

**Alex Russell**, partner and head of immigration at Mills & Reeve, looks at immigration developments and the direction of travel and what this means for the care sector



# Immigration considerations

**The health and care sector is facing significant recruitment challenges. A report from Skills for Care has identified that the number of filled posts in adult social care is down for the first time on record (by around 50,000 between 2020/21 and 2021/22) despite vacancy rates having risen by 55,000 over the same period.<sup>1</sup>**

The NHS presents a similar picture with well-publicised capacity challenges following the Covid-19 pandemic. According to Nuffield Trust research, the NHS may be short of 12,000 hospital doctors and 50,000 nurses, with The Health Foundation projecting the shortage could peak at 180,000 by 2024/25 based on current trends.

The UK's immigration system is a key part of the health and care recruitment landscape. The post-Brexit immigration system liberalised access to the UK labour market for non-EU nationals but introduced visa requirements for EU citizens who had previously been able to work in any job without restriction.

This has had significant implications for the health and care sector, much of which has historically relied upon the recruitment of EU nationals to fill many roles, which is now operating in an unusually tight labour market with record high vacancy rates and low unemployment.

The Migration Advisory Committee's 2022 report on social care found evidence that worker shortages had resulted in some care providers handing back contracts that they could not fulfil.<sup>2</sup>

So, how have recent immigration developments impacted the health and care sector and what is the direction of travel of UK government policy in this area?

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## Routes

In 2020, the government implemented the health and care visa in an attempt to incentivise eligible health and care workers to take up employment in the UK. It provides a visa route for doctors, nurses, radiographers, paramedics and allied health professionals as well as other health related roles such as biological scientists and biochemists. Applicants benefit from fast-track entry to the UK, reduced application fees, a dedicated email support service, and an exemption from the controversial immigration health surcharge.

But in many respects the visa is simply a re-badged version of the skilled worker visa (i.e. the main work visa which applies across all sectors).

The immigration skills charge (ISC) of up to £1,000 per year (effectively an employer visa tax) applies to most of these roles at an estimated cost to the NHS of more than £15m per year.

The ISC is likely to be prohibitive for many private care businesses, with employers required to manage a range of complex and dynamic sponsor compliance obligations in relation to record keeping, monitoring and reporting. For larger employers this typically necessitates the recruitment of specialist immigration compliance staff.

The immigration rules also present significant recruitment barriers for some roles. For example, the minimum salary that must be paid for healthcare assistants (HCAs) who are sponsored for a health and care visa must exceed both £20,480 and the applicable Agenda for Change pay band. Band 2 of Agenda for Change for less than two years' experience is £20,270. So NHS employers are unable to sponsor HCAs with no prior experience, despite high HCA vacancy rates across many NHS trusts.

In a boost for the social care sector, on 15 February 2022 care workers were added to the shortage occupation list. Broadly, this meant that the minimum salary threshold was reduced to £20,480 per annum with applicants also benefitting from reduced visa application fees. At the same time, care assistants, care workers, carers, homecare assistants, and home carer and support workers were added to the roles eligible for the health and care visa.

Significantly, this removed the



requirement for applicants to pay the immigration health surcharge (IHS) of £624 per year (so £6,240 for a main applicant and a dependant partner for a five-year visa). The IHS is likely to have acted as a disincentive for some potential job applicants given the relatively low pay that care roles attract.

It remains the case, however, that many social care roles do not attract a sufficiently high rate of pay to qualify for a health and care visa (minimum wage rates of pay will not suffice). It is also notable that the February 2022 changes have been implemented for an initial 12-month period and are subject to review in late 2022.

This is consistent with the government's apparent reluctance to relax visa rules in order to address labour shortages across the economy, often contrary the recommendations of the Migration Advisory Committee and in the face of intense sector lobbying. It appears the perfect storm of the strain caused by the Covid-19 pandemic and the impact of Brexit resulted in these concessions for the care sector.

## Barriers

The approach of the UK stands in contrast to the approach adopted by some other developed countries, including Canada and Australia, both of whom have at times made specific

provision for such roles in a challenging care context.

Government's broader immigration policy is to encourage employers to reduce their reliance on what the government perceives as cheap EU labour and identify other ways in which demand can be met, including investment in technology and training, and higher wages. This is, however, of little practical help to a sector under significant strain in providing essential services for vulnerable people in a challenging financial and demographic environment.

So given recent developments, what are the key take-aways for the health and care sector?

First, the relaxation of the rules over the past few months for some health and care roles may prove to be an anomaly, rather than signify a change in the general direction of immigration policy travel. Unfettered access to EU labour markets for deemed lower skilled labour is unlikely to return.

Second, given that longer-term barriers are likely to remain in accessing the international labour market, employers should consider other ways to address recruitment issues. There are no easy answers, but this may require a combination of increased wages, more flexible benefits packages, flexible working (taking into account the cultural changes flowing from the Covid-19 pandemic), increased fees, and more creative

recruitment campaigns. Consideration should also be given to the likely costs associated with continuing to sponsor a significant number of skilled worker/health and care visas on a longer-term basis and budgets reviewed accordingly.

Third, employers who are likely to need to recruit international staff should consider applying for a sponsor licence for skilled worker/health and care visas. Existing sponsor licences should be reviewed to consider whether they are fit for purpose, for example in terms of the branches on the licence and number of certificates of sponsorship.

Finally, the sector will want to continue to articulate the challenges that it faces in an attempt to shape a more favourable policy landscape.

*As CMUK went to press, the government announced it had set up an international recruitment taskforce to consider ways to boost staffing numbers within health and adult social care.*

### NOTES

- 1 <https://www.laingbuissonnews.com/care-markets-content/news/filled-posts-in-adult-social-care-drops-highlights-recruitment-challenges/>
- 2 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1071679/E02726219\\_CP\\_665\\_Adult\\_Social\\_Care\\_Report\\_Elay.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1071679/E02726219_CP_665_Adult_Social_Care_Report_Elay.pdf)