

## **Education and Training Committee – 6 June 2013**

### **Consultation on guidance for registrants about the statutory requirement to have appropriate professional indemnity cover as a condition of registration**

#### Executive summary and recommendations

#### **Introduction**

1. This consultation paper sets out guidance entitled 'Professional indemnity cover and your registration' and has been drafted because of the new requirement for registrants to have appropriate professional indemnity cover as a condition of their registration with HCPC.
2. This requirement is being introduced for all healthcare professionals by the Government via the Health Care and Associated Professions (Indemnity Arrangements) Order 2013 (referred to in the remainder of this document as 'the Indemnity Order'). Subject to parliamentary approval, the Indemnity Order will amend our governing legislation, the Health and Social Work Professions Order 2001 to introduce the statutory requirement.
3. The Department of Health launched its consultation on this new requirement in February 2013 and Council agreed the HCPC's response at their meeting on 27 March 2013. The consultation on the draft Indemnity Order has only recently closed and the finalised legislation had yet to be laid before Parliament. We are consulting on this guidance in preparation for the introduction of a statutory requirement, subject to subsequent parliamentary approval of the Indemnity Order.
4. Please note that the proposed statutory requirement to have appropriate professional indemnity cover was not proposed to extend to social workers in England registered with the HCPC. Social workers are separately regulated in each of the four countries. Social workers in Scotland, Wales and Northern Ireland will also be unaffected by the introduction of this statutory requirement.
5. We are proposing to consult on our guidance on this new requirement between June and August of this year, with the results of the consultation to be brought to Committee and Council for consideration at its September 2013 meeting.

#### **Decision**

The Committee is invited to discuss, agree and recommend to the Council that it approve the attached consultation document and guidance on 'Professional indemnity cover and your registration' (subject to minor editing changes).

#### **Background information**

Paper agreed by Council, 27 March 2013:

<http://www.hpc-uk.org/aboutus/committees/archive/index.asp?id=634>

**Resource implications**

- Mailing and analysis of consultation;
- The resource implications are accounted for in the Policy and Standards department workplan.

**Financial implications**

- Cost of printing and mailing the consultation document – the guidance document will be made available to download from the website.
- The financial implications are accounted for in the Policy and Standards Department budget for 2013-2014.

**Appendices**

Guidance entitled 'Professional indemnity cover and your registration'

**Date of paper**

28 May 2013

**Consultation on guidance for registrants about the statutory requirement to have appropriate professional indemnity cover as a condition of registration**

A consultation seeking the views of stakeholders on guidance for registrants on a statutory requirement to have appropriate professional indemnity cover as a condition of registration with us.

**Please note that we anticipate that this statutory requirement will not apply to social workers in England.**

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## 1. Introduction

- 1.1 We are the Health and Care Professions Council (HCPC). This consultation seeks the views of stakeholders on draft guidance for registrants about a statutory requirement for healthcare professionals to have appropriate professional indemnity cover as a condition of their registration with the HCPC.
- 1.2 This requirement is being introduced for all healthcare professionals by the Government via the Health Care and Associated Professions (Indemnity Arrangements) Order 2013 (referred to in the remainder of this document as 'the Indemnity Order'). Subject to parliamentary approval, the Indemnity Order will amend our governing legislation, the Health and Social Work Professions Order 2001 to introduce the statutory requirement.
- 1.3 At the time of launching this consultation, the consultation on the draft Indemnity Order had recently closed and the finalised legislation had yet to be laid before Parliament. We are consulting in preparation for the introduction of a statutory requirement, subject to subsequent parliamentary approval of the Indemnity Order.
- 1.4 **Please note that at the time of launching this consultation the proposed statutory requirement to have appropriate professional indemnity cover was not proposed to extend to social workers in England registered with the HCPC.** Social workers are separately regulated in each of the four countries. Social workers in Scotland, Wales and Northern Ireland will also be unaffected by the introduction of this statutory requirement.
- 1.5 This consultation document explains about the statutory requirement and how we plan to implement it. The draft guidance – 'Professional indemnity insurance and your registration' – explains more about what this means for our registrants.
- 1.6 The terms 'health care', 'patient' and 'healthcare professional' are used in this document in line with their use in the proposed Indemnity Order. This document uses the phrase 'affected registrant' to refer to a registrant in one of the 15 professions which is affected by the introduction of this statutory requirement.
- 1.7 This consultation will be of particular interest to professional bodies; registrants who are affected by these proposals; and to employers.
- 1.8 The consultation will run from **10 June 2013** to **2 August 2013**.

## 2. About the HCPC

2.1 We are a regulator and were set up to protect the public. To do this, we keep a register of professionals who meet our standards for their professional skills and behaviour. Individuals on our register are called 'registrants'.

2.2 We currently regulate 16 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

### 3. About professional indemnity cover and registration

#### Why is a statutory requirement being introduced?

- 3.1 The Government is proposing to introduce a statutory requirement for healthcare professionals who are regulated by statute to have appropriate professional indemnity cover as a condition of their registration
- 3.2 This requirement is being introduced as part of implementing the UK Government's obligations under European Directive 2011/24/EU on the application of patient rights in cross-border healthcare.<sup>1</sup>
- 3.3 The Department of Health recently consulted on behalf of the four UK Health Departments about introducing this requirement.<sup>2</sup> The consultation said the following gave the following reasons for introducing this requirement.
- There is inconsistency currently because some regulators have a statutory requirement for professionals to have professional indemnity cover in place and others do not. The HCPC does not currently have any statutory powers to require a registrant to have professional indemnity cover in place.
  - Individuals should be able to make a compensation claim where they suffer harm through the negligence of a registered healthcare professional. There are concerns about professionals who practise without any cover or without sufficient cover in place.
  - An independent review of this area which reported in 2010 concluded that making professional indemnity cover a condition of registration with a regulator would be the most cost-effective and proportionate way of making sure that members of the public could make a compensation claim in cases of negligence.

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<sup>1</sup> European Directive 2011/24/EU

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:088:0045:0065:EN:PDF>

<sup>2</sup> Department of Health (2013). Insurance or indemnity for regulated healthcare professionals  
<https://www.gov.uk/government/consultations/protecting-patients-from-negligence>

Health and Care Professions Council (2013). Health and Care Professions Council response to the Department of Health consultation on the Health Care and Associated Professions (Indemnity Arrangements) Order 2013.

<http://www.hcpc-uk.org/aboutus/consultations/external/index.asp?id=157>

### **Which registrants will this requirement apply to?**

- 3.4 The requirement to hold professional indemnity cover as a condition of registration is proposed to extend to all of the professions regulated by the HCPC, with the exception of social workers in England. This is because these 15 professions are considered to be 'healthcare professions' under the terms of the EU cross-border healthcare Directive.
- 3.5 The Government is not proposing that this requirement should extend to social workers in England because social workers fall outside of the definition of healthcare professionals under the EU Directive. The Department of Health has sought views about extending the requirement to have indemnity cover to social workers in England as part of its recent consultation.
- 3.6 However, if the requirement is implemented as currently proposed, we will **not** require social workers in England to have cover as part of their registration with us. This consultation and the draft guidance assume that this requirement will **not** extend to social workers in England.

### **What does the requirement mean for affected registrants?**

- 3.7 When having appropriate professional indemnity cover in place becomes a statutory condition of registration with us, it will mean the following for an affected registrant.
- They will have a personal responsibility to ensure that they have professional indemnity cover in place; or, if they are not working, they will need to ensure that they will have appropriate cover in place before they begin to practise.
  - They will need to ensure that the professional indemnity cover they have in place is appropriate for their practice.
  - This requirement could be met via an employer's arrangements for those who are employed, via holding separate indemnity insurance, or a combination of the two.
- 3.8 For many affected registrants, we anticipate that they will already meet this requirement. Many will work in a managed environment where they are indemnified by their employer. Others, including many who are self-employed or those whose practice comprises a combination of employed and self-employed roles, will have their own professional indemnity insurance.
- 3.9 Applicants for registration in the affected professions will need to ensure that they understand our requirements and confirm that they will have appropriate indemnity cover in place before they begin to practise.

## **How will we check that appropriate professional indemnity cover is in place?**

- 3.10 The draft Indemnity Order allows the regulators the ability to set down in Rules how they plan to implement the statutory requirement, including what information registrants will need to provide about the professional indemnity cover they have in place. The proposed Indemnity Order will also amend the Health and Care Professions Council (Registration and Fees) Rules 2003 to set out these arrangements.
- 3.11 We have developed arrangements for ensuring that affected registrants have appropriate professional indemnity cover in place which we consider are proportionate, having concluded the following.
- Our registrants are personally responsible for their actions and omissions and are already required to self-declare that they meet our standards when they apply for registration or renew their registration with us. Making registrants responsible for ensuring that they have appropriate professional indemnity cover in place would be consistent with this.
  - Registrants (in conjunction with employers and insurers) are best placed to make reasonable, informed decisions about what appropriate cover looks like for them.
  - Many registrants will already have appropriate professional indemnity cover in place, either via their employer, and/or via separate professional indemnity insurance.
  - It would be a disproportionate burden on both registrants and us if we routinely required more than 210,000 professionals to send us evidence of their professional indemnity cover.
  - Any arrangements we put in place should not unfairly disadvantage applicants for registration who have yet to start practising, or registrants renewing their registration who are not practising at that time.
- 3.12 The arrangements we will put in place are set out in more detail in the draft guidance document but are summarised below.
- We will ask applicants for registration to complete a professional declaration to confirm that they will have appropriate professional indemnity cover before they begin to practise.

- We will ask registrants when they renew their registration to complete a professional declaration to confirm that they have appropriate professional indemnity cover or that they are not practising but will ensure that appropriate cover is in place before they begin to practise.
- As this requirement is linked to registration, in the majority of circumstances a failure to hold appropriate cover can be dealt with by administrative means. This means that someone who is unable to complete the professional declarations above would not have their registration renewed or would not be registered by us.
- We may consider taking fitness to practise action where we have concerns that the requirement has not been met.

#### **4. About the consultation**

- 4.1 We have put together the draft guidance for consultation to help explain to affected registrants what the requirement to have appropriate indemnity cover means for them.
- 4.2 When we publish the finalised guidance, we will also publish on our website some additional 'frequently asked questions' to assist different groups of registrants in understanding the requirement. The feedback received as part of this consultation will also inform development of those questions.

#### **Consultation questions**

- 4.3 We would welcome your response to our consultation and have listed some questions to help you. The questions are not designed to be exhaustive and we would welcome your comments on any aspect of the guidance.
- Q.1 Is the guidance clear and easy to understand? How could we improve it?
- Q2. Is the guidance applicable to different groups of health and care professionals affected by the requirement to hold indemnity cover? If not, which groups have we missed?
- Q.3 Could any parts of the guidance be reworded or removed?
- Q.4 Do you have any other comments on the draft guidance?

## 5. How to respond to the consultation

- 5.1 The timescales for this piece of work are dictated by the introduction of legislation in this area. We are consulting for a shorter 8 week period to ensure that guidance is available for affected registrants from the point that the statutory requirement is in place.
- 5.2 This will also allow any registrants who need to put in place new professional indemnity arrangements the time to do so before we start asking these registrants to make a declaration when they renew.
- 5.3 You can respond to this consultation in the following ways.
- By completing our easy-to-use online survey: [link here]
  - By emailing us at: [consultation@hcpc-uk.org](mailto:consultation@hcpc-uk.org).
  - By writing to us at the following address.
- Consultation on professional indemnity insurance  
Policy and Standards Department  
Health and Care Professions Council  
Park House  
184 Kennington Park Road  
London  
SE11 4BU  
Fax: +44(0)20 7820 9684
- 5.4 Please note that we do not normally accept responses by telephone or in person. We normally ask that consultation responses are made in writing. However, if you are unable to respond in writing, please contact us on +44(0)20 7840 9815 to discuss any reasonable adjustments that would help you to respond.
- 5.5 Please complete the online survey or send us your response by **2 August 2013**.
- 5.6 **Please contact us to request a copy of this document in Welsh or in an alternative format.**
- 5.7 Once the consultation period is completed, we will analyse the responses we receive. We will then publish a document which summarises the comments we received and explains the decisions we have taken as a result. This will be published on our website.

## **Professional indemnity cover and your registration**

### **1. Introduction**

#### **About this document**

We have written this document about the requirement for registrants to have appropriate professional indemnity cover as a condition of their registration with us.

It explains what this requirement means for registrants. This document will also be helpful for individuals applying for registration with us.

**The requirement to have appropriate professional indemnity cover as a condition of registration does not apply to social workers in England.**

#### **How this document is structured**

Throughout this document:

- 'we' and 'us' refers to the Health and Care Professions Council (HCPC);
- 'registrant' refers to a professional on our Register; and
- 'you' or 'your' refers to a registrant or potential registrant.

We have used 'service user' in this document to refer to patients and clients who use the services of our registrants. Who service users are will vary between the different professions we regulate.

### **2. About the HCPC**

We are a regulator and were set up to protect the public. To do this, we keep a register of professionals who meet our standards for their professional skills and behaviour. Individuals on our register are called 'registrants'.

We currently regulate 16 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

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## 2. What you need to know as a registrant

### Summary

You are now required to make sure that you have appropriate professional indemnity arrangements in place as a condition of your registration with us. Many registrants will already meet this requirement because they will be indemnified by their employer and/or because they hold separate professional indemnity insurance obtained through their professional body or directly from an insurer.

The following is a straightforward summary of what the requirement to have appropriate professional indemnity cover means for you. We have explained more about this in the sections that follow.

- You must make sure you have professional indemnity cover in place when you practise. This could be:
  - via your employer if you are employed;
  - as part of a membership of a professional body;
  - directly from an insurer; or
  - a combination of the above.
- You must make sure that the indemnity cover you have in place is appropriate to your practice. This means that the cover you have in place needs to be relevant to the risks involved in your practice so that it is sufficient in the event that a successful claim is made against you.
- If you are employed and are in any doubt, you should always ask what is covered by your employer's indemnity arrangements.
- If you are self-employed, you are likely to need to have your own indemnity insurance in place. You should make sure that you understand the terms of your insurance policy and declare any relevant information to your insurer.
- If you undertake both employed and self-employed work you need to make sure that you have professional indemnity arrangements in place which cover all of your practice.
- If your practice or circumstances change, you need to consider whether you might need to change the cover you have in place or arrange additional cover.

- If you registered with us as a social worker, you will not need to meet this requirement as a condition of your registration. However, you still might want to make sure that you have cover in place which is appropriate to your practice.

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### **3. About professional indemnity cover**

This section provides more information about the requirement to have appropriate professional indemnity cover as a condition of your registration with us.

#### **A condition of registration**

In 2013, legislation was introduced which requires all registrants (other than social workers in England) to have professional indemnity cover as a condition of their registration with us. The cover must be appropriate to their practice.

This requirement has been introduced so that if a service user is harmed because of the negligence of a registrant, the service user will be able to recover any compensation to which they may be entitled.

From April 2014 we will start asking registrants and applicants for registration to make a declaration that they have appropriate professional indemnity cover in place (or will have it in place once they begin practising).

#### **Meeting the requirement**

Many registrants will 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, or they will have their own professional indemnity insurance. This means that many registrants may not need to take any additional steps to meet this requirement.

However, other registrants may need to take steps to make sure that they have appropriate cover in place for their practice, for example, if they carry out a combination of employed and self-employed roles.

This 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.

#### **Your responsibility as a registrant**

As a registrant, you are personally responsible for maintaining your registration and continuing to meet our standards. You are now also responsible for ensuring that you have appropriate professional indemnity cover in place when you are registered with us.

This document will help you in understanding our requirements. However, if you are unsure, you should seek further advice. This might include speaking to your professional body, your insurer (if appropriate) or contacting us.

## **‘Appropriate’ professional indemnity cover**

By ‘appropriate’ indemnity cover we mean that you have cover in place which is appropriate to your practice, having regard to the nature and extent of its risks. The cover needs to be sufficient to meet any liability that may be incurred if a successful claim is made against you arising from your professional practice. What is appropriate cover will vary between registrants and depend upon a number of factors, including:

- The practice area or areas in which they work;
- The service-users they work with;
- The risks involved in their practice.

What might be appropriate cover for one registrant may not be appropriate for another registrant. You need to make sure that you consider the risks which may arise from your own practice and ensure that you have in place indemnity cover which is appropriate to those risks.

If you only work for an employer, then your employer is likely to have indemnity arrangements in place which will cover all the relevant risks whilst you are working for them. Some employers may ask their staff to have their own professional indemnity insurance in place. If you are in any doubt, you should always ask about what is covered by your employer’s indemnity arrangements.

If you are self-employed you are likely to need to have your own professional indemnity insurance in place. Many professional bodies offer professional indemnity insurance as part of their membership or for an additional fee, or you can arrange your own cover directly through an insurer. You should make sure that you understand the terms of your insurance policy and declare any relevant risks to your insurer. If you undertake a combination of employed and self-employed work you need to make sure that you have cover in place which covers all of your practice.

We recognise that your practice or circumstances may change. For example, this might be because you specialise, start working with a new client group, or move into a role in management, education or research. This might mean that the level of cover you need changes. You should make sure that you continue to have in place cover which is appropriate to your practice.

We consider that you are in the best position, seeking the advice of your employer, professional body and/or insurer, to make reasonable, informed decisions about the indemnity cover which is appropriate to you and your practice. You need to be able to justify your decisions.

## **Voluntary work and Good Samaritan acts**

The requirement to have appropriate indemnity cover applies to all professional practice, including that undertaken in a voluntary capacity. Many registrants will

undertake voluntary work which does not require HCPC registration. That type of voluntary work does not amount to professional practice for which indemnity cover is not mandatory. However, if you practise your profession as a volunteer then you will need appropriate indemnity cover. Some voluntary organisations will provide this indemnity cover and any existing insurance you hold may also cover voluntary work.

The HCPC does not regard 'Good Samaritan' acts as professional practice for which indemnity insurance is required. However, registrants should be aware that a Good Samaritan - someone who provides first aid or other emergency assistance to an individual when there is no professional obligation to do so - still assumes a duty of care and, as there are no Good Samaritan laws in the United Kingdom, it would be possible for a Good Samaritan to be sued for negligence (although in practice this is unlikely).

### **Checking that cover is in place**

As a registrant, you are already personally responsible for maintaining your registration with us and for continuing to meet our standards.

The members of each profession registered with us renew their registration every two years. When you renew your registration with us, we ask you to make a number of declarations. For example, we will ask you to confirm that you continue to meet our standards for continuing professional development.

We will now ask you to make a declaration about the professional indemnity cover you have in place. We will ask you to complete a declaration to confirm that:

- you have appropriate professional indemnity cover in place; or
- if you are not practising at that time, that you will have such cover in place before you begin to practise.

We will not routinely ask you to send us insurance certificates or other evidence of your professional indemnity cover. However, we may ask you for evidence if, for example, there are concerns that you may not have indemnity cover in place or that it may not be appropriate to your practice.

As having appropriate professional indemnity cover is a condition of your registration, if you are unable to sign the declaration you will be unable to renew your registration with us and would be removed from the Register.

If you cease to have appropriate indemnity cover, you need to inform us. This can be done by contacting our Registration Department. However, you do not need to tell us about routine changes to your indemnity cover, such as a change of insurer or cover ceasing because you are no longer working.

If you are applying to be registered with us, we will ask you to sign a declaration to confirm that you understand the requirement to have appropriate professional indemnity cover and that you will have appropriate cover in place before you begin to practise.

## **Indemnity cover and fitness to practise**

Our fitness to practise process is the way in which we can consider concerns about registrants.

Most registrants will complete declarations honestly and ensure that they have appropriate professional indemnity cover in place. However, we will consider taking fitness to practise action if we believe that these requirements have not been met. For example, if a registrant:

- makes a false declaration that they have professional indemnity cover in place;
- registers or renews their registration with us but cancels their indemnity cover and fails to put alternative cover in place; or
- has professional indemnity cover which is inappropriate for their practice.

It is your responsibility to ensure cover is appropriate. You need to check that cover provided by others, for example an employer, meets the requirements. In relation to your dealings with insurers, as insurance contracts are subject to an 'utmost good faith' requirement, you must disclose all material information which would influence an insurer's decision on whether or not to provide you with cover. A registrant who knowingly had inadequate indemnity cover would be liable to Fitness to Practise proceedings

## **Social workers in England**

The legal requirement to have indemnity cover does not apply to social workers in England.

Many social workers in England are likely to meet the requirement anyway. They will be indemnified by their employer or, if they practise independently, will hold their own professional indemnity insurance.

Although it is not a condition of your registration, if you are social worker registered with us you may still want to make sure that you have professional indemnity cover in place which is appropriate to your practise.

## **3. Accountability**

As an autonomous professional, you are responsible and accountable for the decisions you make. You are best placed to make decisions, taking account of the way in which you practise. You need to make informed and reasonable decisions about your own practice to make sure you have declared any relevant risks to any insurer. It is important that you are able to justify the decisions that you make.

#### **4. More information**

If you have any questions, please contact us. Please be aware, however, that we cannot offer advice on what level of indemnity cover is appropriate. You can contact us at:-

The Health and Care Professions Council  
Park House  
184 Kennington Park Road  
London  
SE11 4BU

Tel +44 (0)845 300 6184

You can view 'frequently asked questions' about this requirement on our website at [www.hcpc-uk.org](http://www.hcpc-uk.org).

We recognise the valuable role professional bodies play in representing and promoting the interests of their members. This may also include guidance and advice on indemnity arrangements for health and care professionals.

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