MBC
MEDICAL BROKING COMPANY

THE MEDICAL BROKING COMPANY GUIDE TO MEDICAL MALPRACTICE INDEMNITY FOR INDIVIDUALS AND ENTITIES

Introduction

Medical Indemnity is a complicated subject, so much so, many decide to stay with their Defence Organisation, the 'the devil we know'. Some consultants are too complacent to look at other options, some unaware of the alternatives, some say they are too busy to complete a simple form or leave the process too late that the renewal date falls due and it is too late to make a change.

However, medical indemnity is a key component of any Private Practice and needs expert and long-term management. There are major changes currently happening with medical indemnity that will have an impact on all consultants.

We have produced this guide to help give clarity to the subject and allay some fears you may have in considering the insurance alternative and deciding to switch.

Many consultants would have experienced year on year cost increases of up to 10%, meaning every 7 years that indemnity cost will double. This is a trend that will continue given the high levels of claims.

Insurance is not only an affordable alternative but is cheaper and better in almost every way. The Government agree, they are concerned that private patients are being seen by consultants who are supported by an unregulated indemnity offering "discretionary cover" as offered by the Medical Defence Organisations. Any claim could be refused without consultant recourse leaving both the consultant and the patient exposed to financial loss. The Government want to review this and have issued a consultation paper on 'Appropriate Clinical Negligence Cover' for those who practice in the independent private health sector.


Department of Health & Social Care

Appropriate clinical negligence cover

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

Published 6 December 2018

The paper seeks views of two options.

1) Leave arrangements as they are or

2) Introduce legislation to ensure that consultants in independent private practice hold appropriate cover that is subject to appropriate supervision by a regulator, currently in the UK this means the Financial Conduct Authority or the Prudential Regulation Authority.

The Government have clearly signalled that their preference is option two. This means that "discretionary indemnity" which is currently offered by the Medical Defence Organisations could become a thing of the past.

The Government's preferred option at this stage is to ensure that all regulated healthcare professionals in the UK (not covered by a state-backed indemnity scheme – i.e. most independent practitioners) hold appropriate clinical negligence cover that is subject to appropriate supervision, in the case of UK insurers by the Financial Conduct Authority and the Prudential Regulation Authority. If this change is implemented it would mean the Discretionary indemnity provided by the The Medical Protection Society, The Medical Defence Union and The Medical Defence and Dental Union of Scotland (Collectively known as the Medical Defence Organisations, or MDO's) would be unacceptable.

The Government's concern is about the stability of the current form of indemnity cover they offer:

- They have no legal obligation to pay valid claims, the Government says - the indemnity providers who provide cover for many healthcare professionals do so under discretionary indemnity arrangements meaning that, unlike commercial insurance companies, they have no contractual obligation to meet the cost of any claim against the professionals they cover;

- They have no requirement to ensure they have adequate funds to pay claims – the Government says -MDO's have no legal obligation to ensure they have the reserves to cover the cost of claims, raising the risk of a patient, ultimately, being unable to access appropriate compensation;

- Their financial position is unclear, the Government says – MDO's do not have to disclose their full financial position, meaning that healthcare professionals may be unaware of the extent of their financial cover; and

- They have no obligation to treat their customers fairly, the Government says – MDO's are not subject to regulation on financial conduct and fair treatment, leaving healthcare professionals at risk of unfair treatment, e.g. they can demand extra payments over and above the annual subscription at any time as a condition of your membership

This guide is designed to help you to understand the issues and provide the information to enable you to make an informed choice.

The Essential Background

What is Medical Malpractice?

Medical malpractice can be split into three key areas

Clinical Negligence

This is professional negligence by a healthcare professional, and it arises where the care provided to a patient by a healthcare professional deviates from standard acceptable medical practices at the time. It is an act or omission that causes actual bodily injury or death to the patient. For a patient to succeed in a claim it is not enough to prove that the standards of treatment were poor, they will have to prove that the lack of care resulted in an avoidable injury; this is called 'causation'. Proving that injury or death to a patient was a result of the action of a healthcare professional is one of the most difficult and contested areas in medical malpractice claims.

For a patient to be successful in a clinical negligence claim in the UK, four fundamental questions must be answered positively:

1) Was the patient owed a legal duty of care?
2) Was that duty of care breached?
3) Did that breach cause the injury?
4) Did damage result?

Defence of Rights to Practice

Consultants are subject to external supervision by the GMC who are charged with protecting the public by ensuring proper standards in the practice of medicine. When either of these is challenged funding for legal expenses incurred in the defence is necessary.

Medico-Legal

This is legal liability arising from giving opinions in a legal context where others rely on this expert testimony and the consequences thereof. The new appraisal and revalidation responsibilities add new questions regarding a duty of care to colleagues and the issue of conflict of interest.

In the UK damages for personal injury bear no relation to the degree of fault. In cases where the common bile duct is transacted during laparoscopic cholecystectomy, the damages are the same when the surgeon has made an honest mistake of anatomy as when he or she was "cavalier, gung-ho or not properly trained."

The size of claims awards is defined by the cost of long-term care. Consider also who is being operated on: the same negligence suffered by an office worker will result in a vastly different settlement than that suffered by a top professional sportsman. It is clear, therefore, that it is not what mistake is made but whom it is made on; this has profound implications in selecting what level of indemnity is purchased when medical malpractice indemnity cover is sought. An extreme example of this was the case of the plastic surgeon, Mr Le Roux Fourie, who was sued by his patient Penny Johnson, originally for £50 million. It was finally settled for £6,190,884, of which £80,000 was for the disfigurement, pain and psychological consequences, and the remainder for loss of earnings.

How Indemnity is Provided for in Medical Malpractice in the UK for Individuals

The Medical Defence Organisations (MDO's)

The MDU, the MPS and the Medical and Dental Defence Union of Scotland (MDDUS) are collectively known as the Medical Defence Organisations (MDOs in the UK). They are mutual organisations based on membership subscriptions which provide discretionary indemnity. Numerically, consultants form only a small part of the total membership. They are not Insurance Companies and are not regulated by the Financial Conduct Authority , one key reason the Government wants to end this type of indemnity.

The first medical defence organisation was the MDU, established in 1885 when Dr David Bradley was imprisoned for eight months after being wrongly convicted of assault on a woman in his surgery. Medical professionals came together to provide financial support for doctors to defend cases and, by 1924, this was extended to include indemnity for compensation to patients.

The MPS was formed in 1892 to provide a similar service to the MDU. Today the MPS has a much wider membership base than the MDU, providing services in 40 countries worldwide, as far apart as Ireland, New Zealand, Hong Kong and Jamaica, accounting for 100,000 members from its total of 270,000.

The MDDUS was founded in 1902 and, contrary to popular perception, operates throughout the UK and has a membership of 30,000.

Insurance

The commercial insurance market in the UK, which has been expanding steadily over the past 20 years. This is an expanding sector and has the necessary skill, financial muscle (far superior to the MDO and Regulated) and capability, as well as an appetite to compete against the MDO.

Several insurance companies are competing for the same type of risk, always ensuring competition and competitive terms.

How Indemnity Providers are Structured

There are 2 business models of indemnity provider in the UK, and it is vitally important to understand the difference between them to reach an informed decision on where to purchase medical indemnity cover. There are two fundamental principles to be understood; these principles are so important that an indemnity provider should not be changed unless they are fully appreciated.

Principle No 1. The difference between claims-made and losses-occurring indemnity.

Principle No 2. The difference between contractual indemnity and discretionary indemnity.

Principle 1: Losses Occurring vs. Claims-Made

Indemnifiers will offer indemnity based on either of the following terms:

Losses Occurring Indemnity

Under losses occurring indemnity, cover is triggered based upon the date of the event giving rise to the claim, and not when the claim was first notified. Occurrence membership does not provide cover for events or acts that occur before the effective date of the membership. Because assistance may be provided based upon when damage occurs, membership on the date of the treatment is necessary for the indemnifier to respond to the claim regardless of when the claim was presented to the Indemnifier. A claim may arise many years after the treatment (in insurance/indemnity parlance known as the tail.)

For example, if a patient was treated in 1995, but the associated claim was presented in 2010, so long as the doctor was a member in 1995, if assistance is provided, the claim can be paid even if the doctor is no longer a member, or has retired in 2010.

Claims-Made Insurance Policies

Under a claims-made policy, cover is triggered by the date the insured person first became aware of the possibility of a claim and notified their insurer of such knowledge. The insurance policy in force on the date that the insured gained such awareness and reported it to the insurer is the one which responds to the claim. The policy period for a claims-made policy will extend backwards in time to a 'retroactive date' that may be some years before the policy was purchased. Therefore, the policy will provide cover for claims made today stemming from actions or events all the way back to that retroactive date. A claims-made policy requires the claim to be made during the policy period or an extended reporting period ('ERP' or 'run-off'). The policy provides coverage only for losses which: (a) occurred after the retroactive date and (b) were reported during the policy period or the run-off.

Therefore, in the above example of a claims-made policy, if a patient was treated in 1995, but the claim was made in 2010, then the policy that was purchased in 2010 is the one that responds. If there was no active policy in 2010 then there is no cover in force unless extended claims reporting cover is purchased, the so-called 'run-off' cover.

Switching between types of indemnity:

(i) If indemnity is changed from losses occurring membership to a claims-made policy, then the retroactive date will be the date the switch was made. The losses occurring membership can respond to all claims made before the retroactive date, and the claims-made policy will respond to all claims made after the retroactive date.

(ii) If a policy is changed from one claims-made policy to another claims-made policy, from insurer A to insurer B, the retroactive date will be from the commencement date of insurer A's policy, so that insurer B's policy, by negotiation, extends back in time to cover all past incidents, such that insurer A no longer has any liability.

(iii) If indemnity is changed from a losses occurring membership to a claims-made policy and is then switched back to losses occurring, say after three years, the three year period in which the claims-made policy was active will not be covered by the occurrence membership for new incidents that happened in the three year period but that were not notified during that period. Unless there is a specific agreement in force, there is no insurance cover for that period. Therefore one should never change from a claims-made policy back to losses occurring membership.

Principle 2: Contractual and Discretionary Indemnity

Contractual Indemnity

Contractual indemnity is where a proposal is submitted, accepted, a premium is paid, and a document (a contract) is issued (an insurance policy in this context) that sets out the terms and conditions that apply between the parties. It will set out what incidents are insured for, what incidents are not insured for, and the obligations and entitlements of the policyholder. Such a policy is legally enforceable in a court of law if there is a dispute as to the terms and conditions. An insurance contract will normally state a maximum limit of the compensation that will be paid, and any compensation that is awarded to a claimant over this limit must be paid from the policyholder's own funds. This limit is known as the 'limit of indemnity'.

Discretionary Indemnity

Discretionary indemnity is provided under a membership agreement. A membership application is submitted and accepted, a subscription is paid, which sets out the objectives of the organisation or what it will offer in terms of indemnity, the MDDUS say 'circumstances that arise from the bona fide practice of medicine'. The Company Act applies, and the MDOs set out their objectives in a Memorandum of Association. A person who has been accepted as a member and paid a subscription is entitled to request the benefits of membership, including indemnity which is granted at the absolute discretion of the Board or Council. There is no right that this is automatically granted.

Discretionary cover is the ultimate test of 'utmost good faith'; there is no contract, and there is no limit of indemnity.

In theory, a discretionary indemnity can pay whatever compensation it decides, subject to Board or Council approval, subject to any stated membership exclusions. However, these are similar to the exclusions that would be imposed under a medical malpractice insurance policy and would include items such as defamation, employment-related issues (not related to professional practice), debt recovery, criminal acts, fines and penalties etc.

Compelling Reasons to Switch to MBC

Many of these features are not available from a Defence Organisation

1 It is Cheaper

Insurers can make savings of up to 40%, Insurers Selection of Risk -Terms are tailored to your specific circumstances; you do not subsidise colleagues or other specialities. This process is crucial in getting competitive terms. Your Defence Union will group you within a speciality and apply an income band, crude and costly.

(i) Open Market Policy

Insurers specialise in certain specialist sectors, and they feel that their knowledge in one particular sector or speciality gives them a market advantage when it comes to pricing and cover; specialist companies believe (evidenced by experience) that they have an insight into a particular sector which their competitors do not have. We do not deal with one insurer but will constantly monitor the deal you have is competitive and switch insurers if necessary.

(ii) The Process is Simple

We will request you to completes a short proposal form and seek your permission to use the data we hold on you to get you an indication of likely terms. This will be subject to a confirmed claims experience, but we can get this directly from your current indemnifier with the mandate you give us.

(iii) The Cover offered is Wide - Designed for 21st Century Private Practice

• Medical Malpractice Cover for Clinical Negligence, including full retroactive for past activities where required.

• 24 Hour Medico-Legal Hotline operated by specialists providing clinical assistance and support assistance with complaints and claims notification

• Professional indemnity cover for:
  - medico-legal reports written by you and any expert witness work
  - evaluating the professional qualifications of healthcare professionals
  - the training and mentoring of healthcare professionals
  - your activities on a MAC or as a MAC Chair

• Run off cover providing continuous cover for 25 years in the event of your retirement, permanent disablement or death

• Public liability cover for injury to people at your workplace

• The cost of a public relations firm to protect your professional reputation

• Court attendance costs providing a daily monetary allowance to attend court

• Defamation cover for liability arising out of any medico-legal report written by you

• Worldwide cover for Good Samaritans Acts

• Cyber liability cover for cyber events (e.g. hacking attack or a virus), security breaches, identity theft, breach of data, computer damage and any financial loss incurred as a direct result

- Legal defence costs:
    - to defend clinical negligence allegations
    - for GMC complaints or disciplinary hearings from private activities
    - for GMC complaints or disciplinary hearings from NHS activities
    - for inquests
    - for criminal proceedings, including sexual misconduct and PACE interviews
    - for employment disputes, tax investigations, contractual disputes, health and safety at work and property disputes
    - for regulatory investigations stemming from security breaches

- Risk management services including:
    - downloadable patient information leaflets bespoke for each speciality
    - online training is providing 12 hours CPD.

(iv) The Price is Stable

We do not just offer discounts for the first year. Where circumstances remain unchanged the premium is likely to remain stable. Your medical indemnity costs are one of the highest costs of the practice. We will professionally manage that for you.

(v) MBC support

Available 7 days per week to discuss any issues that may arise. Better still, in most cases, our policies are supported by 24 legal helplines operated by specialist, independent, lawyers.

(vi) Financial Security (these benefits not possible from a Defence Organisation)

- Insurance offers a legal guarantee that can be enforced in a court of law.
- The terms and conditions of the policy clearly state what is and what is not insured.
- It is regulated by a third party with legal powers, currently The Financial Conduct Authority (FCA). The safeguards of FCA regulation include:
    - The need to treat customers fairly in the sales process.
    - The need for insurers to have adequate funds to meet liabilities.
    - A formal complaints service.
    - There is access to the Financial Ombudsmen Service in the event of a dispute with the insurer.
    - The Financial Conduct Authority (FCA) requires ring-fencing of funds subscribed by UK doctors to pay UK claims, so there can be no subsidy of overseas customers.
    - There is access to the Financial Services Compensation Scheme in the event of a failure of an insurer.

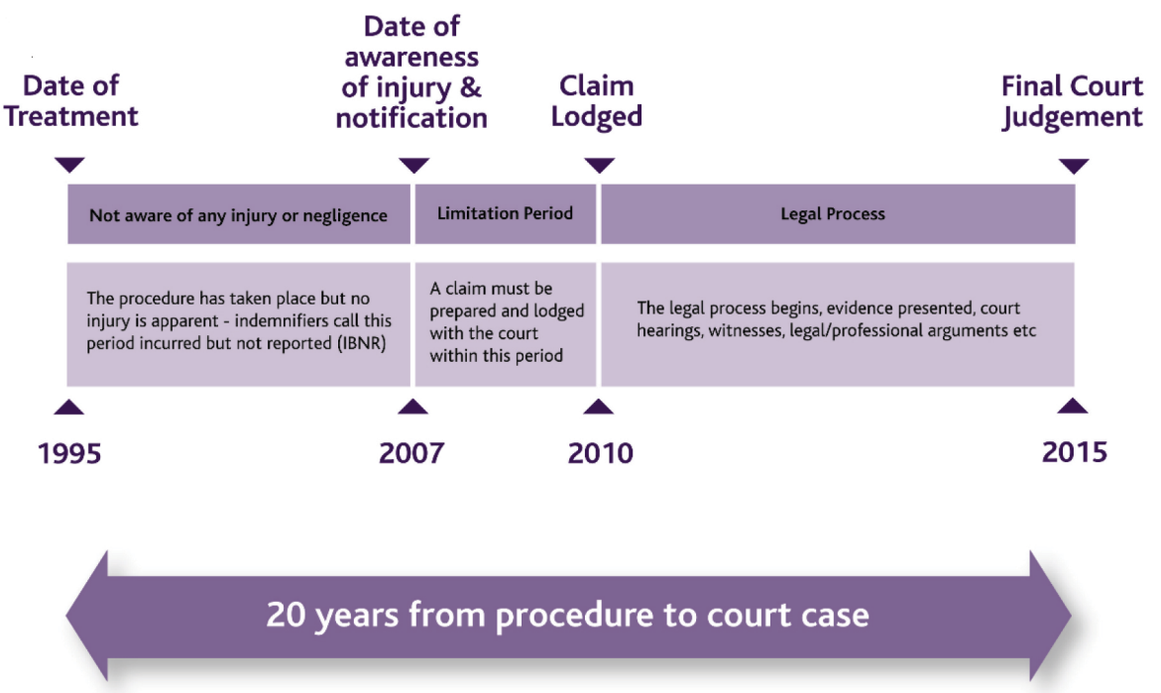
(vii) Up to 25 Years Run-Off

What is Run-Off? The Technical Bit.

UK law includes the principle of a ‘limitation period’, as set out in the Limitation Act of 1980. Simply stated, for personal injury, an action is struck out if it is not brought within three years after the damage became known or ought to have become known. For a minor, the clock starts to run from their 18th birthday.

For a mentally disabled individual, the period of limitation may not apply at all.
For example, if a procedure was performed in 1995 and the damage does not manifest itself until 2007, for the limitation period, the clock starts to run from 2007. From 1995 to 2007 there was a claim that nobody knew about. Indemnifiers term this as 'incurred but not reported' (IBNR), and it has a significant impact on premiums and subscriptions and it is the main reason for the existence of the 'claims-made' wording.

Illustration of the Length of Time from Procedure to Settlement



Run-off (extended reporting period) Explained

A claims-made policy requires that a claim is presented to an insurance company during the policy period. If a consultant learns of a situation that might lead to a claim or receives a notice of a claim, then they must notify the insurance company immediately and before the policy expires. This reporting provision could be difficult to comply with if the consultant receives notice of the claim near the policy's expiration date. It is essential to have procedures in place to report a likely claim or incident that may give rise to a claim immediately; a delay in reporting can invalidate cover (The same principle applies with the Defence Organisations)

At retirement, it is not necessary to buy an insurance policy every year because of the nature of claims made insurance. The final policy simply has a Run-Off Clause that extends the reporting period for up to 25 years. Insurers finance this cost by reserving a small proportion of your annual premium; this is why we ask if you have plans to retire in the next 5 years, as this as the period needed to make an adequate provision for this cost. If you are close to retirement, the best advice is, probably, stay where you are. However, we always look at individual circumstances.

This is automatically included in any terms we offer where the consultant ceases practising through retirement or death.

Cover Comparison of MII – Medical Indemnity Insurance (MII) vs Mutual Defence Organisations (MDU,MPS, MDDUS)

	COVER & FEATURES	MII	MDU / MPS / MDDUS
SERVICE	An insurance Policy for Clinical Negligence giving your legal rights in the UK courts which is fully enforceable, underwritten by A+ insurers	✓	X
	Insurer policies and ethical conduct monitored and Regulated by the Financial Conduct Authority	✓	X
	Insurer claim funds guaranteed by the Financial Services Compensation Scheme and access to the Financial Services Ombudsman	✓	X
FEATURES	Clinical Negligence claims up to £10,000,000 any one claim	✓	Discretionary
	Defence Costs in respect of GMC complaints and disciplinary hearings	✓	Discretionary
	Good Samaritan Acts, worldwide	✓	Discretionary
	Run Off cover in the event of death, disablement and permanent retirement	✓	Discretionary
	Liability arising from Medico-Legal and Revalidation advice	✓	Discretionary
	Includes Public Liability indemnity for non clinical third party claims	✓	X
	Cyber Liability; Legal Liability, extortion and own system damage	✓	X
	Discounts for working in a clinically excellent environment	✓	X
	Individual bespoke underwriting precisely tailored to specific activities and procedures	✓	X
	Legal Expenses for Health and Safety; Data Protection; Criminal Proceedings; Tax Investigation; Contractual Disputes; Employment Disputes, Protection of Reputation	✓	X
	Unique Interactive Risk Management Package including legally reviewed consent forms and 12 hours of CPD	✓	X
SECURITY	Independent, impartial and expert advice for individual circumstances that legally requires the advisor to treat consultants fairly with access to alternative insurers.	✓	X
	Expert, impartial, holistic advice on Partnerships and Limited Companies offering insurance for specific requirements	✓	X
	Medical and Legal Advice Helpline from Independent experts, not in house legal teams	✓	X

Some Other Key Points

Limits of Indemnity

A limit of indemnity is the maximum amount of indemnity provided by an insurance policy, and it is determined by the sum insured and constitutes the maximum liability in respect of any one event or series of events. It includes all legal costs and expenses and is expressed as a monetary amount, e.g. £10 million.

When a limit of indemnity is expressed as 'any one claim and in the aggregate', this means that if the limit were £10 million, then the policy would only pay that sum regardless of the frequency and severity of claims. If you had three x £10 million (total loss) claims from three separate incidents the policy would still only pay a single £10 million sum.

When the limit of indemnity is expressed as '£10 million in any one claim, £20 million in the aggregate', in the above example two (total loss) £10 million claims would be paid.

If the limit of indemnity has a reinstatement clause, this means that if the original limit is exhausted the insured party has the right, by paying an additional premium, to reinstate the original limit.

How to Choose What Limit to Buy

MDOs do not have a limit of indemnity attached to their indemnity provision; it is, in theory, unlimited. However, it is only a theoretical principle as they are limited by their capital and their reserves.

The commercial insurance market can offer up to £25 million for any one claim and in the aggregate; by capping their risk exposure, they are able to offer efficient and cost-effective products, avoiding situations where clients pay for cover they do not need. An important issue, therefore, is how to identify precisely what limit is needed.

Poor advice that is sometimes given on this subject is to buy what is required to secure practising privileges, for example for a hospital to demand the purchase of only a £3 million limit, which is clearly not high enough. The limit that is purchased should bear a direct relation to the actual exposure to risk.

The law and the GMC are virtually silent on this point. The GMC says:

"Article 34. You must take out adequate insurance or professional indemnity cover for any part of your practice not covered by an employer's indemnity scheme, in your patients' interests as well as your own"26.

The onus, therefore, is upon the doctor to select what they feel is adequate and, in the event of a large claim, if there is a shortfall in the limit of indemnity, the balance of any settlement will be from the doctor's own personal assets. It is unlikely that any insurer, governing body, regulator or broker will ever advise what limit should be purchased because that exposes them to a professional indemnity claim should they get this wrong.

The best approach is to look at the evidence and the facts and to understand what is going on in the real world. The following points should be considered:

1. It is apparent that it is not what is done to the victim that defines the size of the award but the cost of long term care and, in some cases, the loss of future earnings. Some insurers have been reluctant to provide indemnity for procedures on high earning professional sportspeople. The MDOs can indemnify a claim brought by a sportsperson himself, but may not assist with one bought by the sportsperson's club for consequential loss. It is essential the indemnity provider is advised of this type of work by the consultant before the commencement of treatment.

2. The length of time from the date of the claim to the date the case is heard before a judge; this is usually 7-10 years in contentious cases. Damages are set at the time of judgement, not the time of the incident; claims inflation (see point 3 below) means that a limit set at ten years in the past will be inadequate. Therefore, the indemnity provider should price their product today to take account of future awards.

3. A significant part of a claim is the provision of care, possibly over many decades. Medical malpractice claims inflation is currently running at a little over 10% p.a. At this rate, it means that the limit of indemnity (and premiums) must be doubled every seven and a half years to keep pace.

4. Risks should be considered in relation to the speciality. All procedures can result in catastrophic damage and should have a limit of indemnity to reflect that eventuality.

5. What are the trends in the law and UK culture: is the tide in favour of the defendant or the claimant? One big landmark judgement has the effect of 'dragging up' all the other similar outstanding claims that have yet to be settled.

6. Contractual Obligations/Practising Privileges. Many independent hospitals are reviewing their own insurance arrangements since they are concerned that if a consultant has inadequate personal indemnity then any shortfall could be claimed against them and this action would need to be defended. The hospital insurers are aware that some of the new offerings are materially substandard, and might leave the consultant and the hospital exposed to significant financial risk in the event of a clinical claim.

7. What is the requirement of the hospital where you have practising privileges? Many now as for a minimum of £10,000,000 any one claim and in the annual aggregate.

Contact **Medical Broking Company,** we have vast experience in this sector and are regulated by the Financial Conduct Authority; we have to offer impartial professional advice by law regarding which policy is right for your circumstances.

Please visit

www.medbc.co.uk/medical-indemnity for more information and where you can fill out an enquiry form and we will get back to you.

Phone **01494 387800** and talk to us

By e-mail **medmal@medbc.co.uk**

Insurance for The Entity

A hospital, Clinic or any commercial enterprise will have assets, employees and generate turnover income and profit. Besides patients, It will also be responsible to shareholders, visitors, suppliers, operate in today's commercial world of the internet and be exposed to a myriad of unforeseeable risks. These risks can be bundled into one description, in insurance parlance, The Entity.

MDOs who are not insurance companies cannot offer these covers or any insurance cover for Limited Companies, .

The principles outlined for the individual equally apply to the Entity. The Entity is in the eyes of the law is a legal entity, it can sue and be sued. It needs insurance to protect itself against unexpected losses that could affect its ability to trade.

Here is a brief summary of the insurances an Entity may need and why.

Liability Insurances, there are several types,

1. Medical Malpractice Liability
First, we need to look at the concept of Vicarious Liability. It is the legal principle of holding someone else responsible (person or entity) for harm or damage caused by someone else. In the employer-employee relationship, the Employer is responsible for the actions and negligence of its employees. The concept is that the Employer (the superior party in the relationship) controls and supervises the actions of its employees. Note where a consultant has practicing privileges this vicarious liability does not exist as the consultant is effectively a subcontractor responsible for their own actions.
The law is changing rapidly with landmark cases in 2018 making the entity more responsible for the actions of subcontractors

2. Employers Liability
The Employers' Liability (Compulsory Insurance) Act 1969 requires that employers carry insurance against the personal injury of their employees. It protects employers from financial loss if a worker has a job-related injury or illness not covered by workers' compensation.

3. Public Liability
This is legal liability to third parties to whom you have a duty of care, e.g. visitors, contractors and the general public. It is usually (but not always) excluded from a Medical Indemnity policy and therefore must be purchased separately

4. Professional Indemnity Insurance
This is legal liability for advice given, it may arise from medico legal reports, training or any situation where advice or opinion is given for a fee.

5. Directors and Officer liability Insurance (often called "D&O")
This is liability to the organization(s) itself for losses as a result of a legal action brought for alleged wrongful acts of personnel in their capacity as directors and officers, usually where they exceed their authority or are negligent in their management.

6. Cyber Liability
Attacks on computer systems from hackers and extortionists who access computer systems and hold businesses to ransom.

7. Property Insurance
Damage and loss of property from All Risks. This will include buildings Contents, Stock, Computers and all other tangible assets.

8. Business Interruption
This is loss of revenue following property damage, it can cover employees' wages, profits, rent and increased cost of working in the event, say, of a serious fire.

The above list is not intended to be comprehensive and will depend on individual circumstances and activity.

Frequently Asked Questions

I am happy with the service I have from my Defence Organisation, why change?

The Defence Organisations have been around 100+ years and have offered good service. However, with medical claims inflation at 10% per annum, increasing litigation from no win no fee lawyers and the increasing pay-outs on medical negligence claims there has been a steady, sometimes unaffordable, increase in annual subscriptions. This trend is likely to continue – an annual 10% increase in subscriptions will mean they will double every 7 years! It's unlikely your fees will perform so spectacularly!

How can Insurers offer lower Premiums?

Insurers are selective on who they take on as a risk. MDOs generally select an income level and pair that against a speciality arriving at an annual subscription – there is no reward for good practice. Insurers assess the risk individually, taking into account speciality, the number of procedures, the type of procedures, past claims record. Also, they look at the clinical environment you work in and reward excellence – the combination of individual and hospital clinical excellence can result in savings of up to 40%

Will I be dealing with a call centre or must I do this on line?

Absolutely not. We offer an individual and personal service. We will ask you to complete a proposal form, and all negotiations are dealt with on a one to one basis, not only with direct communication to you but a discussion with the insurer on the merits of your submission to maximise the discount on your premiums.

My Private Practice is my Private Business, how secure is the information I give you?

All information you give us is between you and us and is privileged. We will not be shared with anyone without your explicit permission.

Retroactive Cover - Will my Defence Union abandon me for past claims if I move?

One common myth is that if you change to insurance, your Defence Organisation will take umbrage and not pay any claims that arise from the past when you were a member. This is a total fallacy. One of the few areas a Defence Organisation states what it will do in writing can be found in its Articles of Association,

For example, The MDU's

To indemnify wholly or in part and on such terms and conditions as may from time to time seem expedient any member or applicant for election to membership or former member of the MDU

We have underlined the relevant part. They will never turn down a claim solely on the basis you are no longer a member.

An insurance policy is an annual contract on claims made basis. It gives you legal rights enforceable in law. It will pay a claim made during the current period of insurance irrespective of when the procedure took place. It will have a cut off retroactive date usually the day you change from a Defence Union to an Insurance contract; this is to avoid dual cover and unnecessary expense.

Moving is a big decision - How can I be sure I am not being enticed into a buying cheap insurance this year only to find it increasing disproportionately next year?

Insurers will never do this; they are regulated not only by the FCA but internally by shareholders, reinsurers and external organisations such as Lloyds and indeed ourselves, your broker who always act in your best interest, not that of the insurer. This principle is enshrined in law and we are legally obligated to look after your best interest. They will always give a true costing of the risk at current commercial terms that are deemed to be viable and realistic. Insurers have a 325-year reputation to protect and any insurer engaging in this type of practice would soon be undone.

What happens if I switch but decide to go back to my original provider or change to another insurer?

You are always free to change to any provider and we will advise you, at no cost, on all the issues you need to consider which will depend on your specific circumstances at the time. It is also incumbent on your new indemnity provide to give you advice and offer retrospective cover where necessary. Switching from one insurance policy to another is simple; the new policy will pick up all past incidents by extending the 'Retroactive' date. If you are returning to the discretionary/occurrence type cover offered by the MDOs, they have in the past offered cover retrospective cover at no cost, but this is a decision for them made at the time of the switch. Whatever the circumstances, our insurers will offer you continuous cover for past activities not covered by your new provider at an additional premium and a quotation will be provided at that time.

I see your insurance offers a £10,000,000 indemnity limit, is this enough?

Extensive research and consultation have gone into setting this level of indemnity, and it is under constant review – indeed if any individual believes this not to be enough, then higher limits can be purchased at a reasonable cost.

What happens when I stop practising?

The Policy includes automatic Run-off cover for all policyholders in the event of Death, Permanent Disability or Permanent Retirement.

How Long should the Run-Off be?

Evidence from actuary's show most claims are reported within 7 years of an incident occurring and the risk a claim is reported after that falls significantly. It would be fair to assume that with an increase in litigation caused by lawyers harvesting claims this figure could be expected to fall. It is about getting the balance right between offering security at the right cost – if insurers extend the run off, then they must commit capital (whether it is required or not) to paying potential claims, which means the cost of the initial premium rises. Insurers say 10 years is the right balance, but this is constantly under review.

WWW.MEDBC.CO.UK/MEDICAL-INDEMNITY
MEDMAL@MEDBC.CO.UK
01494 387800