

Consultation on Rules for professional indemnity

Analysis of responses to the consultation on proposed Rules for professional indemnity, and our decisions as a result

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1. Introduction

About the consultation

- 1.1 We consulted between 26 September 2014 and 31 October 2014 on proposed changes to our Rules for professional indemnity.
- 1.2 The Health Care and Associated Professions (Indemnity Arrangements) Order 2014 ('the Indemnity Order') requires all our registrants (other than social workers in England) to have an appropriate professional indemnity arrangement in place as a condition of registration with us.
- 1.3 We informed a range of stakeholders about the consultation including professional bodies and employers, advertised the consultation on our website, and issued a press release.
- 1.4 We would like to thank all those who took the time to respond to the consultation document. You can download the consultation document and a copy of this responses document from our website: www.hcpc-uk.org/aboutus/consultations/closed.

About us

- 1.5 We are a regulator and were set up to protect the public. To do this, we keep a register of health and care professionals who meet our standards for their professional skills and behaviour. Individuals on our register are called "registrants".
- 1.6 We currently regulate 16 health and care professions:
 - Arts therapists
 - Biomedical scientists
 - Chiropodists / podiatrists
 - Clinical scientists
 - Dietitians
 - Hearing aid dispensers
 - Occupational therapists
 - Operating department practitioners
 - Orthoptists
 - Paramedics
 - Physiotherapists
 - Practitioner psychologists
 - Prosthetists / orthotists
 - Radiographers
 - Social workers in England
 - Speech and language therapists

About professional indemnity

- 1.7 The Indemnity Order has introduced a statutory requirement for our registrants (other than social workers in England) to have a professional indemnity arrangement in place as a condition of their registration with us. The arrangement must provide ‘appropriate cover’ – this means an arrangement which provides cover appropriate to a registrant’s own practice, taking into account the nature and extent of its risks.
- 1.8 The requirement has been introduced by the UK Government in order to implement European Union legislation. The requirement was introduced so that if a service user is harmed in some way because of the negligence of a registrant, the service user will be able to recover any compensation they may be entitled to.
- 1.9 Many registrants will either work in an employed environment, for example, for the National Health Service (NHS), a local authority or in the independent sector, where their employer will indemnify them and / or they will have already made their own professional indemnity arrangements. This means that many registrants will already meet this requirement and will not have needed to take further action.
- 1.10 The professional indemnity arrangement requirements can be met by our registrants through one or more of the following.
- A professional indemnity arrangement through their employer.
 - A professional indemnity arrangement as part of being a member of a professional body, trade union or defence organisation.
 - A professional indemnity arrangement obtained directly through an insurer.
- 1.11 We have published separate guidance and frequently asked questions on our website to explain more about what this requirement means for both our registrants and applicants for registration.¹

The purpose of our consultation on Rules for professional indemnity

- 1.12 In order to implement the professional indemnity requirement fully, we need to amend our Health and Care Professions Council (Registration and Fees) Rules 2003.
- 1.13 The proposed amendments, if implemented, would mean that we would be able to ask registrants and applicants to complete declarations about their professional indemnity arrangements which would be linked to the registration renewal cycle. A registrant or applicant who was

¹ For further information, please see our website: www.hcpc-uk.org/registrants/indemnity/

unable to complete the required declaration would be unable to renew their registration or become registered with us. We would also be able to take appropriate action where a registrant did not have a professional indemnity arrangement in place, or where a professional indemnity arrangement did not provide appropriate cover.

- 1.14 These amendments are in line with the general policy approach we have set out in our guidance: 'Professional indemnity and your registration'. The guidance was the subject of a separate consultation in 2013. The proposed changes to our Rules are about implementing the policy approach outlined in that guidance, rather than adding any additional requirements.

About this document

- 1.15 This document summarises the responses we received to the consultation and sets out our decisions as a result.
- 1.16 The final set of Rules would subsequently need to be laid by the Privy Council, before coming into effect early in the 2015-2016 financial year. This timeline is subject to completion of the parliamentary process.
- 1.17 The document is divided into the following sections.
- **Section two** explains how we handled and analysed the responses we received, providing some overall statistics from the responses.
 - **Section three** provides a summary of responses received for the consultation.
 - **Section four** adopts a thematic approach and outlines the general comments we received for our proposals.
 - **Section five** outlines our responses to the comments received for our proposals and any changes we are making as a result.
 - **Section six** lists the organisations which responded to the consultation.
- 1.18 In this document, 'you' or 'your' is a reference to respondents to the consultation, 'we', 'us' and 'our' are references to the HCPC.

2. Analysing your responses

- 2.1 Now that the consultation has ended, we have analysed all the responses we received. Whilst we cannot include all of the responses in this document, a summary of responses can be found in sections three and four.

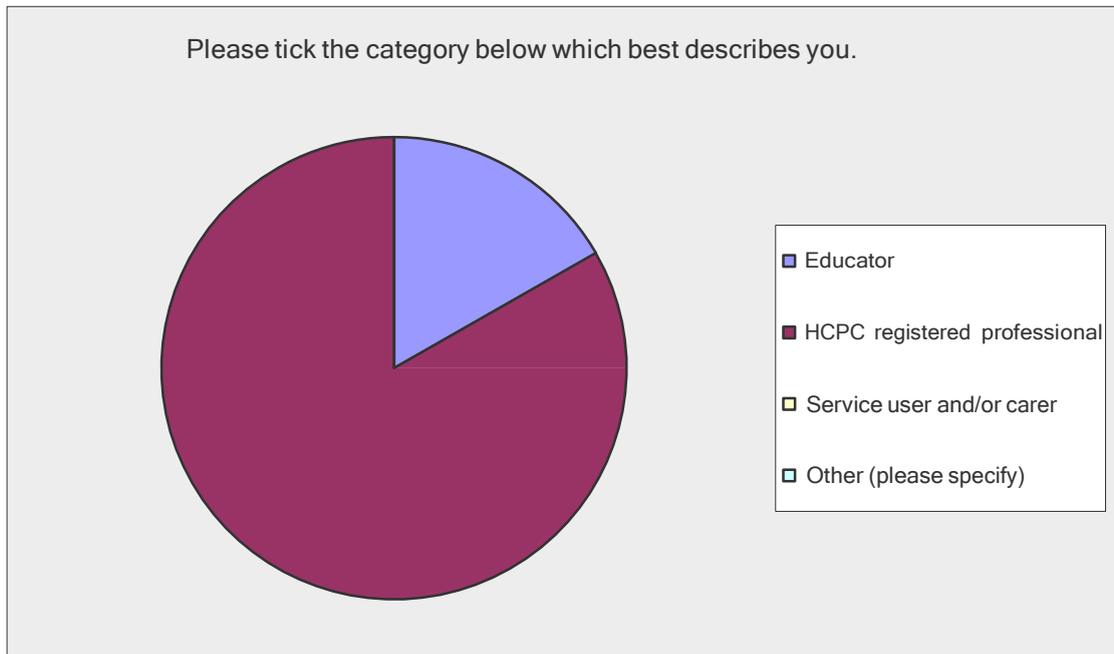
Method of recording and analysis

- 2.2 The majority of respondents used our online survey tool to respond to the consultation. They self-selected whether their response was an individual or an organisation response, and, then provided their comments on the proposal in a free textbox. Where we received responses by email or by letter, we recorded each response in a similar manner.
- 2.3 When deciding what information to include in this document, we assessed the frequency of the comments made and identified themes. This document summarises the common themes across all responses, and indicates the frequency of arguments and comments made by respondents.

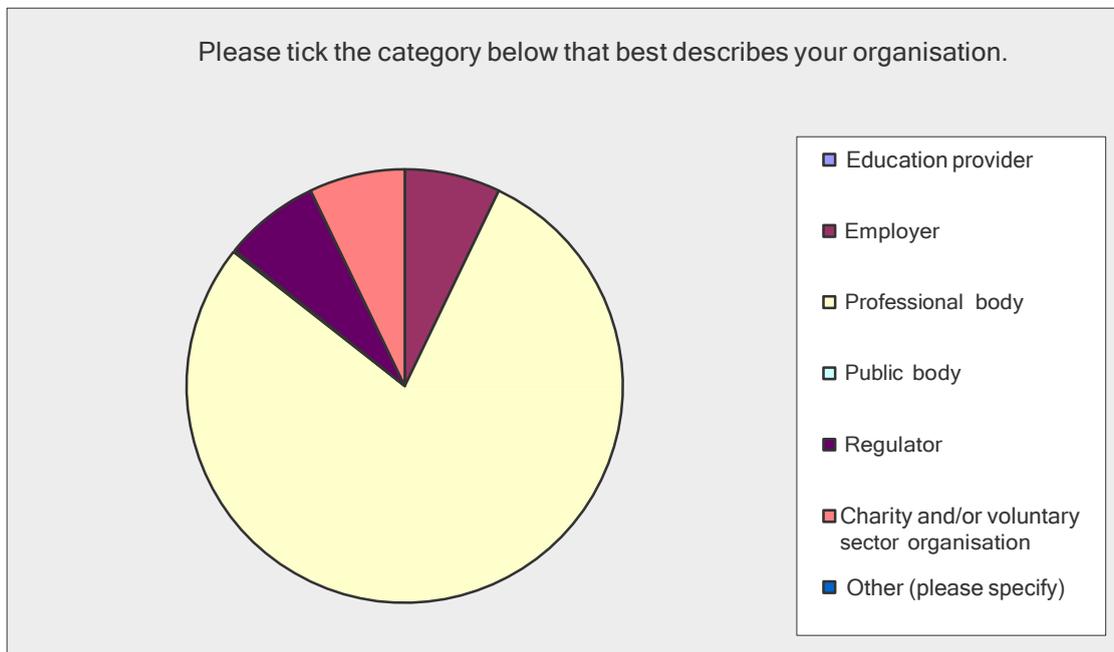
Statistics

- 2.4 We received 32 responses to the consultation. 18 (56 per cent) of responses were received from individuals and 14 (44 per cent) from organisations. Of the 18 individual responses, 15 (83 per cent) were from HCPC registered professionals.
- 2.5 The breakdown of respondent types is shown in the graphs which follow.

Graph 1 – Breakdown of individual responses



Graph 2 – Breakdown of organisation responses



3. Summary of responses

- 3.1 The following is a high-level summary of the comments we received in response to the consultation document and proposed Rules. Please see section four for a more detailed thematic analysis.
- 3.2 In general the majority of respondents either voiced support for the proposed Rules as drafted or qualified their support by suggesting various additions or areas for further consideration.
- 3.3 Comments from respondents who supported the proposed Rules for professional indemnity included that:
 - the provision of adequate information by us on the new statutory requirement meant that the proposed Rules were easy to understand;
 - the proposed Rules were compliant with the general policy approach adopted in our guidance; were logical, clear and covered different eventualities;
 - the proposed Rules would strengthen public protection; and
 - the proposed Rules had effectively drawn a distinction between administrative removal and striking-off.
- 3.4 There were no responses which clearly stated that the respondent did not support the proposed Rules.
- 3.5 In relation to those respondents who qualified their support, we received comments about the length of the notice period for registrants to respond to a request for information about their indemnity arrangements and other comments of a more general nature about our overall policy approach in this area.

4. Responses – summarised thematically

Summary

- 4.1 As referred to in the summary section, there was overall support among respondents for the proposed Rules on professional indemnity. However, some respondents did qualify their support by suggesting further amendments to the Rules or areas for further consideration which will be discussed below.
- 4.2 Some of the comments we received were not specific to the proposed Rules for professional indemnity. Instead they raised general issues about the professional indemnity requirements, including comments on matters which are addressed in the guidance we have published.²
- 4.3 The comments we received are summarised below, structured around the common themes in the responses received.

About professional indemnity

- 4.4 Some respondents referred to more general aspects of the new statutory requirement as opposed to the proposed Rules for professional indemnity.
- 4.5 Two respondents were concerned about health and care professionals who work in non-regulated professions not having appropriate professional indemnity arrangements in place. One of these respondents was concerned that if one of our registrants was removed from the Register and continued to practise without such an arrangement the resultant implications including a negative impact for service users.
- 4.6 One respondent was concerned about the terminology used to describe an appropriate professional indemnity arrangement and favoured 'Medical Negligence Insurance'.
- 4.7 One respondent was concerned about how registrants working in a voluntary and / or education setting would meet the statutory requirement. This respondent also sought some reassurance on whether a professional bodies 'good Samaritan' insurance would cover those who work in a non-clinical role intervening in a situation where there was no professional obligation to do so.
- 4.8 A number of respondents were concerned about what we would consider as 'appropriate cover' and meeting the new statutory requirement. Their views can be summarised as follows:

² The guidance and accompanying frequently asked questions (FAQs) can be found on our website here: www.hcpc-uk.org/registrants/indemnity/

- One respondent sought guidance on what we would constitute as appropriate cover for those registrants who work in private practice.
- Four respondents were concerned with those registrants who work in an employed environment meeting the requirement. These concerns ranged from a perceived over reliance on an employer's arrangement to the possibility of being counter-sued by their employer for not having their own personal arrangement; and to recommending best practice to employers to share relevant professional indemnity information with their employees annually and for us to provide a list of employers who have appropriate arrangements for their employees.
- Two other respondents identified more general issues in their responses. One respondent was concerned about the difficulty of registrants obtaining appropriate professional indemnity arrangements for their practice, even when there was no Fitness to Practise (FTP) related issue or concern. The second respondent supported the new statutory requirement but voiced some unease over a possible resultant increase in litigation by service users.

Use of declarations

- 4.9 A few respondents commented on the use of declarations in order to implement the new statutory requirement. These respondents in general supported the new declarations.
- 4.10 Two respondents commented on the issue of communication. One respondent suggested that we should effectively communicate the new declarations to our registrants. The second respondent was concerned that those registrants who work in an employed environment such as the NHS may not be fully aware of their employer's professional indemnity arrangements when completing the new declarations. They recommended that their employer should provide an indemnity certificate to their employees.
- 4.11 One respondent voiced support for the new declarations as a means of encouraging those registrants who do not have an appropriate professional indemnity arrangement for all aspects of their professional practice to obtain one.

Suggested additional checks to strengthen compliance

- 4.12 Two respondents commented on the issue of additional checks and strengthened compliance for our registrants under the new statutory requirement.

- 4.13 One respondent supported us carrying out regular checks of our registrants' professional indemnity arrangements in addition to those contained in the proposed Rules. This respondent favoured both registrants and applicants for registration having an appropriate professional indemnity arrangement in place at all times which would leave no period without cover.
- 4.14 The second respondent was concerned about any arrangements we have put in place for applicants for registration who may not yet have secured an appropriate professional indemnity arrangement.

Professional indemnity run-off cover

- 4.15 Three respondents referred to registrants who were not practising and appropriate professional indemnity arrangements for this. These comments included the importance of having 'run-off' cover in place; and the need for registrants to understand that insurance cover is normally offered on a 'claims made' basis where insurance needs to be held at the time a claim is made as well as the time when the incident giving rise to the complaint took place.
- 4.16 Two respondents were concerned about professional indemnity for those registrants not practising their profession for short periods of time. One respondent was concerned that the current guidance we had published could result in a gap of insurance cover where a claim was lodged by a service user against a registrant who was no longer practising and had cancelled their arrangement. This respondent suggested that registrants who make their own arrangements should be reminded of their professional obligation to understand how their professional indemnity arrangement will work including any run-off cover.
- 4.17 The second respondent sought additional general guidance on our professional indemnity arrangement requirements for those registrants who are no longer practising, for example, are between jobs. This respondent also supported a time limited voluntary suspension for registrants in this situation whereby they would not have to apply for formal readmission.
- 4.18 The third respondent recommended that we should consider appropriate cover to include a run-off period of 21 years. This would allow individuals who had suffered harm whilst they were children to bring a subsequent claim.

Notice period for disclosure of information to the Registrar

- 4.19 A number of respondents referred to the proposed notice period to be provided by the Registrar to registrants to reply to an information request on their professional indemnity arrangements.

4.20 There was a general consensus among respondents that the time period of seven days may not be appropriate. The reasons included:

- unavoidable delays due to disruption in the postal service; public holidays or registrants being on holidays; and
- a dependence on employers to provide the necessary evidence to the registrant before submitting this to us.

4.21 Three respondents proposed specific alternative time periods. These included: 14 days; 21 days and one month. One of these respondents supported a streamlined readmission policy for cases of administrative removal if a registrant had failed to provide the requested information, with justification, but subsequently provided it to the Registrar.

5. Our comments and recommendations

- 5.1 We received a range of comments about the proposed Rules for professional indemnity during the consultation process, including suggested amendments and possible additional areas for further consideration. We have carefully considered all the comments received. The following section outlines our responses to these comments and suggestions including any changes we will make to the proposed Rules.
- 5.2 We recognise that some of the respondents to the consultation were concerned about more general aspects of the new statutory requirement for our registrants to have an appropriate professional indemnity arrangement in place as a condition of registration with us, rather than the specific issue upon which we were consulting. Nonetheless, we have addressed a number of those concerns below. We have not responded to every individual suggestion or concern, but have grouped them thematically and given our comments.

Scope of the statutory requirement

- 5.3 We previously consulted on guidance for the new statutory requirement in 2013. This guidance, together with amended frequently asked questions (FAQs), was subsequently published on our website when the legislation became effective in July 2014.³
- 5.4 For those health and care professions which are not statutory regulated the HCPC is unable to enforce any professional indemnity arrangement requirements. This is outside of our regulatory remit and the scope of the legislation. If a registrant is removed from our Register for not having an appropriate professional indemnity arrangement in place, they would be prohibited from practising their profession using one of our protected titles.
- 5.5 The new statutory requirement does not mean that all registrants need to take out separate professional indemnity insurance. The requirement to have an appropriate professional indemnity arrangement in place can be met in a number of ways depending on an individual registrant's own practice and whether they are employed, self-employed or carry out a combination of employed and self-employed work. Therefore we are content with both the current terminology used and adopted approach outlined in our guidance and FAQs.
- 5.6 We require all our registrants (other than social workers in England) to have an appropriate professional indemnity arrangement in place for all

³ The guidance and accompanying frequently asked questions (FAQs) can be found on our website here: www.hcpc-uk.org/registrants/indemnity/

aspects of their professional practice. This includes any relevant voluntary work they undertake and those registrants who work in a non-clinical roles such as within the education sector. Our guidance and FAQs can be consulted for further information on how to achieve this.

- 5.7 We do not treat actions as a ‘good Samaritan’ – someone who provides first aid or other emergency help where there is no professional obligation to do so – as professional practice for which a registrant must have a professional indemnity arrangement. This issue is also covered in our guidance.
- 5.8 In relation to what we would consider as ‘appropriate cover’. We consider that any professional indemnity arrangement a registrant has in place will need to provide cover appropriate to their own practice, taking into account the nature and extent of its risks. This level of cover will need to be sufficient to meet any liability that may be incurred if a successful claim is made against a registrant. What is appropriate cover for one registrant may be inappropriate for another registrant and may depend upon a combination of factors including:
- The practice area or areas they work in.
 - The service users they work with.
 - The risks involved with their practice.
- 5.9 We expect our registrants to make their own decisions about the level of cover which is appropriate to them and their practice, seeking advice as appropriate from their professional body, trade union, defence organisation and / or insurer
- 5.10 For those registrants who work in an employed environment such as the NHS we expect that it is very likely that their employer will have professional indemnity arrangements in place which will provide appropriate cover for all the relevant risks related to those activities that they perform as part of their job. Arrangements may, however, vary between different employers, so if a registrant is unsure, they should always check with their employer. An employer’s arrangement will only provide cover for activities performed by an employee as part of their duties during the course of that employment.

Use of declarations

- 5.11 We will put in place an effective communication strategy prior to the amended Rules becoming effective to remind registrants of the professional indemnity requirements. This will include working with the relevant professional bodies to inform their members.

Additional checks and strengthened compliance

- 5.12 We believe that our proposed Rules as drafted are appropriate for meeting our primary obligation to protect the public and are also proportionate to the original legislative intent. We do not consider it proportionate to carry out systematic checks of registrants individual professional indemnity arrangements.
- 5.13 However, we will carry out such checks if it comes to our attention that a registrant might not have a professional indemnity arrangement in place or that the arrangement does not provide appropriate cover.

Professional indemnity run-off cover

- 5.14 Our published guidance explains that registrants, who have made their own professional indemnity arrangements, need to maintain cover in order to benefit from insurance which is provided on a 'claims made' basis. This means that cover would need to be in place both when the event giving rise to a claim happened, and when the claim was made, which may be some years later. Our guidance also requires our registrants to disclose any relevant information to their indemnity provider.
- 5.15 We will review the FAQs we have published to make sure that we provide clear guidance for registrants who have made their own professional indemnity arrangements, but who are not practising their professions for short periods of time, about the importance of having in place run-off cover to ensure that service users are able to make claims. Those individuals registered with us but without a professional indemnity arrangement in place are likely to be those who are newly qualified looking for employment, individuals who are between jobs or those who are on maternity leave from an employed role. We need to make sure that our approach is proportionate and appropriate for all those that we register.

Notice period for disclosure of information to the Registrar

- 5.16 We acknowledge the concern of respondents on the proposed seven day period for a registrant to respond to a request for information from the Registrar on their individual professional indemnity arrangements.
- 5.17 The proposed Rules stipulate that such a period will not be less than seven days. This short period is required to deal with more serious instances such as where a registrant has caused or is continuing to cause harm without having an appropriate professional indemnity arrangement in place. We envisage that in practice in many instances it will be appropriate to provide a longer period of time for a registrant to respond to such a request. We will only need to use this power in exceptional circumstances where we have received information which suggests that a registrant may not have cover or may have cover which is not appropriate to their practice. This is important so that we can take

swift action in the rare circumstances where we might have a concern. The majority of registrants will simply confirm that they are meeting requirements as part of completing the declarations when they renew their registration with us.

Our decisions

- 5.18 The proposed Rules for professional indemnity had a very high approval rating overall among respondents.
- 5.19 Some of the changes suggested by respondents were not included because we felt that they would not allow us to meet our obligations under the legislation which include taking timely and appropriate action if we became aware that a registrant does not have a professional indemnity arrangement in place or has an arrangement which does not provide appropriate cover.
- 5.20 We are therefore not proposing any amendments to the Rules as currently drafted.
- 5.21 Subject to the parliamentary process, we anticipate that the Rules will be in place from early 2015-2016.

6. List of respondents

Below is a list of all the organisations that responded to the consultation.

Association for Perioperative Practice
Association of Dance Movement Psychotherapy
British Academy of Audiology
British Ambulance Association
British Association and College of Occupational Therapists
British and Irish Orthoptic Society
British Chiropractic and Podiatry Association
British Society for Histocompatibility and Immunogenetics
Chartered Society for Physiotherapy
College of Paramedics
Institute of Biomedical Science
National Association of Professional Ambulance Services
National Community Hearing Association
Northern Ireland Ambulance Service