

Refugee Council summary draft response to the Department of Health consultation *Review of access to the NHS by foreign nationals*

March 2010

On 26 February 2010 the Minister of State for the Department of Health (Mike O'Brien) launched a consultation on proposals to reinstate free secondary healthcare for people who have been refused asylum but who cannot leave the UK and are in receipt of asylum support from the UK Border Agency.

The Department of Health *Review of access to the NHS by foreign nationals* is open for consultation until 30 June 2010.

The Refugee Council strongly supports the proposal but believes that it would be fairer and more efficient to restore free health care to **all** refused asylum seekers, regardless of whether they are in receipt of asylum support.

We are keen to encourage organisations, medical professionals, parliamentarians and individuals to respond to the consultation, including asylum seekers, refused asylum seekers and Refugee Community Organisations who have direct experience of the current system and who can help to make the case for positive change.

This summary highlights the key issues in the consultation, sets out the consultation questions and summarises the Refugee Council's key queries and concerns.

Please note that this document is not our formal and final response to the consultation.

Background

Charges for overseas visitors using NHS services were first introduced in 1982 and revised in 1989. In 2004, the *NHS (Charges to Overseas Visitors) (Amendment) Regulation* introduced NHS charges for refused asylum seekers for the first time.

Following intensive lobbying and a series of legal challenges, on 26 February 2010 the Minister of State for the Department of Health launched a consultation into the Department of Health *Review of access to the NHS by foreign nationals*. Amongst other measures, the review proposes re-instating the exemption to NHS charges for secondary healthcare for refused asylum seekers, as long as they are receiving support under Section 4 or 95¹.

This review is open for consultation until 30 June 2010.

¹ Destitute refused asylum-seekers can receive UKBA financial support and accommodation under Section 4 if they are cooperating with attempts to return them to their country of origin but are currently unable to return due to legal or practical obstacles, or in cases where accommodation is necessary to prevent a breach of their rights. Destitute refused asylum-seekers are entitled to accommodation and / or financial support under Section 95 if they are accompanied by dependent children under the age of 18 (as long as the child was born before the asylum claim was refused).

Refugee Council concerns about NHS charges

The Refugee Council has been campaigning against NHS charges for refused asylum seekers since they were first introduced. We are pleased that the current proposal would reinstate free secondary care to some of the most vulnerable in our society. However, the Refugee Council believes that **all** asylum seekers and refused asylum seekers should receive free healthcare on the basis of need until they receive refugee or other protected status, or return home. Charging refused asylum seekers for secondary NHS healthcare is unethical, uneconomical and impractical. The UK parliament Joint Committee on Human Rights has stated that "It is inconceivable that the majority of refused asylum seekers would be able to pay to receive such treatment themselves and therefore ... he or she will be refused treatment. This not only risks exacerbating an asylum seeker's health problems to a point where treatment becomes urgent and critical, but also risks breaching his or her rights under the ECHR [European Convention on Human Rights] and the ICESCR [International Covenant on Economic, Social and Cultural Rights]."

Determining access to healthcare on the basis of whether or not the patient is in receipt of UKBA support will create an unfair and unworkable system. Due to the complexity and inefficiency of the asylum support system, refused asylum seekers come on and off support regularly and experience substantial delays in receiving their entitlements.

The Refugee Council's experience is that the vast majority of refused asylum seekers are destitute and cannot afford to pay for medical treatment. As a result, many refused asylum seekers are denied access to essential medical care. This is regardless of the nature of their health problem (including pregnancy and fatal illnesses) and age (babies, children, adults and the elderly are all charged). The only exceptions are treatment received in an Accident and Emergency department which remains free for everyone, as do compulsory psychiatric treatment, family planning services and treatment for some – but not all – infectious diseases. Although refused asylum seekers are entitled to register with a GP, in many cases they are refused access. The inability to pay or fear of enormous debts prevents many refused asylum seekers from getting medical treatment until their condition becomes critical and medical care is provided by the NHS on an emergency basis. Costs for such treatment – usually much more expensive than treatment would have been at an earlier stage – are still formally levied against the patient, despite their inability to pay. This has an intimidating effect and rarely succeeds in recovering costs for the NHS.

Overview of the proposals in the consultation document

The review proposes to re-introduce the exemption from NHS charges for secondary healthcare for refused asylum seekers who are receiving support under Section 4 or 95. It specifically does not include other refused asylum seekers in this measure.

The review also proposes to increase data collection and sharing between the Department of Health, NHS and UKBA in relation to overseas nationals with outstanding NHS treatment debts. It will also ensure that unaccompanied children are exempt from NHS treatment charges at all stages.

The Refugee Council is concerned that the current proposals do not exempt all refused asylum seekers from NHS charges for secondary healthcare. As a result many destitute refused asylum seekers will continue to be denied access to healthcare, leading to great personal suffering. In addition, ongoing uncertainty and confusion amongst NHS staff regarding eligibility may lead asylum seekers and refused asylum seekers to continue being denied treatment to which they are entitled.

In response to the particular proposals in this consultation paper, we urge the government to:

- Exempt **all** refused asylum seekers from NHS charges as this would be fairer and more workable than restricting free access to those in receipt of asylum support.
- Issue clear guidance to all NHS institutions and staff confirming that all asylum seekers, refused asylum seekers and refugees are entitled to free NHS treatment and services.

Positive elements of the proposals

We welcome the Department of Health proposals to:

- Exempt from NHS hospital charges refused asylum seekers who are receiving support under Section 4 or 95.
- Ensure unaccompanied children are exempt from NHS treatment charges.

Concerns about the proposals

We have serious concerns about the following proposals in the consultation document:

- The failure to exempt all refused asylum seekers from NHS charges.
- Requirements to provide personal information prior to receiving treatment may lead to delays while information is verified. Some refused asylum seekers may be unable to provide the required information (e.g. a fixed address, passport number, etc).

Key consultation questions:

Q4: Does Chapter 3 of the new Guidance document fully and clearly explain the NHS's obligations and requisite processes to ensure the provision of immediately necessary and urgent treatment to chargeable patients who are unable to pay prior to the treatment being provided?

No.

- The guidance requires medical practitioners to take important decisions about eligibility for urgent treatment on the basis of inadequate information in areas where they lack expert knowledge. When deciding whether treatment is "urgent" healthcare professionals must assess when the patient is likely to return home. For many refused asylum seekers this is impossible to know and may well be a question of months or years, not weeks. It is not efficient or reasonable to expect health professionals to make realistic assessments of when a patient might leave the country, before deciding whether to proceed with treatment. We are concerned that many refused asylum seekers may continue to be denied treatment until their condition is critical, at which point treatment is more expensive and complex.
- The guidance document consolidates interim guidance on this matter issued by the Department of Health in April 2009. Research published by the *Still Human, Still Here* coalition found that following the issuance of the earlier guidance, confusion among NHS staff about entitlement to urgent and/or immediately necessary treatment remained widespread.² The Refugee Council is concerned that making some refused asylum seekers but not others eligible for treatment will exacerbate this confusion.
- The *Model Request for Advice from Doctors/Dentists* form in Appendix 2 classifies "immediately necessary" treatment as treatment which is required in order "to save the patient's life". This definition of "immediately necessary" is not in line with that used elsewhere in the guidance document and appears to exclude, for example, routine maternity care (which the guidance notes have specified should be treated as "immediately necessary").

Q5: Do you agree with the proposal to exempt Section 4 and Section 95 failed asylum seekers from charges for NHS hospital treatment?

Yes, but for ethical and practical reasons this exemption should include all refused asylum seekers.

- The Refugee Council believes that all asylum seekers and refused asylum seekers have a right to free healthcare on the basis of need until they receive refugee or other protection status, or return home. The Refugee Council therefore welcomes the proposal to exempt refused asylum seekers receiving support under Sections 4 and 95 from NHS hospital charges. However, the Refugee Council calls for this exemption to apply to all refused asylum seekers, regardless of whether they are receiving UKBA support, for the reasons outlined below.

² Still Human Still Here, *At the end of the line: Restoring the integrity of the UK's asylum system*, 2010, p.57 – 58.

- Due to the complexity and inefficiency of the UKBA asylum support system, in practice there is no clear and permanent distinction between refused asylum seekers who are receiving UKBA support and those who are not. Individuals may fluctuate from one category to the other. There is no indication of how healthcare providers can be expected to assess a patient's eligibility in such circumstances - a patient receiving ongoing treatment may be eligible one week and not the next.
- In the Refugee Council's experience, there are significant delays in processing applications for UKBA support and in providing support to those who are entitled. It is not uncommon for these delays to exceed several months. It is also common for those receiving support under Section 4 to be periodically cut off from support and have to reapply, leading to further delays. It will be difficult if not impossible for refused asylum seekers waiting for UKBA support to demonstrate to medical staff that they are eligible for treatment.
- In the experience of our front line services, many refused asylum seekers are wrongly denied UKBA support, due to the demanding level of evidence applicants are required to produce to prove they are destitute or unable to travel. The unfairness of these decisions is evidenced by the large number of applicants who are denied UKBA support but subsequently have their claims approved on appeal at the Support Tribunal. Completing the appeals process creates further delays and leaves applicants ineligible for medical treatment in the interim. Some refused asylum seekers are unaware that they are eligible for UKBA support and therefore do not apply for it; others, precisely because they are destitute, are unable to make the phone calls or visits necessary to gather the evidence needed to support their claim. Delays can be so severe that an applicant's medical condition is likely to have changed significantly while they await a decision. Denying medical treatment as a consequence of slow and unfair administrative procedures is unethical.
- Refused asylum seekers who are not receiving Section 4 or Section 95 support include families with babies and young children, who are also denied free healthcare under the current and proposed regulations. Inadequate healthcare at this age may have life-long consequences.
- Dropping charges for some refused asylum seekers but not others will increase existing confusion amongst NHS staff regarding entitlement to medical care. As a result, many refused asylum seekers will continue to be denied treatment for which they are eligible.

Q6: Do you agree with the proposal that any unaccompanied non-resident children should be exempted from NHS charges?

Yes.

- The Refugee Council believes that all child asylum seekers and refused asylum seekers should be exempted from NHS charges and therefore welcomes this proposal.
- However, the Refugee Council remains concerned that in the absence of universal access to free health care for all asylum seekers and refused asylum seekers, children will continue to face obstacles in accessing medical treatment. There is no guidance on the entitlement of child asylum seekers who turn 18 during the course of medical treatment, nor on the entitlement of young people whose age is disputed.

Q8: In respect of the proposals referred to in Questions 5 – 7 are you able to provide any additional data that may inform the calculations of costs and benefits?

- In the Refugee Council's experience, refused asylum seekers who are not receiving Section 4 or Section 95 support from the UKBA are, in the overwhelming majority, destitute. Pursuing payment from individuals who are known to be destitute is highly unlikely to result in costs ever being recovered. On the contrary, chasing payment will simply incur further expense for the NHS through administrative costs and charges from debt-recovery agencies.
- The NHS review recommends that "immediately necessary" or "urgent" treatment should continue to be provided to all individuals as required. Treatment which is immediately necessary must be provided regardless of whether an individual is liable or able to pay treatment charges. Urgent treatment must not be delayed pending advance payment. The result of this is that refused asylum seekers receive, de facto, free urgent / emergency treatment. This treatment is generally much more expensive than non-emergency treatment which could have been provided at an earlier stage of the

patient's health problem. The NHS could expect to make significant financial savings by providing free non-urgent health care to all refused asylum seekers, thus reducing the number of refused asylum seekers who later require expensive emergency treatment.

- There is no evidence that refused asylum seekers are “health tourists” seeking to take advantage of free medical treatment in the UK, so restricting entitlement to healthcare does not affect the number of asylum applications made each year. A study published in January 2010 found that less than a third of asylum seekers and refugees interviewed had specifically chosen the UK as their destination for claiming asylum, and in many cases asylum seekers did not know they were going to the UK until they arrived as their travel was arranged by someone else.³ Around 75 per cent of those interviewed had no prior knowledge of the UK asylum or welfare system, including the health system. These findings are in line with the comment of the Royal College of General Practitioners, which has stated that there is “no evidence that asylum seekers enter the country because they wish to benefit from free healthcare”.⁴
- There is no evidence that restricting access to healthcare encourages refused asylum seekers to leave the UK. A comprehensive survey conducted in 2009 found that 31 per cent of refused asylum seekers had remained in the UK, destitute, for over two years.⁵ Seventy-eight per cent of refused asylum seekers who had been destitute in the UK for over six months came from Afghanistan, China, Congo-Brazzaville, Democratic Republic of Congo, Eritrea, Iran, Iraq, Somalia, Sudan and Zimbabwe. Lack of access to healthcare is unlikely to motivate these individuals to return home to countries suffering active conflict or widespread human rights violations, except possibly if such treatment was urgent and lifesaving (in which case they would be eligible for emergency treatment in the UK anyway).
- Lack of access to healthcare may actually prevent refused asylum seekers from leaving the UK as they are too unwell to focus on decisions, make arrangements for travel, attend appointments, etc. Furthermore, lack of medical treatment may cause the individual's health to deteriorate to such an extent that they are no longer able to travel (as defined for UKBA Section 4 support).
- Lack of access to free treatment for HIV/AIDS and misinformation about eligibility for treatment for other infectious diseases results in extreme, potentially fatal, suffering for affected individuals and creates a public health risk to all.
- Reinstating free secondary healthcare to refused asylum seekers would not make the UK a “soft touch” in Europe. At present Belgium, France, Italy, the Netherlands, Portugal and Spain (as well as Wales and Scotland) are among the EU countries that provide full, free healthcare access to refused asylum seekers.⁶
- It is unfair that refused asylum seekers who were dispersed to live in England should be at a disadvantage compared to those dispersed to Wales and Scotland, where they continue to be entitled to free healthcare. Healthcare access should be determined by the patient's need, not by randomly allocated geographical location.

Q9: Do you agree with the proposal to require an overseas visitor receiving chargeable NHS treatment to provide personal information to aid subsequent recovery of charges?

- The Refugee Council recognises that the NHS should seek to recover costs from chargeable overseas patients where appropriate in their personal circumstances. However, the Refugee Council recommends that this proposal be clarified to exempt refused asylum seekers (who are unlikely to be able to pay for treatment costs in any case) from providing detailed personal information.
- The Refugee Council is concerned that without such an exemption this requirement could prevent or delay refused asylum seekers from accessing medical treatment if they are unable to provide the necessary information or documentation (for example evidence of a fixed address, passport number, etc). Refused asylum seekers in need of medical care should be treated as patients first and foremost and treatment should not be delayed pending confirmation of personal details.

³ Swansea University / Refugee Council, *Chance or Choice: Understanding why asylum seekers come to the UK*, January 2010.

⁴ The Royal College of General Practitioners, *Position Statement: Failed asylum seekers/vulnerable migrants and access to primary care*, 13 February 2009.

⁵ Asylum Support Partnership, *The Second Destitution Tally: An indication of the extent of destitution among asylum seekers, refused asylum seekers, and refugees*, May 2009, p.17.

⁶ HUMA Network, *Access to healthcare for undocumented migrants and asylum seekers in 10 EU countries: Law and practice*, 2009.

- This would affect all refused asylum seekers, including those who are receiving UKBA support and/or are in the process of returning to their home country. It would therefore be contrary to the spirit of the proposal to exempt the latter category from NHS charges.

Links to key documents

Review of access to the NHS by foreign nationals (consultation document):

http://www.dh.gov.uk/dr_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalassets/dh_113243.pdf

Impact assessment of exemptions for failed asylum seekers (part of the NHS review process):

http://www.dh.gov.uk/dr_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalassets/dh_113270.pdf

Refusing entry or stay to NHS debtors (Home Office consultation document):

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/nhs-debtors/consultation-document.pdf?view=Binary>

The Asylum Support Partnership "Second Destitution Tally 2009":

<http://www.refugeecouncil.org.uk/policy/responses/2009/destitution.htm>

The Still Human Still Here campaign website:

<http://stillhumanstillhere.wordpress.com/>

Contact

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