Access to health care for people seeking asylum in the UK

This was an email received by an organisation providing assistance to asylum seekers from a community worker, concerned about one of her clients:

'… I have a client who is now 22 weeks pregnant whose appeal for asylum was rejected last year, I understand on grounds of being 2 days overdue in her application. She is very vulnerable, has no partner, speaks little English, has no means of income, and is living in very poor conditions in a 'flat' above a derelict factory in Hackney. The premises has no electricity, or hot water, and is not secure from the outside. She 'shares' the flat with other families, seemingly of similar status, though many have left since the recent electricity disconnection. I am gravely concerned about her welfare, and that of her unborn baby.'

Under new government proposals this lady may not be entitled to receive free antenatal care within the NHS, nor to deliver in hospital without incurring the costs, unless it is in the emergency department. Her child, though it will be born in Britain, may not be eligible for neonatal or child health care.

People of many countries now make their home in the UK. Refugees and asylum seekers come in search of protection from persecution in their countries of origin. Economic migrants come hoping to make a living. Nationals from the European Economic Area may settle here. But the welcome offered to the new arrivals is not an equal one. A person's residency status will determine their entitlement to welfare, health and social provision.

WHAT DO THE TERMS MEAN?

Ordinary resident

A person is regarded as 'ordinarily resident' if he or she is living in the UK for a settled purpose. This usually means work or study. This is the status that applies to most citizens of the EU residing in the UK.

Refugee

A refugee is a person who, according to the 1951 Convention on Refugees owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

Asylum seeker

Anyone who has applied for asylum against persecution under the 1951 United Nations Convention on Refugees, and is waiting for a decision.

Failed asylum seeker

The term covers individuals who have exhausted all their legal avenues in seeking asylum. That does not necessarily make their claim 'bogus'; it means they have failed to meet the strict legal criteria. Their lives may still be at risk, and they may qualify to remain in the UK on humanitarian grounds.

Economic migrants

People who leave their home country to seek work and opportunities unavailable there. The term could be applied to all those who obtain work permits from the government to fill labour shortages in the UK. The United Nations High Commission for Refugees describes a 'migrant' as someone who makes a conscious, voluntary choice to leave their country of origin. When they want to, they can return home in safety.[1]

During the 1990s, Britain saw an increase in the number of asylum applications. The same pattern was seen throughout Europe and can be attributed to the increasing political turmoil in countries such as Iraq, Afghanistan, Sri Lanka, and Somalia. In response to mounting public fear — fuelled by the media and right wing organisations — that Britain would be 'overwhelmed with outsiders' the government responded by introducing a raft of increasingly restrictive legislation.

In the first quarter of 2005, the Home Office received 7015 asylum applications. The largest number of applications came from Iran, Iraq, Somalia, China, Democratic republic of Congo, Pakistan, India, Afghanistan, Sudan and Eritrea.[2]

In January 2005 the Department of Health issued guidance on healthcare provision for refugees and asylum seekers.[3] Its restrictive tone reflects the tightening of controls on welfare entitlements seen in the Nationality, Immigration and Asylum Act 2002. The 2005 health guidance declares that, although refugees and those granted asylum in the UK will retain their entitlement to the full range of NHS services both in primary and secondary care, failed asylum seekers will no longer be eligible for treatment in secondary care unless for treatment that was started before their asylum claim failed, or for an illness with 'public health implications', such as tuberculosis. Upfront charges would apply in all other instances and treatment could be denied unless this were forthcoming. According to the guidance, exception would be made to ensure that such people should receive 'immediately necessary or life-saving treatment;' meaning treatment provided in an accident and emergency department. Charges would apply once the person was transferred to a ward or offered an out-patient appointment.

With regards to primary care the guidance is ambiguous. While it

recommends that failed asylum seekers 'should not be registered' in a general practice, it also notes that GPs have a discretionary right to register them as patients. This lack of clarity would seem to suggest a certain unease within some areas of government that the tough new stance goes against the human rights of the individuals seeking health care.[4] On its website, the British Medical Association (BMA) has advised that GPs do have the right to register refused asylum applicants. The General Medical Council in its document *Good Medical Practice* makes it clear that decisions about access to care should be based on 'clinical judgement of patients needs,' and 'without discrimination.'[5]

The implications of this guidance and its ambiguities are far-reaching and numerous.

It means that there is a group of people in the UK, some of whom may have serious healthcare needs, who may have no access to routine health care. Not only is this harmful to them as individuals (who may be denied preventative treatment for conditions such as diabetes and high blood pressure), but the situation has implications for public health as it will not be possible to diagnose conditions, such as tuberculosis, without allowing people access to primary care.

Refugees and asylum seekers, who do have full healthcare entitlements often find themselves denied access to services, simply due to a lack of understanding about entitlements among front-line staff in practices.[6] Refugees and asylum seekers, lacking language skills or adequate information, may not themselves be in a position to negotiate their entitlements.

There is also confusion among health care practitioners about whether their ethical duty lies in implementing restrictions to care that are enforced by their employers (primary care trusts and NHS trusts) or in providing care to the people who try to access their services.

The government is failing to meet its international commitments, as set out in the United Nations Convention on Economic Social and Cultural Rights.[7,8] This is one of the treaties making up the body of international human rights law. The UK is a signatory to the Convention, although the Convention is not incorporated into UK law. Under the Convention, signatories have an obligation to fulfil the right of 'everyone to the highest attainable standard of health'.

HOW CAN PRIMARY CARE PROFESSIONALS RESPOND TO THOSE SEEKING ASYLUM IN THE UK?

Many health professionals feel that it is their duty to provide care to any patient regardless of his or her origin. They do not see their role as law enforcement agents. This position is in line with mainstream medical ethics.[9] The current guidance does not contain any obligation on the practitioner, or their receptionists, in primary care to determine the asylum status of a patient before providing treatment. Furthermore, the BMA, at its Annual Representative Meeting on 29 June 2005 approved the motion that it is not appropriate for medical staff to act as proxy immigration officers in seeking to determine the immigration status of people presenting for care and treatment.[10] On the other hand it is conceivable that health professionals may be liable to face complaints if they fail to offer care. This position has not yet been tested in court, nor before the General Medical Council.

Managers and healthcare practitioners should ensure that practice receptionist and administrative staff do not turn asylum seekers away inappropriately.

Health professionals can learn more about the particular health and healthcare needs that are common among refugees and asylum seekers, such as posttraumatic stress disorder, and develop an awareness of the cultural and social aspects that will influence how illness or distress may manifest. Resources are available from the Refugee Council[11] and other organisations providing assistance to refugees and asylum seekers.[12]

Interested GPs or practices may apply to deliver 'enhanced services' for refugees and asylum seekers.[13] They may also act as a resource for other GPs or practices who are not in a position to apply for such status.

GPs or practices may put themselves forward as willing to treat privately refugees who have been refused access to treatment under the NHS. In some areas, Patient Advice and Liaison Services officers will help to direct patients to such GPs.[14]

Failed asylum seekers are often reluctant to seek medical help believing that, by drawing attention to themselves, they will come to the attention of the authorities, which may hasten their deportation. Their experience of health care is often broken by repeated moves around the country. By attending without prejudice to the particular healthcare needs of this patient group, building up trust and providing continuity, health professionals may be able to identify complex and deep-rooted health problems, such as the health effects of torture, or posttraumatic stress disorder. In such cases, deportation is likely to be very detrimental to patients' health. Although the legal aspects are not the primary concern of the health professional, doctors and other healthcare workers should be aware that suffering from health problems such as these may constitute grounds for appeal on an asylum application on humanitarian grounds.

Many doctors and nurses may feel distressed about the plight of their patients and frustrated about what little they can do. They could make contact with professionals in similar situations. The refugee councils[11] and organisations such as Medact (http://www.medact,org) may help in this regard. At another level, the BMA is involved in practical help to refugee doctors through their mentoring programme.[15] Many other organisations, including faith-based organisations, offer practical help to refugees and asylum seekers.[16]

Health professionals may help to inform research. Good research into what happens to refugees and their access to health care is of the utmost importance.[17] Frontline reports are particularly valuable. Doctors and nurses are, of course, in a unique position to observe and hear intimate, sometimes harrowing experiences.[18] Appropriately anonymised accounts, with informed consent by patients, can be crucial for informing research. The Refugee Council and Medact are willing to collect such reports.

Frontline reports are also crucial for informing policy makers, including the BMA, the Colleges, MPs and government. Healthcare practitioners can also join groups that are working to promote understanding of the healthcare needs of refugees and asylum seekers, and campaigning for changes to the current guidance and legislation. Medact is one such organisation, while many religious organisations are also involved in advocacy and campaigning.

Beyond the healthcare sector, non-governmental organisations are working to challenge the direction of current government guidance on health care for failed asylum seekers. Although the European Convention on Human Rights prohibits discrimination in healthcare provision on the basis of ethnicity or origin, the UK government holds the view that the convention does not apply to those whose applications for asylum in the UK have failed. Instead of mounting a legal challenge within the UK therefore, efforts are underway to prepare a case against the UK government for flouting its obligations under international law. This case will be presented for scrutiny before the UN Committee for Economic, Social and Cultural Rights. It is hoped that, by drawing attention to the moral and ethical concerns about the new guidance, the British government may chose to reconsider its position on this important matter of health care and human rights.

Margaret Reeves, Gilles de Wildt, Helen Murshali, Paul Williams, Paramjit Gill, Lucy Kralj and Moyra Rushby

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