

Insurance and Indemnity Guidance for decision makers

When failure to have adequate insurance or indemnity cover raises fitness to practise concerns

Good medical practice, paragraph 63 requires doctors to have adequate insurance or indemnity cover in place where necessary.

Parliament passed legislation in 2013, which led to a change to our legislation. The new requirements, which came into effect on 1 August 2015, are set out below:

S44C (1) MA 1983 (as amended) provides that 'A Person who holds a licence to practise as a medical practitioner, and practises as such, must have in force in relation to him an indemnity arrangement which provides appropriate cover for practising as such.

S44C (9) MA 1983 (as amended) provides that 'Where a person who holds a licence to practise is in breach of subsection (1) or there is a failure to comply with regulations made under subsection (4)(b) in relation to him

- a** A licensing authority may withdraw that person's licence to practise; or
- b** The breach or failure may be treated as misconduct for the purpose of section 35C(2)(a), and the Registrar may accordingly refer the matter to the Investigation Committee under section 35C(4).

The GMC, through the Registration and Revalidation Directorate, provides guidance about what this means for the profession, employers and patients. That guidance confirms that the definition of adequate is a complex area and is very much dependent on a doctor's individual circumstances and advises that it is a doctor's responsibility to ensure that they get insurance and indemnity that covers the full scope of their practice (including run off cover where they are retired).

Doctors are recommended to seek advice from the medical defence organisations or organisations in the commercial insurance market to assess what level of insurance and indemnity is adequate for their practice.

Where there is concern that a doctor may not have adequate insurance or indemnity cover, this is a matter that is likely to primarily affect their licence. We have powers, exercised through our registration functions to:

- Check that any doctor practising in the UK has adequate insurance or indemnity cover in place, when we have concerns that this might not be the case.
- Remove a doctor's licence to stop them practising altogether, if we learn that they don't have adequate insurance or indemnity cover in place, or they fail to give us the information we ask for.
- Refuse to grant a licence to a doctor if they can't assure us that they'll have the adequate insurance or indemnity cover in place by the time they start practising in the UK.

A failure to maintain adequate insurance or indemnity cover may in a limited set of circumstances raise concerns about a doctor's fitness to practise. This will be because it falls within one of the categories of impairment in the Medical Act. In most cases this will be because it amounts to misconduct as a result of the doctor being dishonest or misleading about their insurance or indemnity cover. This may be because:

- a A patient has been awarded compensation for negligence for which the doctor's insurance or indemnity cover has been found to be inadequate, as this demonstrates that the doctor's failure to maintain adequate insurance or indemnity cover has placed patients at risk, or
- b In the course of investigating allegations of clinical misconduct, evidence emerges that the doctor treated the patient in circumstances where they knew or should have known that they did not have adequate insurance or indemnity cover in place, or
- c The doctor has lied about insurance or indemnity cover being in place, as this undermines the public's trust in the profession.