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 migrants and visitors to England. This updated version includes changes to immigration and health policies that have come into effect in 2011 and 2012. It aims to inform service providers about the ways that England's 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 HIV exposure. Apart from these specific circumstances, 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. However, 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, not because of it.*

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 support 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 helpline where callers can speak to advisors fluent in a range of languages on 0808 808 2255

Rights of Women runs a part time legal helpline which includes immigration advice for women, given by women lawyers on 020 7490 7689.

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.

Accessing urgent care in hospital

Hospital accident and emergency treatment (A&E) is always provided free of charge to anyone who needs it. Furthermore, the current charging regulations stipulate that there is no requirement to pay for the treatment of a number of transmissible infections such as syphilis, gonorrhoea and tuberculosis – and since 1 October 2012, this now includes the free provision of HIV treatment to all who need it.

However, some migrants may be considered "chargeable" for other secondary treatment and care if:

- They entered the UK without documents.
- They are a visitor or have overstayed a visa.
- They are not 'ordinarily resident' in the UK.
- They have failed all asylum claim appeals, and they started a course of treatment after this point (refused asylum seekers continuing a course of treatment which they commenced while their claim was open will not be charged). (See THT and NAT's updated *Will I Have to Pay?* Information sheet)

Migrants who are considered "chargeable" 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").

In practice, not all hospitals will seek payment from chargeable overseas visitors. However, under new immigration rules, people with an unpaid NHS debt of more than £1,000 will generally have future applications to enter or stay in the UK refused. It is vital for those who have a debt to gain support on managing this directly with the hospital (sometimes through a dedicated Overseas Payment Officer), as they may decide to dramatically reduce or write off the debt for those who are unable to pay. (See THT and NAT's updated *Will I Have to Pay? information sheet or NAM's* advice page on paying or challenging bills). Further advice can be sought from THT Direct (0845 122 1200).

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 sites, or through primary 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 name and a means of contact. Immediate and same-day HIV test results are becoming more common, but are not yet available everywhere. 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, however some clinics will text or telephone the results of other sexual health tests, such as Chlamydia (see also the KWP briefing on HIV testing need).

CONFIDENTIALITY IN HIV/GUM SERVICES

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' health issues are those directly involved in providing their care. Police authorities would only ever be contacted where there is a concern about a particular crime or harm, such as where a child is at risk.

Those who fail to pay debts worth £1,000 or greater to the NHS will normally be refused permission to enter or remain in the UK. The NHS will provide sufficient information to the UK Border Agency to enable it to identify the debtor but medical records, including HIV status, will not be shared.

HIV treatment

Starting from October 2012, HIV treatment is now provided free of charge for all people in England who need it, no matter what their immigration status or how long they have been in the country (see NAT's *Q&A sheet* on these changes to the charging regulations).

HIV care during dispersal, detention, and removal

When a person is on HIV treatment, it is important that they get the drugs continuously and that they have access to medical monitoring of their infection. 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 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.

GPs and primary care

Most people in the UK can access GP care for free, even if they are not citizens. The NHS charging rules do not apply to primary care and there is no minimum period of residency required for GP registration. People who are in the UK for a period of less than 3 months can ask to be registered as a 'temporary' patient.

All asylum seekers whose claim is being considered or appealed and those granted refugee status are entitled to register with a GP, as are those staying in the UK on a valid visa. GPs may only refuse to register these groups if their list is full.

It is up to the discretion of the GP practice whether to register people with irregular migration status such as refused asylum seekers, visa over-stayers and undocumented migrants. However, they have a duty to provide 'immediately necessary' treatment where clinically necessary, regardless of someone's immigration status. 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.

In exercising their discretion, General Practitioners are not allowed to refuse to register a patient 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, HIV clinics strongly encourage registration with a GP, and they can often recommend local doctors 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).

REGISTERING WITH A GP

The NHS gives details of local GPs (NHS Direct: 0845 4647).

The Patient Advice and Liaison Service can help those with problems getting registered.

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

The London Government's guide to registering with a GP designed for migrants and refugees, has useful information, even for those living outside of London.

PUBLIC SERVICES AND SOCIAL CARE

Discrimination and HIV

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

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. See NAT's factsheet on access to benefits and housing for refugees with HIV.

Asylum support from UKBA

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 on 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). 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.

Irregular migrants who do not meet these criteria will not be provided with housing from 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.

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 housing officer 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 housing officer (or equivalent) 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 housing officer to find them safe accommodation. NAT and Shelter have produced a useful guide for housing officers on HIV and Housing. Disclosure of one's HIV status to housemates is an entirely personal decision, and should never be imposed by a third party.

Support for people with no recourse to public funds

Migrants who have *no recourse to public funds* (including migrants on certain work and study visas as well as irregular migrants and refused asylum seekers) are not able to access mainstream housing and benefits. However, in some circumstances local authorities may provide some support to people in these groups.

One such form of support, known as Section 21 support (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."

This support may be sought by asylum seekers and migrants with HIV who need specific assistance, such as: nursing care at home, help with household tasks, and personal daily care. NAT has produced a helpful briefing about Section 21 funding from local authorities.

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 to individuals.

Although it is illegal to discriminate against people because of their perceived or actual HIV status, their ethnicity or nationality, 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 KWP in Practice website describes how people seeking to better meet the HIV prevention needs of African people can plan and implement sector development and policy development interventions. Such interventions can improve awareness of immigration policies and migrants' rights (both inside and outside of the HIV sector), 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

Department of Health, *Guidance on implementing the overseas visitors hospital charging regulations*, October 2012.

Department of Health, *HIV treatment for overseas visitors*, October 2012.

King's Fund, *Reading List: refugee health care*, 2012.

National AIDS Trust, *Benefits and Housing in the UK: a guide for refugees living with HIV*, 2012.

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

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

National AIDS Trust, *Asylum and Migration* (web resource)

Nam Life (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* (web resource)

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

Author: Catherine Dodds, Sigma Research • **Series editor:** Peter Weatherburn, Sigma Research

Thanks to the following people and agencies that supported the development of this briefing by either suggesting key topic areas, commenting on earlier drafts, or both: Jabulani Chwaula, Edna Soomre and Jo Moss (AHPN), Ikenna Obinawa, Joseph Ochieng, and Patrick Serugga (THT), Tina Murphy (HACO), Dele Williams (NIAS), Sarah Radcliffe and Yusef Azad (NAT), Mesfin Ail (Embrace UK), Sam Robbin-Coker (WANI), Amdani Juma (AISD), Rakiba Khatun (Immigrant Advisory Services), James Ramowski (1st Call Immigration Services), Beatrice Osoro (Positively UK), and Syson Namaganda (BHA).

This KWP briefing sheet was commissioned by African HIV Policy Network on behalf of NAHIP, a national HIV prevention partnership previously funded by the Department of Health for England. NAHIP included a range of organisations working in partnership: Sigma Research; NAM; Black Health Agency and Yorkshire Mesmac in Northern England; Centre for all Families Positive Health in Bedfordshire; Lass Social Enterprise, African Institute for Social Development and Derbyshire Positive Support in the East Midlands; and Terrence Higgins Trust Midlands and the Sexual Health Promotion Service at Heart of England NHS Foundation Trust in the West Midlands. In London there were three NAHIP partnerships: Rain Trust UK, NAZ Project London, Embrace UK Community Support Centre, and African Culture Promotions (known as the NEAR partnership); The Metro Centre; and Positive East working with Widows and Orphans International and MS Development Corporation Limited.

Version 2: October 2012
Version 1: October 2010
ISSN 2045-4341