House of Commons
House of Lords

Joint Committee on Human Rights

Windrush generation detention

Sixth Report of Session 2017–19

HC 1034
HL PAPER 160

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Report, together with formal minutes relating to the report

Ordered by the House of Commons to be printed 27 June 2018

Ordered by the House of Lords to be printed 27 June 2018

HC 1034
HL PAPER 160
Published on 29 June 2018
by authority of the House of Commons
and House of Lords

Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Summary

Liberty is a core right. An individual should not be deprived of their liberty without good reason and adequate safeguards. In our work on cases of wrongful detention of members of the Windrush generation, we took the example of two individuals, Mr Anthony Bryan and Ms Paulette Wilson, to seek to understand why they had been wrongfully detained. The experience of detention is traumatising and debilitating, as shown by the evidence we heard from these two members of the Windrush generation, who were detained wrongfully, despite the fact that they had leave to remain in the UK, under the Immigration Act 1971.

We are very grateful to Mr Anthony Bryan and Ms Paulette Wilson, and Ms Janet Mackay and Ms Natalie Barnes, who accompanied them, for being prepared to revisit their experience, which was of enormous help to us in our work.

Our analysis of their case files confirmed that Home Office officials discounted ample information and evidence—the individuals' accounts of their lives; evidence and pieces of information on the case files; representations from family members, lawyers and people who had known them for decades; letters and representations from MPs—all of which were consistent and clear representations on behalf of these individuals meeting their accounts of their lives which should have sufficed to ensure that such individuals were not deprived of their liberty. However, somehow it did not trigger the appropriate response and these people were not listened to and were wrongfully detained.

The evidence session suggested that in these cases, none of the safeguards to prevent against wrongful detention worked. These people were consequently detained unlawfully and inappropriately. We examined the case files of two people who were wrongfully detained and it was clear that the case files shared the same characteristics:

- Information and evidence on the case file, which supported the individual's account, was ignored;
- Family protestations were not heeded;
- Representations by MPs failed to elevate concerns;
- There were numerous different people involved in the handling of each file but all proceeded with the wrongful detention of those individuals; and
- There was inadequate oversight of these cases by more senior officials to guarantee that proper steps were being taken to ensure just and timely progress of the cases.

In relation to the wrongful detentions of Mr Bryan and Ms Wilson, the Home Office told us that they were a result of "a series of mistakes over a period of time."[1] We did not find that explanation credible or sufficient. We take the view that there was in all likelihood a systemic failure.

1 Q24 [Rt Hon Sajid Javid MP]

The Home Office does not appear to have acted like an organisation that had discovered it had made serious mistakes. When an organisation comes across a serious mistake, they take steps to address it—by identifying the staff involved, arranging extra training, extra supervision, or even disciplinary action. Yet the Home Office has not reported taking any action in respect of any of the individuals who played a part in wrongly depriving these two people of their liberty. Other than one senior civil servant being moved out of the Home Office to the Cabinet Office, there have been no reports of staffing changes or disciplinary action against staff at the Home Office.[2].

In our view this suggests that in these cases the Home Office has an inadequate regard for the human rights of those who might wrongly be subject to their immigration procedures and that there is neither sufficient internal or external challenge to prevent the system depriving individuals of the fundamental right not to be detained.

It is unusual for a Committee to make criticisms in the terms that we have before our inquiry is concluded. However, we regard this as being a quite exceptional situation and it is important that as the criticisms we have made are fully justified by the information already available to us, our views should be made known and not be delayed by the desirability of there being further inquiries.

It is welcome that the new Home Secretary, Rt Hon Sajid Javid MP, shares our concern for the protection of human rights and in swiftly sharing these two case files has displayed a welcome transparency. We welcome his acknowledgement that "something went massively wrong" and note his commitment to find out "why did it happen and what lessons can we learn from it? […] We are all sorry for it, but how can we make sure that nothing like this happens to others?"[3]

We appreciate the Home Secretary's determination to ensure fundamental change takes place with regard to his officials' handling of such matters, and his comment that our Committee's work can help his Department to respect human rights. In order to understand further how the system came to deprive individuals of the fundamental right not to be detained without justification and adequate safeguards, we have asked the Home Office for further information including:

- the guidance given to officials dealing with individuals who are challenging the prospect of detention or proposed detention;
- the case files of other Windrush detention cases, in order to establish whether these were, as the Home Office claims, "mistakes" or whether they were part of a wider systemic problem. We have therefore asked for the case files of all the other Windrush generation who were detained prior to being deported. The Home Secretary has told the Home Affairs Select Committee that he is currently aware of 63 Windrush deportation cases; many of these individuals will have been detained before deportation.[4] The Home Secretary told our Committee that he expected his department to have identified the final number of Windrush people who were wrongly detained by July and that he

2 The Times, Home Office official who advised Amber Rudd in Windrush row 'demoted', 24 May 2018
3 Q23 [Rt Hon Sajid Javid MP]
4 Oral evidence taken before the Home Affairs Select Committee evidence session on 15 May 2018, HC (2017–19) 990, Q237 [RT Hon Sajid Javid MP]

would write to us outlining these cases once they were available.[5] We will also be asking the Home Office for the case files of other individuals from the Windrush cohort who were detained in order to ascertain whether individual negligence or systemic failure was the cause of these unacceptable detentions.

5 Q26 [Rt Hon Sajid Javid MP]

1 Introduction

Purpose of this report

1. The human right not to be detained arbitrarily is of crucial importance. Article 5 of the European Convention on Human Rights only permits an interference with the right to liberty in specific circumstances. An individual should not be deprived of their liberty without good reason and adequate safeguards. The experience of detention is traumatising and debilitating as shown by the evidence we heard from Mr Anthony Bryan and Ms Paulette Wilson, two members of the Windrush generation who were detained wrongfully. Indeed, the Home Office have acknowledged that these were wrongful detentions.[6] We found that these two people had a legal right to be in the country and yet were deprived of their liberty and detained. And it might be that there are many more, although the exact number is still unknown. We have used the cases of Mr Bryan and Ms Wilson to seek to understand why they were wrongfully detained and why their human rights were violated. While the detaining authority, the Home Office, has acknowledged the seriousness of these cases, it has not provided a satisfactory account of why this has happened or how systems have been reviewed and altered to ensure such incidents never happen again. In the absence of any such account no-one can be satisfied that it is not still happening.

2. In relation to the wrongful detentions of Mr Bryan and Ms Wilson, the Home Office told us that they were a result of "a series of mistakes over a period of time".[7] We did not find that explanation credible or sufficient. We looked at two separate cases in which information was repeatedly assessed and a series of decisions were taken by different people within the Home Office over a long period of time. It is not plausible that these decisions were all mistakes rather the impression given is of a systemic failure. Moreover, notwithstanding the new Home Secretary's comments referred to above, the Home Office has not responded like an organisation which has come across an error. When an organisation comes across a serious mistake, they take steps to address it. Yet the Home Office has presented no information so far to suggest that appropriate steps have been taken to tackle the causes of these "mistakes."

3. In this report we set out what our examination of the Home Office case files of Mr Bryan and Ms Wilson has shown about how and why they were deprived of the fundamental right not to be detained without lawful justification and adequate safeguards. Our view is that the Home Office did not ensure, as it should have done at the outset of these matters, whether it had a right to detain. It is evident that the Home Office did not appropriately consider the information on file, review progress of these cases nor listen to relatives, MPs or others making consistent and clear representations on behalf of these individuals.

4. It is imperative to examine whether the Home Office failings affected all other detainees in Mr Bryan and Ms Wilson's situation, which we suspect is the case. The Home Office is currently aware of 63 Windrush deportation cases; many of these individuals will have been detained before deportation.[8] We have accordingly asked to see the Home Office

6 Q29 [Rt Hon Sajid Javid MP]
7 Q24 [Rt Hon Sajid Javid MP]
8 Oral evidence taken before the Home Affairs Select Committee evidence session on 15 May 2018, HC (2017–19) 990, Q237 [Rt Hon Sajid Javid MP]

case files of those individuals detained prior to being deported, and we will also be asking for the case files of other individuals from the Windrush cohort that were detained, to examine why these wrongful detentions took place. This must happen if the Home Office is to avoid such human rights abuses in the future.

5. This report sets out provisional conclusions and recommendations for the Home Office and Secretary of State for the Home Department, Mr Sajid Javid MP. These relate specifically to how they came to be wrongfully detained and what should be done to prevent future abuses of detention powers.

Our inquiry

6. We were prompted to look into cases of detention from the "Windrush generation" because we wanted to understand how individuals came to be wrongfully detained and whether the cases implied that current processes and safeguards to prevent against wrongful detention are insufficient.

7. On 16 May 2018, we took evidence from Mr Bryan and Ms Wilson, two children of the Windrush generation, who were detained by the Home Office, despite the fact that they had a legal right to be in the UK, under the Immigration Act 1971. The evidence session suggested that in these two cases, legal and policy safeguards to prevent wrongful detention had not worked. In evidence, our two witnesses indicated that they would like to see their Home Office case files in order to see how the Home Office had made decisions about their status and eventually detained them. These files were then shared with us by the individuals.

8. Our analysis of the case files confirmed that Home Office officials ignored the evidence and pieces of information that were already on the case files as shown by the decisions they made; ignored representation from family members, lawyers and MPs, banned a family member from attending a reporting centre because, she displayed frustration at officials, while seeking to support her mother in navigating the immigration system; failed to apply common sense and appropriate oversight when reviewing applications and showed little, if any compassion to obviously vulnerable individuals. Although not the subject of this Report, it is worth mentioning that crucially the Home Office "lost sight" of the status that was conferred upon Commonwealth citizens then resident in the UK by the 1971 Immigration Act. Moreover, the Home Office required unduly onerous and unnecessary amounts of evidence from members of the Windrush generation members. Cumulatively this ultimately led to officials making perverse and arbitrary decisions leading to their detention.

9. On 6 June, our session with the Home Secretary, Mr Sajid Javid MP, and the Director General of the Border Immigration and Citizenship System at the Home Office, Glyn Williams, sought to understand how and why decision-making at the Home Office was so poor and whether this implied more widespread problems with the Home Office approach to immigration detention. Our conclusions on these questions are discussed further in Chapters four and five.

2 Background

Right to liberty

10. The right to liberty is a core human right. It is included in several international human rights Conventions. Article 5 of the European Convention on Human Rights (ECHR), which is incorporated into UK law by the UK's Human Rights Act, states that:

> 'Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law'.[9]

Article 5 (1) (f) states that a person may be deprived of his liberty if this is "the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."[10] If a person is deprived of his liberty for the purposes of immigration control, then Article 5 requires certain safeguards are provided including:

> "4) Everyone who is deprived of his liberty by […] detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
>
> 5) Everyone who has been the victim of […] detention in contravention of the provisions of this Article shall have an enforceable right to compensation."[11]

In order to be lawful and not arbitrary, immigration detention must be clearly justified, prescribed by law, and there must be appropriate safeguards. Nobody should be arbitrarily detained. Individuals should have protection from detention even if they cannot demonstrate a legal right to remain to the satisfaction of the authorities—that is not a reason to detain a person.

11. In considering the legal framework, it is important to be conscious of the significant impact of detention, which can be traumatising. This is all the more stark given that there is no time limit to immigration detention, which is an issue of grave concern raised by members of both Houses and several stakeholders, including the Bar Council in their recent report.[12] It was described in a telling way by Mr Bryan:

9 Human Rights Act 1998, Schedule 1
10 Human Rights Act 1998, Schedule 1
11 Human Rights Act 1998, Schedule 1
12 Bar Council, Injustice in Immigration Detention Perspectives from legal professionals, November 2017

Box 1: Mr Anthony Bryan interview description of detention:

"The Verne was frightening, terrifying really. I'm 60, and I thought I'd experienced a lot of things. But that was something new. It's right by the sea. You get locked up every day. There were a lot of fights, and people fought over nothing because they have nothing to do and so much anxiety about what might happen to them. You're locked up around people in authority, who at any time can put you in handcuffs and put you on a plane. They come to deport people in the night—it's really terrifying. The people in the centre have done nothing wrong. They've committed no crimes, but they're locked up, in detention, and they don't know for how long. When you're locked up but you don't have a sentence and you're not being punished it's hard to keep your sanity."

Source: Mr Bryan interview with Sky News, 17 April 2018

12. Pierre Makhlouf, from the organisation Bail for Immigration Detainees, described the impact that detention can have on individuals:

> "From the evidence that we have just heard, it is evident that, without information and some legal advice, people are completely confused. The evidence also points to the fact that, as you will see from medical organisations, the experience of detention is so traumatising that, after finding yourself in detention, to think logically about legal steps to defend yourself, to make out your claim and to understand your circumstances is almost impossible."[13]

Windrush generation and the Compliant/Hostile Environment

13. Those referred to loosely as the "Windrush Generation" encompass a number of different people in different legal situations, but broadly mean Commonwealth citizens who settled in the UK before 1973. Legislative and policy changes since the post-war period have involved progressive changes to their status and documents requirements. Most of the people who have faced recent wrongful detentions were Commonwealth citizens who had a right to remain in the UK on the basis of having been settled in the UK before 1973 and having not left the UK for more than two years since 1988.

14. While in this inquiry we focussed on two examples of how two individuals came to be wrongfully detained, we are concerned that cases of wrongful detention of members from the Windrush cohort are not limited to these two examples. This is discussed in Chapters four and five.

13 Q15 [Pierre Makhlouf]. Mr Bryan also told the Committee that if it had not been for his partner's support, he would have given up:" I would have given up. It was too hard. I was willing to go back to Jamaica. Although I do not know Jamaica I was willing to go back, because I was fighting, fighting, fighting, fighting, fighting and I was not getting anywhere. Immigration did not believe me. Those who needed to believe me did not believe me," see also Q14.

3 Detention of Windrush generation: Case Studies

15. Mr Bryan and Ms Wilson, who had come to the UK lawfully as children, were detained, even though the Home Office should have been aware that there were no grounds for detention. Their oral evidence suggested that there had been serious deficiencies in the handling of their cases by Home Office officials with serious consequences for them. We investigated their concerns further when they shared their Home Office case files with us.

16. Our analysis of the case files confirmed that not only did the Home Office miss many opportunities to resolve the cases of Mr Bryan and Ms Wilson but that officials repeatedly made gross errors of judgement when evidence or information was supplied to them and did not appreciate that this evidence and information meant that there were no grounds to lawfully detain Mr Bryan and Ms Wilson. The Home Office seemed to conflate the question of status with a right to detain. Detention is a significant and very serious interference with an individual's human rights. It is for the Home Secretary to satisfy him or herself that the Home Office has a legal right to detain an individual. Given the information in both Ms Wilson and Mr Bryan's case files, there was clear information on the files indicating very strongly that both individuals did have a right to remain. In those circumstances, the Home Office does not have the power to deprive people of their liberty.

17. Separately, even if a person did not have a right to remain, detention powers should only be used if it is necessary and proportionate. Both Ms Wilson and Mr Bryan had settled family lives in the UK. They posed no absconding risk. Therefore, it is very difficult to understand why it was considered lawful, necessary and proportionate to detain such individuals, given that detention is such a severe restriction on an individual's basic rights.

18. This shows a catalogue of errors—misapplication of the law relating to immigration status, the seemingly unlawful and inappropriate use of detention powers, and a culture that failed to treat people with basic respect and dignity. This ultimately led to Mr Bryan and Ms Wilson being detained. A brief account of how their cases were handled by the Home Office is discussed below.

Mr Bryan and Ms Wilson

Mr Bryan

19. Mr Bryan came to the UK from Jamaica in 1965 on his brother's passport. As a Commonwealth citizen, Mr Bryan had "deemed leave" under the 1971 Act, but like many other members of the Windrush generation, he had no documentation to prove his immigration status. The lack of documentation only became a problem for him when he decided to travel abroad in 2015. In an attempt to confirm his status, and lacking in-depth knowledge of immigration law, Mr Bryan first applied for Leave to Remain (LTR) on human rights grounds (and on the basis of his private life) in May 2015. This application was rejected by the Home Office because Mr Bryan was not able to show that he had "resided continuously in the UK for over 20 years."[14] While Mr Bryan was uncertain about his immigration status, he clearly stated on his LTR application that he arrived in

14 Mr Anthony Bryan Home Office case file [not published]

the UK as a minor in 1965.[15] He also enclosed evidence such as his National Insurance records with this application. Despite this, the application was rejected and Mr Bryan was told that had to leave the UK and that if that if he failed to do this, he would be "liable to be detained or removed."[16] The facts clearly stated on this application should have been sufficient to alert the Home Office to the likelihood that he would have deemed leave under the 1971 Act and therefore that there were not lawful grounds to use detention powers.

20. Instead, Mr Bryan was put under reporting restrictions. His Home Office case file shows that he missed some appointments (because one of his children was "hospitalised in intensive care").[17] He was detained on 11 September 2016. Mr Bryan was in detention for almost three weeks. During this period, Mr Bryan's solicitors provided the Home Office with further evidence on 13 September 2016 of Mr Bryan's life in the UK including letters from his friends and family, and a letter from HMRC which stated that Mr Bryan's national insurance contributions dated back to before 1975.[18] While Mr Bryan's solicitors stated that Mr Bryan came to the UK from Jamaica in 1965, they did not mention his rights under the 1971 Act. This also suggests that there was a general lack of awareness of the rights conferred upon members of the Windrush generation through the 1971 Act.

21. Mr Bryan was released on 29 September 2016 but told by the Home Office that while his case needed further investigation, he was still liable to deportation. More evidence was submitted to the Home Office over a period of 14 months but Mr Bryan was detained again on 13 November 2017 (see annex 2 for the chronology according to the Home Office case file). A removal notice was served on him which stated that he would be deported to Jamaica on 15 November 2017. Mr Bryan's deportation was halted by an appeal to the Upper Tribunal Immigration and Asylum Chamber[19] and he was released from his second time in detention on 27 November 2017. Mr Bryan was finally able to get confirmation of his status in February 2018, almost two and a half years after he first set out his status and history to the Home Office, making clear that he was from Jamaica and had been living in the UK since before 1973.

Ms Wilson

22. Ms Wilson came to the UK from Jamaica as a child in 1968. Ms Wilson first submitted an application to the Home Office in 2003 on the basis of having a relative in the UK. This application was rejected because the correct fees were not paid and officials were unsure as to what Ms Wilson was applying for.[20] Ms Wilson's unresolved case was highlighted to the Home Office in 2014, as part of an exercise that the Home Office was undertaking with the company, Capita.[21] The Home Office assumed that Ms Wilson did not have leave to remain and sent her a notice of removal on 7 August 2015, which stated that she was liable for detention and removal.[22] Ms Wilson asked her Member of Parliament, Emma Reynolds, to write to the Home Office on her behalf. This letter stated Ms Wilson had lived in the UK for 47 years.[23] The Home Office's reply to the letter said that they had no

15 Mr Anthony Bryan Home Office case file [not published]
16 Mr Anthony Bryan Home Office case file [not published]
17 Mr Anthony Bryan Home Office case file [not published]
18 Mr Anthony Bryan Home Office case file [not published]
19 Mr Anthony Bryan Home Office case file [not published]
20 Q22 [Glyn Williams]; Ms Paulette Wilson Home Office case file [not published]
21 Q22 [Glyn Williams]
22 Ms Paulette Wilson Home Office case file [not published]
23 Ms Paulette Wilson Home Office case file [not published]

records of Ms Wilson's immigration status and advised that she submit a No Time Limit (NTL) application form. This advice was given despite the Home Office simultaneously stating in the letter that Ms Wilson's "claimed length of residence" meant that she was part of a category of people who had deemed leave under section 1 (2) of the Immigration Act 1971.[24] The letter further added that "there is no requirement for a person" deemed to have Indefinite Leave to Remain (ILR) to make an application to the Home Office "provided that they can show that they have resided continuously in the UK since that date and that they have not had their ILR cancelled or revoked."[25]

23. Like Mr Bryan, Ms Wilson was also under reporting restrictions. On 1 October 2015, Ms Wilson attended her appointment with her daughter Natalie Barnes but Natalie was subsequently banned from the centre because she had an argument with Home Office staff when trying to explain to them that the Home Office were doing the "wrong thing":

> When it came to my mum, I was very angry and I was trying to say to them, "Listen, you're doing the wrong thing. She was here before the law kicked in. It did not kick in until 1973. My mum has been here since 1968". Basically, a guy swore at me. I swore back at him. I said to him "Can you prove to me that you are English right now? Prove it. Take something out of your pocket to prove to me that you are British. How do I know that you're British and not from a different country?" He swore at me and then I got banned from the Home Office. They banned me from there, because they said that I was causing a bit of a disturbance when I was going there, because I was trying to fight for my mum."[26]

24. Ms Wilson and her daughter, Natalie Barnes, sent further letters and emails to the Home Office, which provided a detailed account of Ms Wilson's history in the UK and further showed that Ms Wilson was vulnerable and needed support to help her with confirming her status.[27] Despite this, Ms Wilson was detained twice, first on 9 August 2017 and then on 18 October 2017. The Home Office gave the following reasons to detain Ms Wilson:

> "Detention is necessary as currently there is no evidence of subjects lawful entry into the UK, she claims to have arrived as a 10 year old and been in the UK for over 47 years. So far despite regular prompts she has failed to make any application to provide evidence of this, she has also been non compliant with the ETD process over a sustained period therefore detention is proportionate to attempt to verify her nationality and either subsequently remove her, or at least prompt her to finally make an application."[28]

Ms Wilson was released on 25 October 2017 after the Home Office received a NTL application along with a letter from HMRC which stated that Ms Wilson had 34 qualifying years.[29] Further evidence was submitted by the Refugee Migrant Centre in Wolverhampton on behalf of Ms Wilson. On 1 December 2017, the Home Office finally confirmed that Ms

24 Ms Paulette Wilson Home Office case file [not published]
25 Ms Paulette Wilson Home Office case file [not published]
26 Q6 [Natalie Barnes]
27 Ms Paulette Wilson Home Office case file [not published]
28 Ms Paulette Wilson Home Office case file [not published]
29 Ms Paulette Wilson Home Office case file [not published]

Wilson was "deemed settled on 01/01/1973 (see annex 1 for a chronology according to the Home Office case file)."[30] Like Mr Bryan, it took Ms Wilson over two years to have her immigration status confirmed.

30 Ms Paulette Wilson Home Office case file [not published]

4 Conclusions drawn from case studies

Cases illustrative of wider problems with the UK's approach to immigration detention

25. The Home Office has acknowledged that significant failings were made in the handling of Mr Bryan and Ms Wilson's cases, but it has not provided a proper account of why this has happened. The Home Secretary said that he did not think these cases implied a general problem with Home Office immigration work and rather that the problems in the handling of these two cases are a result of "a series of mistakes [made] over a period of time"[31]:

> "I have said right from the start that what happened in these cases is appalling and wrong in so many ways. That is why, again, I welcome the work that the Committee has done to help bring that to light, which is helping us. But I do not just want to take a couple of cases and a few others that we are aware of where things have certainly gone wrong and say that that applies generally. To say that something is systemic you have to say that it is a general issue in the department […] As I told the Home Affairs Select Committee, I have seen no evidence of a systemic problem."[32]

26. While we remain unclear how Mr Bryan and Ms Wilson came to be detained, our own reading of the Home Office case files of Mr Bryan and Ms Wilson found that officials:

- showed a lack of awareness of the rights conferred upon various categories of individuals;
- ignored evidence on file that supported the individual's account including representations from family members, lawyers and MPs and letters from Government bodies like HMRC;
- placed the entire burden of proof on those investigated even when critical information could have been easily obtained from another department by Home Office officials. Those being investigated were expected to prove their immigration entitlement to a standard even beyond the Home Office's own guidance and seemingly required them to prove that they should not be detained;
- did not adequately satisfy themselves that they had a power to detain (and deport) individuals even when evidence on the case files strongly suggested that there was no lawful power to detain these individuals;
- made flawed assessments of risk of absconding, resulting in detention powers being used wrongfully; and
- demonstrated a general culture that was hostile—failing to treat individuals as deserving of respect and basic dignity.

31 Q24 [Rt Hon Sajid Javid MP]
32 Q27 [Rt Hon Sajid Javid MP]

These are discussed in detail below. Our Committee's detailed examination of these two cases leads us to believe that there was in all likelihood a systemic failure. For this reason we have asked to have sight of all other relevant cases.

Lack of awareness of rights of Commonwealth citizens who settled in the UK before 1973

27. At the root of this whole episode is the astonishing fact that the Home Office's immigration enforcement system failed to recognise the rights that Commonwealth citizens, including members of the Windrush generation, had under the Immigration Act 1971. These individuals had "deemed leave" but were not required to hold any specific document as part of that deemed leave to remain. In evidence, Glyn Williams, Director General of Border Immigration and Citizenship System at the Home Office, told the Committee that the Windrush generation's "special position as regards [to] their legal status" was something the Home Office had "lost sight" of and therefore their "processes were simply not set up to deal with this kind of case."[33]

28. For example, Mr Bryan's application for Further Leave to Remain was rejected on the grounds that he had not provided sufficient evidence of residing in the UK continuously for 20 years[34] and the Home Office proceeded to treat him as someone only entitled to apply on the grounds of a right to family life, even though it should have been obvious from the information he provided that he fell under s 1(2) of the Immigration Act 1971 and therefore had deemed leave and so could use the No Time Limit route to get the documents he required, based on his pre-existing status as a Commonwealth citizen who came to the UK before 1973.[35]

29. **It is unacceptable that the rights of a whole category of people with a legal right to be in the country were overlooked by Home Office officials. The consequent failure to make sure that policy took account of them had serious consequences for the individuals concerned. Even though it should have been obvious very early on in their interactions with the Home Office that Mr Bryan and Ms Wilson were likely to have deemed leave to remain and therefore could not be lawfully detained, officials repeatedly failed to consider this.**

Officials ignoring evidence

30. The Home Office ignored evidence such as letters from family members, written and verbal assertions by individuals whose status was being questioned, and letters from public authorities such as HMRC, all supporting the individual's account and therefore indicating that there was no lawful power to detain.

31. Mr Bryan's initial application for Further Leave to Remain which was made in 2015 clearly stated that he arrived in the UK aged nine and had lived here for fifty years. His application included some payslips and NI records. A simple check with HMRC, asking to see his contributions, may have helped to resolve Mr Bryan's case at this stage. In the same year, Mr Bryan's son sent a letter to the Home Office which said that Mr Bryan had resided

33 Q29 [Glyn Williams]
34 Mr Anthony Bryan Home Office case file [not published]
35 Mr Anthony Bryan Home Office case file [not published]

in the UK for forty-five years and that he would be happy to be contacted if the Home Office needed further information about Mr Bryan. Despite the evidence and assertions on Mr Bryan's file, he was taken into detention on 11 September 2016.[36]

32. On 13 September 2016, Mr Bryan's solicitors applied for his temporary release from detention, enclosing Mr Bryan's HMRC records which confirmed that he had NI records dating back before April 1975.[37] Despite this, the application for temporary release was initially rejected. When he was released after three weeks, the following note was made on his file:

> "We are now in receipt of further submissions dated 13 and 21 September 2016. Contained within his submissions is a letter dated 27 January 2013 from HM Revenue and Customs, which lists his NI credits since 1975/76 […] In light of the above factors Mr Bryan will need further questioning about his claim to have entered the UK in 1965 and to have remained here since. However, NRC Croydon Barrier Casework do not have the resource to undertake such enquiries and Mr Bryan's continued detention cannot be justified while such enquiries are undertaken."[38]

We are concerned that even when HMRC records were submitted as evidence to support Mr Bryan's account, his case remained unresolved and he was detained for a second time in November 2017.[39] We are also concerned that the Home Office do not have sufficient resources to adequately look into cases; indeed, their case notes record that they "do not have the resource" to look into Mr Bryan's case.[40] This might have contributed to depriving these individuals of their rights.

33. Ms Wilson gave a detailed account of her life to the Home Office as early as 15 December 2015.[41] She sent in different pieces of information over the years.[42] But we were told that as it was "not done on an NTL application form and because a fee was not paid," officials did not take a "holistic" view of the information she provided to them.[43]

34. Several individuals who knew Ms Wilson wrote in support of her application prior to her being detained for the first time in August 2017.[44] But these representations made by family members or people that knew Ms Wilson were ignored or disregarded.

35. Even when Ms Wilson's Member of Parliament, Emma Reynolds wrote to the Home Office, stating that Ms Wilson had informed her that she "holds settled status in the UK as she has lived here since 1968," the Home Office insisted that they "required evidence" of Ms Wilson's "settled status" and could apply for a No Time Limit application to meet

36 Mr Anthony Bryan Home Office case file [not published]
37 Mr Anthony Bryan Home Office case file [not published]
38 Mr Anthony Bryan Home Office case file [not published]
39 Mr Anthony Bryan Home Office case file [not published]
40 Mr Anthony Bryan Home Office case file [not published]
41 Ms Paulette Wilson Home Office case file [not published]
42 Q22 [Glyn Williams]
43 Q22 [Glyn Williams]. Glyn Williams also said that "Looking at Paulette Wilson's file, one of the many mistakes that we made was that we kept on asking her to make an NTL application, which costs £229. I do not think she was obliged to make an application to prove her status. It would have been sufficient for her to amass the evidence and present that to us," see Q25.
44 Letter in support of Ms Wilson's application dated 26 July 2016 [not published]; letter in support of Ms Wilson's application dated March 2017 [not published]; letter in support of Ms Wilson's application dated 7 March 2017 [not published]

this requirement.[45] It is difficult to understand how, following clear information that Ms Wilson was a Commonwealth citizen who settled in the UK prior to 1973—supported by correspondence from members of her family, people who had known her for years and even her MP, the Home Office still felt that they could deprive Ms Wilson of her liberty, locking her up, notwithstanding representations from all of these people, that on their face consistently make clear her right to remain in the UK as part of the Windrush cohort.

36. **The Home Office's approach to Windrush detention cases demonstrated a wholly incorrect approach to case-handling and to depriving people of their liberty. The fact that evidence making clear that there was no power to detain was blithely ignored is hugely problematic.**

Burden of proof

37. Home Office processes required standards of proof from those with deemed leave to remain which were very difficult for them to provide.[46] It seems that if those standards were not met, Home Office officials seem to have then considered that they had grounds to detain. Such an approach is simply unlawful—it is for the Home Office to satisfy itself that it has a power to detain an individual—not for an individual to have to satisfy the Home Office that they should not be detained. Not only did the Home Office place the entire burden of proof on the individual whose status was in question, officials sought an amount of proof beyond that required or indeed even beyond that envisaged in the Home Office guidance. Glyn Williams told the Committee that it was likely that the Home Office's

> "[…] interpretation and application of this guidance [NTL guidance] became rigid over the years. When applied in particular to Windrush people who have been here for 30, 40, 50 years, if you apply that rigidly over that time period, it becomes almost impossible."[47]

38. Indeed, this was evident in Mr Bryan's case. Despite the fact that Mr Bryan provided a detailed account of his life in the UK to the Home Office and it was supported by various pieces of evidence, his Further Leave to Remain application was rejected because there were gaps in the documentation supporting his account. As stated by the Home Secretary, members of the Windrush generation were not explicitly required to retain the information:

> In both the examples you have given, of Miss Wilson and Mr Bryan, they sent in applications and letters […]. The system says, "You've got to prove that". The Home Office is obviously a big part of the public sector and has easy access to DWP records, school records and, as you say, the Treasury and HMRC. It does not do that; it puts the entire burden on you […] it is set up much more for those who would already have had to have proved their status […]. There is absolutely no reason why anyone from the Windrush generation who had deemed leave would have to do that. Why should they

45 Ms Paulette Wilson Home Office case file [not published]

46 The Immigration Act 1971, s. 3 (8), provides that: "When any question arises under this Act whether or not a person is [a British citizen], or is entitled to any exemption under this Act, it shall lie on the person asserting it to prove that he is." Such provisions made it easier for Home Office officials to demand unrealistic standards of proof.

47 Q22 [Glyn Williams]

> have to do that, because as far as the law is concerned they are absolutely rightly here? That is why I think that in many cases people were asked for proof that they could not possibly provide […]"[48]

39. **The Home Office required standards of proof from members of the Windrush generation which went well beyond those required, even by its own guidance; and moreover were impossible for them to meet—and which would have been very difficult for anyone to meet. This led to officials making perverse decisions about their status. Moreover, it seems that if those standards were not met, Home Office officials then considered that they had grounds to detain. Such an approach is simply unlawful—it is for the Home Office to satisfy itself that it has a power to detain an individual—not for an individual to have to satisfy the Home Office that they should not be detained.**

Use of detention powers

Power to detain

40. The main Home Office guidance on immigration detention, *Enforcement Instructions and Guidance*, makes several references to a presumption of bail, and therefore liberty, when making a decision to detain an individual.

41. However, from the cases we have examined it is clear that detention powers are being used too readily and without need or legal justification. The Home Office seems to conflate the question of status with a right to detain. Detention is a significant and very serious interference with an individual's human rights. It is for the Home Secretary to reassure him or herself that the Home Office has sufficiently satisfied itself (given all the information before them) that they have a legal power to detain an individual. This means that an individual cannot be detained merely because that individual has not filled out the correct forms or that their application form is missing a piece of supplementary information. This means that the Home Secretary (through his staff) must be satisfied that that individual does not have a legal right to be in the UK and, as a separate matter, that it is necessary for that individual to be detained for deportation. There was clear information on Mr Bryan and Ms Wilson's files indicating very strongly that both individuals did have a deemed right to remain (even if some of the details might have benefited from further research with e.g. other government departments). In those circumstances, the Home Office does not have a power to deprive people of their liberty and detention is unlawful. In such circumstances, the Home Office should resolve the matter, if necessary investigating further to determine either that the person does have a right to remain, or that the person does not (at which point it could consider detention, if that is necessary in an individual's case).

42. The decision to detain Ms Wilson was based on the following reasons:

> "Detention is necessary as currently there is no evidence of subjects lawful entry into the UK […] So far despite regular prompts she has failed to make any application to provide evidence of this, she has also been non

48 Q23 [Rt Hon Sajid Javid MP]

> compliant with the ETD process over a sustained period therefore detention is proportionate to attempt to verify her nationality and either subsequently remove her, or at least prompt her to finally make an application."[49]

The reasons given here to detain Ms Wilson seem, to include a desire to prompt her to submit an application form: this is not a lawful reason to justify using detention powers, and the fact it was given suggests the Home Office is not taking the need for lawful grounds for detention sufficiently seriously.

Risk of absconding

43. Separately, even if a person did not have a right to remain, detention should only be used if it is necessary and proportionate. Both Ms Wilson and Mr Bryan had settled family lives in the UK. They posed no realistic risk of absconding. Therefore, it is very difficult to understand why it was considered necessary and proportionate to detain such individuals, given that detention is such a severe restriction on an individual's basic rights. Given that both individuals had families in the UK the Home Office's decision was not based on any real assessment of the risk of the individual absconding. While both Mr Bryan and Ms Wilson had missed some appointments when they were under reporting restrictions, in at least one of the two cases, this was due to exceptional circumstances.[50] That the Home Office marked them as being at risk of absconding was just one of the failures of the system which did not sufficiently protect against human rights abuses.

44. **Detention powers have been used unlawfully and inappropriately by the Home Office without assuring itself that it had a right to deprive individuals of their liberty. Sufficient consideration was not given as to whether the Secretary of State was satisfied that the individuals did not have a right to remain in the UK and could be lawfully detained with a view to deportation. Separately, detention powers were used even though it was not necessary or proportionate to use them—for example, where the individuals posed no real risk of absconding and there was no conceivable need to detain them. Home Office officials appear to have considerable discretion in their decision-making, without a need to adequately reason and justify their decisions when deciding to deprive a person of their liberty. It appears that in these two cases, at least, they failed to comply with the stated policy on considering all alternatives to detention. It also appears that inadequate oversight and monitoring of the progress of these cases meant these failings were not detected. This is deeply concerning given that immigration detention involves deprivation of an individual's physical liberty.**

45. ***Detention should only be used if the Secretary of State is satisfied that he has a power to detain. Such a power does not apply to individuals that have leave to remain in the United Kingdom. Detention should not be used where the person is settled and poses no real risk of absconding. There should be fundamental change in the law, culture and procedures to protect human rights in the work of the Home Office. The Home Office should review its use of detention for immigration purposes to scrutinise carefully why it has used its powers unlawfully and why it has used these powers unnecessarily and disproportionately in these cases. There should be more accountability when initiating or prolonging detention and stronger safeguards overall to prevent wrongful detention. There should be more opportunities to challenge wrongful detention and***

49 Ms Paulette Wilson Home Office case file [not published]

50 Mr Anthony Bryan Home Office case file [not published]

clear parameters to limit the use of detention. We intend to conduct a further inquiry into the UK's immigration detention system in the Autumn. At this stage we believe that administrative decisions made in these cases were not justified and proportionate and did not protect against unnecessary and unlawful detention. We will be asking the Home Secretary to set out precisely how he is rectifying these failings and will then consider what steps are needed to improve the UK's detention system.

Home Office culture

46. We found the Home Office's approach to, and handling of, Windrush immigration detention cases dehumanising and deeply problematic. In both cases multiple opportunities to resolve Mr Bryan and Ms Wilson's cases and to confirm their status were missed. They were seemingly treated with suspicion and incredulity despite consistent information and evidence, supported by multiple witnesses confirming their life stories. No support was offered to individuals navigating such a complex immigration system, in which it seems even the officials did not know which laws and rules to be applying and instead presented an obstructive attitude of simply asking individuals for more and more impossible historic evidence and resorting too readily to detention if this was not satisfied. Indeed, there seemed to be a lack of a basic culture of humanity, care and respect in dealing with people.

47. For example, even when the Home Office had information, such as email correspondence from Ms Wilson's daughter which stated that her mother often "forgot what they [Home Office Officials] actually told her" and therefore was struggling to understand what was required of her, there seemed to be no real effort to take reasonable steps to assist her or accommodate her in navigating the system even given the clear account they had suggesting she was a Commonwealth citizen with a right to remain in the UK.[51] Moreover, in light of the support Ms Wilson needed, we found the Home Office's decision to ban Ms Wilson's daughter, Ms Natalie Barnes, from the reporting centre ill-judged and thoughtless.[52]

48. In evidence, the Home Secretary and the Director General of Border, Immigration and Citizenship System at the Home Office insisted that the problems in the handling of these two cases were a result of "a series of mistakes [made] over a period of time".[53] However, we are not convinced that this is the case. We looked at two separate cases which contained information about Home Office decisions in relation to the two individuals over a long period of time. It seems implausible that the same mistakes could have been repeatedly made in two entirely separate cases.

49. **The Home Office's approach to Windrush cases has been shocking. Several opportunities to resolve Mr Bryan and Ms Wilson Wilson's cases speedily were missed, seemingly due to unfair processes. Everyone would benefit from a more efficient and constructive process that focussed on resolving the status of individuals speedily and fairly. Apart from the obvious imperative of not detaining people unlawfully, this would also avoid wasting time and money on reporting and detention.**

50. **We do not find the Home Office explanation that the deficiencies in the handling of these cases was a result of "a series of mistakes over a period of time," to be credible**

51 Ms Paulette Wilson Home Office case file [not published]
52 Ms Paulette Wilson Home Office case file [not published]
53 Q24 [Rt Hon Sajid Javid MP]

or sufficient. We examined two separate cases in which information was repeatedly assessed and a series of decisions were taken by different people within the Home Office over a long period of time. Given that these case files were handled by numerous officials it is not plausible that the same mistakes could have been made repeatedly; rather the pattern of errors points to the greater likelihood of a lack of both an appropriate system of case management and of oversight by senior officers of compliance with such a system to minimise the likelihood of such mistakes being made Moreover, there has been no disciplinary action, remedial action or any fundamental review of procedures, taken by the Home Office as one would expect from an organisation which has come across such serious errors. We were told there was a process for "quality assurance," but have not had supporting details.

51. **We think it is imperative to establish whether there is a more general problem in the use of detention at the Home Office in order to learn lessons from what has happened and to implement the necessary changes to prevent future injustices resulting in wrongful detentions.**

52. **If these failings are a result of staff "mistakes"[54] and poor decisions then staff should be identified, disciplined and retrained, as appropriate.**

53. **If Home Office immigration work regularly results in successive poor decisions and successive gross errors of judgement then this implies a problem with the system itself, and therefore requires more fundamental changes to policy, culture and training. We have asked for the Home Office case files of those individuals from the Windrush cohort who were detained prior to being deported and will also ask to see the files of all other detention cases from the Windrush cohort and asked for sight of the guidance that officials are given when dealing with individuals who are contesting their detention.[55] We look forward to considering this information in light of any reforms that are being introduced by the new Home Secretary and may then propose wider changes to the immigration detention system.**

Other issues

Limited support after being released from detention

54. Ms Wilson gave us a telling account of her release from the removals building in Heathrow:

54 Q24 [Glyn Williams and Rt Hon Sajid Javid]

55 Letter from Rt Hon Harriet Harman MP, Chair of the Joint Committee on Human Rights, to Rt Hon Sajid Javid MP, Home Secretary, regarding JCHR oral evidence session, dated 6 June 2018

Box 2: Ms Wilson description of release:

> "The day I was released, they put me outside the airport. The man who let me out said, "A cab is going to pick you up and take you to the station". I was outside the airport. I was in tears, crying, because the planes were just taking off over my head. I had to stand and squeeze my head. I was praying for this taxi man to come and pick me up. They shoved me out. No one stayed with me. I waited for the cab. The cab man came. He said, "Are you Paulette Wilson?" I said, "Yes". He put in the cab and took me to the station. From the station, they gave me a travel warrant to get from here back to Wolverhampton, and that was it. I was on the Underground. Then I got to Euston and I was put on the fastest train back to Wolverhampton. They have not said anything to me ever since."[56]

Source: Q11 [Ms Wilson]

55. Ms Wilson was clearly traumatised by her detention and the threat of removal to a country that she left as a child. Her account suggests that immigration enforcement officials barely communicated with her when she was released from Heathrow, which added to the confusion and anxiety that she was experiencing. **We note that the new Home Secretary has instructed officials to take a sympathetic and proactive approach. A more humane approach to dealing with people who come into contact with the immigration enforcement system is indeed needed. We look forward to hearing more about any new approach.**

Financial difficulties

56. Both our witnesses have had limited support following their release from detention. Ms Wilson missed out on benefit payments for over two years and is trying the recover these[57] while Mr Bryan paid significant amounts for legal advice and is facing bailiffs due to increasing debts.[58]

57. **Both individuals are part of a group from the Windrush generation that is facing financial hardship. The Home Affairs Select Committee has recently called for a hardship fund to be set up to help these individuals. *We support this call for a hardship fund and urge the Government to act immediately in setting up this fund.***

56 Q11 [Ms Paulette Wilson]
57 Q13 [Ms Paulette Wilson and Natalie Barnes]
58 Home Affairs Select Committee, Fifth Report of Session 2017–19, Windrush: the need for a hardship fund, HC 1200

5 The need for a proper review of the Windrush episode

58. The new Home Secretary, Mr Sajid Javid MP, told us that the Home Office is undertaking a full review into the problems experienced by the Windrush generation in proving their status. The Home Secretary said that he is approaching the problems with a view to learning lessons from them:

> "I am new to the job and I hope to use that as an advantage to bring a fresh set of eyes to what happened and what went wrong in these cases, because obviously something went massively wrong. Why did it happen and what lessons can we learn from it? What has happened has happened. We are all sorry for it, but how can we make sure that nothing like this happens to others?"[59]

The Home Secretary also said that some lessons had already been learnt, including instructing the new Windrush task force to take a "sympathetic and proactive" approach when dealing with those members of the Windrush generation who want to confirm their status. Where previously officials did not take the initiative to check evidence with other Government departments, officials are now instructed "to use the entire public estate to gather information on their behalf to make it as easy as possible."[60] The lessons learning exercise that the Government is going through is welcome as are the changes in Home Office practices when dealing with members from the Windrush generation.

59. However, we remain concerned that the similarities in the handling of Mr Bryan and Ms Wilson's immigration cases indicate a systemic problem of dealing with immigration work at the Home Office.

60. Independent scrutiny is needed to ensure the lessons of this episode are learned and made public. To help to understand the causes of these successive errors, we have asked the Home Office for further information. This includes information as to about whether officials who had the conduct of cases which resulted in wrongful detention have been identified and or retrained. We have also asked for the guidance that officials are given when dealing with individuals who are contesting their detention. The Home Office is currently aware of 63 Windrush deportation cases; many of these individuals will have been detained before deportation.[61] We have accordingly asked to see the Home Office case files of those individuals that were detained prior to being deported, and we will ask to see the case files of other individuals from the Windrush cohort who were detained, even if they were not deported, so we can assess whether there are further lessons to be learned.

59 Q23 [Rt Hon Sajid Javid MP]
60 Q23 [Rt Hon Sajid Javid MP]
61 Oral evidence taken before the Home Affairs Select Committee evidence session on 15 May 2018, HC (2017–19) 990, Q237 [RT Hon Sajid Javid MP]

Conclusions and recommendations

1. It is unacceptable that the rights of a whole category of people with a legal right to be in the country were overlooked by Home Office officials. The consequent failure to make sure that policy took account of them had serious consequences for the individuals concerned. Even though it should have been obvious very early on in their interactions with the Home Office that Mr Bryan and Ms Wilson were likely to have deemed leave to remain and therefore could not be lawfully detained, officials repeatedly failed to consider this. (Paragraph 30)

2. The Home Office's approach to Windrush detention cases demonstrated a wholly incorrect approach to case-handling and to depriving people of their liberty. The fact that evidence making clear that there was no power to detain was blithely ignored is hugely problematic. (Paragraph 37)

3. The Home Office required standards of proof from members of the Windrush generation which went well beyond those required, even by its own guidance; and moreover were impossible for them to meet—and which would have been very difficult for anyone to meet. This led to officials making perverse decisions about their status. Moreover, it seems that if those standards were not met, Home Office officials then considered that they had grounds to detain. Such an approach is simply unlawful—it is for the Home Office to satisfy itself that it has a power to detain an individual—not for an individual to have to satisfy the Home Office that they should not be detained. (Paragraph 40)

4. Detention powers have been used unlawfully and inappropriately by the Home Office without assuring itself that it had a right to deprive individuals of their liberty. Sufficient consideration was not given as to whether the Secretary of State was satisfied that the individuals did not have a right to remain in the UK and could be lawfully detained with a view to deportation. Separately, detention powers were used even though it was not necessary or proportionate to use them—for example, where the individuals posed no real risk of absconding and there was no conceivable need to detain them. Home Office officials appear to have considerable discretion in their decision-making, without a need to adequately reason and justify their decisions when deciding to deprive a person of their liberty. It appears that in these two cases, at least, they failed to comply with the stated policy on considering all alternatives to detention. It also appears that inadequate oversight and monitoring of the progress of these cases meant these failings were not detected. This is deeply concerning given that immigration detention involves deprivation of an individual's physical liberty. (Paragraph 45)

5. *Detention should only be used if the Secretary of State is satisfied that he has a power to detain. Such a power does not apply to individuals that have leave to remain in the United Kingdom. Detention should not be used where the person is settled and poses no real risk of absconding. There should be fundamental change in the law, culture and procedures to protect human rights in the work of the Home Office. The Home Office should review its use of detention for immigration purposes to scrutinise carefully why it has used its powers unlawfully and why it has used these powers unnecessarily and disproportionately in these cases. There should be more accountability when initiating or prolonging detention and stronger safeguards overall to prevent wrongful*

detention. There should be more opportunities to challenge wrongful detention and clear parameters to limit the use of detention. We intend to conduct a further inquiry into the UK's immigration detention system in the Autumn. At this stage we believe that administrative decisions made in these cases were not justified and proportionate and did not protect against unnecessary and unlawful detention. We will be asking the Home Secretary to set out precisely how he is rectifying these failings and will then consider what steps are needed to improve the UK's detention system. (Paragraph 46)

6. The Home Office's approach to Windrush cases has been shocking. Several opportunities to resolve Mr Bryan and Ms Wilson Wilson's cases speedily were missed, seemingly due to unfair processes. Everyone would benefit from a more efficient and constructive process that focussed on resolving the status of individuals speedily and fairly. Apart from the obvious imperative of not detaining people unlawfully, this would also avoid wasting time and money on reporting and detention. (Paragraph 50)

7. We do not find the Home Office explanation that the deficiencies in the handling of these cases was a result of "a series of mistakes over a period of time," to be credible or sufficient. We examined two separate cases in which information was repeatedly assessed and a series of decisions were taken by different people within the Home Office over a long period of time. Given that these case files were handled by numerous officials it is not plausible that the same mistakes could have been made repeatedly; rather the pattern of errors points to the greater likelihood of a lack of both an appropriate system of case management and of oversight by senior officers of compliance with such a system to minimise the likelihood of such mistakes being made Moreover, there has been no disciplinary action, remedial action or any fundamental review of procedures, taken by the Home Office as one would expect from an organisation which has come across such serious errors. We were told there was a process for "quality assurance," but have not had supporting details. (Paragraph 51)

8. We think it is imperative to establish whether there is a more general problem in the use of detention at the Home Office in order to learn lessons from what has happened and to implement the necessary changes to prevent future injustices resulting in wrongful detentions. (Paragraph 52)

9. If these failings are a result of staff "mistakes" and poor decisions then staff should be identified, disciplined and retrained, as appropriate. (Paragraph 53)

10. If Home Office immigration work regularly results in successive poor decisions and successive gross errors of judgement then this implies a problem with the system itself, and therefore requires more fundamental changes to policy, culture and training. We have asked for the Home Office case files of those individuals from the Windrush cohort who were detained prior to being deported and will also ask to see the files of all other detention cases from the Windrush cohort and asked for sight of the guidance that officials are given when dealing with individuals who are contesting their detention. We look forward to considering this information in light of any reforms that are being introduced by the new Home Secretary and may then propose wider changes to the immigration detention system. (Paragraph 54)

11. We note that the new Home Secretary has instructed officials to take a sympathetic and proactive approach. A more humane approach to dealing with people who come into contact with the immigration enforcement system is indeed needed. We look forward to hearing more about any new approach. (Paragraph 56)

12. Both individuals are part of a group from the Windrush generation that is facing financial hardship. The Home Affairs Select Committee has recently called for a hardship fund to be set up to help these individuals. (Paragraph 58)

13. *We support this call for a hardship fund and urge the Government to act immediately in setting up this fund.* (Paragraph 58)

Annex 1: Committee's Analysis of Timeline of Key Events from Home Office Case File on Ms Wilson

Page #/ Date	Assertion	Evidence	Home Office Action
27/10/2003	Ms Wilson submits an application to the HO on the basis of having a relative in the United Kingdom. GCID–Case Record Sheet containing Minute/Case notes from the HO.		HO was unsure as to what she was applying for and the application materials were sent back to her on 08/11/2003. There is not a copy of Ms Wilson's Ms Wilson application included in the file. GCID–Case Record Sheet containing Minute/Case notes from the HO.
7/8/2015			Letter from the HO to Ms Wilson containing Notice of Liability to removal form notifying her of her immigration status and liability to detention and removal.
24/08/15	MP Emma Reynolds emailed the HO to enquire about the status of the case, and including attachments about the case. Ms Wilson had informed her that she was born on 20/03/56 in Jamaica, but she has lived in the UK for 47 years, that she has one daughter, Natalie Barnes, born in the UK, and one grandchild born in the UK. E-mail from MP's office		

Page #/ Date	Assertion	Evidence	Home Office Action
09/09/15			The email from the HO states that the HO has no records of her lawful entry to the UK or that she holds current Leave to Remain. The email confirms that HO wrote to Ms Wilson on 07/08/15 advising that there is no evidence of her lawful entry to the UK or that she holds current Leave to Remain. It also set out the criteria for Indefinite Leave to remain; that she did not need to make an application provided she could show that she had resided continuously in the UK since then. It also set out the sorts of evidence that might help were she to want to submit a NTL (No Time Limit) Application. The HO emailed MP Emma Reynolds in response to a previous email from Reynolds on behalf of Ms Wilson and her immigration status.
16/09/15			The letter states further to their correspondence on 07/08/15, Ms Wilson failed to attend her reporting event at West Midlands Reporting Centre on 18/08/15. The letter states a new reporting date for 28/09/15. Letter from the HO to Ms Wilson.
01/10/15			The letter advises that Ms Wilson may submit an NTL (No Time Limit) application in order to obtain a BRP (Biometric Residence Permit) to formally recognize her continuous residence in the UK for the last 47 years. The letter explains how to submit an NTL application. Letter from the HO to Ms Wilson.

Page #/ Date	Assertion	Evidence	Home Office Action
15/12/15	Ms Wilson writes that she arrived in the UK on 1/05/68 to her join her grandparents. She lived with her grandparents in Wellington, Shropshire and was then put in a children's care home. She has never left England since she first arrived at the age of 12. Letter from Ms Wilson to the HO.		
27/09/16	Ms Wilson's 38-year-old daughter, Natalie Barnes, emails the HO, saying: - That she and Ms Wilson filled out an NTL form a year ago with all the required information including "school, boarding school and care home was my mom was in dating back to 1972". - That "[her] mom and dad are dead" - That an individual who assisted with paperwork could contact HO. Natalie asks to be the primary contact regarding Ms Wilson's case. GCID evidence sheet	Natalie states: that both Ms Wilson's Ms Wilson parents have died; that they are scared GCID–Case Record Sheet containing Minute/Case Notes from the HO.	
27/09/16			The HO responds to Natalie Barnes' email stating that the HO has no record indicating that an NTL application has ever been received for Ms Wilson. The email also states that the HO cannot discuss Ms Wilson's case in detail with Natalie as she is not listed as an authorized third party in the HO records. GCID–Case Record Sheet containing Minute/Case Notes from the HO.

Page #/ Date	Assertion	Evidence	Home Office Action
08/03/17	The form states: that Ms Wilson entered the UK as a small child, approximately 10 years old; that Ms Wilson has a daughter, granddaughter and a large family in the UK; that Ms Wilson has no recollection of Jamaica; that Ms Wilson is responsible for the care of her granddaughter and that Ms Wilson *left Jamaica as a 10 year old child*. Jamaican High Commission Interview Form completed with Ms Wilson to be filed in the HO.		
26 & 27/07/17			The document states: that the HO plans to detain Ms Wilson on 09/08/17 at Sandford House, Solihull. It States that "Detention is necessary as currently there is no evidence of subjects lawful entry into the UK, has claims to have arrived in the UK as a 10 year old and been in the UK for over 47 years. So far despite regular prompts she has failed to make any application to provide evidence of this, she has also been non compliant with the ETD process over a sustained period therefore detention is proportionate to attempt to verify her nationality and either subsequently remove her, or at least prompt her to finally make an application." GCID–Case Record Sheet containing Minute/Case Notes from the HO.

Page #/ Date	Assertion	Evidence	Home Office Action
09/08/17			MS WILSON IS DETAINED BY THE HO. The document states that the HO detained Ms Wilson at 11:40 at Sandford House, Solihull. GCID–Case Record Sheet containing Minute/Case Notes from the HO.
09/08/17			MS WILSON IS RELEASED BY THE HO. The document states that Ms Wilson was released from detention as there was no female bed available. GCID–Case Record Sheet containing Minute/Case Notes from the HO.
11/10/17			The document states that the HO plans to detain Ms Wilson on 18/10/17; and states that: "Detention is necessary as currently there is no evidence of subjects lawful entry into the UK, has claims to have arrived in the UK as a 10 year old and been in the UK for over 47 years. So far despite regular prompts she has failed to make any application to provide evidence of this, she has also been non compliant with the ETD process over a sustained period therefore detention is proportionate to attempt to verify her nationality and either subsequently remove her, or at least prompt her to finally make an application GCID–Case Record Sheet containing Minute/Case Notes from the HO.

Page #/ Date	Assertion	Evidence	Home Office Action
18/10/17* *Assumed typo on the document as it states detention on 15/10/17, but all other context shows detention on 18/10/17 as planned.			MS WILSON IS DETAINED BY THE HO. The document states: that the HO detained Ms Wilson at 11:20 at Sandford House; that Ms Wilson has been in the UK since arriving at age 10 and states that: "Subject has failed to regularise her stay and has given no indication they would voluntarily depart. Given subjects immigration history I am not satisfied that she would comply with self check RDs therefore I authorise detention in the interests of effective immigration control and to facilitate removal from the UK". GCID–Case Record Sheet containing Minute/Case Notes from the HO.
23/10/17		HO received copy of a faxed copy of an NTL application and a copy of a letter from HMRC (dated 23/10/17) with National Insurance records showing that Ms Wilson has worked in the UK and has over 35 qualifying years of National Insurance Contributions. GCID–Case Records Sheet	
25/10/17			MS WILSON IS RELEASED on temporary admissions by the HO and told about all conditions/reporting times which she must abide by. Ms Wilson is released from detention while her case is forwarded to Removals Casework for further investigation and consideration due to her potential length of residence. GCID–Case Record Sheet containing Minute/Case Notes from the HO.

Page #/ Date	Assertion	Evidence	Home Office Action
30/10/17	Letter from Refugee and Migrant Centre states that Ms Wilson has indefinite leave to remain in the UK as she entered the UK as a child in 1968 and has remained since. It includes attachments as evidence.	1. An entry from the Shropshire Council showing Ms Wilson's registration into a Children's Home. 2. National Insurance records showing that Ms Wilson has worked in the UK and has over 35 qualifying years of National Insurance Contributions. 3. A letter from 22/09/2015 from Ms Wilson's Ms Wilson GP confirming that she has been registered with their Practice since 27/11/02, and records to confirm that Ms Wilson has been seen by previous doctors since 16/03/78. 4. Ms Wilson's birth certificate from Jamaica confirming her nationality. 5. A letter written from a childhood friend of Ms Wilson to the HO. The letter states that they were a member of the same community as Ms Wilson growing up and confirms her attendance at a Primary School in Wellington and her upbringing in a Children's Home in Wellington. Letter from Ms Wilson's Ms Wilson senior caseworker at the Refugee and Migrant Centre to the HO on Ms Wilson's Ms Wilson behalf in regard to her application for a BRP.	

Page #/ Date	Assertion	Evidence	Home Office Action
31/10/17	Ms Wilson writes a personal statement in her application explaining the grounds as to why she thinks she should be allowed to stay in the UK. She has lived in the UK for nearly 50 years and it is all she knows. She has a daughter and granddaughter in the UK, whom she looks after. Ms Wilson writes that she did not know she was an illegal immigrant until she received a letter from the HO in 2015. (NB She is not an illegal immigrant.) Ms Wilson's NTL application received by the HO.		
31/10/17			Natalie Barnes phoned to ask HO why Ms Wilson had to report to the HO again so soon after being released on 25/10/17. Was told could not discuss case "due to data protection", and that she was unlikely to be able to gain entry to the centre for the appointment next day. HO ASU Call Note
01/12/17 p. 203–206			The document states that Ms Wilson's application status is confirmed as valid; and that it is accepted that the applicant was deemed settled on 01/01/73. HO ASU Call Note

Annex 2: Committee's Analysis of Timeline of Key Events from Home Office Case File on Mr Bryan

Page # Date	Assertions	Evidence	HO action
27/2/13		HMRC Letter stating Mr Bryan has 13 qualifying years of NICs–not clear when submitted to HO (HMRC letter to Mr Bryan)	
3/2/14		Letter from a former partner stating she has three children with Mr Bryan (letter from former partner (does not state to who)	
27/04/14		Mr Bryan states he does "not know any country, Jamaica" (p.46) and states lived in UK for 50 years and came to the UK aged 9. (Further Leave to Remain (FLR) application form)	
18/05/2015	Waran and Company states that client has lived in UK for more than 50 years and has well established family life. Mr Bryan asserts he came to the UK at the age of 9 from Jamaica on his brother's passport (Letter from Waran and Company to HO)	Enclosed with Further Leave to Remain application: birth certificates; payslips and NI records (p.215); photographs.	
10/08/15		Letter from Mr Bryan's son, saying that his father has been in country for 45 years and happy to answer any questions if needed (Letter from Antony's son to HO)	
26/08/15			Home Office agrees with decision to refuse application for Leave to Remain (LTR) (GSID case record)
15/09/15			Further Leave to Remain (FLR) application form–marked INVALID (Letter from HO to Mr Bryan)

Page # Date	Assertions	Evidence	HO action
15/09/2015			APPLICATION FOR LEAVE TO REMAIN REJECTED On basis of insufficient evidence (Letter from HO to Mr Bryan)
16/3/16			HO decision reiterated HO letter responding to pre-action protocol (but don't have sight of protocol)
24/6/16		Case notes say that Waran and Company says applicant unable to attend reporting due to son being in intensive care. (Case notes)	
11/09/16	On initial questioning Mr Bryan asserts he is an 'illegal immigrant'. Checks with HO reveal that Mr Bryan asserts he has lived in UK, since he was 8 yrs old and has 7 UK born children including one born in a child in 1984. In 'Illegal Entry Interview' Mr Bryan asserts that he entered the UK with his brother in Sept 1965 aged 9 on the same passport as his brother. In second interview on the same day gives details of the addresses he's lived at since arriving in the UK, names of schools and company he worked as an apprentice for etc. He also asserts that he has a NI number and has a record on his P45s. (HO Minute Sheet Note of interview with Mr Bryan at his home at the point of 'arrest' by North London Arrest Team)	HO confirms Mr Bryan's child's birth certificate (b.1984) provided as evidence	TAKEN FROM HOME INTO DETENTION AT BECKET HOUSE AND REMOVAL NOTICE SERVED

Page # Date	Assertions	Evidence	HO action
11/09/16			HO gives voluntary departure form to Mr Bryan. Mr Bryan signs declaration for voluntary departure from UK (Disclaimer in the case of voluntary departure)
12/09/16			TRANSFERRED TO VERNE IRC (Case Notes)
12/09/16	Asserts that Mr Bryan arrived in the UK in 1957 with his mother, that he is in a relationship with Janet and has seven children, one of whom has died. (Letter from Waran and Company to HO)	Includes statement from Janet (see below)	
12/09/16		Janet states Mr Bryan has been in the country since age 9; they have been in a relationship for 5 years; and that she "met the applicants seven children, six granddaughters and their mothers." (Statement from Janet)	
12/09/16	Request Mr Bryan be released on bail; makes the assertion that he came in 1966 and has private and family life. Also mentions that HO was notified of death of his son. (letter from Waran & Co to HO)		

Page # Date	Assertions	Evidence	HO action
13/09/2016 (12/10/16)	Assertion that Mr Bryan arrived in the UK in 1957 with his mother, that he is in a relationship with Janet and has seven children, one of whom has died. (Letter from Waran and Company to HO)	- Letter from Janet confirming relationship with Mr Bryan - Photos of five of his children in UK and grandchildren - Birth certificate of one of Mr Bryan's sons and letter from him confirming his presence in the UK for past 32 yrs. - National Insurance number and record of when contributions commenced from 1972.	
14/09/16			REQUEST FOR TEMPORARY RELEASE REFUSED (Letter from HO to Waran and Company)
19/09/16		Letter from Kate Osamor MP on behalf of Janet about Mr Bryan to HO	Kate Osamor MP REQUESTS HO INVESTIGATES CASE
29/09/16			RELEASED FROM DETENTION FROM VERNE IRC Agreed on basis case needs further investigation which they don't have adequate resources for. (Email from NRC Croydon Barrier Casework team to SCW (Senior Case Worker?) and undated response from SCW)
30/9/16			HO one stop notice reasserting liability to deport/urging him to leave voluntarily or tell them about new reasons for remaining (HO one stop notice)
30/09/16			10/16 GCID notes–state info is too sporadic more info needed

Page # Date	Assertions	Evidence	HO action
11/10/16		Statement from a former partner, stating that she was in relationship with Mr Bryan between 1974 and 2004 & had three children (Letter to whom it may concern)	
20/10/16			HO responds to Kate Osamor thanking her and saying 'in order to safeguard and individual's personal information and comply with Data Protection Act 1998 we are limited in what information we can provide when the request is made by someone who is not the applicant. We are therefore unable to provide information about Mr Bryan
09/11/16		Statement from other former partner, confirming her relationship with Mr Bryan and that they had three children together (the first was born in 1977) (Letter from Waran and Company to HO enclosing)	
15/12/16	Asserts details about relationship with Mr Bryan, confirming he never left the UK since arrival.	Further letter from former partner who made statement on 11/10/2016 confirming relationship with Mr Bryan and that they had three children together (the first was born in 1979). Details given include the children's schools etc.	
21/08/17		Waran and Company writes with info noting doc. Enclosed (inc. statements from mothers of children, NHS letters) (Letter from Waran & company to HO)	

Page # Date	Assertions	Evidence	HO action
13/11/17	In interview Mr Bryan asserts that he has been in the UK for 51 years "I've got nothing in Jamaica". (HO Minute Sheet—note of interview with Mr Bryan when he had gone to report at Becket House)		TAKEN INTO DETENTION FROM BECKET HOUSE AT WALWORTH CUSTODY SUITE with a view to deportation to Jamaica on 15/11/17 SUBSEQUENTLY TRANSFERRED TO CAMPSFIELD HOUSE
13/11/17			HO AUTHORISES DETENTION–removal imminent and on basis that previously failed/ refused to leave the UK when asked (Home Office memo detention authorisation & Notice to Detainee) Details of deportation (HO letter to Mr Bryan)
13/11/17		HO notice to Antony about Bail rights (HO notice to Mr Bryan about Bail rights)	
14/11/17			Stay on removal granted by Tribunal (Upper Tribunal Immigration and Asylum Chamber Judicial Review Decision Notice).
27/11/17		Letter confirms Mr Bryan starting primary school date (Letter from primary school)	
27/11/17			Notification of liability of detention (HO letter to Mr Bryan) and reporting restrictions applied
27 /11/ 17			RELEASED FROM CAMPSFIELD HOUSE (GCID notes)
Undated			Application for leave made on 20 May 2015 to remain rejected 9 (HO letter to Mr Bryan)

Page # Date	Assertions	Evidence	HO action
13/2/18	In interview with case officer describes circumstances fully including the nature of family circumstances, lack of bank account, his employment career as a jobbing painter and decorator. (HO record of interview)		
27/2/18			HO accepts that Mr Bryan has Indefinite Leave to Remain (ILR) and that they were wrong and that he is "free landing" (HO email to Waran and Company)

Declaration of Lords' Interests[62]

Baroness Hamwee

- No relevant interests to declare

Baroness Lawrence of Clarendon

- Emigrated from Jamaica to the UK in the early 1960s.

Baroness Nicholson of Winterbourne

- Involved in the first Windrush case approximately 8–10 years ago. It went as far as the Appeals court where the appellant was successful.

Baroness Prosser

- No relevant interests to declare

Lord Trimble

- No relevant interests to declare

Lord Woolf

- Previously Treasury Junior acting counsel (inter alia) for Home Office
- Previous role as a Judge

62 A full list of Members' interests can be found in the Register of Lords' Interests: http://www.parliament.uk/mpslords-and-offices/standards-and-interests/register-of-lords-interests/

Formal minutes

Wednesday 27 June 2018

Members present:

Ms Harriet Harman MP, in the Chair

Fiona Bruce MP	Baroness Hamwee
Ms Karen Buck MP	Baroness Nicholson
Joanna Cherry QC MP	Baroness Prosser
Jeremy Lefroy MP	

Draft Report (*Windrush generation detention*), proposed by the Chair, brought up and read.

Ordered, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 61 read and agreed to.

Summary read and agreed to.

Annexes read and agreed to.

Resolved, That the Report be the Sixth Report of the Committee.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

Ordered, That embargoed copies of the Report be made available (House of Commons Standing Order.134).

[Adjourned till Wednesday 4 July 2018 at 3.00pm

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

Wednesday 16 May 2018

Pierre Makhlouf, Assistant Director, Bail for Immigration Detainees, **Anthony Bryan**, **Janet McKay-Williams**, **Paulette Wilson**, **Natalie Barnes.** Q1–19

Wednesday 6 June 2018

Rt Hon Sajid Javid MP, Secretary of State for the Home Office and **Glyn Williams**, Director-General, Border Immigration and Citizenship System, Home Office Q20–29

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Legislative Scrutiny: The EU (Withdrawal) Bill: A Right by Right Analysis	HC 774 HL Paper 70
Second Report	Proposal for a Draft Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018	HC 645 HL Paper 86
Third Report	Legislative Scrutiny: The Sanctions and Anti-Money Laundering Bill	HC 568 HL 87
Fourth Report	Freedom of Speech in Universities	HC 589 HL 111
Fifth Report	Proposal for a draft British Nationality Act 1981 (Remedial) Order 2018	HC 926 HL 146
First Special Report	Human Rights and Business 2017: Promoting responsibility and ensuring accountability: Government Response to the Committee's Sixth Report of Session 2016–17	HC 686
Second Special Report	Mental Health and Deaths in Prison: Interim Report: Government Response to the Committee's Seventh Report of Session 2016–17	HC 753