

## **GP Indemnity in Wales**

GPs are required by the General Medical Council to hold indemnity so that patients who are damaged by clinical negligence can claim and receive compensation. Before 1 April 2019, GPs had to fund their own indemnity and in order to do so almost all joined one of three medical defence organisations (MDOs). Approximately 43% of Welsh GPs are members of the Medical Defence Union (MDU), a mutual non-profit making organisation owned by its members who are principally UK doctors and dentists. In return for payment of an annual subscription members get access to the MDU's benefits of membership which include discretionary indemnity for clinical negligence claims, and other services such as assistance with complaints, disciplinary and criminal investigations arising from members' clinical work.

It is important to understand that claims against GPs are usually made 3-5 years after the incident that gave rise to them but can be made as many as 10, 20, 30 or more years later. For example, with some cancers if a GP misses a diagnosis it may be 4 or 5 years before symptoms are severe enough for the patient to seek further medical help and the cancer is diagnosed. The patient then has up to 3 years to sue. Claims on behalf of young children, for example where missed meningitis results in brain damage, may be brought much later and take many years to resolve, due to the need to understand how the child develops and what their needs will be. This means that indemnity for GPs is usually provided by the MDOs on an 'occurrence' basis so that GPs can seek assistance with and indemnity for the claim when it is made, even if the incident giving rise to the claim happened years before.

Over the last few years, indemnity has become increasingly unaffordable for GPs in England and Wales. This is not because of any fall in clinical standards, which remain high, but because of legal and economic factors that are beyond GPs' or MDOs' control. It was within the powers of the Westminster Government to address rising costs by changing the law, but it repeatedly failed to do so and the costs for GPs rose dramatically. Further, the Lord Chancellor decided to reduce the personal injury discount rate (used to calculate personal injury awards for future care) from March 2017 by an unprecedented 3.25%. The practical effect of this change was the doubling or trebling of high value claims where the cost of future health and social care is a major factor: for example, a claim against a GP that had been valued at £8.4 million was likely after the discount rate change to settle for £17.5 million.

This change applied in Wales and meant that GPs could no longer afford to pay for their own indemnity. In order to address this, on 14 May 2018 the Welsh Government announced plans to introduce a scheme for the state to provide clinical negligence indemnity for all contracted GPs in Wales. The scheme (the General Medical Practice Indemnity scheme – GMPI) was introduced on 1 April 2019 and GPs will no longer have to fund their own indemnity. Claims arising from any incidents that happened after that date would be handled and paid by the Welsh Government on behalf of GPs.

The Welsh Government also plans to put in place arrangements to meet GPs' liabilities for claims arising from incidents before 1 April 2019 – historic claims. However, when the state indemnity scheme started, the Welsh Government had not done so and Welsh GPs remain

responsible for their historic claims - claims that began before 1 April and claims that have yet to be made as a result of incidents that happened before that date. Because they are now state- indemnified for their 'future' claims, the MDU's Welsh GP members no longer pay the MDU a subscription for their indemnity. As the MDU relies on members' continuing subscriptions to help to meet their needs for historic claims, the new scheme has created a financial gap. The Welsh Government was aware there would be a gap if it did not address historic claims and, the MDU tried repeatedly to reach an agreement with it before 1 April to extend state indemnity to our Welsh GP members' historic claims. The inevitable and perverse effect of not reaching agreement is to reduce the funds available to assist GPs with the vastly escalating costs of indemnifying historic GP claims.

After 1 April we continued to try to find a solution with the Welsh Government but, regrettably, as no agreement was reached and our GP members are left with their historic liabilities, the MDU had to resort to judicial review proceedings which remain pending. The court requires the parties to try to settle the problem out of court, and ongoing litigation should not prevent this, but despite our attempts to open a constructive dialogue, the Welsh Government has not engaged in any meaningful discussions with the MDU.

## **The NHS (Indemnities) Bill**

On 16 July, the First Minister announced that an GP Indemnity Bill would be included in the legislative programme for the forthcoming sitting of the Assembly with the aim of ensuring 'all clinical negligence claims, whenever they are reported or incurred are covered', though no further details were forthcoming.

The National Health Service (Indemnities) (Wales) Bill was laid on the 14<sup>th</sup> October. The Bill will amend section 30 of the NHS (Wales) Act 2006, enabling Welsh Ministers to make regulations to establish an Existing Liability Scheme (ELS) to indemnify GPs for historic negligence claims.

The Welsh Government and the MDOs recognise that the establishment of this scheme will require negotiation and agreement, specifically around the transfer of assets required to meet historic liabilities. The Explanatory Memorandum associated with the Bill suggests that the current estimate of liabilities is in the region of £100m. To date, however, the Welsh Government has not entered substantive discussions with the MDU regarding the level of asset transfer that may be required.

Further, the Bill timetable suggest that the scrutiny of the legislation will be limited, and that the MDOs will not be asked to take part in the Stage 2 consultation. We would be happy to provide further briefing as required to highlight the complexity of the current system and provide further information about potential costs.

## **The MDU**

The MDU was, and still is, a mutual, non-profit making organisation owned by our members. We remain a company run by doctors for doctors. Few organisations that were around in 1885 still exist under the same ownership structure today. The MDU does – and we're proud of our rich history of guiding, supporting and defending our members.