HOUSE OF COMMONS

Health and Social Care Committee

Oral evidence: Government's review of overseas visitor charging, HC 2330

Tuesday 25 June 2019

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Watch the meeting

Members present: Dr Sarah Wollaston (Chair); Mr Ben Bradshaw; Rosie Cooper; Diana Johnson; Andrew Selous; Dr Paul Williams.

Questions 1 - 58

Witnesses

I: Stephen Hammond MP, Minister of State for Health, Department of Health and Social Care; and Sir Chris Wormald, Permanent Secretary, Department of Health and Social Care.

Examination of witnesses

Witnesses: Stephen Hammond and Sir Chris Wormald.

Chair: Welcome to the Health and Social Care Select Committee. We are starting this session with a quarter of an hour looking at the issue of overseas visitors charging. I am very pleased to welcome you, Minister Stephen Hammond, and the permanent secretary, Sir Chris Wormald. Thank you both very much for coming. Paul Williams is going to set the scene, and then we have 15 minutes on the issue.

Q1 **Dr Williams:** Thank you very much, permanent secretary and Minister, for coming today. We know that some new regulations were introduced towards the back end of 2017 around charging for overseas visitors, and they came on the back of regulations introduced in 2015 as well. The Department conducted a review and there has been a written ministerial statement that said that the review is complete.

The review was interested in whether there was any harm caused, whether people were being deterred from accessing treatment, and whether there was any harm to public health. The review concluded that there is no significant evidence that these regulations led to overseas visitors being deterred from treatment or that the changes have had an impact on public health. We have asked, as a Committee, for the review to be published and we were told that some of the evidence submitted to the review was confidential. We then offered, as a Committee, to have a look in private and that request was denied as well, so we have asked you to come here today in order that we can further question you about it. My first question is: why did you do the review?

Stephen Hammond: We did the review as a result of some parliamentary questions about the effect, or potential effect, of the 2017 changes.

Q2 **Dr Williams:** Was that the only reason why the review was conducted?

Stephen Hammond: It was a direct result of those. There were letters from various Members of both Houses and there were some parliamentary questions, so it was felt appropriate to ensure that an internal review was done.

Q3 **Dr Williams:** What were you interested in looking at as a result of the review?

Stephen Hammond: We clearly were looking at whether or not any of the amendments to the regulations—the 2017 changes—had any impact on people who were trying to access care, and whether it had detrimental effects.

Q4 **Dr Williams:** You were interested in seeing whether there was any harm being done as a result of the regulations.

Sir Chris Wormald: For absolute clarity, the review was into the narrow question of the amendments we made to the charging regime. It was not a review of the charging regime as a whole. This is obviously in the context of its being a controversial policy in both directions, and we were looking very specifically at the effect of the reasonably small changes we were making to the wider and long-standing policy of charging.

Q5 **Dr Williams:** When did the 2017 regulations come into force?

Stephen Hammond: They were due to come into force in November 2017.

Q6 **Dr Williams:** When changes are introduced, when guidance is issued or when new regulations are made, how long does it normally take to embed those changes in the NHS?

Stephen Hammond: That will clearly depend on what the changes are, how widespread they are and their breadth. As Sir Christopher has just said, we were undertaking a review of very small, narrow changes to regulations that were already in place.

Q7 **Dr Williams:** Up-front charging was the main change, wasn't it?

Sir Chris Wormald: I would like to add to the Minister's answer slightly. The review of the amendments is not the only thing we do in this area. It is obviously an area that gets a considerable amount of parliamentary scrutiny; it has been subject to Public Accounts Committee hearings and NAO reports. We keep a sort of constant eye on it and have discussions with the NHS on how things are being implemented. We did a specific review of the amendments—

Stephen Hammond: I assumed that Dr Williams was asking about the small narrow aspect of this review, but Sir Christopher is right that we obviously have regular scrutiny of this policy and any number of policies.

Q8 **Dr Williams:** The 2017 regulations extended the scope of charging beyond the 2015 regulations and made provision for up-front charging; that is correct. Were they what you are describing?

Stephen Hammond: Up-front charging to non-exempt—

Q9 **Dr Williams:** Yes, so that is what you are describing as small changes. You were interested in whether or not there was any evidence of harm from those changes.

Stephen Hammond: Yes.

Q10 **Dr Williams:** When the regulations were introduced towards the back end of 2017—you said November; people have told me it was October—why did you decide about six weeks later to do a review?

Stephen Hammond: As I said in response to one of your earlier questions, there was some considerable parliamentary questioning. It was appropriate that we looked at the effect of the regulations. As Sir

Christopher has already said, we keep all regulations under review and have had a number of discussions with NHS providers about how rules are being applied.

Q11 **Dr Williams:** Six weeks later?

Stephen Hammond: It was appropriate, I think, to conduct an internal review.

Q12 **Dr Williams:** An internal review.

Stephen Hammond: Let us be clear. It was quite clear what this review was. The review was a series of questions to a number of organisations, both organisations and individuals, and the review was basically their response to those questions. It was always going to be an internal review. It was never intended to be published. It was also advice to Ministers.

Q13 **Dr Williams:** You wanted to do a review to look for evidence of harm. Surely, if you were serious about looking for evidence of harm, you might have waited a little bit longer for the changes to have actually been implemented.

Stephen Hammond: As Sir Christopher said in his response a moment ago, we have kept the 2015 changes under review. They have been under the consistent scrutiny of the Department and the NHS in how they are being applied. This review was after some changes. As you know, there were a number of letters from various people, particularly at least one member of the Lords Select Committee, as I understand it, and therefore it seemed appropriate to do the review.

Q14 **Dr Williams:** The main change was about up-front charging. Were you confident that that change had been fully implemented by the time you did the review?

Stephen Hammond: We were satisfied that there was enough. We undertook a review. We asked questions of 57 different organisations and individuals.

Q15 **Dr Williams:** Had you adequately consulted about up-front charging?

Sir Chris Wormald: That was one of the questions that was raised. As I understand it—

Q16 **Dr Williams:** That was a question that was raised in the review. My question is about consultation.

Sir Chris Wormald: No, I am sorry, that is the question I am answering. My understanding is—I am sorry; some of this predates me—that it had long been guidance to the NHS that up-front charging should be used in those circumstances, and the regulation was putting that into law, basically, so we did not consult on that specific. It was already the practice in the NHS to do that, which we were clarifying.

Q17 **Dr Williams:** You consulted on the 2017 regulations but you did not consult on the main change that was introduced by the 2017 regulations, which was up-front charging. Is that correct?

Sir Chris Wormald: That is my understanding, but that is because it was already the practice of the NHS in guidance.

Q18 **Dr Williams:** But a few minutes ago, Minister, you agreed that was the main change.

Sir Chris Wormald: It was mainly a legal change, yes.

Stephen Hammond: Yes.

Q19 **Dr Williams:** Why did you consult on the 2017 regulations but not consult on the main change that you then introduced?

Sir Chris Wormald: Because it was already practice.

Q20 **Mr Bradshaw:** What?

Sir Chris Wormald: As I understand it, what the regulations did was to move the position from guidance to the NHS that you should up-front charge to a legal requirement, so it was clarifying the existing practice in regulation.

Q21 **Dr Williams:** But you did not consult before, and this review looked at the impact.

Sir Chris Wormald: Yes.

Q22 **Dr Williams:** That is the review that you will not share with us publicly.

Stephen Hammond: The review is a set of questions that we posed to a number of organisations and individuals. We have written to the individuals and the organisations—some of them twice—to seek their consent to make it public. A number of them have not responded and a number of them explicitly said they provided information confidentially.

Equally, it is clear that this was never intended to be published. It was a review that was going to inform the advice to Ministers. It has been the practice never to publish those.

Q23 **Chair:** Minister, can I clarify a point? Did you ask the consultees whether they thought the changes had been sufficiently embedded for them to be able reasonably to comment on their impact? Did you specifically ask them?

Stephen Hammond: We asked them to comment on their impact.

Q24 **Chair:** Did you ask them whether they thought it had been sufficiently in place? It is a ridiculously short period of time to be able to assess its impact, surely.

Stephen Hammond: As I say, we asked them what their view of the impact was.

Q25 **Chair:** Yes, but did you ask them whether they thought it was the right time to ask the question?

Stephen Hammond: As they were in place, they gave their view on the—

Q26 **Chair:** But did you ask them whether they thought it was the right timing to conduct a review?

Stephen Hammond: I have to confess that I do not know the answer to that and I will write to the Committee.

Q27 **Chair:** Just looking at it, with any major change, do you think assessing at such a short point—

Stephen Hammond: I am sorry, Chair. I think the difference is, as Sir Christopher has already pointed out, that this was moving from guidance into legal regulation, so although it represented a major change in terms of putting it into legislation, it was not a change from the guidance that was already in place.

Q28 **Dr Williams:** The conclusion is that there is no significant evidence of harm, of people being deterred from treatment or an impact on public health. I asked for some of the evidence that was submitted.

One case that I heard was of a gentleman with kidney cancer—diagnosed kidney cancer. His doctors said that he needed an operation to remove that cancer, but he was told that he could not have that operation unless he paid up front for the operation, and he was not able to afford to pay up front. Would you consider that, if I had a cancer and could not have that cancer removed, that cancer could do significant harm to me?

Stephen Hammond: The point at issue is actually how the regulations were being applied.

Q29 **Dr Williams:** It was the up-front charging bit that was the regulation, and it was the up-front charging that he could not have.

Stephen Hammond: There are, as you will know from the regulations, a number of exemptions and a number of ways that people can avoid up-front charging if they are exempt. The ministerial statement said that there was no evidence that the amendment regulations led to people being deterred from treatment, but I agree that there has been evidence that some of the application of those regulations—

Q30 **Dr Williams:** But it was the change, you said; the regulation that was introduced was up-front charging, and in this case it was the up-front—

Stephen Hammond: This is again the point that Sir Christopher made, and I want to reiterate, that this was moving from guidance to regulation. It was not the change in the regulations themselves, because it was already there in guidance. I accept that the guidance was being misapplied, and that is why the ministerial statement makes clear what we are doing in taking action.

Q31 **Dr Williams:** Before, there was discretion. When it is guidance, there is discretion; when it is regulation, there is less discretion, and in this particular case it took a lawyer challenging the hospital, which delayed the man's treatment by four months before he was able to get his kidney operation.

Moving on to another case, a lady who was five months pregnant and needed antenatal care told Maternity Action that she did not want to go for antenatal care for two reasons: she was afraid of being subsequently charged for antenatal care and afraid of her details being passed on to the Home Office, which was something else that was cemented in the regulations. If my partner, knowing that delayed presentation—late booking for pregnancy—is an increased risk for maternal and child death, was not accessing antenatal care, could that cause significant harm?

Stephen Hammond: Again, you are choosing a particular case that I cannot comment on.

Q32 **Dr Williams:** It is one of the cases submitted to the review that we are asking you to comment on.

Stephen Hammond: You are commenting, clearly, on people who have chosen to make their evidence public. I do not think, even if I had been coming here—you may wish to hold a full inquiry into the charging regime, and of course the Department would be very happy to comply with that, and take that—

Q33 **Dr Williams:** Are you interested in knowing whether there is any harm done?

Stephen Hammond: Of course; that is why we instituted the review.

Q34 **Dr Williams:** No, you said the review was not looking at the harm from charging generally—

Stephen Hammond: Yes, I did say that.

Q35 **Dr Williams:** It was just looking at a minor set of changes.

Stephen Hammond: You have asked me here to answer questions about a very specific issue, which is about the review itself—what we did, what we undertook and why we have not chosen to make it public. I am saying that, if you wish to have an inquiry into the general charging regime, I accept that there are a number of issues about the charging regime on which people have very strongly held views, and I also accept, as I have said already, that some of the application of some of the charging regime has not been satisfactory or acceptable, and therefore that is why my ministerial statement set out the action we are taking. I want to make it clear, as Sir Christopher did earlier, that we are in constant contact with NHS providers to make sure that the rules are applied correctly.

Q36 **Dr Williams:** You accept that there might be some harm being done, and I have talked about two cases. There were 22 cases where we know of

harm being done. That was something that came out in the judicial review; there were 22 cases of harm during that very short window. The organisations I talk to say that there are now thousands of cases of harm that they have evidence of. If you as a Minister are interested in this, why aren't you conducting your own thorough review of the impact of the 2015 and 2017 regulations? Why are you asking a non-executive part of Parliament to do that? Why doesn't the Executive do that?

Stephen Hammond: The Executive have undertaken this review. As I said, we are continually talking to NHS providers about the application of the rules.

Q37 **Dr Williams:** When I talk to them, they say there are thousands of cases of harm being done. It is not NHS providers. I am talking to the voluntary and community sector, because most of these vulnerable people end up in the voluntary and community sector, and they tell me there are thousands of cases of harm. Why doesn't the Department conduct its own thorough review into the impact of the 2015 and 2017 regulations?

Stephen Hammond: Because the regulations are in place to be implemented by NHS England and NHS Improvement, and local trusts should therefore be undertaking those reviews as and when they are appropriate at the time.

Q38 **Dr Williams:** You want the trust to conduct a review of the people who are not accessing treatment from the trust. How are they going to access people who are not accessing treatment? Surely, the duty of care to people who are living in our country—often the most vulnerable people, people who have been victims of domestic violence, people who may have been trafficked—is on Government rather than on the trusts.

Stephen Hammond: Technically and legally, the role of the Department is to make sure that NHS England and Improvement undertake their duty of care and comply with their legal obligations. That is what the Department is doing.

Q39 **Dr Williams:** You will not conduct a thorough review of the 2015 and 2017 regulations and their impact on public health.

Stephen Hammond: You might wish to ask Simon Stevens whether NHS England is undertaking that.

Q40 **Dr Williams:** Do you think he should conduct a thorough review?

Stephen Hammond: It will be for them to make a decision and then for us to—

Q41 **Dr Williams:** As the Minister, you say, "Not my problem. It should be"—

Stephen Hammond: You are paraphrasing. I did not say, "Not my problem." The fact that we undertook an internal review shows that it is a problem and an issue that we are looking at.

Chair: I am very sorry, but I am afraid we are going to have to suspend

the sitting because there is a Division in the House. Apologies for cutting you off. I am not sure whether you feel you want to come back after the Division.

Mr Bradshaw: I certainly want them to come back.

Q42 **Chair:** Is that all right, Minister? Could we recall you after the Division?

Stephen Hammond: Yes.

Chair: Thank you very much.

Sitting suspended for a Division in the House.

On resuming—

Chair: We have one final series of questions for you, Stephen.

Q43 **Dr Williams:** Thank you very much for coming back, Minister. I think we got to a point where we both accepted that there could be harm being done by the regulations, and that there may be a need for a review of the 2015 and 2017 regulations.

Stephen Hammond: I accepted that there could be harm done with the application of them and that the Department is taking action to make sure that the NHS acts to ensure that harm is not being done.

Q44 **Dr Williams:** The evidence we have seen shows that it is the regulations rather than the application of the regulations that is doing harm.

Stephen Hammond: That may be evidence that is given to you. I have to say that, again, therefore, that is the overall regulations. It is not the specific that the review was into, as you know. There is a difference between whether or not you are saying that the regulations themselves are doing harm and whether they are being appropriately applied, and whether it is that application or whether it is—

Q45 **Dr Williams:** The BMA report "Delayed, deterred and distressed" interviewed many doctors who have evidence that it is the regulations that are doing harm. If doctors are saying that harm is being done, surely the Department should be conducting a review of the impact of the regulations.

Stephen Hammond: The Department has undertaken a review of the regulations in terms of the amendment in 2017, as I said, which you asked me here to talk about this afternoon.

Q46 **Dr Williams:** Which, according to you, showed no evidence of harm, but I have presented to you some evidence of harm.

Stephen Hammond: You presented evidence of a number of cases. Obviously, I cannot comment on an individual case. Whether or not they were a result of the general charges or whether they were a result of the amendments in 2017, I do not think we agreed, or rather, it was not

clear from what you were saying. The fact that there was harm means that that must not happen and, therefore, that is why, as I set out in the written ministerial statement, we are undertaking a number of actions to make sure that the rules are applied properly.

Q47 **Dr Williams:** It is the proper application of the rules that is doing the harm.

Sir Chris Wormald: No. If you take some of the cases you quoted—and obviously I will not discuss the individual cases, but the categories—you mentioned both domestic violence and the treatment of victims of trafficking. Treatment for those categories is free, I am told; and maternity care, which you also mentioned, should never be charged for up front. So in three of the circumstances—

Q48 **Dr Williams:** It was not the up-front charging that was concerning those people; it is the fact that some of them cannot afford to pay for treatment and therefore are not accessing the treatment.

Sir Chris Wormald: I see. I think this may be why we are slightly talking at cross-purposes. We were invited here to discuss the narrow question of the application of the regulations and the review of those. The questions you are raising, which are perfectly fair questions, are about—

Mr Bradshaw: I am sorry, can you speak more clearly, please, permanent secretary? You are mumbling.

Sir Chris Wormald: I am sorry. The questions that you are raising, which are perfectly fair questions, are about the overall effect of the charging regime. That appears to be your primary interest. That is not something the Government have been reviewing.

Q49 **Dr Williams:** The Government have not reviewed that.

Sir Chris Wormald: No. The review you asked us here to talk about is the narrow review of the amendments of 2017.

Stephen Hammond: From guidance into regulation.

Q50 **Chair:** Minister, could you commit to actually reviewing the whole system, both the changes themselves and their application, given that there are such concerns about the harm to real people that this is causing?

Stephen Hammond: What I will commit to do, Dr Wollaston, is to review the evidence again and to write to you.

Q51 **Chair:** Which bits of the evidence? That is the point: it is both the regulations and their application.

Stephen Hammond: There have been a number of discussions or debates about the overall charging regime, on which people hold differing views, and there is clearly a balance in terms of how healthcare is provided and who it is charged to in these particular cases, but there is a

huge number of exemptions. The permanent secretary has already pointed out several, but one could go on: asylum seekers, victims of modern slavery, children in local authority care. I could go on with the list of those who are exempt. There is a debate about the charging regime and there is a question mark as to whether there is harm being done or not. Then there is what you asked us to talk about today, which was a relatively narrow issue.

Q52 **Chair:** Indeed, so what we are saying to you is that that is too narrow and we would like to see a review of the regulations and their application, coming at it from the perspective of people who use these services and the impact on them. Is that something you would be prepared to do?

Stephen Hammond: I am prepared to listen to that request and respond to you. I cannot commit to it this afternoon, and it would be inappropriate to do so.

Q53 **Chair:** It would be very helpful to us if you could respond to us on that request.

Stephen Hammond: I will happily respond to you.

Chair: Is there anything you want to add, Paul or Ben?

Q54 **Mr Bradshaw:** I cannot understand why you are so resistant to wanting to know whether harm is being done and to having a proper review of these regulations.

Stephen Hammond: There is no question of our being resistant as regards harm being done. We looked at a particular change to the amendments. It showed that the amendments themselves were not causing harm but some of the application was. As I said earlier in response to questions from Dr Williams, we are constantly in contact with NHS providers about cases.

I accept that there has been some evidence that there has been harm and therefore we are undertaking, as my written ministerial statement stated, a number of actions. I am not sure you would really want me to read that out to you again this afternoon, but I am happy to do so. It would be wrong to suggest that there is any tolerance of harm by the Department.

Q55 **Mr Bradshaw:** You will not publish your own review, so how can we know?

Stephen Hammond: That is because, as I said, first, the review was never intended to be published; secondly, it was a series of questions to a number of organisations and individuals, many of whom asked that the evidence they gave should be confidential; and, thirdly, as you know, this was a review conducted so that it could be a submission and advice to Ministers. It is not customary to publish that.

Q56 **Mr Bradshaw:** Permanent secretary, you have looked very embarrassed

all the way through this evidence session, if you don't mind my saying so.

Sir Chris Wormald: No.

Q57 **Mr Bradshaw:** You know very well that, when I was a Minister in the Department, we had exactly the same tabloid-driven proposal on charging, which all the advice to us said would do exactly the damage that my colleague has unearthed in his evidence-seeking. When did that advice change to Ministers?

Sir Chris Wormald: You will know as a former Minister that we do not discuss the policy advice we give to Ministers.

Q58 **Mr Bradshaw:** Isn't this a classic example of a tabloid-driven policy pushed through by a Secretary of State with no evidence? Now you have discovered that there is evidence of harm, you are not publishing it and you need to review it properly before more harm is done to patients. That is your responsibility as permanent secretary. You are the Department in charge of the policy: not the implementation—the policy.

Sir Chris Wormald: The Minister has already set out the Government's position on your question.

Chair: Thank you for coming this afternoon. We look forward to hearing from you.