To consider

Insurance and Indemnity

Issue

1 We need to undertake a consultation on amendments to the Licence to Practise and Revalidation Regulations 2012 (subject to planned changes to the Medical Act 1983 coming into force) to enable us to require applicants to make a declaration about their indemnity arrangements as part of the registration application process.

Recommendations

2 The Strategy and Policy Board is asked to:

   a Note the proposed policy approach.

   b Endorse the proposed amendments to the Licence to Practise and Revalidation Regulations 2012 as the basis for consultation.
Insurance and Indemnity

Issue

3 Since 1998, Good medical practice (GMP) has placed a professional duty on doctors to have professional indemnity or insurance arrangements in place. Paragraph 63 states ‘You must make sure that you have adequate insurance or indemnity cover so that your patients will not be disadvantaged if they make a claim about the clinical care you have provided in the UK.’ The duties of a doctor set out in GMP apply to all doctors registered with the GMC, whether or not they hold a licence to practise.

4 An independent review group headed by Finlay Scott was commissioned by the Department of Health in 2009 to look at this issue. It reported in 2010 and recommended that making insurance or indemnity a statutory condition of registration is the most cost effective and proportionate way of achieving the underlying policy objective.

5 At present there is no compulsory statutory requirement for doctors to have professional indemnity or insurance arrangements.

6 The Department of Health (DH) has consulted on the Health Care and Associated Professions (Indemnity Arrangements) Order 2013, which will create a new S44C of the Medical Act 1983 which will introduce a requirement for doctors to have in place appropriate indemnity cover as a condition of their licence to practise. We expect the provisions to come into force some time after February 2014.

The new S44C of the Medical Act 1983

7 The DH has proposed that the new S44C of the Medical Act 1983 will also provide the GMC with powers to make regulations to:

   a Request information from a doctor seeking a licence to practise to demonstrate that they have appropriate cover, or will have appropriate cover by the time they begin to practise.

   b Require a doctor to inform us if their cover ceases.

   c Require a doctor to inform us if they have appropriate cover provided through their employer.

8 Additionally the proposed new S44C enables us to refuse to grant a licence to practise where a doctor fails or refuses to comply with these requirements.

Proposed approach

9 In determining our proposed approach, we have taken account of the fact that having adequate professional indemnity or insurance cover is a long-standing
professional duty for doctors. Also, in contrast to some healthcare professions, a large majority of doctors will already have indemnity insurance as a result of their employment.

10 Having considered the relative risk associated with this issue for patients receiving medical treatment and with a view to proportionality, our proposed approach is somewhat less onerous than made possible by the powers set out in paragraph 7 of this paper, above (which the new S44C would enable us implement).

11 We think this will reinforce the importance of this issue but avoid placing disproportionate requirements on both doctors and us. We are proposing the following:

a All applications for a licence to practise (both new applications and for applications for restoration) will include a declaration. The declaration will form part of the online application form (a mandatory tick box as part of the final declaration) which will be a required field in order to submit the application.

b Colleagues at the General Optical Council (GOC) have proposed a draft declaration as follows: ‘I have in place, or will have in place, at the point at which I practise in the UK, insurance or indemnity arrangements appropriate to the areas of my practice’. We will continue to work with the GOC and other professional healthcare regulators to agree and finalise a standard declaration.

c There will be no requirement to evidence insurance and indemnity at the point of registration or for us to determine the appropriateness of the indemnity arrangements. There will be no requirement for an ongoing declaration either on an annual basis or as part of the revalidation process. However, we plan to issue a notification to all registered doctors to remind them of their statutory duty, when the new regulations come into force.

d The Registrar will have power to request information regarding an applicant or registrant’s insurance and indemnity arrangements, in order to satisfy themselves that appropriate arrangements are in place.

e Should it transpire that there is no cover in place or an individual refuses to provide information regarding their cover when requested to do so, we will be able to take action to refuse or withdraw that individual’s licence.

Proposed amendments to the Licence to Practise and Revalidation Regulations 2012

12 The proposed amendments are set out at Annex A.
Next steps

13 Pending approval of the proposed amendments to the Licence to Practise regulations as a basis for consultation and subject to DH consideration and endorsement of the amendments, we plan to launch the consultation in quarter 1 or 2 of 2014.

14 Following the consultation, we will ask Council to formally approve the regulations at its meeting on 25 September 2014 with a view to implementing the changes in quarter 4 of 2014 or quarter 1 of 2015.

15 We will liaise with colleagues across the organisation to ensure that the relevant communications, systems and operational requirements are planned and rolled out prior to the implementation date.
Supporting information

How this issue relates to the corporate strategy and business plan

16 Strategic aim 2: To give all our key interest groups confidence that doctors are fit to practise.

Other relevant background information

17 The proposed Section 60 Order will implement Article 4(2)(d) of the European Union Directive 2011/24/EU on the application of patients’ rights in cross-border healthcare. The Directive requires Member States to have systems of professional liability insurance or similar arrangements in place in relation to provision of cross border health care transposed into domestic law by 25 October 2013. The domestic legislation will be subject to approval by the Privy Council prior to final clearance.

18 We have however noted that the draft Order introduces a provision that will exempt ‘visiting EEA medical practitioners’ from the requirement to complete a declaration regarding their indemnity arrangements. We are, along with the Nursing and Midwifery Council and the General Pharmaceutical Council, raising this with DH to ask that the S60 draft is amended to enable us to require this cohort of doctors to complete a declaration.

How the issues support the principles of better regulation

19 The proposals set out in this paper attempt to strike a balance, ensuring that patients have recourse to redress if they suffer harm through negligence on the part of a regulated doctor but doing so in a way that is proportionate to the risk and do not place unnecessary requirements on doctors or on the GMC.

How the action will be evaluated

20 We will undertake a consultation on the proposals and will take into account any resulting feedback.

What equality and diversity considerations relate to this issue

21 We have taken into account the need to ensure that flexibility is built into the regulations/policy to accommodate those whose registration and licence requirements change with their personal situations such as health, maternity or career breaks. For this reason, current policy proposals will not require doctors to inform us each time their cover ceases or employment status changes.

If you have any questions about this paper please contact: Jon Billings Assistant Director Registration and Revalidation, jbillings@gmc-uk.org, 020 7189 5434.
Insurance and Indemnity – proposed amendments to the Licence to Practise and Revalidation Regulations 2012

1. This annex sets out the proposed amendments to the Licence to Practise and Revalidation Regulations 2012, which will be made by way of a new section 44C(4)(a) of the Medical Act 1983.

2. We are also proposing the addition of a new regulation to the Licence to Practise and Revalidation Regulations 2012, which will be made by way of a new section 44C(4)(b) of the Medical Act 1983.

3. The changes to the Medical Act to enable us to amend the regulations will be introduced by the Health Care and Associated Professions (Indemnity Arrangements) Order 2013.

4. I have set out below the proposed amendments to the regulations and the proposed additional regulation:

Proposed amendments to the regulations: Information to be provided to the Registrar by or in respect of a person seeking a licence to practise (made under Section 44C(4)(a)).

a. Applications for a licence to practise

Amendment to Regulation 1(2) to insert the following additional definitions:

“indemnity arrangement” has the meaning given in s.44C(2) of the Medical Act 1983;

“appropriate cover” has the meaning given in s.44C(3) of the Medical Act 1983.

Amendment to Regulation 3(3) – adding a new provision after Regulation 3(3)(h):

‘3(3) An application made under paragraph (2) must include –
(a)-(h)...

(i) A statement that the practitioner has in place, or will have in place at the point at which the practitioner practises in the UK, an indemnity arrangement which provides appropriate cover.'

b. Withdrawal of a licence to practise

Amendment to Regulation 4(3) – adding in the additional provisions after Regulation 4(3)(g):

‘4(3) The licence of a registered practitioner may be withdrawn by the Registrar where it is established to the satisfaction of the Registrar that the practitioner has –

(a)-(g) ...

(h) failed, without reasonable excuse, to provide any evidence or information to the Registrar in accordance with [new Regulation 6A]

(i) failed to obtain, or maintain, an indemnity arrangement which provides appropriate cover;

c. Applications for restoration of a licence to practise after withdrawal

Amendment to Regulation 5(2) – adding a new provision after Regulation 5(2)(h):

‘5(2) An application made under paragraph (1) must include –

(a)-(h)...

(i) A statement that the practitioner has in place, or will have in place at the point at which the practitioner practises in the UK, an indemnity arrangement which provides appropriate cover.’

5

By adding such provisions, the GMC would then be able to rely on specific powers under Regulations 3(8)(a) or 5(10)(a)(i) to refuse applications for failure to comply with the application provisions.

Proposed additional regulation: Information to be provided to the Registrar by or in respect of a registered medical practitioner (made under Section 44C(4)(b))

6

Adding a new regulation (suggested new regulation 6A):

‘Where in the Registrar’s opinion it is reasonable to do so for the purpose of determining whether there is in force in relation to a licensed practitioner an indemnity arrangement which provides appropriate cover, the Registrar may by
notice to the licensed practitioner, request that a licensed practitioner provide information.'