

CORPORATE
INDEMNITY
SOLUTION

Product Guide







NEW OPPORTUNITIES FOR COMPANIES

The changing face of healthcare in the UK is offering exciting new opportunities for clinicians to provide their services in innovative ways. An approach which an increasing number of practitioners are following is to organise themselves into a company to assist in obtaining contracts from PCTs and other bodies.

There are many challenges for those starting up companies to provide clinical services. Not least of these is how to ensure that the clinical indemnity liabilities of the company will be covered.

Up to now, clinical indemnity in the United Kingdom has been organised mostly on an individual basis, but in response to the changing market, MDU Services has developed a comprehensive solution tailored to the special and unique needs of companies and integrated with the needs of clinicians.

The Corporate Indemnity Solution offers both insurance cover, underwritten by SCOR UK Company Limited (SCOR) and International Insurance Company of Hannover Limited (Inter-Hannover) and, through corporate membership of the Medical Defence Union Services Limited (the MDU), access to expert risk management support and publications. The insurance policy provides indemnity in the event of the company being sued for clinical negligence either for its vicarious liability for the acts of its individual members of staff and subcontractors or for the company's own actions.



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WHY DO COMPANIES REQUIRE CORPORATE CLINICAL INDEMNITY COVER?

Traditionally, claims for clinical negligence have been made against individual healthcare professionals. In a changing world, where the doctor or dentist is employed by a company and where the patient referral is organised through the company, it is increasingly likely that a claim may be made against the company itself instead of, or as well as, the individual healthcare staff involved in treating the patient.

EXAMPLE 1:

Poor procedures or management of the patient by the company

While an individual practitioner may be sued for a negligent diagnosis, a patient may seek to make a further claim against the company, for example, for inappropriate treatment of his referral; for lack of a system to follow-up on tests conducted; or for lack of assessment or poor quality training or supervision of the practitioner by the company. Indeed in some claims it may be not be possible to identify a single practitioner who alone provided the negligent care. Where in the past such claims might have been made against partnerships, they may now be made against the company contracted to provide the service.

In these examples, a company would need to be certain its interests were covered.

EXAMPLE 2:

For vicarious liability for the actions of staff employed or engaged by the company

Historically, doctors have been vicariously liable for the acts of other healthcare professionals working under their direction. If, for example, practice nurses are acting under the direction of company managers, rather than employed doctors, the company may find itself being sued for their negligent actions.



The Corporate Indemnity Solution developed by MDU Services is designed to do just that.

Corporate membership of the MDU

As a corporate member of the MDU, a company has:

- a Corporate Clinical Indemnity insurance policy
- access to the largest team of specialist doctors, lawyers and claims handlers among indemnifiers in the UK
- free individual membership of the MDU for practice managers and practice nurses employed by your company



Corporate members will receive access to the largest team of specialist doctors, lawyers and claims handlers among indemnifiers in the UK.



In more detail the benefits of corporate membership of the MDU include:

1 Corporate Clinical Indemnity Insurance Policy

Through corporate membership of the MDU, a corporate entity obtains a Corporate Clinical Indemnity insurance policy. The indemnity limit can be set at different levels depending on the company's needs.

The policy provides cover for clinical negligence in the provision of practice professional services, including the examination and treatment of patients and providing written or oral advice, for the areas of practice undertaken by the company as specified to and agreed by the co-insurers.

The policy is on a claims made basis. It will cover claims made during the period of insurance, arising from incidents occurring when the company was a corporate member of the MDU, subject to terms and conditions. It does not cover claims made after a corporate member has left the MDU.

Please note that a corporate member under the Corporate Indemnity Solution will not have access to the MDU's traditional discretionary indemnity.

There are two main areas covered by this Corporate Clinical Indemnity insurance policy:

A. Cover for claims made against the company itself

Indemnity and defence costs for the company for claims brought against it for its activities in providing professional services.

Even where claims may be made against an individual doctor or dentist, there is still a risk that the company may be sued, for instance, for failures in its procedures and controls. The policy provides indemnity to protect the assets of the company in the event of such a claim.

In addition the policy provides cover for legal expenses incurred in relation to an investigation or enquiry by a governmental or regulatory authority (but not a registration body). It also provides cover for legal expenses incurred in defending allegations of corporate manslaughter, harassment and unlawful discrimination.

An extension can be arranged to provide indemnity for legal costs for individual directors of the company, who are doctors, but not otherwise indemnified, having to attend GMC enquiries into their fitness to practise in relation to their involvement in the company's affairs.

The policy does not provide cover for directors' and officers' liability. (For example, if a company goes into liquidation and the director is accused of wrongful trading – this would not be covered.)

In addition the policy provides cover for legal expenses incurred in relation to an investigation or enquiry by a governmental or regulatory authority.

B. Cover for the vicarious liability of the company for the alleged clinical negligence of employed and contracted staff.

An important area of cover under the policy relates to indemnity for the company for its vicarious liability for the acts of its non-doctor/dentist employees and contractors. This means that claims brought against the company for clinical negligence of staff employed in or engaged by the practice, such as nurse practitioners, practice nurses, practice managers, counsellors, receptionists and physiotherapists can be indemnified. The cover extends to unpaid or voluntary workers.

There is also cover for legal expenses (but not damages) to defend civil cases where employees are accused of harassing, discriminating against or defaming patients, where this is not proven or admitted.

The corporate policy does not cover the practice of midwifery.

The corporate policy specifically excludes cover for liability for the acts of doctors or dentists working for the company. It is a condition of the policy that each of these must have in place their own personal indemnity arrangement. (This can be arranged through the company's clinicians having individual membership of the MDU – see opposite.)

An important area of cover under the policy relates to indemnity for the company for its vicarious liability for the acts of its non-doctor/dentist employees and contractors.



A copy of the policy wording with a full list of terms, conditions and exclusions is available at www.the-mdu.com/corporate

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Other Benefits of Corporate membership of the MDU

As a Corporate member of the MDU, a company has access to:

- the MDU's website with case histories and up to date medico-legal articles;
- risk management advice and experience;
- training sessions from the MDU's team of liaison managers;
- the MDU's authoritative publications on matters such as confidentiality and consent.

A further benefit of corporate membership is that practice managers and practice nurses employed by the company can apply to become individual members of the MDU at no cost.

Their free membership, which applies only while they remain employed by the company and while the company retains corporate membership of the MDU, includes the following benefits:

- access to the MDU's 24 hour medico-legal helpline which can provide advice on a range of medico-legal matters such as consent and confidentiality;
- access to seek assistance in preparing a case and representation at a Nursing and Midwifery Council hearing relating to matters of clinical practice and personal misconduct;
- access to seek support in preparing a response to patients' complaints;
- access to seek support with criminal investigations and proceedings arising from clinical practice;
- access to seek advice and representation in dealing with press or media enquiries.

Free individual MDU membership for nurses and practice managers does not include an individual professional indemnity insurance policy or, except as mentioned above, access to the MDU's traditional discretionary indemnity.



A further benefit of corporate membership is that practice managers and practice nurses employed by the company can apply to become individual members of the MDU at no cost.

The MDU will not provide advice and representation under this free membership for nurses and practice managers who are in dispute with, or face disciplinary action from, the company itself.



A COMPREHENSIVE INTEGRATED SOLUTION FOR COMPANIES AND CLINICIANS

Although the Corporate Clinical Indemnity policy specifically excludes cover for clinicians, the MDU can provide separate insurance cover for individual doctors and dentists (for their work for the company) via individual membership of the MDU, thereby providing comprehensive integrated cover.

The traditional first place where claims are brought by patients is against the individual practitioner, and so to ensure the company is certain in advance that a claim will be met, it is necessary to make sure all its clinicians have in place appropriate indemnity arrangements.

It is not a prerequisite of having the Corporate Clinical Indemnity policy, that all clinicians be members of the MDU, rather than with other indemnifiers, but we believe that there are some important reasons why this is preferable.

Having all of its practitioners as MDU members, not only provides a company with greater certainty, it also has other benefits:

- it should minimise conflicts when claims affecting both individuals and the company arise, as many of the policy definitions are common between the individual policy wording and the corporate policy wording;
- it should minimise costs and delays in handling claims as it is under "one roof" and with the same underwriters;
- as members of defence organisations other than the MDU do not receive a policy of insurance (instead relying on discretionary assistance), there is a risk that if discretion does not respond, a claim may be made against the company directly.

Through membership of the MDU, individual doctors and dentists are provided with a professional indemnity policy issued by SCOR UK Company Limited and International Insurance Company of Hannover Limited with an indemnity limit of £10 million for one claim and in the aggregate in a policy year.



We believe that directors of a company may well expect to see evidence of a contract of insurance in place for each practitioner, and will not necessarily rely on an unregulated discretionary arrangement as a way to mitigate their risks.

Among medical defence organisations, only the MDU is able to offer this assurance.



WHAT IF NOT ALL DOCTORS AND DENTISTS ARE MDU MEMBERS?

Notwithstanding the benefits of having all clinicians with the MDU for their individual membership, we recognise that some clinicians are reluctant to change long-standing relationships with other defence organisations.

This can be addressed in two ways:

One approach is dual membership. Under this approach the doctor or dentist can decide to stay with their existing defence body for their outside work, but join the MDU to cover only the work they do for the company. Such an approach would allow the company to benefit from the most competitive corporate membership subscription as all of the risk would be organised through the MDU.

The other approach is that the clinician can stay with their existing defence organisation for all of their work. In this instance, the price of the corporate membership would be likely to be higher.

Please note that individual membership of the MDU is provided on an occurrence basis. That means as long as an incident arises while the individual is a paid member of the MDU, he or she can seek assistance with a claim even if it arises after they have left the MDU. Where the individual has left the MDU when a claim is made any such assistance provided would be outside the insurance policy on a discretionary basis.

A copy of the policy wording for individual members of the MDU is available on the MDU website at www.the-mdu.com/corporate





HOW MUCH DOES THE CORPORATE INDEMNITY SOLUTION COST?

The price for the cover under the Corporate Indemnity Solution will be tailored to meet each company's needs, including the number of practitioners and staff involved in the business and the amount and type of work they undertake.



HOW DO I APPLY FOR THE CORPORATE INDEMNITY SOLUTION?

To apply for the Corporate Indemnity Solution, you will need to complete an application form including questions on the type and nature of your practice and details of the clinical staff who will be working with the organisation.



To obtain an application form, visit www.the-mdu.com/corporate, email corporate@the-mdu.com, or telephone the membership department on **0800 716 376**.

It is likely that before an application is accepted, MDU Services will conduct a clinical risk assessment of your organisation.



ABOUT OUR INSURANCE SERVICES

1 Both the Corporate Clinical Indemnity policy and individual professional indemnity insurance policy are arranged through MDU Services Limited (MDUSL). MDUSL's registered office is 230 Blackfriars Road, London, SE1 8PJ. MDUSL is an insurance intermediary, and from 14 January 2005 has been authorised and regulated by the Financial Services Authority (FSA) in respect of insurance mediation activities only (reference number 312054). You can check this on the FSA's Register by visiting the FSA's website www.fsa.gov.uk or by contacting the FSA on **0845 606 1234**.

2 MDUSL is a wholly owned subsidiary of The Medical Defence Union Limited (MDU).

3 The MDUSL offers individual professional indemnity insurance and corporate indemnity insurance from two insurers, operating on a co-insurance basis:

- SCOR UK Company Limited
- International Insurance Company of Hannover Limited

SCOR UK Company Limited is authorised and regulated by the FSA (reference number 202333) and is a member of the Association of British Insurers (ABI).

International Insurance Company of Hannover Limited is authorised and regulated by the FSA (reference number 202640) and is a member of the ABI.

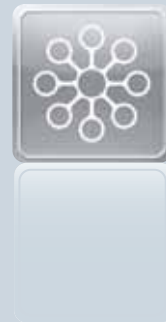


The Medical Defence Union is the only medical defence organisation authorised and regulated by the Financial Services Authority (FSA).



For membership queries

**please call the freephone membership helpline on
0800 716 376** lines are open Monday to Friday, 8am to 6pm



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MDU Services Limited
230 Blackfriars Road
London SE1 8PJ

website www.the-mdu.com/corporate

email corporate@the-mdu.com

If you would like to receive this application guide and form, or any of our literature, in a large print format please contact our membership helpline on the number above.

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