

The Windrush Compensation Scheme and Older People

Briefing Paper April 2019 update



Introduction

The Windrush scandal affecting thousands of people who arrived in Britain from the Commonwealth in the late 1940s and 50s is a truly shameful affair that has yet to be rectified. Many who came to work in the NHS and other public services did not have documentation confirming their immigration status and have since faced major difficulties in proving their right to work, to rent property and to access benefits and services to which they are entitled. Further to this is the human cost, as people have been denied medical treatment, put in detention centres, deported and separated from their loved ones.

Whilst the government has apologised to the 57,000+ people in this position and the Home Office started a scheme on 30 May 2018 to help those affected get the documents they need, action has been painfully slow, with people waiting many weeks for biometric cards and access to services.

The total number of those affected by the scandal remains unknown, but more than 5,000 people have been granted documentation by the Windrush taskforce in the past year, confirming they have a legal right to live in the UK; 3,674 of them have been granted British citizenship.

The Compensation Scheme

The government ran a consultation for a compensation scheme from 18th July 2018 to 16th November 2018 and the full design of the compensation scheme was announced on the 3rd April 2019. It is estimated between 15,000 and 30,000 applications for recompense will be made.

A Home Office impact assessment estimates that the scheme will cost between £49m and £587m - taking compensation and operational costs into account, with a figure of £200m the most likely outgoing total. There is no cap on how much overall compensation someone can receive under the scheme, but many categories have set payments.

Eligibility

The scope of the Windrush Compensation Scheme is not limited to men and women who originally came to the UK from the Caribbean Commonwealth. Almost everyone originally from a Commonwealth country who arrived before 1 January 1973 is included.

If you have a right of abode or settled status (or are now a British citizen) and arrived to live in the UK before 31 December 1988 you will also be eligible to apply regardless of your nationality when you arrived – even if you are not a Commonwealth citizen.

The scheme is also open to:

- Children and grandchildren of Commonwealth citizens in certain circumstances.
- The estates of those who are now deceased, but who would have otherwise been eligible to claim compensation.
- Close family members of eligible claimants where there has been a significant impact on their life or where there is evidence of certain direct financial costs.

Entitlement

You may be able to claim compensation for losses related to:

- Employment
- Immigration fees
- Detention and removal
- Housing
- Health
- Education
- Driving licences
- Banking
- Impact on normal daily life

Conclusion

The compensation scheme – whilst welcome – is likely to raise as many concerns as it solves. For example, a person who was unlawfully deported will get £10,000; those detained for over 30 minutes are entitled to £500 per hour for the first three hours, followed by lower hourly rates if they're held for longer; and people wrongly made homeless can expect £250 per month, up to a maximum of £25,000.

Additionally, there is no legal aid being made available to provide specialist support to fill in the lengthy application form, help people quantify their losses or track down the evidence required. The burden of proof is still therefore disproportionately placed on the individual.

To access compensation, people are required to provide evidence that might not exist – for example, to prove their attempts to contact the Home Office to resolve the problems that the Home Office was itself responsible for creating. The cost of applications to the Home Office to secure some form of evidence of status – in the face of its refusal to recognise their existing rights – will not be reimbursed, though they can cost individuals hundreds or even thousands of pounds in fees.

There has also already been controversy with the scheme, as 500 email addresses were leaked. The department sent information to Windrush migrants in a way that meant their email addresses could be seen by other people. An internal review has been launched and the matter has been referred to the Information Commissioner.

MPs have now called on the government to review the Windrush compensation scheme, describing the sums to be paid for individual losses as “derisory” and “insultingly low” and requesting the caps on certain categories be scrapped.

In reality, no amount of money can undo the injustices and inhumanity that the Windrush generation have faced over the years.

Further Information

[1] HM Government (2019) The Windrush Scheme & Information

<https://www.gov.uk/government/publications/undocumented-commonwealth-citizens-resident-in-the-uk>

[2] HM Government (2019) Windrush Compensation Scheme

<https://www.gov.uk/guidance/windrush-compensation-scheme>

[3] HM Government (2019) Windrush Compensation Scheme Rules

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/793028/Windrush_Compensation_Scheme_Rules.pdf

[4] HM Government (2019) Windrush Claimant Application form

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792025/Primary_Claimant_Guidance_.pdf

National Pensioners Convention
62 Marchmont Street
WC1N 1AB
London
www.npcuk.org