

Health and Care Professions Council (HCPC) Consultation on guidance for registrants to hold statutory indemnity to practice
Chartered Society of Physiotherapy
Consultation response

To: Consultation on professional indemnity insurance
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The Chartered Society of Physiotherapy (CSP) is the professional, educational and trade union body for the UK's 51,000 chartered physiotherapists, physiotherapy students and support workers.

The CSP welcomes the opportunity to respond to the Healthcare Professions Indemnity Consultation.

Our response is focussed on the areas in which we feel we can most effectively contribute to the debate. We would be pleased to supply additional information on any of the points raised in our response at a later stage.

The contribution of physiotherapy

Physiotherapy enables people to move and function as well as they can, maximising quality of life, physical and mental health and well-being. With a focus on quality and productivity, it puts meeting patient and population needs, and optimising clinical outcomes and the patient experience, at the centre of all it does.

As an adaptable, engaged workforce, physiotherapists have the skills to address healthcare priorities, meet individual needs, and to develop and deliver integrated services in clinically and cost-effective ways.

Physiotherapists use manual therapy, therapeutic exercise and rehabilitative approaches to restore, maintain and improve movement and activity. Physiotherapists work with children, those of working age and older people; across sectors; and in hospital, community and workplace settings. Physiotherapists facilitate early intervention, support self management and promote independence, and help prevent episodes of ill health and disability developing into chronic conditions. Physiotherapy supports people across a wide

range of areas including musculoskeletal disorders (MSD); many long-term conditions, such as stroke, MS and Parkinson's disease; cardiac and respiratory rehabilitation; children's disabilities; cancer; women's health; continence; mental health; falls prevention.

Physiotherapy delivers high-quality, innovative services in accessible, responsive, timely ways. It is founded on an increasingly strong evidence base, an evolving scope of practice, clinical leadership and person-centred professionalism.

1. Is the guidance clear and easy to understand? How could we improve it?

- 1.1 We support the requirement for registered health professionals to have appropriate indemnity arrangements in place. This is commensurate with the expectation that health professionals practice in a safe, responsible and accountable manner, and that should include provision for compensation to patients in cases of proven negligence.
- 1.2 There needs to be a clear explanation of what 'indemnity' is, and that it relates to medical malpractice. Many healthcare professionals do not have an understanding of the principles of indemnity, methods of providing indemnity, nor the nuances of types of risk and liability, and it would be helpful in the introduction to include some brief explanation and clarity of terms. For example:
 - 1.2.1 'Indemnity' – This means 'securing against loss' and refers to arrangements that are put in place to provide compensation for losses incurred. A policy of insurance is one way of providing indemnity for losses.
 - 1.2.2 'Professional Indemnity' – In this context means the arrangements you have in place to cover your civil liabilities from claims arising from medical malpractice and professional risk.
 - 1.2.3 'Public Liability' – In this context it means the arrangements you have in place to cover your civil liabilities from claims arising from your work that are not associated with personal injury to your patient.
- 1.3 Within the section 'Meeting the requirement' it needs to be made clear that an employer's arrangement will only provide cover for activities performed as part of employment, which the employer has authorised. An employer's scheme does not provide blanket cover for all work undertaken in whatever context.
- 1.4 Within the section 'Your responsibility as a registrant' it would be helpful to add the words '...for your work' in the second sentence after the words '...cover in place'. Whilst this appears a small point, it is necessary to be clear that the cover is required for ALL work undertaken, and moreover there will still be a requirement to have appropriate cover in place for periods when registrants are not working.
- 1.5 Overall, the section on 'Appropriate professional indemnity' is not at all clear, and is likely to be confusing to registrants. We would suggest structuring as follows:

- 1.6 For the first paragraph it would be clearer to describe that –
‘There must be arrangements in place to cover your liabilities to your patients arising from medical malpractice, professional practice and public liability risks. The context in which you work, the types of patient you treat, and the tasks you perform may affect the level of appropriate cover you require.’
- 1.7 If paragraph 1 is reworded appropriately, we would recommend paragraph 2 be deleted for clarity. As currently written paragraph 1 may lead to registrants taking a rather ‘task’ orientated approach to their work, rather than an overarching approach to professional risk which includes both what is performed and the whole context of professional practice.
- 1.8 Paragraph 3 needs to be reworded to be clearer. The first bullet point of the summary page is clear and these bulleted points should be repeated in this section. Paragraph 3 may be better worded as:
‘If you are an employee, you may be covered by your employer’s arrangements for those activities that you perform for your employer as part of your job. If you are unsure, you should always ask what is covered by your employer’s arrangements. Your employer may require you to hold your own personal indemnity arrangements in addition to any employer’s scheme that is in place.’
- 1.9 It must be remembered that it is not for the registrant to satisfy themselves that any employer’s arrangements are suitable, nor for the employer to believe they can subrogate their statutory employer responsibilities to the employee. NHS employers will be covered by the NHSLA scheme, and there is scope that the NHSLA scheme may become available to larger private commercial healthcare companies delivering NHS services in the future. However, many healthcare employers do not understand the nature of the cover they are required to have for their regulated health professional employees, and it is unreasonable to hold an employee accountable for the acts and/or omissions of an employer in the procurement of employer’s vicarious insurance. An employer’s liability scheme only covers the activities of the employee which an employee carries out during the course of their employment, and which the employer has authorised. The wording as it stands could give the impression that simply being covered by an employer’s scheme will cover ALL working contexts, and this is not the case.
- 1.10 Paragraph 4 is generally clear, though not the phrase ‘...[you should] declare any relevant risk to your insurer’ may not be necessary. It is generally ‘activities’ that are insured against a risk materializing, rather than risks per se being indemnified. Moreover, in the employed context, how would an employee be able to identify individual relevant risks directly to an insurer? In cases where schemes are brokered, or schemes are underwritten by syndicates, the individual will often have no knowledge of the actual underwriter anyway. It would be helpful to provide clear guidance to registrants who work in ‘portfolio’ roles e.g. who are employed, but also undertake some degree of self-employed work as well. For example:
‘If you are an employee and you also undertake some self-employed work, you will need to ensure you have appropriate arrangements in place for your self-employed work, as this will not be covered by your employer’s scheme.’

- 1.11 Paragraph 5 is also unclear. The HCPC accepts that practising a profession included activities within education, management, research and leadership roles. Whilst risks of medical malpractice will clearly be diminished for non-direct practice roles, the wording may be better phrased as:
‘You should make sure you continue to have appropriate indemnity cover in Place if you move into education, management, research or leadership roles, as these are still considered to be practising activities. You may also need to maintain appropriate cover for your previous work if you take maternity leave, a career break, or other break in service.’
- 1.12 We support the wording of Paragraph 6. The onus on the individual practitioner to take responsibility for their indemnity arrangements promotes the expectation of personal accountability and responsibility for one’s own practice. Within physiotherapy, whilst the scope of the profession as a whole is broad and diverse, individual physiotherapists determine their own scope of personal practice according to their individual education, training and competence. To that end, the risks of practice may vary from practitioner to practitioner, and thus so will the necessary levels of indemnity cover. For example, in the case of the indemnity scheme offered to members of the Chartered Society of Physiotherapy (CSP), those working with high net worth individuals such as elite sports people are able to increase their levels of indemnity over and above the levels provided to the membership as a whole. Where there is a range of risk profiles within a profession, it is appropriate that those undertaking higher risk work have proportionately greater levels of cover, than those working in areas with a proven low risk profile.
- 1.13 The section on ‘Voluntary and Good Samaritan acts’ is not clear. It is not helpful to suggest that ‘voluntary work does not require HCPC registration’. As in many cases this is not correct. Many physiotherapists undertake voluntary work, for example with community sports teams and/or children, where they are clearly practising their profession using a protected title, and so HCPC registration is required by law. Whilst your following sentence then goes on to qualify the statement, it may be better to revise your paragraph structure and remove the unhelpful second sentence.
- 1.14 It would be helpful to make an explicit statement with regard to the scope of professional activities requiring registration. The HCPC makes clear that it considers roles in education, management, research and leadership to be professional activity as well as direct practice roles. It would be helpful therefore to add a paragraph to this effect, so that all registrants are clear of their need to have indemnity in any context where a claim for negligence could arise.
- 1.15 The section ‘Checking that cover is in place’ could be better structured to be clearer. It may be helpful to have a paragraph that deals with people applying to be registered for the first time or re-registering after a period off the register. For example, the existing draft paragraph 7 is suitable wording that could be improved upon by, for example:
‘If you are applying to be registered with us for the first time, or you are re-registering with us, we will ask you to sign a declaration to confirm...[existing wording is fine.]’

- 1.16 For registrants renewing their registration, it may be clearer to have revised wording. For example:
'When you renew your registration with us, we will ask you to make a declaration about the professional indemnity cover you have in place and you will be asked to confirm that either (tick one)
- You have appropriate cover in place for your work
 - If you are not currently working that you have appropriate cover in place to cover the relevant periods when you were working
 - You will have appropriate cover in place when you recommence working.
- 1.17 The final paragraph within 'Indemnity cover and fitness to practise' needs reviewing. As stated earlier, it is not for an individual registrant to check that an employer's cover meets the needs of the individual beyond understanding that cover is provided for their employed work and for the employer to state that cover is in place. Moreover, where such indemnity is provided as part of professional body membership, such as the CSP PLI scheme for members, the individual member is not party to the contract negotiations for the terms and conditions of the group cover, nor would it be appropriate for individuals to make direct approaches to the underwriters. Nor do individuals have to make individual disclosures to effect individual endorsements to the group policy. This paragraph is only relevant for registrants who choose to make their own individual arrangements for cover, and who thus in effect, make a direct contractual arrangement with an insurance provider.
- 1.18 Equally, it must be remembered that not every registrant will be indemnified by a contract of insurance, and other forms of indemnity are acceptable. Better wording might be:
'It is your responsibility to ensure that the cover you have in place is appropriate to the needs of your work. Your employer can tell you the extent of an employer's cover. If you are covered by a professional body scheme, you should read the terms and conditions of the cover provided. If you make individual arrangements directly with an insurance provider, as with all insurance policies, you must disclose all material information which may affect whether the contract you enter into is valid and enforceable. A registrant who knowingly has inadequate indemnity arrangements in place for their practice would be liable for fitness to practice proceedings.

2. Is the guidance applicable to different groups of health and care professionals affected by the requirement to hold indemnity cover? If not, which groups have we missed?

- 2.1 We note that physiotherapists who are only subject to 'temporary registration' are likely to be excluded from the indemnity requirements. This does not create an equitable landscape across all professionals and potentially leaves patients treated by temporary registrants at risk of not having access to compensation in cases of proven negligence. All patients should be reassured that their health professional is indemnified regardless of whether the nature of the work is temporary or permanent in the UK.

- 2.2 We also believe that relevant requirements for indemnity insurance should be extended to the group of visiting health professionals who may accompany patients under the Directive 2011/24/EU of the European Parliament and of the council on the application of patients' rights in cross-border healthcare. The HCPC should clarify if it has any influence on the insurance status of professionals accompanying patients to the UK. This group does not require any HCPC registration as long as they only treat the patient/patient group they are accompanying - therefore the extent of any HCPC influence on indemnity cover for this group is unclear.
- 2.3 The guidance needs to be clear that the proposed indemnity arrangements apply to all those required to hold statutory registration. The guidance needs to be more explicit that those working in education, management, research and leadership roles whilst registered will also be required to have appropriate indemnity, not just those in direct practice.
- 2.4 It should be made clear that the HCPC does not regulate students, however, the HCPC should advise students to consider their own individual indemnity needs and how those may be met by their HEI's or other suitable arrangements such as from a professional body, whilst on clinical placement.

3. Could any parts of this guidance be reworded or removed?

- 3.1 If the regulators are clear on the scope of insurance/indemnity arrangements which need to be in place to satisfy the insurance provisions, then registrants need only confirm that they have (a) individual insurance as a self-employed practitioner (b) insurance as part of an association membership benefit or (c) they are included within their employer's insurance/indemnity arrangements.
- 3.2 The provision in (c) assumes that each worker has only one place of work. The consultation makes clear that where members are solely employed, then the employers cover is adequate, but where members are self-employed that individual cover is required. The CSP is aware that many of our members undertake an employed role as their main income, but also undertake a variety of self-employed or voluntary roles, for which individual indemnity is required. There needs to be clear guidance that where workers undertake more than one role, then additional cover is needed. Moreover, consideration needs to be given to the manageability of this, and whether it will be flexible enough to manage temporary contracts of employment, or frequent changes of employer. 'Portfolio' working is an increasing feature of modern working patterns and must be reflected in this guidance.
- 3.3 Our comments with regard to re-wording and editing are covered in our answers to Question 1.

4. Do you have any other comments on this guidance?

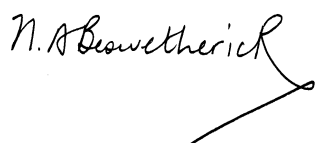
- 4.1 In cases where registrants fail to have good reason for their lack of indemnity arrangements, or fail to make provision for such arrangements when advised to do so, then we would support the possible sanction of formal warnings from the HCPC, followed by removal from the register. However, this must be balanced against the

risk that such individuals may continue to practice, without indemnity and without regulation, and thus potentially leave patients without recourse to either regulatory sanction or compensation in the cases of proven negligence.

- 4.2 As previously stated, within the NHS these questions are relatively straight forward to answer, but much more complicated within the private sector, with many employers themselves not understanding the nature of the cover they are required to take out on behalf of their healthcare professionals regulated by statute. It is wrong to suggest, therefore, that licenses to practise should be withdrawn in circumstances where the employer has failed to maintain adequate insurance. The failure of employers to hold appropriate employer insurance is not the responsibility, or fault, of the individual registrant.
- 4.3 The CSP believes that all regulated health professionals should be treated equally. Introducing indemnity requirements to the HCPC registered professions brings these professional groups in line with other health professions.
- 4.4 The guidance should make clear that it relates to cover for individual liabilities for medical malpractice and professional activity, and does not relate to the separate matters of business/corporate liabilities that individuals may have by virtue of how they structure their working arrangements, nor does it cover any criminal liabilities.

5. Conclusion

- 5.1 We support the requirement for registered health professionals to have appropriate indemnity arrangements in place.
- 5.2 The CSP has raised a number of concerns in this response which need to be addressed before mandatory indemnity arrangements can be introduced.



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For further information on anything contained in this response or any aspect of the Chartered Society of Physiotherapy's work, please contact:

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