

# Windrush compensation scheme

## Home Office consultation

### Response from Thompsons Solicitors

#### November 2018

#### **Part 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?**

No.

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

The compensation scheme should consider any and all persons whose status as a UK citizen has, since 2013, been questioned but then ultimately found to be valid.

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

No.

#### **Part B: What losses will be eligible**

**Q2. Do you think claimants should be able to apply for compensation for:**

Home Office fees for unsuccessful immigration applications YES

Incidental costs relating to an unsuccessful immigration application YES

Legal costs relating to an unsuccessful immigration application YES

**Q3. Do you think compensation should be given when the following losses can be demonstrated as a result of being unable to demonstrate immigration status?**

Direct loss of income through termination of employment YES

Direct loss of income through an inability to secure employment YES

Lost opportunities such as career progression or future employment YES

Compensation should also be given for issues such as loss of savings, property loss and costs associated with continuing care for dependents who were left in the UK whilst the affected individual was without work, held or deported. This should also extend to those who, as a result of unjustified challenge, chose to leave the UK.

**Q4. Do you think compensation should be given for the following impacts resulting from an inability to demonstrate immigration status?**

Removal YES

Detention *YES*

Voluntary departure from the UK due to imminent enforcement action *YES*

Voluntary departure from the UK due to refused immigration decision *YES*

As per our answer to question 3, compensation should also be given for any additional non direct impact as a result of removal, detention and departure due to actions by the home office to those associated with caring for those dependent on an individual left in the UK. To have any credibility the Scheme should ensure that the type and amount of compensation should reflect that which a Claimant would receive had they brought proceedings in the civil courts, for example for false imprisonment or breach of the Human Rights Act.

**Q5. Do you think compensation should be given for the following impacts resulting from an inability to demonstrate immigration status?**

Denial of re-entry to the United Kingdom *YES*

Anticipation of denial of re-entry to the United Kingdom preventing travel *YES*

**Q6. Do you think compensation should be given to those who have been prevented from doing the following due to difficulties demonstrating their immigration status?**

Accessing free National Health Service care *YES*

Accessing social housing *YES*

Accessing private housing *YES*

Accessing post 18 education *YES*

Obtaining a driving licence *YES*

Opening a bank account *YES*

**Q7a. Do you think the compensation scheme should include the impact on normal daily life as a loss?**

Yes.

**Q7b. How should the compensation scheme take account of the different experiences of individuals in terms of the type and severity of any impact?**

Where there has been a personal injury, the compensation scheme should follow the ordinary principles in such cases of compensation for pain, suffering and loss of amenity. Independent medical evidence may be required and should be paid for within the scheme.

Where there has been an injury to feelings as a result of Home Office failings not amounting to a personal injury, compensation should be awarded as it would be in an Employment Tribunal (ET) discrimination claim. The guidance provided in *Vento v Chief Constable of West Yorkshire Police* [2002] and the further ET Presidential guidance for uplifting provided in 2017 should apply.

**Q8a. 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:**

Loss Rating 5

Fees from unsuccessful immigration applications to Home Office 5

Incidental and legal costs from unsuccessful immigration applications 5

Employment 5

Benefits 5

Detention or removal 5

Voluntary departure from the UK 5

Denial of re-entry to the UK 5

Denial of travel 5

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 licence 5

Loss/ Denial of access to a bank account 5

Impact on normal daily life 5

All the losses in the table are important. Not only might any of those situations cause great anxiety or humiliation for the individuals involved, they could also have cataclysmic ramifications for a person's daily life.

For example:

1. Denial of travel outside the UK may mean that someone was not able to see a dying relative.
2. The loss or denial of a driving licence could mean that a person required to drive for their living would be forced to give up their occupation and livelihood.

**Q8b. Do you think the proposals contained in this section have captured the correct type of losses?**

No - see our response to question 8c below.

**Q8c. Are there any additional losses that you think should be included? Please state**

The losses of all of those who suffered either directly or indirectly must also be included. This includes family members of those who have been directly affected.

**Q8d. Are there any losses that you think should not be included? Please state**

No.

**Q9a. Do you think losses experienced at any time point in the past should be covered by the compensation scheme?**

Yes.

**Q9b. Please explain the reasons for your response to Q9a below.**

The compensation scheme should cover losses from any point where an individual's life was impacted by their immigration status being questioned or challenged.

**Part C: How the scheme should operate**

**Q10a. Do you think the scheme should accept both postal and online compensation claims?**

Yes.

**Q10b. Do you think claimants should be offered assistance in completing their application?**

Yes.

**Q10c. If yes to 10b, who do you think should be offered assistance?**

All potential claimants.

**Q10d. If yes to 10b, what assistance should be provided?**

All reasonable and necessary legal costs.

There should be specific provision to exclude Claims Management Companies and paid McKenzie friends from acting for people under the scheme. Such a provision would minimise the chance of individuals being taken advantage of for financial gain.

**Q11. Do you think it is right that the compensation scheme uses a combination of different calculation methods for determining compensation payments?**

Yes.

**Q12a. Do you think compensation for a known value of loss should be considered where the claimant has:**

Lost their job and can evidence salary and pension foregone? *YES*

Been denied access to benefits? *YES*

Incurred costs and fees that are eligible to be compensated? *YES*

**Q12b. If you have answered no to any of the losses in Q12a, please explain why.**

Not applicable.

**Q13a. Do you think compensation should be calculated on a tariff style approach where the claimant has:**

Foregone rights and opportunities a claimant would have otherwise been able to pursue or take up? *NO*

Been detained or removed? *NO*

Been denied free NHS care? *NO*

Been denied access to other services? *NO*

Experienced an impact on normal daily life? *NO*

**Q13b. If you have answered no to any of the losses in Q13a, please explain why.**

The compensation scheme has to be individually calculated or at least flexible enough within wide parameters to recognise the various different reactions of an individual. For example, in relation to compensation for detention, a former prisoner may react differently to a person who has been entirely law-abiding throughout their life.

**Q14a. Should the scheme have a discretionary element to make payments for circumstances not covered by the scheme rules?**

Yes.

**Q14b. If yes, what circumstance should a discretionary element apply to?**

Anything above the most straightforward case and limited reaction to the hostile environment operated by the Home Office.

**Q15a. Do you think the compensation scheme should have a minimum claim amount?**

No.

**Q15b. If yes, what do you think the minimum amount should be?**

Not applicable.

**Q16a. Do you think the compensation scheme should have a maximum claim amount?**

No. There is no justification for a maximum amount. The Scheme should provide compensation for all wrongs and put the person back in the position (in terms of loss) had the wrongs not happened.

**Q16b. If yes, what do you think the maximum amount should be?**

Not applicable.

**Q17a. The list below summarises the 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:**

Factor Rating

Date of entry to the UK

Claimant had previous contact with the Home Office

Quality of previous applications

Loss attributable to immigration status

Misapplication of immigration rules

Costs or expenses otherwise incurred

This is a facile question that suggests the government is seeking to limit payments out rather than, as they have claimed, genuinely apologise to people impacted. It is inappropriate to 'rate' factors that may be taken into account. The scheme should be flexible enough to pay appropriate compensation to individuals (both directly and indirectly affected) based on their individual circumstances and response. We are concerned that the consultation document refers to "excessively high payments". We cannot see how any payment, which is properly due to right the wrongs suffered, could be "excessively high", even if the amounts paid turn out to be significant in themselves.

**Q17b. Please provide any comments you have on the factors that may be taken into account when calculating the amount of compensation awarded.**

See our answer to question 8 – it depends on the impact of the treatment and how people reacted in each individual scenario.

**Q18a. Do you think claimants should be offered non-financial recompense in addition to a financial award?**

Yes.

**Q18b. If yes, which of the following non-financial recompense should be offered:**

Counselling *YES*

Letter of apology from Home Office *YES*

Exploring reinstatement of employment (where possible and applicable) *YES*

**Q18c. Do you have any comments on non-financial recompense?**

An option for one's own counselling to be funded by the scheme should be considered in addition to financial compensation.

There could also be the possibility of trying to reinstate someone to their previous job had they lost it as a result of the actions of the Home Office, but we accept that the Home Office cannot require an employer to make such an offer.

There should be no adverse impact on any financial award if an individual chooses not to take a non-financial recompense option.

**Q19a. Do you think conditions of acceptance should be applied to the final compensation payment?**

Yes.

**Q19b. If yes, do you think the following conditions of acceptance should be applied?**

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

A claimant cannot be compensated more than once for the same loss YES

Payments will be recovered if it's subsequently found that the claim was fraudulent YES

**Q19c. If you disagree with any of these conditions of acceptance, please state why for each condition:**

Not applicable.

**Q19d. Are there any other conditions of acceptance that you think should be considered (please state)?**

A Certificate that is signed and stamped by an independent solicitor to confirm that the individual has considered the offer, has been advised that it is reasonable and has accepted that advice.

While not related to conditions of acceptance, we also would like to raise our concerns with paragraph 3.74 in the consultation document:

*3.74 The scheme would also refer to the police for prosecution any individuals who are found to be making or have made fraudulent claims. We believe these measures are important to protect the integrity of the scheme and ensure public money is directed towards genuine claimants.*



There is no need to spell this out to individuals in a group which has already been treated badly by the authorities. Any attempt to emphasise this point (which is self-evident) in the scheme may anger and intimidate potential claimants, making them feel that the hostility that the government claims has ended in fact continues. In turn, this may make people less likely to claim compensation to which they are rightly entitled.

**Q20a. 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?**

Yes.

**Q20b. If yes, which parts of the compensation scheme decision should a claimant be able to request a review of?**

Eligibility of claimant *YES*

Assessment of evidence provided *YES*

Amount of final award offered *YES*

Other \_\_\_\_\_ (please state)

**Q20c. If yes to 20a, do you agree with the compensation scheme decision review process set out in the consultation?**

Yes.

**Q20d. If you've answered no to 20c, please explain why:**

Not applicable.

**Supplementary questions**

**Q21. 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.**

Who should be eligible *No further comments.*

What losses should be compensated *No further comments.*

How the scheme should run *No further comments.*

Other comments *No further comments.*

**Q22a. 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?**

Yes.

**Q22b. If Yes, please specify:**

Disability, race and age.

We assume this question relates to access by potential applicants rather than the impact of the decisions for which individuals are to be compensated.

**Respondent characteristics - organisations**

**Q23. Who are you responding for?**

On behalf of an organisation.

**Q35. What is the name of the organisation you are responding on behalf of:**

Thompsons Solicitors.

**Q36. What best describes your organisation**

Legal Profession.

**For further information please contact:**

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