**The “hostile environment” and charges for NHS care**

**Briefing for SE London MPs from Save Lewisham Hospital Campaign**

**Introduction**

Government policy has rendered 600k people, including 120,000 children, ineligible for free NHS care. By so doing they have put the health and lives of these people at risk and have ended universal access to the NHS for people living in the UK.

Lewisham and Greenwich NHS Trust (LGT) has been an early operator in identifying eligibility for free NHS care and invoicing those deemed ineligible. It is one of the highest referrers in England of patients who have been charged for their care to debt collection agencies.

The Save Lewisham Hospital Campaign (SLHC) has questioned LGT about this has discovered information about how the policy is being implemented that could be generalisable to other hospital trusts and could be the basis of investigations of the policy impact in other areas of England. Therefore, we are sharing our findings so they can be helpful to elected representatives and to campaigners more widely.

**Our main concerns:**

**1: Adverse impact on patient health**

* 1. There is a lack of knowledge at LGT as a whole about the impact of this policy on individual patients’ health and on the health of the population that the Trust serves.
  2. There is a lack of knowledge and concern about the impact on safeguarding responsibilities to children and vulnerable adults.
  3. There is a conflict between the human right of people to health care and obeying immigration law.
  4. This conflict between duty of care and implementing the law also impacts on health care staff facing ethical dilemmas when treating patients.
  5. LGT seems overzealous in their actions, even within the application of the law, and we suspect there is a strong financial incentive for this, specifically the ability to claim 50% of the cost of the procedure (which is in fact 75% of the tariff for “overseas visitors” set at 150% of the NHS cost).
  6. LGT has not been using discretion to waive debts from people who are unable to pay.
  7. The messaging to patients is unduly hostile and should be altered to reduce unnecessary alarm.
  8. There are particularly inhumane aspects of the application of these rules that were raised by the midwives: for example, billing women who have had a miscarriage or stillbirth £12,000 because these are billed as “complicated births” and are charged double the fee of a normal birth.
  9. We are concerned over the intimate relationship with and sharing of patient data with the Home Office – effectively making the Trust an auxiliary branch of the Home Office in enforcing the hostile environment regulations
  10. Clinicians are being used to unwittingly support application of the regulations without fully understanding the implications of what are quite difficult judgements about whether treatment is urgent or not.
  11. There has been a lack of training for clinical staff on the application of the rules and their role. Therefore the probability exists that they could be making errors in their decisions which impact on eligibility for care.
  12. Many patients denied free care, unable to confirm their documentation, are subsequently shown to have been eligible all along.

**2: Adverse impact on maternity patients – mothers and babies**

1. We are concerned that pregnant women are put off accessing antenatal and intra-partum care. We know this is happening elsewhere.
2. We have asked LGT to investigate the effect of this on the health of mothers and their babies.
3. Senior LGT maternity clinicians agree with the concerns we expressed.
4. The LGT Maternity service has done an audit of the women who have been charged. Can the anonymised results be shared?
5. The LGT Maternity service confirmed that they do not know how many women have never come back after attending earlier antenatal appointment, having been put off by the threat of charging.
6. This may be difficult to study, but we suggest an examination of differential rates of “DNAs” for the ‘eligible’ and ‘non-eligible’ patients and an attempt to track had happened to those people, eg through contacting their GP.

**3: Conflict with duties re: safeguarding children and vulnerable adults**

1. This policy conflicts with duty of care to the population of Lewisham, including vulnerable children and adults and many migrants,
2. Taking the lack of knowledge at LGT of the potential consequences of the hostile environment in healthcare policy and the way this has instilled fear in people and potentially put them off accessing the care they need, what is the impact on the Trust’s safeguarding duty to children and vulnerable adults?
3. Children may be deprived of care because their parents have debts or are too afraid to access care. This has happened elsewhere and has had adverse consequences for the children concerned.
4. The Royal College of Paediatrics has surveyed staff on the adverse impact of this policy on children.[[1]](#footnote-1) This was an issue the midwives were very concerned about too.
5. There is a dangerous lack of awareness of the way implementing this policy conflicts with duty of care to the population of Lewisham, many of whom are vulnerable and/or migrants and many of whom are probably not able to demonstrate they have indefinite leave to remain but are nevertheless residents of the borough.

**4: Adverse impact on Staff**

1. It is not known what impact this has on the staff who are forced to play their part in implementing these policies, because no surveys have been done.
2. But some individual staff and several Royal Colleges have expressed serious concerns about the conflict between their duty of care to patients and the requirement to implement the charging policy.
3. This moral dilemma presents an unavoidable source of stress and is bad for morale.

**6. Adverse impact on Lewisham borough as a sanctuary borough**

1. This policy is part of the Home Office’s hostile environment.
2. It creates an environment damaging to the wellbeing of migrants and asylum seekers, regardless of whether they are entitled to free healthcare under the law.
3. The policy impacts differentially on a significant section of the population of Lewisham, including vulnerable children and adults, and many migrants.
4. There is a conflict with Lewisham Council’s policy of being a sanctuary borough

**5: What we think LGT and other hospital trusts should do**

* 1. *LGT should conduct a health impact assessment* of the policy on the population served by the trust. In particular, LGT should investigate what the impact is on deterring people from seeking care. A priority should be the impact on pregnant women and their babies
  2. LGT should review its policy in the context of its safeguarding duties to children and vulnerable adults.
  3. LGT should use discretion not to pursue unpayable debts.
  4. LGT should stop referring people to the Home Office (this is not a legal requirement).
  5. LGT should stop sharing patient information with the Home Office
  6. LGT should inform NHS England and Improvement of the impact of this policy on patient care and the wellbeing of NHS staff.
  7. LGT should inform local elected representatives and Lewisham Council of the impact of this policy on patient care and the wellbeing of NHS staff.
  8. LGT should join with the royal colleges in calling for the policy to be suspended pending a full review and full publication of findings.
  9. Meanwhile, LGT should urgently improve the information patients are given about the policy, make it less hostile, highlighting patients’ rights to access healthcare and signposting patients to sources of support and advice.

***This briefing was produced by Save Lewisham Hospital Campaign July 2019.***

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**This page is intentionally blankAppendix A: SLHC Briefing – in full**

**What SLHC discovered about migrant charging in Lewisham & Greenwich**

The Save Lewisham Hospital Campaign (SLHC) was concerned to discover that LGT was one of the highest referrers of patients to debt collecting agencies for unpaid debt. (Guardian, NHS trusts call in the bailiffs to chase ineligible patients’ debts Sat 23 Mar 2019)

The Campaign sought to verify the information. The Freedom of Information request 22 March 2019 was supplied to us on request from journalist [Chaminda Jayanetti](https://www.theguardian.com/profile/chaminda-jayanetti). Subsequent FOIs revealed more information on the extent of charging but we had many questions.

The Trust Chief Executive Officer agreed to meet SLHC in March and was very open to questions. In May SLHC met trust staff including the Deputy Finance Director and Overseas Visitor Manager, the Director of Midwifery and the trust’s Consultant Midwife, both of whom had concerns about the clinical impact of the policy.

**We had a number of questions that the Campaign sought answers to:**

* 1. Why Lewisham was the highest referrer of patients with debts to debt agencies?
  2. How much money did they recoup from this?
  3. What were the Trust’s charging policies and practices?
  4. What was their relationship with the Home Office?
  5. Were they aware of how many people were put off accessing care because of fear of charging or reporting to the Home Office?
  6. Were they aware of the health impact of their policy on those who were charged or on those who were discouraged?
  7. Were they aware of the impact of their messages to patients at various entry points?
  8. How did the Trust’s implementation of the policy tally with their safeguarding duties to children and vulnerable adults?
  9. How did the policy impact on pregnant women (the single biggest group of people being charged)?
  10. Was the Trust aware how complex immigration law was in assessing status?
  11. What training did the Overseas Visitors staff have in immigration law? (We asked this in an FOI) (One thing we could have asked but didn’t is have they done any audit on errors they have made e.g. charging someone who then turned out to be eligible for free care.)
  12. What training did clinicians have? – clinicians are required to fill out on the spot forms, which sanction or deny access to emergency and further treatment.
  13. Had the Trust made any representation to government about the impact of this policy?
  14. Was the Trust aware that Lewisham wants to become a Sanctuary Borough for refugees?

**What we discovered from our meetings**

1. On the process of charging, debt collection firms, and contact with the Home Office, the Trust said it is obliged by law to charge people and pursue them for unpaid debts. *The charges are 150% of the national tariff.*
2. The Trust is paid 50% of the value of every unpaid invoice by the CCG. Unpaid debts do not become “bad debts” on the trust ledgers. *In this way the Trust is incentivised to invoice patients.*
3. LG Trust invoices and seeks payments from thousands of patients. LGT says it refers to debt agencies ‘as a last resort’ (it is still to be clarified how many patients).
4. The Trust denied that the debt collection agencies that they contract use bailiffs.
5. The Trust regularly contacts the Home Office and uses the HO MESH database including the batch which can process up to 5000 names at a time.
6. The Home office regularly contacts the Trust with the names of patients they have queries about in terms of whether they have received treatment and are checked in terms of charging
7. Patients are selected for check based not only on some objective factors like recent NHS numbers but also on subjective observations such as language, name etc.
8. Patients who have not paid after a certain time are reported to the Home Office. *We are not clear whether the Trust is aware that this could adversely affect people applying for leave to remain; and could possibly lead to deportation.*
9. If the patient agrees a repayment plan the Trust may not pass their details to the Home Office.
10. The Trust does not recognise that it has any discretion to waive payments from those who do not have the means to pay, including those who are destitute. *It is unclear what happens to LGT patients who are unable to pay.*
11. There is no training for clinicians on the form they must fill in and its impact.
12. LGT has done no research on the impact on the population they serve
13. LGT has done no research on the impact on their safeguarding duties
14. Current Trust policy, including the published material informing patients of the charging rules, uncritically accepts the language of “overseas visitors” to describe people deemed ineligible but many, if not the majority, are actually living in the UK.
15. Maternity staff are very concerned and are trying to mitigate against adverse patient impact. For example, they removed hostile posters from the maternity unit and made it clearer which women are exempted from having to pay (e.g. victims of trafficking, or of domestic violence).
16. Maternity staff are also auditing the impact of the charging policy on women who have had babies in their unit, but are not able to follow up the many women who fail to access care because they are afraid of charging and Home Office involvement. *The midwives, despite their senior positions and strong concerns about the adverse impact of the charging policy, are limited in what they can do to help women because of the Trust’s legal obligation to charge.*

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4. The Royal College of Paediatrics has published a report on the adverse impact of this policy on children. This was an issue the midwives were very concerned about too.
5. There is a dangerous lack of awareness of the way implementing this policy conflicts with duty of care to the population of Lewisham, many of whom are vulnerable and/or migrants; and many of whom are probably not able to demonstrate they have indefinite leave to remain but are nevertheless residents of the borough.

**4: Adverse impact on Staff**

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  8. LGT should join with the royal colleges in calling for the policy to be suspended pending a full review and full publication of findings.
  9. Meanwhile, LGT should urgently improve the information patients are given about the policy, make it less hostile, highlighting patients’ rights to access healthcare and signposting patients to sources of support and advice.

**Appendix B: SLHC Briefing - Background Information**

**Changes to immigration and NHS charging rules**

**Current charging policy: the National Health Service (Charges to Overseas Visitors) (Amendment) regulations 2015 and 2017** introduced a number of significant changes. They only apply to England.

The 2015 regulations placed a statutory duty requirement on NHS Trusts to identify and charge people not eligible for free NHS care, increased the amount people could be charged to 150% of the national tariff, and introduced the Immigration Health Surcharge.

The 2017 regulations placed a statutory duty on NHS trusts to charge people upfront for treatment if they were found to be ineligible for free NHS care, increased the range of services that were chargeable to include some community and mental health services, and mandated that NHS Trusts record people’s chargeable status on their patient record. (TOP, CMHT, some DN services).

Government has stated its intention to extend charging to all health services including GP and A+E.

**Economic background**

Government’s own estimate of cost of deliberate misuse of NHS by overseas visitors at £300 million, or 0.3% of budget, the majority of which is attributed to British migrants who live overseas and return to use the NHS. This does not include costs of deterring people from accessing care., and subsequently costing the NHS more. It also excludes the costs of implementing the policy (including all the hospital overseas visitors debt staff).

The government’s [impact assessment](http://www.legislation.gov.uk/ukia/2017/121/pdfs/ukia_20170121_en.pdf) from July 2017 predicted upfront charging would save the NHS £20m a year – less than 0.02% of NHS England’s £110bn total health expenditure in 2017/18.

**Human rights**

The UK is a signatory to various human rights charters enshrining the universal right to health care, including the International Convention on Economic, Social and Cultural Rights in which article 12 explicitly lays out a human right to the highest attainable standard of physical and mental health”. This right is not dependent on migration status.

The language used by the Government, and copied by the media, is always about “overseas visitors” as if the majority of migrant use of NHS services is from people deliberately coming to the UK to access treatment then returning home. But there is no officially collected data about what proportion of “overseas visitors” fall in to this category and what proportion are actually resident in the UK, though lacking evidence of their status as UK residents, including “leave to remain.”

Charities working with undocumented migrants and asylum seekers attest to the fact that there are many people trapped in the situation of living in the UK but being ineligible for NHS care. They report large numbers of people accessing their services for help with health problems, often in very desperate sand even life threatening situations, (including children, born in the UK), and who are resident in the UK, but unable to access NHS care through lack of the requisite evidence of status.

Before the 2015 legislation many such people would have been considered “ordinarily resident” in UK. Since the tightening of the rules to stipulate they must have “indefinite leave to remain” many people have been caught in the trap of not being able to prove their eligibility (as with many of the Windrush generation). There are many others, such as failed asylum seekers, for whom the UK is now their home. As about 50% of failed asylum seekers win their right to asylum on appeal this shows that at any one time a person’s legal status is a changeable and uncertain thing, and there are many grey areas.

**Hostile environment**

The language goes as far as to call people “illegal”, which is very dehumanising, reducing them to a category of non person, devoid of rights. This is the language of the “hostile environment.” Undocumented migrants are human beings and as such are entitled to health care as a human right. Even criminals get health care – it is a universal human right.

This harsh and punitive attitude to migrants and others seeking health care is part of the hostile environment to so called illegal immigrants that Teresa May introduced. The government might use the language of “overseas visitors” as a way of deceiving the public about what is really going on, but the intention of the policy is clear. It is not about deterring people from flying in to UK for treatment; it is about making life impossible for those already here, whose status is undocumented or uncertain, to create a “hostile environment” for people who are unable to demonstrate they have the legal right to be in the UK, including people who have lived in the UK for decades.

This is a politically motivated policy, which in practice is inhumane, as we have seen from what has happened to the Windrush generation.

**Concerns by Medical Royal Colleges, BMA, charities, Maternity action**

The Royal College of Physicians, the Royal College of Paediatrics and Child Health, the Royal College of Obstetricians and Gynaecologists and the Faculty of Public Health have signed a statement urging Matt Hancock, the Health and Social Care Secretary, to suspend regulations brought in in 2015 and 2017 that specify when overseas visitors should be charged for receiving NHS care. Charges should not be enforced until a full independent review is undertaken of how they are affecting migrants’ access to healthcare, the four groups say.

They have voiced particular concern about [pregnant women being denied care](https://www.theguardian.com/politics/2018/sep/18/nhs-fees-maternity-care-putting-migrant-mothers-at-risk) and children missing out on treatment for life or death illnesses.

The charity Maternity Action has also called on the government to suspend charging for maternity care. See their vital report on the impact of the migrant charging policy on pregnant women and their babies (<https://www.maternityaction.org.uk/wpcontent/uploads/WhatPriceSafeMotherhoodFINAL.pdf>)

The British Medical Association at its recent annual conference called for charges to be scrapped.

**Campaigns**

Many campaigns against migrant charging have sprung up around the country. National campaigns include Docs not Cops, MedAct, Maternity Action, Migrants Organise, and Keep Our NHS Public. There are local hospital campaigns in Liverpool, north and east London, and several other places, which in many areas include hospital staff as well as patients and public.

**Appendix C: SLHC Briefing – Facts, references, further reading**

**1. Guardian:** *NHS trusts call in the bailiffs to chase ineligible patients’ debts* <https://www.theguardian.com/uk-news/2019/mar/23/nhs-trusts-use-bailiffs-collect-debts-ineligible-patients-asylum-seekers-immigrants>

The Guardian’sFOI data shows that across 80 hospital trusts, the total amount charged upfront to patients – including most of those who did not proceed with treatment – was about £4m for the first eight months of the upfront charging regime. [Data published by the Guardian under the Freedom of Information Act](https://www.theguardian.com/society/2018/nov/13/nhs-denied-treatment-for-migrants-who-cant-afford-upfront-charges)in November 2018 showed that across 84 of England’s 148 acute hospital trusts, 2,279 patients were charged upfront between October 2017 and June 2018.

**2. The Government’s**[**impact assessment**](http://www.legislation.gov.uk/ukia/2017/121/pdfs/ukia_20170121_en.pdf)**July 2017** predicted upfront charging would save the NHS £20m a year – less than 0.02% of NHS England’s £110bn total health expenditure in 2017/18.

**3. Chai Patel, legal policy director for the Joint Council for the Welfare of Immigrants:** “The government has no idea if upfront charging actually saves the NHS any money, because it is not measuring any of the costs of implementing the system.”

**4. ‘Hundreds of patients have been denied treatment** for serious health problems including cancer, arrhythmia and cardiac chest pains after ministers forced the NHS to impose upfront charges on migrants deemed ineligible for free healthcare, the Guardian can reveal.‘ <https://www.theguardian.com/society/2018/nov/13/nhs-denied-treatment-for-migrants-who-cant-afford-upfront-charges>

**5. Data sourced by the Guardian under the Freedom of Information Act found that across 84 of England’s 148 acute hospital trusts, 2,279 patients were charged upfront between October 2017 and June 2018.** Of these, 341 patients across 61 trusts did not proceed with their intended treatments or appointments after being told to pay. The true figure across all trusts is certain to be higher, given that 64 trusts did not supply figures.

6. Hospitals have wrongly told some migrants needing urgent care to pay for it in advance even though they qualified for free treatment on the [NHS](https://www.theguardian.com/society/nhs), the government has admitted for the first time. Rules were broken when 22 people were ordered to pay before they could start treatment, despite the seriousness of their condition, the Department of [Health](https://www.theguardian.com/society/health) and Social Care (DHSC) has acknowledged. A minister in the department has admitted that the 22 were wrongly told they had to pay upfront after hospital personnel made mistakes in their interpretation of a controversial [rule that has led to migrants being denied care for cancer](https://www.theguardian.com/society/2018/nov/13/nhs-denied-treatment-for-migrants-who-cant-afford-upfront-charges), heart complaints and other serious medical conditions.

<https://www.theguardian.com/society/2019/feb/17/migrants-wrongly-told-to-pay-for-nhs-care-upfront-minister-says>

**6. Opposition from Medical Royal Colleges**

‘Representatives of more than 70,000 doctors have urged ministers to suspend regulations that force hospitals to charge overseas visitors upfront for NHS care. Three royal medical colleges and one faculty say the charging regime is harming people’s health by deterring them from seeking NHS help when they fall ill. Payments in advance are “a concerning barrier to care”, they say. They have voiced particular concern about [pregnant women being denied care](https://www.theguardian.com/politics/2018/sep/18/nhs-fees-maternity-care-putting-migrant-mothers-at-risk) and children missing out on treatment for life or death illnesses.

‘The statement has been signed by the Royal College of Physicians, the Royal College of Paediatrics and Child Health, the Royal College of Obstetricians and Gynaecologists and the Faculty of Public [Health](https://www.theguardian.com/society/health).

‘They want Matt Hancock, the health and social care secretary, to suspend regulations brought in in 2015 and 2017 that specify when overseas visitors should be charged for receiving NHS care. Charges should not be enforced until a full independent review is undertaken of how they are affecting migrants’ access to healthcare, the four groups say.’

<https://www.theguardian.com/politics/2018/dec/20/medical-colleges-criticise-charging-migrants-for-nhs-care>

**8. Maternity**

Migrant mothers and their babies are being put at risk because they are too frightened of incurring large debts and falling victim to the so-called hostile environment immigration policy to access vital medical care, a report has found.

Mothers who are not settled in the UK are not eligible for taxpayer-funded treatment, and are [charged 50% more than the normal tariffs](https://www.bmj.com/content/349/bmj.g4639) for antenatal care, births and postnatal care. Some with secure immigration status have also been mistakenly charged for treatment. Attempts at debt collection launched shortly after new mothers leave hospital can trigger mental health issues among some of the poorest and most vulnerable women in the UK, the research found.

The report, What Price Safe Motherhood?, was launched on Tuesday by [Maternity Action](https://www.maternityaction.org.uk/). The charity’s [open letter to Matt Hancock](http://www.maternityaction.org.uk/2018/07/7072), the health secretary, calling for the government to [immediately suspend charging for NHS maternity care](https://www.maternityaction.org.uk/campaigns/maternity-care-for-all-women/) has been signed by more than 700 people, including heads of trade unions, NHS professionals and campaigners.

Report by Maternity Action “What Price Safe Motherhood?” <https://www.maternityaction.org.uk/wp-content/uploads/WhatPriceSafeMotherhoodFINAL.pdf>

**9. Statement from the Academy of Medical Royal Colleges**

<https://www.aomrc.org.uk/wp-content/uploads/2019/03/2019-03-14_NHS_charges_overseas_visitors_regulations.pdf>

**10. Patients not Passports. Challenging healthcare charging in the NHS. This is a very detailed and useful briefing prepared by MedAct.**

<https://www.medact.org/2019/resources/briefings/patients-not-passports/>

**11.** [**https://patientsnotpassports.co.uk**](https://patientsnotpassports.co.uk) A toolkit for those advocating for people facing charges for NHS care.

***This briefing was produced by Save Lewisham Hospital Campaign July 2019. For further information contact*** [***olivia.osullivan@btinternet.com***](mailto:olivia.osullivan@btinternet.com) ***or*** [***louise.irvine@runbox.com***](mailto:louise.irvine@runbox.com)

1. <https://www.rcpch.ac.uk/news-events/news/healthcare-arrangements-children-move-migrants> [↑](#footnote-ref-1)