

Response to General Dental Council consultation on guidance on professional indemnity and insurance cover

June 2023

1. Introduction

- 1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and registration of people working in health and care. We are an independent body, accountable to the UK Parliament. More information about our work and the approach we take is available at www.professionalstandards.org.uk
- 1.2 As part of our work we:
- Oversee the ten health and care professional regulators and report annually to Parliament on their performance
 - Accredit registers of healthcare practitioners working in occupations not regulated by law through the Accredited Registers programme
 - Conduct research and advise the four UK governments on improvements in regulation
 - Promote right-touch regulation and publish papers on regulatory policy and practice.

2. General comments

- 2.1 We welcome the opportunity to comment on the General Dental Council's (GDC's) revised guidance on professional indemnity and insurance cover. It is vital that healthcare professionals and practitioners hold appropriate cover which allows patients and service users to access compensation if they suffer harm as a result of treatment received. Unfortunately, there have been some high-profile cases recently where patients have been left without access to compensation for harm caused.
- 2.2 The Paterson Inquiry Report called for the Government to: 'as a matter of urgency, reform the current regulation of indemnity products for healthcare professionals, in light of the serious shortcomings identified by the Inquiry and introduce a nationwide safety net to ensure patients are not disadvantaged'.¹ In response to this, the Government have committed to bring forward proposals for reform of clinical negligence cover in 2023, building on a previously begun programme of work. This is however unlikely to result in immediate change to the requirements on healthcare professionals.

¹ *Report of the Independent Inquiry into the Issues raised by Paterson*, February 2020. Available at: <https://www.gov.uk/government/publications/paterson-inquiry-report>

- 2.3 We recognise that this is a complex area and there may be limitations in what regulators can reasonably require from registrants under current legislation. However, we welcome the GDC's work to strengthen its own guidance on this issue. In our view the revised guidance is clearer and is likely to prove more helpful to registrants in understanding their responsibilities. However, we would like to see a clearer description of the differences in the types of cover available including the factors which may affect whether a claim is covered.
- 2.4 The 2018 government consultation on appropriate clinical negligence cover highlighted that: 'it is unclear the extent to which regulated healthcare professionals are aware of the differences between discretionary and contractual (insurance) cover'.² It is important that the guidance helps registrants understand this when choosing the type of cover they need.
- 2.5 The GDC may also wish to engage with dental indemnity and insurance providers on the need for them to provide clarity on the basis on which they might not cover a claim against individual products.
- 2.6 It would also be helpful for the guidance to be clearer on the legal basis for the requirement for indemnity cover and any relevant legal interpretation or legal advice received on how this should be interpreted and the scope to provide guidance to registrants.
- 2.7 We have provided our detailed comments under the relevant questions below.

3. Detailed comments

Question 4: To what extent do you agree or disagree that the proposed guidance on professional indemnity and insurance provides a clear explanation of what dental professionals must do to be compliant with legal and regulatory indemnity or insurance requirements?

- 3.1 Neither agree nor disagree.
- 3.2 The revised guidance is an improvement on the previous 2016 version. It is much more focussed on public protection and looks likely to provide greater support to registrants in considering how to meet their obligation to hold appropriate cover so that patients can access compensation if something goes wrong with their treatment.
- 3.3 However, there are some additions that we think could be made to strengthen the guidance, in particular to help mitigate the risks associated with primarily discretionary cover being withdrawn in certain circumstances which may leave patients without access to adequate compensation. We have outlined further detail in our answer to question 5.

² Department of Health and Social Care 2018, *Appropriate clinical negligence cover A consultation on appropriate clinical negligence cover for regulated healthcare professionals and strengthening patient recourse*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777469/Clinical_negligence_indemnity_consultation.pdf

Question 5: Please tell us if there is anything else that you think should be included in the proposed update to the guidance on professional indemnity and insurance cover.

- 3.4 We note that there have been some recent cases where discretionary indemnity cover has been withdrawn by the provider (due to a range of different factors) leading to patients being unable to claim compensation for harm caused during treatment. This happened in the case of Clive Worthington who was unable to claim compensation awarded for harm caused by mistakes made during dental work he received and very sadly subsequently took his own life.
- 3.5 We think that the guidance could be clearer on the limitations and conditions of different kinds of clinical negligence cover, for example the difference between discretionary indemnity cover and a contract of insurance. It could also be more explicit on the circumstances in which a claim might not be covered, drawing on recent examples. This may include actions by the registrant such as those leading to a criminal conviction, working outside of their scope of practice (undertaking tasks not covered by the policy) or lack of cooperation with the indemnifier.
- 3.6 The GDC may also wish to engage with providers of indemnity products on the information they provide to registrants on specific products and what the limitations might be.
- 3.7 We recognise that the GDC is required by its legislation to allow as appropriate cover: 'a policy of insurance, an indemnity arrangement, or a combination of the two'. It may be helpful for the GDC to clarify whether it has sought any legal advice on the scope it has within its legislation to provide guidance to registrants on how to interpret the requirement for 'appropriate' cover and the limitations of particular types of cover.
- 3.8 It may be helpful to outline within the guidance the legislative basis for the requirement for indemnity cover and any relevant legal interpretation.

Question 6: Please tell us if you have any further comments about the proposed update to the guidance on professional indemnity and insurance cover.

- 3.9 Although not an omission from the guidance itself, it might have been helpful for the GDC to cross-reference the work being undertaken to move away from a more prescriptive approach to higher-level guidance on scope of practice.
- 3.10 In our response to the scope of practice guidance consultation we noted that the GDC may wish to consider engaging with providers of indemnity insurance who may utilise existing scope of practice guidance to support development of indemnity products. This was in response to feedback received from stakeholders about the potential implications of the change in approach for providers of indemnity and insurance. It may therefore be helpful to acknowledge the links between the two pieces of work.

Question 7: Please tell us about any impacts you think the proposed guidance may have with regard to the protected characteristics, or any other aspect of equality, diversity and inclusion.

- 3.11 We don't have detailed comments to make on possible impacts on those with protected characteristics but would expect the GDC to fully assess the equality impacts of the revised guidance before it is introduced.

4. Further information

- 4.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

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