



Home Office

Rt Hon Harriet Harman MP
House of Commons
London
SW1A 0AA

04 June 2018

Dear Harriet,

Thank you for your letter of 26 April addressed to my predecessor, about the detention of Windrush children. The failure of successive governments to ensure that individuals arriving before 1973 and lawfully here have the documentation they need is deeply regrettable. As I have said to the House a number of times recently, I would like to reassure you that I am determined to ensure the Windrush generation and their families are safeguarded, and I am taking steps to provide those affected with both apology and support. We are putting right the wrongs as a matter of urgency.

These individuals should not have been detained. We have a range of safeguards in place and review mechanisms for all those in detention which I would like to set out in response to the questions you have raised in your letter:

Where a person is detained the onus is on the person affecting the detention to show that this detention is lawful. The onus should not be on the person detained to prove their right to liberty. So what was the legal basis for the detention of the Windrush generation?

Immigration detention decisions are made under powers in Schedules 2 and 3 to the Immigration Act 1971, section 62 of the Nationality, Immigration and Asylum Act 2002 or section 36 of the UK Borders Act 2007. All decisions to detain are taken on the basis of a careful consideration of the individual circumstances of the case in question. Published Home Office policy is clear that there is a presumption in favour of liberty. Where a person is detained for the purpose of removal there must be a realistic prospect of removal within a reasonable period of time.

How did the admission process of the Windrush generation to detention check their detention was lawful?

Decisions to detain are taken on the basis of careful consideration of the facts of the individual circumstances of each case, taking into account all factors arguing both for and against detention. Detention decisions must be in line with statutory detention powers as well as published policy on their use. A person's detention is kept under regular review at successively more senior levels throughout its duration to ensure that it remains both lawful and appropriate, it will not continue where it does not satisfy those tests.

What steps were taken, including by removal centres, to inform the Windrush generation of their rights including their rights to challenge their detention or seek bail?

The Windrush generation have the right to be here and should not have been subject to detention. To inform people in detention of their right to a bail hearing, since 15 January 2018 (the implementation of the Single Power of Bail Immigration Act 2016), all detainees are provided with an 'Immigration Bail Information' document by the detaining officer, which contains information on when they can apply for immigration bail; how to make immigration bail applications to the Secretary of State; how to make immigration bail applications to the First-tier Tribunal; when they will be automatically referred for consideration for immigration bail; and where they can obtain further information.

Service providers at immigration removal centres (IRC) are required to provide the services of a welfare officer to signpost detainees to advice and assistance. Detainees may also approach members of the Independent Monitoring Boards based in every IRC.

All individuals who are detained pending removal, or pending a decision on directions for their removal, are eligible to apply for bail at any point during their detention. In addition, through the Immigration Act 2016 we put in place a process by which detainees, other than foreign national offenders, and those detained pending removal in the interests of national security, are referred for a bail hearing after four months detention and every four months thereafter. Automatic bail consideration ensures that all detained individuals have the appropriateness of their continued detention considered by the independent judiciary at regular intervals. It does not affect their ability to apply for bail whenever they do not choose to, nor does it affect the routine administrative reviews of the appropriateness of continued to detention.

What access to legal advice and representation was made available to Windrush generation detainees at the time of their detention?

All detainees are made aware of their right to legal representation, and how they can obtain such representation, within 24 hours of their arrival at an immigration removal centre (IRC). The Legal Aid Agency operates legal advice surgeries across the detention estate in England, with detainees receiving up to 30 minutes of advice without reference to financial eligibility or merits of their case. There is no restriction on the number of surgeries a detainee may attend. If a detainee requires substantive advice on a matter which is in scope of legal aid then full legal advice can be provided.

Detainees also have regulated access to the internet under the requirements set out in Detention Services Order DSO 04/2016. This enables them to independently identify contact details for immigration legal advisors. Legal reference material is stocked in all IRC libraries and each IRC has a welfare officer who can signpost detainees to information on how to access legal advice.

How many of the Windrush generation have been detained and for how long were each of them detained?

Intensive work is currently underway in the department to conduct checks on individuals who may have Windrush characteristics and who may have been removed or deported: this has been our priority. This is a complex piece of work that involves manually checking historical records and is still ongoing.

I hope this letter provides you with the answers you require and reassures you that the Government takes this seriously.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Javid', with a small flourish at the end.

Rt Hon Sajid Javid MP