




THE JOINT COUNCIL
for **THE WELFARE**
OF IMMIGRANTS

Windrush
Compensation
Scheme
Training

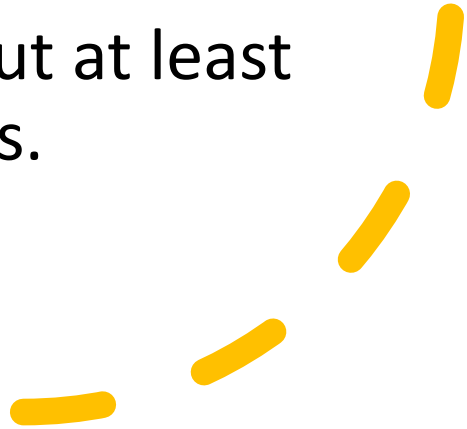
Windrush – an abridged history

- People arriving in the UK between 1948 and 1971 from Caribbean countries have been labelled the Windrush generation.
- It refers to the ship MV Empire Windrush, which docked in Tilbury on 22 June 1948, bringing workers from Jamaica, Trinidad and Tobago and other islands, to help fill post-war UK labour shortages.
- The ship carried 492 passengers - many of them children.
- They are among more than 500,000 UK residents who were born in a Commonwealth country and arrived before 1971, according to University of Oxford estimates.

Windrush – the scandal

- The Home Office kept no record of those granted leave to remain and issued no paperwork - making it difficult for Windrush arrivals to prove their legal status.
 - In 2010, it destroyed landing cards belonging to Windrush migrants.
 - Those who had lived in the United Kingdom lawfully for decades felt the full force of the government's hostile environment policies.
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Windrush Scheme

- The Windrush scheme, introduced in May 2018 offers free citizenship application/confirmation of Indefinite Leave to Remain;
 - The compensation scheme provides payments to individuals who suffered losses as a result of not being able to evidence their lawful status in the United Kingdom;
 - The scheme is far from perfect but at least provides some redress for victims.
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Windrush Scheme – documentation

- If you're settled in the UK but do not have a document to prove it, you may be eligible to apply to the 'Windrush Scheme'.
- You may be able to apply for a document to prove you can live and work in the UK if one of the following is true:
- you came to the UK [from a Commonwealth country before 1973](#)
- your [parents came to the UK from a Commonwealth country before 1973](#)
- you came to the UK [from any country before 31 December 1988](#) and are now settled here.
- It's free to apply.

Windrush Scheme – compensation

The compensation scheme is for losses that happened because you could not show that you had a right to live in the UK.

‘Losses’ can be things like not being able to work, find a place to live or get health treatment. They can also include immigration action, like detention or removal from the UK.

Claims can be made from 3 April 2019, scheme originally due to close on 2 April 2023. Following a welcome announcement in summer 2021 – now no deadline.

Eligibility – who can apply

1. Primary claimants

- (a) a Commonwealth citizen who was settled in the United Kingdom before 1 January 1973 and has been continuously resident in the United Kingdom since their arrival (or who satisfied this provision and is now a British citizen);
- (b) a Commonwealth citizen who was settled in the United Kingdom before 1 January 1973 whose settled status has lapsed because they left the United Kingdom for a period of more than 2 years, and who is now lawfully in the United Kingdom (including as a British citizen);
- (c) a Commonwealth citizen who has a right of abode and was ordinarily resident in the United Kingdom on 1 January 1973 (or who satisfied this provision and is now a British citizen);
- (d) a child of a Commonwealth citizen who either: (i) was settled in the United Kingdom before 1 January 1973; or (ii) has a right of abode (or did and is now a British citizen) and was ordinarily resident in the United Kingdom on that date, (including a citizen who satisfied one of those requirements and is now deceased), where the child was born in the United Kingdom or arrived in the United Kingdom before the age of 18 and has been continuously resident in the United Kingdom since their birth or arrival;
- (e) a grandchild of a Commonwealth citizen who either: (i) was settled in the United Kingdom before 1 January 1973; or (ii) has a right of abode (or did and is now a British citizen) and was ordinarily resident in the United Kingdom on that date, (including a citizen who satisfied one of those requirements and is now deceased), where the grandchild and their parent were born in the United Kingdom or arrived in the United Kingdom before the age of 18, and the grandchild has been continuously resident in the United Kingdom since their birth or arrival;
- (f) a person of any nationality who arrived in the United Kingdom before 31 December 1988 and who either is lawfully in the United Kingdom or is now a British citizen;
- (g) a Commonwealth citizen outside the United Kingdom who was settled in the United Kingdom before 1 January 1973 and who has a right of abode or settled status or who is now a British citizen, or whose settled status has lapsed because they left the United Kingdom for a period of more than 2 years.



Eligibility – who can apply

2. Estates

The estate of a primary claimant is eligible to claim compensation under the Scheme.

A claim on behalf of an estate must be made:

- (a) where the estate is administered in the United Kingdom, by an executor or an administrator of the estate or by a personal representative of the deceased;
- (b) where the estate is not administered in the United Kingdom, by a person who has responsibility for the administration of that estate.

Eligibility – who can apply

3. Close Family Members

A close family member of a primary claimant (including a primary claimant who is deceased or who has not brought a claim under the Scheme) is eligible to claim compensation under the following provisions of the Scheme only:

- (a) paragraph 3.2 and Annex B (fees and costs);
- (b) paragraph 3.8 and Annex H (impact on life); and
- (c) paragraph 3.9 and Annex I (discretionary award).

A close family member of a primary claimant is eligible to claim compensation under paragraph 3.8 and Annex H (impact on life) and under paragraph 3.9 and Annex I (discretionary award) only if the impact, loss or detriment in respect of which the compensation is claimed, occurred or was triggered when the close family member was lawfully in the United Kingdom within the meaning of paragraph 2.9.

A person is a close family member of a primary claimant if the person was at the material time: (a) the claimant's spouse or civil partner and living with the claimant; (b) the claimant's partner (living with the claimant, unmarried and not in a civil partnership, as husband and wife or as civil partners, for a continuous period which lasted in total for 2 years or more); (c) the claimant's child; (d) the claimant's parent; (e) the claimant's sibling.

Heads of Loss

- Immigration fees and legal costs;
- Detention, deportation, removal and return;
- Loss of access to employment;
- Loss of access to Child Benefit, Child Tax Credit or Working Tax Credit;
- Loss of access to benefits;
- Housing;
- Health;
- Education;
- Banking;
- Driving licence;
- Homelessness;
- Impact on life;
- Discretionary.



Criminality

The Home Office's guidance states:

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.

If you are advising clients with a criminal record it is important that you highlight this from the outset.



Evidence gathering

- The client's account can be the most powerful evidence – impact;
- A relationship of trust and confidence can take time to build;
- Detail is important – particularly dates and a clear chronology – clients will need guiding;
- HMRC;
- DWP;
- Employer – contract, payslips, P60, P45;
- GP records;
- Letters from government departments refusing benefits or housing;
- Detailed witness statement;
- Letters of support from charities.

How to submit requests for information

- GP records – letter to the GP’s surgery with signed authority;
- DWP – form to request information as a third [party](#) - needs to be signed by the client and posted. There is no fee;
- HMRC – form to request information as a third [party](#) – needs to be signed and posted. There is no fee.
- Home Office file of [papers](#) - detailed request, can be made online, but will need to send signed authority and certified photographic identification.





Useful resources

- Compensation application [form](#);
- Home Office [Policy](#);
- Windrush compensation scheme [rules](#);

Application

- Cover letter – outlining immigration history and impact;
- Head of loss with description and calculation – refer to annexes of the rules;
- Outline relevance of supporting evidence;
- Forensic accountant to prepare schedule of loss.

Can be submitted by email or post:

WindrushCompensationScheme@homeoffice.gov.uk;

by post from within the United Kingdom to: Freepost Windrush Compensation Scheme; or by post from overseas to: PO Box 3468, Sheffield S3 8WA, United Kingdom.

Offers of compensation

- Must be accepted within 2 months;
- Right of review – to be requested within 2 months of the determination – tier 1 – senior reviewer;
- 2 months from decision of senior reviewer to request a tier 2 review. Conducted by an independent person;
- Offer accompanied by an apology.

Top tips

- Start with the evidence the client already has, including their own testimony;
- Be alive to the fact that there simply might not be an official paper trail;
- Show empathy and compassion – the client might be reliving trauma or may struggle to recall dates and details;
- Be realistic – it can take time to gather the evidence and even longer for the Home Office to decide the application.



Lessons Learned and challenges

Problems with the scheme –

Delays and low-level awards;

Complex application process and unreasonable levels of documentary proof required.

December 2020 – increase to minimum award for impact on life from £250 to £10,000 and preliminary payments.

Still scope for strategic challenge – importance of monitoring outcomes.

Call for evidence

- The Home Office published its [Windrush Lessons Learned Review response: comprehensive improvement plan](#) in September 2020, setting out how it intended to implement the Independent Adviser's recommendations, including righting the wrongs of the scandal and a focus on 'wholesale and lasting cultural change'.
- The Independent Adviser has returned to the Department 18 months on from the publication of the Windrush Lessons Learned Review, to assess the Department's progress in implementing the 30 recommendations set out in her report. The [Windrush Lessons Learned Review progress update: terms of reference](#) includes some questions that the revisit seeks to answer.

This call for evidence was issued on 21 October 2021 and will run until 21 November 2021.

More information: [Windrush Lessons Learned Review progress update: call for evidence - GOV.UK \(www.gov.uk\)](#)

JCWI

- For more information about JCWI and the work that we do visit our website & follow us on social media:
- Website: www.jcwi.org.uk
- Twitter: @jcwi_UK
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