



# Londonwide LMCs

The professional voice of London general practice

## All you wanted to know about GP indemnity .....but were afraid to ask!

### Scope of guidance

This guidance is designed to inform GPs as to what steps they should take to ensure that they have adequate and appropriate professional indemnity in place.

### You **must** have it!

The GMC place all registered medical practitioners under a professional obligation to have *adequate and appropriate insurance or indemnity to compensate a patient* if they suffer harm as a consequence of clinical negligence (the GMC guidance can be accessed in full [here](#)).

[The Health Care and Associated Professions \(Indemnity Arrangements\) Order \(2014\)](#) introduced a statutory obligation such that a registered medical professional *must have in force in an indemnity arrangement which provides them with appropriate cover*.

**Setting aside the above professional and statutory obligations, it makes no sense not to have adequate indemnity arrangements in place as it would expose you too personal, professional and financial risks as well as running the risk that a patient may go uncompensated.**

### What should it cover?

You should ensure that your insurance and/or indemnity portfolio covers the following potential risks:

- Personal risks, which include:
  - Clinical negligence claims.
  - Non-claims matters (for example - the provision of medicolegal advice, assistance with complaints, inquests, disciplinary procedures, NHS England investigations, GMC investigations and criminal investigations [arising out of clinical practice], employment matters, contractual disputes etc).
- Partnership matters (relevant if you are a GP partner or are contemplating taking up a GP partnership) which include (but may not be limited to):
  - Public liability claims.
  - Employment matters.
  - Locum insurance.

### Clinical negligence claims

The Clinical Negligence Scheme for General Practice (CNSGP) was introduced on 1 April 2019 and is a comprehensive scheme that covers clinical negligence liabilities (within the scope of the scheme) arising in general practice (in relation to incidents that occurred on or after 1 April 2019).

In short, the *scheme extends to all GPs (including locum GPs, salaried GPs and GPs in training) and others working for general practice who are carrying out activities in connection with the delivery of primary medical services* both in and out of hours and irrespective as to the pace at which *the activity is carried out*.

More details about the CNSGP and its scope can be found at the links below:

- [General Practice Indemnity scheme scope](#)
- [Londonwide LMCs - The CNSGP – What is in, what is out and who do I approach for help?](#)
- [Clinical Negligence Scheme for General Practice - NHS Resolution](#)

Is there anything I should be aware of in relation to the CNSGP?

You should be aware of the following matters pertaining to the CNSGP:

#### Exclusions

There are some exclusions under the scheme, which include:

- Appraisers fall outside the scope of the CNSGP **but** are covered under NHS Resolution's Liabilities to Third Parties Scheme (LTPS) – provided that the organisation contracting with the appraiser is a member and agrees to accept liability for any negligence on the part of the appraiser.
- A breach of data protection legislation (which may result in a monetary penalty) falls outside the CNSGP **but** the CNSGP will cover an alleged breach of confidence has occurred due to wrongful disclosure of personal data, which results in personal injury or loss to a patient arising from or in connection with their diagnosis, care or treatment.
- CNSGP **only** covers general practice services carried out as part of the NHS in **England** (NHS Resolution have confirmed that the CNSGP would cover the scenario in which a registered patient seeks telephone advice whilst they are outside England for a short period [for example - on holiday])
- Good Samaritan Acts – cover for *Good Samaritan Acts* is usually provided within Medical Defence Organisation (MDO)<sup>1</sup> membership (as an aside, it is very rare for a personal acting in the capacity of a *Good Samaritan* to become the subject of a clinical negligence claim.
- The provision of any medical reports that are not required to be provided under a GMS, PMS or APMS contract (including reports for the DWP) – this cover is usually provided by the MDOs.
- Occupational Health investigations and the provisions of immunisations (including influenza immunisations) to practice staff for the purposes of their employment – this cover is usually provided by the MDOs.

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<sup>1</sup> In addition to the MDOs there are numerous commercial indemnifiers/insurers that have entered the market. In the context of this guidance, the term MDO is intended to cover all such providers, however you must check the terms of any cover before purchase.

- The CNSGP would **not** cover a claim that would normally fall to a public liability insurer.
- If you undertake NHS work in the secondary care setting, which does not fall under a GMS, PMS or APMS contract then the CNSGP would not be applicable, however it is likely that the Clinical Negligence Scheme for Trusts (CNST) would cover a claim – **in such circumstances, or if there is any doubt, you should seek confirmation of the indemnity position from your employer/prospective employer in writing before you take-up the post.**

### Reporting obligations

There are obligations to report any claim or potential claim to NHS Resolution within prescribed timescales.

In brief, the following matters engage the reporting obligation:

- Notifiable patient safety incidents.
- A request for disclosure of the records (*a Letter Before Action*).
- Any demand for compensation (for example a Letter of Claim).
- Receipt of correspondence from the Parliamentary and Health Service Ombudsman.
- Any complaint response that amounts to an admission of a breach of duty.
- Any intended offer of compensation.
- Any potential group action.

Further details of the reporting obligations and how to do it can be found at the below link:

[When and how to report a claim - NHS Resolution](#)

### Matters that arose in whole or in part before 1 April 2019

This is a complex area and will depend on the arrangements that have been made between the CNSGP and the MDO with whom you were in membership at the time of the incident that gave rise to the claim.

For further information, please refer to the information at the link below:

[When and how to report a claim - NHS Resolution](#)

The Existing Liabilities Scheme for General Practice (ELSGP) covers claims for compensation arising from the care, diagnosis and treatment of a patient as part of the NHS in England following incidents which occurred before 1 April 2019 during, or as a result of, care provided by a member of the Medical and Dental Defence Union of Scotland (MDDUS) or a member of the Medical Protection Society (MPS).

This means that if you were an MDDUS or MPS member prior to 1 April 2019, then the ELSGP will cover you for claims relating to any incidents that occurred during your period of membership of the MDDUS or the MPS.

If a claim is brought against you which relates to an incident which happened entirely before 1 April 2019 and:

- You were not an MDDUS or MPS member prior to 1 April 2019 **or**

- You were a member of the MDDUS or the MPS prior to 1 April 2019 but the claim relates to an incident that did not occur during that period of membership of MDDUS or MPS

..then you should approach the MDO which provided your indemnity at that time.

Where there is a sequence of events that have led to a claim that both *pre and post* dates 1 April 2019 period, then

- If you are or were an MDDUS or MPS member at the relevant times, both CNSGP and ELSGP will be relevant to you.
- If you are not or were not an MDDUS or MPS member at the relevant times, only the CNSGP will be relevant and will be applicable to the *post* 1 April 2019 period. You should approach both NHS Resolution and the MDO that provided you with indemnity prior to 1 April 2019 – please be reassured that they will work closely together in relation to the management of the claim.

#### Private work

The CNSGP would not cover any private work that you undertake hence you must ensure that you have appropriate alternative indemnity arrangements in place to cover such work.

#### Non-claims matters

The CNSGP provides indemnity in relation to clinical negligence claims only, hence it **does not** extend to the provision of assistance with the following matters (an indication as to which organisation **may** be able to assist is provided in bold):

- Complaints (unless there is a concurrent claim, the Parliamentary and Health Service Ombudsman is involved, or an offer of financial compensation/redress is being contemplated in the context of the local resolution procedure). **MDO/Londonwide LMCS (constituents only)**
- The provision of medicolegal advice (beyond the scope of clinical negligence claims). **MDO/BMA/ Londonwide LMCS (constituents only)**
- GMC investigations. **MDO**
- Disciplinary proceedings. **MDO (professional conduct)/BMA (personal conduct)/Londonwide LMCS (constituents only)**
- NHS England investigations under the provisions of the NHS Performers List Regulations. **MDO (professional conduct)/BMA (personal conduct)/ Londonwide LMCS (constituents only).**
- Employment matters. **BMA (your MDO membership may also allow you access advice in relation to employment matters)**
- Contractual disputes. **BMA (your MDO membership may also allow you access advice in relation to employment matters)**
- Inquests. **MDO**
- Criminal investigations arising from clinical practice. **MDO**
- Non-clinical claim liabilities (for example, a defamation claim). **MDO**

**In order to provide you with cover in relation to the above matters Londonwide LMCs unequivocally recommends that you maintain membership with both an MDO and the BMA (please refer to the below link).**

[Professional protection from a medical defence organisation \(MDO\)](#)

Details about the scope of the benefits of membership of the MDOs<sup>2</sup> and the BMA can be found at the following links:

- [The MDU - GPs in Training](#)
- [The MDU - GPs](#)
- [General Practice Protection | MDDUS](#)
- [Medical Protection Society](#)
- [The BMA - About us](#)

Is there anything I should be aware of in relation to my membership of an MDO/the BMA?

You should be aware of the following matters:

- The scope of the membership offer provided by the respective organisations.
- You **must** be honest about the nature, extent and scope of your practice when you apply to join the organisation (and update them if it changes) as if you are in the incorrect category of membership, you may not be entitled to assistance.
- You **must** include and provide an honest explanation about any previous/ongoing issues if called-upon to do so at application.
- You **must** ensure that your membership does not lapse.
- You will **not** be entitled to assistance in relation to matters that pre-dated your membership.
- You **must** seek assistance appropriately and follow the advice that is provided (**as an aside, Londonwide LMCs are aware of cases when GPs have not sought assistance about criminal allegations in which the GP provided statements to the police in the absence of MDO advice, which potentially compromised their case**).

Partnership matters

If you are a GP partner or are contemplating becoming a GP partner, you **must** give consideration to the following matters<sup>3</sup>:

- You **must** ensure that you have a partnership agreement/deed in place for the following reasons:

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<sup>2</sup> As indicated above, other providers are available.

<sup>3</sup> This is not intended to be a comprehensive guide to all matters relating to partnership liabilities, however it provides an indicative guide as to some of the consideration.

- There is in effect a contractual obligation to have a partnership agreement/deed.
- If there is no partnership agreement in place, then the partnership is a *partnership at will*, which leaves the partners and the partnership in a vulnerable position – for further information, please refer to the BMA's advice at the below link:

[The importance of an up-to-date partnership agreement](#)

- You **must** ensure that you have adequate and appropriate public liability insurance in place (to cover a claim brought by a patient, staff member or other visitor to the practice that they have sustained an injury on the premises [examples include but are not limited to slips, trips and falls]).
- You **must** ensure that you have access to employment advice (which may be provided by the BMA and/or may be included with MDO practice membership).
- You **must** ensure that you have adequate and appropriate employer liability insurance in place (this is to cover any compensation awards and legal fees if an employee or ex-employee sues for illness or injury caused by their work).
- The partnership might wish to consider having locum insurance in place to help cover the costs of GP locums in the event that one of the GP partners has to take long-term sickness absence.

Is there anything I should be aware of in relation to employment advice, public liability and employer liability insurance?

You should be aware of the following matters:

- You should seek and follow professional employment advice at an early stage.
- When considering any prospective insurance policy, you should be mindful of the following matters:
  - Price.
  - The scope and extent of cover provided.
  - Policy exclusions.
  - Policy obligations (for example – reporting requirements).
  - Caps – the policy could have a cap in relation to how much it will pay out (which could be applied in a single claim on an aggregate of claims over the insured period and may include legal fees) – in such circumstances, the partnership will be responsible for meeting any award of damages or costs that exceeds the cap.
  - Voluntary excess payments.
  - You **must** ensure that your cover does not lapse.
- Non-indemnifiable risks – some risks are deemed non-indemnifiable – in general terms such risk amount to the imposition of fines (or similar). The reason that such risks are deemed to be non-indemnifiable is that part of the purpose of a fine is that it is punitive, and this function would be negated if it was possible to pass this onto an insurer or indemnifier. An example of this may be the imposition of a monetary penalty by the Information Commissioner's Office as a consequence of a breach of data protection legislation.

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