



Health and Social Care Committee

House of Commons London SW1A 0AA

Tel: 020 7219 6182 Fax 020 7219 5171 Email: hsccom@parliament.uk

Website: www.parliament.uk/healthcom Twitter: [@CommonsHealth](https://twitter.com/CommonsHealth)

From Dr Sarah Wollaston MP, Chair

Rt Hon Matt Hancock, MP
Secretary of State for Health and Social Care

Letter by email

27 August 2019

Dear Matt

I have received the correspondence below from the Medical Defence Union, concerning historic liabilities for GPs following the introduction of a state indemnity scheme from earlier this year. I would welcome your comments on the concerns expressed in the MDU's letter. I am particularly concerned by the MDU's report that "DHSC has not engaged in any meaningful discussions with us since 1 April".

As usual, I would expect the Committee to want to publish your response. I am copying this letter to Mary-Lou Nesbitt, Head of Governmental & External Relations at the MDU.

Yours sincerely,

A handwritten signature in black ink that reads "Sarah Wollaston".

Dr Sarah Wollaston MP
Chair of the Committee

Letter from MDU

Dear Dr Wollaston

[...]

As you will know, because claims costs inflation made indemnity increasingly unaffordable for GPs, the DHSC introduced state indemnity for English GPs on 1 April 2019 with the aim of protecting GPs from the burden of indemnity costs. However, while the state scheme indemnifies GPs' clinical negligence claims arising from incidents after that date, we could not agree arrangements with the DHSC that would be acceptable for our GP members' clinical negligence liabilities for claims arising from incidents before 1 April 2019. This means the NHS will take responsibility for future claims made against all GPs arising from incidents after 1 April, but the MDU's GP members remain responsible for their historic claims, that is ongoing claims and claims that have yet to be made as a result of incidents that happened before 1 April. (Experience shows these claims can be made up to 10, 20, 30 or more years after the original incident.) Since our discretionary assistance is provided on an 'occurrence' basis, without a state scheme our GP members still look to us for indemnity in respect of these historic claims. However, because they are now indemnified by the NHS for their 'future' claims (which are unlikely to be notified until 3-5 years after 1 April 2019, giving DHSC a payment holiday), they no longer pay us a subscription for their indemnity, though we rely on GP members' continuing subscriptions to help to meet their needs for historic claims. The outcome of the DHSC's failure to agree a scheme to indemnify the MDU's GP members for their historic claims is the prospect of increased demand against dwindling funds contributed by these GPs. In our most recent estimate approximately 47% of English GPs were MDU members.

We tried repeatedly to find a solution with the DHSC before 1 April to extend NHS indemnity to our GP members' historic claims. Regrettably, as no agreement was reached and our GP members are left in the difficult position I have explained, we had to resort to judicial review which remains pending. The fact of ongoing litigation should not prevent the parties from trying to reach an agreement to resolve the problem, but despite our attempts to open a constructive dialogue, DHSC has not engaged in any meaningful discussions with us since 1 April and we are unable to move this along. Four months have passed and the problem is becoming increasingly acute.

[...]

With best wishes,

Mary-Lou Nesbitt
Head of Governmental & External Relations



Department
of Health &
Social Care

From the Rt Hon Matt Hancock MP
Secretary of State for Health and Social Care

39 Victoria Street
London
SW1H 0EU

020 7210 4850

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Dr Sarah Wollaston MP
Chair, Health and Social Care Committee
House of Commons
London
SW1A 0AA

30 SEP 2019

Thank you for your letter of 27 August 2019 enclosing correspondence from the Medical Defence Union “MDU” in which they expressed concern about the failure to agree indemnity arrangements for the historical liabilities of their GP members and Government’s engagement with MDU on this since April 2019.

As the MDU’s letter acknowledges, the Government introduced a new scheme (the Clinical Negligence Scheme for GPs) in April 2019. This scheme covers NHS clinical negligence liabilities for general practice for future claims arising from incidents occurring from 1 April 2019, and was an important part of the GP contract for 2019-20.

The Government’s intention has been and remains to introduce a further scheme, the Existing Liabilities Scheme, to address historical clinical negligence liabilities of general practice in England, subject to commercial negotiations with medical defence organisations. On 1 April 2019 the Government announced it had agreed commercial terms with the Medical Protection Society “MPS” covering historical NHS clinical negligence claims of MPS’ general practice members for incidents that occurred before 1 April 2019. We indicated that discussions were ongoing with other medical defence organisations. This was to include separate discussions with the MDU and the Medical and Dental Defence Union of Scotland “MDDUS” representing a significant proportion of the remaining GP indemnity market.

Accordingly, the Government continued to negotiate with both MDDUS and MDU. Negotiations with MDDUS successfully concluded on 20 September 2019 and

commercial terms have now been agreed to address historical liabilities of their members. However, negotiations with MDU are yet to bear fruit.

An important and unwelcome development came on 3 June 2019, when the MDU chose to initiate Judicial Review proceedings. This sought to challenge the Government's decision to introduce a future liabilities scheme without implementing at the same time an existing liabilities scheme for MDU's GP members. This claim is being fully defended. You will appreciate that I am unable to comment on the details of the commercial discussions to date with the MDU, as they are by their very nature commercially sensitive. In addition, I am also unable to comment on the ongoing litigation.

Notwithstanding MDU's judicial review claim, DHSC has, since 1 April 2019 been engaged, and continues to be open to, further negotiation and discussion with MDU. Indeed, officials wrote to MDU as recently as 30 August 2019 to encourage further progress and confirm that the Department is still open to continuing discussions with MDU to secure its involvement in the arrangements for the Existing Liabilities Scheme subject to agreeing satisfactory terms including on price. The MDU has now responded to that letter and my officials will be responding in due course.

I am copying this response to Mary-Lou Nesbitt, Head of Governmental & External Relations at the MDU.

Yours ever,



MATT HANCOCK