Appropriate Clinical Negligence Cover Consultation
Acute Care and Quality Directorate
Fifth Floor
Department of Health and Social Care
39 Victoria Street
London
SW1H 0EU 21
February 2019

Dear Madam or Sir

RESPONSE BY THE GDC TO THE CONSULTATION ON APPROPRIATE CLINICAL NEGLIGENCE COVER FOR REGULATED HEALTHCARE PROFESSIONALS AND STRENGTHENING PATIENT RECOURSE

Introduction

1. The GDC welcomes the opportunity to provide its views on the matter of appropriate clinical negligence cover. The GDC works on behalf of the public to regulate those providing oral healthcare, maintaining a framework of standards to support the delivery of high-quality care.

2. Our overarching purpose when exercising our functions (set out in the Dentists Act 1984 and updated by the Health and Social Care (Safety and Quality) Act 2015) is 'the protection of the public', which involves the pursuit of the following objectives:

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

3. Our role in meeting these objectives is to regulate the 110,000 members of the dental team, which involves carrying out some specified mandatory functions. These are to:

- Set standards for dental education
- Maintain a register of dentists and dental care professionals who meet the registration requirements
- Set and promote professional standards
- Investigate allegations of impaired fitness to practise.

4. One key component of our mandate is to ensure that all registrants meet the requirement to hold appropriate indemnity arrangements in respect of their practice. This provision is implemented by requiring each registrant to certify this when they register for the first time or re-register each year.

5. The GDC has previously raised questions about the gaps and uncertainties of current modes of indemnity and potential implications for public protection. The traditional occurrence-based indemnity model appears to be well established and a similar model is used by the NHS. The newer entrants to the market who offer cheaper subscriptions than the MDDOs create a new risk as the level of cover which is provided is also often less comprehensive.

Response to the consultation questions

What are your views on the proposed options for meeting the Government's policy objectives (please see paragraph 4.1)? (6.1)

6. The policy objectives set out in paragraph 4.1 of the consultation document are clear and well-made. As noted in the introduction above, a key element of the GDC's purpose is to protect the well-being of the public and to maintain their confidence in the dental profession. The GDC has already invested considerable effort in reviewing and adjusting the arrangements by which the public can raise complaints and concerns about dental professionals, and it is right that there should be equal transparency about the terms and conditions which would apply when redress is sought.

What are your views on the potential costs and benefits of these options, for example the familiarisation and administrative costs for individuals, businesses, and other groups, in complying with potential changes to regulation? (6.2)

7. We have considered this point, but we are unable to comment other than in broad terms. It is likely that there will be costs for business in changing from their current indemnifiers to providers of indemnity products which meet the new legal requirements. The actual extent and impact of the change will be influenced by the time scale allowed for transition and the steps taken by indemnifiers to be clear about the strengths and limitations of the products they offer to the market. A key point of interest for healthcare workers who are on lower incomes will be the annual cost of premiums for products which comply with the new rules introduced by legislation.

Are there any other options that the Government should consider? (6.3)

8. Although the consultation document (paragraph 1.4) makes a passing reference to this point, we consider that the Department should not rule out the possibility of extending the proposed state-backed scheme for GPs/GP staff in England to dental professionals (either all of them, or as a minimum to those who deliver any level of NHS work).

Do you agree with the Government's preferred option (ii), set out from paragraph 5.15, of ensuring that all regulated healthcare professionals in the UK hold appropriate clinical negligence cover that is subject to appropriate supervision by the FCA and PRA? (6.4)

9. Yes. As articulated in the consultation document, this will both provide regulated healthcare professionals with greater clarity and will provide greater consumer protection.

Do you have further insight or data into the types of indemnity/insurance cover held by healthcare professionals? (6.5)

10. The GDC does not hold this data and has no additional views at present.

If Government pursues option (ii)

In order to achieve this aim (6.6), what would be the benefits or implications of introducing regulation via:
• a) changing professional standards so that professionals have to hold a regulated product in order to practise;

11. This is possible and could be delivered through the arrangements for annual re-registration. However, in order to gain acceptance from registrants there would need to be a robust evidence base that underpinned the justification for strengthening the terms of cover. In addition, there is an opportunity to reinforce the key messages to professional about the need to have satisfactory cover which is conversant with the nature and type of interventions they offer.

• b) changing financial regulation so that any organisation offering clinical negligence cover would need to be authorised to do so;

12. This has some attraction through its simplicity in creating a single and transparent platform of cover available. But we would be interested to learn the views of the indemnity/insurance industry on the impact this might have on the availability of products on the market and their views on the impact of the affordability of obtaining cover.

• c) changing both financial and professional regulation.

13. As with a) above, providing a clear explanation of the benefits of introducing new arrangements will be key to helping registrants reach decisions about the level of cover that meets the aims of indemnity cover. Making changes to requirements for registrants and to those who offer cover should create a sustainable market which should be able to offer a range of options to the wide variety of healthcare professionals who need to obtain cover.

Do you have a view on when regulations should come into force and should these involve a transitional period, considering the potential impact on indemnity providers and healthcare professionals? (6.7)

14. We have no views at present.

Are there any measures that could mitigate the potential risks to introducing regulation as set out in paragraphs 5.32-5.35 (in terms of a stable transition for regulated healthcare professionals and indemnity providers, mitigating potential cost impacts, and run-off cover)? (6.8)

15. Our view is that there would need to be a transition period which was long enough to give registrants sufficient time to move to a different provider (if necessary) but which was not unnecessarily long (because this would perpetuate the perceived risk for patients). The actual duration of the transition period will need to be informed by the views of indemnity providers who will be obliged to carry out their own research, analysis and due diligence as part of their work in creating a new market.

Specifically, on the transition risk, are there any measures that could support the run-off of indemnity providers' existing liabilities on a discretionary basis, and given the potential interaction with overseas business set out in paragraph 5.21? (6.9)

16. We have no views at present on this point.

Specifically given the potential risk with claims-made and claims-paid policies and indemnity arrangements as set out in 5.35, should Government specify the type of insurance or regulated product required for regulated healthcare professionals? This could take the form of a) claims-occurring cover, b) claims-made cover, c) claims-made cover with built-in run-off cover on either death or retirement from clinical practice, or d) a combination of these. (6.10)

17. We consider that rather than be too prescriptive at this stage about the exact type of cover that should be purchased by registrants, instead it would be more appropriate to be

clear about the minimum requirements necessary that registrants have to meet that deliver the key aspects of public protection (including elements of both patient and consumer protection).

Related to the above, should the Government and/or the professional healthcare regulators specify a minimum standard of insurance or regulated cover that should be required for regulated healthcare professionals (for example, a minimum level of cover for each claim and in the aggregate, depending on the regulated healthcare professional)? (6.11)

18. We have no evidence at present to support a firm view on this point. We would be interested to learn of the real-world experience of other regulators, particularly where the nature and type of clinical intervention is much greater than that likely to be experienced in the dental sector.

Are there any equality issues that arise (positive or negative) in relation to each of the options but, in particular, in relation to the Government's preferred option (ii) which is set out from paragraph 5.15? (6.12) In particular:

19. We have no views at present on this point.

Is there any discriminatory impact (direct or indirect) arising from any of the proposed options that would engage the Equality Act 2010 and Section 75 of the Northern Ireland Act 1998? (6.13)

20. We have no views at present on this point.

What is the impact, if any, on any group of persons who share one or more of the protected characteristics set out in section 149 of the Equality Act 2010 when compared with persons who do not share the protected characteristic(s)? Section 149 of the Equality Act 2010 is set out in full in Annex C. (6.14)

21. We have no views at present on this point.

What are the potential consequences to the conduct of clinical research of the proposals set out in this document? (6.15)

22. We have no views at present on this point.

Conclusion

23. A key principle of working effectively and safely as a professional is that harm must be prevented. One element of the work to raise levels of professionalism is to embed a sound appreciation not only of the required levels of skill, competence and experience needed to provide high quality, safe and effective interventions but also the need to provide clear, unambiguous and impartial advice about how a patient can make a complaint and/or raise a concern. All of this is supported by a clear understanding of the scope, extent and limits of relevant indemnity cover.

24. Overall, there is a clear case that while the existing arrangements require regulated healthcare professionals to hold indemnity cover, the structure and availability of current market products does not provide a good level of assurance that patients will receive proper redress.

25. The GDC has considered the strengths and challenges of introducing a revised requirement for more highly regulated indemnity cover, including whether it would be

appropriate to do so by changing the rules that apply to new and repeating registrants without there being a statutory requirement underpinning this. While we recognise the attraction and simplicity of this approach, our view is that there is a stronger rationale for imposing similar conditions on dental health professionals as for other healthcare professionals if these are a statutory requirement.

26. In recent years there has been an acceleration of change in the structure of the dental profession (NHS vs private and small business vs. corporate) and it is likely that this could affect attitudes to how indemnity cover is procured. This could have an impact on the design of new indemnity products and could provide new opportunities.

27. This letter conveys our views as a regulator. Nevertheless, we welcome the consultation as an opportunity to take note of the wider views of indemnity providers, to ensure amongst other things that any major changes to the market do not introduce unintended consequences which make it more problematic for registrants to source the cover they need to have.

Yours faithfully

Richard Drummond

Richard Drummond

Head of Public Policy
General Dental Council