Updated FAQs arising from the change to indemnity cover

Questions from affected members

Q1: What changes are happening to the RCN indemnity scheme?

The RCN is making a small change to the conditions of its contractual indemnity scheme with effect from 1st January 2012. The change will mean that indemnity cover for work undertaken by an employed member in general practice will be provided by the employer. The costs of any clinical negligence action will fall on the employer and his/her indemnity provider, not on the RCN scheme.

NHS employers and almost all independent sector employers accept what’s called “vicarious liability” for the actions of their staff. This means that employers accept legal and financial responsibility for authorised tasks carried out by their employees. The NHS and independent sector employers do not try to recover costs from the individual nurse (or other health care employee) at fault, when an action is settled.

GP employers also take out insurance or indemnity cover, through defence organisations such as the Medical Defence Union (MDU) or Medical Protection Society (MPS), for their own practice and for the work of all the staff in their employment. However, if an employee in a GP practice is a member of the RCN, the defence organisations the MDU and MPS seek to recover from the RCN part or all of the costs of an action that has been settled against a practice, where the RCN member was at fault. The RCN is making a small change to the conditions of its indemnity scheme so that from January 2012 the defence organisations will no longer be able to do this.

Q2: If I don’t require specific cover from the RCN in the workplace, what else do I get from my membership?

Through your RCN membership you are entitled - and remain entitled - to the full range of legal benefits under the RCN legal advice and representation scheme. These give you:

- Personal protection whenever and wherever you experience employment difficulties,
- Advice and representation before the NMC,
- Support if you have an accident,
- and access to all of the other benefits available to RCN members.
- In addition, the indemnity scheme will continue to cover you for any Good Samaritan actions, charitable or voluntary work outside of your employment, and practice as a self-employed nurse (subject to standard conditions).

The change to the scheme is a technical one to ensure that it works in the same way for all members. You will still have all the cover you need as a Member and as a practising nurse. Nothing has changed for you, only for the medical defence organisations.

In addition, RCN membership will continue to provide members with a wealth of other benefits, including access to learning resources via the web site, CPD opportunities and the chance to network...
with other nurses through the branch structure, Congress and our specialist forums, including the Practice Nurse Association.

Q3: Why is the change necessary?

The RCN must ensure that spending on all member benefits represent good value for money for all members, and is sufficient to cover all members’ needs. The RCN spreads and manages the cost of the indemnity scheme through an insurance scheme.

Overall expenditure on claims and the insurance premium paid by the RCN are both rising. Spending on claims arising from general practice is now a disproportionate part of that budget, at around 90 per cent of expenditure under the scheme. This is not because general practice employees make more errors than other groups of nurses, but simply because NHS trusts and independent sector employers don’t pursue the RCN or the individual at fault, for costs. However, in the case of general practice, the medical defence organisations do pursue the RCN for costs relating to a claim. Although these cases are small in number, around 40 per year, the costs are very high, requiring us to hold reserves for this purpose of around £5 million. This is an unacceptable financial burden on the RCN which must ensure that cover for all members remains affordable.

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Q4: Are you treating practice nurses differently from the rest of the RCN membership?

Practice nurses are not being treated differently from other members – the change actually puts all members on the same footing – indemnity for work as an employee is covered by the employer; advice and representation for other issues, such as a referral to the NMC, accidents and so on, is covered by the RCN legal advice and assistance scheme.

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Q5: Will there be a reduction in the subscription to reflect this change?

No. The RCN subscription covers a very wide range of benefits, including legal advice and representation, as well as indemnity cover for Good Samaritan and charitable work. This small change to the indemnity scheme will prevent the RCN from incurring excessive costs in the future. You still have all the professional cover you need and your benefits will be in line with those of other members of the RCN.

Q6: What is the difference between a clinical negligence case and a case before the NMC?

When someone complains that a nurse is unfit to practise, for whatever reason, you could find yourself before the NMC. For example, this may be in response to an allegation of misconduct which breaches the NMC code. (You can find out more here [http://www.nmc-uk.org/hearings/](http://www.nmc-uk.org/hearings/). Or
someone may complain to the NMC where they are harmed through a nurse’s (alleged) carelessness. In the latter instance, the patient could sue the nurse’s employer for negligence, if they have been harmed through a clinical error.

Q7: What does this say about my status as a professional in my own right?

Nurses are accountable for their professional decisions and actions – that is true whether you work in the NHS, independent sector or in a GP practice. The RCN will continue to represent you if you are called to account by your professional body, the NMC.

However, if a nurse is a practice employee, they should be treated the same as any other health care employee – the employer takes responsibility for the consequences of the actions of their staff. GP employers are more than willing to do this – that is why they have indemnity cover for their whole practice. Equally, GPs may not actually be aware that the medical defence organisations MDU/MPS seek to recover costs from the RCN.

Q8: What is a medical defence organisation?

These organisations provide cover to individual doctors and to health care employers such as general practices.

Indemnity cover from the defence organisations covers the doctor for problems that arise out of his or her medical practice when self-employed, and where the doctor is the employer, group cover can be purchased for the whole organisation such as a general practice.

The costs of subscriptions to the defence organisations (including representation before the GMC) vary considerably, from around £500 per year to several thousand pounds per year depending on whether the doctor is in a high risk speciality such as obstetrics and whether they work privately as well as for the NHS, or as a GP. A small number of nurses are members of defence organisations too – such as nurses who are partners in a general practice, and some nurse practitioners.

There are three defence bodies: Medical Defence Union (MDU), Medical Protection Society (MPS), and the Medical and Dental Defence Union Scotland (MDDUS). Indemnity cover from the defence organisations covers the doctor for problems that arise out of his or her medical practice when self-employed, but in addition provides representation if the doctor is referred to the General Medical Council. This is a key difference between doctors and nurses – doctors get support for complaints about them to the GMC through their indemnity scheme from a medical defence organisation (not their BMA membership), but nurses get this support for any complaints made about them to the NMC through theRCN legal advice scheme or that of another nursing union.

Q9: Will the defence organisations increase premiums for GPs if the RCN will no longer cover any of the cost?

We do not yet know whether the defence organisations will make any change to the premiums they charge. The costs recouped from the RCN are a very small proportion of the defence organisation’s overall costs.

It is the responsibility of the employer – whether it is a GP or any other health employer to have proper indemnity provision in place and to accept “vicarious liability” for the actions of all their staff.
When something goes wrong, it is not always the fault of a single individual. Several professionals may be involved or there may be a system failure that has made an error more likely. That is why employers must have cover for the whole of their organisation.

**Q10: My GP employer pays for my RCN subscription to get the indemnity cover for me, this may stop now and I am concerned**

The RCN subscription covers a very wide range of benefits and continues to be a worthwhile investment – whether you pay it yourself or have the fee covered or subsidised by your employer. Through your RCN membership you can access a wealth of professional learning resources and professional networks – these alone would justify the subscription as your employer can be confident that you are able to access the very best nursing support and expertise.

For you personally, it remains important that you have access to legal advice and representation in case you have any employment difficulties, suffer a personal injury, or face a referral to the NMC. All of these are included in the RCN subscription as well as indemnity for charitable or Good Samaritan work.

**Q11: My employer has made it a condition of my employment that I am in membership of the RCN – mainly because of the indemnity cover – what happens now?**

The RCN is a registered trade union. As such it is not legal for an employer to insist that you join the RCN – it’s also illegal to discriminate against you if you do. It seems as though your employer is trying to ensure that you have personal indemnity cover – which is legitimate if you are self employed, but is not right if you are an employee. If something goes wrong for a patient, it is not usually the fault of a single individual – several people may be involved or there may have been a systems failure. That is why health employers accept “vicarious liability” on behalf of all their staff, and why GP practices need group indemnity cover. Please contact your regional office for further advice on your personal situation.

**Q12: What changes (if any) will I notice?**

Nothing has changed for you only for the medical defence organisations.

There won’t be any changes for you to notice as to how complaints of clinical negligence are handled. The medical defence organisations will provide indemnity for the whole GP practice as usual, only now they will not be able to recoup any costs from the RCN. You will still receive the same protection from your employer as before and the RCN will still be able to give you advice and support during this process.

**Questions from activists**

**Q13: Does this mean the RCN is in financial difficulty? I need to be sure that services are in place for the members I represent**

No you can be confident that the RCN’s finances are on a sound footing. Year on year the RCN has successfully met its financial targets and generated surpluses. At 31 March 2011 it had accumulated reserves of £30 million, in line with the reserve strategy set by RCN Council. However, we there are
many calls on the RCN’s income so we must always ensure that members’ money is being put to best use. We should therefore not continue to cover costs that relate to an employer’s vicarious liability – that should be the responsibility of the indemnifier for the practice.

**Q14: Will there be other changes arising in the near future?**

This change puts nursing staff who work in general practice on the same footing as other members employed throughout the health care system, for whom the employer accepts vicarious liability. It is a small extension to the exclusions in the existing indemnity scheme. All services and benefits to members need to change and develop over time in response to changing patterns of employment, new technologies and changing costs.

Any future changes to the scheme would always work from the principle of ensuring that the scheme works fairly for all members and that the right organisation is picking up the costs of any action.

**Q15: How do I handle a new case involving a practice nursing member?**

The way we handle cases is not changing.

If it is an employment dispute or an NMC referral it will be handled by the RCN in the usual way – contact RCN Direct or the regional office for advice. If it is a clinical negligence issue, it will be handled in the usual way by the defence body on behalf of the GP practice and the RCN will still provide advice and support to the nurse during the process. The only change is that the MDU/MPS will not be able to cross charge the RCN for any costs relating to the employer’s vicarious liability for the nurse.

The new exclusion, which will save the RCN from bearing the costs incurred by the practice, starts in relation to incidents happening after 1 January 2012.

**Q16: Is the RCN changing the way it supports specialist groups of members?**

No. The RCN has been in dialogue with the Practice Nurse Association (PNA) on this issue and we have assured the PNA of our continued support for practice nurses and other members employed in general practice. We will be meeting with all the relevant organisations to explain the position.

The RCN believes it is important that the huge variety of nursing roles are recognised and celebrated – often it is through specialism that innovation and practice improvement come – to the benefit of patient care.