

Health Care and Associated Professions (Indemnity Arrangements) Order 2013

Chartered Society of Physiotherapy
Consultation response

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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. Do you agree that the requirement for healthcare professionals to have an indemnity arrangement in place should match the requirements set out in the Directive and place an obligation on healthcare professionals themselves to ensure that any indemnity arrangement in place is appropriate to their duties, scope of practise, and to the nature and the extent of the risk?

- 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. However, the requirements set out in the Directive do not actually detail the scope of cover required, merely that self-employed practitioners should obtain individual covers and employees must demonstrate they are protected under an employer's arrangement.
- 1.2 It will be profoundly difficult for employees to confirm whether their employer's insurance/indemnity arrangements are adequate and satisfy the regulators insurance requirements without clarity and definition of what that cover should entail. In order to help healthcare professionals understand what an appropriate policy for their particular profession is, we believe the regulator should provide more detailed guidance.
- 1.3 The onus on the individual practitioner 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, depending on the personal scope of practice, 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 pay proportionately more for cover, than those working in areas with a proven low risk profile.
- 1.4 Whilst the recommendations are for the individual healthcare professional to insure themselves if on a self-employed basis, the recommendation should also extend to include their vicarious liability for the negligent acts of any assistant/support workers engaged by them (and who may not themselves be insured).
- 1.5 We note that consultation does not address issues of the amount of indemnity required and we support this. The levels of indemnity required will vary according to

personal scope of practice and type of work undertaken, and will also vary over time according to claims experience. Therefore it should be a matter for individuals and their indemnity advisers to consider the level of indemnity required for responsible practice.

- 1.6 The document refers to healthcare professionals who are subject to 'temporary registration'. We believe the term 'visiting European health and care professionals under the EU Directive on the recognition of professional qualifications 2005/36/EC' better describes this group of professionals.
- 1.7 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.
- 1.8 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.

2. Do you agree with the proposed definition of an indemnity arrangement?

- 2.1 As stated above the definition does not actually provide any guidance on the policy make up merely referring to 'Professional Indemnity Insurance'. Whilst the indemnity provided by the CNST for NHS employees is a constant and easily understood, the different covers available in the commercial market for self-employed practitioners and corporate entities can vary dramatically.
- 2.2 Whilst CSP members employed within the NHS or private sector as employees will or should have the benefit of their employer's insurance/indemnity arrangements, such protection may be compromised if the employee has acted beyond the scope of their employment.
- 2.3 Physiotherapists who are registered with the Health and Care Professions Council (HCPC) comprise practitioners, physiotherapy managers, educators and researchers. Whilst many practitioners are employed in the NHS or are self employed, educators and researchers are frequently employed by Higher Education Institutions, research bodies and charities.
- 2.4 In addition, we have noted that our members are increasingly becoming portfolio workers holding a number of concurrent positions involving part-time NHS posts with part time lecturer or research post, or part-time NHS with part-time self-employed work or positions in the voluntary sector. As a result our members cannot be entirely reliant upon their employers' insurance to cover all such scenarios.
- 2.5 The CSP's PLI cover provides protection to all members where they are held personally accountable for any negligence (within the scope of physiotherapy practice) regardless of their employment status at the time.

3. Do you agree with the proposed provisions that set out: (a) What information needs to be provided by healthcare professionals, and when, in relation to the indemnity arrangement they have in place; (b) The requirement to inform the Regulator when cover ceases; and, (c) The requirement for healthcare professionals to inform their regulatory body if their indemnity arrangement is one provided by an employer?

- 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 In the case of physiotherapists, the CSP, as the professional body, brokers a group indemnity scheme for the benefit of all its working members (and students) who are eligible for cover. One of the eligibility criterion for that cover is registration with the regulator. Therefore these provisions will require suitable structures in place to allow regulators and professional bodies to communicate and share information.
- 3.3 The purpose for provision (b) should be clarified, particularly if it is to be linked to removal from the register. If a registrant is no longer able to satisfy the insurance requirements of their registration, they should immediately notify the regulator. If there is no intention to continue insurance (because the registrant is no longer practicing), then confirmation should be provided to the regulator that provision for run-off cover has been arranged. However, many health professionals may have short periods where they are not working, and thus do not need active indemnity e.g. the self-employed who take maternity leave or career breaks. Such short breaks are currently permissible without the need to de-register and re-register and if the need to prove indemnity is to become the overarching requirement for registration, then impact of this on current provisions need to be fully explored by the regulator.
- 3.4 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.
- 3.5 Membership of the CSP, in a category that provides indemnity, is predicated upon demonstrating HCPC registration, so we welcome the provision that allows regulators to request information about what indemnity arrangements will be in place 'in future before commencing work'. This will enable physiotherapists to obtain registration and then apply for membership to the professional body for the purposes of securing indemnity.

4. Do you agree with the proposal to allow healthcare professional regulatory bodies the ability to refuse to allow a healthcare professional to join, remain on, or return to, their register, or, for the GMC, to hold a licence to practise unless they have an indemnity arrangement in place?

- 4.1 We agree that no healthcare professional should be allowed to practice without appropriate insurance. However, we would reiterate the comment made in 3.3 above regarding maternity leave or short career breaks.
- 4.2 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 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.

5. Do you agree with the proposal to permit healthcare professional regulatory bodies to remove a healthcare professional from their register, withdraw their license to practise, or take fitness to practise action against them, in the event of there being an inadequate indemnity arrangement in place?

- 5.1 The regulator needs to establish what constitutes 'inadequate indemnity arrangements'. One of the challenges employed registrants will have is ensuring that the employer maintains adequate insurance cover on which they are reliant. Greater clarity is needed on whether it will be necessary for employment contracts to be amended, so that the employer is obliged to take out and maintain "appropriate" insurance. If this is to be the case, clarity is required as regards how the employee will satisfy themselves as to the efficacy of such cover and how can they prevent it being compromised by the actions of the employer (failing to comply with policy conditions).
- 5.2 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 difficult to suggest, therefore, that licenses to practice should be withdrawn in circumstances where the employer has failed to maintain adequate insurance.
- 5.3 Without the statutory obligations extending to employers and professional associations, there appears to be an inequality in the ability for employed registrants to establish adequate insurance provisions when arranged either by an employer or their professional association compared to a self-employed practitioner arranging their own individual cover.
- 5.4 As stated in 1.5 above, we note that consultation does not address the issue of the amount of indemnity required and we support this.

6. Please provide any information with regard to the potential barriers to independent midwives moving to alternative governance and delivery practices in order to obtain appropriate indemnity arrangements.

6.1 The CSP does not have anything to add on this point.

7. Do you agree that the provisions in the Draft order should only apply to qualified healthcare professionals and not students?

7.1 We agree that the Draft order should only apply to qualified healthcare professionals and not students, for the reasons set out in paragraph 53 of the consultation document.

8. Are there any equalities issues that would result from the implementation of the Draft Order which require consideration?

8.1 We would reiterate the comment made in 3.3 above regarding maternity leave or short career breaks.

9. Please provide comments as to the accuracy of the costs and benefits assessment of the proposed changes as set out in the Impact Assessment (including, if possible, the provision of data to support your comments).

9.1 None available.

10. Please provide information on the numbers of self employed registered healthcare professionals and whether they are in possession of indemnity cover or business insurance which includes public liability insurance and professional indemnity insurance.

10.1 The CSP has a membership of more than 51,000 of which at least 35,000 are registered physiotherapists who are working. Whilst we have no specific figures, we estimate that at least one third of our member physiotherapists are engaged in some form of self-employed work, either alone or in conjunction with employment.

10.2 The CSP provides a comprehensive package of individual indemnity to our members who are eligible to benefit from the scheme. It also includes public liability insurance. The CSP scheme does not provide specific business insurance, although our members engaged in business activities can arrange such cover through the CSP's brokers if they wish.

11. Please provide information on the numbers of employed healthcare professionals who, in addition to working in an employed capacity covered by an employer's arrangement for indemnity or insurance, undertakes self-employed practice. Where possible, please provide information as to whether they are in possession of indemnity cover or business insurance which

includes public liability insurance and professional indemnity insurance for that self-employed element of their practice.

- 11.1 As outlined in 10.1 and 10.2 above, the CSP does not have specific figures, but we estimate that at least one third of our members undertake some form of self-employed work, either alone or in conjunction with other employment.

12. Do you have views or evidence as to the likely effect on costs or the administrative burden of the proposed changes set out in the Draft Order?

- 12.1 The CSP has nothing to add on this point.

13. Do you think there are any benefits that are not already discussed relating to the proposed changes?

- 13.1 The CSP has nothing to add on this point.

14. Do you have any further comments on the Draft Order itself?

- 14.1 The order is relatively clear to understand and clearly arranged such that provision for each regulated professional group can be found.

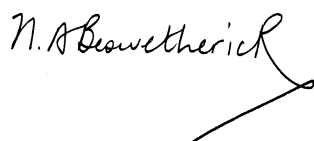
15. What are your views on extending the requirement to hold an indemnity arrangement as a condition of registration to all professionals statutorily regulated by the Health and Care Professions Council? This would cover Social Workers in England only.

- 15.1 The CSP believes that all regulated health professionals should be treated equally. Introducing indemnity requirement to the HCPC registered professions brings these professional groups in line with other health professions.

16. Conclusion

- 16.1 We support the requirement for registered health professionals to have appropriate indemnity arrangements in place.

- 16.2 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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