



Submission to

**Wendy Williams, Independent Adviser to Home Office
Windrush Lessons Learned Review**

**Progress Update on Home Office
implementation of recommendations**

November 2021

Introduction:

1. Amnesty International UK welcomes the opportunity to provide observations to the Independent Adviser on her assessment of Home Office progress in implementing her recommendations from the Windrush Lessons Learned Review. We made a submission to the initial review;¹ and have provided further evidence concerning the scandal to parliamentary inquiries relating to it.²
2. The following observations are informed by:
 - a. our engagement with individuals affected by Home Office nationality, immigration and asylum functions and organisations representing such individuals, including in joint policy advocacy and campaigning work;³
 - b. our engagement with the Home Office including as a member of the Asylum Strategic Engagement Group; and

¹ See

<https://www.amnesty.org.uk/files/Resources/AIUK%20to%20Home%20Office%20Windrush%20Lessons%20Learned%20Review.pdf>

² These include September 2020 submission to the Joint Committee on Human Rights inquiry on *Black people, racism and human rights*; November 2020 submission to the Home Affairs Committee inquiry on *Windrush Compensation Scheme* and December 2020 supplementary submission to that same inquiry; and February 2021 submission to the Women and Equalities Committee inquiry on *Role of GEO: embedding equalities across Government*.

³ Included among those with whom we have undertaken such joint work over the last 12 months are Bail for Immigration Detainees, Da'aro Youth Project, Families Together Coalition, Migrant Voice, Project for the Registration of Children as British Citizens (PRCBC) and Scottish Refugee Council; and in addition to these organisations and their members we have engaged with, among others, members of the British Overseas Territories Citizenship Campaign, UK Citizenship Equality and the British Indian Ocean Territory Citizens.

- c. our expertise in relation to nationality, immigration and asylum functions as these concern human rights obligations.
3. Before addressing the discrete questions identified in the Call to Evidence, we wish to make clear that our direct and indirect experience of the Home Office is, as has long previously been the case, not all one way. We have positive as well as negative experiences of the department. However, negative experiences tend to dominate – particularly where these concern policy or practice relating to areas that tend to attract heightened ministerial or media attention on numbers, targets and policy aims rather than the individual women, men and children affected.
4. Rather than answering the discrete questions in the Call to Evidence directly, we refer to five examples and show how each relates to one or more of those questions. The examples are of various types ranging from high level policy to basic operational work. We acknowledge that these examples do not provide a comprehensive picture. Indeed, the examples are not comprehensive even in respect of their own subject matter. However, they illustrate both our concern that there is neither fundamental change nor, as matters stand, any likely prospect of that.

Home Office consultation on its New Plan for Immigration:

5. On 24 March 2021, the Home Office published its New Plan for Immigration policy statement and opened a consultation upon it. For reasons we have raised with the Home Office, that consultation was profoundly lacking in transparency, accessibility and impartiality.⁴ It comprised of a complex online survey and a private round of engagements with various but undisclosed stakeholders, some of which engagements were facilitated by external consultants and some of which by the Home Office itself. The consultation closed on 6 May 2021. On 6 July 2021, the Nationality and Borders Bill, containing various provisions to implement the plans to which the consultation related, received its First Reading in the House of Commons. The Bill was debated at Second Reading in that House on 19 July 2021. However, it was not until 22 July 2021 that the Home Office published its response to the consultation.⁵ That response made clear that a substantial majority of respondents to the consultation opposed key elements of the plan.⁶ The substance of the response gave little away in terms of either the degree and nature of the opposition or reasons for it.
6. This example shows a profound lack of commitment to either transparency or to evidence-based policy-making. Rather, it emphasises the same culture from the top of the department, including at Ministerial level, down by which policy is determined with little, if any, care to its impact upon the people it will directly affect or the

⁴ Our letter and the Minister's response are available here: <https://www.amnesty.org.uk/resources/amnesty-uk-letter-minister-new-immigration-plan-consultation>

⁵ See

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005042/CCS207_CCS0621755000-001_Consultation_Response_New_Plan_Immigration_Web_Accessible.pdf

⁶ The response stated: "around three quarters of those who responded said they opposed many of the policies set out".

practicability of what is proposed; and when there is opposition and evidence contradicting that policy, the department is most concerned to downplay or hide that to avoid any need or pressure to review or revise the policy. This lack of commitment to transparency and evidenced-based policy-making is antithetical to any ambition of transforming a similar culture. This example once again emphasises that leadership at this department confirms the priority of policy, policy targets and public positioning over either people or evidence; and similarly affirms the “*closed, secretive and defensive*” culture that was described by the Rt Hon Theresa May, when Home Secretary.⁷

Response to concerns regarding circumstances of Afghans evacuated in August:

7. Two to three weeks after the fortnight of evacuation flights from Kabul had ceased,⁸ we spoke to a young Afghan woman who had been evacuated to the UK. She remained in temporary hotel accommodation with no information as to her status or future in the UK. She emphasised how grateful she was to have been evacuated and her understanding that the emergency nature and scale of the evacuation may have been responsible for challenges in planning or responding to people’s arrival and addressing their needs. Nonetheless, she explained that she had simply been left in limbo. There was no contact person or address for her to make enquiries of the Home Office. There was no information about if and when somebody would be in touch with her to update her on the situation. Shortly afterwards, we drew officials’ attention to this specific example at a Home Office stakeholders’ meeting. The response simply restated that the challenges to the department of finding long-term housing and addressing other needs of people evacuated were considerable. There was no recognition of the limbo-state in which this woman and many other Afghans had been left and, accordingly, nothing was indicated would be done to address that.
8. We understand – and indeed we made this express at the meeting – there may sometimes be challenges which mean something that needs to be done cannot be done as quickly as would be desired. This may have been such a case. However, if Home Office culture were sufficiently changed to be open to and sensitive to the needs and experiences of the people subject to its powers and functions, we should have expected some effort to ensure people were not merely left in limbo and apparently forgotten. We should have expected some means of keeping in touch to have been established. While it may not have been possible to give a date by when various matters, such as long-term housing, would be sorted out, we should still have expected a formal means by which people would be updated about progress – even if just to say ‘sorry, this is still something we are working on urgently, but please know we have not forgotten you’. We would equally have expected that having failed to recognise this at the start, its being pointed out would have been met with sensitivity, ideally some commitment to correct this, and certainly not the defensive response received.

⁷ Hansard HC, 26 March 2013 : Col 1501

⁸ Operation Pitting

9. We are aware that other organisations – including those working directly with evacuated Afghans – have witnessed the same failure to keep people informed about what is happening and how and when they can expect to be updated. We are aware that this includes much more recently and long after we raised our concern directly with the Home Office.
10. On 17 November 2021, in oral evidence to the Home Affairs Committee, the department was asked about its failure to notify local authorities that Afghan families with children had been placed by the Home Office in ‘temporary’ hotel accommodation in their area.⁹ Its response was precisely the same as it gave to us about the matter, which we raised at the stakeholders’ meeting, save that the department also emphasised that there had been no time to consult with local authorities about where the children were being placed. As was put to the department, the concern was not simply about failure to consult but about failure to inform.
11. It must be emphasised that in this instance the Home Office is under a specific statutory duty to give primary consideration to the best interests of children.¹⁰ The department is plainly well aware that local authorities have the statutory duty to safeguard the welfare of children in need in their area.¹¹ Of course, local authorities cannot fulfil their duty if they are unaware of the children; and it is impossible to understand how the Home Office can have failed to understand or act on that. But even long after the event, when asked about its failure, the response of the department continues to show a fundamental incapacity or unwillingness to see the people affected by its powers and functions rather than being fixed on its policy aims and challenges it faces in exercising these powers and functions.
12. This example provides further indication that the department remains unable or unwilling to see the ‘face behind the case’ or be open and willing to receive scrutiny or criticism even in forums that are specifically for that very purpose.

Publication of reports of Independent Chief Inspector of Borders and Immigration:

13. As at 17 November 2021, the following seven reports of the chief inspector are awaiting publication:¹²

Inspection	When inspection report was completed
ePassport Gates	17 June 2021
EU Settlement Scheme	15 July 2021

⁹ See Questions put by Tim Loughton to Victoria Atkins, Minister for Afghan Resettlement and Emma Haddad, Director General, Asylum and Protection, at the evidence session on 17 November 2021 (oral transcript yet to be published)

¹⁰ Section 55, Borders, Citizenship and Immigration Act 2009

¹¹ Indeed, that this responsibility sat with the local authority was expressly stated by the department at the evidence session.

¹² Information taken from the webpages of the Independent Chief Inspector of Borders and Immigration on that day. As explained in the text, one of these reports was published the following day after a 4 months wait.

<i>Asylum Casework</i>	<i>23 July 2021</i>
UKVI front end services	9 September 2021
Queues at Birmingham Airport	28 September 2021
Chief Caseworker Unit's referral process	14 October 2021
Project Kraken at small seaports	1 November 2021

14. Currently, Parliament is considering the Nationality and Borders Bill. Ministers present this as critical legislation for implementing their immigration policy, which they say, is necessary to address a system they claim is 'broken'.¹³ Several of these inspections are, at least on their face, important for both parliamentary – and indeed public – scrutiny of the Home Office, including of the claims made in promoting this legislation. Yet, the Bill – introduced in July 2021 – has not only had its Second Reading and passed through its Committee stage. It will likely complete its passage through the Commons within a matter of weeks. This once again emphasises the department's unwillingness – from Ministers down – to be transparent, open to scrutiny and base its policy on evidence. As we have stated above, if the department is not committed to these and related principles, it is impossible to see how Ministers can expect that the remainder of what the department does will nonetheless manifest that commitment (assuming they wish it to do so).

15. *We note that on 18 November 2021, the chief inspector's report on Asylum Casework was published.¹⁴ This was almost four months after its being provided to the Home Secretary, two weeks after the Public Bill Committee had completed its consideration of the Nationality and Borders Bill and a day after Ministers had appeared before the Home Affairs Committee to give evidence concerning the Government's asylum policy and practice (specifically in connection with inquiries concerning Channel crossings by boat and Afghan resettlement).*

Children's rights to British citizenship:

16. In our submission to the Windrush Lessons Learned Review, we drew particular attention to the ongoing injustices in policy and practice by which many children were effectively deprived of rights to register as British citizens (the very rights of which many members of the Windrush generation had long before been deprived).¹⁵ Since that submission, the Home Secretary has elected not challenge the finding of the High Court in December 2019 that she has failed to assess or understand the best interests of children for the purpose of exercising her fee making powers in relation to children's registration.¹⁶ She made that choice following the Court of Appeal decision upholding the High Court's ruling in *R (Project for the Registration of Children as British*

¹³ For example, at Second Reading, the Home Secretary stated: "*The Bill will finally address the issues that over a long period of time, cumulatively, have resulted in the broken system that we now have.*" *Hansard HC*, 19 July 2021 : Col 708

¹⁴ See <https://www.gov.uk/government/news/inspection-report-published-an-inspection-of-asylum-casework>

¹⁵ *Op cit*, see in particular paragraphs 30-31 & 43

¹⁶ *R (Project for the Registration of Children as British Citizens, O & A) v Secretary of State for the Home Department* [2019] EWHC 3536 (Admin)

Citizens & O) v Secretary of State for the Home Department [2021] EWCA Civ 193 on 18 February 2021.

17. The Home Secretary has still not assessed the best interests of children in this matter (or made public its assessment if it has done this). She has asserted that it is necessary to await a decision from the Supreme Court in *R (Project for the Registration of Children as British Citizens & O) v Secretary of State for the Home Department*¹⁷ even though the matter before that court does not include any consideration of children's best interests. Moreover, her wider policies and practices concerning children's rights to registration as British citizens – including other policy that she has conceded in other High Court proceedings to require revision¹⁸ – also continue to impede children's citizenship rights with no proper or effective evaluation of the best interests of the children affected still less any giving effect to those interests.
18. Most recently, the department has asserted – in response to media reports about provision in the Nationality and Borders Bill to allow deprivation of British citizenship by stripping people of it without warning or informing them¹⁹ – that “*citizenship is a privilege, not a right*”.²⁰ This is wrong in both international law²¹ and UK domestic law.²² Moreover, it is an error that goes right to the heart of the original injustice done to the Windrush generation and which has continued to be repeated in the case of many thousands of children born and growing up in the UK since 1 January 1983. The failure – or refusal – to recognise this at the department in itself undermines any confidence that might be had that it is capable or willing to learn lessons arising from the review.

Deportation policy and practice:

19. In our submission to the Windrush Lessons Learned Review, we also drew attention to deportation policy and practice.²³ We included specific reference to the

¹⁷ See Parliament, Written Questions & Answers, UIN HL2441, 6 September 2021; UIN HL1540, 29 June 2021; & UIN HL1071, 14 June 2021

¹⁸ We are aware that a review of the Home Office guidance, *Registration of British citizenship: children*, remains outstanding following litigation brought by the Project for the Registration of Children as British Citizens (PRCBC) that was settled in Spring 2021.

¹⁹ Clause 9, Nationality and Borders Bill, Bill 187 (as amended in Committee)

²⁰ See ‘New bill quietly gives power to remove British citizenship without notice’, *The Guardian*, 17 November 2021: <https://www.theguardian.com/politics/2021/nov/17/new-bill-quietly-gives-powers-to-remove-british-citizenship-without-notice>

²¹ This is briefly and incompletely summarised in the September 2021 joint briefing of the Project for the Registration of Children as British Citizens (PRCBC) and Amnesty International UK to the Joint Committee on Human Rights on its scrutiny of the Nationality and Borders Bill: <https://committees.parliament.uk/writtenevidence/39358/pdf/>

²² That registration, for example, concerns rights was emphasised by the then Home Secretary, William Whitelaw, in distinguishing registration and naturalisation, during the passage of the British Nationality Act 1981, see *Hansard HC*, 2 June 1981 : Col 855; and the High Court has, in the very case that has, on its face, led directly to clause 9 being introduced, emphasised that British citizenship is a fundamental status and its deprivation constitutes a “*very substantial interference with [a person’s] rights*”: *Case of D4 v Secretary of State for the Home Department* [2021] EWHC 2179 (Admin), paragraph 50.

²³ *Op cit*, particularly paragraphs 23, 40 & 45(b)

unlawfulness of exercising deportation powers against members of the Windrush generation; and the failure or refusal (that has continued) at the department to investigate this unlawfulness by which some people will have been wrongly exiled from their home and family in the UK.²⁴

20. We draw attention to more recent charter flight removals – particularly those destined for Jamaica (though it is not only deportation to that country that is of concern). It has been widely reported²⁵ – and is entirely consistent with what is known to us and our longstanding concerns²⁶ – that people identified and detained for deportation on such a flight include more people than the flight can or is intended to carry, people who have lived in this country from a very young age, people who have not committed the serious offences that are routinely and publicly associated by statements of Ministers and officials with having been identified for deportation on the particular flight, people whose connection to the UK arises from long residence here and close family, people who have little if any memory or connection with Jamaica, people who have not offended for many years, people whose offending was in childhood, people whose offending arises from their being exploited and people whose deportation will cause significant distress and harm to partners, children and other people dependent or closely connected to them.
21. None of this indicates a willingness to see the ‘face behind the case’, building anything that is fairer and more compassionate (still less fair or compassionate) or taking any account of the complexity of people’s lives. On the contrary, it strongly emphasises that the culture continues of being led by policy and operational targets that are set by reference to considerations such as what headlines may be achieved or avoided rather than by reference to what is lawful, reasonable or likely to be effective in view of the rights, needs and circumstances of the people directly affected.

Conclusions:

22. There are many other examples that we might have offered; and we have no doubt that there are several more of which we are not aware. We must stress that we are not saying that every action or decision of this department exhibits the same failings. However, experience strongly suggests that the underlying culture is as we described it in our submission to the review and that this has neither changed nor is changing. In that submission, we identified some previous instances where that culture had been identified, including by previous Home Secretaries.²⁷ This did not lead to change then and, we regret to say, we see no real commitment or prospect of it doing so now.

²⁴ *ibid*

²⁵ See e.g. ‘Jamaica deportation flight leaves with just four people on board’, *BBC News*, 10 November 2021; ‘A farce: Jamaica charter flight leaves UK with four people on board after dozens found to have right to stay’, *Independent*, 11 November 2021; and ‘#Jamaica50: Deportation charter flights and access to justice’, *The Justice Gap*, 2 November 2021

²⁶ See e.g. <https://www.amnesty.org.uk/blogs/stories-rights/unjust-deportation-system>, <https://www.amnesty.org.uk/blogs/rights-and-realities/excessive-heat-over-deportation-helps-nobody> and <https://www.amnesty.org.uk/blogs/campaigns-blog/recognition-racism-uk-growing>

²⁷ *Op cit*, particularly paragraphs 32-33, with especial reference to paragraph 32(a)