

Access to health care for asylum seekers and refused asylum seekers

Guidance from the BMA's Medical Ethics Department

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Introduction

This guidance note has been produced in response to queries from doctors treating asylum seekers and those whose claim for asylum has been unsuccessful but who remain in the UK. The BMA is concerned about the uncertainty expressed by some health professionals as to whether and to what extent asylum seekers and refused asylum seekers are entitled to free health care. This guidance note clarifies the situation regarding asylum seekers. In addition, the guidance also provides useful further reading and resources.

Refused asylum seekers: April 2008 judicial review

This guidance offers advice in light of the April 2008 judicial review regarding a refused asylum seeker receiving free hospital treatment. Department of Health guidance was judged to be unlawful in not stating that refused asylum seekers can be considered 'ordinarily resident' in the UK. The resultant ruling makes it possible for asylum seekers whose application for asylum has been unsuccessful to be considered 'ordinarily resident' in the UK and therefore entitled to free NHS hospital treatment. The Department of Health is appealing against the ruling, but unless and until the decision is overturned, the judge's decision is effectively the law. Guidance specifically for medical staff treating refused asylum seekers has not yet been issued by the Department of Health and pending the appeal, which is due to be heard on 17 and 18 November 2008, the following guidance offers *interim* clarification of the current situation regarding refused asylum seekers' right to free NHS hospital treatment.

The BMA has repeatedly expressed its concerns to government about the plight of asylum seekers and refused asylum seekers. Such concerns are based both on humanitarian and public health arguments which support the timely provision of appropriate care to this vulnerable group of patients.

The legal situation in summary

- All asylum seekers are entitled to free primary and secondary health care.
- Those who have been granted Discretionary Leave to Remain or Humanitarian Protection are entitled to free primary and secondary health care.
- All asylum seekers have the right to be registered with a GP practice.
- Health professionals must not discriminate against asylum seekers or unfairly prioritise other patients in preference to them.
- Asylum seekers who do not receive benefits may still be entitled to free prescriptions.
- It is a matter of discretion for individual GP practices whether or not they register refused asylum seekers to receive primary health care.
- Refused asylum seekers are only entitled to free secondary health care if they are considered to be 'ordinarily resident' in the UK (see Registering at hospitals – page 2).
- Refused asylum seekers who are undergoing a course

of hospital treatment at the time their claim for asylum is rejected, should continue to receive treatment free of charge until completion.

It remains the BMA's view that it is not the responsibility of individual doctors to make decisions about the immigration status of patients. Decisions regarding eligibility for treatment lie with trusts' Overseas Visitors Managers.

Information about health care for asylum seekers

The BMA recommends that on arrival in the UK, asylum seekers should be provided with information, in a language they understand, about access to health care and other social services and how to register with a doctor. Those alleging torture need information about how to contact an experienced medical expert. Early referral in such cases can be crucial to the patient's asylum case as well as providing assessment for treatment. (See in Useful addresses – page 4 – the note on the Medical Foundation for the Care of Victims of Torture). Some Primary Care Organisations (PCOs) in areas which have long accommodated large numbers of asylum seekers have included details of local health services in "welcome packs" for asylum seekers and refugees.

Clearly, asylum seekers like all other patients need to be informed about any testing or screening proposed for them. The BMA has been concerned by some anecdotal reports of asylum seekers being HIV-tested without their prior knowledge or consent. The government currently encourages universal antenatal screening for HIV. Asylum seekers from countries of high HIV prevalence may obtain their first positive result from a routine antenatal HIV test. Such possibilities should be anticipated and discussed in advance with the patient. Local treatment providers and public health teams should consider whether additional services and support are likely to be required in areas receiving large numbers of asylum seekers.

Registering with a General Practitioner

All asylum seekers have the right to be fully registered with a NHS general practice. It remains at the discretion of the individual practice whether or not they register refused asylum seekers. There is no obligation or expectation for doctors to check the immigration status of people registering to join their lists. Many GPs, however, feel under pressure by the programme of dispersal of asylum seekers. In some cases hundreds of asylum seekers have been moved into a surgery's catchment area without prior notification. Nevertheless, GPs must not discriminate against any particular group. Clearly this does not mean that a practice which is already over-subscribed and has closed its list has to accept new applicants. Where spare capacity exists, however, local inhabitants should not be given unfair precedence over newcomers. If they are unable to find a practice to accept them, asylum seekers are likely to rely on inappropriate use of emergency hospital services.

GPs can refuse to take an individual onto their lists but they must take into consideration GMS/PMS contract regulations as well as the Human Rights Act 1998 ban on discrimination (article 14). Health professionals must also

be careful not to breach section 20 of the Race Relations Act by discriminating against asylum seekers (by refusing to provide them with health care services, for example, or by providing lower standards of care). The BMA has consistently emphasised that it is unethical to refuse to accept particular patients solely because they may require expensive treatment (so-called 'uneconomic' patients).

Additional resources

Because of the upheavals, family separation, traumas and social difficulties faced by many asylum seekers, they often have complex health problems. Some have been imprisoned or tortured prior to immigration and many have lived in situations of poor health care provision in their own country. Recognising the additional support they often need, the BMA has argued for additional payments to be available for doctors offering an extended range of services to this group of patients.

Some PCOs have established dedicated PMS practices for asylum seekers. PCOs can also approve additional payments to existing practices through local enhanced services to provide for an extended range of services for asylum seekers. Nevertheless, this is dependent upon local resources and is not invariably forthcoming.

Referral for specialist services

In some countries, primary care is not well developed and some asylum seekers may expect to be referred to hospital for relatively minor complaints. Sensitivity and skill are required to introduce them to the way medicine is practised in the NHS.

Some asylum seekers need specialist help because of the violence and trauma they have encountered. Identifying the sequelae of torture requires additional training and should be done by experienced health professionals. The principal UK centre for expert examination (including for the provision of medical reports to support asylum applications) and for treatment is the London-based Medical Foundation for the Care of Victims of Torture. (See Useful addresses – page 4). The government has made clear that asylum seekers who claim to have been tortured are entitled to be referred to such a specialist service for assessment and treatment.¹

GPs increasingly need to be able to recognise conditions which may be more common in asylum seekers' countries of origin than in the UK, including tuberculosis (TB) and HIV. Increasingly, screening for conditions such as TB is carried out on entry to the UK and that information should be made available to GPs when patients are dispersed in order to avoid duplication. It is also important, however, that GPs remain vigilant for early symptoms of such conditions in undiagnosed patients who seek help for other routine health problems. They also need to be able to offer appropriate pre-test discussion and testing or know where patients can be referred for such tests. GPs with a large number of patients who are asylum seekers may find it helpful to be in contact with specialist patient support organisations for a range of conditions.

Registering at hospitals

The current system for registration for hospital services determines free entitlement by posing patients with the following three questions:

- Have you been living here for the last 12 months?
- On what date did you arrive in the UK?
- What is the basis of your stay in the UK?

Those responsible for determining entitlement to free NHS hospital care should bear in mind the judgment in the 2008 judicial review, which indicated that there is no strict time frame within the 'ordinarily resident' test. A person does not have to have been in the UK for a specific length of time to be considered 'ordinarily resident'. In the ruling the judge did mention a 'significant period' as being important. The Department of Health has previously advised that a person who has been in the UK for less than six months is less likely to meet the 'ordinarily resident' test but this is only a guideline, not a deadline, and in itself does not always preclude a person from being considered 'ordinarily resident'. Each case must be assessed on its own merits.

Where a hospital wishes to verify that the patient is an asylum seeker, refused asylum seeker who is 'ordinarily resident' in the UK or refugee, the patient should be able to produce one of the following:

- i. a travel document which shows that it was issued in the UK in accordance with the Convention on the Status of Refugees;
- ii. a letter from the Home Office stating that the patient is a refugee or has been granted refuge in the UK;
- iii. an acknowledgement letter from the Home Office confirming that the applicant has made an application for asylum.

Hospital treatment for refused asylum seekers

Refused asylum seekers granted temporary asylum or temporary release must produce written authority by an immigration officer or other UKBA official on behalf of the Secretary of State to the individual in order to register for hospital treatment.

Not all refused asylum seekers on temporary admission are 'ordinarily resident' in the UK, but in certain circumstances they may be. Hospitals and trusts must consider whether each refused asylum seeker that they treat can be considered 'ordinarily resident' in the UK, in the same way as they would do with any other patient, and obtain sufficient proof of ordinary residence.

Hospitals may directly contact the Home Office (on 0870 606 7766) if a patient claims to be a refugee or to have made a formal application, but is unable to produce any of the documents mentioned above and wishes his or her status to be confirmed by the Home Office. When practicable the hospital should contact the Home Office in the patient's presence, giving only the patient's nationality, name and date of birth.

Prescription charges

Asylum seekers and refused asylum seekers are entitled to free prescriptions under the same conditions as any other patient. They must be aged under 16, under 19 if in full-

time education, over 60 or holding an exemption certificate on maternity or medical grounds. Details are in the leaflet, *Are you entitled to help with health costs?*². Unless asylum seekers are already entitled to free prescriptions under the existing categories or remain entitled to income support, they have to make a Low Income Scheme HC1 claim. Refused asylum seekers can also apply.

Applicants will either receive an AG2 exemption certificate in order to receive free prescriptions, vouchers for sight tests and glasses, and hospital travel costs under the NHS **or** an AG3 which is an NHS Charges certificate for limited financial help. HC1 forms are freely available from the address below³ and from any Benefits Agency office or NHS hospital. They can also be obtained from the Health Benefits Division, Sandyford House, Newcastle Upon Tyne NE2 1DB. Tel: 0191 203 5555.

Refugee agencies are concerned that:

- i) asylum seekers may be unaware that they might be entitled to free prescriptions;
- ii) form AG1 is some 16 pages long which some asylum seekers with limited English will find difficult to complete.

Ideally, doctors should help patients understand whether or not they are entitled to free prescriptions, indicate the form that is required and from where it can be obtained.

Patients need to know that they will have to present proof of their exempt status. Doctors who treat a large number of asylum seekers or other low income patients may wish to acquire a number of HC1 forms and distribute them directly at the surgery. Large order copies are available from 3M Security Printing and Systems Ltd, Gorse Street, Oldham OL9 9QH. Tel: 0845 610 1112.

If it becomes clear that the asylum seeker has limited English and may have difficulty in completing the HC1 form, doctors are requested to direct that patient to either the local Refugee Community Office or Citizens Advice Bureau. Some other useful addresses are given at the end of this guidance.

Confidentiality

All patients should be able to expect that their personal health information will be kept confidential. Doctors express concern, however, about the requests they receive to disclose information about patients for planning, administrative or other purposes. They also feel that this contributes to the reluctance of some patients to allow their GP to have some important information, such as that concerning the patient's HIV status. Particular problems can arise in this respect for asylum seekers, especially those who need access to specific support services. It is clearly important that when they are dispersed around the country, asylum seekers with very specific health needs are not sent to areas where there are insufficient sources of help. Not only do they need services such as health care, housing and education but many are also particularly dependent upon assistance from voluntary support groups. They should be placed so as to be able to be in contact with the relevant voluntary sector infrastructure and with medical services for conditions which may be rare in the indigenous population but common in those coming from

abroad. Patients need to know and agree, however, if some of their personal health information is needed by third party agencies for dispersal, health care planning and other purposes.

Many asylum seekers have a complicated medical history, information about which can be difficult to confirm. Tuberculosis and HIV are among the health problems prevalent in this group of patients who may not be included in community screening programmes and health promotion. Even establishing the immunisation status of children, for example, can prove difficult. Providing care for people who have experienced violence or persecution can be very demanding. They may be unable to discuss their health problems openly or be fearful of examination. Some cannot discuss their experiences even with family or friends and it can never be assumed that they are willing for relatives to be asked about their health background. Many focus on non-specific pain, avoiding discussion of details or of psychological problems. If they are willing to talk about what happened to them, the situation described can be disturbing for the health professional as well as for the patient. This is one of the reasons why the BMA emphasises the importance of referral to a specialised centre if torture is alleged. (See Useful addresses – page 4).

Asylum seekers are entitled to the same high degree of confidentiality as other patients⁴. As is made clear above, it cannot be assumed that patients would be willing to have their health discussed with their relatives. In some communities, however, patient expectations are that family members are included in consultations. It should be made clear to individuals that they can always see a doctor alone unless they want others present and that information will not be passed on to relatives without consent.

Finding an appropriate interpreter is often a problem. In some cases, other members of the patient's family or cultural group offer to interpret, causing confidentiality problems. These can be particularly acute if patients want to discuss sensitive information or need to access services such as family planning, abortion or HIV testing. Some UK PCOs have interpretation services, although paying for them can present problems as they are not necessarily funded by the PCO. Language Line is commonly used in England (see Useful addresses – page 4). In Scotland, the concept of three-way telephone interpreting has been considered. The disadvantages are that it has to be booked and paid for in advance and the asylum seeker has to understand and adhere to the concept of an appointment at a specified time. In practice, doctors and patients often have to make do with patients' friends or other volunteers to interpret.

Wherever possible, sensitivity should be exercised in selecting interpreters, with regard to factors such as gender, political or cultural background (eg avoiding asking a Serb to interpret for an ethnic Albanian). Sensitivity in choice of interpreter is also advised in cases where patients need to discuss very personal issues such as sexual behaviour or sexually-related conditions. It is essential that health services do not rely on embassies or official agencies of the patient's home country when the patient claims to have been persecuted or tortured there, since information may be collected which puts patients at risk (if they return)

and may jeopardise the safety of their relatives.

It is worth noting that the Royal College of General Practitioners has recommended that:

- There should be training for GPs on the nature, purpose and correct use of advocacy and interpreters;
- All GPs and their practice colleagues should undergo training in racism awareness which includes, among other things, the status of refugees in the UK⁵.

Useful addresses

For further information the following addresses might be helpful:

Medical Foundation for the Care of Victims of Torture (MFCVT)

111 Isledon Road, London N7 7JW. Tel: 020 7697 7777; Fax: 020 7697 7799

www.torturecare.org.uk

Provides services for survivors of torture and other forms of organised violence. Centre staff carry out casework, counselling, advice regarding welfare rights, physical and mental health care, individual and group therapy, complementary therapy, family therapy and child and adolescent psychotherapy. They also give advice and help with the access to statutory health care. Foundation Staff run training sessions and workshops for professional groups working with refugees and survivors of torture and can discuss issues with health care workers.

British Red Cross International Tracing and Message Services

UK Office, 44 Moorfields, London EC2Y 9AL.

Contact via local British Red Cross office – see www.redcross.org.uk – or call 0870 170 7000

Delivers family news and traces family members internationally where normal means of communication have broken down or the family has been separated due to armed conflict or natural disaster.

Refugee Council

240-250 Ferndale Road, Brixton, London SW9 8BB. Tel: 020 7346 6700

London Advice Line: 020 7346 6777 (open Mon-Fri 10am-1pm and 2-4pm, except for Wed when it is open 2-4pm only).

See www.refugeecouncil.org.uk for other UK advice lines. The Refugee Council runs a mixture of direct and indirect services for refugees and asylum seekers in the UK. The main services include the One-Stop Service at 240-250 Ferndale Road, Brixton, London SW9 8BB, which is open every day from 9am-5.30pm, except for Wed when it is open 2-5.30pm, for advice and day centre services.

Joint Council for the Welfare of Immigrants

115 Old Street, London EC1V 9JR. Tel: 020 7251 8708 Advice Line: 020 7251 8706 (Mon-Fri, 10am-1 pm).

Advice, information and representation for people with immigration or nationality problems.

Language Line

25th Floor, 40 Bank Street, Canary Wharf, London E14 5NR. Enquiries: 0800 169 2879

A commercial telephone interpreting service across a wide range of languages. A number of PCOs and trusts have

contracts with Language Line.

Additional guidance

The Health of Refugees - A Guide for GPs, (1999) Levenson R & Coker N, King's Fund bookshop (www.kingsfund.org.uk).

The Health of Refugee Children (1999), The Royal College of Paediatrics and Child Health. Available from the RCPCH website at www.rcpch.ac.uk. This book covers a wide range of children's general health issues, including the importance of obtaining the child's consent, the introduction of child health surveillance, screening, immunisation and child accident prevention. It also stresses the importance of their often disregarded rights of medical confidentiality.

Guidelines for health workers providing care for Kosovan refugees by Dr Angela Burnett is available from the Medical Foundation for the Care of Victims of Torture (www.torturecare.org.uk) and provides much general advice as well as information specific to Kosovan refugees.

The Medical Profession and Human Rights: Handbook for a Changing Agenda, BMA (2001) has a chapter on asylum seekers and a chapter on rehabilitation services.

- 1 Hansard, vol 355, 145, col 44, 23/10/00.
- 2 Free from the following address: Department of Health, PO Box 777, London SE1 6XH, Fax: 01623 724524
- 3 As above at 2.
- 4 The BMA has guidance on the exceptional circumstances under which disclosure may take place. See page 37 of the *Confidentiality and disclosure of health information tool kit*, available via the BMA's website www.bma.org.uk
- 5 Royal College of General Practitioners, *Breaking barriers – towards culturally competent general practice*. London, RCGP, 1997.