

Written evidence from National Aids Trust [EAP0005]

1. National AIDS Trust is the UK's HIV rights charity. We work to stop HIV from standing in the way of health, dignity and equality, and to end new HIV transmissions. Our expertise, research and advocacy secure lasting change to the lives of people living with and at risk of HIV
2. We have worked on the topic of asylum and migration for many years to improve the health outcomes and quality of life of people born abroad living with HIV in the UK. In 2012, we successfully campaigned for an amendment to the NHS (Charges to Overseas Visitors) Regulations meaning that HIV treatment is not chargeable to anyone in the UK irrespective of immigration status. In 2018, we submitted oral evidence to the Health Select Committee inquiry on the Memorandum of Understanding (MoU) between NHS Digital, the Department of Health and Social Care and the Home Office which facilitated the use of non-clinical data from the NHS for immigration enforcement. And in 2021, we published a report '[HIV and migration: Understanding the barriers faced by people born abroad living with HIV in the UK](#)' It identifies the challenges faced by migrants, including people seeking asylum, when accessing HIV testing, treatment and care, as well as wider healthcare and its impact on individual and public health, and contains policy recommendations to overcome them.
3. We welcome the opportunity to submit evidence to the Women and Equalities Committee's inquiry 'Equality and the UK asylum process'. All people diagnosed with HIV are deemed in law to have a "disability" for the purposes of the Equality Act 2010 (Schedule 1, para 6(1), Equality Act 2010). Our response is informed by our policy research on HIV and migration, and our work with stakeholders in the HIV and migration sectors.
4. HIV is a public health challenge which disproportionately affects migrants in the UK. In 2019, 62% (2195/3552) of all new HIV diagnoses in the UK (including people previously diagnosed abroad) were among migrants.¹ Over half probably acquired HIV in the UK, and 61% were diagnosed for the first time in the UK.² The data on HIV does not disaggregate by immigration status and so it is not possible to identify the number of people seeking asylum or granted asylum status who are living with HIV. However, our research and experience show that the needs of many people living with HIV seeking asylum are not being met.

Asylum and protected characteristics

What is the nature and extent of UK asylum claims based on discrimination or persecution relating to the protected characteristics?

5. People often seek asylum based on discrimination or persecution relating to their HIV status. They are often fleeing a situation where they are forced into destitution or unable to access life-saving treatment because of the stigma and discrimination related to HIV. Treatment is vital, as with it HIV is now a manageable long-term condition. However, in some parts of the world, treatment is not affordable. One

¹ PHE data, provided upon request in email dated 21 April 2021.

² Ibid.

person we spoke to as part of our research applied for asylum in 2018 after he lost his job in Nigeria and his HIV status was shared widely in the community. He was as a result unable to find work and support himself and was unable to stay with friends or family once they found out about his status. The stigma associated with HIV meant he found it difficult to access treatment. He could not go to the clinic for his appointments because of fears he would be targeted by his community. For HIV treatment to work well, it must be taken at the same time without missing any doses. Being unable to attend clinic for treatment and monitoring jeopardised his health.

6. This experience mirrors that of others in our research. For people seeking asylum who are living with HIV and also LGBT, some have expressed real fears of being forced into dangerous and painful conversion therapy in the attempt to make them heterosexual, being unable to access the HIV clinic or being unable to adhere to a treatment regimen and death threats from people within their community.

Are those with certain protected characteristics more or less likely to be granted asylum in the UK?

7. The grounds for claiming asylum in the UK do not explicitly line up with many of the characteristics protected under the Equality Act 2010. As well as race, religion, nationality and political opinion, people can apply for asylum if they are being persecuted because of 'anything else that puts you at risk because of the social, cultural, religious or political situation in your country, for example, your gender identity or sexual orientation.' HIV is considered a disability from the point of diagnosis under the Equality Act 2010, and yet HIV, and other disabilities, are not clearly included in these criteria meaning they are not afforded protection in the same way as other protected characteristics. This suggests that people living with HIV are significantly less likely to be granted asylum in the UK on the basis of this protected characteristic.
8. We could not find any data on how many people have sought asylum in recent years on fears of persecution as a result of a disability, so it is not possible to demonstrate conclusively the scale – however this data should be sought by the committee from national Departments. Our casework and research does however indicate this is a significant issue faced by those living with HIV.
9. Another person living with HIV who had been trafficked into the UK said she had applied for asylum on medical grounds twice and had been rejected, before being connected to different legal representation who encouraged her to include information about her trafficking experience in her application. Her application was then accepted, and she was supported, however the fears around being forced to return to her country of origin and not be able to access HIV treatment was not enough to meet the threshold of refugee status despite fear of discrimination or persecution based on a protected characteristic.
10. Another person living with HIV seeking asylum was refused twice when they applied on medical grounds and was not accepted until they made an application based on her gender identity and sexual orientation.

11. People with health conditions can apply for leave to remain through Article 3 of ECHR which protects people from torture, inhuman or degrading treatment or punishment. This is outside of the asylum process and therefore beyond the scope of this inquiry, however it is important to note that this is often the only avenue available to people living with HIV who would face a shortened life expectancy, persecution, or inability to access treatment if they were returned to their country of origin.³ This has only become a viable option in the UK since 29 April 2020 when the UK Supreme Court (UKSC) gave judgment in *AM (Zimbabwe) v Secretary of State for the Home Department* [2020] UKSC 17. *AM* is a vital case about the construction of 'medical grounds' in immigration appeals including Article 3 of the European Convention on Human Rights (ECHR).

The asylum process for individuals with protected characteristics

Is the UK asylum process safe and fair for those with protected characteristics?

Are individuals with certain protected characteristics more at risk of harm or unfair treatment when going through the UK asylum process?

12. We believe that people living with HIV are at significantly more risk of harm or unfair treatment when going through the UK asylum process. The vulnerabilities fall broadly into three categories: the impact of destitution and poverty on access to healthcare, lack of knowledge and misconceptions about the healthcare system in the UK, and failures of the UK healthcare system and immigration estate to adequately care for people seeking asylum living with HIV. All of these factors place people seeking asylum living with HIV at greater risk of harm by making it harder to access and adhere to treatment, compromising their health. If people are not testing and accessing treatment, they are more likely to pass on the virus, making it harder for the UK to achieve its goal of ending new HIV transmissions by 2030.

Destitution and poverty

13. Whilst waiting for a decision on an asylum claim, people seeking asylum get £39.63 in asylum support, which amounts to just over £5 a day. During this time, they are unable to work or access public funds. We heard that this severe financial insecurity can also mean people seeking asylum are forced into transactional relationships, exchanging sex for accommodation or immigration status. This makes people even more vulnerable to harm such as domestic violence, including coercive control. Insecure housing status can also compromise ability to access treatment or prevention, with knock on impacts on individual and public health.
14. Poverty forces people into situations more likely to put them at risk of acquiring HIV and makes it harder for them to engage with care and access effective treatment to stay healthy once living with HIV. People we spoke to living on asylum support told us about the difficulties of affording to both attend hospital appointments and food. We spoke with someone seeking asylum who told us each journey to his sexual health clinic in central London cost him nearly £10 and he had to go without other necessities in order to attend.

³ More information about medical grounds cases here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/927593/medical-claims- article3and8 -v8.0ext.pdf

15. The issue of affording travel to hospital appointments has been exacerbated by the COVID-19 pandemic. People seeking asylum have been housed in contingency accommodation including MOD barracks. A briefing by Refugee Council published in March 2021 details how many accommodation sites are on the outskirts of towns and cities because they are cheaper to procure, but it results people having more lengthy and costly journeys to healthcare centres.⁴ People seeking asylum living with HIV are having to choose between prioritising their health and other basic necessities.

Lack of knowledge and misconceptions about the healthcare system

16. It was abundantly clear from our research that many people seeking asylum do not understand their healthcare entitlements in the UK. As a result, they are reluctant or unsure how to access healthcare in the UK.
17. HIV testing, treatment and care is free for everyone in the UK irrespective of HIV status. People seeking asylum, and those granted asylum, are able to access free NHS treatment, however they are often unclear about what they can access for free. We spoke to many people who had not accessed any healthcare, including HIV treatment and care, until their asylum claim had been accepted, as they were worried they would be charged or if would impact the outcome of their application. This results in people not testing for HIV or not getting treatment if already diagnosed. Data from 2018 show that among migrants born and previously diagnosed abroad, 36% did not access care within one year of their arrival in the UK and 46% received a late diagnosis at the time of their first HIV positive test in the UK.⁵ This increases the likelihood they will be diagnosed late, which results in a tenfold risk of mortality within the first year of a diagnosis, poorer health outcomes, and increased likelihood of passing on the virus.
18. Others simply did not know how to register with a GP and said it was difficult to access any reliable information about healthcare entitlements in the UK. One person lamented that despite reporting to the Home Office every fortnight and being in regular contact with immigration enforcement whilst awaiting the outcome of his application, he had not once been encouraged to register with a GP or informed how to navigate the healthcare system.
19. People's experiences before and during migration also impact their willingness to engage with healthcare. Some people we spoke to were wary of the state in any form due to being persecuted by state authorities back home. Misconceptions about HIV also impact linkage to care; one person we spoke to from Malawi did not get an HIV test for many years due to the belief that if it was positive, it could not be treated. He had seen the effects of HIV back home and did not see the point in taking a test. People seeking asylum need additional help accessing healthcare, including HIV

⁴ Refugee Council, 'A note on barriers experienced by refugees and people seeking asylum when accessing health services', March 2021, https://media.refugeecouncil.org.uk/wp-content/uploads/2021/10/29174557/A-note-on-barriers-experienced-by-refugees-and-people-seeking-asylum-when-accessing-health-services_March_2021.pdf, page 4.

⁵ O'Halloran C, Sun S, Nash S, Brown A, Croxford S, Connor N, Sullivan AK, Delpech V, Gill ON. (2019). HIV in the United Kingdom: Towards Zero 2030. Public Health England, London, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/965765/HIV_in_the_UK_2019_towards_zero_HIV_transmissions_by_2030.pdf, 40.

services, and the Home Office and Department of Health and Social Care (DHSC) should proactively provide information on healthcare entitlements to everyone applying for asylum.

Failures of the UK healthcare system and immigration enforcement

20. Despite the barriers detailed above, many people seeking asylum do try to prioritise their health and are let down by the healthcare system and immigration enforcement. Everyone in the UK is able to register with a GP irrespective of immigration status, and yet many people seeking asylum are incorrectly asked to provide a form of ID in order to register or are incorrectly refused registration due to being unable or unwilling to provide an address. Compounded by a lack of knowledge about healthcare entitlements, this results in people seeking asylum being unable to access healthcare at even the most basic level.
21. People seeking asylum living with HIV can face risk of additional harm through their interactions with immigration enforcement. Those who are placed into initial accommodation, which is voluntary, temporary accommodation for people seeking asylum, should have access to health checks that include HIV testing and link-up to necessary HIV care, but we know this does not happen consistently.
22. We have supported an individual living with HIV who was unable take his HIV medication at the correct time due to a lack of flexibility of mealtimes whilst housed in initial accommodation. HIV medication must be taken at the same time every day to be effective, and some must be taken with food. He was unable to adhere to his treatment regimen, even though he informed the relevant staff that he was living with HIV and so they were aware he had a protected characteristic and is protected from indirect discrimination.
23. Additionally, people seeking asylum are often dispersed away from London. This is especially problematic for those who have established HIV care in London and have support networks in place. Since 2012, Home Office guidance has recommended that people living with HIV should not routinely be dispersed away from their existing clinic.⁶ However, this continues to occur; we spoke to three people who were dispersed out of London after 2012. One relied on an HIV support service in the city to which he was dispersed to connect him to a new HIV clinic which jeopardises retention in care. This practice needs to end.
24. The asylum process is incredibly stressful and has a direct impact on the mental health of people seeking asylum. This can result in specific harms for those living with HIV as our research found that poor mental health had a direct impact on adherence to HIV treatment. One person we interviewed reported not taking their medication when their application for refugee status was refused and they were feeling suicidal. Their application has since been granted, but they still struggle with the ongoing impact on their mental health and receive regular treatment for depression and anxiety.

⁶ UK Visas & Immigration, 'Healthcare Needs and Pregnancy Dispersal Policy', v3.0, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/496911/new_Healthcare_Needs_and_Pregnancy_Dispersal_Policy_EXTERNAL_v3_0.pdf

Are particular protected characteristics given priority in the asylum process?
What challenges do those with protected characteristics face on the basis of those characteristics if they are granted asylum in the UK?
What specific issues do those with certain protected characteristics face?

25. People living with HIV continue to face challenges if their asylum claims are accepted. 'Hostile environment' policies introduced in 2012 have a profound impact on the health and wellbeing of migrants living with or affected by HIV. Patients who are unable to prove eligibility for NHS care can be charged 150% of the cost price of services. In addition, if a patient has a debt of greater than £500 outstanding for more than two months, NHS Trusts are currently required to share non-clinical patient data with the Home Office which can be used to track, detain and deport people.

Although HIV care is free, the existence of charging in the system provides a real barrier for all, because people don't always understand what they are entitled to and expect to get charged. Healthcare providers often don't understand the system either so may give the wrong information to people or turn them away. Errors in the implementation of the charging system contribute to confusion. These policies contribute to many people born abroad, including refugees, being afraid to access HIV testing and treatment in the UK. This has ramifications on individual and public health; those diagnosed late are more likely to have poorer health outcomes including co-morbidities and are more likely to pass the virus on when undiagnosed and untreated.

26. People with refugee status living with HIV often have significant mental health support needs. Many have experienced the most harrowing situations and are deeply traumatised because of what happened to them. Concerns around immigration status, racism, HIV stigma and financial insecurity compound this. As well as impacts on treatment adherence, many people with refugee status told us they feel isolated and lonely in the UK. Some people we spoke to were able to access mental health support that met their needs, but others were not able to get the help they needed due to long waiting lists, or inadequate care which was not tailored to the specific needs of people migrants living with HIV.

27. People who have not been granted asylum in the UK are not considered by this inquiry, but we feel they should be. Refused asylum seekers are some of the most vulnerable people in the UK, and many go on to successfully appeal the initial refusal and are granted asylum. The terms of reference of this inquiry cite evidence from Rainbow Migration (formerly the Lesbian and Gay Immigration Group) that between 98% and 99% of all asylum claims made in the UK by lesbian and gay people were rejected at the initial interview stage, compared with 73% for other asylum claims. In 2019, the Guardian reported that the Home Office had refused at least 3,100 asylum claims from LGBT nationals from countries where consensual same-sex acts are criminalised.⁷ There is still a need to consider people with protected characteristics whose asylum applications have been rejected. Hostile environment policies in healthcare have a particularly large impact on people without any immigration status. Our research found they were less likely to access healthcare when needed, resulting in poorer health outcomes.

⁷ 'Home Office refused thousands of LGBT asylum claims, figures reveal', The Guardian, 2 September 2019, <https://www.theguardian.com/uk-news/2019/sep/02/home-office-refused-thousands-of-lgbt-asylum-claims-figures-reveal> (accessed 4 November 2021).

Do current domestic and international laws and conventions governing the UK's asylum process provide effective protection against discrimination for those with protected characteristics?

28. Current domestic and international laws and conventions governing the UK's asylum process do not provide effective protection against discrimination for those with protected characteristics. People living with HIV, and others with health conditions classed as disabilities by the Equality Act 2010, are not afforded protected under any legislation governing the UK's asylum process. Despite the persecution people living with HIV face in some parts of the world, since it is not included in any criteria for asylum, people living with HIV are often forced to make claims based on other protected characteristics, and if they have none then are likely to have their claim refused. HIV treatment is available and accessible in many parts of the world, and there is real progress being made against HIV stigma too. However, the reality is that some people are at risk of serious harm on the basis of their HIV status and should be protected.
29. We believe there is poor understanding of HIV within the asylum process and wider immigration estate which means that existing domestic and international legislation is not being appropriately implemented. An example is a judgment on 30 July 2021 in R (On The Application Of CSM) v Secretary of State for the Home Department [2021] EWHC 2175 (Admin) which found that the Home Secretary was in breach of the duty to the Claimant under Article 3 ECHR, in that she had failed to put in place appropriate legal administrative systems to protect people living with HIV in immigration detention from harm. The Judge also found that she had breached her 'operational' or 'protection' duty to the Claimant under Article 3 EHCR in that she had failed to take reasonable steps to provide him with his medication when officials knew, or ought to have known, that he was at real and immediate risk of serious harm.
30. If HIV and other health conditions classed as disabilities were granted greater precedence within domestic and international laws and conventions governing the UK's asylum process, people living with HIV going through the system would no doubt have greater protection from discrimination. A pressing issue is lack of compliance to the Equality Act 2010 within the asylum process.
31. In 2020, the Equality and Human Rights Commission (EHRC) found that the Home Office failed to comply with the Public Sector Equality Duty (PSED) when developing, implementing, and monitoring the hostile environment policy agenda. The EHRC concluded that "equality impacts were often considered too late to form a meaningful part of many decision-making processes. Exceptions to the PSED for immigration were in many cases interpreted incorrectly or inconsistently, and there was a general lack of commitment within the Home Office to the importance of equality."⁸

⁸ Equality and Human Rights Commission, 'Home Office failed to comply with equality law when implementing 'hostile environment' measures', 25 November 2020, <https://www.equalityhumanrights.com/en/our-work/news/home-office-failed-comply-equality-law-when-implementing-%E2%80%98hostile-environment%E2%80%99>

32. We believe that the Home Office must do more to comply with PSED to sufficiently protect people living with HIV going through the immigration system, including the asylum process. We have made recommendations below to aid this.

How is the Government addressing any discrimination or specific dangers for those with protected characteristics in the asylum process, and what more could be done?

33. The Government is not doing enough to address the discrimination and specific dangers faced by people living with HIV in the asylum process. Below are a number of recommendations to address the discrimination and specific dangers for those with protected characteristics in the asylum process, which also bring wider public health benefits and contribute to the government commitment to end new HIV transmissions by 2030.

- The Home Office and Department of Health and Social Care should proactively provide information on HIV testing and treatment entitlements to all migrants applying for asylum. This should include information on how the healthcare system works and how to register with a GP.
- The Home Office must comply with PSED throughout the asylum process to prevent unlawful discrimination of and promote equality of opportunity for people living with HIV.
- The Home Office should include all characteristics protected by the Equality Act 2010, including disabilities and HIV, in criteria for asylum assessments.
- Information provided by the Home Office and the Department of Health and Social Care to people seeking asylum about their healthcare entitlements should be available in key languages and include information about interpretation services.
- The Home Office should implement the guidance recommending that people with diagnosed HIV are not routinely dispersed away from the area they are receiving treatment.
- The Home Office must replace confiscated mobile phones and provide mobile data so people in initial and contingency accommodation can access GPs and HIV clinic.
- The Home Office should urgently work to ensure that the standards set out in the guidance 'Immigration detention and HIV: Advice for healthcare and operational staff' are met and that staff are provided the necessary information and training to implement the guidance.
- The Home Office should end the No Recourse to Public Funds policy which provides inadequate protection from destitution.
- Healthcare staff should not be responsible for upholding 'hostile environment' policies.

- Charging migrants for access to healthcare should be ended as a practice that does more harm than good and the Government should not consider any further expansion of charging as this will only do further harm to public health.
- End all data sharing between the NHS and the Home Office. This practice should end in all circumstances and should be communicated to migrants so that they regain trust in the health system.
- The Health and Social Care Committee should investigate the health and economic impacts of the current lack of permission to work and No Recourse to Public Funds policy on individual and public health.
- The UK Government must expedite actions to address digital exclusion and ensure access to key services such as healthcare for particularly excluded groups, such as migrants.

How has the Covid-19 pandemic affected those with protected characteristics who are seeking asylum?

34. The COVID-19 pandemic has exacerbated many of the existing inequalities which disproportionately affect people living with HIV seeking asylum. Digital exclusion has been heightened by the shift to telemedicine and the simultaneous practice of confiscating phones at the border under the immigration powers. Since asylum support amounts to just over £5 a day, people seeking asylum cannot afford to replace their phones which are taken or purchase credit and data. Initial and contingency accommodation, as well as dispersal accommodation often have a phone at reception which is inappropriate for people who need to have confidential conversations about their health, including with a sexual health clinic.
35. Internet access is also inconsistent for people seeking asylum in initial and contingency accommodation, and widely unavailable in dispersal accommodation. As mentioned above, access to information about healthcare entitlements for people seeking asylum is already an issue affecting access to healthcare services, and not being able to use the internet to search for information has only made this worse.

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