

16th November 2018

Rt Hon Sajid Javid MP

Freepost

Windrush compensation consultation

By email: windrushcompensation@homeoffice.gsi.gov.uk

Dear Windrush Compensation Consultation panel,

1. Submission on the Windrush Compensation consultation

- 1.1. We thank you for the opportunity to provide feedback on the design elements of the Windrush Compensation Scheme ('the scheme'). As publishers of *Keep The Faith* magazine and descendants of the Windrush Generation, we support the Home Office's steps to develop the scheme further.
- 1.2. In general, we agree with the overall principle of introducing the scheme and there are many design elements we agree with. Where appropriate, we identify some design elements where we think changes can be made. In each case, we provide our recommendation(s) for the Panel to consider. We also outline our rationale for the recommendation(s), based on our insight into the community affected. The recommendations are noted in our submission.
- 1.3. We trust that our submission highlights the importance and positive impact the scheme will have on the lives of those affected. We thank you for taking positive steps to remedy the situation for the Windrush Generation.

2. The Empire needed support and the Commonwealth answered the call

- 2.1. One of the major features of the United Kingdom ('UK') is that it is a modern and multicultural society. The UK has long-adopted a policy of welcoming visitors and skilled workers from abroad.
- 2.2. During both World War I and II, the then British Empire needed support and the Commonwealth answered the call for help (See appendix A). These brave service-men and -women gave their lives to support Britain in its war efforts.

The Windrush Generation helped rebuild Britain

- 2.3. During the post-World War II period (1945-1983), the UK faced a severe labour shortage and actively recruited workers from the Commonwealth. These workers and their children

became the 'Windrush Generation'. The Windrush Generation replaced labour to industries to aid the UK's economic recovery after the war.

- 2.4. Under the British Nationality Act 1948, the Windrush Generation were at that time British subjects by virtue of having been born in a British colony. The Act provided '*citizen of the United Kingdom and Colonies*' status and the right to settle in the UK. The Commonwealth Immigrants Act 1962 also provided *automatic right to settle* status for the Windrush Generation.

A series of policy changes created a hostile environment

- 2.5. It was not until the British Nationality Act 1981 (enacted 1983) that the right to settle in the UK was reconsidered and immigration controls were introduced.
- 2.6. In 2009, the Home Office created a 'hostile environment' by implementing a set of administrative and legislative measures designed to make staying in the UK as difficult as possible for people without leave to remain. The hope was these individuals would voluntarily leave.
- 2.7. Passenger landing cards, which provided evidence of legal right to remain in the UK, were also destroyed by the Home Office. In many cases, these records were the only evidence available to the Windrush Generation.
- 2.8. Also, in 2014 the Home Office removed a key protection from the Immigration Act which protected the right to remain for longstanding commonwealth residents. There have been calls to replace these provisions to remedy the hostile immigration environment.

The Windrush Generation have been denied access to basic standards of living

- 2.9. Today, 70 years after the arrival of the HMT Empire Windrush ship, the Windrush Generation and their children find themselves fighting for the right to remain in the UK.
- 2.10. The majority of the Windrush Generation are denied access to fundamental rights in the UK, such as: medical care, employment, and shelter. This impacts the Windrush Generation, their families, and the community more broadly.
- 2.11. Another concern is that there are over 80 known deportations of the Windrush Generation. Sadly, an estimated 11 people, deported from the UK under the immigration policy, have passed away. The true deportation and death toll may be even higher.
- 2.12. The UK risks breaking policies and agreements it has held with the commonwealth and British colonies, and the Windrush Generation themselves. But this is an opportunity to put things right, and we're pleased the Home Office is moving in this direction.

3. Elements of the scheme design should be reconsidered

- 3.1. The following provides a high-level outline of the design elements we think could be changed. We also provide more detailed suggestions in our consultation questionnaire response (Appendix B).

The application process should be fair and simple

- 3.2. We agree that the principles underpinning the scheme should be ‘fairness’ and ‘simplicity’.¹
- 3.3. It is important to ensure that compensation is paid to the right people. It is equally important to ensure that there are no undue barriers to rightful compensation claims. That is, those who are eligible to apply for compensation are not unduly deterred from doing so. This will require careful consideration regarding the scheme design and applicant demographics.
- 3.4. We recommend allowing both digital and paper submission to the scheme. The reason being a large proportion of the applicants will be older BME individuals. Some will opt for the digital service, but some individuals in this cohort may have limited computer literacy.
- 3.5. We also recommend establishing assistance programmes to support applicants during the application process. The hostile immigration environment meant individuals lost access to health services, employment, and accommodation. This has pushed many individuals into significant hardship. Those in hardship may not have the capacity available to undertake the application process, when faced with more pressing health, financial and shelter concerns.

Compensation should include broader financial costs and some non-financial losses

- 3.6. We agree that compensating for fees, incidental costs, and legal costs associated with confirming immigration status is fair.
- 3.7. There are some fees and costs which have been excluded from compensation but reflect real losses of a reasonable person(s) acting fairly and in good faith to confirm their immigration status.
- 3.8. We believe that in some cases fees associated with a previous successful application should be considered as a loss and therefore compensated. Especially if:
- (a) losses were incurred before the Windrush Taskforce was available as a resource to assist applicants

¹ Paragraph 3.4, Windrush Compensation Consultation, July 2018 (Cm 9654)
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(b) the individual had to undertake undue steps to prove their immigration status in the face of the hostile immigration policy.

- 3.9. We also believe the first unsuccessful passport application fee should be considered. The reason is some applicants believed they were already British subject by virtue of having been born in a British colony, the immigration policy at the time of arrival, and being unaware of their 'illegal' immigration status. It should be considered fair and reasonable that the first passport application is a good faith attempt to confirm citizenship of a document they reasonably expected to obtain.
- 3.10. The compensation for legal costs associated with securing lawful immigration status should extend to both immigration lawyers and immigration advisers. All registered immigration advisers regulated under The Office of the Immigration Services Commissioner (OISC)² and an approved professional body should be included in the compensation scheme. The reason is the Home Office website lists these agents as being able to help in confirming immigration status and representing applicants at tribunal. The Windrush Generation may have first approached these immigration advisers as a first line of enquiry.

The Home Office should consider funding community and faith organisations for the communities affected

- 3.11. The Home Office should consider funding charities, community groups, and faith organisations as support services.
- 3.12. It is important the support services provided are tailored to the community affected. A disproportionate number of those affected by the immigration policy, also supported by the Home Office's analysis, were: BME, elderly, and suffered significant emotional distress.
- 3.13. Our concern is that mental health is a poorly discussed topic within the UK's BME communities, and even less so in the older generations. Support services such as counselling should be available and offered to those who want to use the services. However, there is a real risk that individuals suffering emotional distress may not reach out to these services due to the perceived mental health stigma by some of the BME community.
- 3.14. It is our view that supporting several community and faith-based support services will be a more cost-effective and approachable solution to help affected individuals. Especially when the community and faith organisations are BME-led. The services are more likely to resonate with the affected community and therefore more likely to provide the emotional support required.

² Find an immigration adviser – GOV.UK <https://www.gov.uk/find-an-immigration-adviser>

We can help you reach the BME community

- 3.15. *Keep The Faith* magazine and *Diverse Media Group* would like to assist the Home Office. We can assist the Home Office in accessing BME communities disproportionately affected by the Windrush incident.
- 3.16. *Keep The Faith* magazine³ has been in print for over 13 years and is the channel of choice to access the UK's BME-focused faith community. We also pride ourselves as being one of the main voices for the UK's BME community generally, alongside our peers at *The Voice Newspaper*.
- 3.17. We urge the Panel to ensure that any recommendations and design consideration for the Windrush compensation scheme are in the long-term interests of the Windrush Generation and rights the wrongs of the individuals affected.
- 3.18. If you have any questions regarding our submission, please contact myself: Dr. Daniel J. Tulloch, Director. We remain committed to assisting the Panel where possible as the scheme design progresses.

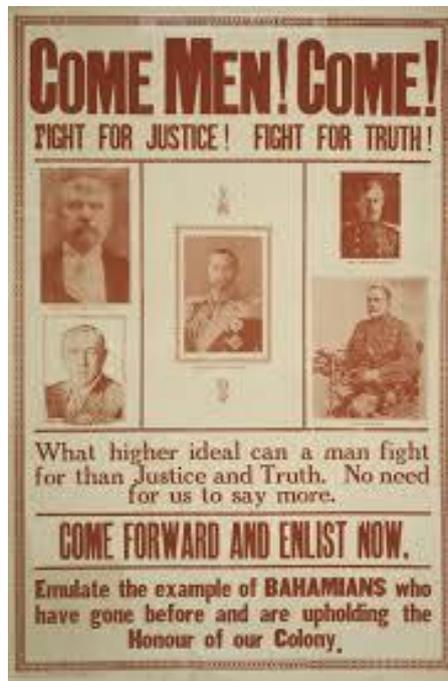
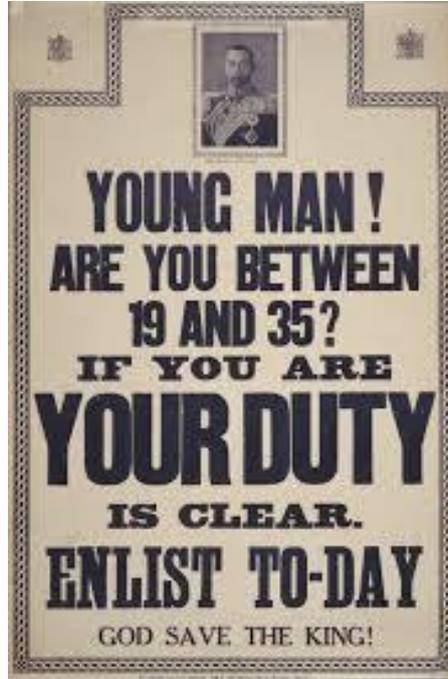
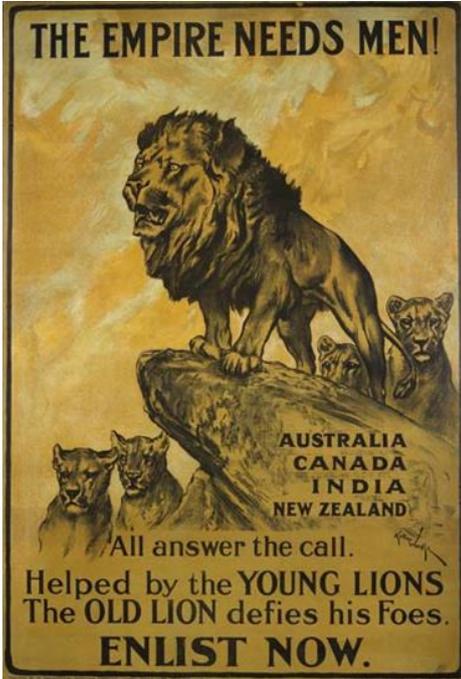
Yours sincerely,



Dr. Daniel J. Tulloch
Director
Diverse Media Group Limited

³ Website: www.keepthefait.com
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Appendix A: Recruiting poster for the British West Indies Regiment and Commonwealth



Appendix B: Questionnaire response

A Scheme eligibility

1a. Do you think that eligibility for the compensation scheme should be aligned with those who are eligible for help through the Windrush Scheme? (Paragraphs 3:5 – 3:10)

Yes

1b. If no, are there additional groups that you think should be eligible?

(No answer)

1c. If no, are there groups that you think shouldn't be eligible?

(No answer)

B What losses will be eligible

2. Do you think claimants should be able to apply for compensation for (Paragraphs 3:13 – 3:19):	Yes	No	Don't know
Home Office fees for unsuccessful immigration applications	✓		
Incidental costs relating to an unsuccessful immigration application	✓		
Legal costs relating to an unsuccessful immigration application	✓		

3. Do you think compensation should be given when the following losses can be demonstrated as a result of being unable to demonstrate immigration status? (Paragraphs 3:22 - 3:24)	Yes	No	Don't know
Direct loss of income through termination of employment	✓		
Direct loss of income through an inability to secure employment	✓		
Lost opportunities such as career progression or future employment	✓		

4. Do you think compensation should be given for the following impacts resulting from an inability to demonstrate immigration status? (Paragraph 3:29 – 3:31)	Yes	No	Don't know

Removal	✓		
Detention	✓		
Voluntary departure from the UK due to imminent enforcement action	✓		
Voluntary departure from the UK due to refused immigration decision	✓		

5. Do you think compensation should be given for the following impacts resulting from an inability to demonstrate immigration status? (Paragraphs 3:32 – 3:33)	Yes	No	Don't know
Denial of re-entry to the United Kingdom	✓		
Anticipation of denial of re-entry to the United Kingdom preventing travel			✓

6. Do you think compensation should be given to those who have been prevented from doing the following due to difficulties demonstrating their immigration status? (Paragraphs 3:35 – 3:37)	Yes	No	Don't know
Accessing free National Health Service care	✓		
Accessing social housing	✓		
Accessing private housing	✓		
Accessing post 18 education	✓		
Obtaining a driving licence	✓		
Opening a bank account	✓		

7a. Do you think the compensation scheme should include the impact on normal daily life as a loss? (Paragraphs 3:38 – 3:41)

Yes

7b. How should the compensation scheme take account of the different experiences of individuals in terms of the type and severity of any impact?

Attempting to measure the different experiences of individuals in terms of type and severity of impact will be difficult. The solution should ideally result in relatively consistent outcomes for individuals in similar circumstances. It should also scale by the severity of the impact and length of time suffered.

An outline of a simplified method could be:

Step 1) Create basic rates for different types of distress suffered.

Step 2) Multiple the type of distress by a "severity" (multiplier) factor. Typically 1 for low impact and (say) 4-5 for high impacts.

Step 3) Multiple the severity by the "Per Diem" (Daily rate) method. This scales the impact by the length of time suffered.

The Home Office and also consider funding or partly funding access to support services.

It should also be recognised that there remains some stigma regarding mental health in the BME communities, especially in the older generations. The Government should focus on support services the community already use.

The Government should fund more Black and minority: community groups, charities, churches, and faith organisations. There is an abundance of research which shows that these entities provide many of the support services that the community are more likely to access.

References:

Blank, M. B., Mahmood, M., Fox, J. C., & Guterbock, T. (2002). Alternative mental health services: the role of the black church in the South. *American journal of public health*, 92(10), 1668-72.

Taylor, R. J., Ellison, C. G., Chatters, L. M., Levin, J. S., & Lincoln, K. D. (2000). Mental health services in faith communities: The role of clergy in black churches. *Social work*, 45(1), 73-87.

8a. The table below summarises the different types of losses that the compensation scheme may compensate individuals for. Please give each a rating from 1 (not important) to 5 (very important) based on how important you think it is that the scheme covers this loss (Paragraphs 3:13 – 3:41):

Loss	Rating
Fees from unsuccessful immigration applications to Home Office	5
Incidental and legal costs from unsuccessful immigration applications	4
Employment	5
Benefits	5
Detention or removal	4
Voluntary departure from the UK	3
Denial of re-entry to the UK	4
Denial of travel	3
Denial of access to free NHS care	5
Denial of access to housing	5
Denial of access to post-18 education	5
Loss/ Denial of driving license	4
Loss/ Denial of access to a bank account	4
Impact on normal daily life	4

8b. Do you think the proposals contained in this section have captured the correct type of losses?

Yes

8c. Are there any additional losses that you think should be included? Please state

Yes. There should be compensation to families provided for loss of life. Especially if the loss of life was the result of preventable or treatable medical conditions, which was hindered while trying to prove legal immigration status. An estimated 11 individuals have died while deported under the recent immigration policies. The true death toll is likely to be higher.

8d. Are there any losses that you think should not be included? Please state

(No answer)

9a. Do you think losses experienced at any time point in the past should be covered by the compensation scheme? (Paragraphs 3:42 – 3:44)

Yes

9b. Please explain the reasons for your response to 9a below.

The hostile environment created in 2010 was designed to “make staying in the UK as difficult as possible” and to encourage “voluntary leave”.

This means those individuals wrongly caught in the policy would have been subject to the most extremely hostility possible since 2010, and also denied access to any services a British citizen or subject of a British colony should be entitled to access.

C How the scheme should operate

10a. Do you think the scheme should accept both postal and online compensation claims? (Paragraphs 3:46 – 3:47)

Yes

10b. Do you think claimants should be offered assistance in completing their application?

Yes

10c. If yes to 10b who do you think should be offered assistance?

All potential claimants, especially the elderly.

10d. If yes to 10b, what assistance should be provided?

Consultative advice on how to complete and submit the application. The advice should be impartial and independent to the department processing the application, such as an external entity.

11. Do you think it is right that the compensation scheme uses a combination of different calculation methods for determining compensation payments? (Paragraph 3:53)

Yes

12a. Do you think compensation for a known value of loss should be considered where the claimant has: (Paragraph 3:55)	Yes	No	Don't know
lost their job and can evidence salary and pension foregone?	✓		
been denied access to benefits?	✓		
incurred costs and fees that are eligible to be refunded?	✓		
12b. If you have answered no to any of the losses in 12a, please explain why?			
(no answer)			

13a. Do you think compensation should be calculated on a tariff style approach where the claimant has: (Paragraph 3:56)	Yes	No	Don't know
foregone rights and opportunities a claimant would have otherwise been able to pursue or take up?		✓	
been detained?		✓	
been removed?		✓	
been denied free NHS care?		✓	
been denied access to other services?		✓	
experienced impact on daily life?		✓	
13b. If you have answered no to any of the losses in 13a, please explain why?			
Under question 13, the tariff style approach may miss the severity of the impact and the actual cost. For example, being detained and/or removed has many indirect costs (loss of house, loss of employment, removal costs) which simply may be capped under the tariff approach.			

A tariff-style approach could be a good starting point, so long as the severity of the impact is scalable.

I have suggested an alternative method of calculating impact on daily life and compensation in Question 7b.

14a. Should the scheme have a discretionary element to make payments for circumstances not covered by the scheme rules? (Paragraphs 3:57 – 3:58)

Yes

14b. If yes, what circumstance should a discretionary element apply to?

They should be considered on a case-by-case basis, so it is not possible to provide a list of circumstances.

It should also feed into step 2 of the calculation method in question 7b (the severity multiplier).

15a. Do you think the compensation scheme should have a minimum claim amount? (Paragraphs 3:59 – 3:60)

No

15b. If yes, what do you think the minimum amount should be?

(No answer)

16a. Do you think the compensation scheme should have a maximum claim amount? (Paragraphs 3:59 – 3:60)

No

16b. If yes, what do you think the maximum amount should be?

(no answer)

17a. The list below summarises some of the different factors that may be taken into account when calculating the amount of compensation awarded. Please give each a rating from 1 (not important) to 5 (very important) based on how important you think it is that these factors are considered: (Paragraphs 3:66 – 3:67)

Factor	Rating
--------	--------

Date of entry to the UK	5
Claimant had previous contact with Home Office	2
Quality of previous applications	1
Loss attributable to immigration status	5
Misapplication of immigration rules	4
Costs or expenses otherwise incurred	5
17b. Please provide any comments you have on the factors that may be taken into account when calculating the amount of compensation awarded.	
<p>The quality of previous applications should not be a factor taken into account when calculating the amount of compensation awarded. The prior applications were make under hostile circumstances.</p>	

18a. Do you think claimants should be offered non-financial recompense in addition to a financial award? (Paragraphs 3:68- 3:69)

Yes

18b. If yes, which of the following non-financial recompense should be offered:	Yes	No	Don't know
Counselling	✓		
Letter of apology from Home Office	✓		
Exploring reinstatement of employment (where possible and applicable)	✓		
Other (please state)	✓		

18c. Do you have any comments on non-financial recompense?

See our response to questions 7b. Many of the claimants are from BME backgrounds. Many members of this community should also have access to support through community groups and faith organisations. This should be provided in addition to individual compensation.

Alternatively, this could be a donation to an organisation of the applicants choice to support the services the organisation provides.

19a. Do you think conditions of acceptance should be applied to the final compensation payment? (Paragraphs 3:70 – 3:74)

Yes

19b. If yes, do you think the following conditions of acceptance should be applied?	Yes	No	Don't know
Any compensation award is made in full and final settlement of a claim - reapplications will not be permitted		✓	
A claimant cannot be compensated more than once for the same loss	✓		
Payments will be recovered if it's subsequently found that the claim was fraudulent	✓		

19c. If you disagree with any of these conditions of acceptance please state why for each condition:

Any compensation award is made in full and final settlement of a claim - reapplications will not be permitted

We do not agree with this condition. Paragraph 3.73 of the Windrush Compensation Consultation paper allows the Home Office to recover payments in the light of new evidence. Therefore, the settlement is not final for the Home Office. The condition would only be fair if it extends the same rights to the applicant.

There is a real concern the Home Office could be perceived to have the stronger bargaining position and compensation offered is a 'one-time only' deal; "take-it-or-leave-it".

The approach should be:

- 1) Either the settlement is final for both parties, or
- 2) Both parties can reconsider the settlement (see question 20a).

The application process should allow the two parties to mutually agree on the outcome, and impartially mediate any disputes. Any mediation should be provided by an independent third-party.

However, any subsequent decision should take into account the prior settlement amount.

19d. Are there any other conditions of acceptance that you think should be considered (please state)?

(No answer)

20a. Do you think the claimant should be able to request a review of the compensation scheme decision if they do not agree with the outcome? (Paragraphs 3:75 – 3:77)

Yes

20b. If yes, which parts of the compensation scheme decision should a claimant be able to request a review of?	Yes	No	Don't know
Eligibility of claimant	✓		
Assessment of evidence provided	✓		
Amount of final award offered	✓		
Other (please state)			

20c. If yes to 20a, do you agree with the compensation scheme decision review process set out in the consultation?

Yes

21. Do you have any further comments on the proposals for the compensation scheme set out in this consultation document? Please use the appropriate box below to log any supplementary views. (Paragraph 3:80)

See our attached cover letter.

22a. Are there impacts, positive or negative, on people with protected characteristics (age; disability; race; religion or belief; sex; sexual orientation; gender reassignment; pregnancy and maternity) which should be taken into account when designing and implementing the compensation scheme? (Paragraphs 1:8 – 1:9)

Yes

22b. If Yes, please specify:

A disproportionate number of those affected by the Windrush incident were Black or Minority Ethnic. As discussed in question 7, the Windrush Compensation scheme should consider how best to support members of this community.

Respondent Characteristics — Organisations

35. What is the name of the organisation you are responding on behalf of:

Keep The Faith Limited

Diverse Media Group Limited

36. What best describes your organisation (please tick one)

Other: *Keep The Faith* magazine is Britain's leading Black & multi-ethnic (BME) community-focused publication, promoting and supporting unity, faith and family values.