

General Practice Indemnity podcast: S1 E1 transcript

Nick Rogers: Hello and welcome to our new series of podcasts on General Practice Indemnity. My name is Nick Rogers and I'm a Senior Policy and Strategy Lead at NHS Resolution.

In this series, we're going to be talking about a hot topic for the whole of the health sector, which is the clinical negligence scheme for general practice or, CNSGP for short. The scheme launched back in April 2019 and I'm going to be talking to key people across the sector on topics ranging from coverage to claims process. I hope you find this podcast interesting and useful and don't forget to subscribe, share and let us know your thoughts.

This first podcast will explain why CNSGP was introduced, what cover is provided under the scheme and how the scheme is funded. Future podcasts will focus on what to do if you think you have a claim and what you can expect from NHS Resolution. Up until 2018/2019, rising cost of indemnity and clinical negligence was a great source of concern for general practice.

Indemnity costs were understood to be having a negative impact on recruitment and retention of GPs, and the wider workforce and indemnity provision before 2019 wasn't set up to support the changes to primary care service provision, that are rapidly coming to fruition. With the government committed to ensuring the general practice remains an attractive long term option, CNSGP was launched on the 1 April 2019. In this podcast we speak to NHS leaders about why the scheme was introduced in the context of wider change within primary care. First up, we're joined by Keira Moulds, Head of Primary Care Commissioning at NHS England & Improvement. Keira was part of a General Practice Indemnity review published in July 2016 and has been involved in setting up CNSGP.

So Keira, tell me, how did we arrive at a state indemnity scheme for general practice?

Keira Moulds: Hi, we identified as, as you've just alluded to, in 2016 that indemnity in general practice was becoming a real problem in terms of costs, and it was something that perhaps wasn't going to be able to support future care models as primary care was developing.

We felt very much the indemnity needs to meet the needs of current and future general practice staff to support the constantly evolving models of care delivery, within the primary care settings as set out now in our NHS Long Term Plan. The rising costs, as alluded to, were something that were taking a real strain on the profession.

We, for example, we're hearing that it was affecting people's decisions to retire. It was affecting the ability to fill out of hours rotas for example. This was because indemnity was a membership and people had their own package of cover for a certain number of shifts, so if they wanted to do extra shifts, obviously there was an extra cost that would be attached to that and understandably put people off. So the response that the government wanted to make was to introduce them off flexible and affordable scheme of indemnity and CNSGP was launched on 1 April 2019.

Nick Rogers: So could you tell us a little bit more about the scheme?

Keira Moulds: Sure.

So it covers any clinical negligence liabilities arising from an act or omission occurring on or after the 1 April 2019. So those would be acts by an eligible provider or, anyone authorised to undertake their contracted primary medical services on their behalf. By that I mean, this must be in connection with the diagnosis of an illness or the provision of care or treatment under a primary medical services contract.

So these are commonly known as GMS, PMS, APMS contracts, sometimes actually referred to collectively as Part 4 contracts. Or additionally, any primary medical services being delivered under Schedule 2L of an NHS standard contract, which is also referred to as an APMS bolt-on.

Nick Rogers: Okay, great. So you mentioned a few different types of contract there Keira.

Could you explain what these are as I imagine that not everybody working in general practice would be familiar with them?

Keira Moulds: Of course. So GMS stands for General Medical Services contracts. PMS stands for Personal Medical Services contracts and APMS stands for Alternative Provider Medical Services contracts.

Nick Rogers: So this is a really big change for general practice?

Keira Moulds: Absolutely, yes. I think the biggest change for general practice is that the clinical negligence indemnity cover now flows from the contract rather than it being an individual membership.

Nick Rogers: Could you tell us a bit about the benefits of the scheme?

Keira Moulds: Yeah, so as I was alluding to, it removes the cost and administrative burden from the individual practitioner because they no longer need to be an individual member paying their own costs. And it also covers everyone who works in general practice and it's an automatic cover for any NHS primary medical services that are undertaken under the contracts that we were just referring to before. So everyone who works in general practice, which would include all healthcare professionals and any other staff would be covered, not just GP.

Also, you know, it's worth noting that it's the contractual arrangements that give you the pin into the cover and it's unlimited and comprehensive in nature so there is actually no need to apply or register or become a member. You are automatically covered by virtue of performing the activities under the contract.

There's some really helpful information on NHS Resolution's website, which contains further information about the contracts and activities, et cetera, that are in and out of scope. But I think the primary thing to take away is that NHS primary medical services are, within scope. I think there will be more information later on in this podcast on that.

Final point to note, I think on this bit is that we would expect to see locum rates adjusted accordingly given the cover under CNSGP automatically extends to them as they are providing activities under the contract.

Nick Rogers: So CNSGP covers incidents that happen on or after 1 April 2019 but what about incidents that occurred before 1 April 2019?

Keira Moulds: So these claims aren't covered under CNSGP because they relate to diagnosis, care or treatment before the scheme actually came into operation. So alongside CNSGP, the department of health and social care remains committed to delivering on its commitment to put in place an existing liability scheme.

And at the point of recording this podcast, has agreed commercial terms with the Medical Protection Society, or MPS as it's commonly known, and Medical and Dental Defence Union of Scotland or MDDUS as it's commonly known covering historical NHS, clinical negligence, incidents of their GP members occurring at any time before 1 April, 2019.

Nick Rogers: My understanding is that NHS resolution has some sort of role in these claims before 1 April 2019. Could you tell me a bit more about what that is?

Keira Moulds: They do have a role. NHS Resolution has oversight of the arrangements for an interim period with both MPS and MDDUS but what that means is that MPS and MDDUS will continue to handle these claims, meaning that there is no change for the members at the moment.

So if a claim arises for any activity before 1 April 2019 you should continue to contact the MDO regarding these claims. It's worth saying that those working in general practice should look out for further announcements regarding historical liabilities as these may change once the LS scheme has been established.

At the time of recording this podcast, we understand discussions are ongoing with the Medical Defence Union or MDU as they're commonly referred to. But the majority of English GPs now benefit from the arrangements agreed between the department and MPS and MDDUS.

Nick Rogers: So individual general practice staff no longer have to pay clinical negligence indemnity costs for their NHS work, but how is this arrangement being funded by government?

Keira Moulds: So the scheme is funded through essentially held primary care allocation. In April 2019 there was a one off permanent adjustment to the global sum figure in the GP contract, which took into account the existing contributions from general practice for indemnity.

So what that means in practical terms for the general practice community is that no increasing costs in the future will be passed on to clinicians.

Nick Rogers: So has the money just being taken from those working in general practice?

Keira Moulds: Well given other investments made under the five year framework of the GP contract reform to implement the NHS Long Term Plan, investment in general practice contract actually still rose by 1.4% in 2019-20 with further investments in the future.

So CNSGP removes that cost from the frontline, from the individual practitioner for the actual cost of cover and the administrative burden of dealing with claims. But I think it's important just to note that there is an expectation that individual practitioners will continue to purchase professional indemnity cover because that's not an area that's covered under the CNSGP. CNSGP only covers clinical negligence, not professional negligence. So by that I mean representation at inquests are perhaps at GMC, which are purely personal professional issues.

Nick Rogers: So that's a short summary of how we arrived at a state indemnity scheme for general practice. Thanks very much for your time, Keira.

But what specific cover is included or excluded under the scheme?

Well, to help us address these points, we're joined by John Mead, Technical Claims Director at NHS Resolution since 2005. John, we've heard a little bit about this from Keira, but can you tell us a bit more about scheme coverage?

John Mead: Hello Nick yes. If the activity is in connection with one of the main primary medical services contract, now that might sound a bit complicated, but to help, we've put a scope table on the NHS Resolution website, which contains a lot of detail about what specific activities are, and perhaps even more important, are not covered under CNSGP.

If your question isn't answered by that scope table, then please contact NHS Resolution via our dedicated mailbox.

Nick Rogers: Thanks. And we'll give that out at the end. So am I right in thinking that if the activity doesn't fall within one of these contracts, then it's not covered?

John Mead: No. If the activity isn't being delivered under one of those contracts, it won't be covered unless you can answer yes to each of the following three questions.

So number one, is it an activity that consists of or is in connection with the provision of NHS services?

Two, are those NHS services being provided by a person or organisation whose principle activities are to provide primary medical services or under a subcontracting arrangement with such person.

And three, is the activity in question connected to the diagnosis, care or treatment of the patient? So you have to answer yes to all of those questions in order for cover to apply. If you can't answer yes to any of those questions, then the services are not covered under CNSGP and you will need separate cover for those activities either from a medical defense organisation or from an insurer.

Nick Rogers: And what should people do if there is a claim to notify?

John Mead: Please notify us straight away, the sooner the better. When telling us about a claim in NHS Resolution will then ask for details of the PMS or other contract under which services were provided so that

we can confirm cover under the scheme or advise if there is no cover. But what we'll do if you have received proceedings, for example, is that we'll protect your positions, such as by appointing defense solicitors to enter a defense, even before the question of cover has been resolved.

Nick Rogers: Thanks for explaining all about John, you'll find reporting guidelines on the NHS Resolution website, which contains further guidance on when and how to report a claim.

All of that sounds a little bit complicated though John, so what should people do if they're still unsure?

John Mead: Yes I agree it's complicated, but the essence of cover under the scheme is the contractual arrangement under which the services giving reliance to the claim were provided.

Now, if anyone's unsure about those contractual arrangements, then they should speak to their practice manager or contract manager to find out what arrangements were in place. I stress though that for most people working in general practice, the issue of determining cover will be relatively straightforward. Again, if people are unsure about cover, then they should contact NHS Resolution.

Nick Rogers: As this is a new scheme for those working in general practice, people might not be familiar with NHS Resolution. Could you tell us a bit more about NHS Resolution, John?

John Mead: Yes. We're a Special Health Authority reporting to the Department of Health and Social Care. Our main function is to deliver indemnity arrangements on behalf of the Secretary of State. The one that most people may have heard of is CNST, which is the Clinical Negligence Scheme for Trusts, and that covers all trusts and Clinical Commissioning Groups in England.

Our mission is to operate fairly, both for the members of our schemes and for patients because we recognise that claims and litigation are very stressful things, and we aim to resolve claims as quickly as feasible.

Unfortunately, sometimes it's not possible to avoid proceedings being commenced, but again, we will try to conclude litigation as quickly as we can because we know that litigation in particular is, is really stressful.

Nick Rogers: Thanks, John. Am I right in thinking that despite CNSGP being in place, people still need to purchase separate cover from their medical defense organisation or other provider?

John Mead: It is very important because CNSGP only covers clinical negligence claims. So there are a host of other types of liabilities that a GP or a Practice Nurse, for example, can incur over and above clinical negligence. For example, if a patient comes into the surgery and trips on a defective mat that's what we call a public liability claim, which isn't covered under CNSGP. If a surgery employee injures themselves as a result of defective equipment, that's an employer's liability claim, again, not covered under CNSGP.

Nick Rogers: And there's a full list available on the NHS Resolution website of what is and is not covered. So one point that some people are concerned about is do they need to purchase what's called runoff cover?

John Mead: Yes. That is necessary if you or your practice had what's called claims made or claims paid cover prior to 1 April 2019. Claims made cover is exactly what it says, which is that the policy covers claims actually made during the period of the insurance, irrespective of when the alleged liability happened and claims paid cover covers claims that are actually paid during the period of cover.

Nick Rogers: Some people might be confused about complaints handling. Does NHS Resolution deal with these or is it just claims?

John Mead: No, I'm afraid NHS Resolution doesn't deal with complaints as they don't fall within the scope of CNSGP. But we do need to know where a complaint response amounts to an admission of breach of duty as soon as possible.

Having said that, NHS Resolution is not asking that practices are constrained when dealing with complaints. We are very firmly saying the practices need to be open and transparent with patients when dealing with complaints and that is the right thing to do. We will not withdraw indemnity from a practitioner if a complaint has been dealt with in an open and transparent manner.

There's a document on our website called Saying Sorry, which explains all of this in in greater detail and outlines good practice in dealing with admissions and explanations to patients.

Nick Rogers: Thanks very much, John.

So we've spoken about why CNSGP was introduced, what cover is provided under the scheme and how the scheme is funded. Hopefully you found that summary useful, but if you're still unsure about coverage under CNSGP, you should check the NHS

Resolution website or contact NHS Resolution via the mailbox, CNSGP@resolution.nhs.uk. For incidents that occurred on or after 1 April 2019 report via the mailbox, CNSGPNotification@resolution.nhs.uk and helpline 0800 030-6798.

Report to NHS Resolution and to your MDO where allegations spanned a period pre and post 1 April 2019. NHS Resolution's website contains more information on the other services that NHS Resolution deliver to providers and commissioners of primary care, including Primary Care Appeals, Safety and Learning and Practitioner Performance Advice.

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