

To: All Practices in Surrey & Sussex

24th October 2017

Dear Colleagues

Update – Indemnity Insurance

I am writing to update all colleagues on developments in GP Indemnity since the announcement by the Secretary of State that the Government would introduce a state-backed indemnity scheme over the next 12 to 18 months, a policy that has been widely welcomed as addressing the inequity between GPs and medical colleagues working within the NHS Trust sector, who are able to rely on the pooling CNST [Central Negligence Scheme for Trusts] for medical negligence claims relating to their NHS work. It is not anticipated any GP scheme would cover private work, or the indemnity required for NHS England or GMC performance processes, for which hospital colleagues continue to pay individually.

All GPs must maintain their indemnity cover until the state scheme commences and the full details of that scheme are available.

Almost immediately following that announcement and as I noted in my letter last week, the MDU announced an approximately 50% reduction in GP subscription fees for renewals after 1st November 2017, anticipating there would be a reduced future claims liability upon the MDU once the state scheme came in to operation. This must be true if a state based scheme is introduced, since claims arising after the introduction of the scheme will be covered. However, what is less clear is if the scheme will take on the liabilities for claims arising before the state scheme was introduced, but are not yet known about.

This issue relates to the difference between claims based and occurrence based indemnity. Medical indemnity is normally occurrence based: this means that indemnity is provided based on the date on which the adverse incident occurs, not the date on which it is reported or becomes known about. If you are indemnified at the time as adverse incident occurs, then with an occurrence based cover you have the necessary protection even if it is years later, you are no longer a member [of the indemnity scheme you were at the time] or if you have ceased practicing. Claims based protection is a more typical insurance arrangement in which a period of membership provides cover for claims arising during that period of cover, usually with conditions in terms of reporting the incident as soon as it is known about and with only a short, or no, grace period after the end of the paid period of protection.

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This works well with, for example, accident, theft or damage insurance, but the difficulty for medical negligence is that under current arrangements adult patients can usually bring a negligence claim up to three years after they become aware they have suffered harm, but in the case of children this is three years after the age of 21. There are exceptions which can extend the claim period for longer.

The MPS provides statistics indicating only 30% of claims are notified to the MPS within a year of the adverse incident and 5% are unreported eight years after the incident. Occurrence based protection is thus more expensive, because provision needs to be made for unreported liabilities, however, the risk can be predicted and so many claims-based schemes allow for the purchase of "run-off cover" after the period of policy cover, which insures against possible but as yet unreported adverse incidents. The cost of this cover is a balance between the general costs of insurance, the speciality risk and, if it can be identified, the risk of the individual being covered. The MDU refers to this as 'Extended Benefit Rights'. When the CNST, effectively a state funded medical scheme for Trust doctors, was introduced in the 1900s, future liabilities were accepted by the scheme: the MDU website argues this is likely to occur again in any comparable GP scheme, although the potential cost and political environment may be different over the next few years than in 1990.

Full details of the MDUs approach and the MPS and MDDUS comments, remembering this is a commercial environment, are available on their respective websites and members of each organisation are likely to receive correspondence about this issue. At present the MPS and MDDUS do not appear to be introducing what the MDU describes as a Transitional Benefit Scheme in anticipation of a GP state scheme:

Medical Defence Union (MDU): www.themdu.com

Medical Protection Society (MPS) : www.medicalprotection.org

Medical and Dental Defence (MDDUS) : www.mddus.com

Accordingly, it now appears unlikely any substantially reduced renewal subscription will be available in the short-term to MPS and MDDUS members, particularly in view of their comments about the MDU for doing so, but this may change as more details of the state backed scheme for General Practice becomes available. Unfortunately, this is not likely in the near future, since discussions with the Government on the scope of the scheme have only just commenced and also because at least some elements of the way the scheme will operate may need to be agreed as part of the 2018/19 or even 2019/20 GP Contract negotiations. It may also be the MDU will modify its Transitional Benefit proposals prior to their planned introduction on 1st November or decide to defer this membership option.

Overall however, despite the uncertainties, the underlying policy of introducing a state GP indemnity scheme to mirror that available to Trust medical colleagues is a huge step forward and will tackle one of the significant identified barriers to GP recruitment and retention.

I am sure there will be many more updates to follow.

With best wishes.

Yours sincerely

A handwritten signature in black ink, consisting of a stylized 'JP' followed by a long horizontal line extending to the right.

Dr Julius Parker
Chief Executive