

# Refugee & Migrant Children's Consortium

## Doubling the Immigration Health Surcharge

Since 2015, most non-EEA nationals making an immigration application either to enter or remain in the UK have been required to pay an annual surcharge to the National Health Service (NHS) in addition to any relevant immigration application or visa fees.<sup>1</sup> On 11<sup>th</sup> October the draft Immigration (Health Charge) (Amendment) Order 2018 was laid. The order doubles the amount of the Immigration Health Surcharge owed when an immigration application is made.<sup>2</sup>

The Refugee and Migrant Children's Consortium is extremely concerned about the impact of increasing the IHS on children and young people making immigration applications from *within* the UK on the basis of prior long residence in the UK and their rights under Article 8 of the European Convention on Human Rights (ECHR). This includes those who are lawfully present but not 'settled' who could risk losing their lawful status. The IHS compounds the unaffordability of Home Office application fees and disproportionately affects young people and families with human rights cases.

### What is the Immigration Health Surcharge?

The IHS was brought in by the government in 2015 in a clampdown on so-called 'health tourism' and as part of attempts to recover money by improving the system of identification of, and cost recovery from, chargeable patients receiving secondary care.<sup>3</sup> The IHS generated £234 million in income last year,<sup>4</sup> already over the Department of Health's target of £200 million per year,<sup>5</sup> but efforts to chase bills *after* treatment have had limited success, which may in part explain the government's decision to increase the IHS.<sup>6</sup> The government estimated that increased charges *may* provide around £220 million extra every year, with this money going to NHS services.<sup>7</sup>

Payment of the IHS must be made at the same time as an immigration application is made. It is not possible to pay by instalments. Payment must cover the total cost up-front for the duration of the leave they are applying for, and for all the people named on the application. The IHS is payable until such time as the person is granted indefinite leave to remain in the UK, or returns to their own country at the end of their visa period. Paying the IHS exempts a person from the system which

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<sup>1</sup> This change was introduced in sections 38 and 74(8) of the Immigration Act 2014.

<sup>2</sup> [http://www.legislation.gov.uk/ukdsi/2018/9780111172995/pdfs/ukdsi\\_9780111172995\\_en.pdf](http://www.legislation.gov.uk/ukdsi/2018/9780111172995/pdfs/ukdsi_9780111172995_en.pdf)

<sup>3</sup> Home Office income from IHS at p. 117

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627853/ho\\_annual\\_report\\_and\\_accounts\\_2016\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627853/ho_annual_report_and_accounts_2016_2017.pdf)

<sup>4</sup> Home Office income from IHS at p. 126 at

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/727179/6\\_4360\\_HO\\_Annual\\_report\\_WEB.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727179/6_4360_HO_Annual_report_WEB.PDF)

<sup>5</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/589815/Ipsos\\_MORI\\_Cost\\_Recovery.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/589815/Ipsos_MORI_Cost_Recovery.pdf)

<sup>6</sup> In 2017/28 the NHS recovered £392 million from overseas visitors and migrants, under its £500 million target

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/728780/Department\\_of\\_Health\\_Annual\\_Report\\_Accounts\\_Web\\_Accessible\\_NEW.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728780/Department_of_Health_Annual_Report_Accounts_Web_Accessible_NEW.pdf), p 27

<sup>7</sup> <https://www.gov.uk/government/news/health-charge-for-temporary-migrants-will-increase-to-400-a-year>

operates for undocumented migrants in the UK: up-front charging of an estimated 150% of the cost of treatment, prior to accessing secondary NHS healthcare.<sup>8</sup>

When doubled, the IHS will cost £400 per year of leave applied for, with a discounted rate for students and their dependents of £300 per year.<sup>9</sup> **Applying for 2 ½ years of limited leave to remain will incur an IHS of £1,000 per person** (or £750 per student). If they fail to pay the right amount, the applicant will be given the opportunity to rectify their payment within a specified time frame. If the outstanding charge is not paid, the application will be treated as invalid.<sup>10</sup>

Asylum seekers, those applying for humanitarian protection and those applying for discretionary leave to remain in the UK as a victim of trafficking (or their dependants) do not need to pay the IHS. Neither do children under 18 who are looked after by a local authority, who are exempt. Anyone applying for indefinite leave to remain who is subsequently granted limited leave instead will need to pay before their leave is valid.<sup>11</sup>

### **Why is the increase of the Immigration Health Surcharge problematic?**

For some migrants, such as high rate tax payers, this rise will not cause particular concern; the proposed higher costs are not far removed from the cost of private health insurance in other European countries, and are substantially less than is paid in some developed countries outside the EU.<sup>12</sup> However, such a rise will have a significant and disproportionate impact on some particularly vulnerable groups of migrants already living in the UK, including those on lower incomes, and it is these migrants who are being asked to pay the most.

#### *It compounds the unaffordability of Home Office fees*

In the past six years, the immigration system for children and young people who have grown up in the UK but have uncertain status has changed significantly. Before 2012, most children and young people who had grown up in the UK could expect to acquire indefinite leave to remain in six years after two applications, or in some cases after two years and one application. Now, if able to make an application for leave to remain, these children are on very long routes to settlement: they will only be granted 2 ½ years leave at a time and will have to make four applications over the course of ten years, costing £6,521 in application fees (at 2018 rates – an underestimate) and an additional £2,000 in IHS before they will have been granted settled status (indefinite leave to remain). **When the charge is doubled they will have to pay yet another £2,000, bringing the total bill to £10,521 over a ten year period.** This cumulative cost has concrete negative impacts on long-resident migrant children in the UK. Caught between spiralling costs and the government's 'hostile environment', families are struggling to pay the large up-front costs required to secure or maintain regular status in the UK such that it is seriously impacting on the quality of children's lives, affecting their development and forcing families into long-term poverty.

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<sup>8</sup> There are exceptions for urgent care, for which treatment is charged for in retrospect

<sup>9</sup> [http://www.legislation.gov.uk/ukxi/2015/792/pdfs/ukxiem\\_20150792\\_en.pdf#page=3](http://www.legislation.gov.uk/ukxi/2015/792/pdfs/ukxiem_20150792_en.pdf#page=3), para 7.5

<sup>10</sup> If refused no fees are taken. If an application is refused (i.e. it is valid but does not meet requirements to be granted leave) then the application fee will not be refunded but the IHS will be refunded within 6 weeks

<https://www.gov.uk/healthcare-immigration-application/refunds>

<sup>11</sup> [http://www.legislation.gov.uk/ukxi/2015/792/pdfs/ukxiem\\_20150792\\_en.pdf#page=3](http://www.legislation.gov.uk/ukxi/2015/792/pdfs/ukxiem_20150792_en.pdf#page=3) para 7.14

<sup>12</sup> Unlike private health insurance, the IHS cannot be paid in monthly or even yearly instalments; it is an up-front cost at the point of application.

**Case study: Andrew, aged 23, came to the UK from Guyana and has lived in the UK for 12 years:**

“The fee cost has made it almost impossible for me to make an application. My mother was forced to save up for several years to actually be able to pay both the application fee and lawyer fee for my brother and I. Paying for the fees as well as the NHS Surcharge and lawyer fees is too much and very overwhelming. For me I had to pay £3,000 in total to my lawyer not including the £2,033 I will have pay for application if the NHS doubles from £500 to £1,000. The application fees have burdened our family on numerous occasions. We were forced to not pay rent which therefore caused us to be evicted from our home. After saving money towards the fees my mother was never able to become financially stable again which led to various other evictions later. The impact the current immigration fees have on me and my family is something I wish on no one because it’s a devastating place to be.”

In theory, a fee waiver system exists for those who cannot afford to pay immigration fees including the IHS. If immigration application fees are waived for an application, the IHS is also waived. However, this system is complicated, ineffective and deeply flawed, and the success rate is extremely low – less than 8% of children are granted fee waivers.<sup>13</sup> In fact the impact assessment accompanying the Immigration (Health Charge) (Amendment) Order 2018 states that ‘it is considered that only a proportion of the in-country family visa applications may be eligible for visa fee waiver on destitution grounds’.<sup>14</sup> **A family of four with parents who are actually working may not fulfil the criteria for a fee waiver but will still be unable to save the staggering £8,100 they will be required to pay every two and a half years** (this figure does not include legal costs). Each year, families must pay more in immigration fees than the average UK household would pay for food.<sup>15</sup>

*It disproportionately affects families and young people with human rights cases*

The IHS is being doubled ‘to better reflect the actual costs to the NHS of treating those who pay the surcharge’.<sup>16</sup> However, the vast majority of migrants required to pay the surcharge are either on short-term visas which are not a route to settlement, such as students, or are on family or work visas which lead to settlement after five years. A minority, such as ‘high net worth’ individuals, may be granted settlement (and thus no longer have to pay the IHS) in three or even two years. The exception to this is people who have been granted leave to remain due to long residence here and their Article 8 right to family and private life. Many of these individuals are families with children, or are young people who came to the UK when they were very young. For these individuals and families, their route to settlement takes 10 years and they will have to pay £1,000 *more* towards the NHS (in addition to what they will already pay in national insurance if they are employed) than those on a five-year route to settlement. The short term periods of leave these families are granted whilst on that 10 year route means they are trapped in precarious low income employment, but are often employed and therefore paying taxes towards the NHS: in essence, they are being charged twice.

<sup>13</sup> [https://www.childrenslegalcentre.com/wp-content/uploads/2018/07/ICIBI\\_inspection\\_charging\\_CoramLetUsLearn\\_July\\_2018.pdf](https://www.childrenslegalcentre.com/wp-content/uploads/2018/07/ICIBI_inspection_charging_CoramLetUsLearn_July_2018.pdf)

<sup>14</sup> [https://www.legislation.gov.uk/ukia/2018/126/pdfs/ukia\\_20180126\\_en.pdf](https://www.legislation.gov.uk/ukia/2018/126/pdfs/ukia_20180126_en.pdf)

<sup>15</sup> £53.20 a week based on Office of National Statistics figures. See <https://www.moneyadvice.service.org.uk/blog/how-does-your-household-food-spend-compare>

<sup>16</sup> Immigrants: Health Services: Written question - HL9522, at <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2018-07-12/HL9522> The explanatory notes to the original 2015 regulations claimed that ‘the average per capita cost of temporary migrants is £800 per year, and non-EEA students £700 per year’ and the Department of Health and Social Care estimates that the NHS spends’ £470 on average per person per year on treating surcharge payers’

## Conclusion

The IHS forms a significant part of the government's wider 'hostile environment' (now called the 'compliant environment') agenda. Combining the payment of the IHS to the payment of immigration application fees can have serious consequences for vulnerable individuals. **The government stated that prior to the proposed doubling of the IHS, a 'full impact assessment' would be conducted.<sup>17</sup> This impact assessment contains no reference at all to the potential impact on children and young people and their rights.<sup>18</sup>** Because an immigration application can be refused or considered invalid by the non-payment, or partial payment, of the IHS, a fee designed to gate-keep access to healthcare also controls a person's ability to having status, and therefore holding a bank account, renting a home, holding a driving license, and working in the UK. Families and individuals will be required to make huge up-front payments, creating a risk that they will either not be able to regularise or will lose their lawful stay due to their inability to save thousands of pounds every two and a half years. As demonstrated by the Windrush scandal,<sup>19</sup> there are also public health implications of driving poorer communities into destitution.

## Recommendations

- **The current scope of the exemptions for the IHS should be reviewed and amended. Many vulnerable groups are currently chargeable, including undocumented young people who came to the UK as infants and care leavers.**
- **Children and young people (up to the age of 25) who have grown up in the UK making immigration applications on the basis on the basis of their Article 8 rights should be exempt from the Immigration Health Surcharge.**

OR

- **There should be a discounted rate for families and individuals with leave to remain on the basis of their human rights on the ten year route to settlement: a 50% rate for each year would mean that young people seeking to regularise their stay in the UK would only be paying the same amount over the course of their route to settlement as a worker on an inter-company transfer, for example, rather than twice as much.**

The RMCC is a coalition of over 50 organisations working to promote and protect the rights of young refugees and migrants – see [www.refugeechildrensconsortium.org.uk](http://www.refugeechildrensconsortium.org.uk).

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<sup>17</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2018-07-12/HL9522>

<sup>18</sup> [https://www.legislation.gov.uk/ukia/2018/126/pdfs/ukia\\_20180126\\_en.pdf](https://www.legislation.gov.uk/ukia/2018/126/pdfs/ukia_20180126_en.pdf)

<sup>19</sup> British Medical Journal, 'Doctors protest against "hostile environment" immigration policy spreading to NHS' <https://www.bmj.com/content/361/bmj.k1953.full>