Consultation response: Overseas visitors and migrants: extending charges for NHS services

Local authorities have responsibilities to provide essential safety net support to the most vulnerable migrants who cannot access mainstream benefits or statutory housing services due to their immigration status, i.e. they have no recourse to public funds (NRPF). In England these responsibilities are set out in the Children Act 1989 and the Care Act 2014, and require local authorities to provide accommodation and financial assistance to destitute migrant families where there is a child in need, care leavers, and adults with care and support needs.

Local authorities strongly disagree with the proposals to extend charging to all forms of care as set out in the consultation paper.

Key points:

1. Charging for primary and emergency healthcare will result in deterring people from accessing services, leading to wider public health concerns and increasing demand on other statutory and non-statutory services. The priority of the NHS must be to focus on meeting urgent need; administering complex charging regulations at crucial points of access to healthcare can only impede such efforts.

2. Local authorities already experience cost and resource pressures as a consequence of secondary healthcare charging; the proposals will lead to cost shunts to local authorities, particularly around:
    a. Supporting migrants who would be eligible for continuing healthcare or nursing care but cannot afford this.
    b. Funding prescription and other charges for supported migrants.

3. In order to prevent the proposals adversely impacting on vulnerable people, there must be a charging exemption for migrants in receipt of local authority support.

1. Concerns about charging overseas visitors for primary and emergency care

Local authorities strongly disagree with the proposals to charge for primary healthcare due to the implications this will have on residents and communities.[1] The number of migrants with no immigration status that were estimated to be in the UK at the end of 2007 is between 417,000 and 863,000. The Immigration Act 2014 and Immigration Bill 2015-16 contain many measures designed to restrict the living and earning arrangements of such migrants, leading to destitution.

Medical professionals have raised concerns about the impact on public health of extending charging to primary and emergency care.[2] The changes are expected to particularly affect

[1] Gordon I., K. Scanlon, T. Travers, and C. Whitehead. *Economic Impact on London and the UK of an Earned Regularisation of Irregular Migrants in the UK.* (GLA Economics, Greater London Authority), 2009. https://www.london.gov.uk/sites/default/files/gla_migrate_files_destination/irregular-migrants-report.pdf

[2] British Medical Journal, *New proposals make the NHS the most restrictive healthcare system in Europe for undocumented migrants,* 9 February 2016. http://www.bmj.com/content/352/bmj.i685.full?ijkey=2ezqnoDIOD7UpfH&keytype=ref

children and pregnant women, who were the subject of a Europe-wide study by Medicines du Monde in 2014, which concluded that *'..reported barriers to healthcare, as well as the analysis of the legal frameworks in the countries surveyed, confirm that restrictive laws and complex administrative processes to obtain access to care actually contribute to making people sicker.'*

Untreated medical conditions are likely to give rise to greater social care needs and put children at risk, therefore creating increasing demand on social care services. Local authorities will also be concerned about any further measures undertaken by the government that have the consequence of adversely affecting community cohesion and the general wellbeing of their residents, regardless of an individual's immigration status.

NHS England has produced guidance in response to the difficulties migrants have in registering with a GP.[3] Should the proposals to extend charging come into force, local authorities would support continued free access for all to GP and nurse appointments. However, in view of the fact that in order to implement these proposals, GPs will be required to collect more patient data than is currently required, there must be assurances that the Department of Health will take appropriate steps to ensure that all groups subject to charging are able to easily register and access GP surgeries.

2. Cost shunts to local authorities

Medical professionals have suggested that the financial savings these proposals will make for the NHS 'modest and overestimated.'[4] Local authorities are particularly concerned that whilst savings may be made for the NHS, the financial and resource impact will be significant for them, with two examples of direct cost shunts arising if charges are brought in for NHS continuing healthcare, nursing care, and reducing the eligibility for free prescriptions and related services.

(a) NHS continuing healthcare (CHC) and nursing care

Local authorities do currently provide assistance to migrants, who are not ordinarily resident for the purpose of secondary healthcare charging, who are receiving CHC or nursing care:

- For migrants that have no recourse to public funds, if they are receiving continuing health care from the NHS within the community then it may fall to social services to provide accommodation if they are destitute.
- Nursing care is funded by a social care contribution and health contribution, the latter paying for the registered nurse element of the care and support that is provided. Again, the local authority may be funding accommodation costs for a person with NRPF.

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[3] NHS England, *Patient Registration Standard Operating Principles for Primary Medical Care (General Practice),* November 2015. https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2015/11/pat-reg-sop-pmc-gp.pdf

[4] Doctors of the World briefing*: Department of Health consultation on further NHS charging – "Making a fair contribution"* February 2016. https://www.doctorsoftheworld.org.uk/files/DOTW_briefing_DH_consultation_on_further_NHS_Charging_Feb_2016_FINAL.pdf

Under the Care Act 2014, local authorities are required to safeguard adults at risk of abuse or neglect, promote wellbeing, and reduce, prevent and delay the development of care needs. Although section 22 of the Care Act 2014 prohibits local authorities from funding nursing care or other assistance that is provided under the National Health Service Act 2006, when the CCG currently does not agree to fund the nursing element of the care required, in practice local authorities will end up funding this in order to comply with obligations under the Care Act 2014.

If CHC and nursing care is subject to charging, then situations will arise where the nursing element of a person's care cannot be provided by the NHS due to the person's immigration status and inability to fund treatment. This would give rise to more situations where local authorities must accommodate and meet the care needs of migrants, who, due to the nature of their condition, are unable to leave the UK. Failing to provide such a person with the assistance that they require would, in most cases, be an untenable situation for social services. Local authorities would therefore be very concerned about introducing charging for CHC and nursing care, which would result in a direct cost shunt to the local authority.

A person will be eligible for continuing health care due to the nature, intensity and complexity of need. It is unclear whether treating such need would be determined by clinicians as being 'urgent or immediately necessary', and therefore whether CHC would be provided without a fee paid up front. However, that would still result in a destitute migrant running up a considerable NHS debt.

(b) Prescriptions and other charges

Local authorities provide financial support to alleviate destitution which is intended to cover the basic living needs of the families and adults they are supporting. The Courts have found that non-prescription medication is an essential living need, when examining what items constitute essential living needs for the purpose of providing asylum support (asylum seekers being exempt from prescription charges).[5] Local authorities are also required to provide assistance to safeguard and promote the welfare of a child who has needs in addition to those arising from destitution.

The consultation proposes for prescription charges to be made non-EEA residents to whom surcharge arrangements do not apply, unless they fall under the current prescription exemption criteria and are in one of the charge-exempt categories. The proposals are unclear about whether the low income scheme will remain available to people who are not otherwise exempt.[6]

Should the low income scheme be unavailable to migrants with no status in receipt of local authority support then it would fall to local authorities to fund their prescription charges, and charges that would otherwise be met by the NHS, for example, a child in need who requires glasses. This would therefore be a direct cost shunt to the local authority.

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[5] *Refugee Action, R (On the Application Of) v The Secretary of State for the Home Department* [2014] EWHC 1033 (Admin) (09 April 2014). http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2014/1033.html&query=refugee+and+action&method=boolean

[6] Department of Health, *Making a fair contribution: A consultation on the extension of charging overseas visitors and migrants using the NHS in England*, December 2015, paragraph 5.8 & Department of Health, *Impact Assessment: Visitor and Migrant Cost Recovery - Extending Charging*, pp.17-19.

3. Exemption from charging on the basis of local authority support

If the proposals are implemented, then in order to prevent the measures adversely impacting on vulnerable people, there must be a charging exemption for migrants in receipt of local authority support. In January 2015, the NRPF Network previously submitted a request for such an exemption to the Immigration Minister.

We propose that the following groups of vulnerable migrants should be exempt from charges:

- Families in receipt of support under section 17 Children Act 1989
- Adults with care and support needs in receipt of support under the Care Act 2014
- Care leavers in receipt of support under sections 23C, 24A, 24B Children Act 1989

If the proposals are implemented after Part 5 of the Immigration Bill 2015-16 comes into force, then the exclusion must also apply to people in receipt of local authority support under paragraphs 10A and 10B of Schedule 3 of the Nationality, Immigration and Asylum Act 2002.

This is on the basis that:

(i) The majority of local authority supported migrants are currently subject to charging which results in increased costs and resource implications for local authorities.
(ii) The numbers that would be affected by such an exemption are small, so the financial impact on NHS cost recovery would be minimal.
(iii) Those supported by local authorities are not generally in the UK for a short time.
(iv) It is discriminatory not to have an exemption for local authority supported migrants when there is one for refused asylum seekers receiving asylum support.
(v) The government needs to undertake measures to mitigate the anticipated cost-shunts that the provisions of the Immigration Bill 2015-16 are likely to result in for local authorities.

The table below contains the make-up of the client group supported by local authorities in terms of immigration status. This data is from 35 local authorities across the UK but is indicative of the national trend.[7]

Immigration status recorded by Home Office	**Percentage of supported households**
Overstayer/ illegal entrant/ status unknown	66%
Limited leave to remain	26%
EEA nationals or dependants of EEA nationals (including EU derived rights)	4%
Pending asylum application	3%
Indefinite leave to remain	Less than 1%

At least two thirds of the client group supported by local authorities have no immigration permission. This reflects the finding by COMPAS that 63% of families supported by local

[7] Data from NRPF Connect as of 31 December 2015 (see footnote 11)

authorities were visa overstayers.[8] These migrants, including children without status, are currently subject to secondary healthcare charging.

The following exemptions set out in the NHS (Charges to Overseas Visitors) Regulations 2015 apply to a small proportion of local authority supported migrants:

- Adults or care leavers with asylum applications that have yet to be determined
- People with limited leave to remain who have paid for or are exempt from the immigration health charge
- People who applied for or were granted limited leave to remain prior to 6 April 2015
- People with an EU right to reside in the UK
- Refused asylum seeking adults who are supported under the Care Act 2014 and started to receive local authority support under the National Assistance Act 1948 prior to 1 April 2015*

*Of the 222 adults across 35 local authorities who are receiving local authority support that started prior to 1 April 2015, 79 are recorded as having claimed asylum. Therefore up to 36% of the adults supported may benefit from this exemption, which makes up 4% of the total households supported by local authorities.[9]

The lack of a specific exemption to charging for local authority supported families, care leavers and adults with care needs, has considerable cost and resource implications for the authority concerned.

In 2014 the NRPF Network produced a report, based on information acquired from three local authorities on families or adults that they were supporting. The report found that the people concerned were deterred from accessing healthcare; were refused treatment leading to increased costs and resource input from the local authority and were pursued for debts despite being destitute.[10]

An exemption as proposed would only affect a small number of migrants, resulting in minimal loss of income for the NHS.

The numbers of migrants who are receiving accommodation and financial support from local authorities because they are NRPF and satisfy statutory eligibility criteria is documented by the following sources:

[8] Price, J. & Spencer, S., *Safeguarding Children from Destitution, Local Authority responses to families with NRPF,* Centre on Migration Policy & Society (COMPAS), June 2015, p.27. https://www.compas.ox.ac.uk/media/PR-2015-No_Recourse_Public_Funds_LAs.pdf

[9] Data from NRPF Connect as of 31 December 2015 (see footnote 11).

[10] NRPF Network, *Report on the impact of the NHS (Charges to Overseas Visitors) Regulations 2011 on local authority supported service users*, November 2014. http://www.nrpfnetwork.org.uk/Documents/NHS-report.pdf

Data source	Data period	Number of local authorities	Number of NRPF households financially supported	Number of dependants	Costs (£)
NRPF Connect database [11]	31 December 2015	35 (England, Wales and Scotland)	2202 - 1865 families - 289 single adults with care needs	3964	34 million (accom & financial support)
London Councils [12]	Financial year 2014/15	32 (London Boroughs)	3200 estimate across year 2500 at year end	Not provided	50 million (all costs)
COMPAS [13]	Financial year 2012/13	137 (England)	3391 families	5900	28 million estimate (accom & financial support)

Data from NRPF Connect also shows that the average time a household spends in receipt of local authority support is 771 days for families and 1176 days for adults.

The Department of Health estimates that 13% of non-EEA residents who used the NHS have not paid the surcharge or have it waived, and that the total effect of exempting those that belong to a vulnerable group from cost recovery is small.[14]

Therefore extending the charging exemptions to those groups listed above that are supported by local authorities, because they are vulnerable and destitute, would not significantly impact on the income the NHS would otherwise generate through charging such people, whereas the impact on the local authority can be great.

The justification provided by the Department for Health for charging overseas visitors is that:

> *'It is considered fair that people who are in this country for a short time, and are not Ordinarily Resident here, should meet the costs of all NHS healthcare they receive.'*[15]

Although two thirds of the client group supported by local authorities have no immigration permission, the majority will have enforceable rights to remain in the UK, often obtaining limited leave under the 10 year settlement routes under the family or private life rules, and are therefore not resident in the UK for a short time: 51% of family cases and 29% of adult

[11] NRPF Connect database is used by local authorities voluntarily to share information on NRPF caseloads with the Home Office. http://www.nrpfnetwork.org.uk/nrpfconnect/Pages/default.aspx

[12] A survey of London Boroughs undertaken by London Councils in 2015 focusing on the costs of supporting NRPF cases across London in the financial year 2014/2015.

[13] Price, J. & Spencer, S., *Safeguarding Children from Destitution, Local Authority responses to families with NRPF,* Centre on Migration Policy & Society (COMPAS), June 2015. https://www.compas.ox.ac.uk/media/PR-2015-No_Recourse_Public_Funds_LAs.pdf

[14] Department of Health, *Impact Assessment*, pp.12-13.

[15] Department of Health, *Impact Assessment*, p. 6.

cases closed by local authorities in 2015 were due to grants of status conferring recourse to public funds.[16]

Additionally, migrants with no current immigration permission who are supported by local authorities are provided with support in similar circumstances to refused asylum seekers in receipt of section 4 asylum support, i.e. they are destitute and there is a barrier preventing them from leaving the UK, for example a pending human rights application or being unable to travel due to a medical condition. It is therefore discriminatory not to allow such migrants to be exempt from NHS charging when refused asylum seekers who are being supported by the Home Office are. The NHS is therefore not achieving its aim of *'a system that does not increase inequalities.'*[17] This argument is set out in more detail in the NRPF Network's report.[18]

Finally, the Immigration Bill 2015-16 contains measures to further restrict access to services and employment for migrants with no immigration permission, and to withdraw asylum support for refused asylum seeking families. The provision of local authority support to such families will be administered under a new statutory framework set out in the Immigration Bill. Local authorities are expecting to see an increase in referrals for support but it is unclear at this time what the impact will be on the numbers that are expected to be eligible to receive support. Local authorities therefore require the government to undertake measures to mitigate the impact of this potential cost-shunt; providing an exemption for NHS charging would contribute to this.

NRPF Network 7 March 2016
Islington Town Hall, Upper Street, N1 2UD
Tel: 0207 527 7121
Email: nrpf@islington.gov.uk

NRPF network
No Recourse to Public Funds Network

[16] Data from NRPF Connect across 2015.
[17] Department of Health, *Consultation,* p.11.
[18] NRPF Network, *Report on the impact of the NHS (Charges to Overseas Visitors) Regulations 2011 on local authority supported service users*, November 2014, pp.5, 19-20.