

Revisions to the Guidance on Indemnity and Insurance

Consultation Outcome Report

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1. Introduction

This report provides a summary of the responses from the General Dental Council's (GDC's) consultation on proposed changes to our Guidance on Indemnity and Insurance. The report also provides our considerations of the responses, including detailing any amendments we have made as a result of feedback received.

The consultation was open for responses from all stakeholders including patients, dental professionals and representative bodies from 28 March 2023 until 20 June 2023.

The consultation asked for views on an important professional responsibility and legal requirement, as all dental professionals must have indemnity or insurance arrangements in place that ensure appropriate cover in all circumstances that arise through their practice. The cover should also ensure that any patient who suffers harm is able to receive compensation in the event of a successful claim.

The consultation invited feedback on the proposed guidance which aimed to clarify our expectations of each individual dental professional in relation to appropriate indemnity and insurance cover, and to support professionals to ensure that appropriate cover is in place.

The consultation paper is available on our [website](#).

2. Background

The GDC is the regulator of dental professionals in the UK, and one of ten professional healthcare regulators. The GDC is a statutory body established by the Dentists Act 1984 and has a broad statutory remit. In common with all other healthcare professional regulators, our overarching objective is the protection of the public, in pursuit of which we must pursue the three following objectives:

- To protect, promote and maintain the health, safety and well-being of the public.
- To promote and maintain public confidence in the regulated professions.
- To promote and maintain proper professional standards and conduct for members of those professions.

Parliament has also set out four functions (our 'statutory functions') that we must carry out in pursuit of these objectives. They are:

- To maintain a register of dental professionals.
- To set standards for the dental team.
- To set standards for dental education.
- To investigate allegations of impaired fitness to practise and take appropriate action where necessary.

The purpose of this guidance is to clarify our regulatory requirements for dental professionals regarding their indemnity or insurance cover. Dental professionals applying for registration or restoration, and those renewing their registration each year, are required to tell us that they have indemnity or insurance cover in place – or that they will have it by the time they start practising.

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3. Consultation on updating the Guidance on Indemnity and Insurance

Questions and analysis

To assist with the analysis of responses, the following information about respondents was gathered:

- Whether a respondent was replying as an individual or on behalf of an organisation.
- If they are a registered dental professional (including the title of their professional group).
- If they are on a specialist list.
- How they would best describe themselves or their organisation.

We asked five questions in the consultation about the proposals. One of these questions was a scale question, which required the respondent to indicate one answer from a pre-set list. This was followed by an open question asking people to explain their answers. There were three further open questions, and respondents were able to answer these questions in an open text box.

Separately to the questions we asked about the proposed guidance, we provided an anonymous optional survey to collect information about the protected characteristics of the people making responses. We collect this data in order to understand who we are, and are not, hearing from to ensure we are reaching out to a wide range of audiences when consulting. Of the 49 who completed the consultation survey, 12 people answered the voluntary equality, diversity and inclusion (EDI) survey, and these responses were spread across a variety of options within each of the EDI questions. This dataset is too small to include analysis in this consultation. However, we will continue to analyse the EDI survey responses across all our consultations, to ensure we are doing more to engage hard to reach groups.

How we reviewed the consultation responses

We started the analysis of the responses once the consultation window closed. Responses for closed (quantitative) questions are reported in the form of summary tables. For open text (qualitative) questions, a coding framework was prepared for each question to categorise each response and identify key themes across all responses.

How we promoted the consultation and engaged with stakeholders

Prior to the launch of the consultation, we developed a communications and engagement plan.

At the launch of the consultation, we made the consultation materials available on our website and promoted them with correspondence to our stakeholders, social media posts and a press release. We also included announcements and reminders of the consultation via our monthly newsletter to stakeholders.

We used the opportunities in our regular meetings with stakeholders to introduce the consultation and encourage responses. We also held an online stakeholder event on 5 June 2023 which was attended by over 60 people including dental professionals and indemnity providers.

Respondents had the option to either read and respond to the consultation paper online via our website and a survey platform or download a copy of the paper and submit their response via email.

4. Headline analysis of consultation responses

We received 59 responses to the consultation. 54 of these were submitted to us using the online platform. One response was a completed consultation document sent to us via email. The other four responses were submitted from organisations in the form of general feedback about the consultation proposals rather than responses to the set questions. These were therefore considered more broadly as part of the consultation analysis process.

37 of the responses were submitted by individuals. 17 responses were from organisations, these were mainly from professional representative bodies and providers of insurance and indemnity cover. We also received a response from the Professional Standards Authority (PSA). The remaining five respondents did not answer or provide information about whether they were responding as an individual or on behalf of an organisation.

Table 1 – Number of responses from organisations and individuals

Response	No. of responses*	%**
Individual	37	62.7
Organisation	17	28.8
Blank/did not say	5	8.5
Total	59	100

*Some respondents submitted their responses both through the online survey and by email, and some respondents submitted duplicate online responses. Duplicates have been counted only once towards the total number of responses.

**Throughout this report, percentages within tables have been rounded up or down to one decimal place.

Responses were made on behalf of the following organisations who have agreed to be listed in this report:

The British Association of Dental Nurses
Bangor University
British Dental Association (BDA)
BDA Indemnity
British Association of Private Dentistry
British Society of Dental Hygiene and Therapy
Bupa Dental Care
Dental Professional Alliance
Dental Protection (MPS)
Dental Technologists Association
Medical and Dental Defence Union of Scotland
Professional Standards Authority
Society of British Dental Nurses
Taylor Defence Services Ltd
The British Association of Clinical Dental Technology
The Medical Defence Union
The Regulation Quality Improvement Authority
UK Special Risks

Not all respondents answered every question, and in our analysis of each question we have adjusted the base rate number (n) to reflect the number of completed responses.

In general, responses from organisations contained more detail than those from individuals, and this is reflected in the analysis of the feedback. The breakdown of the responses we received can be found in the tables below.

Table 2 – Responses broken down by type of organisation or individual

Response	No. of responses*	%
Dental patient or member of the public	1	2.0
Professional body	9	17.6
Education or training provider	5	9.8
UK registered dental professional	26	51.0
NHS body	3	5.9
Other	7	13.7
Total	51	100

*Some respondents submitted their responses both through the online survey and by email, and some respondents submitted duplicate online responses. Duplicates have been counted only once towards the total number of responses.

26 of the individuals who responded to the consultation identified themselves as a UK registered dental professional.

Of the seven respondents who answered ‘other’, the majority were from indemnity providers/insurers.

Table 3 – Responses broken down by type of dental professional title

Response	No. of responses*	%
Dental hygienist	2	7.1
Dental nurse	6	21.4
Dental technician	2	7.1
Dental therapist	2	7.1
Dentist	14	50.0
Orthodontic therapist	0	0
Clinical dental technician	2	7.1
Total	28	100

*Some respondents submitted their responses both through the online survey and by email, and some respondents submitted duplicate online responses. Duplicates have been counted only once towards the total number of responses.

In total, 28 individuals identified themselves as having a dental professional title – 14 dental care professionals and 14 dentists. The responses were to a multiple-choice question. One individual who responded on behalf of an organisation also identified themselves as having a dental professional title. This means that the overall number of professional titles exceed the number of respondents who identified themselves as a UK registered dental professional (26) in response to the previous question.

Table 3a – Specialist list status

Response	No. of responses*	%
On a specialist list	2	15.4
Not on a specialist list	11	84.6
Total	13	100

*Some respondents submitted their responses both through the online survey and by email, and some respondents submitted duplicate online responses. Duplicates have been counted only once towards the total number of responses.

Two respondents told us that they were on a specialist list.

5. General feedback

Overall, the proposals were welcomed by most respondents. Almost all of the organisations were positive in their feedback about our proposals. There was a suggestion that there needed to be greater clarity in the guidance about the implications of not having cover for dental nurses, and the difference between individual and employer cover.

We received feedback on aspects of the drafting in the proposed revised guidance, with requests for clarity.

Some respondents suggested that vicarious liability and non-delegable duty of care should be included within the guidance. This is to account for employers or practice principals who may need to consider whether their policies provide adequate cover in the event of a claim made by patients treated at their practice by employees, trainees or associates. We also received feedback that further detail on run-off¹ cover was required.

GDC response

We are proposing updates that seek to promote patient safety and maintain public confidence, by supporting professional standards and conduct for all members of the dental team. Our goal in reviewing this guidance is to ensure dental professionals understand the purpose of professional indemnity and insurance and what they must consider when arranging cover, most importantly the obligations they have to patients. In relation to the points raised above, while we consider that it is not the role of the GDC to give detailed advice on each type of policy cover, we have made amendments to the wording of this section to bring greater clarity. We have now included reference to vicarious liability and non-delegable duty of care within the guidance, and we have added it to the checklist within the guidance as something that dental professionals may wish to consider if they are also employers or practice principals. Although we refer to run-off cover in the draft guidance, we amended some of the wording in the updated draft to bring greater clarity. The feedback raised from consultation respondents are responded to below in the next section of this document in more detail.

¹ 'Run-off' cover ensures that you have appropriate cover for your past practising roles when you retire, or you work only in roles that do not require cover, you are taking a break from practicing, or you have switched indemnity or insurance provider. This will allow patients to be compensated against events which occurred while you were still practising, including when some years have passed.

6. Specific feedback

The questions in the consultation paper were numbered 4 – 7, as the first three questions asked for information about the respondent. There was a sub-question, 4a, which meant that there were five substantive questions about the proposals. A summary of the consultation feedback and the GDC’s response, are set out below.

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?

The consultation asked respondents to what extent they agreed that the guidance provided a clear explanation on complying with requirements for indemnity or insurance cover. They could answer the question indicating their response on a scale between strongly agree and strongly disagree. Respondents could select one answer from five options or choose not to answer. The answer options and the responses received are set out in the table below.

Table 1 – Number of responses from organisations and individuals

Response	No. of responses*	%
Strongly agree	15	29.4
Agree	22	43.1
Neither agree nor disagree	6	11.8
Disagree	5	9.8
Strongly disagree	3	5.9
Total	51	100

*Some respondents submitted their responses both through the online survey and by email, and some respondents submitted duplicate online responses. Duplicates have been counted only once towards the total number of responses.

51 respondents answered this question. 5 did not provide a response.

Overall, the majority of respondents were supportive in their response to this question. (Strongly agree/ agree = 37; 72.5%). The GDC is encouraged by the level of positive engagement from respondents and the number of suggestions for improvements made in response to subsequent questions in the consultation.

4a. Please explain your answer

44 respondents provided an explanation to their answer. The majority of respondents, both organisational and individual, were generally positive about the proposed revised guidance. Several respondents used the words “useful”, “clear” and “helpful” to describe the guidance. The section on ‘questions to consider when arranging cover’ was identified as being particularly useful to dental professionals considering the right cover for them.

Organisations were generally positive about the aims of the guidance. Dental Protection suggested that the draft guidance clearly set out legal and regulatory requirements which will help dental professionals with compliance.

A smaller number of respondents highlighted areas where the proposed guidance could provide further detail. A couple of these responses noted issues with employers making details of indemnity cover clear and available to dental professionals. Furthermore, a respondent suggested the guidance should set out the difference between being covered by your employer and having your own cover.

GDC response

We are planning to update our guidance [Supporting the Dental Team - a Guide for Managers and Employers](#) and we will include a strong recommendation to employers to share details of cover provided by the employer with the dental professional. This is important so that dental professionals can individually assess if they are appropriately covered. We are unable to provide detail about the differences between employer and individual cover as each situation is different, and there are many different types of cover to consider. However, the checklist and questions in the revised guidance will help individuals make informed decisions about their cover, and whether they require cover in addition to that provided by their employer.

We received suggestions from organisations including employers and providers of indemnity and insurance about the things we should consider including in the guidance. This included requests for details about different types of cover, including the difference between indemnity and insurance, and the risks and benefits as well as a list of things dental professionals should be covered for. One respondent suggested that the proposed guidance does not define what we mean by ‘appropriate cover’ well enough for dental professionals to understand. Several respondents made comments relating to discretionary indemnity cover and some raised concerns about the reference to this cover within the guidance citing the current absence of regulatory oversight for this type of product.

GDC response

The purpose of the Guidance on Indemnity and Insurance is to support professionals so that they have cover which will compensate patients who have suffered harm, in the event of a successful claim. This is what we mean by appropriate cover. Therefore, while we consider it to be outside of our remit to provide advice on what else a dental professional's cover should include. We agree that dental professionals should have as much information about options relating to their cover available to them, and that this should be requested from suppliers.

The Dentists Act specifically identifies indemnity arrangements, as distinct from insurance policies, as a means for providing appropriate cover. Both kinds of policy are therefore capable of providing the cover dental professionals are required to hold.

The legislation does not favour or lend more weight to one type of indemnity over another. As such, neither does the draft guidance for indemnity and insurance cover. We also cannot recommend any type of indemnity or insurance cover over another.

In 2018, the Department of Health and Social Care (DHSC) published a consultation on appropriate clinical negligence cover for regulated healthcare professionals. This consultation proposed two options. The first was to leave arrangements as they are, and the second was to change legislation to ensure that all regulated professionals in the UK not covered by a state-backed indemnity scheme hold appropriate clinical negligence cover that is subject to appropriate supervision – in the case of UK insurers, by the Financial Conduct Authority and Prudential Regulation Authority.

The Government has indicated a preference for the second option but has not yet made a firm decision, still less made the legislative changes which would follow from that decision. The guidance will be revised as necessary to reflect any future legislative change.

A few respondents queried the GDC's role in providing guidance about indemnity and insurance cover. This linked to feedback from another respondent who requested that we clearly set out the legal basis for requiring indemnity or insurance cover within the guidance.

GDC response

We agree that it is helpful to reference the legal basis for requiring indemnity or insurance requirements. We have included a reference to the Dentists Act and the Standards for the Dental Team within the revised guidance.

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.

We had 44 responses to this question. The majority of respondents suggested inclusions for improvement and/or highlighted areas where the guidance could be expanded further or where there may be gaps in the guidance. For example, some respondents highlighted the section of the draft guidance which states that 'the GDC has the right to request further information regarding your cover at any time'. It was suggested that the GDC use its power to check if a dental professional has appropriate indemnity or insurance cover more frequently by carrying out random checks. This point was made by organisations including the British Association of Dental Nurses (BADN). The BADN also indicated a preference for the guidance to direct dental nurses to be required to have their own cover, rather than rely on employer cover.

GDC response

We request a declaration of indemnity cover at registration, restoration and at annual renewal. We also request details of indemnity cover during relevant fitness to practise investigations. We have considered undertaking 'spot checks' of indemnity and have concluded that there is not currently a case for such checks to be a proportionate means of meeting our overarching patient safety aim.

The concerns raised by BADN reflect a concern that dental nurses can find themselves unwittingly without the appropriate cover, in the event that they have relied on employer cover. While the draft revised guidance directs individuals to consider specific questions relating to their individual need for cover, we recognise that there is more that we can do with representative groups to ensure that this guidance is communicated to groups of professionals, including with the support of additional materials such as case studies.

A few respondents identified areas where they suggested there were gaps in the draft guidance. This included a reported increase in overseas based providers of indemnity and insurance and how the guidance might address this.

GDC response

The draft guidance states '*you should not rely on cover obtained outside the UK for your practice here*' which means that while cover from an overseas provider is permissible, it must provide cover for incidents which occur within the UK to be considered appropriate. Declarations of cover which are made on the basis of cover which does not cover treatment in the UK will be considered false declarations and could put your registration at risk. Therefore, we consider that relying on cover obtained from outside of the UK puts greater responsibility onto the individual to check that their cover is appropriate. We have updated the revised guidance to make this point clear.

Several respondents asked for information relating to cover for vicarious liability, aimed at employers and practice owners. In this context vicarious liability refers to the situation where a practice owner might be held responsible for issues arising from the work of an employee or self-employed member of staff, including non-clinical staff. There have been several case law developments in this area in recent years.

GDC response

We recognise the importance of considering vicarious liability in specific circumstances when thinking about cover. We have now referenced this within the revised guidance and under the 'questions to consider when arranging your cover' section. The guidance around vicarious liability will be monitored to ensure it reflects any further case law developments.

Some respondents referred to the wider benefits of indemnity and insurance arrangements which go beyond fitness to practise investigations and include risk management advice. They suggested that the guidance highlights this consideration to dental professionals when deciding on cover.

GDC response

The draft revised guidance highlights the legal requirement for dental professionals to have indemnity or insurance cover which will allow patients who have suffered harm to receive compensation, in the event of a successful claim. This is a mandatory requirement for all dental professionals and an individual's registration is at risk if they do not comply.

There are additional options relating to cover which professionals can choose to take if they wish. In the draft revised guidance, we have recommended that individuals consider their indemnity and insurance needs beyond just meeting liabilities to patients. This includes considering cover which provides dental professionals with support when they are subject to fitness to practice proceedings.

Several respondents sought clarity for issues impacting Dental Technicians. For example, we received a couple of responses about Dental Technicians who solely work in a laboratory and whose indemnity is covered by their employer. The concerns relate to whether this provides them with the right level of cover, including cover which will provide them with legal representation should they find themselves subject to fitness to practise proceedings for concerns about their work or conduct issues arising from personal matters.

GDC response

We recognise that professionals may be concerned about whether they are fully covered to meet their needs and we encourage all professionals to utilise the revised guidance, including the checklist and questions to assure themselves that they have appropriate cover in place. There is a reference in the revised guidance to Dental Technicians and the potential limitations of this cover. As noted earlier, we plan to update the [Supporting the Dental Team - a Guide for Managers and Employers](#) to include a strong recommendation that all employers share details of the cover they offer with the dental professionals they employ.

Some respondents asked that the guidance included scenarios to provide further explanation about the situations where claims could be made, and further scenarios of when cover is not required. Students were referenced as one example.

GDC response

We will consider providing case studies to illustrate parts of our Guidance on Indemnity and Insurance, including common scenarios in which people may find themselves in. This will sit outside the guidance and form part of the supporting materials we plan to produce to support different aspects of professionalism. Student indemnity cover is not part of the legislative requirements, and this guidance applies to registered dental professionals and not pre-registration students and trainees. When the [Supporting the Dental Team - a Guide for Managers and Employers](#) and the Student Professionalism and Fitness to Practise Guidance are reviewed, we will seek to make these requirements clearer to employers and education and training providers.

Several suggestions were made about areas of the guidance which could be improved, and areas which could be clarified. These include:

- Clarifying that dental care professionals need to ensure that they review their indemnity or insurance cover as their scope of practice grows through their career.
- Including a requirement for foundation dentists and vocational trainees to have their own separate professional indemnity or insurance cover even when employed through a lead employer arrangement.
- Referring to insurance and indemnity as 'policies' rather than 'schemes' or 'cover' for consistency and clarity.
- Details of when claims may arise and scenarios around when these claims may not be successful.

GDC response

We have considered all suggestions for improvements, and we have amended our guidance accordingly where this was required. In response to the specific points above:

- We have now included a reference to ensuring that indemnity arrangements reflect scope of practice, as it develops through a professional's career.
- We appreciate that foundation dentists and vocational trainees require individual cover, however, there are numerous scenarios around when a dental professional may need to carefully consider their indemnity cover, including in training settings. We are not able to cover all eventualities within the guidance document and recommend that professionals speak to an adviser on indemnity and insurance if they are unsure. The draft guidance aims to demonstrate to all professionals that they are responsible for assuring themselves that they have appropriate cover, including in circumstances where employer cover is available.
- We have considered the language in the document and think that the terms are widely understood, and we have reviewed the guidance for consistency.
- We have considered the request for more details about when claims may arise in terms of scenarios separate to the guidance, however we consider the guidance to be clear in terms of needing to abide by the terms and conditions of the policy to avoid the invalidation of a claim.

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

There were 39 responses to this question. As we heard in response to the previous question, the feedback focussed on additional areas the guidance could address. Some suggestions were repeated suggestions from the answers to question 5. We have not included duplicate comments in our overview of the analysis of this section.

Several respondents suggested that run-off cover needed to be further explained in the guidance including the difference with claims-made and occurrence-based indemnity and the need for run-off cover where appropriate.

GDC response

We consider that the level of detail in the draft guidance to be appropriate to the aim of the guidance. This is to direct dental professionals to assure themselves that they have the appropriate cover to meet their individual circumstances. The guidance highlights that claims may arise even after practising or whilst taking a break from the profession. However, we have amended some wording to the revised guidance to increase clarity within this section.

Some respondents called for greater clarity in the language used in the guidance. For example, 'defence organisations' and 'insurers' to be supplemented for the term 'indemnifier'. Respondents told us that they wanted the guidance to detail further the different types of cover and what people can expect from each type.

GDC response

The guidance outlines the main two types of policy cover – claims based and occurrence based, rather than the providers who may sell various models and products, including hybrid models. It is the responsibility of dental professionals to make an informed decision as to what policy best works for their circumstances.

Other examples of feedback we received about clarity related to specific sections of the guidance. A few responses included several suggestions about small changes to wording. One example suggested changing, 'if your cover has expired – stop practising' with wording that highlights that indemnity needs to be relevant to the work being undertaken.

GDC response

We have considered the suggestions about changes to wording and retained the existing wording where we have considered this to be clear. In the areas where we have agreed that greater clarity is needed, we have carefully considered the best form of words for the guidance, and we have made these changes accordingly.

Several responses included suggestions for additions to the guidance. The suggestions mainly came from organisations including professional associations, corporate employers and providers of indemnity and insurance. Some points from their suggestions, not already covered in this report, are summarised below:

- The guidance should include a section relating to corporate structures and the vicarious liability of members of a board.
- The guidance should compel indemnity and insurance providers to engage with employers and practice owners.
- The guidance should clearly highlight disadvantages of relying on employer cover including lack of cover for disciplinary proceedings and Good Samaritan Acts.

GDC response

We have considered the suggestions for inclusion and included those points that we believe are necessary to achieving the aims of the guidance. Primarily this is to direct dental professionals to assure themselves that they have the appropriate cover for their needs, and which covers their entire scope of practice.

The purpose of the guidance is to help dental professionals ensure that they are meeting their legal obligation to have appropriate cover. The guidance cannot create new obligations, so it is not possible for the GDC to place obligations on indemnity and insurance providers.

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.

In this section, we asked respondents to consider whether this revised guidance has the potential to impact particular groups of people. We received 35 responses to this question. The majority of respondents suggested that the guidance would have no impact on either people with protected characteristics or any other aspect of equality, diversity and inclusion. Some respondents told us that they thought there was a potential impact on certain groups and in certain situations.

Several respondents observed that gender related matters were not accounted for, with two more specifically stating that maternity leave should be noted within the guidance as a reason for taking a break from practising, as the draft guidance referenced retirement in this regard.

GDC response

We have made amendments to references on run-off cover, to include taking a break from practising, allowing for the many reasons one may take a break.

Several respondents raised the need for the guidance to be available in different formats and accessible to different audiences (e.g. for the guidance to be available in multiple languages and user-friendly for people with dyslexia).

GDC response

The finalised guidance is now published on our website as a fully accessible PDF file. Alternative formats can be made available on request.

7. Next steps

The guidance will be kept under review to ensure that it effectively helps dental professionals make decisions about their indemnity or insurance cover. This includes reviewing the guidance when the DHSC publish outcomes from the 2018 consultation on appropriate cover.

We remain committed to working in an open and collaborative way when seeking to make improvements to regulatory guidance and will seek to engage with relevant stakeholders should we consider any future amendment to the guidance.

The finalised guidance can be found on our [website](#) and will come into effect from 12 February 2024.

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