

# Healthier Communities Select Committee Supplementary Agenda

Wednesday, 15 January 2020

**7.30 pm,**

Civic Suite

Lewisham Town Hall

London SE6 4RU

For more information contact: John Bardens (02083149976)

This meeting is an open meeting and all items on the agenda may be audio recorded and/or filmed.

## Part 1

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## Healthier Communities Select Committee

### **Report title: NHS Migrant Charging**

**Date:** 15 January 2020

**Key decision:** No.

**Class:** Part 1

**Ward(s) affected:** All

**Contributors:** John Bardens, Scrutiny Manager

### **Outline and recommendations**

The purpose of the attached paper is to provide the Healthier Communities Select Committee with a briefing on Lewisham and Greenwich NHS Trust's arrangements for charging those not eligible for free healthcare.

- Members of the Healthier Communities Select Committee are recommended to note the report.

## 1. Summary

- 1.1. The purpose of the attached paper is to provide the Healthier Communities Select Committee with a briefing on Lewisham and Greenwich NHS Trust's arrangements for charging those not eligible for free healthcare.
- 1.2. This includes the Trust's use of the credit reference agency, *Experian*, as part of eligibility checks (see attached [Health Service Journal](#) article for further context); details about the information shared with the Home Office as part of the recovery of costs of treatment; and the Trust's plans to review the current arrangements.
- 1.3. Save Lewisham Hospital Campaign raised concerns about migrant charging at Lewisham and Greenwich NHS Trust and produced a briefing for the Mayor and Councillors in August 2019.

## 2. Recommendations

- 2.1. Members of the Healthier Communities Select Committee are recommended to note the report.

## 3. Policy Context

- 3.1. The Council's *Corporate Strategy 2018-2022* outlines the Council's vision to deliver for residents over the next four years and includes the following priority relevant to this item: [Delivering and defending: health, social care and support](#) - Ensuring everyone receives the health, mental health, social care and support services they need.

## 4. Financial implications

- 4.1. There are no direct financial implications arising from the implementation of the recommendations in this report.

## 5. Legal implications

- 5.1. There are no direct legal implications arising from the implementation of the recommendations in this report.

## 6. Equalities implications

- 6.1. Equality Act 2010 brought together all previous equality legislation in England, Scotland and Wales. The Act included a new public sector equality duty, replacing the separate duties relating to race, disability and gender equality. The duty came into force on 6 April 2011. It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 6.2. The Council must, in the exercise of its functions, have due regard to the need to:
  - eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
  - advance equality of opportunity between people who share a protected characteristic and those who do not.
  - foster good relations between people who share a protected characteristic and those who do not.

## 7. Climate change and environmental implications

- 7.1. There are no direct climate change or environmental implications arising from the implementation of the recommendations in this report.

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## **8. Crime and disorder implications**

- 8.1. There are no direct crime and disorder implications arising from the implementation of the recommendations in this report.

## **9. Health and wellbeing implications**

- 9.1. There are no direct health and wellbeing implications arising from the implementation of the recommendations in this report.

## **10. Background papers**

- 10.1. [Revealed: Mass use of credit check firm to find NHS patients to charge](#), *Health Service Journal*, 30<sup>th</sup> September 2019
- 10.2. [NHS patient debt: guidance on administration and data sharing](#), Department of Health and Social Care, 5<sup>th</sup> April 2019
- 10.3. The “hostile environment” and charges for NHS care: Briefing for Lewisham MPs and Councillors, *Save Lewisham Hospital Campaign*, 31<sup>st</sup> August 2019

## **11. Report contact**

- 11.1. *John Bardens, Scrutiny Manager*, [john.bardens@lewisham.gov.uk](mailto:john.bardens@lewisham.gov.uk) 020 8314 9976

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## Briefing paper to Lewisham Healthier Communities Select Committee January 2020

### Migrant charging

#### 1. Background

The NHS provides free healthcare to anyone who is a legal resident of the UK (defined as “ordinary residence”). NHS trusts are required by law to charge patients who are not ordinarily residents in the UK for the treatment they receive (although treatment in emergency departments is exempt from charges for everyone).

Further to a number of recent media interest and queries from members of the public in relation to the Trust’s arrangements for making charges to those not eligible for free healthcare, the Trust is establishing a short term oversight panel to review the current arrangements for doing so.

#### 2. Oversight panel

It is proposed that the review oversight panel reviews whether Lewisham and Greenwich NHS Trust is being fair and compassionate in following national requirements for charging patients who are not UK residents – taking into account Lewisham’s status as a sanctuary borough. It is proposed that the panel makes recommendations for improvements where they are needed.

It is proposed the panel has an independent chair, Peter Gluckman, and includes representation from local authorities, local campaign groups and patients. The first meeting had been scheduled for late 2019 but had to be rescheduled due to Purdah restrictions.

#### 3. Use of Experian

On 4 October 2019, the Trust published the statement below and commissioned an external review to look at all data sharing processes that are in place at the organisation.

***Statement on agreement with Experian for identifying overseas visitors***

*It is important that patients who may not be ordinarily UK residents are identified in a non-discriminatory way. As one of its ways of doing this, Lewisham and Greenwich NHS Trust has a data sharing agreement with the credit reference agency, Experian, to check whether patients who are booked for treatment are economically active in the UK. This is one of several indicators used by the Trust to help identify that patients are eligible for free care.*

*It is important to stress that:*

- *Experian do not carry out credit checks on Lewisham and Greenwich NHS Trust's patients [and have never done so]. No credit footprint is left on anyone's credit report as a result of this process.*
- *Data is transferred between Lewisham and Greenwich NHS Trust and Experian through a secure system*
- *Experian do not keep a copy of the data they are sent, and they do not use it for any purpose other than processing information for the Trust*
- *Experian use a fully automated system to process the data they are sent*

*Lewisham and Greenwich NHS Trust does have a notice on its website about sharing some information with non-NHS organisations. However, due to concerns that have been raised about the processes for notifying patients about how their data is used, the Trust has commissioned an external review to look at all data sharing processes that are in place at the organisation. The review will be carried out by independent data specialists and arrangements with Experian were suspended in October, until the independent review is completed.*

*The Trust is also seeking advice from the Information Commissioner Office on the issues that have been raised, and any further actions that we may need to take to ensure full compliance with the Data Protection Act (2018).*

#### **4. Information shared with the Home Office**

The national guidance from the Department of Health and Social Care is attached as a separate document.



## Appendix: financial context

### Activity

The table below summarises the Trust's financial transactions in last two financial years from non legal UK residents:

	2017/18	2018/19
	£000	£000
A) Income recognised in year	4,216	4,148
B) Cash Payments received in year	703	528
C) Amounts added to provision for bad debt	2,244	3,267
C) Amounts written off in year	408	997

The table below shows the main sources of income from non legal UK residents in the last two financial years:

Division	2017/18		2018/19	
	£000	%	£000	%
Maternity	2,249	53%	1,536	37%
Medicine	537	13%	762	18%
Other	665	16%	760	18%
Paediatrics	125	3%	242	6%
Radiology	4	0%	(1)	0%
Surgery	86	2%	284	7%
Women's Health	550	13%	565	14%
<b>Total Income</b>	<b>4,216</b>		<b>4,148</b>	

In April 2015 DHSC introduced a new legislation on charging overseas patients, the two main changes were:

- Non-EEA chargeable patients would now be charged 150% of tariff, rather than 100% of tariff.
- The financial risk of treating chargeable non legal UK residents would be shared 50/50 with the lead commissioner (Lewisham CCG).

### **Risk sharing arrangement**

The risk sharing arrangement relates to unpaid debt, meaning that local CCGs will pay the Trust 50% of the amount invoiced (or 75% of tariff) to chargeable overseas patients who have not yet paid for their treatment.

This 50% will held on balance sheet by Trust and CCG organisations until one of the following happens:

Scenario	Result
The patients pays for the treatment invoiced	LGT refunds cash to Lewisham CCG
Under LGT policy the debt is deemed unrecoverable and written off	LGT Write debt off and recognise the 50% received from the CCG as income

The below table summarises the Trust's transactions.

	2017/18	2018/19
	£000	£000
Cash received from CCG held on balance sheet	1,542	1,342
Benefit to I&E recognised	-	272



# Overseas chargeable patients, NHS debt and immigration rules

## Guidance on administration and data sharing

Published 26 March 2019

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# 1. Introduction

- 1.1 This manual of guidance supersedes all previous guidance on administration and data sharing of NHS debt.
- 1.2 This guidance refers to 'relevant bodies'. These are organisations that are required to make and recover charges under the National Health Service (Charges to Overseas Visitors) Regulations 2015, which has been amended most recently by the National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017. These organisations are NHS trusts, NHS foundation trusts and local authorities in the exercise of public health functions in England and, since 23 October 2017, any provider of relevant services including non-NHS organisations such as private and voluntary providers supplying relevant services.
- 1.3 In order to allow better recovery of NHS debts, and following a public consultation in 2010, the Home Office amended the immigration rules to include an unpaid debt of £1,000 or more by a person subject to immigration control as a ground to refuse an application for a new visa or extension of stay. These rules came into force on 31 October 2011 and apply to invoices raised for treatment provided by NHS hospitals from 1 November 2011 onwards.
- 1.4 The immigration rules were then amended, with changes coming into force on 6th April 2016. This amendment means:
  - a) in respect of relevant NHS services provided from 1 November 2011 up to, and including 5 April 2016, relevant bodies must notify the Home Office of outstanding debts of £1000 or more that have been outstanding for 3 months or more\*; and
  - b) in respect of relevant NHS services provided on, or after, 6 April 2016, relevant NHS bodies must notify the Home Office of outstanding debts of £500 or more that have been outstanding for 2 months or more\*.

\* Note: the time period starts from when the patient is formally charged, usually with an invoice, rather than from the date of treatment, which might be an earlier date.
- 1.5 Relevant bodies must support the administration of these rules to improve the recovery of debts by providing relevant information to the Home Office. Provision of this information must take full regard of data protection, information security and patient confidentiality duties. It is important that this guidance is followed closely to ensure that these duties are met and that the immigration rules are applied fairly and lawfully.

## **2. Why should relevant bodies supply debtor information to the Home Office?**

2.1 Relevant bodies must provide relevant debtor information to the Home Office and thereby improve the recovery of NHS debts. The scheme is an important part of the cost recovery process for the NHS when recovering costs of treatment, as it:

a) encourages overseas visitors with outstanding NHS debts to pay promptly or to enter into a reasonable repayment plan; and

b) potentially prevents additional outstanding debts being incurred by an overseas visitor who wishes to return to the UK to receive further treatment without the means to pay.

## 3. Informing the Patient

3.1 It is important that patients who incur a charge for NHS services are made aware that failure to pay their healthcare bills could result in a future immigration sanction under the Home Office rules if it remains unpaid.

3.2 Chargeable patients should therefore be made aware or reminded at the earliest point at each key stage of interaction, in particular:

- Initial registration and screening for liability for NHS charges;
- At the point of invoicing; and
- Follow up requests pursuing outstanding payment by the hospital or any agency it may have contracted.

Finance departments need to ensure that they are able to issue invoices promptly, perhaps at very short notice, in order to ensure that the invoice can be presented, wherever possible, before the patient leaves the provider of the relevant services.

Registration forms should already include advice on information sharing with the Home Office and other Government agencies. These should include reference to the immigration rules. You are advised to use the model forms and letters which are available for download from the Overseas Visitor Manager toolbox on <https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations>.

3.3 For pre-attendance forms and invoices/undertaking to pay documents:

If you fail to pay for NHS treatment for which charges have been applied, it may result in a future immigration application to enter or remain in the UK being denied. Necessary non-clinical personal information may be passed via the Department of Health and Social Care (DHSC) to the Home Office for this purpose.

3.4 For letters following up on unpaid debts. The second paragraph is important to mitigate against any delay in updating shared records:

You should be aware that under paragraphs 320(22) and 322(12), and 3.14 of Appendix V, of the Immigration Rules, a person with outstanding debts of over £500 for NHS treatment that is not paid within two months of invoicing, may be denied a further immigration application to enter or remain in the UK.

In the absence of prompt full settlement or an accepted reasonable repayment schedule, non-clinical information relating to this debt is provided routinely to the Home Office and may be used by the Home Office to apply the above Immigration Rules. The Home Office will keep your personal information for as long as it is necessary for permitted purposes. In the borders, immigration and citizenship system, the Home Office maintain a long-term record of immigration history and immigration offending to support future decision-making and enforce penalties. More information can be found in the [borders, immigration and citizenship privacy information notice](#).

In the event that you may seek entry to the UK or make an immigration application after settling an NHS debt in the previous two months, you are advised to retain and carry evidence of payment for potential examination by Home Office officials.

- 3.5 Where an invoice is particularly large, or where the patient is genuinely willing to provide payment for services provided but cannot meet repayment in full, then Trusts should agree with the patient, at the earliest opportunity, a reasonable repayment plan (see details below on what constitutes a reasonable repayment plan).

## What constitutes a reasonable Repayment Plan?

- 3.6 The repayment needs to be reasonable to allow for the debt to be repaid within a realistic timeframe. The financial circumstances of the individual must also be taken into account and agreement of the terms of the repayment plan reached between the debtor and relevant body. Relevant bodies will therefore need to consider the individual's particular circumstances such as amount of disposable income against the amount of the debt to decide whether a repayment plan is reasonable. Any repayment plan should be agreed by the relevant body's finance department (or equivalent) at the appropriate level. Please ensure that you take into account all necessary legal and compliance issues when entering into repayment plans.
- 3.7 Payments of a specified amount will need to be made on a specified date, preferably by direct debit or standing order.
- 3.8 The individual should be made fully aware of the consequences if the plan is not adhered to i.e. the relevant body will notify the Home Office of the outstanding debt.

## 4. Criteria for referring debtor information to the Home Office

4.1 Information relating to cases of outstanding debt owed by a person should only be shared when all of the following criteria are met:

a) For charges relating to NHS treatment from 1st November 2011 until 5th April 2016

- Single or multiple invoice debts amount to £1,000 or more; and
- The debt has been outstanding for three months or more. The time period starts from when the patient is formally charged, usually with an invoice, rather than from the date of treatment, which might be an earlier date.

b) For charges relating to NHS treatment from 6th April 2016 onwards

- Single or multiple invoice debts amount to £500 or more;
- The debt has been outstanding for two months or more. Note: The time period starts from when the patient is formally charged, usually with an invoice, rather than from the date of treatment, which might be an earlier date.

c) For all charges

- Charges relate to NHS and not private treatment;
- There are no genuine outstanding challenges to, or doubt about, the legitimacy of the charge;
- No reasonable arrangement has been made, and is being adhered to, for a schedule of payments to clear the debt. If a patient has entered into a repayment plan, and then subsequently cancels that plan, NHS bodies should submit the debt information to the Home Office as described. Further information on repayment plans can be found in Section 3;
- The debt has not been cancelled; and
- The person is not: an EU citizen; a national of an EEA country or Switzerland; a person who is a dual national where one of those nationalities is British or EU/EEA; or a person from a Third Country (i.e. non-EEA) who has rights of residence because of their relationship with an EU citizen. Note: It is unlawful to apply the immigration restriction to an EU citizen or a national of an EEA



country or Switzerland as it would be counter to their rights under the Free Movement Directive. Nationals of other countries who have a right of residence because of their relationship with an EU citizen will also attract these rights (for instance if they are the EU citizen's primary carer or are economically dependent on the EU citizen). Note: Agreements with the EU to come into force following the UK's exit from the EU are in negotiation. This section will be updated as necessary in due course.

- 4.2 Whilst it is not necessary to seek the patient's consent before sharing their personal information with the Home Office, it is best practice to inform them that you have done so or are going to do so and why. This may encourage the overseas visitor to pay the debt or enter into a reasonable repayment plan. There is a leaflet about data sharing with the Home Office available in the OVM Toolbox for this purpose.
- 4.3 While most of these criteria are factual, a local decision may be required for individual cases as to:
- Whether there is reasonable doubt over whether charges apply to the patient made under the Charging Regulations on which dialogue with the patient or their authorised representative is ongoing; and
  - Whether an agreed reasonable arrangement for scheduled payments is in place and is being maintained – see 3.6 - 3.8, above.
- 4.4 Staff of relevant bodies should not exercise judgement or discretion regarding other circumstances of individual cases (for example domestic or compassionate circumstances, age, connections with the UK). Relevant bodies should therefore continue to refer debtor information relating to such cases.

## 5. Additional points to bear in mind

- 5.1 Relevant bodies are expected to treat individuals fairly at all times.
- 5.2 Relevant bodies should consider whether there are any relevant circumstances that need to be taken into account, for example if the individual has a mental health condition or is in a vulnerable position. Where necessary relevant bodies might wish to use the services of professional teams and, if concerned about the welfare of any patient, should speak to their safeguarding teams. Please see chapter 7 of the [Guidance on Implementing the Overseas Visitor Charging Regulations](#) for further information when working with vulnerable patients.
- 5.3 Relevant bodies should also read paragraphs 13.63, 13.64 and 13.69 of the [main charging guidance](#) for further guidance about identifying and charging directly chargeable patients.

## 6. Details of the debtor information to be shared

- 6.1 The Home Office requires as many pieces of information as can reasonably be provided in order to verify the unique identity of the person who has incurred the debt. The DHSC provides a secure online database that relevant bodies should use when seeking to transfer the above information to the Home Office.
- 6.2 Further information may be provided on a case specific basis that may be helpful in tracing the individual. However, personal clinical information relating to treatment provided must not be included. Care should also be taken not to unnecessarily provide information from which the clinical history of the patient nor the nature of the medical condition and treatment can be deduced.
- 6.3 While not all required information will be available in every case, much will already be collected during patient registration or charging to support routine recovery of debts. It has been established that it is reasonable to collect any or all of the above information for the purposes of ensuring a contractual agreement to pay for services provided, as long as it is handled in accordance with data protection law and the NHS Confidentiality Code of Practice.

**It is not permissible to refuse immediately necessary or urgent treatment in the event that information is withheld.**

## 7. How debtor information should be shared with the Home Office

- 7.1 Relevant bodies with outstanding debts owed for NHS services in line with the listed referral criteria should collate the relevant information and pass it securely (in accordance with information security duties) to the NHS Visitor and Migrant Cost Recovery Team at the DHSC. The standard form should be used.
- 7.2 The information should be sent in response to the DHSC team's request for it, which is on a monthly basis. **However, updates on any change in the debt status (including payment, or agreement to pay leading to removal of the case) where it is known that a person plans to travel to the UK imminently should be sent immediately to the DHSC team and should not be held back for the following month's return, so that appropriate immigration decisions can be made.** The Trust may be liable for the consequences of any failure to inform such changes.
- 7.3 Relevant bodies should take care to ensure that they complete the form accurately. A step by step guide for relevant bodies on how to complete the monthly form is set out within the DHSC toolbox. Once a debt has been outstanding for two months from date of invoice (or outstanding for three months or more if invoiced before 6 April 2016), relevant bodies may wish to submit the information to the database rather than waiting until the end of the month.
- 7.4 The DHSC secure database will collate individual returns and DHSC will pass the data securely to the Home Office. The holding and/or transfer of all personal data must comply with the requirements of the Data Protection Act 2018 and General Data Protection Regulation 2018.
- 7.5 Home Office systems will validate the returned data, any errors will be returned to relevant bodies as a rejection report with the reason for rejection against each entry. These will be returned on a monthly basis outside the normal reporting.
- 7.6 Where the relevant body has contracted a commercial debt recovery company or agency to recover applicable outstanding debts on its behalf, please note that the debt recovery company or agency should be responsible for pursuing the debt only. Any information sharing with the Home Office should be directed from the relevant body. However, it should be recognised that the debt company will do so as an agent of the relevant body that will itself remain responsible for the due diligence of the process. Relevant bodies are reminded that debt collection agencies should not be employed in relation to persons whom it is clear to them will be unable to pay.

## 8. Use of the information by the Home Office

- 8.1 Home Office staff use the debtor information to identify individuals as they interact with immigration and border controls (which could be through online applications, at offices abroad or in the UK or at border points).
- 8.2 The Home Office is responsible for making an immigration decision. However, they may on occasion also encourage any voluntary payment of the debt between the individual and the relevant body or nominated debt agency prior to making that decision. In these situations, the relevant body or nominated debt agency may receive a direct approach from a debtor wishing to pay for previous treatment where this has contributed to the refusal of leave to enter or remain.
- 8.3 In some cases, these actions by the Home Office may require contact with the relevant body or the debt agency, either to check the accuracy of disputed information (e.g. through copy invoices or letters chasing payment), or to facilitate a payment. The Home Office will not take direct payment themselves. This will therefore require appropriate contact details to be available within reasonable office hours.
- 8.4 Where the status of the debt is disputed at ports outside of reasonable office hours, port officials have discretion to grant immigration bail and require the person to report for further interview at a later date. The port official will make further enquiries that may involve contacting the relevant body or agency. To avoid considerable inconvenience and potential complaint it is therefore extremely important that Debtor information is reported accurately and that debt repayment (including agreed repayment plans) is reported promptly so that up to date information on Debtor status is held on Home Office databases.
- 8.5 The immigration rules apply on a UK-wide basis and relate to NHS debts pertaining from chargeable NHS treatment in Scotland, Wales and Northern Ireland as well as England. Equivalent data-sharing and related processes are therefore in place in all four countries.

## 9. Roles and Responsibilities

9.1 The following sets out the separate responsibilities of bodies and agencies involved in the information collation & sharing and operational decision-making related to the immigration rules:

### **Relevant Bodies:**

- Identify cases where patient debts trigger the criteria for potential immigration sanctions;
- Pass relevant information relating to these cases (including any subsequent payment or cancellation of the debt) to the DHSC Visitor and Migrant Cost Recovery Team;
- Mandate a third-party agency that manages debt recovery on their behalf to pursue the debt;
- Ensure that the handling process, whether carried out directly or through an agency conforms to all relevant aspects of this guidance;
- Remain responsible for the maintained accuracy of information provided (whether provided directly or through their third-party agency), in particular ensuring that any debt payment is accounted for;
- Provide a point of contact (directly or through their third-party agency) to facilitate information checks and/or debt payment;
- For audit purposes, securely keep local records of all submitted data. DHSC and Home Office do not hold full records of all data that is submitted and are not able to supply this information. This will also help NHS bodies ascertain when a NHS debt has been submitted to the DHSC and help with repayments of debts;
- Ensure that all local records contain accurate information about the patient, amount of debt etc, to support payment and any other administration of the debt; and
- Provide (directly or through their third-party agency) relevant case history to assist the Home Office with handling any disputed claims.

### **Department of Health and Social Care:**

- Receive monthly returns from relevant bodies and contracted third party agencies, and validate their completeness (but not the accuracy of individual records);
- Hold all received data in accordance with information security and assurance processes as laid down by Cabinet Office. DHSC holds submitted data for three months only, for data protection reasons; and
- Pass a full record of returns by secure means to the Home Office.

### **Home Office:**

- Make decisions on immigration applications with regards to any outstanding NHS debt, including any instances of discretion in exceptional individual circumstances;
- Make necessary checks with relevant bodies or their agents to verify information where its accuracy may be challenged;
- Hold all received data in accordance with information security and assurance processes as laid down by Cabinet Office;
- Publicise the rules and the implications of current or recent NHS debts for travellers to the UK;
- Retain data as set out in the [borders, immigration and citizenship privacy information notice](#) ; and
- Provide management information.

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Acute Care and Workforce/Provider Efficiency and Performance/NHS Visitor and Migrant Cost Recovery Programme

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FOR HEALTHCARE LEADERS

# HSJ

# Revealed: Mass use of credit check firm to find NHS patients to charge

By [Shaun Lintern](#) | 30 September 2019

**Lewisham and Greenwich Trust has been using Experian since at least 2015**

***HSJ* has seen documents showing NHSE/I encouraged 51 trusts to carry out similar checks**

**NHSE/I worked with several trusts in the spring and summer on mass credit checks**

**Experian and several trusts say no additional NHS checks are currently under way**

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**An NHS trust is routinely sharing patients' identities with a major credit check firm to find overseas visitors who can be charged, and officials have sought to extend the scheme nationally, *HSJ* can reveal.**

Lewisham and Greenwich Trust, which runs two hospitals in south east London, has been handing information from referred patients to Experian since at least 2015, helping it to recoup millions of pounds, *HSJ* has established.

The information – including name, address, date of birth and NHS number – is routinely passed on when a patient is referred to the trust. Experian then checks whether the individual has a credit footprint in the UK, and is therefore likely to be resident and eligible for free NHS treatment. If not, the trust can carry out further eligibility checks and potentially issue charges.

*HSJ* has also seen documents revealing NHS England and Improvement earlier this year encouraged 51 trusts to carry out similar checks, and, during the spring and summer, worked with a smaller group of trusts to try to put a mass credit checks process in place.

An email from a member of staff at Experian in the summer, also seen by *HSJ*, said several trusts had shared data with it as part of a pilot.

However, when *HSJ* approached Experian last week, the firm said a pilot with the NHS had been “discontinued” and “there are currently no plans to extend the services we provide in this area to other trusts”.

*HSJ* understands that at least three trusts were working to put the system in place during the spring. These are Liverpool Women’s, King’s College Hospital and St George’s University Hospitals foundation trusts. Liverpool Women’s and St George’s told *HSJ* on Friday they were “not involved” in the pilot.

Privacy campaigners questioned whether this use of identifiable data was lawful, and warned some vulnerable people without a credit history could be unfairly targeted.

For several years, the government has asked the NHS to do more to recoup costs from those who are eligible to pay for NHS treatment and has introduced new regulations. NHSE/I warned earlier this month [trusts should step up their efforts ahead of a potential no-deal Brexit](#).

## Digital footprint

An official in NHSI's "overseas visitor improvement team" said in an email in January, seen by *HSJ*, it had identified 51 NHS trusts which had an "income opportunity" from overseas visitors, and continued: "We are offering you the opportunity to participate in a research and development pilot exercise made available by a third-party provider, Experian."

This would involve, it said: "Running checks on historical data (2017-18) to confirm residency by matching an individual to an address using a patient's digital footprint and then analysing credit bureaus for other aspects which could 'disprove' residency against economic activity, potentially helping us identify ex-pats and other health tourists."

It said: "Experian is already being used by a major acute trust to provide residency checks, so a data sharing and processing agreement is already available... The information required would be name, address, DOB, preferably an NHS number or other identifier, email address and telephone number. Clinical or other sensitive information is not required."

The email said the aim of the pilot was to "refine a system that can conduct bulk residency checks on all admissions and referrals in secondary care", including to establish whether "this is an economically viable solution for use in all trusts".

*HSJ* has been told there was significant disquiet in trusts over the plan to share historic data, including concern it could breach data protection rules because individuals had not been informed.

Several well-placed sources said this retrospective sharing project did not go ahead.

## New pilots

However, in the spring, NHSI started working with a smaller group of trusts to use the Experian process on new referrals, in a similar way to Lewisham and Greenwich.

A "frequently asked questions" document sent to trusts in May about this project said: "The overseas visitor improvement team at NHS Improvement is facilitating a pilot exercise between a third-party provider, Experian, and eight acute trusts to help improve eligibility checking within overseas departments.

“Trusts should seek their own independent legal and information governance advice as appropriate on whether their participation in the pilot and their individual arrangement with Experian is compliant with their legal obligations and their own information governance policies and procedures.”

On whether patients should be informed, NHSI’s FAQ said trusts should update their privacy statements, and that it had not carried out its own data protection impact assessment. It said: “NHS Improvement has not reviewed Experian’s processes and data sharing agreements for compliance with either GDPR or Caldicott principles. The individual participants will need to carry out this exercise.”

NHSE and I declined to say how the pilot with eight trusts had developed, saying only that trusts had a duty to seek payment where applicable.

An Experian spokesman told *HSJ*: “Experian currently works with one NHS trust to help them verify the identity of patients. The trust submits lists of patient details in order for us to cross reference and check whether they are residents in the UK, and therefore eligible for services. This process is similar to most standard residency checking services.

“The information used in this process is subject to strict industry guidelines. And it is not used for any other purpose than helping the NHS trust identify potential overseas patients, who may be required to pay for treatment under NHS guidelines.”

Phil Booth, from data privacy campaign group Med Confidential, told *HSJ*: “People who go to the NHS do not expect their data to be handed over to a credit finance agency.

“It is extraordinary that a national body, not having even determined the legality of what they are doing, appear to be doing everything they can through this carefully designed process to wash their hands of any consequences and put them on to any trust foolish enough to join this pilot.”

One insider close to the programme told *HSJ*: “The public has a right to know who the NHS is working with, especially when something this wide ranging is happening that could be setting a precedent for further sharing with the finance sector.”

An Information Commissioner’s Office spokeswoman said the use of personal data was required by law to be fair, transparent and secure, especially medical information.

# Lewisham

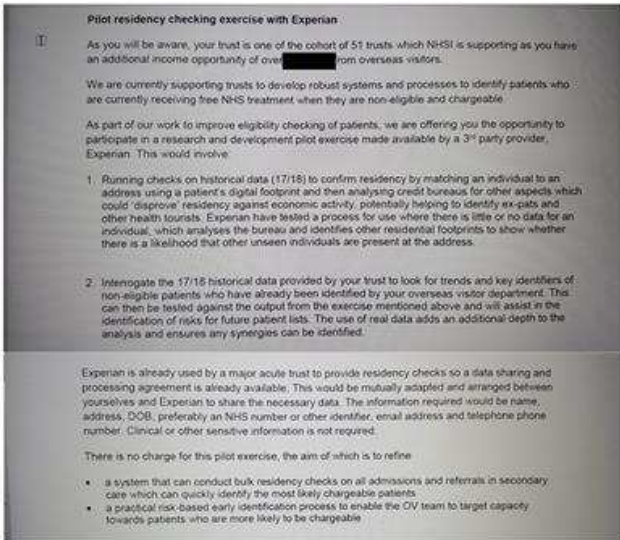
Trust documents seen by *HSJ* show Lewisham and Greenwich Trust has been running a scheme with Experian since at least 2015. In 2017-18, the system helped generate £4.2m in invoices for overseas visitors, with around a quarter of that recovered.

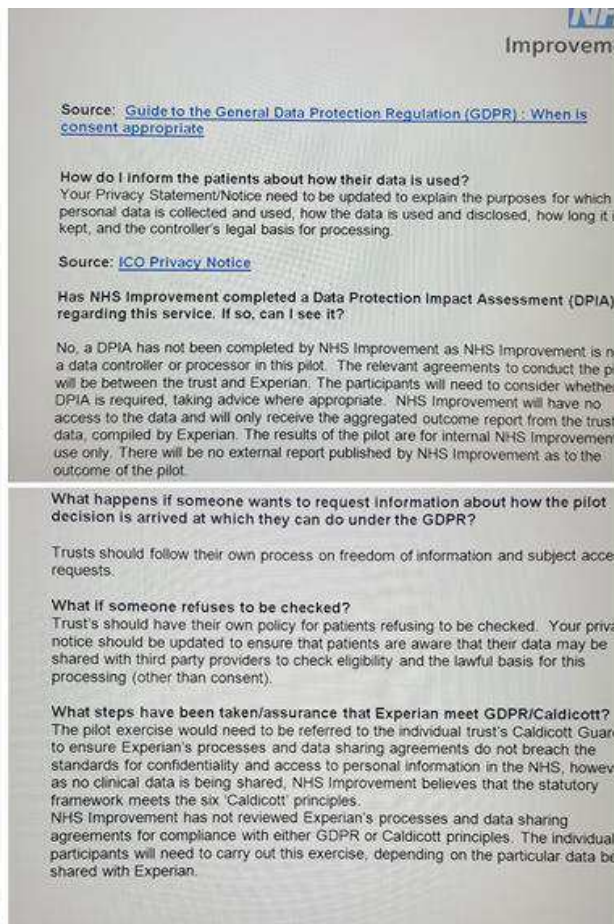
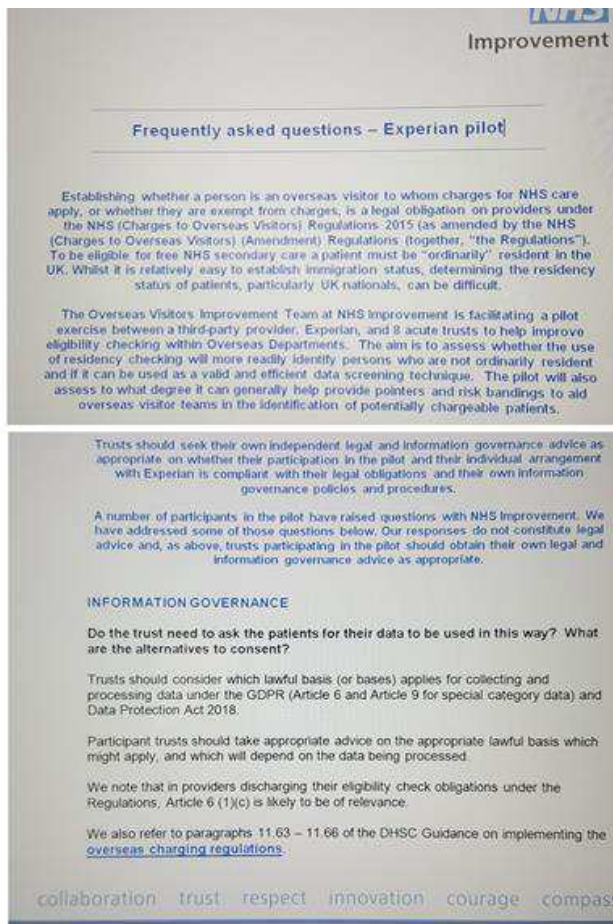
A Lewisham and Greenwich Trust spokesman told *HSJ*: “We have used Experian as a non-discriminatory way of potentially identifying patients that are not entitled to free NHS treatment.”

The trust did not say whether patients had been informed of the checks, but the spokesman added: “We do have a notice on our website about sharing some information with non-NHS organisations.

”It is important to stress that Experian do not carry out a credit check, but look at many sources to see whether patients are economically active in the UK. This is one of several indicators to help check that patients are UK residents and eligible for care which is free at the point of access, in a non-discriminatory way.”

King’s College Hospital said it was approached to take part in the pilot but it not go ahead.





Source

*Leaked documents, interviews and HSJ investigation*

Source Date

*September 2019*