

# SOAS ICOP Policy Briefings

## To Inform Government and Parliamentary Debates

### **Windrush Wrongs Not Being Righted** by Grace Brown, barrister (21st January 2022)

In her announcement on [23 April 2018](#), the then Home Secretary the Rt Hon Amber Rudd MP, acknowledged that many of the measures introduced over the years to combat illegal immigration have had unintended negative effects and also in some cases have had a devastating effect, on members of the Windrush generation.

The [Windrush Scheme](#) was subsequently launched on 30 May 2018. In his [statement](#) announcing the launch of the Windrush Scheme the then Home Secretary, the Rt Hon Sajid Javid MP, said he wanted to “swiftly put right the wrongs” that have been done to the Windrush generation. The [Windrush Compensation Scheme](#) was subsequently launched in April 2019.

Whilst [a number](#) of claims to the Windrush Scheme and Windrush Compensation Scheme have been satisfactorily resolved, a significant number of claimants have either been denied redress or proper redress through one or both schemes. In mid-December 2021, the UK Administrative Court [decided](#) the cases of two Windrush claimants who had both been denied British citizenship under the Windrush Scheme. The refusal of their applications was on the ground that the Windrush claimants had not resided in the UK for a sufficiently long period in order to qualify for British citizenship. Under the [British Nationality Act 1981](#) (BNA), citizenship is granted to applicants who have resided in the UK for at least 5 years prior to the date of their application.

What the Home Office failed to acknowledge – and put right – is that the reason why the claimants were unable to satisfy the 5-year requirement in the BNA is because the claimants had been prevented – by the UK immigration authorities – from returning to the UK after their respective departures. One of the claimants had been exiled for 32 years and the other for over 13 years. In essence, rather than ‘righting the wrong’ that had been perpetrated against the claimants, the Home Office had [compounded it](#). Recognising that the Home Office had compounded its own wrong-doing the Court was compelled to accept the argument that discretion had to be exercised in the claimants’ and like cases, even though the 5-year rule in the BNA was expressed as though there could be no discretion.

In another case, which is likely to have to go before the court, the Home Office accepted that the claimant had been wrongly deported from the UK but is refusing to award compensation, for the very egregious and continuing effects of that deportation, because the claimant cannot satisfy the requirement in the Windrush Compensation Scheme rules to have been lawfully present in the UK. He was ‘not lawfully present in the UK’ because he had been – wrongly – deported and had re-entered the UK ‘in breach’ of that wrongful deportation order.

MPs are urged to support proposals, including those of the [House of Commons Home Affairs Committee](#) for:

- Windrush generation members to be treated differently, where they are adversely affected due to the impact of legislation and measures introduced after the Windrush migrant was already settled in the UK.
- The government to do more proactively to identify affected individuals both in the UK but particularly abroad.
- Windrush compensation to be paid to claimants ‘swiftly’ and without the need for Windrush migrants to bring court proceedings to demonstrate their entitlement to status.