

**Isle of Man Government
Department of Health and Social Care**

Indemnity Policy

Ratified by Department 7th August 2015
To be Reviewed August 2018

Indemnity Policy for Clinical Negligence Claims in the Department of Health and Social Care

Introduction

This policy document clarifies and confirms the indemnity policy in respect of Indemnified Persons where there is a Claim made against that person or the Department in Clinical Negligence.

1. Definitions and Interpretation

Unless otherwise inconsistent with the context, for the purpose of this policy, the following terms shall have the following meaning or interpretation:-

- 1.1 Claim** means a claim against the Indemnified Person in respect of Clinical Negligence
- 1.2 Clinical Negligence** means a breach of duty of care by a Health Care Professional consequent on decisions or judgments actions or omissions of the Health Care Professional acting in their professional capacity in the course of their employment or contract for services or in the course of their day to day duties as a student or volunteer working or studying with or on behalf of the Department in connection with the diagnosis of any illness or condition, or the care or treatment of any patient which are admitted as negligent by the Department or are determined by the Court in the Isle of Man as negligent pursuant to any Claim
- 1.3 Health Care Professional** (subject to the exceptions set out in section 5 below) means:-
- 1.3.1 any person who is employed or contracted to the Department whether employed or self employed
 - 1.3.2 any other staff member working within the Department (including those staff employed by the Mental Health Service and Prison Health Service and those providing teaching or learning in the Department's Teaching Team)
 - 1.3.3 any person working or studying or training as a volunteer or student within a health care setting within the Department or working towards a professional health care medicinal clinical or other relevant professional qualification
 - 1.3.4 any General Practitioners or dentists who are directly employed by the Department for example as Public Health doctors (including port medical officers and medical inspectors of immigrants at Isle of Man Airport and Sea Terminal

and such term is intended to include but is not limited to doctors, dentists, nurses, midwives, health visitors (including community health care workers), hospital pharmacy practitioners, registered ophthalmic or dispensing opticians working in a

hospital setting, members of professions ancillary to or allied with medicine and dentistry, ambulance and paramedic personnel, laboratory staff and technicians teachers lecturers and research assistants working within a hospital or surgery setting for or on behalf or with the Department, locums, medical academic staff on honorary contracts, those conducting research and clinical trials, charitable volunteers, and students or other staff working on healthcare income generation projects

1.4 Indemnified Person means a Health Care Professional that qualifies for an indemnity pursuant to section 2 of this policy

1.5 Injured Party means a person who makes a written allegation or a Claim based on the alleged Clinical Negligence of the Indemnified Person

2. Indemnity

2.1 The Department is vicariously liable for the negligent acts and omissions of their employees or other persons working for them (in this policy referred to as 'Indemnified Persons') and this document confirms the policy of indemnity in respect of this liability.

2.2 An indemnity will only be provided to the Indemnified Person where the negligent Indemnified Person was:

2.2.1 working under a contract of employment with the Department and the negligent act or omission occurred in the course of that employment; or

2.2.2 contracted to the Department to provide services to persons to whom that the Department owed a duty of care; or

2.2.3 otherwise owed a duty of care to the Injured Party (i.e. a volunteer or student or teacher/lecturer) by virtue of their position as a Health Care Professional; and

PROVIDED THAT the Indemnified Person has:

2.2.4 acted in accordance with the Department's standards, policies, protocols, instructions and requirements (which for avoidance of doubt includes paragraphs 3.8 and 3.9 of the report titled Principles of Maintaining Competence in a Small Community which state:-

"3.8 In an emergency situation the individual healthcare practitioner who finds themselves working outside their area of expertise and competence must weight up the risk and benefits to the patient of doing so and must always act and work accordingly, within laid down protocols and ensuring they meet their regulatory requirements.

3.9 Any healthcare practitioner who believes that in the best interests of a patient, they must work outside their usual area of expertise and competence should do so if no practical alternative exists that is safer for that patient and by omission the patient may be at greater risk").

PROVIDED FURTHER THAT in the event an Indemnified Person finds themselves working outside their usual area of expertise and competence the matter should be reported as soon as possible to the lead for their particular profession.

- 2.3 Where the above criteria is met, the Department policy shall be to meet the reasonable and proper Expenses where negligent harm has been proved to have occurred to an Injured Party due to a breach of duty of care by the Indemnified Person, and shall not seek to recover the Expenses from the Indemnified Person subject to the terms and conditions of this policy.

3. Expenses

- 3.1 Where a Claim is made against an Indemnified Person, the Department shall meet the following reasonable Expenses (including disbursements and VAT) properly incurred by an Indemnified Person:-

- 3.1.1 the legal and administrative costs of defending the Claim (including any cost of pre action protocol and disclosure) and any mediation or arbitration;
- 3.1.2 if appropriate, the legal and administrative costs of reaching a settlement;
- 3.1.3 the Claimant's costs, either agreed by the parties or as awarded by the court;
- 3.1.4 the damages awarded either as a one-off payment or as a structured settlement.

- 3.2 In all cases of any claim for payment by the Indemnified Person, meeting reasonable Expenses shall be subject to:-

- 3.2.1 the terms and conditions of this policy or any updated policy as may be in force from time to time;
- 3.2.2 evidence of the costs and expenses claimed, in writing and with any supporting or documentary evidence as the Department shall reasonably require;
- 3.2.3 assessment of the Expenses on an ongoing basis upon receipt of any claim for payment to ensure proportionality, rates, time spent and so on has been appropriately accounted for and claimed.

4. Breach of Duty of Care

- 4.1 In this policy, "breach of duty of care" has its legal meaning, and the general position will be that the following must all apply before liability for clinical negligence pursuant to this policy exists:

- 4.1.1 There must have been a duty of care owed to the Injured Party; and
- 4.1.2 The standard of care appropriate to such duty must not have been attained and therefore the duty breached, whether by action or inaction, advice given or failure to advise by the Indemnified Person;
- 4.1.3 Such a breach must be demonstrated to have caused the injury and therefore the resulting loss complained about by the Injured Party;
- 4.1.4 Any loss sustained as a result of the injury and complained about by the Injured Party must be of a kind that the Isle of Man Court recognize and for which they would allow compensation (either by reference to common law principles in the Isle of Man or by determination of the Claim); and

- 4.1.5 The injury and resulting loss complained about by the Injured Party must have been reasonably foreseeable as a possible consequence of the breach of duty of care.

5. Exceptions

- 5.1 This policy does not cover indemnity for any other liability than set out specifically in this policy, and does not include cover or any indemnity for the following non-exhaustive liabilities:-
 - 5.1.1 product liability;
 - 5.1.2 employers liability
 - 5.1.3 liability for members of various committees of the Department including research and development (and in particular the Local Research and Ethics Committee)
- 5.2 Unless specifically agreed in writing by the Department, this policy of indemnity does not apply to the following workers who should make their own indemnity and insurance arrangements:-
 - 5.2.1 general medical and dental practitioners working for the Department pursuant to a contract for services;
 - 5.2.3 employees of general practices, or private hospitals (even if treating Isle of Man National Health Service patients) or voluntary agencies

6. Circumstances of Care Covered

The circumstances of care given by Indemnified Person which would ordinarily be covered by this policy are:-

- 6.1 healthy volunteers or patients treated or undergoing tests;
- 6.2 receiving an established treatment, whether or not in accordance with an agreed guideline or protocol;
- 6.3 whenever they are receiving a novel or unusual treatment which in the clinical judgement of the Health Care Professional is appropriate for the particular patient

7. Claims Management Principles

- 7.1 The provision of any indemnity in the terms of this policy is subject to the management of the Claim by the Department in accordance with the principles set out in this section.
- 7.2 The Department must be advised within two (2) months or as soon as reasonably practicable of any incident action or omission which may give rise to a complaint allegation or a Claim
- 7.3 The Department must take the essential decisions on the handling of the Claim, including:-
 - 7.3.1 any pre-action disclosure, negotiation or settlement;
 - 7.3.2 any mediation or arbitration;
 - 7.3.3 the instruction and retainer and level of fees for any professional legal or expert opinion, advice or administration of the Claim including but not limited to the employment of an Advocate, professional adviser, expert, mediator or arbitrator or other agents or advisors as appropriate;

- 7.3.4 general case management including but not limited to issuing or defending a Claim or counterclaim, making any interim application to the Court (save and except for matters of a purely administrative nature)
- 7.4 The Department may in its absolute discretion choose to pay part only of the Expenses where an Indemnified Person or its employees advisers Advocate or other agent acts unreasonably, claims inappropriate or disproportionate sums, or acts against the direction or reasonable guidance of the Department in the case management of the Claim.
- 7.5 This policy is set out without prejudice to any rights or remedies the Department may have against the Indemnified Person in an employment, contractual or other civil law remedy in respect of the performance of the Indemnified Person, including any counterclaim or suit as may be appropriate in the circumstances.

8. Financial Support Arrangements

- 8.1 The Department shall make such arrangements to secure funding which is sufficient to support the reimbursement and payment of the Expenses provided for in this policy.
- 8.2 To this end, the Medical Indemnity Fund ("the Fund") was established by Treasury with effect from 1st April 1994, to generate a reserve from which to meet valid self-insured claims for damages made by or on behalf of patients against staff working in Island hospitals, employed by the Department. The Fund's income arises from annual savings in insurance premiums and investment income thereon.
- 8.3 Annually, the Department are required to notify the Treasury of any claims made or outstanding with the likelihood of settlement, and the Treasury will where necessary increase or decrease funds applied to the Fund, which reimburses the Department for any paid Expenses.