

A Vicious Circle:

The relationship between NHS Charges for Maternity Care, Destitution, and Violence Against Women and Girls

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Maternity Action, November 2019

Maternity Action is the UK's leading charity committed to ending inequality and improving the health and well-being of pregnant women, partners and young children – from conception through to the child's early years.

www.maternityaction.org.uk

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Maternity Action is the UK's leading charity committed to ending inequality and improving the health and well-being of pregnant women, partners and young children – from conception through to the child's early years. An increasing area of work for Maternity Action in recent years has been supporting women whose access to maternity care has been compromised by the NHS charging regime, as well as women who find themselves destitute during pregnancy. Many of the women who seek the support of Maternity Action have experienced Violence Against Women and Girls (VAWG). Some are pregnant as a result of sexual violence, survival sex, or coercion. Others are unable to access free NHS maternity care or refuge accommodation having lost their immigration status after fleeing an abusive relationship.

Maternity Action provides an advice service, the Maternity Care Advice Access Service, for pregnant women and new mothers who are subject to NHS charging for their maternity care. This service is open to women who have been charged or are worried about being charged, their friends and family, midwives, other health professionals, advice workers and community workers. It is open to women from abroad, migrants, refugees, asylum seekers, EU and EEA nationals and UK citizens. Between October 2018 and October 2019, the service provided advice for 271 women about NHS charges for their maternity care. It is through this work advising, supporting, and interviewing women who have been charged for NHS maternity care, that we have become aware of the links between NHS charging for maternity care, immigration status, and violence against women.

Maternity Action has carried out a series of research reports on NHS charging for maternity care. Most recently, *What Price Safe Motherhood?*¹ and *Duty of Care? The impact on midwives of NHS charging for maternity care*². VAWG has arisen consistently as a theme in interviews with women who have been charged and with the midwives responsible for their care. One midwife interviewed for the Duty of Care report told us,

“They haven't got a lot of money for food, they're having to resort to food banks. They can't afford the vitamins. There's domestic abuse sometimes and they're dependent on this spouse for money, when they haven't got any access to anything themselves.”

This report draws on Maternity Action's research in this area and our experience of advising migrant women who have been charged for their NHS maternity care. It highlights the ways in which VAWG can push women into destitution, leaving them unable to pay for maternity care, can lead to pregnancy and subsequent NHS charges, can be a cause of women losing their immigration status and becoming chargeable for NHS care. It also outlines how NHS charges can trap women in abusive relationships as the debt and the threat to their immigration status is used to control them. Just as violence against women is a causal and complicating factor in women needing NHS maternity services, the charges that are then levied against them are often a factor in women becoming trapped in abusive relationships.

¹ *What Price Safe Motherhood?* Maternity Action 2018

² *Duty of Care? The impact on midwives of NHS charging for maternity care*, Maternity Action, 2019

NHS Charging for maternity care

The National Health Service was founded on the principles that: it should meet the needs of everyone; that it should be free at the point of delivery; and that it should be based on clinical need, not an individual's ability to pay. Yet, following the introduction of a charging regime for migrants requiring secondary healthcare (hospital treatment), for many vulnerable pregnant women, midwifery, obstetric, and general healthcare is no longer free. Migrants subject to charging include undocumented migrants and refused asylum seekers not in receipt of Home Office support (in England). Many pregnant women and new mothers subject to charging for NHS maternity care are socially and economically vulnerable with many facing destitution, sexual exploitation and precarious living conditions.

Since 2017, hospital trusts have been required to ask for advance payment giving an estimated charge for treatment, unless care is 'urgent' or 'immediately necessary', and to identify on a patient's record whether the patient is chargeable or exempt.

Maternity care is charged in the same way although all maternity care is designated as immediately necessary. This means that it must not be delayed or refused because of a woman's inability to pay in advance. Nevertheless, any woman ineligible for free NHS care remains chargeable, and failure to either repay within two months of an invoice being received or to set up an agreed repayment plan within this time, will result in a woman being reported to the Home Office. The Home Office may then refuse further immigration applications or re-entry to the UK. In addition, most chargeable patients are also charged 150% of the standard tariff.

Certain groups of patients are exempt from the NHS charging regime including detainees, refugees or victims of human trafficking. There are also exemptions which only apply to those services provided for treatment of conditions caused by certain types of violence: torture, female genital mutilation (FGM), domestic violence or sexual violence (Regulation 9 (f) exemptions³), provided they have not travelled to the UK for the purpose of seeking treatment. Patients who have been trafficked are also exempt (Regulation 16 exemptions⁴).

However, calls to Maternity Action indicate that these exemptions simply do not work in practice. The narrow ambit of the Regulation 9 (f) exemptions as only 'for treatment of conditions caused by' FGM, domestic violence or sexual violence shows little understanding of the complexity of women's experiences of FGM, domestic violence and sexual violence, of the barriers to disclosure, and how problematic it is for those responsible for determining whether a woman should be charged and chasing NHS debts to require women to provide evidence of VAWG. This requirement to show causation between the treatment sought and the violence experienced is a high bar which contrasts with the exemption for victims of trafficking who do not need to prove that the NHS treatment directly related to the fact that they had been trafficked. However, even the exemption from all charging for victims of trafficking is still hard to use for many women simply because they are too afraid to disclose that they have been trafficked or they may be deterred by charging so that they do not engage with healthcare professionals at all.

In this report we explore the experiences of pregnant women and new mothers who have experienced VAWG (trafficking, FGM, domestic violence and sexual violence) as they face the effects of the current regulations requiring NHS trusts to charge certain groups for all secondary care.

³ <http://www.legislation.gov.uk/uksi/2015/238/regulation/9/made>

⁴ <http://www.legislation.gov.uk/uksi/2015/238/regulation/16/made>

Pregnancy and VAWG

Violence Against Women and Girls is a term that comprises a wide range of abusive, violent, or coercive acts against women and girls, including rape, sexual assault, domestic violence, Female Genital Mutilation (FGM), trafficking, sexual harassment, stalking, and forced marriage. Violence against women and girls is clearly defined as a violation of human rights by a range of human rights conventions, most notably the UN Convention on the Elimination of Discrimination Against Women and the UN Declaration on the Elimination of Violence Against Women.

Prevalence of VAWG is extremely high. Recent global prevalence figures indicate that about 1 in 3 (35%) of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence in their lifetime and almost one third (30%) of women who have been in a relationship report that they have experienced some form of physical and/or sexual violence by their partner⁵. While some asylum seeking women and refugee women may be fleeing sexual violence in conflict, some women are trafficked to the UK for the purposes of forced prostitution, others will experience VAWG here in the UK at the hands of their partner or another family member.

Domestic violence often begins or escalates in pregnancy. According to one study of pregnant women in east London, 15% reported violence during their pregnancy: of these women, just under 40% reported that violence started while they were pregnant, while 30% reported they had at some time suffered a miscarriage as a result⁶. According to the seventh Confidential Enquiry into Maternal and Child Health, between 2003 and 2005, of the 295 maternal deaths reported in *Saving Mothers' Lives*, 70 occurred in women who had features of domestic abuse (24%), and of these women, 19 were murdered⁷.

VAWG may also take the form of coercive control or reproductive coercion. It is estimated that as many as 1 in 4 pregnancies involve some form of reproductive control, be it refusal to use contraception, sabotaging of contraceptives, or not allowing the woman to access contraceptive or abortion services⁸.

Pregnancies caused by trafficking into prostitution or survival sex are not uncommon among the women who contact Maternity Action for support with NHS charging. Academic research suggests that more than one in four women become pregnant while trafficked due to sexual violence or forced prostitution⁹.

Barriers to reporting

There are multiple barriers to women and girls reporting VAWG to the police or even disclosing to friends or family. Trauma, shame, fear of being disbelieved, fear of so called "honour based" violence or reprisals, may all mitigate against women disclosing. The additional hurdles faced by migrant women of navigating an unfamiliar criminal justice system, language barriers, racism, and possibly fear of engaging with the authorities due to immigration status, compound the problem. Women are afraid to

⁵ WHO Factsheet on Violence Against Women 2016

⁶ *Domestic Violence. A Health Response: Working in a Wider Partnership* J Coid, Department of Health; 2000

⁷ *Saving Mothers' Lives: reviewing maternal deaths to make motherhood safer 2003–2005*, The Seventh Report on Confidential Enquiries into Maternal Deaths in the United Kingdom. London: CEMACH; 2007

⁸ *Reproductive control by others: means, perpetrators and effects*, Rowlands S, Walker S, BMJ Sexual & Reproductive Health 2019

⁹ *Maternity care for trafficked women: Survivor experiences and clinicians' perspectives in the United Kingdom's National Health Service*, Bick O, Howard L, Oram S, Zimmerman C, PLoS One, 2017 (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5699814/>)

report to the police for fear of being deported.¹⁰ Women who have disclosed VAWG to the Maternity Action advice line are often adamant that they will never disclose what has happened to them to the police or other authorities due to shame, stigma, and fear of reprisals from a violent partner.

It is not unusual for undocumented migrant women to live under the radar, actively excluded from or choosing to avoid many of the services intended to act as a safety net for people in vulnerable situations. This includes all mainstream benefits and domestic violence support services. Many campaigners against the so-called ‘hostile environment’ have cited Operation Nexus as a barrier to migrants reporting crimes to the police. Launched in London in 2012, Operation Nexus involves the systematic checking of foreign nationals’ immigration status, and police questioning for non-crime purposes and without any of the normal procedural protections the police usually have to abide by.

For many migrant women survivors of VAWG, the risk of reporting to the police is simply too high, especially when weighed against the shockingly low levels of prosecutions for VAWG related crimes. In 2019, the proportion of reported rapes prosecuted in England and Wales fell to just 1.4 per cent – a rate so low that the End Violence Against Women coalition has said that rape has effectively been decriminalised¹¹.

A midwife interviewed for Maternity Action’s Duty of Care report noted that the fear of incurring additional costs for NHS care or attracting the attention of the Home Office can act as a barrier to women disclosing VAWG to midwives. She said:

“Like domestic violence and previous trauma, anything like that they will be more anxious to say anything as if it would cost them more money. And if you, as it were, told on them and called the Home Office, called the overseas, they will be less likely to trust you and tell you other stuff.”

VAWG as a cause of destitution and the consequences for immigration status and access to the NHS

Women who are in the UK on spousal visas will lose their status if they leave the relationship. Although they are eligible to apply for leave to remain due to having experienced domestic violence, many women are not aware that this option is open to them. Furthermore, the application may be refused by the Home Office due to women having incurred charges for their maternity care while they didn’t have secure immigration status, either because they lost it by escaping a violent relationship or because they were prevented from renewing their status by an abusive partner.

Women fleeing abusive relationships that are the basis of their regular immigration status therefore become undocumented and lose their entitlement to free NHS care, regardless of whether they have paid an Immigration Health Surcharge¹² to cover them for that time. This means that they will be expected to pay upwards of £7,000 for their NHS maternity care.

¹⁰ *The Right to be Believed: Migrant women facing Violence Against Women and Girls (VAWG) in the ‘hostile immigration environment’ in London*, McIlwaine C, Granada L, Valenzuela-Oblitas I, Kings College London and the Latin American Women’s Rights Service, 2019

¹¹ <https://www.independent.co.uk/news/uk/crime/rape-prosecutions-uk-disclosure-mobile-phones-cps-a9160556.html>

¹² The immigration health surcharge is currently paid by non-EEA nationals who are applying for a visa to work, study or join family in the UK for more than six months, but not permanently or who are living in the UK already and are making an immigration application to stay in the UK for any period of time, but not permanently. Asylum seekers and family members of EU nationals do not pay. At the time of writing (November 2019) the surcharge costs £400 per year (with the exception of students or those coming to the UK

At the same time, they lose access to many of the safety nets intended to offer support to women who experience VAWG. Undocumented women are not able to access accommodation in refuges, are not entitled to any mainstream benefits, often becoming homeless, destitute and clearly in no position to repay the charges to which they are subject as a result of escaping the violent relationship. Although spaces in refuges are now funded for asylum seeking women, women who have No Recourse to Public Funds or are undocumented cannot generally access refuge spaces as refuge provision depends on public funds (housing benefit). Furthermore, even where migrant women are able to access VAWG services, specialist services that take into account their cultural and language needs have been far more affected by funding cuts than mainstream services.¹³

According to the Women's Aid *Nowhere to Turn* project, of 20 women interviewed who had No Recourse to Public Funds and who were fleeing an abusive relationship with their children, social services either refused outright to fund a refuge space or provide emergency accommodation (in 14 cases), or offered to accommodate the children in emergency accommodation but not the mother (in 6 cases). A third of the women who were refused help from social services spent time sleeping rough, four of these women slept rough with children and one woman left her baby with a friend while she slept on the streets. Women's Aid also found that social services were unable to provide adequate interpretation services, in one case even using the perpetrator as an interpreter¹⁴.

For the migrant women who contact Maternity Action for help in relation to NHS charges, often the only support available when leaving violent partners, other than that of members of their community, is support under Section 17 of the Children Act 1989. Section 17 support is not usually available to pregnant women unless they already have dependent children. It is intended to be a support of last resort for families where there is a child in need (for instance, at risk of homeless or not enough food).

The rate of Section 17 payment is discretionary and varies from one local authority to another but it is often based on Section 4 asylum support¹⁵. There is no lower limit and the rate paid often falls well short of what families need to meet their basic needs. Project 17 states that families supported under section 17:

"... are often receiving financial support well below Asylum Support rates...this is the minimum the Home Office says is required to avoid a breach of the European Convention of Human Rights...Many families supported under section 17 are unable to afford basic necessities such as enough food for the family, clothing, school uniform and transport. Sometimes parents are unable to take their children to school because they cannot afford the bus fare. The families we work with are also heavily reliant on food banks and charities...The Children's Society found that in some cases, families supported under section 17 were living on less than £2 per person per day¹⁶".

on a youth mobility scheme for whom it costs £300). The government has announced plans to increase this to £650 per year.

¹³ Briefing for the House of Lords debate on the support available to survivors of domestic abuse and preventing further abuse, Equality and Human Rights Commission, 2018 https://www.equalityhumanrights.com/sites/default/files/briefing_debate_on_support_to_survivors_of_domestic_abuse_and_preventing_further_abuse.pdf

¹⁴ *Nowhere to Turn*, Women's Aid, 2018 <https://1q7dqy2unor827bqjls0c4rn-wpengine.netdna-ssl.com/wp-content/uploads/2018/06/NWTA-2018-FINAL.pdf>

¹⁵ At time of writing (November 2019) Section 4 Asylum Support is £34.00 per person, per week.

¹⁶ *Not Seen, Not Heard: Children's Experiences of the Hostile Environment*, Project 17, 2019

Women who are dependent on such a meagre income, often for long periods of time, are unable to pay back any NHS debts. The outstanding NHS debt in turn has the potential to give the Home Office cause to reject their immigration application.

Destitution, survival sex, pregnancy and NHS charges

Not only do women become destitute as a result of a combination of trafficking, sexual and/or domestic violence, and hostile environment policies, but they are exposed to further sexual violence and exploitation as these policies may push them into exploitative relationships and ‘survival sex’.

Both undocumented migrant women and those with a no recourse to public funds condition attached to their leave to remain can find themselves left without housing and financial support as a result of Government hostile environment policies that exclude them from employment and from mainstream benefits.

Maternity Action has been contacted by women seeking advice regarding NHS charges for maternity care who disclose that they have been forced into exchanging sex or domestic work in return for a bed and food. In these situations, women reported that food was sometimes withheld or that they were only allowed to leave the house when undertaking errands. One woman who contacted Maternity Action for advice in 2019 was living in such poverty and was so hungry that she had agreed to have sex with a man in exchange for a takeaway meal. She had become pregnant as a result and, due to a complex pregnancy and labour, now faces a bill of over £10,000 for her NHS care.

Maternity Action’s research into NHS charges for maternity care in 2018, *What Price Safe Motherhood?*, included interviews with women who had been trafficked to the UK and others who had become pregnant while they were “sofa surfing” as they were homeless. The report explained that some interviewees who said they were “staying with friends” may actually be talking euphemistically about having sex with men in exchange for a bed. *“Many women reported that to support themselves they had moved from place living with ‘friends’. This is also often referred to as ‘sofa-surfing’. These terms may be euphemisms for transactional sexual relationships or domestic work in exchange for shelter. Such sexual relationships have also been characterised as ‘survival sex’ – “the exchange of sex for accommodation and/or other material support,”*

Home Office and local authority dispersal policies exacerbate the vulnerability of these women by moving them to areas where they are isolated from any support networks they may have had.

Many of the women who contact Maternity Action for advice fit with the UN Special Rapporteur, Professor Philip Alston’s, description of the people he met when gathering evidence for his report for the UN on extreme poverty in the UK. He described people who: *“Depend on food banks and charities for their next meal, who are sleeping on friends’ couches because they are homeless and don’t have a safe place for their children to sleep, who have sold sex for money or shelter”¹⁷.*

Other women told Maternity Action of leaving violent relationships, only to return because of a lack of money or support. Some had approached domestic violence charities during their pregnancies, only to be told that there was nothing that could be done due to the woman’s immigration status.

¹⁷ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23881&LangID=E>

NHS debts and the impact on immigration status: another means of control used by abusers

With NHS charges for maternity care averaging around £7,000 for a straightforward pregnancy and labour, and given that many of the women who are charged are destitute with no access to mainstream benefits or access to paid employment, the reality is that the charges become burdensome debts which women have no hope of repaying. The regulations state that unpaid debts must be reported to the Home Office which may affect future applications to regularise immigration status.

Maternity Action's research report, *What Price Safe Motherhood?*¹⁸, examined the impact of charges for NHS healthcare on pregnant migrant women and found that women were being deterred from accessing NHS services and were being aggressively pursued by debt collection services when they were unable to pay the fees. Many of the women interviewed found the hospital's communication about debt confusing and threatening. Other women described receiving phone calls where the caller threatened to call the Home Office. Another woman said that nobody in the hospital told her anything about being charged, but after she gave birth she started to receive phone calls, but didn't always understand what was said on the phone.

The NHS Overseas Visitors Regulations allow for NHS Trusts to agree a repayment plan with patients who have been charged. Some women interviewed by Maternity Action were offered the opportunity of paying by instalments, but none of these women had right to work or claim mainstream benefits. At the time they were either living on help from friends or charities, or were accommodated by local authority social services departments with minimal financial support. None of the women were able to make more than a minimal repayment, if any.

Debts are recognised as playing a part in financial abuse and coercive control, regardless of immigration status. Immigration status is also known to be used as a means of exerting control, with partners refusing to renew visas so women become undocumented and so fear reporting or escaping violence in case they end up destitute, detained or deported.¹⁹ Home Office guidance on coercive control notes that immigration status "*may also be exploited by perpetrators to exert control over victims, for example, by threatening to inform immigration authorities, or to no longer support their stay*"²⁰.

For the women who contact Maternity Action about NHS charges, the debt and the threat to their immigration status combine to keep them trapped in abusive relationships. Maternity Action has spoken to women who have not accessed antenatal care because their partners have told them they will not pay and the women have no income of their own to pay for the NHS charges.

Failure of NHS charging regime to identify or protect survivors of VAWG

Shame, stigma, and fear present significant barriers to women disclosing sexual and domestic violence. In the context of NHS charging, there are additional complications. By way of example, Maternity Action has recently dealt with cases where women had conceived through sexual violence in ongoing abusive relationships, who have been charged for their maternity care and have not been informed about the possible exemptions. Some of the women we have spoken to have experienced severe PTSD as a result of their experiences of sexual violence, domestic abuse and trauma. Others would not be able to name

¹⁸ <https://maternityaction.org.uk/wp-content/uploads/WhatPriceSafeMotherhoodFINAL.October.pdf>

¹⁹ *The Right to be Believed: Migrant women facing Violence Against Women and Girls (VAWG) in the 'hostile immigration environment' in London*, McIlwaine C, Granada L, Valenzuela-Oblitas I, Kings College London and the Latin American Women's Rights Service, 2019

²⁰ *Controlling or Coercive Behaviour in an Intimate or Family Relationship: Statutory Guidance Framework*, Home Office, 2015

their experiences as VAWG. For instance, some women who have contacted Maternity Action have described being trafficked but would not use the word trafficking.

The process of identifying women who may benefit from the domestic violence or sexual violence exemption involves building a trusting relationship to enable the woman to feel safe to disclose that she has been subject to violence by the father of her child. Often women describe feeling under pressure from members of the Overseas Visitor Teams to repay the debt immediately and the conversations which take place between the woman and the Overseas Visitors Manager are not conducive to a woman feeling safe enough to disclose sexual or domestic violence. When Maternity Action has become involved in cases and informed the hospital administrators (the Overseas Visitors Manager) that the woman should benefit from one of the exemptions, the administrator has responded by asking the woman to produce evidence of sexual or domestic violence.

There are many barriers to disclosure of violence, and midwives are trained to pick up on indicators and deal with information sensitively. However, the stories women have told us seem to illustrate that information shared with midwives does not always reach the Overseas Visitor Managers who are imposing the charges on women. For example, even when midwives referred one woman on to a specialist domestic violence project, the OVM in her case was not aware that one of the exemptions might apply. In another case, a woman who sought the help of Maternity Action had been admitted to a medical ward during her pregnancy. The nursing staff had witnessed her partner's abusive behaviour towards her while visiting the ward. In spite of this evidence, the Overseas Visitors Manager did not notify the woman about the domestic violence or sexual violence exemptions and she was charged for her maternity care.

Many of the women who contact us have disclosed their history of sexual violence, domestic violence or FGM to their midwife but they have still been charged. Even where midwives are aware of the exemptions themselves, the process for flagging that a woman is exempt and withdrawing the charges is not always clear. In order for the exemptions to serve their intended purpose and to meet the needs of this vulnerable cohort, the midwife, who has been trained to spot signs of VAWG and to create a safe space to allow women to disclose, should have the authority to attest that an exemption relating to VAWG should apply.

Giving authority to midwives and other medical professionals to attest to an individual's eligibility for a service or an exemption already happens elsewhere in the system. The Anonymous Electoral Registration (2018) procedures provide a useful model of a robust system which confers authority to qualifying officers to attest to an individual's eligibility for anonymity. Qualifying officers include medical and healthcare professionals registered with the General Medical Council (GMC) or Nursing and Midwifery Council (NMC) and domestic violence refuge managers. Their attestation is relied on by local Electoral Officers to make a decision on whether to register the voter anonymously.

Similarly, in relation to exemptions from the two child limit on child benefit in cases of rape, HMRC and the Department for Work and Pensions accept forms submitted by midwives as well as healthcare professionals in Sexual Assault Referral Centres, doctors, nurses, health visitors, registered social workers, and a defined list of named specialist women's service providers. Again, these forms are considered as robust evidence for these public bodies to make rulings.

Challenging injustice

We have seen that many pregnant migrant women's experiences of poverty and destitution are inextricably linked to experiences of VAWG. Maternity Action's experience of supporting women who

have been charged for their maternity care tells us that the reasons for women seeking NHS care are often linked to their experiences of VAWG, yet the exemptions in the charging regulations are too restrictive, are poorly understood and are poorly applied in practice. Our experience also tells us that NHS charges are driving already destitute women further into poverty and debt, making them more vulnerable to exploitation and creating an additional barrier to leaving an abusive relationship. Maternity Action has been campaigning on these issues for many years yet the government has refused to carry out a meaningful impact assessment of the charges or to reconsider how the exemptions are failing to protect survivors of VAWG.

Maternity Action is challenging this injustice. We have launched a legal challenge of the government's charging policy which we believe has a disproportionate, negative impact on women. We argue that people in receipt of section 17 support from local authorities should be exempt from charging.

We also argue that the current exemptions relating to VAWG are discriminatory. The requirement that for treatment to be exempt it must be directly *caused by* VAWG effectively excludes most women from these provisions. This contrasts this with the full exemption from charging for victims of trafficking, who appear to be predominantly male. We also argue for this exemption on human rights grounds.

Finally, we argue that maternity charging is indirect sex discrimination. It is only women who are charged for maternity care and the impact of charging on women's access to health care is harsh. We also argue for this exemption on human rights grounds.

Get involved

Find out more about Maternity Action's research and campaigning on NHS charges for maternity care on our website where you will also find a campaign toolkit to help activists to challenge NHS charging locally.

www.maternityaction.org.uk