

**By email**

For the attention of :- Medical Directors NHS  
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cc.

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Dear colleagues

**Re: Medical indemnity requirements for joining the England National Performers List**

This letter is intended to provide some guidance to local teams when considering applicants to the medical performers list (MPL) to ensure that all doctors have appropriate indemnity arrangements. This letter does not cover dental or ophthalmic practitioners on the national performers list. Further work is ongoing with the regulators and representative bodies and guidance will be published soon.

As you will be aware, the NHS Performers List (England) Regulations 2013 provide at Regulation 2, that the interpretation of “Indemnity Insurance” means an arrangement which may comprise:-

- (a) Policy of insurance;
- (b) An arrangement for the purpose of indemnifying a person; or
- (c) A combination *[of (a) and (b)]*

It further provides at Regulation 4 (provision for the inclusion of a practitioner onto the Performers List) for the practitioner to have an *“appropriate indemnity arrangement”*.

With more providers of medical insurance joining the market, there are greater numbers of doctors who are seeking a medical insurance policy to cover medical negligence claims as an alternative to indemnity through a medical defence organisation. (MDO)

A number of local teams have been debating what level of insurance is required as a minimum, to allow a doctor to be accepted without conditions onto the medical performers list. The General Medical Council states in their guidance to doctors (*Good medical practice 2013*) that “*you must make sure you have adequate insurance or indemnity so that your patients will not be disadvantaged if they make a claim about the clinical care you have provided*” There is however no guidance under the regulations regarding what adequate insurance or indemnity cover should look like for doctors providing general medical services. Under insured doctors present a risk to patient care, but also, through vicarious liability, can also present a significant risk to both general practices and GP partners with whom they work.

Inflation in the claims market means that the cost of indemnity in both primary and secondary care sector rises at approximately 10% a year with the value of compensation payments doubling approximately every 7 years. For this reason, it is not possible to say that indemnity cover of £Xm this year will be sufficient in three or four years’ time. We need therefore to adopt dynamic arrangements that give NHS England confidence that all doctors registered on the MPL have up to date adequate indemnity cover.

This position statement is intended to provide for a level of consistency in decision-making by local teams and has been informed by awards arising from clinical negligence in primary care in recent years in excess of £7m. In light of the methodology employed by Courts in these types of cases, future awards of damages for both loss in earnings and the provision of care can vary greatly. With increasing life expectancy it is foreseeable that an award could be made in excess of that figure.

Therefore, in recognition of the type of work routinely undertaken in primary care, dealing with undifferentiated illness, NHS England’s guidance is for performers to have indemnity provision of **£10m** as a minimum in order to be included onto the Performers List.

This sum is considered to be an appropriate level of indemnity provision to satisfy the Regulations in 15/16 and 16/17. As always, there may be exceptions to the general rule, and such cases should be debated at a Performers List decision making panel (PLDP). In order to maintain national consistency advice should be sought from NHS England’s central legal team to ensure we consider any repercussive consequences in accepting a different level of cover.

It is intended that this guideline figure should be reviewed annually to account for an increase in levels of damages awarded by the Courts. It is proposed that the indemnity arrangement figure

of £10m be review on **1<sup>st</sup> April 17** and thereafter each year to fit with the annual cycle for GP trainees joining the MPL. Any change to the level of indemnity cover required will be subject to any intervening legal challenge or change in the legislation.

For those practitioners already on the list then it is proposed that a doctor's indemnity is considered at annual appraisal. At appraisal a doctor is expected to make a declaration that they accept the professional obligations placed on them in Good Medical Practice in relation to probity and consider whether there are any matters in relation to probity which they wish to discuss with their appraiser. This includes recognition that the doctor accepts the statutory obligation to ensure that they have adequate and appropriate medical insurance or indemnity covering their full scope of work in the UK. Changes to the appraisal MAG form have been made to draw attention to this issue for appraisees and appraisers.

Our position has yet to be tested through the courts; the legal team continue to work with us to update the evidence supporting our position statement, therefore if a case is being challenged through a PLD it would be a useful to share this evidence so that our position can be tested should a case be appealed to the First Tier Tribunal.

Best wishes



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