

# Refugee & Migrant Children's Consortium

## Doubling the Immigration Health Surcharge, November 2018

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. This includes those who are lawfully present but not 'settled' who could risk losing lawful status. **The IHS compounds the unaffordability of Home Office application fees and disproportionately affects young people and families with human rights cases.**

Our concerns were shared by MPs in the Commons debate on this draft order on the 13<sup>th</sup> November 2018 – both the Labour party and the SNP opposed the increase to the surcharge.<sup>3</sup>

### What is the Immigration Health Surcharge?

The IHS was introduced 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. 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 applied 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 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>4</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. **Applying for 2 ½ years of limited leave to remain will incur an IHS of £1,000 per person** (. If they fail to pay the right amount, the applicant will be normally given the opportunity to rectify their payment within a specified time frame (normally ten working days). If the outstanding charge is not paid, the application will be treated as invalid.<sup>5</sup>

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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> [https://hansard.parliament.uk/commons/2018-11-13/debates/01b84bae-9729-400a-8f81-c54109844670/DraftImmigration\(HealthCharge\)\(Amendment\)Order2018](https://hansard.parliament.uk/commons/2018-11-13/debates/01b84bae-9729-400a-8f81-c54109844670/DraftImmigration(HealthCharge)(Amendment)Order2018)

<sup>4</sup> There are exceptions for urgent care, for which treatment is charged for in retrospect

<sup>5</sup> 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. If an application is rejected as invalid, the fee paid is refunded minus an administration fee. See <https://www.gov.uk/healthcare-immigration-application/refunds>

## 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 less than is paid in some developed countries outside the EU.<sup>6</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 after six years and 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.

**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.”

### *Although exemptions exist, the fee waiver system is not fit for purpose*

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.<sup>7</sup>

<sup>6</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.

<sup>7</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

Immigration application fee waivers are also available on specified human rights routes and where this fee is waived, the requirement to pay the surcharge 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>8</sup> The impact assessment accompanying the Immigration (Health Charge) (Amendment) Order 2018 itself acknowledges that ‘only a proportion’ of these cases will be eligible for a fee waiver on destitution grounds.<sup>9</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>10</sup>

*It disproportionately affects families and young people with human rights cases whose futures lie in the UK*

In a Written Statement on 11 October 2018, the Minister, Baroness Williams of Trafford, wrote that the IHS ‘is still below full average cost recovery level and remains a good deal for those seeking to live in the UK **temporarily**’ (emphasis added).<sup>11</sup> In the Commons debate, the Immigration Minister highlighted the government’s belief that ‘it is fair that temporary migrants make a financial contribution’.<sup>12</sup> However, the people about which this briefing is concerned are not seeking to live here temporarily. Many of these individuals are families with children, or are young people who came to the UK when they were very young; their futures lie in the UK and they have the legal right to remain here. But because of Home Office policy, their route to settlement *takes 10 years*. 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.

## 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>13</sup> ***This impact assessment, now published, contains no reference at all to the potential impact on children and young people and their rights.***<sup>14</sup>

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<sup>8</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>9</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>10</sup> £53.20 a week based on Office of National Statistics figures. See <https://www.moneyadvice.org.uk/blog/how-does-your-household-food-spend-compare>

<sup>11</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>

<sup>12</sup> [https://hansard.parliament.uk/commons/2018-11-13/debates/01b84bae-9729-400a-8f81-c54109844670/DraftImmigration\(HealthCharge\)\(Amendment\)Order2018](https://hansard.parliament.uk/commons/2018-11-13/debates/01b84bae-9729-400a-8f81-c54109844670/DraftImmigration(HealthCharge)(Amendment)Order2018)

<sup>13</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2018-07-12/HL9522>

<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)

Because an immigration application can be 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 be granted status, and therefore hold a bank account, rent a home, hold a driving license, and work 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>15</sup> there are also public health implications of driving poorer communities into destitution.

**The current scope of the exemptions for the IHS should be reviewed and amended. Children and young people (up to the age of 25) who have grown up in the UK making immigration applications on the basis of their Article 8 rights should be exempt from the Immigration Health Surcharge.**

### Questions for the Minister

- **In theory, a fee waiver system exists for those who cannot afford to pay immigration fees and the health surcharge, but this is inaccessible to most. What steps will be taken to ensure that low income families who may be ineligible for a fee waiver under the current system do not risk losing their status because of high fees and the higher health surcharge?**
- **We are still waiting for the Independent Chief Inspector of Borders and Immigration's report on the Home Office charging for services, which will look at the impact of high fees in the immigration system. Given that the Immigration Health Surcharge *must* be made at the same time as an immigration application, it is a key part of assessing affordability. Can the Minister confirm why the IHS is being doubled *now*, before we have heard from the Chief Inspector?**
- **This impact assessment for the draft order contains no reference at all to the potential impact on children and young people and their rights. Given the government's stated commitment to considering children's rights when developing new law and policy, is the Minister willing to consider an urgent assessment of the impact of the doubling of the Immigration Health Surcharge on children and young people who have grown up in the UK and are on the ten year route to settlement? These children will have to now pay over £10,000 before they can secure settled status in this country.**

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>15</sup> British Medical Journal, 'Doctors protest against "hostile environment" immigration policy spreading to NHS' <https://www.bmj.com/content/361/bmj.k1953.full>