

NRPF network

No Recourse to Public Funds Network

Report on the impact of the NHS (Charges to Overseas Visitors) Regulations 2011 on local authority supported service users

The case for a secondary healthcare charging exemption for
local authority supported service users.

November 2014

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1. Background

Local authorities provide financial support to certain groups of destitute migrants who have 'no recourse to public funds' (NRPF) and are not in receipt of asylum support.¹ These individuals are owed a duty of care under governing social services legislation.²

Some NRPF service users supported by local authorities (hereafter referred to as 'local authority supported service users') will need to access secondary healthcare, ranging from antenatal support to more intensive treatments, such as chemotherapy. However, many are precluded from doing so free of charge as they are not ordinarily resident or exempt from the NHS (Charges to Overseas Visitors) Regulations 2011 (hereafter referred to as 'the 2011 Regulations').³

The number of NRPF households receiving local authority support is estimated to be around 3,500.⁴ Local authorities demand a secondary healthcare funding exemption for this group equivalent to that afforded to asylum seekers and refused asylum seekers receiving Home Office support.

2. Key Findings

Following a prolonged period of research and collaborative work with local authorities on the impact of the 2011 Regulations, our key findings in respect to local authority supported cases can be summarised as follows:

- The 2011 Department of Health Guidance on Implementing the Overseas Visitors Hospital Charging Regulations (hereafter referred to as 'the Department of Health Guidance') is **not being applied correctly** to local authority supported service users;
- The 2011 Regulations are **obstructing partnership working** between the NHS and local authorities; and
- The current exemptions under the 2011 Regulations, in failing to include local authority supported service users while including similar groups, **are discriminatory**.

These arguments are now explored further and supported by case studies provided by local authorities. Details of all of the case studies referenced in the report and additional case studies not included in the report can be found in **Appendix A**.

3. Why a change is necessary

1. The Department of Health Guidance is not being applied correctly

The first justification for exempting local authority supported service users relates to the application of the Department of Health Guidance. The unique legal status and circumstances of this client group means they are suffering disproportionate detriment from the application of the 2011 Regulations and there are no clear safeguards in place to protect them. Our research has shown that there are three typical outcomes arising from the

¹ Defined as '[individuals] subject to immigration control' (s.115 Immigration and Asylum Act 1999) – i.e. those who require LTR but don't have it and those with LTR and a NRPF condition

² See **Appendix B** for a summary of the relevant legislation

³ See **Appendix C** For a summary of the 2011 Regulations

⁴ See **Appendix E** for statistics

application of the 2011 Regulations that disproportionately impact local authority supported service users.

The first is that the service user receives treatment and is subsequently charged or is charged while receiving a course of treatment. In spite of the Department of Health Guidance, payment is at times being pursued from destitute local authority supported service users despite it being clear they will be unable to pay.⁵

Case Study – “PW” – PW was invoiced for breast cancer screenings she received at her local hospital. She has dementia and lacks capacity to make decisions for herself so her sister (GA) is responsible for care along with her local authority. GA has been contacted by debt collection agencies chasing payment of the invoice and this has caused her significant distress.

A further issue is the fact that leave to remain ‘should normally’ be refused when the applicant has an outstanding debt with the NHS.⁶ The problem here is that many local authority supported service users attempt to regularise their stay by submitting applications to the Home Office under the Immigration Rules and/or raising human rights grounds. The paramount considerations when deciding the outcome of these applications are the fundamental questions of human rights and the best interests of children, not what NHS services have been accessed in the interim period.

Case Study – “CA” – A family had an outstanding Article 8 application to the Home Office. The application was refused and one of the grounds was the fact that they had a disabled son who had regular NHS treatment – the Home Office therefore established that they had debts of over £1,000.

This Immigration Rule on NHS debt leads to the second possible outcome: the service user is deterred from accessing healthcare as they fear it will impact an outstanding application. This poses a serious health risk to the individual, their dependents and the public.

Case Study – “MZ” – MZ was hospitalised for heart failure and was invoiced for the treatment she received. She has discussed refusing future treatment as she cannot afford the bill and is now reluctant to go herself or take her children to a doctor’s surgery or hospital again in case she gets another bill.

The final outcome is that the service user is prevented from receiving treatment. This is a serious issue for local authority supported service users because it is impossible to determine how long it will take for the Home Office to process an application, leaving the local authority to deal with the service user’s deteriorating condition while they continue to remain liable for secondary healthcare due to their immigration status.⁷

Case Study – “PW” – PW was diagnosed with breast cancer and informed she needed a mastectomy which she was unable to have until she had paid for services already received. The local authority has responded by requesting the Home Office process her application for leave to remain urgently – at the time of writing there had not been an outcome on PW’s application. In addition to this, the local authority has allocated additional resource to support PW during this period.

⁵ See **Appendix C** for the Department of Health guidance regarding pursuit of payment from destitute individuals

⁶ Immigration Rules 320-322 (debt should have a total value of at least £1,000)

⁷ A 2011 audit of local authorities found that officers estimated that just 42% of their adult cases were resolved within 2 years, increasing to 62% for children and family cases (*‘Social Services Support to People with NRPF: A National Picture’*, NRPF Network, 2011)

2. The existing regulations are interfering with local authority and NHS partnership working

As it stands, the result of the 2011 Regulations is that local authority and NHS duties of care are not compatible. There are a range of statutory duties imposed upon local authorities in relation to this service user group while, in contrast, there is no corresponding duty upon the NHS relating to secondary healthcare.

This creates a clear tension between two publicly-funded authorities which is clearly untenable and doesn't exist in any other area of cross-cutting work.⁹ By effectively denying this group access to secondary healthcare, it leaves local authority supported service users' conditions to deteriorate and the local authority is ultimately left to support the individual. This is not only a far cry from the 'culture of cooperation and coordination' that the Department of Health has advocated but also gives rise to serious operational issues for local authorities.¹⁰

Case Study – “AB” – AB had a course of chemotherapy stopped as a result of her inability to pay for previous treatment – this impacted upon the local authority in a number of ways, including:

- The local authority increased her hours of care
- AB has been contacting the local authority with far greater frequency on account of her feeling unwell and depressed
- AB has been referred to the mental health team for an assessment following a deterioration in her mental health

3. The current exemptions, in failing to include local authority supported service users, are discriminatory

The final justification for exempting local authority supported service users is based on the fact that those with on-going claims for asylum and some refused asylum seekers are exempt, despite local authority supported service users being provided with support in similar circumstances to refused asylum seekers in receipt of section 4 asylum support.¹¹ Seemingly the only explanation for the concession is a practical one; secondary healthcare could not be withdrawn on the basis of non-payment if the person's sole income derives from the Home Office.

If section 4 and section 95 supported migrants were not exempt from the 2011 Regulations then the Home Office would need to consider either increasing the cost of service provision to cover secondary healthcare, getting the NHS to change the funding requirements or face a legal challenge in the light of someone being financially supported getting more ill. The individual's source of income is surely no justification for disparity in treatment between the two groups.

⁸ NRPF Connect is a secure database in which the Home Office and local authorities can exchange information about NRPF cases

⁹ Areas include: adult and children's social care, public health and Health and Wellbeing Boards

¹⁰ In a recent Department of Health report (*Integrated Care: Our Shared Commitment*), emphasis was placed upon the need to create 'a culture of cooperation and coordination' between (among others) local authorities and the NHS in order to 'maximise quality of care'.

¹¹ See **Appendix D** for a more detailed comparison between the s.4 service users and local authority supported service users.

Due to the similarities between migrants receiving section 4 asylum support and local authority supported service users, where processes are in place that work for the asylum system, they need to work for local authorities as well. The current approach to healthcare under the 2011 Regulations does not allow for this.

4. Conclusion

The service user group that has been discussed is relatively small¹² but come at a significant cost to local authorities due to the complex nature of cases and the duration of support. There is no risk that granting them an exemption from the 2011 Regulations would undermine the intentions of the original legislation, particularly as local authorities are working closely with the Home Office to find efficient resolutions to cases.¹³

The exemption requested is simply a case of making things work sensibly in the 'interim period' while local authorities provide the safety net support that Parliament intends them to. It is therefore of fundamental importance that the requested exemption is included within the new regulations that are due to be made under the Immigration Act 2014.

¹² See **Appendix D** for recent figures.

¹³ The primary justifications for the 2011 Regulations laid out by the Department of Health (*Sustaining services, ensuring fairness, 2013*) focused on the arguments that people should have access to public services in a manner commensurate with their immigration status and that the Regulations would reduce levels of 'health tourism' in the UK.

Appendix A – Case Studies

A.1 Case Study “AB” - Croydon Council

Background

AB has been in the care of Croydon Council for approximately five years. She presented as a visa overstayer and was assessed under section 21 National Assistance Act 1948 and is being supported to prevent a breach of her human rights under Article 3. She has been declared unfit to travel by her GP.

Croydon Council currently have a care plan in place for AB and she is getting accommodation, subsistence and a carer from the council. The current weekly cost of AB's support to the council is £465.80 (This covers her care package (£252.80), rent (£173) and subsistence (£40)).

The cost of supporting AB to the council since she first presented has been £72,664.80, though there are staff and other resource costs that will not be included in this figure.

AB was diagnosed with bowel cancer approximately 6 years ago.

NHS Charges

AB received chemotherapy to treat the cancer– as far as the council are aware there was no mention of charges during this period. By 2013, the cancer was in the advanced stages.

In October 2013, and seemingly without any forewarning, she was informed that she had to pay approximately £5,000 for the treatment she had already received and would be unable to access further treatment unless she paid this amount.

Following the charge, AB contacted a solicitor via the council – the legal process that ensued took over a month, during which there was a significant and noticeable deterioration in AB's condition. As a result of the solicitor's intervention treatment was able to recommence.

Two months later, AB was told once again she would only be able to access further treatment if she paid for treatment previously received. At this point, AB opted not to pursue the legal process again as she was too mentally and physically exhausted.

It is understood that a representative from Croydon Council contacted the hospital to see what they could do – they spoke to a consultant who said that they had discontinued treatment because AB was unable to pay for it.

Implications

The implications for the individual have been a clear deterioration in her health and stress induced by the charges received. The implications of the charges to the council have been significant:

- The council tried to add additional hours of care for AB as they believed she needed it but AB declined the additional care
- AB has been getting in contact with the local authority more frequently on account of her feeling depressed

- There has been an emotional cost which means that staff are spending more time contacting and visiting the service user outside of the time detailed in the care plan
- AB has since been referred to the mental health team – CC staff have said that there was a significant deterioration in her mental health following the charges being imposed
- Since refusal and at request of Croydon Council, AB has been granted LTR in the UK for 30 months. At the time of NHS refusal, AB had an outstanding application for LTR on medical grounds

A.2 Case Study “PW” - Croydon Council

Background

PW came to United Kingdom in 2000 to look after her sister (GA) who was experiencing mental health issues due to the death of her husband. Due to the circumstances of GA's loss, the Home Office agreed to grant PW limited leave to remain in the UK to support her.

In 2006, PW had a stroke and developed illnesses of her own, meaning she could not look after herself nor could she look after her sister.

When PW presented to the local authority in 2008 following a stroke, her sister was now supporting her. PW had overstayed her visa and was supported by the local authority on human rights grounds.

Since 2008, a number of health and care issues have been identified in relation to PW in addition to the stroke she suffered, including:

- Breast cancer
- Early stage of dementia or mild cognitive impairment
- Memory loss (Poor or decreased/impaired judgment, loss of communication skills, problems with keeping track of things, misplacing things, changes in mood or behaviour, hallucinations, agitation)
- Poor mobility (difficulty performing familiar tasks, needs a carer to assist her with personal care needs, disorientation to time and place, gait, motor, and balance problems)
- Double incontinence (neglect of personal care and safety)

GA says that PW's application for leave to remain was unsuccessful but PW was given the right to appeal – GA is not sure if the solicitor made the appeal on behalf of PW. PW has also been assessed as unfit to travel by her GP.

The current weekly cost of PW's support to the council is £258.75 (This covers her care package (£218.75) and subsistence (£40)). The cost of supporting PW to the council since she first presented has been £107,328.00, excluding staff and other resource costs.

NHS Charges

In early 2014, PW was diagnosed with breast cancer and informed she would require a mastectomy to prevent the cancer from spreading following a pre-operation assessment. With the help of her sister, she consented to this operation as due to her dementia she struggles to make decisions for herself.

On 11th March 2014, PW was informed that she will be denied access to this treatment if she cannot pay for the NHS services she had already received (£300).

GA (PW's sister) has informed the council that the NHS has told her that they will not provide PW with the treatment until she pays for her previous treatment.

The council have responded by alerting the Home Office to the situation to try to get leave to remain granted as soon as possible to ensure eligibility for treatment.

Implications

PW has no capacity to make a decision for herself, she is not fit to travel and has multiple serious health conditions outlined above. Accordingly, GA is dealing with the on-going situation, but she too is not well.

GA has been contacted by a debt collection agency chasing up payment of the charges and this has caused her significant distress. GA has a number of health and care issues of her own (diabetes, fall, chronic head and neck pains, incontinence, poor mobility, risk of care, inability to carry out daily activities without assistance)

There has been additional strain on local authority resources in supporting and trying to deal with this issue. The Home Office is aware of the NHS treatment refusal. A decision is still pending but according to NRPF Connect a decision regarding PW's immigration case is imminent.

A.3 Case Study “FM” - Lambeth Council

Background

FM originated from Chad. Initially, her husband was living in the UK and FM was living abroad. FM came to live with her husband in the UK but presented to the local authority with her dependent daughter having left her husband due to domestic violence in September 2011.

FM was supported under section 17 Children Act 1989. From September 2011 until July 2012 (when FM passed away), approximately £1,777.95 was paid to FM in the form of subsistence payments. During the support period, FM was medically declared unfit to travel.

NHS Charges

FM was diagnosed with a number of conditions, including: haematuria and cancer of the cervix with liver, lung, bone and brain metastases.

A Social Services Section 2 referral form dated the 15/05/2012 confirmed that FM required palliative radiotherapy. FM was told she would have to pay for the radiotherapy because of her immigration status. As she was unable to pay for the radiotherapy all that she was offered was treatment with painkillers.

FM's solicitors wrote to FM about a possible exemption from the 2011 Regulations but the outcome of this is unknown. Lambeth Council were informed that they were taking the case to judicial review but have no evidence that this was pursued. FM died on 22nd July 2012.

Implications

It is unclear whether FM's husband continued with litigation against the hospital following FM's death.

A.4 Case Study “AH” - Lambeth Council

Background

AH entered the UK on a Visitor's Visa in 2001. AH is currently classed as an over stayer and has no recourse to public funds – he has been in the care of Lambeth Social Services for approximately five years. He is supported under s.21 National Assistance Act 1948.

AH suffered a traumatic brain injury. He was found to have sustained other injuries including a vascular bleed involving one of his femoral arteries and ruptured papillary cardiac muscles.

He was urgently transferred from St Georges Hospital to St Thomas' Hospital where he had a mitral valve (MV) replacement and an emergency repair of the femoral vascular tear. Upon his return to St Thomas' Hospital he was slow in improving and was re-imaged. The CT scan showed a significant left dominant middle cerebral artery (MCA) infarction on his pre-operative CT scan.

AH is currently living in a residential home and the Lambeth NRPf team have a care plan in place for AH – he is getting accommodation and subsistence, including 24-hour care. The current weekly cost of AH's support to the council is £750.00 (this covers his care package, rent and subsistence). The cost of AH to the council since he first presented is approximately £156,000.00.

The council is trying to move AH into the community at his request but this is proving difficult as there is limited private property available.

NHS Charges

AH has been charged for the treatment he has received. He was sent an invoice/bill for £10,505.00 which was sent to the Local Authority. The Local Authority has refused to pay the bill and has written to the NHS informing them of this.

Implications

The implications on the council have been significant:

- AH has been in contact with the local authority more frequently on account of him wanting to move into his own accommodation close to his brother CH who is his only support.
- A social worker has been visiting AH in Birmingham at an additional cost to the local authority.
- Still waiting for the Home Office to make a decision on his application and the outstanding debts owed to the NHS means that there is a possibility this application could be refused.

A.5 Case Study “CA” - Bradford Council

Background

CA arrived in the UK in June 2003 on a two-year student visa – this was renewed for two years until June 2006. CA’s partner (CB) arrived on a one-year visitor visa valid from December 2003. CB then varied his leave to a student visa.

CA and CB’s two eldest children entered the UK on 6-month visitor visas in December 2005. Their third child was born in the UK.

They presented to Bradford Council on 10 April 2013 and are supported under s.17 Children Act 1989. They are currently receiving approximately £300 per week in subsistence, £120 per week for accommodation and their utilities are paid for by the local authority. The family has cost the council approximately £18,500 since presenting.

The family are currently awaiting an appeal to the upper tribunal concerning their immigration matter.

NHS Charges

CA and CB’s eldest son has a learning disability and a speech impediment and is receiving treatment from a consultant at a local hospital. He has had extensive tests and treatment for his speech impairment and diagnosis of his learning disability.

The mother has also accessed NHS maternity services for her third child.

Treatment has not been stopped or refused, however, their recent application for leave to remain was refused and one of the reasons given was that the Home Office believed that given the eldest son’s disabilities he would have accrued an NHS bill of over £1,000. As the family were unable to provide receipts for any treatment they were assumed to have an unpaid debt.

This was the first point they were made aware of any potential charges for treatment.

Implications

CA and CB are worried about themselves or their family accessing any future treatment in case they are billed again.

A.6 Case Study “LD” - Bradford Council

Background

The family arrived on visitor visas and overstayed. They submitted applications for leave to remain. Support was provided by the local authority to the family under s.17 Children Act 1989 but the parents subsequently separated.

The father (LD) is a double amputee, wheelchair dependent and has suffered a stroke. LD is now supported under s.21 National Assistance Act following the separation. Subsistence is currently provided at a rate of £24.40 per week and residential care costs of £500 per week are paid by the local authority.

LD has cost the authority approximately £187,000 since presenting. He currently has an Article 3 application pending with the Home Office which has been outstanding since 2007.

He has an HIV-related illness which resulted in a double amputation above the knee and he receives on-going treatments for this illness as well as stroke care.

NHS Charges

No charges have been made thus far.

Implications

As LD's condition deteriorates he may need nursing care. As he isn't exempt from NHS charges the nursing element will not be paid for and the local authority cannot lawfully provide this. If there was no local authority duty to support LD then he would be eligible for asylum support and therefore free secondary healthcare.

A.7 Case Study “MZ” - Bradford Council

Background

TZ and her husband arrived in the UK in September 2002.

Since arriving in the UK, the family have had 5 children all under the age of 5 years. TZ’s husband is currently serving a custodial sentence for working without the legal right to.

TZ and the children presented at the local authority on 10 October 2013 and are being supported under s.17 Children Act 1989. The family currently receive subsistence at a rate of £300 per week and their utilities are paid for by the local authority. Since presenting, the family have cost the local authority approximately £12,700.

The Home Office has made a decision to remove the family but an appeal is on-going. The local authority has suggested it is highly unlikely that they will be removed from the country while TZ’s husband is in prison.

TZ has a heart condition and is currently going for appointments for regular check-ups – she was recently hospitalised for treatment. She also has a metal plate in her left hand – this has broken and needs further treatment as a result. TZ has also received maternity services for the birth of her children.

NHS Charges

The amount requested for TZ’s most recent overnight hospital visit is £2,190.14. There has been no dialogue between the local authority and the NHS as yet. She has not been billed to date for maternity services received.

Implications

Both TZ and MZ are worried about accessing primary and secondary healthcare in case they accrue further debts.

Appendix B – Summary of social services legislation

The primary statutory duties placed upon local authorities in relation to individuals with NRPF can be summarised as follows:

- A duty to provide accommodation for persons aged 18 or over who by reason of age, illness, disability or any other circumstance are **in need of care and attention (s.21 National Assistance Act 1948)**
- A general duty to **safeguard and promote the welfare of children who are in need** and, so far is consistent with that duty, to promote the upbringing of such children by their families (**s.17 Children Act 1989**)

These duties exist because these individuals are prohibited from accessing benefits and local authority housing by virtue of s.115 Immigration and Asylum Act 1999, yet their circumstances are such that they become destitute or develop care needs meaning that it becomes the responsibility of the local authority's social services department to provide assistance.

Additionally, local authorities have duties to provide assistance to children leaving the care system at the age of 18 having been looked after by the local authority as a child (**s23C, 24A, 24B Children Act 1989**).

Schedule 3 of the Nationality Immigration and Asylum Act 2002 excludes persons **unlawfully present** in the UK from accessing social services support (this includes visa overstayers, failed asylum seekers who applied for asylum in-country and illegal entrants). The only circumstance in which those exempt by Schedule 3 will be eligible for support from a local authority is where the withholding of support would cause **a breach of their human rights** under the European Convention of Human Rights or their rights under European Community Treaties. In order to establish this, the local authority will carry out an in-depth human rights assessment on the individual or family.

If the statutory criteria are satisfied or if a human rights assessment finds that withholding support from an exempt individual would breach their human rights or European Community treaty rights, the local authority is required to **meet the needs of the individual**, which may include the provision of accommodation and subsistence.

For more information on the social services legislation that governs local authority support for NRPF service users, visit the [NRPF Network website](http://www.nrpfnetwork.org) <www.nrpfnetwork.org.uk>.

Appendix C – 2011 Regulations Summary

The NHS (Charges to Overseas Visitors) Regulations 2011 place a legal obligation on NHS Trusts in England to establish whether a person is an overseas visitor to whom charges apply for secondary healthcare or whether they are exempt from charges.

Definition of an overseas visitor

An overseas visitor means any person, of any nationality, who is not “ordinarily resident” in the UK and therefore potentially liable to charges for NHS hospital treatment. “Ordinarily resident,” for these purposes, means living lawfully and on a properly settled basis in the UK.

Services exempt from the 2011 Regulations (Part 3)

There are certain services which are **free of charge** to everyone regardless of the status of the patient.

These include:

1. Accident and emergency services;
2. Family planning services;
3. Certain diseases where treatment is necessary to protect the wider public health;
4. Treatment for sexually transmitted diseases including HIV;
5. Treatment given to people detained or liable to be detained under the provisions of the Mental Health Act 1983 or other applicable legislation;
6. Any other treatment which is imposed by, or included in, an order of the Court;
7. Services provided in the community by staff employed by or on behalf of the Trust.

Individuals exempt from the 2011 Regulations (Part 3)

Under the 2011 Regulations certain groups who do meet the “ordinary resident” requirement are, nevertheless, exempt from charges for secondary healthcare. The precise wording of the 2011 Regulations in relation to refugees, asylum seekers and failed asylum seekers is as follows:

“No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who –

- a) Has been granted temporary protection, asylum or humanitarian protection under the immigration rules made under section 3(2) (general provisions for regulation or control) of the Immigration Act 1971;*
- b) Has made an application, which has not yet been determined, to be granted temporary protection, asylum or humanitarian protection under those rules;*
- c) Is currently supported under section 4 or 95 of the Immigration and Asylum Act 1999;*
or
- d) Is a child taken into local authority care under the Children Act 1989(3)”*

Significantly for present purposes, no reference is made to an exemption for local authority supported service users.

When to pursue debts and when not to: Department of Health *Guidance on Implementing the Overseas Visitors Hospital Charging Regulations (2011)* extracts:

4.39 Where a patient is provided with urgent or immediately necessary treatment, which they have not paid for in advance, this does not mean that that treatment is then free of charge. If charges apply, they cannot be waived for any reason – or by any person – and relevant NHS bodies have an obligation to recover them. Therefore, reasonable measures must be taken to pursue overseas visitors' debt, based on the individual circumstances of the patient. Relevant NHS bodies are recommended to consider employing the services of a debt recovery agency that specialises in the recovery of overseas debt, **except in relation to persons whom it is clear to the relevant NHS body will be unable to pay, e.g. destitute failed asylum seekers.**

4.40 In cases where patients are without sufficient funds to pay the debt immediately, relevant NHS bodies should accept payment from the patient in instalments where possible. If relevant NHS bodies begin to recover debt before the course of treatment is finished, they should be careful not to discourage those in further need of immediately necessary or other urgent treatment from continuing to receive it.

4.41 **Even where it is believed that an overseas visitor is unable to pay, an invoice for treatment provided should still be raised.** This must be recorded accurately and identified in the relevant NHS body's accounts. More financial information is provided at Chapter 6.

Appendix D – Detailed comparison between those in receipt of s.4 asylum support and local authority supported service users

Under **Regulation 11(c)**, overseas visitors who are supported under **s.4** of the **Immigration and Asylum Act 1999** are exempt from charges for healthcare. Section 4 support applies to those who have come to the end of the asylum process, have been **refused** asylum and have exhausted all appeal rights.

The similarity between s.4 service users and local authority supported service users who are excluded from support by Schedule 3 Nationality Immigration and Asylum Act 2002 is well-demonstrated when one compares the statutory requirements of an individual receiving s.4 support with the requirements of a local authority supported service user.

The table below aligns the circumstances when the Home Office is statutorily required to provide s.4 support to the circumstances in which a local authority is statutorily required to provide support to a service user:

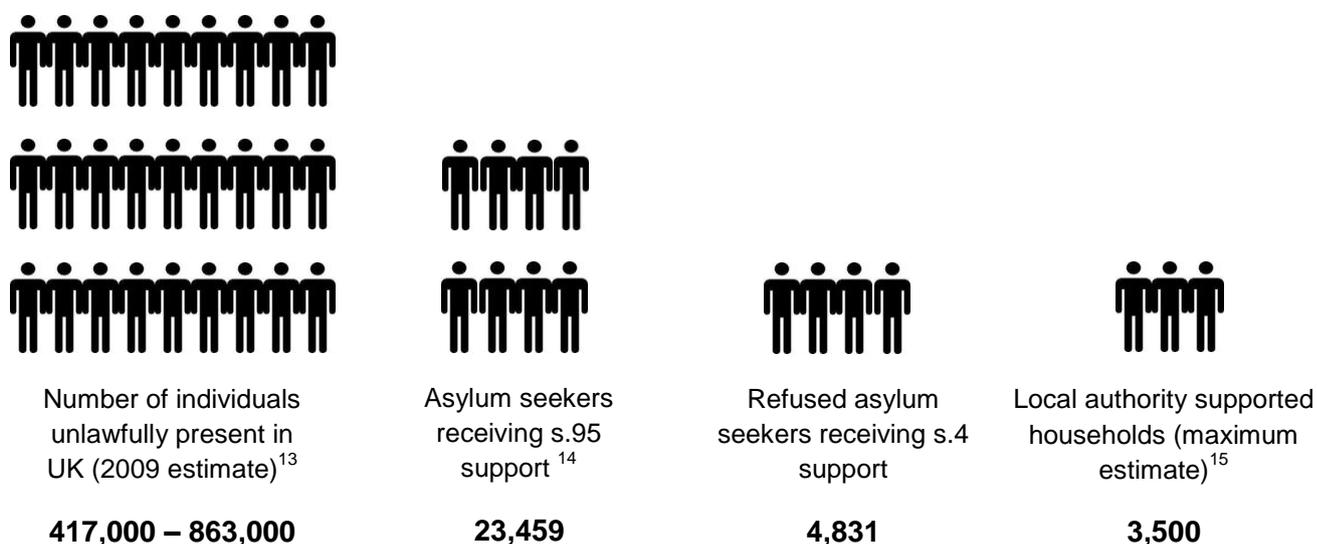
Circumstances in which the Home Office will provide s.4 support	Circumstances in which local authorities will provide support
They are destitute or likely to become destitute within the next 14 days – this will be established through an assessment carried out by the Home Office	Service users receiving local authority support or support pending investigation will have been assessed to be destitute, i.e. the service user does not have adequate accommodation and/or is unable to provide for their essential needs, and there is a child in need (s17 Children Act) or adult with assessed care needs (s21 National Assistance Act).
And <u>one</u> of the following criteria	Comparison with local authority supported cases
The person is taking all reasonable steps to leave the UK, or to place themselves in a position in which he or she is able to leave he UK.	If the individual had applied for voluntary return, the local authority would support them during this process.
The person is unable to leave the UK by reason of a physical impediment to travel or for some other medical reason.	The local authority would support the person if they were declared unfit to travel by a medical professional because this acts as a barrier to return and a local authority would be in breach of Article 3 ECHR if support is not provided.
The person is unable to leave the UK because in the opinion of the Secretary of State there is currently no viable route of	In this case, the local authority would support the individual until there was a viable route of return deemed available by the Home Secretary because this acts as a barrier to

return available.	return and a local authority would be in breach of Article 3 ECHR if support is not provided.
The person has made an application in Scotland for judicial review of a decision in relation to his asylum claim, or, in England, Wales or Northern Ireland, has applied for a judicial review and been granted permission to proceed.	See case of <i>KA v Essex County Council</i> [2013] EWHC 43 (Fam) where it was held that local authorities are required to support individuals while there may be pending legal action in relation to their immigration case after an Article 8 application has been refused. As this acts as a barrier to return a local authority would be in breach of Article 3 ECHR if support is not provided.
The provision of accommodation is necessary for the purpose of avoiding a breach of a person's Convention rights, within the meaning of the Human Rights Act 1998.	For those exempt from accessing support by Schedule 3 a local authority will only be able to provide support if a human rights assessment is on-going or if a human rights assessment concludes that the withholding support would breach a person's Convention rights.

As can be seen, the circumstances in which local authorities will provide support to those who are excluded from support under Schedule 3 are almost identical to those required of successful s.4 applicants.

Appendix E – Analysis of migrant groups in the UK

E.1 Breakdown of migrant groups present in the UK



As can be observed from the above diagram, local authority supported service users are relatively low in number meaning the economic impact of granting an exemption would be minimal.

E.2 Current numbers of local authority supported cases in England

The following figures for 24th September 2014 are taken from NRPF Connect, and include data from 19 local authorities in England:

Household type	Total number of households supported	Number that are lawfully present or EEA nationals or have an asylum claim as recorded by the Home Office	Number that are not lawfully present or status is unknown or not recorded by the Home Office
Family	1337	399	938
Adult	218	54	164
Care leaver	39	7	32
Total	1594	460	1134

As those who are lawfully present or EEA nationals are likely to be eligible for free secondary healthcare, and those who are not lawfully present are not, it can be inferred that **71%** of local authority supported households are not eligible for free secondary healthcare.

¹⁴ 'Economic impact on the London and UK economy of an earned regularisation of irregular migrants to the UK', London School of Economics, 2009

¹⁵ Home Office Figures, October – December 2013

¹⁵ Estimate based on NRPF Network report: *Social Services support to people with NRPF: A national picture* (March 2011)

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