8 June 2018

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

Dear Windrush Compensation Scheme Team,

The Immigration Law Practitioners' Association is a registered charity and a professional membership association, the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Established in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on numerous government, including Home Office, and other consultative and advisory groups.

Our members advise and represent many people resident in the UK for lengthy periods, from before and after 1973, and recognise the problems that have been created for them by the increasing prevalence of demands for documents to prove their status. The consequences of this appear most starkly when they are applied to people who have been resident for most of their lives but who cannot provide the very specific documents required by the Home Office, or by the other authorities and individuals to whom immigration checks have been outsourced, but there are also serious problems for other younger people. ILPA urges that as well as remedying the injustice suffered by long-settled Commonwealth-country citizens who do not have the documents demanded, the whole 'hostile/compliant environment' policy should be reconsidered. It is not clear that the policy has produced the aim intended, to persuade more people without a claim to be here to leave the country. Whilst in addition there is increasing evidence that it has adversely affected many of those who do have the right to live here. As a result we believe that it is an ineffective and harmful policy, which should be ended.

In response to the five specific questions in this consultation, ILPA draws on information received from many of its members and their clients, and their extensive dealings with the Home Office.

Question 1:

The overwhelming reason for the problems experienced by long-settled Commonwealth-country citizens is the unrealistic evidential demands from the Home Office when they have tried to establish their status. The legal standard is the balance of probabilities, but the Home Office has set the bar for this far too high. For example, when one member of a family has mislaid his/her document on which s/he entered the UK, but knows that the whole family travelled together, there is evidence of parents or siblings' entry date for settlement and evidence of the person's presence and residence in the UK from soon after the date of entry, this should have been enough to satisfy the Home Office that the person was and always had been settled. But it has not been. Equally, documents such as the birth certificates of their children born in the UK, their marriage and divorce certificates in the UK have not been considered adequate evidence of residence. Some people have been compelled to apply to the courts for a judicial review of the Home Office

failure to accept the documents of their case.

When the Home Office has eventually been satisfied about a period of residence, instead of recognising that the person originally entered for settlement and confirming this, the Home Office has either (before 12 July 2012) granted indefinite leave to remain from the date of decision or (after 12 July 2012) granted leave to remain for 30 months, on the 10 year route to settlement. This has entailed people paying Home Office application fees (four times over, at present prices £5488 per person to achieve indefinite leave) when none of these applications should have been necessary. It has also meant that people applying for naturalisation a year after indefinite leave was again confirmed have been refused, under the 'good character' interpretation from December 2014, on the grounds that the Home Office is not satisfied they have been 'compliant with the immigration laws' for 10 years before applying for citizenship. The overwhelming evidence is that the person has been settled, and thus living in the UK in accordance with the laws, since entry; and provided the other requirements for naturalisation are met, the application should have been granted. When it is refused, the fee, currently £1330, is not refunded. All such cases should be investigated and, at the very least, all the unnecessary Home Office fees paid should be refunded to the individual, with interest. When people have paid for legal advice and representation in sorting out problems that should never have arisen, their legal fees should also be reimbursed.

Question 2:

The overwhelming reaction from people who have made their lives in the UK and have lived here since childhood to having their status questioned is bewilderment, distress and anger. They know that they have lived here for the length of time they have, they know that they never had to have any dealings with the immigration authorities since their date of entry and that this is their home. The feeling of rejection, of being treated with suspicion, of being considered 'illegal' when they know that they are not, can be devastating for individuals, and their family members and friends.

In practical terms, ILPA members know of people who were dismissed from their jobs, whose benefits were stopped, who built up rent arrears and were evicted, because they did not have confirmation of their status from the Home Office, or who had to rely on begging loans and gifts from family and friends to survive. The psychological effects of being disbelieved, of having all one's life turned upside down, for no logical reason, cannot be overestimated.

Question 3:

Establishing the fact of long residence in the UK has often been difficult, even for people who came to the UK more recently than the 1970s and where their corroborative evidence might be easier to find. ILPA members have found difficulties in satisfying the Home Office of this for years. Many of the more complex cases, in relation to people who have been in the UK since the 1970s have arisen from 2013 - 2014 onwards, but we are aware of problems in applications made from at least 2009 onwards. We know that there has been much research on the effects of the 'hostile environment' policy and reports sent to the Home Office about the effects of their policy on those who have full rights to be in the UK, but not documents, over several years, but no policy action to deal with the injustice and mistakes appears to have been taken until 2018.

Question 4:

As discussed, people have lost their jobs, or been unable to take up new jobs. They have thus been unable to continue to make national insurance contributions. They have lost work opportunities and have been unable to move on with their lives. Their welfare benefits, such as income support, job seeker's allowance, housing benefit, to which they were fully entitled, have been stopped because they could not provide Home Office documents. They have lost their homes, been forced to move in with relatives, or sofa-surf, or become street homeless.

People have been unable to access the NHS medical treatment that they needed, both because of inability to provide documents to prove their status to hospital overseas visitor managers, and through fear of the consequences. They have found all aspects of their lives affected by the withdrawal of the rights that they knew they had.

People have been unable to travel, for fear that they would not be readmitted on their return. Others have left the UK expecting to return and have been denied re-entry. People have thus missed important family events, such as weddings, or been unable to see relatives or friends abroad when they were ill, or attend their funerals. It is difficult fully to quantify how this has affected people, their families, their mental and psychological state, when they have experiences such as these. Even the inability to go abroad on holiday is significant, and the insecurity which hangs over every aspect of life is overwhelming.

All these effects on and disruption of the lives of people who have made their homes here, have families here and have spent very long periods here, raise issues about unjustified state interference in their family and private lives, contrary to Article 8 of the European Convention on Human Rights. This past and ongoing breach of their ECHR rights must also be considered in respect of planned compensation.

Question 5:

The government recognition of the injustice done to long-settled Commonwealth-country citizens and its apologies are significant. It is important that these should be followed by practical measures to remedy the injustice and change the policy. ILPA hopes that the new team dealing with individual applications will be successful, will use the more common-sense approach to evidence suggested in the new staff guidelines, and will be able to deal with people's cases quickly.

The Home Office states that it has been able to identify some 63 people who may have been returned to the Caribbean illegally. It is not clear whether these checks have gone wider than the Caribbean, or if they have also been identifying other long-settled people who have successfully been able to obtain Home Office confirmation of their status, or who have cases pending, or who have been refused that confirmation but no further action has been taken. The Home Office should provide the statistics of people in these situations, not only from the Caribbean, and should widely publicise the fact that they were unjustly treated, and they could now qualify for refunds of the fees they had paid for their cases, and their other expenses incurred, such as legal fees, biometric fees, and set up a simple scheme to apply for such refunds.

The scheme must also cover all the ancillary losses consequent on the immigration issue – loss of

earnings for all the time that people were unable to work and until they found employment again, loss of benefits for all the time that they were refused. There should be a clear scheme to compensate for intangible matters, such as worry and insecurity, as well as the medical and psychological effects of these, both short- and long-term. Decided cases on compensation for wrongful arrest and detention and similar matters should inform the Home Office decisions on the amounts of compensation and damages payable to individuals.

Such a compensation scheme should apply to all those people who on the balance of probabilities were admitted for settlement until the coming into force of the 1988 Immigration Act, and who have had to reapply for settlement.

The Home Office should ensure that there is widespread publicity for the compensation scheme when it is set up, nationally, locally and in black and minority ethnic communities and media, that it is clear what it will cover, and that applications for compensation will be considered quickly and sensitively. It is vital that there should be confidence in the scheme, and that it should not turn into yet another ordeal with people being asked for further unrealistic evidence before it is accepted that they qualify.

We look forward to further information about this scheme and when it will begin to operate.

Yours faithfully

ILPA Family and Personal Working Group
On behalf of ILPA