



WINDRUSH

March 2019



WHO IS AFFECTED?



COMMON MISCONCEPTION

- Those affected by the Windrush scandal are Caribbean only
- Only affects those who came to the UK on the ship Empire Windrush



THE FACTS

- Affects all Commonwealth nationals who arrived before 1 January 1973
- And potentially their family members arriving before 1988
- Including India, Pakistan, Bangladesh, Malaysia, Kenya, Nigeria, Guyana as well as the Caribbean
- ~500,000 born in a Commonwealth country, and arriving in the UK before January 1973, are in the UK
- Those from the Caribbean disproportionately affected – did not obtain documentation

HOW DID THIS HAPPEN?



- During the 1940s to 1970s, the Home Office failed to issue citizenship, or a document certifying ILR
- It issued them with indefinite leave to remain (ILR) stamps in their passports, or with nothing
- People were able to live, work, travel based on those stamps
- In 2010, it destroyed landing cards evidencing when people had arrived, important for individuals pre 1973

THE HOSTILE ENVIRONMENT



- Also in 2010, the Hostile Environment introduced
- Make life in the UK more difficult for “migrants”
- Laws/policies impacted those that were not migrants

- BRP required to prove entitlement to live in the UK, work, access benefits, NHS, rent, drive, bank, study
- In order to prove ILR, individuals to apply for BRP, pay £237 (at the time)
- Burden of proof on the individual

- People who were already British or had ILR, but no proof of this told they had no right to remain in the UK, and no right to access public services or employment



MICHAEL BRAITHWAITE

- His story was key to exposing the scandal in the mainstream media
- Came to UK as a child from Trinidad and Tobago in 1961
- Arriving in the UK before Trinidad became independent from Britain, he was British
- He went to primary school, married his Irish wife, had children and grandchildren. He worked as a teaching assistant for special needs children for years
- Then one day in 2016, he was told he did not have the right to work. Things spiralled from there – he was told he did not have the right to remain in the UK, he faced losing his family, his pension, his entire life...



WHAT PROBLEMS DO AFFECTED PEOPLE FACE?



- Individuals wrongly told not eligible for NHS treatment – including safe saving cancer treatment.
- People too afraid to approach their doctors for fear of removal and detention
- Denied access to public funds, people who living in UK for 50 years made homeless and destitute
- These difficulties resulted in mental health problems and breakdown in relationships
- Fear and shame of being “illegal” meant they were too scared to seek help
- Unknown numbers detained and removed from the UK
- As advisors, think about the mental health impact, access to housing, effect on benefits, right to work, loss of earnings, intangible losses such as family breakdown. Know where to signpost

NHS RIGHTS

- Anyone in England can register with a GP, regardless of immigration status
- All urgent care must be provided irrespective of status; only a clinician can decide whether care is urgent
- Anyone settled in the UK pre-January 1973 has ILR by virtue of the 1971 Immigration Act, and is therefore entitled to free NHS care
- Windrush generation is not subject to immigration control, and therefore not subject to pay for NHS care
- No requirement to have a British passport or BRP card to access NHS

NHS GUIDANCE

- Department of Health and Social Care has issued guidance published 31 October 2018
- Where a person claims to be Windrush, must be treated until their status is resolved. The Guidance states “These individuals should not be charged even though they may not yet have the required documents”
- A letter to the NHS provider citing the Guidance may be helpful in getting your client immediate care

HOW SHOULD WE DEAL WITH WINDRUSH CLIENTS?



- The Windrush victims experienced additional layers of harm caused by the Hostile Environment
- The anxiety caused by fear of removal, detention, of suddenly being treated as an “alien” after a lifetime of believing you belong can make it difficult for individuals to provide cogent instructions
- Destruction of data by the Home Office in 2010 means that they might not be able to provide evidence to substantiate their claims

WIDER NEEDS

- Need signposting for assistance with housing, benefits, NHS access, right to work and rent?

ACCESS TO LEGAL ADVICE AND LEGAL AID



- Windrush applications are not in scope for Legal Aid
- Home Secretary has repeatedly maintained that the system is so simple that no lawyers are needed...

EXCEPTIONAL CASE FUNDING

- Exceptional case funding is not a solution
- Very few providers who undertake ECF work, and there is no guarantee that ECF will be granted
- Many individuals will be ineligible despite having low or no income, as after 40+ years living in the UK it is likely that they will own property or have over £8,000 in savings
- The sector continues to push for applications to be brought within scope for Legal Aid

THE APPLICATION FORM



- Windrush application carries no fee. There is no fee to register biometrics once an application is made either. The form can be accessed at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/736467/windrush-08-18.pdf

- Applicants (and their children in certain circumstances) can apply for:
 - British citizenship, or confirmation that they are already British
 - Document confirming they have a right of abode in the UK
 - Document confirming they have indefinite leave to remain in the UK
- Nationals of any country arriving in the UK before 31 December 1988, who have lived in the UK continuously since then, can also apply for the above

- Do not need to be originals
- Best evidence of entry to and residence in the UK are passports
- Home Office policy: ensure that it communicates with other government departments to obtain evidence
- As advisors we need to be proactive in finding sources of evidence
- Good sources of information: UKVI SAR, medical records, HMRC records, DWP records, school records and certificates, letters from employers, tenancy agreements
- In the absence of the above, a detailed statement from your client
- Ideally you should provide as much evidence as possible



THE HOME OFFICE'S "WINDRUSH TASKFORCE" CONTACT DETAILS

- Phone: 0800 678 1925 (Monday to Saturday: 9am to 5pm; Sunday: 10am to 4pm)
- Email: commonwealthtaskforce@homeoffice.gsi.gov.uk

POLICIES

- "Windrush Generation" guidance for NHS staff and other providers of NHS funded secondary and community care services, 31/10/2018
- Landlords: right to rent checks on long-resident non-EEA nationals and Windrush generation, 8/01/2019
- Employers: right to work checks on long-resident non-EEA nationals and Windrush generation, 8/01/2019

DECISION MAKING ON WINDRUSH APPLICATIONS



- The Home Office policy: decisions on Windrush applications to take 2 weeks
- Reality: decisions have taken longer – from several weeks to several months
- If your client is detrimented by a delay, consider challenge by way of judicial review

HARDSHIP AND COMPENSATION FUNDS



COMPENSATION SCHEME

- There is no compensation scheme
- Compensation scheme consultation ended in November 2018, no further guidance issued
- Few claims issued under Equalities Act. Most victims await publication of the compensation scheme
- Future litigation? Caps on loss of earning and benefits, quantification of intangible loss, unlawful detention

HARDSHIP FUND

- Announced in December 2018 to provide up to £5000 to those who have been affected
- Only one person has received support under the hardship scheme

- The media played a significant role in unearthing the scale of the scandal, and then ensuring that the government took action
- Channel 4 Home Affairs Correspondent Simon Israel worked closely with us and other organisation to place the story on broadcast media
- Amelia Gentleman of the Guardian began investigating in October 2017; she unearthed stories of deprivation and deportation of individuals who had every right to be in the UK
- The media's work helped to gain mainstream support for the victims, and to ensure that urgent action was taken by the Government

CAN MEDIA HELP MY CLIENT?

- For individuals, media exposure often led to swift resolution of their issues. In these cases, media attention may be a helpful option for your client