

## State-backed Indemnity for GPs – Latest Update: Preparing for Run Off

**Tristan Lennox-Gentle, Director, MIAB**

With just six months to go until the expected launch of state-backed indemnity, GPs are demanding more information about the scheme.

Little official information is known about how GPs will benefit from the proposals. A highly anticipated government update due in May was released in mid-June, but did little to expand on what had already been announced in October 2017. In fact, if we consider what we *do* know about state-backed indemnity, it highlights there are still lots of questions left unanswered.

### What we know

We know, based on official releases from the Department of Health (now the Department of Health and Social Care), that the scheme was scheduled to take “12-18 months” to develop and the scope of cover was not limited to individual GPs, but for all staff and clinicians that provide “primary medical services” delivered through NHS Standard Contracts. In addition, the scheme would only cover clinical negligence, and not extend to private (non-NHS) work, fitness to practise, coroners’ cases or other professional regulatory matters.<sup>1</sup>

### First mover

Following the announcement, Medical Defence Organisations (MDOs) immediately began jockeying for the most advantageous position. The most interesting change was from The MDU with the launch of a ‘Transitional Benefits’ scheme, which replaced their traditional ‘occurrence’ model of indemnity with a lower-priced ‘claims-made’ arrangement. Members renewing or joining will now be placed on the Transitional Benefits scheme until such time that the member transfers to the state-backed scheme.<sup>2</sup>

### Protecting past work – the implications of run-off cover

However, this brought two significant implications: firstly, that The MDU are relying on the state-backed indemnity scheme to accept all claims arising from past work (for which members would have previously been covered for under the ‘occurrence’ model; the switch to a claims-made model means this protection has been removed).

For the state-backed scheme to accept liability for claims arising from past work, it will need to include run-off cover, a form of indemnity insurance that covers historic liabilities. However, an addendum to the government’s initial statement stated that “*the Government does not currently plan to include this run-off cover in a state-backed scheme*”.<sup>1</sup>

The second implication is, therefore, those covered under either The MDU’s Transitional Benefits scheme or under claims-made insurance policies would “*be required to purchase such cover separately themselves at the point they move to a state-backed scheme*.”<sup>1</sup> With this additional (and essential) expense, it’s possible that any savings from the Transitional Benefits arrangement may be lost.

---

<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/663780/GP\\_indemnity\\_factsheet\\_-\\_Nov\\_17\\_update.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/663780/GP_indemnity_factsheet_-_Nov_17_update.pdf)

<sup>2</sup> <https://www.themdu.com/my-membership/transitional-member-benefits/why-transitional-benefits>

## State-backed Indemnity for GPs – Latest Update: Preparing for Run Off

MIAB

The government's statement raises a cautionary point by advising that *“any GP purchasing an indemnity product on a reduced cover basis should make themselves fully aware of the terms under which it is being offered, taking into consideration how they will cover themselves after the period of cover has expired and the cost of run-off cover.”*<sup>1</sup> It is, of course, a separate point entirely whether GPs have been given enough information to make an informed choice about the implications of *“reduced cover”*, the importance of run-off cover and its cost.

### Equal cover for all?

There is also the matter of equality of approach. While it is helpful to see that MDOs are negotiating with the government on behalf of their members, who is currently representing the large contingent of clinicians who fall outside of the scope of the MDOs?

For example, those indemnified on an occurrence basis can sever their arrangement and move to the government scheme without the need to purchase run-off cover at an additional cost. However, not all GPs and clinicians are indemnified on an occurrence basis. This includes MDU members on the Transitional Benefits scheme and those who use insurance in preference to an MDO, such as Clinical Pharmacists, Advanced Nurse Practitioners and GPs with adverse claims histories.

Importantly, entities such as practices, federations and other new models of care often purchase insurance coverage to satisfy a requirement of an NHS contract or through a desire to manage risks, such as contingent and vicarious liabilities, more effectively.

It is for these practitioners and entities for whom run-off cover will be a requirement, and this will incur an additional cost in most cases.

Will the government promote inclusivity for all, and if so, at what cost? Is it acceptable to only provide run-off cover for former MDO members? Will the government approach insurers to subsidise claims in the same way as MDOs were approached in 1990 when secondary care moved to the state-backed Clinical Negligence Scheme for Trusts (CNST) indemnity scheme? Or is negotiating with insurers seen as too much of a complex task, and MDOs should bear full responsibility for subsidising the margins? In the worst case, will the government insist that responsibility for run-off rests with the clinician/practice?

### Who bears the cost burden?

The financial burden of GP indemnity has been at the heart of the state-backed indemnity proposal since its conception, so what does all this mean in terms of cost and how might it be affected if run-off is to be provided? Given that the official announcements suggest that indemnity will be provided at a contract level (with costs<sup>3</sup> embedded into GP contract negotiations<sup>3</sup>) it is reasonable to assume the scheme will be mandatory, paid for through renegotiation of existing contract income.

However, if the government maintain their official position of not providing run-off cover, will there be concession to those practices that have to buy it separately because of legacy claims-made arrangements?

---

<sup>3</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-10-12/HCWS159/>

## State-backed Indemnity for GPs – Latest Update: Preparing for Run Off

### MIAB

For example, will it be possible to negotiate state-backed indemnity on a case-by-case basis, dependent on each practice's contract and indemnity requirements, extracting cover for those who are insured elsewhere and reflecting the savings in the final contract value? Or in the worst case, will the government provide a one-size-fits-all indemnity arrangement where practices are also required to procure run-off privately for any legacy claims-made policies? Will the state-backed scheme only seek to exacerbate practice costs in such instances?

### Timing is crucial

It is also important to understand when and how a practice will transfer to the new scheme to ensure current indemnity arrangements can be sympathetic to the migration date.

While the interpretation from most parties is a launch date of 1<sup>st</sup> April 2019, it is plausible that the scheme may not launch on time, or indeed require all members to join on the same common renewal date - all of which has yet to be officially confirmed.

This information is essential to how practices should plan for their migration and highlights the importance of GPs and practice leadership discussing with existing providers what refund terms are available should there be a need to cancel occurrence cover mid-term.

As an example, if a GP's indemnity is due in February and the state-backed scheme launches, as hoped in April 2019, would a GP be expected to pay a full annual subscription to an MDO who discharges liability for the risk just two months into the period of cover? If an indemnity arrangement is offered on an occurrence basis it might be considered unreasonable for an MDO to retain membership for a time on cover that the government would later assume responsibility for. What money could be recovered? How will the MDOs prevent their members from being financially disadvantaged by the Performers List requirement to maintain adequate indemnity<sup>4</sup>, until such time as the government scheme launches? Will MDOs move to offering short term policies in preparation for a mass migration to a state-backed scheme when the date of launch is finally confirmed?

### Action plan

The position of run-off requires careful consideration, by both the government, insurance policy holders and MDO members currently benefitting from claims-made cover. If the government does not offer run-off cover for those presently indemnified on a claims-made basis, it should be a priority task to understand how current providers will offer run-off and at what cost.

- GPs indemnified under the Transitional Benefits plan would be wise, as a contingency, to enquire with their MDO what the total cost of run-off will be – no matter the likelihood of needing it
- Likewise, those covered under an insurance policy should enquire of the run-off provision from their insurer and how much it might cost
- Clinicians who are unsure what their basis of cover is (ie, occurrence or claims-made) should enquire with their provider as a matter of urgency
- It is also important to check whether practices and provider companies have indemnity cover and on what basis
- Check all indemnity cover renewal dates and how close to 1<sup>st</sup> April 2019 they are

---

<sup>4</sup><https://www.performer.england.nhs.uk/Content/Performers%20List%20Application%20form%20and%20Notes%20V2.pdf>

## **State-backed Indemnity for GPs – Latest Update: Preparing for Run Off**

MIAB

### Continuous monitoring

Over the coming months we will continue to monitor and deconstruct the proposed state-backed indemnity scheme as further details emerge, with a view to giving practitioners the tools and knowledge to transition to a state-backed scheme in the most seamless and informed way.