Project 17

Unit 1.3 Resource for London

356 Holloway Road, N7 6PA

07963 509 044

abi.brunswick@project17.org.uk
www.project17.org.uk

Charity no: 1152621

Response to the Consultation 'Amendment of the National Health Service (Charges to Overseas Visitors) Regulations 2016

About Project 17:

Project 17 is an organisation working to end destitution among migrant children. It works with families experiencing exceptional poverty to improve their access to statutory support.

Overview:

We are fundamentally opposed to all charging for healthcare. In the context of the proposal, we broadly support the suggested exemptions and advocate for all families and care leavers (not just refused asylum seekers) in receipt of Home Office and local authority support to benefit from charging exemptions. Answers to the specific questions posed are below.

Q1: We propose to amend regulation 15 of the Charging Regulations at the earliest opportunity so that the exemption applies where an overseas visitor-

- **Has made an application to be granted temporary protection, asylum of humanitarian protection under the immigration rules, which has been refused, and**
- **Is supported by the Home Office under the 1999 Act.**

We agree that the Charging Regulations should be amended in line with the changes to the 1999 Act that will be brought about by the Immigration Act 2016. However, as explained below, we do not consider that the proposed exemptions go far enough, as they continue to exclude a wide range of particularly vulnerable groups.

Q2: We are considering whether to provide an exemption that applies where an overseas visitor-

- **Is provided with support by the Home Office to enable them to meet a residence condition of immigration bail; or**
- **Is provided with support by a local authority under new powers to support destitute families without immigration status and destitute adult migrant care leavers**

We strongly agree that charging exemptions should be extended to people in receipt of Home Office support under s.4(1)(c) and to refused asylum seekers in receipt of local authority support. As explained in our response to question 3 below, we do not believe these exemptions go far enough, and advocate

for exemptions for all people in s.4(1) support and for all families and care leavers in receipt of local authority support.

Although we note that s.4 will be withdrawn when the Immigration Act provisions relating to asylum support come into force, we are concerned that those in receipt of s.4(1) support now, and those that will be effected by transitional arrangements, require this exemption.

We note that under the new provisions, the differences between refused asylum seekers' accessing support from local authorities and accessing support directly from the Home Office are likely to be:

a) The time at which a barrier to return to the country of origin arose: For example, an asylum seeking family or care leaver that becomes appeals rights exhausted will be entitled to s.95A support if they decide return to their country of origin within the 90 day grace period before their s.95 support is terminated; but if they decide to return to their country of origin after 91 days, they will be excluded from s.95A support and will have to rely on the local authority instead.
b) The type of further representations: if fresh representations in support of an asylum claim are submitted, the refused asylum seeking family/care leaver can access s.95 support directly from the Home Office. If an application for leave on other human rights grounds is submitted, the refused asylum seeking family/care leaver will access support from the local authority under para 10A/B. In both cases the family or care leaver will have a right to remain in the UK in order to hear the outcome of their application.

In both scenarios, the family or care leaver is destitute and is unable to leave the UK. The only distinction is the type of immigration application they have submitted, or when the barrier to leaving the UK arose. Neither of these concerns are material to determining whether a person should be eligible for a charging exemption. Indeed, including refused asylum seekers supported by local authorities in the charging exemptions does not, in practice, extend the exemptions. It merely replicates the status quo by recognising that some refused asylum seekers who are currently support under s.4(2) (and are thus exempt from charging) will in future be supported by local authorities. In practice, these exemptions merely ensure that people who are currently eligible for the exemption will continue to receive it.

Refused asylum seekers in this situation will have demonstrated to the local authority that they are unable to leave the UK. People in this situation cannot be referred to as 'health tourists': they will continue to remain in the UK whether or not they are entitled to free NHS care.

Q3: Do you have any comments you would like us to consider in respect of this proposed position? Do you consider that there are circumstances in which irregular migrants who are not failed asylum seekers, or irregular migrants who are failed asylum seekers but who are not receiving support, should be provided with an exemption?

Section 4(1)(a)&(b)

It is only possible to qualify for support under s.4(1)(a) and (b) if the applicant's circumstances are 'truly exceptional'. Applicants must demonstrate that a failure to leave the UK would breach their human

rights; they must show that it would be unreasonable for the Home Office to expect them to leave the UK; and they must show that they are destitute[1]. As such, people in receipt of support are required to meet criteria that are extremely similarto the criteria required under s.4(2), except that instead of making a claim based on protection needs, their immigration claim is based on other human rights concerns. We do not consider this to be a relevant distinction when considering charging exemptions as the type of immigration application a person has submitted bares no relation to health needs. Moreover, prioritising those who have made asylum applications over those with other human rights applications risks increasing discrimination towards non-asylum seeking migrants by reinforcing a false dichotomy of 'good' and 'bad' migrants.

Local authority support

All families and care leavers in receipt of support from local authorities should be provided with an exemption. In order to access support, the family or care leaver will already have demonstrated that they meet the criteria set by the Home Office. This will include proving that they are destitute, and that there is a barrier preventing their return to their country of origin, or that support is required to safeguard the welfare of a child, or needs to be provided to a care leaver.

Although the regulations governing the implementation of local authority support have not yet been published, we anticipate that current caselaw governing local authority support will continue to apply. This includes the requirement for local authorities to establish that the local authority cannot discharge any duties by advising return to the country of origin.

In the first instance, families and care leavers are required to demonstrate that they are destitute. Charging people who have been assessed as 'destitute' is both counterproductive and costly. Clearly, a family that is unable to meet its basic living needs will be unable to pay for medical treatment. As a result, non-urgent treatment will not be sought and preventative measures will not be taken. Emergency situations will arise because early intervention did not take place. Urgent and necessary care will be provided at greater expense to the NHS, and destitute families will be billed after they have received treatment. Clearly, they will be unable to pay. Chasing bad debts will create further administrative costs for the NHS and will lead to very little cost recovery. Of course, this is in addition to the distress, unnecessary illness, and potential long-term health problems of the individual.

Secondly, the family or care leaver would need to demonstrate that they are unable to leave the UK, or that support is required to safeguard the welfare of a child or is needed to support the care leaver. It is damaging and inaccurate to refer to people that are legally or practically unable to leave the country as 'health tourists'.

Thirdly, it is difficult to see how the Department could comply with its duties under the UN Convention of Rights of the Child if it fails to exempt all families in local authority support from charging. The UNCRC requires that a child's best interests are treated as a primary consideration. Failing to exempt all families will force parents assessed as destitute to choose between medical treatment and food. Families supported under para 10A will, by necessity, involve dependent children. Refusing to exempt destitute families from NHS charging cannot possibly be in the best interests of the child.

[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/513619/Asylum_Support_Section_4_Policy_and

Fourthly, there will be no material difference between refused asylum seeking families and other families that are accessing support under para 10A. The former group will have made an unsuccessful asylum application. The immigration status of the latter will be diverse, and will include pending human rights applications and those with a derivative right to reside under European law. This distinction is completely irrelevant to determining access to healthcare.

Finally, we fundamentally object to all charging for NHS treatment and advocate for a system that does not discriminate based on immigration status. Using terminology such has 'health tourist' and 'overseas visitor' denies the reality that many people, including children, live in the UK for years while trying to regularise their immigration status. We believe that charging anyone who lives in the UK for healthcare creates serious safeguarding and public health risks. Any short-term savings are eclipsed by additional administrative expenditure and increased need for emergency treatment for those unable to access preventative care.