

Appropriate Clinical Negligence Cover Consultation
Acute Care and Quality Directorate, Fifth floor
Department of Health and Social Care
39 Victoria Street, London
SW1H 0EU



19 February 2019

Dear Sirs

A consultation on appropriate clinical negligence cover for regulated healthcare professionals and strengthening patient recourse

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a history of working to help injured people gain access to justice they need and deserve. We have around 3,400 members committed to supporting the association's aims, all of which sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

We welcome the opportunity to respond to the Department of Health and Social Care's consultation on appropriate clinical negligence cover. It is vital that all healthcare professionals have clinical negligence cover in place that is sufficient to meet the cost of any claims brought. We share the Department of Health and Social Care's concerns about the current arrangements. With no obligation on insurers offering discretionary indemnity cover to honour the claim, or to demonstrate that they can meet the cost of a claim, injured people may be under compensated or not compensated at all.

What are your views on the proposed options for meeting the Government's policy objectives?

APIL believes that all providers of NHS services should be covered by a state backed indemnity scheme. While we welcome the introduction of a state backed scheme for GPs, we fail to see why any state backed scheme should not cover all healthcare professionals providing NHS services, including, for example, dentists. This would ensure certainty for both the healthcare professional, and anyone who is injured by their negligence and needs to bring a claim for compensation.

APIL recommends that for all private healthcare providers, including GPs and dentists providing services in a private capacity, the Government should pursue option 2. APIL members report that they have experience of medical defence organisations exercising their discretion not to pay out for an insurance claim, and this leaves the injured person unable to seek redress. There should also be a requirement that those who hold private indemnity insurance are checked annually by their regulator, for example the General Medical Council, or Nursing and Midwifery Council, to ensure that the insurance that they hold is appropriate and will meet the cost of any claims brought.

Run-off cover

Indemnity cover provided by the state backed scheme, and by regulated insurance contracts should also be required to include run-off cover. We note that the consultation states that the period of cover for most contracts of insurance is determined on a "claims made" basis. Therefore, at present, additional run-off cover must be purchased by those no longer in

practice or else no longer insured, to cover any historical claims made. As the consultation points out at paragraph 5.35, there is a risk that patients may not be appropriately compensated for future claims if healthcare professionals do not take out appropriate run-off cover. Therefore, both the state backed scheme, and the cover provided through a regulated insurer, must include run-off cover as standard.

Minimum levels of cover

APIL also believes that any cover provided should be unlimited, to ensure that regardless of the value of the claim, the injured person can obtain the compensation that they need to be put back, as closely as possible, to the position they were in before the negligence.

We hope that our comments prove useful to you.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Alice Taylor', written in a cursive style.

Alice Taylor

Legal Policy Officer