

HCPC requirements for PII upon registration and during employment

INTRODUCTION

What's changing?

The government is proposing that all health professionals must hold professional indemnity insurance (PII) as a condition of registration. This is to comply with European Directive 2011/24/ eu which imposes a wide range of measures on member states in relation to healthcare across the EU. In particular, there must be a common safety standards for EU nationals who travel across borders and require healthcare.

All member states will have to show that patients who may require treatment or diagnosis have recourse to insurance cover should there be negligence or injury when in the care of a health professional.

When will the changes occur?

The Health Care and Associated Professions (Indemnity Arrangements) Order 2013 is expected to come into force in October 2013 and, subject to legislative timetable, cover must be in place by 25 October. From 1 April 2014, new applicants to the HCPC Register; and those renewing registration, will be required to complete a professional declaration.

What is expected of me?

The order will require registered healthcare professionals to have insurance cover in place in the event that a claim is made against them or their employer for injury or malpractice.

The EU Directive does not stipulate the level of cover and does not state how the Directive will operate in member states. Hence in the UK, the government will oblige the HCPC to make sure registrants, at registration and when employed, have an insurance policy that meets the requirements of the Directive.

Do I really need cover? Are you insisting?

The requirement to prove that you have insurance is personal which means that you need to decide if you require insurance having read the HCPC guidance (see link on page 4).

The SoR is not insisting that you have insurance, although as a member you will have, as a benefit of membership, sufficient cover to satisfy HCPC registration.

If you decide that you do not need insurance for whatever reason, you will not complete the appropriate declaration on the HCPC renewal form.

If, subsequently, it is found by the HCPC that you are working (or have practiced) without insurance cover; your registration will be automatically suspended and you will be the subject of investigation and possible referral to a full hearing at the HCPC.

I work in the independent/ not-for-profit sector. How am I affected?

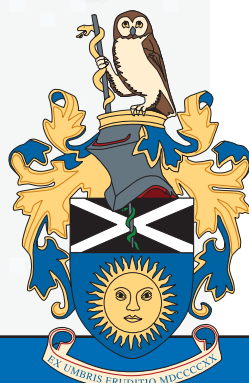
Employees in the independent and not-for-profit sectors, working for agencies or multiple employers, will have to think carefully when they renew their registration.

In general, members employed by companies providing healthcare on NHS contracts (through a formal commissioner or purchaser contract with a service provider) will be required to have sufficient indemnity in place that is equal to or better than NHS provision.

This could be reliance on the employment relationship and therefore vicarious liability, or in addition, have in place a blanket insurance cover for staff. Either way, it is advised that you check with your employer the insurance arrangements before you renew your registration and, if possible, obtain written proof of the level of cover in case the HCPC ask for it.

Where individuals work independently (sole practitioners), or as a limited company, or in a partnership, the situation is more complicated. SoR membership will, in most cases, provide sufficient individual cover for the employee as long as they operate in accordance with the policy conditions and our Scope of Practice and Code of Conduct.

Please note that the SoR indemnity policy can not be used by third parties or employers as surrogate insurance to avoid purchasing a company specific policy.



Where the member works outside of these parameters and is therefore not covered by our policy, they will have to prove to the HCPC that at registration and at any time during the registration period, they operate continuously within an appropriate professional indemnity insurance policy.

In most cases this will mean you, or the employer, will have to purchase additional insurance or be able to show that cover is provided by the employment relationship (vicarious liability).

I work in the NHS. Won't I be covered by them?

Not necessarily! The Society often hears from registered healthcare professionals "there is no need for any additional insurance cover because whatever happens, the employer will cover me. And they (the employer) are responsible for me when I work for them and since my employer has more money than me, I am not likely to be sued."

All of the above is true, but, like all matters that relate to the employment relationship nothing is that simple!

In all employment contracts the employer has a strict liability in law to be responsible for the acts of an employee during the course of their employment. Whereas the liability is absolute, the practical application can be open to interpretation.

In truth, as long as the employee performs work that is in accordance with the contract, or is associated with the terms of employment, the employer will be liable for any act or omission that may make the employee or the employer subject to civil action for injury or negligence.

This does not mean that the employer simply foots the bill, accepts responsibility and rolls over when faced with a civil claim for damages. It should be remembered that whilst employers owe a duty to the employee, they must also protect their own interest and business.

The latter duty will often be the driver to mount a defence against a claim and if legal counsel discovers a means to limit the liability for the client (the employer) by shifting the blame on to the actions of the employee, they are obliged to suggest this as a credible defence.

The employer may decide to limit their exposure to damages (costs) by 'joining' the employee in any action. This means that the employer will accept some liability, but argue that the employee, who is responsible for their own actions as a professional, has equal or shared responsibility for the claim and hence any judgement for costs or damages.

The employer, or at least their solicitor, could argue that the employer is responsible for the work that the member performs but equally there is an element of responsibility on the professional for performing their work diligently and in accordance with current practice. The exposure to this form of action increases as members accept more autonomy and extend their scope of practice.

It is also possible for an employer to argue that they are not liable because the registered professional acted alone and not in accordance with the terms of the contract, (this is often called a 'frolic') and hence any liability for injury or negligence falls squarely on the shoulders of the employee.

What is often argued is that employees' pockets are not as deep as that of the employer. But not all cases are for damages. A proportion will be about justice and what the claimant will consider 'as making sure that what happened to them does not happen to others'.

In our experience, an aggrieved party will often cast their net very wide and, if the civil action fails, refer the employee to the HCPC.

So, whilst the employee may be willing to take the risk that the employer will fully accept the blame, this can be limited, will not guarantee immunity and will not avoid other forms of retribution.

This is where the SoR is of real value. Our professional indemnity insurance scheme protects you in the event that an employer tries to shift the blame or deny liability. We are also able to advise and guide the member on how to act and what to say or write to limit any exposure to liability.

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Other scenarios

If, at any time during the registration period there is a change in ownership of the company, you will need to ensure that insurance cover is maintained. Without it, you will have to cease or suspend your registration and stop practising.

The onus is on you to maintain cover at all times if your employment relationship changes because of a merger, takeover or reorganisation and you become:

- self employed (an independent or sole practitioner);
- employed under a contract or sub-contract for services;
- engaged by an employer that undertakes non-NHS work, or work that is not in accordance with SoR Scope of Practice or Code of Conduct.

Failure to do so may result in the HCPC undertaking a full investigation into your activity.

As discussed, NHS employment will cover you by virtue of vicarious liability, but any arrangement you may have to do work for a private employer, even NHS work, will need to be checked to ensure that cover is maintained.

You can not and should not assume that any NHS employment will automatically cover you for other employers or employment.

SoR membership provides you with insurance that covers you as an individual and applies to any number of eligible jobs that you may have.

I've qualified but am not yet employed. What does this mean for me?

If you are out of work and not looking for employment but want to register then there is no requirement to declare at registration that you have insurance. However, as soon as you begin to look for work, or if you are offered employment, you will need to inform the HCPC that you will have insurance in place before you commence employment.

As an SoR member, our insurance scheme will cover you during periods of inactivity and allow you to declare at registration that you have insurance. If you leave membership for whatever reason before you commence work you will not be covered and will have to ensure that your employer has sufficient cover to meet the requirements of the Directive and therefore HCPC registration.

Who doesn't this change affect?

Assistant Practitioners are not currently regulated and therefore are not included in the EU regulations. SoR indemnity cover does, however, provide insurance for the SoR's assistant practitioner members.

Registrants who work in Social Care are exempt because they fall outside of the definition of healthcare professionals under the terms of the EU Directive.

SEVEN KEY TAKEAWAYS

- 1 The Directive will come into effect on 25 October 2013 but the HCPC do not intend to ask registrants for declarations until April 2014.
- 2 When you register with the HCPC you will be required to declare that insurance (indemnity) is in place, or will be in place when you start employment.
- 3 The requirement to ensure that insurance is in operation when employed will be the responsibility of the registrant and not the employer or HCPC.
- 4 The SoR insurance cover protects your interests and ensures that, should your employer decide or be directed to 'join' with you in an action (that is, make you equally liable for costs or accountability), you can defend yourself.
- 5 NHS employment will be the minimum to satisfy the requirement of the Order. If you are employed by the NHS you will have cover by virtue of vicarious liability. This means that the employer will be responsible for what you do as long as you are acting within your Scope of Practice and in accordance with the terms of your contract. However, the employer's primary responsibility is to protect the service.
- 6 If you are self-employed or in independent practice, you will have to ensure you have insurance and be prepared to prove this if required.
- 7 Where a registrant is found to have made a false declaration their name will be automatically removed from the register and they will be subject to an investigation.



FIVE BENEFITS OF SoR MEMBERSHIP

- 1** Members of the SoR receive professional liability insurance (PII). This is part of the SoR's package of membership benefits.
- 2** The total amount of the indemnity provided is £5,000,000 in respect of any one accident or series of accidents. This is sufficient enough cover to satisfy HCPC requirements.
- 3** The insurance applies anywhere in the world with the exception of the USA and Canada.
- 4** The SoR's professional indemnity insurance scheme protects you in the event that an employer tries to shift the blame or deny liability.
- 5** As a member, the SoR can advise and guide you on how to act and what to say or write, to limit any exposure to liability.

Further reading/advice

The SoR's PII guidance for members (members only)

www.sor.org/being-member/professional-indemnity-insurance/pii-guidance-members

Becoming a member of SCoR

www.sor.org/being-member

HCPC consultation

<http://bit.ly/18kldWA>

HCPC PII guidance

<http://bit.ly/1dH1jNK>

SoR membership provides you with insurance that covers you as an individual and applies to any number of eligible jobs that you may have

We're here to help!

If you require any further advice or information please do not hesitate to contact the team at the SoR.

Email your enquiries to: tuir@sor.org

