Department of Health & Social Care

NHS

NHS Resolution

CEM/CMO/2020/013

Dear colleague,

Joint letter from the Department for Health and Social Care, NHS Resolution, and NHS England and NHS Improvement: clinical negligence indemnity in response to Coronavirus.

As part of efforts to respond to the Coronavirus outbreak, we would like to reassure healthcare professionals and others working in the NHS in England about the position in relation to indemnity for clinical negligence incidents.

Comprehensive arrangements are already in place to indemnify healthcare professionals and others for the NHS work which they already do. The Clinical Negligence Scheme for Trusts (CNST) provides indemnity for those working in NHS trusts. The Clinical Negligence Scheme for General Practice (CNSGP) provides indemnity for GPs and others working in NHS general practice. NHS Resolution administers both schemes and more details can be found at resolution.nhs.uk. Some healthcare professionals also have indemnity cover from Medical Defence Organisations or commercial insurers.

We expect that in the vast majority of cases during this emergency period, any person working for trusts or GP practices will be covered for NHS work by these existing indemnity arrangements. This includes any healthcare professionals returning to the workforce from retirement or joining as students, who would be covered by CNST or CNSGP if they work in NHS trusts or general practice settings, respectively.

However, we recognise that there will be a need for changes to working arrangements during this emergency period. We do not want indemnity to be a barrier or delay to such changes. The Coronavirus Act 2020 provides the Secretary of State for Health and Social Care with powers to provide indemnity for clinical negligence liabilities arising from NHS activities carried out for the purposes of

dealing with, or in consequence of, the coronavirus outbreak, where there is no existing indemnity arrangement in place (*section 11 of the Act*).

The Government has introduced the additional indemnity cover under the new Act for clinical negligence liabilities that arise when healthcare professionals and others are working as part of the Coronavirus response, or undertaking NHS work to backfill others as a consequence, and existing arrangements (CNST, CNSGP or individual arrangements) do not cover a particular activity This additional indemnity cover will provide an additional safeguard, and is complementary to any existing indemnity provision already in place.

The additional indemnity provided by the Coronavirus Act 2020 covers NHS services commissioned from non-NHS providers. These arrangements will therefore include healthcare professionals and others from the independent sector, working as part of the Coronavirus response, where there is no existing indemnity arrangement in place.

Many healthcare professionals also require medico-legal advice and support (for example, assistance with complaints, GMC investigations or inquests) and we are working with organisations that provide such services to ensure that this is not a barrier to healthcare professionals who wish to return to, or begin working in, the NHS. Some of these organisations have already made commitments on their websites, for example:

- The Medical and Dental Defence Union of Scotland (MDDUS), mddus.com/coronavirus;
- The Medical Defence Union (MDU), themdu.com/coronavirus; and
- The Medical Protection Society (MPS) medicalprotection.org/uk/articles/information-for-retired-doctors.

The professional regulators and the four Chief Medical Officers[1] have set out guidance to reassure those working for the NHS that where they need to work in different ways, that they should be supported to do so; that the regulators will take extreme circumstances into account; and that the usual regulatory frameworks and the need to act in line with the principles of good practice set out by the regulators will apply.

[1] https://www.aomrc.org.uk/wp-content/uploads/2020/03/0320_letter_supporting_doctors_in_COVID-19.pdf

We can confirm that healthcare professionals and others carrying out NHS activities will continue to be covered for clinical negligence incidents if they have to work in different ways or locations – for example, advising more patients over the telephone instead of in face to face appointments or working in different settings.

For further information please see NHS Resolution's website: resolution.nhs.uk/2020/03/19/covid-19-and-business-continuity/



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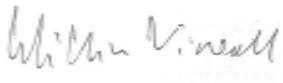

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