

# **THE SOCIETY OF RADIOGRAPHERS' PROFESSIONAL INDEMNITY INSURANCE MEMBERSHIP BENEFIT**

## **FREQUENTLY ASKED QUESTIONS (FAQs)**

### **Introduction**

Following on from the SOR policy revision, the following answers to questions below will apply from 1<sup>st</sup> October 2017. FAQs sheet accompanies the General Insurance Summary Statement prepared by the Society of Radiographers (SoR) Professional Indemnity Policy Insurance Brokers. It deals with questions that members of the SoR ask frequently. While these FAQs have been prepared by the SoR in good faith, the terms of the insurance cover are governed by the wording of the policy and not by the Summary Statement or these FAQs. In the event of any conflict between the policy itself, the Summary Statement or the FAQs, the terms and conditions of the policy will apply.

The SOR scheme relies on the members being employees that have vicarious liability from the employer, and if appropriate, holding statutory registration with the HCPC or NMC. The policy cannot be used to indemnify a company or a member who is not engaged as an employee. It is the member's responsibility to ensure they fulfil these requirements.

### **Frequently Asked Questions**

#### **1) What do I do in the event of an accident or incident?**

In the event that a member is made aware of a possible claim that may involve them in making a formal statement, participating in a formal enquiry or giving evidence under oath, it is important that they contact the SoR as soon as possible. Members should note that it is extremely important that they provide no written statements to anyone until they have been approved by the SoR's insurance brokers. Initial enquiries will be responded to within a maximum of three days. Failure to report an incident immediately, which later leads to a claim, could result in insurers refusing to deal with the matter if they feel that their position has been prejudiced by the late receipt of notification of a possible claim.

It is always safer to report a serious incident when it occurs than to leave it until a claim is made. Examples of when it might be appropriate to report an incident to the SoR include when a major extravasation of contrast agent occurs, under- or over- irradiation during a course of radiotherapy, injection of an inappropriate radiopharmaceutical, contrast agent or other drug during an imaging or therapeutic procedure, wrongly identifying a fetus as normal or abnormal, a fall by a patient that results in fracture or loss of consciousness.

#### **2) What protection is provided by the SoR professional indemnity cover?**

The SoR Professional Indemnity Insurance is an insurance policy that provides monetary protection in the event of legal action being taken against an individual who has caused damage or loss. The policy provides 'claims made' cover and indemnifies members against such sums as they may become legally liable to pay in respect of claims made against them arising from bodily injury or disease (fatal or non-fatal) to persons, or damage to material property, caused by any accident resulting in a claim being made during the period of the policy.

#### **3) How much cover do we provide?**

Each subscribing eligible member is covered up to £5,000,000 in respect of any one incident or series of incidents arising out of one originating cause (inclusive of costs and expenses) and in total in respect of any one member during any one period of insurance. This cover is

provided by underwriters at Royal & Sun Alliance Insurance plc (£2,000,000) and Novae Insurance Company Limited (£3,000,000 in excess of £2,000,000), and a period of insurance is one year.

**4) What does 'claims made' cover mean?**

It means that professional indemnity cover must be in place at the date of the claim AND at the date of the incident giving rise to the claim for it to be covered by the policy.

**5) What if a claim is made after 1<sup>st</sup> October 2017 – will I still be covered?**

We will continue to investigate all claims that meet the conditions of the policy that operated at the time. We are not able to say that cover will apply as only the underwriter can make that decision. However, assuming that all conditions have been met then the SoR will recommend that cover is active.

**6) Who is covered?**

Full members in employment who have vicarious liability cover from the employer, those life members who have paid the triennial premium separately, members of associated professions for whom there is an agreement of cover, and student/trainee members under supervision (see <https://www.sor.org/being-member/professional-indemnity-insurance/pii-guidance-members>). It should be noted that you must have been a member at the time of the incident in order for the insurance cover to operate, and you must also be in membership at the time a claim is made.

**7) I am a member of the SVT and obtain PII through the SoR. What do I need to know?**

The SoR PII scheme and its requirements apply as for other SoR members and all these FAQs are relevant. As the policy is 'claims made' you should maintain cover for a period of three years from when you retire from work. If you work in obstetric ultrasound or with paediatric patients please note FAQ 7 and 8. Only accredited members of the SVT qualify for access to the Society's PII scheme.

**8) I am involved in obstetric ultrasound and claims can be made many years after an incident that I may not even have been aware of - what should I do?**

You should ensure that you maintain personal professional indemnity cover at all times during your working life, and for at least three years after retirement as this is when most claims would arise. If you are concerned about longer term claims then it is advisable to maintain your membership when you leave the profession. Maintaining your membership of the SoR while at work and during retirement means that you will have professional indemnity cover.

**9) What if a paediatric patient makes a claim against me in his or her own right on reaching the age of 18? It may be many years after I dealt with that patient and I don't recall the claimed incident at all.**

As for those practising in the field of obstetrics, those working in paediatric practice should maintain personal professional indemnity cover at all times during their working life, and for at least three years after retirement. If you are concerned about longer term claims then it is advisable to maintain your membership when you leave the profession. Maintaining SoR membership provides the necessary professional indemnity cover.

**10) I am planning to leave the SoR – what does that mean in terms of my professional indemnity cover?**

It means that your PII cover will cease with effect from the date of your resignation. Claims against you that arise when you are not a member will not be covered, and it is unlikely that the SoR will be able to assist you in the case of a claim brought against you from an incident that took place while you were in membership. This is one of the reasons that we urge members to make sure that they keep up their SoR membership throughout their working life and for at least three years after retirement. If you work in obstetric ultrasound or with paediatric patients please note FAQ 7 and 8.

**11) I am planning to retire – what should I do about indemnity insurance?**

Members retiring should make sure that they keep up their membership of the SoR at the retired members' rate for at least three years after the date of your retirement. If you work in obstetric ultrasound or with paediatric patients please note FAQ 7 and 8.

**12) I am leaving the profession before I retire – do I need to retain indemnity insurance cover?**

Yes. The Society can offer you a reduced rate, dependant on your circumstances when you retire (age, any health issues etc). Please contact the Membership Department at the Society of Radiographers on 0207 740 7200 to discuss this option. You should retain insurance cover for at least three years and a single payment can be made to cover the entire period if you prefer. The insurers deem this period as sufficient to ensure that you remain covered in the event of a claim. If you work in obstetric ultrasound or with paediatric patients please note FAQ 7 and 8.

You are not obliged to pay this sum and retain your cover, but if you do not and a claim is made against you, you could be liable for all subsequent costs and will not have access to the Society's support.

**13) What are the principal policy exclusions and conditions?**

There are several policy exclusions and conditions, which are common to all insurances of this nature (<https://www.sor.org/being-member/professional-indemnity-insurance/pii-guidance-members>).

The following restrictions are the most likely to be relevant to members:

- The policy does not cover acts of criminal negligence; that is where it can be shown there was intent to commit an act knowing it is likely to cause harm.
- There is no cover for claims brought in the USA/Canada. The policy also excludes any legal fees, costs and expenses relating to such claims.
- It is a condition of the policy that the member's business or operations in respect of which this policy is effected is that of Radiography, as recognised by the UK Council of the Society of Radiographers. UK Council recognises that referrals for radiography may arise from referrals from entitled, statutorily regulated healthcare professionals in the case of the use of ionising radiation; or from self-referrals, or from referrals from non-statutorily regulated healthcare professionals subject to compliance with the SoR's advice (see <https://www.sor.org/learning/document-library/self-referral-allied-health-professionals-position-statement-relation-diagnostic-and-therapeutic> and see also document entitled 'Clinical Imaging Requests from Non-Medically Qualified Professionals' available to download as a PDF from <https://www.sor.org/learning/document-library>

**14) Why do members need PII?**

Members are responsible for what they do and how they work. The law stipulates that all practitioners are responsible for their actions and any consequences. If a member causes harm

or damage in the practice of his or her profession to another person, the latter can seek to be compensated.

**15) Why do members working in the NHS need cover?**

SoR insurance is protection against legal action. Every employer of every kind has a responsibility for the actions performed by its employees. This is called vicarious liability (vicarious means secondary). Therefore health authorities, boards or trusts, being employers, have a vicarious liability for actions taken by their staff. However, any claim against a health authority, board or trust has to come from NHS monies. Now that NHS budgets are being rigorously controlled to meet Government criteria, health authorities may well decide that, although they will meet the claims made against them because of their vicarious liability, they will, in certain circumstances, subsequently pass on the cost of legal action arising from an employee's malpractice or negligence to the individual or individuals concerned. The Society's indemnity insurance policy would cover you in such an eventuality.

**16) Does the SoR professional indemnity cover satisfy the requirement that statutorily regulated healthcare professionals must be covered by appropriate professional indemnity arrangements?**

Yes. From October 2013 and to address a section of the European Union Directive on the application of patients' rights in cross-border healthcare, the Government has determined that all statutorily regulated healthcare professionals must be covered by professional indemnity arrangements, and must confirm this at initial registration and renewal of registration if they are practising or intending to practise.

**17) Does the SoR PII cover me for non-medical/non-clinical examinations?**

At the most recent annual review meeting with the Society's professional Indemnity Insurance (PII) underwriters the position of members who undertake 2D/3D/4D ultrasound scans in obstetrics for 'souvenirs' or bonding was discussed. There are Trusts, Health Boards and independent providers who offer these scans for a fee and where the primary purpose of the scan is not that of diagnosis or screening. Members undertaking such 2D/3D/4D scans benefit from the Society's PII cover provided that the scanning is performed within a professional environment, by qualified staff and within a clear clinical governance and quality assurance framework. However, scanning in obstetrics for 'entertainment' only purposes where there is no report or referral in the event of maternal or fetal problems, where no clinical governance and quality assurance framework exists or where the scanning practices could bring the profession into disrepute are outside of the Scope of Practice for the profession, and members who undertake such scanning do so outside of the scope of the Society's PII scheme.

Outside the field of obstetrics members may also be asked to carry out examinations with no apparent medical or clinical value, or for health screening purposes again usually by individuals seeking to self-refer. It is essential that members are able to justify accepting such scans to remain within the terms of the SoR's professional indemnity policy. As for the situation above such scans must also be performed within a professional environment, by qualified staff and within a clear clinical governance and quality assurance framework. It is expected that a report will be issued and onwards referral arranged as appropriate.

**18) Use of disclaimers**

The use of disclaimers is becoming common. These are documents which individuals are asked to sign to accept that the scan/examination to be undertaken has no medical or clinical purpose or value, and no guarantees can be given as to whether the scan/examination is normal or shows an abnormality. As with all disclaimers, the mere inclusion of a disclaimer,

even if properly drafted and placed, does not usually provide legal protection. The most a disclaimer can accomplish in this respect is to reduce, probably marginally, the responsibility of the practitioner. The Society of Radiographers does not advocate the use of disclaimers. Rather, it emphasises that members must at all times use their judgment to assess the risk/benefit of all requests, whether from referral or self-referral sources, and ensure that their practice is prudent and in accordance with the SoR's Scope of Practice, Code of Conduct, and other professional guidance and advice.

**19) I provide Any Qualified Provider (AQP) imaging services for NHS patients. Is there any other source of indemnity insurance?**

Please See; <http://www.nhsla.com/Claims/Pages/Handling.aspx> where detail of cover is explained. [Scroll to the bottom of the page]

**20) Can a member be sued as an individual?**

Yes. There are instances of radiographers being joined in actions brought against health authorities. In such cases solicitors are appointed on behalf of the health authority and it is their brief to defend all those joined in the action, although the interests of the parties may not be the same. The Society's insurance policy means you could have your own legal representation if you were involved in such a case or were joined in a separate action.

**21) Am I covered for work carried out outside the NHS as an employee?**

Yes. If members are employed by a private hospital for example, the same principles of cover apply. Private employers have vicarious liability for their employees, but may be less hesitant about claiming back losses incurred through legal action.

**22) What other support does the SoR's insurance policy give the member?**

First and foremost, as with all kinds of insurance, there is the reassurance that you are covered and that when you most need help it is instantly at hand. Ultimately, it is not who pays that is important, whether the payer is the employer or the insurer, but how you are helped during a traumatic experience. The SoR and its insurers can provide prompt advice and guidance.

**23) Could I save the cost of SoR membership by buying my own insurance?**

No. The Society is able to use the size of its membership to obtain the insurance policy at a very reasonable premium. Individual cover would be much more expensive.

**24) Does the scheme cover claims from other health professionals?**

Yes. It is not always the patient who gets hurt by malpractice and negligence; sometimes it is other health professionals. It could be you, either alone or with others, who cause the injury. In such a case the injured party can sue the person or people responsible.

There is also an extension in the policy to cover National Councils/Regional Committees of the Society and individual members in respect of their legal liability incurred arising out of activities and meetings held by the National Councils/Regional Committees.

Cover includes indemnity to members in respect of legal liability arising from their acts as an Expert Witness or as an External Appointment Assessor. Members involved in audit work are covered provided they have a minimum of 25 years experience, they are not auditing any work for which they do not have experience themselves and that they have had no claims made against them in respect of this work. Expert witnesses must be on the Society's list of Expert witnesses and only accept work referred via the Society.

**25) If I am injured at work, is this covered by the SoR's professional indemnity policy?**

No. Personal injury claims are dealt with under a separate arrangement administered by the Trade Union and Industrial Relationships department of the SoR. See <https://www.sor.org/trade-union-support/employment-advice/injuries-work> for further information.

**26) I am self employed for part or all of my work. Am I covered by the SoR PII?**

The SoR policy can only be accessed if there is a contract of employment in place that includes vicarious liability from the employer. For periods when the member is self-employed, sub-contracted or engaged in work as an when on an ad hoc basis/cash in hand payment, the SoR PII scheme will not apply.

In these circumstances the member is responsible for obtaining sufficient insurance cover to meet any liability and to satisfy the requirements of the registration body.

**27) Does the SoR Professional Indemnity Insurance cover my equipment or provide Public Liability Insurance cover?**

No. Separate insurance will need to be sourced. The Society does not provide these insurances.