



National Audit Office

Report

by the Comptroller
and Auditor General

Home Office

Handling of the Windrush situation

Key facts

2,658

people granted citizenship, or leave to remain, through the Home Office's Windrush taskforce, as at 30 September 2018

164

cases the Home Office identified of individuals in the country before 1973 who were detained and/or removed since 2002

18

people the Home Office considers most likely to have suffered detriment, such as being detained or removed, because their right to be in the UK was not recognised and therefore where it is most likely to have acted wrongfully

599,078

Commonwealth-born people living in the UK who arrived before 1971, based on the 2011 Census

500,000

Settled migrants living in the UK who did not hold a biometric residence permit to prove their right to reside and access public services, based on Home Office estimates in 2014

**Around
171,000**

Commonwealth individuals on whom the Home Office has a record on its immigration database and who were born before 1 January 1973

11,800

Cases involving detention and removal reviewed by the Home Office, relating to Caribbean Commonwealth nationals

**Around
2,000**

Caribbean nationals whose case the Home Office is reviewing to assess whether or not they may have been in the UK before 1973 and whether they may have been subject to a compliant environment sanction

Summary

Background

1 Between 1948 and 1973 many Commonwealth citizens came to the UK under successive pieces of immigration legislation. Some of these individuals, particularly those from Caribbean nations, have recently become known as the Windrush generation. There is no definitive estimate of how many people came to the UK, or still live here, although some academics have put the figure at more than 500,000 (not including children of original Windrush migrants). The government amended existing immigration legislation with the Immigration Act 1971, which came into force in 1973. At this time, Commonwealth immigrants already settled in the UK were given indefinite leave to remain, but many were not issued with any documentation, and the Home Office (the Department) kept no records confirming these individuals' status.

2 Over at least the past 10 years the government has further reformed immigration policies according to the principle that the right to live, work and access services in the UK should only be available to those migrants who are eligible. This policy was known as the 'hostile environment', a term that dates from 2010, and is now known as the compliant environment. Through the 2014 and 2016 Immigration Acts, the government introduced a range of checks and controls on migrants' access to services such as welfare benefits, driving licences and bank accounts. These were designed to prevent illegal immigration, remove incentives for illegal migrants to enter or remain in the UK and encourage them to depart.

3 The Department and its agencies play several key roles in the UK immigration system.

- **The core Department** sets and oversees immigration policy.
- **UK Visas and Immigration** makes decisions about who has the right to visit or stay in the country.
- **Immigration Enforcement** is responsible for preventing abuse of the immigration system, dealing with the threats associated with immigration offending and encouraging and enforcing the departure of illegal migrants from the UK.
- **Border Force** is responsible for enforcing the law at the UK border and carrying out immigration and customs controls for people and goods entering the UK.

4 Other public bodies, such as the Department for Work & Pensions and the Driver & Vehicle Licensing Agency (DVLA) enforce the compliant environment in their areas of responsibility. Private individuals and businesses also help enforce the compliant environment, for example by checking people's rights to rent a home or to work in the UK.

5 In the spring of 2018, the media began to report stories of people who had come to the UK from the Commonwealth, being denied access to public services, being detained in the UK or at the border, or removed from, or refused re-entry to, the UK. It was reported that some people did not have the paperwork to prove their legal right to reside in the UK. This included people who worked in Parliament and public services. In April 2018, the government acknowledged that the Windrush generation had been treated unfairly and set up a taskforce and scheme to help individuals to resolve their immigration status.

Our report

6 The Home Affairs Committee, the Joint Committee on Human Rights and individual MPs, among other commentators, have raised concerns about whether the experience of the Windrush generation indicates systemic problems in the Department. They highlighted shortcomings such as poor data management and poor management oversight.

7 This report seeks: to increase transparency about what happened; and to establish whether problems with the Department's information management and management of immigration casework may have contributed to the situation. We are not questioning the merits of the Department's policy objectives. We examine:

- the scale and impact of the problem of people from the Windrush generation potentially being denied access to services, or detained or removed from the UK;
- whether the Department identified the potential for new legislation and policy to have adverse effects on the Windrush generation and others;
- whether its systems, guidance and processes contributed to negative outcomes, such as wrongful detention and removal;
- whether the quality of the Department's information was a factor in people being wrongfully detained, removed or denied access to services;
- whether the Department had adequate feedback loops to identify any adverse or unintended consequences and responded appropriately to feedback; and
- how the Department is now supporting people who might have been affected, through the Windrush scheme.

8 Our report draws on fieldwork conducted in August and September 2018, and on our previous work examining the Department's management of immigration policy and casework. We reviewed official documents and data and interviewed officials from the Department and other public bodies. We also reviewed reports by other, independent commentators, such as the Independent Chief Inspector of Borders and Immigration (the Inspectorate). We focused on the Department's role as the lead department responsible for setting and managing immigration policy across government. We did not examine all aspects of immigration policy or operations, or other departments' systems, in detail but we did consider the impact of data-sharing between departments. Appendix One describes our methodology.

Key findings

The impact on those affected

9 The Department has not yet established the full extent of the problems affecting people of the Windrush generation. It has reviewed 11,800 cases of Caribbean Commonwealth individuals who had been detained and/or removed from the UK since 2002 and who were born before 1 January 1973. From this, it identified 164 cases where there was an indication in the record that the individual could have been in the UK before 1973. From these cases it identified 18 people it considers most likely to have suffered detriment, such as being detained and/or removed, because their right to be in the UK was not recognised and therefore where it is most likely to have acted wrongfully. The Department announced in November 2018 that this number may rise because it drew too broad a definition of criminal activity in attempting to exclude foreign national offenders from its review. The Department is also conducting a separate review of around 2,000 cases to identify individuals who may have been the subject of a compliant environment sanction, such as having a driving licence revoked, and who could have been in the UK before 1973. We understand this is likely to identify at least 25 such cases (paragraphs 2.4, 2.5, 2.8 and Figure 3).

10 The Department decided to narrowly focus its historical reviews on individuals from the Caribbean. It considers that proactively reviewing other Commonwealth nationals' cases would be disproportionate. It based this decision on the nationality of applicants who were granted status through its Windrush taskforce, in its first operational month. We do not believe this was sufficient evidence on which to draw this conclusion. The Department has not established whether those who applied through the taskforce are representative of the underlying population who may have experienced detriment, for example, by reviewing a sample of cases. It also has not presented any analysis to support its assertion about the effort required. Established principles on legal entitlements and administrative practices (LEAP), which set out how government should correct situations in which departments know or suspect that people's legal entitlements might not have been met, place the onus on the Department to use its own data to identify people affected. The Department tells us that it does not believe LEAP principles are applicable although legal advice to the National Audit Office (NAO) indicates they are (paragraphs 2.10 to 2.13 and Figure 4).

Whether the Department identified the potential for new legislation and policy to have adverse effects on the Windrush generation and others

11 The Department's impact assessments did not analyse sufficiently the risk that compliant environment policies might have unintended or unfair consequences. Pre-implementation impact assessments of compliant environment policies, introduced between 2012 and 2016, contained very little analysis of the potential negative effects on individuals or communities who were in the UK lawfully but would find it harder to prove their immigration status. The Department's own analysis in 2014 indicated that there might be around 500,000 people in this position, although Home Office data indicates it has issued around 90,000 no time limit biometric residence permits¹ to individuals since June 2014 to help them clarify their status. Guidance on impact assessments states that the Department should analyse how and to what extent new policies may impact on different stakeholders. The Department also did not bring together equality impact analyses of individual schemes, such as the scheme to restrict access to bank accounts, and to develop a combined analysis of the impact of its proposals (paragraphs 2.14, 3.2 to 3.4).

Whether the Department's systems, guidance and processes contributed to negative outcomes, such as wrongful detention or removal

12 Some of the Department's processes contributed to the risk of wrongful detentions and removals. The Department has identified 18 cases where it was likely that it had incorrectly treated someone as not in the UK legally. In a wider group of 74, it considers it less clear that it acted wrongly because, for example, people had left the UK for more than two years and lost their indefinite leave to remain. This may have led to individuals being denied entry at the border and removed, or to being detained in an immigration removal centre and removed from the UK. We identified some common themes and issues in our review of the summaries of these cases. These include: poor records management by the Department and poor customer service. The complexity of the immigration system may also have been an issue. In some cases individuals appeared to be confused about their immigration status, rights and responsibilities, applying for visas for which they were not eligible, or not keeping up to date documentation demonstrating their current immigration status (paragraphs 2.5, 3.6, Figure 3 and Figure 7).

¹ A biometric residence permit is a card which holds a migrant's biographic details (name, date and place of birth) and biometric information (facial image and fingerprints), and shows their immigration status and entitlements while they remain in the UK. Any individual who is granted indefinite leave to enter or remain in the UK or who has no time limit on their stay here may stay and work in the UK as long as they like.

13 UK Visas and Immigration's quality assurance systems are not focused on outcomes or the impact of decisions. UK Visas and Immigration's overall performance framework is geared towards processing large volumes of immigration decisions within agreed target times. However, its quality assurance approach does not reflect fully the complexity of the decisions it makes, or the impact of different decisions. It selects cases to check by randomly sampling 2% of completed cases within each immigration route. However, visa and citizenship refusals, which would have been more of an issue for the Windrush cases, make up a relatively small proportion of the outcomes (approximately 5.6% for settlement and citizenship applications) and so would inevitably have been reviewed infrequently. UK Visas and Immigration has acknowledged in its revised assurance strategy, published October 2017, that it could do more to focus its quality assurance approach on outcomes across its operations (paragraphs 3.9 to 3.11).

14 The Department has had targets for removing illegal migrants since 2004, but there is insufficient information to conclude on whether this contributed to the Windrush situation. In 2017-18 Immigration Enforcement expected to achieve 12,800 enforced removals and broke this target down into weekly targets of around 230 to 250 removals. The Department has said that targets for enforced removals were part of an overall target for removals in previous years.² It has also said that during the period in which specific, quantified goals were set by senior managers, it was common practice for those to be apportioned among individual teams, reflecting their roles or areas of geographical coverage, and for local members of staff to see how their own work contributed to that. It is therefore reasonable to conclude that these targets would influence how staff carried out their work. Sir Alex Allan, in his report on the circumstances surrounding the former Home Secretary's evidence to the Home Affairs Committee on 25 April 2018, found that communication on this issue had not been clear. In relation to other targets for compliant environment sanctions, the DVLA also had a target, set by the then Prime Minister's Office, to deliver 10,000 licence revocations in 2014-15 (paragraphs 3.12 and 3.13 and Figure 1).

² This also included a target for voluntary departures.

Whether the quality of information shared with agencies was a factor in people being wrongfully denied access to public and private services, and accommodation

15 Issues with the Department’s data management increased the risk of action being taken against people who had a legal right to be in the UK. When the Department identifies someone it believes should not be in the UK, for example because it refuses that person’s visa application, it places them automatically in a ‘migration refusal pool’. Immigration Enforcement uses these data to target its work on removals and detention. The Department also shares these data with other public bodies, which may then apply other sanctions. Both we and the Inspectorate have raised concerns several times since 2014 about the quality of the data and controls underpinning this system. The Department declined to cleanse its database as recommended by the Inspectorate in its review of compliant environment measures on driving licences and bank accounts in 2016. The Department has now paused some of this data-sharing with other departments. It has also paused the automatic ‘pull’ of selected visa refusal cases into the migration refusal pool. It has not decided when, or if, it will resume these activities (paragraphs 3.14 to 3.16, 3.19, 3.21 and Figure 8).

Whether the Department had feedback loops to identify any adverse or unintended consequences and responded appropriately to feedback

16 The Department did not act on credible information about issues that may have contributed to the Windrush situation. We found several Inspectorate reports that raised issues with the targeting of compliant environment measures generally, including the possibility that some people were being sanctioned who should not have been, because of issues such as incorrect data. The reports also mention that in some cases there was a lack of information to properly assess the impact of compliant environment measures. In relation to Windrush specifically, a 2014 report called ‘Chasing Status’, by the Legal Action Group highlighted the potential adverse impact of compliant environment policy on certain groups, including Jamaican migrants who arrived in the UK before 1973.³ The Department was aware of the report at the time but did not act on it. In addition, Caribbean ministers raised Windrush cases with the UK government at a ministerial forum in April 2016. The Foreign & Commonwealth Office subsequently shared a brief record of this forum but it is not clear whether the Department was aware of this. It is our view that there were warning signs from enough different sources, over a long enough period, to collectively indicate a potential problem that merited further investigation (paragraphs 3.21 and 3.22).

3 Legal Action Group, Fiona Bawdon, *Chasing status: if not British, then what am I? The ‘surprised Brits’ who find they are living with irregular immigration status*, October 2014.

The Department's plans to provide redress

17 The Department has established a dedicated team to respond to people who may have been affected. It set up a Windrush scheme in April 2018 to help individuals to resolve their immigration status. It has waived its usual fees for people applying through the scheme. As at 30 September 2018, the Department had issued 2,658 individuals with documentation to confirm their status. The majority are from Caribbean Commonwealth nations (73%) and other Commonwealth nations (25%), although a minority (2%) are from other countries, such as Italy. The scheme is open to people from any country, as long as they arrived in the UK before 31 December 1988 and are settled in the UK. It has issued documents to individuals from around 50 nationalities. The Department has run outreach activities to raise awareness of the scheme. It also set up additional support for vulnerable people and simplified some of its forms to help people apply more easily to the best immigration route for their circumstances. The Department plans to embed some of these practices more widely through its immigration casework processes, although it has not yet confirmed what will change and how it will be sustained. It has also established a head of profession and chief caseworkers unit to provide professional leadership and guidance to caseworkers on complex cases (paragraphs 2.10 and 4.1 to 4.4).

18 The Department is setting up a compensation scheme, the cost of which is still being established, and this might result in a large range of financial liabilities. The Department has committed to public consultation on issues such as who will be eligible for compensation, and what they will receive under the scheme. It has said that it intends to compensate people for a broad range of impacts and that the scheme will not necessarily be limited to Commonwealth citizens. It intends to start making payments by spring 2019. It has been a long-standing practice for the Department to agree confidentiality when settling immigration and asylum compensation claims. It has said that claims paid under the formal Windrush compensation scheme will not be subject to confidentiality agreements and that in future, such agreements will only be used where there is clear legal advice that there are valid reasons for their use (paragraphs 4.5 and 4.8).

Conclusion on value for money

19 The policy of successive governments to create a hostile/compliant environment for illegal migrants involved limiting access to benefits and services and tightening enforcement activities. This included a 'devolved approach' placing a duty on landlords and employers and public service providers to carry out checks. This predictably carried a risk of impacting on individuals who were, in fact, entitled to residence, but who did not have the necessary documents.

20 The Department had a duty of care to ensure that people's rights and entitlements were recognised and this has been re-emphasised by the Prime Minister. We do not consider that the Department adequately considered that duty in the way that it introduced immigration policy.

21 In its implementation of the policy with few checks and balances and targets for enforcement action, we do not consider, once again, that the Department adequately prioritised the protection of those who suffered distress and damage through being wrongly penalised, and to whom they owed a duty of care. Instead it operated a target-driven environment for its enforcement teams. The clarity of briefing to the former Home Secretary on this issue has also been called into question.

22 It is clear that the Department received warnings of the fact that people, including in one case an employee of the House of Commons, were being wrongly caught up in the enforcement and compliant environment sanction regimes it was responsible for, but this did not have the effect of stimulating inquiry, or timely action.

23 The Department is now moving to identify affected individuals, and to compensate them. This is positive. However, it is still showing a lack of curiosity about individuals who may have been affected, and who are not of Caribbean heritage, on the basis that this would be a 'disproportionate effort'. In the circumstances, we find this surprising.

24 It is clear that the Department's implementation of the policy, now resulting in a belated and costly exercise in seeking information and paying compensation, to say nothing of the reputational damage involved, was not value for money.

Recommendations

25 This report shows how the Department's failure to fully consider the needs of a specific group within the wider immigration system led to serious adverse consequences for the individuals affected. Our recommendations are designed to help the Department reduce the risk that a similar situation will happen again.

- a** **The Department should consider its responsibility, in line with LEAP principles, to be more proactive in identifying people affected and put right any detriment detected.** It should consider reviewing data on: other Commonwealth cases as well as Caribbean nations; and on refusals of citizenships and other immigration routes. It should also identify and contact proactively individuals who suffered detriment other than removal and detention.
- b** **The Department should improve its approach to assessing the risks to particular individuals and groups before it implements its policies.** It should bring analyses together to develop a clear picture of the impact on individuals or groups of people who might be vulnerable to unintentional adverse impacts. Where there are several aspects to a policy, as there are in the compliant environment, it should consider the combined effects, rather than treating each element as a 'stand-alone' initiative.

- c The Department should develop a Department-wide strategy to support potentially vulnerable customers across the immigration system as a whole.** Specific actions might include allowing one claim to be considered under multiple application routes, as well as simplifying forms and guidance.
- d The Department should place greater emphasis on outcomes in its assurance of immigration decision-making.** It should develop a system that seeks actively to improve decision quality and is based on a broad understanding of the risks and impact of incorrect or inconsistent decisions. This should include testing proactively for the risks that new policies present, including the risk that individuals who have the right to reside in the UK are wrongfully identified as being in the country illegally. Specifically, it should consider additional checks on refusal decisions, because enforcement action may follow automatically.
- e The Department should use independent scrutiny to identify and counter potential negative consequences.** This should include:
- incorporating more independent analysis when developing policy and operational processes;
 - acting positively on external reviews and inspections, particularly where these identify potential problems; and
 - conducting more, and better, independent evaluation of the impact of its policies.
- f The Department should, as soon as reasonably possible, clarify the arrangements for the Windrush compensation scheme.** This should include clarifying who is eligible to apply for compensation and the potential cost so that the Department can assess the financial management and budgeting implications.