Submission to the

Windrush Lessons Learned Review

October 2018

Amnesty International UK is a national section of a global movement of over three million supporters, members and activists. We represent more than 600,000 members, supporters, activists, and active groups across the UK. Collectively, our vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. Our mission is to undertake research and action focused on preventing and ending grave abuses of these rights. We are independent of any government, political ideology, economic interest or religion.

1. Amnesty International UK ("AIUK") welcomes the opportunity to make this submission to the review.

2. The review is urgently needed. The treatment of members of the Windrush generation that has been exposed is appalling; and that this has persisted for so long, affecting so many people, so dramatically, is more than sufficient to justify this review.

3. However, as we explain in response to the specific questions raised (under discrete subheadings below), there is a real risk that lessons will not be learned and any corrective measures will prove inadequate if the review or the Home Office response to it are too narrowly focused in either understanding of the relevant chronology or recognition of whom has been and continues to be wrongly affected.

4. The Government was, for example, right not to restrict the remit of its Windrush taskforce and guidance to either people who came from the Caribbean or other Commonwealth countries.[1]

5. However, the terms of reference[2] need some unpicking to ensure that the review and its reception by the Home Office is not unduly narrow. We have the following distinct concerns relating to the aim and objectives:

    a Members of the Windrush generation may have been disproportionately affected but are far from the only people who have been wrongly treated as if ineligible or not entitled to be in the UK and consequently harmed by immigration powers and exclusions.

    b The events that have led to what is described as 'Windrush issues' importantly include legislative, policy and operational developments of several decades ago.

    c The 'Windrush issues', which we understand to mean the wrongful subjection of members of the Windrush generation to immigration powers (e.g. to detain, expel and refuse return) and immigration exclusions (e.g. from employment, housing, welfare and healthcare) predate 2008.

    d Generally characterising these immigration powers and exclusions as "*designed for illegal immigrants*", which we understand to mean to address unlawful entry or stay in the UK, is to misunderstand or misrepresent both the purpose and substance of much of the relevant legislation and policy. Similarly, describing members of the Windrush generation as "*becoming entangled*" mischaracterises the injustice and harm done to people and the policies and other means by which these were done.

---

[1] The people eligible under the Windrush Scheme expressly include "*a person of any nationality, who arrived in the UK before 31 December 1988 and is settled in the UK*": https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/735187/Windrush-Scheme-v2.0ext.pdf

[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727184/WLR_Terms_of_Reference_vn_5.0__003_.pdf

e Without full recognition of these preceding concerns, neither the review nor Home Office response will be adequate to understand what has happened and ensure lessons are learned and acted on to end widespread and systemic wrongful subjection of people to immigration powers and exclusions.

6. We are satisfied that the terms of reference do not preclude addressing these concerns. However, we consider the way the aim and objectives are framed raises a serious risk that responses to the call for evidence will be too narrow in their focus in relation to these concerns.

1.What, in your view, were the main legislative, policy and operational decisions which led to the members of the Windrush generation becoming entangled in measures designed for illegal immigrants?

7. We have broken our response down into roughly three periods of time. This is to facilitate understanding. However, there is a danger that by disaggregating policies and practices in this way, connections and continuity of policy and practice across these periods is overlooked. We caution against that. We must also emphasise that our focus is on main factors. Some factors are, therefore, not considered; including those falling outside the specific periods considered.

8. We first note, however, that the relevant legislative, policy and operational decisions have not all been directed at people whose presence in the UK is unlawful. Some of these have been said to be so directed; others not. It is inaccurate to describe the Windrush generation as having become entangled in measures designed for people not lawfully in the UK. Various of the measures that have most caused harm to the Windrush generation and many other people lawfully in the UK were designed to apply to people lawfully in the UK, including people settled in the UK. The harms done were not, therefore, accidental. The Windrush generation were among the many people to whom the policies and their implementation applied. At best, if the Windrush generation were not people to whom it was recognised these policies applied, or that their impact would be so severe, then there was a profound carelessness as to their impact. An alternative explanation might be that there was a general negligence about the inevitable impact of these policies and their implementation on this group of people and other people in a similar situation; that the harm that would be done to them was regarded as acceptable in the pursuit of policies intended to have wider impact.[3]

Up to the passing and taking effect of the Immigration Act 1988

9. *Critical effects of legislative and policy changes over this period, outlined in this subsection, were to deprive people of British nationality and render them subject to immigration controls. Racist political and social attitudes motivated and were sustained by these changes, which cannot be divorced from the racial discrimination*

[3] We note that Home Office guidance archived before the political scandal broke this year expressly recognised the risk of adverse publicity if mishandling the cases of people settled in the UK prior to 1 January 1973; see (p24):
http://webarchive.nationalarchives.gov.uk/20140607190103/https://www.gov.uk/government/publications/travel-documents-no-time-limit

and violence suffered by many people of the Windrush generation.[4] *The injustice done by these changes was compounded because insufficient was done to ensure that people were aware of the changes; understood they were affected by the changes and how; and assisted and enabled to exercise, where these were available, rights to mitigate the changes and their effects.*

10. Commonwealth citizens arriving in the UK over the post-War period arrived as British subjects, under the British Nationality Act 1948, thereby sharing the same nationality as the UK's then resident population.[5] At the beginning of this period, all British subjects were equally entitled to come and go from the UK. The Commonwealth Immigrants Acts 1962 and 1968 changed that,[6] and practices at the time also curtailed people's capacity to exercise their right to come to the UK.[7] The Windrush generation were people to whom these legislative measures applied.

11. Under the British Nationality Act 1948, 'British subject' and 'Commonwealth citizen' were coterminous.[8] The Act did distinguish between Commonwealth citizens who were citizens of the UK and Colonies and those who were not.[9] Thus, Commonwealth citizens included nationals of independent countries that had formerly been British colonies. Over the years, other British colonies, dependents and protectorates secured their independence. In doing so, they conferred their new nationalities upon their citizens; and those citizens ceased to be citizens of the UK and Colonies. As this happened, section 1(3) of the British Nationality Act 1948 was amended to include the

---

[4] Cabinet papers disclose a preoccupation with 'coloured' immigration and immigration from the West Indies, India and Pakistan. For example, a memorandum by the Lord President of the Council on Commonwealth Immigration, C.(65) 90, 6 July 1965 provides statistics on immigration from the Commonwealth with the introduction "*A substantial increase in the number of coloured Commonwealth citizens settling in this country first came to notice in 1953. From 1955 onwards a rough check was kept at the ports of the number of Commonwealth citizens from the Caribbean, Asia, East and West Africa and the Mediterranean who were arriving and leaving. Estimates of the net intake of coloured immigrants based on this count are as follows....*" A memorandum by the Secretary of State for the Home Department and Lord Privy Seal on Commonwealth Immigrants, C.(58) 132, 25 June 1958 included: "*I hope that the administrative measures that are being taken will reduce the flow of immigrants from India, Pakistan and the West Indies and that the legislative action will not therefore be necessary. Legislation directed against the Commonwealth would be controversial in itself... If legislation does eventually become necessary, my present view is that it would have to apply to the whole of the Commonwealth and the Republic of Ireland, even though we used it initially only to deal with immigration from India, Pakistan and the West Indies. To discriminate against these countries in the Bill would obviously be difficult.... As regards permanent legislation about aliens... Any attempt to incorporate such permanent powers in a Bill which authorised the exclusion of British subjects in carefully defined circumstances would strengthen the hands of those who want to make our powers to deal with aliens much more precise and circumscribed and subject to much more closely defined safeguards.*" Some of the history of the time is briefly discussed by Sundeep Lidher in *British Citizenship and the Windrush generation*, April 2018: https://www.runnymedetrust.org/blog/british-citizenship-and-the-windrush-generation

[5] Section 1, British Nationality Act 1948

[6] Section 1(1), Commonwealth Immigrants Act 1962 provided: "*The provisions of this Part of this Act shall have effect for controlling the immigration into the United Kingdom of Commonwealth citizens to whom this section applies.*" Section 2 of the Act permitted an immigration officer to refuse admission to the UK, or impose a time limitation on the person's admission, but not in the case of a Commonwealth citizen who had been ordinarily resident during the previous two years, the wife or child of a Commonwealth citizen who was resident in the UK or being admitted to the UK, or a Commonwealth citizen coming to the UK to work and possessing a current voucher to do so, to study or was self-sufficient. Refusal of entry was also permitted on specified medical, criminal or national security grounds. The Commonwealth Immigrants Act 1968 made significant amendment to these provisions.

[7] See Sundeep Lidher *op cit*

[8] Section 1(2), British Nationality Act 1948

[9] Section 1(1), British Nationality Act 1948

newly independent countries among the Commonwealth countries mentioned in that section. By this means, the people affected by these changes continued to be Commonwealth citizens. One significance of this was that adult Commonwealth citizens, if ordinarily resident in the UK for 12 months, were entitled to register in the UK as citizens of the UK and Colonies.[10] The Commonwealth Immigrants Act 1962 extended this time requirement to five years.[11] The Immigration Act 1971 substituted a registration scheme set out in Schedule 1 to the Act for the provisions in the 1948 and 1962 Acts whereby adult Commonwealth citizens settled in the UK could register in the UK as citizens of the UK and Colonies. The scheme was available to anyone who was settled in the UK at the time of the Act's commencement.[12] A continuous period of five years ordinary residence in the UK was required to register in the UK as a citizen of the UK and Colonies.[13] Registration in the UK as a citizen of the UK and Colonies was significant under the Immigration Act 1971 as it conferred on the person the right of abode (also described by that Act as patriality).[14]

12. The Immigration Act 1971 placed further constraint on Commonwealth citizens' rights to enter the UK. However, it included important safeguards for Commonwealth citizens who had settled in the UK, including people now referred to as the Windrush generation and their family members. Section 1(1) confirmed the general right "*to live in, and to come and go into and from, the United Kingdom without let or hindrance*" of all people with the right of abode (patrials). Section 2 confirmed who had the right of abode (patriality), including citizens of the United Kingdom and Colonies who had been at any time settled in the UK and ordinarily resident for five years [subsection (3)] and citizens of the United Kingdom and Colonies by birth, adoption, naturalisation or registration in the UK [subsection (1)]. Schedule 1 of the Act made provision for registration in the UK as a citizen of the United Kingdom and Colonies. Section 1(5) required that immigration rules introduce no further restriction on the freedom of Commonwealth citizens already settled in the UK and their wives and children to come and go from the UK. Commonwealth citizens ordinarily resident at the coming into force of the Act also benefited from exemptions from deportation in section 7.

13. The British Nationality Act 1981 fundamentally changed British nationality law. It created British citizenship, which by section 11 of the Act was conferred primarily at commencement to persons who were patrial citizens of the UK and Colonies (i.e. such citizens who had the right of abode) immediately before commencement. The take up of registration under Schedule 1 to the Immigration Act 1971 (or under the preceding provisions), therefore, became an important determinant of whether many Commonwealth citizens who had settled in the UK became British citizens on the 1981 Act's commencement. Additionally, section 7 of the British Nationality Act 1981 made provision by which a person, who would have been able to register under specified provisions of Schedule 1 to the Immigration Act 1971 (were these still in force), was entitled to register as a British citizen. Five years ordinary residence was, therefore, required to register as a British citizen under this provision.

---

[10] Section 6(1)(a), British Nationality Act 1948
[11] Section 12(2), Commonwealth Immigrants Act 1962
[12] Paragraph 2 to Schedule 1, Immigration Ac 1971
[13] *ibid*
[14] Section 2(1) and (6), Immigration Act 1971

14. Whether or not a Commonwealth citizen settled in the UK, with a right to register as a British citizen, took up that right, she, he or they continued to be settled here. Moreover, at the time, and until the commencement of section 1 of the Immigration Act 1988,[15] she, he or they were free to go from the UK for any length of time without ceasing to have the right to freely return and stay. The 1988 Act changed that. Thenceforth, these people would cease to be settled in the UK if absent for a continuous period of two years. The Act also removed the freedom provided by section 1(5) of the Immigration Act 1971 from which Commonwealth citizens' wives and children had benefitted, save that outstanding applications for entry clearance by these wives and children were not to be affected by the commencement of the 1988 Act.[16]

15. During the debates on the 1981 Act, Ministers emphasised their desire and intention to encourage anyone entitled to register as a British citizen under section 7 to do so.[17] This was in recognition, in part, of the importance that all those with close connection to the UK have the fullest sense of security through British citizenship.[18] This desire to encourage take up of registration was said to be the reason for limiting the period in which a person could register under section 7 to within five years of commencement of the Act[19] or, if the person was a minor at commencement, to within five years of her, his or their reaching adulthood.[20] A person was required to be an adult to register. Discretion was included in any particular case to permit registration within a further three years "*in special circumstances*".[21]

16. The events of more recent years whereby many Commonwealth citizens have been wrongly treated as if without entitlement to be in the UK importantly derive from these earlier legislative and policy developments. Those events throw a light on the inadequacy of what was done at the time even in securing the parliamentary and Ministerial intentions behind some of this legislation. They also arise out of a failure to recall, understand or recognise the importance of the earlier developments.

17. A starting point in any consideration of how these events transpired must be reflection on why it is that so many Commonwealth citizens and their family members, whom it was intended by the British Nationality Act 1981 (read with the Immigration Act 1971; and the British Nationality Act 1948 and Commonwealth Immigrants Act 1962) should register as British citizens, did not do so. Ministers said the Act would encourage this. Ministers expressly recognised that securing this was necessary for good race relations in the UK.[22] Had those intentions been fulfilled, the Windrush

---

[15] Article 2, Immigration Act 1988 (Commencement No. 1) Order 1988, SI 1988/1133 brought section 1 into effect on 1 August 1988

[16] Article 3(1), Immigration Act 1988 (Commencement No. 1) Order 1988, SI 1988/1133

[17] As regards, the imposition of a restriction of time during which the entitlement needed to be exercise, Lord Belstead, Minister of State, indicated the Government's view that such a restriction was necessary to encourage take up of registration: see *Hansard* HL, 21 July 1981 : Col 173-4.

[18] *Hansard* HC, 24 February 1981 : Col 177 *per* Timothy Raison, Minister of State, Home Office

[19] This period was extended to six years if at the commencement of the Act the person had yet to reach five years of continuous residence.

[20] Section 7(7), British Nationality Act 1981

[21] For those persons entitled to register within six years of the Act's commencement, the additional period during which they could be registered at the discretion of the Secretary of State was limited to two years.

[22] This was generally and powerfully recognised in connection with the Act, by the Minister's emphatic and prescient statement (*Hansard* HC, 24 February 1981 : Col 177-9): "*This is the fundamental position that we*

generation would have been British citizens. Institutional loss of memory or care concerning their immigration status as settled in the UK, and later failures to ensure their capacity to demonstrate their possession of that status, would have been largely irrelevant. The seeds of what was a devastating institutional (and societal) loss of memory or care were sown in the failure to either recognise the effective barriers to the fulfilment of Parliament's and Ministers' intentions or to ensure those barriers were overcome. Archive records indicate various reasons why people did not register. Some people were not aware of their right or need to do so because they continued to believe themselves to be British or saw no immediate change to their day to day lives, unaware of the future implications of not doing so by reason of legislative, policy and operational developments they could not possibly have predicted. Other people were deterred from doing so by the fee or by the bureaucracy. Some people were simply insulted at the demand that they register as British (citizens), including paying a fee, given their arrival in the UK as British (subjects) and their contribution to British society and public service.[23]

18. Nonetheless, without British citizenship, the Windrush generation were settled in the UK. Their right under immigration laws to come and go from the UK was unrestricted, save that with the commencement of section 1 of the Immigration Act 1988, this right would be lost by absence from the UK of two years or more. At a minimum, the events of more recent years also raise a serious question as to what was done at the coming into force of this change to ensure that people affected by it were aware that their previous freedom to come and go from the UK was now restricted.

Period from mid-2000s to May 2010

19. *This subsection primarily highlights two legislative and policy developments that were integral to how later law and policy changes would have such devastating effects on people's lives. These were the introduction of biometric residence permits (an identity card system) for all people subject to immigration control with a requirement that people pay for these permits, including where this was in effect a redocumentation process of people long settled in the UK. These developments would not, however, have had such relevance to people of the Windrush generation if, decades earlier, they had not been deprived of their British nationality without enabling them to exercise rights intended to mitigate or correct this deprivation. However, it is important to mention that this period also foreshadowed several aspects of the critical law, policy and practice, effectively accelerated and enlarged in the final period into which our submission breaks down the chronology. This foreshadowing is not outlined in this*

---

have adopted. We believe that it is extremely important that those who grow up in this country should have as strong a sense of security as possible. Otherwise, we are breeding trouble for ourselves over the years to come. I believe that this is fundamental and that the evidence for it is very strong. It may not be quantifiable or capable of translation into statistics, but anyone who looks at our society can see that, whatever the history of the matter, large numbers of people come to this country today from overseas and settle here. It is therefore of crucial importance to us all, and not simply to the ethnic minorities, that we should have a harmonious society in which there is minimum fear, apprehension and doubt. That is at the heart of our proposal… We have to say that we are now living in a country where there are all sorts of different colours, ethnic backgrounds and minority communities. I believe profoundly that that is a fact of our society and we have got to make it work. We shall make it work by encouraging people to feel secure in this country rather than by encouraging their apprehensions. That is fundamental to our position."

[23] See for example: https://www.youtube.com/watch?v=_UwLep9KEFk

subsection but includes the introduction of removals targets;[24] *greater political emphasis on deportation;*[25] *expansion of Home Office powers, including significantly increasing the detention estate;*[26] *undermining safeguards such as appeal rights and legal aid;*[27] *and extending powers to exclude people from such opportunities and services as work, social services and welfare support.*[28]

20. Two legislative and policy developments during this period are of especial relevance. First, section 42 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 included powers to charge more than administrative cost for immigration and nationality applications. The relevant provisions were amended by the Immigration, Asylum and Nationality Act 2006 and UK Borders Act 2007.[29] Fees above administrative cost began to be rolled out from 2007.[30] Second, sections 5 to 15 of the UK Borders Act 2007 included powers to introduce a mandatory biometric residence permit scheme. Biometric residence permits were rolled out from 2008.[31]

21. The intention behind the introduction of biometric residence permits was or became to establish a biometric identity card system for all people in the UK who were neither British citizens nor exercising European free movement rights (i.e. for all people subject to immigration control).[32] Had Commonwealth citizens settled in the UK registered under the various citizenship provisions referred to above, they would not have been subject to this scheme as they would be British citizens. Commonwealth citizens settled in the UK who had not registered, however, remained subject to immigration control. The policy was that in time they too would require a biometric residence permit to evidence their right to reside and access specified services and opportunities in the UK. Implementing this would ultimately mean that whatever previous documentation a Commonwealth citizen held and used over the preceding decades would need to be replaced. The Home Office established a formal application process for this. It applied not only to Commonwealth citizens and to other people already settled in the UK. Many people were effectively required to make a 'transfer

---

[24] For example, in a speech on immigration and asylum in April 2005, the Rt Hon Tony Blair said: "*We have set a target of removals exceeding applications for the first time ever.*"

[25] This emphasis became very much greater following the events leading to the resignation of the Rt Hon Charles Clarke as Home Secretary in 2006. See further paragraph 23 of this submission.

[26] In 2000, the UK immigration detention estate had a capacity of less than 500. By the time the Verne opened as an immigration removal centre in 2014, that capacity rose to over 3,800. See Amnesty International UK, *A matter of routine: immigration detention in the UK*, December 2017, p16

[27] Significant immigration legal aid cuts were made in 2004; and then in October 2007 fixed and graduated fee schemes were introduced as heralded by the Legal Services Commission/Department for Constitutional Affairs *Legal Aid Reform: the Way Ahead*, Cm 6993, which paper had followed a report by Lord Carter and a consultation.

[28] For example, sections 15-26, Immigration, Asylum and Nationality Act 2006 introduced a civil penalty scheme in relation to employers.

[29] Paragraph 6 of Schedule 2, Immigration, Asylum and Nationality Act 2006 (see also sections 51 and 52); and section 20, UK Borders Act 2007

[30] The Immigration and Nationality (Fees) Regulations 2007, SI 2007/1158 first introduced nationality and immigration fees at above administrative cost.

[31] See the following information taken from the UK Border Agency website in April 2010: http://webarchive.nationalarchives.gov.uk/20100408132458/http://www.ukba.homeoffice.gov.uk/managingborders/idcardsforforeignnationals/

[32] *Ibid*. At the time of the introduction of the UK Borders Bill, the Government was intent on introducing identity cards in the UK more generally. Parliament had by that time passed the Identity Cards Act 2006. That Act was repealed by section 1, Identity Documents Act 2010. What had presented as the completion of a comprehensive identity card system in the UK, thus became an identity card system for migrants only.

of conditions/NTL' (NTL standing for no time limit) application for new documentation to confirm their existing and, in the case of many of these people including all the affected Commonwealth citizens, longstanding status as settled in the UK. As when changes were made by the British Nationality Act 1981 (and under previous legislation) to nationality law and the Immigration Act 1988 to protections relating to Commonwealth citizens' settled status, no steps were taken to raise awareness among people long settled in the UK to understand how they were affected, still less facilitate this re-documentation process in a manner that respected their rights and ensured it would not cause cost, disruption or harm to these people.[33]

22. These applications were charged for.[34] The general intention behind the powers to charge above administrative cost was or became that the immigration system would in time become self-financing.[35] While the fees to make an NTL application (and the additional fee required to register biometric details) were set at what was said to be the administrative cost, it seems at least likely that the underlying policy intention was relevant to why the Home Office chose to compound the imposition of a requirement for people to re-document themselves through a formal application process by imposing a fee (currently £229 plus £19.50).

23. A further development merits particular consideration due to its impact on a smaller group of the Commonwealth citizens who have been affected by what the terms of reference refer to as 'Windrush issues'. In 2006, the then Home Secretary was compelled to resign in the face of revelations that the Home Office had failed to consider whether to apply its powers of deportation in relation to dozens of people subject to immigration control, who had been convicted of offences in the UK leading to their imprisonment.[36] The then Prime Minister promised to automatically deport such people in the future[37] and the UK Borders Act 2007 included new provisions

---

[33] We have spoken to Chilean refugees who settled in the UK in the 1970s, whose lives were disrupted (including being dismissed from their employment) by the introduction of biometric residence permits because they were unaware there would be any need for them to obtain these documents or could not afford the document; and who expressed feelings of insult at the change and the fee.

[34] During the passage of the UK Borders Act 2007, Lord Bassam of Brighton, Home Office Minister of State explained: "*We will endeavour to ensure that cost recovery levels match what is reasonable and appropriate, but they must abide with Treasury rules in recovering the full administrative costs to the system.*" *Hansard* HL, 9 October 2007 : Col 226

[35] See statement of Rt Hon James Brokenshire, Minister for Immigration, First Delegated Legislation Committee: Draft Immigration and Nationality (Fees) Order 2016: "*To support the Government's approach towards recovering an increased proportion of immigration and visa costs and transitioning to a self-financing border and immigration system, we propose to apply incremental increases to most immigration and nationality categories.*" An intention with which the official Opposition expressed agreement. See *Hansard* HC, 2 February 2016 : Cols 3-4

[36] In her introduction to her July 2006 report on *Foreign National Prisoners: A thematic review*, the then HM Inspector of Prisons wrote: "*But, as this thematic report shows, there is as yet no effective and consistent approach, that ensures proper support for foreign nationals while in prison, and coherent, timely planning for what happens to them afterwards. This became startlingly apparent just after the fieldwork for this report was completed, when it emerged that many foreign nationals leaving prison had neither been identified nor considered for deportation. This was not because of a gap in legislation or powers. It was an acute symptom of the chronic failure of two services to develop and implement effective policies and strategies for people who were not seen as a 'problem': though in fact, as this report shows, they were people who had many problems, which were not sufficiently addressed.*" However, what was an administrative failure, including very specifically a failure to attend to the rights, interests and needs of the relevant prisoners, was quickly recharacterized by the Government as a problem of inadequate legal powers to deport.

[37] See: https://www.theguardian.com/politics/2006/may/18/immigration.ukcrime

requiring the deportation of certain people on the basis of having been sentenced to a term of imprisonment of 12 months or more.[38] One thing these provisions did not do was increase powers to deport someone. What they did do was remove, in certain cases, discretion not to do so; and heighten the then political fervour around deportation of people sentenced to imprisonment in the UK. Properly understood, these new provisions did not apply to people of the Windrush generation (or similarly situated Commonwealth citizens). Section 33(1)(b) exempted these people from those provisions thereby maintaining the legislative effect of section 7 of the Immigration Act 1971.

May 2010 to date

24. *During this period, there was a significant ratcheting up of measures designed to restrict people's access to several services and opportunities. These measures increasingly relied upon the biometric residence permits, which continued to be rolled out. In addition to these measures, the vulnerability of people subject to immigration control to wrongful decision-making, whether by the Home Office or providers of services and opportunities (including employers and landlords), was greatly increased, including by increased data-sharing[39] and the removal or curtailment of safeguards, particularly access to legal remedies. There were dramatic cuts to legal aid and appeal rights.[40] Measures were passed to constrain access to judicial review and constrain access to bail for people detained under immigration powers.[41] Meanwhile, the Home Office was even more greatly encouraged in the exercise of its powers by emphasis on what Ministers and others continue to refer to as 'illegal immigration' with no or little care as to what in practice or principle such a term meant and whom it included. These various measures combined to systematically deprive people, who were unable to demonstrate their right to reside and access various services and opportunities, of their livelihoods, their homes, their liberty, their health and their right to stay in or return to the UK.[42]*

25. Among the key developments in this period were measures contained in three Acts of Parliament: the Legal Aid, Sentencing and Punishment of Offenders Act 2012; the Immigration Act 2014 and the Immigration Act 2016. The former largely removed legal aid for non-asylum immigration matters. There were some, narrow exceptions.[43]

---

[38] Sections 32-39, UK Borders Act 2007.

[39] One area of data sharing that has attracted particular concern has been sharing between the NHS and Home Office. See e.g. Health and Social Care Committee, *Memorandum of understanding on data-sharing between NHS digital and the Home Office*, Fifth Report of Session 2017-19, HC 677, March 2018

[40] Made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and Immigration Act 2014 respectively. Also at the beginning of this period, the closure of the two largest not-for-profit providers (Refugee and Migrant Justice; Immigration Advisory Service) of immigration legal advice added considerably to pre-existing inadequate nationwide coverage of legal advice provision.

[41] Sections 84-90, Criminal Justice and Courts Act 2015 introduced constraints on accessing judicial review affecting individual claimants and public interest challenges; paragraphs 3(4) and 12 of Schedule 10, Immigration Act 2016 in specified circumstances respectively required consent of the Home Office to a grant of bail by an immigration judge and directed the refusal of a bail application without a hearing.

[42] For example, the Guardian reviewed the experiences of several people of the Windrush generation subjected to these harms: https://www.theguardian.com/uk-news/2018/apr/15/why-the-children-of-windrush-demand-an-immigration-amnesty

[43] See paragraphs 24 to 32A of Part 1 of Schedule 1, Legal Aid, Sentencing and Punishment of Offenders Act 2012 for the current areas within scope in relation to immigration.

The exceptions included retaining legal aid provision to seek bail[44] but, as exposed by what happened to Anthony Bryan and Paulette Wilson,[45] legal aid to challenge the use of detention powers is of limited and possibly no assistance in the absence of legal aid to establish or bring proceedings to show the very basis for detention (the Home Office assertion that someone is not entitled to be in the UK) is wrong.

26. The Immigration Acts 2014 and 2016 contained a raft of measures designed to preclude or constrain access to various services and opportunities. These include healthcare,[46] housing,[47] banking facilities,[48] driving licences[49] and employment.[50] The impact of these measures has been to greatly expand the means (as well as the consequences) whereby error or mischief may subject someone to serious harm affecting their well-being and livelihood, and she, he or they may be drawn, rightly or wrongly, to the attention of the Home Office.[51] The inevitability and seriousness of such harms arise from delegating (through empowering including on pain of sanction) a wide range of public and private actors (e.g. employers, landlords and healthcare workers and administrators) to make decisions and share information based on their assessment or belief about the immigration status of someone. The 2014 Act also took away rights to appeal against immigration refusals of non-asylum and non-human rights based claims.[52] The 2014 Act included provision to allow the Home Office to remove people from the UK without giving notice of when their removal would occur.[53] This was something the Home Office had previously done by policy, until the courts had ruled the policy to be unlawful.[54] It made it especially difficult for people to seek or receive legal assistance to dispute the lawfulness of removing them. That Act introduced powers to deport people who retained an appeal right before they could exercise their appeal or before it was heard;[55] and the 2016 Act extended this to people subject to administrative removal.[56]

27. During this period, the roll out of biometric residence permits continued. As this was done, the Home Office also removed reference to several types of documentary evidence of a person's settled status in the guidance available to such providers of

---

[44] See paragraphs 25 to 27 of Part 1 of Schedule 1, Legal Aid, Sentencing and Punishment of Offenders Act 2012.
[45] See Joint Committee on Human Rights, Sixth report of Session 2017-19, *Detention of Windrush generation*, HC 1034, HL Paper 160.
[46] Sections 38-39, Immigration Act 2014; see also the National Health Services (Charges to Overseas Visitors) Regulations SI 2015/238 (as amended) and earlier regulations
[47] Sections 20-37, Immigration Act 2014; sections 39-42, Immigration Act 2016
[48] Sections 40-43, Immigration Act 2014; section 45, Immigration Act 2016
[49] Sections 46-47, Immigration Act 2014; section 43, Immigration Act 2016
[50] Sections 44-45, Immigration Act 2014; sections 34-38, Immigration Act 2016
[51] See e.g. fn 42 of this submission; also Amnesty International UK submission to Home Affairs Committee, *Home Office delivery of Brexit: immigration* in 2017 (fns 16 & 17): http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/home-office-delivery-of-brexit-immigration/written/73223.html
[52] Section 15, Immigration Act 2014
[53] Section 1, Immigration Act 2014
[54] *R (Medical Justice) v Secretary of State for the Home Department* [2011] EWCA Civ 1710; [2010] EWHC 1925 (Admin)
[55] Section 17(3), Immigration Act 2014
[56] Section 63, Immigration Act 2016

services and opportunities as employers and landlords.[57] This was done without any attempt to forewarn people who would be affected because they relied upon documents no longer approved as sufficient evidence of a right to reside (and rent or work etc.), let alone specific steps to ensure that people with settled status would not have their livelihoods and wellbeing harmed by these changes. This negligence in introducing changes that would inevitably have potentially devastating impacts on people's lives mirrors the negligence throughout in failing to ensure important legislative and policy changes were known to people and they were enabled to exercise the means to mitigate or correct these changes.

Concluding observations

28. To fully understand how members of the Windrush generation and other Commonwealth citizens were made homeless and destitute, denied healthcare, detained, expelled from and barred from their home country, and caused immense emotional and psychological distress, it is necessary to view this chronology holistically. What was done can, however, be summarised relatively briefly. People were first effectively deprived of the citizenship of their home country by legislative fiat and failure to enable them to mitigate or correct this. This left them subject to immigration control. The impact of this was to render them susceptible to changes in immigration law and policy. The severity of consequences of the changes duly made resulted from a combination of imposing measures intended to have precisely the effects that resulted without care or attention to whom would be affected while systematically removing safeguards available to anyone wrongly caught by those measures.

29. Summarising in this way must not take anything away from the magnitude of what was done and the harms caused. Moreover, it is vital that the injustice or harm done by legislative, policy or operational decisions are considered both discretely and collectively. If these are not considered discretely, there is a real risk that particular injustice and harm is missed. However, the sum total of injustice cannot be understood if there is not also an holistic accounting. Legislative, policy and operational decisions over an extended period have combined in various ways to significantly aggravate the dreadful impact they have had on people's livelihoods and wellbeing. For example, when someone is wrongly treated as without entitlement to be in the UK, there are several consequences that can and do combine to both exacerbate the harm done to her, him or them and increase the barriers to she, he or they taking steps to correct the injustice. So, being made destitute and homeless is a barrier to engaging with the immigration system, partly as it is disruptive to daily life in ways that make it hard to engage in formal processes, attend appointments, write and receive letters or other correspondence, maintain contact with legal advisers or authorities; and these difficulties are exacerbated by the emotional, psychological and physical impact of being destitute and homeless (or under threat of these). These impacts can be exponential since being treated with suspicion, being isolated from society more generally, have the potential to significantly undermine people's capacity to have trust and confidence in even those seeking to assist; as well as significantly exacerbating the prospect of stigma and suspicion among those who could, including those who

[57] Compare, e.g., Annex A to Home Office *An employers' guide to right to work checks*, 2018 with List 1 to Home Office *Comprehensive guidance for UK employers on changes to the law on preventing illegal working*, 2004.

should, assist. People are also put at increased risk of exploitation and abuse. In relation to all of this, pre-existing social isolation and relative poverty are inevitably significantly aggravating factors. We are also concerned that these legislative, policy and operational decisions have combined to produce institutional and wider social damage by promoting suspicion and hostility towards people who are or are perceived to be subject to immigration control.

30. Many other people have suffered from these same legislative, policy and operational decisions save, with one important exception, for the developments we highlight during the first of the periods into which we have broken down this chronology. That exception concerns people with rights to register as British citizens, including by entitlement.[58] Of particular significance is that the British Nationality Act 1981 removed the principle of *jus soli* from UK nationality law. In doing so, Parliament sought to replace it with a principle of 'connection'.[59] Thus, since 1 January 1983, the date of commencement of the Act, acquisition of nationality of the UK (British citizenship) is no longer automatically by birth in the UK.[60] This was to prevent British citizenship being acquired by people born in the UK but not staying and with no other connection here, in significant part to prevent their passing on British citizenship to their children born elsewhere.[61] For the children born here, but not born British citizens, who do grow up here, Parliament was clear that these children should be recognised as British citizens just like their peers;[62] and also ensured that other children who grow up having been brought to the UK at a young age could be recognised as British citizens.[63] The means to this was by providing these children with rights to register as British citizens.

31. Years later, these rights – including statutory entitlements – are being blocked by legislative, policy and operational decisions made without regard or respect for either the intention of Parliament in passing the 1981 Act or their impact upon a large and

---

[58] The British Nationality Act 1981 includes several provisions by which someone is provided with a right to register as a British citizen including for entitlements to certain people born in the UK, certain stateless people born in the UK and certain people excluded from British citizenship by past discrimination and injustice in British nationality law. More on key provisions concerning people born in the UK, and concerning children brought to the UK at a young age, is available from the website of the Project for the Registration of Children as British Citizens (PRCBC) here: https://prcbc.wordpress.com/ Some introduction to some of the key provisions concerning historical injustice and discrimination is available from the joint submission of PRCBC and Amnesty International UK to the Joint Committee on Human Rights concerning the British Nationality Act (Remedial) Order 1981, available with other submissions here: https://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/remedial-orders1/british-nationality-act-1981-remedial-order-2018-17-19/?type=Written#pnlPublicationFilter

[59] See White Paper, *British Nationality Law: Outline of Proposed Legislation*, July 1980, Cmnd 7987, paragraph 37; and *Hansard* HC, 3 June 1981 : Cols 979-980 *per* Mr Timothy Raison, Home Office Minister of State: "*...what we are looking for in the creation of our new scheme of British citizens is real connection. We are looking for citizens who have a real connection with the United Kingdom.*"

[60] Section 1, British Nationality Act 1981 provides for automatic acquisition and registration by entitlement of people born in the UK. Birth in the UK to parents, neither of whom is a British citizen or settled, is insufficient for automatic acquisition. More information is available from the Project for the Registration of Children as British Citizens (PRCBC) leaflet here: https://issuu.com/prcbc/docs/british_citizenship_claims

[61] *Hansard* HC, 12 February 1981 : Col 41

[62] See Project for the Registration of Children as British Citizens (PRCBC) *Commentary on Parliament's intention in introducing registration provisions for children in the British Nationality Act 1981 as this relates to fees*, August 2018: https://prcbc.files.wordpress.com/2018/09/commentary_-hansard-bna-1981-_registration_aug-2018.pdf

[63] *Ibid* and see section 3(1), British Nationality Act 1981

increasing group of children and adults who have grown up or are growing up in the UK at risk from and experiencing the very same harms to which people of the Windrush generation have been subjected.[64] These decisions include introducing fees far in excess of administrative cost for children and adults to register rights to British citizenship[65] and a good character requirement for people to register as British citizens that applies to children as young as 10.[66] These decisions wrongly treat children born in the UK and children with memories of no other country as migrants. Registration is treated as akin to adult naturalisation.[67] Not only does this disrespect children's welfare and best interests,[68] it flies in the face of the distinction clearly legislated for by Parliament in 1981 between registration and naturalisation;[69] and the intention of Parliament in so legislating.[70]

2.What other factors played a part?

32. There are several further factors which played a significant part in causing or exacerbating the harms and injustice that has been done to many people. We highlight the following, several of which overlap:

    a *Culture:*[71] The experience of people of the Windrush generation, as many other people subjected to Home Office decisions and powers, strongly suggests an underlying culture that is hostile towards people who are or are

---

[64] More information about this is available from the website of the Project for the Registration of Children as British Citizens (PRCBC) *op cit*, including a joint PRCBC and Amnesty International UK briefing on citizenship registration fees https://prcbc.files.wordpress.com/2018/06/fees_briefing_revised_june_2018.pdf; a joint PRCBC, Runnymede Trust and Amnesty International UK briefing note on the good character requirement applied to children https://prcbc.files.wordpress.com/2018/10/summary-on-good-character-requirement-in-childrens-citizenship-rights.pdf and the PRCBC submission to the Joint Committee on Human Rights on UK's record on children's rights: http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/childrens-rights/written/40459.pdf

[65] Debates this year in the House of Lords (*Hansard* HL, 12 June 2018 : Col 1655) and House of Commons (*Hansard* HC, 4 September 2018 : Col 1WH)have drawn attention to this.

[66] This was first introduced by section 58, Immigration, Asylum and Nationality Act 2006. More information is provided by the joint PRCBC, Runnymede Trust and Amnesty International UK briefing note on the good character requirement applied to children *op cit*.

[67] See e.g. Tony McNulty, Minister for Immigration, *Hansard* HC, Immigration, Asylum and Nationality Bill Standing Committee E, 27 October 2005 : Col 256: "*The registration route is reserved for those people—minors, certain persons already holding a form of British nationality, and certain persons with ancestral connections to the UK—whose particular circumstances are deemed to merit varying degrees of exemption from the full rigours of the naturalisation process... We are aligning the two processes of nationality by naturalisation and registration so that they have a common legal base.*"

[68] It was significant that at the time of the introduction of fees above administrative cost and of the good character requirement, the UK retained its nationality and immigration reservation to the 1989 UN Convention on the Rights of the Child. That reservation was withdrawn in November 2008, and the following year the Home Office became subject to a general children's welfare duty, now understood to effectively adopt the best interests duty expressed in Article 3 of the Convention, by section 55, Borders, Citizenship and Immigration Act 2009.

[69] See e.g. *Hansard* HC, 2 June 1981 : Col 855 *per* Rt Hon William Whitelaw, Home Secretary

[70] See e.g. Project for the Registration of Children as British Citizens *Commentary on Parliament's intention in introducing registration provisions for children in the British Nationality Act 1981 as this relates to fees*: https://prcbc.files.wordpress.com/2018/09/commentary_-hansard-bna-1981-_registration_aug-2018.pdf

[71] Amnesty International UK set out concerns regarding culture and leadership (see below) in its submission to the joint APPG (Refugees and Migration) inquiry into the use of immigration detention in the UK, October 2014 (see in particular paragraph 7): https://detentioninquiry.files.wordpress.com/2015/02/amnesty-international-uk.pdf

believed to be subject to immigration control. This culture is revealed by such matters as excessive use of powers;[72] perverse decisions that ignore relevant matters while relying on irrelevant matters to doubt the truth of what someone says or the evidence she, he or they present;[73] decisions that are given with no reasons specific to the claimant's case, circumstances and evidence;[74] maintaining decisions (e.g. to refuse leave to enter or remain, to refuse citizenship and to detain) in the face of evidence and reasons that clearly show the decision to be unreasonable or unlawful;[75] and decisions and exercise of powers in the face of information known to and available to the Home Office which shows the decision or exercise of powers to be unlawful or unreasonable and which is ignored.[76] The few instances that are captured on film or otherwise recorded, and made publicly available, showing the verbal and physical treatment of people being subjected to powers of arrest, detention and removal similarly indicate a disdain for the person subjected to these powers.[77] Something of this was revealed by the previous Home Secretary, the Rt Hon Amber Rudd, in answer to an urgent question tabled by the Rt Hon David Lammy on 'the status of Windrush children' in the UK, where she said:

> "*I am concerned that the Home Office has become too concerned with policy and strategy and sometimes loses sight of the individual.*"[78]

The Prime Minister, the Rt Hon Theresa May, when Home Secretary in making a parliamentary statement on what was then the UK Border Agency identified various systemic faults including:

> "*...a closed, secretive and defensive culture.*"[79]

Theresa May also highlighted a culture of crisis management whereby focus is constantly on immediate crisis causing neglect of the seeds that nurture future crises. This, which is clearly compounded by the concern regarding lack of transparency, she described as:

> "*...all too often focus*[ing] *on the crisis in hand at the expense of other important work.*"[80]

---

[72] This includes excessive use of the power to detain; and excessive use of force in arresting, detaining or removing a person.

[73] Concerns about Home Office decisions on a claimant's credibility are longstanding and deep-rooted in and beyond the asylum system.

[74] We are aware that this is e.g. an abiding concern in relation to refusal to register children as British citzies under section 3(1), British Nationality Act 1981

[75] The detention of Paulette Wilson and Anthony Bryan provide clear example of this and excessive use of powers. See Joint Committee on Human Rights *Detention of Windrush generation* inquiry, see report at: https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1034/1034.pdf

[76] A glaring example of this was revealed in *R (Muuse) v Secretary of State for the Home Department* [2010] EWCA Civ 453; [2009] EWHC 1886 (Admin), where the Home Office detained Mr Muuse for many months intent on his deportation to Somalia while retaining and ignoring his Dutch passport.

[77] The exposure of atrocious treatment of people detained in Brook House prompted an inquiry by the Home Affairs Committee: https://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/inquiries/parliament-2017/inquiry/publications/

[78] *Hansard* HC, 16 April 2018 : Col 28

[79] *Hansard* HC, 26 March 2018 : Col 1501

[80] *Hansard* HC, 16 April 2018 : Col 1500

We would caution against any suggestion that this culture of disregarding the people – their interests, rights and humanity – subjected to Home Office decisions and powers (as identified by Amber Rudd) and of secretiveness and defensiveness (as identified by Theresa May) is a new feature of the department's policy or practice; or that this culture is exceptional or occasional.

b *Leadership:* It is impossible to divorce the culture at the Home Office from its leadership. That leadership comes from both Ministers and senior officials. We are not in a position to assess all aspects of Home Office leadership, but we are able to identify two critical concerns. First, it is a matter of strong implication that the culture so clearly and so long evidenced in Home Office policy and practice must derive from those responsible for the department's leadership. The culture is too deep, pervasive and chronic for it to be otherwise. At best, it may be that the leadership is at fault in failing to care about, still less address and correct, that culture and the way in which people are mistreated as a result. However, given the very serious harms known to have been caused by that mistreatment,[81] it is very difficult to accept a conclusion that the culpability of leadership, and its connection to the culture, ends there. Second, the hostility towards, and disregard for the humanity of, people subject to immigration control is express in the public statements of Ministers over years and decades and the policies and aims they have set out and pursued. The 'hostile environment' called for by the current Prime Minister, when Home Secretary, is but an example of this.[82] Ministers, from the office of the Prime Minister down, have publicly disparaged and dehumanised people subject to immigration control.[83] Indeed, the very description of people as 'illegals' and 'illegal migrants' is an aspect of this. Ministers have also set and presided over policies that prioritised rising removals and deportations without care or consideration as to whom is affected or how. They have done so directly in setting targets; and indirectly in pursuing policies deliberately targeted at reducing net migration.[84] They have further done so, as has Parliament in acceding to their legislative agenda, by systematically removing, curtailing and obstructing the availability and accessibility of mechanisms by which people can seek to address and remedy

[81] Those serious harms are too numerous to list. Outside the appalling treatment and harm done to members of the Windrush generation, several serious harms done by and in connection with the use of immigration detention were outlined in our the joint APPG (Refugees and Migration) inquiry into the use of immigration detention in the UK, October 2014 (see in particular paragraph 7):
https://detentioninquiry.files.wordpress.com/2015/02/amnesty-international-uk.pdf

[82] See https://www.telegraph.co.uk/news/uknews/immigration/9291483/Theresa-May-interview-Were-going-to-give-illegal-migrants-a-really-hostile-reception.html

[83] See also paragraphs 50-53 of our submission to the Joint Committee on Human Rights *Enforcing Human Rights* inquiry, February 2018:
http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/enforcing-human-rights/written/78416.html

[84] There is a very close link between the Government's longstanding commitment to a net migration target of under 100,000 and the legislative, policy and operational decisions that occurred in the post May 2010 period discussed earlier in this submission. The Home Affairs Committee was right to acknowledge this in it's the *Windrush Generation*, Sixth Report of Session 2017-19, July 2018, HC 990 (paragraph 95):
https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/990/990.pdf

wrongful treatment by the Home Office.[85] Removal of appeal rights[86] and dramatic cuts to legal aid concerning nationality and immigration decisions[87] are particularly important, but there are other means by which the message has been consistently and repeatedly sent to Home Office officials that neither the executive nor legislature, and by implication nor society at large, cares whether the decisions and practices of officials are lawful or accord with principles of justice, equality and reasonableness.[88]

c *Race:* If there is one thing the Windrush scandal, properly and fully understood, exposes and requires attention, it is the chronic and deep link between race and racism, on the one hand, and nationality and immigration law, policy and practice on the other. There is an urgent need, therefore, to acknowledge and address this link. But one example of this urgency arises from the connection in law, policy and practice between the criminal justice system and the nationality and immigration systems.[89] The processes and decisions whereby people, including people born in the UK with statutory entitlements to British citizenship, are excluded from that citizenship and subjected to immigration powers to detain and banish them from the country of their home have been almost entirely devoid of either scrutiny or consideration in terms of their racial impact. It is remarkable that in commissioning a review on *the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the criminal justice system*, the Government gave and sought no consideration of the impact of the nationality and immigration systems.[90] Similarly, the Government's race disparity audit spanning a wide range of social policy areas gave no consideration to disparity in the nationality and immigration systems – neither by distinct consideration of those systems nor measuring the many impacts of those systems in the various policy areas that were considered.[91] These concerns cannot be divorced from the matters of culture and leadership discussed above. At a

---

[85] On 19 October 2018, BBC reported the previous Home Secretary, Rt Hon Amber Rudd, as saying of her time at the Home Office: "*Unfortunately I was told certain things that turned out not to be true.*" https://www.bbc.co.uk/news/uk-politics-45915418
This, however, raises further questions about the culture at the Home Office and the response of Ministers to that culture. Secretiveness and defensiveness were descriptions of the department by her predecessor yet the response of Rt Hon Theresa May (as Home Secretaries previously and since) was to invest greater power in the department while removing safeguards for people subjected to those powers. The critical issue is that the people most at risk from and most harmed by the Home Office culture are not Ministers but the people subjected to the immigration powers and exemptions which Ministers have bestowed upon the department.

[86] *Op cit*

[87] *Op cit*

[88] The extremes to which Government has been prepared to go in pursuing Home Office aims in relation to immigration have been most shockingly exposed by the legislative attempt via the Immigration and Asylum (Treatment of Claimants, etc.) Bill 2003-04 to oust the jurisdiction of the higher courts from this policy area; and the attempt by the Ministry of Justice to use powers under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to impose a 12 months lawful residence requirement for access to legal aid, which was struck down by the Supreme Court in *R (PLP) v Lord Chancellor* [2016] UKSC 39

[89] This is explicit in deportation and nationality policy; and has been made explicit in policing practice such as via the Metropolitan Police's Operation Nexus. See e.g. http://www.infologue.com/news/operation-nexus-launches/ This is briefly considered in Amnesty International UK's *Trapped in the Matrix* report, May 2018 (pp22-23): https://www.amnesty.org.uk/files/2018-05/Trapped%20in%20the%20Matrix%20Amnesty%20report.pdf?HSxuOpdpZW_8neOqHt_Kxu1DKk_gHtSL=

[90] https://www.gov.uk/government/publications/lammy-review-final-report

[91] https://www.gov.uk/government/publications/race-disparity-audit

minimum, the message sent to officials by refusal or failure to consider disparate racial impact of and in nationality and immigration law, policy and practice mirrors that message identified in the preceding paragraph – that neither government nor society care about race discrimination and prejudice in these areas. That message is reinforced by general statutory exemptions from safeguards against inequality concerning race, nationality, ethnic or national origins and religion or belief in Schedules 3 and 18 of the Equality Act 2010.[92]

d *Complexity and uncertainty:* The task of managing and operating the immigration system, and the decision-making, responsibilities and powers that come with it, has been made increasingly more difficult by the sheer complexity that Ministers and Parliament have inflicted upon it through legislation, immigration rules and policy over many years. Simplification of the immigration system (and of law, rules and policy) was a popular call before even the Home Office embarked upon a project to achieve that in the mid-2000's.[93] However, that project was neither finished nor fulfilled and, as numerous judicial comments lay testimony, the system has become more complex and unnavigable.[94] That is a problem for those caught up in the system, rightly or wrongly, and for those responsible for operating it. It can only both exacerbate the other concerns identified in this section and act as a compounding factor in their combined impact on people. The issue of

---

[92] See paragraphs 17 & 18 of Schedule 3; and paragraph 2 of Schedule 18

[93] In his foreword to the June 2007 consultation *Simplifying Immigration Law: an initial consultation*, Rt Hon Liam Byrne, then Minister for Immigration, wrote: "*Since last July, we have made real and important progress in implementing our plans to reform and build confidence in our immigration system. To support and deepen that reform, the Border and Immigration Agency has now established a Simplification Project which will take forward our commitment to radically simplify the Agency's legal framework, from primary legislation through to rules and guidance.*"

[94] The impact of rules and legislative changes in making the immigration system complex and inaccessible has been frequently remarked upon by the senior judiciary. In concluding the judgment of the Supreme Court in *R (Mirza & Ors) v Secretary of State for the Home Department* [2016] UKSC 63 on 14 December 2016, Lord Carnwath observed: "*I have found this a troubling case. It is particularly disturbing that the Secretary of State herself has been unable to maintain a consistent view of the meaning of the relevant rules and regulations. The public, and particularly those directly affected by immigration control, are entitled to expect the legislative scheme to be underpinned by a coherent view of their meaning and the policy behind them. I agree with the concluding comments of Elias LJ (para 49) on this aspect, and the "overwhelming need" for rationalisation and simplification.*" Judicial observations on the complexity of the immigration rules have become far too numerous to fully enumerate but, in addition to those of Lord Carnwath in *Mirza & Ors*, include: "*These provisions have now achieved a degree of complexity which even the Byzantine Emperors would have envied.*" *per* Jackson LJ in *Pokhriyal & Anor v Secretary of State for the Home Department* [2013] EWCA Civ 1568; "*It is, however, a striking fact that the immigration rules are already hugely cumbersome. The complexity of the machinery for immigration control has (rightly) been the subject of frequent criticism and is in urgent need of attention.*" *per* Lord Dyson in *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33; "*...the speed with which the law, practice and policy change in this field is such that litigants must feel they are in an absolute whirlwind and indeed judges of this court often feel that they are in a whirlwind...*" *per* Longmore LJ in *DP (United States of America) v Secretary of State for the Home Department* [2012] EWCA Civ 365; and "*The Master of the Rolls (para 40), echoing words of Jackson LJ, described the law in this field as 'an impenetrable jungle of intertwined statutory provisions and judicial decisions'. It is difficult to disagree...*" *per* Lord Carnwath in *Patel & Ors v Secretary of State for the Home Department* [2013] UKSC 72.

complexity is compounded by frequent changes to rules (and hikes in fees).[95] These often require, to avoid injustice, complex transitional arrangements and maintenance of institutional (and other) memory. Where change is made, particularly without any transitional protection, people become subject to requirements and obligations which they can neither have anticipated nor meet even where they have dutifully met all previous requirements and obligations upon them and made considerable financial, familial and emotional commitments in so doing.

e *Lack of transparency:* This has already been highlighted above in relation to 'culture'. However, it is sufficiently serious to distinctly list. It and the culture it promotes is intrinsically linked to lack of independent oversight and safeguards (see below). We note that in the same statement to which we refer above, Theresa May identified as the second of four main concerns:

> "*...lack of transparency and accountability.*"[96]

f *Lack of independent oversight and safeguards:* This also merits distinct listing, though it has been referred to above in relation to 'leadership'. In addition to measures that have removed and curtailed legal aid, appeal rights and data protections, there have been other legislative measures that have sought to curtail independent judicial scrutiny – particularly, though far from exclusively, by legislating to mandate deportation[97] and confine consideration and effect of the right to respect for private and family life in connection with deportation and other immigration decisions.[98]

g *Lack of impact assessment:* Much of the relevant law, policy and practice has been made and implemented without any formal assessment of its impact, including as to its impact on legal aid provision, access to justice and equality. A feature of Home Office practice is that even where assessment is done this is often after the event and often narrow in focus or otherwise inadequate.[99]

---

[95] We observed upon this issue in our submission to the Home Affairs Committee's *Immigration* inquiry in 2015: http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/immigration/written/46663.html

[96] *Hansard* HC, 26 March 2013 : Col 1500

[97] Sections 32-39, UK Borders Act 2007

[98] In introducing, at Second Reading, the provision that became section 19, Immigration Act 2014, Rt Hon Theresa May, then Home Secretary, as she had done at other times, directly challenged the rule of law and the integrity of the judicial system: "*The Government first sought to address this issue in July 2012 by changing the immigration rules with the intention of shifting the weight the courts give to the public interest. This House debated and approved the new rules, which set out the factors in favour of deportation and the factors against it. The courts accept that the new rules provide a complete code for considering article 8 where we are deporting foreign criminals. However, some judges have still chosen to ignore the will of Parliament and go on putting the law on the side of foreign criminals instead of the public. I am sending a very clear message to those judges: Parliament wants a law on the people's side, the public want a law on the people's side, and this Government will put the law on the people's side once and for all. This Bill will require the courts to put the public interest at the heart of their decisions.*" (*Hansard* HC, 22 October 2013 : Col 162)

[99] For example, no impact assessment has ever been done concerning children and their welfare in relation to the introduction of fees above administrative cost or a good character requirement to apply to children's (and others') entitlements to British citizenship. Assessment of the impact of the right to rent scheme introduced by the Immigration Act 2014 or the administrative review scheme introduced to replace appeal rights removed by that Act were left to after the introduction of the schemes and with no adequate plan as to how in introducing these schemes the Government would prepare and ensure effective collection and collating of relevant

The failure to carry out effective impact assessment is itself a further indication of a general absence of care as to the impact that such law, policy and practice will have.

33. Each of the matters specifically listed above has implications for the other. Taken together, they have long provided and continue to provide fertile ground for what the terms of reference refer to as 'Windrush issues' and for the many similar experiences of so many other people treated, rightly or wrongly, as subject to immigration control. These matters are closely connected with general emphasis upon what the terms of reference refer to as 'illegal immigration' as the primary and overwhelming focus for immigration policy and practice rather than, for example, ensuring respect for people's dignity and rights and enabling the exercise of people's rights and needs to come and go from, and stay in, the UK.[100] It is noticeable that so many political and other responses to the Windrush scandal have resisted any change to this focus. Indeed, many responses have emphasised (as the terms of reference implicitly and wrongly seek to do) a distinction between what is acknowledged to have gone wrong and caused this from what is referred to as 'illegal immigration'.[101] This is consistently done without analysis of what this term means and to whom it applies. Yet, in principle and in practice, the term is applied to people of the Windrush generation and many other people unjustly subjected to immigration powers – including people who are either entitled to or eligible for, but do not possess, citizenship or permission to be in the UK; people who are excluded from these entitlements and eligibility on unjust grounds, including where they have come to be in the UK without permission by changes in rules and practices (including fees) for which they have been unable to prepare; and people who have citizenship or permission but are unable to prove it.[102] This focus necessarily entails the very heightening of risk of error, injustice and harm to people because it promotes an attitude and response to people that is hostile to them rather than an attitude and response that encourages assistance and readiness to discover and recognise someone's true circumstances, interests and rights.[103]

---

information in order to carry out an effective assessment. The same is true of the sweeping cuts to scope for legal aid (including in relation to nationality and immigration) done by the Legal Aid, Sentencing and Punishment of Offenders Act 2012; and can be said of many other aspects of nationality and immigration law, policy and practice.

[100] As we submitted to the 2017 Home Affairs Committee *Home Office delivery of Brexit: immigration*: http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/immigration/written/46663.html

[101] For example, Rt Hon Amber Rudd, then Home Secretary, placed frequent emphasis on the need to distinguish 'illegal immigration' in here response to the urgent question of Rt Hon David Lammy: *Hansard* HC, 16 April 2018 : Cols 30, 36 & 38. In distancing himself from the 'hostile environment' tagline of his predecessor, Rt Hon Sajid Javid, Home Secretary, placed the same emphasis on 'illegal immigration': Home Affairs Committee, Oral Evidence, *Windrush Children*, HC 990, 16 May 2018, Q263 & Q310. Rt Hon Diane Abbott, shadow Home Secretary, did similarly in her speech in the 'Windrush 70th Anniversary' debate: *Hansard* HC, 14 June 2018 : Col 1177. There were nearly 60 references to this term in the debate on 'Minors entering the UK: 1948 to 1971': *Hansard* HC, 30 April 2018 : Col 640 *et seq*.

[102] Some general observations upon this are set out here: https://www.amnesty.org.uk/blogs/yes-minister-it-human-rights-issue/stop-saying-illegal-immigrants

[103] This was clearly the experience of Paulette Wilson and Anthony Bryan, whose experiences were considered in detail by the Joint Committee on Human Rights for its *Detention of Windrush generation* inquiry, see report at: https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1034/1034.pdf
However, it is also the experience of many people as Amnesty International UK emphasised in its submission to the Home Affairs Committee *Immigration Inquiry* in 2015: and *Home Office delivery of Brexit: immigration* in

34. In our submission to the Joint Committee on Human Rights *Enforcing Human Rights* inquiry, we provided an overview of how UK nationality and immigration law, policy and practice fails to respect the rule of law.[104] The relationship between the individual and the state is bound up in the status which the state recognises and respects the individual to hold - whether as citizen, settled person or otherwise entitled or eligible to be lawfully resident. What the Windrush Scandal exposes about the Home Office, and the law and policy within which it operates, is that it does not recognise and respect the individual and is effectively licensed, even directed, to do considerable injustice and harm as a consequence. This is not restricted to people of the Windrush generation. In this way, UK nationality and immigration law, policy and practice undermine the rule of law.

3.Why were these issues not identified sooner?

35. Our answer to the previous question sets out, to considerable degree, the various reasons why what was (and is) happening to members of the Windrush generation were not more quickly identified. In brief, the internal culture and leadership at the Home Office strongly worked against effective institutional recognition of what was being done. It is significant that the Home Office was aware of the risks.[105] It simply was unwilling to take any effective steps to address them. The removal and curtailment of means by which the Home Office could be held accountable, particularly cuts to legal aid and appeal rights (and access to independent judicial oversight more generally), denied and denies many people the opportunity to force attention (at least within the Home Office) to injustice and the need to remedy it. This concern has most recently been compounded by Parliament giving power to the Home Office and other data controllers of exemption from basic data protections for immigration purposes.[106]

36. A further concern relates to the practices and procedures at the Home Office for recording, collating and keeping under review instances of error, whether arising by mistake, capriciousness or policy that is unlawful or unreasonable; and lack of transparency in relation to both these practices and procedures (whether they are even in place and to what degree they are followed) and what they reveal.[107]

2017: http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/home-office-delivery-of-brexit-immigration/written/73223.html

[104] See paragraphs 50-53 of our submission *op cit*

[105] Indeed, the Home Office was also aware of the risk of adverse publicity, though it later removed its caution in its *No Time Limit* guidance (p16): "*As these applicants are stating they have been in the UK for a long time it is important you treat these cases in a careful and sensitive manner and applicants are given every opportunity to send in evidence. This is because there is a risk of adverse publicity if these cases are mishandled.*" http://webarchive.nationalarchives.gov.uk/20100817110228/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised

[106] Paragraph 4 of Schedule 2, Data Protection Act 2018

[107] For example, we are aware of attempts to persuade the Home Office of the need to collect and collate, and make available, information concerning incidents of self-harm in immigration detention raised through past stakeholder meetings, which were met with responses that indicated no recognition that no satisfactory monitoring and assessment of trends and possible causes could be maintained without such collection and collation.

4.What lessons can the Home Office learn to make sure it does things differently in future?

37. Of course, the Home Office needs to do things differently. However, the focus needs to be more clearly upon the result to be achieved. If the general aim and understanding of immigration control remains as it has been for many years and decades, merely adopting different policies and practices (or legislative measures) likely will not achieve a significant or sufficient change. People will continue to be wrongly subjected to immigration powers and exclusions and by that done considerable additional harms including to their wellbeing and livelihoods (indirectly where it is e.g. their family member, employee or carer directly affected). At a minimum, it must be understood that giving ever more power to officials and removing ever more safeguards is a reckless approach to immigration control that has satisfied none of the motivation said to be behind it while doing far-reaching harm to many people. Similarly, introducing ever more complexity into law, policy and rules has had and will have disastrous effects; and making frequent changes to rules (and hiking fees) inevitably adds complexity, uncertainty and inaccessibility.[108]

38. Accordingly, the lessons need to be learned not only by the Home Office. Ministers, parliamentarians and society more generally need to learn these lessons. While it seems difficult to imagine happening, the Home Office ought to regard itself as duty bound to play a significant role in this wider ambition. Societal and political awareness of the fullness of what has gone so terribly wrong would be beneficial in developing and sustaining a culture in which the same and similar injustices and harms are avoided. That requires full recognition and understanding of what we have set out as the chronology and other causative factors; and a willingness and ability to draw the links between these and the experiences of other people – past, present and in the future. One aspect of the Home Office role in this ought to be to ensure, not necessarily solely through its own delivery, that awareness is raised of people's rights and changes to these in good time for people to adjust their circumstances; and of transitional or other protective measures intended to mitigate or remedy the impact of changes. The importance of this is emphasised by the repeated experience of people of the Windrush generation in being deprived of their citizenship rights and protections in relation to their settled status; and then being subjected to the biometric residence permit scheme.

5.Are corrective measures now in place? If so, please give an assessment of their initial impact.

39. Some corrective measures are in place.[109] However, these are inadequate; particularly because they fail to recognise the fullness of the wrongs that have been done. There are four ways in which this is so.

---

[108] Amnesty International UK drew attention to this impact of changes to rules and fees in its submission to the Home Affairs Committee, *Immigration Inquiry*, published February 2015: http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/immigration/written/46663.html

[109] The Windrush taskforce was established to implement a scheme whereby correction is to be provided. A separate compensation scheme is yet to be established.

a First, the measures taken to remedy the wrongs done continue to misunderstand and misapply important rights in law dating back to the origins of the current scandal. Thus, some of the correction on offer is providing less than that to which people are legally entitled.

b Second, the measures do not fully address the nature of the wrongs done. Thus, some of the correction on offer falls short of remedying those wrongs for all the people affected.

c Third, the approach adopted for implementing the corrective measures does not fully address the barriers facing the people who have been wronged. Thus, there is inadequate assistance to people to ensure their engagement with the process for correction or ensuring that process results in correction.

d Fourth, the corrective measures implemented are designed to restrict correction to specified groups of people, almost exclusively Commonwealth citizens settled in the UK before 1988. This is in line with the continued effort to present the injustice and harms done as something exceptional and past – even if affecting a relatively large group of people – as distinct from something intrinsic, systemic and ongoing in nationality and immigration law, policy and practice. Thus, that law, policy and practice continue to do injustice and harm to many people affected in the same or very similar ways to people of the Windrush generation. This body of law, policy and practice has even since the breaking of the scandal been rendered more harmful by the sweeping immigration exemption from data protection safeguards contained in paragraph 4 of Schedule 2 to the Data Protection Act 2018.[110]

40. The first of four three ways is reflected in the guidance to which the Windrush taskforce is operating concerning absences from the UK;[111] and statements made by Ministers concerning people expelled or barred from the UK on account of criminal convictions.[112] As regards the guidance, this fails to recognise the effect of section

---

[110] Amnesty International UK's concerns regarding this exemption were set out in written evidence to the Joint Committee on Human Rights:
http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/legislative-scrutiny-data-protection-bill/written/73870.html
and to the Public Bill Committee:
https://publications.parliament.uk/pa/cm201719/cmpublic/DataProtection/memo/dpb22.htm
during the passage of the Bill. They remain generally as there expressed.

[111] The 'Windrush Scheme' guidance and application form at
https://www.gov.uk/government/publications/undocumented-commonwealth-citizens-resident-in-the-uk each wrongly restrict application under the scheme to people who were continuously residence since 1 January 1973. While the casework guidance at
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/735185/windrush-scheme-casework-guidance-v2.0ext.pdf identifies (under the subheading 'lapse of indefinite leave') that there was no time restriction on absences from the UK up to 1 August 1988, the guidance nonetheless repeats the same error in stating that the scheme applies to people continuously residence since 1 January 1973.

[112] The relevant forms *op cit* make express enquiry into 'good character' and the refusal of citizenship on this ground is expressly referred to in the Home Secretary's September update to the Chair of the Home Affairs Committee, as is consideration of criminality in relation to the right to return of people wrongly excluded from the UK:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742688/20180921_-_Monthly_update_-_Windrush_.pdf

1(5) of the Immigration Act 1971 until its repeal on 1 August 1988. To that time, there was no limit of time during which a Commonwealth citizen settled in the UK could be absent from the UK while retaining her, his or their right to come and go freely. Absences up to that date should therefore be expressly treated as irrelevant to the corrective measures being led by the taskforce. As regards Ministerial correspondence and statements, these indicate that criminal convictions are considered a bar to giving effect to corrective measures by the taskforce, including to formally recognise and document Commonwealth citizens' settled status in the UK. This, however, is contrary to the protection against deportation contained in section 7 of the Immigration Act 1971 and section 33(1)(b) of the UK Borders Act 2007. Effectively, what the Home Office is doing in these instances is to maintain an illegality.

41. The second particularly relates to the offer to Commonwealth citizens of naturalisation without a fee. This is, at least for those Commonwealth citizens settled prior to the commencement of the Immigration Act 1971, effectively a belated implementation of the registration rights contained in the British Nationality Act 1948, Immigration Act 1971 and British Nationality Act 1981, by which Commonwealth citizens would either have become British citizens automatically by section 11, or would have been able to register by entitlement as British citizens under section 7, of the latter. However, naturalisation under the British Nationality Act 1981 is and always has been subject to a good character test;[113] whereas registration under these various provisions was not subject to such a test.[114] Certain Commonwealth citizens are, therefore, being excluded from the corrective measure to address the deprivation of their British nationality, and failure to ensure their knowledge and exercise of earlier rights intended to correct this, by the imposition of a test of their character that did not then and should not now be applied to them.

42. A key aspect of the third concerns the decision not to make legal aid available to people to establish their entitlement to British citizenship, the right of abode or settled status under the Windrush guidance.[115] The Windrush taskforce and processes cannot command confidence if the delivery of justice to the people harmed remains so dependent on the very body that has perpetrated the injustice and done that harm with

---

[113] Paragraphs 1(1)(b), 3(e), 5(1)(b) and 7(e) of Schedule 1, British Nationality Act 1981 made provision requiring a person to be of good character to be naturalised as a British citizen.

[114] Registration as a British citizen was not subject to a good character requirement until the commencement of section 58, Immigration, Asylum and Nationality 2006 on 4 December 2006 (by SI 2006/2838). The requirement has since been inserted as section 41A, British Nationality Act 1981 by section 47, Borders, Citizenship and Immigration Act 2009 (later amended by paragraph 70 of Schedule 9, Immigration Act 2014). The extension of this requirement to registration was said in 2006 to be to bring registration into line with naturalisation, but this explanation simply passes over the original intentions in clearly distinguishing naturalisation and registration. For more on this see the joint note of the Project for the Registration of Children as British Citizens (PRCBC), the Runnymede Trust and Amnesty International UK on *Children's rights to British citizenship blocked by good character requirement*: https://prcbc.files.wordpress.com/2018/10/summary-on-good-character-requirement-in-childrens-citizenship-rights.pdf
and PRCBC's *Commentary on Parliament's intention in introducing registration provisions for children in the British Nationality Act 1981 as this relates to fees*: https://prcbc.files.wordpress.com/2018/09/commentary_-hansard-bna-1981-_registration_aug-2018.pdf
and a legal opinion provided for and made public by PRCBC: https://prcbc.files.wordpress.com/2018/09/prcbc-good-character-opinion-rt-for-public1.pdf

[115] Section 9(2)(a), Legal Aid, Sentencing and Punishment of Offenders Act 2012 empowers the Lord Chancellor to make additions to Part 1 of Schedule 1 to the Act, thereby clearly empowering the Lord Chancellor to ensure legal aid is available in these cases.

no, or no accessible, independent assistance available to the people affected. That is all the more so given the potential complexity – legal or evidential – that can be expected to arise. This, coupled with concerns that have been expressed that the guarantee of flexibility in approach that had been promised is not being provided in all cases[116] and with the observations in the previous two paragraphs, means it is inevitable that the corrective measures will not fulfil their purpose.

43. The fourth has far wider implications. Once the full nature of the wrongs done and what has caused them is understood, it is impossible to ignore that the relevant causative factors and unjust outcomes are not isolated to people of the Windrush generation. Contrary to the insistence of Ministers and senior officials the problems at the Home Office are systemic, also deep and long rooted.[117] They concern the laws, policies and rules the department is tasked to implement and the culture and practices at that department (and among the private contractors with whom it engages).[118] We have given one specific example of a large group of people upon whom the same injustices are being inflicted (people with rights to register as British citizens). We have highlighted this group because of the close connection with the beginnings of the injustice inflicted upon people of the Windrush generation in being effectively deprived of British citizenship. Indeed, there are many connections. The ultimate harms are also very much the same; as is the prospect of their materialising at almost any time of the person's life, the impact of a general refusal or failure to take steps to ensure people are made aware of their rights and a willingness to exercise powers against people in the knowledge of their right to citizenship that would exempt them from the lawful use of those powers.[119] However, there are key differences such as that people with rights to register as British citizens, including people who have been born in the UK and grown up here never having been or knowing any other place, do not necessarily have settled status or any other formalised immigration status (leave to remain). These people's presence is not, however, unlawful – though they may have no right to return to the UK if leaving, or removed from, the country (if not having exercised their right to register).[120]

44. The Government has now responded to the Joint Committee on Human Rights *Windrush generation detention* report, and the response sets out the corrective steps

---

[116] While we have not investigated this matter, we are aware that there are significant concerns that excessive demands for documentation to evidence that someone has been continuously resident persist within the Windrush scheme.

[117] The Rt Hon Sajid Javid, Home Secretary, has consistently sought to reject the suggestion that problems at his department are systemic. He did so, e.g., in giving oral evidence before the Joint Committee on Human Rights on 6 June 2018 (Q27, HC 1034, *Detention of Windrush generation*): http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/windrush-generation-detention/oral/84686.html
and in giving oral evidence before the Home Affairs Committee on 15 May 2018 (Q220-221, HC 990, *Windrush Children*): http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/windrush-children/oral/82932.html

[118] The policy and practices of private contractors is a matter of concern in relation to many delegated Home Office functions including in relation to providing asylum accommodation, contacting people to 'encourage' them to leave the UK, immigration detention and removal.

[119] The Home Office has actively pursued action to remove from the UK children born in the UK knowing the child to have and be seeking to exercise her statutory entitlement to British citizenship.

[120] *Remi Akinyemi v Secretary of State for the Home Department* [2017] EWCA Civ 236

taken or being taken by the Home Office.[121] The response does not recognise the full chronology of injustice and harm done by law, policy and practice going back decades. It also continues to mischaracterise the overall injustice and harm done as 'mistake'[122] when much of what was done that caused such harm was done in fulfilment of the policy being implemented. The steps outlined are all essentially steps solely for the Home Office to implement.[123] There is no attention to external, independent assistance to people subjected to Home Office powers, to safeguards including access to independent judicial scrutiny; nor generally for independent oversight (save for a narrowly defined role for the independent chief inspector of borders and immigration).[124] There is repetition of legal standards and expectations rather than consideration of how people can enforce these; and general assumption that the existence of such standards constitutes their fulfilment – as with the statement that detention is used sparingly (a policy position derived from legal obligations) which practice demonstrates not to be the case. Something of the continued inability or unwillingness at the Home Office to recognise the difference between statements of principle and operational reality is revealed in the implication that periods of detention of up to four months or 28 days constitute "short periods of time".[125]

6.What (if any) further recommendations do you have for the future?

45. In summary, our key recommendations are as follows:

Specific to work within or connected to the remit of the Windrush taskforce:

a Prior to 1 August 1988, absences from the UK by Commonwealth citizens settled in the UK by 1 January 1973, or their wives and children who may have come to the UK after 1973, were irrelevant to their right to come and go from the UK and retain their settled status. Accordingly, no person should be required to demonstrate presence or continued presence during the period between these dates.

b Commonwealth citizens ordinarily resident in the UK on 1 January 1973 are exempt from deportation powers by section 7 of the Immigration Act 1971 and section 33(1) of the UK Borders Act 2007. Accordingly, no person to whom these exemptions apply should be barred from confirmation of their settled status, right to return to and stay in the UK, and compensation, by reason of their offending.

c Legal aid should be made available to people to establish their entitlement to British citizenship, the right of abode or settled status under the Windrush guidance.

---

[121] Joint Committee on Human Rights, *Windrush generation detention: Government's Response to Committee's Sixth Report of Session 2017-19*, Fourth Special Report of Session 2017-19, HC 1633, October 2018: https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1633/1633.pdf

[122] *Ibid*, paragraph 3

[123] The various corrective measures are outlined in the main section of the response (pages 2-5) which consists of statements of what the Home Office says it has done or will do without any indication as to how there will be any guarantee to the people subject to Home Office powers and exclusions (nor to Parliament or society more generally) that these commitments will be either fulfilled or effective.

[124] *Ibid*, paragraph 26

[125] *Ibid*, paragraph 22

d Flexibility in seeking to confirm entitlement under the Windrush guidance is required. This should include flexibility as to what type and degree of evidence is required. Statements from friends and families, as well as from individual claimants, must be given due weight; and the evidence should be considered in the round to ensure that decisions are taken on the basis of what is reasonably likely to be the case rather than what may be considered proved to some higher standard. The duty to adopt a flexible approach lies all the heavier on the Home Office given the persistent failure over many years to ensure people were aware of legislative and policy changes that affected them and enabled to act to protect themselves against their loss of rights by these changes.

e Legislation should be passed to remove the good character requirement for naturalisation by Commonwealth citizens who were entitled to register as British citizens under section 7 of the British Nationality Act 1981.

General recommendations concerning Home Office functions and responsibilities:

f First and foremost, all those responsible for legislative, policy and operational decisions concerning Home Office nationality, immigration and asylum functions need to acknowledge the systemic and chronic nature of what is wrong. There needs to be a fundamental change in the approach to these functions and responsibilities – how they are understood, how they are discussed and how they are pursued. At the centre of this should be a wholesale shift in approach to prioritising the aim of ensuring respect for people's dignity and rights and enabling the exercise of people's rights and needs to come and go from, and stay in, the UK. This approach must put people – their rights, interests and needs – at its heart. There must be an end to, and a reversal of, years and decades of expanding Home Office powers and curtailing the safeguards to their misuse; and to the expansion of Home Office responsibilities being delegated to various private and public bodies and individuals. There must also be an end to the political culture of generally exempting the Home Office from the reach of vital safeguards such as data protection measures and race relations legislation. Any exemptions, including statutory exemptions, should be narrowly constructed to apply only where there is a clear, specified purpose, whose impact has been fully assessed with clear mechanisms for keeping its impact under review. There should be positive action to ensure that people know their nationality, immigration and asylum rights and can access these. These systems need to be clear, predictable and accessible to people with legal aid available and access to independent judicial scrutiny through appeal rights and judicial review. People should not be subjected to sudden and dramatic changes to their status, rights or means to secure and prove these; especially not to changes that they are unable or impeded from mitigating because they are not informed of the change or are in some way charged for the change. There is an urgent need to fundamentally review the nationality, immigration and asylum systems to ensure effective reform that will give real and lasting effect to these concerns.

46. We have not sought to itemise all remedial steps that are necessary to put right what has gone so terribly wrong. This is because a full understanding of what has gone wrong highlights a need for reform far beyond what we are able to outline here and which is also beyond the remit of this review, requiring social and political changes some of which outside the control (but not influence) of the Home Office. However, the review needs to expose the scale of the problem, prompt immediate action and further dialogue and investigation of change that is necessary. Currently, even the will to recognise the nature and scale of what is wrong is lacking.