



Osteopathic Practice Committee

25 June 2014

Professional Indemnity Insurance Consultation Analysis

Classification	Public
Purpose	For decision
Issue	Consideration of the response to the recent consultation on professional indemnity insurance and agreement of next steps.
Recommendations	<ol style="list-style-type: none">1. To consider the consultation issues, consultation questions and the analysis of the responses received.2. To consider the key points to be taken forward in new professional indemnity insurance rules.3. To recommend to Council the adoption of a new mechanism for registrants to demonstrate they hold professional indemnity insurance.4. To note that Council will be asked to publish draft professional indemnity insurance rules for consultation later this year.
Financial and resourcing implications	A new mechanism for demonstrating that professional indemnity insurance is held would create efficiency savings for the Registration and Resources team and the professional indemnity insurance brokers, while reducing a regulatory compliance cost on registrants.
Equality and diversity implications	None
Communications implications	There will be a consultation with stakeholders on new professional indemnity insurance rules later this year.
Annexes	None
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Background

1. The Osteopathic Practice Committee (OPC) received a paper in September 2013 which outlined that following the implementation of EU Directive 2011/24/EU on cross border patient rights, the General Osteopathic Council (GOsC) would need to make changes to the GOsC Professional Indemnity Insurance Rules 1998.
2. At that meeting OPC considered a draft consultation document on the principles that could underpin new professional indemnity insurance rules. The consultation was broken into seven sections as follows:
 - a. Obligation to insure
 - b. Prescribed risks
 - c. Prescribed amounts
 - d. Run-off cover
 - e. Evidence of compliance
 - f. Non-compliance
 - g. Registrants who work overseas.
3. In October 2013, Council agreed with a recommendation from the OPC that the consultation document be published. A three month consultation was held between 1 November 2013 and 24 January 2014.
4. The consultation document was made available on the GOsC public website and the registrants' website. A link to the online consultation document was emailed to stakeholders including:
 - a. Registrants
 - b. British Osteopathic Association (BOA)
 - c. Osteopathic Education Institutions
 - d. Professional Standards Authority (PSA)
 - e. Members of the public/patient group
 - f. Professional indemnity insurance brokers
 - g. Other healthcare regulators.
5. At the close of the consultation 47 responses had been received. Given this was a technical consultation the Executive was pleased with the response rate which

included responses from registrants, the BOA, the PSA, a patient and two professional indemnity insurance brokers. Of the 47 responses:

- a. The PSA did not answer the specific questions but provided a consultation response addressing 'right-touch regulation' and how it relates to the principles that may underpin new professional indemnity insurance rules.
 - b. One response was ineligible and was excluded from the result set.
6. This paper sets out the consultation issues; an analysis of the consultation responses and describes how the issues will be taken forward in new professional indemnity insurance rules.

Discussion

7. An analysis of the responses to each section of the Consultation document is provided in the table below.
8. In addition, as outlined above, the PSA provided a broad response to the consultation without answering the specific questions. The PSA response is summarised below:
- a. PSA suggest we apply 'right-touch regulation' to the review of our policy around new rules. Specifically this means applying the minimum regulatory force required to achieve the desired result.
 - b. The rules should be proportionate but must protect and assure patients and the public.
 - c. The rules should provide sufficient flexibility for registrants to adapt their cover to their own requirements which may, for example, vary based on the nature of their practice and the size and profile of their client base.
 - d. If GOsC sets rules around minimum levels of cover and run-off cover this should be informed and supported by the evidence base around risks in osteopathy. The GOsC should assure itself (with appropriate insurance/legal advice) that insurance requirements will result in registrants holding indemnity insurance appropriate for liabilities their practise risks incurring.
 - e. Concerns about registrants not complying with the rules should be dealt with through the GOsC fitness to practise processes. PSA does not believe an administrative removal process would protect the public and/or maintain public confidence.

Section 1: Obligation to insure

What are the issues?	Should there be an obligation on all registered osteopaths to be insured?
What question(s) did we ask?	1. Osteopaths will be required to hold insurance as a condition of registration. In order that the new rules are clear, are there any circumstances under which an osteopath registered with the GOsC should not be required to have insurance? If yes, describe those circumstances.
What did the consultation response tell us?	<p>Question 1: (45 responses) 17 consultation responses (38%) believed there to be circumstances under which an osteopath registered with the GOsC should not be required to have insurance. 28 consultation responses (62%) believed registrants should always have insurance cover.</p> <p>Of those who believed there to be circumstances under which an osteopath should not have insurance cover, 16 (94%) cited where a registrant was not practising through reasons such as ill-health, maternity leave or retirement as being a good reason not to have insurance cover.</p> <p>It was suggested by one consultation response that a registrant in a purely academic/research role, who was not in clinical contact with patients, would not need insurance.</p> <p>One consultation response believed that insurance cover would not be needed if a practitioner was working in one clinic and the clinic covers their insurance.</p>
What are the key points to be taken forward in the new rules?	<p>New rules must continue to place patient safety at its core. There is no distinction in the Osteopaths Act 1993 between a non-practising and practising osteopath; in fact, the status of 'non-practising' is not even mentioned. While, Council has previously issued policy statements about registrants who are 'non-practising' and who may be entitled to pay a reduced fee, the obligation on all registered osteopaths to hold professional indemnity insurance has remained constant.</p> <p>Action: the new rules should clearly state that there is an obligation on all registrants to be insured.</p>

Section 2: Prescribed risks

What are the issues?	Are the current rules too prescriptive? Can the current rules be simplified?
What question(s) did we ask?	<ol style="list-style-type: none"> 1. Are the prescribed risks appropriate for osteopathic practice or could they be simplified? If so, how? 2. Are there any risks that have not been included and, if so, what are these? 3. Would it be helpful for the GOsC to provide guidance for osteopaths about what risks should be included in the cover? 4. If so, what areas of risk do you think this guidance should cover?
What did the consultation response tell us?	<p>Question 1: (45 responses) 37 consultation responses (82%) believe the prescribed risks are appropriate for osteopathic practice, with the remaining 8 consultation responses (18%) believing the risks could be simplified.</p> <p>Of those who believed the risks could be simplified, two responses came from the professional indemnity insurance providers. Both believed the risks could be better explained. This view was supported by other consultation responses who believed the rules could be simplified. One provider suggested that the rules include a generic statement which required all registrants to ensure their cover allowed patients to have the ability to be paid compensation where the registrant causes harm through neglect or error of omission.</p> <p>Question 2: (42 responses) Just five consultation responses (12%) believed there to be risks missing from the rules. These missing risks included attending courses/working outside of the UK (2 responses); cranial and adjunct therapies (2 responses of which one was the patient response); with the final response believing that GOsC should seek the views of the insurance providers in order to answer this question.</p>

	<p>Question 3: (45 responses) 29 consultation responses (64%) believed GOsC should provide guidance for osteopaths about what risks should be included in the cover, with 16 consultation responses (36%) believing that no guidance was necessary.</p> <p>Question 4: (20 responses) Feedback on what areas of risk any guidance should cover produced a mix of responses with a range of topics suggested. Additionally, one insurance provider believed GOsC would not be able to provide guidance as it was not registered with the Financial Standards Authority.</p>
<p>What are the key points to be taken forward in the new rules?</p>	<p>The majority of consultation responses believe the prescribed risks to be appropriate although there may be better/clearer ways explaining them in the new rules. The Executive is comfortable with the concept of prescriptive rules as this would ensure considerations of cost do not override patient safety, although we need to ensure that in attempting to better describe the prescribed risks we do not inadvertently restrict the variety of osteopathic practice.</p> <p>This latter point is in alignment with the PSA response that new rules should provide the registrant with some degree of flexibility to adapt their cover based on different aspects of their practice such as location and nature of their patient base.</p> <p>While the responses to the consultation highlighted some possible risks which were not included, the Executive is not convinced these should be added to the new rules. We refer to the PSA response specifically that regulations should be modelled on the 'right-touch' approach by being proportionate to achieve the right regulatory outcome.</p> <p>On the point of GOsC providing guidance, the new rules do not need to make any reference to this activity. The Executive has noted the concern that guidance may not be able to be provided as GOsC is not registered with the Financial Standards Authority (FSA). It was never the intention of the Executive to provide such detailed and tailored guidance about insurance products/policies that it would require FSA registration, more that it would provide broad generic information and questions for osteopaths to think about for themselves. We note however this point and will keep it under consideration if we</p>

	<p>decide to move forward in providing any materials of this nature.</p> <p>Action: the new rules should continue to prescribe risks but should attempt to do so in a better/clearer manner while being mindful that the description does not inadvertently restrict the variety of osteopathic practice.</p>
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Section 3: Prescribed amounts

What are the issues?	Should GOsC prescribe a minimum amount of cover in legislation? Should the current minimum level of cover increase?
What question(s) did we ask?	<ol style="list-style-type: none"> 1. Do you agree that it is appropriate for the GOsC to prescribe in legislation a minimum level of cover? If no, please provide your reasons. 2. Do you agree that the minimum level of cover should be increased from £2.5m? If no, please provide your reasons. 3. If you believe the minimum level of cover should increase, please state to what level you think it should be increased.
What did the consultation response tell us?	<p>Question 1: (45 responses) 40 consultation responses (89%) believed it was appropriate for GOsC to continue to prescribe in legislation a minimum level of cover.</p> <p>Of the five responses who disagreed, there was concern that setting the level of cover too high would unnecessarily increase premiums and potentially attract attention from injury claim seekers. There was also feedback that setting a minimum level of cover needed to be decided upon in context of risk. GOsC was encouraged to liaise with the insurance brokers and to use evidence from its own fitness to practise case evidence where cases have been heard which showed the level of cover was inadequate.</p>

	<p>Question 2: (45 responses) 31 consultation responses (69%) believed the minimum level of cover should be increased compared with 12 consultation responses (27%) that did not. 2 consultation responses (4%) did not know.</p> <p>There were a number of comments from those who answered this question. The comments mainly challenged the justification for any increase, seeking evidence of the risk osteopathy poses which would warrant an increase in the minimum level of cover.</p> <p>Other responses, including the BOA, made two points which were (a) that many other healthcare providers already have at least £5m cover and/or (b) many insurance providers already provide a minimum level of cover set at £5m.</p> <p>Question 3: (29 responses) There was a wide range of responses to the question about what the minimum level of cover should be, if it was to be increased.</p> <p>While there was limited support for the level of cover being less than £5m, the majority of consultation responses considered that the minimum level of cover should be £5m+.</p>
<p>What are the key points to be taken forward in the new rules?</p>	<p>The minimum level of cover (£2.5m in the aggregate) was set in rules in 1998, and some 16 years on, the Executive believe it is right that this amount is increased.</p> <p>We note the Professional Standards Authority response which stated that minimum levels of cover should be informed and supported by the evidence base around risks in osteopathy. With the small number of complaints which go through the GOsC fitness to practise procedures, we are not able to quantify the evidence base around risks in osteopathy and relate this specifically to what should be the minimum level of cover.</p> <p>However, the insurance brokers are in a much better position and we note that a number of providers already offer a minimum level of cover in excess of the current limit.</p>

	<p>To continue to ensure that patients are protected both in the present and in the future, and to bring the osteopathic profession in line with many other healthcare providers, we believe that cover should be increased to at least £5m.</p> <p>The Executive does not believe that increasing the minimum level of cover would attract a higher degree of claims from injury claim seekers nor do we believe that the risk of insurance premiums increasing as a result of changing the minimum level of cover should outweigh patient protection.</p> <p>Action: the new rules should prescribe at least £5m in the aggregate as a minimum level of cover.</p>
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Section 4: Run-off cover

What are the issues?	Should run-off cover feature in the rules? If yes, for how long should run-off cover last?
What question(s) did we ask?	<ol style="list-style-type: none"> 1. Do you agree that a requirement for run-off cover should be maintained as an important element of the rules? If no, please provide your reasons. 2. For how long should the run-off cover continue? Please provide your reasons.
What did the consultation response tell us?	<p>Question 1: (45 responses) 41 out of 45 consultation responses (91%) agree that a requirement for run-off cover should be maintained as an important element of the rules.</p> <p>Of those who did not agree, feedback highlighted a belief that as long as the registrant had cover in place when the treatment took place this was sufficient.</p> <p>Question 2: (37 responses) In response to how long run-off cover should last, the range of consultation responses was significant with no one clear answer being favoured.</p>

	<p>Answers ranged from 1 year, 5 years, 8 years for adults and 24 for children, 10 years, in correlation to the statute of limitations or in perpetuity.</p> <p>Interestingly the two responses from the insurance providers provided differing opinions on the same subject. One referred directly to the Limitations Act while another believed the Limitations Act could be overridden leading to their view that run-off cover should be in perpetuity.</p>
What are the key points to be taken forward in the new rules?	<p>Run-off cover is extremely important and must feature in the new rules. Run-off cover ensures that past practise is still covered by insurance after a registrant ceases practise/registration. Run-off cover ensures ongoing patient protection even after a registrant leaves the Register.</p> <p>It is clear from the consultation responses that there is confusion about when run-off cover is required; in what circumstances it may be required, and for what period of time it should cover.</p> <p>The overriding concern for GOsC is patient safety. Confusion about such an important element of the professional indemnity insurance rules is not ideal. It is for the purpose of avoiding any doubt that the new rules should make it a requirement that run-off cover lasts in perpetuity as this is the only way GOsC can ensure patients are protected after a registrant ceases practise/registration.</p> <p>Action: the new rules should seek to introduce the concept of perpetual run-off cover.</p>

Section 5: Evidence of compliance

What are the issues?	Is the current mechanism for a registrant to demonstrate to the GOsC they hold insurance too burdensome? Are there alternative mechanisms?
What question(s) did we ask?	<ol style="list-style-type: none"> 1. Do you agree with the principle that osteopaths should be required to demonstrate they hold insurance cover in line with the rules? If not, please provide your reasons. 2. Which mechanism for an osteopath to demonstrate they hold insurance cover in line with the rules

	<p>do you support:</p> <ol style="list-style-type: none"> a. Hard copy evidence submitted to GOsC? b. Self declaration during the renewal of registration cycle? c. Other, please describe. <p>3. Do you agree that the Registrar should be able to request evidence of insurance from an osteopath at any time? If no, please provide your reasons.</p> <p>4. Do you agree that if insurance cover ceases, for whatever reason, the osteopath in question should immediately advise the GOsC? If no, please provide your reasons.</p>
<p>What did the consultation response tell us?</p>	<p>Question 1: (45 responses) 44 out of 45 consultation responses (98%) agreed with the principle that registrants should be required to demonstrate they hold insurance cover in line with the rules.</p> <p>Question 2: (44 responses) 16 (36%) consultation responses believed that registrants should continue to submit hard-copy evidence to the GOsC, with 13 (30%) consultation responses in favour of a self-declaration model. 15 (34%) consultation responses answered that they would prefer a different model.</p> <p>Of those who would prefer a different model, the majority favoured GOsC working in-conjunction with the insurance providers to determine who has insurance cover in place.</p> <p>Question 3: (44 responses) 40 consultation responses (91%) believed that the Registrar should be able to request evidence of insurance from an osteopath at any time.</p> <p>Four consultation responses (9%) did not agree with the main reason being that if evidence is required</p>

	<p>at the point of renewal then why would there be a need for the Registrar to ask again at a later stage. There was also a view that GOsC should only ask for evidence if there was reason to believe that a registrant was not maintaining insurance cover.</p> <p>While agreeing with the principle that the Registrar could request evidence of insurance at any time, the British Osteopathic Association pointed out that this may not be necessary if the name of an individual was already listed on a spread sheet shared between the insurance provider with the GOsC.</p> <p>Question 4: (44 responses) 39 consultation responses (89%) agreed that if insurance cover ceases, for whatever reason, the onus should be on the registrant to immediately advise the GOsC.</p> <p>5 consultation responses (11%) did not agree. Reasons varied but included a view that the onus should be on the insurance provider to notify the GOsC; a view that if the registrant was not working why should they hold insurance and that there should be a 'grace period' as it depended entirely on circumstances.</p> <p>In addition, two consultation responses which agreed with the principle also provided additional comments. One comment, from the patient respondent, asked what GOsC would do with the information once it knew a registrant did not have insurance cover, while another respondent was concerned that forgetting to renew insurance, for example by a few days, should not result in disciplinary proceedings.</p>
<p>What are the key points to be taken forward in the new rules?</p>	<p>Almost all consultation responses agreed with the principle that a registrant should be able to demonstrate they hold professional indemnity insurance cover and nearly 90% of responses agreed with the principle that if insurance cover ceases the onus should be on the registrant to notify the GOsC immediately.</p> <p>Action: the mechanism for how registrants demonstrate they hold insurance cover is not in the current rules and it is not proposed that it be included in any future rules. Further discussion on the best mechanism for registrants demonstrating their hold insurance cover can be found at paragraphs 8-12</p>

	<p>later in this paper.</p> <p>Action: the new rules should retain the point that registrants should be able to demonstrate they hold insurance cover in line with the rules and the onus remains on the registrant to advise GOsC immediately if cover ceases.</p>
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Section 6: Non-compliance

What are the issues?	How should the GOsC deal with an osteopath who fails to maintain insurance in accordance with the rules?
What question(s) did we ask?	<ol style="list-style-type: none"> 1. Do you agree with the principle that a registrant who fails to maintain insurance cover in line with the rules should be held to account? If not, please explain your reasons. 2. How do you believe a registrant should be held to account: <ol style="list-style-type: none"> a. Referred to the Professional Conduct Committee for unacceptable professional conduct? b. Administratively removed from the Register? <p>Please provide your reasons.</p>
What did the consultation response tell us?	<p>Question 1: (44 responses)</p> <p>39 consultation responses (89%) agreed with the principle that a registrant should be held to account if they fail to maintain insurance cover in line with the Rules.</p> <p>5 consultation responses (11%) did not agree. Of those who did not agree the main concern was that a genuine mistake of not renewing would be treated as a significant disciplinary issue when a warning letter may suffice. One consultation response was unclear what rules the consultation was referring.</p>

	<p>Question 2: (39 responses) 24 consultation responses (62%) believed a registrant should be held to account using the GOsC fitness to practise procedures, compared with 15 consultation responses (38%) who believed that the registrant should be administratively removed.</p>
What are the key points to be taken forward in the new rules?	<p>The majority of consultation responses believe that it is right for a registrant to be held to account if they fail to maintain insurance cover in line with the rules, and that the mechanism should be through the GOsC fitness to practise procedures.</p> <p>The PSA response states that 'an administrative removal process would not protect the public and maintain public confidence' and the Executive agree.</p> <p>Action: the new rules should make it clear that a registrant will be held to account and this may involve using the GOsC fitness to practise procedures.</p>

Section 7: Registrants who work overseas

What are the issues?	Should the rules be extended to include work by registrants overseas?
What question(s) did we ask?	1. Do you agree with the principle that registrants who practise overseas should hold insurance, where such cover is available, and if required be able to demonstrate this to the GOsC? If no, please provide your reasons.
What did the consultation response tell us?	<p>Question 1: (42 responses) 36 consultation responses (86%) agreed that registrants who practise overseas should hold insurance, where such cover is available, and if required demonstrate this to the GOsC.</p> <p>6 consultation responses (14%) disagreed with the main view being that the registrant should be required to practise in accordance with the laws and legislation of the country in which they are providing services.</p>

<p>What are the key points to be taken forward in the new rules?</p>	<p>There was high level of agreement from the consultation with the principle that registrants who practise overseas should hold insurance, where such cover is available, and if required demonstrate this to the GOsC. The Executive agrees.</p> <p>Action: the new rules should be clearer that a UK registrant providing professional services overseas should hold insurance if available.</p>
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Mechanism for demonstrating evidence of compliance

9. Section 5 of the consultation document sought views from stakeholders about the best mechanism for a registrant to demonstrate they hold insurance cover in line with the rules.
10. The current renewal of registration process requires a registrant to self-declare on health and fitness, good character and CPD compliance. However, it also requires registrants, who are not members of the BOA block insurance scheme, to submit hard-copy evidence at the point of their renewal of registration. Members of the BOA block scheme are not required to submit hard-copy evidence of their insurance as the BOA provides confirmation on their behalf.
11. Requiring a registrant to submit hard-copy evidence of insurance discourages them from using the online renewal tool which is the most cost effective and efficient route to renew a registration both for GOsC and the registrant. This requirement represents a regulatory compliance cost to the registrant.
12. A self-declaration model would ensure consistency with the other aspects of the renewal of registration process. To ensure a self-declaration model would have sufficient robustness it is suggested that the Registration team undertake periodic, targeted audits, to ensure registrants were complying with their responsibilities to hold professional indemnity insurance cover in line with the rules.
13. It is proposed that GOsC liaise with the insurance brokers and seek agreement that at a given point in the year the brokers provide a list of those registrants who hold professional indemnity insurance. This would allow GOsC to match this information to the Register and to target any perceived gaps. The BOA already provide this information to the GOsC on a regular basis so in the event that only they complied, we can already verify a significant proportion of the Register.

Next steps

14. The next steps for the development of new professional indemnity insurance rules are:
 - a. Discussion at the Osteopathic Practice Committee (June 2014)
 - b. Focus group discussion with the professional indemnity insurance brokers (date tbc)
 - c. Development of draft professional indemnity insurance rules for Council (July 2014)
 - d. Consultation with stakeholders (post-Council for three months).

Recommendations:

1. To consider the consultation issues, consultation questions and the analysis of the responses received.
2. To consider the key points to be taken forward in new professional indemnity insurance rules.
3. To recommend to Council the adoption of a new mechanism for registrants to demonstrate they hold professional indemnity insurance.
4. To note that Council will be asked to publish draft professional indemnity insurance rules for consultation later this year.