

Windrush Workshop

23 February 2021

Emma Harris
With Jacqueline McKenzie



1

INTRODUCTION

- ▶ The relevant legal framework and developments in nationality and immigration law to help you to identify potential Windrush victims
- ▶ The Windrush Scheme; who is eligible to apply and what for
- ▶ Case Studies

2

British Nationality and Status of Aliens Act 1914

- ▶ British Subjects were:
 - ▶ Any person born within His Majesty's dominions and allegiance; and
 - ▶ Any person not born within the UK or a UK Colony whose father was a British Subject born within the UK or a UK Colony or who had naturalized as a British Subject by the time they were born

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

3

British Nationality Act 1948

- ▶ If the place of a person's birth remained under British rule they became a Citizen of the UK and Colonies (a "CUKC")
- ▶ When a country gained independence, people born there (or with father's born there) became citizens of that country
- ▶ Whether you were a CUKC or a citizen of a newly independent country, you remained a "Commonwealth Citizen"
- ▶ There were no immigration restrictions for any CUKC or other Commonwealth Citizen

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

4

Commonwealth Immigrants Act 1962

- ▶ Section 1 provided that immigration controls would now apply to:
 - ▶ s.1(2) ... any Commonwealth citizen not being-
 - (a) a person born in the UK
 - (b) a person who holds a United Kingdom passport and is a citizen of the UK and Colonies, or who holds such a passport issued in the UK or the Republic of Ireland; or
 - (c) a person included in the passport of another person who is excepted under paragraph (a) or paragraph (b) of this subsection.
 - ▶ s.1(3) ... "United Kingdom passport" means a passport issued to the holder by the Government of the United Kingdom, not being a passport so issued on behalf of the Government of any part of the Commonwealth outside the United Kingdom.

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

5

Commonwealth Immigrants Act 1962

- ▶ There were exemptions set out in s.2(2)
- ▶ The power to refuse admission or admit subject to conditions under this section shall not be exercised, ... in the case of any person who satisfies an immigration officer that he or she-
 - (a) is ordinarily resident in the United Kingdom or was so resident at any time within the past two years ; or
 - (b) is the wife, or a child under sixteen years of age, of a Commonwealth citizen who is resident in the United Kingdom or of a Commonwealth citizen (not being a person who is on that occasion refused admission into the United Kingdom) with whom she or he enters or seeks to enter the United Kingdom.

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

6

Independence of Colonies

- ▶ Recommended – Fransman's British Nationality Law
- ▶ Standard "two-point formula":
 - ▶ Any person born in the newly independent country after independence and CUKC who had been born or whose father had been born in the newly independent country became a Citizen of that country
 - ▶ Under UK law, any person who had gained a new citizenship ceased to be a CUKC
- ▶ The only people to whom this didn't automatically apply were for people born, naturalised or registered in a place which, on independence day remained within the UK and Colonies.

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

7

Immigration Act 1971

- ▶ A person with the "right of abode" is exempt from immigration control
- ▶ People who have the "right of abode" in the UK:
 - ▶ s.2(1)(a) – a CUKC born, adopted or naturalised in the UK or Islands
 - ▶ s.2(1)(b) – a CUKC whose parent was a CUKC born, adopted or naturalised in the UK or Islands
 - ▶ s.2(1)(c) – a CUKC who had at any time been "settled" in the UK and been "ordinarily resident" in the UK for 5 years or more
 - ▶ s.2(1)(d) – a Commonwealth Citizen born to a parent who had been born a CUKC in the UK or Islands
 - ▶ S.2(2) – a woman who is or has at any time been the wife of a man with the right of abode

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

8

Immigration Act 1971

- ▶ For those who did not qualify for a right of abode, s.1(2) provided that:

“indefinite leave to enter or remain in the United Kingdom shall, by virtue of this provision, be treated as having been given under this Act to those in the United Kingdom at its coming into force, if they are then settled there (and not exempt under this Act from the provisions relating to leave to enter or remain).”

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

9

British Nationality Act 1981

- ▶ The British Nationality Act 1981 created “British Citizenship”
- ▶ A person became a British Citizen under s.11 of the Act if immediately prior to commencement they were a CUKC who had the right of abode
- ▶ Anyone who only had ILR under the 1971 Act did not automatically become a British Citizen
- ▶ Anyone born in the UK pre-1 Jan 1983 was a British Citizen
- ▶ Anyone born in the UK after 1 Jan 1983 would only be a British Citizen if one parent was British or had ILR

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

10

Indefinite Leave to Remain

- ▶ Prior to 1988, s.1(5) of the 1971 Act protected Commonwealth Citizens from losing their ILR through long absences from the UK:
- ▶ That protection was repealed by the Immigration Act 1988
- ▶ From that point onwards, a Commonwealth Citizen who was absent from the UK for a period of more than 2 years would lose their ILR and would have to apply to as a Returning Resident.

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

11

The Windrush Scheme

Applications From Inside the UK

- ▶ Group 1: Commonwealth citizens who were either settled in the UK before 1 January 1973 or who have the right of abode
- ▶ Group 2: People of any Nationality who arrived in the UK and had ILR before 1 January 1973
- ▶ Group 3: People of any nationality who arrived in the UK between 1 January 1973 and 31 December 1988 and who have settled status
- ▶ Group 4: A child of a Commonwealth citizen parent and the parent was settled in the UK before 1 January 1973 or had a Right of Abode (or met these criteria but is now a British citizen) (i.e. Child with Group 1 parent)

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

12

Group 1:

Commonwealth citizens who were either settled in the UK before 1 January 1973 or who have the right of abode

- ▶ Confirmation of British Citizenship (if already held)
 - ▶ Can then be used to make a paid application for a passport
- ▶ Certificate of Right of Abode (if already held)

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

13

Group 1

- ▶ To naturalise as a British Citizen (for someone with ILR and continuous residence since 1988)
 - ▶ No absences of more than 2 years since 1 August 1988
 - ▶ Good Character
 - ▶ No Life in the UK Test
- ▶ To naturalise as a British Citizen (having returned as a Returning Resident)
 - ▶ Residence Requirements
 - ▶ Good Character
 - ▶ Life in the UK Test
- ▶ To naturalise as a British Citizen (as a person holding the Right of Abode)
 - ▶ Good Character
 - ▶ Life in the UK Test IF no strong ties to the UK

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

14

Group 1

- ▶ For confirmation of the ILR that they hold (NTL)
 - ▶ For those who do not want citizenship or do not qualify
 - ▶ No absences of more than 2 years since 1 August 1988
 - ▶ NTL Guidance applies
- ▶ To apply for ILR (outside of the Rules) if their previously held ILR has lapsed due to long absence since 1988
 - ▶ Must have some form of "limited leave" and show "strong ties"
 - ▶ General Grounds for Refusal
 - ▶ No consideration of why they left the UK or why they returned

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

15

Group 2:

People of any Nationality who arrived in the UK and had ILR before 1 January 1973

- ▶ For confirmation of the ILR that they hold (NTL)
 - ▶ Continuous residence since 1 January 1973
 - ▶ No absences of more than 2 years since 1 January 1973
- ▶ This group are at a disadvantage compared to Commonwealth Citizens when it comes to Citizenship – these would not fall under the Windrush Scheme and paid applications would still need to be made

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

16

Group 3:

People of any nationality who arrived in the UK between 1 January 1973 and 31 December 1988 and who have settled status

- ▶ For confirmation of British Citizenship (if already held)
- ▶ For a Certificate of Entitlement to Right of Abode (if already held)
- ▶ For confirmation of the ILR that they hold (NTL)
 - ▶ Based on NTL guidance
 - ▶ Subject to serious criminality which would otherwise result in deportation

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

17

Group 4:

Child of a Commonwealth citizen parent and the parent was settled in the UK before 1 January 1973 or had a Right of Abode (or met these criteria but is now a British citizen)

- ▶ Confirmation of British Citizenship
 - ▶ Automatically by birth if born pre-1983
 - ▶ If born after 1 January 1983, child can apply in their own right but Taskforce will likely need to resolve the parent's status first to establish if parent was British or had ILR when the child was born
- ▶ Certificate of Entitlement to Right of Abode
 - ▶ Child born British but does not want to apply for a passport

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

18

Group 4

- ▶ Registration as British Citizen under s.1(3)
 - ▶ Parent not British or settled at child's birth
 - ▶ Parent has settled since birth
 - ▶ Under 18
 - ▶ Good Character
- ▶ Registration as British Citizen under s.1(4)
 - ▶ Born in the UK and first 10 years of life continuously resident in the UK
 - ▶ Good Character

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

19

Group 4

- ▶ Naturalise as a British Citizen
 - ▶ Born outside of the UK
 - ▶ Arrived in the UK after 1 Jan 1973 whilst under 18
 - ▶ Residence requirement
 - ▶ Good character
 - ▶ If parent is Group 1 settled since 1 Jan 1973, No Life in the UK test
 - ▶ If parent is Group 1 with ROA the no Life in the UK test if parent had strong ties

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

20

Group 4

- ▶ Confirmation of ILR/NTL (already held)
 - ▶ Those who don't want to naturalise or don't meet good character
 - ▶ Child of settled Group 1 parent
 - ▶ Arrived in the UK after 1 Jan 1973 when under 18
 - ▶ Continuous residence
 - ▶ Had ILR
 - ▶ NTL guidance applies
- ▶ ILR outside of the Rules
 - ▶ Born outside of the UK to Group 1 parent
 - ▶ Arrived in the UK after 1 Jan 1973 when under 18 with continuous residence since
 - ▶ Has leave but not ILR
 - ▶ Doesn't fall for refusal on criminality or non-conductive grounds

© Copyright Goldsmith Chambers 2021
Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

21

Applications from Outside the UK

- ▶ Only Group 1 can apply from Outside the UK
- ▶ Returning Resident
 - ▶ Previously had ILR but lapsed
 - ▶ Strong ties PLUS factors to be considered include length of original residence, length of absence, why they left the UK and remained absent, why they want to return, intention to live permanently in the UK, any other compassionate or compelling factors
 - ▶ General Grounds of Refusal apply
- ▶ Multi-Entry 10 year visit visa if returning resident criteria met but they do not intend to live permanently in the UK

© Copyright Goldsmith Chambers 2021
Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

22

Good Character

- ▶ An applicant will normally be refused if they:
 - ▶ have a criminal conviction which falls within the sentence-based thresholds
 - ▶ are a persistent offender
 - ▶ have committed an offence which has caused serious harm
 - ▶ have committed a sexual offence or their details are recorded by the police on a register

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

23

Good Character

- ▶ Sentence-based threshold provides that a person will normally be refused if they have received:
 - ▶ a custodial sentence of at least 4 years
 - ▶ a custodial sentence of between 12 months and 4 years unless a period of 15 years has passed since the end of the sentence
 - ▶ a custodial sentence of less than 12 months unless a period of 10 years has passed since the end of the sentence
 - ▶ a non-custodial sentence or out-of-court disposal that is recorded on their criminal record which occurred in the 3 years prior to the date of application

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

24

Case Study 1: Maria & Louisa

- ▶ Maria was born in Guyana (British Guiana as it then was) as a Citizen of the UK and Colonies on 01/03/1955.
- ▶ She first arrived in the UK in 1965, and she believes she was travelling on the passport of one of her parents. Maria has predominantly lived in the UK ever since. She applied for a British passport once when she was younger but was refused. She obtained a Guyanese passport instead to enable her to visit her grandmother and other extended family in Guyana in 1976. Although she hadn't intended to, because of problems her grandmother was having with her health, Maria ended up staying in Guyana for 3 years before returning to the UK in 1979.
- ▶ Maria then trained in the UK as a nurse and worked for the NHS for over 25 years. She married a Nigerian national who had arrived in the UK in 1981 on a student visa. They had a daughter, Louisa, who was born in the UK in 1986 and they have a grandson, Marcus born in the UK in 2017.
- ▶ In 2008, Maria's employer was carrying out right to work checks and found that Maria had no documentary evidence of her entitlement to work in the UK and terminated Maria's employment. Maria has also had problems accessing benefits since then and has been asked to pay for treatment received through the NHS.
- ▶ Louisa has had similar problems when trying to claim benefits from her local authority and is worried about the implications for Marcus.

NB Guyana gained its independence and became a Commonwealth country on 26 May 1966.

On independence, under Guyanese nationality law, any person who had been born or whose father had been born in British Guiana became a Citizen of Guyana. Simultaneously, under UK law (with very limited exceptions) all persons who became a Citizen of Guyana ceased to be a Citizen of the UK and Colonies (regardless of where they were now living).

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

25

Case Study 1: Maria & Louisa

Maria and Louisa have approached you together for advice on the following:

- ▶ What is Maria's current status in the UK?
- ▶ What impact did Maria's three years spent in Guyana from 1976-1979 have on her status?
- ▶ What status does Louisa have? And Marcus?
- ▶ Can they make an application under the Windrush Scheme? If so, under which groups and what can they apply for?

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

26

Case Study 1 Answers: Maria & Louisa

- ▶ What is Maria's current status in the UK?
 - ▶ Maria was born a Citizen of the UK and Colonies and came to the UK prior to independence in Guyana
 - ▶ Maria was a child when she arrived and could not therefore have had a time limit placed upon her leave to remain when she entered pre-1973.
 - ▶ When Guyana gained its independence she was somebody who had been born in that country and would therefore automatically have become a Citizen of Guyana. Simultaneously under UK law she would have ceased to be a Citizen of the UK and Colonies.
 - ▶ When the 1971 Act came into force on 1 January 1973, she was not a CUKC and could not otherwise qualify for the right of abode.
 - ▶ Maria was settled in the UK and therefore obtained Indefinite leave to remain ("ILR") on 1 January 1973 by virtue of s.1(2) of the 1971 Act
 - ▶ As a Commonwealth Citizen, so long as she spent no period of more than 2 years outside of the UK after 1988, her ILR will have been preserved and she will still have held it throughout.
 - ▶ She won't have become a British Citizen automatically because she was not a CUKC and did not have the right of abode in 1983
- ▶ What impact did Maria's three years spent in Guyana from 1976-1979 have on her status?
 - ▶ None. Because she is a Commonwealth Citizen, she had the protection of s.1(5) 1971 Act which the Home Office policy (currently) agrees offered protection to Commonwealth Citizens up until it was repealed in 1988. If it had been after 1988 then it would have made a difference.

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

27

Case Study 1 Answers: Maria & Louisa

- ▶ What status does Louisa have? And Marcus?
 - ▶ She was born a British Citizen. Louisa was born in the UK after the British Nationality Act 1981 came into force and Maria had ILR when she was born and therefore both Louisa and Marcus will have been born British.
- ▶ Can they make an application under the Windrush Scheme? If so, under which groups and what can they apply for?
 - ▶ Maria is a Group 1 in-country applicant. She is not automatically British but can apply through the Windrush Scheme to naturalise as British for free so long as she has had no significant absences since 1988. She will need to meet the good character requirement but will not have to take the Life in the UK test and will be exempt from the English language requirement because a) Guyana is on the list of exempt countries and b) she is over 65.
 - ▶ If Maria did not want British Citizenship, she could still apply through the Windrush Scheme for confirmation of her ILR in the form of a NTL stamp. She would still have to show no absences of more than 2 years since 1988 and meet the NTL Requirements
 - ▶ Louisa was born a British Citizen but can make an application through the Windrush Scheme under Group 4. If Louisa is intending to apply for a passport, she can first apply through the Scheme for a letter confirming her nationality which will make the issuance of her passport more straightforward.
 - ▶ If Louisa is not intending to apply for a passport then the letter confirming her nationality is not a valid document for right to work and right to rent checks so it would be more worthwhile applying for a Certificate of Entitlement to the Right of Abode which is a valid document for these purposes.

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

28

Case Study 2: Winston

- ▶ Winston was born in Jamaica in 1942 and came to the UK in 1961 with his wife. They were continuously resident in the UK from that point onwards.
- ▶ Winston had some trouble with the police in his early 20s and has several convictions for possession and supply of drugs. The most serious of these led him to serve a 2 year prison sentence in 1964.
- ▶ Apart from this, Winston also has a conviction for driving under the influence of alcohol from 1994 when he was disqualified from driving for a period of a year and had to pay a fine.
- ▶ Winston and his wife had three children all born in the UK in the late 1960s, and early 1970s. As a family they were never particularly well-off and Winston and his wife didn't travel abroad at any time and never needed to obtain passports.
- ▶ Winston and his wife both worked until they retired.
- ▶ Winston's wife passed away in 2014 and Winston decided then that he wanted to travel to the country of his birth for the first time since he was 19. He was refused a British passport and so applied for a Jamaican one. He travelled in June 2015 and planned to stay for a month with extended family but when he attempted to return to the UK he was refused re-entry as he didn't have a visa.
- ▶ Winston has been staying with extended family in Jamaica ever since. Although he complained to the British embassy, they had no records of him. So much time has passed that he has given up hope of ever being able to return to his home in the UK.

NB Jamaica gained its independence and became a Commonwealth country on 6 August 1962.

On independence, under Jamaican nationality law, any person who had been born or whose father had been born in Jamaica became a Citizen of Jamaica. Simultaneously, under UK law (with very limited exceptions) all persons who became a Citizen of Jamaica ceased to be a Citizen of the UK and Colonies (regardless of where they were now living).

© Copyright Goldsmith Chambers 2021
Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

Case Study 2: Winston

Winston's children have approached you to see if there is anything that can be done to bring him home:

- ▶ What was Winston's status in the UK before his holiday to Jamaica?
- ▶ Was the decision to refuse him re-entry to the UK a lawful one?
- ▶ How will his status have been impacted by his having been out of the UK for nearly 6 years?
- ▶ What application, if any, can be made for him under Windrush Scheme and what factors will be relevant for the decision-maker?
- ▶ What impact will his criminal convictions have upon any application he makes?

© Copyright Goldsmith Chambers 2021
Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

Case Study 2 Answers: Winston

- ▶ What was Winston's status in the UK before his holiday to Jamaica?
 - ▶ Winston had been born a British Subject and automatically became a Citizen of the UK and Colonies in accordance with the British Nationality Act 1948
 - ▶ He freely landed in the UK as he arrived before restrictions could be imposed under the Commonwealth Immigrants Act 1962 and he therefore never had a time limit on his stay in the UK
 - ▶ When Jamaica gained its independence, Winston became a Jamaican Citizen and lost his Citizenship of the UK and Colonies. He was then still a Commonwealth Citizen.
 - ▶ As Winston was continuously resident in the UK thereafter, he would have obtained ILR on 1 January 1973 and with no absences after 1988, he would have continued to hold that status when he went to Jamaica in June 2015
- ▶ Was the decision to refuse him re-entry to the UK a lawful one?
 - ▶ There seems to have been no lawful basis to refuse re-entry to someone who holds ILR in the UK as he had not been absent for 2 years
- ▶ How will his status have been impacted by his having been out of the UK for nearly 6 years?
 - ▶ His ILR will now have lapsed as he has been outside of the UK for more than 2 years

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

31

Case Study 2 Answers: Winston

- ▶ What application, if any, can be made for him under Windrush Scheme and what factors will be relevant for the decision-maker?
 - ▶ He is a Group 1 applicant under the Windrush Scheme which is the only group that can apply to the Scheme from outside of the UK.
 - ▶ He still wants to return to the UK permanently so his application would be as a Returning Resident which would give him ILE
 - ▶ The caseworker would consider:
 - i. the strength of his ties to the UK which would include his children who were all born in the UK prior to 1983 and who are therefore all now British Citizens as well as any property he owns
 - ii. the length of his original residence – 54 years
 - iii. the length of his absence – 6 years
 - iv. why he left the UK – he went on holiday
 - v. why did he remain outside – He was refused re-entry
 - vi. does he intend to live permanently in the UK - Yes
 - vii. Any other compassionate or compelling factors – the refusal of his re-entry was most likely unlawful

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

32

Case Study 2 Answers: Winston

- ▶ What impact will his criminal convictions have upon any application he makes?
 - ▶ There isn't a good character requirement for a Returning Resident application but the general grounds of refusal apply. If his application had been made prior to 1 December 2020, then his sentence would have fallen into the 12 month – 4 year bracket and so would not have been relevant because more than 15 years have passed since his conviction.
 - ▶ However, the general grounds of refusal have changed as of 1 December 2020 and they now state as follows:

"Paragraph 9.4.1. of the Immigration Rules provides that entry clearance or permission **must** be refused where the applicant:

(a) has been convicted of a criminal offence in the UK or overseas for which they have received a custodial sentence of 12 months or more"
 - ▶ Winston may well therefore be refused under the general grounds of refusal.
 - ▶ This is clearly disproportionate and a clear interference with his Article 8 family and private life. It should be made clear within the application that Winston is making a human rights claim and he should then have a right of appeal (notwithstanding that the Home Office claims that there is no right of appeal against Windrush decisions) and can alternatively judicially review the decision as disproportionate in all the circumstances. We consider that these new provisions should be challenged.

© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

33

Contact Details

Emma Harris - Goldsmith Chambers

Clerk: Neil Dinsdale – immpublic@goldsmithchambers.com

Tel: 0207 353 6802



© Copyright Goldsmith Chambers 2021

Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

34