

Council - 26 March 2009

Professional indemnity insurance

Executive summary and recommendations

Introduction

The subject of professional indemnity insurance was previously discussed by the Council on 3 July 2008 (in their private meeting). The Council requested a paper from the Executive at a future meeting of the Council.

Decision

The Council is asked to discuss the implications for the Council and other stakeholders should professional indemnity insurance become a statutory requirement.

Background information

Minutes from Council meeting 23 January 2003, Enclosure 7

http://www.hpc-uk.org/aboutus/council/councilmeetings_archive/index.asp?id=22

Resource implications

None.

Financial implications

None.

Appendices

- Professional Indemnity (PI) Insurance discussion paper
- Regulator's professional indemnity insurance requirements

Date of paper

16 March 2009

Professional Indemnity (PI) Insurance

This paper invites the Council to discuss the possibility of PI insurance becoming a requirement for registration with the Health Professions Council (HPC). The paper provides the background and context of PI insurance as well as the requirements made by the other UK health regulators. There are questions later in the paper that the Council may want to use to help inform their discussions about the possible implications that a requirement for PI insurance may have on the Council and its stakeholders.

The Department of Health (DH) has stated that they want to extend the provision for compulsory indemnity cover (or insurance) as a condition of registration for each profession. As the opportunity arises, they are looking to add this to the legislation as part of wider legislative change.

The DH have asked whether introducing compulsorily indemnity cover in our legislation would be controversial, or whether it would cause any difficulties to individual practitioners who are working in private practice or as individuals. The DH has asked whether there any specific groups of practitioners we regulate who would be disadvantaged by such an approach. This includes the impact any requirement may have on our registrants over other healthcare professionals because of the lower pay many registrants receive.

As a result of these developments it is timely that the Council discusses and makes recommendations on this issue.

Background and context

PI insurance provides financial cover against claims for loss or damage by a service user or third party if the service provider has made mistakes, or is found to be negligent in some way. PI insurance can also cover legal costs. This would not include fitness to practise (FTP) decisions because they do not involve financial penalties.

We (the HPC) do not currently require registrants to have PI insurance as a condition of their registration. PI insurance is not specified in our legislation or rules. It is unlikely that we could introduce requirements for mandatory PI insurance cover without at least a rule change and potentially the need for a change to the Health Professions Order 2001.

A number of registrants are already covered by PI insurance schemes. These schemes vary between those held by employers and those which protect the individual. Those who are based in managed environments are usually covered by PI schemes, for example, employers such as the NHS hold PI insurance which covers their employees. Professional body membership can also include PI insurance, and a number of registrants have private PI insurance.

Regulatory context

The Council first considered the appropriateness of requiring PI insurance at the 21 January 2003 Council meeting¹. The Council agreed with the recommendations of the Conduct and Competence Implementation Working Party not to make PI insurance obligatory for all registrants, but to make reference to it in appropriate explanatory leaflets and brochures.

The 2007 White Paper 'Trust, Assurance and Safety – The Regulation of Health Professionals in the 21st Century' stated: *'In response to a government initiative, indemnity insurance is also becoming a requirement.'* (6.3, p.75).

Further reference to PI insurance was made in the Council for Healthcare Regulatory Excellence (CHRE) 2008 report 'Special report to the Minister of State for Health Services on the Nursing and Midwifery Council' (NMC). The report said that not requiring indemnity insurance as a condition of registration was an example of decisions being made in the professions' interest rather than the public interest (3.5.12, p.14).

In the private session of the 3 July 2008 Council meeting, the Council noted that reference had been made in the CHRE NMC report to the issue of PI insurance for health professionals. The Council agreed that this issue should be considered at a future meeting of the Council.

Requirements of the UK health regulators

All of the other UK health regulators make some requirement for PI insurance. However, their requirements, the specific policies, how they check whether appropriate PI insurance is held, and the implications for FTP vary. Appendix 1 provides a guide to the requirements of the other UK health regulators.

None of the regulators specify whether the registrant must be covered privately, by a professional body or defence organisation, or by their employer's indemnity scheme.

The NMC is the only regulator that does not make having PI insurance a requirement of registration. The NMC 'recommend' in their code of conduct that registrants have PI insurance. All the other health regulators require their registrants to have and maintain PI insurance for the period of their registration, but the requirements for the type of PI insurance must have varies. For example, the General Dental Council (GDC) requires registrants to have and maintain 'adequate' or 'appropriate'² PI insurance.

¹ The paper can be found at:

http://www.hpc-uk.org/aboutus/council/councilmeetings_archive/index.asp?id=22

Enclosure 7.

² The definitions of 'adequate' and 'appropriate' are open to interpretation, the General Dental Council (GDC) are currently consulting on their interpretation of these terms.

Some of the regulators such as the General Chiropractic Council (GCC) and the General Osteopathic Council (GOsC) have it written into their rules and legislation that PI insurance is required. In the case of the GCC the legislation specifies that the cover must be for a minimum of £3 million. Others, such as the GDC and the General Medical Council (GMC) provide guidance to their registrants.

None of the other regulators recommend specific policies but some encourage joining defence organisations or professional bodies. The GOsC regularly publishes criteria that the policies must meet and are the only regulator that approves insurance providers. The GOsC does not require their registrants to take out their PI insurance with the approved providers, but, they must ensure the cover they take out meets the requirements of the GOsC. The Royal Pharmaceutical Society of Great Britain (RPSGB) encourages registrants to check the classified section of the Pharmaceutical Journal.

How regulators gather the information on whether the registrant has PI insurance varies widely. Of those who have the power to check, the GCC, the General Optical Council (GOC) and the GOsC check at registration and renewal. The GDC and GMC have the power to check at registration and renewal but do not currently do so. They do ask for evidence of PI insurance when a complaint is made. The RPSGB's requirements are linked to both individual registration and to the registration of premises, the RPSGB check during routine visits to pharmacies.

There is little evidence that PI insurance has been a factor in many FTP cases. The GOsC suspended one registrant for not having PI insurance, and the GDC stated that it has only been an issue alongside other issues. The RPSGB have had three cases resulting in all three registrants being struck off. None of the other regulators advised us of any formal action being taken.

Discussion

The Council is now asked to discuss the implications for the Council and other stakeholders should PI insurance become a statutory requirement. Below are a number of questions that the Council may want to consider. The questions are provided to assist the Council in their discussions; they are not intended as a definitive set of questions.

- **Is PI insurance necessary?**

The Council is asked to consider whether to recommend that PI insurance should be obligatory for all registrants. We have not received any information that HPC registrants not having PI insurance has resulted in problems for service users or registrants. However, FTP does receive enquiries from members of the public seeking compensation.

CHRE have also not provided any evidence that a lack of PI insurance has been an issue with any of the health regulators.

We do not know how many of our registrants have PI insurance, what level of cover they hold, the type of PI insurance they hold, or who provides the insurance.

The Council is asked to consider whether the purpose of regulation and the HPC as a regulator is to support the ability of a service user to gain financial compensation from a registrant. By requiring PI insurance as a condition of registration we would be moving away from being a body that looks at the skills, conduct, performance and ethics of registrants, to a body that helps to provide compensation. However, the Council should also be aware of their responsibility to promote the interests of the public.

One outcome could be for the Council to advise that PI insurance is necessary but not conditional for registration. This would mean it would be necessary to produce guidance and advice to inform members of the public and registrants on the HPC's requirements for PI insurance.

Further questions for consideration

Below are a number of questions that the Council may want to consider should they decide that PI insurance will be a requirement for being on the Register.

- **Who is PI insurance for?**

The aim of PI insurance is to provide financial compensation for negligence or mistakes. This begs the question of whether the purpose of PI insurance is for the protection of the public or the protection of the professional against financial liability for mistakes or negligence.

Another question raised is whether PI insurance should be required in all the settings that the HPC registrants work in. The Council may want to consider whether PI cover should be required by all registrants irrespective of their work environment, their role, whether they work part-time or are not currently practicing.

- **What type of cover would be required?**

If the Council decides that PI insurance is required of all registrants, the Council may want to consider what an 'adequate' and 'appropriate' level of cover would be. The Council may also want to consider the type of cover, the amount of cover, and whether the cover should vary for each profession.

The Council may want to consider whether appropriate PI insurance should be held by each individual registrant or if they could be covered by an employment scheme.

Consideration should be given to the risk posed by the professions on the Register. The Council may want to consider whether the level of PI insurance cover may vary between professions or individual practices. For example, should a paramedic in private practice have the same level of cover as a part-time podiatrist who has ten regular service users?

We are a multi-disciplinary regulator and recognise that registrants in all of the professions, and within professions, work in a variety of settings. The Council may want to consider whether a system that requires the same level of cover would allow for registrants to move to different settings.

The Council should also be aware of the importance of the length of cover that may have to be stipulated. It is essential that any PI insurance that covers a registrant in the present would also cover the registrant for any claim made must protect today but must also cover future claims based on historical incidents.

- **Who provides the cover?**

There are already a number of PI insurance packages available. The Council may want to consider what types of cover would be required and who would be able to provide the cover. At present, cover held by an individual can be provided by a private insurance provider, the employer, a professional body or a defence organisation.

The Council may want to consider recommending insurance providers whose cover meets our requirements. If the Council chooses to do this, they should be aware that many professional bodies approve and accredit PI insurance schemes. The revenue from these schemes often provides a revenue stream for the professional body. The Council may want to consider the potential impact on the professional bodies if the Council took the approach of approving providers.

- **When would cover be required from?**

The Council may want to consider when they would require registrants to be covered, when they would check that registrants have appropriate cover, and the methods they would use to collect this information. Any decisions must be proportional and reasonable.

If the Council decides that information to confirm a registrant holds PI insurance should be provided at the point of renewals and registration, the Council may wish to consider whether registrants would be asked to sign a declaration that they hold the appropriate cover or whether verifiable proof would be required.

If compulsory, we would have to have verifiable proof of insurance. Original copies or certified copies may be required which would result in an extra cost to registrants. Another option would be to link PI insurance to CPD and use sampling methodology. However, if a serious and untoward incident arises with a

registrant who does not have PI insurance it might lead to criticisms that we are not carrying out our role as a regulator properly.

- **What would the impact be on Fitness to Practise?**

The Council may want to consider the potential impact that requiring PI insurance would have on FTP. Would people be removed from the Register? How would people rejoin the Register? What appeals requirements would be necessary?

- **What would be the operational impact?**

The Council may want to consider and be aware of the potential impact on the operations in the HPC. Consideration would have to be given to how registrants would be informed. A consultation outlining the requirements would need to be conducted with appropriate time built in to the project plan for appropriate responses and a communications strategy.

Overall decision

The Council is asked to consider the implications for the Council and other stakeholders should PI insurance become a statutory requirement.

The ongoing impact of this work is dependant on DH policy and any subsequent legislation. The Executive will keep the Council up to date of any further developments and will provide further papers dependant on subsequent legislation and the Council's discussions.

Appendix 1: Regulator's professional indemnity insurance requirements

Regulator	Requirement	Where stated	Policy recommended	How is info collected?	FTP implications
General Chiropractic Council	Whilst practicing, registrants must have and maintain professional indemnity insurance	General Chiropractic Council (Professional Indemnity Insurance) Rules Order 1999	No specific policy recommended.	Checked at registration and at annual renewal.	Failure to comply with the rules constitutes unacceptable professional conduct and may be referred to the Investigating Committee. No recent PII cases.
General Dental Council	Registrants must, if they have provided advice or treatment whether currently or in the past, have indemnity insurance or be a member of a defence organisation.	2006 amendment to the Dentists Act, 1984. GDC currently consulting on interpretation of 'adequate' and 'appropriate'.	No specific policy recommended.	Checked at registration and renewal.	New powers to investigate this. A number of recent FTP cases which involved failure to have PII (often alongside other issues).
General Medical Council	Registrants must hold adequate insurance or professional indemnity cover for any part of their practice not covered by an employer's indemnity scheme.	Good Medical Practice Guidelines 2006	No specific policy recommended. Registrants are encouraged to join a defence organisation	Not presently checked.	Possible that action could be taken, depending, of course, on the circumstances of the case. Very rare and no formal action has been taken.

Nursing and Midwifery Council	Recommended that registrants have professional indemnity insurance. Especially important where employers do not accept vicarious liability.	NMC Code Of Professional Conduct: Standards Of Conduct, Performance and Ethics Part 9	No specific policy recommended.		Difficult to make FTP case against, as only recommended in the code. However, proceeded with a case where registrant did not disclose fact they did not have PII.
General Optical Council	To register as an optometrist or dispensing optician, you must be adequately covered by an appropriate, UK-valid professional indemnity insurance policy.	Online, under their FAQs about Registration	No specific policy recommended. Members of professional bodies eg AOP can obtain insurance at a reduced rate	When an individual registers, renews or restores they must provide appropriate indemnity insurance details. Which are checked with the insurance company.	If a registrant is found to be practising without appropriate insurance, they are removed from the register by the Registrar and may potentially have to answer a fitness to practice case.
General Osteopathic Council	To register with the GOsC you must be covered by approved and appropriate Professional Indemnity Insurance.	Code of Practice, Clause 91 also Osteopaths Act 1993 and GOSC Professional Indemnity Rules	No specific policy recommended. It regularly publishes criteria the policies must meet.	Checked after registration and then annually on renewal.	Failure to maintain PII may constitute unacceptable professional conduct. Currently, one interim suspension order against someone practising without PII.

Pharmaceutical Society of Northern Ireland	Pharmacists must ensure that all activities they undertake are covered by professional indemnity arrangements.	Code of ethics.	No specific policy recommended.	Not presently checked.	No cases to date.
Royal Pharmaceutical Society of Great Britain	Pharmacists must ensure that all activities they undertake are covered by professional indemnity arrangements.	Code of Ethics (7.7)	No specific policy recommended. Pharmacists are encouraged to check the classified section of the Pharmaceutical Journal.	Checked during routine visits to pharmacies.	Three cases involving lack of PII. In each case, considered so serious that the registrant was struck off.