Parliamentary and Health Service Ombudsman

Final Investigation Report - UK Visas and Immigration

Final Investigation Report – UK Visas and Immigration (October 2020)

Contents

Summary of our findings

1. Mr [redacted] applied to the Windrush Scheme in May 2018. UKVI gave an undertaking its Windrush Taskforce (the Taskforce) would complete Windrush Scheme applications within two weeks of receiving all the evidence. It recognised that some cases would take longer because of their complexity.

2. The Taskforce completed its evidence gathering by 14 September 2018. It proposed to refuse the application but then took 11 months to give Mr [redacted] its decision. We have not seen evidence that the time taken was justified by the complexity of Mr [redacted]'s case. We have found there was an unreasonable delay, which amounts to maladministration.

3. In reaching our decision we have considered UKVI's claim the time taken was justified and unavoidable because:

- Mr [redacted]'s case was complex
- there were ongoing activities during that 11-month period
- refusal decisions had to be submitted to the Immigration Minister/senior civil servant for sign off in batches and could not be made individually
- Mr [redacted]'s case could not be expedited because of that process and because the outcome was not going to assist him.

4. The evidence we have seen does not support those justifications for the time taken. We do not agree with UKVI that the delay on Mr [redacted]'s case was unavoidable.

5. We have found the delay in giving the decision led to delay in enabling Mr [redacted] to take alternative steps to resolve his immigration status. After he received the refusal decision, he provided a more detailed account of his entry into the UK and early years and his Solicitor gathered additional documentary evidence of residence in the UK from [redacted]. This resulted in the Home Office making a reasonable grounds decision under the National Referral Mechanism (NRM) that Mr [redacted] is a potential victim of modern slavery. We have found that without UKVI's delay, Mr [redacted] would have received the support provided by that mechanism around 10 months sooner.

6. We have also found that UKVI sent Mr [redacted] and his MP misleading information about whether Mr [redacted] would be able to access public funds and services while waiting for his application to be decided. Those letters gave Mr [redacted] false hope that he would be able to access benefits and resulted in him wasting his time attempting to do so.

7. Finally, we have found that UKVI's actions showed it did not treat Mr [redacted] with respect and its delays resulted in a loss of dignity and autonomy. We have upheld both complaints made by Mr [redacted].

8. We have made the following recommendations:

- UKVI reviews learning from this case to:
    - remove any unnecessary delays in the Windrush Scheme process
    - improve the level of openness and transparency in the Windrush Scheme process with a view to telling applicants as soon as possible when it proposes to refuse the application
    - ensure it provides accounts of its actions that meet our *Principles of Good Administration* of being open, accountable and truthful.
- UKVI shares the outcome of the actions above with us and with the Chairs of the Public Administration and Constitutional Affairs Committee and the Home Affairs Select Committee (HASC)
- UKVI apologises sincerely to Mr [redacted] for the injustice caused by its actions
- UKVI makes a financial payment to Mr [redacted] to reflect the material and emotional injustice he has suffered.

9. UKVI has told us it accepts the fundamental learning points from our investigation. We are pleased it also agrees with us that Mr [redacted] deserves an unreserved apology and financial remedy for the injustice he has suffered. UKVI's response to our investigation is set out in Annex A.

The Windrush Scheme

10. In April 2018 the Prime Minister and the Home Secretary apologised to the people affected by the Windrush scandal. This related to people lawfully entitled to live in the UK but who could not prove it because of the Home Office's policy at the time of not providing documentation. The lack of official documentation meant some people lost their jobs, housing and access to public funds and services. The Home Secretary committed to resolving this situation with urgency and purpose.

11. The Home Office's actions included four corrective measures. These were:

- **the Windrush Taskforce and Windrush Scheme**
- **a historical cases review**
- **an exceptional payments policy**

- **the Windrush Compensation Scheme.**

12. Mr [redacted]'s case relates to the Windrush Taskforce and the Windrush Scheme. The purpose of these was to help people prove their right to remain in, or return to, the UK.

Mr [redacted]'s complaint

13. Mr [redacted] said UKVI delayed its decision on his May 2018 application for indefinite leave to remain made under the Windrush Scheme. He says this delay in resolving his immigration status meant he remained destitute, unable to work and unable to return to normal life.

14. Mr [redacted] also said UKVI said he could claim benefits when it knew he could not do so because he had no way to prove his immigration status. He said it hurts that UKVI gave information it knew was wrong.

15. Mr [redacted] wanted UKVI to make a decision. This has now happened; UKVI refused his application on 30 August 2019. Mr [redacted] still wants to regularise his immigration status so he can get his life back.

Background to the complaints

16. Mr [redacted] heard of the Windrush Scheme in May 2018. At this time he was unemployed, unable to access benefits and homeless with a short-term place in a shelter. Mr [redacted] told us his problems started in 2014 when he was no longer able to work because of a lack of documentation proving his immigration status.

17. Mr [redacted] said he has been in a desolate situation since his status was questioned. He said he grew up in the UK, studied, went to college, ran a business, worked for many years, had his own house and was a qualified tradesman. He has now lost everything. Mr [redacted] said he felt worthless, broken, with no hope or prospects.

18. Mr [redacted] applied to the Windrush Scheme on 18 May 2018 helped by a charity that provides free legal advice and representation to asylum seekers, refugees and other migrant groups. A solicitor from the charity (Mr [redacted]'s Solicitor) gathered evidence and documented Mr [redacted]'s account of his arrival and time spent in the UK. Mr [redacted] told us he had no evidence of his own.

19. Mr [redacted] said UKVI told him at the appointment to enrol his biometric details on 29 May 2018 that it would take six weeks to get a decision. He said three other people at his shelter got their decisions in four weeks. Mr [redacted]'s MP's office told us they had helped other constituents with their Windrush Scheme

applications. They had seen cases being resolved where less evidence had been provided than in Mr [redacted]'s case. They could not understand why UKVI took so long to make a decision.

20. UKVI refused Mr [redacted]'s application on 30 August 2019. It said it was unable to confirm he fell within any of the groups eligible for consideration under the Windrush Scheme. This was because it was unable to find any Home Office records to confirm Mr [redacted] had entered the UK in 1970 [redacted], as claimed. UKVI said it was also unable to conclude he was living and settled in the UK before 1 January 1973 because of an absence of evidence. Finally, UKVI said it accepted Mr [redacted] had been continuously resident in the UK since 1986 but there was no record of him having settled status.

21. UKVI's refusal letter set out the next steps available to Mr [redacted]. He could request a review of the decision if he thought UKVI had made an error. Alternatively, UKVI said it was satisfied Mr [redacted] had been continuously resident in the UK for more than 20 years and could make an application for leave to remain based on his private life.

Developments since UKVI's refusal decision

22. Mr [redacted] requested a review of the refusal decision. His Solicitor submitted further representations and evidence. These included greater detail of Mr [redacted]'s arrival in the UK, the time spent here and his identity. The evidence also included a statement given by Mr [redacted] for the NRM that he was a victim of human trafficking and modern slavery. That referral was made by his local authority in September 2019.

23. UKVI upheld its decision to refuse the application. It said the grounds raised, that Mr [redacted] was a victim of human trafficking, were outside the scope of the review.

24. In October 2019 the Home Office made a reasonable grounds decision that Mr [redacted] was a potential victim of human trafficking and modern slavery. This was based on his account of arriving in the UK in 1970 and available evidence. Under the NRM, the Home Office should make a conclusive grounds decision within 45 days of the reasonable grounds decision. It is still to do so. Mr [redacted] has been told the Home Office is currently taking up to two years to make conclusive grounds decisions.

Evidence we have considered

25. The facts and findings set out in the report are based on the following evidence:

- **Mr [redacted]'s complaint form, correspondence, and telephone conversations with us**
- **Correspondence and telephone conversations with Mr [redacted]'s MP's office**
- **Correspondence and telephone conversations with Mr [redacted]'s Solicitor**
- **UKVI's records of Mr [redacted]'s application that have been provided to us (this does not include all relevant records it holds)**
- **UKVI's responses to our enquiries and telephone conversations with us**
- **National Audit Office's *Handling of the Windrush situation*, 5 December 2018**
- **Part 3 and Annex I of the *Windrush Lessons Learned Review*, 19 March 2020**
- **UKVI's monthly updates to the Home Affairs Select Committee**
- **Comments on our provisional views made by UKVI, Mr [redacted], his MP and Solicitor.**

26. 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:

- **The Home Office's *Windrush Scheme Casework Guidance* (versions 1, 2 and 3 published on 24 May 2018, 22 August 2018 and 10 June 2019)**
- **Statements made, and answers given, in Parliament by Home Secretaries and Home Office Ministers**
- **The Ombudsman's *Principles of Good Administration* and *Principles for Remedy***
- **The Ombudsman's *Our guidance on financial remedy*.**

How we have determined this complaint

27. Our role in an individual case is to determine whether maladministration has led to an injustice. This means looking at what happened and establishing what should have happened. We then assess whether the gap between them was so significant that it should be deemed maladministration. We then look at the consequences of this and determine whether this resulted in a negative impact on the complainant (and others).

28. In the context of a complaint of delay, taking a long time to do something is not automatically maladministration. Instead, we will consider the reasons for the time taken, how the delay is managed and whether any actions have been taken to mitigate any negative impacts the delay has caused.

Issue 1 — delay in deciding the application

What UKVI did with Mr [redacted]'s application

29. We have set out below the Taskforce's key actions in its consideration of Mr [redacted]'s application. This is a summary and does not mention everything that happened, but no significant events have been left out. This information is important because UKVI has not accepted there was an unreasonable delay in its action and does not accept that the delay amounts to maladministration.

30. The Taskforce's actions fall into two periods. The first is its actions up to 26 September 2018. During this period it was actively considering the application and gathering information. In the second period from 26 September 2018 until 30 August 2019 the Taskforce was finalising its refusal decision.

Key events up to 26 September 2018

29/05/18 Mr [redacted]'s Solicitor provided a letter setting out Mr [redacted]'s account of his arrival in the UK and his early years. This included:

'[redacted], *Mr* [redacted] *was sent to the UK by his parents to live with his [family]. Mr* [redacted] *says that he travelled on his parent's passport*.

'*Thereafter, Mr* [redacted] *recalls initially attending a primary school, [and the area around the school] (although this has proved impossible to trace). Thereafter he was home schooled until he reached adulthood.*

'*When he reached* [redacted]*, Mr* [redacted] *left the home. When he did so, he says that* [he was given] *a national insurance card with his name on it and NINO* [number given].'

The letter went on to say Mr [redacted] had studied, worked, set up a business and owned property in the UK. It said he became unemployed in 2017 because of a lack of Home Office documents. He then attempted to claim welfare benefits and was told by the DWP his NINO was not valid. His Commonwealth country passport had been stolen and could not be replaced.

Mr [redacted] provided documentary evidence of his residence for two periods of 16 and 9 years respectively.

06/06/18 UKVI completed its initial Home Office identity checks and consideration of Mr [redacted]'s evidence of residence. It requested

HMRC and DWP checks along with further police national computer (PNC) and security checks. It noted Mr [redacted]'s identity might need further investigation.

14/06/18 UKVI wrote to Mr [redacted]'s Solicitor in response to a request for an update. Its letter said:

'*As previously advised we are working with applicants to obtain evidence of their life in the UK and this includes liaising with other Government Departments to obtain further information.*

'*We are making further enquiries on your client's behalf therefore we are unable to confirm his status today. If, in the meantime, you have any further evidence of his residence in the United Kingdom, please submit this to our office as soon as possible.*'

03/07/18 A caseworker reviewed the case and discussed it with a senior caseworker. They noted it was for potential refusal as UKVI had only seen evidence of residence from 1986 and there was no evidence Mr [redacted] had settled status.

03/09/18 Mr [redacted]'s Solicitor emailed UKVI. They understood Mr [redacted] had submitted sufficient evidence of residence in the UK to show he met one of the Windrush Scheme criteria (that is, a person of any nationality who arrived in the UK before 1988) and should be given a document confirming his settlement.

03/09/18 DWP and HMRC checks were completed and found no trace of Mr [redacted]. A senior caseworker decided they needed to contact Mr [redacted]'s former employer. This was to check if the employer had any PAYE issues.

07/09/18 UKVI told Mr [redacted]'s MP that it did not need any information from him at this time.

14/09/18 UKVI learned the former employer could not give any information about the NINO used by Mr [redacted] because its payroll systems did not cover that period.

21/09/18 A caseworker said Mr [redacted]'s application needed to be reviewed by a senior caseworker '*to see if his pre 73 account seems credible and if we can accept evidence from 1986-2002, 2009-date*'.

26/09/18 The senior caseworker's review found that the earliest record they had of Mr [redacted]'s residence in the UK was subsequent to 1973.

Requesting additional evidence

31. The Windrush Taskforce took no action on Mr [redacted]'s application in October or November 2018. Meanwhile, on 5 November 2018, UKVI's MP correspondence team told Mr [redacted]'s MP his application was still under consideration using the evidence already available. It continued:

> '*However, if in the meantime Mr* [redacted] *has any further evidence of his residence in the UK from 2002 to 2009, it is open to him to submit this evidence in order to assist us in confirming his eligibility under the Windrush Scheme*.'

32. There is no record of why this evidence was requested at this time and why it was needed. UKVI told us '*evidence from this period may have helped establish whether Mr* [redacted] *had demonstrated his settled status previously and therefore qualified within the Windrush Scheme*'. We note this point. However, as shown below, UKVI did not use the information provided to make any further enquiries that could have helped establish Mr [redacted]'s settled status or residence before 1986.

33. In response to the request, Mr [redacted]'s Solicitor provided evidence of Mr [redacted]'s residence, banking, education and employment in that period. UKVI received this further information on 30 November 2018 (and again on 3 December 2018). A caseworker considered the further information on 4 December 2018. The caseworker noted:

> '*It is my understanding that we should now be able to accept the residence for* [no time limit] *purposes as we can confirm that the* [applicant] *was present from 1986. However [we] cannot be satisfied with any earlier claim. It is however still unclear whether* [applicant] *entered with settled status*.'

34. The caseworker reviewed matters with a senior caseworker and recorded that:

> '*As we cannot confirm* [applicant's] *status in the UK on his claimed entry in 1978 and only have evidence placing him in the UK from 1986 we cannot be satisfied that he is eligible for any product. Therefore placed back in refusal hold 12*'.

The pen picture

35. On 14 December 2018 the Windrush Taskforce wrote a 'pen picture' for Mr [redacted]'s application. We understand this was prepared by a senior executive officer and used for the refusal sign-off process. This set out UKVI's position on his application as follows:

> '*Mr* [redacted] *is a* [redacted] [commonwealth] *national who claims to have entered the UK in August or September 1970* [redacted]. *No evidence of*

arrival has been provided. No passports or official documentation has (sic) *been provided as evidence of his identity. No evidence of ever being granted any form of leave in the UK has ever been provided and no record can be found in Home Office records.*

'*Mr [redacted] applied under the Windrush scheme on 18 May 2018 and attended an appointment at Croydon PSC on 29 May 2018.*

'*In support of his application Mr [redacted] provided evidence of his UK residence from 1986 to date. CID Note of that date lists evidence.*

'*HMRC & DWP Checks have been carried out but show no trace. Mr [redacted] has stated that this is because he recently found out that the NINO he was given by a family member was not genuine.*

'*On 14 June 2018 the taskforce wrote to Mr [redacted] requesting further evidence of residence. In response his representative… advised that Mr [redacted] is homeless and unlikely to obtain any further evidence.*

'*On 14 September 2018 the taskforce spoke with Mr [redacted]'s former employer in an attempt to find out what NINO he was using. The taskforce were advised that Mr [redacted]'s former employers have had new payroll systems installed recently which does not cover the period 1999-2002 so they were unable to advise in relation to the NINO.*

'*In summary, Mr [redacted] has provided no passports or official documentation as evidence of his identity. Furthermore he has only provided evidence of residence in the name of [redacted] from [redacted] to date.*

'*As Mr [redacted] has failed to provide evidence of being resident in the UK as a minor he cannot be considered as a child of Windrush.*

'*Likewise, as Mr [redacted] has failed to provide evidence of entering the UK before January 1973 and no evidence that he has ever had lawful residence in the UK he cannot be considered eligible for any product under the Windrush scheme in his own right.*'

Events from December 2018 to 30 August 2019

36. There is no record of the Taskforce taking any other action on Mr [redacted]'s application in December 2018. The next action was recorded by a caseworker on 3 May 2019. They had obtained the file to deal with an enquiry from Mr [redacted]'s MP earlier that year and the response that was sent on 26 March 2019. UKVI told us it investigated what happened around this time and said the senior caseworker was actively investigating this element of the application between March and May 2019. UKVI provided no evidence to support its claim and did not explain whether this had any impact on the timing of the refusal decision. The 3 May 2019 file note says:

> '*I wanted to look at whether* [redacted] *may have been a pre-73 arrival as this is who he claims to have joined when entering in 1970 as a minor. I could find no records of* [redacted] *on any systems and nor am I going to request that Mr* [redacted] *contacts* [redacted] *as his claim is that he used to maltreat him* [redacted]*. I do not believe that any further information would be able to be obtained and therefore the outcome of a proposed refusal remains. This is currently being added into a submission by SEOs.*'

37. UKVI also explained to us this check was done because it was aware of an upcoming change in the Windrush Scheme Casework Guidance. This change would include children who had come to the UK with a close relative instead of a parent in the Windrush Scheme. When looking at this, the caseworker missed that Mr [redacted]'s application said the relative he travelled with had died. UKVI told us it accepted the caseworker should have noticed this fact but this was still a valid line of enquiry that may have helped to confirm Mr [redacted]'s eligibility under the Scheme.

38. UKVI has told us that, on 9 July 2019, a senior executive officer at UKVI asked a manager to review the first draft of the refusal submission for approval by the Immigration Minister. This included Mr [redacted]'s case along with 30 other cases. After feedback and further versions, the manager cleared the submission for wider circulation on 22 July. The submission was sent the next day to the Home Office's legal advisers, policy team, press office, MP correspondence team and the High Profile team (this includes the Windrush Scheme Vulnerable Person Team). All the responses were received by 26 July.

39. The submission was put to the senior civil servant for approval on 6 August 2019. It explained:

> '*The individuals within this submission are not eligible for a consideration under the Windrush Scheme and have either misinterpreted the eligibility criteria or may have taken this opportunity to lodge an application that is free of charge.*'

and

> '*Several individuals in this submission claim to have been resident in the UK for a significant period and may have a claim for leave to remain under family or private life grounds under the Immigration Rules should they make the appropriate application. For cases in which there is a manifestly strong claim we will support the issuing of a Windrush refusal with a direct telephone call to advise the individual that the best way to regularise their status in the UK would be to submit a human rights application.*'

40. UKVI has told us the senior civil servant approved the refusal decision on some cases on 14 August but had questions about others, including Mr [redacted]'s case. These questions were discussed, and the approval was given, on 21 August. UKVI sent its decision to Mr [redacted] on 30 August. UKVI has not provided us with all of the records covering these actions.

41. UKVI followed up its refusal decision with a telephone call to Mr [redacted]'s Solicitor on 5 September 2019. This was to explain that Mr [redacted] could apply for leave to remain on human rights grounds. That is, UKVI believed he had a manifestly strong claim to regularise his status via this route.

UKVI's handling of requests to expedite the case

42. Mr [redacted]'s MP and Solicitor made repeated requests to UKVI for updates on progress with the application. They also asked for his case to be expedited given his circumstances of being homeless, destitute and without access to public funds. We believe that how UKVI responded to these requests is a relevant consideration when looking at how it dealt with the delay in giving its decision.

43. We can see the Taskforce ignored one request for an update and on other occasions said it was unable to contact Mr [redacted]'s Solicitor. We have also seen that UKVI told Mr [redacted]'s MP it was taking actions that are not supported by the evidence we have seen. The relevant events are:

> 05/11/18 **It explained to Mr [redacted]'s MP that Windrush Scheme applications are expedited above other nationality and settlement applications. It is only able to prioritise a Windrush case above other Windrush cases where there are compelling compassionate circumstances such as urgent need to travel to visit a terminally ill relative or attend a funeral.**
>
> 27/11/18 **The Windrush Taskforce took no action on Mr [redacted]'s Solicitor's request for an update. It simply recorded '***placed back in refusal hold 12***'.**
>
> 10/12/18 **UKVI told Mr [redacted]'s MP his:**
>
> > *' … application is still under consideration … there are a number of checks that must be completed before we can finalise an application. Some of these enquiries need to be made with third parties and the length of time they take to complete is not always within our control. We are committed to resolving Windrush Scheme applications within two weeks once we are in receipt of all the necessary information to process the case.'*
> >
> > - **There is no evidence UKVI carried out third-party checks at this time.**
>
> - 21/12/18 **The Windrush Taskforce told the Windrush Vulnerable Person Team that Mr [redacted]'s case was still under consideration and could not be expedited.**
>
> - **No reasons were given for why it could not be expedited.**

- 14/01/19 **UKVI told Mr [redacted]'s MP that '***on occasion cases will take exceptional time limits'* **and said the caseworkers received information from internal checks in late December.**

  - **There is no evidence that information was received from internal checks in late December. UKVI has told us it accepts that this note is incorrect and it understands this was a genuine error and was in no way intended to mislead.**

- 08/02/19 **UKVI told Mr [redacted]'s MP:**

  - *' … it is necessary for us to undertake and routinely conduct checks with other government departments and external agencies. This may mean that we hold some applications for longer than normal, but in some cases, it is essential that we do so. The extent and length of time taken to complete checks varies according to the circumstance of each application.*

  - *'Please reassure Mr [redacted], that his case is under active consideration, and that he will be notified as soon as we are able to make a decision.'*

  - **There is no evidence UKVI were undertaking any checks with other departments or external agencies at this time.**

- 14/02/19 **an internal UKVI note records:**

  - *'I'm aware your office has been in touch with the applicant's MP representative. I'm currently in liaison with the solicitor, who expressed in numerous occasions his dissatisfaction with the case. Is my understanding correct, that this case will be refused? I just raised the point that there are various things that need to be looked at. However, if this isn't up for refusal, can I get an update with its progress? It's coming up to 9 months since the application was first opened.'*

  - **The Windrush Taskforce's response is '***email sent to advise we are unable to contact applicant or rep at this time***'. No reasons were recorded for why it was unable to do so.**

- 26/03/19 **UKVI told Mr [redacted]'s MP:**

  - *'Whilst the Government made a pledge to deal with the Windrush Scheme cases promptly, and "within two weeks of receipt of all necessary information", it may be helpful to explain that 'necessary information' does not just relate to the information the applicant is able to provide, it can also relate to other information which needs to be obtained in order to make a fair and correct decision.*

- *'Please assure Mr [redacted] that his application has been prioritised, and we anticipate a decision will be made shortly. We will inform Mr [redacted] once a final decision has been made.'*

44. Between April and August 2019 UKVI's response to update requests was that it was unable to provide a timescale for its decision.

UKVI's comments on the complaint of delay

45. During the investigation, UKVI provided us with its comments on the allegations made. It did not accept there were failings in its actions or that there was an unreasonable delay. Its comments are set out below.

46. UKVI explained:

> *'The Taskforce was focussed on regularising status as quickly as possible, where information is available to support any claim. Significant progress has been made in reducing the numbers of outstanding cases, including refusal decisions. It may be helpful to explain that 54% of the Windrush applications submitted in May 2018 were decided on the same day the individual enrolled their biometrics, and 76% were decided within two weeks biometrics being provided.'*

47. In response to our proposal to investigate Mr [redacted]'s allegations, UKVI told us the delay in deciding this application was '*unfortunate*' but:

> *' … we have been attempting to resolve his application. We have been making a number of enquiries to try to confirm Mr [redacted]'s status in the UK but this has been difficult as a result of the lack of evidence to place him in the UK as claimed, and also as a result of Mr [redacted] having used a false National Insurance number since he started work in the UK.'*

48. We put it to the Taskforce that there seemed to be a significant period of inactivity after 26 September 2018. The Taskforce said it accepted the case had taken longer than it had anticipated to conclude but said Mr [redacted]'s case was complex and it did not accept the delay was unjustified. The Taskforce said a timeline provided to us showed there were ongoing activities on his application between 26 September 2018 and 30 August 2019. It also said:

> *'Given the number of proposed refusals under the Windrush Scheme it would have been impractical to draft a submission for every case individually. Had this been the only refusal under the Windrush Scheme it may have been possible to progress this application quicker. Furthermore, the refusal process was agreed near the end of September 2018 and it was decided when composing submissions to the Immigration Minister, to group similar cases together into "batches".'*

49. The Taskforce continued:

> *'Mr [redacted]'s application was more complex than others due in part to the fact that he claimed to be eligible under the Windrush Scheme, but could not sufficiently demonstrate this. As such his case required further work before we were in a position to submit a proposal to refuse. Additionally, on a number of occasions between September 2018 and August 2019, we received additional evidence from Mr [redacted] and his solicitor in support of his Windrush claim. This additional evidence required further consideration before we could reach a final decision.'*

50. We discussed this with the Taskforce. It told us Mr [redacted]'s case was complex and in a cohort of around 30 similar cases that were equally complex. The Taskforce said it was also dealing with other cohorts of cases that were also complex.

51. We asked the Taskforce why it did not expedite its decision. It said the outcome of his application was not going to assist Mr [redacted]. It was then not possible to submit his case individually for sign off. The Taskforce said it has experience of expediting decisions. It said in normal nationality casework it is possible to submit an individual case for approval by senior staff.

52. Given that explanation, we asked the Taskforce if the delay on Mr [redacted]'s case was a result of the refusal sign-off process it had set up. It told us the process was a practical approach that took account of the operational considerations of dealing with the volume of applications it had to consider.

53. The Taskforce had told us in April 2019 it was minded to refuse Mr [redacted]'s application but was satisfied he had lived in the UK since 1986. This meant he could make a different application for leave to remain based on his private life. The Taskforce told us it would not advise Mr [redacted] of this route to resolving his status until his Windrush Scheme application had been decided.

54. We asked the Taskforce why it did not tell Mr [redacted] it proposed to refuse his application but an alternative route was potentially available to him. The Taskforce said it only had a proposed refusal decision from September 2018 and it could not act on this until the final decision had been made. This was because the refusal might not be agreed and up to the point where a decision was made there was always the possibility that fresh evidence might be submitted that could change the decision.

55. The Taskforce said that even though Mr [redacted]'s application was unsuccessful, it did what it could to advise him about making an alternative application on private life grounds and how to get the fee waived because he was destitute. The Taskforce told us those additional lines of advice were added to the refusal letter. The Taskforce said this was not something it normally did and was added for Mr [redacted]'s case only. UKVI has since clarified that its Taskforce provides this support and guidance to those who appear to qualify under another route, as well as for those who are identified as vulnerable.

56. The Taskforce told us there was no published service standard in the Windrush Scheme. It said this was unlike other categories of applications, which included a published service standard, for example, indefinite leave to remain.

Our findings on delay

Service standard

57. Service standards are an important benchmark for assessing whether there has been an unreasonable delay. In April 2018 the Home Secretary said the Windrush Taskforce would be tasked with resolving applications within two weeks when evidence had been provided. This commitment was repeated in further statements to Parliament. UKVI's first note on Mr [redacted]'s file said the caseworker should aim to resolve his case within two weeks of all the information being provided.

58. The same commitment was in UKVI's correspondence to Mr [redacted]'s MP. However, the letter of 26 March 2019 clarified the two-week pledge '*does not just relate to the information the applicant is able to provide, it can also relate to other information which needs to be obtained in order to make a fair and correct decision*'.

59. On 30 October 2019 the Government reconfirmed this commitment, saying:

> *' … we gave an undertaking to complete applications within two weeks of receiving all the evidence being gathered. Usually this will be from the point that a person's biometrics are taken, although in some cases further evidence is supplied by the applicant or other sources after this point. The Home Office has always acknowledged that some decisions will fall outside these timescales due to their complexity.'*

60. We accept complex cases may take longer to consider and reach a decision on. However, it is important to identify where that complexity lies. UKVI's November 2018 update to HASC said:

> *'Numbers of decisions have continued to reduce during September as we move through the outstanding applications made before the Windrush Scheme launch. These outstanding cases were more complex cases which required more detailed information gathering before we could issue documentation to the individuals, hence a greater number of these decisions took longer than two weeks.'*

61. The Taskforce's responses to this case also described complex cases as those that require more detailed information gathering before a decision can be made.

62. When commenting on our provisional views, UKVI told us its Taskforce was '*focused on regularising status as a priority where possible and aims to conclude applications within two weeks of receiving information necessary to issue documentation*'.

63. Taking all of that evidence into account, we find there was a two-week service standard for the Taskforce to decide Mr [redacted]'s application. This was two weeks from when UKVI had all the information it needed.

Gathering information

64. Mr [redacted]'s application could not be decided immediately because he had not provided documentary evidence that proved the facts of when he entered the UK and whether he was continually resident here. This meant the Taskforce had to gather information to decide his application. If evidence was not available that proved matters of fact then it needed to decide the case on the balance of probabilities, taking into account the picture of life in the UK and evidence in the round.

65. The Taskforce told us its initial consideration of each application is done by a caseworker (at executive officer grade). They will carry out and consider the Home Office checks and request checks with other Government departments where necessary. The caseworker will discuss the evidence with a senior caseworker (at higher executive officer grade) and agree any further lines of enquiry. Where the application is to be refused, the senior caseworker will confirm there are no other lines of enquiry that should be taken.

66. The Taskforce, initially, made good progress with Mr [redacted]'s application. It completed its Home Office checks within two weeks and made timely enquiries to HMRC, DWP and Mr [redacted]'s former employer. The caseworker sought input from a senior caseworker on 3 July 2018 and 3 September 2018. The senior caseworker gave advice on contacting Mr [redacted]'s former employer to see if they had any record of problems with his National Insurance number. The Taskforce explained to us the intention of this enquiry was to see if there was a different National Insurance number used that could produce further lines of enquiry that could place Mr [redacted] in the UK before 1986.

67. The Taskforce's records show it completed its evidence gathering on 14 September 2018. It completed its consideration of that evidence on 26 September 2018. We have found no evidence of delay up to this point. It then took the Taskforce 11 months to issue its decision. We go on to consider the Taskforce's actions in this period and its explanations for the time taken.

The Taskforce's explanations for the time taken

68. The Taskforce took 11 months from having all the information it thought it needed to make its decision on Mr [redacted]'s application. This is well beyond the two-week service standard. It does not appear to show that the Taskforce handled the case with urgency and purpose. However, we note complex cases may take longer and UKVI has argued the delay was justified. We have carefully considered the points it has made.

Complexity

69. The Taskforce said the case was more complex than others because Mr [redacted] claimed to be eligible but could not demonstrate this. The Taskforce said this meant it had to seek further information (from DWP, HMRC and his former employer) before reaching a decision. As noted above, this information gathering work was completed by 14 September 2018 and does not explain the delay after this date.

70. We have considered whether there is any evidence of complexity in the Taskforce's consideration of Mr [redacted]'s application and what the evidence showed. The caseworker's note of 21 September 2018 suggests the Taskforce had to do two things: '*see if pre 73 account seems credible and if we can accept evidence from* [redacted]*x*'. This does not appear to be particularly complex and, in any event, the senior caseworker completed their consideration of the evidence on 26 September 2018.

Ongoing activities

71. UKVI told us there were ongoing activities in this period. It said these were:

03/12/18	receiving additional evidence of residence 2002 to 2009
04/12/18	considering additional evidence of residence 2002 to 2009
21/02/19	reviewing further correspondence from Mr [redacted]'s Solicitor
03/05/19	case reviewed to see if Mr [redacted] was a de facto parent.

72. There is no record of why UKVI's MP correspondence team had invited Mr [redacted] to submit evidence of residence for 2002 to 2009. We cannot see that this information was requested by the Taskforce to help it make a decision. However, this information meant that UKVI was now satisfied Mr [redacted] had been continuously resident in the UK for more than 20 years and would have a claim to remain here on human rights grounds. If UKVI was still gathering evidence at this point, it should have also invited evidence of residence before 1986. In any event, the Taskforce completed its consideration of the additional evidence the day after it was received. This does not suggest this involved significant ongoing work.

73. The correspondence received on 21 February 2019 was a request from Mr [redacted]'s Solicitor for the Taskforce to make its decision. The request repeated that Mr [redacted] was destitute and could not access public funds as UKVI's letter of 19 November 2018 was not accepted by DWP or his local authority. There is no record of the Taskforce taking any action on the Solicitor's request.

74. The record for 3 May 2019 relates to a caseworker checking whether [redacted] was a de facto parent. When commenting on our provisional views, UKVI told us the caseworker was actively investigating this issue between March and May 2019. It did not provide any evidence to support this claim and UKVI did

not explain how this impacted on the timetable for the refusal decision. We can see the caseworker found no trace of [redacted] and noted the proposed refusal remained. There is nothing in this record to suggest this activity involved significant ongoing work and it was certainly not part of any work that had been ongoing since September 2018.

75. Instead of those activities, it appears to us the key activity for the Taskforce was preparing its refusal decision. The casework guidance said if the applicant did not fall within one of the Windrush Scheme groups, the Taskforce must issue a letter explaining the reasons for this. The guidance also said the Taskforce should consider all the potential Windrush categories that could be relevant to the applicant.

76. The Taskforce prepared the pen picture dated 14 December 2018 that sets out details of the application, evidence and reasons for the proposed decision. We have no information about what work was involved in this or how long it took to complete. However, we think the work to prepare the pen picture cannot account for the delay between 26 September and 14 December 2018.

77. We have compared the pen picture to the refusal letter issued on 30 August 2019. There are no significant differences between the two and no indications of significant additional work that would explain the delay from December 2018 to August 2019.

78. For all of the reasons above, we have found the Taskforce's delay was not caused, or justified, by ongoing activities.

Unavoidable delay in the refusal process

79. The Taskforce said refusal decisions had to be submitted to the Immigration Minister or later the senior civil servant for sign off in '*batches*' and could not be made individually. It provided no details of why this process was brought in and how it worked and gave only a broad overview of some of the batches. Instead, it directed us to the explanations given in the monthly updates to HASC.

80. UKVI's September 2018 update to HASC shows it was already aware its refusal process had led to delays in completing cases. This said:

> '*I would like to reiterate that none of the refusals decisions have been made lightly, and all of them have had lengthy and detailed consideration. The decision to refuse in these cases has been checked and challenged extensively at operational level and been approved at Ministerial level. Policy experts have been engaged to ensure that all refusals are in line with our policies and guidance. While I am confident this has led to the correct decisions being made, I also acknowledge that it has led to unavoidable delay.*'

81. Subsequent monthly updates included the same explanation for refusal decisions experiencing unavoidable delay because of the checking and challenging

process and approval at Ministerial or senior civil servant level. UKVI's updates to HASC also said:

> ' … *there are some cases outstanding which, due to their complexity, are taking longer than anticipated to process. It is likely that a significant proportion of these cases will lead to more refusals.*'

82. It is not stated whether the delay in processing these cases is due to complexity in that UKVI had to gather more information before being able to make a decision or in considering the evidence and making a decision. Our concern here is whether the use of '*complexity*' is hiding a different cause of delay.

83. We have found no evidence that complexity was the cause of delay in Mr [redacted]'s case. Instead, it seems the better explanation for the delay is in the Taskforce's statement that Mr [redacted]'s case sat in a cohort of similar cases and alongside other cohorts of cases that all needed its consideration.

84. When commenting on our provisional views, UKVI maintained that complexity was a factor in the time taken on Mr [redacted]'s. It gave four reasons for the complexity in his case: additional due diligence was required because Mr [redacted] claimed to have arrived before 1973; the Taskforce had not been able to find evidence of residence before 1986; there were no records of any applications to the Home Office; and the National Insurance number was found to be false. We agree with UKVI that each of these factors are valid reasons for taking more time. However, UKVI had completed its actions on these issues by September 2018. We have not found any delay in its actions up to that point.

85. We asked the Taskforce for a description of each batch/refusal submission that was put up for approval. It said it would be extremely difficult and time consuming to obtain this information. We asked to see the records relating to Mr [redacted]'s batch/refusal submission. UKVI provided some of these records and a timeline of the dates when the refusal submission was sent to the senior civil servant for approval and the date the approval was given.

86. Given what we have found in this case, we do not agree with UKVI's claims in its updates to Parliament that the delays in processing refusal decisions were unavoidable.

Evaluating the refusal process and mitigating the delay

87. Even if the delays can be shown to be avoidable, we think UKVI should have evaluated its process. The purpose of this would be to see if delays could be avoided or if it should be taking mitigating actions for any negative impacts of the delay. Such a step would have been in line with the *Ombudsman's Principles* that public bodies should plan carefully when introducing new procedures and plan and prioritise their resources to meet service standards.

88. In this case we think mitigation action could have included telling Mr [redacted] or his Solicitor that it was minded to refuse his application and signposting him to the alternative route to resolving his status. This would have been in line with the *Ombudsman's Principles* that public administration should be transparent and

public bodies should give people information and, if appropriate, advice that is clear, accurate, complete, relevant and timely.

Refusal to expedite the decision

89. The evidence shows the Taskforce ignored or refused the requests to expedite its decision. On 26 March 2019 it said Mr [redacted]'s case had been prioritised, but UKVI has provided no evidence to show that this was done. Indeed, the Taskforce told us his case could not be expedited because of its refusal process and because the outcome was not going to assist him. We think there is an important point here.

90. Giving a refusal decision will help the applicant. At the very least, it will bring the matter to a close and enable them to consider any alternative options. It also will enable them to take action to gather more evidence and challenge the decision. In Mr [redacted]'s case, the Taskforce knew Mr [redacted] had a potential alternative route to resolving his status and knew it was not going to tell him about this until the final decision was issued.

91. While Mr [redacted] was not successful at review, he has gone on to take alternative action that has improved his situation. We can also see other applicants have benefited from getting their decision and going on to have refusal decisions overturned at review.

Communications

92. When considering the issue of delay, we have seen that some of UKVI's communications with Mr [redacted]'s MP were not in line with the *Ombudsman's Principles*. In particular, the *Principle* of *being open and accountable* says that public bodies should be '*open and truthful when accounting for their decisions and actions*' and the *Principle* of *being customer focused* says they should '*communicate effectively, using clear language that people can understand and that is appropriate to them and their circumstances*'.

93. When commenting on our provisional views, UKVI told us:

> '*The standard wording is generic and explains that the Taskforce undertake a detailed consideration and routinely conduct checks with other government departments and external agencies before finalising an application. The correspondence sent to Mr [redacted]'s MP and representatives did not state explicitly that there were checks pending on his application nor that these checks were the cause of the delay, rather confirmed that the application was still under consideration. UKVI will review the wording of progress responses to ensure they are bespoke and relevant to specific customer, to avoid any confusion.*'

94. We have carefully considered what the evidence shows, along with UKVI's comments. We find UKVI's letters were misleading about the actions being taken and one letter included a false claim that action had been taken when it had not. The letters of 10 December 2018 and 8 February 2019, in particular, would have given any reader the impression that enquiries and evidence gathering were

ongoing and this was the cause of the delay. This is a significant departure from the applicable standard of ensuring UKVI had been '*open and truthful*' when accounting for its actions. UKVI's communications on this case are a cause of serious concern.

Conclusion on issue 1 — delay

95. We have established that UKVI should have been aiming to give its decision on Mr [redacted]'s case within two weeks of having all the information it needed. That was the applicable standard. We have considered each of UKVI's reasons for why the period of delay that occurred from September 2018 to August 2019 was not avoidable or unreasonable. We have found UKVI's reasons do not explain the delay that occurred.

96. When commenting on our provisional views, UKVI said it:

> *' … accepted that there were periods of inactivity in resolving this application beyond December 2019, which led to avoidable delayed [sic] in the decision and in turn to Mr [redacted] seeking to regularise his stay in the UK. The process adopted for clearance of proposed refusals, whilst intended to provide assurance, in practice proved to be cumbersome. This process did not properly balance the need for governance, against the needs of Mr [redacted] in his application. The clearance process has already been streamlined, though UKVI will use this report to further review, refine and improve processes.'*

97. We welcome that acceptance of avoidable delay. However, UKVI has also said it did not accept that the delays on Mr [redacted]'s case amounted to maladministration. We have carefully considered this comment, which is based on the UKVI's views on the complexity of Mr [redacted]'s case. These are set out and considered in paragraph 84. It is clear UKVI's comments address its actions in the period to September 2018 rather than after that point.

98. Taking all of this into account, we find there was an unreasonable delay of around 10 months in the period from September 2018 to August 2019. This was such a significant departure from the two-week service standard that the delay amounts to maladministration.

Issue 2 — UKVI's communications about access to benefits

UKVI's comments on the access to benefits complaint

99. In response to our proposal to investigate this issue, the Taskforce told us it did not know what was said by whom. It said the statement that Mr [redacted] could

claim benefits while his application was being considered was not made by the Taskforce.

100. During the investigation, the Taskforce told us it persuaded DWP to agree it should not take negative action against Windrush Scheme applicants. It explained this meant that if an applicant had an open benefits award, this would carry on. It did not mean a new benefits claim would be awarded. The Taskforce said the letter sent to Mr [redacted] by the Vulnerable Person Team on 19 November 2018 was sent to every applicant. We understand it means the letter was not tailored to Mr [redacted]'s circumstances.

101. We asked the Taskforce if there was a disconnect between it and the Vulnerable Person Team. This was because the 19 November 2018 letter said the information provided by Mr [redacted] indicated he was eligible when the Taskforce had already completed its consideration of that information and had provisionally decided he was not eligible.

102. The Taskforce said the Vulnerable Person Team had access to its systems and would have been able to see the progress of his application at that time.

103. When commenting on our provisional views, UKVI said its letter of 19 November 2018 '*was not intended to mislead Mr* [redacted] *or indeed any other applicants to the Windrush Scheme, rather primarily to protect any existing benefit payments and to advise that it was possible to apply for benefits, provided that DWP were satisfied of entitlement*'.

What UKVI said about Mr [redacted]'s ability to access benefits

104. The Windrush Vulnerable Person Team wrote to Mr [redacted] on 19 November 2018 saying:

> '*I can confirm that the information we have received from Mr* [redacted] *indicates that he is eligible under Windrush.*
>
> '*We have been informed that Mr* [redacted] *is eligible to apply for benefits whilst his case is under consideration.*
>
> '*Mr* [redacted] *is an undocumented Commonwealth citizen and the Home Office is currently providing assistance to provide a physical token to prove his immigration status in the United Kingdom.*
>
> '*Negative action should not be taken based on Mr* [redacted]*'s current immigration circumstances. Mr* [redacted]*'s inability to provide a status document does not mean he has no entitlement to services or public funds. It should not be assumed that the absence of a token means Mr* [redacted] *has no lawful status in the United Kingdom.*'

105. We have also seen that on 8 February 2019 UKVI's MP correspondence team told Mr [redacted]'s MP: '*I am also able to confirm that whilst Mr [redacted]'s application is under consideration, he will be able to continue to have access to public funds and claim benefits*'

Our findings on UKVI's communications about access to benefits

106. We can see the Windrush Vulnerable Person Team and UKVI's MP correspondence team had the good intention of trying to help Mr [redacted] while he was waiting for a decision. They wanted to give him confirmation that he was '*eligible to apply for benefits while his case is under consideration*'. Sadly, this was not the case and, given what it has told us, the Taskforce knew that.

107. The *Ombudsman's Principles* say public bodies should communicate effectively, using clear language that people can understand and that is appropriate to them and their circumstances.

108. We have carefully considered the wording of the letters above. It is a fact that the first letter misled Mr [redacted] and he tried to use the letter to access universal credit and housing. Both DWP and his local authority said they could not help him without proof of his status in the UK. The letters did not provide this proof. For these reasons, we can say the letters of 19 November 2018 and 8 February 2019 gave the misleading impression that Mr [redacted] was eligible for consideration under the Windrush Scheme and would be able to successfully make a new claim for benefits.

109. When responding to our provisional views UKVI said it accepted the wording of its letters could be improved and it would review them to ensure they are bespoke and applicable to individual customers.

110. We find UKVI's letters to Mr [redacted] and his MP were a significant departure from the standard that applied. As such, we find there was maladministration in what UKVI told Mr [redacted] about his ability to access benefits while he waited for its decision on his Windrush Scheme application.

The injustice to Mr [redacted]

111. When we find something has gone wrong, we look at whether this has had a negative impact. We call this injustice. The different elements of the injustice caused by UKVI are set out below.

112. We have found delay in giving the decision, lack of transparency up to that date and failure to consider mitigating action. This led to delay in enabling

Mr [redacted] to take alternative steps to resolve his immigration status. This is a significant material injustice to Mr [redacted].

113. We have seen that after getting the refusal decision, Mr [redacted] provided a more detailed account of his entry into the UK and early years. His Solicitor gathered additional documentary evidence of residence in the UK from 1980. This resulted in the Home Office making a reasonable grounds decision under the National Referral Mechanism (NRM) that he is a potential victim of modern slavery. Mr [redacted] is being housed and provided with financial assistance under the mechanism.

114. UKVI's delay meant Mr [redacted] suffered the material injustice of receiving the housing and support provided by that mechanism 10 months later than he should have done. This is not the full eleven-month period of delay but we believe this fairly reflects that UKVI still had some work to do to prepare, check and approve its refusal decision after completing its consideration of the evidence.

115. UKVI's delay has also meant that Mr [redacted] is now 10 months behind where he should be in resolving his immigration status. Resolving his status is a life-changing issue for Mr [redacted] and UKVI's delay is time that cannot be given back.

116. We asked Mr [redacted] how he thought UKVI's delay had affected him. Mr [redacted] said his life was on hold from his application in May 2018. He could not work, had no money and could not buy food. He said he was destitute and felt '*worthless, broken, with no hope or prospects*'. Mr [redacted] said his mental health was poor. All he wanted to do was get his status confirmed so he could work again and begin to rebuild his life. Mr [redacted] told us everyone slept in the same room at the homeless shelter and he had no privacy. He was not allowed to stay in the building during the day. Mr [redacted] said he spent his time walking the streets or going to the library. He explained the bed in the shelter was offered on a temporary basis for 28 days, but he had stayed there for many months. Mr [redacted] said he has been provided with accommodation under the NRM but still shares a room and there are a lot of restrictions. He now receives financial assistance to buy food. When he was in the shelter, he relied on the food given to him.

117. There is a difference in Mr [redacted] receiving short-term shelter and food provided by charity and being housed and financially supported under the NRM. The latter provides more secure and private accommodation and gives Mr [redacted] greater control. We find UKVI's delay also resulted in Mr [redacted] suffering the significant emotional injustice of a loss of dignity and autonomy for 10 months.

118. Mr [redacted], his Solicitor and his MP thought he would qualify under the Scheme. This view was reinforced by UKVI's misleading letter of 19 November 2018 that said: '*I can confirm that the information we have received from Mr [redacted] indicates that he is eligible under Windrush*'. We find UKVI's misleading information caused the further emotional injustice of giving Mr [redacted] false hope.

119. We have carefully considered Mr [redacted]'s circumstances during the period of delay. He was destitute and reliant on charity for shelter and sustenance. We believe the material injustice caused to Mr [redacted] by the delay is greater than

other cases of similar delay because he was in such a desperate situation during this period.

120. Furthermore, UKVI's response to its delay was wholly unacceptable and this too has compounded Mr [redacted]'s injustice. This is because we have found that:

- **UKVI was well aware of Mr [redacted]'s desperate situation yet it repeatedly refused requests to expediate its decision**
- **UKVI gave responses on the delay that were not in line with our *Principles* of being '*open, accountable and truthful*'**
- **UKVI knew, from 4 December 2018, that Mr [redacted] had what it later described as '*a manifestly strong claim*' to resolve matters via an application on human rights grounds but did not tell him about this until 30 August 2019.**

121. The Windrush Scheme was set up to rectify past wrongs and do so with urgency and purpose. It has fallen well short of that in this case. It will be a severe disappointment to Mr [redacted] to see from the facts established by our investigation how UKVI disregarded his desperate circumstances, delayed its decision and did not give him the advice he needed sooner. We believe UKVI's inexcusable actions will stay with Mr [redacted] for the rest of his life. Taking all of that into account, we find those failings by UKVI caused Mr [redacted] to suffer the significant and lasting injustice of not being treated with respect.

122. Turning to the issue of whether Mr [redacted] would be able to access public funds, we have found that UKVI gave him misleading information. Mr [redacted] told us he took UKVI's 19 November 2018 letter to DWP but it refused to help without proof of his status. He said UKVI knew he would not be successful, and it hurts that the information it gave him was wrong.

123. We find the misleading letter resulted in Mr [redacted] suffering the emotional and material injustices of having false hope that he would be able to access public funds and wasted effort in his attempts to do so.

Our recommendations

124. 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. *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.

125. The lessons from this case include that the negative impacts of delay could have been mitigated if UKVI had been more open and transparent. We also believe

UKVI cannot be satisfied its communications on this case were always open and truthful and this means it needs to review its current communication practices.

126. In line with this, we recommend that within twelve weeks of our final report:

- **UKVI reviews learning from this case to:**
    - **remove any unnecessary delays in the Windrush Scheme process**
    - **improve the level of openness and transparency in the Windrush Scheme process with a view to telling applicants as soon as possible when it proposes to refuse the application**
    - **ensure it provides accounts of its actions that meet our *Principles of Good Administration* of being open, accountable and truthful.**
- **UKVI shares the outcome of the actions above with us and the Chairs of the Public Administration and Constitutional Affairs Committee and the Home Affairs Select Committee.**

127. *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. Mr [redacted] has told us he wants a financial remedy if that is appropriate.

128. We have found that Mr [redacted] suffered the significant material and emotional injustices of:

- **being 10 months behind in resolving his immigration status**
- **accessing housing and support 10 months late**
- **loss of dignity and autonomy over a 10-month period**
- **not being treated with respect**
- **being given false hope**
- **having his time and effort wasted.**

129. We recommend UKVI should apologise sincerely to Mr [redacted] and provide a financial remedy to put right those injustices.

130. To determine a level of financial remedy, we review similar cases where similar injustice has arisen, along with our severity of injustice scale. This is published in *Our guidance on financial remedy*. Following this review, our current thinking is that the significant injustices suffered by Mr [redacted] fall within level 5 of the severity of injustice scale.

131. We recommend that UKVI should pay Mr [redacted] £5,000 in recognition of the injustice described above. The apology and payment should be made within four weeks of the final report.

Annex A – UKVI's response to our investigation

UKVI sent us its response to our investigation on 30 September 2020. It said:

> *'UKVI takes the findings very seriously and remain committed to providing effective, empathetic and timely support and decisions to all customers who apply to the Windrush Taskforce.*
>
> '*The Taskforce has pioneered a customer-led approach and has built supportive and pro-active relationships with individuals. Where it is not possible to identify information to support the issue of documentation, the Taskforce has worked hard to ensure that all avenues are exhausted before proposing a refusal; no applications are refused lightly.*
>
> '*We are grateful for this report and have taken on board the fundamental learning point that it is essential to focus on determining cases and on keeping customers properly informed regardless of the likely outcome; every customer deserves the same high level of service. There was a key focus on issuing documentation where possible to confirm status as a priority, and insufficient recognition that delays in confirming refusals also had a fundamental impact on customers.*
>
> '*UKVI maintain that this was a more complex case for the reasons set out in* [paragraph 84 above] *including difficulties obtaining the necessary documentation. Despite extensive enquiries it did not prove possible to identify the necessary information to issue documentation to confirm Mr* [redacted] *'s status in the UK. It is fully accepted that the Taskforce should have recognised that earlier and informed Mr* [redacted].
>
> '*It is accepted that there were periods of inactivity in resolving this application beyond December 2019, which led to avoidable delayed in the decision and in turn to Mr* [redacted] *seeking to regularise his stay in the UK. The process adopted for clearance of proposed refusals, whilst intended to provide assurance, in practice proved to be cumbersome. This process did not properly balance the need for governance, against the needs of Mr* [redacted] *in his application. The clearance process has already been streamlined, though UKVI will use this report to further review, refine and improve processes.*
>
> '*Finally, as part of the responses the [sic] Wendy Williams* Lessons Learned Report *the Home Office have adopted new 'Face Behind the Case' learning, to underpin the importance of keeping the customer at the heart of what we do.*
>
> '**Conclusion**

'In all these circumstances, UKVI accept that an unreserved apology is appropriate to Mr [redacted] for this delay and that an ex-gracia [sic] payment of £5,000 is appropriate.

'As set out above the fundamental learning point of this report and the unreserved apology for the avoidable delay is accepted.

'UKVI will use this report to:-

- **undertake a further review of our processes, to refine and improve the clearance system to ensure it is fully effective;**
- **Consider whether there may be other similar cases where it might be appropriate to expedite a decision;**
- **Review the wording of progress responses to ensure that they are specific to individual customers to avoid any confusion;**
- **Update on the progress within three months of the date of the final report.'**