



CoDH Briefing: Professional Indemnity Requirements: implications for educators

Summary

From 17 July, all HCPC and NMC registrants are required to have an 'appropriate level' of indemnity cover for the risks associated with their practice.

NMC and HCPC guidance identifies three principal staff groups: those who are employed by the NHS (who are covered by the NHS indemnity scheme); those employed by private providers (covered usually by their employer); and those who are self-employed (who must make their own arrangements). Some staff will have additional indemnity via their professional body or union.

The situation for some staff in universities will be more complex. In general, universities indemnify staff in their role as educators, including when they are within a practice placement setting, but not for the delivery of care in the supervision of a student. Some staff may be covered for this through honorary contracts with the NHS or through their professional body/union. However, for those without this cover, there is a potential gap for educators involved in supervising and supporting students in practice, if that involves care delivery.

In England, the contracting arrangements between commissioners, education providers and placement providers also have a bearing on this. For example, the 2010 national standard contract suggests that HEI staff working with students in an NHS practice placement would be indemnified for clinical care via trust insurance schemes (but not necessarily in non-NHS organisations). The new LDA implemented by HEE makes no distinction between NHS and non-NHS organisations.

Indemnity Requirements (UK)

Change to legislation, 17 July 2014.

Purpose: This briefing alerts members to the potential implications of the change in the law coming into force on 17 July that will require every NMC and HCPC registrant to hold an 'appropriate level' of indemnity cover for their practice, taking into account its risks.

Relevance for CoDH members:

We believe there may be vulnerability in cover for educators working in practice with students in non-NHS placements. We therefore advise each member institution to ascertain its internal policies on indemnities and establish the impact of arrangements with education commissioners.

CoDH contact for more information:

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We therefore advise members to check their university policies and their contracting arrangements (where these apply) to establish whether there are any gaps in cover that may affect staff in their support of students on practice placements. From a brief survey of the LDA and national standard contract in England, we particularly advise looking carefully at arrangements for practice placements that do not fall under the NHS indemnity scheme, such as private providers and GP practices.

Context

As a result of the transposition of the EU Cross Border Healthcare Directive, it is expected to become a legal requirement for all nurses, midwives and AHPs to hold an indemnity arrangement in order to be registered with the NMC or HCPC. The legislation has now been laid in the UK Parliament and the Scottish Parliament and will come into force on 17 July 2014, subject to parliamentary and Privy Council approval.

In the past, many nurse educators have been indemnified for working with students in a practice setting through membership of the RCN, on top of whatever indemnities are held through their employment contracts. Our understanding is that from 1 July, the RCN's indemnity policies are changing and nurse educators will no longer be covered by membership of the RCN for this.

Current Arrangements: HEIs

In general, universities insure staff in their role as lecturers, including when they are within a practice placement setting, but not for the delivery of care in the supervision of a student. The responses we have received from a number of universities on the question of indemnity have indicated that any care (emergency, remedial or routine), should be performed by practitioners employed by the trust, not the university educator. This leaves a potential gap between university cover and the role of educators in supervising and supporting students in practice, if that involves direct care delivery.

Examples of Current Arrangements: Education Contracts (England)

Typically, the main education contract, the learning and development agreement and the practice placement agreement all contain wording on indemnity. The exact wording will depend on local contracting arrangements, for example whether the education contract is called off the National Standard Contract, or whether HEE's standard LDA has been implemented locally.



Example: Clauses from the 2010 National Standard Contract (emphasis added)

- 18.6 The Authority shall arrange that any employees, servants or agents of the Institution who will work alongside and supervise students during periods of practice placements shall be treated as secondees to the NHS organisation. The Authority shall ensure that the NHS organisation agrees the specific duties and obligations of such persons as regards student supervision and patients care as appropriate. **The Authority shall ensure that the NHS organisation shall be deemed to be the employer of such persons seconded whilst they are on NHS premises for the purposes of training and instructing students and the Authority shall ensure that the NHS organisation will indemnify the Institution against any costs, claims or liabilities which may arise from the negligent acts or omissions of those persons.**
- 18.7 The parties shall jointly ensure that the organisations providing placements, which are not covered by the NHS indemnity scheme, **agree to be deemed to be the employer of the students admitted onto their premises for the purpose of training and instruction** and can assure the Parties that they have appropriate insurance cover for employers liability, public liability and clinical negligence. Parties not covered by the NHS indemnity scheme would include for instance; GP and Dental Practices unless carrying out work contracted from the NHS; and voluntary and independent sector organisations unless carrying out work contracted from the NHS.

Implications: This clause suggests that HEI staff working with students on practice placements in NHS organisations are treated as secondees to the organisation and indemnified. However, the wording in 18.7 implies that HEI staff working with students in placements are not covered by the NHS indemnity scheme are not covered (although students are).

Example: Clauses from the new LDA implemented by HEE (emphasis added)

- 15.5 The Placement Provider shall ensure that any Learner or member of staff of an Education Provider involved in the provision of the Services is appropriately integrated into the Placement Provider's arrangements for clinical governance and is made aware of relevant Placement Provider policy and requirements.
- 15.6 **The Placement Provider will ensure that any Learner or member of staff of an Education Provider involved in the provision of the Services has the benefit of the Placement Provider's usual arrangements for indemnifying its staff against claims associated with the performance of their professional duties (including but not necessarily limited to claims arising out of adverse clinical events).**
- 15.7 Where the Placement Provider provides Continuing professional and personal development, it shall be liable for any action of all Learners relating to that Continuing



professional and personal development and the liability and insurance provisions of Part A to Schedule X (*Responsibilities of the Placement Provider where it is Providing Work Based Learning*) shall take precedence over the rest of this Clause **Error!**
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Implications: The new LDA implemented by HEE makes no distinction between NHS and non-NHS organisations. Any placement provider covered by the LDA is obliged to ensure that both learners and members of staff from education providers benefits from the placement provider's indemnity arrangements.

Conclusion

This is a complex area on which it is hard to generalise; members are therefore advised to take advice within the university on their institution's policy and to check education commissioning arrangements (where these apply) to ensure that there are no gaps in cover for staff working with students on practice placements.

Individual registrants may also want to check whether their professional body/union is changing its policy as a result of the implementation of the EU Directive.

For more information

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[NMC information on indemnity](#)

[HCPC information on indemnity](#)