



Windrush Compensation Scheme Debate on 6 May 2020

On 6 May 2020, the House of Lords is due to hold a debate on the Windrush compensation scheme.

In late 2017, the *Guardian* published a series of articles drawing attention to certain immigration cases. They highlighted the cases of longstanding UK residents who were facing deportation because of difficulties proving their lawful immigration status. Over the following months, continued coverage told stories of individuals who had lost jobs and homes, as well as their access to healthcare and the welfare state, because of these issues. The group affected is often referred to as the Windrush generation, and as a result the problem became known as the Windrush scandal.

In April 2018, the Government acknowledged that members of the Windrush generation, and other Commonwealth citizens, had been treated unfairly. To address the issues, in April 2019 it announced the Windrush compensation scheme in addition to other actions. The Government announced several changes to the scheme in February and March this year.

The scheme will be funded under provisions of the Windrush Compensation Scheme (Expenditure) Bill, which completed its parliamentary stages on 21 April 2020 and is currently waiting royal assent. Until the bill becomes law, a ministerial direction is providing authority for payments.

Opposition parties have welcomed the idea of compensation for Windrush victims. However, some MPs and Peers have argued the scheme has several problems. In addition, both the *Guardian* and compensation recipients have been critical. Issues raised include:

- ownership of the scheme;
- application process and burden of proof; and
- delays in payments and amounts awarded.

In March 2020, Wendy Williams published her independent *Windrush Lessons Learned Review*. The Home Office commissioned the review to provide an independent assessment of the events leading up to the Windrush scandal (particularly from 2008 to March 2018) and identify key lessons for the department. She found that despite the Home Office being taken by surprise, Windrush was “foreseeable and avoidable”. Wendy Williams made 30 recommendations.

Nicole Winchester | 30 April 2020

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I. ‘Windrush scandal’

I.1 What was the problem?

In late 2017, the *Guardian* published a series of articles drawing attention to certain immigration cases.¹ These articles highlighted the cases of longstanding UK residents who were facing deportation because of difficulties with proving their lawful immigration status. Over the following months, the paper continued to publish stories of individuals who had lost jobs and homes, as well as their access to healthcare and the welfare state, as a result of these issues.² Some had been detained in the UK or at the border, while others had been removed from the country or denied re-entry following trips abroad.

Although the number of people affected by such issues is not known, initially the focus was on individuals from Caribbean Commonwealth countries who had come to the UK as children to join family members who had migrated. This group is often referred to as the Windrush generation, named after the Empire Windrush, one of the first ships that brought workers from the Caribbean to the UK to fill labour shortages following the second world war.³ As a result, the problems became known as the ‘Windrush scandal’. However, individuals from non-Caribbean countries were also affected.

I.2 What caused the problem?

The Immigration Act 1971—which came into force in 1973—gave Commonwealth immigrants already settled in the UK indefinite leave to remain.⁴ However, many were not issued with any documentation and the Home Office did not keep records confirming these individuals’ status. As a result, many people have been living in the UK for decades without documentary proof of their immigration or nationality status.⁵

This became an issue over time as immigration policies under successive governments changed. Over the past decade, the Government reformed immigration policies based on the principle that the right to live, work and access services in the UK should only be available to those migrants who are eligible.⁶ This became known as a ‘hostile environment’ and is now known as a compliant environment.⁷

The 2014 and 2016 Immigration Acts were part of this policy. They introduced a range of checks and controls on migrants’ access to services, including welfare benefits, driving licences and bank

¹ Amelia Gentleman, ‘[I can’t eat or sleep’: the woman threatened with deportation after 50 years in Britain](#)’, *Guardian*, 28 November 2017.

² Nadia Khomami and Goda Naujokaityte, ‘[How the Windrush scandal led to fall of Amber Rudd—timeline](#)’, *Guardian*, 30 April 2018; and *Guardian*, ‘[It’s inhumane’: the Windrush victims who have lost jobs, homes and loved ones](#)’, 20 April 2018.

³ HM Government, [The Windrush Compensation Scheme](#), March 2020, p 1.

⁴ National Audit Office, [Handling of the Windrush Situation](#), 5 December 2018, HC 1622 of session 2017–19, p 5.

⁵ House of Commons Library, [Windrush Generation: Government Action to ‘Right the Wrongs’](#), 24 March 2020, p 4.

⁶ National Audit Office, [Handling of the Windrush Situation](#), 5 December 2018, HC 1622 of session 2017–19, p 5.

⁷ *ibid.*

accounts.⁸ Such controls were designed to:

- prevent illegal immigration;
- remove incentives for illegal immigrants to enter or remain in the UK; and
- encourage them to leave.

Both public bodies and private individuals and businesses were required to enforce these rules, for example by checking an individual's right to rent or work in the UK.⁹

In practice, these controls caused issues as some people, including members of the Windrush generation, were lawfully resident in the UK, but did not have documentary proof of their rights.¹⁰ The measures therefore incorrectly included them. Whilst in theory they could resolve the problem by applying to the Home Office for confirmation of their status, issues such as the application fee and the amount of supporting evidence the department required posed obstacles for some.¹¹

1.3 How did the Government react?

In April 2018, the Government acknowledged that the Windrush generation should not have been treated in this manner.¹² Since then, the Government apologised for the harm caused.¹³

In addition to recognising the problem, in April 2018 the Home Office announced measures it would be taking to address the Windrush generation's situation. These included:¹⁴

- conducting reviews of historical Caribbean cases that the Home Office wrongly included for detention/removal or to which they applied a compliant environment sanction;
- establishing a 'Windrush scheme' to issue confirmation of status documents (and in some cases, grants of British citizenship) free of charge to eligible applicants;
- creating a Windrush taskforce to assist people who may be eligible under the Windrush scheme;
- initiating an independent lessons-learned review; and
- suspending aspects of the hostile/compliant environment policy and amending related guidance.

It also announced the creation of a Windrush compensation scheme for those affected.¹⁵

⁸ National Audit Office, [Handling of the Windrush Situation](#), 5 December 2018, HC 1622 of session 2017–19, p 5.

⁹ *ibid*, p 6.

¹⁰ House of Commons Library, [Windrush Generation: Government Action to 'Right the Wrongs'](#), 24 March 2020, p 4.

¹¹ *ibid*.

¹² National Audit Office, [Handling of the Windrush Situation](#), 5 December 2018, HC 1622 of session 2017–19, p 6; and [HC Hansard, 16 April 2018, cols 27–38](#).

¹³ [HC Hansard, 19 March 2020, cols 1155 and 1159](#); and [HC Hansard, 16 April 2018, cols 27–38](#).

¹⁴ [HC Hansard, 23 April 2018, cols 619–22](#); Home Office, '[Free citizenship for the Windrush generation](#)', 23 April 2018; and House of Commons Library, [Windrush Generation: Government Action to 'Right the Wrongs'](#), 24 March 2020, p 4.

¹⁵ [HC Hansard, 23 April 2018, cols 619–22](#).

2. Windrush compensation scheme

In April 2019, the Government launched the Windrush compensation scheme following a consultation process.¹⁶ The scheme's purpose is to compensate claimants for the losses and impacts suffered because they were unable to prove their lawful immigration status in the UK.

The scheme will be funded under provisions of the Windrush Compensation Scheme (Expenditure) Bill, which completed its parliamentary stages on 21 April 2020 and is currently awaiting royal assent. The bill does not seek to change any of the details underpinning the design or operation of the scheme, which ministers can change without primary legislation.¹⁷ Until the bill becomes law, a ministerial direction is providing authority for payments. The bill is discussed in more detail in section four of this briefing.

The scheme is not limited to those who originally came from the Caribbean Commonwealth. Rather, it is open to:

- anyone from any nationality who has the right to live or work in the UK without any restrictions or is now a British citizen, and arrived in the UK before 31 December 1988;
- anyone from a Commonwealth country who arrived and settled in the UK before 1973;
- children and grandchildren of Commonwealth citizens in certain circumstances;
- the estates of those who are now deceased but who would have otherwise been eligible to claim compensation; and
- close family members of eligible claimants where there has been a significant impact on their life or where there is evidence of certain direct financial costs.¹⁸

Under the scheme, compensation is available for losses related to:

- employment;
- immigration fees;
- housing;
- health;
- education;
- driving licences;
- banking;
- impact on normal daily life (for example, missed key family events or inability to travel); and
- detention and removal.¹⁹

¹⁶ Home Office, '[Guidance: Windrush compensation scheme](#)', 3 April 2019; and '[Consultation outcome: Windrush compensation scheme](#)', 6 February 2020.

¹⁷ House of Commons Library, '[Windrush Compensation Scheme \(Expenditure\) Bill 2019–20](#)', 24 March 2020.

¹⁸ Home Office, '[Guidance: Windrush compensation scheme](#)', 3 April 2019.

¹⁹ *ibid.*

Further information on the scheme can be found in the Government’s scheme rules and associated casework guidance.²⁰

The Government has committed to providing Parliament with regular updates on the scheme, including number of applications received; number of claims paid; and overall amount paid out under the scheme.

On 27 February 2020, the Government published data on claims and payments made under the scheme.²¹ It showed that as of 31 December 2019, 1,108 claims had been made. Of these, 36 payments had been made totalling £62,198. However, the Government has stated that many of these payments are provisional and that claimants may receive further awards.²² Commenting on this amount, the then shadow Home Secretary, Diane Abbott, stated that “the amount and the quantity of the payments are pitifully small” and argued it showed poor administration of the scheme by the Government.²³

2.1 What recent changes have been made to the scheme?

In February 2020, the Government announced alterations to the scheme. These changes were set out in a letter from Kevin Foster, the Minister for Future Borders and Immigration, to Yvette Cooper, chair of the House of Commons Home Affairs Committee.²⁴

Deadline extended

The Windrush compensation scheme is time-limited and was initially due to run for two years until April 2021. However, the Government has extended the deadline for applying to 2 April 2023.²⁵ Mr Foster stated that the change would provide certainty to people thinking about making a claim by giving them more time to consider it. He also said that it would provide more time to reach people who are not yet aware of the scheme.

Mitigation policy

The Government also announced amendment of the scheme’s mitigation policy. This means that a wider range of circumstances and actions taken by individuals to resolve their immigration status, or mitigate losses or impacts, are considered when deciding awards.²⁶ Commenting on this change, Mr Foster said:

Whilst we consider it still reasonable to expect individuals would have tried to resolve

²⁰ HM Government, [The Windrush Compensation Scheme](#), March 2020; and Home Office, ‘[Guidance: Windrush compensation scheme casework guidance](#)’, 5 March 2020.

²¹ Border Force, UK Visas and Immigration and Immigration Enforcement, ‘[Transparency data: Windrush compensation scheme data: February 2020](#)’, 27 February 2020.

²² Home Office, ‘[Letter to the Chair of the House of Commons Home Affairs Select Committee](#)’, 6 February 2020.

²³ [HC Hansard, 10 February 2020, col 626](#).

²⁴ Home Office, ‘[Letter to the Chair of the House of Commons Home Affairs Select Committee](#)’, 6 February 2020.

²⁵ *ibid.*

²⁶ *ibid.*

problems evidencing their lawful right to be in the UK, these changes will enable the Home Office to apply a more flexible consideration in relation to the steps someone took to resolve their situation.²⁷

Independent advisor

The Government also announced the recruitment of a permanent independent advisor to the scheme. It has also launched a procurement tender for an organisation to provide ongoing independent advice and support for claimants.²⁸

A revised impact assessment was published alongside these changes.²⁹ It estimated total compensation payments would cost between £20.5 million and £301.3 million, with operational costs estimated to be in the range of £15.4 million to £23 million.³⁰

The Home Secretary, Priti Patel, announced further changes to the scheme on 19 March 2020.³¹ These included:

- the establishment of a new cross-government working group to develop programmes to improve the lives of those affected; and
- the creation of a £500,000 fund for grassroots organisations to promote these programmes.

2.2 Responses to the scheme

Opposition parties have welcomed the idea of compensation for Windrush victims.³² However, various groups have raised issues about the scheme's design and its implementation.³³ This section of the briefing presents responses by MPs and Peers to the scheme during debates on the Windrush Compensation Scheme (Expenditure) Bill. It also includes issues noted by Wendy Williams in her independent *Windrush Lessons Learned Review*. In the review, she said that the Home Office had "missed an opportunity to adopt a more personalised and sensitive approach to claimants".³⁴ Issues raised with the scheme via these routes have included:

Ownership of the scheme

Various MPs, including Diane Abbott (the then Shadow Home Secretary), Stuart McDonald (SNP immigration, asylum and border control spokesperson), Sarah Olney (Liberal Democrats business,

²⁷ Home Office, ['Letter to the Chair of the House of Commons Home Affairs Select Committee'](#), 6 February 2020.

²⁸ *ibid.*

²⁹ Home Office, ['Windrush Compensation Policy: Impact Assessment'](#), 29 January 2020.

³⁰ *ibid.*, p 2.

³¹ [HC Hansard, 19 March 2020, col 1156.](#)

³² [HC Hansard, 10 February 2020, cols 625 and 631.](#)

³³ For example, MPs, Peers, Wendy Williams, the *Guardian* and recipients of compensation under the scheme. For the latter, see *Guardian*, ['The Guardian's view on Windrush compensation: why the delay?'](#), 10 February 2020.

³⁴ Wendy Williams, ['Windrush Lessons Learned Review'](#), March 2020, HC 93 of session 2019–21, p 126.

trade and transport spokesperson) and David Lammy (Labour MP for Tottenham), have said that the Home Office should not be administering the scheme. They argued that many of the claimants' previous dealings with the department would mean that they lacked trust in it and would potentially not wish to engage with Home Office officials.³⁵ Several Lords Members also questioned whether ownership of the scheme should remain with the Home Office. For example, Lord Hastings of Scarisbrick (Crossbench) observed:

Even though there are independent assessments and the possibility of independent considerations and committees, this is the same department with possibly the same individuals who will make the judgments on payments.³⁶

Mr McDonald said that should ownership of the scheme remain with the Home Office, there should be strong and independent routes to challenge the decisions it makes.³⁷

Commenting on this issue, Kevin Foster, the Minister for Future Borders and Immigration, said he understood the concerns.³⁸ However, he argued that moving ownership of the scheme “would risk significantly delaying payments to claimants”.³⁹ Explaining this, he stated:

The first stage in deciding a claim for compensation is to confirm an individual's identity and eligibility, which is linked to an individual's immigration status. It would be difficult to decouple this process from the Home Office, which is the department that confirms this status.⁴⁰

In addition, Mr Foster stated that the Home Office can engage with claimants through MPs if they wished to do so. He said the Government would not use information provided for immigration enforcement.⁴¹ Echoing Mr Foster's remarks, Baroness Williams of Trafford, a Minister of State for the Home Office, highlighted in the House of Lords the role of the independent adviser to the scheme, Martin Forde QC. She said he would continue to “provide external scrutiny and challenge on its operation and implementation”.⁴²

Time limit

Both Yvette Cooper and Wendy Williams, in her review, welcomed the extension of the scheme's deadline the Government announced in February 2020.⁴³ However, Stuart McDonald argued that the Government should further extend the scheme or give “generous provisions” to those who miss the current deadline. He said it needed to do so partly due to the Home Office limiting its proactive search for those affected by the problems to Caribbean countries, “despite being told by the NAO

³⁵ [HC Hansard, 19 March 2020, cols 627, 632 and 639.](#)

³⁶ [HL Hansard, 21 April 2020, col 29.](#)

³⁷ [HC Hansard, 10 February 2020, col 632.](#)

³⁸ [HC Hansard, 24 March 2020, col 306.](#)

³⁹ *ibid*, col 307.

⁴⁰ *ibid*.

⁴¹ [HC Hansard, 10 February 2020, col 668.](#)

⁴² [HL Hansard, 21 April 2020, col 44.](#)

⁴³ Wendy Williams, [Windrush Lessons Learned Review](#), March 2020, HC 93 of session 2019–21, p 126; and [HC Hansard, 10 February 2020, col 621.](#)

that its reasons for not proactively searching for victims elsewhere do not add up”.⁴⁴ He therefore argued that the Government should revisit the policy.⁴⁵

Responding, Kevin Foster said that Mr McDonald had raised a “fair point” about those who miss the deadline due to ill health or a probate issue.⁴⁶ He stated that the Government would continue to review the process, take advice and engage with stakeholders on the issue and that the option for extending the scheme remained open.⁴⁷ However, Mr Foster also argued that:

There is a balance to be struck between having a date far enough in the future to enable people to feel confident that they have time to make their claim, but soon enough to encourage people to put in their claim.⁴⁸

Several Lords members also argued that the scheme should be open for longer than is currently planned.⁴⁹ For example, Baroness Watkins of Tavistock (Crossbench) said that the scheme should be extended as current circumstances and the need for social distancing were impeding promotion of the scheme.⁵⁰ Lord Kennedy of Southwark (Labour shadow spokesperson for home affairs) also gave his support for a longer extension.⁵¹

Clarity on scope of the scheme

An unsuccessful amendment tabled by Diane Abbott during committee stage of the Windrush Compensation Scheme (Expenditure) Bill would have provided for an explicit statement that the scheme was not only for individuals who travelled from the Caribbean, but from other Commonwealth countries. Commenting on this, she argued that it was important that the Government made it clear that the scheme was not only for those from the Caribbean and called for a national campaign to encourage engagement.⁵²

Speaking on the scope of the scheme, Kevin Foster clarified those who are eligible.⁵³ He said that references to the Windrush generation were a “shorthand way to ensure that the public are aware of what we mean”, but that the Government was not talking purely about people from the Caribbean, but all those from the Commonwealth who are affected.⁵⁴ In addition, Baroness Williams of Trafford stated that Home Office data had shown that “claims are being made by individuals of a range of nationalities, spanning the Commonwealth beyond the Caribbean”.⁵⁵

⁴⁴ [HC Hansard, 10 February 2020, col 633.](#)

⁴⁵ *ibid*; and National Audit Office, [Handling of the Windrush Situation](#), 5 December 2018, HC 1622 of session 2017–19, p 12.

⁴⁶ [HC Hansard, 10 February 2020, col 668.](#)

⁴⁷ *ibid*; and [HC Hansard, 24 March 2020, col 308.](#)

⁴⁸ [HC Hansard, 10 February 2020, col 668.](#)

⁴⁹ [HL Hansard, 21 April 2020, col 27.](#)

⁵⁰ *ibid*, col 37.

⁵¹ *ibid*, col 41.

⁵² [HC Hansard, 24 March 2020, col 304.](#)

⁵³ [HC Hansard, 10 February 2020, cols 668–9.](#)

⁵⁴ *ibid*.

⁵⁵ [HL Hansard, 21 April 2020, col 43.](#)

Application process

In her *Windrush Lessons Learned Review*, Wendy Williams reported concerns about the “complex application process”.⁵⁶ Both the *Guardian* and several MPs also raised this. For example, Stuart McDonald stated:

The application form declares that the Home Office does not think that people will need an immigration lawyer to complete it, yet question one alone asks about lapsed status, settled status, whether people were ordinarily resident, and the right of abode. How many people in this chamber could provide a coherent description of all those concepts?⁵⁷

Lord Taylor of Warwick (non-affiliated) also argued that the language in the form was not straightforward and that the Government should simplify it “so that justice is seen to be done”.⁵⁸ Speaking on the scheme’s design, Priti Patel, the Home Secretary, set out the consultation process the scheme had gone through and said that “the Home Office’s first priority was to ensure that the scheme was accessible to claimants”.⁵⁹ Kevin Foster also argued that the claim forms were “simple and easy” to understand and were tested with users to ensure that legal assistance is not required.⁶⁰

In the House of Lords, several Members raised concerns that claimants must fill in the forms online and raised concerns that people cannot submit evidence as files were too large for the system to accept.⁶¹ Speaking on this, Lord Kennedy of Southwark said that such a situation was “not acceptable”.⁶²

Burden of proof

Wendy Williams’ report, and Stuart McDonald in the House of Commons, also highlighted the burden of proof the scheme required. Ms Williams said that she had heard concerns that the levels of documentary proof required were unreasonable.⁶³ Speaking on the issue, Mr McDonald said that the scheme’s guidance stated that caseworkers must be “satisfied beyond all reasonable doubt” before making awards. That, he said, was the criminal standard of proof. He argued that it was unnecessary and that it should instead be based on the civil standard.⁶⁴ David Lammy also argued that the required evidence was “the kind of evidence that people were explicitly denied because of the ‘hostile environment’ or dissuaded from accessing for fear of alerting the Home Office”.⁶⁵

Commenting on the burden of proof required, Kevin Foster said that the Government had worked with the independent adviser to the scheme, Martin Forde, to ensure “that the evidential threshold is

⁵⁶ Wendy Williams, [Windrush Lessons Learned Review](#), March 2020, HC 93 of session 2019–21, p 126.

⁵⁷ [HC Hansard, 10 February 2020, col 632.](#)

⁵⁸ [HL Hansard, 21 April 2020, col 36.](#)

⁵⁹ [HC Hansard, 10 February 2020, col 620.](#)

⁶⁰ [HC Hansard, 24 March 2020, col 308.](#)

⁶¹ [HL Hansard, 21 April 2020, col 37.](#)

⁶² *ibid*, col 41.

⁶³ Wendy Williams, [Windrush Lessons Learned Review](#), March 2020, HC 93 of session 2019–21, p 126.

⁶⁴ [HC Hansard, 10 February 2020, col 668.](#)

⁶⁵ *ibid*, col 639.

as low as possible".⁶⁶ On evidence needed for the awarding of actual losses and tariff-based awards, he stated:

Where awards are tariff-based, caseworkers will make decisions on the balance of probabilities. Where awards are for actual losses, it is right that we seek to obtain an appropriate level of assurance that those losses were incurred, in order to fulfil our duty to properly manage money.⁶⁷

Mr Foster also said that caseworkers would work with applicants and contact other government departments to try and help fill evidential gaps.⁶⁸

Support available to claimants: Citizens Advice and legal aid

Both Stuart McDonald and Wendy Williams argued that more support should be available to those wishing to make a claim. Mr McDonald said that while the support available from Citizens Advice was good, it was not enough.⁶⁹ He argued that claimants needed a choice of providers, especially as for some people Citizens Advice was unable to help them with their problems in the first place. Wendy Williams also said that it was disappointing that more community-led support was not made available to those submitting applications, in addition to the Citizens Advice's support.⁷⁰

Speaking on the issue, Kevin Foster said that the Government had extended the Citizens Advice service until it procured a new provision.⁷¹ He also referred to the announcement of a £500,000 fund for grassroots organisations to promote the compensation scheme, which included provision for advice services.⁷² However, in the House of Lords, Baroness Bull (Crossbench) questioned whether this amount of funding would be enough due to the range of communities and localities effected.⁷³

Stuart McDonald also argued that the Government should make legal aid available to all claimants, stating:

Not only are difficult concepts of immigration and nationality law involved, but the process of documenting losses and damages is often not easy.⁷⁴

Responding to Mr McDonald, Mr Foster said the team had designed the application forms to be simple and easy to understand. He again referred to Citizens Advice support and the procurement process the Home Office had begun to provide additional support.⁷⁵ He also said that Martin Forde,

⁶⁶ [HC Hansard, 10 February 2020, col 669.](#)

⁶⁷ [HC Hansard, 24 March 2020, col 309.](#)

⁶⁸ *ibid.*

⁶⁹ [HC Hansard, 10 February 2020, col 632.](#)

⁷⁰ Wendy Williams, [Windrush Lessons Learned Review](#), March 2020, HC 93 of session 2019–21, p 126.

⁷¹ [HC Hansard, 24 March 2020, col 308.](#)

⁷² *ibid.*

⁷³ [HL Hansard, 21 April 2020, col 31.](#)

⁷⁴ [HC Hansard, 10 February 2020, col 633.](#)

⁷⁵ [HC Hansard, 24 March 2020, col 308.](#)

the independent adviser to the scheme did not think specialist legal support was needed to make a claim.

Limits on compensation

During debates on the scheme, several MPs raised concerns about the scheme's limits, tariffs, and caps. In April 2019, David Lammy asked an urgent question on the scheme.⁷⁶ He said that when the then Home Secretary Sajid Javid had initially set out the scheme there were no details of any caps. However, Mr Lammy argued that a later separate compensation scheme rules document "set out incredibly strict caps to be awarded for different losses". He said that MPs had had no chance to question or scrutinise those caps and called for the Government to remove them.

In addition, Diane Abbott argued that the scheme "compares very unfavourably" with the criminal injuries compensation scheme. She said that awards under that scheme were aligned with compensation for loss under common law and that claimants were allowed a statutory right of appeal of awards and legal aid for those appeals. Ms Abbott said that "none of that is true in any meaningful sense in the case of the Windrush victims". She asked how the Minister could justify that.

Ms Abbott also said the opposition believed the Home Office should pay for losses actually incurred.⁷⁷ Using healthcare as an example, she argued:

There is only £500 for denial of access to free healthcare. It is easy to quantify how much people had to spend when they had to access private healthcare. Why cannot they get that money back?⁷⁸

Responding, Caroline Nokes, the then Minister of State for Immigration, said:

With regard to caps on payments, this scheme is both tariff and actuals-based. The right hon. Lady raised the issue of those who might have been denied NHS care, where the tariff scheme involves an award of £500. However, if an individual incurred private healthcare costs, the actuals will of course be repaid.⁷⁹

During the Commons committee stage, Kevin Foster responded to an unsuccessful amendment that would have led to further consultation on the scheme's limits, tariffs and caps.⁸⁰ He said that there were 13 categories under which people could claim and that the scheme awarded compensation based on actual losses, as well as tariff-based awards. Commenting on the limits, he argued:

Although some categories of award have an upper limit, there is no overall cap on the amount

⁷⁶ [HC Hansard, 9 April 2019, col 193.](#)

⁷⁷ *ibid*, col 194.

⁷⁸ *ibid*.

⁷⁹ *ibid*, col 195.

⁸⁰ [HC Hansard, 24 March 2020, col 307.](#)

that an individual can receive in compensation under the scheme, nor a set budget limit on payments to be made.⁸¹

He also said that the Government had not placed the scheme on a statutory footing “to allow a degree of flexibility around the rules where it is necessary”. He cited changes the Government had made to the scheme since its creation.⁸² In addition, Baroness Williams of Trafford told the Lords that the Government’s method for awarding compensation was comparable with an employment tribunals’ approach for calculating loss of earnings.⁸³

Reduction and refusal of compensation

Stuart McDonald raised concerns that the Home Office can reduce compensation on the grounds that an individual failed to contact the Home Office at an earlier stage. He argued that “eye-watering application fees” would have led some people to think that “fixing their situation was impossible”.⁸⁴ He also said that others who did try to contact the Home Office ended up the subject of enforcement action and that the Home Office’s messages at the time meant that it was “wholly unrealistic” that people suspected of being in the UK illegally should have contacted the department.

Speaking on the issue, Kevin Foster argued that it was “reasonable” to expect individuals who had difficulty in evidencing their status to have taken steps to try and resolve the issue.⁸⁵ However, he also referred to changes made following feedback that meant the Home Office would “now consider any evidence of steps that someone took to resolve their situation, even if those steps were not taken as soon as reasonably practical”.

On the issue of compensation being denied due to criminality, Stuart McDonald argued that the guidance provided on the issue was vague.⁸⁶ He also said that as a point of principle “the fact that someone has a criminal record surely does not mean that the person is not owed compensation when they are wronged by the Government”. Lucy Powell (Labour MP for Manchester Central) also raised the issue during the bill’s second reading, arguing that the issue was not about criminality, but about “whether people are or are not regarded as British citizens”.⁸⁷

Responding to calls that the Government should remove denial of compensation due to criminal conviction, Kevin Foster said that those with criminal convictions were “not precluded per se from making a claim for compensation”.⁸⁸ However, he also stated that:

Being mindful of the Government’s obligations towards taxpayers’ money, we may reduce or decline an award if a claimant has a record of serious criminality.⁸⁹

⁸¹ [HC Hansard, 24 March 2020, col 307.](#)

⁸² [HC Hansard, 10 February 2020, col 667.](#)

⁸³ [HL Hansard, 21 April 2020, col 44.](#)

⁸⁴ [HC Hansard, 10 February 2020, col 668.](#)

⁸⁵ [HC Hansard, 24 March 2020, col 308.](#)

⁸⁶ [HC Hansard, 10 February 2020, col 634.](#)

⁸⁷ *ibid*, col 623.

⁸⁸ [HC Hansard, 24 March 2020, col 309.](#)

⁸⁹ *ibid*.

Delays in payments

Citing government figures on payments made under the scheme, Wendy Williams said that given the relatively low number of claims that had been submitted, it was “disappointing that only 36 payments have been made”.⁹⁰ Stuart McDonald also commented on the pace of the scheme, arguing that “the process has been slow and drawn out”.⁹¹ In addition, Sarah Olney queried why so few payments had been made. She asked whether it was because the scheme was poorly run, or because the hostile environment policy made it difficult for individuals to claim.⁹² In the House of Lords, Lord Newby (Liberal Democrat) also raised these concerns, asking how long the Home Office was taking to deal with claims on average.⁹³

Responding to concerns about delays, Priti Patel said that the Government’s “priority has also been to ensure that payments are made as quickly as possible”.⁹⁴ Baroness Williams of Trafford highlighted the Home Office made interim payments where it could resolve part of a claim more quickly than others.⁹⁵ Baroness Williams also mentioned the criminal injuries compensation authority as a comparator, stating that its website said that claims made would take 12 to 18 months to conclude. In addition, Kevin Foster said “it does not automatically follow that someone who has secured documentation through the taskforce will then be instantly entitled to compensation”.⁹⁶

In relation to the delays, both Diane Abbott and Stuart McDonald called on the Government to look again at the introduction of a special hardship scheme.⁹⁷ Yvette Cooper, the chair of the House of Commons Home Affairs Committee, supported this request, arguing that the existing scheme would take too long for “many people who are in urgent need of compensation”.⁹⁸ She noted the cases of four people the committee highlighted in a 2018 report,⁹⁹ stating:

Shockingly, two of them have still had nothing, despite facing great hardship, and the other two died before they could get any compensation or hardship support at all.¹⁰⁰

The *Guardian* has also raised the issue of claimants dying before receiving compensation in its response to the scheme.¹⁰¹

⁹⁰ Wendy Williams, [Windrush Lessons Learned Review](#), March 2020, HC 93 of session 2019–21, p 126.

⁹¹ [HC Hansard, 10 February 2020, col 631](#).

⁹² *ibid*, col 653.

⁹³ [HL Hansard, 21 April 2020, col 26](#).

⁹⁴ [HC Hansard, 10 February 2020, col 623](#).

⁹⁵ [HL Hansard, 21 April 2020, col 45](#).

⁹⁶ [HC Hansard, 10 February 2020, col 667](#).

⁹⁷ *ibid*, cols 621 and 631.

⁹⁸, col 621.

⁹⁹ House of Commons Home Affairs Committee, [Windrush: the Need for a Hardship Fund](#), 13 June 2018, HC 1200 of session 2017–19, pp 3–4.

¹⁰⁰ [HC Hansard, 10 February 2020, col 621](#).

¹⁰¹ *Guardian*, [‘The Guardian’s view on Windrush compensation: why the delay?’](#), 10 February 2020.

Replying to these concerns, Ms Patel said that she would look into those cases. She added that an exceptional payments scheme “should stop anybody falling through”.¹⁰² In addition, when the issues of claimants dying before receiving payment was raised by another MP, Ms Patel stated “cases are complicated in terms of the provision of information, background, data and evidence, and this will take time”.¹⁰³

Kevin Foster also said that the Windrush taskforce had a dedicated vulnerable persons team to help where safeguarding and vulnerability issues arise.¹⁰⁴ Mr Foster noted that up until the end of September 2019, the team supported nearly 1,000 individuals. He also highlighted a fast-track service operated with the Department for Work and Pensions to confirm status and residence and to arrange access to benefits. Baroness Williams of Trafford also said that the Government could help with securing accommodation for those identified as homeless.¹⁰⁵

Amounts awarded

Several MPs raised concerns that amounts awarded so far under the scheme had been too low. Diane Abbott felt “the amounts being paid out are indeed pitiful”.¹⁰⁶ She argued that “they do not compensate for material loss, or for the misery, the fear and the uncertainty under which too many people have laboured for too long”. David Lammy agreed, labelling the pay-outs as “nothing short of insulting, degrading and shameful”.¹⁰⁷ Mr McDonald asked why the scheme did not “come closer” to providing restitution for actual losses:

Some of the lump sums seem surprisingly low. Right across access to social security benefits, housing, employment and education, we cannot accept restrictions on possible total awards. Why is the scheme not aiming to come closer to providing restitution for actual losses, rather than very limited broad-brush payments?¹⁰⁸

In House of Lords, Lord Taylor of Warwick noted the amounts paid out so far, calling it a “pitiful sum”.¹⁰⁹

Kevin Foster said that “there is no overall cap on the amount that an individual can receive in compensation under the scheme, nor a set budget limit on payments to be made”.¹¹⁰ He also said that the Government had established an independent review process for those dissatisfied with their compensation offer.¹¹¹

¹⁰² [HC Hansard, 10 February 2020, col 664](#); and Home Office, [Windrush Scheme: Support in Urgent and Exceptional Circumstances](#), 17 December 2018.

¹⁰³ [HC Hansard, 10 February 2020, col 619](#).

¹⁰⁴ *ibid*, col 669.

¹⁰⁵ [HL Hansard, 21 April 2020, col 47](#).

¹⁰⁶ [HC Hansard, 10 February 2020, col 626](#).

¹⁰⁷ *ibid*, col 639.

¹⁰⁸ *ibid*, col 633.

¹⁰⁹ [HL Hansard, 21 April 2020, col 35](#).

¹¹⁰ [HC Hansard, 24 March 2020, col 307](#).

¹¹¹ *ibid*, col 310.

3. Windrush lessons learned review

In March 2020, Wendy Williams published her independent *Windrush Lessons Learned Review*.¹¹² The Home Office commissioned the review to provide an independent assessment of the events leading up to the Windrush scandal (particularly from 2008 to March 2018) and identify key lessons for the department.¹¹³ To complete the review, Ms Williams spoke to those affected, their families and representatives, officials and ministers (both past and present), and accessed departmental papers.

Ms Williams found that despite the scandal taking the Home Office by surprise, it was “foreseeable and avoidable”.¹¹⁴ She traced the causes back through successive rounds of policy and legislation about immigration and nationality from the 1960s onwards, finding that “over time those in power forgot about them [the Windrush generation] and their circumstances”. As a result, when successive governments wanted to demonstrate they were being tough on immigration, “this was done with a complete disregard for the Windrush generation”. She also reported that a range of warning signs from inside and outside the Home Office “were simply not heeded by officials and ministers”. In addition, Ms Williams said that when the press began to report stories, the department was too slow to react.

In the review Ms Williams identified organisational factors in the Home Office which created the operating environment in which such mistakes could be made.¹¹⁵ She found that there were lessons for both ministers and officials to learn. Ms Williams also reported that:

While I am unable to make a definitive finding of institutional racism within the department, I have serious concerns that these failings demonstrate an institutional ignorance and thoughtlessness towards the issue of race and the history of the Windrush generation within the department, which are consistent with some elements of the definition of institutional racism.¹¹⁶

Ms Williams made 30 recommendations for change and improvement. She said these could be boiled down to three elements:

- the Home Office must acknowledge the wrong which has been done;
- it must open itself up to greater external scrutiny; and
- it must change its culture to recognise that migration and wider Home Office policy is about people and, whatever its objective, should be rooted in humanity.¹¹⁷

Responding to the publication of the review, the Home Secretary, Priti Patel, apologised and stated:

Today’s publication is part of an ongoing mission to put this right and ensure such events can

¹¹² Wendy Williams, [Windrush Lessons Learned Review](#), March 2020, HC 93 of session 2019–21.

¹¹³ *ibid.*, p 7.

¹¹⁴ *ibid.*

¹¹⁵ *ibid.*

¹¹⁶ *ibid.*

¹¹⁷ *ibid.*

never happen again, as there were far too many victims of Windrush.¹¹⁸

She also outlined some of the actions already taken to “put right the wrongs caused to individual members of the Windrush generation”, including the compensation scheme.¹¹⁹ Regarding a response to the review, Ms Patel said that she would bring forward a detailed formal response in the next six months.¹²⁰

4. Windrush Compensation Scheme (Expenditure) Bill

4.1 What would the bill do?

The Windrush Compensation Scheme (Expenditure) Bill would give parliamentary authorisation for expenditure under the Windrush compensation scheme. It does not seek to change any of the details underpinning the design or operation of the scheme. These can be changed without primary legislation.¹²¹ Until the bill becomes law, a ministerial direction is providing authority for payments.¹²²

Provisions of the bill

The bill consists of two clauses:

- Clause 1 would provide parliamentary authority for expenditure under or in connection with the Windrush compensation scheme, which is defined as the scheme published by the Home Office on 3 April 2019.
- Clause 2 would provide for the bill’s territorial extent (the whole of the UK). It would also provide for its commencement—it would come into force on the day on which it is passed—and short title.

4.2 How is the bill progressing?

The bill was introduced in the House of Commons on 8 January 2020 and completed its Commons stages on 24 March 2020. It received cross-party support, though concerns were raised about the scheme itself. The bill passed third reading without division.

The Lords stages took place on 21 April 2020. The bill received cross-party support. As in the House of Commons, various Members of the Lords raised issues with the design and operation of the scheme. As a money bill, the Lords passed it without amendment. It is currently awaiting royal assent.

¹¹⁸ [HC Hansard, 19 March 2020, col 1154.](#)

¹¹⁹ *ibid*, col 1155.

¹²⁰ *ibid*, col 1157.

¹²¹ House of Commons Library, [Windrush Compensation Scheme \(Expenditure\) Bill 2019–20](#), 24 March 2020.

¹²² Home Office, [‘Letter to the Permanent Secretary to the Home Office’](#), 4 July 2019; and [Explanatory Notes](#), p 3.

5. Further Information

- House of Lords Library, [Windrush Compensation Scheme \(Expenditure\) Bill: Briefing for Lords Stages](#), 15 April 2020