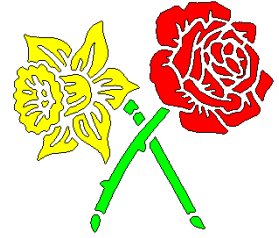


Legal Update



January 2016

HEALTH CHARGES FOR NON-BRITISH SUBJECTS

BACKGROUND

- To what extent can an Individual who is not a British Citizen, use National Health Service (NHS) facilities without charge remembering that the NHS ethos is “ a service free at the point of use?”
- The NHS is a Residence Based Health Care System unlike many other Countries which is Insurance Health Based. ‘Ordinarily Resident’ in the United Kingdom means “living in the UK on a lawful and properly settled basis for the time being”. The starting point is therefore that persons who are not “ordinarily resident” such as visitors to England may have to pay for their health care.
- People from the European Economic Area (EEA) must have a European Health Insurance Card (EHIC) if they want to use the NHS without facing personal charges. EHIC is issued by their Country of Domicile and enables the NHS to recover the cost of the treatment from the Government of that Country. The EEA covers the 27 Countries in the European Union (EU) Iceland, Lichtenstein, and Norway. Switzerland is also within this Regulation Framework. The National Health Service however still recommends that persons from EEA also have their own Personal Health Insurance Cover. For example EHIC does not cover private medical case nor travel costs to be flown home for treatment.
- For persons (Visitors) outside of the EEA and therefore subject to Immigration Control, and without an Indefinite Leave to Remain (ILR) designation in the United Kingdom, health care costs can be payable by the visitor.
- Persons coming into the country pursuant to a VISA for more than six months may have to pay an Immigration Health Surcharge (IHS) at the point of application for a VISA. The present annual charge is £200.00- £150 for students. Where the IHA has been paid and shown on the VISA the visitor is entitled to free health care in the same way as a person who is ordinarily resident in the UK. A Visitor will still be required to pay for prescriptions and dental treatment in the same way as persons ordinarily resident in the UK. Where a VISA is curtailed or brought to an end by the Home Office, a Visitor will from that point become subject to paying all NHS Charges.

PRESENT POSITION

- This is set out in NHS (Charges for Overseas Visitors)Regulations 2015 which came into effect on 6th April 2015. It is Statutory Instrument 238-2015 and can be downloaded from the Internet. The 2015 Regulations replace the 2011 Regulations. A summary of the 2015 Regulations is as follows:-
 - **Part 2 Clause 3** - the Health Authority MUST make and recover Charges for any relevant services it provides to an Overseas Visitor. This is unless one of the Exceptions from charges apply as set out on page 2 of this Note. Where a charge is imposed and paid the Overseas Visitor must keep a receipt.
 - **Part 2 Clause 4** - where the Overseas Visitor is a child, then the person responsible for the welfare of the child is liable to pay the charge.
 - **Part 2 Clause 7** - sets out the charging methodology and machinery. There are two:-

“Legal Update” is a Publication of the League Cricket Conference

- 1) Where the Overseas Visitor is from EEA or Switzerland, the charge is based upon Regulation 13(1) (NHS charges) of the National Health Service (Cross Border Health Regulations) 2013
- 2) Where the Overseas Visitor is not from EEA or Switzerland then the charge shall be “**equal to the tariff for the relevant service multiplied by 150%**”- see **Part 2 Clause 7(3)**

So a broken arm dealt with as In Patient which would normally cost £5,000 to NHS can be charged out at £7,500 to an Overseas Visitor.

- **Part 2 Clause 9-** A Charge shall not be imposed in the following:-
 - 1) Initial Accident and Emergency Treatment- (this ceases upon either the Overseas Visitor being admitted as an In Patient or an out patient’s appointment)
 - 2) Treatment listed under Schedule 1 of the 2015 Regulations- which include acute encephalitis, acute poliomyelitis, anthrax, cholera, diphtheria, enteric fever, food poisoning, leprosy, measles and mumps, pandemic influenza , plague, rabies, smallpox, typhus, whooping cough, yellow fever, (see the Schedule for the complete list).
 - 3) Treatment for sexually transmitted disease.
- **Part 2 Clause 14 -** No charge shall be imposed for relevant services provided where it is to an Overseas Visitor who comes from a Country with whom the United Kingdom has a reciprocal Health Provision Agreement with a Country or Territory listed in Schedule 2 of the Regulations (read the Schedule for a complete list), but those which are Cricket Playing Counties are:-

Anguilla
Australia
Barbados
British Virgin Islands
Gibraltar
Monserrat
New Zealand

Countries from the Sub- Continent are not currently in this list.

- In July 2015 the Department of Health issued a Consultation Paper on tightening the Rules for Overseas Visitors. Excluding some of the vitriolic terminology in the Paper, the principal points are
 - Removing Free Health Care for Persons from outside EEA with ILR
 - Persons living outside the UK but who have paid National Insurance in this Country for a period of at least 7 years to qualify for free health care
 - Introduction of an annual mandatory “Health Migrants Charge” for persons coming into the country for up to five years where a comprehensive Health Insurance Policy cannot be produced.
 - Extending Hospital Charges to be paid by persons “not ordinarily resident” in the UK for visits to GP appointments and other forms of Secondary NHS Treatment. This Proposal has attracted considerable controversy.
 - Treatment for all infectious or sexually transmitted diseases to remain free for all persons- for example the recent E Bola outbreak
 - Greater exchange of Information on NHS Health Charges with other Government Departments to ensure that non –ordinarily
 - An audit to be carried out to establish the true extent of “health tourism”

“Legal Update” is a Publication of the League Cricket Conference

THE CLUB ACTION SUGGESTIONS LIST

- Clubs who act as an employer for overseas players will need to re-visit their template contract. This should apply regardless of whether the player comes from a Country with whom the UK has a reciprocal agreement under Schedule 2 of the 2015 Regulations. In addition, Clubs need to keep apprised on the outcome of the 2015 Consultation which could if implemented allow GPs to charge non EEA Residents for routine appointments.
- The Contract must make clear that the Player cannot expect free health treatment in the UK and must set out whether the Club or the Player is to be responsible for Health Charges. A copy of the 2015 Regulations should be provided to the Player
- I would strongly advise that a term is written into the Contract of Employment to state that it is the Player's responsibility to have comprehensive Health Insurance Cover. Players must be reminded that in any event that they will be responsible for dental, optician and prescription. The Player on arrival SHOULD be required to provide the Club Secretary with copies of their
 - Health Insurance Cover
 - Passport
 - Visa
 - Any other method of entry details applicable at the time for an individual to come into the country and be remunerated for playing.
 - Coaching Qualifications from their own country.
 - Disclosure and Barring Documentation or the equivalent from their own country.

A Club should also retain details of the local GP with whom the Player has registered.

- Where the Player brings in his or her family it must be made clear that the Player's Insurance must also cover the family.
- For players from the Sub-Continent where the United Kingdom has no reciprocal agreement under Schedule 2 of the 2015 Regulations, the precautions suggested at point 3 above would seem even more vital.
- Where a Player comes from a Country listed in Schedule of the 2015 Regulations download a copy of the applicable Healthcare Reciprocal Agreement.
- For players who are ordinarily resident in this country and are being paid to play Cricket by a Club, the Contract in the same way should state whether it is the Player or the Club who is responsible for the Player's Personal Injury Insurance arising from accident whilst playing or travelling to a game. Where the Player is to be responsible a copy of the Player's Personal Injury Insurance should be kept by the Club.
- In respect to players who come from overseas to play cricket other than for remuneration ("the Overseas' Amateur") then the same principles and considerations should apply in respect of health cover whilst the individual is in this country, and as good practice clubs should make the individual aware of the factors detailed above in suggestion 3. In these cases then good practice would be that the individual, on arrival, should provide the Club Secretary with copies of their:-
 - Health Insurance Cover
 - Passport
 - Visa
 - Any other method of entry details necessary for the individual to come into the country and which also enable them to play cricket.

"Legal Update" is a Publication of the League Cricket Conference

- Any other documents applicable to the individual's stay in the country – if coaching is to be undertaken it must be allowable under the method of entry to the country and a copy of the requisite qualifications should be held along with the equivalent Disclosure and Barring certification.
- In respect of others players who are not being paid to play cricket, I would strongly advise that all players sign a Declaration before the start of each season that they are responsible for organising their own Personal Injury Insurance arising from accidents whilst playing or travelling to a game and that each player acknowledges that it is not the Club's responsibility to offer Insurance. The Club should retain copies of these signed declarations with a list of all players with designations as to whether they are amateurs or professionals.
- The above is subject to the Club's overarching duty of care to provide a playing surface which is reasonably safe for use. Please see my Guidance Note subject of Summer 2015 on the Duty of Care (copies are available from Rob Sproston – General Secretary of the League Cricket Conference)

ACCOMPANYING HEALTH WARNING

This Paper is based on an interpretation of the Regulations as at 3rd January 2016. This is a developing area and Clubs need to ensure that they keep up to date

Prepared by Malcolm Buck- Solicitor of the Supreme Court

Admitted - October 1988 - Solicitors Regulation Authority – No. 139699

January 2016

This Advice is not to be treated as a Contract between writer and recipient and neither the writer nor the League Cricket Conference accepts any liability. This Update is as a guide only and Clubs and Leagues are advised to take their own Legal Advice in the event of all questions of Law. Clubs and Leagues should appoint their own Legal Advisors on all Points of Law.

“Legal Update” is a Publication of the League Cricket Conference