



Are you covered?

Rupert Hoppenbrouwers, head of the Dental Defence Union (DDU), examines the issues surrounding insurance and indemnity for dental professionals.

With the rise in claims for clinical negligence and an even steeper increase in awards for damages, ensuring that you have appropriate professional indemnity is more important than ever before. In the event of a claim, will you get the support you need from your indemnifier?

Choosing a dental indemnity provider can be a bit of a minefield. Complex terminology and reams of information on the types of indemnity available can be perplexing to even the most experienced dental professional. However, understanding the difference, and knowing how indemnity and insurance apply to you, will help you make a sound choice and ensure that if a claim is made against you, you will have access to the support and representation you need and that patients who are harmed through negligence are compensated.

GDC requirements

All dental professionals should be aware that the General Dental Council (GDC) requires every registrant to ensure that they have indemnity arrangements in place so that patients can be compensated in the event of a claim. Although the GDC does not specify which type of indemnity is preferred, it is important to note that they only recognise certain indemnity arrangements.

The types of indemnity arrangements recognised by the GDC are:

- Dental defence organisation (DDO) membership, which provides insured indemnity for DDU members and discretionary indemnity for members of the other DDOs
- Professional indemnity under the employer's insurance arrangement
- NHS indemnity.

The GDC states that if a dental professional

is relying on arrangements made by their employer, it is the dental professional's responsibility to check their indemnity position with the employer and not make assumptions about whether or not they are covered. This is because they might need to provide proof that they are indemnified, if a patient makes a complaint to the GDC or a claim against them.

Discretionary vs. insured indemnity

Traditionally, dental defence organisations have provided their members with indemnity on a discretionary basis, meaning that there is no legal contract between the indemnifier and the dental professional. Should the dental professional find themselves in a position where they require assistance, it is at the discretion of the DDO's board or council whether to assist or not. Each case is considered when the request is made.

In circumstances, albeit rare, that discretionary assistance is refused, the dental

Case illustration

The following fictional case illustrates the need to have your own clinical negligence indemnity:

For a number of years, a dental therapist had worked two days a week for an NHS dental practice, alongside a part-time job with the community dental service. The therapist had some experience of treating people with special needs and her dentist colleagues regularly referred such patients to her for treatment.

A new dentist had joined the practice a few weeks before and one of his first patients was a 14-year-old girl with severe learning difficulties. The patient's dental health was poor and she had extensive caries. On examination, the dentist decided that two of the patient's molars could be filled but two others could not be saved. He explained to the patient's mother that he was going to refer the patient to the therapist for the restorative treatment to be carried out prior to him arranging for the extractions and an appointment was made for the patient to return the following week. The dentist then wrote out a treatment plan for the therapist, setting out his management, including the restoration of UL7 and LL6.

The therapist was on holiday at the time and by the time she returned, the dentist himself was on sick leave so there was no chance for her to discuss the case before the patient came back for her appointment.

That morning had been particularly busy and the therapist was already running late when she saw the patient. The patient herself was anxious and her mother explained she had had a bad night and she wanted to get her daughter home. However, when the therapist looked into the patient's mouth she was concerned that it was difficult to determine which teeth were the ones to be filled as the level of co-operation from the patient was poor. In spite of this, the therapist successfully filled two teeth, and gave the patient's mother the appropriate aftercare advice.

A few weeks later, the patient returned to see the dentist for an extraction appointment. When he examined her, he discovered that the dental therapist had mistakenly filled UL6. He immediately informed the patient's mother of what had happened and explained that the patient would need to have a further appointment for restoration of the UL7 which he would carry out himself.

The practice later received a complaint which was resolved with a letter of apology from the practice complaints manager. However, a year later, the therapist herself received a letter of claim from a firm of solicitors acting for the patient, alleging that the therapist had acted negligently by not checking which tooth was to be extracted. The claimant sought compensation for her distress, and for the further procedure she had had to undergo.

The therapist was a DDU member and immediately notified the claims department of what had happened. She admitted she had been at fault for going ahead with the procedure rather than rearranging the appointment and said she did not feel she could defend her actions. With the member's consent, the DDU negotiated with the claimant's solicitors and eventually settled the claim on her behalf as well as the associated legal costs. This was paid under the member's clinical negligence insurance policy.

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professional may find themselves faced with having to fund their defence and any compensation award themselves. Equally concerning is where that leaves patients who have been negligently harmed; they might not be able to seek the compensation they may be entitled to, which goes against the GDC's ethical guidance, *Standards for dental professionals*.¹

The Dental Defence Union (DDU) has long taken the view that dental professionals need the assurance of a contract of insurance. An indemnity policy is a legal contract to provide assistance in the event of a claim, subject only to the terms and conditions of the policy. The DDU is unique among DDOs in providing its

members with an insurance policy as well as access to discretionary assistance for matters that fall outside the terms of the insurance policy.

Benefits of DDO membership

When you are considering your dental defence arrangements you need to be aware that it might not be a good idea just to rely on your employer's indemnity. It might be all right if there is a negligence claim but many dental professionals find themselves needing support with more everyday practice matters, such as advice on responding to patient complaints or writing clinical incident reports. Every week there seems to be a news story highlighting patient dissatisfaction in some area of the healthcare sector. And with the GDC experiencing a rise in the number of complaints it receives about dental professionals, you may well find yourself the subject of a GDC investigation at some time in your career.

This is where DDOs come into their own since, in addition to assistance with claims, they can provide extensive advisory assistance on a whole range of ethical and dento-legal dilemmas.

So what exactly are the advisory benefits dental professionals can expect to receive from a DDO? Firstly, DDOs offer 24/7 dento-legal support for help with all manner of enquiries, from regulatory matters to how to respond to a patient who has complained about the practice receptionist. The DDU's advice lines are staffed by experienced dental professionals and when we are assisting you, you can be assured that your query is being dealt with by someone with experience in both the dental and legal professions. We can also provide support and representation at GDC hearings, assist members to respond to complaints in the NHS and independent sectors, and provide advice and representation in dealing with press or media enquiries as well as risk management advice in connection with a member's practice.

Think carefully about your dental defence

With all of this in mind, the DDU advises dental professionals to take time to source and gather information before deciding which type of indemnity and assistance package is right for you. While the priority of every dental professional is to treat patients to the highest standard, the importance of having the appropriate support in place, for all your dento-legal and ethical dilemmas, shouldn't be taken lightly.

1. General Dental Council. *Standards for dental professionals*. [www.gdc-uk.org/Newsandpublications/Publications/Publications/StandardsforDentalProfessionals\[1\].pdf](http://www.gdc-uk.org/Newsandpublications/Publications/Publications/StandardsforDentalProfessionals[1].pdf)