

8 November 2012

Our ref: HRIKVA\Indemnity

To: KSS HR Directors and Relevant Partners (RE-ISSUE)

Dear Colleagues

Re: Personal and Professional Indemnity

Whilst I have not changed the dates on each document, I am re-issuing amended documentation which relates to the agreed indemnity arrangements for persons acting on behalf of KSS Deanery, together with a letter from COPMeD, which is intended to remind individuals to ensure that they have sufficient personal and professional indemnity to cover the work and reputational risks they carry as a result of work undertaken as senior medical educators. **Please destroy earlier copies**, which had previously referred to liability not being accepted for actions which, although they may not be lawful, do not accord with DH, BSUH and Deanery policies. This should have made reference to DH and Deanery policies, as shown in the amended documentation.

We would be grateful if the attached documentation could be provided to the cohort of stakeholders, who undertake roles on behalf of KSS Deanery within your employing organisation. The list is not exhaustive so you may include other relevant partners who do not appear on the list but will act on the Deanery's behalf in the capacity mentioned in the documentation.

We will ensure the documentation is provided to new starters, who are contracted to the Deanery in some way, eg. Directors of Medical Education, Clinical Tutors and Training Programme Directors, but it would be helpful if you could also circulate the documentation to other relevant colleagues within your organisation.

Below is a list of the enclosures:

- Letter from COPMeD regarding personal and professional indemnity – 1 page
- Letter from Dean Director confirming new agreement with BSUH (Host Organisation) – 1 page
- Letter from Dean Director setting out the scope of the indemnity – 1 page
- Health Service Circular – HSC 1999/015 – 6 pages

If you have any queries, please do not hesitate to contact the Deanery.

Yours sincerely



Karen Allman
Head of Human Resources - on behalf of
Professor David Black, Dean Director

University of London



With our partners

Chair, Deanery – Professor Sir David Melville CBE
Dean Director – Professor David Black

brighton and sussex
medical school

Date 5th July 2011
Ref DS/IP
Direct Line 0115 8467312
E-mail David.Sowden@nottingham.ac.uk



www.copmed.org.uk

Chair: Professor David Sowden

To: COPMeD

Dear Colleague,

Re Personal and Professional Indemnity

Further to previous discussions on this topic it is important that each senior medical educator ensures that they have sufficient personal and professional indemnity to cover the work and reputational risks they carry as a result of that work.

The provisions of Crown Indemnity are, by their very nature, limited and do not usually extend to the principles of coverage for reputational risk; though the situation may vary across the UK. As a result, referral to the GMC for fitness to practise considerations is unlikely to be covered by provisions made by your local NHS employer irrespective of any assurances that you might have received to the contrary.

In addition, there are further constraints imposed on the defence of certain cases by the NHS Litigation Authority or the DA equivalent. They may well decide to settle a case out of court on the grounds of costs but with the potential that you are unable to defend or be seen to defend your professional position and reputation. In such circumstances individual indemnity cover offers an opportunity to pursue such cases outside those arrangements.

It's also worth highlighting that the nature of indemnity cover varies between the individual defence organisations and it may be sensible to discuss with them the nature of that cover and the period for which it is provided. In particular, whether protection continues to be provided after retirement in relation to cases that developed whilst premiums were being paid, despite the annual indemnity fees not continuing to be paid after retirement.

Best wishes.

Yours sincerely

A handwritten signature in black ink, appearing to be 'DS', with a long horizontal line extending to the right.

Professor David Sowden
Chair COPMeD (UK)
Postgraduate Dean and Managing Director
East Midlands Healthcare Workforce Deanery

A handwritten signature in blue ink, appearing to be 'BL', with a long horizontal line extending to the right.

Dr Barry Lewis
Chair, COGPED
Director Postgraduate GP Education
North Western Deanery

KSSNHS Postgraduate
Deanery for Kent,
Surrey and
Sussexwww.kssdeanery.ac.uk7 Bermondsey Street
London SE1 2DD
Direct Dial: 0207 415 3402
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Main Fax: 0207 415 3666Brighton and Sussex
University Hospitals

NHS Trust

To: Directors of Medical Education & Clinical Tutors
Secondary Care Deputy and Associate
Medical Education Managers
Medical Staffing Managers
Foundation Training Programme Directors
Directors of Human Resources
GP Associate Deans, GP Trainers, Clinical and Educational Supervisors in GP
Placements, GP Programme Directors and GP Tutors
Dental Associate Deans, All Dental Tutors and Clinical Dental Advisors

Amended: May 2012

Dear colleague

Indemnity on behalf of the KSS Deanery

I have recently reached agreement with the Brighton and Sussex University Hospitals NHS Trust (host organisation for KSS Deanery) about updating the 1999 agreement (HSC 1999/015) with the Department of Health on providing indemnity and liability of persons acting as agents for, or on behalf, of Deaneries. The roles and areas of responsibilities within the enclosed Circular have been updated over time and are accurately reflected in the enclosed copy of a letter which should be kept on file.

Yours sincerely

David Black
Dean Director

Encs: Updated Indemnity letter
HSC 1999/015 paper

University of London



With our partners

Chair, Deanery Board - Professor Sir David Melville CBE
Dean Director - Professor David Black

brighton and sussex
medical school

Amended: May 2012

Dear colleague

Persons acting as agents for, or on behalf of, Deaneries

Deaneries and their direct employees benefit from the indemnity and liability arrangements established by the Department of Health through Brighton and Sussex University Hospitals NHS Trust. Colleagues who act for the Deanery, but who have no contract of employment with the Deanery, may also benefit from these arrangements. The arrangements extend in all circumstances only to actions undertaken on behalf of, and under the management of, the Deanery.

This will include, for example, persons acting for the Deanery in respect of:

- the appointment of junior doctors and dentists (including LAT appointees), dentists and pre-registration pharmacists
- supervision of trainees in GP placements
- the conduct of Record of In-Training Assessment (RITA), Annual Review of Competence Progression (ARCP) panels and Dental Foundation Training
- the management of specialist placements, including general practice training placements
- the management of Deanery teaching programmes
- targeted training of individual medical, dental and general practice specialty trainees undertaken under the direction of Postgraduate Deans
- pre and post-registration trainees in pharmacy under the direction of the Head of Pharmacy

Liability will not be accepted for actions which are unlawful. Furthermore, liability will not be accepted for actions which, although they may not be unlawful, do not accord with policies of the Department of Health or the Deanery.

Yours faithfully



David Black
Dean Director

University of London



With our partners

Chair, Deanery Board - Professor Sir David Melville CBE
Dean Director - Professor David Black

 brighton and sussex
medical school

Health Service Circular



Series number: HSC 1999/015
Issue date: 1st February 1999
Review date: 1st February 2002
Category: Human Resources
Status: Good Practice

material which is for guidance only and aims to share good practice on a particular issue

INDEMNITY

To: Dental Postgraduate Deans
Directors of Education & Training
Health Authorities (England) - Chief Executive
NHS Trusts - Chief Executives
Post Graduate Deans
Directors of Postgraduate General Practice Education

Cc:

Further details from: Graham Jacob
Medical Education Unit
Room 2N35A
Quarry House
Quarry Hill
Leeds LS2 7UE
0113 254 5945

Additional copies of this document can be obtained from:

Department of Health
PO Box 410
Wetherby
LS23 7LN

Fax 0990 210 288

It is also available on the Department of Health website at
<http://tap.octa.gov.uk/doh/coin4.nsf>

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INDEMNITY

Summary

This HSC sets out arrangements whereby individual doctors or dentists involved in postgraduate medical and dental education (PGMDE) may have a source of indemnity for actions undertaken in the delivery of PGMDE. This HSC is not concerned with indemnity in relation to clinical activities, including where patients are injured or put at risk and sue as a result. These remain properly the ambit of the Medical Defence Associations and the employer.

Background and Other Information

Postgraduate Medical and Dental Education

Postgraduate Deans in England are, for the purposes of managing Postgraduate Medical and Dental Education, engaged as civil servants through the Regional Offices. This applies whether or not they hold a contract of employment with another body - for example a university - because they are acting directly as agents of the Department and the Government. Although different arrangements apply in the rest of the UK the principle remains the same.

However, the nature of PGMDE in the UK is such that those delivering medical training may act at different times in a variety of roles and for a variety of bodies. These could include, for example, an NHS Trust as the doctor's employer, a Royal College, the General Medical Council or the Secretary of State via the postgraduate deans. It is equally possible that in some cases a doctor or dentist would neither be acting as an employee nor as an agent of another, but in a purely personal advisory capacity ('the benefit of my experience'). Clearly, it will be important to establish in any particular instance for whom a particular doctor or dentist is acting, in what capacity and what is expected of him in that particular role. This would help to determine whether or not a particular act was done "in the course of employment". It would not be sufficient for indemnity purposes simply to claim **after the fact** that a particular action was carried out on behalf of, for example, the Secretary of State or an employer. The Department or employer would have to have agreed the liability and de facto to have extended indemnity. Clearly, it would be advantageous to do this in advance of a crisis (see Annex A - "Liability").

We do not propose to set out a list (which could not be exhaustive) of all possible situations in which an individual doctor or dentist could or would be covered by Departmental indemnity, but would instead advance the general principle that:

where a doctor or dentist is duly authorised to act as the agent of the Secretary of State or of an appropriate relevant body (eg. as when acting on behalf of a Postgraduate Dean), he is covered by the indemnity arrangements which exist between the Department of Health and the Dean or are established for that relevant body.

It follows that indemnity cannot be promised to individuals in advance of a case arising, but it should be clear that persons acting properly in the course of their employment on behalf of the Government will be entitled to benefit from indemnity arrangements.

It will therefore be important to be able to state with confidence whether a particular person's actions in a particular set of circumstances are carried out as an agent of the Secretary of State or of a governmental body. It is suggested that the most simple and effective means of ensuring this would be by reference to an individual's job description. We would strongly advise that Deans devise job descriptions for themselves and others to cover those roles in which doctors and dentists act as their agents, and *agree these with the Department*. These should cover as a minimum the duties of the post, the responsibilities of the post, the objectives of the work, and the line of accountability (for example, to the Secretary of State via the postgraduate dean). They should also specify the extent to which any activity undertaken is also undertaken on behalf of another body (for example, an employer or a Royal College) and therefore the extent to which the liability and any indemnity might be shared. Doctors and dentists taking on roles on behalf of the Dean should ensure that they are clear in particular situations when they are acting on behalf of the Dean and the Secretary of State and when they are acting on behalf of, or as employees of, other bodies, or in a purely personal capacity.

A draft letter which may be used for issue to individuals who may benefit from the indemnity arrangements described in this HSC is attached at Annex B.

A statement of the Department's policy on Equal Opportunities, and which may be incorporated into letters issued as per Annex B, is attached at Annex C.

This circular has been issued by:

Hugh Taylor
Director of Human Resources

ANNEX A

LIABILITY

An employer is "vicariously liable" for the acts of his employee done "*in the course of his employment*". The individual employee remains liable in law but in practice the person claiming to be wronged is more likely to sue the employer, who will (generally) be in a better position to pay damages. Where a person *acts as an agent* on behalf of another person or legal body (the principal), the person or body for whom the agent is working will be liable *provided the agent is acting within the scope of the authority given to him*. The agent will also remain liable for the same wrong.

This common law rule enables employers to escape liability for misdoings by employees (or agents) if the act complained of was not done "in the course of employment". For common law purposes something is done "in the course of employment" only if it relates to what the employee or agent was required to do. It is not "in the course of employment" simply because the act was done at work. The final decision as to whether an act was wrong, and if so, whether the employer is liable, rests with the Courts.

The agent or the employee may therefore be sued successfully for his actions, but the employer or the principal may also be sued. If, therefore, an individual delivering PGMDE is doing so on behalf of the Government, whether as an employee or as an agent, and is doing so in a manner and within the terms appropriate to that role, then the associated liability for his actions would extend to the Government as well.

This covers most types of cases apart from discrimination Act cases. Amongst other things, the Acts seek to prevent discrimination on the grounds of race, sex or disability against employees or potential employees and also people seeking or undergoing vocational training. In these cases *any person* who engages in conduct contrary to the relevant Acts will be liable. This liability will extend to the person's employer and, where a person is acting on someone else's behalf, to the principal except where the employer or the principal can show to a Court's satisfaction that he took *all reasonable steps* to prevent discrimination.

[Dear Colleague]

Persons acting as agents for, or on behalf of, Deaneries

Deaneries and their direct employees benefit from the indemnity and liability arrangements established by the Department of Health for its employees and agents. Colleagues who act for the Deanery, but who have no contract of employment with the Deanery, may also benefit from these arrangements. The arrangements extend in all circumstances only to actions undertaken on behalf of, and under the management of, the Deanery.

This will include, for example, persons acting for the Deanery in respect of:

the appointment of junior doctors (including LAT and FTTA appointees)

the conduct of Record of In-Training Assessment (RITA) panels and Summative Assessment of GP Vocational Training

the management of specialist and general practice training placements

the management of Deanery teaching programmes

ad hoc targeted training of individual Specialist Registrars undertaken under the direction of the Postgraduate Dean.

Liability will not be accepted for actions which are unlawful. Furthermore, liability will not be accepted for actions which, although they may not be unlawful, do not accord with the policies of both the Department of Health and the Deanery.

[Postgraduate Dean]

ANNEX C

EQUAL OPPORTUNITIES

The NHS and the Department of Health promote and implement equal opportunities policies. There is no place for discrimination on grounds of age, sex, marital status, race, religion, creed, sexual orientation, colour or disability. All advertisements should include a clear statement on equal opportunities including the suitability of the post for part-time/job share working. Appointment processes must conform to employment law and good practice in selection and recruitment. Discrimination on the grounds of race and sex is prohibited under the Race Relations Act 1976 and the Sex Discrimination Acts 1975 and 1986. A booklet giving detailed recommendations for appointments procedures that meet employers' responsibilities in these areas was circulated under cover of EL(91)71. Good practice guidance is also available from the Equal Opportunities Commission and the Commission for Racial Equality. Helpful background advice can be found in the BMA's Guidelines for Good Practice in the Recruitment and Selection of Doctors (June 1994). The implications of the Disability Discrimination Act 1995 for NHS employers are explained in EL(96)70. A Guide to Specialist Registrar Training (February 1998) gives guidance on specialist registrar recruitment.