

Briefing Note on Clinical Indemnity

This briefing note includes a list of sample questions for members to put to indemnity providers who are offering “claims made” coverage instead of “occurrence based” coverage.

In terms of the difference:

‘Claims made’

‘Claims made’ indemnity or insurance means that the policy applies to a given period and covers claims notified during that period. It may not provide cover for claims reported after the policy expires, even in respect of claims that arise from procedures or treatments provided to patients during the period when the ‘claims made’ indemnity or insurance cover was in place.

‘Occurrence based’

Cover on an ‘occurrence’ basis means that the Consultant is covered in respect of patients treated during the time of cover even after one retires or ceases to be covered by the indemnifier for other reasons. It is not a requirement that the claim surfaces or is reported during the period of cover. The claim might materialise some years later, after cover has ceased, but it should still be covered under the ‘occurrence’ based model (but noting that MPS cover is in theory discretionary as it is a mutual society, not an insurer).

Regarding MPS, You will find contact details for them at [this link](#). If encounter any difficulties, you can contact Rachel Lynch who is their main point of contact for Ireland: Email: rachel.lynch@medicalprotection.org; Phone: 0035 3429 338 996; Mobile: 087 2867 491

MedPro/Medisec, a Berkshire Hathaway company, entered the market in 2020 and is offering ‘occurrence based’ medical indemnity insurance to hospital Consultants in Ireland. For further details, please see <https://medisec.ie/offer/#consultants-section>.

The guidance below highlights:

- (a) the difference between ‘occurrence based’ indemnity and ‘claims made’ cover;
- (b) the importance of obtaining full clarity from one’s indemnifier/insurer on the terms for ‘run-off’ coverage that may or may not be available from the provider and the cost of purchasing ‘run-off’ cover at retirement or on cessation of one’s policy; and
- (c) the differences between indemnity coverage and insurance contract products.

Members are advised to consider in detail the potential risks associated with the indemnity and insurance products. ‘Claims made’ indemnity or insurance means that the policy applies to a given period and covers claims notified during that period. There may be limitations on the extent to which it provides cover for claims reported after the policy expires, even in respect of claims that arise from procedures or treatments provided to patients during the period when the ‘claims made’ indemnity or insurance cover was in place. The need for ‘run-off’ cover to provide cover after a ‘claims made’ policy, either because of retirement or because a consultant changes indemnifier or emigrates or the indemnifier or insurer ceases to offer cover, requires careful examination. It is understood that the Medical Defence Union (MDU) and Challenge Insurance Brokers only offer ‘claims made’ coverage. MPS provides a choice of ‘occurrence based’ and ‘claims made’ options. MedPro offers ‘occurrence based’ cover. It is recommended that if a member is taking out ‘claims made’ coverage, that the ‘run-off’ cover requirements and provisions are also assessed in detail.

Members are advised to assess carefully any alternative indemnity cover they may be considering. It is important to clarify issues concerning the type, extent and terms and conditions applying to any indemnity proposals, especially “claims made” cover which is now being offered as an alternative to the usual “occurrence based” indemnity. The following is a non-exhaustive list of sample questions that should be put to providers:

1. Does the indemnity being offered provide full cover in the form of "occurrence based" cover which means that the Consultant is covered for any patient treated during the indemnity cover period regardless of when the claim is made, including claims made after retirement or if you cease to be covered with the particular indemnifier if you change indemnifier in the future?
2. Is the indemnity being offered on a "claims made" basis without "run off" cover which implies that cover against new claims submitted ceases when the cover ends, even for patients treated while the "claims made" cover was in place?
3. If it is "claims made" cover and if "run off" cover is not included in the policy, will it be possible to buy "run off" cover (to continue the cover for patients treated when "claims made" cover ceases for any reason) and if so when can it be purchased, from whom and at what cost and is this guaranteed or not?
4. If "run off" cover is included in the premium, are there limiting terms attached to the run off cover which mean it does not absolutely guarantee cover against all claims into the future for patients treated during the "claims made" cover period?
5. Is the benefit of the run off cover being proposed:
 - limited to a specific number of years and if so what run off cover will be available after the end of the period and at what cost and who will provide it?
 - limited to death, disability or retirement only and if so what about other eventualities?
 - guaranteed for all patients treated during the period you have the "claims made" cover with the indemnifier or broker/insurer or will this be affected if you change to another indemnifier or broker/insurer in the future?
 - guaranteed for all patients treated during the period you have the "claims made" cover in place even if the indemnifier or broker/insurer does not renew your cover?
6. Are there excess amounts that the consultant will be required to pay per claim?
7. Does the cover leave any other exposure for the consultant to pay part of possible claims over aggregate limits or other limits?
8. If it is "claims made" cover (which costs much less to provide in year 1 and increases over the years as exposure to claims increases) what is the commitment on the projected cost in years 2 to 5 and thereafter?
9. Is the premium being quoted on an individual risk rated basis or a specialty risk rated basis?
10. What would be the impact on the premium in future years and the effects on the availability of ongoing cover arising from a Medical Council investigation or a finding against the consultant or notification of a potential adverse incident or complaint, or receipt of a claim, or notice of the initiation of legal or court proceedings or settlements involving awards to patients?
11. What provisions are included in the cover for legal advice on adverse incidents and potential complaints and claims?
12. Confirm if all legal and other costs associated with medical negligence defence cases and representation in Medical Council fitness to practise hearings are covered.
13. Provide information on the legal firm or firms which will be responsible for this and their track record in medical negligence cases.

14. Provide information on the indemnifier's or broker's/insurer's medium to long term commitment to providing clinical indemnity cover for hospital Consultants in Ireland.
15. What is the track record of the indemnifier or broker/insurer in providing clinical indemnity cover to Consultants and the success in defending cases?

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