

LIRA'S IMMIGRATION CORNER

AT A TIME when health has been of particular concern to so many, it is crucial to know what you may (or not) be entitled to access freely under the NHS, the process applied by health providers and what happens if you owe money for treatment received. The following looks at the NHS in the context of immigration.

“The NHS stands for the National Health Service. It refers to the Government-funded medical and health care services that everyone living in the UK can use without being asked to pay the full cost of the service. These services include:

- Visiting a doctor or a nurse at a doctor's surgery
- Getting help and treatment at a hospital if you are unwell or injured
- Seeing a midwife if you are pregnant
- Getting urgent help from health-care professionals working in the ambulance services if you have serious or life-threatening injuries or health problems - this might include being transported to hospital

(source: <https://fullfact.org/health/what-is-the-nhs/>)

Who can use the NHS without paying?

The NHS is **not** free for all to use. The starting point when considering whether you are required to pay for NHS treatment is the type of treatment you are seeking. This is divided into “Primary” and “Secondary” health-care.

Visiting your GP is considered Primary healthcare and is free of charge (excluding some prescriptions). Most Secondary healthcare is provided at hospitals. An example will be where you see your GP and are then referred to have a scan or exploratory procedure. However, some treatments at hospital are not chargeable even if it is regarded Secondary healthcare including:

- Diagnosis and treatment for specified infectious diseases, including TB, malaria and COVID-19
- Diagnosis and treatment for sexually transmitted infections, most commonly HIV
- Family planning services (e.g. contraceptive products but not termination of pregnancy)
- Treatment required for a physical or mental condition caused by domestic violence or sexual violence

It is also noteworthy that accident and emergency (A&E) services are regarded as primary care, and as such is not chargeable unless you are an overseas visitor and you have already been accepted as an inpatient or at a follow-up outpatient appointment.

Once you have established that the treatment you require is not considered primary healthcare and is not a treatment that is exempt for charge (as above), the next consideration is whether you are “Ordinarily resident” in the UK.

Ordinarily Resident

Some may be surprised to note that a person who has British citizenship, even if born in the UK, may not be considered “ordinarily resident” and may **not** therefore be entitled to free NHS treatment. In short, your residence, rather than citizenship is the determining factor when assessing your entitlement to free NHS care.

A person is ordinarily resident if they are living in the United Kingdom:

- lawfully
- voluntarily
- for settled purposes as part of the regular order of their life for the time being, whether for a long or short duration

People that are subject to immigration control must also have indefinite leave to remain in the UK in order to be considered ordinarily resident.

(source: <https://www.gov.uk/government/publications/help-for-nhs-to-recover-costs-of-care-from-visitors-and-migrants/settled-purpose-tool>)

That means that the main categories of people who may be charged for treatment are:

- Those in the UK without permission
- Those on visitor visas
- Those on fiancé(e)/proposed civil partner visas

But even then, not all are chargeable. There are further exemptions for:

- Asylum seekers and refugees
- Children looked after by a local authority
- Victims and suspected victims of modern slavery

Immigration and Access to the National Health Service (NHS)

- Prisoners and immigration detainees
- Residents of 19 countries and territories with which the UK has reciprocal health agreements.



BY LIRA
SIMON
CABATBAT

continue. This means if you were previously entitled to NHS care, this will continue whilst your application is pending. For example, someone with a spouse visa seeking to extend his/her visa in the UK will continue to be able to access NHS free treatment whilst his/her application is being considered by the Home Office.

NHS debt

Owing a debt to the National Health Service is a ground for refusing applications for permission to enter or remain in the UK.

The ground for refusal on the basis of an NHS debt can be found in Part 9 of the Immigration Rules; Appendix FM (family members); and Appendix Armed Forces.

Paragraph 9.11.1 of Part 9 says:

An application for entry clearance, permission to enter or permission to stay may be refused where a relevant NHS body has notified the Secretary of State that the applicant has failed to pay charges under relevant NHS regulations on charges to overseas visitors and the outstanding charges have a total value of at least £500.

Note that the above only applies if the charge was incurred after 6 April 2016. For charges incurred between 1 November 2011 and 5 April 2016, an application should only be refused if the debt is £1,000 or more.

(source: <https://freemovement.org.uk/general-grounds-refusal-owing-debt-nhs/>)

The above means that a migrant's application for a visa **may be** refused solely because of an NHS debt. I have noted below a very useful guidance from Free Movement on dealing with NHS debt.

(<https://freemovement.org.uk/general-grounds-refusal-owing-debt-nhs/>)

Top tips for dealing with NHS debt

It is not the case that everyone who ever received medical treatment in the UK will be refused. To assess whether access to the NHS may affect an application, applicants and their legal representatives should consider:

- The date of the treatment (key dates are 1 November 2011, 6 April 2016 and 24 November 2016, as explained above)
- The immigration status of the applicant at the time of the treatment
- The nature of the treatment (is it exempt?)
- The amount of the debt (more or less than £500/£1,000?)
- The type of application (Appendix FM/Armed Forces or other?)
- Whether there are “compelling or compassionate circumstances” or human rights considerations

Applicants and their legal representatives should also be aware that applicants might never have been told that they had to pay for using the NHS but may still be refused on the basis of an unpaid debt. It may be necessary to contact the hospital where they were treated and ask if they were, or should have been, issued with an invoice. If so, the safest course of action might be to pay it; the hospital should give applicants guidance on how to do so.

If applicants cannot afford to pay off the bill at once, they may also want to consider agreeing a schedule of payment by instalments. The suitability guidance suggests that the NHS will not inform the Home Office of a debt if the applicant has an agreed payment plan which is being maintained. ■

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Article written by Ms Lira Simon Cabatbat. Lira has been in practice as an Immigration and Family solicitor for over 29 years and is the principal of Douglass Simon Solicitors. She is an accredited Resolution (First for Family) specialist and is a fluent Tagalog speaker. Douglass Simon (tel. 0203 375 0555 • email: cabatbat@douglass-simon.com) has been established for over two decades and has been a centre of excellence, especially in the areas of Immigration, Family and Probate. We have received commendations from judges and clients alike. Please refer to our website for more details.