

## ARM 2021 Brief – The ‘hostile environment’

This briefing provides background information to support debate on ARM motion 15:

**Motion by JUNIOR DOCTORS CONFERENCE: That this meeting recognises that “The Hostile Environment Policy” has a detrimental impact on the health of patients, doctors and minority groups whilst also threatening public health and calls for the BMA:-**

- i) to lobby for undergraduate and postgraduate training on how the hostile environment policy impacts doctors’ clinical practice;**
- ii) to provide clear guidelines for doctors considering supporting patients and patient groups affected by the hostile environment policy;**
- iii) to ensure that full support is offered to its members who are penalised for advocating for those whose health is threatened by the hostile environment policy.**

### What is the ‘hostile environment’?

Over the last decade, the Westminster Government has set out a suite of policies with the explicit aim of creating a ‘hostile environment’ for people currently residing in the UK with an irregular immigration<sup>1</sup> status. This includes making it as challenging as possible for individuals without proof of their right to reside in the UK to access employment, rent property, open bank accounts, or to access benefits and essential services, including free health and social care.

The hostile environment has extended and embedded immigration controls into public services and communities. In many instances, doctors, teachers, landlords, and other public sector workers are expected to implement these restrictive policies and, in some cases, to carry out immigration checks themselves.<sup>i</sup>

Since the Windrush Scandal<sup>2</sup> broke, the Government has attempted to refer to this set of policies as the ‘compliant environment’. However, in practice very little has changed and it is still widely referred to as the ‘hostile environment’.

### What is the role of the ‘hostile environment’ in the NHS?

In 2015, the Westminster Government introduced new rules governing the charging of ‘overseas visitors’ accessing NHS services in England, with the stated intention of ensuring NHS bodies did not lose income by providing care to those not eligible for free treatment. This introduced a charge of up to 150% of the cost of treatment for overseas visitors using NHS services, alongside powers for Trusts to make and recover charges from chargeable patients.

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<sup>1</sup> Irregular immigration status refers to a person who, due to entering the country without immigration permission, breaching a condition of their original entry permission or the expiry of their legal permission for entering and residing in the UK, does not have a legal immigration status.

<sup>2</sup> The 2017 Windrush scandal saw hundreds of British residents who migrated legally from the Caribbean as children, but frequently lacked immigration documents, lose their homes and livelihoods, be denied access to essential healthcare, and even face detention and deportation under various hostile environment policies. While not the intended target population, this was a foreseeable consequence of policies intended to create insurmountable barriers for people living in the UK without documentation.

The National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017 updated these rules, expanding charging to community services, placing a statutory duty on Trusts to charge patients upfront for non-urgent care and requiring NHS services to record patients' eligibility for free treatment.<sup>ii</sup>

Care which is considered 'urgent' or 'immediately necessary' should not be withheld, although patients may be charged or billed retrospectively. However, there is frequent misapplication of these highly complex regulations, and many patients are incorrectly charged or refused treatment if they are unable to pay.

Attempts to embed immigration control policies within the NHS go beyond charging. In January 2017, a memorandum of understanding (MoU) was signed between the Home Office, NHS Digital and the Department of Health and Social Care in England. The MoU formalised a long-standing information-sharing arrangement that enabled the Home Office to access demographic patient data for immigration enforcement purposes.<sup>iii</sup> Until May 2018, this information was systematically shared with the Home Office.

The BMA was instrumental in bringing an end to the routine sharing of confidential patient information with immigration authorities. However, despite amendments which significantly limited these arrangements, NHS Trusts continue to report debt to the Home Office in cases where a patient has an outstanding bill of over £500 pounds for more than three months. Additionally, requests for patient data continue to be made in cases involving 'serious criminality'.

Linked to the introduction of these restrictive immigration policies in secondary care, and the confusion around entitlement to care it has brought into the NHS, we have also seen an increase in administrative barriers to accessing primary care services for un/under documented groups. NHS England produced guidance in 2015 clarifying that patients should not be turned away from registering with GP practices if they lack proof of ID, address or immigration status.

However, in 2017, additional questions were added to GMS1 forms regarding a patient's immigration or residency status which, while voluntary, have reinforced a fear of accessing services for patients and led to some practices checking proof of immigration status – although some practices do cross out the section in question.<sup>iv</sup> This has contributed to frequently poor implementation of national guidance and to registration being routinely denied to un/under-documented patients who cannot provide this documentation.<sup>v</sup>

### What is the impact of the 'hostile environment' on individual and public health?

The hostile environment is comprised of multiple policies with complex impacts on individual and public health. Many of these policies affect areas outside the health system which are nonetheless vital to supporting good health, such as the ability to access decent housing and formal employment, with attendant rights and protections.<sup>vi</sup> This impacts the social determinants of health, creating an environment which deepens inequalities and disproportionately harms the most vulnerable in society.

Hostile environment policies also directly affect health status by creating barriers and deterrents to accessing clinically appropriate healthcare, including through NHS charging regulations and information sharing between health and immigration enforcement.<sup>vii</sup> This poses a risk not only to patients themselves, as they may present only when their condition has become especially severe, but also to public health more widely if treatment for communicable diseases is delayed. Further, where patients are effectively forced to rely solely on general practice for their care due to barriers

to accessing hospital services, they are also left to live with and manage potentially complex or long-term conditions without the treatment they need.

The COVID-19 pandemic has highlighted the vital importance of ensuring that everyone, regardless of their immigration status, feels safe coming forward for timely screening and treatment. Treatment for conditions at an advanced stage is also far more extensive and expensive than preventive care or early intervention, meaning that the hostile environment also negatively impacts doctors and NHS capacity.

### How does the 'hostile environment' affect doctors and other healthcare staff?

Clinicians are not directly involved in administration of the NHS charging system but are required to make judgements about the urgency of care. This information is used by administrative staff (Overseas Visitor Managers or 'OVMs') to determine whether patients who are not entitled to free NHS care must be charged upfront before they can receive treatment.

While the charging regulations are clear that assessing urgency is a clinical matter, our member research<sup>viii</sup> has shown that in many cases clinicians face pressure and interference from OVMs and Trusts in such judgements. There have been a number of high-profile cases in which doctors have stepped in to act as advocates for destitute patients whose necessary care was withheld by Trusts due to inability to pay.<sup>ix</sup>

Our member research also revealed that the workloads of doctors and other clinical staff increased as a direct result of the charging regulations. Navigating the complexity created by the regulations took vital clinician time away from delivering patient care, and related administration impacted on the overall workload of healthcare teams. The current regulations also risk undermining the doctor-patient relationship, with some patients fearful of accessing services due to potential financial implications or the threat of immigration enforcement, while doctors are in many cases unable to treat or refer patients as they would normally due to barriers in different parts of the health system.

This has persisted during the pandemic, with doctors being called on to make complex judgements about whether care was for COVID-19, and therefore exempt from charge, or for an underlying condition which might be chargeable.<sup>x</sup> The BMA is clear that such distractions are wholly inappropriate at a time when the NHS and frontline staff face unprecedented challenges, and all efforts should be focused on patient care.

In addition, the barriers to accessing secondary care services imposed under the hostile environment have driven greater demand to already over-stretched GP practices, where registration and care remains free of charge for all. This has further increased pressure on GPs and frequently means they are relied upon to support patients with conditions that should properly be treated in specialist or wider secondary care services.

While doctors are not directly involved in implementing hostile environment policies embedded in public services other than healthcare, their work is inevitably affected by the implications of these policies. For example, many vulnerable migrants, including those who reside in the UK legally, are unable to access benefits such as housing or disability assistance due to their immigration status (known as 'No Recourse to Public Funds'<sup>xi</sup>). This can pose significant challenges to effective case management, adding to the workloads of doctor and other healthcare staff caring for such patients.

### What work has the BMA done in this area and called for?

#### **Suspension of current NHS charging regulations**

The BMA has long campaigned to ensure that doctors do not have any role in assessing immigration status and entitlement to free NHS care. We are clear that it is the role of the doctors to care for the patient in front of them, and that clinical judgement must take precedence.

The BMA has sector-leading policy calling for an overhaul of the current charging system, including:

- the immediate suspension of the current charging regulations, and associated immigration checks and data sharing, at least for the duration of the pandemic, along with a public information campaign to ensure migrants feel safe when presenting for care;
- the suspension to continue pending a full and independent review into the impact of the regulations on individual and public health;
- a simplification of charging criteria and exemptions to improve clarity for patients and providers and reduce instances of their misapplication;
- the introduction of safeguards to ensure that vulnerable populations are not deterred from seeking care, are able to access the care they are entitled to, and that necessary treatment is not denied due to difficulty or delay in proving eligibility; and
- an investigation into OVM performance and action in cases of interference with clinical decision making.

### **Improving access to primary care for vulnerable migrants**

The BMA recently endorsed the DoTW (Doctors of the World) [Safe Surgeries toolkit](#) which is targeted at improving GP practices' understanding of rules around registration for vulnerable, un/under-documented migrants. We are currently engaged in a campaign encouraging GPs and practices to adopt the recommendations set out in the toolkit. The BMA considers that it is now more important than ever that patients are registered with a GP. Registration will likely mitigate the effects of the pandemic on health inequalities by improving equitable access to care and supporting access to vaccines.

We have previously published guidance on [access to healthcare for overseas visitors](#), which supports doctors in both primary and secondary care to navigate their legal and ethical responsibilities under the charging regulations. We have also produced a toolkit on the health needs of patients who are [refugees and asylum seekers](#), which includes information on their entitlement to free NHS care and how to overcome common barriers.

### **Suspension of routine data sharing for immigration enforcement**

Our previous successful campaign was influential in the suspension of a MoU (Memorandum of Understanding) between NHS Digital, the Home Office and Department of Health and Social Care in England in 2018. The MoU permitted the routine sharing of confidential information in order to trace individuals suspected of committing an immigration offence. We strongly opposed the MoU which fell short of ethical standards for sharing confidential data and presented a risk to public health, should patients fear visiting the doctor. We raised our concerns with the National Data Guardian, [in Parliament](#), directly with the Government and in the media.

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<sup>i</sup> Institute for Public Policy Research (2020) [Access denied: The human impact of the hostile environment](#)

<sup>ii</sup> BMA (2018) [Delayed, deterred, and distressed: The impact of NHS overseas charging regulations on patients and the doctors who care for them](#)

<sup>iii</sup> BMA (2020) [Overseas visitors and third-party requests for information](#)

<sup>iv</sup> Doctors of the World (2019) [Safe Surgeries training: Understanding migrant rights to NHS care](#)

<sup>v</sup> Doctors of the World (2018) [Refused Registration: A study on access to GP registration in England](#)

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- <sup>vi</sup> The Joint Council for the Welfare of Immigrants (2017) [The impact of the Right to Rent checks on migrants and ethnic minorities in England](#)
- <sup>vii</sup> BMA (2018) [Delayed, deterred, and distressed: The impact of NHS overseas charging regulations on patients and the doctors who care for them](#)
- <sup>viii</sup> BMA (2018) [Delayed, deterred, and distressed: The impact of NHS overseas charging regulations on patients and the doctors who care for them](#)
- <sup>ix</sup> Campbell D, *The Guardian* (14 October 2020) [Migrants in England denied NHS care for average of 37 weeks, research finds](#)
- <sup>x</sup> BMA, Doctors of the World, Faculty of Public Health, et al (May 2020) [Joint letter to Home Secretary and Secretary of State for Health and Social Care](#)
- <sup>xi</sup> The Joint Council for the Welfare of Immigrants (2020) [Westminster Hall debate: No Recourse to Public Funds](#)