

**Priti Patel**

## Appeal court quashes UK policy of removing migrants with little warning

**Judges emphasise migrants' right of access to justice under common law in blow to Priti Patel**

**Diane Taylor**

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The court of appeal has quashed a Home Office policy of removing migrants from the UK without access to justice.

In a unanimous decision, three judges found the policy, which allowed the forcible removal of a migrant from the UK sometimes with only hours notice and in many cases without access to lawyers, to be unlawful.

More than 40,000 removals were affected by the policy, resulting in vulnerable people being put at risk. Some were recognised as having been removed unlawfully, were brought back to the UK and granted leave to remain.

Wednesday's ruling will be a blow for the home secretary, Priti Patel, who has vowed to take a tough line on removing migrants from the UK. It also comes at a time when she has been reported to be considering making some definitions of human rights law for judges rather than leaving judges to decide these legal points for themselves.

The judgment from the lord chief justice Lord Burnett, Lord Justice Hickinbottom and Lord Justice Coulson emphasises the importance of the right of access to justice under common law: "The right to access the court is an absolute and inviolable right ... the right to access to the court is not a relative right to be balanced against other rights and interests."

The Home Office policy that has been quashed includes "removal windows", whereby someone is given as little as 72 hours notice that they might be removed from the UK at some point during the subsequent three months, without any warning.

The appeal court challenge was brought by the charity Medical Justice, the Public Law Project and Duncan Lewis solicitors.

A Medical Justice spokesperson said: "One of our society's most precious treasures is access to justice. Chillingly, away from the public gaze, this policy denied that fundamental right on a massive scale causing serious harm to extremely vulnerable people and risking life. It was effectively a shortcut to removal. Quashing the policy brings us back towards equal access to justice for all."

Rakesh Singh, a solicitor at the Public Law Project, said: "This is a case about access to justice, one of the fundamental values of the British constitution. The 'removal windows' policy shut people out of the legal process. It meant that when mistakes were made, people could not

access the court to put things right, and led the Home Office to remove people with a right to be here - including a number who were caught up in the Windrush situation.

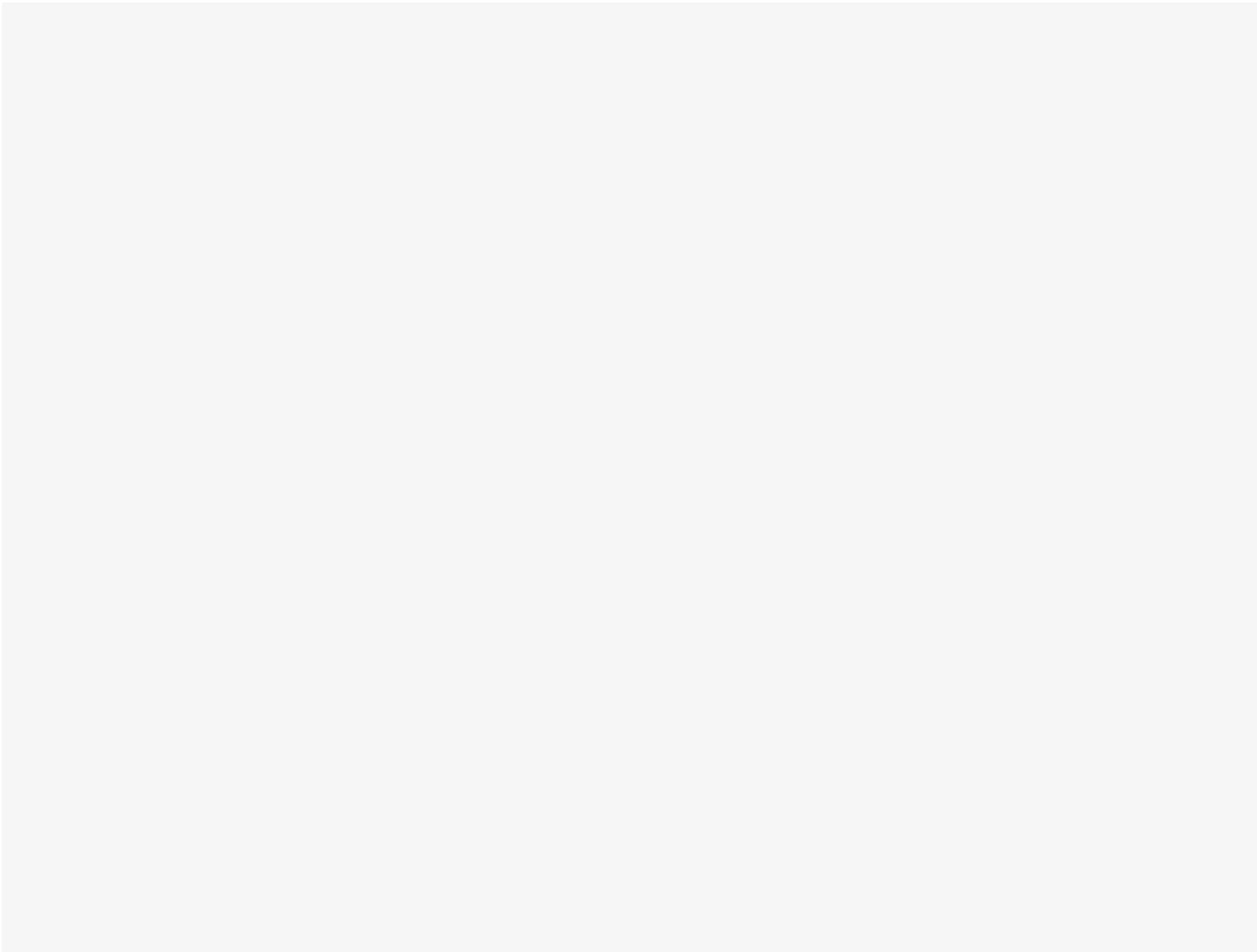
“Removing people in this way caused terrible injustices and placed many individuals and families in danger and into hardship, unnecessarily and unjustly.”

Raja Uruthiravinayagan of Duncan Lewis solicitors said: “The importance of this judgment cannot be overstated. Access to justice is a fundamental principle of rule of law. Without it, individuals will not be able to challenge unlawful decisions and hold decision-makers accountable. It protects our fundamental rights and freedoms. The delivery of justice should be impartial and non-discriminatory, regardless of who is seeking it, if it is to protect and strengthen our democracy.”

A Home Office spokesperson said: “Our immigration and asylum system is fundamentally broken and we are determined to introduce a new system that is fair, firm and will expedite the removal of those who have no legitimate claim for protection.”

Home Office sources said the court found that the removal windows interfered with an individual’s access to legal advice. It did not find that removal windows were unlawful.

- This article was amended on 28 October 2020. An earlier version said that the policy could allow the forcible removal of a migrant from the UK within hours; this has been clarified to say the removal could be with only hours notice.



News &gt; UK &gt; Home News

# Home Office policy giving people little notice of deportation ruled unlawful

Court rules that policy which saw tens of thousands of people forcibly removed, including members of the Windrush generation, allows 'no opportunity' for justice and is 'arbitrary and thus unlawful'

**May Bulman** | @maybulman | 6 days ago | 24 comments



More than 40,000 people have been removed under the 'removal notice window' (RNW) policy, some of whom the Home Office was later ordered to bring back to Britain after it was ruled that they weren't given adequate access to justice

A **Home Office** policy which gives people 72 hours' notice that they could face deportation without further warning has been ruled unlawful by the courts because it prevents access to justice.

More than 40,000 people have been removed under the policy, including members of the Windrush generation, some of whom the Home Office was later ordered to bring back to Britain after it was ruled that they were not given adequate opportunity to legally fight their case.

The policy, which was temporarily suspended in March 2019 after the charity Medical Justice was granted permission to challenge it, gives people between three and seven days' notice that they can be removed without further warning at any time during the subsequent three months.

In a unanimous decision published on Tuesday, the **Court of Appeal** quashed the policy, saying it provides "no adequate opportunity – or, indeed, any opportunity at all – for the individual to take advice and lodge a judicial review challenging that decision before he or she is at risk of removal", and ruling it to be "arbitrary and thus, in any event, unlawful".

The Administrative Court ruled in September 2019 that it was lawful, at which point the charity took the case to the Court of Appeal.

Ruling the policy unlawful in the judgment on Tuesday morning, the lord chief justice, Lord Burnett, with Lord Justice Hickinbottom and Lord Justice Coulson, concluded that “the right to access the court is an absolute and inviolable right ... The right to access to the court is not a relative right to be balanced against other rights and interests.”

One Jamaican national who was unlawfully detained and almost wrongly deported under the policy described it as the “most inhumane and unjust process”.

The man, who did not wish to be named, had lived legally in the UK for almost 30 years when he was detained and threatened with removal in 2017.

He had asked the Home Office for a new stamp to show that he had indefinite leave to remain when replacing a lost passport, but the department had lost their records and he was stripped of his immigration status, meaning that he could not access NHS care and was let go from a dry-lining training course he had been excelling in.

“The day I was taken to the detention centre was horrendous. There was no warning at all. It was early in the morning. There was a loud hammering at the door,” the man said.

“When I got to the detention centre they took my phone away and gave me another handset to use, but it was useless. It was almost impossible to get a signal. I would queue up all day in the detention centre to try and see a lawyer and when I finally got to see an assistant they said straight away that they couldn’t help.”



He was in detention for about two weeks when he was called in for a meeting and told he was going to be put on a plane to Jamaica in two days' time. Fortunately, his partner found a lawyer at the last minute who said he could try and get an injunction, and the injunction came just after 5pm the next day.

Once the injunction was in place, the man had time to prove his immigration status and the Home Office subsequently accepted that he had had indefinite leave to remain since 1990, meaning they should not have tried to remove him. The department also acknowledged that they had detained him unlawfully.

In another case, the Home Office refused to give any consideration to new information provided by an asylum seeker that several of his relatives had been killed in his home country, because he "had not followed the correct procedure".

He was detained and removed without having had access to legal advice. The Home Office later brought him back to the UK, accepting that his removal was unlawful, and granted him refugee status.

A spokesperson for Medical Justice, which supports people in immigration detention who are facing removal, said clients they had managed to remain in contact with following removal had described "terrible consequences".

"One of our society's most precious treasures is access to justice. Chillingly, away from the public gaze, this policy denied that fundamental right on a massive scale, causing serious harm to extremely vulnerable people and risking life," the charity's spokesperson said.

"It was effectively a shortcut to removal. Quashing the policy brings us back towards equal access to justice for all."



Home Office to carry out review of hostile environment following Windrush says Priti Patel

Rakesh Singh, solicitor at the Public Law Project, who worked on the case, said: "This is a case about access to justice, one of the fundamental values of the British constitution.

"The 'removal windows' policy shut people out of the legal process. It meant that when mistakes were made, people could not access the court to put things right, and led the Home Office to remove people with a right to be here – including a number who were caught up in the Windrush situation.

"Removing people in this way caused terrible injustices and placed many individuals and families in danger and into hardship, unnecessarily and unjustly."

Philip Armitage, solicitor at Duncan Lewis Solicitors, who represented an Afghan individual affected by the policy, said: "This is a landmark decision from the Court of Appeal which emphasises that everyone in the UK is entitled to access justice and to seek redress from the courts.

“Our client for weeks faced removal to Afghanistan where he feared his life was at risk but, removal and he is now a refugee. For individuals such as him, the ‘rule of law’ is not an inte strengthens those protections for everyone in our society.”

A Home Office spokesperson said: “Our immigration and asylum system is fundamentally broken and we are determined to introduce a new system that is fair, firm and will expedite the removal of those who have no legitimate claim for protection.”