anguilla
- Antigua and Barbuda
- Australia
- Bangladesh
- Barbados
- Belize
- Bermuda
- Botswana
- British Antarctic Territory
- British Indian Ocean Territory
- Brunei
- Canada
- Cayman Islands
- Cyprus (excluding the Sovereign base areas)
- Dominica
- Falkland Islands
- Fiji
- Ghana
- Gibraltar
- Grenada
- Guyana
- Hong Kong
- India
- Jamaica
- Kenya
- Kiribati
- Lesotho
- Malawi
- Malaysia
- Maldives
- Malta
- Mauritius
- Montserrat
- Namibia
- Nauru
- New Zealand
- Nigeria
- Pakistan
- Papua New Guinea

- Pitcairn, Henderson, Ducie and Oeno Islands
- Saint Lucia
- Samoa
- Seychelles
- Sierra Leone
- Singapore
- Solomon Islands
- South Africa
- South Georgia and the South Sandwich Islands
- Sri Lanka
- St Helena, Ascension and Tristan da Cunha
- St Kitts and Nevis
- St Vincent and The Grenadines
- Swaziland
- Tanzania
- The Bahamas
- The Gambia
- Tonga
- Trinidad and Tobago
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Vanuatu
- Virgin Islands
- Zambia
- Zimbabwe

In addition, the following people are included:

- citizens of the UK and colonies by virtue of a connection to a country or territory on the above list
- British subjects without citizenship under the law on 1 January 1973

Although British overseas territories are not members of the Commonwealth in their own right, with the exception of the Sovereign Base Areas of Akrotiri and Dhekelia British overseas territories are included in the list of Commonwealth citizens in this guidance. Citizens of Rwanda, Cameroon and Mozambique are not included in the list of Commonwealth citizens in this guidance, as these countries were never British colonies, but have nonetheless joined the Commonwealth.

## **Related content**

[Contents](#)



# Criminality

This page tells you about criminality.

You are responsible for checking criminality.

In most instances an individual's criminality will not impact on the compensation they are to be awarded. However, the Home Office has the discretion to decline or reduce an award in respect of a claimant, where both of the following apply:

- they have been convicted of an offence in respect of which they received a sentence of imprisonment of 4 years or more
- their offending was of such a nature that it makes it inappropriate to make an award in whole or in part

In these instances, only awards for Impact on Life will be affected.

Sentences of imprisonment of four years or more for offences such as murder, rape, or sex / sexual assault with a minor will likely result in awards for Impact on Life being declined.

Where this is the case, you should consider whether there are circumstances since their release from prison which point to a reduction in the Impact on Life award being appropriate, rather than declining it. For example, because they have dedicated their life to working with the community and the police to prevent others committing similar crimes, or charity work.

You should check with the claimant whether they have any such evidence.

If such evidence is forthcoming, you may consider reducing the award for Impact on Life by 50% rather than declining it. If no such evidence is forthcoming, you should consider declining the award for Impact on Life.

All claims where the claimant has a sentence of imprisonment of 4 years or more should be referred to a team leader in the first instance. You should recommend whether, based on the nature of the claimant's offending and mitigating circumstances since their release from prison, compensation for Impact on Life should be awarded in full, reduced by 50%, or declined.

All claims where the claimant has a 4-year sentence will subsequently be submitted for ministerial sign off.

This does not apply in relation to a conviction and sentence under the law of a country outside the UK for conduct which on the date of conviction did not constitute a criminal offence under the law of any part of the UK.

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**Official - sensitive: end of section**

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[Contents](#)

# Estates

This page explains the checks you must undertake where the claim is made on behalf of a deceased's estate.

You should check that the deceased would have been [eligible](#).

If the estate is administered in the UK, the claim must be made by an executor or administrator of the estate or by a personal representative of the deceased. You should check that the claim is made by one of these people.

Where the estate is not administered in the UK, the claim must be made by a person who has responsibility for the administration of that estate.

A person who makes a claim on behalf of an estate must submit all the following documents:

- a copy / photocopy of the death certificate of the deceased
- a copy / photocopy of the relevant grant of probate or letters of administration
- proof of his or her own [identity](#)

Please note that this is not an exhaustive list. You may need to consider alternative forms of evidence.

You must carry out a [verification check](#) if you have reasonable doubts about the authenticity of any document.

## **Related content**

[Contents](#)

# Claimants who lack mental capacity

This page explains the checks you must undertake where a claim is submitted on behalf of a claimant who lacks mental capacity on the date their claim is made.

The claim must be made:

- if the claimant is in the UK, by a person exercising [power of attorney](#) over the claimant's financial affairs or by a deputy, guardian or controller with power over the claimant's financial affairs
- if the claimant is outside the UK, by a person exercising corresponding powers

You must check that the power of attorney is registered with the Office of the Public Guardian (OPG) where the claimant is in the UK. See: [Lasting power of attorney, being in care and your financial affairs](#) on GOV.UK for more details.

A person can be appointed as a deputy (England and Wales), guardian (Scotland) or controller (Northern Ireland) to look after a person's financial affairs. This may occur where a person has lost mental capacity before a Power of Attorney was appointed. You must check that this appointment has taken place.

You will need to make similar enquiries with the relevant department of the foreign government in which the claimant resides.

## Related content

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# Close family members

This page explains the checks you must make where a close family member submits a claim.

A close family member is a person who was at the material time (when the loss occurred or was triggered):

- the claimant's spouse or civil partner and living with the claimant
- the claimant's unmarried partner (living with the claimant, unmarried, as husband and wife (or as civil partners) for a continuous period which lasted in total for 2 years or more)
- the claimant's child which includes an adopted child
- the claimant's parent
- the claimant's sibling which includes a sibling of the half-blood

You must check that the close family member is related to the primary claimant.

You must check that the close family member is related to the primary claimant however a person will also be considered the 'child' or 'parent' of a primary claimant where there has been a genuine transfer of parental responsibility. This would include, for example, step parents and situations whereby a child has been sent to live with another person.

You must check that the close family member has the necessary [lawful status](#). A close family member can make a claim from outside the UK. If they are in the UK when they make their claim they must have the necessary lawful status. Also, a close family member must have been lawfully in the UK when the loss occurred or was triggered if they are making a claim for impact on life, livings costs or a discretionary payment but not in so far as they are making a claim for fees.

In the case of an unmarried partner, the 2-year period of cohabitation must include the material time but need not have run for a period of 2 years before the material time.

The close family member must submit documents as evidence of the relationship to the eligible person in support of the claim. This is not an exhaustive list of documents. You must consider other documents which show the relationship between the claimant and the eligible person and proof of cohabitation where appropriate.

## Married / civil partners: proof of relationship

Proof of relationship for those married or with civil partners could include:

- copy / photocopy of a valid marriage certificate recognised under the laws of England and Wales, Scotland or Northern Ireland or civil partnership certificate

- marriages and civil partnerships from outside the UK must be evidenced by a reasonable equivalent to the evidence detailed above, valid under the law in force in the relevant country
- proof of their own [identity](#)

## Married / unmarried / civil partners: proof of cohabitation

Bills or correspondence from a recognised company or organisation need to be submitted as evidence of cohabitation. They must show dates spread out over a period of 2 years and must reflect the same address. The bills can either be in joint or in separate names. Photocopies are acceptable.

This is not an exhaustive list and you must consider other forms of evidence which the claimant may have provided:

- household utility bill (for example, gas, electric, water or fixed line telephone) in joint names or if separate bills in sole names they must show the same address
- bank, building society or credit card statement in joint names or if separate bills in sole names they must show the same address
- local authority tax bill (for example, council tax) in joint names
- local authority rent book in joint names
- proof of their own [identity](#)

## Children / parents / siblings: proof of relationship

Proof of relationship could include, but is not limited to:

- copy or photocopy of birth / adoption / marriage / death certificate
- proof of their own [identity](#)

You must carry out a verification check if you have reasonable doubts about the authenticity of any document

### Related content

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# People who are not eligible

This page tells you who is not eligible under the Windrush Compensation Scheme:

- those who are in the UK and do not have lawful status
- persons who do not meet one of the specific eligibility criteria even if they have evidence to show that they were impacted by measures designed to control access to work, benefits and services, were detained or removed

Overseas claimants do not need to have lawful status in the UK but do need to provide evidence.

## People who lost settled status in the UK after 2 years overseas

Where individuals left the UK for more than 2 years, their settled status (ILR) would have lapsed. This means that they lost the right to live in the UK and would have needed to make a new application for leave in order to return.

You should not award compensation for impacts or losses experienced because a person no longer held lawful status in the UK.

In certain circumstances, an individual may have experienced impacts because they could not demonstrate lawful status which they held previously, but which subsequently lapsed. For example, an application for entry clearance as returning resident may have been refused solely because an individual could not demonstrate they held lawful status when they departed the UK. In situations such as these, compensation may be appropriate even though lawful status was not held at the point the impact or loss was experienced.

Certain individuals may be exceptionally considered for compensation on the basis of a claim made prior to 24 January 2022. This includes all claims linked to a claim made prior to this date (see [When to consider claims out of date order](#) for the meaning of linked claims)

This '2-year rule' has always applied to Commonwealth citizens. However, some historic Home Office guidance previously stated in error that Commonwealth citizens would have retained settled status even if they remained overseas for more than 2 years, provided they returned to the UK prior to August 1990

As a result of this error, a small number of individuals may have been incorrectly recognised as retaining settled status and may have been granted a 'No Time Limit' (NTL) document even though they were not eligible for one.

It is possible that individuals who were issued an NTL document in error may apply to the Windrush Compensation Scheme. Where you encounter an individual meeting the following characteristics, you should refer them to a Windrush (documentation)

Scheme senior manager in order for them to consider whether they are eligible for a product under that Scheme.

This issue may affect some cases meeting the following criteria:

- a Commonwealth citizen who was settled in the UK on or before 1 January 1973 and was subsequently absent from the UK for two or more years at some point after 1 January 1973, before returning to the UK by 1 August 1990.
- the child or grandchild of an individual that meets the above descriptions.

## Entitlement

Once you have established identity and eligibility you must determine [entitlement](#).

Where primary claimants meet the eligibility criteria, you should only consider awarding compensation under each category of claim for impacts or losses suffered in connection with being unable to demonstrate their lawful status in the UK at the time. They should not be compensated for losses or impacts that occurred during periods of unlawful residence in the UK.

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# Entitlement: mitigation of loss

This page explains the grounds on which you can decide to reduce or decline an award where you consider that a claimant has consciously failed to take steps to mitigate their loss or has taken conscious steps that have resulted in an increased or exacerbated loss.

You may decline or reduce an award if you consider that:

- the primary claimant or the deceased (in the case of an estate) has failed to take reasonable steps to resolve their lawful status
- the primary claimant, deceased or close family member has otherwise failed to take reasonable steps to mitigate losses or impacts
- the primary claimant, deceased or close family member has taken unreasonable steps that have resulted in increased losses
- there has been wilful default or lack of co-operation on the part of a primary claimant or deceased when attempting to resolve their lawful status

The grounds for declining to make or reducing an award are intended to relate to:

- actions taken or not taken by claimants that differ from what we might reasonably expect claimants to have done or not done
- where these have had an impact on the outcomes experienced by claimants

You should take all the available facts and actions taken by the claimant into account and apply these grounds only where there is clear evidence of:

- a failure on the part of the claimant
- a deliberate act or acts by the claimant
- knowledge on the part of the claimant that they were unable to demonstrate their immigration status and that this could have harmful impacts on them
- it being reasonable to expect that the claimant knew their failure or deliberate acts were unreasonable
- there are no extenuating or personal circumstances which might explain or excuse what are otherwise reasonable or unreasonable steps
- the claimant's culpability in either failing to act or in acting in such a way as to have harmful consequences

## Steps taken to resolve lawful status

All eligible claimants who have experienced difficulties on account of being unable to demonstrate their immigration status should ordinarily have been expected to have taken reasonable steps to regularise their status. These steps may have been taken before or after they experienced difficulties and may include a variety of actions. In some instances, claimants may have contacted the Home Office, in other instances they may have sought advice from elsewhere or taken other action.

Reasonable in this context will usually mean things that in the majority of cases an average person would expect to see being done by another average person in possession of average knowledge of how to go about solving problems and dealing with public authorities, service providers and other institutions. **But each case must be considered on its own facts.**

You should note that the scheme rules only refer to claimants taking reasonable steps to resolve their status. In cases where you consider that the claimant has not provided clear evidence of mitigating action, you will need to decide whether it was reasonable for them to have not taken any action.

What is reasonable may depend on the consequential experiences of the claimant:

- you may accept as reasonable a failure to do anything if a claimant suffered only minor inconvenience as a result of being unable to demonstrate their immigration status
- a failure to attempt to mitigate these consequences is unlikely to be appropriate where a claimant suffered more serious consequences, such as the loss of access to employment, benefits or housing

Where the claimant claims to have contacted the Home Office to regularise their status the claimant may evidence this in a number of ways, for example:

- a letter from the Home Office in response to an enquiry about their lawful status
- confirmation from the department's records that such contact was made
- a letter from the Home Office in response to an application for status

In many cases, you should be able to verify this claimed contact with the department from the Home Office's internal records such as the Case Information Database (CID). In some cases, however, such records may not be available, possibly due to passage of time or because the nature of the enquiry was not sufficient to merit formal recording.

You should consider the following factors:

- whether the claimant says that they took mitigating action
- what action they took - a contact from a claimant's representative will count as contact from the claimant
- who they contacted - you should expect claimants to have raised an enquiry direct with the Home Office, either in writing (including email), in person or over the telephone
- you may also accept a claimant saying that they asked a friend to make enquiries on their behalf if the claim seems plausible and supported by relevant evidence

Other claimants may not have contacted the Home Office to resolve their status but may have taken other steps to do so. You should therefore consider evidence of correspondence from the claimant to other parties such as an MP or legal representative asking that they make enquiries on the claimant's behalf with the Home Office.

You should ensure there is sufficient evidence to conclude that it is more likely than not that the claimant did engage in reasonable steps to resolve their status.

If you conclude the claimant did not engage in reasonable steps to resolve their status you may consider whether there is sufficient justification to decline or reduce an award.

You should then consider whether the claimant can demonstrate a compelling reason to fear contacting the department - for instance, if a claimant can show that their actions were strongly influenced by direct knowledge of a family member who had contacted the Home Office and then been detained or removed from the UK this might constitute sufficient justification.

You will need to evaluate cases on an individual basis and may need to obtain further information from the claimant.

## Steps taken to mitigate losses or impacts

As with steps taken to resolve lawful status, what is reasonable under this ground for declining or reducing an award may differ depending on the outcome experienced by the claimant. A claimant who suffered major impacts may have been expected to have taken steps to reduce these impacts whereas someone experiencing only minor measures may not have been expected to do too much about it.

Mitigation in the context of this ground means doing something different to contacting the Home Office.

## Steps that resulted in increased losses

This relates to the claimant having done something which has resulted in the claimant's losses being greater than they otherwise would have been. It is the actions of the claimant which are most important here. You should ask yourself whether the claimant's actions were unreasonable using the test for reasonableness identified above (such as, what would an average person consider it acceptable to do under these circumstances).

You should also take into account the claimant's circumstances at the time of their actions. Were they acting in full knowledge of both their actions and the likely result of those actions? It is not sufficient for there to have been a potential loss as a result of those actions. The claimant must be considered to have good grounds to believe that increased losses would result.

## Wilful default or lack of co-operation

You should consider whether to decline or to reduce an award where a claimant has deliberately and in full knowledge either:

- misled enquiries
- failed to respond to enquiries

- provided false information when attempting to resolve their immigration status

You should consider whether the claimant's actions do represent a default or lack of co-operation and do not represent a mistake or error or misunderstanding of what was wanted. You should also consider if the claimant's actions were deliberate and not the result of an oversight, forgetfulness or other reasonable error.

There must be evidence of an intent on the part of the claimant to either delay or to avoid the immigration process. You will also need to consider whether it was reasonable or not for them to have done this.

## Whether to decline or to reduce an award

If you decide that a claimant meets one of the grounds outlined above, then you may consider whether to decline or to reduce an award.

The default position will be to reduce an award rather than decline one. This is because although the claimant's actions may have resulted in a failure to mitigate against losses or to increase losses they nevertheless did experience those losses.

You must consider each case on its own facts.

For example, you should consider if any delay in seeking evidence of status contributed to a quantifiable increase in loss such as an increase to private health care costs. If so, you should consider reimbursement of fees up until the date on which it would have been reasonable to consider that status should have been regularised; where the delay represents additional months of homelessness that payment might be reduced pro rata using the monthly rate for a homelessness award.

Sometimes it may be appropriate to take a holistic view of a claimant's actions or failure to act and apply a percentage reduction which seeks to reflect the extent to which the losses have been exacerbated by those actions or that failure to act. It will be necessary to make a judgment based on all the circumstances of the claim.

If you consider that a claimant's actions are such that without those actions they would have suffered no losses or only very minor losses, then you should decline an award.

Decisions to reduce an award or to decline an award must be referred to a senior officer at civil service grade 7 or higher who must approve the decision.

### Related content

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# Entitlement: categories of claim

This page explains what categories of compensation a claimant may be entitled to claim:

- [Fees](#)
- [Detention, removal and deportation](#)
- [Loss of access to employment](#)
- [Loss of access to benefits](#)
- [Inability to access services: housing, health, education, driving licences and banking](#)
- [Homelessness](#)
- [Impact on life](#)
- [Discretionary payments](#)
- [Living costs](#)
- [Non-financial remedies](#)

## Related content

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# Approaching a claim

This section tells you the principles you should apply when considering a claim for compensation. It tells you about the standard of proof claimants must meet, and how to approach information and evidence gathering.

Remember that many of those affected have been in the UK for a long time and have suffered losses due to difficulties in demonstrating their lawful status. It is therefore important you treat these cases in a careful and sensitive manner.

## Minimum amount of information required

There is a minimum amount of information and evidence that we need to register and progress a claim.

This information must be provided in the claim form as specified by the Home Office. This means the claimant must:

- fill in personal details in section 2 of the claim form
- make a claim for compensation in one or more categories
- fill in section 4: Compensation
- fill in the declaration page and ensure the claim form is signed
- provide information about the person linking them to the Scheme if applying as a close family member
- provide, in a format acceptable to the Home Office, evidence to confirm their identity and address

When a claim is received without the minimum information required, you should write out to those claimants. You should outline what information is required and what help we can provide through our claims assistance provider to obtain the information or evidence required.

You should attempt on at least two occasions to contact any claimant who submits a claim without the minimum information required.

You should ensure that all claimants feel supported to obtain the information or documentation required to assess their claim.

If, following this, you have been unable to obtain the minimum information required, you should write to the claimant setting out the reasons why we are unable to progress their claims and that we will continue to progress claims where the minimum information required is subsequently provided.

## Standard of proof

We want claimants to receive the maximum compensation to which they are entitled under the scheme. However, providing detailed documentary evidence to support every aspect of a claim for compensation can be challenging for claimants.

The scheme operates on the balance of probabilities. This means you can award compensation if you are satisfied it is more likely than not that what has been claimed for occurred, that is, you are more than 50% sure.

This means you **should not expect customers to provide detailed documentary evidence to support every aspect of their claim, or every criterion within a particular category.**

The suggested documents set out in the next sections of this document are not exhaustive or prescriptive. You should take a holistic view of the claim and use all the information and evidence you have available to you.

This will include:

- direct documentary evidence – this information is factual and corroborates what a claimant has told us - it may be from Home Office records or official correspondence, for example from employers or a local authority
- circumstantial information – this won't categorically prove something but may indirectly support what a claimant has said - it may include statements from a claimant and / or others, or it might be documentation that proves aspects of a claim but not all, for example records from HM Revenue and Customs (HMRC) which might tell you that an individual stopped being employed but doesn't tell you why

If, drawing upon both, and your overall understanding of a claim, you are satisfied that it is more likely than not that what the customer has claimed for has occurred, then you should make an award.

## Information and evidence gathering

Before contacting a claimant for further information and / or to verify information, you should:

- ensure you have thoroughly reviewed Home Office records to ensure that the information you are seeking has not already been provided, or is not already held by us
- ensure that, where relevant, other government departments have been contacted to verify and / or gather customer information, such as Driver and Vehicle Licensing Agency for a driving licence, Department for Work and Pensions for details about benefit claims, HMRC for tax details or local authorities for housing and council tax matters
- consider whether information could be obtained more quickly and easily through third parties for example GPs, previous employers, and recruitment agencies
- ensure you are satisfied that the additional information is definitely needed – ask yourself whether you could already conclude a claim using the balance of probabilities

If, following this, you think you do need to ask a claimant for more information or evidence you should:

- check whether the claimant has already been asked for this information previously
- think about exactly what you need and the questions you plan to ask
- ensure you clearly explain to the claimant what you are asking for and why this may help with their claim

Claimants should not be asked multiple times for information or evidence they say they do not have. If a claimant is unable to provide or produce something, you should consider whether you can proceed without that information or evidence.

You should contact claimants using their preferred contact method, as well as the preferred day / time that they would like to be contacted.

If you have fully considered a claim and it is clear that no compensation can be paid, even with further information, do not keep trying to gather more information. For example, if you have established that an individual did not have lawful status during the period they are claiming for, or an individual did have lawful status but had documentary evidence to prove this.

## Claim suspension

Where an eligible claimant has not responded to the Home Office about their claim, and / or has not provided information which is necessary to progress their claim, you should consider whether it is appropriate to suspend the claim.

Before suspending a claim, you should ensure that at least six months has passed since you made the first written request to the claimant.

You should make efforts to contact the claimant in line with the 'Requesting more information and evidence' section of the guidance.

Where possible, a full and final decision should always be made. An eligible claim should only be suspended if it is not possible to conclude the claim, and not because a claimant has been unable to provide information which would be helpful or would support the consideration of a claim.

Prior to suspending the claim, you should notify the claimant, where possible, in writing that they have two months to respond and provide information, or the claim will be suspended.

If you have not received a response within two months of the letter, the claim will be suspended. You should issue a notice of claim suspension to the claimant.

Should the claimant subsequently contact the Home Office and provide the information necessary to progress the claim after the claim has been suspended, the claim will be reopened at the same stage it was at when the claim was suspended.



## When to consider claims out of date order

Where claims move into caseworking (following registration, initial evidence gathering, and an initial assessment within 6 weeks of eligibility being confirmed) consideration of claims should begin in the order in which they were received by the department. Close family member claims and associated primary / estates claims will be linked where possible and caseworked together with whichever claim was received first.

Where a claimant refers to hardship or vulnerabilities, this will not generally be a reason to begin the consideration of their claim out of order. In these instances, you should assess whether a referral to the Vulnerable Persons team or an Urgent and Exceptional Payment may be appropriate.

Exceptionally, it may be appropriate to begin the consideration of a claim out of date order. This may include where an individual has a critical or life shortening illness that means there is a substantial risk they will not receive the outcome of their claim if it is considered in date order.

If you think you should begin the consideration of a claim out of date order you should, in the first instance, consult your team leader / Technical Specialist. Requests to consider claims out of date order will be looked at on a case by case basis.

### **Related content**

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# Fees

This page tells you how to determine what fees are eligible for an award.

## Fees: successful applications

Fees for immigration applications that were successful (that gave the claimant what they applied for) are **not** awarded under this scheme. However, where a successful application was made subsequent to an unsuccessful application of the type identified below then consideration may be given to reimbursing that fee where the initial application was incorrectly refused (see guidance on [Unsuccessful applications: types](#)).

Where an application gave the claimant something other than what they applied for (such as where the application resulted in a grant of leave, but not what the claimant applied for and was actually entitled to) and where that grant did not resolve the claimant's long-term lawful status, that application should be interpreted as an unsuccessful application for the purposes of the Windrush Compensation Scheme. Reimbursement of the fee for such an application should be considered in accordance with the guidance on [unsuccessful applications](#).

## Fees: unsuccessful applications

The Windrush Compensation Scheme will make an award in full for the Home Office fees for unsuccessful immigration applications.

Immigration applications became chargeable from 1 August 2003.

There is no inflationary uplift to any historic Home Office fees that are recoverable. The fee that was paid at the time will be the fee that is repaid under the scheme.

## Biometric enrolment fees: unsuccessful applications

The Windrush Compensation Scheme will make an award in full for the biometric enrolment fees for unsuccessful immigration applications.

Biometric enrolment for no time limit and indefinite leave to remain applications became compulsory for all applications submitted from 29 February 2012 onwards and from March 2015 for indefinite leave to enter and returning resident visa applications. The biometric enrolment fee is included in the Home Office fee for applications submitted outside the UK.

See: [Biometric residence permits \(BRPs\)](#) on GOV.UK for more information about biometrics.

## Unsuccessful applications: types

An immigration application must be for:

- British citizenship
- Confirmation of British nationality status
- certificate of entitlement to a right of abode
- indefinite leave to enter
- indefinite leave to remain
- no time limit
- returning resident visa application

This includes multiple applications and where a close family member paid the fee or where the primary claimant has subsequently died.

Where it is decided to make a payment in respect of one of the above applications, you may also make a payment in respect of any other immigration application fee (and any associated health charge paid under section 38 of the [Immigration Act 2014](#)) in claims where:

- the application that the fee or charge relates to was made after the refusal of an application under one of the 7 [types of application](#)
- the decision to refuse was incorrect
- the subsequent application was made in order to resolve the claimant's immigration status and not for any other reason
- you are satisfied that the subsequent application was a reasonable response on the part of the claimant to the refusal of an application under one of the 7 types of application listed above
- the subsequent application did not resolve the claimant's immigration status
- the fee or charge for that subsequent application has not been reimbursed

The following can make a claim:

- a primary claimant in respect of a fee paid by the primary claimant for an application relating to that claimant
- a close family member of a primary claimant if that close family member paid the fee on behalf of the primary claimant
- an estate, where the deceased primary claimant paid a fee before death and the estate wants to make a claim for an award to the estate

## Award: requirements

You should make an award if the claimant can demonstrate the following:

- the purpose of the application was to resolve their lawful status
- the person in respect of whom the application was made did, in fact, have lawful status when the application was made
- the immigration application was unsuccessful solely because the claimant could not provide sufficient evidence of lawful status

You should check Home Office records such as Case Information Database (CID) to confirm:

- the amount of the application fee and that it was paid
- to ensure that the application fee has not previously been reimbursed
- the reasons for the refusal of the application as an application may have been refused for other reasons such as not being made to a reasonable standard, inappropriate for the individual circumstances or misconceived

Where Home Office records are unable to confirm this, you should contact the primary claimant, close family member or the estate representative for their written confirmation that the fee has not been reimbursed.

Biometric enrolment fees for in-country applications amount to £19.20 and are payable directly to the Post Office by the claimant. You should check the CID to confirm that the claimant submitted their biometrics.

## Legal costs: unsuccessful applications

Where you have made a fees award for an unsuccessful immigration application or where you have made a fees award for a successful immigration application of the type identified in the [Unsuccessful applications: types](#) section, you can consider an application for a contribution towards the legal costs incurred in association with this application.

Claims are limited to one payment for each immigration application that is subject to a fees award.

You should refund the actual amount paid or £500, whichever is the lesser. Where the legal services were rendered on or after 30 April 2001, you must check that the person to whom the costs were paid was a 'qualified person' within the meaning of [section 84 of the Immigration and Asylum Act 1999](#).

Where the legal services were rendered before 30 April 2001, you must check that the representative is approved to provide immigration advice with either:

- [the Office of the Immigration Services Commissioner \(OISC\)](#)
- one of the following designated authorities:
  - the [Law Society](#)
  - the [Law Society of Scotland](#)
  - the [Law Society of Northern Ireland](#)

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### Official – sensitive: start of section

The information in this section has been removed as it is restricted for internal Home Office use.

Claims for legal costs incurred in connection with being unable to demonstrate lawful status in the UK that are not in respect of immigration applications may be considered under the discretionary category.

## **Primary claimant, close family member or estate representative: evidence required**

Claimants may provide evidence that includes, but is not limited to:

- correspondence from the Home Office relating to the immigration application in respect of the claim being made
- paid invoice or receipt from a legal representative which must be on an official letterhead
- bank or credit card statement - electronic copies are acceptable provided that the statement bears an official stamp of the bank in question

The invoice must be sufficiently detailed to demonstrate what the legal costs relate to. If this is not the case, you must seek further information or evidence from the claimant (or the estate representative).

## **Close family member / deceased estates: additional evidence**

Written confirmation from the primary claimant (or the estate representative of that claimant if they are deceased) should state the following:

- the [close family member](#) paid the legal costs on behalf of the primary claimant
- the primary claimant or the estate representative agree to the close family member being reimbursed for these legal costs
- an undertaking from the primary claimant or the estate representative that they will not make any additional claims in respect of those legal costs for that application

## **Deceased estates: additional evidence**

Copy / photocopy of death certificate.

## **Verification checks**

You must carry out a [verification check](#) if you have reasonable doubts that a document is not genuine.

### **Related content**

[Contents](#)

# Detention, removal and deportation

This page tells you how to determine claims for compensation for detention, removal, deportation or returns.

A claimant who has been detained, deported, removed or returned may claim for a payment under the scheme (or their estate may claim if the deceased was detained, deported or removed before death).

The claimant must have been detained, deported, removed or returned under the provisions of one or more of the following acts:

- [The Immigration Act 1971](#)
- [The Immigration and Asylum Act 1999](#)
- [The Nationality, Immigration and Asylum Act 2002](#)
- [The UK Borders Act 2007](#)

A material reason for the claimant's detention, deportation, removal or return must have been their inability to provide sufficient evidence to establish their lawful status. There may be cases where other factors have played a part in the detention, removal or deportation. If so, you should satisfy yourself that the inability to establish lawful status was a material reason and, alone, would very likely have resulted in the same action, even in the absence of other factors.

If in doubt, consult your team leader.

## Detention

You must conduct the following checks:

- whether the claimant was detained under the relevant [legislation](#)
- confirm from the claimant's Home Office immigration records whether they were detained in:
  - a removal centre
  - short-term holding facility
  - prison or part of a prison
- release from detention was prevented or not permitted by the relevant detaining authority
- the dates on which the claimant's detention began and ended
- a material reason for detention was the claimant's inability to demonstrate their lawful status, and that otherwise the claimant would not have been detained, noting:
  - where a claimant was detained pending deportation as a result of their criminal behaviour (automatic, court recommended, conducive deportation), they will generally only be eligible for compensation if they were also exempt from deportation at the time (under section 7 of the Immigration Act 1971 or

- because they were a British citizen), or had the Right of Abode under section 2(1)(b) of the Immigration Act 1971, but were unable to prove this
- where a claimant was detained pending deportation as an immigration offender (pre-2000) because they could not prove their lawful status, they will generally be eligible for compensation regardless of whether they were exempt from deportation at the time
  - the length of time the claimant was detained; no payment will be made for a period of detention lasting 30 minutes or less
  - look for mitigating action by checking the claimant's immigration history on Home Office systems, for example GCID to determine whether the claimant's non-compliance such as failure to report, failure to reply to correspondence or refusing to provide readily available documentary evidence contributed towards their detention

Section 7 exemption:

- Section 7 of the Immigration Act 1971 provides that a Commonwealth or Irish citizen who was such a citizen and ordinarily resident in the UK at the coming into force of the Immigration Act 1971 on 1 January 1973, and ordinarily resident in the UK for at least five years before the decision to make a deportation order, shall not be liable to deportation
- Sections 7(3) and (4) set out how the period of five years should be counted and excludes any time spent serving custodial sentences of six months or more
- guidance on assessing ordinary residence is available
- Section 7(2) provides that for the purposes of section 7, a person who has become ordinarily resident will not be treated as ceasing to be so because they remained in the UK in breach of immigration laws

You must also be satisfied of the following:

- that no wilful act, such as giving false information, or wilful lack of co-operation, on the part of the claimant substantially contributed to the decision to detain the claimant. Such instances where they have occurred will be recorded on the Home Office case notes
- a refusal to co-operate or to give false information must be deliberate and the claimant must have been in full knowledge of what they were doing.
- the claimant must have been acting in such a way as to frustrate or thwart immigration enforcement
- a general reluctance or displeasure is not sufficient to warrant refusal of a claim

A claimant who, immediately prior to being detained under one of the acts listed in C1(a) of the scheme rules, was in prison or was lawfully in custody for non-immigration reasons, may be eligible for compensation but you must reduce any payment by 20% for the first 24 hours of that detention.

The amount of compensation which is payable to the primary claimant will depend on the length of their detention and is set out in the [detention: tariff table](#).

## Detention: tariff table

Detention	Amount of award	Detention
After the first 30 minutes of detention, hourly award for the next 3 hours of detention  (No award for detention lasting 30 minutes or less)	£500 per hour	Part hours to be rounded up to the nearest hour
Hourly award for the subsequent 6 hours of detention	£300 per hour	Part hours to be rounded up to the nearest hour
Hourly award for the balance of the first 24 hours of detention	£100 per hour	Part hours to be rounded up to the nearest hour
For each full day of continuous detention following the first full 24 hours	<ul style="list-style-type: none"> <li>• £500 per 24-hour period for the first 30 days</li> <li>• £300 per 24-hour period for the subsequent 60 days</li> <li>• £100 per 24-hour period for any period of detention thereafter</li> </ul>	Part days to be rounded up to the nearest day

### Related content

[Contents](#)



# Deportation and removal

You must conduct the following checks:

- whether the claimant was deported and removed under the relevant [legislation](#)
- that the main reason for deportation or removal was the claimant's inability to demonstrate their lawful status, and that otherwise the claimant would not have been deported or removed, noting:
  - where a claimant was deported as a result of their criminal behaviour (automatic, court recommended, conducive deportation), they will generally only be eligible for compensation if they were also exempt from deportation at the time (under section 7 of the Immigration Act 1971 or because they were a British citizen), or had the Right of Abode under section 2(1)(b) of the Immigration Act 1971, but were unable to prove this
  - where a claimant was deported as an immigration offender (pre-2000) because they could not prove their lawful status, they will generally be eligible for compensation regardless of whether they were exempt from deportation at the time
- whether the claimant's non-compliance such as failure to report, failure to reply to correspondence or refusing to provide readily available documentary evidence contributed towards their deportation or removal - you should find this information on CID

Section 7 exemption:

- Section 7 of the Immigration Act 1971 provides that a Commonwealth or Irish citizen who was such a citizen and ordinarily resident in the UK at the coming into force of the Immigration Act 1971 on 1 January 1973, and ordinarily resident in the UK for at least five years before the decision to make a deportation order, shall not be liable to deportation
- Sections 7(3) and (4) set out how the period of five years should be counted and excludes any time spent serving custodial sentences of six months or more
- guidance on assessing ordinary residence is available
- Section 7(2) provides that for the purposes of section 7, a person who has become ordinarily resident will not be treated as ceasing to be so because they remained in the UK in breach of immigration laws

You must also be satisfied of the following:

- that no wilful default, such as giving false information, or wilful lack of co-operation, on the part of the claimant substantially contributed to the decision to deport and remove the claimant - such instances where they have occurred will be recorded on the Home Office case notes
- a refusal to co-operate or to give false information must be deliberate and the claimant must have been in full knowledge of what they were doing
- the claimant must have been acting in such a way as to frustrate or stop immigration enforcement

- a general reluctance or displeasure is not sufficient to warrant refusal of a claim

In cases where a claimant returned voluntarily, you must check that the reasons for that return were problems associated with that claimant's inability to demonstrate their immigration status. The claimant might demonstrate they were unable to access employment or benefits, that they lost access to other services such as housing or that the impact on their daily life was such that a voluntary return was a reasonable and rational response to the claimant's circumstances.

You should be satisfied on the balance of probabilities that the claimant was experiencing difficulties in living a normal life in the UK on account of problems with their immigration status. Information and evidence supplied by the claimant in relation to other categories of claim should be considered as to whether this sufficiently shows the claimant was not able to lead a normal life.

The amount of compensation which is payable to the primary claimant will depend on whether they were deported or removed and if the latter, then the type of removal set out in the [deportation and removal: tariff table](#).

## Deportation and removal: tariff table

Type of deportation or removal	Amount of award
Deportation	£10,000
Administrative removal with reporting requirements	£7,500
Administrative removal with detention	£6,000
Administrative removal without detention or reporting requirements	£5,000
Any other removal or return where the reason for the removal or return related to difficulties associated with an inability to establish lawful status	£1,000

## Inability to return to the UK

There is no claim under the scheme for any losses incurred as result of a claimant's inability to return to the UK. Impacts experienced because of this inability may attract an award under other parts of the scheme such as [impact on life](#).

## Verification checks

You must check the claim against available Home Office records such as CID to verify that the claimant was detained, for how long and whether they were deported or removed.

## Balance of probabilities

Remember, the scheme operates on the balance of probabilities. This means you can award compensation if you are satisfied it is more likely than not that what has been claimed for occurred, that is, you are more than 50% sure.

This means you should not expect customers to provide documentary evidence to support every aspect of their claim, or every criterion within a particular category.

You should take a holistic view of the claim and ensure that you have checked Home Office records and use all the information and evidence available to you, including circumstantial information.

### Related content

[Contents](#)

# Loss of access to employment

This page tells you how to determine claims for compensation for loss of access to employment due to a claimant's difficulty in establishing their lawful status.

Between January 1997 and February 2008, section 8 of the [Asylum and Immigration Act 1996](#) applied to right to work checks conducted during this period. The law does not require employers to carry out retrospective checks on persons who lawfully began employment before 29 February 2008.

Claimants who lost access to employment will include those who may have been dismissed because of difficulties demonstrating their lawful status, and those who had job offers withdrawn or were unable to progress job applications due to difficulties in demonstrating their lawful status.

Claimants who lost access to employment for reasons unconnected with their lawful status (for instance, whose employment was ended due to unsatisfactory performance, business closures or planned redundancies) will **not** be entitled for loss of access to employment compensation.

Claimants may also state that not being able to work led to other difficulties for them and may wish to claim compensation for these difficulties. You should consider such claims under other categories such as [impact on life](#) or [housing](#).

## Key terms

**Period of loss** means the period of time in months that the claimant or the deceased will be compensated for.

**Employment** means paid work in the UK as an employed or self-employed person for tax purposes.

**Regular employment** does not necessarily mean that a claimant needs to have been in permanent full-time employment. Claimants may have been in part-time employment or may have had periods of employment interspersed with periods out of employment.

**Commenced employment** means employment gained since the start of the period of loss for this category.

Where there are gaps in employment, you should consider whether there is a pattern of employment of short or long periods. This pattern need not be consistent, but it should be coherent. For example, a claimant who worked irregularly for short periods such as only one or 2 days a month but not on a consistent monthly basis may not be demonstrating regular employment.

Examples of regular employment include:

- a full-time permanent position with an employer
- a part-time permanent position with an employer
- work as a self-employed person
- a temporary position with an employer
- several short periods of contract work

## Types of awards

An award for loss of access to employment will be either:

- based on the claimant's [actual earnings](#)
- a [general award](#)

## Actual earnings award

### Requirements

You can make an actual award for loss of access to employment if you are satisfied on the balance of probabilities the following conditions are met:

- the primary claimant or deceased:
  - was in employment which was terminated and can demonstrate what their earnings had been
  - was not in employment but had accepted an offer of employment which was rescinded and can demonstrate what their earnings would have been
  - was unable to access employment but had been in regular employment in the two years prior to the date they were first unable to access employment and can demonstrate their earnings over that period
  - was required to defer the progression of a job application for a job which they were subsequently able to secure and can demonstrate their earnings in that employment
- the reason for the termination of employment, rescinding of job offer, or for the primary claimant or the deceased's inability to access employment or progress a job application was the inability of the primary claimant or the deceased to demonstrate their lawful status in the UK

### Evidence

You should assess a claim on the balance of probabilities. This means you should consider whether it is more likely than not that someone lost their job, had a job offer withdrawn, or could not access employment or progress job applications due to difficulties evidencing their status.

If a claimant is unable to supply sufficient evidence, you should refuse the claim for compensation for loss of access to employment.

If a claimant is unable to supply sufficient evidence of their earnings, you should consider making a general award.

## **Official - sensitive: start of section**

The information in this section has been removed as it is restricted for internal Home Office use.

## **Official - sensitive: end of section**

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Throughout this section, where an individual states that they were self-employed you should see evidence that the business was trading. Relevant evidence will include but is not limited to:

- business advertisement or promotion
- tax returns
- business bank statements
- evidence of a business account showing income earned and income tax paid
- self-employment National Insurance registration from HM Revenue and Customs (HMRC)

Where the claimant was in employment, they may be able to provide documentary evidence of this and their earnings. Relevant evidence could include, but is not limited to:

- pay slips
- evidence from HMRC
- bank statements that demonstrate income from the employer
- an employment contract which states the salary
- correspondence from the employer confirming employment of the claimant and their salary

Claimants may also provide documentary evidence to show that their employment was terminated due to difficulties demonstrating their lawful status. This could include, but is not limited to, official correspondence from the employer which may state that the reason the claimant's employment was terminated was their inability to show their lawful status.

Where the claimant was not in employment but had accepted an offer of employment, the claimant may provide documentary evidence of this, and / or what their earnings would have been. This could include, but is not limited to:

- correspondence from the employer which makes a clear offer of employment, or gives a start date, and states the salary offered
- a valid contract of employment which states the salary offered

Claimants may also provide documentary confirmation that they had accepted the offer of employment. Usually this will take the form of correspondence from the claimant which confirms this, or a contract of employment signed by the claimant.

You might also see documentary evidence that shows their offer of employment was rescinded due to difficulties demonstrating their lawful status. This could include, but is not limited to, correspondence from the employer which clearly states the reason for rescinding the offer of employment was the claimant's inability to show lawful status.

Where the claimant was unable to access employment but had been in regular employment in the two years prior to being unable to access employment, you might see documentary evidence of this regular employment and their earnings over this period. This could include, but is not limited to:

- pay slips
- evidence from HMRC
- bank statements which evidence regular income from employment
- employment contracts which state the salary
- correspondence from employers confirming employment of the claimant and their salary

You might also see documentary evidence that shows they were unable to access employment and that this was due to difficulties evidencing their status. Relevant evidence could include, but is not limited to:

- correspondence from a prospective employer requesting proof of status to enable a job application to be progressed
- correspondence from a prospective employer discontinuing the claimant's job application solely because of the claimant's inability to show lawful status
- a letter or notice from the Home Office stating the claimant no longer has a right to work or forbidding employment, for example, a notice of Immigration Bail

Where the claimant was required to defer the progression of a job application for a job which they were subsequently able to secure, claimants may provide documentary evidence of this, and their earnings in that employment.

Relevant evidence demonstrating that they were unable to progress job applications due to status issues could include, but is not limited to:

- correspondence from a prospective employer requesting proof of status to enable a job application to be progressed
- correspondence from a prospective employer discontinuing the claimant's job application solely because of the claimant's inability to show lawful status

Relevant evidence demonstrating that they secured employment in a role they had previously had to defer the application for, and their earnings, could include, but is not limited to:

- pay slips from that employer
- evidence from HMRC
- bank statements which evidence regular income from that employer
- an employment contract which states the salary

- correspondence from that employer confirming employment of the claimant and their salary

## General award

### Requirements

You can make a general award for loss of access to employment if you are satisfied on the balance of probabilities the following conditions are met:

- the primary claimant or deceased:
  - was in employment which was terminated but is unable to demonstrate what their earnings had been
  - was not in employment and had accepted an offer of employment which was rescinded but is unable to demonstrate what their earnings would have been
  - was unable to access employment but had been in regular employment in the two years prior to the date they were first unable to access employment but is unable to provide evidence of their earnings over that period
  - had not been in regular employment in the previous two years but can demonstrate they were actively seeking employment and were unable to progress job applications
- the reason for the termination of employment, rescinding of job offer, or for the primary claimant or the deceased's inability to access employment or progress a job application was the inability of the primary claimant or the deceased to demonstrate their lawful status in the United Kingdom

### Evidence

You should assess a claim on the balance of probabilities. This means you should consider whether it is more likely than not that someone lost their job, had a job offer withdrawn, or could not access employment or progress job applications due to difficulties evidencing their status.

If a claimant is unable to supply sufficient information and evidence, you should refuse the claim for compensation for loss of access to employment.

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#### **Official - sensitive: start of section**

The information in this section has been removed as it is restricted for internal Home Office use.

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#### **Official - sensitive: end of section**

Throughout this section, all correspondence and employment contracts should, where possible, include the following:

- a full valid postal address



- the signature of an identified individual
- telephone and email contacts for that individual

Where the claimant was in employment, they may be able to provide documentary evidence of this. Relevant evidence could include, but is not limited to:

- an employment contract
- correspondence from the employer confirming employment of the claimant

Claimants may also provide documentary evidence to show that their employment was terminated due to difficulties demonstrating their lawful status. This could include, but is not limited to, correspondence from the employer which clearly states that the reason the claimant's employment was terminated was their inability to show their lawful status.

Where the claimant was not in employment and had accepted an offer of employment, the claimant may provide documentary evidence of this. Relevant evidence could include, but is not limited to:

- correspondence from the employer which makes a clear offer of employment, or gives a start date
- a valid contract of employment

Claimants may also provide documentary confirmation that they had accepted the offer of employment. Usually this will take the form of correspondence from the claimant which confirms this, or a contract of employment signed by the claimant.

You might also see documentary evidence that shows their offer of employment was rescinded due to difficulties demonstrating their lawful status. This could include, but is not limited to, correspondence from the employer which clearly states the reason for rescinding the offer of employment was the claimant's inability to show lawful status.

Where the claimant was unable to access employment but had been in regular employment in the two years prior to being unable to access employment, you might see documentary evidence of this regular employment. This could include, but is not limited to:

- employment contracts
- correspondence from employers confirming employment of the claimant

You might also see documentary evidence that they were unable to access employment and that this was due to difficulties evidencing their lawful status. Relevant evidence could include, but is not limited to:

- correspondence from a prospective employer requesting proof of status to enable a job application to be progressed
- correspondence from a prospective employer discontinuing the claimant's job application solely because of the claimant's inability to show lawful status

- a letter or notice from the Home Office stating the claimant no longer has a right to work or forbidding employment for example, a notice of Immigration Bail

Where the claimant had not been in regular employment in the previous two years but was actively seeking employment and was unable to progress job applications due to status issues they could provide documentary evidence of this.

Relevant evidence could include, but is not limited to:

- correspondence from prospective employers requesting proof of status to enable a job application to be progressed
- correspondence from prospective employers discontinuing the claimant's job application solely because of the claimant's inability to show lawful status

You should see evidence that the claimant made more than one attempt to obtain employment.

## Balance of probabilities

Remember, the scheme operates on the balance of probabilities. This means you can award compensation if you are satisfied it is more likely than not that what has been claimed for occurred, such as you are more than 50% sure.

This means you should not expect customers to provide detailed documentary evidence to support every aspect of their claim, or every criterion within a particular category.

You should take a holistic view of the claim and ensure that you use all the information and evidence available to you, including circumstantial information.

## Period of loss

Once you are satisfied on the balance of probabilities that the claimant has met the conditions for a general award, you should then determine the [period of loss](#).

The period of loss begins on the date on which the claimant's or the deceased's employment was terminated, job offer was rescinded or the primary claimant or the deceased could not access employment or progress job applications, because of an inability to demonstrate lawful status.

The period of loss ends on whichever of these comes first:

- three months from the date on which a decision was made by the Home Office confirming the primary claimant or the deceased's lawful status in the UK
- the date on which the primary claimant or the deceased commenced employment with average net monthly earnings equal to or above the value of the monthly amount that will be used to calculate the award
- where the estate of a primary claimant applies for an award under this Annex, the date on which the deceased died

- where a primary claimant is not resident in the UK, the date on which they ceased to be resident in the UK
- where D8 of the scheme rules applies, the date on which the primary claimant or the deceased returned to their previous employment after a period of suspension

If the claimant is not resident in the United Kingdom because of Home Office enforcement action or the threat of Home Office enforcement action, the period of loss ends on whichever of these comes first:

- the date on which the primary claimant commenced employment in the state in which they are resident
- the date on which the primary claimant received confirmation from the Home Office that they are eligible for lawful status in the UK

You should treat part months as full months. This means the last month comprising the period of loss should be rounded up.

## Ending a period of loss based on commenced employment

To determine whether a period of loss should end based on commenced employment, you should calculate the average net earnings from the employment over at least the subsequent 3 months.

If it is unclear whether the monthly earnings from a commenced employment exceed the monthly amount used to calculate the award, it may be appropriate to consider the average monthly earnings over a longer period. This should not normally exceed 12 months.

If average net monthly earnings exceed the monthly amount used to calculate the award within the period, you should end the period of loss on date the person commenced employment.

If average net monthly earnings do not exceed the monthly amount used to calculate the award, you should continue the period of loss until one of the rules which ends the period of loss is met. You should deduct any earnings which occur within the period of loss in line with the [Employment on lower earnings](#) section.

If average net monthly earnings later exceed the value of the award, including where there is further commenced employment or salary increases, you should end the period of loss on the date in which they first exceeded, on average, the monthly amount that will be used to calculate the award.

## Award Calculation

### Actual earnings award: calculation

You should multiply the number of months comprising the period of loss by whichever of these applies as determined by the available information and evidence:

- where the claimant or the deceased was in employment, their monthly net pay immediately prior to the ending of their employment
- where the claimant or the deceased had accepted an offer of employment, the monthly net pay that would have been payable under the terms of the contract of employment
- where the claimant or the deceased was not in employment when their period of loss began, their average monthly net pay based on their taxable earnings in the 2 years preceding
- where the claimant secured employment in a role having obtained evidence of their lawful status, having previously been unable to progress their application for that same employment, the net monthly pay under the terms of that contract of employment

Claimants may be able to evidence net pay, gross pay or both. They may also provide evidence of weekly or monthly pay.

Where individuals can only evidence gross pay, you should calculate their net pay using the [Net payments: calculation section](#).

Where individuals can evidence their net pay and gross pay, you should make a separate calculation of their net pay from their gross pay using the [Net payments: calculation section](#) and make an award based on the highest net pay figure.

To calculate average monthly net pay based on taxable earnings in the 2 years preceding you should add the claimant's total net pay over the 2-year period and divide this total by 24.

Where an individual provides evidence of weekly pay you should multiple the weekly wage by 52 and then divide by 12 to obtain a monthly amount.

If the claimant's net monthly salary is less than £1,147 (this should be adjusted on a pro-rata basis for part time working) you should calculate the award by multiplying the number of months comprising the period of loss by £1,147 (adjusted on a pro-rata basis for part time working). This ensures they don't receive less than they would be entitled to receive under a general award.

When adjusting awards for part time working you should make calculations based on full time being equivalent to 32 hours or the known full time equivalent, whichever is more generous.

## Net payments: calculation

You can calculate the net pay from gross pay by using the examples below.

### Basic tax rate payer 2013-2014:

For a claimant paying basic rate tax in the year 2013 to 2014, you should perform the following calculations:

- annual gross pay (up to) £32,010 minus £9440 (personal tax allowance) multiplied by 0.68 (to account for 20% tax and 12% National Insurance), add back £9440 = annual net pay
- divide by 52 for weekly net salary and then again by the amount of days normally worked each week for the daily net salary (claimant may work less than 5 days a week)

### **Basic tax rate payer 2014-2015:**

For a claimant paying basic rate tax in the year 2014-2015, you should perform the following calculations:

- annual gross pay (up to) £31,865 minus £10,000 (personal tax allowance) multiplied by 0.68 (to account for 20% tax and 12% National Insurance), add back £10,000 = annual net pay
- divide by 52 for weekly net salary and then again by the amount of days normally worked each week for the daily net salary (claimant may work less than 5 days a week)

### **Higher rate 40% band:**

The pay bands for the higher rate 40% tax for 2013 to 2014 and 2014 to 2015 are set out below:

- 2014 to 2015 – £31,866 to £150,000
- 2013 to 2014 - £32,011 to £150,000

### **Higher rate 45%:**

Over £150,000 for 2013 to 14 and 2014 to 2015.

### **Salary for a higher rate tax payer (2013-14 figures used):**

For a claimant paying higher rate tax in the year 2014 to 2015, you should perform the following calculations:

- you should use the basic rate calculation for the first £32,011 and the following for the remaining amounts over £32,011, but below £150,000:
- annual gross pay (over) £32,011 minus £9440 (personal allowance) multiplied by 0.48 (to account for tax and National Insurance), add back £9440 = Annual Net Pay over £35,000 only
  - add the Higher Rate Annual Net Pay (HRANP) amount to the Basic Rate Annual Net Pay (BRANP) amount for the total Annual Net Pay (you will also need to account for a further 2% of National Insurance contributions on all pay above £797 per week or £41,444 per annum)
  - divide by 52 for weekly net salary and then again by the amount of days normally worked each week for the daily net salary (remember that the customer may work less than five days a week)

- the personal tax allowance stated above (£9440) applies to the 2013 – 2014 tax year - this allowance will increase each year. Information about the personal tax allowance can be found at the [HMRC website](#)

All of these examples are based on previous years' tax rates and personal tax allowances. These rates change frequently and so you should use the relevant tax rate and personal tax allowance for each year of loss. See [HMRC website](#) for the tax rates.

## General award: calculation

Once you have determined the period of loss, you should calculate the award by multiplying the number of months by £1,147, adjusted on a pro-rata basis for part-time working.

When adjusting awards for part time working you should make calculations based on full time being equivalent to 32 hours or the known full time equivalent, whichever is more generous.

## Employment on lower earnings

If the claimant obtained employment on lower earnings during the period of loss for this category, you should deduct their net earnings from these commenced employments from the overall award for this category. You should only deduct income from earnings which occurred within the period of loss for this category.

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### Official - sensitive: start of section

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### Official - sensitive: end of section

Where individuals can only evidence gross earnings within the period of loss, you should calculate their net earnings using the method in the [Net payments: calculation section](#).

#### Example:

An individual's period of loss starts on 01 January 2015 with a net monthly award of £1500. The individual commenced employment with average net monthly earnings of £750 per month from 01 February 2015 to 31 May 2015. The individual's status was then resolved by the Home Office on 05 January 2016.

Because the earnings from the commenced employment were below the value of the monthly award the period loss would continue. The period of loss ends 3 months after status was resolved on 05 April 2016.

Period of loss: 01 January 2015 to 05 April 2016 (15 months and 4 days rounded up 16 months)

Maximum value of the award:  $16 \times \text{£}1500 = \text{£} 24,000.00$

Because there were earnings within the period of loss these should be deducted from the total:

Net earnings within the period of loss:  $4 \times \text{£}750.00 = \text{£}3000.00$

Final award:  $\text{£}24,000.00 - \text{£}3000.00 = \text{£}21,000.00$

## National Insurance contributions

Once an employment award has been accepted and paid, you must complete a referral to DWP to establish whether gaps in the claimant's national insurance record require filling to improve their State Pension entitlement.

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### Official - sensitive: start of section

The information in this section has been removed as it is restricted for internal Home Office use.

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### Official - sensitive: end of section

If the claimant's national insurance record needs filling, this will be processed automatically by DWP and HMRC who will notify the claimant of the action they have taken. DWP will also notify the Home Office of the outcome, and you should subsequently notify the claimant.

If the claimant's national insurance record does not need filling DWP will notify the Home Office and you should inform the claimant. If DWP confirm that there are no gaps to fill, you should send a letter to the individual to confirm this.

### Related content

[Contents](#)

# Loss of access to benefits

This page tells you how to refer claims for benefits to other government departments and, where appropriate, how to determine claims for compensation for loss of access to Child Benefit, Child Tax Credit and Working Tax Credit.

State benefits are paid by the Department for Work and Pensions (DWP), HM Revenue and Customs (HMRC) and local authorities. See the [benefits section of GOV.UK](#) for a full list of benefits.

Claimants may be eligible for the following benefits:

- in-work benefits
- out-of-work benefits
- other benefits such as child benefit and child tax credits

DWP and HMRC determine eligibility for benefits such as whether a claimant can have any benefits reinstated or be reimbursed for any lost benefits.

The Windrush Compensation Scheme will not make any payment in relation to DWP administered benefits. Where HMRC does not reimburse claimants for lost benefits the scheme can, where the relevant conditions are satisfied, award compensation in lieu of this loss for child benefit, child tax credit and working tax credit.

## Referrals to other government departments (OGDs)

You must send claims for loss of benefits to the following OGDs:

- HM Revenue and Customs (HMRC) for tax credits and child benefit
- Department of Work and Pensions (DWP) for all other benefits

DWP and HMRC will process these claims in line with their own procedures and reinstate benefits and will decide whether to make reimbursement for lost benefits, applying any relevant legislation or policy framework. In the case of benefits payable by a local authority, DWP will pass those claims on to the relevant local authority to determine. Claims for adjustment of a national insurance position should be passed to HMRC.

In the case of HMRC benefits (Child Benefit, Child Tax Credit and Working Tax Credit) the Windrush Compensation Scheme will make a payment in lieu of compensation for these benefits to eligible claimants as set out below. This only applies to a primary claimant or estate. A close family member cannot claim under the Windrush Compensation Scheme for loss of access to benefits.

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DWP and HMRC will notify you of payments that have been made.

## Child Benefit and Child Tax Credit

### Award: requirements

To be eligible for an award, a claimant must meet the following requirements:

- have been in receipt of or been denied access to child benefit or child tax credit:
  - had that access terminated or been denied access because of an inability to demonstrate their lawful status in the UK
  - not have been in receipt of a payment of child benefit or child tax credit from HMRC in relation to that period of loss

### Evidence

You may have been provided with information and evidence from the claimant as part of their claim.

You should ask HMRC to confirm the following:

- that the claimant was in receipt of child benefit and child tax credit and had those payments terminated because of the claimant's immigration status
- that the claimant had applied for child benefit and / or child tax credit and had that application refused because of their immigration status

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### Award: calculation

<b>Calculation of award</b>	-
Child benefit	£1,264
Child tax credits	£2,500

## Working Tax Credit

### Award: requirements

A claimant must meet the following requirements:

- have been in receipt of or been denied access to working tax credit
  - had that access terminated or been denied access because of an inability to demonstrate their lawful status including those who lost employment as a result of this inability and who were then denied access to working tax credit because they were not working
  - not have been in receipt of a payment of working tax credit from HMRC in relation to that period of loss

### Evidence

You may have been provided with information and evidence from the claimant as part of their claim.

- you should ask HMRC to confirm that either the claimant:
  - was in receipt of working tax credit and had those payments terminated because they could not demonstrate that they had lawful immigration status or because they were unable to continue to meet the condition of being in employment because of difficulties demonstrating their lawful immigration status
  - had applied for working tax credit and had that application refused because although they had employment, they could not demonstrate that they had lawful immigration status

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#### Official - sensitive: start of section

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#### Official - sensitive: end of section

### Award: calculation

Calculation of award	-
Working tax credits	£1,100

### Verification checks

You must carry out a [verification check](#) if you have reasonable doubts that a document is not genuine.

You should also check Windrush Scheme Compensation records to ensure that the other parent or another person has not also made a claim in respect of these benefits.

You also need to check the following with HMRC:

- that HMRC has not already made a payment in respect of the period of time over which the benefit is claimed to have been lost
- the claimant would have been eligible for the benefit if status difficulties had not arisen

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**Official - sensitive: end of section**

## Balance of probabilities

Remember, the scheme operates on the balance of probabilities. This means you can award compensation if you are satisfied it is more likely than not that what has been claimed for occurred, such as you are more than 50% sure.

This means you should not expect customers to provide detailed documentary evidence to support every aspect of their claim, or every criterion within a particular category.

You should take a holistic view of the claim and ensure that you use all the information and evidence available to you, including circumstantial information.

### Related content

[Contents](#)

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

This page tells you how to determine claims for compensation for inability to access services such as housing, health, education, driving licences and banking.

The primary claimant or the deceased must have been denied access to these services due to their inability to demonstrate their lawful status.

## Key terms

**Relevant date:** the date on which the primary claimant or (in the case of an estate), the deceased, was notified or became aware, whether through contact with the Home Office or otherwise, that they could not demonstrate their lawful status in the UK.

**Relevant period:** the period starting on the relevant date and ending on the date on which on which the relevant primary claimant or the deceased received a document from the Home Office proving their lawful status in the UK.

**Homeless:** the primary claimant or the deceased did not have access to accommodation in which it was reasonable for them to reside. The Home Office will consider that a primary claimant or the deceased did not have access to accommodation in which it was reasonable for them to reside if they were rough sleeping, staying temporarily in a hostel, night shelter or bed and breakfast, staying temporarily in other accommodation with poor conditions that adversely impacted their health or squatting.

## Related content

[Contents](#)

# Devolved administrations

This page explains the concept of devolved administrations.

In Scotland, Wales and Northern Ireland, some government policies and public services are different from those in England. The UK central government has given certain powers to devolved governments, so that they can make decisions for their own areas.

The devolution settlements are complex and are all different. That said, broadly speaking, the following things are devolved in Scotland, Wales and Northern Ireland:

- health and social care
- education and training
- local government and housing
- agriculture, forestry and fisheries
- the environment and planning
- tourism, sport and heritage
- economic development and internal transport

For more information about devolved administrations, see: [Devolution of powers to Scotland, Wales and Northern Ireland section of GOV.UK](#).

You will need to liaise with government departments in the devolved administrations where the claimant incurred a loss of access to relevant devolved services in Scotland, Wales or Northern Ireland.

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**Related content**

[Contents](#)

# Housing: denial of access

This page tells you how to determine claims for compensation for denial of access to housing services.

Housing services include but are not limited to:

- social housing
- emergency council housing
- the private rental sector
- the right to buy scheme

## Requirements

You can make an award for denial of access to housing services if you are **satisfied on the balance of probabilities** that the claimant or the deceased meets the following requirements:

- they were denied access to one or more housing services during the [relevant period](#)
- they would have accessed housing services during the relevant period had they not been denied access
- they were denied access to housing services because they could not demonstrate their [lawful status](#) in the UK

## Evidence

You should assess a claim on the balance of probabilities. Claimants may provide documentary evidence which could include, but is not limited to:

- copies of social housing applications
- any evidence submitted in support of the claim
- any decision letters or reviews
- evidence the local authority considered when reaching its decision
- details of any bids placed by the claimant

In the majority of cases, you should make enquiries of the relevant local authority to establish the necessary facts. See the [list of local authorities on GOV.UK](#). You may be able to access some information readily on-line, for example a local authority's social housing allocations policy should be available on their website. The information you request will depend on the circumstances of the case.

Ways of Working (WoW) will include agreements on data sharing with each local authority. You should speak to your team leader to confirm whether a WoW agreement exists between Windrush Compensation Scheme and the specific local authority you wish to contact.



## Award: calculation

If you are **satisfied on the balance of probabilities** that the claimant or the deceased has met the conditions, then you can make a one-off award of £1000.

## Referrals to other government departments (OGDs)

None of the information required is readily available from other government departments. You should use the information provided on the claim form to help you to assess what further information is required to either support the claim and how to fill any knowledge gaps. It is important that you agree the scope for any investigation early on with the claimant.

As housing is a [devolved](#) matter, you will need to contact the appropriate authority in Scotland, Wales or Northern Ireland when considering claims from these areas.

## Balance of probabilities

Remember, the scheme operates on the balance of probabilities. This means you can award compensation if you are satisfied it is more likely than not that what has been claimed for occurred, such as you are more than 50% sure.

This means you should not expect customers to provide detailed documentary evidence to support every aspect of their claim, or every criterion within a particular category.

You should take a holistic view of the claim and ensure that you use all the information and evidence available to you, including circumstantial information.

### Related content

[Contents](#)

# Health

This page tells you how to determine claims for compensation for denial of access to free NHS care and for reimbursement of private medical fees.

## Denial of access to free NHS care

Free NHS care within the scheme generally refers to secondary NHS care, which means the care a patient receives in hospital, as either an in-patient or an outpatient. Primary NHS care is free at the point of delivery to all patients regardless of their immigration status.

### Award: requirements

You can make an award if you are **satisfied on the balance of probabilities** that the claimant or the deceased has met the following conditions:

- they were denied access to free NHS care during the [relevant period](#) and, as a result, did not receive any NHS treatment during the relevant period
- they would have been treated for a medical condition during the relevant period if they had not been denied access
- they were denied access to free NHS care because they could not demonstrate their [lawful status](#) in the UK

### Evidence

You should assess a claim on the balance of probabilities. Claimants may provide documentary evidence which could include, but is not limited to:

- a letter from a medical professional which details the reasons for, the circumstances and dates of the treatment
- medical records
- correspondence with a hospital or NHS Trust
- a copy of an NHS invoice

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See the [NHS website](#) for more information

## Award: calculation

If you are **satisfied on the balance of probabilities** that the claimant or deceased meets the requirements, then you can make a one-off award of £500.

## Reimbursement of private medical fees incurred in the UK

Private healthcare costs can be reimbursed in exceptional cases. For private healthcare costs incurred in the UK, reimbursement will be capped at the rate of NHS treatment for this condition.

## Award: requirements

You can make an award if you are **satisfied on the balance of probabilities** that the claimant or the deceased meets the following requirements:

- they were denied access to free NHS care during the [relevant period](#) for treatment of a medical condition because they could not demonstrate their lawful status in the UK
- they paid private medical fees for the treatment of a medical condition
- they would have been eligible to receive equivalent treatment for the medical condition for free by the NHS had they been able to demonstrate their [lawful status](#)

## Evidence

You should assess a claim on the balance of probabilities. Claimants may provide documentary evidence which could include, but is not limited to:

- a letter from a medical professional which details the reasons for and the circumstances and dates of the treatment
- medical records
- correspondence with a hospital or NHS Trust
- a copy of an NHS invoice
- a copy of an invoice for private treatment and confirmation of payment

You should make sure that you see confirmation of how much the NHS would have charged for receiving the equivalent treatment.

## Award: calculation

If you are **satisfied on the balance of probabilities** that the claimant or the deceased has met the conditions, then you can award the lesser of:

- the amount the NHS would have charged a person who was ineligible, by reason of immigration status, to receive the equivalent treatment on the NHS for free

- the actual amount of private medical fees incurred

## Reimbursement of private medical fees incurred overseas

Private healthcare costs can be reimbursed in exceptional cases. For example, when the claimant was overseas and unable to return to the UK to access free NHS care due to their inability to show their lawful status.

### Award: requirements

You can make an award if you are **satisfied on the balance of probabilities** that the claimant or the deceased meets the following conditions:

- they could not access free NHS care because they were not in the UK at the time they required treatment for a medical condition
- the reason they were not in the UK at the time they required treatment for a medical condition was that they had been removed or deported, or refused re-entry, to the UK because they could not demonstrate their [lawful status](#)
- they paid private medical fees for the treatment of a medical condition in the state in which they were resident during the relevant period
- they would have been eligible to receive the equivalent treatment of the medical condition for free by the NHS had they been in the UK with lawful status

### Evidence

You should assess a claim on the balance of probabilities. Claimants may provide documentary evidence which could include, but is not limited to:

- a letter from a medical professional which details the reasons for and the circumstances and dates of the treatment
- medical records
- evidence as to whether the equivalent treatment is available on the NHS
- a copy of an invoice for private treatment and confirmation of payment

### Award: calculation

If you are **satisfied on the balance of probabilities** that the conditions are met, then you can award the actual amount of private medical fees incurred.

### Referrals to other government departments (OGDs)

None of the information you require is held centrally by one government department.

In order to consider a claim for reimbursement of private medical care in the UK, which should be capped at the rate of the same NHS treatment, Department for Health and Social Care has reference costs from NHS providers in every NHS Trust. See the [NHS website](#) for a list of NHS Trusts in England.

As health is a [devolved](#) matter you will need to contact the relevant NHS trusts in Scotland, Wales or Northern Ireland when you are considering claims from these areas.

Ways of working (WoW) will include agreements on data sharing with each NHS Trust. You should speak to your team leader to confirm whether a WoW agreement exists between the Windrush Compensation Scheme and the specific NHS Trust you wish to contact.

## **Balance of probabilities**

Remember, the scheme operates on the balance of probabilities. This means you can award compensation if you are satisfied it is more likely than not that what has been claimed for occurred, such as you are more than 50% sure.

This means you should not expect customers to provide detailed documentary evidence to support every aspect of their claim, or every criterion within a particular category.

You should take a holistic view of the claim and ensure that you use all the information and evidence available to you, including circumstantial information.

### **Related content**

[Contents](#)

# Education

This page tells you how to determine claims for compensation for denial of access to higher education as a home student and for reimbursement of international student fees.

## Denial of access to higher education as a home student

Higher education means post-secondary education at university or a similar establishment usually to degree level.

The term home student is used to refer to those who are eligible to pay university tuition fees at a lower rate than overseas students.

### Award: requirements

You can make an award if you are **satisfied on the balance of probabilities** that the claimant or the deceased meets the following requirements:

- they were denied access to higher education as a home student in the UK and, as a result, did not attend any higher education institution, during the [relevant period](#)
- this was because they could not demonstrate their [lawful status](#)
- they would have taken up an opportunity at a higher education institution during the relevant period if they had not been denied access

### Evidence

You should assess a claim on the balance of probabilities. Claimants may provide documentary evidence which could include, but is not limited to:

- a letter of offer of a higher education place in a UK institution
- evidence of educational qualifications required for the course
- correspondence with the institution relating to fees
- correspondence with a student loan company

### Award: calculation

If you are **satisfied on the balance of probabilities** that the claimant or deceased meets the requirements, then you can make a one-off award of £500.

## Reimbursement of international student fees

### Award: requirements

You can make an award if you are **satisfied on the balance of probabilities** that the claimant or the deceased meets the following requirements:

- they paid international student fees rather than home student fees to attend a higher education institution during the [relevant period](#)
- this was because they could not demonstrate their [lawful status](#)

### Evidence

You should assess a claim on the balance of probabilities. Claimants may provide documentary evidence which could include, but is not limited to:

- a letter of offer of a higher education place in a UK institution
- evidence of educational qualifications required for the course
- correspondence with the institution relating to fees
- correspondence with a student loan company
- proof of payment of international student fees institution

### Award: calculation

If you are **satisfied on the balance of probabilities** that the conditions are met, then you can award the difference between the international student fee rate and the home student fee rate for the relevant period.

## Referrals to other government departments (OGDs)

None of the information you require is held centrally by one government department. If the claimant is unable to provide the information to evidence the claim, you will need to contact the relevant educational institution or student loan company by using the cross-departmental data sharing agreements in place.

See the [Universities and higher education section of GOV.UK](#) for a list of UK higher education institutions and the [Student Loan Company website](#) for information about student loans.

You may also need to contact the last educational institution which the claimant attended to confirm their previous academic attainment. See the [Schools Web directory website](#) for more information.

As education is a [devolved](#) matter you will need to contact the relevant education authority in Scotland, Wales or Northern Ireland when considering claims from these areas.

Ways of working (WoW) will include agreements on data sharing with each UK higher education institutions or the Student Loan company. You should speak to

your team leader to confirm whether a WoW agreement exists between Windrush Compensation Scheme and the specific UK higher education institutions or the Student Loan company you wish to contact.

## **Balance of probabilities**

Remember, the scheme operates on the balance of probabilities. This means you can award compensation if you are satisfied it is more likely than not that what has been claimed for occurred, such as you are more than 50% sure.

This means you should not expect customers to provide detailed documentary evidence to support every aspect of their claim, or every criterion within a particular category.

You should take a holistic view of the claim and ensure that you use all the information and evidence available to you, including circumstantial information.

### **Related content**

[Contents](#)



# Driving licences

This page explains how to deal with claims relating to loss of access to driving licences.

Driver and Vehicle Licensing Agency (DVLA) will deal with claims relating to loss or refusal of driving licences in line with their existing procedures. You will need to inform the DVLA that the claimant has their lawful status confirmed so they are eligible for a UK licence.

It is possible that a claimant may include information about loss or refusal of a driving licence as part of a claim for [impact on life](#) or [loss of access to employment](#).

## Referrals to other government departments (OGDs)

You should send any claims for loss or refusal of a driving licence to DVLA to deal with. DVLA will directly contact the claimant and make arrangements if they consider appropriate for settlement with the claimant.

The DVLA tariff compensation payment is £50 a month up to a maximum payment of £500.

For further information see: [DVLA – Complaints procedure](#).

### Related content

[Contents](#)

# Banking

This page tells you how to determine claims for compensation for denial of access to banking services and direct financial losses which result from denial of access to banking services.

## Denial of access to banking services

Banking services include, but are not limited, to:

- a bank account
- an overdraft facility
- a mortgage product

Denial of access to banking services includes cases where the claimant or the deceased was denied access to a new service and cases where the provision of an existing service was withdrawn.

## Award: requirements

You can make an award if you are **satisfied on the balance of probabilities** that the claimant or the deceased meets the following requirements:

- they were denied access to one or more banking services during the [relevant period](#)
- this was because they could not demonstrate their [lawful status](#) in the UK

## Evidence

You should assess a claim on the balance of probabilities. Claimants may provide documentary evidence which could include, but is not limited to:

- bank or mortgage statements
- a letter or email from a bank, which confirms that a banking service has been lost / denied due to the claimant's inability to show their lawful status

## Award: calculation

If you are **satisfied on the balance of probabilities** that the claimant or deceased meets the requirements, then you can make a one-off payment of £200.

## Reimbursement of direct financial losses

### Award: requirements

You can make an award if you are **satisfied on the balance of probabilities** that the claimant or the deceased meets the following requirements:

- they incurred direct financial losses because of a denial of access to banking services during the [relevant period](#)
- this was because they could not demonstrate their [lawful status](#)

### Evidence

You should assess a claim on the balance of probabilities. Claimants may provide documentary evidence which could include, but is not limited to:

- bank or mortgage statements
- a letter or email from a bank, which confirms that a banking service has been lost / denied due to the claimant's inability to show their lawful status
- evidence of the direct financial loss, for example a bank statement which details the interest charges incurred
- proof of payment

### Award: calculation

If you are **satisfied on the balance of probabilities** that the conditions are met, then you can award the full amount of the direct financial losses.

## Referrals to other government departments (OGDs)

None of the information you require is available from one central government department. Claimants should provide the information required to evidence their claim. See the [Financial Ombudsman Service website](#) for some useful information about how to deal with complaints about financial institutions.

## Balance of probabilities

Remember, the scheme operates on the balance of probabilities. This means you can award compensation if you are satisfied it is more likely than not that what has been claimed for occurred, such as you are more than 50% sure.

This means you should not expect customers to provide detailed documentary evidence to support every aspect of their claim, or every criterion within a particular category.

You should take a holistic view of the claim and ensure that you use all the information and evidence available to you, including circumstantial information.

### Related content

[Contents](#)

# Homelessness

This page tells you how to determine claims for compensation for homelessness.

## Award: requirements

You can make an award for homelessness if you are **satisfied on the balance of probabilities** that the claimant or the deceased became [homeless](#) on or after the relevant date, and either:

- this was because they could not demonstrate their lawful status in the UK
- they became homeless for an unrelated reason, but continued to be homeless due to an inability to demonstrate lawful status

## Evidence

You should assess a claim on the balance of probabilities. Claimants may provide documentary evidence which could include, but is not limited to:

- copies of a homelessness application made to a local authority for help and support and decisions
- any relevant correspondence
- any assessments by the local authority
- anecdotal evidence including witness statements and correspondence from the claimant or the estate
- any relevant notes on the claimant's immigration case record
- media articles
- contact and / or support from a charitable organisation and / or from a legal representative

In the majority of cases you should make enquiries of the relevant local authority to establish the necessary facts. See the [list of local authorities on GOV.UK](#). You may be able to access some information readily on-line, for example a local authority's social housing allocations policy should be available on their website. The information you request will depend on the circumstances of the case.

Ways of working (WoW) will include agreements on data sharing with each local authority. You should speak to your team leader to confirm whether a WoW agreement exists between Windrush Compensation Scheme and the specific local authority you wish to contact.

## Period of loss

This will start on the [relevant date](#) or, if later, the date on which they became or continued to be homeless and will end on the date on which they found new settled accommodation in which is reasonable for them to reside.

## Award: calculation

If you are **satisfied on the balance of probabilities** that the claimant has met the conditions, you should make an award based on the calculations in the table:

<b>Calculation of award</b>	-
£250	Per month of homelessness. Treat part months as full months

## Balance of probabilities

Remember, the scheme operates on the balance of probabilities. This means you can award compensation if you are satisfied it is more likely than not that what has been claimed for occurred, such as you are more than 50% sure.

This means you should not expect customers to provide detailed documentary evidence to support every aspect of their claim, or every criterion within a particular category.

You should take a holistic view of the claim and ensure that you use all the information and evidence available to you, including circumstantial information.

### Related content

[Contents](#)

# Impact on life

This page tells you how to determine claims for compensation for impact on life. The impacts dealt with in this category are **non-financial** impacts only. Therefore, financial losses or impacts should not be the subject of awards under this category.

Claims under this category may be made by the primary claimant, the estate representative or a close family member of the primary claimant.

Detrimental impacts can include the following:

- inconvenience:
  - hardship lasting no more than a few days, for example, one-off cancellation of appointments, short-term deprivation of money, small financial losses or losses of opportunity or delays that have no material impact
- injury to feelings:
  - anxiety, distress, and reputational damage, worry, annoyance and similar emotional impacts
  - traumatic or highly upsetting experiences
  - embarrassment or humiliation
- deterioration of physical and / or mental health:
  - experience of pain or illness due to either a new condition or exacerbation of an existing condition
- family separation:
  - inability to meet with close family members outside of the UK
  - breakdown of the family unit
- inability to attend significant family occasions:
  - weddings and funerals only
- inability to work because of deterioration in their physical or mental health
- inability to return to the UK for example, after a holiday abroad or a short period of time spent outside the UK

Claimants may cite a range of impacts which had a detrimental impact on them and each case should be considered on its merits. You should consider whether the claimant has experienced a loss or a disturbance in their everyday life because of their own or of a close family member's inability to show their lawful status.

You will need to determine the significance of the impact on the claimant. Some impacts such as inconvenience or hurt feelings may be relatively minor and short-lived. Others such as a deterioration in physical or mental health may be more serious and longer lasting. Inability to attend a family occasion may be a significant impact but may not be of long duration.

The significance of the impact, and the supporting evidence is what will determine the [tariff payment](#) you should award.

## Evidence

All claimants should provide information and that the primary claimant, the deceased or the close family member experienced detrimental impacts as a direct consequence of being unable to demonstrate lawful status.

In relation to lower-level impacts, such as inconvenience or distress, information and evidence may just be circumstantial, for instance, distress and upset caused by the inability to demonstrate their lawful status. You may take at face value a statement that the claimant has experienced inconvenience or distress when the facts of the claim are considered in the round.

Impacts that have a greater effect on a claimant should be accompanied by directly relevant information and evidence where possible. A claim for impacts on mental or physical health should be supported by medical evidence of the detriment suffered and an opinion that this was caused by, or exacerbated by, uncertainty over lawful status.

Where it is claimed that a pre-existing condition has been made worse, you should consider the degree of exacerbation, acceleration and nature of contributing causes when determining the level of tariff to award.

Where a claimant says that they were unable to work owing to physical or mental health impacts caused by issues over lawful status they should be expected to provide medical evidence which demonstrates:

- that they were unable to work together with an opinion that this had been caused or exacerbated by concern over lawful status
- evidence that they were in employment and the period for which they were unable to work - this period may be evidenced by sick notes signed off by a medical practitioner and / or a letter from the employer

Where a claimant says that they experienced family separation or inability to attend family events they should be expected to provide information or evidence in support of this. This may take the form of documentary evidence in the case of a legal separation or circumstantial information in the case of any other separation or of an inability to attend a family event. In the case of the latter, this should be a significant event such as the birth or marriage of a son or daughter or the funeral of a son, daughter, mother or father.

You should ensure that you do not include in the impact on life category any impacts that it would be more appropriate to consider under other categories of loss.

You should take account of all relevant circumstances and available information and evidence and pay particular regard to the severity and duration of detrimental impacts, adopting a '**balance of probabilities**' approach.



## Award: calculation

You should determine the amount of award payable in accordance with the tariff set out in the [Impact on life: tariff table](#).

### Impact on life: tariff table

Level	Description	Remedy amount
1 (equivalent to old level 1)	Marked detriment such as inconvenience, annoyance, frustration and worry, where the effect on the claimant was fairly short-lived (lasting up to a few weeks). Family events may have been missed.	£10,000
2 (equivalent to old level 2)	Moderately severe impact on some aspects of the claimant's life over an extended period of time (weeks or months) or where multiple cumulative impacts were suffered for a relatively short period of time. Claimant may have been unable to engage in activities with which they were previously familiar, although should still have been able to live a relatively normal life for much of the time. There may have been an inability to attend one or more significant family events; or there may have been family separation.	£20,000
3 (equivalent to old levels 3 and 4)	Ability to live a relatively normal life was substantially affected. More than one area of the claimant's life may have been affected and the overall impacts were significant. Cumulative impacts will have been experienced for an extended period (several months) with recovery or a return to normal life having taken a reasonable amount of time. Short periods of focused medical treatment may have been necessary.	£40,000
4 (equivalent to old level 5)	Significant impacts to the extent that the claimant's ability to live a relatively normal life was seriously compromised. Cumulative impacts will have been experienced for a prolonged period (months or years). The claimant's life will have undergone change of some description, such as having regular medical treatment, care visits or other therapeutic intervention, with recovery taking a significant amount of time.	£70,000
5 (equivalent to old level 6)	Profound impacts on a claimant's life which are likely to be irreversible. This is expected to involve major physical or mental health impacts, where the claimant has been permanently affected or where recovery or return to a relatively normal life is likely to take (or has taken) several years.	£100,000

Because it is not possible to anticipate every eventuality that may arise, there remains scope to award more than £100,000 where an individual's circumstances are so compelling or severe it would be appropriate to do so.

You should refer these cases to your team leader in the first instance. These decisions should be taken on the facts of each case.

## **Initial Assessment and Preliminary Award: under review**

We are conducting a pilot to improve the experience for claimants by allocating claims to a single named caseworker at the earliest point this is possible: confirmation of eligibility. This caseworker will determine whether a £10k preliminary payment can be made within 6 weeks. In some instances, it may be possible to fully conclude claims within the 6 weeks.

You should carry out an initial assessment of the Impact on Life category within 6 weeks of eligibility being confirmed. Based on the information and evidence provided with the claim, you should determine whether the claimant or deceased suffered detrimental impacts as a result of being unable to demonstrate their lawful status and therefore meets at least level 1 on the tariff table.

Where you are satisfied on the balance of probabilities that the claimant or deceased does meet at least level 1 on the tariff table, you should proceed with offering a preliminary level 1 Impact on Life award, ahead of the claim being fully considered.

If you are not satisfied on the balance of probabilities that the claimant or the deceased meets at least level 1 on the tariff table, you should proceed to caseworking the claim more fully.

If, after considering all the information available, it is unequivocally clear that the claimant will not receive any compensation because there has been no loss or detriment owing to an inability to demonstrate lawful status, you should issue a full and final decision.

Once you have fully considered a claim, if the final award for Impact on Life is higher than level 1 and a preliminary payment has already been paid, you should deduct this from the final award offered under this category.

## **Referrals to medical experts**

Where you have cause to consider that the claimant's supporting medical evidence is unsatisfactory or inconclusive you should consult with your team leader to decide whether to seek the opinion of a suitably qualified practitioner. You should also consult with your team leader when a request to commission medical or other expert evidence is received from a claimant or a claimant's representative. This will be especially relevant for a claim which is being considered for a tariff payment at level 3 or higher.

You must obtain the claimant's consent to commission a report, the costs of which will be met by the Home Office.

The claimant is expected to cooperate with reasonable arrangements for obtaining such a report.

The Home Office will meet the claimant's reasonable travel costs in respect of producing this report.

The completed report will be sent to the Home Office and you should send a copy of this to the claimant.

## Balance of probabilities

Remember, the scheme operates on the balance of probabilities. This means you can award compensation if you are satisfied it is more likely than not that what has been claimed for occurred, such as you are more than 50% sure.

This means you should not expect customers to provide detailed documentary evidence to support every aspect of their claim, or every criterion within a particular category.

You should take a holistic view of the claim and ensure that you use all the information and evidence available to you, including circumstantial information.

### Related content

[Contents](#)

# Discretionary payments

This page explains under what circumstances you may decide to award a discretionary payment.

Claims under this category may be made by the primary claimant, the estate representative or a close family member of the primary claimant.

Awards for losses should be adequately covered under the other categories and so awards under this category should be very rare. However, some individuals may, **exceptionally**, have evidence of other impacts, losses or detriments attributable to status difficulties which you may decide merits a discretionary award.

## Award: requirements

Claims under this category must satisfy the following qualifying criteria:

### Primary claimant (or in relation to an estate, the deceased):

- the impact, loss or detriment experienced must be significant of a financial nature
- be a direct consequence of being unable to establish their lawful status

### Close family member:

- the impact, loss or detriment experienced must be significant of a financial nature
- be as a direct result of being adversely affected by the primary claimant's inability to establish their lawful status

**All claimants** must also satisfy the following further criteria:

- the impact, loss or detriment does not qualify for compensation under any other [categories](#) under the scheme, whether or not an award has been made under one or more of those categories
- the impact, loss or detriment is not excluded from consideration under paragraph 3.15 of the scheme
- the evidence, [mitigation](#) and causation requirements have been met

## Evidence

On the basis of the information and evidence provided, you should be **satisfied on the balance of probabilities** that:

- the primary claimant, [close family member](#) or deceased suffered the impacts, losses or detriment claimed

- at all material times, the primary claimant, close family member or deceased used best endeavours to minimise and mitigate the impacts, losses or detriments suffered
- the impacts, losses or impacts arose solely as a direct consequence of the inability to demonstrate lawful status
- where it is reasonable to expect as much, that information and evidence is corroborated by sources independent to the claimant

## Wholly exceptional circumstances

If the claimant cannot demonstrate some or all of the requirements you may consider making an award if you are satisfied that the circumstances presented are **wholly exceptional** and to make an award would be appropriate.

Wholly exceptional circumstances may arise where they are one-off in character, are rare and unlikely to be repeated.

Claimants must still satisfy the criteria for a discretionary award.

## Exclusions

You must not consider a discretionary award if a claimant is seeking an increased award made under another category of loss or as a substitute award for an impact, loss or detriment of the type already dealt with under the other [categories](#).

The discretionary award is not a review route. You should not consider claims under this category if a claimant has not succeeded in their claim under another category of loss and the impact, loss or detriment presented sits under another category of loss.

## Balance of probabilities

Remember, the scheme operates on the balance of probabilities. This means you can award compensation if you are satisfied it is more likely than not that what has been claimed for occurred, such as you are more than 50% sure.

This means you should not expect customers to provide detailed documentary evidence to support every aspect of their claim, or every criterion within a particular category.

You should take a holistic view of the claim and ensure that you use all the information and evidence available to you, including circumstantial information.

### Related content

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# Living costs

This page tells you how to determine claims for close family member living costs.

Claimants may be eligible to claim for significant living costs of the following type:

- rent
- utilities (gas, water, and electricity)
- contributions towards food and household essentials
- travel
- prescription fees
- council tax

## Award: requirements

You can make an award for living costs if you are satisfied on the balance of probabilities that:

- the costs incurred were a direct result of the primary claimant being unable to demonstrate their lawful status in the UK
- the primary claimant lost access to employment and / or benefits due to an inability to demonstrate their lawful status in the UK
- the losses are reasonable living costs of the type set out above
- the impact, loss or detriment is not of a kind excluded from consideration under paragraph 3.16 of the Scheme

## Signed agreement

The close family member must, where it is reasonable to do so, provide in a format acceptable to the Home Office:

- signed agreement from the primary claimant that information about their claim and any award for loss of access to employment and loss of access to benefits can be disclosed to the close family member as part of consideration for their claim
- signed agreement from any other close family members stating that they have not made and will not make additional claims for the same costs

Reasons it may not be reasonable to request signed agreement may include:

- the primary claimant or other close family member lacks capacity
- the primary claimant or other close family member is deceased
- there has been a relationship breakdown and / or family separation
- there has been refusal to sign from a third party
- the claimant is not entitled to compensation under this category and the absence of the signed agreements does not affect your ability to explain the decision

If you believe that a claimant may not be able to request signed agreement for the reasons listed above, then you should proceed with the claim. If you are unsure, you should contact your team leader for further advice.

## Evidence

You should assess a claim on the balance of probabilities. This means you should consider whether it is more likely than not that the close family member incurred reasonable costs due to the primary claimant being unable to demonstrate their lawful status in the UK. Claimants may provide documentary evidence which could include, but is not limited to:

- bank statements
- proof of payment
- signed statement from the primary claimant

## Award: calculation

If you are satisfied on the balance of probabilities that the conditions are met, then you can award up to the full amount of the financial losses incurred.

## Balance of probabilities

Remember, the scheme operates on the balance of probabilities. This means you can award compensation if you are satisfied it is more likely than not that what has been claimed for occurred, such as you are more than 50% sure.

This means you should not expect claimants to provide detailed documentary evidence to support every aspect of their claim, or every criterion within a particular category.

You should take a holistic view of the claim and ensure that you use all the information and evidence available to you, including circumstantial information.

### **Related content**

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# Non-financial remedies

This page tells you about the non-financial remedies available to claimants.

## Letter of apology

We recognise that an apology is an important part of the redress and of the compensation package as the aim of the Windrush Compensation Scheme is to right the wrongs suffered by the Windrush generation who have faced difficulties in demonstrating their lawful status under the immigration system as a result of the [compliant environment](#).

You must ensure that where you have awarded compensation to a claimant, that the award is accompanied by an apology letter. The letter must acknowledge what has happened to the claimant or close family member (or in the case of an eligible estate, the deceased) and for any role that the Home Office may have played in the impact or loss suffered.

The letter must not be a stock, template letter but should be tailored to the circumstance of the impact on each claimant. This is an important element of the compensation package.

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# Requesting more information and evidence

This page tells you about requesting more information and evidence. You should also refer to the [Approaching a claim section](#) for further advice.

If you think it is absolutely necessary to contact the claimant for further information or evidence, you should contact them and invite them to provide this. You should confirm all requests for information in line with the claimant's preferred method of contact.

If the claimant tells you they are unable to provide the information you have requested, and you are unable to support them to obtain it, you should proceed with making a full and final consideration. You should not continue to ask them to provide something they have told you they cannot get.

If the claimant tells you they can obtain the information requested you should follow up with them if you have not received this after one month. If, after at least 2 attempts, the additional information is not forthcoming you should consider whether it is appropriate to proceed and make a full and final decision based on the information you have available to you.

There may be instances where a claimant tells you they are trying to obtain the additional information requested but that it is proving difficult to do so. You should consider what support, if any, you are able to give to the claimant. Depending on the additional information being requested, you should agree a timeframe of no longer than 6 months with your HEO Team Leader and if the information is not provided within that timescale, you should consider whether to proceed with making a full and final decision.

## Evidence and information obtained from a third party

Where you consider that further information or evidence from a third party is necessary to support, enhance or make sense of a claim, for example archived housing records, you should consult with your team leader whether to obtain this.

You must obtain the claimant's consent to commission this, the costs of which will be met by the Home Office.

The claimant is expected to cooperate with reasonable arrangements for obtaining this information.

See [referrals to medical experts](#) where medical evidence is required.

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# Translating documents

This page tells you when you can accept translated documents.

If a document is not in English or Welsh, the claimant should provide a fully certified translation from a professional translator or translation company that can be independently verified by the Home Office. The translation should include:

- confirmation that it is an accurate translation of the document
- the date of translation
- the full name and signature of the translator or an official from the translation company
- the translator or translation company's contact details

This should also be dated and include the signature of the translator or an authorised official of the translation company.

## **Related content**

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# Verifying documents

This page tells you how to verify supporting documents.

You must be confident that the documents a claimant has submitted to claim compensation are genuine. In certain circumstances you will have to verify these documents, for example, if you have reasonable doubts about the authenticity of any document.

The process for verifying documents will vary in each claim, but may involve checking the authenticity of documents with:

- employers
- banks
- universities
- hospitals
- professional bodies
- student finance
- the relevant embassy or high commission
- other government departments
- local authorities
- legal representatives

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## Official - sensitive: start of section

The information in this section has been removed as it is restricted for internal Home Office use.

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## Official - sensitive: end of section

The purpose of these checks is to ensure that the document provided is genuine and accurately reflects the statements made in the claim.

If...	Then...
Documents have been confirmed as genuine	You must continue to consider the claim.
Documents have been confirmed as false	If you consider that the claimant has been dishonest (deliberately gave false or withheld information with the intention of obtaining compensation they weren't entitled to) you should normally refuse the claim. If you are the case worker, you must refer the case to your team leader for a decision or to discuss whether it would be unjust not to grant an award in whole or in part. It may be considered by the team leader that the rest of the claim can stand even though a supporting document has been found to be false.

If...	Then...
	If you consider that there has been an honest mistake you should notify the claimant and ask them to submit the correct documentation.
The verification check is inconclusive	You must continue to consider the claim.

**Related content**

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# Compensation

This page explains the concepts of award and interim payments.

## Awards

You should normally pay an award in a lump sum.

Once a claimant, eligible estate or eligible close family member accept an award their acceptance is deemed to be in full and final settlement of any claim which they may have been entitled to bring.

## Interim payments

You may consider making an interim payment to a claimant, an eligible estate or eligible close family member in respect of any part of the claim. Such a payment can only be made if an interim decision has been taken in respect of it under [paragraph 7.2 of the scheme](#).

Once a claimant, eligible estate or eligible close family member accepts an interim payment that acceptance is deemed to be in full and final settlement of that part of the claim to which it relates.

If whilst resolving the remaining elements of a claim additional evidence comes to light which would result in an increased offer of compensation for a part of a claim that has already been paid as an interim payment, you may revisit that part of the claim.

## Tax

Payments made to a claimant under this scheme are not liable to income tax or capital gains tax.

## Repayment

If the Home Office receives evidence after payment of an award that the claimant made a false representation or withheld information and as a result obtained compensation to which they would not otherwise be entitled or that the claimant has received a payment from another source which should have been taken into account, it may give written notice of intention to recover the award or part of it to the claimant.

The claimant may make representations within 28 days of the notice being given.

After you have considered the evidence and any representations made, you must either:

- confirm any determination in force
- issue a repayment demand (which requires repayment in whole or in part of the award paid under the determination in force)
- and give written notice of that decision to the claimant

## Double recovery

You may decline or reduce an award in so far as it compensates for or relates to an impact, loss, damage, detriment or other circumstance that has previously been the subject of compensation or payment under or outside the scheme.

You must consider a claimant to have been compensated or paid under the scheme in respect of an impact, loss, damage, detriment or other circumstance if:

- they have been granted an award in respect of that impact, loss under the scheme
- a primary claimant or an estate has been compensated under the scheme in respect of a loss relating to certain immigration fees and legal fees if a close family member has, with the written consent of the primary claimant or estate, applied for and subsequently been granted an award in respect of that loss
- a close family member has been compensated in respect of a loss relating to certain living costs if another close family member has, with the written consent of the claimant, applied for and subsequently been granted an award in respect of that loss

You must consider a claimant to have been compensated outside the scheme in respect of an impact, loss if:

- they have been granted a payment in respect of that impact, loss by way of compensation, damages, benefits or any other payment by any person or estate
- they have received an exceptional payment from the Home Office under the Windrush Scheme: [Support in the Urgent and Exceptional Circumstances Policy](#)

## Fraud

You should normally decline an award under this scheme if you are satisfied that the claimant has, in any part of their claim, dishonestly made a false representation or dishonestly withheld information with the intention of obtaining compensation to which they would not otherwise be entitled.

You may grant an award under this scheme, in whole or in part, to a claimant if you are satisfied that it would be unjust not to do so. You must refer these cases to your team leader before you decide whether to make an award.

If you consider that the claimant may have committed an offence you must refer the case to your team leader to notify the police.

You must record a decision to decline or reduce an award in the determination.

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# Reviews

This page explains the review process.

There is no fee for a review under the Windrush Compensation Scheme.

Claimants can request a review of the decision to refuse all or part of their claim and must do so within 2 months of the determination. The Home Office can extend this period if satisfied there are reasonable grounds for the delay.

Claimants can challenge any aspect of the determination including:

- a decision under [part 2 of the scheme rules](#) that they are not eligible under the scheme
- a decision under [part 4 of the scheme rules](#) to reduce or decline an award on the grounds of double recovery, failure to mitigate, criminality or fraud and
- the amount of an award in a determination

There is no time limit for the completion of a review under Tiers 1 and 2.

## Tier 1 internal review: procedure

A Tier 1 review decision must be done by a senior reviewer who was not involved in making the decision to which the request for a review relates.

If you are the Tier 1 senior reviewer, you must apply the Windrush Compensation Scheme rules and follow this guidance when considering the review.

You must review whether the decision is correct, which can include looking at whether:

- the rules, policy and guidance were applied correctly
- there was a mistake of fact
- the initial decision maker made the right judgement on the correct standard of proof
- all the available information and evidence was considered

Some decisions are not reviewable.

As the Tier 1 senior reviewer you have the authority to:

- uphold a determination or revised determination that is in force
- reinstate an initial determination that since been revised
- make a new determination
- make any other consequential provision required



You must notify the claimant in writing of the result of the review and the reasons for your decision. Your notification must include a copy of the determination in force. The claimant must, within 2 months of receipt of the notification, either accept the decision (and any determination in force) or notify the Home Office in writing that they wish to request to proceed to a Tier 2 review.

You must remit the case back to the Home Office for a redetermination of the claim where you disagree with either of the following decisions:

- to reject a claim (in whole or in part) under part 2 of the scheme rules on the grounds of eligibility
- to decline to make or reduce an award under part 4 of the scheme rules on the grounds of criminality or fraud

and in such a case will not consider any other ground of review.

## Tier 2 independent person: procedure

A Tier 2 review is to the Adjudicator, who is independent of the Home Office.

The Adjudicator's office will consider the initial decision and determination that was the subject of the request for a review and any Tier 1 review decision taken in respect of it (as well as any supporting information submitted by the claimant) with a view to identifying any material decision made under the scheme with which they disagree.

The Adjudicator will make a recommendation to the Home Office as to whether, why and how the determination in force should be reconsidered and will notify the claimant in writing of that recommendation.

A recommendation may recommend that the Home Office:

- uphold a determination that is in force
- reinstate a determination that has since been withdrawn or revised
- make a new determination
- may recommend any other consequential provision required

The Home Office will consider the recommendation of the Adjudicator and will notify the claimant in writing of its Tier 2 review decision and will include the determination that is in force.

If the Home Office does not accept and implement the recommendation of the Adjudicator, it will provide written reasons for its decision.

Where the claimant has been notified of a Tier 2 review decision and determination, the claimant must, within 2 months of receipt of that notification, notify the Home Office in writing whether they wish to accept the determination.

The Home Office may extend that period if satisfied that there are reasonable grounds for the delay.

## Withdrawal: review requests

A claimant can, in writing, withdraw a request for a Tier 1 or Tier 2 review, in whole or in part, at any time.

If the claimant withdraws the review request in whole, they may accept any determination in force or withdraw their claim under [paragraph 6.13 of the scheme rules](#).

If a claimant withdraws a review in part, the remainder of the review will be considered by the senior reviewer (in the case of a Tier 1 review) or the Adjudicator or (where the Adjudicator has made a recommendation) the Home office (in the case of a Tier 2 review).

## Non-reviewable decisions

A request for a review cannot challenge:

- the manner in which an award or payment is to be made under part 8 [of the scheme rules](#)
- payments or refusals to make payments made by other government departments
- determinations issued under [part 10 of the scheme rules](#) except by way of progressing to a Tier 2 review under [paragraph 10.11 of the scheme rules](#)
- determinations that have been withdrawn under paragraph 7.9 [of the scheme rules](#)
- an exceptional payment under the [Windrush Scheme: Support in Urgent and Exceptional Circumstances](#)
- the repayment of a determination pursuant to a repayment demand under paragraph 5.3 [of the scheme rules](#)
- determinations issued under Part 10 [of the scheme rules](#) (review) to reject a claim under Part 2 [of the scheme rules](#) on the grounds of eligibility
- a claim that has been suspended under paragraph 6.21 of the scheme rules

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