Future Healthcare Journal 2021 Vol 8, No 1: 28–30

POLICY Patients or passports? The 'hostile environment' in the NHS

Authors: Kitty Worthing,[A] Marta Mojarrieta Galaso,[B] Johanna Kellett Wright[C] and Jessica Potter[D]

ABSTRACT

Throughout the pandemic, the NHS has continued to charge certain patients for their care based on their immigration status and to report patients with outstanding debt to the Home Office. Research has consistently shown that these policies act as a significant barrier to healthcare access for already minoritised communities, and that during the pandemic patients have remained fearful and reluctant to seek care due to charging, including care for 'exempt' conditions such as COVID-19. Charging policies, and associated data sharing, represent only one of the myriad ways in which structural and 'every day' racism operate to impact health; however, they undoubtedly form a part of the picture as to why COVID-19 has disproportionately affected many minoritised communities.

KEYWORDS: COVID19, hostile environment, health inequalities, racism in health, migrant health

DOI: 10.7861/fhj.2021-0007

What is the 'hostile environment'?

The term 'hostile environment' is commonly used when describing a set of policies introduced in 2012 by the Home Office, then led by Theresa May, that explicitly aimed to make life impossibly difficult for those without the 'correct' immigration status. This includes deliberately preventing people from accessing essential welfare services, including health and social care, alongside making it illegal to work and difficult to open a bank account or rent a property. Public sector workers are tasked in many instances with implementing these policies of restriction, in some cases becoming de facto 'border guards'.[1]

The involvement of the NHS in immigration control

In the NHS, this came in the form of the National Health Service (Charges to Overseas Visitors) Regulations 2015[2] and 2017 amendment.[3] This policy provides a mandate for charging patients not 'ordinarily resident', including those without 'regularised' immigration status and refused asylum seekers, for secondary care at 150% the actual cost. The 2017 amendment increased the range of services that are chargeable to include community-based secondary care and placed a statutory duty on trusts to charge all patients upfront for treatment. Treatment is refused if patients are unable to pay. If the care is deemed 'urgent' or 'immediately necessary' care should not be withheld, although in practice this is not always the case, but patients unable to pay the full cost upfront can be charged retrospectively. Some NHS trusts employ private debt collectors to recoup these costs.[4]

It is of note that charging patients for NHS care on the basis of their immigration status is not new, and nor is organised resistance against this practice. In the 1980s, an attempt to implement such charges was made, but this was swiftly abandoned after resistance from migrant organisations, trade unions and healthcare workers.[5]

The insertion of immigration control in the NHS goes beyond charging patients to also include the following:

- The NHS surcharge: those with visas to work or study in the UK have to pay £624 per adult visa (and £470 per child) per year to use the NHS, in addition to other forms of taxation; as a flat rate tax this disproportionately penalises lower paid workers.[6]
- Data sharing: demographic patient data are passed without consent from the NHS to the Home Office in cases where a patient has a bill of over £500 outstanding for more than 3 months. This data can then be used for immigration control purposes. Demographic data could also be requested by the Home Office from GP surgeries, although this memorandum of understanding has recently been suspended.[7,8]
- Barriers to GP registration: NHS England guidance states proof of address and identification are not needed to register with a GP, and anyone can register regardless of immigration status. However, we frequently see registration denied to patients who cannot provide this documentation, posing further challenges to their ability to access care.[9] It is likely this reluctance is in part connected to restrictive secondary care practices.[10]

While we argue there should not be a hierarchy of deservingness when it comes to healthcare – it is both a human right and a public good – there is clear evidence these policies have frequently been applied 'incorrectly', meaning even individuals deemed eligible for free NHS care have come to harm, with one notable example being those from the Windrush generation.[11] Critically, few people are in a position to challenge decisions made against them. When

Authors: [A]GP specialist trainee, Tower Hamlets VTS, London, UK; [B]intensive care nurse, University College London Hospitals NHS Foundation Trust, London, UK; [C]clinical research fellow, North Bristol NHS Trust, Bristol, UK; [D]consultant in respiratory medicine, North Middlesex University Hospital, London, UK

confidentiality is undermined – such as through data sharing – and fear of debt, deportation and discrimination is embedded in our health service, the ability for individuals to access the care they need is diminished and they come to harm themselves. Some die as a result. The cases of Elfreda Spencer,[12] Kelemua Mulat,[13] Esayas Welday,[14] Pauline Pennant,[15] Beatrice,[16] Bhavani Espathi,[17] Simba Mujakachi[18] and Nasar Ullah Khan[19] have all been made public, but this is of course just the tip of the iceberg. None of these outcomes come as a surprise – and in fact reflect the explicit intentions of the 'Hostile Environment' to cut off vital access to healthcare as a means of immigration control.

The impact of COVID-19

While COVID-19 has ripped through communities, disproportionately affecting those living in deprivation and precarity, the NHS has continued to implement charging, affecting those often from already minoritised groups. Although testing for and treatment of COVID-19 is exempt from charges and free for all, research suggests many patients remain unaware of this and there have been tragic reports of individuals dying with COVID-19 at home, too scared to seek help.[20] The use of 'exemptions', where care for certain conditions remains free, has been shown previously to be ineffective by Potter *et al*.[21] In regard to test and trace systems there have been no clear assurances about a data firewall with the Home Office and data sharing in secondary care continues. Additionally, we are yet to see clear communications or planning regarding those not registered with a GP regarding access to vaccination.

The ability to access appropriate and effective healthcare is central to improving health outcomes for all populations. While the NHS purports to be a universal, non-discriminatory healthcare system, free at the point of service, policies and practices associated with the 'hostile environment' undermine these values and are causing harm to our patients and communities. COVID-19 has further exposed the impact of structural racism on health, the multitude of ways this operates, and our shortcomings in evidencing and addressing it. The 'hostile environment' in health represents just one part of this, but NHS trusts must act immediately to end all charging and data sharing, and actively redress harms already caused.

Whilst 'hostile environment' policies represent only one part of the myriad ways structural and everyday racism operates to impact the health, they are an important one, and will of course form part of the picture of why COVID-19 has disproportionately affected minoritised communities. Evidence for this is already emerging – both Baroness Lawrence's report *An avoidable crisis*[22] and the NHS Confederation's BME leadership network report *Perspectives from the front line: The disproportionate impact of COVID-19 on BME communities*[23] highlight that these policies have contributed to the racialised health inequalities by having 'contributed to the systemic discrimination experienced by migrants and the UK's Black, Asian and minority ethnic population'.[22] Both reports recommend immigration policy reform.

The Patients Not Passports campaign

As in the 1980s, healthcare workers, alongside those affected by charging and their communities, have been mobilising to bring an end to these harmful policies. At present the Patients Not Passports campaign represents a broad coalition of groups and calls for NHS trusts to act immediately and end all charging and data sharing, as well as to actively redress harms already caused in the communities they serve. These calls have, for many years, been met with silence and inaction from NHS trusts that now state they stand in solidarity with the Black Lives Matter movement. They do this at the same time as knowingly enacting racist health policies. More broadly, the Patients Not Passports[24] movement has consistently called for an end to the 'hostile environment' in its entirety, as it has multiple intersections that damage people's health. In the face of the pandemic, this is ever more urgent. ■

References

1 Joint Council for the Welfare of Immigrants. *The hostile environment explained*. www.jcwi.org.uk/the-hostile-environment-explained [Accessed 11 January 2021].
2 *The National Health Service (Charges to Overseas Visitors) regulations 2015*. www.legislation.gov.uk/uksi/2015/238/contents/made [Accessed 11 January 2021].
3 *The National Health Service (Charges to Overseas Visitors) regulations 2017*. www.legislation.gov.uk/uksi/2017/756/contents/made [Accessed 11 January 2021].
4 Skinner J. *Patients not passports*. Medact, 2019. www.medact.org/wp-content/uploads/2020/10/Patients-Not-Passports-Challenging-healthcare-charging-in-the-NHS-October-2020-Update.pdf [Accessed 11 January 2021].
5 New Economics Foundation. *Learning from the international struggle for universal healthcare*. New Economics Foundation, 2020. https://neweconomics.org/uploads/files/NEF_Patients-not-passports.pdf [Accessed 11 January 2021].
6 The Home Office. *Pay for UK healthcare as part of your immigration application*. www.gov.uk/healthcare-immigration-application [Accessed 11 January 2021].
7 Department of Health and Social Care. *Information sharing with the Home Office for unpaid NHS patient debts: privacy notice*. www.gov.uk/government/publications/information-sharing-with-the-home-office-for-unpaid-nhs-patient-debts-privacy-notice [Accessed 11 January 2021].
8 Dudderidge T. *Government will halt NHS data sharing with home office except for serious crime*. Doctors of the World, 2018. www.doctorsoftheworld.org.uk/news/government-will-halt-nhs-data-sharing-with-home-office-except-for-serious-crime/ [Accessed 11 January 2021].
9 Player F, Abbs I, Corbett J. *Registration refused: A study on access to GP registration in England*. Doctors of the World, 2018. www.doctorsoftheworld.org.uk/wp-content/uploads/2019/08/Registration-Refused-final.pdf [Accessed 11 January 2021].
10 Worthing K. *Registration without documentation: Pathways from Homelessness conference, 11 March 2020*. Pathway, 2020. https://vimeo.com/398332759 [Accessed 11 January 2021].
11 Williams W. *Windrush: lessons learned: review*. Home Office, 2018. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874022/6.5577_HO_Windrush_Lessons_Learned_Review_WEB_v2.pdf [Accessed 11 January 2021].
12 Jayanetti C. Cancer patient died after NHS demanded £30,000 for treatment. *The Guardian*, 13 November 2018. www.theguardian.com/society/2018/nov/13/cancer-patient-died-after-nhs-demanded-30000-for-treatment [Accessed 11 January 2021].
13 Halliday J. Asylum seeker denied cancer treatment by Home Office dies. *The Guardian*, 19 September 2019. www.theguardian.com/politics/2019/sep/19/asylum-seeker-denied-cancer-treatment-nhs-home-office-hostile-environment [Accessed 27 January 2021].
14 Campbell D. 'I thought they were killing me': NHS trust halted asylum seeker's cancer treatment. *The Guardian*, 21 January 2019. www.theguardian.com/society/2019/jan/21/i-thought-they-were-killing-

me-nhs-trust-stops-asylum-seekers-cancer-treatment [Accessed 27 January 2021].
15 Halliday J. 'It's like a death sentence': ex-NHS worker billed £4,388 for treatment. *The Guardian*, 23 May 2018. www.theguardian.com/uk-news/2018/may/23/go-die-not-interested-windrush-citizen-feels-neglected-by-britain [Accessed 27 January 2021].
16 Andersson J. Four-month-old baby sent letter saying his mum was 'likely to be detained' after she couldn't pay £6,000 for giving birth to him. *The I*, 9 October 2020. https://inews.co.uk/news/health/nhs-migrant-charges-218455 [Accessed 27 January 2021].
17 Bulman M. 'Cruel and inhumane': Home Office threatens woman in coma with forcible deportation. *The Independent*, 13 May 2019. www.independent.co.uk/news/uk/home-news/uk-immigration-deportation-woman-coma-home-office-crohn-s-disease-bhavani-espathi-a8903271.html [Accessed 27 January 2021].
18 Mujakachi S. I nearly died but was still presented with a £93,000 bill for my treatment. *The Metro*, 9 December 2019. https://metro.co.uk/2019/12/09/i-nearly-died-but-was-still-presented-with-a-93000-bill-for-my-treatment-11233713/ [Accessed 27 January 2021].
19 Preece A. Dad denied heart transplant and told to pay £32k for care dies aged just 38. *Birmingham Live*, 15 February 2019. www.birminghammail.co.uk/news/midlands-news/dad-denied-heart-transplant-told-15835228 [Accessed 27 January 2021].
20 Medact, Migrants Organise, New Economics Foundation. *Migrants' access to healthcare during the coronavirus crisis.* Medact, 2020. www.medact.org/wp-content/uploads/2020/06/Patients-Not-Passports-Migrants-Access-to-Healthcare-During-the-Coronavirus-Crisis.pdf [Accessed 11 January 2021].
21 Potter JL, Burman M, Tweed CD *et al*. The NHS visitor and migrant cost recovery programme – a threat to health? *BMC Public Health* 2020;20:407.
22 Lawrence D. *An avoidable crisis: The disproportionate impact of Covid-19 on Black, Asian and minority ethnic communities*. Labour Party, 2020. Available from https://www.lawrencereview.co.uk/ [Accessed 27 January 2021].
23 Farah W, Saddler J. *Perspectives from the front line: The disproportionate impact of COVID-19 on BME communities*. NHS Confederation, 2020. Available from https://www.nhsconfed.org/resources/2020/12/perspectives-from-the-front-line-disproportionate-impact-covid-19-bme-communities [Accessed 27 January 2021].
24 Medact, Migrants Organise, Docs Not Cops. *Patients Not Passports toolkit*. www.patientsnotpassports.co.uk [Accessed 11 January 2021].

Address for correspondence: Dr Kitty Worthing, Royal Liverpool University Hospital, Prescot St, Liverpool L7 8XP, UK.
Email: kitty.worthing@nhs.net
Twitter: @kitdempsey