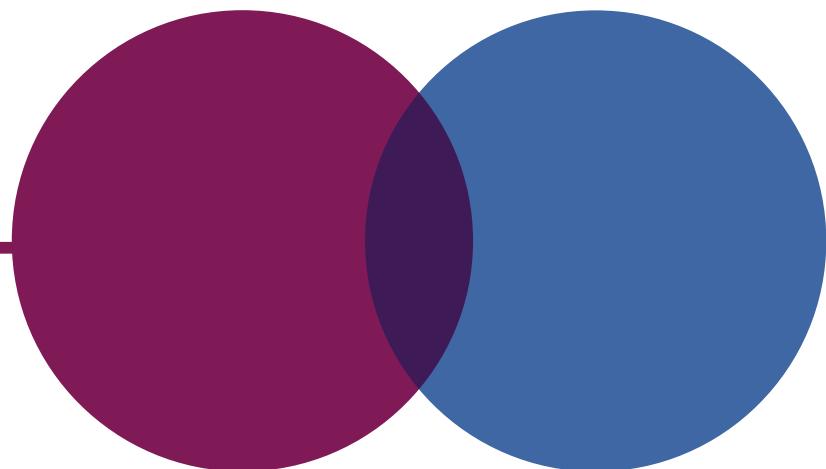




National Audit Office



Investigation into the Windrush Compensation Scheme

Home Office

REPORT
by the Comptroller
and Auditor General

SESSION 2021-22
21 MAY 2021
HC 65

What this investigation is about

1 In the spring of 2018, the Home Office (the Department) acknowledged serious shortcomings in its treatment of the Windrush generation, who had suffered harm due to the Department's 'hostile environment' policies. These policies required members of the Windrush generation to demonstrate their lawful immigration status to access public services, housing and jobs. Some struggled to do this even though they were living in the UK legally. The Department acknowledged it had treated the Windrush generation unfairly and announced a set of measures to "right the wrongs" experienced by those affected. One of those measures was the Windrush Compensation Scheme (the scheme). The scheme aimed to compensate members of the Windrush generation and their families for the losses and impacts they have suffered due to not being able to demonstrate their lawful immigration status.

2 The Department launched the scheme in April 2019. Parliament and the media have criticised the complexity of the claim process and the length of time it takes for claimants to receive compensation, with some claimants dying before receiving payment. They have also criticised the amount of documentation claimants must provide to support their claims. Even when claimants have been successful, they have perceived the value of payments as insufficient to compensate for the harm suffered. In December 2020 the Department announced changes to the scheme, including an increase in payments for 'impact on life' and a commitment to make a preliminary payment as soon as impact on life had been established.

3 This investigation covers the Department's establishment and administration of the scheme and the progress it has made in implementing the changes from December 2020. Our investigation sets out the:

- history and development of the compensation scheme;
- Department's engagement activity;
- number of compensation claims and payments; and
- Department's administration of the scheme.

4 The report sets out the facts relating to the Windrush Compensation Scheme. In undertaking our fieldwork, we have focused on the Department's operations and decisions in establishing and running the scheme. A separate inquiry on the Windrush Compensation Scheme by the Home Affairs Select Committee will assess the scheme from a user perspective and we have therefore sought to avoid duplicating its work. We have not examined the Department's separate Windrush Scheme (or Windrush taskforce), which was designed to ensure that members of the Windrush generation receive documentation confirming their lawful status in the UK. Nor have we examined the Department's wider progress in implementing the recommendations of Wendy Williams' independent lessons-learned review.

Summary

Key findings

Design and establishment of the scheme

5 The Home Office's (the Department's) design for the Windrush Compensation Scheme (the scheme) aimed to compensate claimants quickly while protecting public money from abuse. The Department started to design the scheme in April 2018 and told us it found no clear precedent for the scheme. The Department therefore developed four potential scheme options and decided to proceed with a scheme that included tariff payments across a range of compensation categories and with a wide range of eligible claimants, including family members and relatives of deceased individuals. The Department launched the scheme in April 2019. It has developed different sets of objectives and it is not clear which it uses to measure progress (paragraphs 1.3 to 1.8 and Figures 1 to 4).

6 In December 2020, the Department announced policy changes to the scheme following Parliamentary and media criticism and stakeholder feedback. The changes aimed to: address criticism from Parliament and the media, and feedback from stakeholders and caseworkers; and to change payment levels to better reflect the suffering endured by the Windrush generation and improve the pace of payments by getting money to claimants faster. The Department's cross-government working group highlighted to the Department that it risked failing to fulfil its public sector equality duty by choosing not to make interim payments to help 'reduce or minimise the suffering of all members of the Windrush cohort', and proposed introducing preliminary payments of £10,000 to claimants. The Department made this change, increased its 'impact on life' payments, and made changes to awards for loss of access to employment (paragraphs 1.15 and 1.16 and Figure 6).

The Department's engagement with affected communities

7 The Department has spent £773,000 on engagement and marketing activity to promote the Windrush schemes but continues to receive feedback reporting distrust.

The Department has held 140 engagement events with nearly 3,000 attendees, aiming to raise awareness of the Windrush scheme for documentation and the separate compensation scheme. The Department commissioned research in summer 2020, which identified two main barriers that might discourage people from approaching it – awareness and trust. Some respondents to a Department commissioned survey reported they did not trust the Department or believe they would be helped or were eligible. They said they were concerned that people had rarely been compensated and expressed concern the schemes were a way to 'round [people] up'. In response the Department developed and ran a series of media and 'grassroots' campaigns between August 2020 and October 2020, including recruiting community ambassadors.

Feedback from the campaigns has been broadly positive. Respondents to post-event surveys said they felt more aware of the schemes following presentations. However, the Department did not start to see an increase in applications until after it announced the changes in December 2020 (paragraphs 2.2 to 2.10 and Figures 7 and 9).

8 The Department launched a £500,000 Windrush Community Fund in December 2020 to help raise awareness of the Windrush schemes. The Windrush Community Fund is available for funding applications from charities, community or grassroots organisations across the UK for projects to help raise awareness of the Windrush scheme for documentation and the compensation scheme.

The Department will pay Voice4Change nearly £145,000 to administer the scheme on its behalf and advise which proposals the Department should fund. The Windrush Community Fund will be open for applications in two phases, the first of which ran between 14 December 2020 and 12 February 2021. The Department provisionally offered approximately £270,000 to 14 organisations. During the second phase from 1 April 2021 to 30 June 2021, the Department intends to allocate the remaining £230,000 (paragraphs 2.11 and 2.12 and Figure 8).

Compensation claims and payments

9 When the Department launched the scheme in April 2019, it estimated it might pay out compensation worth between £120 million and £310 million to 15,000 people. The Department does not know how many people might be eligible for compensation, and so estimated the number based on information from its immigration systems and the 2011 census. It estimated the likely total compensation payments using a range of factors, including national minimum wage levels, legal advice on the costs of fees and Parliamentary and Health Service Ombudsman financial remedy recommendations. Using these and its estimate of the number of claims, it calculated the possible compensation. In October 2019, it reduced its assumption to 11,500 likely applications and subsequently changed its estimated compensation payment to between £60 million and £260 million, although there is no maximum or minimum on what it might pay. The Department's governance board has discussed a substantial degree of uncertainty around the estimate and believes it to be high but has continued to work from these assumptions. At the time of publication, the Department was reviewing its estimates (paragraphs 1.9 to 1.11 and 3.3).

10 The Department has received 19% of the claims it estimated it might receive as part of the scheme. By the end of March 2021, the Department had 2,163 claims on its system, of which 1,732 (80%) were from individuals, 313 (14%) were from family members and 118 (5%) were on behalf of the estate of someone who had passed away (paragraphs 3.2 to 3.4 and Figure 9).

11 To the end of March 2021, the Department had paid £14.3 million to 633 people, although some of these people may receive further payments. It has paid £11.6 million of this (81%) since it announced the policy changes in December 2020. The Department does not report whether these payments are preliminary, final or increased 'impact on life' payments. We estimate it has paid £2.6 million in preliminary payments and £4.24 million as increased 'impact on life' payments to those previously paid, representing nearly 60% of payments since December. Our analysis of the Department's data shows that by 31 March 2021, it had progressed 414 claims (19%) to the payment stage. The Department's internal figures show that it has made final decisions on 824 claims (38%), although the Department calculates this number using a combination of its system data and manual spreadsheets and we were unable to reconcile it. Some of these claims are still subject to a review or have not yet resulted in a payment. The Department has told 117 claimants they are not eligible for the compensation scheme and has made decisions that 210 claimants are not entitled to monetary compensation as they did not suffer losses. Since March 2020, 230 claimants in total have appealed against the Department's decision or offer (paragraphs 3.5, 4.8 and 4.16 and Figures 11 and 14).

Administering the compensation scheme

12 Between April 2019 and March 2021, the Department had a budget of £15.8 million to run the scheme and spent £8.1 million, of which £6.3 million has been spent on staff. The Department has spent much less than its budget running the scheme and has had considerably fewer staff than it expected to need, although claim numbers have also been much lower than expected. It originally stated it needed 125 full-time equivalent caseworkers from the outset, but when the scheme launched it had 6 full-time equivalent caseworkers in post. The Department told us that at March 2021, it required 51 full-time equivalent caseworkers and had 53 in post. However, its records have not provided a clear picture of the number of caseworkers it needs. The Department is reluctant to increase the number of caseworkers significantly, because it recognises that the scheme's complexity means that it takes time for new staff to get up to speed. It is considering increasing caseworker numbers by up to 10 before the end of June 2021 (paragraphs 4.2, 4.3 and 4.5 and Figure 12).

13 It takes, on average, 154 staff hours to process a case through to payment approval, considerably longer than the Department estimated. When the scheme began the Department estimated that it would take, on average, 30 staff hours to work through a case. However, it found that cases were more complex than forecast and took longer to process. We have analysed data for new applications since March 2020 when the scheme moved to a new IT system (1,033 applications, 48% of total applications); 102 of the 1,033 cases (10%) reached payment approval stage. It took these cases an average of 177 days to reach payment approval, with half of the cases taking between 109 and 250 days. The analysis shows that, on average, applications go through 15 steps before payment to claimants is approved. The Department intends to speed up its claims processing in the next few months (paragraphs 4.4, 4.6, 4.8 to 4.10, 4.12 and 4.13 and Figures 13 to 15).

14 The Department's quality assurance processes are not identifying all errors. Our analysis shows that, of the cases that were subject to a quality assurance check, half needed to return to a caseworker for further work, indicating cases often contained errors. However, some claims have proceeded to payment without errors being identified. As of March 2021, the Department is aware of six overpayments, totalling £38,292 in value. We undertook our own review of 10 cases and identified overpayments of £447 relating to two items worth £330,566 in total (0.14% error). Our case file review also identified further inconsistencies in how caseworkers have calculated loss of income from employment (paragraphs 4.15 to 4.18).

15 The Department has reduced the standard of proof required for some categories of claim to ensure claimants receive the maximum compensation owed to them. In October 2020, the Department lowered the burden of proof required for some claim categories from ‘satisfied as to be sure’ and ‘beyond reasonable doubt’ to ‘on the balance of probabilities’. It told us that caseworkers understand what this means because they had already been working to the ‘on the balance of probabilities’ threshold for most categories of claim but has not set out in writing to us or to caseworkers what this change means in practice. The Department is now undertaking a review of how evidential standards are applied in decision-making, claim forms, guidance and training (paragraphs 1.8, 4.10 and 4.11).

Concluding remarks

16 The Department recognises the Windrush Compensation Scheme is an important part of its response in righting the wrongs suffered by the Windrush generation. Its design aimed to compensate claimants quickly while protecting public money from abuse. However, it started accepting applications before it was ready. Until it started enacting the changes it made in December 2020, it was not meeting its objective of compensating claimants quickly. Since then, it has made some progress. By the end of March 2021, the Department had paid £14.3 million in compensation, of which £11.6 million has been paid since December 2020. Nearly 60% of the payments since December relate to paying increased ‘impact on life’ awards to those previously paid and making preliminary payments, rather than finalising more claims. The Department needs to sustain its efforts to improve its caseworking operations and management systems to ensure it fairly compensates members of the Windrush generation in acknowledgement of the suffering it has caused them.