Greater Manchester Immigration Aid Unit is a voluntary organisation supporting people subject to immigration control for over 25 years.

We offer free legal advice, representation and support services to people seeking asylum, refugees, children and vulnerable adults.

Windrush: lessons learned review call for evidence

Response of the Greater Manchester Immigration aid Unit
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Q1. What, in your view, were the main legislative, policy and operational decisions which led to members of the Windrush generation becoming entangled in measures designed for illegal immigrants?

The above three issues are all intertwined in that successive governments have formed the view that it is necessary to demonise migrants in order to counter the perceived public perception that being soft on immigration loses votes. This has led to political rhetoric targeting immigration which in turn has led to legislation restricting the access to public services for immigrants which in turn has led to an attitude within the Home Office that those perceived as migrants are of no value. This has combined with a total lack of concern about the effects of this approach on people in the UK with the legal right to remain here to create the 'Windrush scandal', with jobs lost, healthcare refused, benefits refused and the lives of those with the right to be in the UK ruined by a policy targeted at immigrants, built on an ideological pursuit of political targets.

One of the main ways of demonising migrants was by using the word 'illegal immigrants' as a generic label for anyone suspected of having no status, the legal term being either 'illegal entrant' or 'overstayer'. This label, which is used excessively in the press and by politicians (and in this question) is emotive and is now common language in the streets when directing racist abuse at individuals from the ethnic minorities.

The main relevant legislation is

a) The law on preventing illegal working in sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006
b) The 2014 and 2016 Immigration Acts which extended Immigration enforcement to landlords, banks, etc.
c) Legal Aid, Sentencing and Punishment of Offenders Act 2012 which restricted access to legal aid for those with immigration issues

The main policy was set out in a UK Home Office report from February 2010 which said: "*This strategy sets out how we will continue our efforts to cut crime and make the UK a hostile environment for those that seek to break our laws or abuse our hospitality".* The concept was introduced under the then Labour government and formed the basis of the subsequent Conservative government's approach to immigration, with the then Home Secretary, Theresa May's determined to get the figure of immigrants down to tens of thousands and having a zero tolerance policy to those who had no right to be in the country.

This led to Operational decisions to concentrate on removing people from the UK and setting targets. For example,

1) the Home Office's decision to *"set a target of achieving 12,800 enforced returns in 2017/18 … this will move us along the path towards the 10% increased performance on enforced returns which we promised the Home Secretary earlier this year".*
2) The decision in January 2017 by the then Home Secretary, Amber Rudd, to refocus ' *immigration enforcement's work to concentrate on enforced removals. In particular I will be reallocating £10m (including from low-level crime and intelligence) with the aim of increasing the number of enforced removals by more than 10% over the next few years:*'

Additionally there was a total lack of concern about people who had been here for a long time as evidenced by the operational decision in 2009 to destroy previous landing cards. This was a decision made by the then labour government and was viewed as being unhelpful to long term immigrants, even by Home office caseworkers.

This is confirmed by a Guardian article on the 17th April 2018, where it is reported that

> *The former employee (who has asked for his name not to be printed) said it was decided in 2010 to destroy the disembarkation cards, which dated back to the 1950s and 60s, when the Home Office's Whitgift Centre in Croydon was closed and the staff were moved to another site. Employees in his department told their managers it was a bad idea, because these papers were often the last remaining record of a person's arrival date, in the event of uncertainty or lost documents*.'

This decision meant that the vast majority of the 'Windrush' generation did not have records of their existence within the Home Office system and were automatically assumed to be in the UK without status and slated for removal to meet other operational targets.

There was, in essence, a political culture which drove operational polices which left a whole generation of people extremely fearful about their right to be in the UK, with many being refused access to services and some being unlawfully deported.

Q2 What other factors played a part?

The main other factor was the culture within the Home Office that those people with immigration issues had no value and, thus, no proper training was required to deal with such cases.

As outlined in a Guardian article **'Asylum offices 'in a constant state of crisis', say whistleblowers'** (25th December 2017) – which reported on the way asylum, family and human rights applications are dealt with by caseworkers.

> *The source also said that mistakes are being made by caseworkers when they decide whether applications are denied or accepted, because they have targets for the number of cases they must deal with each day. "Caseworkers don't have time to request more documents if something is missing or if more information is needed," they said. "Sometimes they don't even have time to read the applications properly."*
>
> *The second whistleblower comes from inside the Family and Human Rights Unit (FHRU), a department inside the UKVI which focuses on visas for spouses and parents of British and EU nationals. They describe a similar state of constant crisis: "We currently have staff who are trained for one week before doing live cases. There is a high turnover (in the unit), staff are leaving and coming every week," they said.*
>
> *"Caseworkers will make poor decisions because of lack of training, support and mentoring from experienced caseworkers. This in turns creates a bigger workload for post-decision casework," they said.*
>
> *"On my team, we are seeing a shocking increase of complaints and MP enquiries questioning the delay. We are just told to give standard lines."*
>
> *Mike Jones, Group Secretary for PCS, the union for Home Office employees, has canvassed his members and has found both whistleblowers' comments to be "correct".*

Essentially the Home office staff have minimal training even to deal with standard asylum, family and human rights applications, never mind receiving any training with respect to the status of people who arrived in the UK

decades ago. The default setting within the Home Office, with respect to Windrush situations is that the person is here without status.

Our experience has been that there has been a total lack of understanding of the law and a particular lack of knowledge about the fact that, before the 1971 Immigration Act, Commonwealth citizens and their families had the right to come and remain in the UK. (Case C/D below)

Our experience has also been, as outlined in cases below (Case E and case G) that there is a shocking lack of knowledge about current law, never mind the law in 1971. This is because the driving impetus is to stop immigration to the UK as well as to classify foreign nationals as having no right to remain in the UK and remove them. This driving impetus follows on from political statements denigrating all those classified as immigrants, i.e those of a non British ethnic origin, regardless of whether they have an entitlement to remain in the UK.

Another factor was the structure of the Home Office, in particular, the fact that there was no mechanism for any applicant (or their representative) to have any direct contact with the Home Office caseworker. In many cases that we have dealt with, the Home Office had clearly misunderstood the basis of the applications. Direct contact with the caseworker could have resolved these issues easily and would also mean that the caseworker had to become involved with and take proper ownership of the case.

Q3 Why were these issues not identified sooner?

The issues had been in existence for a number of years with us having dealt with ‘Windrush’ individuals refused status for over a decade.

However there was clearly no will within the politicians and the home office to take their attention (and devote resources) away from their primary agenda of removing as many people as possible and making living in the UK as difficult as possible for those perceived as having no status. There was consequently no desire to deal with the suffering identified in individual cases.

For example, as stated by the whistleblower,

> *“On my team, we are seeing a shocking increase of complaints and MP enquiries questioning the delay. We are just told to give standard lines.”*

There was therefore no will even to deal with complaints properly.

It is worth noting that the response of the Home office to the issues raised by the whilstleblowers was a totally bland statement that:-

> *"We do not recognise these claims. We have dedicated and hardworking staff who are prepared to go the extra mile to provide a high level of service with what are often complex applications. Their individual workload is appropriate and dependant on their seniority and experience."*

There is simply no recognition that there might even be flaws within the Home Office.

There was also clearly no will within the politicians to accept that the policies that they had initiated with their anti-immigration rhetoric had led to people who had been in the UK for decades to lose their benefits, their livelihood and their homes. A recognition of these large scale effects would have entailed them having to accept the totally negative effects of the 'Hostile environment' statement.

The government is not willing even now to accept this responsibility and has, in fact, confirmed that the 'hostile environment' policy is still valid.

> *Theresa May has refused to roll back her controversial "hostile environment" crackdown following the Windrush scandal, despite her own home secretary's call for change.*
>
> *Speaking to* The Independent *on her trip to the G7 summit, the prime minister rejected – three times – calls for a rethink on policies to curb illegal immigration, which have trapped British citizens.*
> *Instead, she insisted she had the public's backing for measures which have turned employers, landlords, the NHS and banks into "de facto border guards", required to make immigration checks.*

There has been no concern by politicians of the effects of their rhetoric on the lives of ordinary citizens. There is still no concern as evidenced by their refusal to abandon the discredited 'hostile environment' policy.

It was therefore, following this logic, better for them to ignore the devastating effects of their policies on the 'Windrush generation' until the issues were repeatedly highlighted in the press.

Q4 What lessons can the Home Office learn to make sure it does things differently in future?

The Home office need to re-evaluate their internal structure. They need to be able to take account of the legitimate views of their own staff and trade unions, who at times legitimately questioned the lack of training offered to them.

In addition, the Home Office's culture is determined by the agenda set by the politicians. There can therefore be no impetus for change until this agenda changes.

The agenda has to move away from viewing immigrants, whether here lawfully or unlawfully, as being a totally negative factor into viewing them as potentially being a positive factor in society.

Once the agenda has changed the Home office will need to ensure that, at the very least, they set in place adequate training of staff to ensure that they are able to make decisions based on the law and to accept that the people that they are dealing with are treated as human beings.

Q5 Are corrective measures now in place? If so, please give an assessment of their initial impact.

Generally no – The Windrush taskforce has worked relatively effectively to ensure that people, are getting status and nationality. However this should just be the start of the process as there has been no acceptance within the Home Office that the 'Windrush Scandal' highlights wider failing within the organisation, specifically, the lack of understanding of the law by case workers and their need to appreciate that they are dealing with human individuals and not criminals who must always be deported.

There has also been absolutely no acceptance within this government that the 'Windrush scandal' occurred directly as a result of their policy to create a 'hostile environment' for Immigrants.

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

At the minimum a withdrawal of all legislation which outsources Immigration enforcement to landlords, banks, etc.

A public withdrawal of the ' hostile environment ' policy and an associated change of culture with the Home Office.

Restoration of legal aid in Immigration cases to ensure that Immigration decisions can be effectively challenged.

Urgent measures must also be taken to reform the Home Office to eliminate the practices within the organisation to ensure that others subject to migration controls do not have to suffer the same experiences as those of the 'windursh' generation. Otherwise the effects on people who have had to experience traumatic consequences will continue and will spread to other communities as yet not widely seen as similarly affected – it has to be, in particular, recognised that the 'Windrush scandal' is the tip of the iceberg.

Case A – Windrush case

A is a Jamaican national who was born in 1942.

He came to the UK in May 1962, a few months before Jamaica became independent. He therefore came in on a British Subject (Citizen of the United Kingdom and Colonies) passport with the absolute right to enter and live in the UK.

He has lived in the UK since and travelled back to Jamaica a few times.

He has Jamaican passports covering the periods 21st September 1981 – 21st September 1991, 28th June 2000 to 28th June 2010 and a recent one covering the period 26th June 2012 to the 25th June 2022.

The first passport has no exit or entry stamps in it, the 2nd passport has 2 ILE (indefinite leave to enter) entry stamps dated the 27th March 2001 and the 8th November 2004, the last passport has an ILE stamp dated the 23rd June 2015.

He was advised in 2015 by people he knew that Jamaican nationals were having problems returning back to the UK and so decided to make an application for an ILR biometric card. He did this on the 7th March 2015. On the 25th March 2015 he withdrew this application as he had to travel to Jamaica on an emergency. The Home Office records show that on the 10th July 2015 his file was sent to the removals casework section (despite him having been issued with ILE at Manchester Airport a few weeks before on the 23rd June 2015)

He was then sent letters from Capita stating that he was in the UK illegally and that he had to make arrangements to leave.

On the 22nd March 2016 he was issued with an IS96 asking him to report to the local enforcement Unit. On the 5th May 2016 he reported to the enforcement unit and took his passports with him to show that he had status in the UK.

In his own words, '*The immigration officer I saw, who was male, white and young, impounded my passports and also told me that not only was I illegally in the UK but that I would now be deported.'*

He came to see the Greater Manchester Immigration Aid unit on the 12th May 2016. We wrote to the enforcement section on the 18th May 2016 pointing out that

> *Our client did not require leave to enter when he first came to the UK as he was still, at that time, a Citizen of the United Kingdom and Colonies*

and, as such, had no restrictions on his right to enter and remain in the UK.

Section 1(2) of the 1971 Immigration Act conferred indefinite leave to remain on him.

This would, no doubt, be confirmed by the re-entry stamp on his previous passport, which was seen by the Immigration Officer and retained.

There was no response.

Instead, on the 2nd June 2016, his driving licence was revoked. We made representations to the Home Office sanctions section on the 13th June 2016 again setting out his history and pointing out that he had ILR under the 1971 Immigration Act. However, despite this, the decision to revoke the Driving Licence was still maintained. We then lodged an appeal to the Magistrates court against the revocation decision resulting in the immediate withdrawal of that decision by the Home Office.

The decision that he was in the UK illegally was finally withdrawn on the 13th September 2016 after repeated representations by us.

The decision was withdrawn based on the information in the passports that he had sent in on the 7th March 2015 and which had then been returned back to him. They were also the passports which were impounded by the Immigration Officer on the 5th May 2016.

A was then invited to apply for British nationality by the Windrush taskforce. He applied for this and was then asked to produce evidence that he had been in the UK since his arrival because the home office file showed that he had been granted NTL

on the basis of your client's continued residence since 27/3/2001 and not on the basis of your clients claimed entry date in May 1962 as no documents were received throughout that application that confirmed your clients residence prior to 27/3/2001'

This totally ignored the fact that the home office had seen his passport covering the period 21st September 1981 – 21st September 1991 as well has his full national insurance record from the date of his arrival in the UK which showed his total presence in this country since his arrival . This information had to be sent in again before he was granted nationality.

This case highlights systematic failures within the Home Office when dealing with those with status in the UK.

These are

a) The decision to refer our client to the removals section after he withdrew his application for ILR. This is despite the fact that the passports he enclosed with his application proved that he had ILR. This clearly indicates that their response to the withdrawal of any application was to automatically to initiate removal proceedings regardless of the person's status in the UK.
b) The threats issued by the Immigration Officer to remove our client whilst actually holding in his hand proof that he was legally in the UK.
c) The decision to maintain the revocation of our client's driving licence until faced with the prospect of ending up having to justify this in a Magistrates court.
d) The delay between May 2016 and October 2016 in accepting that our client had ILR in the UK despite having had proof of this on the file.
e) The complete lack of connection between the windrush task force and Home office. They had clearly not looked at the whole file but had just looked at some part of it and had also not contacted the DWP to check his national insurance. This is amazing given that they had actually contacted him personally and asked him to apply for nationality.

Case B – Windrush case

B was born in Jamaica in 1956 and entered the UK on the 30th May 1962. She also came in before Jamaica became independent and so came in on a Citizen of the United Kingdom and Colonies passport. She has lived here since.

She started working as a carer in 2000. She was then transferred under the 'Transfer of Undertakings (Protection of Employment) Regulations 1981' to 2 different firms, the first transfer occurring in 2010 and the second transfer occurring in the middle of 2016.

She was asked to, produce confirmation of her right to work each time she was transferred.

She produced the passport she came in on plus a visitor's passport she had obtained in 1979 to prove her right of work for the first transfer. She also had a Carters travel agent receipt to show her entry to the UK in 1962. This was accepted as proof of ability to work.

She produced the same evidence in 2016. This time her evidence was not accepted and she was suspended without pay on the 15th November 2016.

We became involved on the 17th November 2016.

We made representations to the latest employer but their position was that, whilst they understood that she was likely to have status, they were bound by the conditions as set down by the Home Office in their 12th July 2016 ' An employer's guide to right to work checks'. They particularly referred to Annex

A of that guide which set out the documents which an employer had to see to ensure that they were protected against being charged under sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006 (the 2006 Act).

That list, which we enclose, did not cover the situation of our client and the employer therefore had a legitimate and defendable excuse for maintaining our client's suspension from work.

We therefore had to make an application for our client to obtain an ILR card and this required providing proof of our client's continual residence in the UK since her arrival here. This was problematic as the schools that our client went to no longer existed. Our client, who had no income, also had to arrange to borrow the money to make the application.

An application for the ILR card was made in May 2017 and a residence card finally issued in December 2017.

Our client was re-employed in September 2017 once there was confirmation from the home office that an application had been made.

The case highlights the impact of the 'hostile environment' policy as initiated by the government. It particularly highlights the following:-

a) The fear engendered within employers of employing someone who might not have status. In this case the employer was sympathetic to our client's circumstances but was also aware that they were in danger of being prosecuted if they carried on employing our client whilst she did not have any of the documents specified in the Home Office guidance.
b) The ongoing toughening of the 'hostile environment' policy. For example, our client was accepted as having the legal right to work in 2010 but was not accepted as such in 2016.
c) The failing in the Home office public policy , 'an employer's guide to the right of work' to take account of those people, like our client, who did not possess these documents but had an absolute right to work.

Case C/D – windrush cases

This is a linked case of a mother (C) and her son (D).

C is a Jamaican national who came to the UK in February 1968 when she was 7 years old. She came in to join her father and has remained in the UK since.

The documents she has, as proof of her residence in the UK, are

a) Ticket/boarding card dated the 9th February 1968 with her name and the ship she arrived on
b) Hospital letter addressed to her in the UK dated the 26th February 1969
c) Doctor's clinical notes covering the period 22nd February 1968 to 21st January 1969

d) Hospital letter dated the 23rd November 1972 which related to appointments she had on the 16th November 1972 to the 18th November 1972
e) Doctor's clinical notes for the 28th February 1974, 21st May 1976, 17th June 1976 and 19th August 1977.
f) Her full national insurance record from 1976 onwards showing her presence in the UK during the whole of that period.

Her son (D) was born in the UK on the 10th November 1992 and should have been entitled to a British passport as his mother had settled status in the UK when he was born.

D applied for a British passport twice before he came to see us but was refused both times as he was told that he was not British as his mother was not settled in the UK at the time of his birth. C was obviously distressed that she was deemed not to have status in the UK despite having lived here for nearly 50 years.

We formally took over the case on the 17th May 2017 and sent a letter to the Passport office on the 2nd June 2017 pointing out the circumstances of the mother, the legal position with respect to the 162 Commonwealth Immigrations act and the 1971 Immigration act as well as copies of C's documents. We asked for acceptance that this confirmed that she had ILR in the UK when D was born. We received an undated reply (received on the 21st June 2017) which simply said that ' *as previously explained to the applicant, there is no claim for British citizenship as the applicant's mother did not have Indefinite leave to remain at the time of her child's birth.*' The letter did not address any of the issues we raised.

D then made a formal application for a British passport on the 24th November 2017. We then received a call from the passport office (on the 11th December 2017) asking whether we wanted the client's documents to be sent back to us. Our notes of the conversation are as follows:-

> *Spoke to Mr XXXXX – 0151 471 6160 – he was just going to return all the stuff and say no as ' it is all random information'*
>
> *Explained to him what the issue was – i.e. Jamaican children who came in before 1973 had automatic ILR and retained it – he expressed total disbelief at this idea – said ' am I telling him that mother automatically got ILR' – said he has been with the office for a very long time and has never heard of this at all – can't be true – he clearly had no idea of the pre – 1973 system – ended up quoting the 1971 act to him and explaining what the situation before was – i.e any commonwealth person being allowed in before 1962 and then children upto 1973*

Also said that we would be challenging any decision and that it therefore needs to be well thought out

He finally agreed to look at the law and the case – said it would take a few days

We heard nothing and chased this up on the 13th March 2018 only to be told that everything had been sent back to our client directly on the 15th January 2018 with a standard cover letter saying that he was not British.

Our client confirmed that he had received this letter but was too disillusioned to chase it up.

We also recently informed C of the windrush procedure and she was immediately issued with an ILR card.

This case highlights the following

a) The ignorance within the Passport Office of the law. It is extremely worrying that a passport official (who was clearly experienced) was able to say that the documents we sent in were just '*random information',* and expressed disbelief at the idea that someone who came in pre-1973 was automatically granted ILR on arrival.

Case E – non windrush case

E is in the UK with Humanitarian Protection. He applied for his wife and 3 children to join him under the family reunion provisions of the Immigration rules.

His family was refused on the basis that E only had Humanitarian protection and did not have refugee status. This was despite the fact that

a) The Immigration rules confirm that family reunion applies to those with either Humanitarian Protection or refugee status
b) The Home Office policy also confirms this
c) The form on which they applied (and which must have been seen by the Entry Officer), explicitly says on the front page that

YOU SHOULD COMPLETE THIS FORM IF YOU WISH TO COME TO THE UK AS:

• The Pre-Flight family member (spouse or civil partner, unmarried or same-sex partner, or child) of someone with limited leave to enter or remain in the UK as a refugee or ***beneficiary of humanitarian protection****. [our emphasis]*

We sent a pre-action protocol letter to the Home Office Litigation group pointing out the law, policy and the wording on the form and asking them to grant entry to the family. The response from the Entry clearance manager was that

> ‘ *I can confirm that the Entry Clearance officer applied the correct rules and made the correct decision’*

We then applied for a Judicial review of the refusal with the Home Office solicitors conceding within a day of getting the court application that they were wrong and agreeing to pay our costs.

This case highlights the failure of both an Entry Clearance Officer and his/her manager, who holds a senior post, to understand basic Immigration law and to even have the ability to read the form on which the application was made.

The Government had to pay costs of over £2,000.

Case F – Non windrush

F applied for status based on being the sole carer of a child of a British father. The father refused to acknowledge the child as his and refused to take DNA tests to prove that he was not the father when asked to by the Child Maintenance Service. They then decided that he was the father and forced him to pay maintenance.

The Home office refused the application on the basis that they did not accept that the father of the child was a British national and, specifically stated that the father was clearly not the father of the child because he had refused to accept that he was. The decision of the Child Maintenance Service was totally ignored.

We appealed against the decision. On the day of the hearing the Home Office presenting Officer told the Judge that she could not defend the Home Office decision given the acceptance by another government body of the relationship. She said that her section would ask that the case be reconsidered and the applicant granted status as the mother of a British child.

The Judge recorded this and correctly deemed the appeal as having been withdrawn.

A few months later the applicant was refused again, on exactly the same basis as before. An appeal has now been lodged again with, no doubt, exactly the same result.

This case highlights the impetus within the Home Office to refuse applications even when a presenting officer, who is experienced and knowledgeable on law, has told them that there is no legal basis for the application to be refused.

Case G – non windrush

G is a Libyan national who applied for asylum on the basis that she had a fear of returning to her country as she had had sex outside of marriage and would be in danger of an honour killing.

No decision was made on the application for over one year so we wrote in asking for her to be granted permission to work.

To our amazement we got a letter from the Home office saying that

> *"I have refused your request for permission to work at this stage because asylum related submissions have been concluded and in addition, your clients submissions are based on Article 8 Family and Private Life as fear of return for the reasons given does not meet the criteria as a convention article."*

This was amazing because a) the leading case on Libya confirms that fear of an honour killing forms a convention reason and b) the home office's own policy explicitly states that this fear is a convention reason.

We wrote to them to point this out only to get another letter saying

> *"Permission to work was refused correctly and is upheld as your clients further submissions with regard to issues with her family which you state is fear of an honour killing, does not fall within a convention article*

We then sent on a pre-action protocol letter threatening Judicial review to the Litigation group only to have them confirm that

> *"… your client's submissions do not meet the criteria for an asylum claim…..*

We had no choice but to lodge an application for permission to seek a Judicial review of this refusal to accept that a fear of a honour killing was a refugee claim. The Home Office Solicitor's, on receipt of the claim, immediately backed down and agreed to pay our costs.

They finally paid over £2,500 in costs.

This case highlights a shocking lack of knowledge within the home office and their litigation group of the basics of asylum law. It is important to note that they still ridiculously maintained their decision even after having had the law and their own policy quoted at them