

Professional Indemnity Insurance: Statement of Good Character, Conduct & Health

The new Nursing & Midwifery Council has informed the Council that it has received clear, legal advice that there should be a clause in its own version of the above requiring all nurses, midwives and health visitors to have professional indemnity insurance. That Council states that “The advice makes clear that this represent par the of the Council’s responsibilities in terms of public protection, i.e. promoting the interests of patients and clients, as well as enhancing the good standing and reputation of the professions. The vast majority of nurses, midwives and health visitors are covered for acts or omissions by dint of their employer’s vicarious liability insurance scheme. The requirement would be to ensure that indemnity cover was in place for all activities not provided for by an employer’s vicarious liability insurance scheme, e.g. for private or independent practice, or some aspects of practice such as counselling.” It should also be pointed out that the majority of the HPC’s registrants are covered also by their professional association’s indemnity insurance schemes. The clause which the NMC has drafted for possible inclusion into its Statement is as follows:

A registered nurse or midwife in advising, treating and caring for patients/clients must be indemnified against claims for professional negligence. This is in the interest of both patients/clients, who may have a right to compensation, and the registrant.

Many employers provide liability insurance to cover the acts or omissions of their employees. Such cover does not, normally, extend to activities carried on outside of work, nor private or independent practice. Nurses and midwives must obtain adequate insurance or professional indemnity cover for practice which is not covered by an employer’s indemnity scheme.

As can be seen from the Working Party’s minute 02/41.1, it believed that the imposition of such a requirement on all registrants would potentially result in a considerable financial burden on at least some of them and that whether or not registrants were covered by professional indemnity insurance was not the Council’s concern. However, it was agreed that before a final decision was made on this, legal advice be sought. Mr. J. Bracken has given the following advice:

There is no express obligation on the Council to require registrants to hold PI insurance, but as it is common for many other professions to be required to hold such cover, it is a matter which the Council should consider as part of its regulatory functions having regard to its main objective of safeguarding the health and wellbeing of patients. If no such obligation to insure is imposed by the Council then there is a possibility that it may be subject to legal challenge if a victim is unable to recover damages from a negligent registrant.

Whether a requirement to insure advances that objective must be in some doubt. Clearly the existence of an insurance policy will mean that a patient who suffers harm at the hands of a registrant has better prospects of recovering any damages awarded by a court (or of reaching a settlement with the insurers) but, unless insurers are pro-active in advancing standards of care, the existence of such insurance is unlikely to make a significant contribution to improving standards of professional conduct or reducing the likelihood of such harm.

The Council needs to weigh all the factors, including the extent to which insurance is already provided by the NHS and other employers of registrants, the level of uninsured private practice, the scope for negligent registrants to cause harm and so on. Clearly the HPC will be regulating a much larger number of private practitioners than its predecessor but that alone does not mean that PI insurance should be a requirement to practise. Ultimately this is a decision for members to make after a proper consideration of the facts.

Taking the example of midwifery, there is a real prospect of a midwife being sued for negligence arising during the delivery of a child that results in the child being brain damaged. That sort of claim would give rise to a potentially huge financial liability. Looking across the 12 HPC professions it is difficult to imagine circumstances in which, for example, a dietitian, arts therapist or chiropodist might be involved in cases with that level of risk or liability. In those instances where an HPC professional may cause real harm - overdosage by a therapeutic radiographer, mismanagement of a spinal injury by a paramedic, mismatching of blood by an MLSO -any liability is likely to arise in NHS practice and therefore be covered by the employer's insurance in any event.

After considerable discussion, the Working Party on 7th January did not recommend that the obtaining of professional indemnity insurance be made obligatory for all registrants, namely it did not believe that this should be made an absolute requirement for registration. It therefore recommended to the Council that an item on professional indemnity not be added to the Statement of Good Character, Conduct and Health. It nonetheless agreed that registrants, in accompanying explanatory leaflets, be strongly advised to obtain such insurance, and that the public, in the appropriate explanatory leaflets and brochures, be advised to satisfy themselves, when they were considering consulting or seeking treatment from practitioners in private practice registered with the Council, that these registrants were so covered.