

## Consultation Response HCPC guidance on indemnity



July 2012

# **MPS's response to Health and Care Professionals Council's consultation on guidance for registrants about the statutory requirement to have appropriate professional indemnity cover as a condition of registration**

## **About MPS**

The Medical Protection Society is the leading provider of comprehensive professional indemnity and expert advice to doctors, dentists and health professionals around the world.

We are a mutual, not-for-profit organisation offering more than 280,000 members help with legal and ethical problems that arise from their professional practice. This includes clinical negligence claims, complaints, medical council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal-accident inquiries.

Fairness is at the heart of how we conduct our business. We actively protect and promote the interests of members and the wider profession. Equally, we believe that patients who have suffered harm from negligent treatment should receive fair compensation. We promote safer practice by running risk management and education programmes to reduce avoidable harm.

MPS is not an insurance company. The benefits of membership are discretionary - this allows us the flexibility to provide help and support even in unusual circumstances.

## **MPS and HCPC registrants**

MPS currently has members who are registrants of the HCPC and for whom we provide an indemnity, specifically these are clinical scientists and operating department practitioners.

## **Comments on the guidance**

We welcome this guidance on the statutory requirement to hold indemnity as a condition of registration as we think it is important that healthcare professionals are given support to fulfil this obligation.

Two of the recommendations made by Finlay Scott as part of his *Independent Review of the Requirement to have Insurance or Indemnity as a Condition of Registration as a Healthcare Professional*<sup>1</sup> referred to the importance of communication around indemnity arrangements:

- Recommendation 7 suggested that the regulators should work with employers, representative bodies, and defence organisations to communicate to registrants the importance of indemnity arrangements
- Recommendation 11 suggested that consideration should be given to the case for communicating indemnity arrangements to patients and the public.

We believe that for the new arrangements to be successful, regulators must invest in regular promotion of the requirement for indemnity to registrants and spread awareness amongst patients and the public.

Therefore, we support the work the HCPC is doing in producing this guidance. However, we are concerned that some of the detail of the guidance is inaccurate or misleading and does not properly reflect the legislation being introduced.

### **Medical defence organisations**

We are concerned that the draft guidance does not accurately refer to the possibility of registrants being indemnified via their membership of a medical defence organisation.

The guidance implicitly excludes this possibility. The guidance states that the '*requirement to have professional indemnity cover may be met, for example, through one or more of the following arrangements*

- *Indemnity arrangements provided by your employer.*
- *Indemnity insurance provided as part of a professional body membership.*
- *Indemnity insurance obtained by you directly through an insurer'*

We think that there should be another option which would be 'an indemnity via your membership of a medical defence organisation.' This is an important and distinct option. MPS provides a range of benefits to support our members in their practice including the right to request assistance with a clinical negligence claim. However, MPS is not an insurance company and we do not offer insurance products to our members.

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<sup>1</sup> Finlay Scott, *Independent review of the requirement to have insurance or indemnity as a condition of registration as a healthcare professional*, Department of Health (June 2010)  
<https://www.gov.uk/government/publications/independent-review-of-the-requirement-to-have-insurance-or-indemnity-as-a-condition-of-registration-as-a-healthcare-professional>

## **Indemnity and Insurance**

The *Health Care and Associated Professions (Indemnity Arrangements) Order 2013* refers to the need for registrants to hold an 'indemnity arrangement' which may comprise:

- (a) a policy of insurance;*
- (b) an arrangement made for the purposes of indemnifying a person; or*
- (c) a combination of the two.*

This language is inclusive of a variety of ways in which a registrants can have an indemnity arrangements: an arrangement through an employer (which may or may not be via an insurance policy); an arrangement through a professional association (which may or may not be via an insurance policy); a policy of insurance purchased from an insurer by a registrant; and, membership of a medical defence organisation which might provide an indemnity as part of membership. Only some of these are properly captured by the HCPC guidance.

We think it is important that this full range of options is presented in the guidance so as to accurately reflect the requirements of the legislation. Furthermore, we think there should be encouragement in the guidance for registrants to understand the different indemnity arrangements they may hold or that are available to them, as suggested by the Finlay Scott review.

This is important because medical defence organisations offer a service which is distinct from employers, insurance companies and other professional associations like the medical royal colleges. MPS offers occurrence-based indemnity which means members can seek assistance for any adverse incident that occurs during their membership of MPS – even if the claim is brought years later and assistance is not conditional on their remaining a member of MPS at the time of the claim being made.

MPS indemnity is comprehensive and discretionary. Because we are not restricted by detailed terms and conditions and other constraints found in insurance policies, we are often able to help members with unusual problems. MPS indemnity rests on the Memorandum and Articles of Association, which specifies that all the benefits of membership are to be granted at the discretion of MPS Council. This discretion allows us to respond to changes in the medicolegal environment and assist members with emerging problems that may not have been foreseen – and therefore not included in a contract of insurance – at the time it was taken out. MPS indemnity for healthcare professionals is not limited by financial caps– nor do we impose a system of excesses. When we take on a member's case, we can take care of all the legal costs and compensation payments.

Advances in clinical practice, changing social expectations and political agendas all influence the medicolegal environment to varying degrees. Therefore, it is important that indemnity arrangements for healthcare professionals are both robust enough to accommodate escalating costs and flexible enough to adjust to new and unusual demands. We think that the indemnity provided by MPS is best placed to achieve this.

### **Suggested revisions to language of the guidance**

We think the guidance needs to be revised so that it properly informs registrants of various arrangements they can put in place for their professional indemnity. We also think that it is important that the guidance reflects the language, and consequent inclusive definitions, of the legislation.

The guidance refers throughout to 'professional indemnity insurance', 'indemnity insurance' or 'professional indemnity cover'. The legislation uses the term 'indemnity arrangement' which includes all the possible options for a registrant. We think this term should be used unless the guidance is specifically explaining issues around insurance products.

The guidance also refers to employers, insurers and professional bodies as providers of indemnity. We think medical defence organisations should be included in this also as they provide a service to their members which is distinct from the other organisations mentioned.

### **Appropriate indemnity**

The guidance could place greater emphasis on informing providers of changes in indemnity requirements.

Healthcare professionals (whose practice is not fully indemnified by their employing Trust or other employer) must understand their duty to fully disclose the nature, scope and extent of their practice to their indemnity provider. Full disclosure must occur both at the time of taking out indemnity protection and whenever the scope of their practice changes.

Equally regulators need to be aware that the scope of registrants' indemnity arrangements matches the full scope of their practice. A failure to oblige the registrant to disclose the totality of their indemnity arrangements could allow a small number of registrants to under-indemnify.

We believe that healthcare professional regulators should make it clear to registrants that they must fulfil this responsibility for full disclosure and remind them of the importance of doing so on an ongoing basis.

## **CONTACT**

Should you require further information about any aspects of our response to this consultation, please do not hesitate to contact me.

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