Select Committee on the European Union

Home Affairs Sub-Committee

Corrected oral evidence:
Brexit: Reciprocal Healthcare

Wednesday 13 September 2017

10.30 am

Watch the meeting

Members present: Lord Jay of Ewelme (The Chairman); Baroness Browning; Lord Crisp; Baroness Janke; Lord Kirkhope of Harrogate; Baroness Pinnock; Lord Soley; Lord Watts.

Evidence Session No. 1 Heard in Public Questions 1 – 10

Witnesses

I: Paul Macnaught, Director, EU, International and Public Health System, Department of Health.

Examination of witness

Paul Macnaught.

Q1 **The Chairman:** Welcome. Thank you very much for coming, Mr Macnaught. This is, as you know, a public hearing and a transcript will be taken, which we will send to you afterwards for correction. This is the first hearing of a new inquiry that the Committee is undertaking into reciprocal healthcare. We are very grateful to you for coming to set the scene for us. As it is the first day, it is very much about making certain that we are asking the right sort of questions and seeking the right kind of information for the inquiry. Please, if you feel that we have not asked the right questions, do answer others that you think we ought to have asked, so that we have a proper scope.

I should also stress that we are as much concerned about EU citizens in the UK as we are about UK citizens in the EU, so we want to cover both during our inquiry. May I ask you whether you would like to make any kind of initial statement, which you would be very welcome to do, or whether we should go straight on to the questions?

Paul Macnaught: I only want to say thank you for inviting me and I will do my best to answer your questions as well as I can.

Q2 **The Chairman:** Perhaps I may ask the first question. Could you outline the reciprocal healthcare entitlements that the Government hope to achieve from the withdrawal agreement and, beyond that, in the future EU-UK relationship? May I just say that we are very grateful that Mr Dayan, who will be with us next, is behind you?

Paul Macnaught: There are two main objectives that the Government have for the negotiations for reciprocal healthcare, which are, first, for the UK to continue to be a full participating member of the European Health Insurance Card scheme in the future, and, secondly, to protect the entitlements of pensioners to retire to the continent. That is true of pensioners who are currently out there now or will be on exit day and people who become pensioners and may wish to do that in the future. They would also like for those two things to be reciprocated, in the way you described, for EU citizens.

The Chairman: Can you just help us split the withdrawal agreement from the longer-term agreement? Do you see a difference between the two as far as either British citizens abroad or EU citizens here are concerned?

Paul Macnaught: Our position is, given that at the moment virtually the entire population of this country is now entitled to hold an EHIC and to avail themselves of the benefits of that system, those entitlements should therefore be reflected in the withdrawal agreement. Similarly, for pensioners and people who are not yet of pension age but have, through the course of their life, been making social security contributions under the broad framework of Regulation 883, these are all entitlements that

people have now and we are seeking for those to be enshrined in the withdrawal agreement.

The Chairman: You have specified two categories: those who are eligible for the EHIC, and pensioners. Is that it, or are there other categories that we should be looking at or that do not fall into those two?

Paul Macnaught: There are some other categories. The pensioner entitlement is linked to the fact that the uprating of pensions is an exportable benefit under the Regulation 883, and there are other exportable benefits as well, such as employment support allowance, which would also carry those healthcare entitlements with them. Some of those other benefits are part of wider cross-government discussions at the moment about exactly what the Government's approach will be in the future.

However, by far the two biggest areas of expenditure for the country under the current arrangements are, first, pensions, which is about £500 million per year of the £650 million total, and, secondly, the EHIC scheme as a whole, which of course does not just cover holidaymakers. It covers temporary workers and other people who are visiting other countries for whatever reason.

Q3 **Lord Watts:** I shall widen that out if I can. According to the Government's assessment, which groups—for instance, the disabled, people with long-term health conditions and children—stand to be the most affected by changes in any reciprocal healthcare? What do the Government intend to do to try to mitigate any of those effects on those groups or any other groups that you can identify?

Paul Macnaught: What we are trying to do to mitigate the possible effects is to pursue the two objectives that are described. The EHIC entitlement covers the whole population. There are 27 million current holders of the UK-issued EHICs. A great many of them will be people with the kind of conditions that you describe, and it will be those sorts of groups that take the most reassurance and gain the most peace of mind from the existence of the current scheme and whose travel insurance premiums are lower as a result of the existence of the scheme. We are not trying to single out particular groups. We want to protect everyone who is entitled to the card.

Lord Watts: I understand that you are trying to get as near as you possibly can to what we have in place now, but if that is not possible, what assessments have the Government made of those specific groups who have more health needs that the general population and will be more expensive, and in some cases may not be able to get cover in insurance terms? Are the Government looking at those options and looking at what can be done if a deal cannot be struck.

Paul Macnaught: At the moment our focus is to reach a deal. We are also, as you would expect, looking at a wide range of scenarios and possible outcomes and doing quite a lot of work on what we might do in

those different scenarios, but it depends on quite a lot of factors. This is only one issue in a much wider negotiation, and Ministers take the view that to say more about the detail of that thinking now would not be helpful at this stage of the negotiations.

Lord Watts: But there is work going on at this moment, and someone is working on the alternative options, which the Government do not want to talk about because they want, as best they can, to keep the existing systems in place.

Paul Macnaught: We are looking at a wide range of possible scenarios and different outcomes, and doing work on what we would do in those events.

Lord Watts: Are discussions going on, for example, with insurance companies about how they could put in place an alternative scheme if needed, and what the costs of that possible scheme would be?

Paul Macnaught: There have been contacts with a wide range of different stakeholders and other sectors. That work is still at a relatively early stage because, of course, our focus at the moment is the withdrawal negotiations.

Q4 **Baroness Pinnock:** Focusing on UK citizens currently resident in the EU and the other way around, you have already said that the Government's objective is to protect the healthcare arrangements that are currently set out in EU regulations. I just want to explore a bit of that. It seems as though the EU and UK negotiating positions are as one on the current question of people temporarily in one or the other country on the day of exit, and they will be entitled to access healthcare as at present. However, after that will UK citizens who are currently in an EU member state be likely to retain access to such arrangements if they move to another EU state? If you were in France and you moved to Spain, would you still retain those rights? Equally, if EU citizens who were here on the day after withdrawal then went to Germany, say, what are their rights likely to be? I am just exploring the post-Brexit possibilities.

Paul Macnaught: On the issue of further movement rights, we have not got that far yet in the negotiations on this particular topic. What we have agreed is set out in the table that was published at the end of the August round on the gov.uk website. We have reached a position on healthcare where, if you are in a cross-border situation on exit day, whether that is because you are a pensioner living in another country, you are on holiday in another country, you are a student in another country or you are working in another country temporarily, then you would continue to be covered. We have not got as far as resolving the question of what would happen if you moved to a different member state. We are midway through the negotiations and that is an important issue and it is something that we will be exploring in subsequent rounds.

There is possibly another question in there, which is about EU pensioners who are resident in the UK on exit day and whether they would continue

to be able to travel on holiday to other countries in the EU after exit day. Under the EHIC principle, on which we have reached agreement, they would be able to do that. Similarly, UK pensioners resident in Spain on exit day would be able to use the EHIC for subsequent travel, which they may wish to do around the EU. However, what happens if people move their residence from one state to another is something that we need to discuss further in subsequent rounds.

Baroness Pinnock: Do you know how many people this might affect? We know for holiday travel and that sort of thing that is a large number. However, do you know for those who move residence across the EU?

Paul Macnaught: It is a good question. I do not have a figure with me for the number of people who at the moment or in the past have tended to move in that way. I guess the numbers in the future will be quite heavily dependent on the outcome of this whole negotiation, so I do not have a figure to suggest.

The Chairman: May I just ask one question about the scheduling of negotiations? You have talked about what has been agreed or where we are so far, and we have the document that sets that out. You talked about other things that are still to be settled. Are there constant negotiations going on, or is this round by round? From your point of view, how do you see the next year or 15 months panning out, in so far as you can tell us?

Paul Macnaught: My colleagues at DExEU would not thank me for speculating on what they think the schedule is going to be. It is probably a question for them. I can only comment on this particular bit of the negotiations, which has been a part of each of the week-long rounds that have taken place in recent months. There is another negotiation coming up in the week beginning 25 September. We are currently focused on preparing for that. However, to learn exactly what is happening beyond that you would need to ask the people who are organising this in the round.

Q5 **Lord Crisp:** Good morning. I should perhaps say, for the benefit of the Committee, that we have actually worked together in the past when I was in the Department of Health. I would like to go back to some of the points that have been raised by both Lord Watts and Baroness Pinnock about what data you have on the number of people resident in EU countries? Do you have a good picture of who is there, in terms of the numbers and other bits of information about them?

Paul Macnaught: The number of UK state pensioners resident in other EU countries is believed by DWP to be about 480,000. There are 190,000 UK state pensioners registered for the reciprocal healthcare arrangements. That is quite a gap, between 190,000 and 480,000. That will be partly explained by the fact that some of those people who are entitled to a UK state pension are also entitled to a pension from another member state, from past working life, for example. The way the system works is if you are a resident in, say, Spain, and you have in the past

contributed to the system in Spain, then Spain would become your insuring country; that would explain part of the gap.

There are presumably many thousands of pensioners who are not in that sort of situation and could choose to register for the reciprocal healthcare system if they wished, and we do always encourage people to do so because of the benefits it offers.

On the EHIC scheme side, there are 27 million holders of UK-issued cards at the moment. There are something like 53 million visits from the UK to the EU for whatever purpose. We of course do not know whether people actually carry their EHICs. There are about 25 million incoming visits from the EU to the UK. You would expect the majority of those people to be using or carrying an EHIC. However, in any given year only about 1% of EHIC holders actually make a claim.

Lord Crisp: Going to your first figures, which were the ones about the pensioners resident and then the number who are registered, do you have any assessment at all of, if the negotiations do not work out as we would like them to, what the implication might be for that group in terms of returning back to the UK for healthcare or whatever?

Paul Macnaught: It is common sense to say that if these arrangements fell away the balance of circumstances for a significant number of people would change, and they might well choose to return to the UK. We have done modelling on that. There are all sorts of different factors that you could take into account. At the moment our focus is primarily on getting a negotiated outcome. Ministers take the view that it would not be sensible at this point in the negotiations to go public with such assessments, but of course we have made them. It is common sense that if people came back to the UK that would add some demands to the health service or social care or housing, but I am not in a position to share those numbers today.

Lord Crisp: However, you are modelling that with the NHS and social care.

Paul Macnaught: We have done work in that area.

Lord Crisp: Could you say a bit more about that? Are you talking with people like the NHS Confederation or the NHS Employers and people about that? Are those live discussions, about the impact on the NHS?

Paul Macnaught: Yes, not least because those organisations have been quite vocal about that possibility and no doubt when they respond to the request for evidence to this inquiry, they will include those sorts of assessments

Lord Crisp: They will be making some assessments that will be public but you are not going to be making any assessments that will be public.

Paul Macnaught: Not at this point. Of course, on scenario-planning and what we would do if there was not a negotiated outcome, there would

come a point where some of those arrangements would need to be stood up. However, at this point we are not going public with those assessments.

Lord Soley: Can I just clarify an answer you gave to Lord Crisp just now? I did not understand. I think I heard you correctly: 1% had made a claim. What do you mean by that?

Paul Macnaught: If, for example, somebody is on holiday in France and they need to be admitted to hospital for whatever reason, they would hopefully have travel insurance but they would also have their EHIC, and the French hospital would be entitled to record that fact and report it to the Department of Health in France and in the long run have France bill the Department of Health in the UK for that care. However, that typically happens only for about the equivalent of 1% of those who hold EHICs.

Lord Soley: That is a very small percentage, is it not?

Paul Macnaught: It is good news that people are not keeling over when they are on holiday.

Lord Soley: I am not disputing that. I am in favour of people staying well; it is a good idea. However, I am surprised that it is such a small percentage. We have quite an extensive system for a number of countries, and if you are saying that only 1% make a claim on it, it suggests that everybody is using their travel insurance or, alternatively, hospitals in Europe are doing what often happens here and just not filling in the forms.

Paul Macnaught: I am sure that will be that happening.

Lord Soley: Which? Both or which—claiming on insurance or people just not filling in the forms?

Paul Macnaught: Both. However, people take great reassurance from the fact that they can carry one of these cards and use it if they need to, particularly people in the kind of groups that we spoke about earlier.

Lord Soley: It is a good thing. I am in favour. I am just puzzled that it is such a low percentage. It seems very small. You are talking about that as the total—1% of all card holders when they travel in Europe.

The Chairman: To be clear, that is claims that come back here, not the number of people who are treated. You have no idea, presumably, of how many people might be treated or might go into a healthcare centre somewhere in France, pay their €30 and get treated and then that is it; they are glad they are better.

Paul Macnaught: We do not collect that data and we do not go out of our way to encourage other countries to bill us more than they are planning to.

Lord Soley: Sorry. Just to be clear about this, the 1% is where the

British have to pay for someone who has sought treatment and presented their card.

Paul Macnaught: That is what the data suggests, yes.

Lord Soley: Okay. I am surprised.

Baroness Browning: Could I just follow up on that? You said that somebody with a card, say, is admitted to a hospital in another European country and they are asked if they have travel insurance and/or a card. What is the correct process here? Clearly, people who need repatriating would rely on their travel insurance, I imagine. However, consider someone who has gone in with a suspected heart attack or something, and is asked for their travel insurance. We see newspaper reports that sometimes the money has to be paid up front in those circumstances, and then recouped from the travel insurance firm.

From the British Government's point of view, it is a better deal for the taxpayer if it is all done through the travel insurance. Do people know what their statutory rights are if, although they may have travel insurance, they simply present the card and expect the country concerned to provide what we would provide on the NHS? Is that mirrored in the UK?

Paul Macnaught: The exact situation would be different in different countries, but what carrying the card does is entitle you to get needs-arising healthcare or emergency healthcare, whatever your situation. You might be admitted to hospital and not be in a position to share your travel insurance details, so the EHIC scheme does give you that entitlement.

Baroness Browning: Surely not if you are unconscious. It surely must apply to people who are conscious enough to say what their travel insurance company is. It all sounds a bit dodgy to me.

Paul Macnaught: I cannot tell you today exactly how things work in France or other European countries, but we could provide further information on that if you would like it.

Baroness Browning: The legal process by which this information is offered and is asked for would be quite interesting. I carry a card. I have never used it. I would not know whether I would be within my rights if they said, "Let us see your travel insurance first". I just do not know.

The Chairman: I think it would be helpful if you could send us something more on that.

Paul Macnaught: Sure.

Lord Soley: I have a final, very quick question. What is the cost of the scheme?

Paul Macnaught: The EHIC scheme costs about £150 million a year to the Department of Health in the UK.

The Chairman: I think you said earlier that pensions cost £500 million. EHIC costs £150 million. The total is £650 million to the Exchequer.

Paul Macnaught: Yes. Obviously it varies from year to year, but on average that is true.

Q6 **Lord Kirkhope of Harrogate:** Mr Macnaught, you expressed a certain amount of quiet satisfaction that a number of European Union states do not actually bill us. We do not know about treatment that takes place where they are entitled to bill us. What I am rather curious about is that currently we are entitled to bill them too, and my understanding is that we fail to do so. In a lot of cases we do not bother. Can you clarify that, and can you also, perhaps, just looking ahead a bit, say whether we are going to toughen up on that approach if we are able to continue the arrangements that we supposedly have at present in that respect?

Paul Macnaught: Yes. The income we typically get from other European countries as part of the scheme is about £70 million a year. We spend about £650 million and we get income of about £70 million a year. That is a big disparity, of course. However, when you look at the numbers, we have got 190,000 UK state pensioners signed up for the scheme living in other EU countries, and there are only 5,800 pensioners from other EU countries resident in the UK. If you take Spain, for example, we have about 70,000 UK state pensioners resident in Spain, and at the last count there were something like 100 Spanish pensioners over here, so that explains some of the disparity on the pensioner side.

On EHIC, there are about twice as many visits from the UK to the rest of Europe per year as there are from Europe to the UK. Of that £70 million, more than half is linked to EHIC. There is a lot going on to try to make sure that where the UK is entitled to seek to get the money back from another European country, we are doing so.

One of the factors is that because access to the NHS is based primarily on ordinary residence and is a free-at-point-of-use system, historically the NHS has not been as good at knowing exactly who is using the system and what they are entitled to as some of the other European countries are, where they perhaps have more of an insurance-based model. However, there is a lot of working going on to enable us to claim back more. If you would like more details about that, I could write to you with those.

The Chairman: Thank you. That would be very helpful.

Q7 **Baroness Janke:** What do you think the priorities should be for any transitional arrangement?

Paul Macnaught: The question of whether or not there is a transitional arrangement is way beyond my remit. You need to address that question to DExEU.

Baroness Janke: Should there be a transitional arrangement, what do you believe the priorities for that should be?

Paul Macnaught: Should there be one then there will be an obvious case for reciprocal healthcare being part of such an arrangement. At the moment we are trying to reach agreement that the withdrawal agreement will cover everybody who is currently entitled to an EHIC, but if that was not possible and there was a transition period, then I suppose as well as protecting people who happen to be in a cross-border situation on exit day, you could say to people with EHICs, "Your EHIC entitlement could continue for another period".

Baroness Janke: You are not necessarily looking closely at how you might face some of these discussions with a view to a transitional arrangement. You are working on the basis that there is unlikely to be a transitional arrangement. Do I understand that correctly?

Paul Macnaught: We are working on the basis that we want to get agreement, as part of the withdrawal agreement, for those two things: participation in the EHIC scheme and ongoing entitlement for pensioners. That is our focus at the moment. That is what the negotiations are focused on.

The Chairman: I applied for an EHIC recently. I thought it would be useful to get it updated. When are EHICs going to be issued up until? What is the thinking about how long that will continue now?

Paul Macnaught: Obviously, we are still a full member of the EU at the moment and these schemes continue to apply. EHICs are still being issued and will continue to be issued. They currently have a life of five years before they need to be renewed, and one of the reasons we are seeking to clarify the position on EHIC as part of the withdrawal agreement is to provide as much certainty to people ahead of exit day as we can.

Baroness Janke: Presumably, though, more time would be helpful, given the complexity and the scope of the task that you face.

Paul Macnaught: We want to have more time in the sense that we want the scheme to continue in perpetuity.

Baroness Janke: Presumably the cut-off point, whereby somebody in the EU one day, the day before exit, has entitlements and the next day has not, must be very problematic for you. Presumably in a transitional arrangement you would be looking to extend those rights over a given period.

Paul Macnaught: One of the operational complexities of the position we have so far reached in principle with the Commission is if, for example, you are on holiday in France, say, over the period of exit day and two weeks later, while still on holiday, you have a heart attack and go into hospital, how is the French hospital supposed to know whether you were or were not already on holiday before exit day. Technically, the hospital would need to find that out under the agreement in principle that we have so far reached. As it says in the table that is published on the

GOV.UK website, we will be continuing to press the Commission on those points, because it seems to us that if you are another member state trying to administer that sort of arrangement, in practice it would be different.

Baroness Pinnock: Can I just explore that? You have said a couple of times that of the two aims of the Government, one concerns the pensioners resident in the EU member states. However, there are many other UK citizens who are resident, my daughter being one of them; perhaps I ought to say that. What would be the situation for her, or for other people who are not pensioners and who are resident in the EU?

Paul Macnaught: That sort of issue comes up in a different area of the negotiations. That is more to do with the future immigration status, and my understanding of the position in that area is that we want UK citizens such as your daughter to continue to be able to have access to the healthcare system of the country that they are resident in after exit day, and we would offer the same to EU citizens resident here after exit day. For this purpose, she would not be getting healthcare reimbursed by the UK and if she was an ordinary resident there she would not be using her EHIC. However, she would currently be able to access the health service in that country just as any national of that country would, and that is the situation that we would like to attain not just for healthcare but for other benefits as well.

Baroness Pinnock: You are pursuing that.

Paul Macnaught: Collectively we are. That is in a different area of the negotiations. That is more of an immigration policy question. It is about immigration status and what follows from that status. This is a different question.

Q8 **Baroness Browning:** Can you share with us your thinking on dispute resolution? You said you cannot get involved in transition but once we are through transition or we have an agreement on this, what will the arrangements be? Will it involve just the individuals or will an intergovernmental process be involved?

Paul Macnaught: Clearly there will need to be some kind of mechanism for resolving disputes. I think it is extremely unlikely that there would be a bespoke one just for reciprocal healthcare, and so this is another issue where it is part of much broader discussions across government, which DExEU is in the lead on. I cannot really comment on that. You would need to address those questions to them.

Baroness Browning: What is your thinking about whether it should be a process that involves the individual, because that must involve your department, or whether it is left to intergovernmental?

Paul Macnaught: Our position is that there needs to be an effective dispute resolution mechanism, and we are involved in discussions that are ongoing across government.

Baroness Browning: For the individual?

Paul Macnaught: We do not have a view that is different from what the collective position will end up being on this. Questions about the dispute resolution mechanism would be properly addressed to my colleagues in DExEU.

Baroness Browning: In terms of reciprocal health arrangements—purely that, in isolation—what are the pros and cons of it being an individual process?

Paul Macnaught: Those are discussions that are going on at the moment across government, and I do not want to get into what the Department of Health might think are the pros and cons. There is a collective position to be discussed within government.

Baroness Browning: I understand that but when you have come to a collective decision it is because all the individual parties have made their case based on their knowledge and their responsibility. In this case we are talking about health. I am not asking you to divulge things that you cannot divulge. All I am asking is whether you have a view in the department about the pros and cons. Has that analysis been made of an individual process, or will it be a matter for individuals to be totally dependent on a state process and, in other words, the individual will be disempowered in this?

Paul Macnaught: The Department of Health has a view on those issues but it is a subject for current cross-government discussion.

Baroness Browning: You are not going to tell me, are you?

Paul Macnaught: Not if I can help it.

Baroness Browning: Good man.

Q9 **Lord Soley:** Is there anything that you could tell us that might be helpful to know about the situation with non-EU continental countries in Europe, such as Liechtenstein or Norway?

Paul Macnaught: Do you mean what the implications of all this might be for our arrangements with them?

Lord Soley: Or even what we do now. Is there anything relevant to the study we are doing, because clearly we have arrangements with them? Are they the same? What do we do?

Paul Macnaught: They are different. For example, we have arrangements with Australia and New Zealand.

Lord Soley: Sorry, I was thinking of continental Europe—Switzerland, Liechtenstein, Norway and so on.

Paul Macnaught: The arrangements with the other EEA countries and Switzerland are currently the same as they are for the EU. The current

negotiation is with the EU. I imagine that the negotiations that will take place also with those other countries will be very similar.

The Chairman: If I could just follow up on that question, if you were your counterpart in Paris, Berlin or Madrid, what would you be worried about as far as your citizens were concerned, in terms of the implications of Brexit for them?

Paul Macnaught: I would be worried about very much the same sort of issues as we are in this space. In terms of how the current negotiations are going, I would be worried about the operational complexities of implementing the agreement in principle that we have so far reached with the Commission, and I would like to think that they would be as interested as we are in the UK in the end remaining part of the EHIC scheme.

The Chairman: Is it your view that they are?

Paul Macnaught: I do not think I could really comment on what we think the view of other member states is. However, as far as it went, we were encouraged by the progress that we were able to make in the August negotiating round, and we would hope to make more progress in subsequent rounds.

Q10 **Lord Crisp:** In terms of how British pensioners abroad are thinking about this, are you, as the Department of Health, in touch with them and listening to their concerns and their fears, or indeed them saying, "Actually, if this happens we are coming home," or whatever? Are you picking that up?

Paul Macnaught: Yes, we are. My team talks to posts in other European countries. For example, in Madrid there is a lot of discussion going on about exactly those issues. That is a very important source of information and intelligence for us.

The Chairman: I do not suppose I am alone in getting quite an inbox from various organisations and British citizens around the EU who are very, very concerned about these and other issues.

Thank you very much indeed. Is there anything else you would like to say? Are there any issues that you were expecting us to ask about but we have not, or anything that you want to tell us that we have not asked you to tell us, to make sure that our inquiry is fully rounded?

Paul Macnaught: I think your questioning has been very thorough.

The Chairman: Thank you very much for coming today, and thank you very much for the evidence you have given us.