



# Joint Council for the Welfare of Immigrants

Campaigning for justice in immigration, nationality & asylum law & policy since 1967

## **JCWI response to the Department of Health Review on NHS Charging Regulations 1 June 2018**

For further information, please contact:

Chai Patel  
Legal Policy Director  
Direct Line: 0207 553 7463  
Email: [chai.patel@jcwi.org.uk](mailto:chai.patel@jcwi.org.uk)

Minnie Rahman  
Policy & Campaigns Officer  
Direct Line: 0207 553 7457  
Email: [minnie.rahman@jcwi.org.uk](mailto:minnie.rahman@jcwi.org.uk)



# Joint Council for the Welfare of Immigrants

Campaigning for justice in immigration, nationality & asylum law & policy since 1967

## About JCWI

JCWI is an independent national charity established in 1967. We work to ensure justice and fairness in immigration, nationality and asylum law and policy and we provide direct legal advice and assistance to those affected by UK immigration control.

## Scope of our Response

To put our response in the appropriate context we remind you that the former chief executive of NHS England David Nicholson has described the current charging regime as “*nothing short of a national scandal based on fake evidence*”. We concur.

As a charity with expertise in immigration, human rights, and discrimination we have focussed on these issues, though we remain gravely concerned by the many other damaging consequences of this scheme in areas such as public health, which have been repeatedly brought to your attention in the past by groups such as Doctors of the World, Medical Justice, Medact, Asylum Matters, Freedom from Torture, the National Aids Trust, clinicians and others.

First of all we refer you to our previous response to the DH consultation on charging and to the totality of evidence submitted to you by organisations in every formal consultation, informal email exchange, and stakeholder meeting. We remind you that it is the job of the Department of Health to monitor the adverse impacts and cost-effectiveness of its own policies and ask you to commit to doing so.

## Background

This review follows repeated consultation and ‘stakeholder engagement’ meetings that the Department of Health has had with groups and NGOs such as ours. You have been warned over and over again of the drastic, life-threatening, discriminatory, and disproportionate impacts of this scheme both before and after implementation. You have ignored those warnings at every step. This review was announced during a House of Lords debate in which the appalling consequences of your failure to heed these warnings were being laid bare in public.

We are not persuaded that this announcement was anything other than a cynical attempt to kick the can down the road and stave off a reckoning of the money that has been wasted and the lives destroyed by this deeply ill-conceived policy. We are aware that organisations that have previously put great effort into responding to your consultations on this, and have provided mountains of evidence of the harmful, discriminatory, and costly impacts of charging share our scepticism. Some will be dissuaded from providing further responses when their past evidence has been so summarily ignored.

You must not cite any diminution in responses to this review as evidence that concerns about this scheme have lessened. They have not. The evidence grows that the policy is disastrous. It is simply that many have lost faith in the Department of Health’s willingness to engage with facts and evidence on this issue.

It is up to the Department of Health now to show it is taking this seriously by suspending up front charges and commissioning a full and independent review of the charging regulations.



# Joint Council for the Welfare of Immigrants

Campaigning for justice in immigration, nationality & asylum law & policy since 1967

## Obscuring the purposes of Charging

### The Hostile Environment

The continual dissembling that we have seen from Department of Health Officials about the true purpose of the charging regulations is a case in point. We have been repeatedly told by officials in the Department that the charging regulations are not part of the hostile or compliant environment. We have been told that it is not designed to encourage migrants to leave the country because they cannot access healthcare and that this is not an aim of the Department of Health.

The most recent report of the Independent Chief Inspector of Borders and Immigration shows this to be an untenable interpretation of the purpose of the regulations. He reveals that the Interventions and Sanctions Directorate in the Home Office has the following remit:

*“increasing compliance with immigration laws by creating a hostile environment for migrants who are living in the UK illegally. It aims to limit illegal migrants’ access to health, housing, credit, and driving licenses and manages the civil penalty scheme”.*

Please explain to us:

1. What up-front charging is if it is not a core plank of the hostile environment, designed to limit migrants’ access to health?
2. How exactly can the Department of Health distance itself from the aims of the Home Office, while enacting the precise policies that the Home Office desires?

### Costs Recovery

We have been told by Department of Health officials that the purpose of the charging regime is to recover costs for the NHS. It is hard to believe that this could be true given that both Ipsos Mori, nor the National Audit Office have pointed out that the scheme is not recovering anything like the amount of money anticipated. More seriously Ipsos Mori was unable to measure the cost of implementing charging in Trusts and community services across the NHS. The fact that the following increased costs to the NHS are not being measured or monitored in any systematic way by the Department of Health renders the costs recovery argument a nonsense:

1. Administrative staff implementing and operating charging;
2. Clinical staff being asked to make decisions on care in the context of charging, and immigration status;
3. Greater costs being incurred as conditions that are chargeable and therefore not treated, become more serious;
4. Greater costs incurred as patients who are chargeable are diverted to non-chargeable services;
5. Costs in terms of any greater risk to public health;
6. Litigation and compensation costs as those who are wrongly denied treatment or discriminated against sue the NHS.

Some questions arise:

1. Why is the Department of Health operating a costs recovery scheme that may cost more than it saves, and then failing to put in place systems which would measure whether or not it works?
2. Why have no systems been put in place to measure discrimination, deterrence of those entitled to free care, or wrongful denial of treatment.



# Joint Council for the Welfare of Immigrants

Campaigning for justice in immigration, nationality & asylum law & policy since 1967

It is becoming clearer and clearer that up-front charging simply cannot be justified on a costs saving basis. Even if it is costs neutral, or there are marginal costs savings (which we strongly dispute) it cannot make up for the risks it poses in terms of harm to individuals, the public, and of encouraging unlawful discrimination.

## Deterrence

We find it hard to understand why the Department of Health is asking whether individuals have been deterred from accessing treatment as if that is not the obvious outcome of these policies. As we show above, that is the purpose of this scheme. The government created a cross-departmental initiative to create a hostile environment for migrants. Up-front charging is a major part of that, and the hostile or compliant environment is explicitly described by the Home Office as a means of denying migrants access to healthcare. It would be astonishing if it did not have that effect.

## Impossibility of Application

We will not rehearse the evidence given to you on the practical impossibility of applying these regulations fairly, consistently and correctly given the complexity of immigration law and status. You have our previous submissions on this subject, and those from many other organisations, not least the Immigration Law Practitioners' Association.

Simply put:

1. The regulations make discrimination on grounds of race inevitable. Hospitals, clinics, community care providers simply do not have the capacity to check every patient's chargeable status nor is there any easy way of identifying both residence and nationality/immigration status.
2. The exemptions, while essential to protect certain groups, are completely unworkable in practice. Their complexity makes them impossible to apply in a clinical setting.
3. The clinical tests around urgent and immediately necessary care, are also impossible for doctors and nurses to apply, because they include immigration status considerations. No one working in a hospital in any capacity is qualified to estimate when a person may 'reasonably be expected to leave the country'. That is what immigration judges are for. Even the Home Office gets these sorts of decisions wrong so regularly that 50% of appeals against its decisions are successful.

## Recklessness

According to the Ipsos Mori evaluation, you have done next to nothing to train NHS staff in the scheme. You have placed some videos on a website which have had negligible views. Our own experience of providing training bears this out and the lack of knowledge amongst staff of the scheme and how it is supposed to work is shocking.

As we say above, this scheme is not workable. But it is nevertheless grossly reckless to impose a scheme that puts people's lives, and the livelihoods of the staff that will inevitably be blamed for misapplication of the rules, at risk without implementing a full and comprehensive training scheme for all those expected to apply it, and without carefully piloted roll-out.

This would of course reveal the scheme to be costly, time consuming, impossible to apply and unpopular with those expected to implement it. But that is not a reason to duck your responsibility to make sure staff are fully aware of how the charging scheme works before you impose it on vulnerable individuals.



# Joint Council for the Welfare of Immigrants

Campaigning for justice in immigration, nationality & asylum law & policy since 1967

## The Inevitable Consequences

As with the recent furore about Windrush, these charging regulations will have a number of clear and foreseeable consequences. You have already been warned and provided evidence of all of them, but for your convenience we will summarise them here:

1. There will be systemic discrimination on grounds of race across NHS funding services;
2. Individuals will be wrongly denied urgent care & some will suffer injury or even death as a result;
3. Individuals will be wrongly deterred from accessing care with the same consequences;
4. The exemption system will not be properly understood or applied, exacerbating points 2 & 3 above;
5. Doctors and nurses placed in impossible positions by unclear and self-contradictory guidance will face disciplinary action and lawsuits through no fault of their own;
6. The charging system will not save the NHS any non-negligible sum, and may even cost more than it saves.

We remain astonished that the Department of Health has put no systems in place to monitor these impacts, and instead is asking a group of largely underfunded organisations, with limited institutional access, who often face resistance from officials when attempting to obtain information, to do its monitoring for it.

It is also simply disingenuous for the Department of Health to suggest these risks and impacts are somehow speculative or unproven. They are the natural logical and inevitable consequences of the policies and regulations that you have chosen to impose.

## Action for the Department of Health to take.

1. Immediately suspend up-front charging and the extension of charging into community services.
2. Institute an independent evaluation into the impact of the 2015 charging regulations on migrants' access to healthcare.