Windrush Lessons Learned Review submission

About Runnymede
The Runnymede Trust is the UK’s leading race equality thinktank. We were founded in October 1968, exactly 50 years ago, to provide evidence on racial inequalities, to inform policymakers and public opinion about the reality of those inequalities, and to work with local communities towards these aims.

We hold the secretariat for the APPG on Race and Community, chaired by David Lammy, and organised two major events this year, one with 13 Caribbean High Commissioners, and one in Parliament attended by 5 of those affected by Windrush injustice, and around 40 parliamentarians, including the leader of the opposition and Immigration Minister Caroline Nokes, who apologised personally to Paulette Wilson and other attendees.

Summary
- We endorse the submission of Colin Yeo, a barrister at Garden Court Chambers.

- Whilst there are deeper causes of the Windrush injustice, the proximate cause was the ‘hostile environment’. There is a reason these cases emerged in large numbers in 2017-18 but not in 2009-10 or 1989-90.

- We will not elaborate on the hostile environment, and related policies, except to note our longstanding concern that such policies would predictably increase racial inequalities and incentivise racial discrimination. Our response to the 2013 changes is available here, and this point has been consistent ignored by government:

- We are concerned that the government does not take equality law seriously. In particular, the government response on the racially discriminatory effects of immigration policy (in the provision of education, employment, housing and health) has been to say it wasn’t their intent to affect ethnic minorities generally, or the Windrush generation (this is also what Treasury told us when we showed that the Budget would increase ethnic inequalities). But intent is irrelevant to equality law, and has been since the 1976 Race Relations Act introduced the concept of indirect discrimination and after the 2000 Race Relations (Amendment) Act, passed after the Stephen Lawrence Inquiry report, introduced the public sector equality duty. We provide further discussion here.

- It should have been clear that immigration policies would disproportionately affect ethnic minorities. Over half (54%) of ethnic minorities were born overseas, with Black Caribbean (46%) actually being more likely to be British born than Pakistani (64%), Indian (67%), Bangladeshi (73%) or Black African (88%) people, all of whom are likely to be affected by a future ‘Windrush’-type injustice. There is a reason why landlords or employers ask ethnic minorities for papers or documents; not all of those 9 million without a passport are equally vulnerable to the hostile (or compliant) environment. The government’s policies will continue to
incentivise private citizens to discriminate on grounds of race, affecting not just migrants, but British-born ethnic minorities.

- The government should issue a formal review of whether racial discrimination legislation is working as intended, including (but not limited to) whether the exemptions for immigration are appropriately understood and applied, and the extent to which that exemption affects wider Home Office decision-making in misapplying race discrimination law. It should also apply training across the entire civil service. This should focus on race equality, not ‘diversity’ generally.

- Decision-making at the Home Office has lost sight of treating those engaging with it with dignity and humanity, in pursuit of ever restrictionist laws and policies on immigration. This has been justified with reference to public opinion, but ministers must take more responsibility for public attitudes.

- Ministers and government generally cannot be surprised that officials seek to implement the government’s stated intent. When seeking organisational change, including to improve outcomes for ethnic minority employees, we focus on the role of leadership from the top, and how that affects the culture of an organisation. It is inconceivable that the hostile environment, immigration target, and restrictionist language (with an exceedingly rare comment on the benefit of immigration) was not heard by officials, and that it didn’t affect their decision-making. For example, when government decided in 2015 that being named as a father on a birth certificate was not evidence of paternity, it can’t credibly express surprise when people are required to take a DNA test.

- The immigration target, as a utopian number that existing policies could never hit, was always unreasonable, and again incentivises unreasonable decision-making. Even today, every deportation remains a ‘positive’ contribution to this unhittable, and knowingly unhittable target. To have such a knowingly unimplementable policy, even merely as an aspiration, sends a strong signal to officials: do whatever you can to drive down immigration numbers, even if this is perverse.

- The government’s engagement with ethnic minority and migrant communities has been extremely limited over the past decade. This has been a failure of democratic accountability but it is particularly challenging for a Conservative-led government where relatively few ministers or backbenchers have significant numbers of black constituents.

- In fact, immigrants, particular black and minority ethnic people, should be recognised for their vital role in establishing what we now call ‘British values’, notably non-discrimination and equality. Until the 1965 race relations act there was no free-standing right to non-discrimination in common law, and it was the struggle of this generation of black migrants that made this happen. It’s not just our British values but our identity that has been profoundly shaped and reshaped by the Windrush generation. To the extent that Britain has become more comfortable with multiculturalism or diversity, the Windrush generation helped lay a foundation stone for a new edifice of Britishness on which each successive migrant generation has been able to build. This is no minor tributary to the story of who we are but central to who Britain is, and always has been.

- The rest of this submission will focus on the race equality dimensions that help explain the Windrush injustice. This should not deter from our overall assessment that the hostile
environment is the proximate cause of the Windrush injustice. We are, however, concerned that the issues of race, racism, and the experiences of the ‘Windrush’ generation, or of black people living in Britain, still haven’t been widely understood, inside or outside government.

The role of racial inequalities and identity in the British Empire
To understand how the Windrush Scandal came into being, we need to look fully and honestly at Britain’s history with the Caribbean. ‘Black Caribbean’ people are in Britain not only because the ship, Empire Windrush arrived in June 1948. There are only ‘Black Caribbean’ people because British slave ships transported people from Africa to the Caribbean.

Even after the slave trade was abolished, millions of black people in the Empire had less political rights, and worse life outcomes. The centuries and generations of British subjects being differently treated, with different rights and outcomes on grounds of race, are not widely known or discussed. These inequalities of rights were ‘repatriated’ to the UK.

It is important to reflect on why Caribbean as opposed to South Asian people were more vulnerable during the Windrush injustice, which emerged after the passage of hostile environment and related legislation in 2014 and 2016. First is their later date of independence. India and Pakistan won independence in 1947, and this, along with Canada’s citizenship law introduced that year, provided some of the background to the 1948 British Nationality Act. The dates of Caribbean nations’ independence range from Jamaica and Trinidad and Tobago (1962) to Nevis and St Kitts (1983). Guyana and Barbados won independence in 1966, the only other Caribbean nations (though the most populous ones) to do so before the 1971 Immigration Act. One of the consequences of their later independence was that people living in the Caribbean not only travelled on a British passport, albeit one with less rights and entitlements in virtue of being issued in the Caribbean.

In general, most Caribbean people in Britain already saw themselves as British. They were born British, and have remained British ever since, and this should have been as recognised legally as it was a reality in terms of identity and culture. What might now be called ‘cultural integration’ – their belief that they were obviously already British even in the 1960s – is in part a cause of what would be called the Windrush injustice in 2018. It didn’t occur to many of those affected to question their identity, and so they were more likely to be among the 9 million UK residents who don’t hold a passport.

Finally, it is also important to understand the persistence of racial inequalities. The levels of discrimination against black people in the 1950s and 1960s is too often glossed over, for example being denied access to a pub or accommodation or a job simply because of the colour of their skin, as well as the unsolved racist murders, including that of Kelso Cochrane in 1959. As a consequence, black British people earned less money, were able to save less, less able to own their homes, and less able to travel overseas. Not only could they not afford to travel, and so had little need for a passport, but they were less likely to establish the other forms of documentation – financial records of savings accounts or mortgages – that are more likely to be formally kept and satisfy the Home Office’s identity requirement.

The Windrush generation’s greater ‘integration’ and greater poverty are the reasons that they are less able to meet the Home Office standard on proving their Britishness or their right to reside.
Legal and political background since 1960s

The immigration and antidiscrimination legislation established in the 1960s to 1980s set the legal framework and political landscape that made the present Windrush injustice possible. During this period, Black Caribbean people organised against the racism they experienced in Britain, and by 1965 the government acted in response by passing the first race relations act. This was a weak act, extending only to places of ‘public resort’. The 1968 act extended these provisions to housing and employment, making discrimination in those important spheres illegal for the first time: until that point it was legal to discriminate on grounds of race, a reality many of the Windrush generation would have experienced.

While the Labour party under Gaitskell opposed the Conservative government restrictionist 1962 Immigration Act, the election in Smethwick in 1964, when the prospective Labour Foreign Secretary was shockingly defeated, established that a racist election campaign could win votes. Labour shifted its position and in 1968 rushed through an even more restrictionist act, with the support of the Conservative opposition, and in part to keep out East African Asians and of course in response to Enoch Powell’s infamous speech.

From at least the mid-1960s on, the Labour position was ‘tough on immigration’ while supporting ‘race relations’ legislation, while the Conservatives supported the toughness on immigrants but opposed the principle of non-discrimination and the extension of rights for ethnic minorities (voting against both the 1965 and 1968 Race Relations Acts).

By the late 1960s policymakers had then decided: the Windrush generation would get some protection, but only by clamping down on the opportunities for future migrants from the ‘New [i.e. non-white] Commonwealth’. Because employers and others always denied they intended to discriminate, the 1976 Race Relations introduced the idea of indirect discrimination.

To understand why the Windrush generation did not have the requisite paperwork demanded by the hostile environment policies passed since 2014 requires understanding the unwinding of Empire, and how the (racially) differentiated rights of different types of British citizenship applied. Technically it was straightforward legally for people to arrive in Britain, and to secure work permits, though there were attempts to dissuade people from arriving by British high commissions even in the period from 1948 (when people across the Empire more or less had ‘free movement’) until the 1962 Act began introducing formal legal restriction.

The 1968 and 1971 were more explicitly racially discriminatory. But Hugh Gaitskell, then the leader of the opposition, even criticised the 1962 bill calling it: ‘a plain anti-Commonwealth Measure in theory and … a plain anti-colour Measure in practice’, and that Labour pledged to repeal the Act if elected.

As related above Labour switched its position from opposing the 1962 Immigration Bill to implementing the much more restrictionist, and even more racially discriminatory, 1968 Immigration Act, in part in response to what it believed were ‘community tensions’ about the numbers of ‘coloured immigrants’. The Act was described as follows in the Lords debate:

‘Broadly speaking, these people are, let us face it, coloured… They are coloured people and ipso facto it appears that this is a question of colour discrimination… that is what it looks like. It is going to be hard to convince anybody – the public at large, and particularly the coloured section of the public – that this same action would have been taken if all these people had been white’. (House of Lords debate on Immigration Bill, Hansard, 29 February, 1968)
Not only did the Conservative opposition support this legislation, but it opposed the ‘balancing’ race relations act (despite this being the object of Powell’s ire in his infamous speech), and further implemented the even more restrictionist 1971 Act. Neither Labour not the Conservative party showed themselves able to resist the pressure of anti-immigrant if not racist sentiment, though at least Labour governments sought to moderate its effects by passing race relations legislation.

With the 1971 Act the differentiated rights and ‘fuzziness’ of British identity and citizenship was clarified further, with racially discriminatory effects. This meant that one had to prove a grandparent was born on the island of Britain, or in ‘British Britain’ not merely in what was previously British India or the British West Indies. At a stroke those whose grandparents, great-grandparents and so forth to 1700 had all been born ‘British’ were no longer British. This was of course an expected response to the independence of not just India and Jamaica, but of British colonies in Africa.

The 1971 act didn’t apply until January 1973 and those already legally resident in the UK would be able to bring their children as legal dependents in perpetuity. In theory, this might have meant a person who moved from Barbados as an infant in 1967 might have the right of residence for an overseas-born child born in 2000 or after. In practice, after 1973 it became more difficult to move back and forth, and more difficult still after the 1981 Immigration and Nationality Act and then later acts.

Future concerns
The 1981 Immigration and Nationality Act is also of concern, as combined with the 1971 patriality conditions, means that British-born ethnic minority children will be exposed to immigration policy in perpetuity. This act removed birthright citizenship, meaning that even if you are born in Britain and have never lived anywhere but Britain, you are not by definition British. Every migrant who arrives in Britain will face this reality for their children.

For the Windrush generation, the new doubts about their actual citizenship and status then had a knock-on effect for their children and grandchildren. Given those children and grandchildren could only claim British citizenship in virtue of their Windrush, Caribbean-born parent, and that the 1971 ‘patriality’ condition required a grandparent to be born not just British, but on the British island (or in Northern Ireland), the 1981 Act meant that they had no independent claim to British citizenship.

Lack of engagement and ongoing effects of racial inequalities
Others, such as Colin Yeo of Garden Court Chambers, will explain the legal and policy background of these acts and of the hostile environment in further detail. The final point we wish to make is that government has failed to engage with civil society about issues of immigration and race. This partly explains their surprise about the impact of their policies (immigration and otherwise) on the Windrush generation and other ethnic minority and migrant people.

There has been little or no focus on race equality, with no funding for such work from central or local government. Some funding has instead been directed to ‘Prevent’ but this neither brings ethnic groups together, nor focuses on discrimination. The focus on service delivery has meant groups are uncomfortable raising such issues and the cuts to the Equality and Human Rights Commission, legal aid, as well as the demise of the hundreds of Race Equality Councils from
the late 2000s, has meant that central and local government haven’t had the support or challenge necessary to make discrimination law a reality.

In the last year there has been a large increase in engagement on the issue of race equality through the race disparity audit. This has improved levels of engagement, especially after the Windrush injustice emerged as an issue of public concern, but it remains the case that immigration is viewed as a ‘separate’ issue, and we’ve been told by officials not to mention immigration when raising issues of racial disparities.

Consultation periods for government legislation have been shrunk, and narrowed in scope to answer defined questions. Groups working with migrants are viewed a ‘pro migrant’ and dismissed on those grounds. This is partly a question of public attitudes, or perceived public attitudes, but the government clearly has its own reasons for this approach. The relationship between the Home Office and those supporting migrants, including lawyers, is always bound to be sensitive, but trust and interaction is now very fraught.

In addition to migrant groups, black people have been rarely heard in public debate. They remain the group most likely to experience discrimination, and in 2018, 47% of black children are growing up in poverty (compared to 28% of white children). There are few if any influential national or even local institutions that represent black people, or that focus on racial discrimination.

For a Conservative government in particular there is a real danger in not engaging. Around 85-90% of black people vote for the Labour party, and there are few constituencies with large numbers of black people held by a Conservative MP. Conservative ministers and backbenchers are therefore less likely to hear from such constituents in their surgeries, and migrants generally will be more reluctant to attend a surgery where the local MP (Labour or Conservative) is known for their restrictionist rhetoric and policy on migration.

It’s not just the Conservative party or successive governments that have failed to understand or listen to the black British experience. This has too often been viewed as marginal to or a mere ‘add on’ in Black history month or in an annual report to show a commitment to ‘diversity’. The British Empire, ongoing discrimination against black people, and their resistance to racism and struggles for civil rights, needs to be better understood and taught in every school across the country.

Furthermore, there needs to be a strengthening of civil society voices. Government must listen to a wider range of voices, including those who criticise it in forthright terms. If it doesn’t, another Windrush injustice will be around the corner, for this government or the next.

Deportation and detention had become somewhat ordinary aspects of immigration policy from the early 2000s (though Runnymede wrote a report on the increase in deportations to the ‘New Commonwealth’ in the early 1980s). Many of us were aware that many of those deported were to the Caribbean and to Africa. But because of the hostile public discourse on migration, and the stereotypes about black people, we were reluctant to raise these issues, or those groups that did got little hearing.

This relates to the over-policing and under-protection of ethnic minority people, and particularly black people, that we see in David Lammy’s review of criminal justice, and a recent StopWatch report. This found that black people are 9 times more likely to be stopped and searched and
more likely to be convicted for drugs possession (despite being less likely to use drugs compared to white people). We were aware that many of the ‘foreign nationals’ in British prisons were born in Jamaica, and that some might have leave to remain or even be British or dual nationals. But because the government and public opinion were and remain misinformed and negative about criminal justice and race, there was a reluctance to raise the issue.

A distinction between ‘good’ and ‘bad’ migrant will always lead to outcomes like Windrush: where policies designed to target ‘bad’ migrants only rebound on the ‘good’. The government cannot insulate its general rhetoric on ‘illegals’ from wider repercussions on all migrants, and indeed British born ethnic minorities, and needs to be more honest about these effects. Minimally, the government needs to balance the rhetoric of hostility (or compliance) with the language and reality of contribution, economically, socially and culturally. That is now beginning to happen and we hope it develops further.

Finally, improving the public sector equality duty is needed. Following the Stephen Lawrence Inquiry report, there was recognition of how public bodies (not just the police) were failing to deliver a good, fair service to ethnic minority people. However, the government since 2010 has depicted the PSED as ‘red tape’. Government should work to make strengthen the PSED so it is fit for purpose instead of a ‘tick box’ exercise.

The best way for the government to show it has ‘learned the lessons’ of Windrush is to show it understands how its decisions and rhetoric have a wider impact: on public opinion, on public officials, and on migrants and ethnic minorities. It must strengthen measures designed since the 1960s to ensure racial discrimination is weakened, as well as its engagement with ethnic minority and migrant communities. It must ensure everyone in Britain better understand the deep roots of racial inequalities in our history, speak more openly and clearly about the contribution of migrants not just to our economy but to who we are over the centuries, and develop a strategy for tackling those ongoing and persistent racial inequalities today.