

## MEDICAL INDEMNITY REFORMS

# Medical indemnity – what you should know

If you're working in the medical sector, you must read this, writes **Kevin McCluskie**

THE GOVERNMENT is concerned that private patients are being seen by consultants who are supported by an unregulated indemnity based on 'discretionary cover' as offered by the medical defence organisations (MDOs).

Any claim could be refused without consultant recourse, leaving both the consultant and the patient exposed to financial loss.

The Government wants to review this and has issued a consultation paper on *Appropriate Clinical Negligence Cover* for those who practise in the independent private health sector.

The paper seeks views of two options:

1. Leave arrangements as they are;
2. Introduce legislation to ensure that consultants in independent private practice hold appropriate cover that is subject to appropriate supervision by a regulator.

Currently in the UK, the regulators in question are the Financial Conduct Authority (FCA) or the Prudential Regulation Authority (PRA).

The Government has clearly signalled that its preference is option two.

This means that 'discretionary indemnity', which is currently offered by the MDOs, could become a thing of the past.

#### This is because:

- MDOs that offer 'discretionary cover' have no legal obligation to pay any valid claims;
- MDOs have no legal requirement to ensure that they have adequate funds to pay claims;
- MDOs have no legal require-

ment to declare their financial position;

- MDOs are not bound by FCA rules to treat customers fairly.

#### What is the alternative?

Currently, the alternative is the insurance market, which has been active in this area for many years.

#### Why conventional insurance?

■ The cover that the insurance companies offer is not discretionary; it is guaranteed within the policy and enforced by law.

■ Insurers are regulated by the FCA and the PRA, and this gives greater all-round financial security and claims funds are regulated and guaranteed by law.

■ Insurers offer stable pricing which is cost-effective based on individual circumstances.

■ Insurance offers wide cover, designed for 21st century risk threats.

Besides clinical negligence and GMC investigations, an insurance bundle of cover could offer such things as defence of reputation,

cyber liability, tax investigations and more.

Insurance policies are flexible contracts and are tailored to fit consultants' personal circumstances.

For instance, excesses can be chosen to reduce costs, limited companies can be included and retroactive dates to pick up historical claims and run-off cover to offer indemnity after retirement are now standard.

#### What action should I be taking?

Check your current indemnity policy to establish whether you only have 'discretionary cover' and then decide if that's a risk you are prepared to continue to take.

If not, then you need to look at the alternatives and act sooner rather than later.

Currently, there are several insurers who can underwrite medical indemnity insurance.

If the Government takes decisive action, it is expected demand will outstrip supply by a considerable margin while the market adjusts to the new rules.



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We have experience of this when the Solicitors Mutual Fund failed in 2000 and solicitors had to buy insurance – many being unable to obtain it.

#### How do I do this?

Contact Medical Broking Company; we have vast experience in this sector and are regulated by the Financial Conduct Authority.

We have to offer impartial professional advice by law regarding which policy is right for your circumstances.

Visit <https://medbc.co.uk/medical-indemnity> for more information, where you can fill out an inquiry form and we will get back to you. Alternatively, get in touch by phone on 01494 387800 and talk to us. Or email us at [medmal@medbc.co.uk](mailto:medmal@medbc.co.uk).

Get the facts and explore your options. ■

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