

**Osteopathic Practice Standards Committee**  
**14 May 2013**  
**Professional Indemnity Insurance consultation and principles of cover requirements**

<b>Classification</b>	Public
<b>Purpose</b>	For consideration
<b>Issue</b>	GOsC will be required to draft new professional indemnity insurance rules and implement those rules following anticipated changes to the Osteopaths Act for the implementation of EU Directive 2001/24/EU. This paper sets out the background to this work and seeks views on the possible future cover requirements.
<b>Recommendation</b>	To consider the possible future requirements for professional indemnity cover as set out in paragraphs 14-24.
<b>Financial and resourcing implications</b>	There may be some expenditure incurred relating to the drafting of new rules; the consultation with registrants and the implementation of new rules.
<b>Equality and diversity implications</b>	None
<b>Communications implications</b>	There will be a consultation with registrants before new rules are implemented.
<b>Annexes</b>	A. GOsC Professional Indemnity Insurance Rules 1998 B. GOsC response to Department of Health consultation
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## Background

1. In order to be registered with the General Osteopathic Council (GOsC), registrants are required to hold professional indemnity insurance cover which is in accordance with the GOsC Professional Indemnity Insurance Rules 1998 – Annex A refers.
2. Within healthcare regulation, only four regulatory bodies have a statutory requirement for its registrants to hold an insurance or indemnity. A further two regulatory bodies have legislation which has not yet been commenced with two regulatory bodies have no requirement in legislation.
3. For the protection of patients, the UK Government believed it is unsustainable that some healthcare professionals could practise without cover or with an inappropriate level of cover. Therefore the Government launched an independent review to consider whether requiring healthcare professionals to hold insurance or indemnity cover as a condition of registration was the most cost effective and proportionate means of resolving the issue.
4. The review, led by Finlay Scott, former Chief Executive of the General Medical Council, reported its findings in June 2010 and concluded that *'making insurance or indemnity a statutory condition of registration is the most cost effective and proportionate means of achieving the policy objective.'*
5. Alongside the independent review, EU Directive 2001/24/EU on the application of patients' rights in cross-border healthcare was under negotiation by the European Union Commission, Parliament and European Council. The Directive was formally adopted on 28 February 2011 and came into force on 9 March 2011. Article 4(2)(d) of the Directive places a requirement on Member States to ensure that by 25 October 2013, they have transposed into domestic law:-  
  
*'systems of professional liability insurance, or a guarantee or similar arrangement that is equivalent or essentially comparable as regards its purpose and which is appropriate to the nature and the extent of the risk, are in place for the treatment provided in [Member States]'*
6. The UK Government considered the findings of the independent review and the need to implement the Directive and concluded that it was right and proper to introduce a requirement on all healthcare professionals to hold an insurance or indemnity cover as a condition of registration.
7. The Department of Health issued a 12-week consultation ending 17 May 2013 focussing on how the requirement might be implemented through a Section 60 Order. These Orders under the Health Act 1999 allow primary legislation such as the Osteopaths Act to be amended through secondary legislation or 'Statutory Instrument'. GOsC has responded to the consultation and our response can be found at Annex B.

## Implementation of Directive 2001/24/EU: implications

8. Osteopaths are already required to hold an insurance or indemnity cover as a condition of registration and therefore the implementation of the Directive does not place any additional burden or compliance costs on registrants.
9. However, even though the Osteopaths Act 1993 provides for this requirement, the Government proposes that the Act is amended so that the requirements become consistent across regulators and professions. Once implemented GOsC will need to draft new professional indemnity insurance rules, undertake a consultation with registrants and implement the new rules.
10. A considerable part of the discussion among regulators and the Department of Health has been the extent to which regulators should prescribe the cover that registrants require or whether the obligation should be on the individual professional to determine the appropriate level of cover.
11. The current GOsC rules are at the more prescriptive end of the scale and we have taken the view that it would be appropriate to continue with this to some degree. The reasons for this include the relative immaturity of the insurance market which continues to attract new entrants and high levels of competition. We believe it is important that minimum standards are put in place in order that considerations of cost do not override the protection of patients.
12. However, we must also consider to what extent it is appropriate for the GOsC to completely prescribe cover requirements and whether some elements of the current requirements can be left to the discretion of registrants. We might also consider whether some elements of these requirements could be provided in guidance to osteopaths rather than in statutory rules.
13. In preparation for the development of new rules the Executive has considered the existing professional indemnity insurance requirements and whether these should be incorporated in the new rules. The five main components of the rules are set out below.

### *Prescribed risks*

14. Section 4 of the PII Rules states the insurance obtained by an osteopath shall cover the following risks:
  - a. Legal liability for negligent acts, errors or omissions in professional services rendered
  - b. Liability for claims for public liability or product liability arising from death or injury to third parties
  - c. Legal liability (as above) attributable to employees, partners or associates
  - d. Liability for legal costs in respect of claims.

15. Our principle concern must be that patients interests are protected. The extent to which the GOsC should prescribe public or product liability when these are in consequence of the osteopath's business is questionable. Therefore we consider this section should be reviewed and tightened.

#### *Prescribed amounts*

16. The minimum amount of cover required in respect of the prescribed risks is £2.5m. This figure has remained unchanged since the rules were introduced in 1998.
17. We should consider four issues here:
  - a. Is it appropriate for the GOsC to prescribe the amount?
  - b. Given we are unaware of any claims that have reached this level, is it too high?
  - c. Given that most osteopaths are already covered to £5m, is it too low?
  - d. What is an appropriate mechanism for determining the level?

#### *Run off cover*

18. An osteopath should ensure they have run-off cover in respect of any claims which arise after the date on which he/she ceases to practise as an osteopath for whatever reason.
19. We believe it is important to continue to require run off cover. This is because once a registrant has left the Register there are no regulatory levers to ensure that their past patients remain protected.
20. We may also wish to consider whether a minimum time period should be introduced for which run off cover should last.

#### *Evidence of compliance*

21. At the point of renewing their registration, registrants are required to submit evidence that they have appropriate cover in place. This is either done electronically or with a hard copy of their insurance certificate.
22. While we hope over time to be able to check the insurance status of all registrants online, we also think it would be appropriate to move to a system of self-declaration with a proportion of the Register sampled annually to test compliance. This would reduce an existing regulatory cost on registrants at the point of renewal and, by removing the residual paper element of the registration renewal process, may encourage a take-up in online registrations.

*Overseas practice*

23. The current rules require that the insurance cover need only cover liability for practise in the UK.
24. Approximately 8% of our registrants are registered with overseas addresses; we know that many others travel abroad to teach and practise. Osteopaths who work overseas have no requirement to be registered with the GOsC but use their registration with us as a mark of professional authority in their country.
25. Although the availability of indemnity may vary in different countries and there may be practical difficulties in prescribing what is required, we may want to consider whether a lack of any requirement remains appropriate.

**Recommendation:** to consider the possible future requirements for professional indemnity cover as set out in paragraphs 14-24.