

Education and Training Committee, 10 March 2011

Professional indemnity insurance

Executive summary and recommendations

### **Introduction**

This paper appeared as a paper to note at the Council meeting on 10 February 2011 and is included in the agenda at this meeting of the Education and Training Committee as the Committee's remit includes matters related to registration.

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](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](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.



# Response to the Independent Review of the Requirement to have Insurance or Indemnity as a Condition of Registration as a Healthcare Professional

The four UK Health Administrations welcome the publication of this report and their joint response to it is set out below.

## **Policy Background**

We believe that, on the rare occasions when patients, the public, and service users suffer harm through negligence on the part of a registered healthcare professional, redress should be available to them.

To further this objective, Government has sought to introduce a requirement for healthcare professionals to have insurance or indemnity cover in place as a condition of their registration with their regulatory body.

## **Background to the Review**

Following discussions with the nursing and midwifery trade unions about the possibility of introducing a new requirement for nurses and midwives to have insurance or indemnity cover in place as a condition of their registration, the previous UK Administration commissioned an independent review of policy on insurance and indemnity cover for health professionals.

The specific purpose of the review was to make recommendations to Government as to whether requiring healthcare professionals to have adequate indemnity cover in place as a condition of their registration was the most cost effective and proportionate means of ensuring that there is a means of seeking redress where a healthcare professional has been negligent.

An independent review group (made up of representatives from regulators, professional bodies, patient/public representatives and other interested parties) was established by the then Secretary of State for Health in England, with the support of Ministers in Northern Ireland, Scotland and Wales to take forward work arising from the Review. The review group was led by Finlay Scott, the former Chief Executive of the General Medical Council.

## **Response to Recommendations**

The response of the four UK Health Administrations to the review group's specific conclusions and recommendations is as follows. For ease of reference these have been grouped into categories.

**Legislative Changes:** (recommendations 1-5, 8-10, and 12-19)

We agree with the principles set out in these recommendations, with particular emphasis on the clarity the report recommends as to the respective powers and duties of both regulatory bodies and healthcare professionals. Provisions should be consistent across health regulation, and introduction of any requirements should not be framed so as to require individual employees to obtain personal cover themselves when they are already covered by corporate or employer cover which is sufficient to ensure redress is available.

Accordingly, legislative changes will be introduced at the next most appropriate opportunity to give effect to these recommendations.

Such legislative changes will be considered in light of any new requirements of the proposed Directive of the European Parliament and of the Council on the Application of Patients' Rights in Cross-Border Healthcare (the EU Directive) which is likely to ensure a mechanism of redress which places responsibility for possession of Cover on providers of healthcare, including individual healthcare professionals acting independently.

We are conscious that the systems of insurance and indemnity, and bodies which potentially could enforce and monitor compliance at a provider level, are different across all four countries. In addition, the Department of Health's White Paper *Equity and Excellence: Liberating the NHS* sets out a package of extensive reforms to the architecture which governs the delivery of healthcare services in England. Therefore, the Department of Health in England is conscious that methods of implementation need to be compliant with these plans as they develop.

The Scottish Government's No Fault Compensation Review Group has recently submitted its report which is currently being considered. However some further work needs to be done around the costs associated with the recommendations before a response is given and before the report is published. Some of its recommendations may well be relevant to consideration of recommendations of the Independent Review.

**Coordination, Cooperation and Communication:** (recommendation 6-7)

We are in full agreement with these recommendations and will draw them to the attention of those bodies concerned. These are clear recommendations which recognise the real need to widen public and professional knowledge about insurance and indemnity. The key to this is clear and co-ordinated messages.

**Public Awareness:** (recommendation 11)

We endorse the recommendation that regulators should consider communicating with the public on the matter of indemnity and insurance and will bring this to the attention of the regulators.

**Market Issues:** (recommendation 20)

We agree with this recommendation and will take forward work on a case-by-case basis where this is appropriate.