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Emma Game explores the issue of illegal contracts and the circumstances in which they can be enforced, with a particular emphasis on immigration law

Enforcement of illegal contracts

A CONTRACT OF employment may be illegal:

- **If it is prohibited under statute, such as immigration legislation**
- **If it is for a criminal or immoral purpose**
- **Through "performance", such as tax evasion.**

The general rule is that an illegal contract is unenforceable, so statutory rights cannot be imposed. However, the courts will consider the type of illegality and what the parties knew when deciding whether an innocent party can bring a claim under the contract. The fact that a contract is "illegal" does not, therefore by itself, determine whether or not the contract is void or unenforceable.

> *"Migrant workers may be subject to immigration laws before they can work in the UK and it would therefore be unlawful for them to work if they are in breach of them"*

The legality of a contract of employment often arises in relation to immigration issues and, in particular, whether or not a migrant worker is working legally. Generally a contract of employment performed in breach of immigration rules will not attract the usual employment protections, such as the right to claim unfair dismissal.

What is statutory illegality?

Some employment contracts are prohibited by legislation. For instance, migrant workers may be subject to immigration laws before they can work in the UK and it would therefore be unlawful for them to work if they are in breach of them. If they do, it may render the employment contract illegal, either from the start of it or while it is being performed.

To determine whether a contract is illegal, the wording of the statute itself needs to be considered. This may specifically state that an employment contract that is made in contravention of the legislation is void. If so, the contract is unlawful and therefore unenforceable, irrespective of whether either of the parties were aware that it was illegal.

If this does not apply, then the next step is for the court to interpret the statute, taking into account the public policy thinking behind it. This means that the tribunal will consider the purpose of the statute and whether the contract should be regarded as unenforceable.

For instance, in the case of **Patel -v- Mirza** (in which Mr Patel paid Mr Mirza to help him buy shares based on advance insider information) the Supreme Court held that courts: "should have regard to the policy factors involved and to the nature and circumstances of the illegal contract in determining whether the public interest in preserving the integrity of the justice system should result in the denial of the relief claimed."

The key issue is whether a claim would harm the integrity of the legal system.

Whether it does will depend on the underlying purpose of the law, proportionality and other public policy considerations. Proportionality will depend on the seriousness of the illegal conduct, how central it is to the contract, the intention of the parties and how culpable the parties are respectively.

If an individual is entitled to work in the UK, then the contract will be valid and the individual can bring claims under it.

In the case of **Okuoimose -v- City Facilities Management (UK) Ltd** (weekly LELR 249) the claimant, who was from Nigeria, was married to an EEA (European Economic Area) national. A stamp in her passport said that she had a right of residence in the UK until 8 July 2010. Her employer suspended her that day without pay, pending evidence of her eligibility to work in the UK.

After enquiring with the UK Border Agency, the employer dismissed her after being told that her entitlement to work could not be confirmed. Ms Okuoimose submitted a claim for unlawful deduction from wages for the time she was suspended without pay.

Although this was rejected by a tribunal, the appeal tribunal overturned that decision, holding that her right to work in the UK came about from her status as a family member of an EEA national and it was not dependent on any stamp in her passport. As such, the tribunal should not have relied on the employer's reasonable belief of her immigration status.

In some cases, the contract of employment may become illegal for issues that arise going forward, for example in situations where an individual's right to work in the UK is about to expire. In those circumstances, if the individual can show that they have applied for leave to remain in the UK, before their visa expires, and the decision is pending, it is likely to be unfair to dismiss the worker on grounds of statutory illegality.

In **Badara -v- Pulse Healthcare Ltd** (weekly LELR 653), for instance, Mr Badara (a Nigerian married to an EEA national) did not apply to extend his right to remain until the afternoon of the expiry date. His employer then refused to provide him with work from that point because, according to Home Office checks carried out, he did not have the right to work.

➲

➲ Distinguishing **Okuoimose**, the EAT held that a claimant with the right to work under the relevant legislation cannot be required by his employer to produce evidence of it before allowing him to work.

What is performance illegality under the common law?

Common law illegality is a concept based on whether the formation, purpose or performance of a contract is illegal or contrary to public policy. If a contract is for criminal or immoral actions, it is, not surprisingly, illegal from the outset. If it is performed in an illegal way at some point during the duration of the contract, it will become unlawful.

This situation generally arises where the contract itself is lawful but is then illegally performed. Whether the contract is unenforceable is a matter of public policy and the issues in **Patel -v- Mirza**, mentioned above, will be considered.

In addition, the enforceability of the contract will depend on the knowledge and participation of the parties. The tribunal will consider whether the parties were aware of the illegality, whether the employee participated in the illegality and whether the illegal performance was sufficient to turn what was a valid contract into an illegal one.

The tribunal will also look at whether there has been a fraudulent misrepresentation of the facts, whether the employer's knowledge was greater than the worker's, whether the worker knew what was happening, and if they were aware of the facts giving rise to the illegality.

In **Okedina -v- Chikale** (weekly LELR 641), for instance, a Malawian national (Ms Chikale) continued to work for her employer even though her visa had expired, meaning that she was in breach of immigration law. Ms Chikale, however, had been led to believe that her employer was organising her visa extension for her.

Her employment was subsequently terminated and she brought claims for unfair dismissal and unlawful deduction from wages.

The tribunal found that Ms Chikale had relied on her employer to take care of her visa situation, that it entirely suited Ms Okedina and her husband to keep Ms Chikale away from the immigration appeal hearing, and that she had not signed the extension application form. The tribunal found that, as Ms Chikale had not knowingly participated in the illegality, the employment contract was not rendered unenforceable.

What is continuity of employment?

Employees must show that they have been continuously employed for a minimum period of time to qualify for certain employment rights. For example, to claim unfair dismissal or a redundancy payment, the minimum period of continuous service is two years. If a contract is legal for only part of its duration, an employee's continuity of employment may be broken.

In **Bamgbose -v- Royal Star and Garter Home**, for instance, the claimant, a Nigerian national, was employed as a staff nurse at a nursing home from November 1991 until his dismissal in June 1994. At the time he entered into the contract, he did not have the right to work or remain in the UK. On 27 January 1993 he was granted leave to do so.

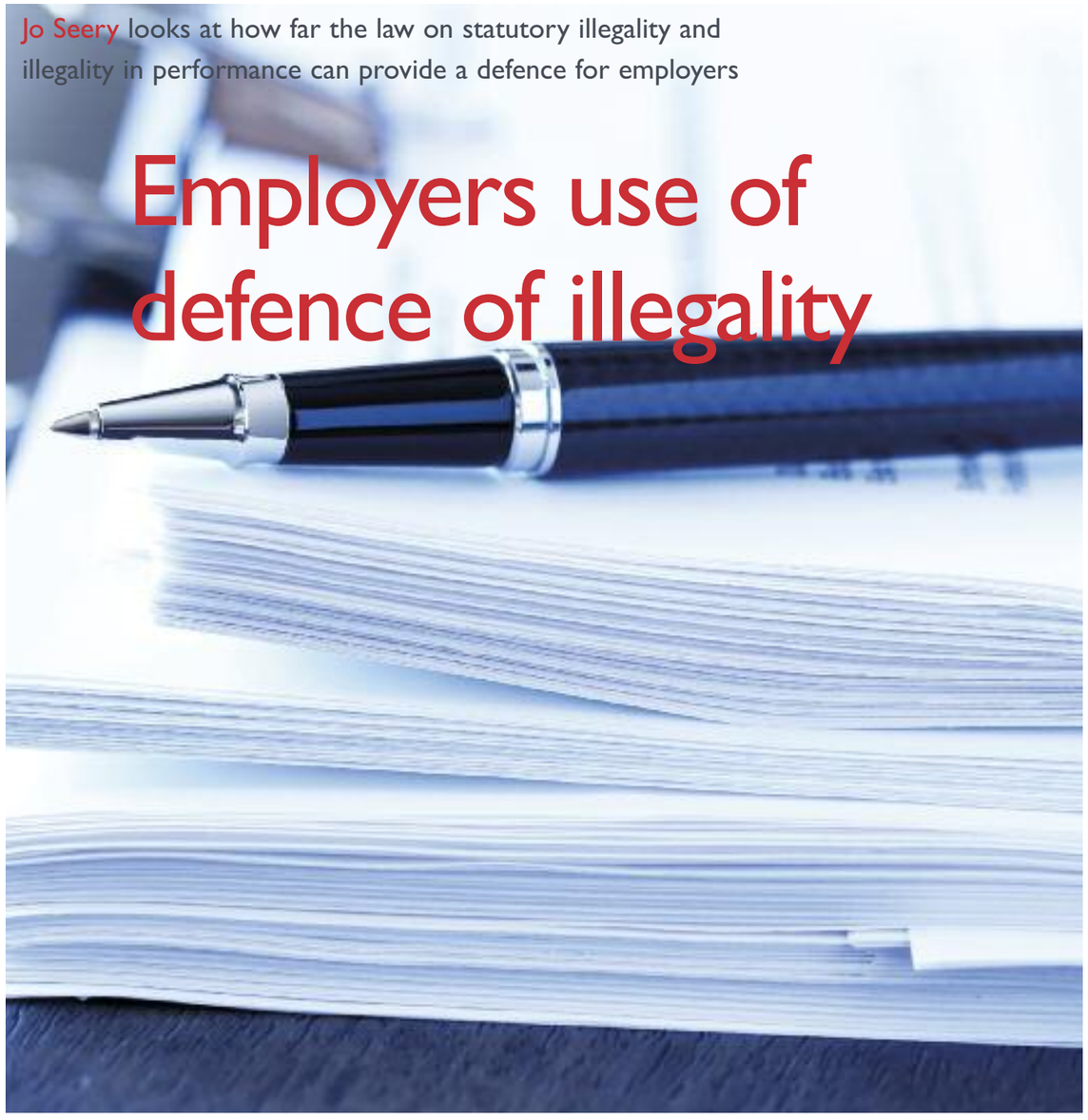
The EAT held that Mr Bamgbose had known at the time that he entered into the contract that he would be committing a criminal offence by working in the UK without permission. The contract was therefore unenforceable for the period from November 1991 to 27 January 1993 due to illegality. In the circumstances he did not have the requisite two years' service to bring an unfair dismissal claim.

With regard to the employment status of a migrant worker who continues to work after their right to work expires, they will be deemed to be working under an illegal contract from the point at which the permission expires. Although their continuous employment would restart when they obtain the fresh right to work, their previous service may be discounted.

> *"The tribunal found that, as Ms Chikale had not knowingly participated in the illegality, the employment contract was not rendered unenforceable"*

Jo Seery looks at how far the law on statutory illegality and illegality in performance can provide a defence for employers

Employers use of defence of illegality



WHERE A WORKER or employee is subject to the rules on immigration, their employer may argue that their contract is illegal as a defence to an employment tribunal claim.

The problem is that, if the contract is found to be illegal, it is automatically unenforceable, with the result that the person cannot enforce their employment rights. This includes the right of employees to claim unfair dismissal after two years' continuous service and the right to a written statement of particulars.

In addition, workers who do not have a contract of employment but instead have a contract to provide personal service have the right not to be discriminated against because of a protected characteristic (age, disability, gender reassignment, marriage/civil partnership, pregnancy/maternity, race, religion and belief, sex and sexual orientation) under the Equality Act 2010. Workers also have the right to be paid wages and holiday pay.

As Emma Game explains on pages 2 to 5, a contract may be illegal if the parties enter into it with the intention of committing an illegal act (though this is rare); if it is prohibited by statute or is performed in an unlawful way.

What is the law on statutory illegality?

A breach of immigration law may make an employment contract illegal because the individual was not granted leave to remain at the time the contract was entered into or during performance of the contract, for instance where leave to remain lapses during a period of employment.

In that case, the employer may seek to rely on section 15 and/or 21 of the Immigration, Asylum and Nationality Act 2006 (IANA), details of which are set out in the box.

An employer may claim that a contract is illegal where a worker tries to enforce their contractual right to pay. Alternatively, where an employee has been dismissed, the employer may claim that the employee cannot continue working so that they (the employer) do not find themselves in contravention of a statutory duty or statutory ban, including the provisions of IANA (see box).

In **Okedina -v- Chikale** (see Emma Game's article for details of the facts), the Court of Appeal held that, although sections 15 and 21 of the IANA provide for penalties to be imposed in the case of an employee who does not have leave to remain, they do not prohibit an employer from employing someone who may be in breach of an immigration restriction.

However, the court also considered that it could not have been parliament's intention to leave vulnerable workers unprotected. As such, even if an employee does not have the appropriate immigration status, that does not automatically mean that their contract is unenforceable. In doing so the court took into account that it was not in the interests of public policy for an innocent employee to be deprived of contractual remedies against their employer.

Section 15 Penalty

(1) It is contrary to this section to employ an adult subject to immigration control if:

a) he [sic] has not been granted leave to enter or remain in the United Kingdom,

Or

b) his [sic] leave to enter or remain in the United Kingdom –

(i) is invalid

(ii) has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), or

(iii) is subject to a condition preventing him [sic] from accepting the employment.

(2) The Secretary of State may give an employer who acts contrary to this section a notice requiring him [sic] to pay a penalty of a specified amount not exceeding the prescribed maximum.

(3) An employer is excused from paying a penalty if he [sic] shows that he [sic] complied with any prescribed requirements in relation to the employment.

Under section 15, employers are liable to pay a civil penalty of up to £20,000 if they employ a person who is subject to immigration control and who is not legally entitled to work in the UK.

Section 21 Offence

(1) A person commits an offence if he [sic] employs another ("the employee") knowing that the employee is disqualified from employment by reason of the employee's immigration status.

2) If an employer breaches section 21, they may be subject to a fine and a jail sentence if they knowingly employed an illegal immigrant.

What do employers have to prove under the statutory ban?

Where an employer relies on the statutory ban as a reason for dismissing an employee, they cannot just claim that they *believed* the contract would be illegal. Rather, they have to show that there would be an actual contravention of a statutory restriction.

In **Hounslow London Borough Council -v- Klusova**, for instance, a Russian national was dismissed while she was waiting for a decision on her ➲

application to extend her leave to remain. The council relied on the statutory ban as a reason for her dismissal because she had failed to provide proof that she was entitled to work.

The court held that there was no statutory ban because a person who is lawfully in the UK on a limited right to remain and who makes a valid application to extend their leave to remain before it expires is permitted under section 3C of the Immigration Act 1971 to continue in employment pending determination of their application.

An employer who dismisses an employee because they fail to produce documentary evidence of their right to work may also be liable for a claim of unfair dismissal. In particular, section 15(3) of the Immigration Act 1971 only provides that an employer is excused from paying a penalty if they can show that they complied with "any prescribed requirements" in relation to employment.

> *"The employer may argue that dismissal is fair for some other substantial reason, namely, a reasonable belief that the continued employment would be illegal"*

This, though, is not the same as imposing a requirement on an employer to actually obtain certain documents.

In other cases, the employer may argue that dismissal is fair for some other substantial reason, namely, a reasonable belief that continued employment would be illegal. Where this is because the employee had not produced evidence of their continued entitlement to work (at the insistence of the employer), the employer should provide the employee with a right of appeal. This would not only enable the employee time to obtain evidence but also ensure that the employer is acting reasonably before making the decision to dismiss, as in the case of **Afzal -v- East London Pizza Ltd t/a Domino Pizza** (weekly LELR 587).

What are the key issues to consider in cases of illegal performance?

This arises where a contract is performed in an illegal manner, such as where an employee or a worker is subject to discrimination under the Equality Act 2010. In these cases, the key issue for the court to determine is whether there is a causal link between the illegal conduct and the illegal performance of the contract.

In **Vakante -v- Addey and Stanhope School Governing Body** the court held that a Croatian national, who falsely stated on his application form that he did not need a work permit, was not entitled to bring a claim for race discrimination and victimisation against the employer, because his claims were inextricably bound up in his illegal conduct.

This contrasts with the case of **Hounga -v- Allen** (weekly LELR 386) where a Nigerian au pair was working illegally with the assistance of the employer. She was allowed to proceed with her claim for race discrimination because of the way she had been treated and the manner of her dismissal.

The Supreme Court found that there was an inextricable link between her agreement to work illegally and the discrimination she was subject to, including her dismissal. Moreover, the court held that her claim should be allowed to proceed on public policy grounds where the evidence showed that she was a victim of forced labour. This outweighed public policy considerations of allowing a defence of illegality.

The difference in treatment in these two cases appears to be the extent to which the employer was involved in the illegality and the application of public policy considerations based on the circumstances of the case.

Conclusion

The developing case law is a reminder to employers that they should be careful not to jump to conclusions about a worker's or an employee's immigration status or what the law requires.

A defence of illegality for an alleged breach of immigration status may be no guarantee against employment claims brought by employees or workers in these circumstances.

Rachel Halliday explains the concept of settled status which will apply to EU nationals living in the UK after the transitional period

Settled status scheme for EU nationals

EU NATIONALS currently have the right to move freely between all member states without breaching national immigration laws. After five years' residence in an EU country, subject to complying with various conditions, an EU national can acquire the right to live permanently in that country.

Although the UK left the EU at the end of January, EU workers and their family members will retain those rights during the transitional period which is due to last until 31 December 2020.

From January 2021, however, the UK government intends to end freedom of movement. As a result, EU nationals who do not have British or Irish Citizenship, will have to prove their right to be in the UK.

What impact will the EU Withdrawal Agreement have?

In October 2019, the UK agreed a new Withdrawal Agreement with the EU. Part Two deals with citizens' rights and applies to all EU nationals and their family members lawfully residing in the UK by 31 December 2020. Under the Withdrawal Agreement, EU nationals who have been living in the UK continuously and lawfully for five years by that date will have the right to reside here permanently, as will their family members.

EU citizens who have not lived continuously and lawfully for five years in

➲ the UK by that date will be able to stay until they reach the threshold at which point they will acquire the right to reside permanently, subject to the UK's right to restrict the rights of serious or persistent criminals or those who seek to abuse or defraud the system.

What is the settled status scheme?

Under the settled status scheme introduced by the government, EU nationals and their family members living in the UK, as well as nationals of Iceland, Lichtenstein, Norway and Switzerland, are required to apply for settled status to secure their right to stay in the UK after the end of the transitional period.

Even EU nationals who have a permanent residence document and might, entirely reasonably, have believed that this would entitle them to remain in the UK permanently are required to apply for settled status.

Permanent residence documents will not be valid after 30 June 2021. EU nationals who have been granted indefinite leave to remain (which is unlikely to apply to EU citizens who moved to the UK after 2006) are not required to apply for settled status.

The deadline for applying is currently 30 June 2021, but if the transitional period were to be extended, this deadline would be pushed back.

According to statistics published by the Home Office in January 2020, by the end of December last year, 2,756,100 applications for settled status had been made and 2,450,100 applications had been processed. Of those, 58 per cent were granted settled status while 41 per cent were granted pre-settled status. Only six applications had been refused on suitability grounds.

To put these figures in context, the Office for National Statistics estimated in 2017 that there were 3.8 million EU citizens resident in the UK.

What types of status are available?

To be eligible for settled status, EU nationals have to have lived in the UK for a continuous five-year period. In other words, they have to have lived here for five years in a row, for at least six months of every year.

Most EU nationals who came to the UK before the end of the transitional period but have been here for less than five years, can only apply for pre-settled status. Once they have lived here for the requisite period, they can then apply for settled status.

How do people apply?

For the vast majority of people, the only way to apply is through the online application process, which consists of three main parts:

- Proving identity
- Satisfying the five-year residency requirement (if the automatic check of the applicant's national insurance number against government databases does not confirm this)
- Answering questions about criminal history.

If the application is successful, the applicant will receive a letter of confirmation although, in a Kafkaesque twist, the letter cannot be used as proof of status. That can only be confirmed online, through the Home Office online checking service.

What is the legal status of the settled status scheme?

The Immigration Act 1971 empowers the Secretary of State to lay before parliament statements of the rules, or of any changes in the rules, that determine the practice to be followed in regulating the entry into and stay in the United Kingdom of anyone who is not a British citizen.

The rules of the settled status scheme are set out in Immigration Rules Appendix EU (www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu). Given the relative ease with which immigration rules can be issued and changed without the level of scrutiny that would apply to an Act of Parliament, those who are subject to those rules may be left in a vulnerable position.

However, now that the European Union (Withdrawal Agreement) Act has been passed, the rights of EU nationals that are set out in the Withdrawal Agreement can be enforced in UK courts.

What are the main issues of concern about the scheme?

The most serious concern is the position of vulnerable people who may not apply for settled status before the expected deadline of 30 June 2021.

This might include: children and very long term residents who may not be aware that they need to apply; those who have already been granted permanent residence who may assume that they do not need to apply; and people who are worried that they are ineligible, for example because of a minor criminal conviction.

Other groups who may struggle with the application process include victims of domestic abuse, victims of exploitation, people living in poverty, people without ➲

> *"The most serious concern is the position of vulnerable people who may not apply for settled status before the expected deadline of 30 June 2021"*

Declan Owens considers the impact of the Windrush Scandal on its "ineligible" victims and sets out what still needs to be done to resolve their immigration status

The Windrush Scandal and the campaign for justice

IN 2018, a scandal emerged concerning British nationals (and their children) who had come from the Caribbean to Britain in the late 1940s.

It transpired that not only had some of them been denied the right to work, some had been detained or even removed from the country as a result of the so-called "hostile environment" policies introduced by Theresa May when she was Home Secretary.

Although the "Windrush generation" (named after one of the first ships that brought the migrants here) were considered British and, therefore, were initially entitled to stay indefinitely, this changed with the introduction of the 1971 Immigration Act, effective from 1 January 1973, which replaced all existing immigration legislation.

The roots of today's scandal can be traced back to this legislation, which was introduced to satisfy the racist backlash to black and Asian immigration, led by the then Tory MP, Enoch Powell.

Why is the Immigration Act 1971 significant?

Introducing the concept of "patriality", section 2 of the 1971 Act gave different categories of "patrials" the right to live in the UK without immigration controls:

- Citizens of the UK and colonies (CUKC) who were born, registered, naturalised or adopted in the UK (or who had a parent or grandparent who was)
- CUKCs who had at any time been settled in the UK and had lived there for the last five years or more
- Commonwealth citizens who had been born to or legally adopted by a parent who at the time was a UK citizen
- Wives and some widows of people in the above categories.

➲ stable housing, people with disabilities, unpaid carers and people working cash in hand.

The government said, in April 2019, that it had allocated funding of up to £9 million to 57 charities and community organisations to support 200,000 vulnerable or hard to reach EU citizens. It is not yet clear how effective this funding will be.

> *"If such a policy were to be imposed, vulnerable EU citizens could find themselves facing the same draconian effects of the "hostile environment" policies as the victims of the Windrush scandal"*

Alarmingly, in October 2019, a Home Office Minister, Brandon Lewis, said that those who had not applied for settled status before the deadline could face deportation, unless they could show that they had reasonable grounds (as yet undefined) for missing the deadline.

If such a policy were to be imposed, vulnerable EU citizens could find themselves facing the same draconian effects of the "hostile environment" policies as the victims of the Windrush scandal (see Declan Owen's article on page 13).

In January 2020, Mr Lewis backtracked slightly, saying that deporting EU citizens who had not applied for settled status was "not what we're about", although he also took the opportunity to emphasise the requirement to show "good reason" for not applying.

There has been much criticism of the unfairness of a policy that requires all EU nationals, including those who have made the UK their home and/or been here for many years, to apply for settled status.

Campaign groups, such as the 3 million (www.the3million.org.uk), are calling for change. In particular, they argue that the Home Office should adopt a declaratory system. In other words, it should pass legislation to protect the rights of all EU citizens living in the UK before Brexit, regardless of whether they apply for settled status before 31 December 2020.

However, the government appears unlikely to change its policy, given its response to criticisms of the scheme, made in a Home Affairs Committee report dated 30 May 2019, saying that:

"We cannot have a similar situation where, years down the line, EEA and Swiss citizens and their family members who have built their lives here find themselves struggling to evidence their rights in the UK.

"Under a declaratory system there is no impetus to obtain evidence of status, so people tend only to apply for it when they need to, for example when applying for a job. However, this may be too late, as they will not be able to take up employment until they can evidence their status.

"A mandatory application process with a clear deadline that they understand will encourage people to apply now and not in an emergency situation years from now.

"People do not know when they might need to prove their status in future but they do understand a simple deadline for action… The issue is how that residence can be demonstrated, so that we can grant applicants the status that will enable them to evidence their rights in future, rather than granting a blanket provision by statute as was the case for the Windrush generation which, as explained above, the government considers would store up significant problems for the future for those EEA citizens and create confusion for employers and others."

If you would like more information on this topic, Thompsons has produced guidance which can be found at: www.thompsons.law/support/legal-guides-and-resources/guidance-for-eu-workers-on-applying-for-settled-status-january-2020.

Conclusion

Regrettably, it would seem that the lesson that the government has learned from the Windrush scandal is not a substantive one about the human cost of hostile immigration policies, but a procedural one about putting the onus on the individual to apply to the state for their immigration status to be recognised.

Victims of Windrush

> *The problem is that the scheme excludes descendants and family members who joined their Windrush generation families after 1988, when immigration law changed yet again*

Although the Act cemented the right of those who were born British in the colonies and Commonwealth and were already settled in Britain to be treated "as if" they were British citizens, this "as if" phrase meant that the Windrush generation and their descendants continue to be subject to second-class status.

This is because the 1971 Act also left the door open to descendants of British citizens from the "older colonies" (code for majority white countries such as Australia, the USA and so forth) to easily claim British citizenship through its patriality clause.

Many of the people being refused by the Windrush Scheme would, had their parents or grandparents been white and from one of these "older colonies", have been able to settle in the UK with an ancestry visa and acquire British citizenship with relative ease.

What is the Windrush Scheme?

Set up last year by the government to address the difficulties facing this group and to compensate them for their losses, the scheme gives the right to obtain the necessary documentation to remain in the UK, free of charge to Commonwealth citizens, their children and other overseas nationals who arrived in the UK before 31 December 1988 and have settled status.

The problem is, however, that the scheme excludes descendants and family members who joined their Windrush generation families after 1988, when immigration law changed yet again. The legal justification can be challenged but it is of course interwoven with politics and the debate in the UK regarding the status and control of immigration.

Can the Scheme be amended?

One potential solution to the restrictive eligibility criteria for regularisation of immigration status and the related possibility of compensation for victims of the Windrush Scandal is to pass an amendment to the Windrush Scheme.

Thompsons recommends widening it to include the group that relates to "Windrush Children/child of a Commonwealth citizen parent settled in the UK", thereby providing a route to citizenship for the descendants and family members of the Windrush generation. This category of people is currently excluded from the scheme because they arrived in the UK to join their Windrush generation families as adults after 1988.

As a political exercise, this should be straightforward as primary legislation (which has to be passed by parliament) is not required to amend the Windrush Scheme because it was set up through a statutory instrument that does not require scrutiny by parliament.

The Home Office has discretionary powers to grant leave to remain and already waives certain requirements. Adding an additional category of eligible claimants to the Windrush Scheme would simply involve applying discretion with regard to applications from descendants and family members, providing them with a route to citizenship.

That, however, is the very least that they deserve in their battle for justice in the ongoing fight against the racism and discrimination that lies at the heart of Home Office immigration policies.

Is the Scheme discriminatory?

By virtue of section 2 of the 1971 Act, Commonwealth citizens were restricted from obtaining a right of abode in the UK unless they were able to demonstrate a direct personal or ancestral connection to the UK.

The 1971 Act therefore replicates the discriminatory effect that was found to exist in the Commonwealth Immigrants Act 1968 in the decision of **East African Asians -v- UK** as only those from the predominately white Commonwealth countries are likely to be able to demonstrate the requisite connection to the UK.

In **East African Asians -v- UK**, the claimants, who were from "British India", were CUKCs and holders of British passports. Pursuant to British emigration policy they had travelled to East Africa to work on a railway. As a result of the Commonwealth Immigrants Act 1968, however, which the government admitted was enacted to restrict immigration "geographically", they were subsequently refused permission to enter the UK.

The court held that the British government had reduced the claimants' status to that of second-class citizens and "de facto" based their immigration policy on race, which amounted to degrading treatment within the meaning of article 3 of the European Convention on Human Rights. As a result, they were held to be British nationals.

To the extent that the formulation of the categories in the Windrush Scheme is based on or derived from the 1971 Act, it is arguable that the scheme perpetuates the same illegality as found in **East African Asians -v- UK** and, in failing to acknowledge certain categories of people as a Windrush descendant, it essentially has the effect of treating their Windrush generation parents as second class citizens.

In addition, it is the view of Thompsons that the Secretary of State could also be found to be in breach of their statutory obligations under section 149(1)(a) of the Equality Act 2010, which is the duty to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act, as the Secretary of State has failed to carry out "rigorous consideration", as is required, in establishing the Windrush Scheme.

Conclusion

Justice for the Windrush generation means justice for all those who have been shamefully mistreated by the Home Office. As Rachel Halliday writes on page 12, there is a danger that the inherent faults of the UK's immigration legislation and immigration rules could re-create the Windrush Scandal in the operation of the "settled status" scheme for EU citizens.

Equalities legislation won by the rising up and collective mobilisations of the Windrush generation and their descendants also led to deeper measures of equality for all women and working-class people through their vital contribution to the trade union movement's struggles, including the Bristol Bus boycotters and the Grunwick strikers in the 1960s and 1970s respectively.

In a similar vein, the Windrush Scandal and the movement mobilised to put right this terrible wrong has the potential to bring about fundamental changes that positively impact all immigrant communities, to finally end second-class and unequal citizenship.