

## Windrush Compensation Scheme consultation

### Response from the London Borough of Hackney

**1a. Do you think that eligibility for the compensation scheme should be aligned with those who are eligible for help through the Windrush Scheme?**

No

**1b. If no, are there additional groups that you think should be eligible?**

No, eligibility for compensation should be far wider than this. There should be recognition that those closely connected to those who have been directly affected may also have experienced some form of loss or impact to their lives from their relationship to a person who can directly show that they have been impacted. Children of those who have been unable to prove their British nationality are a particular group who should be eligible for compensation if they are not already automatically eligible in the scheme. Many such individuals have been deemed stateless and this has affected their ability to travel and restricted employment and other opportunities.

Emotional distress is a significant issue facing those impacted by the 'hostile environment' immigration policies and it is hard to put a price on appropriate recompense for those who have been denied their rights to access services and have had their own opportunities and lives restricted.

**1c. If no, are there groups that you think shouldn't be eligible?**

N/A

**Q2. Do you think claimants should be able to apply for compensation for:**

Home Office fees for unsuccessful immigration applications - Yes

Incidental costs relating to an unsuccessful immigration application - Yes

Legal costs relating to an unsuccessful immigration application - Yes

**Q3. Do you think compensation should be given when the following losses can be demonstrated as a result of being unable to demonstrate immigration status?**

Direct loss of income through termination of employment - Yes

Direct loss of income through an inability to secure employment - Yes

Lost opportunities such as career progression or future employment - Yes

**Q4. Do you think compensation should be given for the following impacts resulting from an inability to demonstrate immigration status?**

Removal - Yes

Detention - Yes

Voluntary departure from the UK due to imminent enforcement action - Yes

Voluntary departure from the UK due to refused immigration decision - Yes

**Q5. Do you think compensation should be given for the following impacts resulting from an inability to demonstrate immigration status?**

Denial of re-entry to the United Kingdom - Yes

Anticipation of denial of re-entry to the United Kingdom preventing travel - Yes

**Q6. Do you think compensation should be given to those who have been prevented from doing the following due to difficulties demonstrating their immigration status?**

Accessing free National Health Service care - Yes

Accessing social housing - Yes

Accessing private housing - Yes

Accessing post 18 education - Yes

Obtaining a driving licence - Yes

Opening a bank account - Yes

**Q7a. Do you think the compensation scheme should include the impact on normal daily life as a loss? Yes**

**Q7b. How should the compensation scheme take account of the different experiences of individuals in terms of the type and severity of any impact?**

The scheme should be as open and flexible as possible to the type of experiences and impacts that claimants have experienced. Each case will be different and not necessarily fit the expectations about how lives have been impacted in the examples given above. There needs to be a firm understanding about how emotional distress will manifest itself in different ways for individuals.

The scheme should provide support to individuals to help them identify the range of impacts and severity experienced and provide generous compensation to compensate fully for suffering experienced.

**Q8a The table below summarises the different types of losses that the compensation scheme may compensate individuals for. Please give each a rating from 1 (not important) to 5 (very important) based on how important you think it is that the scheme covers this loss: Very Important for all**

Fees from unsuccessful immigration applications to Home Office - 5

Incidental and legal costs from unsuccessful immigration applications - 5

Employment - 5

Benefits - 5

Detention or removal - 5

Voluntary departure from the UK - 5

Denial of re-entry to the UK - 5

Denial of travel - 5

Denial of access to free NHS care - 5

Denial of access to housing - 5

Denial of access to post-18 education - 5

Loss/ Denial of driving licence - 5

Loss/ Denial of access to a bank account - 5

Impact on normal daily life - 5

**Q8b. Do you think the proposals contained in this section have captured the correct type of losses? Yes**

**Q8c. Are there any additional losses that you think should be included? Please state**

Emotional distress. This can manifest itself in many ways and impact on the day to day well-being of individuals and their families. Lost opportunities can not be easily measured and the scheme should take account of the difficulty some claimants may have to provide direct evidence of losses that have occurred, particularly where this relates to emotional distress inflicted.

Where claimants have turned to offending in desperation at being denied rights and access to support, the role of the Home Office in this should be recognised. Compensation should not be denied because someone unjustly targeted has resorted to measures they otherwise would not have done, in order to feed themselves and keep themselves warm.

Inability to travel for leisure, live and work abroad

Ill health due to not being able to prove nationality. Impact in terms of anxiety, stress and poor physical and mental health

Contributing factor to early death with compensation to family members provided

Support (financial and otherwise) provided by friends and family of those directly affected which has had a financial impact or restricted their opportunities

**Q8d. Are there any losses that you think should not be included? Please state**

None

**Q9a. Do you think losses experienced at any time point in the past should be covered by the compensation scheme? Yes**

**Q9b. Please explain the reasons for your response to Q9a below.**

There should be no limitations in terms of timescales for compensation that can be demonstrated is linked to the wrongful application of immigration law for the affected group.

## **How the scheme will operate**

**Q10a. Do you think the scheme should accept both postal and online compensation claims?** Yes

**Q10b. Do you think claimants should be offered assistance in completing their application?** Yes

**Q10c. If yes to 10b, who do you think should be offered assistance?**

All potential claimants

Specific groups (please state)

1. Disabled people
2. Older people
3. Those with literacy problems or special needs
4. Those who are currently not in the country and requiring support where they are
5. Those with mental or physical health difficulties
6. Those who are traumatised by the process and as a result find it difficult to engage with the Home Office to regularise their immigration status

**Q10d. If yes to 10b, what assistance should be provided?**

Free Legal Advice

Holistic support that provides help from initial request for support through to resolution - our experience of complex immigration advice tells us that stand alone legal advice is not enough

Support to fill an online application in

Help to identify and compile evidence demonstrating negative impact of policies

**Q11. Do you think it is right that the compensation scheme uses a combination of different calculation methods for determining compensation payments?** The process should be as simple and human as possible, as stated above, it is difficult to establish impacts on emotional wellbeing that arise from having your rights unfairly taken away

**Q12a. Do you think compensation for a known value of loss should be considered where the claimant has:**

lost their job and can evidence salary and pension foregone? - yes

been denied access to benefits? - yes

incurred costs and fees that are eligible to be compensated? - yes

**Q12b. If you have answered no to any of the losses in Q12a, please explain why.**

N/A

**Q13a. Do you think compensation should be calculated on a tariff style approach where the claimant has:**

NB: Do not understand the question properly and therefore unclear on the implications of endorsing a tariff style approach so answering Don't Know

foregone rights and opportunities a claimant would have otherwise been able to pursue or take up? – Don't Know

been detained or removed? – Don't know

been denied free NHS care? – Don't know

been denied access to other services? – Don't know

experienced an impact on normal daily life? – Don't know

**Q13b. If you have answered no to any of the losses in Q13a, please explain why.**

N/A

**Q14a. Should the scheme have a discretionary element to make payments for circumstances not covered by the scheme rules? Yes**

**Q14b. If yes, what circumstance should a discretionary element apply to?**

There should be as much flexibility as possible in the scheme to ensure that anyone who doesn't strictly meet any set criteria can have their application fairly considered and receive appropriate compensation.

**Q15a. Do you think the compensation scheme should have a minimum claim amount?**

No

**Q15b. If yes, what do you think the minimum amount should be?** No minimum amount should apply. Compensation should be guided by the circumstances of each case.

**Q16a. Do you think the compensation scheme should have a maximum claim amount? No**

**Q16b. If yes, what do you think the maximum amount should be?**

There should be no maximum amount set to reflect the emotional distress caused by loss of home, employment, benefits and, where applicable, where people have been unable to visit family or friends in the event of serious illness and/or death (including to attend a funeral).

**Q17a. The list below summarises the some of the different factors that may be taken into account when calculating the amount of compensation awarded.**

**Please give each a rating from 1 (not important) to 5 (very important) based on how important you think it is that these factors are considered:**

Factor Rating

Date of entry to the UK - 2

Claimant had previous contact with Home Office - 5

Quality of previous applications - 2

Loss attributable to immigration status - 5

Misapplication of immigration rules - 5

Costs or expenses otherwise incurred - 5

**Q17b. Please provide any comments you have on the factors that may be taken into account when calculating the amount of compensation awarded.**

Emotional distress - the scheme should not merely compensate direct financial losses which can be easily demonstrated such as an airline ticket or loss of employment. The scheme should provide appropriate redress for emotional distress caused. There are huge challenges in applying financial figures to this as no amount can adequately compensate for the inability to visit dying family members, being separated from loved ones or being refused the ability to travel or return to the place you call home. The challenge will be for the scheme to address this issue fairly for those affected.

Maladministration by Home Office - where there is clear evidence that the Home Office have made clear errors is misapplying hostile environment legislation to this affected group this should be reflected in the level of compensation to which the claimant is entitled.

Previous contact with Home Office - There needs to be full recognition built within the scheme that many claimants have attempted to engage with the Home Office to resolve their situation and that instead of support and help it drew the authorities attention to their lack of papers and in many cases enforcement action followed. This must be a high priority, recognising the Home Office's response to being approached for assistance has left many traumatised and unwilling to engage. The culpability of the authorities in this should be recognised. We are also aware of instances where individuals have contacted the Home Office and been advised to restart the process as if they had not previously made contact and there was no awareness of the individual case. This is unfair and penalises those who have tried to engage to no avail.

Forced removal - being forcibly removed, detained or deported should be at the highest end of the compensation scale. The compensation should also reflect the

Compensation for family members where removed person has died since should be generous

Amount of time where it can be demonstrated that misapplication of immigration law affected claimant - number of years that claimant can demonstrate their life was affected

Criminality - this should not be a factor in determining that compensation should be lower than for a claimant without a prior criminal record. Those affected were always British citizens and should be recognised as such

**Q18a. Do you think claimants should be offered non-financial recompense in addition to a financial award?**

Yes

**Q18b. If yes, which of the following non-financial recompense should be offered:**

Counselling – Yes

Letter of apology from Home Office – Yes

Exploring reinstatement of employment (where possible and applicable) - Yes

Other – Provide access to Social Housing where this has been removed

**Q18c. Do you have any comments on non-financial recompense?**

Recompense should come in many forms and there should be no set list of potential forms of recompense. Rather each case should be considered and appropriate forms of compensation both financial and non-financial be considered according to the principles of restorative justice.

**Q19a. Do you think conditions of acceptance should be applied to the final compensation payment?**

No

**Q19b. If yes, do you think the following conditions of acceptance should be applied?**

Any compensation award is made in full and final settlement of a claim - reapplications will not be permitted - No

A claimant cannot be compensated more than once for the same loss - No

Payments will be recovered if it's subsequently found that the claim was fraudulent – Don't Know

**Q19c. If you disagree with any of these conditions of acceptance, please state why for each condition:**

Any compensation award is made in full and final settlement of a claim - reapplications will not be permitted

*New evidence may come to light or impacts not immediately apparent*

A claimant cannot be compensated more than once for the same loss

*As above further evidence may come to light*

Payments will be recovered if it's subsequently found that the claim was fraudulent -

*Who will judge that alleged fraud has taken place? What arrangements will be in place to appeal against such a finding? This could compound errors made which have affected those genuinely affected.*

**Q19d. Are there any other conditions of acceptance that you think should be considered (please state)**

Confidentiality clauses of any kind should not be applied in respect of these cases. Obtaining compensation goes hand in hand with seeking justice which those affected should be free to discuss and publicise as they see fit. The Home Office should embrace a new spirit of openness and transparency in order to address the fundamental problems inherent within

the department which led to the catalogue of systemic problems and crisis which negatively impacted for affected individuals.

**Q20a. Do you think the claimant should be able to request a review of the compensation scheme decision if they do not agree with the outcome?**

Yes

**Q20b. If yes, which parts of the compensation scheme decision should a claimant be able to request a review of?**

Eligibility of claimant - Yes

Assessment of evidence provided - Yes

Amount of final award offered - Yes

Other Any aspect of the decision (please state)

**Q20c. If yes to 20a, do you agree with the compensation scheme decision review process set out in the consultation?**

No

**Q20d. If you've answered no to 20c, please explain why:**

Further comments

A review should be referred at an earlier stage be to an independent reviewer outside of the scheme. There is little trust in the ability of the Home Office to get things right and there may be an incentive to downplay impacts and not provide appropriate compensation if decisions are made solely internally.

**Q21: Do you have any further comments on the proposals for the compensation scheme set out in this consultation document? Please use the appropriate box below to log any supplementary views.**

**Who should be eligible**

Anyone affected in the widest possible sense. Those who have resorted to offending in desperation at their treatment should not be excluded from the scheme.

**What losses should be compensated**

Any losses that can be demonstrated to be linked to a decision to not recognise the correct status of a claimant. Where individuals have been wrongly deported, compensation should also reflect the cost of living in the country they have been unable to return from, the cost of maintaining a home in the UK as well as living costs incurred whilst living overseas.

Where individuals do want to return to the UK, the compensation scheme should also cover flights as well as transport of personal belongings and securing accommodation that is comparable to that which they had previously lived in, in the UK at today's cost (not the cost at the time of leaving).

The scheme should cover the loss of all earnings as well as loss of pension contributions where those cases where individuals have lost their jobs.

### **How the scheme should run**

The scheme should be run in an open and transparent way with flexibility to meet the needs of claimants. The scheme should be transparent and easy to understand to prevent and discourage claim management firms from farming clients and securing compensation that barely covers their losses/emotional distress.

Compensation should not be subject to tax and benefits should be unaffected.

The scheme should support residents to achieve naturalisation not simply by waiving fees but by working with them on a one to one basis to ensure that their needs are met. Many affected individuals and families will have complex needs and unique cases which need to be understood and engaged with. Just simply waiving fees creates a risk that no pro active engagement takes place to identify, support, understand and deal fully with the barriers to naturalisation. In addition the government should reconsider its view that a passport will not be provided free of charge to those affected. Given the level of distress created for many, this seems petty in the extreme to waive naturalisation fees but charge for a passport.

The way the scheme has been set out in this consultation does not inspire the greatest confidence that the Home Office is geared up to deal with the huge complexity of many cases including those of have been stuck overseas for some time and denied the right to return to the UK. Is the Home Office prepared to work with overseas governments to provide support if such individuals do not wish to return to the UK. How will this support be organised?

The scheme should engage expert organisations with relevant expertise such as Praxis and Hackney Migrant Centre who in our area have a strong record of supporting those affected by government 'hostile environment' policies. The compensation scheme and positive changes to the way that immigration policy is enforced should be shaped by those with the knowledge and understanding of the issues and direct experience of supporting those who have been affected, as well as claimants themselves.

### **Other comments**

The London Borough of Hackney passed a motion at its Council meeting in July 2018 at which it resolved to

continue actively campaigning for an end to all 'hostile environment' policy measures and to continue to call on the Government to enable the Windrush generation to acquire British citizenship at no cost and with proactive assistance throughout the process,

lead the way, by celebrating an annual Windrush Day in Hackney and for Hackney to welcome the government's announcement to make 22 June each year an annual celebration of recognise and honour the enormous contribution of those who arrived between 1948 and 1971

press the Prime Minister to call for an independent public inquiry into the Windrush scandal,  
demand the Government fully supports advice agencies in their work to achieve justice (and compensation for all losses, injury and damages to date where necessary) for all Hackney residents of the Windrush generation,  
review our own policies and procedures to ensure we support those affected,  
support the call for fees for naturalisation to be waived for all those who have been affected, and oppose the criminalisation of Windrush families.

Whilst we welcome the introduction of this scheme and attempts to provide redress, we are of the view that a compensation scheme is in itself an insufficient response to the magnitude of distress, hurt and suffering caused to those affected. The circumstances of how this situation arose can only be addressed through an open and transparent public inquiry where there is a genuine desire to identify what went wrong, expose the failings and ensure that this could never happen again. Diligent campaigners have been highlighting how undocumented British citizens have been caught up in the requirement to prove their citizenship for a number of years and have been seemingly ignored by those in power until the body of evidence grew too strong to overlook.

We are of the view that this scheme needs to be established alongside a wholesale review of Home Office immigration enforcement policy. The 'hostile environment' policies which have been designed to make life difficult for those with irregular status have not only targeted such individuals, but have impacted many others who are British citizens and should have no restrictions on their rights to access services. For example, requirements for landlords to check immigration status can in practice result in some being unwilling to let property to any non white British applicants. These policies restrict access to housing, benefits, employment opportunities and much else for many of our residents who are non-white British. The government should be exploring evidence of how such policies result in discrimination and are institutionally racist in their application.

Implicit in the approach described for how the compensation scheme will operate is a continued unwillingness to fully believe how those targeted by such policies have suffered and a lack of willingness to provide full redress. Creating a high bar for evidence that claimants need to provide does not suggest that the Home Office understands that it is precisely this approach which has created the problem in the first place. A lack of understanding of individuals needs, human interaction and systemic failure to recognise where wrong decisions have been made are in danger of being repeated under the compensation scheme. A different approach is required which requires empathy, support for claimants to engage and most importantly for there to be a default position that they will be believed.

As widely reported on Friday 21 September 2018 in the media, Home Office officials have already been rejecting approaches from a number of individuals who have approached them for assistance. This includes those convicted of serious crimes or who are deemed unable to

prove that they arrived in the UK prior to 1 January 1973. In respect of the former not meeting the 'good character requirement', this is illogical given that such individuals should be considered as having always been British citizens but have lacked the documentation to prove it. Such individuals should therefore not be denied their rights to be recognised as British citizens in spite of any past offending behaviour.

It is concerning to hear that potential claimants are being denied support due to not being able to evidence their arrival in the UK before 1973. It is precisely because many individuals could not provide evidence of their UK residence that individuals are being caught up in this bureaucratic quagmire. In the circumstances, it doesn't seem reasonable to expect proof of residence before 1973 to be provided. Those caught up in the 'hostile environment' deserve to be believed, not turned away. It seems to highlight that the Home Office haven't really learnt much at all since the scandal broke about the role they have played in the crisis.

**Q 22: Are there impacts, positive or negative, on people with protected characteristics (age; disability; race; religion or belief; sex; sexual orientation; gender reassignment; pregnancy and maternity) which should be taken into account when designing and implementing the compensation scheme?**

Yes

**If Yes, please specify:**

Race – Negative

It is clear that the vast majority of individuals affected share a key characteristic in being of Black British origin. The scheme should consider whether losses have occurred specifically due to claimants sharing this protected characteristic and the role that discrimination and prejudice may have played in denying claimants their rights, access to support and justice for so long.

Age - Negative

Those directly affected having arrived prior to 1973 are now almost all elderly so the impact of 'hostile environment' policies has disproportionately affected those of an older age profile of 65 years and over. The exception is those who arrived as dependent children and the offspring of non-documented Windrush citizens who have also been negatively impacted by the application of such policies who may fit a younger age profile.