

A critique of the Windrush Lessons Learned Review

Jacqueline McKenzie,¹ solicitor and partner at McKenzie Beute and Pope, considers the Windrush Lessons Learned Review which was published almost one year ago on March 19, 2020. She sets out the background to the Windrush scandal and analyses the Review's findings and remit. In her opinion, the Home Office's handling of the Windrush generations' right to live and work in the UK sits squarely within a discourse of ideology, race and discrimination. Despite the Home Secretary's acceptance of institutional failings at the heart of the Home Office,² she expresses concerns about the lack of progress on the cultural change required of the department by the Review. She considers there is a lack of political leadership or willingness to engage in a meaningful way with the Review's recommendations, both of which are required to change Home Office culture and ensure that such a scandal can never happen again.

Immigration policy is largely driven by ideological considerations and voter priorities. The idea that ministers decide policies which civil servants advise on and implement would suggest that it is government, past and present, which ought to come in for closer scrutiny in the assessment of the Windrush scandal. The review of the scandal and the injustices meted out to the members of the Windrush generation has however, largely focused on the role, culture and operations of the Home Office.

The recommendations of the Windrush Lessons Learned Review focus on the need for learning, engaging and cultural reform in the Home Office with little analysis of how political ideology informs and drives the department's outputs and outcomes. The women and men affected by the scandal represent a marginalised group of UK citizens. Mostly characterised by images of people disembarking off ships, including the HMT Empire Windrush which docked at Tilbury on June 22, 1948, or in the various uniforms of London Transport, British Rail and the NHS, theirs is largely a history of surviving racism and a hostile and unequal society.

British opposition to immigration

Studies done from the 1960s onwards found that an overwhelming majority of British people thought that too many immigrants had come to the UK; about half of those surveyed felt very strongly on the issue. Ivor Crew, in his essay *Representation and the Ethnic Minorities in Britain*,³ explained: *'the typical British elector is implacably opposed to further coloured immigration, regards strict immigration control rather than city aid as the key to good race relations and considers that action on behalf of racial equality has already gone far enough'*.⁴ He pointed to the demonstrations in support of Enoch Powell after his 1968 'Rivers of Blood' speech and the rise in support for the Conservative party after Margaret Thatcher's January 1978 interview on *World in Action* during which she proclaimed, in response to the arrival of people from the new commonwealth and

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² CP 293 – The Response to the Windrush Lessons Learned Review: A Comprehensive Improvement Plan – September 2020 (publishing.service.gov.uk)

³ Glazer N and Young N, 1983, *Ethnic Pluralism and Public Policy – Achieving Equality in the United States and Britain* p 262

⁴ *Ibid* pp 262-263

Pakistan ‘... it is an awful lot and I think it means that people are really rather afraid that this country might be rather swamped by people of a different culture’. Crew explained that Thatcher understood that ‘there are votes for the picking in fanning the flames of racial resentment... and few extra votes to be won by dousing the flames.’⁵

The Runnymede Trust reported⁶ that her speech caused Labour to lose their prime position in the polls, and Thatcher went on to win the 1979 election. This thinking prevails today. The Migration Observatory at Oxford University found that British people make distinctions between immigrants from different countries. ‘Just 10% of a 2017 sample said that no Australians should be allowed to come and live in Britain compared to 37% saying that no Nigerians should be allowed.’⁷

The ‘coloured immigration’ referred to, to use a now discredited term, was in the main the half a million men and women who settled in the UK from the Caribbean between 1948 and 1973, now described as the Windrush generation. Many of the people affected by the Windrush immigration scandal are from that era, but there are victims who are their descendants. Most of those who came to the UK before the end of the 1970s thought that they were moving from one part of the motherland to another. Few ever imagined, despite the legacies of slavery, colonialism and their experiences of the independence movements, that the documents they possessed, qualifying them as British subjects or Citizens of the United Kingdom and Colonies (CUKC), endorsed with a myriad of stamps confirming their right to remain in the UK indefinitely, conferred a status that was distinguishable from that of white people in the UK, including white people from the old Commonwealth. In their minds they were British people who happened to be born in other countries.

The Windrush generation were right to feel secure in the UK. There is no reason why they should have known that their status had changed by dint of legislation and the independence of their countries, or that the citizenship registration drives of the 1970s or 1980s had anything to do with them. There can be few groups in society to which so little regard was paid that no one in authority thought it necessary to safeguard their status by keeping adequate records or providing information and advice when changes were afoot. The

failures to protect this group of people is in part due to the historic and continuing inefficiencies of the Home Office, but also due to how this particular group of people were, and in many ways are, regarded in society i.e. Black people of low strata.

It was never the intention of those politicians and policy makers of the 1960s and 1970s that the Windrush generation were ever really going to be considered as equal citizens or even permanent citizens of the UK. It was hoped that once they had helped in the post-war rebuilding of the UK, most would return to where they came from. Churchill was committed to this policy. Paul Gilroy, author of the seminal *There Ain't No Black in the Union Jack: The Cultural Politics of Race and Nation* which assessed the relationship between racism and nationalism, concluded that whilst extolling the virtues of the mother country, Churchill was steadfast in his desire to place migrants from the new Commonwealth at a distance and ‘keep Britain white’.⁸

Researchers looking into the causes of the Windrush scandal, whilst pouring over the historic speeches and archives of Enoch Powell, Margaret Thatcher and Theresa May, inter alia, were surprised to find a letter stating:

*The British people fortunately enjoy a profound unity without uniformity in their way of life, and are blest by the absence of a colour racial problem. An influx of coloured people domiciled here is likely to impair the harmony, strength and cohesion of our public and social life and to cause discord and unhappiness among all concerned.*⁹

The real surprise though was that this letter was signed by eleven Labour MPs and sent to Clement Atlee, a Labour prime minister. In fact, Atlee had enquired of the possibility of re-routing the Windrush passengers to work on a peanut project in East Africa rather than have the ship enter Tilbury Docks; these were free men and women, subjects or citizens, being discussed in this way. Clive Harris in the reader *Post War Migration* featured in *Inside Babylon*, found the concern of the Labour government to be ‘an unmistakable anxiety about the challenges posed by black immigration to a racialized conception of national identity’.¹⁰ Just a year earlier the Ministry of Labour had opposed the recruitment of workers from the Caribbean. Harris points to the Ministry’s contradictory stance in

5 Ibid p 263

6 Runnymede Trust *An oral History of the Runnymede Trust 1968-1988* (runnymedetrust.org)

7 The Migration Observatory Oxford University *UK public Opinion toward Immigration: Overall Attitudes and Levels of Concern* January 20, 2020 (migrationobservatory.ox.ac.uk)

8 Gilroy, P, *There A'int No Black in the Union Jack: The Cultural Politics of Race and Nation*, 1987

9 National Archives, Letter from Labour MPs to Cement Atlee about immigration to the UK, June 22, 1948 (HO 213/244)

10 James W and Harris C, 1993, *Inside Babylon: The Caribbean Diaspora in Britain* p 51

describing the unsuitability of a Caribbean workforce to Britain because they could not withstand outdoor work in the winter but conversely, the mines would be too hot.¹¹ He concluded that '*via the imperialization and hegemonizing palimpsest of the immigrant, black workers found themselves positioned within new discourses of differentiation, hierarchisation and fixity which were to have profound impact on notions of Britishness and Black identity*'.¹²

The history of the Windrush generation in the UK is posited within a discourse on race and racism, identity and nationality. It follows therefore that any investigation into the causes of any injustices experienced by this group should critically analyse the role that race and identity played in creating a malfeasance that caused people who were legally settled in the UK to be denied access to housing, critical health care, benefits and employment, and who ended up in immigration removal centres or removed from the UK.

The Windrush scandal does not only affect people from the Caribbean but to date, they are the largest group supported by the Home Office's Windrush Taskforce, followed by people from Nigeria and Ghana. Legislation enacted in the 1960s and 1970s caused net immigration from the Caribbean to reduce to under 2,000 between 1973-1982, from almost 500,000 between the 1950s, 60s and early 70s. Paul Gilroy finds an inextricable link between racism and nationalism and points to the *patriality* clause in the British Immigration Act 1968 as evidence of this:

*It is important to recognise that the legal concept of patriality, introduced by the Immigration Act of 1968, codified this cultural biology of race into statute law as part of a strategy for the exclusion of Black settlers.*¹³

Windrush Lessons Learned Review

In May 2018, Sajid Javid MP, then Home Secretary, commissioned the Windrush Lessons Learned Review (the Review). The independent review was undertaken by Wendy Williams, the head of HM Inspectorate of Constabulary and Fire and Rescue Services who worked alongside a team of civil servants and an Independent Advisory Group. Its remit was to undertake an assessment of the events leading up to the Windrush scandal over the period 2008 to 2018. It was published on March 19, 2020 on the eve of the national lockdown caused by the Coronavirus pandemic.

11 Lab 13/42, Memorandum, Recruitment of Colonial Subjects for Employment in Great Britain, May 1948

12 James W and Harris C *Inside Babylon: The Caribbean Diaspora in Britain* p 51

13 Gilroy, P, *There A'int No Black in the Union Jack: The Cultural Politics of Race and Nation*, 1987

Williams' baseline was that an illegitimate act had been done to people legitimately in the UK.

*The 1971 Immigration Act confirmed that the Windrush generation had, and have, the right of abode in the UK. But they were not given any documents to demonstrate their status. Nor were records kept. They had no reason to doubt their status, or that they belonged in the UK. They could not have expected to know the complexity of the law as it changed around them.*¹⁴

A critique of the Review must be posited within the constraints not just in terms of its ten-year scope, but in terms of what it set out to do i.e. to investigate key legislative, policy and operational decisions. It sought to explain how members of the Windrush generation, legally resident in the UK, came to be entangled in measures to stem illegal immigration under the 'hostile environment' (administrative and legislative measures designed to make staying in the UK difficult for people without evidence of their right to be in the UK), and to make recommendations for the future.

Williams' extensive review examined 69,000 official documents and interviewed over 450 government staff, officials and politicians. In addition, 270 people affected by the scandal were consulted and ethnographic research was conducted on several cases. Immigration and other lawyers, local authorities, charities, think tanks and academics were consulted. Her report is comprehensive within its terms of reference and critical of the Home Office. It has been welcomed across the board by those affected by the scandal and those who work with them, with many viewing it as a blueprint for reform of the operation of immigration policy in the UK.

The review team were tasked with looking at legislative, policy and operational decisions, and '*what other factors played a part*'.¹⁵ It was structured across themes, but notably, race and discrimination did not feature as themes though these issues are addressed. There was an examination of equalities legislation, policy, practice and operational matters, but the methodology used meant that the level of analysis fell short of the sort of assessment needed to identify whether there were breaches of the Equality Act 2010 (EA) or whether the Home Office could be described as institutionally racist.

The Home Office's equality duties

It is interesting that despite taking over two years to get there, possibly energised by the Black Lives Matter campaign, the Equality and Human Rights

14 Williams, W 2020, Windrush Lessons Learned Review p 11

15 Ibid p 9

Commission (EHRC) announced on June 13, 2020, that it would launch an assessment under s31 of the Equality Act 2006 to examine whether, and how, the Home Office complied with the public sector equality duty (PSED) in relation to understanding the impact of its policies on the Windrush generation. Its assessment was published on November 25, 2020, see below.¹⁶

The Review did not have the investigative powers of the EHRC, the National Audit Office or the Public Affairs Committee.

Williams concluded that she was not able to reach a fair and accurate conclusion regarding the Home Office's duty under EA s(29)(1) which provides that 'A person (a service-provider) concerned with the provisions of a service to the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with this service.'¹⁷ Though the EA pertains to people in the UK, s29(9) covers people seeking entry clearance to the UK under the 1971 Immigration Act; several victims of the Windrush scandal outside of the UK fall within this remit.

Williams was also unable to compare whether the decision-making in Windrush cases was distinguishable from that in non-Windrush cases because the Home Office does not collect data based on the ethnicity of applicants. A country analysis was possible however, resulting in inferences. Overwhelmingly, applicants from the new Commonwealth tend to be Black and Brown and the old Commonwealth and Europe, white. Williams considered however:

*... several of the institutional factors outlined in this report to have posed, and to continue to pose, a substantial risk of causing the Windrush generation (who can be defined as a racial group by reference to nationality and national origin, deriving from the Caribbean ... and who almost all are black) to be treated less favourably and suffer detriment as compared with those: a) who were born in the UK, b) who arrived in the UK neither from the Caribbean nor within the window 1948-1973, c) who are British passport holders, a much higher proportion of whom are black.*¹⁸

Although Williams was unable to do a comparator exercise, she concluded that it is the Windrush generation who 'faced very significant detriment'.¹⁹

The Home Office's public sector equality duty

The formulation of immigration policy as a whole is not excluded from the scope of the EA and Schedule 23 does not exempt the Home Office from a duty not to discriminate directly or indirectly on grounds of colour, national origin or ethnic origin. Williams invited the Home Office to comment on this and it accepted there is no blanket exception. However, she says that when she interviewed senior officers 'equality considerations, especially considerations as to whether the development of policy could have a particular adverse impact on a definable racial group, whether by reference to colour, national or ethnic origins, seemed not to have occurred to the individuals concerned ... There appeared, especially early on in my review, to be an implicit assumption both at junior and senior levels that the duties in the Equality Act 2010 did not apply to what they did on a day-to-day basis'.

This concerned her because of the s149 EA duty of public authorities to carry out their functions with due regard to achieving the objectives of the EA to a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the EA, and b) advance equality of opportunity between persons who share a relevant protected characteristics and persons who do not share it and c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Equality impact assessments were required across government from early 2000 but on November 19, 2012, David Cameron, then prime minister, announced that these would no longer be required, describing them as bureaucratic rubbish.²⁰ Instead, he suggested that policy makers should use judgment rather than tick boxes.

That he thought that the choice was between individual judgment and tick boxes demonstrates the institutional ignorance which Williams talks of.

She found an inadequate discussion or understanding of African and Caribbean people. This ignorance, found across society, in part explains the poor indicators experienced by members of this group in most areas, including health and well-being, poverty, education, employment, entrepreneurship and the criminal justice system. This is so despite over 50 years of race relations and equalities legislation and almost every major organisation having equalities, diversity and inclusion policies and is central to the issues being raised by the Black Lives Matter movement. The inequalities in society are caused by individual action and is systemic.

¹⁶ Home Office failed to comply with equality law when implementing 'hostile environment' measures | Equality and Human Rights Commission (equalityhumanrights.com)

¹⁷ Equality Act 2010 s 29 (1) Legislation.gov.uk

¹⁸ Williams, W 2020, Windrush Lessons Learned Review p 71

¹⁹ Ibid 13

²⁰ David Cameron axes equality assessments in war on 'red tape' | David Cameron | *The Guardian*

It cannot be the case therefore that the mistreatment of the Windrush generation, both historically as explored earlier, and in contemporary times under the hostile environment, is not in part due to inherent and systemic racism and discrimination.

The Equality and Human Rights Commission assessment

The EHRC's assessment concluded that the Home Office did not comply with its s149 EA duties in understanding the impact on the Windrush generation and their descendants when developing, implementing and monitoring the hostile environment policy agenda. The Commission did not assess the question of institutional racism but concluded that *'the devastating effects of the hostile environment on Black members of the Windrush generation, showed a clear failure by the Home Office to develop and implement immigration policies that were fit for purpose for the Black people affected by them'*. The Commission agreed with the Review's conclusion that the experiences of the Windrush generation were *'foreseeable and avoidable'* and made several recommendations designed to help the Home Office to comply effectively and meaningfully with its PSED obligations in the future development, implementation and monitoring of immigration policy and practice.

Williams fell short of making a finding of racism or institutional racism despite finding that issues connected to race, culture and identity are causative. She reports that the European Commission for Human Rights found that there was a racial element to both the 1968 and 1971 immigration legislation and found that *'this was a key reason why so many of the Windrush generation were so caught up by the hostile environment'*.²¹ She explained that when questioning senior civil servants and former ministers on the role that race might have played in the scandal, she found them to be *'unimpressively unreflective, focusing on direct discrimination in the form of discriminatory motivation and showing little awareness of the possibility of indirect discrimination or the way in which race, immigration and nationality intersect. ...I have concluded that race clearly played a part in what occurred, that some of the failings would be indicators of indirect discrimination if the department was not capable of establishing objective justification and that the department should therefore consider whether such justification exists and be alive to the risk of discrimination'*.²² If race played a part, then, in the author's opinion, so does racism.

²¹ Ibid p 71

²² Ibid p 13

Williams concluded that she could not make a definitive finding of institutional racism as the late Sir William MacPherson did of the Metropolitan Police Force following his review of its investigation into the murder of Stephen Lawrence: *'While I am unable to make a definite finding of institutional racism within the department, I have serious concerns that these failings demonstrate an institutional ignorance and thoughtlessness towards the issue of race and the history of the Windrush generation within the department, which are consistent with some elements of institutional racism.'* But if there are elements of institutional racism then, in the author's opinion, there's institutional racism.

Williams continued: *'The department has failed to grasp that decisions in the arena of immigration policy and operation are more likely to impact on individuals and the families of individuals who are BAME, who are not born in the UK, or who do not have British national origins or white ethnic origin.'*²³ This is something however that both governments and the Home Office ought to be acutely aware of. A deeper analysis of these findings was deemed outside the scope of the report.

Williams did not find evidence of deliberate targeting of the Windrush generation by reason of their race or otherwise but said this does not mean this was not the case. *'I have not found evidence of stereotypical assumptions being made throughout the Home Office about those from the Caribbean or black people. What I have found... is a generation whose history was institutionally forgotten.'* It is though, the very stereotyping of this group which caused this historical amnesia and drives the current discourse on the decolonisation of education, critical race theory and the teaching and celebration of the contribution of migrants to the UK. The Review features a quote from Professor Andrew Thompson of Exeter University in which he states, *'The stain that Windrush has left on our public life has been a very long time in the making'*.²⁴ The making of the Windrush scandal has its roots in colonialism and inequality and underpinned by scientific racism. There are findings of this in immigration jurisprudence. In 1981, the European Commission for Human Rights in the case of *East African Asians v United Kingdom* found that the UK had discriminated against citizens from Tanzania, Kenya and Uganda on racial grounds and that the unfair treatment meted out to them had racial motives.²⁵

The Review did not undertake a comparative study based on race but drew an inference. All members of the

²³ Ibid p 14

²⁴ Ibid p 52

²⁵ ECHR judgment in *East African Asians v United Kingdom* (Application number 4403/70) (1973) 3 EHRR 76

Commonwealth were equally affected by the Windrush scandal. But the Commonwealth Immigrants Act of 1968 extended immigration control to citizens of the CUKC who did not have a parent or grandparent born, naturalised, adopted or registered in the UK. Because of migration from the UK to countries like New Zealand, South Africa, Australia and Canada, white people born in those Commonwealth countries were therefore more likely to qualify. Equally, those with CUKC status could not pass it on to their children born overseas so that those who left children overseas until they were settled economically, found that their children who arrived in the UK after the January 1, 1973, did not have a right of abode. Some became adults and were never able to join their parents and of those who did, many found themselves without status and still unable to benefit from the Windrush Scheme. Sir Burke Trend, Cabinet Secretary said that the main motive of the Act was *'to avoid the risk of being swamped by immigrants from the new Commonwealth, and that such a resurgence would inflame community relations'*.²⁶

Immigration policy and the hostile environment

The Review did not set out to consider the impact of ideology on immigration policy generally or the Windrush scandal specifically. However, on the launch of the framework for the hostile environment, first by Labour and then by the Conservatives, no one thought that there needed to be safeguards to protect people who may get caught up in the operations of the policy unwittingly. Williams concludes that *'... the root cause can be traced back to the legislation of the 1960s, 70s and 80s, some of which, as accepted at the time, had racial motivation'*²⁷ and that *'opportunities to correct the racial impact of historical legislation was either not taken or could have been taken further'*. She concluded that the politicians ought to have identified the risks which would adversely affect the Windrush generation and that the monitoring of racial impact on immigration policy and decision-making in the Home Office was not just poor, but in fact, likely to have been non-existent.

Theresa May MP, as Home Secretary, defended her extension of the hostile environment policies by incorporating them into the Immigration Act 2014. The role of government in setting the framework for hostile operations are mired in the political decisions governments make to combat their fear that their electorate are intolerant of migration, particularly

the sort that attracts Black and Brown-skinned people. Williams found that the dominant political discourse failed to challenge, and even encouraged, the association of immigration with negative social and economic outcomes. Both the political parties positioned themselves as *'tough on the immigration of black, Asian and over time – other disfavoured groups'*.²⁸

Governments whip up hysteria regarding migrants as seen particularly during the December 2019 general election and during the Brexit referendum. On June 17, 2020, the National Audit Office reported that the Home Office had no idea whether the government's hostile environment policies had any impact on its stated aim, i.e. to encourage illegal migrants to leave the UK on a voluntary basis. Ironically, the policy aimed at stemming illegal immigration to the UK appears to have affected those lawfully in the UK, more so.

Many organisations had warned the Home Office of the impact of the hostile environment both on members of the Windrush generation and people seeking to rent, the latter known as the 'right to rent' scandal. Williams was asked after her review had started, to examine the right to rent policy which many suggested would lead landlords to take decisions which would disproportionately affect people who are non-white for fear of incurring financial penalties if they were to rent to someone not eligible under the policy. Despite recognising in October 2013²⁹ concerns that this proposal could lead to unlawful discrimination and outlining actions to mitigate the risk, the government still fought the Joint Council for the Welfare of Immigrants' legal action to declare the policy unlawful.³⁰

Though there were signs for almost a decade that some groups were disproportionately affected by Home Office policies, it was not until the end of November and beginning of December 2017 when *The Guardian* highlighted the case of Windrush victim Anthony Bryan,³¹ did it start to take any action. Even then it would take until April 2018, in response to the outrage of the Caribbean leaders in London for the Commonwealth Heads of Government meeting, who had been refused a formal request to meet the prime minister, before the government would create a task force to correct the wrongs evident in the scandal.

²⁸ Ibid p52

²⁹ Home Office, Response to Public Consultation *'Tackling illegal immigration in privately rented accommodation'*, October 2013 p 7

³⁰ *Secretary of State for the Home Department v The Queen on the application of the Joint Council for the Welfare of Immigrants and others* [2020] EWCA Civ 542; April 24, 2020; Briefing 994

³¹ *The Guardian, They Don't Tell You Why: Threatened with removal after 52 years in the UK* December 1, 2017

²⁶ *The Guardian, Ministers saw law's 'racism' as defensible* | Politics | *The Guardian* January 1, 2002

²⁷ Williams, W 2020, Windrush Lessons Learned Review p 12

The Review's recommendations

Wendy Williams produced 30 recommendations. Most of these are about the culture and learning requirements of the Home Office. Recommendation 27 requires the department to establish an overarching race advisory board to inform policymaking and improve organisational practice whilst recommendation 29 requires a review of its diversity and inclusion and unconscious bias training. Recommendation 30 is particularly interesting in that it requires the Home Office to consider the impact of discrimination on its own staff, with a regular review of all successful employment tribunals claims which relate to race discrimination, harassment and victimisation. The obstacles to progression of Black, Asian and other ethnic minorities in the Home Office were dealt with in the Supreme Court case of *Essop v Home Office (UK Border Agency)* [2017] UKSC 27; Briefing 752 Black, Asian and Minority Ethnic (BAME) staff are predominantly concentrated in lower grades and in 2018, made up 26.14% and 26.33% of the lowest two grades, respectively. It is a different story at the more senior levels, with only 7.18% of the senior civil service in the Home Office being BAME. Given the department has the highest representation of BAME staff across Whitehall, this is a stark disparity.³²

Williams found that there had been a low take up of internal equalities and unconscious bias training and a defensiveness, lack of awareness and an unwillingness to listen and learn from mistakes. The Home Office's sensitivity to public claims of racism underscores why cases which hit the media are instantly resolved but do not result in systemic change.

Three years on

Three years after the scandal was publicly uncovered, the victims still complain of mistreatment with reports of inexplicable delays in the provision of status documents, hardship assistance and compensation. Many struggle to obtain assistance and the processes, both in terms of obtaining status and compensation, require evidence of a high standard going back decades; there are complaints about the completion of lengthy forms and the complex guidance. There is evidence of some claimants receiving follow up letters with 30 questions, questions which have been answered or evidenced in the original claim, suggesting either callousness or poor case working. The Windrush victims are in the main a vulnerable group of people. Many are elderly, suffer ill health and have variable other complex needs. Thousands have not even begun

the process and some commentators believe that this is because of an ongoing fear of the hostile environment.

Many of those who work with the victims feel certain that the Home Office has failed to consider the characteristics of the group they are dealing with, that it is business as usual and that justice is far off. There are also numerous media reports of delays and paltry offers of compensation and the National Audit Office, Home Affairs Select Committee and the Parliamentary and Health Service Ombudsman have condemned the process, as have countless lawyers and NGOs.

Pressure was brought to bear and on December 14, 2020 the Home Secretary announced some improvements to the compensation scheme which saw the tariff for impact on life rise from a minimum of £250 to £10,000 and the top quantified sum from £10,000 to £100,000. These sums were announced five days after the author and another lawyer, Holly Stow, gave evidence to the Home Affairs Committee during which the rationale for the low tariffs, which most people saw as insulting, was questioned. This is a welcome change as it is the one head of claim most claimants qualify under. For historical reasons and given the length of time most people affected had been in the country, few lost university opportunities or housing for example and many were lucky to have employers who did not think to question their immigration status given how long they had been employed.

However, there is still some way to go. Claimants are still very unhappy with being unable to claim for loss of pension contributions or the impact of reduced pensions; many used up life savings in order to survive which they are unable to reclaim. These issues were not addressed in the December announcements.

Further, unlike the millions provided to community groups to assist EU citizens with the EU Settlement Scheme and the millions spent on advertising, no such attempt has been made, even on a pro rata basis, to assist those affected by the Windrush scandal. The Home Office has said that it did not know who it could fund and that it feared a judicial review of any organisations not provided with funding – a response largely deemed illogical and insulting by those representing the people affected.

The government had contracted with Citizens Advice, formerly the Citizens Advice Bureau, to deliver assistance and, despite the credibility of this organisation, many of the victims reported not wanting to use it because this is where they first went when they encountered immigration difficulties. In December, the government announced that it had awarded the

³² Williams, W 2020, Windrush Lessons Learned Review p 93

contract to a firm called We Are Digital to take over from the Citizens Advice.³³ Time will tell how the firm gets on because it has not worked with the cohort before or delivered a service of this nature.

Delay and slow progress

There was much speculation as to why the government took so long to release the Review. Williams blames the culture, lack of learning and organisational methods within the Home Office as the precipitating factor in the scandal. The underlying theme of the Review is the need to learn and change. It does not bode well if, whilst the public spotlight is still on the issue, the grievances continue.

Moreover, there has been much concern about how change in the Home Office will be progressed and at the lack of a definitive blueprint in its improvement plan published in September 2020 in response to the Review.³⁴ Giving her own evidence to the Home Affairs Select Committee on October 14, 2020, Williams expressed concerns about the slow progress being made since her review. She told MPs that the Home Office risked losing a once-in-a-generation opportunity for change stating: *'the department has a choice. It can really embrace my recommendations or it can pay lip service to my recommendations, and not institute that fundamental cultural change... the Home Secretary's priorities are very clearly not focused on righting the wrongs of Windrush but on doggedly pursuing the same approach of unbridled hostility that created them'*.³⁵

MacPherson defined institutional racism as *'the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people'*.³⁶ It is quite difficult to see how this does not apply to the Home Office.

In November 2020, there was widespread concern about news of an internal investigation in the Home Office into complaints of racism and discrimination within its teams set up to address the Windrush scandal, and the resignation of a senior official, Alexandra Ankrah, a former barrister and policy expert. Alexandra was the most senior black Home Office employee in the team responsible for the Windrush compensation

scheme which she described as systemically racist and unfit for purpose.

At the same time, *The Guardian* also reported that about 20 members of staff working on the Review were interviewed by a civil service equality, diversity and inclusion officer after allegations of racially discriminatory treatment were made by minority ethnic staff members. That this should happen three years after the first stories advising of the Windrush scandal appeared in *The Guardian*, is extremely worrisome and not at all indicative of lessons being learned.³⁷

Ideology, race and discrimination are as much causative of the Windrush scandal as is the culture and operations of the Home Office. The problems are historic, systemic and institutional. The treatment of people risking their lives to cross the channel to seek refuge, the deportation of people en masse on charters, including the grandchildren of people of the Windrush generation and the disdain shown to human rights lawyers, of which both the Home Secretary³⁸ and the Prime Minister stand accused, does not inspire confidence that there is the political leadership or will to listen, learn and engage in a meaningful way so that something like the Windrush scandal can never happen again.

³⁷ In November 2020, the most senior Black member of staff Black official quit 'racist' Windrush compensation scheme | Windrush scandal | *The Guardian* November 18, 2020

³⁸ Priti Patel accused of putting lawyers at risk by branding them 'lefty do-gooders' | *The Independent*; October 6, 2020

³³ [Windrush compensation scheme overhauled - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/windrush-compensation-scheme-overhauled)

³⁴ [Windrush Lessons Learned Review response: comprehensive improvement plan - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/windrush-lessons-learned-review-response-comprehensive-improvement-plan)

³⁵ Gentleman A, October 14, 2020 Windrush report author attacks Home Office's response | Windrush scandal | *The Guardian*

³⁶ [4262.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/4262.pdf)