

HIV AND IMMIGRATION

The knowledge, the will and the power (KWP) states the National African HIV Prevention Programme's (NAHIP) plan to prevent sexual HIV transmissions among African people in England. KWP articulates a number of aims that highlight the connection between HIV prevention need, immigration, health and social care policy (see Policy aims 2, 6, 7, 8, and 15). Successful immigration policy advocacy in the African HIV sector relies on a workforce that can respond to questions that relate to HIV and immigration.

This document is for providers of health care, social care, HIV prevention and health promotion services to African visitors and migrants in the UK. It aims to inform service providers about the ways that immigration laws and policies can impact on HIV prevention need, and where to find expert resources for further support. This briefing is limited in its detail, and readers are encouraged to seek expert legal advice when providing support for individual service users.

HIV AND IMMIGRATION POLICY

HIV and entry to the UK

The United Kingdom does not impose mandatory HIV testing for those entering the country as visitors or immigrants, nor does it require a declaration of HIV status. In rare circumstances, an individual's conditions of employment may require testing, for instance, where a healthcare worker is moving to the UK to work for the National Health Service, they may be asked to test for HIV if the job role carries a high risk of exposure. Apart from these specific circumstances, non-voluntary HIV testing is not a requirement for UK entry, and UK testing policy stresses that HIV testing should always be voluntary, with fully informed consent.

Those who seek asylum are routinely offered a voluntary health assessment. People should know that in the UK, no health test or procedure should be performed without their consent.

HIV and deportation

It is common for migrant African people to fear that people with diagnosed HIV will be deported if their status becomes known to the immigration authorities. *This is not true. HIV is never the reason why someone is deported.* When asked if they knew that: "Africans are NOT deported from the UK solely because they have HIV", fewer than two-thirds (62%) of *Bass Line* respondents knew this. It is likely that confusion has arisen because there have been key legal decisions about cases where people with HIV have been deported, *despite their infection.*

HIV and immigration decisions

Where a person knows they have HIV, this may partly support their application to remain in the UK. However, as each case is decided on individual circumstances, this is not always the case. Taking the earliest possible opportunity to report a known health condition as a part of any immigration application is the best way to ensure full assessment of an individual's circumstances.

A person's HIV status may be a factor in an application for **humanitarian protection**. This protection is granted to people who are not eligible for refugee status (or whose application has been refused), that face serious risk to life or person on return to their country of origin. Humanitarian protection is difficult to attain, and if having HIV is the only basis for the claim, it is unlikely to succeed. Where such an application is refused and all UK appeals have been exhausted, it may be possible to appeal to the **European Court of Human Rights**. Specialist agencies will give advice to those working with individuals considering such claims.

People with HIV whose immigration status is unsettled may be particularly vulnerable to domestic violence. The UK Border Agency offers specialist advice for migrants experiencing domestic violence, and this is an issue with which the Black Health Agency has experience.

SPECIALIST IMMIGRATION ADVICE LINES

Asylum Aid runs a part-time helpline on 020-7354 9264

Refugee Council has a number of regional helplines. Their London helpline is 020-7346 6777

Rights of Women runs a part time legal helpline which includes immigration advice for women, given by women lawyers on 020-7251 8887 or 020-7490 2562.

HEALTHCARE FOR NON-NATIONALS

Non-nationals may sometimes be charged for using the National Health Service (NHS). The Nam Life website has an excellent summary about NHS access for non-nationals. Nationals from within the European Economic Area (EEA) should be able to freely access NHS care due to the existence of reciprocal healthcare agreements across the EEA.

HIV testing

Free, confidential HIV and sexual health screening is available for everyone who wants it, from Genito-Urinary Medicine (GUM) or sexual health clinics in hospitals, at community-based testing units, or through primary health care. It is easy to find nearby testing centres and sexual health services from the NHS, and fpa. Testing is completely confidential, and most clinics will not ask for more than a first name and a means of contact. Some places can offer immediate or same-day HIV test results, however many do not. For HIV test results that are not immediate, the individual needs to return to the place where the test was done to hear the result, although some clinics will text or telephone the results of other sexual health tests, such as chlamydia.

CONFIDENTIALITY

All NHS sexual health and HIV services are confidential, and this should be clearly communicated to everyone who uses a service. The only people who will know about patients' names, contact details, and health issues are those directly involved in providing their care. Contact details are only passed on to authorities where there is a concern about a particular crime or harm, such as where a child is at risk. Details are not passed from sexual health services to immigration officers.

HIV treatment

People with life threatening conditions – including people with HIV – should receive treatment and care at an NHS hospital, no matter what their immigration status (this is known as “immediately necessary” treatment). But whether the treatment is “immediately necessary”, like HIV treatment, or not, they may be charged for this treatment if:

- they entered the UK without formal documentation;
- they are here on a visitor's visa, or they have overstayed a visa of any kind;
- they hold a British passport, but are not ordinarily resident in the UK;
- they have failed in an asylum claim and in all possible appeals, and their treatment commenced after the asylum claim was finally refused.

For chargeable treatments, some hospitals will have an Overseas Payment Officer who should assess a person's ability to pay, although it is ultimately up to the doctor to

decide if they will offer treatment. For people with HIV, HIV treatment and care should be made available, even where individuals are unable to pay. In practice, not all hospitals will seek payment from chargeable overseas visitors. The Nam Life website provides clear advice about charging, and further advice can be sought from THT Direct (info@ttht.org.uk / 0845 122 1200) or the African AIDS Helpline (0800 096 7500).

Hospitals and secondary care

Migrants who are considered “chargeable” for one of the reasons noted above may be asked to pay for the majority of hospital treatment (secondary care). They may be asked to make a deposit prior to receiving care (if the treatment is not considered “immediately necessary”). However, some secondary care is always free. Hospital accident and emergency treatment (A&E) is always provided free of charge.

Also, public health regulations stipulate that there is no requirement to pay for the treatment of other transmissible infections such as syphilis, gonorrhoea or tuberculosis (but the treatment of HIV infection is sometimes “chargeable”).

HIV care during dispersal, detention, and removal

When a person is on HIV treatment, it is important that this remains consistent. Current guidance states that asylum seekers who know that they have HIV should only be dispersed to a new area to live if:

- there has been discussion and expert advice from their current HIV clinician, and
- the asylum seeker is medically stable, with no other health complications, and
- there has been time for preparation, including organising the transfer of clinical care to a specialist in the new area.

In situations where these recommendations are not being implemented, contact policy specialists at NAT and AHPN for professional support.

Where an applicant or irregular migrant is refused legal status in the UK, they may be detained at an Immigration Removal Centre (IRC) prior to their deportation. Asylum seekers may also be detained at an IRC prior to a decision being made on their claim. Where such an individual has HIV, there are a number of important health and well-being issues that should be prioritised. Best practice recommendations for IRCs regarding their detainees with HIV include:

- ensuring that a detainee has access to the correct anti-retroviral medications within 24 hours if they did not arrive with them;
- making advance clinical arrangements for transferring a detainee with HIV out of or between IRCs;
- ensuring a detainee with HIV is fit for travel prior to removal.

AHPN has produced an action checklist for service providers supporting a person with HIV who has been detained. AHPN encourages organisations to submit evidence about such detentions and deportations, which can remain anonymous if that is the wish of the service user.

GPs and primary care

Most people in the UK can access GP care for free, even if they are not citizens. The Department of Health guidance on charging overseas visitors for NHS services states that people with an asylum claim in process or in appeal, migrants who are employed and have a visa to work in the UK, and registered students with a student visa are entitled to free care. In addition, people from countries that have a reciprocal healthcare arrangement with the UK will not have to pay for healthcare.

There is no legal requirement for GPs to charge anyone for their treatment and care. GPs may charge refused asylum seekers, visa overstayers and undocumented migrants at their discretion, but are not obliged to seek payment.

General Practitioners are not allowed to refuse services because of a person's medical condition, including HIV. They are also not allowed to discriminate on the basis of ethnicity, gender, religion, or sexuality. For those with diagnosed HIV, their HIV clinic can recommend a GP with some HIV experience. For the best patient care, GPs and HIV clinics should be able to communicate with one another about a patient's well-being and treatment (with the patient's permission).

FINDING A DOCTOR

The NHS service directory website www.nhs.uk gives details of GP practices by postcode, as does NHS Direct. (telephone: 08 45 46 47)

The Patient Advice and Liaison Service (PALS) can help those who have had difficulty getting registered. www.pals.nhs.uk

The Refugee Council, Doctors of the World and local refugee support groups can help irregular migrants access free healthcare.

MAINSTREAM SERVICES AND SOCIAL CARE

Public services and migration status

While social housing should be made available to most UK citizens who need it, it should also be provided to refugees and those with unconditional leave to remain or with exceptional or discretionary leave to remain.

Asylum seekers whose asylum application is in process and who are destitute may receive housing and subsistence cash support from the UK Border Agency (UKBA) under Section 95 of the Asylum and Immigration Act 1999. UKBA also

provides housing and subsistence support in vouchers or a pre-paid card to those on Section 4 support (a special programme of support for those whose claim has been refused but where it is accepted they cannot currently return home, or where they are making further representations following a refusal, and who would otherwise be destitute).

Irregular migrants who do not meet these criteria will not be provided with housing from either their Local Authority, a Housing Association or the UKBA.

Asylum seekers and those with a positive decision on their asylum application are entitled to education and training opportunities. All children up to the age of 16, regardless of their immigration status or that of their family, are legally entitled to a free school education in the UK.

Discrimination and HIV

The Equality Act 2010 and the Public Sector Equality Duty mean that a person should not be denied a service or an offer of employment on the basis of their actual or perceived HIV status.

Support for people with no recourse to public funds

Financial support referred to as Section 21 (which refers to the section of the National Assistance Act 1948, under which it is provided) is granted by Local Authorities to people who "*who by reason of age, illness, disability or any other circumstances are in need of care and attention which is otherwise not available to them.*" People who are seeking asylum need to prove that this need is not only because they are destitute.

Recent court rulings mean that some asylum seekers in receipt of Section 21 support may no longer be entitled to that support. For asylum seekers with or without HIV whose only requirements are housing and financial assistance for daily living, the UK Border Agency is now their only provider of food and housing. However, where people need specific assistance, such as: nursing care at home, help with household tasks, and personal daily care, they will have a reasonable case for receiving Section 21 support. NAT has produced a helpful briefing about Section 21 funding from local authorities.

Also, mentioned above is Section 4 support (referring to Section 4 of the Immigration and Asylum Act 1999). Where an application for asylum is refused and the individual is temporarily unable to return home, or where they are making further representations after a refusal – and would be destitute without support – they can apply to be provided with access to food and shelter in the meantime. It is also worth mentioning that provisions for the welfare of children under 18 years of age are made under Section 55 of the UK Borders Act 2009.

Housing issues among asylum seekers with HIV

Asylum seekers who need accommodation will have it provided for them by the UK Border Agency, as most are not eligible for any support from local authorities. Asylum seekers cannot choose where this accommodation will be, and the housing itself (managed either by the local authority, a social landlord, or a registered private landlord) is usually of a poor standard.

Substandard heating, rising damp and unsanitary kitchen and toilet areas are just some of the conditions common to UKBA provided housing that can pose a substantial threat to the health of people with HIV. Where a case owner is aware that an asylum seeker is diagnosed with HIV, they should consider their particular needs when arranging accommodation.

In addition to attending to the general standard of the living arrangements, the case owner should consider the privacy needs of the asylum seeker in storing and taking HIV medication. Also, evidence on housing need collected in Nottingham and elsewhere demonstrates that living in shared accommodation can provoke considerable stress for asylum seekers with diagnosed HIV. The situation can lead to an overwhelming fear of, or direct experience of HIV-related stigma and discrimination. Where an individual's mental well-being and security is put at risk because others become aware of their HIV infection, it is the responsibility of the case owner to find them safe accommodation. Disclosure of one's HIV status to housemates is an entirely personal decision, and should never be imposed by a third party.

OVERVIEW

Issues relating to immigration and HIV can be complex, and specialist agencies provide expert advice to voluntary and statutory sector agencies as well as individuals.

Although it is illegal to discriminate against people because of their perceived or actual HIV or migration status, this does not

mean that all people living in the UK are allowed free access to services provided by the state. Local HIV and refugee support agencies should be able to offer advice on these issues to people of any immigration status who are at risk of acquiring or have HIV (whether they have been diagnosed or not).

The *African HIV prevention handbook* is an implementation toolkit for KWP. The final two chapters of the *handbook* describe how people seeking to better meet the HIV prevention needs of African people can plan and implement sector development (chapter 15) and policy interventions (chapter 16). Such interventions can improve awareness of immigration policies and migrants' rights, help to reduce stigma and discrimination in the provision of healthcare and social services, and help to change the national and local policies that directly impact on people affected by HIV and uncertain immigration status.

KEY RESOURCES

AHPN, *National contact list of immigration solicitors*, 2008.

Department of Health, *Overseas visitors* (updated website resource).

King's Fund, *Reading List: refugee health care*, 2010.

National AIDS Trust, *HIV and the UK Asylum Pathway*, 2008.

National AIDS Trust, *Detention, removal and people living with HIV*, 2009.

Nam Life (updated web resource for people with diagnosed HIV).

Positively Women / Asylum Aid / ICW, *A Positive Partnership: the HIV immigration project 2003-2009*, 2009.

UK Border Agency, *Immigration rules* (updated website resource).

UK Border Agency, *Applying for permission to settle as a victim of domestic violence*, (updated website resource).

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