Unite the Union Consultation Response to:

Professional Indemnity insurance as a requirement for registration with the NMC: information for nurses and midwives

This response is submitted by Unite. Unite is the UK’s largest trade union with 1.5 million members across the private and public sectors. The union’s members work in a range of industries including manufacturing, financial services, print, media, construction, transport, local government, education, health and not for profit sectors.

Unite represents in excess of 100,000 health sector workers. This includes eight professional associations - British Veterinary Union (BVU), College of Health Care Chaplains (CHCC), Community Practitioners and Health Visitors’ Association (CPHVA), Guild of Healthcare Pharmacists (GHP), Hospital Physicists Association (HPA), Medical Practitioners Union (MPU), Mental Health Nurses Association (MNHA), Society of Sexual Health Advisors (SSHA).

Unite also represents members in occupations such as allied health professions, healthcare science, applied psychology, counselling and psychotherapy, dental professions, audiology, optometry, building trades, estates, craft and maintenance, administration, ICT, support services and ambulance services.
Introduction

Unite welcomes the opportunity to respond to the consultation on the Professional indemnity insurance as a requirement for registration with the NMC: information for nurses and midwives.

As part of this response, Unite has used its ongoing routes throughout the organisation to hear back the views of members who are registered with the NMC and these have informed our response.

We would like to highlight Unite’s response in May 2013 to the consultation on the proposed Healthcare and Associated Profession Indemnity Arrangements Order 2013 (available on our website; http://www.unitetheunion.org/how-we-help/list-of-sectors/healthsector/healthsectorbriefingsandresearchpapers/). In this we were clear that whilst we recognise the importance of compensation for individuals harmed due to negligent activities by healthcare professionals, we are fundamentally opposed to making the requirement for appropriate professional indemnity cover, a condition of registration, except in cases where registrants are working in a self-employed capacity. Furthermore, we consider that the most effective way of protecting the public is to mandate that organisations that are providing healthcare services provide appropriate cover for their employees. In cases where registrant healthcare professionals are self-employed then it should indeed be their responsibility to have appropriate cover and the requirement for such cover should be factored into their decision to take this route.

Response to the consultation

Whilst the draft information is well structured and easy to understand, we consider that there are parts that should be reworded or removed and these are detailed below under the heading of the section to which they apply;

‘What is “appropriate” cover?’

‘Appropriate cover is an indemnity arrangement which is appropriate to your role and scope of practice and which reflects the nature and extent of its risks. The cover needs to be sufficient to meet any award of liability if a successful claim is made against you’.

The summary states that the majority of registrants will be covered by their employer. We are therefore concerned about the transfer of liability onto the individual that the statement above implies. It seems feasible to expect registrants who are self-employed to ascertain their level of ‘appropriate cover’ as they will be arranging their own policy in conjunction with insurance experts. However, we foresee that the majority of employed registrants would have difficulty in obtaining sufficiently detailed information from their employers concerning the policy being provided for them, to be able to assure themselves that the cover provided is sufficient to meet any award of liability if a successful claim is made against them. Each individual registrant would require access to the organisation’s policy (including the small print) in order to make an accurate self-declaration to this effect. Has the impact of requiring this level of information on employees and employers been considered? In addition has the possibility been considered that individual registrants may need to access independent advice on appropriateness of cover, which will come at a cost, further penalising those who are already experiencing significant reductions in their standard of living?

Furthermore, we suggest that the employee would have limited influence over increasing the level of cover provided by their employer should they find that it was not to be appropriate for their practice.

‘If you work in the NHS’
‘If you work in private healthcare’
We are concerned about these sections and consider they should be removed for the reasons detailed above and also because:

- The fragmentation and privatisation of the NHS means both private and NHS organisations are now delivering healthcare services on behalf of the NHS
- The draft *Healthcare and Associated Profession Indemnity Arrangements Order 2013* stated; ‘where an individual is employed, the employer can be liable for their acts or omissions, provided it can be shown that they took place in the course of their employment (vicarious liability)’. Our members increasingly tell us that employers are refusing to provide them with cover and are insisting that they take out their own, at their own cost. The information as detailed may increase the potential for employers to encourage employees to provide their own cover, again at a huge cost.
- They may lead to confusion as previous information states that registrants will be covered if they are employed and indemnity cover is only something they need to provide if they are practising in a self-employed capacity
- It is our view that ALL organisations that are delivering NHS healthcare should be mandated to provide cover for their staff

**Evidence of cover**

‘If your indemnity arrangement is no longer appropriate for your scope of practice….’

Again we would contest that those registrants who are employed may not be informed if their employer changes or removes cover for their employees.

**The new requirement and fitness to practise**

It was suggested by the Review Group that was asked to look at the best way to implement the European Directive 2011/24/EU that making the presence of indemnity cover ‘a statutory condition of registration has the unique advantage that, when supported by appropriate powers, enforcement action can be taken through low cost administrative procedures rather than high cost fitness to practise procedures’. The proposals to link the requirement to fitness to practise action contained within the guidance therefore appear to be against this view.

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