

Council meeting, 10 February 2011

Professional indemnity insurance

Executive summary and recommendations

Introduction

In June 2010, the final report of the 'Independent review of the requirement to have insurance or indemnity as a condition of registration as a healthcare professional' was published. The previous administration's clear policy was that 'when harm has been caused through negligence on the part of a registered healthcare professional, the patient or client should receive any redress to which they are entitled'. The review was set up to look at whether 'making insurance or indemnity a condition of registration is the most cost effective and proportionate means of achieving the policy objective that all registered healthcare professionals must have cover'.

The recommendations made in the review are outlined in an appendix to this paper. The four country administrations have now published their response to the review (also appended) and have endorsed the recommendations made. The response acknowledges that legislative change is necessary and that these changes 'will be introduced at the next most appropriate opportunity to give effect to these recommendations'.

The Council previously discussed the issue of whether holding professional indemnity insurance (whether individually or via an employer's vicarious liability) should be made a condition of registration at its meeting on 26 March 2009. Overall the Council questioned whether this was consistent with its role and objective to protect the public but also discussed what this might mean practically should such a requirement be introduced.

The recommendations of the review allow a considerable degree of flexibility as to how the HPC might exercise its power if the legislation is amended. Some issues to resolve / areas of work in the future might include:

- Defining in the context of the professions regulated by the HPC (and, potentially, those that may be regulated in the immediate future) what constitutes 'adequate' and 'appropriate' cover (see recommendation 2e).
- Deciding how the HPC would seek to implement and 'enforce' its powers – for example, by a system of self-declaration at admission and renewal, by exception reporting, and/or by targeted auditing (see recommendations 5 and 8).
- Stakeholder work including liaison with insurers, professional bodies, and registrants about the requirements, which might include consulting on our approach and supporting guidance (see recommendations 6, 7 and 19).

- Identifying whether there are any groups of independently practising registrants for whom 'the market does not provide affordable insurance or indemnity' (recommendation 20)

Decision

This paper is to note; no decision is required.

There is no current timetable as to when the legislation might be amended to implement the review's recommendations. Recommendation 9 of the review indicates that timetables will be determined between regulators and ministers and that each regulatory body would have time to make decisions about how best to exercise its powers once legislation is amended.

Background information

- 'Independent review of the requirement to have insurance or indemnity as a condition of registration as a healthcare professional' is available here: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationPolicyAndGuidance/DH_122611
- 'Professional indemnity insurance' considered by the Council at its meeting on 26 March 2009
http://www.hpc-uk.org/aboutus/council/councilmeetings_archive/index.asp?id=415

Resource implications

There are no resource implications at this time.

This area will be included in the project list for the Policy and Standards Department in the 2011/2012 financial year but it is anticipated that, subject to legislative movement, this will be a 'watching brief'.

Financial implications

There are no financial implications at this time.

Appendices

- Recommendations from the 'Independent review of the requirement to have insurance or indemnity as a condition of registration as a healthcare professional'
- Response to the Independent Review of the Requirement to have Insurance or Indemnity as a Condition of Registration as a Healthcare Professional

Date of paper

31 January 2011

Appendix 1: Recommendations from the ‘Independent review of the requirement to have insurance or indemnity as a condition of registration as a healthcare professional’ (June 2010)

Recommendation 1: There should be a statutory duty upon registrants to have insurance or indemnity in respect of liabilities which may be incurred in carrying out work as a registered healthcare professional.

Recommendation 2: In relation to the condition of registration, the roles of healthcare professional regulators should be supported by powers not duties; and those powers should include:

- a. A power to require relevant information to be provided to the Registrar in order to determine whether a registrant, or applicant for registration, has cover.
- b. A power to require registrants to inform the Registrar if cover ceases.
- c. A power to refuse to grant registration to an applicant who fails to comply with a request for information or fails to demonstrate that they have, or will have, cover.
- d. A power to withdraw registration from a registrant who fails to comply with a request for information or fails to demonstrate that they have, or will have, cover.
- e. A power to refer a registrant into fitness to practise procedures if the cover is alleged to be inadequate or inappropriate to the registrant’s practice.

Recommendation 3: Relevant legislation should be harmonised across healthcare professional regulators, with common duties on registrants and common powers for healthcare professional regulators.

Recommendation 4: There should be a review of existing legislation, including that in force for the General Chiropractic Council, General Optical Council and General Osteopathic Council.

Recommendation 5: Within a harmonised framework, it should be for each healthcare professional regulator to decide, using a risk based approach, how best to exercise its powers.

Recommendation 6: Healthcare professional regulators should cooperate with system regulators, primary care organisations, and the independent sector to maximise coordination and minimise duplication.

Recommendation 7: Healthcare professional regulators should work with employers, trade unions and other representative bodies, and defence organisations to communicate to registrants the importance of insurance or indemnity and to explain how the condition of registration can be satisfied .

Recommendation 8: Healthcare professional regulators should explore, for example through pilot studies, how best to introduce the statutory condition of registration in a way that secures registrants' support and compliance rather than resistance.

Recommendation 9: Healthcare professional regulators should be given adequate time to prepare but Ministers should set a target date by which the statutory condition of registration has been implemented for all registrants.

Recommendation 10: To maintain and enhance public confidence, the Council for Healthcare Regulatory Excellence should report on each healthcare professional regulator's use of the relevant powers, as part of its annual performance review.

Recommendation 11: In consultation with insurers and indemnifiers, healthcare professional regulators should consider the case for communicating to patients, clients and the public, for example through regulators' websites, the value of insurance and indemnity, when they can assume it is in place, when they may need to check and how they would do so.

Recommendation 12: For the minimisation of doubt, the legislation should ensure, and make clear, that healthcare professional regulators are not liable for a breach of duty by a registrant provided that the regulator has acted reasonably.

Recommendation 13: In relation to personal cover required for self-employed practice, there should be a duty upon registrants to provide full disclosure of relevant facts to their insurer or indemnifier.

Recommendation 14: When personal cover for self-employed practice is alleged by a healthcare professional regulator to be inadequate or inappropriate, enforcement action should be through fitness to practise procedures, not administrative procedures.

Recommendation 15: Provided that there has been full disclosure of relevant facts, in the event that personal cover for self-employed practice is alleged to be inadequate or inappropriate, registrants should be entitled to rely on the defence that they have acted in accordance with the proposals of their insurer or indemnifier.

Recommendation 16: Healthcare professional regulators should make clear that, if registrants wish to change the scope of their practice, they should first have, or acquire, adequate and appropriate insurance or indemnity.

Recommendation 17: In relation to self-employed practice, healthcare professional regulators should consider their requirements for run-off cover and how to deal with past periods when the statutory condition of registration had been breached.

Recommendation 18: Healthcare professional regulators should explain to registrants that Good Samaritan acts fall outside the requirement to have insurance or indemnity as a condition of registration; and should provide guidance to registrants on good neighbour acts.

Recommendation 19: When implementing the condition of registration, healthcare professional regulators should seek to ensure, as far as they can, that they do not inadvertently jeopardise the availability of personal cover through membership related schemes provided by trade unions and others.

Recommendation 20: In relation to groups for whom the market does not provide affordable insurance or indemnity, the four health departments should consider whether it is necessary to enable the continued availability of the services provided by those groups; and, if so, the health departments should seek to facilitate a solution.