## Key actors

The Joint Council for the Welfare of Immigrants (JCWI), an immigration law charity, and Foxglove, a tech-justice non-profit, have been working in partnership to bring a case before the courts challenging a UK Home Office algorithm that was used for processing visa applications.

### The Joint Council for the Welfare of Immigrants (JCWI)

JCWI works to ensure that UK immigration law and policy are based on sound evidence and are underpinned by respect for human rights and human dignity. JCWI challenges unjust laws and practices that restrict rights and lead to discrimination. It seeks to ensure that no individual or family faces the denial of fundamental human rights as a result of immigration law or its application.

### Foxglove

Foxglove works across three areas to stop the abuse of digital technology: monitoring the power of Big Tech, investigating the spread of potentially harmful digital technologies, and challenging unfairness and opacity in public sector algorithmic decision-making.

The two organisations bring complementary expertise to this litigation, blending JCWI's understanding of immigration law and policy with Foxglove's knowledge of digital technology.

The legal team consists of Rosa Curling and Anna Dews (Leigh Day), Ben Jaffey (Blackstone Chambers), Nic Grubeck (Monckton Chambers), and Ciar McAndrew (Monckton Chambers).

## DFF — Digital Freedom Fund

The Digital Freedom Fund (DFF) supports partners in Europe to advance digital rights through strategic litigation. This is one of a series of case studies, which highlight the work of DFF's grantees working to protect digital rights.

## The Joint Council for the Welfare of Immigrants v. UK Secretary of State for the Home Department

### Case facts at a glance

**Case outcome:**
The Home Office stopped using a computer algorithm to sort visa applicants after Foxglove and JCWI launched their legal action.

## Background to the case

In 2019, the UK Home Office came under fire in the national press for its use of a secretive algorithm to sort visitor visa applications. The Home Office insisted that the algorithm was only used for categorising applicants and that the final decision was in the hands of human caseworkers, not machines. But there was widespread concern that the algorithm could entrench bias within the decision-making system. This was a particular concern in light of the UK government's 'hostile environment', which is a policy designed to create a climate of fear and hostility towards anyone with an insecure immigration status.

Foxglove and JCWI initially engaged in a lengthy process to obtain information about how the algorithm worked. They discovered that the algorithm sorted visa applicants into different risk groups – red, amber or green – to determine high, medium and low levels of risk. They found out that the algorithm discriminated on nationality to categorise applicants, and that some nationalities appeared to be automatically streamed into the high-risk group.

Foxglove and JCWI argued that categorising applicants on the basis of nationality violated the UK Equality Act 2010. They intended to take the case to the Administrative Court to prevent the algorithm from being used and to ensure that a fair, transparent and accountable system was introduced. But, in response to the litigation, in August 2020 the Home Office announced that it would no longer use the algorithm and is in the process of re-designing its systems.

> **By using an algorithm, the Home Office has given us an opportunity to force them to address the racism and arbitrary decision making that was always inherent in the system.**
>
> Martha Dark, Foxglove

# Exposing the shadowy, secretive nature of data-driven immigration policies

## Creating awareness about the potential harm of algorithmic decision-making

Alongside the litigation, Foxglove and JCWI have been raising awareness about the potential harm and discriminatory impacts of algorithms used to influence decisions about immigration status. They spread the message that the system discriminated against applicants by singling out some people as suspect and others as somehow more trustworthy just because of where they came from. It is alarming to find out that a computer algorithm could have such a significant impact on people's lives and their identity. Foxglove and JCWI's campaign highlighted the potential harm caused by this 'digital hostile environment.'

Foxglove and JCWI have been working to keep up the media interest. They wanted to generate a public debate on the issue and involved lawyers and immigration experts in discussions about the case. The media interest and public awareness campaigns are likely to have influenced the Home Office's decision to retract the use of the algorithm. This outcome is an important win for Foxglove and JCWI, and is likely to significantly influence the way that immigration policy decisions are made in the future.

> **The Home Office's 'streaming tool' has for years had a major effect on who has the right to come here to work, study, or see loved ones. This is the digital hostile environment.**
>
> Chai Patel, JCWI

Governments are exploring ways to increase their efficiency through the use of new technology. Immigration and border control policy is one area that is undergoing a raft of changes. Some of the emerging data-driven immigration systems include outsourcing border controls and surveillance, introducing biometric systems, and constructing algorithms to aid decision-making. The purpose of these systems is to streamline and speed up processes, but without regulation and transparency they risk perpetuating, or even exacerbating, existing bias and discrimination.

Decisions about immigration status affect people's lives and livelihoods and deserve to be treated with utmost fairness and careful scrutiny. This litigation sheds light on how vital it is to understand the way algorithms are designed, the data they use, and the ways in which they influence decision-making. The UK Home Office's use of an algorithm to sort visa applications was shadowy, secretive and lacking in sufficient scrutiny and regulation. This meant that racist, sexist and prejudiced decision-making could be woven into the system and might have gone on to influence the decisions that were made by caseworkers. By influencing the Home Office's decision to abandon the use of the visa processing algorithm, Foxglove and JCWI have played an instrumental role in addressing some of the systemic flaws in the Home Office's approach to visa processing.

> **Algorithms and streaming tools are only ever as good as the data that goes into them: if discriminatory data and decisions go in, then that is what you will get out.**
>
> Chai Patel, JCWI

## DFF's role

### Financial assistance

DFF has provided financial support to enable Foxglove to take on this litigation. Initially this was in the form of an emergency grant to support the filing of a pre-action letter, and subsequently a full grant to support the rest of the litigation process.

### DFF strategy meetings

Foxglove participated at DFF's annual strategy meeting. This was helpful for developing its digital rights litigation strategies.

### DFF workshops on digital rights litigation

This case was discussed at DFF's 'Litigating Algorithms in Europe' workshop in November 2019, which brought together litigators from the US, Europe and Latin America who were working on cases concerning automated decision-making.

> **DFF get the right people in the room, try to get us talking to others working on similar issues, and are always very inclusive.**
>
> Martha Dark, Foxglove