A Toolkit for the NHS Charging Regulations

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Legal framework

Health care is a devolved area of policy in the UK. There is a different legal framework for the National Health Service (NHS) in each of the devolved administrations of England, Scotland, Wales and Northern Ireland, with different regulations dealing with charges for health services to non-residents. This toolkit deals with the position in England.

The toolkit focuses on the position in England, in respect of which the scope of charging migrants for access to health care services was extended significantly following a series of Department of Health and Home Office consultations from July 2013.

Power to charge for NHS services

The National Health Service Act 2006 provides the legal framework for the NHS in England. Under this Act, the Secretary of State has a general duty to promote a comprehensive health service in England[1], with health services provided free of charge unless other legal provisions allow for making or recovering charges[2]. There is a power under s.175 National Health Service Act 2006 to make regulations for charging people who are not 'ordinarily resident' in the UK for NHS services.

Ordinary residence

The definition of 'ordinary residence' for the purpose of charging for NHS health care was limited by constraints introduced by the Immigration Act 2014 and applied across the whole of the UK. There are now two limbs to consider when deciding if a person is ordinarily resident: first, their nationality or immigration status; second, the factual circumstances surrounding their presence in the UK.

Nationality and immigration status

People from countries outside the European Economic Area (EEA) and who require leave to enter or remain can now only be ordinarily resident in the UK if they have *Indefinite* Leave to Enter or Remain in the UK (permanent stay). Section 39(1) of the Immigration Act 2014 excludes temporary migrants from outside the EEA granted leave for a limited period, for example to study, work or join family in the UK, and those without leave from the definition of ordinary residence for the purpose of charging for health care. It does so by stating that a person is defined as not ordinarily resident for the purpose of s.175 National Health Service Act 2006 if they require leave to enter or remain in the UK in order to be here lawfully and either do not have leave to enter or remain or only have leave to enter or remain for a time-limited period.

Therefore, only those with the following nationalities or immigration status can be ordinarily resident:

- British Citizens or those with the right of abode in the UK;
- Irish citizens, who have a Common Travel Area (CTA) exemption (they do not require leave to enter or remain)
- Non-EEA nationals (who require leave to enter or remain) who have Indefinite Leave to Enter or Remain (permanent stay in the UK);

[1] s.1(1) National Health Service Act 2006
[2] s.1(4) National Health Service Act 2006

- EEA and Swiss nationals and non-EEA family members of an EEA national resident in the UK under European Union (EU) law (who therefore do not require leave to enter or remain under general immigration law).

Place of actual residence

Persons not excluded from the definition of ordinary residence on the grounds of their immigration status still need to show they are in fact 'ordinarily resident' in the UK. This is because the provision in 39(1) Immigration Act 2014 is expressed 'without prejudice to the generality of the reference' to ordinary residence.

Ordinary residence is a concept that has been developed in case law and applied across a number of different areas of policy. The key case is *R v Barnet London Borough Council ex parte Shah* [1983] 2 AC 309; [1982] UKHL 14[3]. A person is ordinarily resident in the UK if they are living here in the UK lawfully and adopted residence here voluntarily and for a degree of settled purpose for the time being, whether this is of short or long duration. A person may be ordinarily resident in more than one country at once. A person may also be ordinarily resident from the first day of their arrival in the UK if they have a genuine intention to settle here for the time being.

A number of factors have to be considered in order to determine ordinary residence. The Department of Health has provided a tool for NHS managers for determining if a person is 'properly settled' in the UK for the purposes of ordinary residence where this is unclear[4]. The reference to being properly settled refers to the case law on ordinary residence and is not the same as settlement (permanent stay) in immigration law. The Department of Health tool begins by considering whether a person has been in the UK for six months or more, whether they intend to remain in the UK for six months or whether their stay in the UK is one of a number of regular and consistent stays before looking at other factors that might also demonstrate ordinary residence. However, in law there is no provision that states that a person must have been in the UK for six months and intend to stay for six months (or to have regular and consistent stays) in order to be ordinarily resident. The tool is simply setting down markers for NHS managers.

The NHS refers to people who are not ordinarily resident in the UK as 'overseas visitors' and this is the term is used in the NHS Charging Regulations[5]. It refers to the full range of situations above in which a person is not ordinarily resident and not just to people visiting the UK from overseas. An undocumented migrant who has lived in the UK for forty years, is still an 'overseas visitor' for the purposes of the NHS Charging Regulations.

EEA and Swiss nationals and their family members

EEA and Swiss nationals may travel freely to and from the UK under EU free movement provisions. They have an initial right to reside for three months in the UK without any restrictions on their stay. They continue to have a right to reside in the UK if they undertake activity as a worker, self-

[3] *R v Barnet London Borough Council ex parte Shah* [1983] 2 AC 309, [1982] UKHL 14, at: http://www.bailii.org/uk/cases/UKHL/1982/14.html

[4] Department of Health, *Determining if a person is properly settled in the UK in order to establish they are ordinarily resident here*, at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/430967/OR_Tool__1_.pdf

[5] The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238, regulation 2

employed person, student or self-sufficient person. Their family members, whether from the EEA or from outside the EEA, as their dependents, have the same or equivalent rights of residence. Many EEA and Swiss nationals and their family members will be ordinarily resident in the UK, for example because they have an intention to settle here for the time being and are already living, working or studying in the UK. They are therefore exempt from NHS charges on this basis.

EEA and Swiss nationals and their family members visiting and staying in the UK on a temporary basis, for example on holiday, who need medical treatment during their visit can access free healthcare by presenting a European Health Insurance Card (EHIC) or Provisional Replacement Certificate for the EHIC. The UK is then able to claim the costs of treatment back from their country origin in the EEA. Students may also rely on an EHIC to access healthcare although many will also be ordinarily resident.

NHS staff may be familiar with EHIC cards but may have less awareness of EU residence rights and the entitlements of many EEA and Swiss nationals, including their non-EEA family members, to free health services on account of being ordinarily resident in the UK. Failure to recognise their status may lead to unlawful discrimination in access to health care under both EU and UK law. Moreover, reliance on mere formalities or documentation is incompatible with EU law general principles of proportionality and fundamental rights.

Immigration health surcharge

People granted leave to enter or remain the UK on a time-limited basis, for example to study, work or join family in the UK no longer fall within the definition of ordinary residence, as seen above.

Section 38 of the Immigration Act 2014 allows the Secretary of State to make an order requiring migrants to pay an immigration health charge to cover their access to the NHS in the UK when applying for entry clearance or for leave to enter or remain.

The order made under this provision is the Immigration (Health Charge) Order 2015, SI 2015/792 (as amended). It sets out the amount of the fixed charge payable, when the charge may be reduced or waived and the categories of person who are exempt from paying the charge. The charge is called the immigration health surcharge or 'IHS' in Home Office documents.

The NHS charging regulations below make provision for excluding those who have paid (or are exempt from paying) the immigration health surcharge from the charging regime for most NHS services.

NHS charging regulations

The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238 (as amended) have been made under s.175 National Health Service Act 2006 to create a framework for charging migrants who are not classed as ordinarily resident for health services in England.

The regulations set out those health services for which charges may be made and those services which, and categories of people who, are exempt from charging. The regulations are discussed in detail below but, in brief, they provide for:

- Charges for secondary health care services, but not for primary health care services which remain free at point of use;
- Exemptions from charging for certain services such as Accident & Emergency services, specific services necessary to protect public health, and treatments for conditions resulting from particular forms of violence;
- Exemptions from charging for certain categories of people, such as particular vulnerable groups living in the UK and people who have paid (or are exempt from) the immigration health surcharge; and
- The provision of immediately necessary or urgent treatment regardless of ability to pay;
- How chargeable status is recorded and payment secured for those who need to pay for secondary healthcare.

The Department of Health has published guidance on implementing the charging regulations: *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations

Consultation documents and responses

The government consultation documents and responses on extending the scope of charging for migrants using NHS services may provide contextual information relevant to legal challenges. These are recorded here for reference.

In July 2013, the Department of Health published its consultation on extending charging for access to NHS services for the NHS, *Sustaining services, ensuring fairness: a consultation on migrant access and their financial contribution to NHS provision in England*. This was a wide-ranging consultation considering charging for both primary and secondary healthcare services. It led to the extension of charges for secondary NHS services but concluded that GP and nursing provision should remain free of charge and left other issues for future consideration. Its response to this consultation and its equality analysis were published in December 2013 and an implementation outline followed in January 2014. These documents are all published at: https://www.gov.uk/government/consultations/migrants-and-overseas-visitors-use-of-the-nhs. This consultation led to the introduction of the new version of the NHS Charging regulations, The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238.

At the same time in July 2013 the Home Office held a consultation on extending charges for NHS services for migrants and on the introduction of an immigration health charge. This led to the introduction of provisions on NHS charges in the Immigration Act 2014. The consultation document and response are available at: https://www.gov.uk/government/consultations/migrant-access-to-health-services-in-the-uk.

In December 2015, the Department of Health consulted on extending charging to EEA nationals and on introducing new charges for primary health care services not provided by GPs such as dental appointments, ophthalmic services (sight tests and glasses) and prescriptions; emergency services such as Accident & Emergency departments and ambulances; and secondary NHS health care services provided outside hospitals or by other organisations in the community. Its response was delayed by Brexit considerations and published in February 2017. The Department of Health chose not to extend charging to EEA nationals at the current time. It also stated that it would not introduce charges for primary health care services or emergency services but that it is actively considering ways that it may do so in the future. The Department of Health confirmed that it would

extend charging to secondary NHS health care services provided outside hospitals and in the community. It also stated that it would introduce measures to require chargeable migrants to pay upfront for treatment that was not immediately necessary or urgent and to require NHS bodies to identify and record chargeable status. These did not form part of the original consultation or impact assessment. The documents are available at: https://www.gov.uk/government/consultations/overseas-visitors-and-migrants-extending-charges-for-nhs-services. These were implemented in the most recent amendments to the charging regulations by The National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017, SI 2017/756.

In January 2017, the Department of Health also held a closed consultation considering amendments to the charging regulations following changes to support provision for failed asylum seekers and for destitute migrant families supported by local authorities that will be introduced by the Immigration Act 2016. No response has yet been published.

Key legal and professional duties

There are other broader legal frameworks relevant to the provision of health care which place duties on NHS bodies and health care and other professionals working within them.

Human rights duties

The Human Rights Act 1998 (HRA) gives effect to the rights and freedoms guaranteed by the European Convention on Human Rights (ECHR) in UK law. Although the European Convention on Human Rights does not guarantee a right to healthcare, provisions relevant to health care include Article 2 the right to life, Article 3 which prohibits torture, inhuman or degrading treatment or punishment, Article 8 which protects the right to private and family life and Article 14 which prohibits discrimination in relation to the exercise of other rights protected under the ECHR.

In circumstances where a person has died after not receiving treatment (or receiving delayed treatment) under the regulations or there has been a risk to life, lawyers will want to consider a potential claim under Article 2 ECHR in addition to a potential claim in clinical negligence.

A claim may be brought for breach of the operational duty under Article 2 ECHR where the authorities knew or ought to have known at the time of the existence of a real and immediate risk to life and failed to take measures which, judged reasonably, might have been expected to avoid the risk to life. However, such claims have classically arisen in the context of state detention (in prison, police custody or psychiatric detention) and other specific circumstances and it has proved difficult to bring such claims in healthcare settings outside circumstances of detention (or circumstances likely to give rise to detention). This is likely to be even more difficult in circumstances where treatment has been delayed or denied, where an individual has not yet become a patient of any kind. But where medical staff have failed to provide emergency medical treatment despite being aware that a person's life would be put at risk if that treatment was not given, a claim under Article 2 for violation of the right to life may arise. In *Mehmet Şentürk and Bekir Şentürk v Turkey*, App No. 13423/09, ECHR 2013, the court found that there was a violation of the substantive limb of Article 2 where the provision of emergency medical treatment to a pregnant woman was made contingent on advance payment, causing her to decline treatment.

Where the lack of treatment or delayed treatment has resulted in harm falling short of death or risk to life, lawyers will want to consider potential claims under Article 3 ECHR if the person has suffered

severe pain or discomfort and/or Article 8 ECHR , which protects the right to physical and moral integrity, although such claims are likely to overlap with potential claims in clinical negligence.

For the purposes of a HRA claim, it is sufficient to show a failure to take reasonably available measures which could have had a real prospect of altering the outcome or mitigating the harm, or that the claimant merely lost a substantial chance of avoiding the outcome. This is a less demanding causation test than would be required for a negligence claim.
Only the "victim" of an unlawful act by a public authority may bring a claim under the HRA. Claims under the HRA must be brought within one year, but the court has a discretion to extend the time limit to such period as it considers equitable in all the circumstances. The court will not necessarily make an award of damages and will only do so if, taking account of all the circumstances of the case, the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made. The court may also award compensation where a clear causal link exists between the violation(s) and the pecuniary damage alleged.

Article 14 ECHR may also be relevant in the context of discrimination caused by the scheme. It is dealt with below under the section on equality duties.

Safeguarding duties

Section 11 of the Children Act 2004 places a duty on local authorities and all NHS bodies, among other public bodies, to make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children.

Equality duties

NHS health care services are covered by duties under the Equality Act 2010. The Equality Act 2010 places a duty on all service providers not to directly or indirectly discriminate against a person in the provision of services[6] on account of their protected characteristics of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, or sexual orientation[7]. Direct discrimination is where the public body treats a person less favourably because of their protected characteristic[8]. Indirect discrimination is where a practice or policy has the effect of disadvantaging a person with a protected characteristic as compared with a person without that characteristic[9]. Public authorities such as the NHS and other organisations exercising public functions have further responsibilities under the Public Sector Equality Duty to have due regard to the need to eliminate discrimination prohibited under the Act and to advance equality of opportunity between persons who share a relevant protected characteristic and those who do not[10]. This not only applies to the general formulation of their policies but also to decisions made applying policies to individual cases[11]. The Equalities and Human Rights Commission has published a useful and accessible guide for service users on rights to equality from healthcare and social care services under the Equality Act 2010[12].

[6] S. 29 Equality Act 2010
[7] S.4 and s.28 Equality Act 2010
[8] S.13(1) Equality Act 2010
[9] S.19 Equality Act 2010
[10] S.149 Equality Act 2010
[11] *Pieretti v. Enfield Borough Council* [2010] EWCA 1104
[12] Equalities and Human Rights Commission, *Your rights to equality from healthcare and social care services under the Equality Act 2010: Guidance for service users*, 01 June 2015 at:

It is obviously not possible to set out all the scenarios in which discrimination might arise. However, in addition to the risk of racial profiling, the charging regime may lead to discrimination against certain groups in circumstances where individuals are charged for services and unable to access the care they need whilst others in analogous circumstances are exempt from charging. This may arise in relation to the categories of people who may be charged for services but also in particular with regard to the list of healthcare services that are exempt from charging.

For example, a direct disability discrimination claim could potentially be brought if it can be shown that a person with a particular medical condition has a disability within the meaning of the Equality Act 2010 (in short, a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities – likely to require medical evidence and not all medical conditions are likely to satisfy this test)[13], and that by requiring payment for treating that condition but not others, they are treated less favourably than others who have a different form of disability, but who was in the same material circumstances[14] because of that disability. For example, if it could be shown that a person suffered from a condition analogous to the exempted infectious diseases and conditions listed in paragraph 1 of Schedule 1 to the Regulations,[15] but which had not been made exempt. In principle a similar argument could potentially be made in relation to other categories of exemptions, if material similarity in the respective positions could be shown, but this is likely to prove much more difficult to establish.

Alternatively, decisions to treat *people* differently may amount to unlawful discrimination if it is not justified pursuant to Article 14 ECHR. For example, refused asylum seekers who are accommodated by the Secretary of State pursuant to s.4(2) Immigration & Asylum Act 1999 do not pay for their treatment whereas those who are accommodated independently (e.g. by friends or family for example) are charged even if they are similarly unable to leave the country (e.g. due to medical reasons). Whilst refused asylum seekers must be statutorily "destitute" in order to qualify for s.4(2) support, that does not mean non-destitute failed asylum seekers can necessarily afford expensive medical treatment and they may suffer disproportionality as a result of the charging regime.

The regulations arguably also discriminate against children who are seeking leave to remain in the UK on the grounds of family or private life (and not asylum or humanitarian protection), particularly if the treatment they need is for a condition that only arose after their arrival in the UK (so there can be no argument that their parent travelled to the UK so as to obtain treatment for condition the child already had). This is because the drafters of the regulations were required to treat the best interests of such children as a primary consideration and therefore the "sins of the parents" (i.e. their lack of immigration status) should not be visited on the children. Also, left untreated the condition may deteriorate and require more expensive or urgent treatment in the long run and therefore denying them treatment when they need it may prove to be a false economy. This type of

https://www.equalityhumanrights.com/en/publication-download/your-rights-equality-healthcare-and-social-care-services

[13] Further provisions concerning disability are set out in Schedule 1 to the Equality Act 2010. Paragraph 5 of Schedule 1 provides that an impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if measures are being taken to treat or correct it, and, but for that, it would be likely to have that effect.

[14] For a direct discrimination claim there must be no material difference between the circumstances relating to each case (section 23 of the Equality Act 2010).

[15] Schedule 1 to the Regulations

discrimination may not work easily under the Equality Act but is an example of discrimination that Article 14 ECHR taken with Article 8 ECHR would prohibit.

The Secretary of State has a further duty under section 1C of the National Health Service Act 2006 to have regard to the need to reduce inequalities relating to the health service. The need to reduce health inequalities informs a number of NHS frameworks for the provision of health care and creating a system that does not increase health inequalities was stated to be one of the four overarching principles when developing measures to extend the scope of charging migrants for health care.[16]

Public Law

The NHS is of course a public authority and as such it is also subject to the requirements of administrative/public law.[17] Public law challenges should ordinarily be brought by way of an application for judicial review, pursuant to Part 54 of the Civil Procedure Rules (CPR), or potentially as a defence to a civil claim by an NHS body for unpaid charges, and will focus on the legality of the relevant decision or failure to act by the NHS. An application for judicial review must be brought promptly and in any event within three months of the exercise of the public function (although in some circumstances the courts will be prepared to extend time).
It is important to note that for the most part the charging regime does not confer any discretion on the NHS to charge. On the contrary, it places a legal requirement on persons providing secondary NHS health care services to make and recover charges from those liable to be charged.

Nevertheless, a number of different grounds of challenge may be available in public law. They can and often do overlap. They include:

1. Mistake of fact – the NHS data sharing protocols with the Home Office, or internal data sharing protocols, may have broken down and caused incorrect information to be provided to the relevant decisions maker. NHS staff are not immigration officers and so may misunderstand or make mistakes based purely on the lack of formal documentation.
2. Error of law – the decisions maker may have misunderstood or misapplied the regulations or the statutory guidance.
3. Improper delegation – in particular where the decision as to what is an "immediately necessary service" is taken other than by the treating clinician (see below).
4. Failure to make inquiries – the decision maker may not have obtained the information necessary to make a lawful decision under the regulations. For example, there may have been insufficient clinical input into a decision about whether treatment is urgent or connected to an exempt illness.[18]

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[16] Department of Health, *Sustaining services, ensuring fairness: a consultation on migrant access and their financial contribution to NHS provision in England*, July 2013 at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210438/Sustaining_services__ensuring_fairness_consultation_document.pdf, p.10

[17] This will commonly include bodies that are providing secondary health services for the NHS as well as NHS bodies themselves as they too must make and recover charges from those liable to be charged.

[18] The NHS body must make enquiries that it is satisfied are reasonable in all the circumstances, including in relation to the person's state of health, to ensure that the case is not one where no charge should be made under the regulations – see The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238, regulation 3(2)

5. Failure to take into account a relevant consideration or ignore an irrelevant consideration – this could apply in many different circumstances but might include asking whether someone can afford to private healthcare or be reasonably expected to seek treatment in another country.
6. Irrationality – a decision may be based on illogical or inconsistent reasoning.
7. Unreasonableness – a decision may be one that no reasonable decision maker could make.

Clinical negligence

As set out in more detail in the sections below, the obligation to make and recover charges under the regulations does not require payment for services to be secured where doing so would prevent or delay the provision of (a) an immediately necessary service or (b) an urgent service[19]. In addition to maternity services (antenatal services, child birth and postnatal services), immediately necessary service is defined as "any other relevant service that the treating clinician determines the recipient needs promptly (i) to save the recipient's life; (ii) to prevent a condition becoming immediately life-threatening; or (iii) to prevent permanent serious damage to the recipient form occurring". "Urgent service" is defined as a service that the treating clinician determines is not an immediately necessary service but which should not wait until the recipient can be reasonably expected to leave the UK.

It is accordingly the treating clinician who determines what is an "immediately necessary service" or "urgent service". The Department of Health guidance on charging emphasises that only clinicians can make an assessment as to whether a patient's need for treatment is immediately necessary, urgent or non-urgent[20]. In order to do this, it is acknowledged that clinicians "may first need to make initial assessments based on the patient's symptoms and other factors, and conduct further investigations to make a diagnosis. These assessments and investigations will be included in any charges"[21].

As with other clinical judgments, decisions and advice given to patients, the actions of clinicians in determining the eligibility of patients for treatment and the level of urgency required potentially give rise to civil claims for clinical negligence and breaches of the Human Rights Act 1998 against healthcare providers and individual clinicians. For example, there are likely to be claims arising out of decisions as to the status of individual patients and whether they are chargeable or not. For example, if a particular patient has not sought treatment which he or she required because he or she was wrongly told she would be charged for the treatment, that may give rise to a claim.

Similarly, a patient may have a claim in negligence when a wrong decision has been made that the treatment which she requires was neither "immediately necessary" nor "urgent", with the consequence that her condition has deteriorated significantly, because she has not undergone the treatment she required.

Patients may also have claims arising from allegedly inadequate advice about how they should balance the need for and benefits of treatment with the likely costs of treatment and how likely it was that those costs would ultimately be enforced. It is striking that the regulations themselves (and the guidance) specify the role of the treating clinician in determining the urgency or immediate

[19] The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238, regulation, regulation 3(1A)
[20] Department of Health, *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations, paras 8.3, 8.11
[21] Ibid, para 8.3

necessity of treatment, but in practice the NHS relies on Overseas Visitor Managers (OVMs) to screen patients. Claims may also arise in circumstances where the decision has not been made by the treating clinician, or where a patient has not been able to see or discuss options as required with a treating clinician, but has only engaged with an OVM.

Lawyers faced with clients whose health has worsened following denial or delay in treatment connected with the charging regime will need to assess if their clients have a potential claim in clinical negligence. As a common law tort claim, any such claim would have to satisfy the basic elements of breach of duty, causation and damage, and expert evidence in support of the claim would be required. In general terms claims for damages for personal injuries (such as a claim for personal injuries arising from clinical negligence) benefit from qualified one-way costs shifting, meaning that orders for costs made against a claimant may be enforced but only to the extent of the award of damages and interest to the claimant. In other words, claimants are likely to benefit from costs protection (subject to certain exceptions). The Pre-Action Protocol for the Resolution of Clinical Disputes applies to all claims against hospitals, GPs, dentists and other healthcare providers which involve an injury that is alleged to be the result of clinical negligence. Consideration may also be given to bringing a complaint to the Parliamentary and Health Service Ombudsman, following a complaint to the service concerned. Before a complaint can be made to the Ombudsman, a complaint must have been made to the service concerned. The Ombudsman is bound by strict time limits and cannot require the service to pay compensation, although it can recommend this. Where it appears that there is a general or systemic problem at a particular hospital, or affecting a particular group pool of patients, lawyers may wish to consider whether a group claim could be brought in negligence or potentially as a human rights claim (see above). For example, where a hospital operates a system under which OVMs make decisions on immediately necessary or urgent treatment, contrary to the requirement for these decisions to be made by treating clinicians. Or where there are repeat problems indicating inadequate training of treating clinicians and OVMs, or some other kind of systemic problem.

Professional duties

Medical personnel working in the NHS are also regulated by their own professional bodies and are personally responsible for adhering to the standards set by their professional body separately from any employment requirements.

Doctors are regulated by the General Medical Council (GMC). The duties of a doctor registered by the GMC include duties to:

- Make the care of your patient your first concern;
- Provide a good standard of practice and care;
- Respect patients' right to confidentiality;
- Never discriminate unfairly against patients or others[22].

Nurses and midwives regulated by the Nursing and Midwifery Council must also comply with duties enabling them to meet the following standard relating to prioritising people:

[22] General Medical Council (GMC), *Good Medical Practice*, 2013 at: https://www.gmc-uk.org/guidance/good_medical_practice/duties_of_a_doctor.asp

You put the interests of people using or needing nursing or midwifery services first. You make their care and safety your main concern and make sure that their dignity is preserved and their needs are recognised, assessed and responded to. You make sure that those receiving care are treated with respect, that their rights are upheld and that any discriminatory attitudes and behaviours towards those receiving care are challenged[23].

Other medical professionals will similarly be regulated and have professional standards with which they must be comply. The regulatory body and relevant standards may usually be found online.

International standards

The approach adopted by the UK Government in relation to charging for secondary NHS health care services does not accord with international human rights standards on the right to health.

The UK is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) which requires States to recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health[24], take steps to achieve the full realisation of this right[25] and guarantee this right without discrimination, including discrimination on the ground of national or social origin[26]. The UN Committee on Economic, Social and Cultural Rights has stated that this places States under a particular obligation to refrain from denying or limiting equal access to health care for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, from abstaining from policies enforcing discriminatory practices, and from abstaining from imposing discriminatory practices relating to women's health status and needs[27].
The UN Committee on Economic, Social and Cultural Rights raised concerns about discrimination in access to health care in its recent concluding observations on the UK when assessing its implementation of the rights protected under the Convention. It made a specific recommendation that the UK take steps to ensure that temporary migrants and undocumented migrants , asylum seekers , refused asylum seekers, refugees and Roma , Gypsies and Travellers have access to all necessary health-care services, reminding the UK Government that health facilities, goods and services should be accessible to everyone without discrimination[28].

Other international human rights instruments contain similar standards on non-discrimination in health provision. The UN Convention on the Rights of the Child requires States to recognise the right of all children to the highest attainable standard of health and to work to ensure no child is deprived of access to health care services[29]. In its General Comment No.15, the Committee on the Rights of the Child states that health services must be accessible to all children, pregnant women and mothers

[23] Nursing and Midwifery Council, *The Code: Professional standards of practice and behaviour for nurses and midwives*, 29 January 2015 at: https://www.nmc.org.uk/standards/code/
[24] International Covenant on Economic, Social and Cultural Rights, Article 12(1)
[25] Article 2(1)
[26] Article 2(2)
[27] UN Committee on Economic, Social and Cultural Rights (2000) General Comment No.4 (2000): The right to the highest attainable standard of health, E/C.12/2000/4, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en, para 34
[28] UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, E/C.12/GBR/CO/6, 14 July 2016 at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GBR/CO/6&Lang=En, paras 55-56
[29] UN Convention on the Rights of the Child, Article 24

within the State and that lack of ability to pay for services, supplies or medicines should not result in denial of access[30].

[30] UN Committee on the Rights of the Child, *General Comment No.15, on the right of the child to have the highest attainable standard of health*, 17 April 2013, CRC/GC/2013/15 at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f15&Lang=en, para

Access to primary health care (outside the charging regime)

Primary health care services are not included in the NHS charging regime for migrants. These include general practice (GP services), community pharmacy (prescriptions), dental and eye health services. The NHS Charging Regulations provide for the recovery of charges for 'relevant services'[31] which are defined as services that are not primary medical services, primary dental services, primary ophthalmic services or other equivalent services under the National Health Services Act 2006[32].

General Practitioner (GP) and nursing services

GP services may be accessed free of charge by all people living in the UK regardless of their immigration status. This is also the case for related nursing services such as school nurses and health visiting[33].

Many people face difficulties registering with a GP because they are incorrectly required by reception staff to provide proof of their address, personal identification or proof of immigration status before being able to register with or see a GP.

The NHS Choices website makes clear that people should not be refused registration for GP or nursing services on this basis:

> *You should not be refused registration or appointments because you don't have a proof of address or personal identification at hand. It is not considered a reasonable ground to refuse registration. This also applies if you are an asylum seeker, refugee, a homeless patient or an overseas visitor, whether lawfully in the UK or not*[34].

The same website page has links to four NHS England patient leaflets which provide advice to groups that have typically faced difficulties registering with GP practices: asylum seekers and refugees[35]; gypsy, traveller and Roma communities[36]; homeless patients[37]; and people from abroad[38]. The leaflets also contain guidance on the entitlement to register without the need for further documents directed at the GP practice, so NHS Choices suggests taking the appropriate patient leaflet to the

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[31] *ibid*, regulation 3(1)
[32] *ibid*, regulation 2
[33] Department of Health, *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations, para 2.17
[34] NHS Choices, *NHS general practitioners (GPs) services*, at: https://www.nhs.uk/NHSEngland/AboutNHSservices/doctors/Pages/NHSGPs.aspx
[35] NHS England, *Asylum seekers and refugees: how to register with a doctor (GP),* at: https://www.nhs.uk/NHSEngland/AboutNHSservices/doctors/Documents/how-to-register-with-a-gp-asylum-seekers-and-refugees.pdf
[36] NHS England, *Ethnic gypsy, Roma and traveller communities: how to register with a doctor (GP),* at: https://www.nhs.uk/NHSEngland/AboutNHSservices/doctors/Documents/how-to-register-with-a-gp-gypsy-traveller-roma-communities.pdf
[37] NHS England, *People who are homeless: how to register with a doctor (GP)*, at: https://www.nhs.uk/NHSEngland/AboutNHSservices/doctors/Documents/how-to-register-with-a-gp-homeless.pdf
[38] NHS England, *Visiting the UK?*, July 2017 at: https://www.nhs.uk/NHSEngland/AboutNHSservices/doctors/Documents/Using-the-NHS-Information-for-visitors-from-abroad.pdf

practice when registering. Perhaps more authoritative, but less accessible, guidance on this point has been issued by NHS England.[39]

GP practices are required to register patients and can only refuse to do so on limited grounds, for example because their list is closed to new patients or because they do not take patients who live outside their catchment area. Practices may not decline to register a person on any discriminatory ground.

The leaflets provide guidance on making a complaint if improperly refused registration. A complaint may be made:

- By email: england.contactus@nhs.net (for the attention of the complaints manager in subject line);
- By post: NHS England, P.O. Box 16738, Redditch, B97 9PT; or
- By phone: 0300 311 2233 (Telephone Interpreter Service available).

The telephone service may also be used for help with problems registering with a GP. People can also contact organisations providing advocacy services such as Doctors of the World or Citizens Advice (see resources section for details).

'Walk-in' centres

Walk-in centres are NHS clinics, usually led by nurses, where people can walk in and access health care without an appointment or being registered. While some of these are attached to accident and emergency services, many are provided under primary care health services. These may be accessed free of charge.

Other primary health care services and prescriptions

Charges apply, under separate provisions, to all people living in England irrespective of their immigration status, for other areas of primary health care, such as dental services, ophthalmic services (sight tests and glasses), and for prescriptions. These charges are fixed at a subsidised rate.

There are exemptions for different groups of people. For example, free prescriptions and NHS dental care are available to pregnant women and women who have had a baby in the last twelve months. Free eyesight tests are available to people with certain conditions such as diabetes. The exemptions are listed in full on the NHS Business Services Authority website page on NHS help with health costs at https://www.nhsbsa.nhs.uk/nhs-help-health-costs. The charges and exemptions are the same regardless of immigration status.

People on low incomes may access help with the cost of these services and with the cost of travel to NHS hospitals and specialist services. People receiving certain benefits such as Income Support or Jobseekers Allowance are automatically entitled to free services.

[39] NHS England (2017) Primary Medical Care Policy and Guidance Manual. https://www.england.nhs.uk/publication/primary-medicalcare-policy-and-guidance-manual-pgm/ (p.145)

Other people, irrespective of immigration status, who have a low income may use form HC1 to provide details of their income and apply for a HC2 certificate. The form and further information on how to apply can be accessed at: https://www.nhs.uk/NHSEngland/Healthcosts/Pages/nhs-low-income-scheme.aspx

The HC2 certificate enables a person to access free prescriptions and primary health care services for which a charge is usually made for a period of six months, after which they need to renew the certificate. Asylum-seekers supported by the Home Office under section 95 of the Immigration and Asylum Act 1999 receive their HC2 certificate automatically every six months through the Home Office.

Access to secondary health care

The current version of the NHS Charging Regulations places a legal requirement on NHS bodies and other persons providing secondary NHS health care services to make and recover charges from those overseas visitors and migrants who are liable to be charged under the regulations[40].

Charging applies to all services which are 'relevant services', that is services which are not primary medical services, primary dental services, primary ophthalmic services or other equivalent services under the National Health Services Act 2006[41]. These may be described as secondary health care services and include treatment in hospitals and other specialist services.

Since the most recent amendment to the NHS Charging Regulations[42], the requirement covers bodies providing secondary NHS health care services for the NHS as well as NHS bodies themselves. This means that a wider range of services funded by the NHS are required to charge for secondary health care provision including community mental health services, district nursing services and charities providing specialist services funded by the NHS. These changes are controversial because they extend charging to many services commissioned to reach marginalised communities and individuals unlikely to seek out NHS care placing a considerable administrative burden on these organisations. They also extend charging to mental health services even though the Department of Health has not engaged with the particular difficulties that arise in relation to charging in mental health settings in its consultation documents.

The NHS charging regulations apply to people who are not ordinarily resident and make provision for:

- Charges for secondary health care services;
- Services or treatments that are exempt from charging;
- Categories of people who are not ordinarily resident but are exempt from charging;
- The provision of immediately necessary or urgent care, which are chargeable but may be provided without payment being made.

Assessing your client's charging status

In order to assess whether your client should be charged for NHS secondary health care services, it may be useful to work through the following steps.

1. Identify your client's nationality and immigration status.

2. Consider if your client is ordinarily resident in the UK and therefore not subject to charging under the regulations.

   If your client is:

   - a British Citizen or a person with a right of abode;
   - an Irish citizen with a Common Travel Area exemption;

[40] The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238, regulation 3(1)
[41] *ibid*, regulation 2
[42] By The National Health Service (Charges to Overseas Visitors) (Amendment) Regulations, SI 2017/756

- a non-EEA national with Indefinite Leave to Enter or Remain (permanent stay in the UK); or
- an EEA or Swiss national or their non-EEA family member resident in the UK under EU law;

they are likely to be ordinarily resident in the UK but this will depend on the factual circumstances of their residence in the UK. See the sections on ordinary residence and EEA and Swiss nationals above for more information.

3. Consider if your client needs a service that is exempt from charging under the charging regulations. Services that are exempt from charges are free to access irrespective of a person's immigration status and include:

   - Accident and emergency services;
   - Services for the treatment and diagnosis of specific conditions relevant to public health and of sexually transmitted infections (STIs);
   - Family planning services;
   - The treatment of conditions caused by particular forms of violence;
   - Palliative care services provided by charities
   - 'Non-relevant' community services such as those provided by GPs, school nurses and health visitors.

   These are described in more detail in the sections below.

4. Consider if your client falls within a category of person exempt from charges. These include the following groups which are described in more detail in the sections below:

   - People who have paid, or are exempt from paying, the immigration health surcharge;
   - Children under 18 years who are looked after by local authorities;
   - Asylum-seekers, refugees and those granted other forms of international protection;
   - Victims and suspected victims of modern slavery;
   - Certain others exempt from charging, including those for whom there are reciprocal health arrangements in place with their country.

   This is likely to involve more detailed inquiry about their immigration situation.

5. If your client is not exempt from charges, they may still access health care irrespective of their ability to pay for treatment if their need for diagnosis or treatment is immediately necessary or urgent. These categories are discussed in more detail in the relevant sections below. For example, all maternity care services are classed as immediately necessary.

The process for determining chargeable status within the NHS

When considering charges, the NHS body must make enquiries that it is satisfied are reasonable in all the circumstances, including in relation to the person's state of health, to ensure that the case is not one where no charge should be made under the regulations[43].

[43] The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238, regulation 3(2)

NHS staff must identify patients subject to charges without discriminating against individuals. Administrative staff must therefore ask all patients the same questions to consider whether they might be chargeable. If only some patients are asked questions to determine their charging status, for example on the basis of their appearance, accent or language, this will amount to unlawful discrimination. Discrimination may be experienced by British Citizens from Black and Minority Ethnic backgrounds as well as by people from outside the UK.

The NHS charging guidance suggests the following questions as examples for administrative staff to ask of all patients each time a new course of treatment is commenced:

- Where have you lived in the last 6 months?
  If answered outside the UK, or the UK and another country:
- Do you have a EHIC[44] or other document to show that you're entitled to free NHS care?"[45]

These questions do not assist in identifying who is liable to be charged for health care so NHS staff may ask different or varying questions in practice giving rise to potential issues of discrimination. Regardless of the patient's answer to the suggested second question, the patient will then be interviewed by an Overseas Visitors Manager ('OVM'), a NHS manager responsible for health care charges, to check their entitlement to free health care[46]. The interview should be conducted sensitively and in private[47] and an interpreter provided if needed[48].

The individual sections on services and categories of people in this toolkit provide examples of evidence that OVMs should accept to demonstrate exemption from charging. They are also required to be flexible in the level and type of evidence that they accept, which can sometimes include the word of the patient or a third party if no evidence is available[49].

The nature of the charging regulations, immigration status issues, and the range of documents that may evidence status are complex and this may lead to mistakes by Overseas Visitors Managers in determining eligibility for free secondary health care services. This may require advocacy on behalf of patients explaining their entitlement or providing evidence. It may also lead to unlawful discrimination in access to health care.

Immediately necessary or urgent treatment must always be provided regardless of immigration status or ability to pay for treatment. This must be a clinical decision and means that if a person is not exempt from charging, a clinician must then determine whether treatment is immediately necessary or urgent and complete a form for the Overseas Visitors Manager certifying this[50]. It could also involve diagnostic tests[51]. If patients do not access this clinical input during the process in which

[44] European Health Insurance Card entitling the NHS to claim the health care costs of EEA nationals in the UK for temporary purposes, such as visiting or studying, from their country of origin. This is not the only means of evidencing entitlement. EEA nationals residing in the UK under EU law are likely to be ordinarily resident and be entitled to free health care on that basis.
[45] Department of Health, *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations, para 11.15
[46] *ibid*
[47] *ibid*, para 11.36
[48] *ibid*, para 11.3
[49] *ibid*, para 11.40
[50] *ibid*, para 8.11
[51] *ibid*, para 8.27

their charging status is determined, they may not access the immediately necessary or urgent treatment which may breach their rights under the Human Rights Act 1998.

Difficulties in determining immigration status

It is obvious that the complexity of the regulations creates an inherent risk of error on the part of decision makers, most of whom may not be legally qualified or familiar with immigration law. This means people may be charged or refused treatment improperly. Advisors will need to scrutinise decisions carefully and where the reasons for a decision are unclear or unknown, take appropriate steps to obtain them.

It is well known that immigration law is complicated and proving their entitlement to free medical help based on immigration status will be challenging for many. Importantly, whilst the Government has produced guidance which sets out what forms of evidence they should consider, NHS bodies are required to be flexible in the level and type of evidence they accept, which can sometimes include the word of the patient or a third party if no evidence is available[52]. However, there remains a real risk that hard-pressed staff may not exercise sufficient flexibility and may be inclined to an overly formalistic approach to documentary evidence in particular, which may cause significant problems for many people.

There may also be potential problems in the NHS data and failures to comply with the requirement of the Data Protection Act 1998 that personal data is up to date and accurate.

A comprehensive discussion about the difficulties associated with proving immigration status, and the administrative problems faced by many people and their legal advisors in the field of immigration, is beyond the scope of this document. Suffice to say that alongside their legal complexity these evidential issues mean the implementation of the regulations risks causing considerable injustice.

Feasibility of avoiding discrimination

The Guidance appears to have been written in the knowledge that the regime could result in NHS bodies discriminating against people as it states staff responsible for patients who may be liable for charges need to be "trained to perform this task, including how to identify patients in a non-discriminatory manner (e.g. to avoid racial discrimination and harassment)" (11.3). The risk is obvious, namely that a person belonging to certain racial groups will be subjected to greater scrutiny by NHS saff because of a perception that they are more likely to be an "overseas visitor" and therefore liable to be charged.

The solution proposed by the Guidance is not particularly sophisticated. It dictates that "the same questions must be asked of every single patient, in every single department" (11.7) "every time a patient begins a new course of treatment at the NHS hospital and is entered onto the relevant body's records for inpatient or outpatient care, either on paper or computer, and by either administration or ward staff." (11.17) In case of any doubt the Guidance confirms that "[t]his does

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[52] The Department of Health has published guidance on implementing the charging regulations: *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations. The statement referred to above about evidence is at para 11.40-41

mean that booking-in staff, ward clerks etc. will need to be prepared to ask for basic supporting evidence such as documents that demonstrate both lawful ability to reside in the UK and the fact of doing so."

It must be considered seriously doubtful that NHS bodies will in truth be able and willing to undertake this level of administrative bureaucracy as frequently as the Guidance demands, leaving them to inevitably fall back on racial profiling as a perceived expediency. This would amount to discrimination on the grounds of race and could also have particularly adverse consequences for people who are sensitive to being questioned about personal matters because, for example, they suffer from a mental disorder.

Furthermore, reasonable adjustments may need to be made to address disadvantage caused to disabled people by NHS charging practices or polices. For example, an appropriate adult or intermediary may need to be present for those with mental health conditions or an auditory or sensory impairment. Again, serious concerns remain about the capability of the NHS to meet the additional burdens that the charging regime gives rise to and avoid it being in a way which causes discrimination to increase.

Recording chargeable status

NHS trusts are also required to record that a person is determined not to be ordinarily resident in the UK, the date that determination was made and whether they are a category of person who is exempt from charging. This is recorded with the patient's NHS number to facilitate the identification of chargeable status within the NHS[53]. This duty is only placed on NHS trusts and NHS Foundation trusts (which run hospitals) so GPs do not have to record chargeable status but they can choose to do so voluntarily. This change was introduced from 21 August 2017 following amendments to the NHS charging regulations. There was no public consultation on this provision prior to its introduction.

An individual's immigration status, and therefore their status for the purpose of NHS charging, may change on a frequent basis. This may lead to their charging status being inaccurately recorded on NHS systems. The NHS may also rely on information from Home Office databases for their records, however these are notoriously of poor quality and may not be up-to-date. This is also likely to lead to the risk of inaccurate records and patients being wrongly refused access to health care to which they are entitled. The evidentiary threshold required to mark someone as being chargeable is unclear, which makes it very important to understand why an individual was recorded as chargeable.

Patients may need to provide information and evidence about their entitlement to correct mistakes. It is a requirement under the Data Protection Act 1998 that personal data is accurate and up-to-date. The Information Commissioner's Office provides information on raising concerns about inaccurate personal data on its website: https://ico.org.uk/

Payment for treatment

Where a person is chargeable for secondary health care services, they are required to pay for the estimated amount of their treatment upfront, unless doing so would prevent or delay the provision of a service which is either immediately necessary or urgent, which may be provided without

[53] The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238, regulation 3A

payment being made[54]. This change was introduced from 23 October 2017 with the most recent amendment to the NHS Charging Regulations[55]. It did not form part of any of the consultations on changes to the charging regime. Payment for treatment is dealt with in more detail in the sections on immediately necessary or urgent treatment and on charges and billing.

[54] *ibid*, regulation 3(1A)

[55] By The National Health Service (Charges to Overseas Visitors) (Amendment) Regulations, SI 2017/756

Secondary health care services exempt from charging

Accident and emergency services

No charges may be made or recovered for use of accident and emergency services[56], whether these are provided at an A&E department, an urgent care centre, walk-in centre or minor injuries unit[57].

The exemption from charging does not include services provided after a person has been accepted as an in-patient at a hospital[58] or at an out-patient appointment[59]. This means that if a person is admitted for ongoing treatment in a hospital after attending an A&E department, or given an out-patient appointment for follow up treatment, this treatment is potentially chargeable although the emergency care provided was not.

Services relevant to public health

Services provided for the diagnosis and treatment of the following conditions are exempt from the charging regime[60]. This includes routine screening and vaccinations as well as other diagnostic tests even if they are found to be negative[61]. The conditions listed include the diagnosis and treatment of HIV, TB and other communicable diseases.

Acute encephalitis
Acute poliomyelitis
Anthrax
Botulism
Brucellosis
Cholera
Diphtheria
Enteric fever (typhoid and paratyphoid fever)
Food poisoning
Haemolytic uraemic syndrome (HUS)
Human immunodeficiency virus (HIV)
Infectious bloody diarrhoea
Invasive group A streptococcal disease and scarlet fever
Invasive meningococcal disease (meningococcal meningitis, meningococcal septicaemia and other forms of invasive disease)
Legionnaires' disease
Leprosy
Leptospirosis
Malaria
Measles
Middle East Respiratory Syndrome (MERS)
Mumps
Pandemic influenza
Plague
Rabies
Rubella
Severe Acute Respiratory Syndrome (SARS)
Smallpox
Tetanus
Tuberculosis
Typhus
Viral haemorrhagic fever
Viral hepatitis
Whooping cough
Yellow fever

[56] The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238, regulation 9(a),
[57] Department of Health, *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations, para 4.3
[58] The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238, regulation, 9(a)(i)
[59] *ibid*, regulation 9(a)(ii)
[60] The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238, regulation 9(d) with services listed in Schedule 1
[61] Department of Health, *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations, para 4.3

Services provided for both the diagnosis and treatment of sexually transmitted infections (STIs) are also exempt from charging under the regulations[62].

Family planning services

Family planning services are exempt from charging[63]. These are services that supply contraceptive products and devices to prevent pregnancy, but do not include abortion services[64].

Terminations of pregnancy are chargeable, whether they are provided by the NHS or by private or voluntary services supplying NHS services, unless the individual is in a category of person exempt from charging.

Treatment of conditions caused by particular forms of violence

Services provided for the treatment of a condition caused by torture, female genital mutilation, domestic violence or sexual violence are exempt from charging provided that the individual has not travelled to the UK specifically for the purpose of seeking that treatment[65]. These include services for the treatment of both physical and mental health conditions.

Torture

Many torture survivors will already be exempt from charges for secondary health care as a result of being a refugee, asylum seeker or other category of person exempted from the charging regime. This further provision for the treatment of conditions caused by torture provides some assistance to torture survivors who may not otherwise be exempt. This might include for example torture survivors who have made a fresh application for asylum which has not been recorded by the Home Office and are supported in the community rather than under any other provision that would lead to an exemption from charging. It may also assist torture survivors living in the UK without a regularised immigration status.

The definition of torture used in the NHS Charging Regulations follows that in Article 1(1) of the UN Convention Against Torture which refers to acts by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person by or at the instigation or acquiescence of public officials or other persons acting in an official capacity.

The Department of Health has acknowledged that the identification of survivors of torture presents difficulties as they may not disclose humiliating and degrading experiences of torture and ill-treatment, or may disclose this sensitive information over a period of time as a relationship of trust develops. Its guidance therefore states that when determining whether treatment for an individual should be exempt from charging, NHS managers should accept:

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[62] *ibid*, regulation 9(e)
[63] *ibid*, regulation 9(c)
[64] Department of Health, *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations, para 4.3
[65] The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238, regulation, regulation 9(f)

- Confirmation from a medical professional, including a referring GP, who could identify signs and symptoms of torture and that the treatment required is attributable to this torture; or
- Confirmation from an appropriate non-governmental organisation or charity, such as the Helen Bamber Foundation or Freedom from Torture, confirming that the patient is a client of theirs and is accessing their services as a survivor of torture.

Torture may lead to severe and wide-ranging physical and psychological consequences which may continue into the long-term. The Department of Health accepts that the provision of treatment should be holistic, include medical and psychological care, measures such as medical, physical and psychological rehabilitative services, and that mental health services may play a key role in the treatment of torture survivors[66].

FGM

Services provided to a girl, woman or transgender man for the treatment of any condition, including a chronic condition or a mental health condition, that is caused by female genital mutilation or cutting (FGM) are covered by this exemption and are free of charge. This includes any maternity services (antenatal, perinatal and postpartum treatment) the need for which is caused by the FGM[67].

FGM is defined for the purpose of the exemption as the excision, infibulation or other mutilation of the whole or any part of the labia majora, labia minora or clitoris, where that mutilation constituted an offence under the Female Genital Mutilation Act 2003 or would have done so if performed before the Act came into force[68]. The exemption applies wherever and whenever the FGM took place[69].

A referral from a GP, medical professional or an FGM clinic indicating that the treatment required is attributable to FGM may be used to access treatment under the exemption[70].

Domestic violence

Services provided for the treatment of conditions directly attributable to domestic violence are exempt from charging. There may be information on a person's health record that they are suffering domestic violence or a GP or another medical professional able to identify signs and symptoms of domestic violence may be able to provide the information when the patient is referred for treatment[71]. Documentation from a domestic violence refuge or specialist support service could also be used as evidence[72]. NHS staff must treat people who may be victims of domestic violence

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[66] Department of Health, *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations, para 7.6

[67] Department of Health, *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations, para 7.10

[68] The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238, regulation, regulation 8(1)

[69] Department of Health, *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations, para 7.11

[70] *ibid*, para 7.14

[71] *ibid*, para 7.21

[72] *ibid*, para 7.23

sensitively and discreetly when establishing whether charges apply, especially if accompanied by others who may be violent towards them[73].

Non-EEA nationals and their dependants who have made an application to the Home Office for leave to remain under the Destitution Domestic Violence Concession policy following the breakdown of their relationship due to domestic violence fall within the category of persons who have paid or are exempt from the immigration health surcharge and are exempt from charges for secondary health care altogether (see further below).

Sexual violence

Services for the treatment of any condition directly attributable to sexual violence are free of charge. This includes maternity services that may be needed as a consequence of sexual violence and mental health services[74].

A referral from a GP, other medical professional or a Sexual Assault Referral Centre can be used as evidence in support of the exemption if the experience of sexual violence is not already recorded in the patient's medical records[75].

Palliative care services

Palliative care services (end of life care) provided for the NHS by registered palliative care charities or social enterprises ('community interest companies') are exempt from the charging regime[76].

[73] *ibid*
[74] *ibid*, para 7.25
[75] *ibid*, para 7.27-7.28
[76] The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238, regulation, regulation 1(g)

Categories of people exempt from charging

People who have paid, or are exempt from paying, the immigration health surcharge

The immigration health surcharge (IHS)

Non-EEA nationals and their dependents who apply for leave to enter or remain in the UK for a time-limited period of more than six months are required to pay an immigration health surcharge when they make their immigration application. The charge operates like a form of medical insurance which allows temporary migrants granted leave to study, work or join family in the UK for more than six months to access NHS services during the period of their leave.

The immigration health surcharge is payable when the immigration application is submitted along with the application fee. A charge is made for each individual and dependent in the application. The charges are currently £200 per year for each person within the application and £150 per for students[77]. For applications made outside the immigration rules, the cost is increased to 2.5 times the annual amount payable[78]. The Government plans to introduce changes later in 2018 that would double these amounts[79].

Some people are exempt from the immigration health charge when making their immigration application[80]. These categories include:

- Children who are looked after by local authorities and apply for leave to remain;
- Individuals and their dependants applying for asylum, humanitarian protection or protection under Article 3 of the European Convention on Human Rights (including applications for further leave to remain);
- Individuals and their dependants applying for leave to remain under the Trafficking Convention or as a domestic worker who has received a positive Conclusive Grounds decision from a competent authority that they are a victim of trafficking or modern slavery;
- Individuals and their dependants applying for leave to remain under the Home Office Destitution Domestic Violence Concession following the breakdown of their relationship as a result of domestic violence;
- Non-EEA nationals applying for entry clearance to the UK under EU legislation, for example as a family member of an EEA national resident in the UK[81].

The Home Office may also waive or reduce the immigration health surcharge for applicants on an individual basis[82].

Exemption from NHS charges for secondary health care

Individuals and their dependants who are granted leave to enter or remain for more than six months and have either paid the immigration health surcharge, are exempt from the surcharge, or have had

[77] The Immigration (Health Charge) Order, SI 2015/792, Schedule 1
[78] *ibid*, article 4(5)
[79] https://www.gov.uk/government/news/health-charge-for-temporary-migrants-will-increase-to-400-a-year
[80] The Immigration (Health Charge) Order, SI 2015/792, article 7
[81] *ibid*, Schedule 2, article 1
[82] *ibid*, article 8

the surcharge requirement waived by the Home Office are exempt from charges for most NHS secondary health care services under the NHS charging regulations[83].

People who made their immigration application before the immigration health surcharge was introduced on 06 April 2015 are also exempt from charges for nearly all NHS secondary health care services[84].

If a person makes an application to extend their leave to enter or remain before their existing leave expires (an 'in-time' application), their leave is automatically extended under section 3C of the Immigration Act 1971 until their application is determined. Their exemption from charges for secondary health care services also continues while leave is extended[85]. If a person does not apply to extend their leave to enter or remain within the currency of their existing leave, and so makes an 'out of time' application while an overstayer, their exemption from NHS secondary health care charges will also lapse.

Assisted conception services excluded

Following an amendment to the NHS Charging Regulations in force from 21 August 2017, assisted conception services are no longer available free of charge to those who have paid or are exempted from the immigration health surcharge[86]. These are medical, surgical or obstetric services provided for the purpose of assisting a person to carry a child, for example in vitro fertilisation (IVF) or sperm donation. This is the only secondary health care service that is chargeable for people covered by the immigration health surcharge. If a couple apply for assisted conception services and one person is chargeable and the other is not, then services required by the person who is chargeable will be charged but remain free for the other person.[87]

People who commenced treatment before 21 August 2017 may continue their course of treatment until it is completed. New courses of treatment will be chargeable but whether a particular treatment is a new course of treatment or a continuation of the previous treatment is a clinical decision[88]. Some people may be exempt from charging under other categories under the regulations as the categories overlap.

Evidencing payment of or exemption from the immigration health surcharge

The NHS guidance on charging states that people who have paid the health surcharge, or who are exempt or waived from payment of the health surcharge, will be registered on the NHS system visible to staff by a green banner using information provided by the Home Office[89]. The notification may change to amber or red where charging status may need to be checked, for example because the expected period of leave as expired[90]. The Home Office is notoriously poor at updating its

[83] The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238, regulation 10
[84] *ibid*, regulation 11
[85] *ibid*, regulation 10(1)(b)
[86] *Ibid,* regulation 10(2A)
[87] Department of Health, *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations, para 5.23
[88] *ibid*, para 5.22
[89] *ibid*, para 5.24
[90] *ibid*, paras 5.26-5.27

database systems and this may cause difficulties for people where it is not clear on the NHS system that they are exempted from NHS charges.

Biometric Residence Permits may provide further evidence that a person is eligible for free NHS secondary health care[91]. Information about NHS charging is not included on the card but may be determined by the nature of leave recorded there. People granted leave to enter or remain who are not visitors will be eligible for free secondary NHS health care. They will have either paid or been exempted from the immigration health surcharge as a part of an application after April 2015 or be exempt from charging having made their application prior to that date.

Some people may not have Biometric Residence Permits, for example the Home Office does not issue these to people applying for leave under the Home Office Destitution Domestic Violence Policy. The NHS guidance states that where a person does not have a record on the NHS system or a Biometric Residence Permit, Overseas Visitors Managers should exercise judgment and consider other evidence[92]. They should also contact the Evidence and Enquiry team at the Home Office if details are not recorded on the NHS system[93].

Children under 18 years who are looked after by local authorities

Children under 18 years of age who are looked after by local authorities are exempt from NHS charges[94].

This is an example of where categories of exemption may overlap. A child under 18 years who is looked after by a local authority and has made an application for leave to enter or remain is exempt from the immigration health surcharge[95] and exempt from NHS secondary health care charges on that basis (see above). However, under this separate exemption, all children under 18 years of age in the care of a local authority are exempt from NHS charges, regardless of whether they have made an immigration application or not.

The exemption does not apply to young people aged 18 years or over who are care leavers, although there is an easement provision that allows those who have begun a course of treatment to continue that treatment if they cease being a looked after child under 18 years. On account of the vulnerability of young people leaving care, local authorities retain duties to them under the Children Act 1989, which include the provision of financial support, accommodation, advice on training, education and employment and assistance with any other welfare needs.

Local authorities will have a duty to meet the health care costs of a young person who is not covered by any other exemption under the NHS charging regulations. It may be necessary to bring a judicial review against the local authority for it to undertake that responsibility and a community care lawyer may advise on this.

[91] *ibid*, para 5.32-5.41
[92] *ibid*, para 5.43
[93] *ibid*, para 5.44
[94] The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238, regulation 15(e)

[95] Immigration (Health Charge) Order 2015/792, schedule 2, paragraph 1(d)

There is no specific exemption from NHS charges for children more generally. The NHS body is, however, under a legal duty to have regard to the need to safeguard and promote the welfare of children when carrying out its functions. See further below.

Asylum-seekers, refugees and those granted other forms of international protection

Recognised refugees and those granted other forms of international protection

People who have been granted asylum, temporary protection or humanitarian protection in the UK under the immigration rules are exempt from NHS charges[96]. Their dependants are similarly exempt from charging[97]. The definition of asylum under the immigration rules includes other forms of international protection, such as protection under Article 3 of the European Convention on Human Rights[98], so people granted protection in the UK on this basis are also exempt from NHS health care charges.

People who are recognised as refugees under the 1951 Refugee Convention are granted leave to enter or remain (asylum) as a refugee. Humanitarian protection is granted where a person is not recognised as a refugee but is at real risk of serious harm in their country of origin. Others who do not fall within these categories but face a real risk of torture or inhuman or degrading treatment or punishment, for example because removal would lead to a serious deterioration in their health, may be granted Discretionary Leave to Remain. Temporary protection is a status that may be granted in circumstances where there is a large influx of displaced persons and a special procedure is needed to manage the number of applications.

People who are granted asylum or other forms of international protection who were charged for NHS health care services, for example during periods where their immigration status was uncertain, may be refunded the charges made[99].

Asylum-seekers

There is a further exemption from NHS charges for those applying for asylum, humanitarian protection or temporary protection under the immigration rules[100] and for their dependants[101]. The immigration rules define an application for asylum as including other applications for international protection. This would include, for example, an application for protection under Article 3 European Convention on Human Rights which prohibits torture, inhuman or degrading treatment or punishment[102]. People applying for protection in the UK on this basis are also exempt from health care charges.

The exemption from charging in these categories continues until the application for asylum, humanitarian protection or temporary protection under the immigration rules is determined. An application is determined when there is a decision on the application and any appeal against refusal of protection has been finally determined.

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[96] *ibid*, regulation 15(a)
[97] *ibid*, regulation 15(aa)
[98] Immigration Rules, HC395 (as amended), rule 327
[99] The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238, regulation 6(1)
[100] *ibid*, regulation 15(b)
[101] *ibid*, regulation 15(b)(a)
[102] Immigration Rules, HC395 (as amended), rule 327

People who have not yet claimed asylum

People who are present in the UK for the purpose of seeking asylum or international protection and are charged for NHS health care services before making their claim and becoming exempt from charging as an asylum-seeker may be refunded the charges they paid[103]. This is because they are treated as exempt from charging as an asylum-seeker for the period in which they sought protection in the UK as well as the period from when they made their formal claim[104].

People at the end of the asylum process

People whose application for asylum, temporary protection or humanitarian protection has been finally determined and rejected may remain exempt from NHS charges in certain circumstances:

- Families with children who are supported by the Home Office under s.95 Immigration and Asylum Act 1999. Families with children at the end of the asylum process may continue receiving this support until they leave the UK[105];

- People supported by the Home Office under section 4(2) Immigration and Asylum Act 1999[106]. Support under this provision is provided to people who are destitute and face a genuine obstacle to leaving the UK. This may be because they have made a fresh asylum application that has not yet been accepted by the Home Office as a fresh application; they may be bringing a judicial review against removal; they may have medical problems preventing them from travelling; or they may have difficulties in obtaining travel documentation that would enable them to return to their country.

- People supported by a local authority under Part 1 (care and support) of the Care Act 2014 because they have a care need[107], for example because they have a physical disability or mental health need.

This may be evidenced by letters or documents from the Home Office or local authority confirming that support is being provided under these provisions.

Some people at the end of the asylum process may be supported by members of their family or community rather than by the Home Office or local authority. If they are destitute and in contact with the immigration authorities their situation may be identical (or indeed financially worse) to those supported by the Home Office or a local authority but not benefit from an exemption from NHS health care charges. Lawyers may consider whether the regulations could be challenged.

Helping people access Home Office and local authority support to which they may be entitled may be an important means of becoming exempt from NHS charges and accessing free secondary health

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[103] The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238, regulation 6(1)
[104] *ibid*, regulation 6(2)
[105] *ibid*, regulation 15(c). All people supported under s.95 Immigration and Asylum Act 1999 are exempt from charging, but as s.95 support is a form of support provided to asylum-seekers who are already exempt from charging, this exemption only becomes relevant to families and children at the end of the asylum process who are no longer asylum seekers but may continue to access s.95 support until they leave the UK.
[106] *ibid*, regulation 15(d)
[107] *ibid*

care services. The Asylum Support Appeals Project is an organisation that provides advice on asylum support. Community care lawyers may also be able to advise on accessing local authority support for people with care needs. People at this stage of the process may also need referrals for immigration advice if they have not been able to access this.

People who began a course of treatment while they were an asylum-seeker may continue to receive that treatment free of charge after their status has changed under an 'easement' provision[108]. People may also qualify for other exemptions, for example because they require treatment attributable to torture, FGM, domestic violence or sexual violence (see section on services exempt from charging).

Fresh asylum claims

A person who has reached the end of the asylum process may make further submissions to the Home Office for consideration as a fresh asylum claim. The Home Office will then consider whether to accept the submissions as a fresh claim. If the submissions are accepted as a fresh asylum claim, the individual will become an asylum seeker again during the consideration of that claim and any appeal and be exempt from charging on this basis.

People whose further submissions are being considered by the Home Office but have not yet been accepted as a fresh asylum claim will not be exempt from charging as an asylum seeker during this period[109]. The position may change when the support provisions of the Immigration and Asylum Act 2016 come into force. They may qualify for other exemptions, for example on account of being supported by the Home Office or local authority at the end of the asylum process (see above) or because they require treatment attributable to torture, FGM, domestic violence or sexual violence (see section on exempt services). If they have already started a course of treatment, then this treatment can be continued without charge. Otherwise, people in this situation will become chargeable for treatment.

Victims and suspected victims of modern slavery

There is an exemption from NHS charges for victims and suspected victims of modern slavery, which includes trafficking in human beings, slavery, servitude or forced labour but the terms of the exemption do not adequately take into account the role of health services in identifying victims of modern slavery or address the needs of this vulnerable group.

While nationals of both non-EEA and EEA countries, including the UK, may be victims of modern slavery, the specific exemption from NHS charging for victims is likely to be most relevant to victims from outside the EEA as victims who are British citizens or EEA nationals are likely to be ordinarily resident in the UK and entitled to free NHS services on that basis.

Health care services, including secondary health care services, play a critical role in identifying victims of trafficking and providing them with clinical care. State authorities have positive duties to identify and investigate trafficking and slavery under Article 4 European Convention on Human

[108] *ibid*, regulation 6A(1)(b)
[109] Department of Health, *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations, para 7.45

Rights which prohibits slavery and forced labour[110]. Research on NHS professionals' contact with victims of human trafficking found that many victims of trafficking came into contact with NHS services, including secondary health care settings, during the time they were trafficked or after their escape and that one in eight NHS professionals reported coming into contact with individuals they suspected were trafficked[111]. This is particularly important as victims of modern slavery may not disclose their abuse or self-identify as victims and health services may provide the only opportunity to come into contact with professionals able to identify the signs of trafficking and slavery.

Guidance for NHS staff on identifying and supporting victims of modern slavery is provided through an interactive learning resource[112] and in a leaflet setting out actions for healthcare staff who suspect that a patient may be a victim of trafficking[113]. This guidance states that all immediately necessary treatment should be provided and that NHS personnel should ensure they address the health needs of the individual by continuing to provide care. The guidance also suggests giving consideration to using maternity services to admit pregnant women for observation.

The operation of the charging regime may mean that victims of modern slavery who do not have an immigration status that enables them to access free health care services may not be identified as victims by clinicians at all. Although treatment must be given, it is chargeable which may have to be explained and which may deter victims from continuing to access care. Charges will be refunded, however, if the individual is later exempted from NHS charges as a victim or suspected victim of modern slavery[114].

The victim may be referred, by the health service or another first responder, to the National Referral Mechanism, the mechanism for formally identifying victims of modern slavery. This is a requirement for child victims but adults must consent to entering the process. The exemption from NHS charges is applied to victims following decisions taken within that process by the relevant competent authority, which is the Home Office in the case of non-EEA nationals. Individuals and their dependents are exempt from NHS charging where the competent authority:

- Considers there are reasonable grounds to believe the individual may be a victim of modern slavery and has not yet made a conclusive decision on their status. The 'reasonable grounds' decision should be made within five days of referral but is often delayed, or
- Subsequently makes a conclusive determination that the individual is a victim of modern slavery[115].

This may be evidenced by a copy of the decision letter from the Home Office. An individual found conclusively to be a victim of trafficking who subsequently applies for leave to remain on the basis of

[110] *Rantsev v Cyprus and Russia* (2010) 51 EHRR 1
[111] C. Ross et al., *Human trafficking and health: a cross-sectional survey of NHS professionals' contact with victims of human trafficking*. BMJ Open, 2015, vol 5 issue 8, at: http://bmjopen.bmj.com/content/5/8/e008682
[112] e-Learning for Healthcare / Department of Health, *Identifying and supporting victims of modern slavery: an interactive learning resource to support all health staff in identifying and supporting victims of modern slavery*, at: http://www.e-lfh.org.uk/programmes/modern-slavery/
[113] Department of Health and Social Care, *Identifying and supporting victims of modern slavery: guidance for health staff*, 27 November 2015 at: https://www.gov.uk/government/publications/identifying-and-supporting-victims-of-human-trafficking-guidance-for-health-staff
[114] The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238, regulation 6(1)
[115] *ibid*, regulation 16(1)

their personal circumstances as a victim of trafficking will be exempt from the immigration health surcharge and therefore exempt from NHS charging on that basis.

Individuals not found to be a victim of trafficking at the conclusive grounds stage may continue to receive free of charge a course of treatment that they have already started but will then be chargeable if they are not exempt from NHS charges on any other ground.

In addition to addressing immediate health concerns and safety needs, it is important to refer victims of trafficking for specialist legal advice in immigration at the earliest possible stage. See advice on referrals in the resources section.

Other groups exempt from charging

Exemptions from NHS charges apply for other specific groups:

- People deprived of their liberty under the Mental Health Act 2005 (e.g. sectioned), detained in an NHS hospital under the Mental Health Act 1983, or subject to treatment ordered by a court[116].
- People detained in a prison, young offender institution or under immigration legislation[117], as well as those released from detention who have begun a course of treatment up until that course of treatment is completed[118].
- Members of the regular and reserve forces, war pensioners and those receiving payments from the armed forces compensation scheme, and certain Government and British Council employees[119].
- In individual circumstances where the Secretary of State determines there are exceptional humanitarian reasons[120], a provision that is expected to be used rarely[121].

Reciprocal arrangements

There are also reciprocal arrangements in place for people from the following countries[122]:

Anguilla	Isle of Man	Montserrat
Australia	Israel	New Zealand
Bosnia	Jersey	Serbia
British Virgin Islands	Kosovo	St Helena
Falkland Islands	Macedonia	Turks and Caicos Islands
Gibraltar	Montenegro	

[116] *ibid*, regulation 18
[117] *ibid*, regulation 19
[118] *ibid*, regulation 3(5)
[119] *ibid*, regulations 20, 21, 22.
[120] *ibid*, regulation 17
[121] Department of Health, *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations, para 7.60
[122] The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238, regulation, regulation 14 and Schedule 2

The level of health coverage provided depends on the reciprocal agreement with the particular country. The NHS charging guidance describes what is covered under each country's agreement in a table at pages 81-82[123].

Easement provision

There is an easement provision that allows people who began a course of treatment while they were exempt from NHS charges to complete that treatment free of charge if their status changes and are no longer exempt from charging. This applies to people in all categories of exemption, except those categories which relate to people who have paid or are exempt from the immigration health surcharge or to reciprocal arrangements with other countries.

[123] Department of Health, *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations

Immediately necessary or urgent treatment including maternity services

Treatment which is immediately necessary or urgent must be provided to any patient even if they are unable to pay for that treatment. This means that although such treatment is technically chargeable, it cannot be withheld or delayed for any payment to be made or for the patient's charging status to be determined. It must be a clinician who makes the decision that treatment is immediately necessary or urgent and not a cost recovery or other NHS manager[124]. Delaying or failing to provide immediately necessary or urgent treatment may breach a person's rights under the Human Rights Act 1998.

Immediately necessary treatment is treatment that a patient needs promptly to:

- to save their life; or
- to prevent a condition from becoming immediately life-threatening; or
- to prevent permanent serious damage from occurring[125].

It also includes all maternity services as these are treated as being immediately necessary. This includes antenatal and postnatal services as well as assistance during the birth[126].

Immediately necessary treatment must always be provided irrespective of whether or not the patient has been informed of, or agreed to pay, charges, and it must not be delayed or withheld to establish the patient's chargeable status or seek payment. It must be provided even when the patient has indicated that they cannot afford to pay[127]. Overseas Visitors Managers (NHS managers dealing with charging) must also take particular care to inform pregnant women that they may access maternity care irrespective of their ability to pay.[128]

Urgent treatment is treatment that is not immediately necessary but cannot wait until the person can reasonably be expected to leave the UK in the view of the clinician, who may base their view on a range of factors including:

- the pain or disability a particular condition is causing;
- the risk that delay might mean a more involved or expensive medical intervention being required; or
- the likelihood of a substantial and potentially life-threatening deterioration occurring in the patient's condition if treatment is delayed until they return to their own country[129].

[124] Department of Health, *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations, para 8.11
[125] *ibid*, para 8.4
[126] *ibid*, para 8.6
[127] *ibid*, para 8.5
[128] *ibid*, para 8.6
[129] *ibid*, para 8.7

In this situation, the NHS will seek payment before the treatment but may not delay or withhold treatment if the patient does not or cannot pay. The NHS must not discourage people from having immediately necessary or urgent treatment if they cannot pay for it[130].

The NHS guidance on charging acknowledges that the potential leaving date may be unclear for undocumented migrants, including people who reach the end of the asylum process and are not otherwise exempted from charging. It states that the provision of treatment must be assessed on a case by case basis as there may be obstacles to people leaving the UK[131]. Such obstacles may mean that migrants may remain in the UK for some time. In other cases, it may be difficult to estimate the length of time migrants will be in the UK and so clinicians are advised to initially consider a timeframe of six months in order to determine whether treatment is urgent. This must be reassessed if the person's condition changes unexpectedly[132].

It is therefore possible for a clinician to determine that even though treatment is not immediately necessary, it may be urgent on the basis that the patient may be living in the UK for at least six months and that their illness or condition is causing pain or is likely to worsen and give rise to a need for greater intervention at a later stage. In these circumstances, treatment must not be delayed or withheld if a person is unable to pay.

Non-urgent treatment is treatment falling outside these categories and which will not be provided unless payment is made in advance.

Diagnostic tests

Diagnostic tests are treated in the same way as immediately necessary or urgent treatment as it may be necessary for a clinician to take diagnostic tests into account in order to determine whether treatment is immediately necessary or urgent[133]. Diagnostic tests are therefore potentially chargeable but patients must not be prevented from accessing such tests even if they are not able to pay for these.

Diagnostic tests for those conditions relevant to public health listed in the section above are not charged. These include diagnostic tests for TB, HIV and sexually transmitted infections among other conditions. These are not charged even if the test results come back negative[134].

Potential concerns

The Department of Health guidance on charging emphasises that only clinicians can make an assessment as to whether a patient's need for treatment is immediately necessary, urgent or non-urgent[135]. If in practice, decisions are made by Overseas Visitors Managers or other administrative staff as a result of difficulties administering the charging system, there is a risk that decisions are

[130] *ibid*, para 8.25
[131] *ibid*, para 8.18
[132] *ibid*, para 8.20
[133] *ibid*, para 8.27
[134] *ibid*, para 8.27
[135] Department of Health, *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations, paras 8.3, 8.11

made by staff unqualified to make the necessary clinical judgements leading to access to healthcare being incorrectly refused.

As the charging system places a requirement on doctors to consider whether treatment is immediately necessary or urgent following their diagnosis, there is a real risk of clinicians getting this judgment about the potential progress of their patient's illness wrong. This may result in patients not accessing the immediately necessary or urgent care they need at the appropriate time causing pain, suffering and a deterioration in their state of health. It may also place doctors in breach of their professional duties towards patients.

In many instances decision on whether care is urgent, will be made on the basis of a date thought by an Overseas Visitors Manager to be the date on which a person can be expected to leave the country. We have heard reports that it is an extremely common practice for Overseas Visitors Managers to put 'immediately' as the expected date of return for refused asylum seekers. This would of course be often incorrect and would undermine the basis on which the urgency decision was made. The guidance to clinicians to assume a six month return window where there is any uncertainty, appears to be poorly understood.

The risks may be even higher in relation to conditions where their course may be more difficult to predict. For example, it may be difficult and dangerous for a clinician to assess when intervention is immediately necessary or urgent in relation to a mental health condition, where the risk of self-harm or suicide must be managed and may change significantly and unpredictably without access to treatment. The Department of Health has stressed the importance of early identification and intervention in the treatment of mental health disorders and a key principle of its mental health strategy is ensuring that care is provided in the least restrictive form possible.[136] There are also potential ethical and human rights concerns about permitting a person's mental health to deteriorate and the risk of them being unable to subsequently engage with services or make decisions in their best interests as their mental state becomes more disordered. The Department of Health consultation documents and responses did not engage with the ethics or practicalities of extending charging to mental health services despite NGOs highlighting these concerns. It may be arguable that mental health provision is at least urgent in the absence of an exemption for mental health services.

See particularly the sections on human rights, public law duties and on clinical negligence in the legal framework chapter above for further guidance.

There is a further risk that although immediately necessary or urgent care may not be delayed or withheld if a person cannot pay for treatment, they will still receive invoices for their treatment, be placed under pressure to make payments and may not access the immediately necessary or urgent health care they need for fear of building up debts to the NHS, particularly in light of the potential immigration consequences of doing so (see below).

For vulnerable groups who do not fall within the categories of people exempt from charging and may need to access health care, there may be further options for securing access to free health care in addition to relying on the above provisions for immediately necessary and urgent care.

[136] Department of Health, *No health without mental health: a cross-governmental mental health outcomes strategy for people of all ages*, 02 February 2011, p.6

Children and families

Children who are looked after by a local authority are exempt from charging but there is no exemption for children generally. NHS bodies have a duty under section 11 of the Children Act 1989 to promote and safeguard the welfare of children in discharging their functions. It is difficult to reconcile this duty with withholding treatment from children that is not urgent and this might be challenged in individual cases. It may also be possible to challenge more generally the lack of a category within the charging regime providing an exemption for children if there is evidence that they are prevented from accessing immediately necessary or urgent health care through a lack of understanding of their entitlements to health care or for fear of accruing debts.

There are also no specific exemptions within the charging regulations for children and families supported by local authorities under section 17 of the Children Act 1989. Migrant families may be supported under this provision if they are not entitled to mainstream welfare or housing provision or asylum support in order to promote and safeguard the welfare of the child. Local authorities may therefore need to fund health care costs as part of their own duties to promote and safeguard the welfare of children. A community care lawyer may advise on this.

Care leavers

Similarly, although there is an exemption for children looked after by local authorities, there is no specific exemption for young people aged 18 years or over who are care leavers. There is an easement provision that allows those who have begun a course of treatment to continue that treatment if they cease being a looked after child under 18 years. On account of the vulnerability of young people leaving care, local authorities retain duties to them under the Children Act 1989, which include the provision of financial support, accommodation, advice on training, education and employment and assistance with any other welfare needs. Local authorities will have a duty to meet the health care costs of a young person who is not covered by any other exemption under the NHS charging regulations. It may be necessary to bring a judicial review against the local authority for it to undertake that responsibility and a community care lawyer may advise on this. It will be preferable to fund the young person's health care needs in this way to avoid a young person being left with debts resulting from access to immediately necessary or urgent health care.

People at the end of the asylum process

See the above section on people at the end of the asylum process for further suggestions on accessing health care for people who are not in receipt of Home Office or local authority support and who are outside the existing exemptions for asylum seekers who reach this stage of the process.

Undocumented migrants

Some undocumented migrants may be exempt from charging under existing categories, for example if their need for treatment results of specific forms of violence as discussed above.

Undocumented migrants should be referred for immigration advice. The steps they take towards regularising their stay may also lead to changes in their status for the purpose of health care charges.

Charges and billing

Charges

If patients are subject to NHS charges, these are made at an overseas visitor tariff set at a commercial rate with an element of profit. This is currently set at a rate of 150% of the standard cost of treatment[137]. For non-urgent treatment, patients must pay for the costs of treatment upfront.

In the case of immediately necessary or urgent treatment, the NHS is not permitted to delay or withhold treatment to obtain payment or in circumstances where payment cannot be made. In the case of urgent treatment, the NHS may make efforts to seek payment in advance but still cannot delay or withhold treatment if payment cannot be made. In both circumstances, the NHS will provide the patient with an invoice for the costs of treatment but treatment will be provided irrespective of whether the patient can pay.

Immigration consequences of NHS debts

There is a risk that people may not access the immediately necessary or urgent healthcare they need, even if this cannot be withheld, for fear of potential immigration consequences of being billed for treatment for which they cannot pay.

Owing money to the NHS does not affect a person's existing leave to enter or remain in the UK. However, people may need to extend their leave to enter or remain before it expires or to regularise their stay if they do not already have leave. In these circumstances, they will need to make an application for leave to enter or remain. For many applications for leave to enter or remain, having a debt or debts to the NHS with a total value of £500 or more is a general ground for refusal under the immigration rules under which the application is classed as one that should normally be refused[138]. This presumption in favour of refusal may, however, be outweighed where there are human rights grounds in the claim or where there are exceptional compelling circumstances that justify granting the application[139].

People will need to access good quality legal advice and representation for assistance in presenting their applications. See the resources section on referrals for immigration advice. It is a criminal offence to give immigration advice without being regulated to do so.

Immigration lawyers could also consider challenges to this rule on grounds of discrimination as the provision is likely to have a disproportionate impact on immigration applications made by people with a disability or health condition and by women who need maternity services.

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[137] Department of Health, *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations, p.108

[138] Immigration Rules HC395 (as amended), Rule 320(22) Grounds on which entry clearance or leave to enter the United Kingdom should normally be refused, Rule 322(12) Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom are to be refused.

[139] Home Office, *General grounds for refusal: section 4 considering leave to remain*, v.29.0, 11 January 2018 at: https://www.gov.uk/government/publications/general-grounds-for-refusal-considering-leave-to-remain

It is therefore particularly important to ensure that NHS charges have not been incorrectly applied to patients so that bills can be cancelled where appropriate.

Debts can be cancelled entirely if the charges they relate to are found not to have applied in the first place[140]. There may have been an incorrect record of the patient's charging status. NHS managers may make mistakes as to the status of individual patients and may fail to recognise the evidence appropriate for making a correct decision on charging status. The categories of exemption and examples of evidence that should be accepted in support of these are set out in the above sections.

In addition, asylum-seekers and victims or suspected victims of modern slavery who access healthcare before applying for asylum or for formal identification as a victim of modern slavery and are charged for this may have their bill cancelled and be refunded any payment made once they have made their application[141].

In circumstances where an individual has been wrongly charged or should be refunded, the NHS charging guidance advises that the patient contact the NHS Overseas Visitors Manager (the manager who deals with charging) to determine the basis on which they have found to be chargeable and whether any further documentary evidence is required. If there is continued disagreement, the relevant Patient Advice and Liaison Service (PALS) can be contacted[142].

Patients who were liable for healthcare charges but were not informed by the NHS that charges would apply would remain liable for the charges but could make a complaint of maladministration[143]. Such a complaint would be to the Parliamentary and Health Service Ombudsman. Details of how to make a complaint are available on its website at: https://www.ombudsman.org.uk/

NHS bodies have no discretion to waive health care charges[144]. They may, however, decide to write off debt for accounting purposes if it would not be cost effective to pursue it, for example because the patient is destitute, undocumented or without access to funds or other resources to pay for care[145]. It is unclear in the guidance how this may affect how the NHS reports debts to the Home Office in individual cases as the individual remains liable for the debt even where this debt is written off by the NHS. An individual may also agree a payment plan with the NHS to pay off any outstanding debt in instalments[146].

[140] Department of Health, *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations, para 13.77
[141] The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238, regulation 6(1)
[142] Department of Health, *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations, para 11.67
[143] *ibid*, para 13.64
[144] *ibid*, para 13.64
[145] *ibid*, para 13.67
[146] *ibid*, p.115

Referrals and resources

Health care and advocacy

Doctors of the World

https://www.doctorsoftheworld.org.uk/

Doctors of the World UK empowers excluded people to access healthcare at home and abroad. The organisation runs clinic and advocacy programmes in London, that provide medical care, information and practical support to excluded people such as destitute migrants, sex workers and people with no fixed address. It operates an advice line for help accessing in health care in the UK and for booking appointments at its clinic in Bethnal Green which also has a limited drop in service. It also provides detailed online information on access to health care entitlements.

Maternity Action

https://www.maternityaction.org.uk/

Maternity Action provides free, expert advice to women worried about being charged for NHS maternity care or who are having difficulties getting a maternity appointment. Advice is available through a Freephone telephone helpline or by email to women, their friends and family, health professionals, advice workers and community workers. Detailed information on access to NHS maternity care is also available on its website.

The organisation additionally provides advice and training to health professionals advisers, community workers and volunteers supporting vulnerable migrant women during pregnancy and their child's first year, including through a dedicated telephone and email advice service for professionals, covering income, housing and access to NHS maternity care.

Freedom from Torture

https://www.freedomfromtorture.org/page/make_a_referral

Freedom from Torture, (formerly the Medical Foundation for the Care of Victims of Torture) is a human rights organisation is a human rights organisation dedicated to the treatment and rehabilitation of torture survivors who seek refuge in the UK. It does this through direct and second-tier services from its specialist centres in Birmingham, Glasgow, London, Manchester and Newcastle. Each year, it supports more than 1,000 torture survivors, primarily via psychological therapies, forensic documentation of torture, legal and welfare advice, and creative projects. Freedom from Torture accepts referrals from survivors themselves, friends and family, GPs, solicitors, refugee community organisations or any other voluntary or statutory sector body. All services are free to the client.

Helen Bamber Foundation

http://www.helenbamber.org/referrals/

The Helen Bamber Foundation provides expert care and support for refugees and asylum seekers who have experienced torture and human cruelty. Its clients have been subjected to atrocities

including state-sponsored torture, religious/political persecution, human trafficking, forced labour, sexual exploitation, and gender- and honour-based violence. The Helen Bamber Foundation offers survivors access to an individually tailored programme of specialist psychological care and physical rehabilitation activities alongside an advisory GP clinic, expert medico-legal documentation, safeguarding, welfare and housing support, creative arts and employability skills programmes. It has a multidisciplinary team including General Practitioners/GPs, psychiatrists, psychotherapists, psychologists, and a wide range of other clinicians and experts.

Equalities

Equalities and Human Rights Commission

https://www.equalityhumanrights.com/en

The Equalities and Human Rights Commission is an independent statutory body with the responsibility to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote the human rights of everyone in Britain.

The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation – these are known as protected characteristics. It uses a range of powers to do so, by providing advice and guidance to individuals, employers and other organisations, reviewing the effectiveness of the law and taking legal enforcement action to clarify the law and address significant breaches of rights.

Legal representatives can contact the Commission for assistance with a legal issue that might be of interest to it on its Lawyers' Referral helpline or by email, details at: https://www.equalityhumanrights.com/en/gwaith-achos-cyfreithiol/legal-cases/contacting-us-about-legal-issue

Individuals may contact the Equality Advisory Support Service (EASS). The EASS is an independent advice service which provides expert information, assistance and support (but not legal advice or representation) to individuals across Britain about discrimination and human rights and the applicable law. It works collaboratively with advice agencies and other organisation who may also make referrals to it. The EASS can make referrals to other agencies able to assist and, if the EASS view the facts as being of strategic interest to the Equalities and Human Rights Commission, it can also refer the matter to the Commission for further scoping. The EASS can be contacted through its Freephone telephone advice line, by text, email, freepost and through its website which provides webchat services and British Sign Language interpretation. Details at: http://www.equalityadvisoryservice.com/app/home

Public Law Project

http://www.publiclawproject.org.uk/

The Public Law Project (PLP) is an independent, national legal charity which aims to improve access to public law remedies for those whose access is restricted by poverty, discrimination or other similar barriers. It undertakes research, policy initiatives, casework and training across the range of public law remedies.

The Public Law Project is unable to respond directly to members of the public on their case-specific queries but provides advice to solicitors and other advisers and may be able to take on individual cases referred by lawyers, advisors, MPs or voluntary groups within its casework priorities. Its website also provides useful advice sheets and guides on common public law issues.

Immigration

It is a criminal offence to give asylum, immigration or nationality advice without being regulated to do so. It is important that people are able to access good quality advice in these areas.

The Bar Standards Board has produced a guide for people looking for legal help on asylum or immigration issues explaining the different types of people or organisations that can assist, how to choose a provider, what to expect from them and what to do if something goes wrong. It has also produced a guide for professionals with more detailed information on these areas, on the availability of legal aid and where to signpost clients for information, advice and support.

Both guides are available at: https://www.barstandardsboard.org.uk/media-centre/press-releases-and-news/new-guidance-for-the-public-and-for-professionals-on-immigration-and-asylum-related-legal-issues/

Some specialist legal organisations that also provide initial advice by telephone are listed below.

Joint Council for the Welfare of Immigrants (JWCI)

http://www.jcwi.org.uk/

JCWI provides legal advice and assistance on all aspects of immigration and asylum law, including European Union applications. JCWI employs three solicitors and represents clients at all stages of the legal process including applications to the Home Office, entry clearance, appeals and judicial review. It runs an advice surgery in London and a number of free helplines providing confidential legal advice, including a dedicated helpline for irregular or undocumented migrants.

Asylum Aid

https://www.asylumaid.org.uk/get-legal-advice/

Asylum Aid is part of the Migrants Resource Centre and provides free, confidential and independent legal advice and representation on asylum and statelessness. It also has a telephone advice line which offers free one-off legal advice to asylum seekers, refugees, and individuals or organisations who work to support them.

Rights of Women

http://rightsofwomen.org.uk/

Rights of Women is a women's charity working in a number of ways to help women through the law. Its services include an immigration and asylum law advice line open to individual women with insecure immigration status who have experienced violence and the professionals who support them. It is able to provide free and confidential advice on asylum, trafficking, the rights of Europeans and their families in the UK, immigration law including domestic violence, long residence

and family life, and financial support options including for women with no recourse to public funds. Its website also has detailed information on immigration and asylum law, including trafficking and modern slavery. Rights of Women also has telephone advice lines providing advice to women on family law and criminal law.

Coram Children's Legal Centre

http://www.childrenslegalcentre.com/get-legal-advice/

The Coram Children's Legal Centre (CCLC) provides free legal information, advice and representation to children, young people, their families, carers and professionals. Its legal practice unit provides legal casework advice, assistance and legal representation in relation to immigration, asylum and nationality matters, social services and community care, child and family issues and education law issues. In addition, the centre offers a one-to-one advice line with a dedicated solicitor on all issues affecting migrant, asylum-seeking and refugee children and young people, whether they are separated or in families. Its child law advice line provides telephone advice on social services and community care, child and family issues and issues relating to education law. Its website has detailed advice guides and resources, including legal information written for children and young people.

Human trafficking and modern slavery

Victims of human trafficking and modern slavery may not disclose their experiences so it is important for professionals to be aware of the indicators of these forms of abuse so that victims may be identified and assisted in accessing protection.

Useful information on identifying, supporting and making appropriate referrals for victims of human trafficking and modern slavery is available at the following links:

- Home Office and Ministry of Justice Leaflet on Support for Victims of Human Trafficking: https://www.gov.uk/government/publications/support-for-victims-of-human-trafficking
- Anti-Trafficking Legal Unit (ATLEU): http://atleu.org.uk/resources/
- Rights of Women: http://rightsofwomen.org.uk/wp-content/uploads/2014/09/ROW_Trafficking-A4-DIGITAL-V2.pdf
- NSPCC: https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/child-trafficking/helping-children/

Professionals working in statutory organisations and public services have particular duties in relation to identifying and responding to potential victims of human trafficking or modern slavery and should refer to guidance relevant to their area of practice for example:

- Department of Health, Identifying and supporting victims of human trafficking: Guidance for health staff: https://www.gov.uk/government/publications/identifying-and-supporting-victims-of-human-trafficking-guidance-for-health-staff

- Department for Education, Practice guidance on safeguarding children who may have been trafficked: https://www.gov.uk/government/publications/safeguarding-children-who-may-have-been-trafficked-practice-guidance

It is important that appropriate referrals are made to ensure that an individual is able to access safety and protection. If an individual is in immediate danger then the police should be called on 999 as normal.

Child protection procedures should be followed for children for whom there are concerns that they may have been trafficked or victims of trafficking. The local authority children's social care department will usually refer to the child's case to the National Referral Mechanism for formal identification as a potential victim of trafficking once their immediate safeguarding needs have been met.

The NSPCC Child Trafficking Advice Centre can provide advice by telephone or email to professionals or advocates who are concerned that a child may have been or is at risk of being trafficked. The agency also acts as a first responder for child referrals into the National Referral Mechanism (NRM). Its helpline can be contacted 24 hours per day, 7 days a week.

- **NSPCC Child Trafficking Advice Centre**
  Tel: 0808 800 5000
  https://www.nspcc.org.uk/services-and-resources/childrens-services/child-trafficking-advice-centre-ctac/

Adults who may have been trafficked or subject to modern slavery may access support through referral into the National Referral Mechanism (NRM), the legal process for formally identifying victims of trafficking and ensuring access to safe housing and other support services. The referral may only be made by organisations designated as 'first responders' and adults must give their consent to any referral made to the National Referral Mechanism. In some circumstances, however, safe accommodation may be accessed on an emergency basis before the referral to the National Referral Mechanism is made.

The following organisations provide advice and support 24 hours per day and 7 days per week to individuals and organisations concerned about a potential victim and also act as first responders for referral into the National Referral Mechanism:

- **Salvation Army Modern Slavery Referral Helpline**
  Tel: 0300 3038151
  https://www.salvationarmy.org.uk/modern-slavery

- **Modern Slavery Helpline**
  Tel: 08000 121 700
  https://www.modernslaveryhelpline.org/

The referral from the first responder provides the information on which the Competent Authority (the Home Office in the case of victims from abroad) makes a decision on whether there are reasonable grounds that the individual has been trafficked. It is therefore important to also refer potential victims of trafficking from abroad for specialist immigration advice at the earliest stage. Legal aid is available once the reasonable grounds determination has been made but may be

available at an earlier stage through an application for Exceptional Case Funding for legal aid. Refer to the above section on immigration advice.

Asylum support

Asylum Support Appeals Project

http://www.asaproject.org/

The Asylum Support Appeals Project (ASAP) aims to reduce destitution experienced by asylum seekers by helping them to obtain housing and welfare support. It provides free legal advice and representation to asylum seekers at the Asylum Support Tribunal, runs an advice line for advice agencies, and engages in policy work to improve asylum support law. Its website has a number of factsheets to assist in understanding the asylum support system.

Community care and support

Project 17

http://www.project17.org.uk/

Project 17 works to end destitution among migrant children. It works with families experiencing exceptional poverty to improve their access to local authority support. It provides advice, advocacy and support to individuals by appointment from six different locations in London and operates a telephone advice line for advisers.

Just for Kids Law

https://www.justforkidslaw.org/

Just for Kids Law works directly with children and young people to provide holistic support tailored to their individual needs backed up by legal support across a range of areas including immigration, criminal justice, benefits, homelessness, community care, mental health and education.

Coram Children's Legal Centre

See details in the section on immigration advice above.

Debt

Citizens Advice

https://www.citizensadvice.org.uk/

Citizens Advice provides free, confidential and independent advice in a range of areas including debt and money issues. Advice can be accessed online (including in British Sign Language), by telephone and in person at a local Citizens Advice.

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