

# An investigation into UK Visas and Immigration's handling of Windrush man's status

# Contents

Our decision .....	3
The complaint .....	4
Background .....	4
No Time Limit application .....	5
Contact from Capita.....	5
Immigration Enforcement removal action .....	5
Evidence provided by Mr V and his representative .....	6
Indefinite Leave accepted.....	7
Second No Time Limit application .....	7
Application for British Citizenship.....	8
Complaint handling with UKVI .....	9
Evidence.....	11
UKVI and Immigration Enforcement complaint management guidance.....	12
Our principles .....	12
Findings .....	13
Missed opportunities .....	15
The No Time Limit and nationality applications in 2017 and 2018 .....	16
Ms V’s complaint about UKVI’s complaint handling.....	17
Injustice.....	18
Recommendations .....	20

## Our decision

1. Ms V complained that Immigration Enforcement and UK Visas and Immigration (UKVI) wrongly classed her late father, Mr V, as having no status in the UK when he had indefinite leave. She complained he was repeatedly asked to prove his residence in the UK, and UKVI and Immigration Enforcement did not deal with his complaint adequately.
2. We have found failings in the decision-making which led Capita to contact Mr V. We have found Immigration Enforcement acted with maladministration when they told Mr V he had no status in the UK, and they missed opportunities to put things right. We have also identified failings in Immigration Enforcement and UKVI's record keeping. We have found that when UKVI considered Mr V's 26 May 2017 application for a biometric residence permit they asked for more evidence than was required by their own guidance. We have not found UKVI acted with maladministration when they considered Mr V's British Citizenship application. We have found maladministration in UKVI and Immigration Enforcement's complaint handling because there was a significant delay in providing a response to the complaint and the responses themselves were inadequate.
3. We uphold Ms V's complaint.
4. The failings we have identified had a profound effect on Mr V in what, very sadly, were the last years of his life. He became depressed and anxious and eventually became withdrawn and immobile. For Ms V and her family, seeing their father and grandfather break down in this way was deeply distressing. We therefore recommend that Immigration Enforcement and UKVI apologise to Ms V and pay her a financial remedy in recognition of the severe distress she has suffered over an extended period of time. We also recommend systemic action to ensure the complaints process is at the heart of developing a learning culture and continuous improvement, as well as an opportunity to provide fair outcomes for those affected by the Windrush scandal.

## The complaint

5. Ms V complained on behalf of her late father Mr V, and herself, that:
  - Immigration Enforcement wrongly sent letters via Capita to Mr V, saying he had no status when he had been granted indefinite leave to enter the UK on 23 June 2015.
  - UKVI and Immigration Enforcement wrongly classified Mr V as having no status to remain in the UK and on 5 May 2016 Immigration Enforcement told him he would be deported when he had been granted indefinite leave to enter the UK.
  - UKVI asked Mr V to again prove his residence in the UK when he applied in May 2017 for a biometric residence card.
  - UKVI again asked Mr V to prove his residence in the UK when he later applied for British nationality in June 2018.
  - UKVI and Immigration Enforcement delayed dealing with Mr V's initial complaint of 28 November 2018.
  - UKVI and Immigration Enforcement provided inadequate responses to both Mr V's complaints.
6. Ms V said when her father first told her he was being deported he was in a state of shock and confusion. She said what happened had a profound effect on his physical and mental well-being and he became depressed and anxious. She said he had always been a social, active and very confident man but he began to feel helpless and oppressed and became depressed. Ms V said this continued further when he had his driving licence taken away from him - he had been forcibly stripped of his one last freedom and enjoyment. Ms V said communication from her father lessened and he became withdrawn and immobile and was confined to the area around his house. She said seeing her father slowly breakdown in this way was heart-breaking.
7. Ms V sought an explanation as to why her father's case was so mishandled, an apology and compensation. She would like changes to be made to ensure that Immigration Enforcement and UKVI do not mishandle future cases and deal with complainants properly.

## Background

8. Mr V was a Jamaican national. He arrived in the UK when he was 19 years old in May 1962 and his family have told us he lived and worked in the UK from that time until his death in May 2019. Mr V had Indefinite Leave to Enter (ILE) the UK stamped in his passport. ILE is a type of immigration status - it means there is no time limit on a person's leave to stay in the UK.

## No Time Limit application

9. In March 2015 Mr V applied to UKVI for a permanent status document called a No Time Limit (NTL) biometric residence permit. He had been told by friends that he could struggle to re-enter the UK if he did not. He included his Jamaican passports for the periods 1981-1991, 2000-2010 and 2012-2022. Mr V's passport from 2000-2010 contained ILE stamps from March 2001 and November 2004.

Shortly after, Mr V withdrew his NTL application so he could travel to Jamaica. On 25 March 2015 UKVI wrote to Mr V confirming they had formally withdrawn his application and enclosed his passports.

## Contact from Capita

10. On 21 May 2015 Capita contacted Mr V (UKVI and Immigration Enforcement have told us it is not clear from the notes if this was a phone call). During this period Capita had a contract with the Home Office to contact and process the cases of suspected illegal immigrants. Mr V told Capita he had valid leave to be in the UK and had arrived in 1962. He said he had withdrawn his NTL application because he needed his passport to travel. Capita noted: *'evidence required, Letter sent to app - unable to find valid leave - review set to 14 day.'*

11. When Mr V returned to the UK from Jamaica on 23 June 2015 he was granted ILE at the airport.

12. After his return from Jamaica Mr V received letters from Capita on behalf of Immigration Enforcement saying he was residing in the UK illegally and should make arrangements to leave. His records show Immigration Enforcement opened a returns preparation case (to arrange his removal from the UK) on 10 July 2015.

## Immigration Enforcement removal action

13. On 27 February 2016 the removals casework section of Immigration Enforcement reviewed Mr V's case. The caseworker noted *'at Capita contact applicant stated they have valid leave to be in the UK - arrived in 1962. I can find no evidence of leave, and the fact he was applying for NTL suggests he does not have [indefinite leave]'*. (This reasoning does not make sense because NTL is a process designed to enable people with indefinite leave to apply for confirmation of this - paragraph 46). The caseworker said Mr V had failed to respond to Capita's letter asking him to provide proof of his status.

14. Immigration Enforcement sent a letter on the same date to Mr V saying Home Office records showed he did not have permission to be in the UK and should make arrangements to leave without delay. The letter said it was notice of his liability for removal and told him of the intention to forcibly remove him from the country if he did not leave voluntarily. The letter said that after 10 days from the date of the letter he could be removed without further notice. The letter said if he remained unlawfully he could be prosecuted and potentially imprisoned, specifically saying *'your life in the UK will become increasingly difficult'*. It said he was liable to be arrested and detained, could be banned from returning to the UK, would have to pay for any non-emergency healthcare treatment, could be prevented from accessing financial services, would have

his driving licence revoked and could have any benefits he might be receiving stopped. The letter said Mr V needed to tell Immigration Enforcement about any reasons or grounds for wishing to remain in the UK. It said he did not need to tell them about reasons or grounds he had already told them about in any past claim or application.

15. Immigration Enforcement put reporting restrictions in place in March 2016 and they asked Mr V to attend an Immigration Enforcement unit every month.

### **Evidence provided by Mr V and his representative**

16. Ms V's complaint says an Immigration Enforcement official told Mr V on 5 May 2016 he would be deported. UKVI and Immigration Enforcement have said they have no record of a meeting on this date, but the records do include an entry on 5 May 2016 which says '*2 expired passports and one valid passport...*'. A later entry says: '*On reporting on 05/05/2016 the IO [Immigration Officer] impounded both his expired and current passport.*' UKVI and Immigration Enforcement said Mr V would not have been told he would be deported. Mr V's records also say that he attended a reporting event on 25 April 2016 and brought in his three passports (1 valid and 2 expired) which were retained in the safe.

17. Mr V instructed the Greater Manchester Immigration Aid Unit to help him. On 18 May 2016 Mr V's representative wrote to Immigration Enforcement. He said Mr V had come to the UK in early 1962 before Jamaica became independent and had lived and worked in the UK continuously since then. He now received a state pension. The representative described the recent events and how distressing they had been for Mr V. He noted Mr V had been in the UK lawfully for over 50 years. He said that at his last reporting event Mr V had provided his passports, including his passport stamped with indefinite leave. He said the Immigration Officer, instead of considering them, had impounded his passports and told Mr V he was illegally in the UK and would now be deported. Mr V's representative asked: for his reporting restrictions to be lifted; for confirmation of his indefinite leave in the UK; and for his passport to be immediately returned. The representative also asked for a detailed explanation as to why Mr V was issued with a removal decision in the first place.

18. On 2 June 2016 the Interventions and Sanctions directorate (part of Immigration Enforcement) recorded that Mr V had been identified as holding a UK driving licence whilst not holding current leave to remain. His driving licence was put forward for revocation. On 15 June 2016 this was considered again by the Interventions and Sanctions Directorate. They had seen the letter from Mr V's representatives saying that he had lived in the UK for 50 years and that he had indefinite leave. They wrote: '*no evidence to suggest this presented*'. This was incorrect. Mr V's representative had said Mr V had provided his passports which included his indefinite leave stamp. Immigration Enforcement maintained their decision to revoke Mr V's driving licence.

19. On 13 July 2016 Mr V's records show his passports were checked and the caseworker noted his passport contained ILE followed by an immigration officer's stamp. The caseworker recorded they had asked '*one of the forgery staff*' to check this and they had both come to the conclusion that they could not confirm the genuineness of the stamp (no reason for this decision was recorded). Mr V's passport was sent to the NDFU (National Document Fraud Unit) to be checked.

20. On 21 July 2016 Mr V's representative wrote to Immigration Enforcement again. He enclosed information from HMRC covering the period from April 1975 onwards. Records became computerised in 1975 but Mr V had 750 National Insurance contributions paid or credited in the years before 1975 (about 14.5 years). Records showed he had entered the National Insurance system in June 1961. Given Jamaica became independent on 6 August 1962 Mr V would have been a citizen of the United Kingdom and the colonies when he arrived in the UK and would have had the right to enter the UK permanently. His representative said this was compelling proof Mr V had indefinite leave.

### **Indefinite Leave accepted**

21. On 12 August 2016 a caseworker recorded that the fraud unit had replied saying Mr V's ILE stamp was '*as expected*' and said '*I therefore do not consider we can continue with any enforcement action on the case*'.

22. On 13 September 2016 Immigration Enforcement stopped enforcement action and cancelled Mr V's reporting after accepting he had indefinite leave. The Interventions and Sanctions Directorate instructed the DVLA to reinstate his driving licence.

### **Second No Time Limit application**

23. On 25 May 2017 Mr V's representative wrote to UKVI enclosing an application for an NTL biometric card. He asked UKVI to note Mr V had been accepted as having EIL, a decision made on 13 September 2016. He enclosed Mr V's current passport and photos.

24. On 22 October 2017 UKVI wrote to Mr V's representative. They asked for evidence of all Mr V's expired passports to confirm his continued residence in the UK. Alternatively, if he did not have passports that ran consecutively, they asked for original documentary evidence from 1990 to 2011 (at least one piece of evidence for each year).

25. On 25 October 2017 Mr V's representative replied. He asked them to note UKVI had already assessed all the information they were requesting and found on 13 September 2016 Mr V had indefinite leave. He asked them to refer to their department's file note of that date and issue a biometric card.

26. On 28 October 2017 UKVI wrote to Mr V's representative again. They said for the purpose of granting an NTL biometric card they needed to see evidence of continued residence in the UK and all Mr V's expired passports including the passport which contained the ILE stamp. They said if his passports did not run concurrently they would need further evidence of residency to confirm Mr V had not been out of the country for more than two years.

27. Mr V's representative replied on 2 November 2017 reiterating Mr V had been accepted as having indefinite leave on 13 September 2016 and pointing out he could not have been abroad for two years since that date.

28. On 14 November 2017 UKVI replied again. They said they were not disputing Mr V had an ILE stamp in his passport but said, for the purpose of granting NTL, they needed to see evidence to support the application - specifically evidence Mr V had lived in the UK continuously and had not left the UK for more than two years since he was granted ILE.



29. On 21 November 2017 Mr V's representative replied enclosing Mr V's passport dated 28 June 2000 - 27 June 2010 and highlighting the ILE stamp on page 6. He also enclosed a Jamaican emergency travel certificate issued in the UK on 21 May 2012 - within a two-year period from the expiry of the previous passport. (Mr V had to return to Jamaica at this time to get a mistake on his birth certificate corrected before getting a new passport - he was in Jamaica between 6 June 2012 and 10 August 2012).

30. On 28 November 2017 UKVI issued Mr V with a NTL biometric residence permit.

## Application for British Citizenship

31. UKVI then contacted Mr V and invited him to make an application for British Citizenship. Mr V applied on 12 June 2018 under the Windrush scheme. This scheme was designed for people settled in the UK who had arrived here many years ago but might not have a document to prove their status. The scheme was set up after people from Commonwealth countries who had lived in the UK for decades were wrongly told they were in the country illegally.

32. On 19 July 2018 UKVI wrote to Mr V's representative to say they were unable to confirm his eligibility for British Citizenship. They asked for further evidence including: evidence of Mr V's residence in the UK from date of entry in May 1962 until 27 March 2001, a form of photo ID, an overview of Mr V's life in the UK since his arrival (e.g. schools, places of work, family and private life), confirmation Mr V had not been outside the UK for more than 450 days in the past 5 years or more than 90 days in the past 12 months. The letter said Mr V had previously been granted an NTL biometric residence permit on 28 November 2017 on the basis of continued residence since 27 March 2001 and not on the basis of his claimed entry date of May 1962 and no documents were received throughout that application which confirmed his residence in the UK prior to 27 March 2001. UKVI have told us this information was requested to establish Mr V's eligibility to be considered for citizenship and at no point during this consideration was his immigration status in doubt.

33. Mr V's representative replied on 26 July 2018. He pointed out the evidence which had been provided for Mr V's earlier applications including his passports from 1981 onwards. He noted Mr V's file had been sent to the removals casework section in July 2015 despite the fact he had been granted ILE three weeks earlier. He was then classed as a person without status and asked to report to the local enforcement unit. Mr V's representative said on 5 May 2016 he took all his passports including the 2012 passport with ILE in it to the enforcement unit only to have them impounded and was told by the immigration officer that he would still be deported. Mr V's representative said on 21 July 2016 he had faxed Mr V's full national insurance record to the enforcement unit. This showed he had a full work history in the UK since his arrival. Therefore, all the information UKVI had asked for had already been provided. Mr V's representative said Mr V had so far been treated appallingly - he was classified as having no leave a few weeks after he was granted ILE, told he was going to be deported while the immigration officer had in their hand a passport showing he had indefinite leave and had his driving licence revoked. He said UKVI had not checked their own full file or liaised with the DWP to check his national insurance records. He enclosed Mr V's last two passports and current passport and his full national insurance record.



34. A decision was made on 9 August 2018 to grant Mr V British citizenship.

### Complaint handling with UKVI

35. On 28 November 2018 Mr V's representative emailed in a formal complaint about:

- The comments made by an immigration officer to Mr V on 5 May 2016. Mr V's representative complained about the immigration officer's totally unjustified threat to Mr V. He said the immigration officer had in his hands evidence Mr V had status in the UK. Mr V's representative said he had sent a letter dated 18 May 2016 outlining the comments made by the individual and referring to Mr V being distressed as a result of them. He asked whether this was acted on at the time and if not, why not?
- The failure of the Windrush section to process Mr V's NTL and British Citizenship applications properly. Mr V was asked to provide proof he had not been absent from the UK for two years since his last grant of ILE. His ILE stamp was dated 23 June 2015 in his current passport. His application for NTL was 25 May 2017 - less than two years from the date of the stamp. His passport was retained by UKVI on 5 May 2016 and he was reporting from May until September 2016. Mr V's representative asked why in processing both Mr V's British Citizenship and NTL applications UKVI asked for information they already had.
- The failure of the Windrush section to respond to letters sent to them asking why they did not access Mr V's immigration file when making a decision on his citizenship application.

36. UKVI did not respond to this complaint (although internal documents show they sought responses to the complaint from the Windrush Team and the reporting centre in December 2018). Mr V's representative sent a second complaint email dated 18 February 2019 to complain about the delay in receiving a response.

37. UKVI responded to Mr V's complaint on 8 May 2019. They apologised for the late response but did not provide any reasons for this. They said their records showed Mr V had attended a reporting centre on 23 May 2016. They said he would have been advised that he needed to regularise his immigration status in the UK. They said the term 'deported' is not used in relation to non-criminal matters. They apologised for the fact Mr V had received letters from Capita saying he was in the UK illegally. They said these letters were computer generated automatically if they hold no details of someone on their database.

38. UKVI said no evidence was provided with Mr V's British Citizenship application to substantiate his claim of residency prior to 1973 and it was reasonable for the caseworker to request this evidence. They said his file was looked at and previous applications considered but the full picture of his residency was not clear and so further evidence was requested. They said they did not liaise with the DWP as caseworkers only do this where there is no other available evidence. They said it was not necessary in Mr V's case because his passports were available. They said checks with third parties can cause delay and it was better to request alternative evidence from Mr V himself. (UKVI have since told us that the caseworker did request evidence from the DWP and HMRC and used it to make their decision.)

39. UKVI apologised for the lack of communication from ‘*some areas of the department*’ and the stress and inconvenience this had caused to Mr V and said they were upholding the complaint.

40. On 5 June 2019 Mr V’s representative asked for the response to his complaint to be reviewed. He said there was no explanation as to why it had taken six months to respond to the complaint and no acknowledgement of the further complaint made about this delay. He said the response had not answered why Mr V was told he had no status to be in the UK when he had provided his passport showing he had indefinite leave. There was no explanation as to why the letter sent on 18 May 2016 was not treated as a complaint at that time. The explanation that the letters from Capita were sent because they held no details of Mr V on their database did not make sense as he had made an application to be granted a biometric card with proof of his residence in the UK and had recently been granted ILE at the airport prior to the letters being sent. The complaint response had not dealt with the extensive points made about the request for unnecessary information for Mr V’s NTL application. It did not make sense to say that UKVI had extensively considered Mr V’s previous applications when considering his application for British Citizenship as this would have shown that he had already provided proof of residence in the UK since 1962.

41. In their final response to Mr V’s complaint dated 2 July 2019 UKVI said they did not have any record of the conversation at the Immigration Enforcement Unit but the Home Office only referred to deportation in criminal cases which Mr V’s was not and they did not think he had been told this. They apologised for Capita sending Mr V letters and said this was because their database was being updated at the time. They also accepted there was delay in the complaints process and said there was no record of one of Mr V’s complaints on their system. They said the evidence they had asked Mr V to provide for his British Citizenship application was necessary for them to have and would not have been on his file.

42. Mr V sadly died in May 2019. When his daughter, Ms V, looked through his papers after his death she found documentation relating to his complaint and asked his legal representative to pursue it.

## Evidence

43. We have considered evidence provided by Mr V's legal representative, Ms V, UKVI and Immigration Enforcement. This includes records, letters, emails and the comments provided to us by all parties.

44. We use related or relevant law, policy, guidance and standards to inform our thinking. This allows us to consider what should have happened. In this case we have referred to the following standards:

### **NTL applications<sup>1</sup>**

45. NTL is an administrative process by which a person with indefinite leave can apply for confirmation of this status on a Biometric Residence Permit (BRP). In order to qualify for an NTL BRP applicants must have indefinite leave in the UK, have not lost their indefinite leave, for example by being absent from the UK for a continuous period of two years or more since it was granted, continue to be entitled to indefinite leave (it has not been revoked), and apply from within the UK with the correct application form and fee. It is not necessary for a person to apply for an NTL BRP but there are benefits of doing so - such as enhanced security features, evidence of a right to stay permanently in the UK and making travel easier.

46. The guidance for caseworkers processing NTL applications says they must check the applicant has been granted indefinite leave. It says evidence of this can include an indefinite leave endorsement, open date stamps after indefinite leave has been granted, records on databases or in paper files showing indefinite leave has been granted, the applicant has provided photographic documentary evidence confirming their identity such as a passport and the applicant has not lost their indefinite leave due to absences from the UK.

---

<sup>1</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/793574/No-time-limit-v14.0ext.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/793574/No-time-limit-v14.0ext.pdf)

## UKVI and Immigration Enforcement complaint management guidance<sup>2</sup>

47. The complaint management guidance from the relevant time says immigration and border directorates should respond to all complaints within 20 working days. If a complaint is not going to be answered in 20 days the complainant should be informed before the 20 day target is reached and continue to receive appropriate updates until the case is closed.

48. The guidance says immigration and border directorates should endeavour to investigate fully and respond to all the issues raised in a complaint.

### Our principles

49. The Ombudsman's Principles of Good Administration say that to 'get it right' in their decision making, public bodies should have regard to the relevant legislation. Decision making should take account of all relevant considerations, ignore irrelevant ones and balance the evidence appropriately.

50. Our principles say public bodies must comply with the law and have regard for the rights of those concerned. They should act according to their statutory powers and duties and any other rules governing the service they provide. They should follow their own policy and procedural guidance, whether published or internal.

51. Our principles say to put things right when mistakes happen, public bodies should acknowledge them, apologise, explain what went wrong and put things right quickly and effectively.

52. Our principles say that to be open and accountable public bodies should create and maintain reliable and usable records as evidence of their activities. They should manage records in line with recognised standards to ensure they can be retrieved and they are kept for as long as there is a statutory duty or business need.

53. Our Principles of Good Complaint Handling say public bodies should ensure that all feedback and lessons learnt from complaints contribute to service improvement. Learning from complaints is a powerful way of helping to improve public service, enhancing the reputation of a public body and increasing trust among the people who use its service.

---

<sup>2</sup>

<https://webarchive.nationalarchives.gov.uk/20181208013941/https://www.gov.uk/government/publications/complaints-management-guidance-version-7>

## Findings

### Mr V was told he had no status in the UK when he had indefinite leave

54. Ms V has complained Immigration Enforcement wrongly sent letters via Capita to Mr V saying he had no status when the Home Office had granted him indefinite leave to enter the UK on 23 June 2015. She has also complained UKVI and Immigration Enforcement wrongly classified Mr V as having no status to remain in the UK. She says on 5 May 2016 Immigration Enforcement told him he would be deported when he had been granted indefinite leave to enter the UK. We will consider these complaints together.

55. The first time we know the Home Office questioned Mr V's status in the UK was on 21 May 2015 when Capita contacted him. At this time Capita were contracted by the Home Office to consider and conclude cases in the migration refusal pool (the term for cases where a person has been refused leave to remain but the Home Office lacks evidence that they have either left the country or been granted leave by another route)<sup>3</sup>. Mr V had not been refused leave, so we can see no obvious reason why he should have been included in these cases or why he should have been contacted.

56. UKVI and Immigration Enforcement have apologised for Capita sending Mr V letters saying he was in the UK illegally. They provided two explanations. First, they said this happened because the letters are computer generated automatically if they hold no details of someone on their database (paragraph 38), and, second, because the database was being updated at the time (paragraph 42). We have not seen evidence to substantiate either of these reasons.

57. We know Mr V was recorded on the system because he had recently made an NTL application (which he subsequently withdrew so he could travel). This is visible on his Home Office record. Given everyone now accepts with hindsight that Mr V always had indefinite leave in the UK it follows that he should not have been targeted for immigration enforcement action and should not have had to go through everything he did. But it is harder to establish why this happened. The explanations provided for why Capita contacted him do not provide clarity and neither do the records. Why was Mr V ever included in the list of people for Capita to contact? If it was a simple mistake due to database issues, why was it not immediately put right? One reason the answers to these questions are not clear is the lack of an audit trail for the actions taken and the reasons for them. Mr V had indefinite leave but this was not recorded in his Home Office records, despite being stamped in his passports.

58. There is a wider context here. The difficulties many members of the Windrush generation have faced in trying to prove their status in the UK are well known. In her *'Windrush: Lessons Learnt Review'* Wendy Williams said although the 1971 Immigration Act entitled people who had arrived from Commonwealth countries before January 1973 (like Mr V) to a right of abode or leave to remain in the UK, many were given no documents to demonstrate this status and the government did not keep records. She describes this as the *'trap set for the Windrush generation'*. The *Lessons Learnt Review* is clear the difficulties the Windrush generation have experienced in

---

<sup>3</sup> <https://publications.parliament.uk/pa/cm201314/cmselect/cmhaff/820/820.pdf>, see page 16.

demonstrating their status cannot be laid at their door - they had the right to be in the UK and the way they were treated was wrong.

59. *The Lessons Learnt Review* says that from around 2014, and earlier, cases emerged of members of the Windrush generation losing their right to benefits, healthcare and driving licences, and access to their bank accounts and pensions. We know from the reporting of the Windrush scandal that some people in this situation wrongly received letters from Capita telling them they had no right to remain in the UK.

60. In Mr V's case, and for other people, the contact from Capita was the start of a lengthy struggle to prove their status in the UK. We cannot say exactly why Mr V was contacted. We do know this led to everything that followed: Immigration Enforcement's decision to open a returns preparation case, their letter of 27 February 2016, and their decisions to put in place reporting restrictions and to put Mr V's driving licence forward for revocation. These were serious consequences and we will consider the impact on Mr V of what happened in more detail later.

61. The Ombudsman's principles say decision making should take account of all relevant considerations and ignore irrelevant ones, balancing the evidence appropriately (paragraph 50). We have seen no good reason why Mr V was contacted in the first place. Also, his file showed he had recently made an NTL application, which suggested he did have indefinite leave (paragraph 46). Once he was contacted, Immigration Enforcement's own records show he clearly told Capita he had been in the UK since 1962, had valid leave and had withdrawn his NTL application so that he could travel (paragraph 11). Yet the next action was to send him letters saying he was in the country illegally. UKVI and Immigration Enforcement have accepted this should not have happened. Despite a poor audit trail of what happened, we know enough to say the decision-making which led to Capita's initial contact did not take into account all relevant considerations and ignore irrelevant ones - and neither did the subsequent decision to send Mr V letters telling him he was in the country illegally. We find Immigration Enforcement's actions here amount to maladministration.

62. The lack of clarity as to why Mr V was contacted in the way he was is also concerning. Our principles say that to be open and accountable public bodies should create and maintain reliable and usable records as evidence of their activities. We find Immigration Enforcement's record keeping here amounts to maladministration - there is no clear audit trail as to why he was contacted. Beyond this, there is a wider record-keeping problem as Mr V's status was not recorded on Home Office systems. We find this was maladministration because Mr V's records should have been reliable and useable (paragraph 53).

## Missed opportunities

63. We will now consider if there were opportunities to put these mistakes right. UKVI and Immigration Enforcement told us Immigration Enforcement sent the letter on 27 February 2016 to Mr V as no further documentation had been provided to validate his claim that he had an ILE stamp or had entered the UK as he described. They said they had to make further enquiries to validate his status in the UK. They said although Mr V had provided his original passports, both valid and expired, for the withdrawn NTL application, no copies or notes were made on Home Office systems to indicate that he had a valid ILE stamp because the case had not been progressed.

64. However, as we have seen above, Mr V should never have been on the path to removal in the first place. There were missed opportunities to put things right. At the end of April or the beginning of May 2016 (paragraph 17) Mr V had given Immigration Enforcement his three passports including his passport containing an ILE stamp. His representative highlighted Mr V had provided his passports, including evidence of his indefinite leave, when he wrote to Immigration Enforcement on 18 May 2016. On 13 July 2016 Immigration Enforcement considered Mr V's passports and saw his indefinite leave stamp. His representative provided more evidence on 21 July 2016 when he sent Immigration Enforcement records from HMRC.

65. Immigration Enforcement's decision-making should have taken account of all relevant considerations. They should have taken the evidence provided by Mr V and his representative into account when they made decisions on his case. They did not do this. On 2 June 2016, whilst in possession of both Mr V's passports and the 18 May 2016 letter from his representative, they made a decision to put Mr V's driving licence forward for revocation. They maintained this decision on 15 June 2016, when the caseworker noted they had read the letter from Mr V's representative stating he had been in the country for over 50 years and had indefinite leave. They wrongly said '*no evidence to suggest this presented*' despite the fact that they were in possession of Mr V's indefinite leave stamp, and his representative had clearly highlighted this (paragraph 18). On 21 July 2016 Mr V's representative provided evidence from HMRC which showed Mr V had been working in the UK since 1962. This time, there is nothing to show this was considered at all. All these points represented opportunities for Immigration Enforcement's decision-making to put things right by taking the relevant evidence into account properly. This did not happen, and we find this was maladministration.

66. Separately, on 13 July 2016, Immigration Enforcement eventually checked Mr V's passports and saw his indefinite leave stamp. The records show the caseworker felt they could not confirm the genuineness of the stamp and they sent Mr V's passport to the fraud unit to be checked. We accept Immigration Enforcement need to be sure of the genuineness of the documents they rely on for their decisions. However, given everything which had happened in Mr V's case up until this point, it is easy to be sceptical about the reasons why this decision was made. However, the records do not include any reason why doubt was cast over the genuineness of the stamp in Mr V's passport, and we do not have enough information to say Immigration Enforcement acted with maladministration here.

67. Ms V has also complained that when Mr V reported to Immigration Enforcement on 5 May 2016 he was told he would be deported. UKVI and Immigration Enforcement have said Mr V would not have been told he was being deported as this word is only used in



criminal cases (deportation is different from administrative removal - you can potentially be deported if you are a foreign national and have completed a prison sentence for committing a crime).

68. It is not possible to say now exactly what was said by the member of staff Mr V saw - the records just say he brought in his passports. However looking at the letter sent to him in February 2016, which talks of the intention to forcibly remove him from the country, of potential prosecution and imprisonment, that his life would become increasingly difficult and he could be banned from returning to the UK etc, whether or not the word deportation itself was used, Mr V was clearly told he would be forcibly removed from his home of more than five decades. As we have found above, this should never have happened.

### **The No Time Limit and nationality applications in 2017 and 2018**

69. In looking at this complaint we consider that Mr V would have been in a different position if not for the failings identified above which wrongly set him on a path to removal. It is unlikely these applications would have been processed in the same way. However, we will consider whether there were further errors in the Home Office's handling in relation to these applications.

70. Looking first at the NTL application - what should have happened? The NTL guidance says a caseworker must obtain evidence an applicant has been granted indefinite leave. Evidence of this can include an indefinite leave endorsement, open date stamps after indefinite leave had been granted and records in databases and paper files showing indefinite leave has been granted. They also need to see photographic evidence confirming the applicant's identity and evidence they have not lost their indefinite leave due to absences from the UK (paragraph 47). UKVI have told us Mr V did not submit evidence he had of his immigration status with his application. They said the caseworker made every effort to obtain this evidence, writing to Mr V's representative three times. They said the evidence was finally provided after a phone call. We will consider whether this was necessary.

71. Mr V had submitted his current passport and photos with the NTL application he made on 26 May 2017. This would have proved his identity, as required, and also contained an indefinite leave stamp from 23 June 2015. In addition to this, his Home Office records showed that on 13 September 2016 Immigration Enforcement had stopped enforcement action and cancelled Mr V's reporting after accepting he had indefinite leave. Mr V could not have been outside the UK for more than two years after Immigration Enforcement accepted his indefinite leave. The time between 13 September 2016 and 26 May 2017 is obviously less than two years. So Mr V (and his Home Office records) had provided everything the guidance requires: evidence of indefinite leave, evidence of his identity and evidence he had not lost his indefinite leave due to absences.

72. UKVI's request for evidence beyond this - at one point they asked for evidence of his residence in the UK dating back to 1990 (paragraph 25) - went beyond what was required by their own guidance. *Our principles* say public bodies should follow their own policy and procedural guidance, whether published or internal. We find UKVI were acting outside their own process here and that this was maladministration.

73. When UKVI considered Mr V's later application for British Citizenship, they did so under the Windrush Scheme. To apply under this scheme Mr V needed to be a Commonwealth citizen and to be settled in the UK before 1 January 1973. We can see from the notes that the second of these criteria was not immediately obvious to the caseworker considering Mr V's application.

74. We saw earlier that information provided to Immigration Enforcement about Mr V's work history in the UK from 1962 onwards was not considered or recorded at the time. The recent NTL application he made had looked at evidence of his residence between March 2001 and 28 November 2017 when the application was granted. The caseworker considering his citizenship application therefore made the decision to write and request the information they needed, in line with their guidance. We appreciate that to Mr V and his representative this would have appeared as yet another unnecessary hurdle to overcome after so much had gone wrong. However, looking at the actions of UKVI in relation to this application in isolation, we do not think their actions here were so poor as to be maladministration.

### **Ms V's complaint about UKVI's complaint handling**

75. UKVI and Immigration Enforcement accept their complaint handling did not follow their own complaint handling guidance. This says they should have responded to the complaint in 20 days. If this was not going to be possible they should have told Mr V's representative this and then provided updates until the case was closed. In reality, Mr V did not receive a response to his complaint until 8 May 2019 - nearly six months later. UKVI and Immigration Enforcement did not provide updates or explain why this delay happened. They sought responses to the complaint from various teams in December 2018, but it then seems to have been forgotten. Certainly, there is no record of any action. Even after Mr V's representative made a second complaint specifically about the delay in February 2019 there was still a long wait for any response, with no updates provided. Clearly this was not in line with UKVI and Immigration Enforcement's own complaint management guidance and we find this was maladministration.

76. As well as the long and unexplained delay, we cannot say UKVI and Immigration Enforcement had attempted to '*investigate fully and respond to all the issues raised*' in line with their complaint handling guidance (paragraph 49). By the time of the complaint responses in May and then June 2019, the Windrush scandal was well documented - in fact the Windrush Taskforce had been set up to address the problem. Yet there was no acknowledgement in their responses of the profound effect on Mr V of what had happened, and no clear explanations as to why a man who had come to the UK in 1962 and spent more than five decades living and working in this country with indefinite leave, was told he was going to be forcibly removed.

77. As we have seen above, the failings we have identified in the handling of Mr V's case echo many of the wider systemic problems highlighted in the Lessons Learnt Review: the wrongful targeting of older people who had arrived in the UK from Commonwealth countries decades ago, a lack of proper records, a culture of disbelief when dealing with applications, and the protracted difficulties experienced by those trying to prove their status.

78. Our principles say public bodies should acknowledge mistakes, apologise, explain what went wrong and put things right quickly and effectively (paragraph 52). UKVI's own complaint handling guidance says they should endeavour to investigate fully and respond to all the issues raised in a complaint. Given the seriousness of Mr V's complaint and what happened in his case we find that the response to his complaint falls far below these standards and amounts to maladministration. The extent of the Windrush Scandal became clear in 2017-18 and Mr V's complaint represented an opportunity for the Home Office to address the impact of very serious failings. The fact they did not join the dots to look at Mr V's complaint in the context of the Windrush Scandal or seek to acknowledge the impact of what had happened, even while upholding his complaint, is concerning.

## Injustice

79. We are upholding the complaints Ms V has brought to us on behalf of herself and her father, and will now look at the impact of what happened. We will look at how what happened affected Mr V and also the impact this had on Ms V.

80. Before he was told he had to leave the country, Mr V's life was that of a respected father and grandfather. A former HGV driver, Mr V was retired and able to spend time with the family who were so important to him. But everything about his life was about to be turned on its head.

81. For Mr V, being told he had to leave the UK after five decades spent here must have been utterly devastating. It is hard to imagine the true impact of a letter such as the one sent to him on 27 February 2016 (paragraph 15). He was stripped of his driving licence, required to report monthly and plunged into deep uncertainty about his life in the UK.

82. Ms V has explained the profound effect on her father. She described him as becoming depressed, anxious and withdrawn. When his driving licence was removed she said this continued further and he confined himself to the area around his house. The subsequent difficulties with the NTL, his naturalisation applications and the complaint process (which ultimately meant he did not get any closure about what had happened before he died) only added to this. It is particularly sad the last years of Mr V's life were characterised by a distressing struggle to validate his right to remain in a country he had the right to live in. The injustice to him caused by the maladministration we have identified, was extremely serious.

83. Ms V told us watching her Dad withdraw from life was incredibly upsetting for her. Mr V had been an HGV driver and he would drive the family everywhere but he started saying he would not come on trips. She said it was deeply upsetting to witness the rapid decline of her father.

84. Ms V said before her father was told he would have to leave the country he would regularly meet up with his grandsons - her sons - and take them to town. He was proud of their sporting achievements and would go to their competitions. He was her support network and would help them with homework and take them for days out. She said he no longer wanted to be around the family and did not want to see his grandchildren. She said her sons had looked up to him as a role model and were incredibly close to their grandfather. His withdrawal affected them emotionally as they could not understand why

he had stopped visiting and they lost their last years with their Grandad. Ms V said this was reflected in her son's behaviour which was extremely stressful for her. She said it also affected her family in practical ways as Mr V had driven them around and helped with their lives - then the roles reversed.

85. Ms V told us her young daughter's relationship with her grandfather was cut short and she missed out on the opportunity to get to know him properly. Ms V has described the emotional turmoil she experienced as a result of these events. She told us she had difficulty sleeping and suffered from low mood and anxiety over a long period as she battled to hold everything together and reassure both her children and her father, despite being scared herself that her father would be removed from their lives. She said it was incredibly stressful to try and explain to her children what was happening when she did not understand herself why her father was being treated in this way.

86. The huge, detrimental effect UKVI and Immigration Enforcement's actions had on Mr V is clear. This went beyond his own circumstances to deeply affect his daughter. Ms V has described how she and her children felt their father and grandfather had been stolen from them in the last years of his life. This has led to a serious, lasting and on-going emotional impact for Ms V. This began in 2015-2016 as she witnessed her father withdraw from his life and family relationships, profoundly affecting her and her children, and has continued to this day, deeply impacting her last years with her father and her on-going memories of him.

## Recommendations

87. In considering our recommendations, we have referred to *our Principles for Remedy*. These state that where poor service or maladministration has led to injustice or hardship, the organisation responsible should take steps to put things right.

88. Our Principles say that public organisations should seek continuous improvement, and should use the lessons learnt from complaints to ensure they do not repeat maladministration or poor service.

89. We have found maladministration in three main areas:

- Decision-making, where relevant considerations were not taken into account.
- Record keeping, where there was a failure to record Mr V's status, the decision-making relating to his case and the evidence he provided.
- Complaint handling, where there was delay, a failure to respond to all the issues raised, and a failure to attempt to put right what had gone wrong.

90. In considering systemic recommendations we have taken into account that a number of reports have looked at the events leading up to the Windrush scandal and identified key lessons and recommendations for the Home Office to take forward. These include Wendy Williams' *Lessons Learned Review* and the Equality and Human Rights Commission's recent assessment of hostile environment immigration policies.

91. In response to the recommendations from Wendy Williams' *Lessons Learned Review* the Government committed to a comprehensive improvement plan, published in September 2020. This includes a commitment to identify those affected by the Windrush scandal and to help people affected resolve their status. The improvement plan includes a number of commitments in terms of decision-making with the Home Office pledging that they will put people first and take proper account of the complexity of citizen's lives in order to make the right decisions. The improvement plan also includes details of how the Home Office intends to better manage its records. These include moving to a single digital repository for information and training and support for staff on good information and records management practice.

92. Because of this we do not consider it is necessary to make further recommendations in relation to decision-making or record keeping. We note Wendy Williams will return to the Home Office to review their progress in implementing her recommendations in September 2021.

93. In terms of complaint handling, the Home Office made a commitment to reviewing the Borders, Immigration and Citizenship system complaint process. They have told us that they have now completed this review, conducted by the Government Internal Audit Agency. They said they are taking forward a series of improvements designed to ensure the complaints process is clearly signposted for customers, that the process for responding is more efficient and informative and that they gather and use the insight they receive from customers more effectively. They said they have noted how other government departments introduced an Independent Complaints Examiner (ICE) to

enhance the transparency and integrity of their complaints system and said they are exploring a proposal for a Home Office model. They said these two changes are a progressive cultural step for the department, making them better at treating their customers with respect and identifying issues early and learning from their mistakes.

94. As part of this positive work to improve the complaints process and alongside the changes already underway, we recommend that within three months UKVI and Immigration Enforcement:

- Explore the lessons learnt in this case where there was a failure to respond properly to the serious issues raised and no attempt to put right what had gone wrong.
- Consider how learning from complaints with Windrush themes can be identified so that the complaints process is part of developing a learning culture and a method for continuous improvement (paragraph 54), as well as an opportunity to provide fair outcomes for those affected.
- Report back to us, Ms V and the Chairs of the Public Administration and Constitutional Affairs Committee and the Home Affairs Select Committee on the lessons learnt from this complaint.

We also recommend they share this learning with Wendy Williams when she reviews their progress against her recommendations.

95. Our principles say that public bodies should promptly identify and acknowledge maladministration and poor service, and apologise for them. This includes expressing sincere regret for any resulting injustice or hardship. We recommend that within six weeks UKVI and Immigration Enforcement should:

- Write to Ms V to apologise for the impact the maladministration we have identified in this report had on her father, Mr V, and herself.

96. Our principles state that public organisations should ‘put things right’ and, if possible, return the person affected to the position they would have been in if the poor service had not occurred. If that is not possible, they should compensate them appropriately.

97. To determine a level of financial remedy, we review similar cases where similar injustice has arisen, along with our severity of injustice scale.

98. Following this review, we recommend that, within six weeks, Immigration Enforcement and UKVI should:

- Pay Ms V £10,000 in recognition of the severe distress she has suffered over an extended period of time.

In deciding on this amount we have considered our Severity of Injustice scale. We have particularly taken into account the impact of what happened on Mr V’s relationships with Ms V and her children in the last years of his life and the serious and lasting impact of this on Ms V.







## Parliamentary and Health Service Ombudsman

Citygate  
Mosley Street  
Manchester  
M2 3HQ  
United Kingdom

Telephone: 0345 015 4033

Textphone: 0300 061 4298

Fax: 0300 061 4000

Email: [phso.enquiries@ombudsman.org.uk](mailto:phso.enquiries@ombudsman.org.uk)

[www.ombudsman.org.uk](http://www.ombudsman.org.uk)

Follow us on:



If you would like this document in a different format, such as Daisy or large print, please contact us.