

Public Sector
Equality Duty
assessment of
hostile environment
policies

—
Report
November 2020

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Executive summary

Background to our assessment

In 2018, it came to public attention that hundreds of people, mostly of Black Caribbean heritage, had found it increasingly difficult to live, work and access services in the UK, often with life-changing consequences.¹ People who had lived and raised families in Britain for most or all of their lives lost their homes and jobs, were refused vital healthcare, and were even removed or deported to places with which they did not have meaningful ties. Many were led to question their British identity as a result.

The serious injustices experienced by what became known as the Windrush generation and their descendants confirmed ongoing concerns about the UK Government's so-called 'hostile environment' immigration agenda. From 2012, this agenda accelerated the impact of decades of complex policy and practice based on a history of White and Black immigrants being treated differently.

The causes and effects of the hostile environment, now known as the compliant environment, were analysed extensively in the [Windrush Lessons Learned Review \(2020\)](#). It concluded that the Home Office had demonstrated 'institutional ignorance and thoughtlessness towards the issue of race'.² The department has since apologised publicly for the experiences of the Windrush generation as a result of the hostile environment agenda, and accepted the review recommendations in full. In September 2020, the Home Office set out its plans to reform its policies and culture in response.

To build on this, we have used our enforcement powers under section 31 of the Equality Act to look at how, and whether, the Home Office complied with its Public Sector Equality Duty (PSED) obligations in developing, implementing and monitoring hostile environment policies. We have specifically considered the impact of those policies on equality of opportunity for members of the Windrush generation. Using this approach we have drawn broader conclusions and recommendations.

¹ [Wendy Williams \(March 2020\), Windrush Lessons Learned Review](#), p. 25.

² As above, p. 7.

The Public Sector Equality Duty (PSED)

As Britain's national equality body, we promote and enforce the laws that protect people's rights to fairness, dignity and respect. This includes enforcing the PSED.

When it is complied with, the PSED acts as an important safeguard to make sure that policymakers consciously identify and consider the potential and actual impacts of their work on different groups, including people from ethnic minorities.

The Windrush Lessons Learned Review recommended that the Home Office should open itself up to greater external scrutiny, while changing its culture to recognise that immigration policy affects people and, whatever its objective, should be rooted in humanity.³ In our view, this is especially true for a policy area so embedded in Britain's complex history of international power, and its implications for the movement of people. The potential consequences of immigration policy for people's lives are profound, especially when it goes wrong.

The Macpherson report (1999) into the circumstances surrounding the racist murder of Stephen Lawrence defined institutional racism as:

The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racial stereotyping.⁴

³ Windrush Lessons Learned Review, p. 31.

⁴ [Sir William MacPherson \(February 1999\), The Stephen Lawrence Inquiry](#), p. 49.

This finding was essential to the development of the PSED. Policy does not exist in a vacuum; it can reflect or compound the existing barriers, disadvantages and biases faced by different groups. It can also reduce them. The PSED was designed to help make sure that those developing, implementing and reviewing policies and practices considered in detail their real human impact, to avoid discriminating against people and to deliver public policy that addresses structural inequalities. The Windrush Lessons Learned Review found that what happened to Black members of the Windrush generation was ‘foreseeable and avoidable’.⁵

Although it has strong links to the PSED as a legal safeguard, institutional racism is not a legal concept. We have therefore not assessed whether institutional racism was or was not present in the Home Office in the period we looked at. But our findings, together with those of the Windrush Lessons Learned Review about the devastating effects of the hostile environment on Black members of the Windrush generation, show a clear failure by the Home Office to develop and implement immigration policies that were fit for purpose for the Black people affected by them.

This report is designed to help the Home Office effectively and meaningfully comply with its PSED obligations in the future development, implementation and monitoring of immigration policy and practice. This will help the department to guard against institutional racism and deliver on its commitment to act on the Windrush Lessons Learned Review recommendations. It will also help ensure the UK Government meets its equality and human rights legal obligations.

Much of the hostile environment agenda is still in operation. Meanwhile, new approaches to immigration are still being developed, including as a result of the UK exiting the European Union. It is therefore essential that the Home Office acts on the areas we have identified and improve its practice to have due regard to equality.

⁵ Windrush Lessons Learned Review, p. 7.

Our findings

In the documents we assessed, we found insufficient evidence of the Home Office taking the required steps to show due regard to the need to advance equality of opportunity in relation to colour. This included the documents the Home Office supplied to show compliance.

We have therefore concluded that the department did not comply with section 149 of the Equality Act 2010 (the PSED) in understanding the impact on the Windrush generation and their descendants when developing, implementing and monitoring the hostile environment policy agenda.

We also agree with the Windrush Lessons Learned Review conclusion that the experiences of the Windrush generation were ‘foreseeable and avoidable’. Specifically, we have found:

- When negative equality impacts were identified by the Home Office and stakeholders, they were repeatedly ignored, dismissed, or their severity disregarded at crucial points of policy development. This happened particularly when they were seen as a barrier to implementing hostile environment policies in a highly-politicised environment.
- Limited engagement with stakeholders representing members of the Windrush generation and their descendants, even as the severe effects of hostile environment policies began to emerge. The engagement that did take place was too focused on groups that would help to implement the measures, and not those who could make sure the department fully understood the equality implications of its policies.
- That equality impacts were often considered too late to form a meaningful part of many decision-making processes, with their reputational or legal implications for the Home Office given greater weight than the real-life consequences for the people affected.
- That exceptions to the PSED for immigration functions were often interpreted too broadly, incorrectly and / or inconsistently.
- A lack of organisation-wide commitment, including by senior leadership, to the importance of equality and the Home Office’s obligations under the PSED. Any action taken to record and respond to negative equality impacts was perfunctory, and therefore insufficient.

Our recommendations for change

Our recommendations are designed to help the Home Office to comply effectively and meaningfully with its PSED obligations in the future development, implementation and monitoring of immigration policy and practice. In summary, it is our view that the Home Office should:

- Prioritise, act early and use a range of sources and evidence to understand the equality impacts of its policies and practices – particularly through proper engagement with affected groups.
- Fully consider the historical context and cumulative implications of its immigration policies for certain groups.
- Make sure ministers and other decision-makers receive and consider detailed equality information, including options for mitigating any negative impacts, at an appropriately early stage to inform the policymaking process.
- Regularly review equality impacts as policies are implemented, act on this information in a way that is proportionate to the severity of the impacts, and document decisions taken to adopt or not adopt particular mitigation measures.
- Take meaningful action to improve its internal capability to fully understand and comply with the PSED, to fulfil its commitment to equality.
- Be fully transparent and open to scrutiny about the department's commitment and approach to advancing equality.

Next steps

To turn these recommendations into measurable action, we have recommended that the Home Office enter into an agreement with us, under section 23 of the Equality Act 2006, by the end of January 2021. The agreement will involve preparing and implementing a plan of the specific actions, based on the detailed recommendations set out in [Chapter 5](#), that the Home Office will take to avoid a future breach of the PSED in carrying out its immigration functions in respect of race and colour, and more broadly.

We welcome the Home Office's commitment to continuing to work with us on implementing our recommendations. Doing so in full will help to ensure that the PSED is used as an effective safeguard to prevent the deeply negative experiences of the Windrush generation and their descendants from ever taking place again. It will also demonstrate a tangible commitment to the Home Office's goal of delivering a fairer and more compassionate immigration system for all groups.

1. Introduction

Background to our assessment

In 2018, it came to public attention that hundreds of people, mostly of Black Caribbean heritage, had found it increasingly difficult to live, work and access services in the UK, often with life-changing consequences.⁶ People who had lived and raised families in Britain for most or all of their lives lost their homes and jobs, were refused vital healthcare, and were even removed or deported to places with which they did not have meaningful ties. Many were led to question their British identity as a result.

The serious injustices experienced by what became known as the Windrush generation and their descendants confirmed ongoing concerns about the UK Government's so-called 'hostile environment' immigration agenda. From 2012, this approach accelerated the impact of decades of complex policy and practice rooted in a history of White and Black immigrants being treated differently.

The causes and effects of the hostile environment, now known as the compliant environment, were analysed extensively in the [Windrush Lessons Learned Review \(2020\)](#). It concluded that the Home Office had demonstrated 'institutional ignorance and thoughtlessness towards the issue of race'.⁷ The department has since apologised publicly for the experiences of the Windrush generation as a result of the hostile environment agenda, and accepted the review recommendations in full. In September 2020, the department set out its plans to reform its policies and culture in response.

It is essential that these plans are now acted on quickly, so that such events are never repeated.

⁶ Windrush Lessons Learned Review, p. 25.

⁷ As above, p. 7.

This report is designed to help the Home Office to comply effectively and meaningfully with its Public Sector Equality Duty (PSED) obligations in the future development, implementation and monitoring of immigration policy and practice. This will help the department to deliver on its commitment to act on the Windrush Lessons Learned Review recommendations, and will help the UK Government to meet its equality and human rights legal obligations.

Who the Windrush generation are

The Windrush Lessons Learned Review identifies the Windrush generation as the some 600,000 people from Commonwealth countries (most notably Caribbean countries) who arrived in the UK between the end of World War Two and 1973, and whose descendants made up the second, third and fourth generations to the present day.⁸

What the hostile / compliant environment is

The hostile environment is ‘a series of policy interventions intended to make it progressively harder for irregular migrants to live, work and access services in the UK, and to emphasise individuals’ responsibility to prove that they are in the UK legally.’⁹

The hostile environment was designed as a set of connected policies, which included restricting access to housing, banking, work, benefits, healthcare and driving.

⁸ Windrush Lessons Learned Review, p. 31.

⁹ As above, p. 170.

The Public Sector Equality Duty (PSED)

How the PSED applies

As Britain's national equality body, we promote and enforce the laws that protect people's rights to fairness, dignity and respect. This includes enforcing the PSED. This statutory duty is designed to make sure that government departments, and other organisations carrying out public functions, consciously consider (have 'due regard' to) the need to:

- eliminate unlawful discrimination, harassment and victimisation
- advance equality of opportunity between people who share a protected characteristic and those who do not share it, and
- foster good relations between people who share a protected characteristic and those who do not share it.

These are often called the three 'limbs' of the PSED, which is found in section 149 of the Equality Act 2010 (the Act). They apply to all public bodies' activities.

The Act defines race as including ethnicity, colour, and / or ethnic or national origin.¹⁰ But there are exceptions to how the Act applies to immigration and nationality functions in respect of race. Under Schedule 18 to the Act, the duty to have due regard to the need to advance equality of opportunity for those with the protected characteristic of race when carrying out immigration and nationality functions does not apply in relation to nationality or ethnic / national origins. It does, however, apply in relation to colour.¹¹

Our assessment therefore focuses on the impact of hostile environment policies on equality of opportunity for members of the Windrush generation. Most people in this group are Black.¹²

In line with the scope of our assessment, we use the term 'equality impact(s)' throughout this report to refer to the impact on the advancement of equality between people who share a protected characteristic (race) and those who do not, with particular reference to colour.

¹⁰ Equality Act 2010, section 9.

¹¹ Equality Act 2010, Schedule 18.

¹² Windrush Lessons Learned Review, p. 10.

Our full terms of reference are in [Annex 1](#).

What PSED compliance looks like

When it is complied with, the PSED acts as an important safeguard to make sure that policymakers consciously identify and consider the potential and actual impacts of their work on different groups, including people from ethnic minorities.

When developing and implementing policy it requires consideration of:

- the likelihood and extent of the impact of a policy on people sharing protected characteristics
- how any negative equality impacts could be mitigated or eliminated, and
- how positive equality impacts could be achieved.

This should be assessed while the policy is being developed, and before decisions are taken on whether and how to implement it. These decisions must be revisited on a continuing basis, particularly if new evidence becomes available.

Case law has helped to clarify the meaning of ‘due regard’ in relation to the PSED. Examples include *Brown v. Secretary of State for Work and Pensions* (2008), *Harjula v London councils* (2011), and *Bracking v Secretary of State for Work and Pensions* (2013). PSED compliance must be approached with rigour and an open mind, and requires that decision-makers are properly informed by consulting with specific affected groups, among other sources.

To comply with the PSED, public bodies should be familiar with the concepts of relevance and proportionality. In this context, relevance means how far a policy affects people. This may vary by protected characteristic, or across the three limbs of the duty. Proportionality here means making sure that the greater the scale and severity of a policy’s potential impact, the higher the level of attention to equality needed.¹³

Certain public bodies in England also have specific duties to publish equality objectives and information, to show how they are complying with the PSED.¹⁴

¹³ [Equality and Human Rights Commission \(August 2014\), Technical Guidance on the Public Sector Equality Duty: England](#), para 2.20.

¹⁴ The Equality Act 2010 (Specific Duties) Regulations 2011.

The Windrush Lessons Learned Review recommended that the Home Office should open itself up to greater external scrutiny, while changing its culture to recognise that immigration policy affects people and, whatever its objective, should be rooted in humanity.¹⁵ In our view, this is especially true for a policy area so embedded in Britain's complex history of international power, and its implications for the movement of people. The potential consequences of immigration policy for people's lives are profound, especially when it goes wrong.

Origins of the PSED

The Macpherson report (1999) into the circumstances surrounding the racist murder of Stephen Lawrence defined institutional racism as:

The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racial stereotyping.¹⁶

This finding was essential to the development of the PSED, which originated from the Race Equality Duty developed in response to the Macpherson report to guard against such failures happening in the future. This approach was then extended to disability and sex, and subsequently to a further five protected characteristics in the PSED through the Act.

Policy does not exist in a vacuum; it can reflect or compound the existing barriers, disadvantages and biases faced by different groups. It can also reduce them. The PSED was designed to help make sure that those developing, implementing and reviewing policies and practices consider their real human impact in detail, to avoid discriminating against people and to deliver public policy that addresses structural inequalities. The Windrush Lessons Learned Review found that what happened to Black members of the Windrush generation was 'foreseeable and avoidable'.¹⁷

¹⁵ Windrush Lessons Learned Review, p. 7.

¹⁶ The Stephen Lawrence Inquiry, p. 49.

¹⁷ Windrush Lessons Learned Review, p. 7.

Although it has strong links to the PSED as a legal safeguard, institutional racism is not a legal concept. We have therefore not assessed whether institutional racism was or was not present in the Home Office in the period we looked at. But our findings, together with those of the Windrush Lessons Learned Review about the devastating effects of the hostile environment on Black members of the Windrush generation, show a clear failure by the Home Office to develop and implement immigration policies that were fit for purpose for the Black people affected by them. The PSED should be embraced fully by public bodies, including the Home Office, to guard against institutional racism.

How we carried out our assessment

We used our enforcement powers under section 31 of the Equality Act 2006 to assess a specific time period, from 2014 to 2018. We looked at a specific set of policies: those imposing stricter requirements on individuals to produce documentation proving their right to access services and to confirm or change immigration status. The specific time period and policy measures are set out in more detail in [Annex 2](#). Our assessment focuses on the second of the three limbs of the PSED – the need to advance equality of opportunity. Using this approach we have drawn broader conclusions and recommendations.

We used three sources of evidence to inform our assessment. A data management plan was in place in line with current data protection legislation.

The Home Office gave us evidence of its policymaking process, including submissions to ministers and records of meetings. Over 130 items were within the scope of our assessment, and these formed the main evidence source on which we base our findings.

More evidence was provided to us on right to rent, a policy that resulted in private landlords and agents checking the immigration status of prospective tenants, than other hostile environment measures. Right to rent – which is currently being challenged in the courts¹⁸ – is therefore referenced more frequently in our analysis. Where information was not provided, we requested it. Where we found a lack of evidence, we have made reasonable inferences and conclusions about the Home Office’s overall compliance with the PSED.

The second evidence source was external representations submitted by individuals and organisations through our call for evidence (the survey questions are included in [Annex 3](#)). This call for evidence, which followed the process set out in the Equality Act 2006, ran from 27 July to 16 August 2020. During this time, we received 63 completed responses to the online survey, 10 responses from individuals by email, and 2 responses from organisations by email. All were considered in line with our terms of reference.

The third evidence source was the Windrush Lessons Learned Review, from which we took information that was relevant to PSED compliance. In particular, where the Home Office did not provide direct evidence, we highlight some of the relevant review findings.

We analysed this evidence thematically, using an assessment framework based on our terms of reference. We tested this framework through a pilot analysis of the Windrush Lessons Learned Review, and quality assured it to ensure consistent analysis of the evidence. Specifically, we assessed the steps the Home Office took to:

¹⁸ In 2020, the Court of Appeal overruled the High Court’s 2019 finding that right to rent has a discriminatory effect contrary to Article 14 of the Human Rights Act. The appeal court held that, although there was evidence of the scheme giving rise to discrimination, it is justified because it is a proportionate way of achieving a legitimate policy purpose (to deter illegal immigration). In relation to the administrative court’s finding of a breach of the PSED, the Court of Appeal held that this was premature; there had been no decision taken by that point to roll out the scheme in Scotland, Wales and Northern Ireland so it was premature to find a breach of the PSED at that stage. The decision is currently being appealed to the UK Supreme Court. We intervened in the lower courts.

- **understand** the potential and actual equality impacts of the hostile environment measures by gathering information
- **act** on equality evidence to inform its decisions at each stage of forming, implementing and reviewing policy, and
- **embed** the PSED, including by fully understanding and supporting staff to comply with the duty, and encouraging effective scrutiny and challenge.

The report is structured on these three themes, which emerged over the course of the analysis.

2. Understand: gathering information on actual and potential impacts

In this chapter, we look at what steps the Home Office took to understand the impacts of its hostile environment policy and practice, particularly in having due regard to the duty to advance equality of opportunity in respect of colour.

Evidence is crucial in enabling policymakers to understand the potential and actual effects of proposed measures on people who share protected characteristics, to comply with the PSED.¹⁹ Specifically, this means that:

- To understand how protected characteristic groups may be affected by a policy measure, public bodies must do a 'rigorous examination' of a policy's implications.
- It is not necessary to 'undertake a minute examination of every possible impact and ramification'.²⁰
- Potential and actual unintended consequences must be considered sufficiently to identify their scale and severity, so that policymakers can make informed decisions about the risks.

We found that the Home Office had opportunities to understand the potential and actual impact of hostile environment policies on the Windrush generation, but it did not properly appreciate their scale and severity. The department did not pay enough attention to unintended consequences, did not engage sufficiently with stakeholders representing affected people, and did not adequately monitor equality over time.

All of this limited its understanding of the policy measures' individual and cumulative impacts on equality of opportunity on the basis of colour.

Identifying unintended consequences

The hostile environment agenda was intended to discourage people with irregular migration status from living in the UK, by making it progressively more difficult for those without permission to enter or remain in the country to access employment and public services.²¹ People with irregular migration status in the UK were therefore the Home Office's intended target for restrictions in the 2014 and 2016 Immigration Acts.²²

However, the Home Office showed little understanding that, in practice, settled UK residents and British citizens would also be affected. This includes people who would have difficulty providing evidence of their status for a variety of reasons, including previous immigration legislation and policy.²³

This lack of understanding, which was compounded by limited levels of institutional memory, meant the department was ill-equipped to anticipate the implications of hostile environment policies for members of the Windrush generation who, as the Home Office now accepts, were entitled to be in the UK. Many were British citizens who were often unable to provide documents to prove this due to the specific historical circumstances in which they arrived in this country.²⁴

¹⁹ Equality and Human Rights Commission, Technical Guidance on the PSED: England, para 5.17.

²⁰ MA & Ors, R (on the application of) v Secretary of State for Work and Pensions & Ors [2013] EWHC 2213 (QB), para [72].

²¹ Windrush Lessons Learned Review, p. 61.

²² For example: [Home Office \(14 October 2013\), Overarching Impact Assessment – Immigration Bill](#); [Home Office \(25 November 2015\), Overarching Impact Assessment – Immigration Bill](#).

²³ The Home Office's tendency to simplify migration status categories into a binary of 'legal' and 'illegal' is likely to limit a full appreciation of equality implications in the hostile environment context as the overriding emphasis is on being 'tough' on migrants deemed 'illegal'. For example: [Home Office \(October 2013\), Immigration Bill Factsheet: Overview of the Bill](#).

²⁴ [BBC News \(20 April 2018\), 'Windrush: Alan Johnson says landing cards decision was made in 2009'](#).

Insufficient understanding of equality impacts

We found, for example, that there were minimal equality considerations in the impact assessments for the 2013 Immigration Bill, which became the 2014 Immigration Act. The impact assessment for the right to rent provisions noted that some UK citizens may face difficulties in accessing documentation for the landlord checks,²⁵ but largely focused on general implications such as costs to the Home Office and organisations responsible for implementing the control measures.²⁶ The Windrush Lessons Learned Review also found that the impact assessments for the 2013 Immigration Bill ‘didn’t adequately consider the risks for members of the public, including the Windrush generation’.²⁷

The hostile environment agenda was designed as a package of linked measures contributing to a shared strategic aim. Yet we found that the Home Office did not take steps to consider the cumulative equality impact of the individual hostile environment policy decisions. To be effective, any impact assessment of the measures should have determined their implications as a whole, including on equality. However, the overarching impact assessment for the 2013 Immigration Bill included no analysis of the likely cumulative equality impacts of the measures it would introduce to restrict access to services²⁸ (an omission also noted by the National Audit Office).²⁹

The failure to identify and analyse these collective effects at this early stage of policymaking set a precedent that was followed in the development of the 2016 Immigration Act. The implications for access to essential services for members of the Windrush generation were severe.

²⁵ Home Office (25 September 2013), *Impact Assessment: Tackling Illegal Immigration in Privately Rented Accommodation*, p. 19.

²⁶ Home Office (14 October 2013), *Overarching Impact Assessment – Immigration Bill*. For a specific measure, see Home Office (11 October 2013), *Impact Assessment: Regulating Migrant Access to Health Services in the UK*.

²⁷ Windrush Lessons Learned Review, p. 80.

²⁸ Home Office (14 October 2013), *Overarching Impact Assessment – Immigration Bill*.

²⁹ National Audit Office (5 December 2018), ‘Handling of the Windrush situation’, para 3.4.

Cumulative impacts can develop over long time periods, and immigration and nationality law has been reformed frequently and substantially since World War Two. While, as the Home Office itself noted, ‘immigration law is a long and complex subject’,³⁰ we would expect the department to have held, and applied to its work, expert institutional knowledge on the history of immigration policy.

However, the policy documents provided to us contained no consideration or analysis of the historical development of immigration legislation, policy and practice and how that might, in conjunction with the new measures, pose cumulative risks to groups of people on the basis of colour.

Increased requirements on people to prove their status

Two important changes affected the Windrush generation in the time period we assessed.

First was the implementation of requirements for individuals to prove their status to access services, such as banking, before and after the 2014 Immigration Act.³¹ Second was the increasing difficulty people faced in securing documents to prove their status, because the burden of proof required by the Home Office when deciding a status application was, as pointed out by the Windrush Lessons Learned Review, too high.³²

One individual who responded to our survey (on behalf of a member of the Windrush generation) told us:

They asked for evidence dating back more than 15 years, which was difficult to provide.³³

³⁰ Home Office (6 December 2013), Immigration Bill Q&A, p. 140.

³¹ For information on the 2014 Immigration Act’s expansion of restrictions on access to services by migrants see, for example: Immigration Act 2014 Explanatory Notes, part 3.

³² Windrush Lessons Learned Review, p. 98.

³³ Equality and Human Rights Commission’s survey (August 2020), survey response 40.

Through no fault of their own, many people in the Windrush generation faced difficulties evidencing their status because of how nationality law and immigration law had developed over time.³⁴ The UK Government did not provide Commonwealth citizens who were entitled to be in the UK with documents that proved their status,³⁵ and there was no requirement for people to register for British citizenship as the legal framework changed.³⁶

Before the 2014 Immigration Act, Home Office officials were aware of documentation difficulties faced by the Windrush generation. Guidance to immigration caseworkers, dated 2006, noted that some ‘applicants may have lived in the UK since World War Two or longer’ and ‘may have difficulty in providing documentary evidence of their status on or before 1 January 1973 or continuous residence since then’.³⁷

In the policy equality statement for the right to rent scheme, the Home Office noted that respondents to the consultation raised concerns about the implications for some older people who were not born in the UK, who might have ‘had their immigration records destroyed’ or ‘originally come into the country under old legislation but may have difficulty evidencing this’.³⁸

The Windrush Lessons Learned Review also found that the Home Office knew that some of the population settled in the UK by 1 January 1973 may not have proof of status, and that cases of people having difficulties proving status were emerging years before the 2014 Immigration Act.³⁹

³⁴ Windrush Lessons Learned Review, pp. 53–61. Jamaica, for example, only became independent from the UK in 1962 – before that its citizens were classed as Citizens of the UK and Colonies (CUKC).

³⁵ As above, p. 56.

³⁶ As above, p. 59.

³⁷ Home Office (16 January 2006), People Settled in the UK on 1 January 1973: ILR or NTL Applications, General Group Instruction, p. 3.

³⁸ [Home Office \(10 October 2013\), Tackling illegal immigration in privately rented accommodation: The Government’s response to the consultation](#), p. 63.

³⁹ Windrush Lessons Learned Review, pp. 36–37.

Respondents to our survey also reported instances in which the Home Office was told about people struggling to prove or change status and access services.⁴⁰ We are concerned about reports that there is a lack of responsiveness⁴¹ or compassion⁴² from the Home Office when individuals raised questions about their status applications.

We must conclude that the Home Office was aware of the circumstances faced by certain groups in terms of providing documentation. Despite this, we have seen no evidence that the department took sufficient steps to understand how this, when combined with the increasing documentation requirements to access services, would affect Black members of the Windrush generation. As a result, some were unable to access housing or banking, with some even being subject to removal or deportation.

Insufficient consideration of severity of equality impacts

The Home Office summarised the potential impacts on people with protected characteristics in policy equality statements. But these showed little reflection on the nature of the deeply negative experiences of the Windrush generation. The policy equality statement in response to the right to rent consultation, for example, said:

Initial analysis indicated that there was a high risk group that potentially included both UK and foreign nationals who were likely to have difficulty in providing documentation to satisfy the new requirements.⁴³

However, the examples given of this ‘high risk group’ included people with learning disabilities or leaving prison but not those who would later become known as the Windrush generation.

⁴⁰ In particular, survey responses 7, 11, 12, 21, 31, 33, 34, 40, 59, 62. The timing and context of this contact with the Home Office is not clear in all of the responses.

⁴¹ Survey responses 11, 12, 14, 33, 62.

⁴² Survey response 13.

⁴³ Home Office (10 October 2013), Tackling illegal immigration in privately rented accommodation: The Government’s response to the consultation, p. 59.

In our assessment, the Home Office downplayed the number of people potentially affected and the potential severity of the impact on them. The department had considered that the ‘great majority’ of people would be able to produce documentation for the right to rent checks and that in ‘most cases’ foreign nationals with the right to rent would have documentation.⁴⁴ In the policy equality statement, the Home Office similarly noted that appropriate documents would be ‘commonly held by the vast majority of those entitled to live in the UK’ though it did recognise that older people, particularly some who were not born in the UK, may have difficulty providing documentation.⁴⁵

It is not clear on what basis the Home Office made these estimations, especially given that the exact number of people in the Windrush generation affected by hostile environment measures remains unknown.⁴⁶ As a result, the scale and severity of the risk was downgraded.

Case law makes clear that having ‘due regard’ requires policymakers to have an informed understanding of the degree and extent of the equality impacts of a proposed policy.⁴⁷ In our view, the Home Office did not take steps to do so before policy implementation, despite the 2014 Immigration Act measures relating to access to essential services such as housing, banking and healthcare. The due regard paid should have been in proportion to the severe impacts of the hostile environment agenda described by one respondent to our survey:

My brother was homeless for more than 10 years and lost his home due to being unable to prove his status.⁴⁸

⁴⁴ [Home Office \(3 July 2013\), Tackling Illegal Immigration in Privately Rented Accommodation](#), pp. 17 and 37. See also: Home Office (6 December 2013), Immigration Bill Q&A, p. 52.

⁴⁵ Home Office (10 October 2013), Tackling illegal immigration in privately rented accommodation: The Government’s response to the consultation, pp. 60 and 63.

⁴⁶ Windrush Lessons Learned Review, p. 25.

⁴⁷ A proper understanding of the issue should include its ‘degree and extent’: [R \(Lunt\) v Liverpool CC \[2009\] EWHC 2356 \(Admin\)](#), para [44].

⁴⁸ Survey response 40.

Engaging with stakeholders representing protected characteristic groups

The Home Office and other public bodies must use their judgement when deciding what level of engagement with stakeholders would enable a proper understanding and analysis of the equality implications of a decision. As discussed, the 'methods and degree of engagement should also be proportionate to the size and resources of the body and the significance of the issue'.⁴⁹

Public consultations

The Home Office did engage with stakeholder groups in the development of hostile environment measures. It held public consultations on the right to rent and access to health services provisions of the 2014 Immigration Act before they were introduced.⁵⁰ Of the organisations that responded to the right to rent consultation, 30% represented migrants.⁵¹ For the access to health services consultation, that figure rose to 37%.⁵²

⁴⁹ Equality and Human Rights Commission, Technical Guidance on the PSED: England, para 5.30.

⁵⁰ Home Office (3 July 2013), Tackling Illegal Immigration in Privately Rented Accommodation; Home Office (3 July 2013), public consultation, 'Controlling Immigration – Regulating Migrant Access to Health Services in the UK'. The Home Office also undertook a consultation on the employment provisions, which is not the focus of our assessment: Home Office (9 July 2013), public consultation, 'Strengthening and Simplifying the Civil Penalty Scheme to Prevent Illegal Working'.

⁵¹ Home Office (10 October 2013), Tackling illegal immigration in privately rented accommodation: The Government's response to the consultation, p. 5.

⁵² Home Office (15 October 2013), Controlling Immigration – Regulating Migrant Access to Health Services in the UK: Results of the Public Consultation, p. 5.

The public consultations also specifically asked respondents to consider impacts on protected characteristics. 52% of respondents to the consultation on access to health services raised concerns about the potential impact of the proposed measures with regard to race.⁵³ In the consultation on the right to rent scheme, respondents expressed a risk of discrimination ‘where some people are more likely than others to have readily available documentation’.⁵⁴

These are positive initial steps in complying with the PSED. However, this feedback must then be considered with an open mind and, where appropriate, acted on to show due regard to equality.

Lack of engagement with groups likely to be affected

Engaging directly with groups representing people likely to be affected by policies or practices will help public bodies to better understand equality issues. While the Home Office did conduct targeted engagement with certain groups for some hostile environment measures, it focused on organisations responsible for implementation rather than those representing people affected, including those with protected characteristics.⁵⁵

⁵³ Home Office (15 October 2013), *Controlling Immigration – Regulating Migrant Access to Health Services in the UK: Results of the Public Consultation*, p. 37. See Submission to the Immigration Minister for review of the consultation response.

⁵⁴ Home Office (10 October 2013), *Tackling illegal immigration in privately rented accommodation: The Government’s response to the consultation*, pp. 6–7.

⁵⁵ External representation received from an organisation representing members of the Windrush generation state that it was never asked by the Home Office for its views during the relevant assessment period. One respondent to our survey said that the Home Office had outreach meetings, but they did not ‘address social policies’ (survey response 28). We do not have detail about outreach meetings.

In developing and implementing the right to rent scheme, for example, the Home Office engaged specifically with what it described as ‘organisations representing key sectors affected by the proposals’. However, it only listed ‘those representing landlords, lettings agents, tenants, students and housing providers’.⁵⁶ An update on steps taken to engage stakeholders on the right to rent evaluation plans included one of the few references to an equality body, the Discrimination Law Association, as well as a generic reference to voluntary and community sector representatives.⁵⁷ However, we have seen no evidence of efforts to include such groups on the panel.

One formal route of stakeholder consultation was the Landlords Consultative Panel, which was established to advise on phase one of the right to rent scheme. It was formed mainly of housing sector organisations, including homelessness charities and, for part of the process, the Equality and Human Rights Commission.⁵⁸

⁵⁶ Home Office (25 September 2013), *Impact Assessment: Tackling Illegal Immigration in Privately Rented Accommodation*, p. 25. See also Home Office (24 October 2014), *Internal Audit Review of the Implementation of the Immigration Act 2014 – Landlord Checking Services*, p. 4.

⁵⁷ Home Office (17 November 2014), *Immigration Act Landlords Scheme Consultative Panel*, ministerial submission, p. 2.

⁵⁸ We stopped participating in the Landlords Consultative Panel in 2017 due to limited action on our and others’ concerns over discrimination as a result of right to rent policies.

Members of a previous migrant housing research forum raised concerns that they were not members of the Landlords Consultative Panel, though the Home Office said it would remain engaged with the group.⁵⁹ At a later point, officials suggested that the Home Office should consider expanding Landlords Consultative Panel membership to reflect the scheme's reach, such as 'perhaps' to the Joint Council for the Welfare of Immigrants.⁶⁰ Although this proposal was not acted on, the Landlords Consultative Panel meetings included a recommendation to look at impacts on community cohesion and discrimination, and a concern that some British citizens would have difficulty producing documents.⁶¹

The impact assessment on access to health services referred to the Home Office maintaining 'open lines of communication with migrants via a dedicated email address'.⁶² While this showed consideration of how to engage with people directly, there is no evidence that the Home Office reached out proactively to make sure it received feedback on equality considerations. Meanwhile, routes for people affected by other measures to share information with the department were minimal, leaving them under-represented in comparison to implementation partners such as housing groups and landlords.

The type of feedback received by Home Office would have inevitably reflected this prioritisation of stakeholder engagement. We agree with the Windrush Lessons Learned Review that the Home Office did not engage with stakeholders effectively during the development of the 2014 Immigration Act.⁶³ The impacts of these policies on people's lives were not anticipated properly as a result.

⁵⁹ Home Office (9 October 2014), Immigration Act Landlords Scheme Consultative Panel and Commencement, ministerial submission, p. 3.

⁶⁰ Home Office (3 June 2015), Landlords Scheme: Panel and Next Steps, ministerial submission, p. 3.

⁶¹ Home Office (11 September 2014), Landlords Consultative Panel minutes, p. 3; Home Office (14 October 2014), Landlords Consultative Panel minutes, pp. 2 to 3; Home Office (7 July 2015), Landlords Consultative Panel minutes, p. 2.

⁶² Home Office (11 October 2013), Impact Assessment: Regulating Migrant Access to Health Services in the UK, p. 20.

⁶³ Windrush Lessons Learned Review, p. 141.

Overlooking qualitative feedback on equality impacts

In the same time period, equality and human rights stakeholders were raising concerns proactively with the Home Office about the consequences of the hostile environment measures for the Windrush generation.

A 2014 report, published by the Legal Action Group, detailed the experiences of people who had lived in the UK for between 7 to 50 years since having arrived from countries including Jamaica, but were caught up in the immigration measures targeted at people with irregular migration status.⁶⁴ The report raised similar concerns to those highlighted through the Home Office's consultation and caseworker guidance. The department recorded its awareness of the report and a commitment to consider it, but also stated that only 'small' numbers of people would face difficulty proving their entitlements.⁶⁵ We have seen no evidence that the Home Office considered the report further or acted on it.

⁶⁴ [Legal Action Group \(October 2014\), 'Chasing Status: If Not British, Then What Am I?'](#)

⁶⁵ [Lord Taylor of Warwick \(27 October 2014\), Written question to the Parliamentary Under-Secretary of State, Home Office \(Lord Bates\).](#)

The Home Office was also aware that the Joint Council for the Welfare of Immigrants was conducting an evaluation of phase one of the right to rent scheme,⁶⁶ and a draft of the report was shared with the Landlords Consultative Panel.⁶⁷ Noting this and other evaluations, the department planned to make sure that ‘the Home Office gains the initiative in the public debate’,⁶⁸ while ultimately questioning the value of ‘flawed’ findings⁶⁹ of discrimination risks in these evaluations over several years on the basis of methodological limitations. An organisation responding to our survey described how it attempted to share information on the negative effects of the hostile environment measures:

Our experience was that our evidence and concerns were disregarded and no action was taken that addressed the evidence and concerns that we put forward.⁷⁰

The Home Office appeared to diminish the use of qualitative feedback on the actual impacts of its hostile environment policies. A departmental document with early ideas for post-implementation monitoring of phase two of the right to rent scheme said that such feedback was ‘welcome, but risks highlighting individual cases which may not be representative or widespread, and could be based on perceptions rather than actual events’.⁷¹

⁶⁶ Home Office (30 June 2015), Right to Rent evaluation: preliminary findings, p. 3.

⁶⁷ Home Office (28 October 2015), Landlords Consultation Panel minutes, p. 2.

⁶⁸ Home Office (3 September 2015), Landlords Consultative Panel, 9 September, ministerial submission, p. 1.

⁶⁹ Home Office (19 March 2015), Immigration Act Landlords Scheme Consultative Panel, ministerial submission, p. 2; Home Office (29 November 2016), Landlords Consultative Panel, 17 November 2016, ministerial submission, pp. 13 and 22–23; Home Office (18 July 2017), Bringing residential tenancies measures in the 2014 and 2016 Immigration Acts into force across the United Kingdom, ministerial submission, pp. 4–5.

⁷⁰ Survey response 54.

⁷¹ Home Office (9 Feb 2016), Right to Rent: Post-implementation monitoring of phase two, p. 2.

Though the Home Office cannot be expected to give equal weight to all evidence it receives, it should have at least considered all of the risks raised in order to understand the real impact of its policy measures and show due regard. The department demonstrated only limited engagement with stakeholders representing affected people in the examples we assessed, and does not appear to have taken into account the evidence it received proactively from other organisations.

Monitoring equality impacts

As a continuing duty,⁷² the PSED applies at every stage of forming and implementing policy. Monitoring a policy's implementation helps policymakers to understand any emerging evidence or changing circumstances that could have a negative impact on protected characteristic groups.⁷³

There was very limited equality monitoring of measures introduced by the 2014 Immigration Act, only going as far as to monitor the formal evaluation of the implementation of phase one of right to rent.

Evaluating phase one of the right to rent scheme

The purpose of the evaluation was to analyse the scheme's effectiveness.⁷⁴ A draft planning document did discuss the impact on protected characteristic groups under 'equality and diversity issues', highlighting concerns raised in the consultation about discrimination on the basis of ethnicity and age.⁷⁵ The document said that, in this context, the evaluation would look at unintended consequences for protected characteristic groups.

⁷² R. (Brown) v. Secretary of State for Work and Pensions [2008] EWHC 3158, para [95].

⁷³ Equality and Human Rights Commission, Technical Guidance on the PSED: England, para 5.18.

⁷⁴ Home Office (5 June 2014), Immigration Act landlord scheme: Agreeing first phase location and milestones for delivery, ministerial submission, p. 5.

⁷⁵ Home Office (3 July 2014), Landlords scheme: Phase one evaluation, pp. 15–16.

An update to the Minister for Security and Immigration on the planned evaluation stated that contracted research ‘will examine the existence of any potential unlawful discrimination, primarily on the grounds of race, that can be linked to the scheme’.⁷⁶ In the actual evaluation, the ‘mystery shopping’ exercise included a scenario where people seeking a tenancy were ‘British citizens of different ethnicities who have limited documentation’.⁷⁷ These are positive indications of due regard to equality in line with the PSED.

The mystery shopping exercise found that White and ethnic minority mystery shoppers seemed to have different experiences of the renting process.⁷⁸ The evaluation stated that ‘comments from a small number of landlords reported during the mystery shopping exercise and focus groups did indicate a potential for discrimination’.⁷⁹

The evaluation pointed out a documentation risk for some people, but again saw the risk as low:

⁷⁶ Home Office (21 January 2015), Immigration Act Right to Rent Checks Consultative Panel, ministerial submission, p. 13.

⁷⁷ [Home Office \(October 2015\), Mystery shopping to test the potential for discrimination within the private rental sector](#), p. 9.

⁷⁸ [Home Office \(October 2015\), Evaluation of the Right to Rent scheme: Full evaluation report of phase one](#), p. 5. For the detailed findings on discrimination, see pp. 22–25.

⁷⁹ Home Office (October 2015), Evaluation of the Right to Rent scheme: Full evaluation report of phase one, p. 5. A document on preliminary findings stated that some qualitative evidence ‘does highlight a small number of potential individual instances of discrimination’ –Home Office (7 July 2015), Right to Rent Evaluation: Preliminary Findings, p. 7.

A small number of stakeholders being interviewed raised a concern that a potential unintended consequence of the scheme may be that the documentation requirements could present difficulties for some British citizens with limited documentation, for example if not having a passport or driving licence. One housing association respondent in an interview reported experiences of where this issue had occurred.⁸⁰

The Home Office later noted that some interview respondents said the issue of British citizens with limited documentation facing difficulties accessing accommodation 'had materialised in a very small number of cases'.⁸¹ In addition, a submission to the Home Secretary and Immigration Minister on the evaluation's findings stated that focus group and survey research had identified a 'small number of instances were found of foreign-born prospective tenants being turned away as they could not provide the required documentation'.⁸²

When the hostile environment agenda was later being strengthened, a Home Office briefing to the Immigration Minister on the Landlords Consultative Panel noted that the evaluation found 'very little hard evidence that British citizens with limited documentation were experiencing problems as a result of the scheme'.⁸³ The overall evaluation findings were seen as positive, and the issue that some people, such as members of the Windrush generation, might lack documentation was not considered significant.

⁸⁰ Home Office (October 2015), Evaluation of the Right to Rent scheme: Full evaluation report of phase one, p. 6.

⁸¹ Home Office (30 June 2015), Right to Rent evaluation: preliminary findings, p. 17; Home Office (7 July 2015), Right to Rent Evaluation: preliminary findings, p. 7.

⁸² Home Office (13 July 2015), Right to Rent phase 2 roll out and targeted consultation on eviction measures, ministerial submission, p. 7; Home Office (October 2015), Evaluation of the Right to Rent scheme: Full evaluation report of phase one, p. 20.

⁸³ Home Office (17 November 2016), Landlords Consultative Panel – 29 November 2016, ministerial submission, p. 22.

Rejecting further evaluation opportunities

When challenged during the proposed rollout of right to rent measures to devolved administrations, the Home Office acknowledged that the scheme was ‘also likely to have indirect impacts which have not been examined’ and that the department did ‘not have a full picture of the impact of the scheme’.⁸⁴

Despite this, there is evidence that ministers rejected opportunities to fill evidence gaps on the equality implications of right to rent. When asked by the Landlords Consultative Panel about the scope for further monitoring during implementation, the Home Office said that there were ‘no formal plans’ but that it ‘did keep all policies under review’.⁸⁵ The department also noted that a previous minister had not considered an ‘extensive evaluation’ necessary because the Landlords Consultative Panel enabled concerns to be identified,⁸⁶ and that it was unclear to ministers what further useful information more evaluation could provide.⁸⁷

We do not consider this approach proportionate, or consistent with due regard, given the risks raised in the consultation process and phase one evaluation. This worsened the insufficient stakeholder engagement that characterised the development of the policy.

⁸⁴ Home Office (18 July 2017), Bringing residential tenancies measures in the 2014 and 2016 Immigration Acts into force across the United Kingdom, ministerial submission, p. 10. In 2015, the Home Office noted that the ‘full impact of the right to rent scheme can only be fully assessed when it is implemented nationally or over a greater geographical area of the UK’ –Home Office (8 January 2015), Immigration Act landlords scheme: Note for the Minister for Government Policy and Minister of State in the Cabinet Office, ministerial submission, p. 3.

⁸⁵ Home Office (13 January 2016), Landlords Consultative Panel minutes, p. 6.

⁸⁶ Home Office (17 November 2016), Landlords Consultative Panel – 29 November 2016, ministerial submission, p. 15.

⁸⁷ Home Office (18 July 2017), Bringing residential tenancies measures in the 2014 and 2016 Immigration Acts into force across the United Kingdom, ministerial submission, p. 6.

3. Act: using equality evidence to inform policy

In this chapter, we consider the extent to which the Home Office used evidence of equality impacts when developing, implementing and reviewing hostile environment measures.

The PSED requires equality considerations to be placed ‘at the centre of formulation of policy by all public authorities, side by side with all other pressing circumstances of whatever magnitude’.⁸⁸ In practice, this means:

- clearly integrating analysis of equality evidence at the appropriate time in the process to allow it to influence decision-making⁸⁹
- reviewing policy decisions with an open mind, with a view to revising them if required,⁹⁰ and
- implementing effective measures designed to mitigate or, where possible, remove the negative equality impacts.⁹¹

We found that the Home Office did not take sufficient action in each of these areas. The department failed to demonstrate timely integration of a proper equality analysis into policy formation and decision-making throughout our assessment period. This resulted in limited efforts to pilot and review the content of policies with the required open mind, in light of the evidence of the potential and actual equality impacts.

As a result, the Home Office was not in a position to identify, develop and present a range of policy options to ministers – who should request this information proactively if it is not available at the policy formulation stage – nor to implement mitigation measures to address risks to equality as they emerged. These failures had significant consequences for members of the Windrush generation.

Using equality evidence to influence decision-making

Compliance with the PSED requires consideration and analysis of the duty to be:

integrated within the discharge of the public functions of the authority. It is not a question of “ticking boxes”.⁹²

The timeliness of the development and subsequent integration of equality impact assessments, specifically its ‘policy equality statements’, is an important aspect of PSED compliance. It ‘should be an integral part of the formation of a proposed policy, not justification for its adoption’.⁹³

Timely and effective use of up-to-date equality impact assessments gives policymakers an opportunity to develop and change policies to address any evidence of risks to equality. We would expect such integration to result in a set of policy options for the minister to consider, or a series of mitigation measures designed to minimise any risks identified.

⁸⁸ *Bracking v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, para [60].

⁸⁹ Equality and Human Rights Commission, *Technical Guidance on the PSED: England*, para 5.37.

⁹⁰ As above, para 5.37; *Bracking v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, para [26].

⁹¹ Equality and Human Rights Commission, *Technical Guidance on the PSED: England*, para 5.42.

⁹² *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin), at para [92].

⁹³ *R (Kaur and Shah) v London Borough of Ealing* [2008] EWHC 2062 (Admin), at para [24].

Timeliness of impact assessments

In general, we found that Home Office completed this required analysis of equality evidence too late in the decision-making process for it be an effective safeguard within the development and implementation of a proposed policy.

For example, officials stated in a submission to the Home Secretary and Immigration Minister on the 2013 Immigration Bill that they would complete the impact assessments as the third and final phase of the 'key bill phases'.⁹⁴ This was after Home Office ministerial clearance and bill drafting.⁹⁵

From the evidence received, the 'impact assessments' referred to in this submission related to the individual policy equality statements for specific elements of the hostile environment agenda, as well as the overarching impact assessment produced for the 2013 Immigration Bill.⁹⁶ Therefore, it appears that no equality impact assessments were produced until after the policy framework, and the drafting of the legislative provisions designed to implement it, had been finalised.

By that time it was too late for the assessments to influence the substance of the policy decision. This implies that the Home Office created equality impact assessments to justify the policy decisions already taken at the first and second stages.

⁹⁴ Home Office (13 May 2013), *Delivering the Immigration Bill*, ministerial submission.

⁹⁵ As above.

⁹⁶ The policy equality statement for access to financial services is dated 13 September 2013 (HO 1506), the policy equality statement for access to accommodation is dated 25 September 2013 (HO 1064), and the policy equality statement on access to health services is dated 11 October 2013 (HO 1063). The overarching impact assessment for the 2013 Immigration Bill is dated 14 October 2013 (HO 1069).

We have also seen evidence that some policy decisions for the extensions of the hostile environment in the 2015 Immigration Bill repeated this pattern. The ministerial submission seeking approval for strengthening the driving licence provisions in the bill, for example, stated that the Home Office would produce the impact assessment after the initial approval for the policy from the minister was received, and after Parliamentary Counsel had drafted the relevant clauses.⁹⁷ As a result, no information on the equality implications of the measures was included in the ministerial submission before his in-principle approval of them.

Similarly, officials briefing the minister in 2017 recommended that he agree to roll out the right to rent scheme in Scotland, Wales and Northern Ireland 'subject to revising the Policy Equality Statement relating to the scheme'.⁹⁸ Officials annexed the original impact assessment (from 2013, published after the public consultation) to the submission, seeking in-principle approval to proceed from the minister.

We acknowledge that, in this instance, the Home Office decision was expressed as conditional on a revised policy equality statement, suggesting a greater integration of the statement into the decision-making process than other examples. But Home Office officials also advised the minister that they did not 'believe that there will be any changes of substance to be made [to the policy equality statement]'.⁹⁹ This is despite significant new evidence of considerable negative equality impacts emerging in the previous four years. We would expect the policy equality statement to have been revised to take full account of this additional evidence before officials sought ministerial approval.

⁹⁷ Home Office (29 June 2015), Immigration Bill – Driving Licences, ministerial submission, p. 4.

⁹⁸ Home Office (18 July 2017), Bringing residential tenancies measures in the 2014 and 2016 Immigration Acts into force across the United Kingdom, ministerial submission, p. 1.

⁹⁹ As above, p. 5.

In the same briefing, officials went on to suggest that ‘publishing a revised [policy equality] statement would go some way in mitigating the risks of both a successful legal challenge and any challenge in Parliament’.¹⁰⁰ But such policy equality statements are designed to facilitate PSED compliance, not as a way of minimising legal or political risk.

These failures were repeated in the evaluation of the right to rent scheme, published in October 2015. In contrast to other internal evaluations of policies, this evaluation did consider the equality implications of the policy and, therefore, presented an opportunity to reflect on them before deciding to continue with the rollout across England.¹⁰¹ But evidence from before the right to rent evaluation was published reveals that the decision to proceed had, in effect, already been taken by the minister to honour a Government manifesto commitment.¹⁰²

This conclusion was also reached by the Independent Chief Inspector of Borders and Immigration, whose report stated that:

The Home Office conceded that the decision to roll out [right to rent] in England had, in effect, already been taken, subject to not finding that the scheme was causing “significant discriminatory behaviour”¹⁰³

This insufficient integration of equality impacts into the Home Office’s decision-making process underlines our earlier conclusion that the department did not do enough to understand equality earlier in the policymaking process.

¹⁰⁰ Home Office (18 July 2017), Bringing residential tenancies measures in the 2014 and 2016 Immigration Acts into force across the United Kingdom, ministerial submission, p. 5.

¹⁰¹ Home Office (October 2015), Evaluation of the Right to Rent scheme: Full evaluation report of phase one.

¹⁰² Home Office (3 June 2015), Landlords Scheme: Panel and Next Steps, ministerial submission, p. 12.

¹⁰³ [Independent Chief Inspector of Borders and Immigration \(March 2018\), An inspection of the ‘Right to Rent’ scheme, para 3.14.](#)

Giving insufficient attention to equality analysis

The analysis in various policy equality statements, in particular, ranged from limited to non-existent, resulting in these documents being of limited use to decision-makers in developing timely and effective mitigation measures. For example, in the policy equality statement for the financial service provisions in the 2013 Immigration Bill, the Home Office limited its consideration of colour / national / ethnic origins to:

No impacts on the grounds of colour or national or ethnic origins have been identified. The policy will not affect lawful migrants. Colour and national or ethnic origins are not factors in determining migrants' immigration status in the United Kingdom.¹⁰⁴

We found a similar statement in the policy equality statement on the proposals to restrict access to free healthcare:

Decisions on chargeability are based on the person's residency status in the UK, not race or other characteristics ... As the proposed health surcharge would operate a uniform system of charging for visa applicants however, regardless of their country of origin, there would be no discrimination on the grounds of race.¹⁰⁵

These statements did not allow officials and ministers to consciously consider a range of options at the initial stages of policy development to mitigate potential or actual risks to equality. Nor did they enable the Home Office to change policies once implemented.

¹⁰⁴ Home Office (13 September 2013), Policy Equality Statement for financial services provisions for the Immigration Bill.

¹⁰⁵ [Home Office \(22 October 2013\), Controlling Immigration – Regulating Migrant Access to Health Services in the UK.](#)

Ignoring race is not showing due regard, as it fails to take into account the structural inequalities that result in policies affecting groups differently. We found evidence in this area that supports the Windrush Lessons Learned Review finding that the Home Office displayed ‘institutional thoughtlessness’ on the issue of race.¹⁰⁶

Testing and reviewing policy decisions

Testing and reviewing policies meaningfully after ministers approve an initial decision is an important part of the PSED, due to the continuing nature of the duty.¹⁰⁷ Doing so before full or further implementation ensures that public bodies are ‘aware of circumstances which could require it to consider reviewing a current policy or decision.’¹⁰⁸ As with all aspects of the PSED, policymakers must approach this exercise proportionately and with an open mind.¹⁰⁹

We found that the Home Office did spend some time testing and reviewing the effectiveness of the operational implementation of the measures introduced by the Immigration Act 2014, with a view to making improvements.

¹⁰⁶ Windrush Lessons Learned Review, p. 7.

¹⁰⁷ R (Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158 (Admin) para [95].

¹⁰⁸ Equality and Human Rights Commission, Technical Guidance on the PSED: England, para 5.18.

¹⁰⁹ R (Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158 (Admin) para [99].

However, the department was less consistent in evaluating the emerging equality impacts of the measures introduced by the legislation.¹¹⁰ There was a particular weakness in reviewing the risks of the policies for Black members of the Windrush generation, until it was too late.

For example, an internal audit of the implementation of the 2014 Immigration Act focused on delivering the overarching policy goal, including processes for 'decision making, monitoring and oversight over implementation planning and delivery.'¹¹¹ It did not consider the equality impacts of the specific measures. The Home Office also completed a similar, more targeted internal review of the Landlord Checking Services in October 2014. Again, this did not review the equality impacts of the policy within its terms of reference.¹¹²

In response to the extensive concerns raised about the right to rent scheme during and following the Immigration Act 2014 being passed, ministers gave assurances that they would evaluate the scheme properly.¹¹³ The department sought to deliver on this commitment by completing a phased rollout and evaluation of the scheme in five West Midlands local authorities before the planned national rollout from 1 December 2014.¹¹⁴

As Home Office officials advised the minister, a phased approach and implementation:

¹¹⁰ In response to a question about monitoring the impact of hostile environment measures on access to services, Sir Philip Rutnam (Permanent Secretary of the Home Office from 2017 to 2020) stated in evidence to the Public Accounts Committee: 'I think the monitoring beforehand was, to be honest, more limited, although there was some'. [Public Accounts Committee \(17 December 2018\), Oral evidence: Windrush Generation and the Home Office, HC 1518, Q90 \(Sir Philip Rutnam\)](#).

¹¹¹ Home Office (27 January 2015), Internal Audit Review of the Implementation of the Immigration Act 2014 – Programme Governance, p. 3.

¹¹² Home Office (24 October 2014), Internal Audit Review of the Implementation of the Immigration Act 2014 – Landlord Checking Services, p. 3.

¹¹³ Windrush Lessons Learned Review, p. 218; Home Office (27 September 2013), Immigration Bill: Landlords, ministerial submission.

¹¹⁴ Windrush Lessons Learned Review, p. 109.

Would offer the opportunity to review the real impact of the policy on landlords, agents and vulnerable groups, including the homeless, before the process goes live across the sector.¹¹⁵

The decision to undertake a phased rollout rather than a pilot was made for a number of reasons. One was methodological. An Immigration Bill Q&A document for the 2014 Immigration Bill stated, for example, that:

A limited pilot aimed at testing and evaluating the scheme in a particular area would be flawed by the great differences that exist in populations across the UK and the variations in the housing market. The Government does not believe that such a pilot would be useful or cost effective.¹¹⁶

But there were other reasons for the decision. Officials advised that a pilot ‘implies a power to “turn off” the powers after they have been implemented/piloted pending evaluation.’¹¹⁷ It was noted that such an approach would undermine the Prime Minister’s ‘strong public commitment to proceed with the scheme’.¹¹⁸

Later statements reinforce our view that the Home Office overlooked equality considerations, with the evaluation focused more on ‘maximising learning to aid future implementation [nationally]’ rather than informing the decision whether to roll out the scheme nationally at all.¹¹⁹

¹¹⁵ Home Office (27 September 2013), Immigration Bill: Landlords, ministerial submission, p. 6.

¹¹⁶ Home Office (6 December 2013), Immigration Bill Q&A.

¹¹⁷ Home Office (27 September 2013), Immigration Bill: Landlords, ministerial submission, p. 2.

¹¹⁸ As above, p. 2.

¹¹⁹ Home Office (February 2014), Immigration Bill – Proposed Location of First Phase of Landlords Scheme, ministerial submission, p. 2.

This indicates that the Home Office did not approach the evaluation with the necessary ‘open mind’ required by the PSED. The department should also have allowed enough time following the right to rent evaluation to consider effective mitigation measures to address any disproportionate negative impacts on certain groups.

The extension of the driving licence powers in the 2016 Immigration Act was piloted before a national rollout, followed by a public consultation on the draft guidance to accompany the use of these powers. While these are welcome mitigation measures, the Home Office only introduced them after peers in the House of Lords raised concerns that the police would use enhanced powers to stop disproportionate numbers of people from ethnic minorities.¹²⁰

We have not found any evidence of efforts by the Home Office to pilot or review the equality impact of the other measures in the 2014 Immigration Act following implementation, such as the bank account provisions. This approach left little opportunity to gather additional evidence to assess the equality implications of the policies.

We acknowledge that some measures, such as those to restrict access to free healthcare, were implemented with other departments. However the Home Office should have taken appropriate steps to evaluate the cumulative impacts of the far-reaching hostile environment measures, which ultimately targeted the same people and could not reasonably be evaluated in isolation from each other.

The Windrush Lessons Learned Review demonstrated in detail the severe negative consequences of the hostile environment agenda for people’s lives. The responses to our call for evidence underlined this. Lifetime residents of the UK were unable to prove their status with requests for evidence, for example, dating back to childhood, rendered nearly impossible by a lack of historical or digital records. People were unable to open businesses or pursue a career, and in some cases became homeless. As one respondent to our survey told us: ‘rebuilding my life now in my twilight age is difficult’.¹²¹

¹²⁰ Home Office (21 November 2016), Immigration Act 2016: piloting of powers to search for and seize UK driving licences held by illegal migrants, ministerial submission, p. 2.

¹²¹ Survey response 21.

Efforts to mitigate adverse impacts

We found some evidence that the Home Office considered and implemented steps to mitigate against the potential risk of hostile environment policies negatively affecting members of the Windrush generation. However, it is our view that these were not effective enough.

The PSED in particular requires that ‘a Minister must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before the adoption of a proposed policy’.¹²² As discussed in **Chapter 1**, this must reflect the relevance and potential impact.¹²³ In our view, the Home Office needed to show more evidence of considering mitigation measures to tackle any identified potential adverse equality impacts of a policy.¹²⁴

Instead, ministers were often presented with only two options in submissions: do nothing, or implement the proposal.¹²⁵ We have seen evidence of this binary approach in the overarching impact assessment for the 2013¹²⁶ and 2015¹²⁷ Immigration Bills, and the specific impact assessment for the right to rent and migrant access to healthcare measures in the 2013 Bill.¹²⁸

¹²² *Bracking v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345 para [26].

¹²³ Equality and Human Rights Commission, PSED: England para 2.20.

¹²⁴ As above, para 5.42.

¹²⁵ This point was also noted by Windrush Lessons Learned Review, p. 80.

¹²⁶ Home Office (14 October 2013), Overarching Impact Assessment – Immigration Bill.

¹²⁷ Home Office (25 November 2015), Overarching Impact Assessment for the Immigration Bill 2016.

¹²⁸ Home Office (25 September 2013), Impact Assessment: Tackling Illegal Immigration in Privately Rented Accommodation; Home Office (11 October 2013), Impact Assessment for regulating migrant access to health services in the UK.

One document did try to rank the various measures contained in the 2013 Bill as high, medium or low in terms of ‘controversy’, but it did not define which factors made a proposal ‘controversial’ or how, therefore, to mitigate this controversy. There was no evidence that this ranking related to consideration of equality, and we would not expect equality to be discussed in these terms.

Considering ways to mitigate potential impacts

We have been provided with evidence that the Home Office sought to mitigate the potential impact of the right to rent scheme and the driving licence provisions on certain groups, which would have included some members of the Windrush generation.

Early in the development of right to rent measures, the Department for Work and Pensions raised the importance of the Home Office widening the list of acceptable documents to prove eligibility to reside in the UK.¹²⁹

Following the public consultation on the policy, the Home Office conceded that some, particularly older, people would have greater difficulty in providing appropriate documentation and would therefore find it harder to access the private rented sector. The department envisaged that this group would include UK citizens as well as ‘elderly foreign nationals’.¹³⁰

The Home Office responded by making some efforts to mitigate this potential negative impact, including by ‘allowing the production of expired passports that still allow a person to be identified by their photograph’ and broadening the list of acceptable documents to allow the use of documents in combination.¹³¹

¹²⁹ Department for Work & Pensions (27 June 2013), Immigration Bill: Private Landlord Checks, Letter to Rt. Hon Nick Clegg MP and Rt. Hon Dr Vince Cable MP from Letter from Rt. Hon Iain Duncan Smith MP.

¹³⁰ As above, p. 36.

¹³¹ As above, p. 36.

However, these mitigation efforts overlooked the fact that some people would never be able to prove their entitlement to live in the UK with the types of formal documentation that the Home Office continued to require. As we have discussed, these circumstances were foreseeable. By not mitigating these risks sufficiently for members of the Windrush generation, it is our view that the Home Office failed to acknowledge that they needed to be treated differently given their specific situations.

In considering the risk of discrimination, the Home Office accepted that 58% of relevant respondents expressed concerns about this, but it said that this risk was best mitigated by:

Both fully supporting landlords and encouraging prospective tenants to put together the necessary evidence at the outset, thereby minimising the need to copy evidence or make further checks. The Government will achieve this by providing comprehensive guidance to prospective migrant tenants explaining how they can best provide a package of documentary evidence to landlords and letting agents that will immediately satisfy the checks.¹³²

The Home Office did take positive steps to develop a telephone enquiry service and document-checking service for landlords, in close collaboration with representatives of the lettings and landlords industry and homelessness charities.¹³³ It also published a statutory Code of Practice for Landlords to reduce the risk of discrimination.¹³⁴ But in other areas the Home Office's consideration of equality was minimal.

¹³² [Home Office \(10 October 2013\), Tackling illegal immigration in privately rented accommodation. The Government's response to the consultation, p. 65.](#)

¹³³ [Cabinet Office \(6 June 2014\), Civil Penalties for Landlords, p. 8.](#)

¹³⁴ [Home Office \(6 June 2014\), Code of Practice for Landlords: Avoiding unlawful discrimination when conducting 'right to rent' checks in the private rented residential sector.](#)

For example, the June 2016 guidance to tenants contained no reference to addressing the situation of Commonwealth citizens who arrived in the UK before 1973 (although the revised guidance now does).¹³⁵ The department also responded to concerns about potential negative effects of the right to rent measures by saying that the policy ‘will have a net positive effect on social cohesion’,¹³⁶ without providing further evidence.

The Home Office did not propose any mitigation measures in response to 52% of respondents (rising to 60% of non-European Economic Area citizens) who stated, through its public consultation on the proposals to restrict access to free healthcare, that the measures would have a negative impact on people with the protected characteristic of race.¹³⁷ Instead, the department rejected these suggestions on the basis that the surcharge would be payable by all ‘chargeable migrants’ regardless of race.¹³⁸ However, as we have noted, such an approach does not allow public bodies to consider existing barriers and inequalities properly.

We found that the Home Office’s responses generally focused on countering, rather than actively understanding, the information received from the public consultation. Similarly, we found that the focus in developing the financial services measures was largely on mitigating the impact on banks and building societies, rather than for people with protected characteristics.¹³⁹

¹³⁵ The current version of the guidance is: [Home Office \(June 2019\), A short guide on right to rent.](#)

¹³⁶ Home Office (10 October 2013), Tackling illegal immigration in privately rented accommodation: The Government’s response to the consultation, p. 36.

¹³⁷ Home Office (22 October 2013), Controlling Immigration – Regulating Migrant Access to Health Services in the UK, p. 22.

¹³⁸ As above, p. 22.

¹³⁹ Home Office (July 2015), Immigration Bill 2015 – Bank Account Provisions, ministerial submission.

Considering ways to mitigate actual impacts

The mitigation measures considered by Home Office following implementation of the Immigration Act 2014 were also limited. The final evaluation report contained no reference to the PSED or the relevant exceptions, and no policy recommendations for officials and ministers to consider.¹⁴⁰

It is therefore difficult to identify specific mitigations introduced directly because of the 2015 right to rent evaluation. As discussed, a number of other mitigation measures had already been committed to as a result of the initial public consultation and parliamentary process. Advice provided to the minister ahead of a Landlords Consultative Panel meeting in July 2015 stated that the Home Office had:

Reflected on our operational experience of phase 1 to date, together with the evaluation findings, and have identified opportunities which could make enforcement of the scheme more effective for phase 2 and simplify the scheme for landlords and tenants through some changes to the list of documents that may be provided as proof of right to rent as well as the process for making a report to the Home Office.¹⁴¹

However, the advice to the minister for this meeting also noted concerns from some that a revised list of documents would be 'open to abuse' from 'illegal migrants'.¹⁴² As a result, the Home Office proposed a revised list of documents to the Landlords Consultative Panel in September 2015.¹⁴³

¹⁴⁰ Home Office (October 2015), Evaluation of the Right to Rent scheme: Full evaluation report of phase one.

¹⁴¹ Home Office (1 July 2015), Landlords Scheme: Phase 2 Rollout and Panel 7 July, ministerial submission, p. 4.

¹⁴² As above, p. 4.

¹⁴³ Home Office (3 September 2015), Landlords' Consultative Panel, 9 September, ministerial submission.

Despite ongoing concerns from the panel ‘around vulnerable people being able to access documents within the list’,¹⁴⁴ the Home Office did deliver on its proposal to publish updated guidance before this second phase of the rollout, including a revised list of acceptable documents. This is evidence of some mitigation efforts.¹⁴⁵

The policy otherwise continued its rollout in England from 1 February 2016, without the Home Office resolving all of the panel’s concerns – including the risk to equality resulting from the list of acceptable documents.

In other areas of hostile environment policy, the Home Office did not take opportunities to review policies and consider how to mitigate their equality impacts. For example, a suggestion had been made to limit the number of revocations of driving licences on the grounds of immigration status – made under a new power contained in the Immigration Act 2014 – to 1,200 a year.¹⁴⁶ One reason for this suggestion was to ‘allow processes to be tested’ (though not assessing risks to equality explicitly).¹⁴⁷

Regardless of the reasons for the proposal, the submission to the minister stated that the Cabinet Office disagreed with the idea of the limit and that, instead, the Department for Transport ‘should aim to revoke much larger volumes at pace’, with no discussion of potential equality impacts.¹⁴⁸

¹⁴⁴ Home Office (3 September 2015), Landlords’ Consultative Panel, 9 September, ministerial submission, p. 2.

¹⁴⁵ Windrush Lessons Learned Review, p. 217.

¹⁴⁶ Immigration Act 2014, section 47; Home Office (26 June 2014), Revocation of Driving Licences Under the Immigration Act, ministerial submission, p. 2.

¹⁴⁷ As above, p. 2.

¹⁴⁸ Home Office (26 June 2014), Revocation of Driving Licences Under the Immigration Act, ministerial submission. Without such a cap, 11 months later, a ministerial submission revealed that the number of licences revoked under this power (in a period of around 11 months) was 11,000. Home Office (29 June 2015), Immigration Bill – Driving Licences, ministerial submission, p. 2.

Responding to rather than predicting and mitigating impacts

The first serious attempts by the Home Office to consider effective mitigation measures for the negative consequences of hostile environment policies for the Windrush generation was in the minutes of a February 2018 meeting, on the cusp of media reporting of the events.¹⁴⁹

The minutes stated that a paper at this meeting ‘provided an update on the work taking place to ensure appropriate action in cases where Commonwealth nationals who arrived in the UK before 1971 are facing challenges evidencing their right to be in the UK’.¹⁵⁰ It also looked at lessons learned from the handling of some of these cases.¹⁵¹ Evidently, by this stage these discussions were too late for mitigation to be effective.

The Windrush Lessons Learned Review presents evidence that the hostile environment was already having a real-life negative effect on members of the Windrush generation by 2015, and notes that the Home Office could and should have been aware of these impacts earlier. This is supported by the representations we received from members of the Windrush generation, who refer to difficulties proving their status as far back as 2004.¹⁵²

PSED compliance would have allowed the Home Office to understand the specific circumstances facing this group, and take appropriate steps to mitigate the negative impact. Instead, equality considerations were not a meaningful part of decision-making in the implementation of hostile environment policies until it was too late. The repercussions of this were felt by the Windrush generation and their descendants across many areas of life.

¹⁴⁹ Emails between Home Office staff (Feb 2018). The evidence provided to us shows that the Home Office was in communication with journalists from The Guardian towards the end of February 2018 on this issue.

¹⁵⁰ Home Office (9 February 2018) Minutes of the Simplification and Streamlining Group, p. 2.

¹⁵¹ As above, p. 2.

¹⁵² Survey responses 7, 11, 12, 14, 33, 35, 40, 53.

4. Embed: understanding, prioritising and supporting the PSED

In this chapter, we look at the conditions in which the Home Office carried out its general and specific duties under the PSED, and whether these conditions supported or hindered the department's compliance with the Duty.

We assess the three crucial factors for public bodies to ensure that the PSED, and equality more broadly, is understood, prioritised and embedded within their cultures:

1. Staff fully understanding the PSED, why it is important and what it means for their day-to-day work – including the immigration exceptions.
2. Staff being supported and equipped to comply with the PSED, including by receiving appropriate training and guidance.
3. Decision-making processes being transparent to enable scrutiny and challenge.

We identify areas where Home Office practice between 2014 and 2018 fell short of this. In particular, we found that staff did not fully understand how the PSED applied in the context of the hostile environment agenda. We have not seen any evidence of training on how to comply with the PSED or the relevance of the Duty in embedding equality into the department's work, or of how the limited existing guidance on equality impact assessments was promoted or explained to staff.

There was a narrow focus on delivering the political commitment of reducing immigration, and a culture where equality was not seen as important. Identifying risks to equality was therefore not encouraged. The Home Office did not expose itself sufficiently to the external scrutiny that could have challenged its ways of working.

As we describe in **Chapter 1**, our assessment focused on specific policies and timescales. However, as Britain’s national equality body, we have also commented in this chapter on the broader context needed to ensure full and proper consideration of equality.

Understanding the PSED

For the Home Office to comply with the PSED, its staff – caseworkers, officials and ministers – must understand what the duty requires them to do in their role. This must include how the second limb of the PSED intersects with immigration law, policy and practice. As the courts have noted, ‘those in the public authority who have to take decisions that do or might affect [people with protected characteristics] must be made aware of their duty to have “due regard” to the identified goals [of the PSED].’¹⁵³

In our view, the impact assessments completed on important elements of the hostile environment measures reveal gaps in the Home Office’s understanding of how the PSED applied in this context.

As we explain in **Chapter 1**, race is excluded from the Home Office’s obligation to show due regard to advancing equality of opportunity in carrying out immigration and nationality functions. But this does not include racial groups defined by reference to colour. In these cases, the PSED still applies.

However, the policy equality statements we analysed approached the scope of the immigration exceptions for race differently. One, completed in 2013 on access to healthcare, did not mention the immigration exemptions at all. Rather, it analysed the implications of the policies as if all aspects of the PSED applied to all protected characteristics, including the over-broad definition of ‘race’ to include colour, nationality and national or ethnic origins.¹⁵⁴

Another policy equality statement, focused on the provisions of the 2015 Immigration Bill on access to services, noted that:

¹⁵³ R. (Brown) v. Secretary of State for Work and Pensions [2008] EWHC 3158, at paras [90] to [96].

¹⁵⁴ Home Office (15 October 2013), Controlling Immigration – Regulating Migrant Access to Health Services in the UK: Results of the Public Consultation, p. 35.

Schedule 18 to the 2010 Act sets out exceptions to the equality duty. In relation to the exercise of immigration and nationality functions, section 149 (1)(b) – advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it – **does not apply to the protected characteristics of age, race or religion or belief** [emphasis added].¹⁵⁵

Again, this is inaccurate. These policy equality statements either misinterpret the immigration exceptions for race, or do not take them into account at all.

The Windrush Lessons Learned Review also found that the Home Office’s understanding of the PSED exceptions was too broad, with some senior staff seeming to assume that the Equality Act did not apply at all.¹⁵⁶ It is our view that the department demonstrated an inconsistent and sometimes incorrect understanding of how the various parts of the PSED intersect with immigration law, policy and practice.

Supporting PSED compliance

We would expect to see support given to Home Office staff and ministers on their role in ensuring compliance with the PSED. This could include formal training and guidance on how the Duty applies to their work and the relevance of the Duty in embedding equality into the department’s delivery, as well as less formal support from senior leaders and ministers on prioritising equality.

¹⁵⁵ Home Office (23 October 2015), Policy Equality Statement (PES), Immigration Bill 2015 – Access to Services.

¹⁵⁶ Windrush Lessons Learned Review, p. 87.

Training and guidance for staff

The Home Office was not able to give us information on PSED-specific training for officials involved in developing and implementing hostile environment policies. We have seen documents referring to training for department staff responsible for implementing the technical requirements of the right to rent scheme (for example, the document checking service¹⁵⁷ and in rolling out phase two of the scheme).¹⁵⁸ However, we have not seen the content of the training in the material provided to us.

The evidence we have seen of inconsistent and sometimes incorrect understanding of the PSED's application implies that the Home Office's arrangements were not sufficient to equip staff to meet their obligations under the Duty.

The Windrush Lessons Learned Review does not describe whether training in the Home Office at the time included the PSED specifically. It did, however, find that there were low levels of diversity and inclusion training and recommended improvements, including in PSED training.¹⁵⁹ It notes that there were low completion rates of mandatory diversity and inclusion training by senior civil servants, and that training had generally become less rigorous, less consistent and less effective over time.¹⁶⁰

¹⁵⁷ Home Office (24 October 2014), Internal Audit Review of the Implementation of the Immigration Act 2014 – Landlord Checking Services, p. 4.

¹⁵⁸ Home Office (26 November 2015), Landlords' Consultative Panel meeting 2 December (plus annexes), ministerial submission.

¹⁵⁹ Windrush Lessons Learned Review, p. 116.

¹⁶⁰ As above, pp. 94 and 115.

Although we are not able to say whether additional guidance on the PSED was available elsewhere,¹⁶¹ we note the limited guidance available within the templates for producing impact assessments and policy equality statements. The impact assessment template did not require any specific information about equality, and the impact assessment produced for the 2013 Immigration Bill did not mention equality at all.¹⁶²

The policy equality statement template was more prescriptive about the type of equality information to include, requesting a 'summary of the evidence considered in demonstrating due regard to the Public Sector Equality Duty'¹⁶³ before submitting the document for approval. It also included a prompt to provide information on 'actions taken as a consequence of any identified equality issues'.¹⁶⁴

Such simple steps can help staff consider equality in their work, but the policy equality statement template was not tailored to the needs of Home Office officials working in immigration. In particular, it did not request consideration of the relevant immigration exemptions. This would have encouraged officials to focus on ethnic minority groups defined by reference to colour in the context of the requirement to have due regard to advancing equality of opportunity.

The template also did not request consideration of what 'having due regard' for the purposes of this limb of the PSED might look like. The Equality Act 2010 specifies that this should:

- involve consideration of steps that would remove or minimise disadvantages suffered by people in these groups
- meet the particular needs of people in these groups, and
- encourage people in these groups to participate in public life, or in any other activity where their participation is disproportionately low.¹⁶⁵

¹⁶¹ We have seen reference to further resources on Horizon intranet for staff, but these were not provided to us to review so we cannot comment.

¹⁶² Home Office (14 October 2013), *Overarching Impact Assessment – Immigration Bill*.

¹⁶³ This policy equality statement is part of Home Office (15 October 2013), *Controlling Immigration – Regulating Migrant Access to Health Services in the UK: Results of the Public Consultation*.

¹⁶⁴ As above.

¹⁶⁵ Equality Act 2010, section 149(3).

Having due regard to equality goes much further than using templates. But having the proper structures and processes in place is an important part of supporting staff to meet their PSED obligations in fast-paced environments. The policy equality statements we have seen identify concerns about risks of discrimination against people from ethnic minorities, but do not consider steps that would advance equality of opportunity in substantive ways.

Information and guidance for ministers

It is ultimately the responsibility of ministers to make policy decisions. But there is little evidence of a culture of ministers being encouraged to consider the PSED in submissions prepared in the development, implementation and review of the hostile environment agenda.

Equality considerations are absent from the update prepared for ministers on progress in implementing hostile environment measures following the 2014 Act.¹⁶⁶ There are also no references to equality in briefings prepared for ministers in August and October 2016 seeking approval for the implementation of secondary legislation for financial service provisions, and for laying the regulations before Parliament.¹⁶⁷

As discussed in [Chapter 2](#), a rare example of the PSED being mentioned in documentation to ministers was a 2017 submission on the rollout of the right to rent scheme to Scotland, Wales and Northern Ireland. It is raised here again to highlight the nature of the advice given to the minister on their personal equality obligations:

¹⁶⁶ Home Office (14 July 2015), *Building the Hostile Environment – Update on Initiatives Underway in Immigration Enforcement*, ministerial submission.

¹⁶⁷ Briefing to Immigration Minister dated 12 August 2016 concerning implementing secondary legislation for financial services provisions (namely the powers to close or freeze accounts after they have opened). See also briefing to Immigration Minister dated 25 October 2016, seeking approval on the regulations to be laid before Parliament in relation to the financial service provisions of the Immigration Act 2016.

You (Minister) remain under a personal duty to have consideration at all times to the Public Sector Equality Duty and this obligation is a continuing one.¹⁶⁸

While this is an accurate description that goes some way towards showing due regard, we are concerned that reference to the PSED only arose in response to a potential judicial review by the Joint Council for the Welfare of Immigrants rather than the equality considerations themselves – which the submission, as noted, dismissed as ‘flawed’.

There is a general absence of references to equality considerations in official announcements on the hostile environment made by immigration ministers between 2012 and 2018.¹⁶⁹ We have not seen evidence that Home Office ministers and senior officials used their positions to promote PSED compliance. We would have expected them to emphasise the need to advance equality of opportunity, by identifying how all people with the right to live in the UK may be affected negatively by the hostile environment policies.

For example, the Home Office failed to mention equality in an update to ministers on the implementation of important hostile environment measures, but noted that:

¹⁶⁸ Home Office (18 July 2017), Bringing residential tenancies measures in the 2014 and 2016 Immigration Acts into force across the United Kingdom, ministerial submission.

¹⁶⁹ See, for example, the statement by Immigration Minister Mark Harper in relation to the Immigration Bill 2013; [Home Office \(October 2013\), Immigration Bill. Factsheet: Overview of the Bill.](#)

The Immigration Act 2014 provides the basis for work Immigration Enforcement (IE) has taken forward to build a hostile environment designed to target migrants living in the UK illegally. We have already implemented a range of measures to make it systematically harder for people to remain in the UK illegally. But there is significant scope to extend our reach.¹⁷⁰

There is limited evidence of senior leadership directing staff to prioritise the PSED in their work. There is evidence, however, that the political objective of reducing immigration (including irregular immigration) resulted in Home Office staff developing far-reaching measures for doing so, without sufficient consideration of the implications this might have for equality. This compromised the ability of the department to meet its legal obligations under the PSED.

Where submissions to ministers did not include equality considerations, there is no evidence that ministers requested or considered this information separately. This is especially concerning given the intentionally wide reach and severe implications of the hostile environment policies.

The Windrush Lessons Learned Review points out that the Government's public messaging at the time expressed doubts about the need for public consultations in all cases.¹⁷¹ Home Office officials worked in a context where their Secretary of State had a strong public commitment to the hostile environment agenda, working under a Prime Minister who had said equality impact assessments were 'bureaucratic nonsense' that would not be necessary.¹⁷²

¹⁷⁰ Home Office (14 July 2015), *Building the Hostile Environment – Update on Initiatives Underway in Immigration Enforcement*, ministerial submission.

¹⁷¹ Windrush Lessons Learned Review, p. 157.

¹⁷² [BBC News \(19 November 2012\), 'Cameron "calls time" on Labour's equality impact assessments'](#).

Transparent decision-making

Although our assessment terms of reference do not include whether and how the Home Office complied with its specific duties to publish equality information,¹⁷³ those duties are still relevant in showing how the Home Office carried out its general duties. In our PSED guidance, we explain that the type of information the listed authority should publish will vary according to the size of the authority and relevance of the three aims of the general duty to a listed authority's functions. However, the information should be sufficient **to enable those accessing it to reasonably assess how a listed authority has complied** with the general equality duty, and **enable them to hold the listed authority to account**.¹⁷⁴

The Home Office took steps to publish relevant documents, including impact assessments, policy equality statements and its evaluation of the right to rent scheme, outlining the evidence it had gathered on equality and the department's response.

However, for reasons considered in previous chapters, this consideration of equality was not sufficient to allow for effective scrutiny and challenge. We would have expected greater engagement with Parliament and external bodies such as civil society organisations and regulators, including the Independent Chief Inspector of Borders and Immigration and the Equality and Human Rights Commission.

The Home Office's impact assessment on the 2015 Immigration Bill was published too late to inform parliamentary debate. As we noted in our oral evidence to the Public Bill Committee of the House of Commons at the time:

¹⁷³ These specific duties come from section 153 of the Equality Act 2010 and the Equality Act 2010 (specific duties and public authorities) Regulations 2017. The purpose of the specific duties is to enable the better performance by a public authority of the general Public Sector Equality Duty imposed by section 149(1).

¹⁷⁴ Equality and Human Rights Commission, *Technical Guidance on the PSED: England*, pp. 68–69.

We also have an overriding concern about the equality impact assessments undertaken in relation to the Bill. We understand that they are still underway, but the failure to provide proper evidence about equality impact at this stage undermines the ability of parliamentarians to properly debate the provisions in the Bill¹⁷⁵

There is evidence that the Home Office was not transparent in its approach to the evaluation of phase one of the right to rent scheme. A briefing prepared for the Immigration Minister on publishing the evaluation, in light of rising media interest in the scheme, recommended doing so as soon as possible to 'proactively draw on the report's positive findings' and rebut the more critical findings of a parallel evaluation conducted by the Joint Council for the Welfare of Immigrants. It also noted that 'internally-focused material about the operation of the scheme [...] which could have been used to criticise the department' had been removed.¹⁷⁶ This inevitably raises questions about why this decision was taken.

This removal of potentially unfavourable evidence was not consistent with the Home Office's specific duty to publish information that enables other bodies to hold the department to account. The PSED can provide an essential safeguard for effective policymaking, but only if public bodies are transparent about evidence they have gathered on potential or actual negative impacts, and the steps they are taking in response.

Parliamentary scrutiny

Parliamentary scrutiny of the hostile environment policies was another available mechanism to enable transparent decision-making and support PSED compliance. Debates held at important stages of the implementation of this agenda helped to identify concerns about unintended consequences for groups with protected characteristics.

¹⁷⁵ [Equality and Human Rights Commission \(22 October 2015\), Parliamentary Debates, Public Bill Committee, on the Immigration Bill.](#)

¹⁷⁶ Home Office (12 August 2015), Right to Rent evaluation: final report, ministerial submission.

In a discussion on the right to rent scheme in the House of Commons Public Bill Committee, four out of seven witnesses pointed out potential unintended impacts of the changes. The risks for groups defined by reference to colour and for British citizens were highlighted in particular, including due to problems some faced in obtaining passports (although issues affecting members of the Windrush generation were not mentioned specifically).¹⁷⁷

In **Chapter 3**, we discuss the limitations of the measures that the Home Office introduced in response to these concerns, including a statutory non-discrimination code of conduct and a phased rollout of the scheme. These measures did not appear to allay the concerns of some parliamentarians that the scheme would encourage landlords to discriminate against prospective tenants who did not 'look British' or who did not have the documents needed to prove their status.¹⁷⁸

Moreover, we are concerned that the Home Office may have tried to limit parliamentary scrutiny of some of the more controversial decisions, including the decision to roll out the right to rent scheme. In 2016, the Immigration Minister rejected a request by the Liberal Democrats to hold a parliamentary debate on this decision following the conclusion of the scheme's first stage,¹⁷⁹ on the grounds of efficiency. Instead, a decision was made to use the negative parliamentary procedure, which does not require a debate, to introduce further phases of the rollout.¹⁸⁰

Again these are indications that the implications of hostile environment measures for Black members of the Windrush generation were already understood, and could have been anticipated and mitigated by the Home Office.

¹⁷⁷ Windrush Lessons Learned Review, p. 205.

¹⁷⁸ As above, p. 207.

¹⁷⁹ Right to Rent Programme Board meeting – minutes and actions (13 January 2016).

¹⁸⁰ Home Office (6 December 2013), Immigration Bill Q&A. This appears to be a draft document as it contains tracked changes, primarily on the topic of exit checks.

Openness to internal challenge and scrutiny

We have not seen evidence of effective systems within the Home Office to encourage officials at different levels of the organisation to identify problems with the implementation of hostile environment measures, including by reference to the PSED.

According to the Windrush Lessons Learned Review, a combination of poor record-keeping, high workload and a target-oriented culture meant that Home Office staff did not have the confidence to challenge decisions they might consider unfair or unreasonable, including those that may not have shown due regard to the PSED.¹⁸¹

The way in which caseworkers dealt with applications for confirming or changing immigration status does not appear consistent with a culture of PSED compliance. The Windrush Lessons Learned Review also notes that the standard of proof that caseworkers applied in response to these applications was more like that set in the criminal justice system, to prove a defendant's status 'beyond reasonable doubt', than the lower civil standard of proof based on 'a balance of probabilities' that should apply in immigration cases. Yet:

No one in the department knew the origin of this requirement, which a senior official confirmed to the Home Affairs Committee wasn't in the department's guidance to caseworkers. The fact that such a practice was adopted in parts of the organisation, yet its origins were unknown, is [...] indicative of the culture of the department.¹⁸²

¹⁸¹ Windrush Lessons Learned Review, p. 106.

¹⁸² As above, p. 98.

This unreasonable standard of proof was inconsistent with Home Office guidance for caseworkers to treat the cases of people from Commonwealth countries who came to the UK before 1973 'sensitively'.¹⁸³ The fact that this guidance was not followed, and that caseworkers did not know they were applying an unreasonable standard of proof when reviewing applications, demonstrates that this information was not communicated or understood adequately throughout the organisation.

Organisational culture is difficult to objectively measure. But the evidence we have considered suggests that the Home Office culture in the period we assessed did not support due regard to equality, including through transparency and willingness to be scrutinised and challenged. This had clear implications for the Home Office's capacity to comply with the PSED.

¹⁸³ Home Office (16 January 2006), General Group Instruction: People Settled in the UK on 1 January 1973: ILR or NTL Applications, General Group Instruction.

5. Findings and recommendations

In the documents we assessed, there was not enough evidence of the Home Office taking the required steps to show due regard to the need to advance equality of opportunity in relation to colour. This included the documents the Home Office supplied to show compliance.

We have therefore concluded that the Home Office did not comply with section 149 of the Equality Act 2010 (the PSED) in relation to understanding the impact on the Windrush generation and their descendants when developing, implementing and monitoring hostile environment policies.

Many of the agenda's policies and practices are still in operation. Meanwhile, new approaches are still being developed, including as a result of the UK exiting the European Union. We have identified several areas where the Home Office can and should improve its practice related to its obligations under the PSED. These improvements will ensure there are safeguards in place to prevent the negative experiences of the Windrush generation affecting any racial group now or in the future.

Our aim is that the Home Office will commit to working with us to implement our recommended actions in full, in a specific, measurable and time-bound way, to improve PSED compliance throughout the organisation.

Overall findings and recommendations

Overall, we find that the Home Office did not meet its duty to have due regard to advancing equality of opportunity for Black members of the Windrush generation when developing, implementing and monitoring the hostile environment policy agenda between 2014 and 2018. We agree with the Windrush Lessons Learned Review that what happened to those affected by the Windrush scandal was 'foreseeable and avoidable'.

Specifically, we have found:

- That where negative equality impacts were identified by the Home Office and stakeholders, they were repeatedly ignored, dismissed, or their severity disregarded at crucial points of policy development, particularly where they were seen as a barrier to implementing hostile environment policies in a highly-politicised environment.
- Limited engagement with stakeholders representing members of the Windrush generation and their descendants, even as the severe impacts of hostile environment policies began to emerge. The engagement that did take place was too focused on groups that would help implement the measures, and not those who could ensure that the department fully understood the equality implications of its policies.
- That equality impacts were often considered too late to form a meaningful part of many decision-making processes, with their reputational or legal implications for the Home Office given greater weight than the real-life consequences for the people affected.
- That exceptions to the PSED for immigration functions were often interpreted too broadly, incorrectly and / or inconsistently.
- A lack of organisation-wide commitment, including by senior leadership, to the importance of equality and the Home Office's obligations under the PSED. Any action taken to record and respond to negative equality impacts was perfunctory, and therefore insufficient.

We have therefore made specific and practical recommendations that aim to help the Home Office to take timely and effective action to understand and, where necessary, act to mitigate the potential and actual impacts of its policies and practices. We also seek to support the ongoing development and maintenance of a positive culture and capability of PSED compliance within the department.

Such changes do not need to add unnecessary bureaucracy to the work of Home Office and other departments. Rather, they should be embedded to create the structure and culture for correct considerations and decisions to be made at the right time, to ensure that policy reflects and responds to the context in which it will be implemented.

We acknowledge the important steps the Home Office has taken since 2018 to address some of the issues identified in this assessment, such as establishing the PSED team, and introducing revised guidance, more rigorous monitoring, and new training materials. These are essential first steps to embedding a broader culture and capability of PSED compliance.

Implementing our recommendations in full will help the department build on this, and to use the PSED as an effective safeguard against the negative experiences of the Windrush generation and their descendants ever being repeated. Doing so will also demonstrate a tangible commitment to the Home Office's aim of delivering a fairer and more compassionate immigration system.

We have recommended that the Home Office enter into an agreement with us, under section 23 of the Equality Act 2006, by the end of January 2021. The agreement will involve preparing and implementing at pace a plan of the specific actions, based on the detailed recommendations set out in **Chapter 5** of our report, that the Home Office will take to avoid a future breach of the PSED in carrying out its immigration functions in respect of race and colour, and more broadly.

Understand: gathering information on actual and potential impacts

Findings

We find that the Home Office did not give sufficient attention to understanding the potential impacts of the hostile environment policies for the Windrush generation, even though they were foreseeable.

The department included minimal equality considerations in the impact assessments for the 2013 Immigration Bill. It made no attempt to consider the likely cumulative effect of the restrictions it introduced on access to services on people who were British citizens but who did not have documentation proving that status. There is also little evidence that the Home Office used its knowledge of the historical development of immigration legislation, policy and practice to inform its understanding of the potential negative implications of the 2014 Immigration Act for the Windrush generation.

Public consultations organised by the Home Office identified early equality concerns, but the department did not treat these seriously, downplaying the number of people potentially affected and the potential severity of the impact.

Our assessment saw limited evidence of effective impact monitoring, which supports the Windrush Lessons Learned Review conclusion that such monitoring over time was poor.¹⁸⁴ The only dedicated structure for monitoring and understanding the actual impact of the 2014 Immigration Act measures was the evaluation of phase one of the right to rent scheme. However, while this evaluation underlined previously identified concerns about the scheme's negative effects on people with limited documentation, the department chose not to analyse the equality implications of this further.

Recommendations

To properly understand the potential and actual equality impact of its policies and practices on people of different racial groups, the Home Office should:

- 1. Prioritise, act early and use a range of sources and evidence to understand the equality impacts of its policies and practices – particularly through proper engagement with affected groups. This involves:**
 - Giving active consideration to, and gathering evidence of, potential impacts – including possible unintended ones – from the concept stage and at each stage of decision-making.
 - Focusing on understanding the scale and the severity of the potential impacts, taking into account existing inequalities and avoiding assumptions about these effects, and prioritising more thorough understanding where these are more prevalent and / or severe. This is particularly necessary for immigration policy, given the significant potential consequences it has for people's lives.
 - Setting up systems and processes for maintaining, communicating and using institutional knowledge to identify and analyse the cumulative equality impacts of any policy with other relevant current and past policies. This should include those led by different departments (for example, the Department of Health and Social Care's rules for charging overseas visitors and migrants for healthcare) and is important for policies designed as linked packages of measures, such as the hostile environment agenda.
 - Taking active proportionate steps to help make policymakers fully aware of potential and actual human impacts of policies, by using a range of sources, including qualitative evidence. This will include, for example:

¹⁸⁴ See also: Windrush Lessons Learned Review, p. 12.

- Engaging proactively with organisations representing different ethnic minority groups to gather information from them, considering this properly, and feeding information back to them on how this engagement has influenced policy and practice at appropriate points in the process.
- Fully considering qualitative evidence brought to the department by expert stakeholders, especially when it is consistent and frequent in nature.
- Using data broken down by ethnicity and other protected characteristics to identify historical and structural inequalities that may increase the impacts of policies on particular groups.

Act: using equality evidence to inform policy

Findings

We find that the Home Office did not seek to integrate equality considerations sufficiently when developing the initial policy that would become the Immigration Act 2014, or in later decisions, such as on further rollouts of the right to right policy.

It is our view that Home Office officials and ministers only considered equality issues after already making decisions to proceed with policies, where they were considered at all. The department was inconsistent in considering the equality implications of and mitigations for its hostile environment measures. This is despite the severe impacts of each policy – in isolation and as part of the wider hostile environment agenda – on some protected characteristic groups that had already been identified.

The Home Office review into the right to rent scheme is evidence of steps towards PSED compliance, and did result in the department introducing some mitigation measures. But its overall effectiveness was limited. The department did not give the same weight to reviewing the policy's equality considerations as it did to operational matters. As a result, these mitigation measures did not address the specific negative experiences of the Windrush generation. We did not see evidence of any other evaluation of policies after their implementation.

While we do not have evidence to show how this affected individual Home Office decisions, it is clear they took place in a political environment that favoured continued implementation of the policy at pace.

Recommendations

To act properly on its understanding of the potential and actual equality impacts of its policies and practices, the Home Office should:

- 2. Make sure ministers and other decision-makers receive and consider detailed equality information, including options for mitigating any negative impacts, at an appropriately early stage to inform the policymaking process. This involves:**
 - Developing a range of options at the initial stages of policy development for ministers to consider, before any decisions are made. These should aim to mitigate any potential or actual negative impacts for ethnic minority groups, or reduce existing inequalities. Equality considerations should, in principle, be given the same weight as operational, legal and reputational issues.
 - Making sure that senior officials, and then ministers' private offices and advisers, present this range of options clearly in submissions to ministers. If this information is not included in a submission, ministers should request it.
 - Documenting, with reasons, decisions taken to adopt or not adopt particular measures to mitigate impacts.
- 3. Regularly review equality impacts as policies are implemented, act on this information in a manner proportionate to the severity of the impacts, and document decisions taken to adopt or not adopt particular mitigation measures. This involves:**
 - Testing policy meaningfully through pilots, 'challenge sessions' with internal and / or external stakeholders, or other appropriate measures. This should include involving stakeholders in design, delivery and evaluation to monitor the intended and actual impacts and whether any mitigating actions taken are effective.
 - Reviewing decisions regularly and with an open mind, to reflect any changing circumstances or new information on risks to equality. The frequency and depth of reviews should reflect the severity of the policy's potential and actual impacts.
 - Establishing systems and processes to understand and act on actual equality impacts. This could be through the proactive creation of stakeholder networks across protected characteristics and other priority groups (such as those representing migrants), and from internal evidence gathered from frontline implementation. Such an approach should be led by an appropriate senior official.

- Responding to any potential or actual negative equality impacts promptly and with an open mind by considering amending the policy to avoid or mitigate impact, or by considering stopping or postponing a policy where the negative impact is unavoidable. Where the impact is likely to be severe, this consideration should be robust. If the decision is made to continue the policy, the reasons for that decision should be recorded, setting out how equality impacts were considered and balanced with other relevant factors.

Embed: understanding, prioritising and supporting the PSED

Findings

We find that there were significant gaps in the Home Office's understanding of how the PSED applied in the context of the hostile environment. In particular, there was an over-broad and inconsistent understanding of the exceptions to the Equality Act for immigration functions.

This was the result of limited training on the PSED and equality, and limited guidance for officials and ministers on how to identify, analyse and use equality information to inform decision-making.

Consideration of equality does not appear to be part of the culture in which these policy measures were developed and implemented, which was characterised by visible and often contentious political debate. This includes even the name given to this policy agenda. As the Windrush Lessons Learned Review notes: 'the choice and use of words undoubtedly reflects, and also influences, an organisation's culture'.¹⁸⁵

A narrow focus on delivering the political commitment of reducing immigration, combined with a culture where safeguards were not used, resulted in the Home Office failing to have due regard and led to deeply negative outcomes for Black members of the Windrush generation and their descendants.

¹⁸⁵ Windrush Lessons Learned Review, p. 106

Recommendations

To embed its commitment to equality fully, the Home Office should:

4. Be completely transparent and open to scrutiny about its commitment and approach to advancing equality. This involves:

- Identifying and publishing its analysis of the important equality issues, including structural inequalities, relevant to its functions and the equality objectives it will aim to achieve through its work. This should be informed by engaging with relevant stakeholders.
- Putting strategies and action plans in place to achieve its equality objectives, publishing annual reports on its progress, and reviewing plans where progress is not being achieved. This should include the department's approach to gathering evidence on equality, and how it has acted on this information.
- Making sure that the language used internally and externally reflects its commitment to equality, improves public confidence in its ability to carry out its functions fairly and without prejudice, and helps deliver its ambition of being a fair, humane and compassionate organisation.
- Engaging with existing structures and bodies whose role it is to provide scrutiny – such as the Independent Chief Inspector of Borders and Immigration, the National Audit Office, and relevant parliamentary advisory and select committees – to share information about the equality implications of its work, and take specific, measurable action on recommendations from these groups.

5. Take meaningful action to improve its internal capability to fully understand and comply with the PSED, in order to fulfil its commitment to equality. This involves:

- Identifying which of its functions have the greatest actual and potential impact on equality, and prioritising those for its PSED improvement work. It should work with external partners to identify these, gather other relevant evidence, and respond effectively to any negative impacts it identifies.
- Delivering mandatory, high-quality learning and development on how to comply with the PSED and the importance of the Duty for equality more broadly. This should include training and role-modelling from senior leadership, and should be informed by engaging with groups representing those directly affected by the department's work. This learning and development should focus on the purpose of the duty and its origins in the Macpherson report, ensure consistent and accurate interpretation of the exceptions for immigration functions in Schedule 18 to the Equality Act 2010, and make clear the role of all Home Office staff in complying with the PSED.

- Making sure that senior officials champion and continue to strengthen the department's integration of equality considerations into planning and delivery, and holding them to account for this through its performance management system.
- Continuing to develop and embed the use of materials, such as guidelines and templates, which support frontline staff and hold them to account for considering equality in all aspects of their daily work.
- Making sure that performance objectives for relevant Home Office roles, particularly those providing advice or support to ministers, include a responsibility to check and challenge for compliance with the PSED in daily operations and decision-making.
- Developing the appropriate structures, groups and culture to allow staff to scrutinise and challenge decisions and practices constructively.

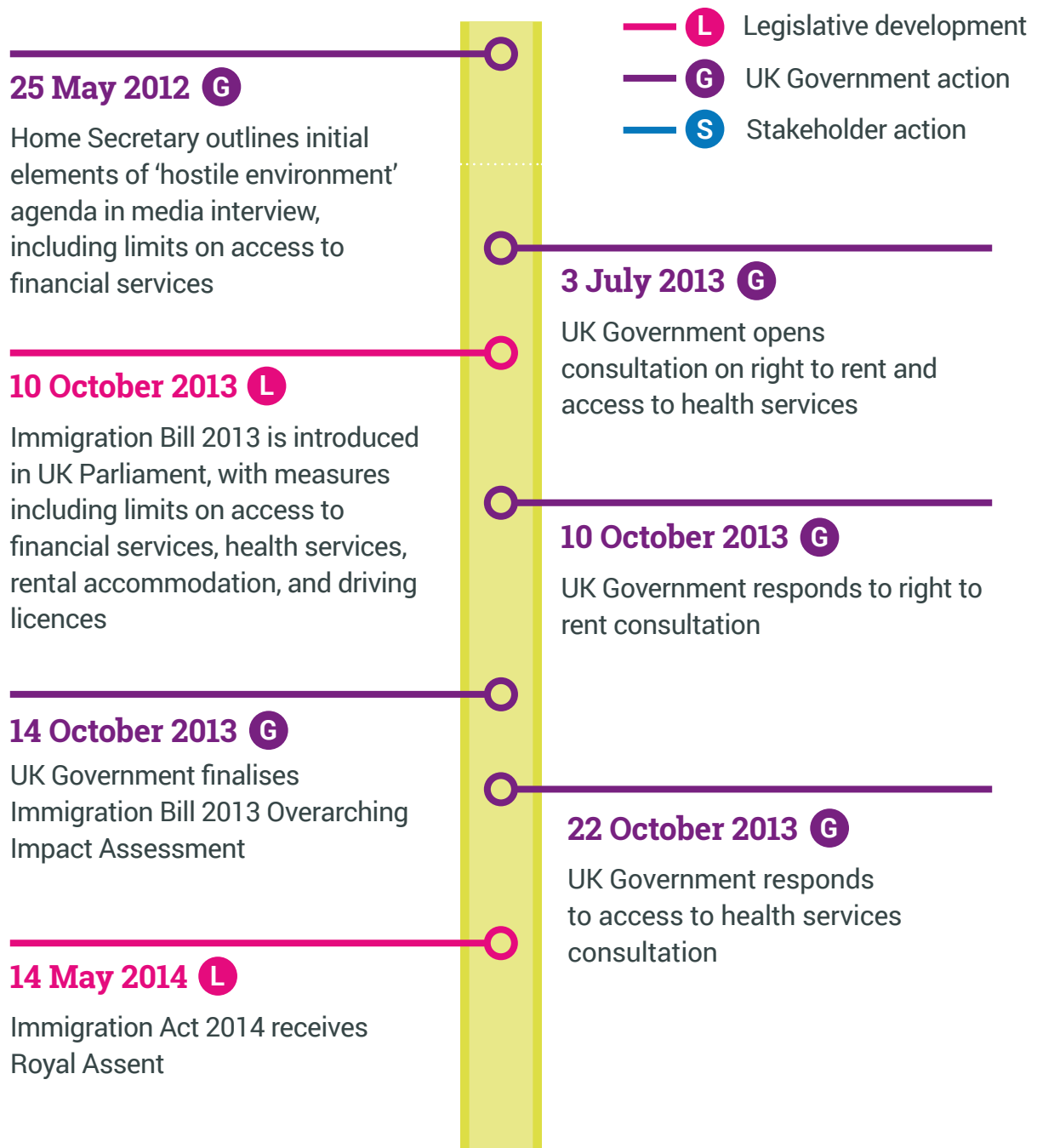
Annex 1: Terms of reference

The Equality and Human Rights Commission will:

1. Use the evidence outlined in the independent 'Windrush Lessons Learned Review' by Wendy Williams, and further specific evidence provided by the Home Office, to assess the manner in which and the extent to which the department complied with section 149 of the Equality Act 2010 (the Public Sector Equality Duty) in relation to understanding the impact on the Windrush generation when:
 - a. Developing immigration policy provisions enacted by the Immigration Act 2014 as part of the so-called 'hostile / compliant environment' agenda that, building on previous legislation, policy and practice, resulted in increased requirements for individuals to prove immigration status in order to access private rented housing, healthcare, driving licences and banking.
 - b. Implementing the policy provisions, operational practices and procedures that led to more onerous requirements on individuals to produce documentation both when accessing services and when making applications to the Home Office to confirm or change nationality / immigration status, focusing on the period 2014 and 2018.
 - c. Monitoring the impact and considering the need for ongoing review of said policy provisions, operational practices and procedures between 2014 and 2018.
2. In relation to the matters set out at 1 above:
 - a. Focus on the Home Office's compliance, in the exercise of its functions, with its duty under section 149(1)(b) of the Equality Act 2010 to have due regard to the need to advance equality of opportunity between people who share a protected characteristic and those who do not, with particular reference to colour.
 - b. Identify areas of good practice in the manner in which the Home Office performed the Public Sector Equality Duty in order to work with the department to help ensure such areas are embedded and strengthened in future immigration policymaking.
3. In light of the evidence referred to at 1 above, and representations from affected members of the Windrush generation and interested organisations, make recommendations for the actions the Home Office

should take in order to improve its future performance of the Public Sector Equality Duty and work with the Home Office to ensure the likely and actual impact on race equality is fully and properly considered in the development, implementation and monitoring of immigration legislation, policy, practice and procedure.

Annex 2: Timeline of important developments considered in our assessment





Annex 3: Survey questions used to gather external representations from individuals and organisations

About you

Question 1: I am:

Home Office consultation: potential impact of policies

Question 2: Did the Home Office ask you for any information or evidence about the potential impact of the new and additional requirements to prove status to access services, before the Immigration Act 2014 became law, on Black members of the Windrush generation? For example, increased requirements for individuals to prove immigration status to access private rented housing.

Question 3: Please describe this process below, including: when this was, how the Home Office sought your input, what type of information you provided. We do not need to see the evidence you submitted to the Home Office. Instead, please provide a summary of the type of engagement you experienced. For example, taking part in a reference group or providing written evidence.

Home Office consultation: actual impact of policies

Question 4: Did the Home Office ask you for any information or evidence, at any point after the Immigration Act 2014 became law, to understand or mitigate the actual impact that the additional requirements to prove status to access services was having on Black members of the Windrush generation? For example, this could relate to the impact of: formal hostile environment measures, such as increased requirements for individuals to prove immigration status to access private rented housing, or internal Home Office practices regarding the level of documentation it needed from individuals seeking confirmation or change of status.

Question 5: Please describe this process below, including: when this was, how the Home Office sought your input, what type of information you provided. We do not need to see the evidence you submitted to the Home Office. Instead, please provide a summary of the type of engagement. For example, taking part in a reference group or providing written evidence.

Attempts to share information

Question 6: Did you attempt to share, or did you share, any information or evidence with the Home Office about the impact that the measures were having on the Windrush generation between 2014 and 2018? For example, this could relate to the impact of: formal hostile environment measures, such as increased requirements for individuals to prove immigration status to access private rented housing, or internal Home Office practices regarding the level of documentation it needed from individuals seeking confirmation or change of status.

Question 7: Please describe this process below, including: when you did this, how you did this, what your experience was, what the Home Office's response was. We do not need to see the evidence you submitted to the Home Office. Instead, please provide a summary of the type of engagement. For example, taking part in a reference group or providing written evidence.

Examples of good practice

Question 8: Do you have any examples of consultation or other engagement, by the Home Office or other public authorities, that you consider to be satisfactory and / or effective? We are specifically looking for examples that the Home Office could follow in the future, to ensure that it considers the potential and actual impact of its policies on people with protected characteristics.

Question 9: Please describe the example(s) below, including: what made it satisfactory or effective, how it affected your relationship with public bodies, how it affected outcomes for the people you represent.

Question 10: I am happy for you to contact me about my responses:

Question 11: If you are happy to be contacted, please provide the relevant details below.

Information that the Home Office asked for

Question 12: Did the Home office ever ask you for information about the impact on you of having to provide proof of immigration status to access services? For example, to access private rented housing or open a bank account.

Question 13: Please describe the process below, including: when you were contacted by the Home Office (what year was this?), how the Home Office contacted you (were you invited to a group, contacted through an organisation, or contacted in another way?) Please provide a short summary. Please do not share the contact you had with the Home Office, or copies of any information you sent to it, as we are unable to review individual cases.

Problems that you told the Home Office about

Question 14: Did you ever tell the Home Office that the additional requirements to prove your immigration status were causing you difficulty or problems? For example, problems accessing services such as private rented housing, or getting confirmation of your status from the Home Office.

Question 15: Please provide more details below, including: when you contacted the Home Office (what year was this?), how you contacted the Home Office (did you write to the Home Office, tell a member of staff at a casework meeting, make a formal complaint, or contact it in another way?), the types of issues you raised, the response you received from the department. Please provide a short summary. Please do not share the contact you had with the Home Office, or copies of any information you sent to it, as we are unable to review individual cases.

Contacts

This publication and related equality and human rights resources are available from [our website](#).

Questions and comments regarding this publication may be addressed to: correspondence@equalityhumanrights.com. We welcome your feedback.

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EASS

For advice, information or guidance on equality, discrimination or human rights issues, please contact the [Equality Advisory and Support Service](#), a free and independent service.

Telephone 0808 800 0082

Textphone 0808 800 0084

Hours 09:00 to 19:00 (Monday to Friday)

10:00 to 14:00 (Saturday)

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