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A portrait of Martin Forde QC, a middle-aged Black man with short grey hair and a goatee, wearing a dark blue suit, a light blue shirt, and a patterned tie. He is standing in front of a large, ornate window with a grid of panes, through which warm, golden light is streaming, creating a bokeh effect. The background is dark, making the light from the window stand out.

Righting wrongs

Martin Forde QC

Interviewed by Natasha Shotunde

Protecting the Young Bar
– ensuring our future

Eight ways to revise
the coronavirus regs

The rise of the
barrister mediator

Righting wrongs

Martin Forde QC

One year on from the launch of the Windrush compensation scheme, the silk who oversaw its design discusses the scandal, British attitudes to migration and citizenship, and misconceptions holding applicants back from rightful compensation

Interviewer
Natasha Shotunde



One of the things that's horrified me in the Windrush scandal has been the lack of obligation this country feels to those citizens.

The prospect of interviewing the formidable Martin Forde QC, the Independent Adviser to the Windrush Compensation Scheme, an expert in health law and a Recorder in the Crown court, leaves me with slight anxiety. As I wait in chambers, I can't help but reflect on my engrained deference to elders and how it might affect my interactions with senior black barristers. But when Martin arrives, in a flat cap, jeans and a black wool coat with leather sleeves, I realise I needn't have worried. His warm smile immediately puts me at ease.

Martin grew up in Langley, Berkshire to a Barbadian father and St Lucian mother, both of whom moved to the UK from the Caribbean in the 1950s. His father had set his heart on coming to England at a young age. 'They were told in no uncertain terms that they were very much part of the British Empire. My father was born in a place called Spooner's Hill in Barbados but was brought up to think he was as British as if he'd been born in Forest Hill [in London],' explains Martin.

He recalls that his father, as a printer's apprentice in Barbados, was paid in pounds, shillings and pence. His grandfather used to bet on the Oxford and Cambridge Boat Race which was annually broadcast there. '[People were] rattling tins to contribute to the British Second World War effort... Poor as they were, the West Indian countries raised today's equivalent of about £43 million... [They were] completely and utterly brainwashed into feeling that they were British.'

However, the reality upon arrival to the UK was a rude awakening. They were greeted with hostile comments on the street, unnecessary stop and searches and were unable to rent rooms. Why was this? As part of his research into Windrush, Martin discovered through Parliamentary debates that, in the late 1960s and early 1970s, the political classes were keen to alienate the working-class white public from the migrant public by making them feel fearful and economically challenged. He believes that the welcoming population were not told *why* people had migrated: 'People came to rebuild the Mother Country and were prepared to do the jobs that the British people would not do. They didn't come as competition; they came because they [had] a feeling of connection.'

He reads out a letter dated July 1973, when his parents had applied to UK passport facilities. The letter stated that they had ceased to be citizens of the UK when Barbados had obtained independence on 30 November 1966 and that, consequently, they were no longer entitled to UK passports. 'I mean, that's just outrageous. By that time, [my father had] been here for 20 years, done two years' national service and paid national insurance and tax for 20



About the interviewer
Natasha Shotunde is a barrister at Garden Court Chambers. She is an elected member of the Bar Council and Chair of the Black Barristers' Network.



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years. My mum had worked for about five years before I was born and then went back to teaching the year before that letter was written. They were told they were no longer citizens of this country and that, in a sense, is what lies behind the whole Windrush controversy.'

'One of the things that's horrified me in the Windrush scandal has been the lack of obligation this country feels to those citizens. I feel this quite strongly, given that we were enslaved, taken from Africa to the Caribbean and basically provided free labour for hundreds of years which enabled the industrial revolution, and the building of most stately homes and magnificent buildings in this country. No special obligation is felt to their generation because of what happened to our ancestors.'

Why does he think this is the case? 'I think it's possibly because of the way in which British colonial history is written. It's all about the achievements of the British; their civilising influence; their creation of infrastructure and civil service. What's rather swept under the carpet is the downside of colonialism; the cheap labour; the fact that it's cost the British taxpayer so much money to repay the slave owners through the Abolition of Slavery Bill, which was finally paid off in 2015.'

Martin suggests that there needs to be a change in attitude to migration, pointing out that migrants are net contributors to the economy in fiscal terms and how the NHS would grind to a halt without their labour. The UK is still recruiting nurses from overseas due to shortages and there are a large number of African, Caribbean and Eastern European women working in care homes. 'There isn't sufficient appreciation of the roles of these people. And then there's almost a resentment when they settle and have families. It feels a little bit like: "We want your labour, but we don't really want you and we certainly don't want your extended families going forward."'

The Empire Windrush arrived at Tilbury Docks, Essex in June 1948, bringing one of the first large groups of post-war West-Indian migrants to the UK. They had answered the call to help rebuild the economy and work in sectors including manufacturing, public transport and the NHS. 802 of the 1,027 passengers aboard gave their last place of residence as a country in the Caribbean. The British Nationality Act 1948 conferred the status of British citizen on all Commonwealth subjects and recognised their right to work and settle in the UK.

Windrush Compensation Scheme extended: On 6 February 2020 Home Secretary Priti Patel announced that the Scheme, launched on 3 April 2019, would be extended by a further two years to April 2023 to allow more time to make a claim. Statistics published on 27 February 2020 showed that 1,108 claims had been received; and £67,723 paid out for 36 claims (Q2-4 2019). These paid claims in fact fall into two categories: repayment of wrongly charged fees; and interim payments of fees pending calculation of more valuable heads of loss, and should not be taken as an indication of an average pay-out figure. At the time of writing, one six figure claim had been offered and accepted. The two-stage appeals process comprises a first tier internal review and if still dissatisfied the claimant can ask for a review by the Independent Adjudicator who is entirely independent of the Home Office.

Given that our interview took place before coronavirus took hold and the lockdown began, I contact Martin again to ask about the effects of COVID-19 on NHS staff: 'I've been particularly struck by the number of NHS staff who have died as a result of coronavirus, including so many from migrant backgrounds,' he says. 'This is hardly surprising when something like 18% of our nurses and 29% of our doctors are foreign nationals according to figures released last year by the Office for National Statistics and of course many also work in the private sector including care homes and social care.' The gov.uk website shows the number of non-white medical staff in the NHS amounts to 44.3%, many of whom are likely to have some form of migration in their ancestry. These points reinforce the need to change the attitude to migration.

He also blames the UK media for its role in the depiction of immigration: 'I think the other difficulty we face is that the press seems obsessed with presenting only the negative side of a black presence in this country. There's lots about knife crime. It's okay if you're an entertainer, a singer, rapper or athlete. Then you're very British, very much absorbed.' He sees no such focus on black intellect and academic achievement. Therefore, those who do not interact with migrant communities get their understanding of the black community from the media, which is a very distorted view.

I ask how he feels this negative portrayal plays out at the Bar and whether it has affected his own practice: 'I do think there is a little bit of stereotyping going on around how we are perceived as pure intellectuals. I don't think we benefit from those from conventional backgrounds crediting us with any, or even equal, intellectual ability. In my very early days when I did crime, and once I managed to persuade people that I wasn't a well-dressed defendant, they would sometimes take me seriously. As an advocate generally, I have been reticent about telling a judge from a conventional background that they're wrong. But I've noticed that my white counterpart has no such qualms. It just feels as if, coming from me, it would sound more challenging. So I try to be more persuasive rather than confrontational, in the way that I think some of my peers might get away with.'

He states that there have been instances where his white counterparts were surprised when the judge seemed to like him and not them. 'That can sometimes be because if one is conspicuous, the judges remember you. They remember you if you've done a competent job as well. Sometimes I feel I'm being given greater credit than perhaps I deserve – but that might be because the initial expectations when I started were lower than they should have been.'

This prejudice was also apparent upon his graduation when he began the interview rounds:

'[My name] is very white sounding on paper. I went to a grammar school, I got a place at Brasenose College Oxford... I had references from the Principal of my college who wrote the leading Roman Law textbook [and other prominent lawyers]. And there was genuine shock when I walked through the door for the interview. At one of my interviews, the receptionist asked me if I wanted a coffee. I offered to make her one as she was quite busy. Apparently, before my interview she warned the panel: "Mr Forde is black, but he's very nice."'

I ask Martin if, as a minority, he feels like he is representing all black barristers when he is doing his job. 'I think I have a responsibility which includes that. And I don't think it changes the way I practise but I try to observe the highest ethical standards. I try to be absolutely transparent on disclosure. I am very conscious of performing well and preparing conscientiously. I would like to think that there are many of us of my generation who feel or have felt a similar obligation.'

I want to know whether he thinks that there are any particular traits that make ethnic minority barristers particularly good at their work. He cites a couple of examples: having an appreciation of what it is like not to be believed; and recognising assumptions made about you. 'I still get followed around certain types of shops. If I'm going Christmas shopping for a Tiffany bracelet or charm for my daughter, I'll visit Sloane Square. If I'm not in a suit, quite often I'll be followed around by the – ironically – black security guard.' Knowing what it's like to be underestimated is another example: 'It gives you humility when you are doubted or questioned. The upside may be that it raises your own personal standards and empathy is important.'

Martin currently sits as a Recorder in crime and suggests that being a black judge can assist in cases. 'I had an assault in a petrol station involving three, as they call us, IC3s. There was a huge complexion variation between the three young men involved. Nobody was dealing with it. And it struck me that the description that the aggrieved had given was of somebody who was probably mixed heritage or very fair skinned Afro-Caribbean and the defendant was much, much darker and shorter. By asking him to contrast his skin tone and height with mine in front of the jury, we established that it was arguable that the description of the perpetrator did not match the defendant. The defendant was acquitted. Nobody else in the case was prepared to go there as there was a sensitivity about it, which I do understand. But it struck me as being very important where the issue was identification.'

In 2018, Martin began advising on the Windrush Compensation Scheme set up by the Home Office to provide compensation to those who had suffered loss because they could not demonstrate their right

to lawfully live in the UK.

I ask how the Windrush Scandal happened. 'Some people felt it was a deliberate tactic to reduce black migration because it affected the black Commonwealth more than the white Commonwealth,' he says. 'I think that the intention was to make life difficult for illegal immigrants. However, I haven't uncovered anything that suggests it was deliberately targeted at the African and Afro-Caribbean populations.'

Martin suggests that the difficulties in proving status, the burden on the individual to provide evidence, and a lack of questioning by the Home Office were important issues surrounding Windrush: 'There was a tendency to be very formulaic in the approach to people who couldn't prove their status... The onus should have been put on the government to prove they had no right to stay. There's a cultural shift needed – if in doubt they remain, rather than if in doubt they get deported... One of the first things I asked when I was approached about helping design the compensation scheme was: what kind of person walks into the home of a 75-year-old black grandmother and says, because you're on my list and despite the protestations of your children who were born here, and your grandchildren who were born here, you're going to be put on a plane or put in detention with no questions asked. I think that's where things went very badly wrong.'

Checks of documents in other government departments could have proved an individual's longstanding stay: GP records; National Insurance and tax records; birth, marriage and death certificates; benefits records and even criminal records. 'Just the paraphernalia of life which could have demonstrated that these individuals had not magically at the age of 65 or 70 decided they were going to come here and overstay.'

Through the consultation, the Scheme identified around 12-13 themes emerging on the types of loss



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A group of protesters mark the first official Windrush Day on 22 June 2019.

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suffered, such as deportation and detention, loss of employment, housing, benefits, bank accounts and lack of access to university as a UK student. He points out that individuals could be entitled to multiple heads of loss which makes it a hybrid scheme. 'If you were deported for five years, in addition to claiming money for the deportation itself, you would also be able to claim for five years' loss of earnings, five years' loss of benefits and housing. If you returned to this country, you could also claim for payments for the time it takes for you to regain social housing.'

Martin's background helped him to recognise the inter-generational dependence people have. 'The scheme is designed for claims to be inherited where people have unfortunately passed away.' He believes that certain areas of the scheme are more generous than a court would award, using the award for distress and anxiety as an example. 'Those aren't claims known to the law – you have to have a recognised psychological or psychiatric damage – so there is a lower threshold for payments through the scheme as a result of political promises. That's the kind of thing I would like publicised.' He also highlights that there is an appeal process, with two rights of review.

I ask Martin whether he thinks that the fact that the scheme was set up by the Home Office puts people off from bringing claims. 'It's something I raised right at the beginning; whether the Home Office should be administering the scheme at all because people see them as marking their own homework. Secondly, if you're responsible for border control and deportation, that can discourage people from coming forward because the community are concerned that if they come for compensation, their details could then be passed on to border enforcement.' He was assured that it is all ringfenced. 'That's another message that needs to be made, as I think there is genuine fear still within the affected community.'

An advantage in the Home Office being in charge is the avoidance of delay in creating the scheme. 'This is a big logistical operation... I'm sure no other government department would want to take on that cost. Apparently, it's cost about £3 million to set up a dedicated service.' He believes that changes to legal aid would have been ideal as they would have allowed claimants to go to a solicitor. However, he notes that the caseworkers have been creative in their approach; by asking claimants questions about themselves and their family to ensure they can access multiple heads of claim. They have also helped over 1,000 people to get their benefits reinstated.

I note that the Scheme is not restricted to those from Afro-Caribbean backgrounds, which pleases me as my grandmother came to the UK from Kenya in 1963. 'It is much more widespread than the Afro-Caribbean population... and I'd quite like a bit more

of a publicity drive to emphasise that.' He also noted that Windrush was a convenient term used by the media and that it has caused some confusion, even within the Afro-Caribbean population. 'I've had people ask me if you had to be on the Windrush in 1948 to make a claim, which would probably mean you are in your early 90s.'

I ask Martin for his views on citizenship; whether he sees it as a right or a privilege. 'I'm veering towards a right,' he says. He uses the deportation of those with criminal records as an example. 'I think that if you came here at five and you commit a crime at 35 and you have three children under the age of 10, you're a British criminal. I don't think you're a Jamaican or Nigerian criminal. You have no memory of that place. You've got no connections. You weren't at school there. You've built your family and your relationships here. I'm not proud of you as you've got a criminal record. But I think it's disastrous to repatriate you away from your family, friends and support network with no source of income and no properly established welfare state... You'll stick out like a sore thumb. You will not integrate... What's the most likely thing for them to do? To be destitute?' He also believes that 'exporting our criminality to other countries is not a fair or proper thing to do'.

What does it mean to feel British? 'I never feel more British than when I'm in the Caribbean.' He lists his accent, ignorance of local customs and 'absolute insistence that I get fried plantain for breakfast every morning' as reasons. 'I sometimes feel in a state of limbo: am I Caribbean or am I British?' He feels the British sense of fairness and fair play. However, he sometimes gets reminders that he looks different, including in court. 'I once had court staff ask, "Can I help you?" and I've said, "I'd like to go to Chamber 14." They ask, "Well, what do you want to know that for, mate?" And I said, "Because I'm the judge."

From time to time, he is treated differently from white people. 'I know that my white British counterpart would not be called "mate" by a security guard. It doesn't bother me that I'm not called "sir". But it would be nice to feel an equal status in their eyes.' He recalls dining at Middle Temple in his early days at the Bar. 'I was dying for the toilet. I hadn't appreciated that you had to wait for the Loyal Toast for the Queen so I got up, went to the loo, came back and found my entrance barred by one of the Middle Temple stewards. He said, "You're not supposed to leave the table before the Loyal Toast." I apologised and explained the situation. He looked at me and he said, "Well she might not be your Queen but she's our Queen." And I said, "I think you'll find she's the Queen of Slough!"'

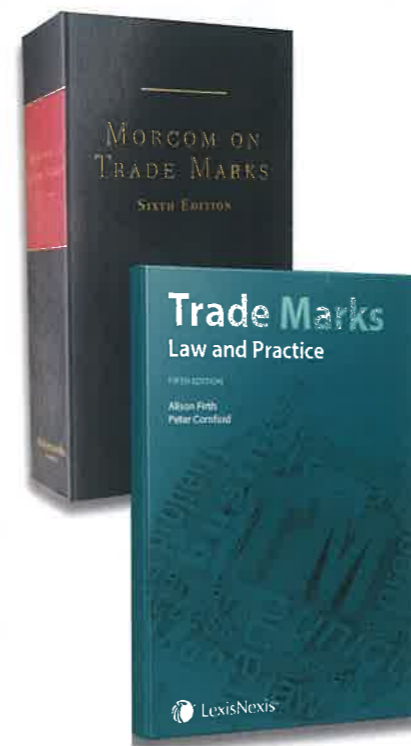
So, does Martin feel British? 'Some of the time, I think is probably the answer.' ●



Martin Forde QC, Independent Adviser to the Windrush Compensation Scheme and a barrister at 1 Crown Office Row, is pictured at a Windrush event. Martin has recently been appointed by Labour's National Executive Committee to head the inquiry investigating the leak of a report to the Equality and Human Rights Commission regarding alleged anti-Semitism in the Party.



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