



**Freedom from Torture**  
Medical Foundation for the Care of Victims of Torture

## **Consultation on proposed amendments to the National Health Service (Charges to Overseas Visitors) Regulations 2016**

### **January 2017**

Freedom from Torture is the only human rights organisation dedicated to the treatment and rehabilitation of torture survivors who seek refuge in the UK. We do this through direct and second-tier services from our specialist centres in Birmingham, Glasgow, London, Manchester and Newcastle. Each year we support more than 1,000 torture survivors, primarily via psychological therapies, forensic documentation of torture, legal and welfare advice, and creative projects.

We support torture survivors to speak out about their situation to those in power and help break down negative attitudes to refugees. Together with survivors, we use our experience to train other service providers to understand and meet the needs of torture survivors in the UK.

#### **1. Proposed amendments to the Charging Regulations**

Q. We propose to amend regulation 15 of the Charging regulations at the earliest opportunity so that the exemption applies where an overseas visitor:

- has made an application to be granted temporary protection, asylum or humanitarian protection under the immigration rules, which has been refused, and
- Is supported by the Home Office under the 1999 Act.

*Do you have any comments on this proposal?*

Freedom from Torture reiterates calls made by the Still Human Still Here coalition (of which we are a member) and strongly supports the Department of Health (DoH) proposal to retain an exemption from charging for refused asylum seekers supported by the Home Office under s4 and s95 of the 1999 Act and s95A and s98A introduced in the 2016 Act, as well as those supported under the Care Act 2014 and the Social Services and Wellbeing (Wales) Act 2014.

Equally, we support the DoH proposal to retain the easement clause currently in the regulations which allows an individual to continue any remaining NHS services provided as part of an on-going course of treatment free of charge, as long as this was started when the person was exempt.

In addition, we strongly recommend that exemptions should also include refused asylum seekers who are supported by local authorities under either:

- Paragraphs 10A of new Schedule 3 of the 2002 Nationality, Immigration and Asylum Act, which enables support to be provided to destitute asylum seeking families who do not meet the criteria for support under Section 95A, but do meet one of four specific conditions; or
- Paragraphs 10B of new Schedule 3 of the 2002 Act, which enables support to be provided to asylum seekers who are appeal rights exhausted, have reached 18 and are leaving care, but have an outstanding immigration application or appeal and do not qualify for the other forms of the support highlighted above.

Freedom from Torture also believes that an exemption from charging should extend to all recipients of s4 support, and not just s4(2) ('failed asylum seeker') recipients. The two cohorts of applicant bear very substantial similarities and are in equal need of access to healthcare. In order to have s4(1) support a person has to be as vulnerable, and as cooperative, as a person on s4(2) support and the Home Office's Asylum Support policy makes it clear that ss4(1)(a) & (b) support will only be granted in "truly exceptional circumstances", where there is destitution, and where there would otherwise be a breach of the person's human rights including because they could not reasonably be expected to leave the UK. Freedom from Torture works with torture survivors receiving this type of support and due to their destitution they are unable to pay for their healthcare.

## 2. Potential further changes

Q. We are considering whether to provide an exemption that applies when an overseas visitor:

- is provided with support by the Home Office to enable them to meet a residence condition of immigration bail
- is provided with support by a local authority under the new powers to support destitute families without immigration status and destitute adult migrant care leavers (these powers are not yet in force and are dependent on regulations being made).

*Do you have any comments relevant to this consideration?*

### 2.1 Destitute families

We strongly encourage DoH to adopt the exemption for overseas visitors provided with support by a local authority under the new powers to support destitute families without immigration status. This exemption will ensure that extremely vulnerable children continue to have access to free healthcare. Charging families for healthcare would not only be unworkable on account of the legal and ethical duties on medical practitioners to safeguard and protect the health and well-being of children, but would also generate new barriers to accessing healthcare services which will inevitably prevent clinicians from identifying concerns with regards to a child's welfare in line with safeguarding guidance. This would be incompatible with the UN Convention on the Rights of the Child (UNCRC) and legal duties under domestic law (Children Act 1989 and 2004) to safeguard and promote the welfare of the child. Charging destitute families for healthcare could also undermine the

government's own commitment to an effective childhood immunization programme with an aim to reduce the incidence of childhood infections<sup>1</sup>. Charging could reduce immunization up-take within these groups which could have an impact on herd immunity and have negative implications for public health.

## **2.2 Adult migrant care-leavers**

We strongly encourage DoH to adopt the exemption for destitute adult care leavers. Many of these young adults may have come to the UK as separated children. Various systematic reviews estimate that 19% to 54% of separated children suffer from symptoms of post-traumatic stress disorder compared to 0.4%-10% of other children in the UK<sup>2</sup>. At Freedom from Torture we treat many separated children and young people who have survived or witnessed torture. Our experience shows us that the mental health problems caused by their trauma can be exacerbated by uncertainty around their immigration status. This becomes an even more acute concern as a separated child reaches adulthood and on turning 18 years' old many are discharged from the care of the local authority, leaving them to fear the possibility they will be returned to a country they have fled. It is vital that these vulnerable young people maintain access to professionals in the health service especially since the support they receive from social services can end abruptly as they reach adulthood.

## **2.3 To meet a residence condition of immigration bail**

We strongly encourage DoH to adopt the exemption for those provided with support by the Home Office to enable them to meet a residence condition of immigration bail. Clinically, it is well understood that detention *per se* is harmful to torture survivors. Most will have been tortured in detention settings and will experience re-traumatisation, including powerful intrusive recall of torture experiences and a deterioration of pre-existing trauma symptoms, if detained subsequently. Furthermore, in detention there is a lack of access to specialist health staff in identifying and treating torture survivors, a torture survivor may have discontinued medication or therapy because they are often detained directly from reporting centres and they may also be forced to stay in clinically inappropriate settings such as sharing a room with a stranger. These experiences in detention can exacerbate and compound mental health problems. Therefore, those leaving detention are likely to have unmet healthcare needs and it is imperative they have access to healthcare services.

Whilst an individual in the above groups may fall within the NHS exemption from charging which applies to treatment required for a physical or mental condition caused by torture, in practice, as described in section 4, this exemption is not always accessible to a torture survivor and does not cover treatment for all their health needs. It is therefore important that exemptions are applied to these groups to help ensure that torture survivors do not fall outside access to healthcare services.

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<sup>1</sup> This commitment is emphasised in *Improving Children and Young People's Health Outcomes: a system wide response* (2013) [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/214928/9328-TSO-2900598-DH-SystemWideResponse.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214928/9328-TSO-2900598-DH-SystemWideResponse.pdf)

<sup>2</sup> The Children's Society (2015) *Not just a temporary fix: Durable solutions for separated migrant children* <http://www.childrensociety.org.uk/what-we-do/resources-and-publications/not-just-a-temporary-fix-durable-solutions-for-separated>

### **3. Matters in respect of which no amendments are proposed**

Freedom from Torture believes the DoH should extend the existing exemptions to all refused asylum seekers including those who are not provided with support of the types outlined in the consultation so they can retain free access to healthcare until they return to their country of origin. This is for a number of reasons discussed below.

#### **3.1 Torture survivors are often wrongly denied protection**

Many survivors of torture are wrongly denied protection by asylum decision-makers. One reason is poor legal representation and failure by their legal representative to submit medical evidence as part of their asylum claim or appeal. Many within this 'appeal rights exhausted' group will try to find a new lawyer to prepare a fresh claim, a process which may take many months, during which they are not entitled to free healthcare. In our long experience of working with this client group, this is not an unusual situation. Our Legal Advice and Welfare Service regularly assists survivors of torture in these circumstances to find new legal representation in order to submit a fresh claim based on new evidence relating to their torture or other circumstances which were not properly presented as part of their initial asylum claim. In the period after refusal of the initial claim and before recognition of the fresh claim, a torture survivor in this category can fall outside the charging exemptions. The individual in this situation may fall within the NHS exemption from charging which applies to treatment required for a physical or mental condition caused by torture, but in practice, as described in section 4, this exemption is not always accessible to a torture survivor and does not cover treatment for all their health needs.

Some within the 'appeal rights exhausted' group will have no further claim for protection (for example because of a genuine and durable regime change in their country that negates the risk of further torture) but be unable to return to their country of origin due to a physical impediment to travel or for some other medical reason. However, because they are not in receipt of s95 or s4(2) asylum support already, they cannot access the necessary medical evidence to support their application on this basis for s4 support. This places asylum seekers who are destitute in a 'catch-22' situation with regard to accessing both necessary healthcare and s4 support. It is incorrect to consider people in this situation as health tourists as their purpose in coming to and remaining in the UK is to secure protection from torture or other form of persecution. For this reason, Freedom from Torture considers that they should be given access to healthcare for which they cannot afford to pay.

#### **3.2 Torture survivors are highly vulnerable**

Torture survivors are considered highly vulnerable for various reasons including but not limited to the complex, severe and multiple health difficulties they experience connected with their torture. Charging them for healthcare exacerbates their vulnerability and prevents them recovering from their experiences.

Many survivors of torture suffer chronic mental health difficulties and a significant proportion of those we provide direct services to would be classified as disabled for the purposes of anti-discrimination laws. There is considerable evidence that torture is causally related to high levels of psychiatric morbidity, most notably

Post Traumatic Stress Disorder, which is often accompanied by depression. Other psychiatric illnesses suffered by survivors of torture include generalised anxiety disorder and in some cases substance misuse (often in an attempt to cope with untreated symptoms of other disorders<sup>3</sup>). Many survivors of torture suffer lasting personality changes characterised by suspicion, difficulties in regulating mood and emotion, and a sense of being alienated from the world. For a significant minority, this morbidity is severe and long-lasting, and leads to substantial social and economic disability, with high levels of dependence in terms of day-to-day care. Clinicians at Freedom from Torture report high levels of suicidal ideation and risk of self-harm amongst this client group.

Torture survivors are often disempowered as a result of their experience in their country of origin but also as a consequence of the prolonged asylum process which often leaves them isolated, de-skilled, financially dependent and lacking in confidence. People living with mental health problems are among those least able to advocate for their healthcare entitlements and struggle to negotiate bureaucratic procedures. For torture survivors and other asylum seekers and refugees this is usually exacerbated by language difficulties. Moreover, many torture survivors in treatment with Freedom from Torture describe how difficulties engaging with complex bureaucracies in the UK, including problems securing access to healthcare, reinforce experiences of powerlessness connected with their torture, exacerbating PTSD symptoms and sometimes triggering flashbacks.

### **3.3 It would simplify a complex process**

One of the reasons why it is so difficult for health professionals to clarify entitlement to free NHS healthcare is the complexity of the various parts of the immigration system and the many different types of status and entitlements within that system. Legal status can change suddenly and repeatedly as an applicant passes through the asylum process, subject to an asylum decision, a support decision, an appeal or a fresh claim.

The Home Office has difficulty managing its own information systems and communicating change in status and entitlements across its own departments. The obligation to repeatedly check status is clearly proving burdensome for secondary healthcare providers and defending an entitlement to free healthcare under an exemption category requires a torture survivor him/herself to understand the exemption which applies, which is a lot to expect if health professionals themselves do not understand it. An exemption for all refused asylum seekers would be a huge step in simplifying this process.

### **3.4 It would help prevent mistakes around eligibility**

The support system operated by the Home Office is notoriously inefficient and Freedom from Torture's research into the poverty experienced by torture survivors identifies numerous examples of survivors of torture who have been incorrectly refused s95 or s4 support, which can prevent their access to free NHS healthcare<sup>4</sup>. Our report also discusses situations where torture survivors find themselves unable to accept section 4 support; in one case because the individual felt too unwell to

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<sup>3</sup> *Psychiatric assessment and treatment of survivors of torture*, Richard M. Duffy, Brendan D. Kelly, *BJPsych Advances* Mar 2015, 21 (2) 106-115; DOI: 10.1192/apt.bp.113.012005 at <http://apt.rcpsych.org/content/21/2/106>

<sup>4</sup> Freedom from Torture (2013) *The Poverty Barrier: the right to rehabilitation for survivors of torture in the UK*, p53 [https://www.freedomfromtorture.org/feature/the\\_poverty\\_barrier/7412](https://www.freedomfromtorture.org/feature/the_poverty_barrier/7412)

tolerate the conditions in the accommodation provided by the Home Office due to poor mental health arising from his history of torture and in other cases as it would have meant separation from family members, children.

Serious administrative problems in the provision of asylum support also mean that individuals may fluctuate between being in receipt of asylum support and falling out of provision. Exempting all refused asylum seekers would make it easier for torture survivors to access healthcare while also making it less complex for the NHS to assess eligibility for healthcare provision, particularly in light of frequent changes of address experienced by asylum applicants which mean they need to re-register with new medical practices.

The Joint Committee on Human Rights has expressed concern regarding restrictions on access to healthcare, warning that this also risks breaching rights under the International Covenant on Economic, Social and Cultural Rights, and recommended that free primary and secondary healthcare be provided for all those who have made a claim for international protection whilst they remain in the UK<sup>5</sup>.

#### **4. Torture exemption needs extending**

We welcome the exemption from NHS charging which applies to treatment required for a physical or mental condition caused by torture, which was introduced to the NHS Charging Regulations following advocacy by Freedom from Torture<sup>6</sup>.

However, effective implementation of this exemption is hampered by a significant obstacle: the identification and documentation of torture survivors. Identification can be extremely difficult and survivors are often reluctant to disclose their experience due to feelings of shame or guilt, lack of trust in figures of authority, fear of repercussions from within their community, and fear of medical professionals who are often employed by states to conduct the torture.

Disclosure can take many months or years, and may only happen once a relationship of trust has been built with someone capable of responding appropriately to indicators of torture. Such relationships can often only be built through regular contact with a GP or health professional who is treating the individual for an entirely or apparently unrelated condition. In research Freedom from Torture has undertaken about the impact of poverty on torture survivors, less than half (47%) of respondents said that they were able to talk to their GP about their torture history<sup>7</sup>. Of those who could not talk to their GP about their torture experience, the most common reasons were that there was not enough time during the appointment, they had worries about confidentiality, the doctor did not seem interested, or they did not feel able to talk about these experiences<sup>8</sup>.

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<sup>5</sup> Joint Committee on Human Rights (2009) *Legislative Scrutiny: Welfare Reform Bill; Apprenticeships, Skills, Children and Learning Bill; Health Bill*, at: <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/78/7806.htm#a22>

<sup>6</sup> Summary of changes made to the way the NHS charges overseas visitors for NHS hospital care (2016) <https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations/summary-of-changes-made-to-the-way-the-nhs-charges-overseas-visitors-for-nhs-hospital-care>

<sup>7</sup> Freedom from Torture (2013) *The Poverty Barrier: the right to rehabilitation for survivors of torture in the UK* [https://www.freedomfromtorture.org/feature/the\\_poverty\\_barrier/7412](https://www.freedomfromtorture.org/feature/the_poverty_barrier/7412)

<sup>8</sup> Ibid.

The DoH should therefore extend the existing torture exemption to all torture survivors seeking treatment for any health condition. Again, this would make a complex exemption considerably clearer and easier to implement. It would also support UK compliance with its obligations under the UN Convention Against Torture, which requires States to ensure the right to as full rehabilitation as possible for survivors of torture (Article 14).

Even for someone who has been identified as a torture survivor, it is unclear what evidence s/he would be required to show in order to prove that s/he is eligible for free primary healthcare under the torture exemption. Firstly, s/he would have to prove that s/he is a torture survivor but there is no certificate or identification document that validates this. Secondly, s/he would have to prove that s/he is seeking treatment for a condition caused by torture. This causal link may not be immediately evident and may only become apparent during the course of treatment. Some of the symptoms and conditions cited by our research respondents were not obviously caused by torture but on investigation may have proven to be so. These included: musculoskeletal problems, diabetes, heart problems, high blood pressure, and high cholesterol, genito-urinary symptoms, arthritis, gastro-intestinal symptoms, skin problems, respiratory problems (asthma), HIV positive, ear and eye problems and nerve damage. The shame and stigma attached to experiences of torture and/or to mental health problems may mean that torture survivors often present to healthcare providers with physical complaints that cannot be causally linked to torture but which indicate underlying mental health concerns. Should charging be raised prior to providing treatment, the survivor might be unlikely to pursue a course of treatment.

For these reasons, Freedom from Torture considers that DoH should exempt all refused asylum seekers from NHS charging. The torture exemption provides a very important safeguard, but in practice, the effective implementation of this exemption is hampered because of the complexity of torture cases, the extent of survivors' health problems needing treatment and their vulnerability.

**To discuss any of the matters in this submission please contact Lucy Gregg, Senior Policy Advisor, at [lgregg@freedomfromtorture.org](mailto:lgregg@freedomfromtorture.org) or on 020 7697 7839**