



The Hearing Aid Podcasts



Episode 10.10

Non UK Citizens: Their Right to Reside and Access to Health and Social Care

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Learning Outcomes

Knowledge

- To gain a general understanding of the immigration/asylum system in the UK
- To develop an awareness of the rights of people seeking permanent status in the UK with regards to access to health and social care resources/services

Skills

- To be able to signpost people to organisations/resources that can provide up to date support and information on this topic for people who need it

Attitudes

- To foster respect for people whatever their situation

Definitions

Right to reside:

The right to reside is the legal right an individual has to live in the UK.

A refugee

A refugee is a person who, '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 their nationality (or habitual residence, where stateless) and who is unable or, owing to such a fear, is unwilling to avail themselves of

the protection of that country'. [1951 United Nations Convention relating to the Status of Refugees] A person given refugee status is normally granted leave to remain in the UK for 5 years and, at the end of that period can apply for Indefinite Leave to Remain (permanent residence.)

Asylum seeker (person seeking asylum)

A person who has left their country of origin and formally applied for asylum in another country but whose application has not yet been concluded.

Refused asylum seeker

A person whose asylum application has been unsuccessful and who has no other claim for protection awaiting a decision. Some refused asylum seekers return home voluntarily, others are forcibly returned. For some, it is not safe or practical to return until conditions in their country change

Migrant

Someone who has moved to another country for other reasons, such as to find work.

The UK asylum system is strictly controlled and complex. The decision making process is tough and it is very difficult for people to provide the evidence required to be granted protection. Every year many people's claims are rejected, in the UK in 2020, 41% of initial decisions resulted in a grant of asylum or other form of protection.

[The Truth about Asylum. Refugee Council. \[on-line\]. Available at: https://www.refugeecouncil.org.uk/information/refugee-asylum-facts/the-truth-about-asylum/](https://www.refugeecouncil.org.uk/information/refugee-asylum-facts/the-truth-about-asylum/)

Main Discussion

Who has the right to reside:

According to the UK government the following groups of people have the right to reside:

- british citizen
- citizen of Ireland
- have pre-settled or settled status via the EU Settlement Scheme
- have indefinite leave to enter or remain in the UK
- have a residence document
- are exempt from immigration control

Right of abode:

A right of abode means an individual is able to live or work in the UK without any immigration restrictions, which means:

- A visa is not needed/required to come to the UK
- there's no limit on the length of time a person can spend in the country

People have a right to abode in the following circumstances:

- one of their parents was born in the UK and a citizen of the United Kingdom and colonies when the person was born or adopted
- They were a Commonwealth citizen on 31 December 1982
- The person did not stop being a Commonwealth citizen (even temporarily) at any point after 31 December 1982

There are also some specific rules related to marriage and what that means regarding a person's right of abode

[HMG. Right to Reside \[on-line\] Available at: https://www.gov.uk/types-of-british-nationality/british-overseas-territories-citizen](https://www.gov.uk/types-of-british-nationality/british-overseas-territories-citizen)

EU Settlement Scheme and Older People:

When the UK withdrew from the European Union EU nationals need to apply for settled status (if they have lived in the UK for over 5 years) or pre-settled status (if they have lived in the UK for less than 5 years) by 30th June 2021.

According to Age UK there were approx. 131,000 EU nationals aged 65 and over living in the UK, who needed to apply to the EU Settlement Scheme, which has proved difficult, with only 64% (47,000) of people aged 65 plus having done so by 30 June 2020.

According to Age UK there are a number of challenges:

- Many have lived in the country for over 40 years and are extremely old and have a range of disabilities, including dementia and other forms of cognitive decline
- research reveals that nearly a quarter of over 65s (24%) have not used the internet at all in the last 3 months, a figure that rises sharply as you go up the age range.
- Many people in extreme old age do not have a valid passport because they're no longer able to travel.
- The impact of covid-19 and the need to self isolate, which applies to a range of older people including the approx. 5,000 EU nationals in residential care

means that they may not have access to support networks (friends/families) who can support them to apply

[Age UK, 2020. The EU Settlement Scheme and Older People \[on-line\] Available at:https://www.ageuk.org.uk/discover/2020/09/eu-settlement-scheme/](https://www.ageuk.org.uk/discover/2020/09/eu-settlement-scheme/)

The Home Office has designed the EU Settlement Scheme to allow applicants with dementia (including lack of capacity) and other similar health conditions to consent to an appropriate third party (family/friends/caregivers) to apply on their behalf.

Therefore, if anyone becomes aware that someone hasn't got the ability to make a decision and are concerned that this person will not be able to:

- understand all the information needed to make the application,
- complete a form and send specific documents (either online or by post) to prove their identity and their residence in the UK to the Home Office

Then it is important to discuss this with their next of kin, power of attorney or social worker.

The Home Office states that they are aware that a range of vulnerable applicants may face significant challenges in securing evidence to support their application. In such circumstances the Home Office will accept a range of evidence of identity and residence on behalf of an applicant, working with the person making the application to establish the applicant's eligibility based on all the evidence available including:

- Passport
- Prescription
- Letter with a current or previous address
- Hospital or GP letters
- Bank account details
- Pension statement

: [Settled. Advice for the elderly and people with severe health conditions, and their carers. \[on-line\] Available athttps://settled.org.uk/en/help/settled-status-advice-for-the-elderly-severe-health-conditions-and-carers/](https://settled.org.uk/en/help/settled-status-advice-for-the-elderly-severe-health-conditions-and-carers/)

[Brexit and the end of the transition period. The Kings Fund, accessed via https://www.kingsfund.org.uk/publications/articles/brexit-end-of-transition-period-impact-health-care-system](https://www.kingsfund.org.uk/publications/articles/brexit-end-of-transition-period-impact-health-care-system) 20/07/21.

[What does Brexit mean for our older population? 10 questions for the new Government. Age UK, 2019. Accessed via](#)

Older People and migration:

Older people face particular problems and their needs are often neglected. As a group they are not as visible as other groups of immigrants, which may be attributed to the fact they are a small group, less than 1%

Whilst they may be a small number a report by the Centre for Policy on Ageing in the UK identified a number of issues facing older refugees and asylum seekers including:

- a lack of income as they are less likely to be able to get a job
- problems learning the language, which tends to get harder as we age
- loneliness and isolation,
- loss of social status;
- mental health problems because of the trauma of detention, torture, violence and rape, either in the country of origin or during the refugee journey.
- Physical health, some forego treatment due to the financial burden on the family.
- Older refugees have reported going without meals or taking smaller portions so that other family members get a larger share.

The report highlights the importance of seeing older refugees as an asset, rather than simply requiring special care, for example they look after children so that their parents can work. They often have knowledge and experience that can help families and communities in exile, such as knowledge about natural medicine and nutrition.

Centre for Policy on Ageing report [on-line] Available at:
<http://www.cpa.org.uk/information/reviews/CPA-Rapid-Review-Diversity-in-Older-Age-Refugees-and-Asylum-Seekers.pdf>

No recourse to public funds.

Research by the Citizens Advice bureau suggests that 1.4m people are without recourse to public funds, but this is not broken down into ages. No Recourse to Public Funds applies to most migrants in the UK until they have obtained a permanent settled status called Indefinite Leave to Remain or have naturalised as citizens. Most visas require a migrant to live in the UK for either five or ten years before they can apply for Indefinite Leave to Remain.

For immigration purposes, the term 'public funds' only applies to:

- Certain benefits including attendance allowance, carers allowance, council tax reduction. Public funds does not include benefits based on National Insurance contributions including the retirement pension
- Homelessness assistance under Part VII of the Housing Act 1996
- A local authority allocation of social housing under Part VI of the Housing Act 1996

When an individual is 'subject to immigration control', as defined by s. 115 of the Immigration and Asylum Act 1999 they cannot claim public funds (benefits and housing assistance), unless an exception applies.

Some example of people who may be subject to immigration controls includes:

- Indefinite leave to remain as the adult dependent relative of a person with settled status (five year prohibition on claiming public funds)
- An asylum seeker
- An appeal rights exhausted (ARE) asylum seeker
- Leave to enter as a visitor
- European Union who do not have a right to reside
- Visa has expired or have been unsuccessful in obtaining an extension to their visa
- Migrants who do not pass the habitual residence test. This may include UK nationals returning to the UK after living outside of the Common Travel Area (UK, Republic of Ireland, Channel Islands and Isle of Mann)

A person will have recourse to public funds when they have one of the following types of immigration status:

- Indefinite leave to enter or remain (unless they are granted this as an adult dependent relative)
- Right of abode
- Exempt from immigration control
- Refugee status
- Humanitarian protection
- Leave to remain granted under the family or private life rules where they are accepted by the Home Office as being destitute or at risk of imminent destitution

Discretionary leave to remain, such as:

- Leave to remain granted to a person who has received a conclusive grounds decision that they are a victim of trafficking or modern day slavery
- Destitution domestic violence concession

So...what support are individuals with no recourse to public funds entitled to?

Social Care:

When an adult cannot access benefits and housing assistance due to having no recourse to public funds, their local council may have a duty to provide accommodation and financial support if the adult is assessed as having care and support needs by social services.

If an adult has been detained under the Mental Health Act 1983, accommodation may be available to them as part of their aftercare package.

Support from social services' can only be provided to the family where this is necessary to prevent a breach of their human rights and therefore a human rights assessment will need to be completed to establish whether they can return to their country of origin to avoid a situation of destitution in the UK, or whether there is a legal or practical barrier that means they cannot be expected to return.

Exclusion criteria is set out in s.54 and Schedule 3 of the Nationality, Immigration and Asylum Act 2002, and applies to a family when the parent is:

- In breach of immigration laws, for example, is a visa overstayer, illegal entrant, or appeal rights exhausted (ARE) in-country asylum seeker
- An ARE asylum seeker who has failed to comply with removal directions
- A person with refugee status that has been granted by another EEA country

NHS care - complex:

NB - This does vary slightly dependent on which country in the UK someone is accessing healthcare in. Please see links to government and specialist organisation websites for up to date information and guidance, or check with your employer's overseas visitors team.

NHS treatment is not classed as a public fund for immigration purposes and can be accessed

- Regardless of a person's immigration status
- Including if a person is subject to the 'no recourse to public funds' condition.
- But, immigration status will affect whether someone is required to pay for some types of treatment.

1) Primary NHS healthcare

- Accessible by everybody for free, regardless of immigration status.
- May need to pay for prescriptions and dental treatment if none of the general exemptions based on age, income or medical conditions apply.
- Anyone can register with and see primary care teams

- Not a requirement to have proof of identity/address
- Not a requirement to provide proof of immigration status
- 111 has the same rules
- It is slightly different, however, in northern ireland where primary care isn't seen as separate to secondary care in terms of the rules re fees

If a person has difficulty registering with a GP practice, they can contact:

- their [local NHS England area team](#)
- the local [Patient Advice and Liaison Services](#)

2) Most types of secondary and community NHS healthcare are chargeable to people who are considered to be 'overseas visitors', unless an exemption applies.

- It is otherwise free at the point of access for those 'ordinarily resident' in the UK (it is residence-based)
 - i.e. You must be living lawfully in the UK on a properly settled basis to be entitled to free healthcare.
 - This entitlement does not depend on nationality, payment of UK taxes, National Insurance contributions, being registered with a GP, having an NHS number, or owning property in the UK.
 - To be classed as 'ordinarily resident' in the UK, people from countries outside the European Economic Area (EEA) need to also have the immigration status of 'indefinite leave to remain', and those from EU countries must be in the UK under the settlement scheme
 - i.e. people need to have applied for settled status by 30th June 2021 to maintain their healthcare entitlements in the UK.
- Most people applying for leave to remain will have paid the NHS surcharge (Immigration Health Charge), when they made their visa application (staying >6 months), which means are exempt from charging for secondary healthcare (currently between 400 to 700 pounds)

Some people are [exempt from paying the surcharge](#), including people who:

- are seeking asylum or applying for humanitarian protection (or their dependants)
- are identified as a victim of human trafficking (or their dependants)
- are applying for indefinite leave to remain
- the Home Office's domestic violence concession applies to (or their dependants)
- would be having their rights violated under Article 3 of the European Convention of Human Rights by being made to leave the UK (or their dependants)

- Prisoners or immigration detainees
 - Temporary leave to remain
- Visitors from the EU who are not in the UK with 'settled status' or on a longer visa can continue to access medically necessary healthcare through the European Health Insurance Card (EHIC) scheme, or planned healthcare through an 'S2' form
 - Some countries have a reciprocal healthcare agreement in the UK and visitors from there are entitled to urgent care without charges

Otherwise, payment is required for treatment and

- must be paid for up front, unless the treatment is deemed to be urgent or immediately necessary.
- Therefore a person may be denied non-urgent treatment if they are unable to pay for it.

Some secondary care/hospital/non GP services are free to all

- Accident and Emergency services
- services provided for investigation/diagnosis and treatment of some infectious diseases (incl TB, malaria, HIV, STIs and COVID-19)
- Family planning (excluding abortion and fertility treatment)
- Healthcare problems related to FGM, those related to torture, domestic violence or sexual violence
- Palliative care services, via palliative care charities

All refused asylum seekers can continue, free of charge, any course of treatment already underway before their application was refused.

- For new courses of treatment, any treatment that clinicians consider is needed immediately or urgently (before the patient is able to leave the UK) will be provided even if payment is not made in advance of treatment, and arrangements for payment can be discussed with the hospital.
- Rules re refused asylum applications and bearing on healthcare differ slightly England vs other 3 countries

[No Recourse to Public Funds Network. \[on-line\]. Available at: https://www.nrpfnetwork.org.uk/information-and-resources/rights-and-entitlements/immigration-status-and-entitlements/eea-nationals-and-family-members#guide-sections](https://www.nrpfnetwork.org.uk/information-and-resources/rights-and-entitlements/immigration-status-and-entitlements/eea-nationals-and-family-members#guide-sections)

[Public Funds \[on-line\] Available at: https://www.gov.uk/government/publications/public-funds--2/public-funds](https://www.gov.uk/government/publications/public-funds--2/public-funds)

[The Joint Council for the welfare of Immigrants \[on-line\]. Available at: https://www.jcwi.org.uk/no-recourse-to-public-funds-public-health-risk-destitution](https://www.jcwi.org.uk/no-recourse-to-public-funds-public-health-risk-destitution)

As Clinicians:

From the BMA:

"Doctors' ethical training is based on a duty to respond to need. Doctors in the NHS may not be used to making decisions that may lead to clinically indicated, but otherwise non-urgent, treatment being withheld in lieu of payment.

However, clinicians play a vital role in protecting patients by ensuring that chargeable patients receive appropriate and timely treatment for urgent and immediately necessary health needs, irrespective of their entitlement status or ability to pay."

[Doctor's responsibilities when treating overseas visitors. The BMA. Accessed via https://www.bma.org.uk/advice-and-support/ethics/refugees-overseas-visitors-and-vulnerable-migrants/access-to-healthcare-for-overseas-visitors/doctors-responsibilities-when-treating-overseas-visitors](https://www.bma.org.uk/advice-and-support/ethics/refugees-overseas-visitors-and-vulnerable-migrants/access-to-healthcare-for-overseas-visitors/doctors-responsibilities-when-treating-overseas-visitors) 20/07/2021

Doctors of the world - charity (with its origins in medics who worked with *medicin sans frontières*)

- A worldwide organisation, but has resources on its website for those in the UK, particularly in primary care to help clinicians care for migrant patients
 - E.g safe surgeries toolkit; simple steps to ensure these vulnerable people are getting the healthcare they are entitled to
 - Migrant health toolkit with information and a community of practitioners that people in primary care can access for specific help looking after migrant patients.

And, when seeing patients who have come from overseas, really important to remember their background may impact on their health, and perception of healthcare

- Sensitive questioning
- Language barriers or cultural differences

[Doctors of the world, Resources for Medics. Accessed via https://www.doctorsoftheworld.org.uk/what-we-stand-for/supporting-medics/resources-for-medics/](https://www.doctorsoftheworld.org.uk/what-we-stand-for/supporting-medics/resources-for-medics/) 20/07/2021

[Guidance: NHS entitlements: migrant health guide. Accessed via https://www.gov.uk/guidance/nhs-entitlements-migrant-health-guide#:~:text=People%20who%20have%20a%20visitor,use%20unless%20they%20are%20exempt.](https://www.gov.uk/guidance/nhs-entitlements-migrant-health-guide#:~:text=People%20who%20have%20a%20visitor,use%20unless%20they%20are%20exempt.) 20/07/2021.

[Scotland: 'Health care for asylum seekers and refugees in Scotland. Accessed via https://www.nhsinform.scot/media/1126/health-care-for-asylum-seekers-and-refugees-in-scotland-v6-2016-206.pdf](https://www.nhsinform.scot/media/1126/health-care-for-asylum-seekers-and-refugees-in-scotland-v6-2016-206.pdf) 20/07/2021

Cost of care:

NHS foundation trusts, NHS trusts, local authorities exercising public health functions or any other person providing 'relevant services', including private providers and those from the voluntary, charitable and social enterprise sector (known as 'relevant bodies'), are required to identify, make and recover costs from overseas visitors where no exemption from charges apply.

Since the mid 2010s, the amount someone is billed for NHS treatment is 150% of the cost of the care.

[New rules to improve overseas visitors' contributions to NHS care. Accessed via https://www.gov.uk/government/news/new-rules-to-improve-overseas-visitors-contributions-to-nhs-care](https://www.gov.uk/government/news/new-rules-to-improve-overseas-visitors-contributions-to-nhs-care) 20/07/2021

Primary carer of a dependent British national ('Zambrano' carer)

A non-EEA national had a derivative right to reside in the UK as a 'Zambrano' carer if all the following applied:

- they were the primary carer of a dependent British national (a minor or a vulnerable adult)
- the dependent British national would not be able to reside in the EEA if the primary carer was required to leave because they would be forced to leave with their carer and relocate to the carer's country of origin outside of the EEA

[EUSS rejects majority of applications from Zambrano carers. Accessed via https://migrate-uk.com/zambrano-carers-2020/](https://migrate-uk.com/zambrano-carers-2020/) 20/07/2021

Windrush:

The Windrush Scandal involved 50,000 Caribbean immigrants who had arrived in the UK between 1948 and 1973 wrongly targeted by immigration enforcement as a result of the government's "hostile environment" policies. This resulted in many elderly people:

- being barred from working,
- refused access to government services including healthcare
- losing access to welfare benefits
- Some were deported

The group targeted as they had not regulated their residency status according to the Migration Observatory at Oxford University. And hence they were viewed as 'illegal immigrants' required to provide documentation to prove they were UK nationals. However, most had arrived on their parents passports and had never requested their own travel documents and were not therefore able to prove their status.

The government said that more than 160 members of the Windrush generation may have been wrongly detained or deported. However, more than 1,270 claims have been made for compensation.

[Everything you need to know about the Windrush scandal. The Independent \[on-line\].](https://www.independent.co.uk/life-style/windrush-generation-scandal-sitting-in-limbo-anthony-bryan-documentary-a9552281.html)

[Available at:](https://www.independent.co.uk/life-style/windrush-generation-scandal-sitting-in-limbo-anthony-bryan-documentary-a9552281.html)

<https://www.independent.co.uk/life-style/windrush-generation-scandal-sitting-in-limbo-anthony-bryan-documentary-a9552281.html>

For more information call the [Age UK Advice Line](https://www.ageuk.org.uk/advice-support/advice-line/) on 0800 678 1602.
open 8am to 7pm, every day of the year

Curriculum Mapping

NHS Knowledge Skills Framework

- Equality and diversity Level 2: Support equality and value diversity

GPVTS

- Professional topics guide
 - Leadership and Management
 - Equality, Inclusion and Diversity.

Internal Medicine Stage 1

- Generic CiP
 - Able to successfully function within NHS organisational and management systems
 - Able to deal with ethical and legal issues related to clinical practice

Geriatric Medicine Specialty Training

- Generic CiP
 - Able to deal with ethical and legal issues related to clinical practice
- Geriatric Medicine Specialty CiPs
 - Evaluating performance and developing and leading services with special reference to older people