



Llywodraeth Cymru
Welsh Government

Who will participate in the Wales Existing Liabilities Scheme?

- The ELS may only be created after successful discussions between each individual medical defence organisation and Welsh Government. After agreement has been reached, there is a formal contract agreeing a transfer of assets to Welsh Government together with a transfer of legal responsibility for GP clinical negligence liabilities from the participating medical defence organisation
- Only medical defence organisations who have reached agreement with the Welsh Government, and their GP members, will participate in the ELS for Wales
- We have reached agreement with the Medical Protection Society on 15 November 2019 and the Medical and Dental Defence Union of Scotland on 11 February 2020. We have always stated our desire to reach agreement with all three main medical defence organisations and hope to be able to reach a satisfactory agreement with the Medical Defence Union

How will GPs access the Wales Existing Liabilities Scheme?

To notify new or potential new clinical negligence claims which concern incidents which happen before 1 April 2019, until further notice, GPs who are a member of a participating medical defence organisation (MDO) should report the claim to their MDO which provided cover at that time for advice as to the next steps. The MDO will refer to NHS Wales Shared Services Partnership Legal and Risk Services (“NWSSP L&R”) as appropriate.

Will the Existing Liabilities Scheme arrangements provide cover for practice staff as well as GPs?

- The ELS scheme will cover the activities of all contractors who provide primary medical services which will include clinical liabilities arising from the activities of GP practice staff and other medical professionals such as salaried GPs, locum GPs, practice pharmacists, practice nurses etc.
- The scheme will not cover private work, complaints, involvement in coroners’ cases, GMC hearings and other matters. The scheme will not cover primary care dentistry, community care dentistry community pharmacy, and optometry. GPs should continue to refer these matters and any related queries to their relevant medical defence organisation.

Are there any aspects of GP’s work which not be covered by the Existing Liabilities Scheme?

- The scheme will not cover private work, complaints, involvement in coroners' cases, GMC hearings, ICO investigations and other matters. GPs should continue to refer these matters and any related queries to their relevant medical defence organisation.
- The scheme will not cover primary care dentistry, community care dentistry community pharmacy, and optometry.

Will GPs and their reputations be robustly defended?

- Yes. NWSSP L&R shall robustly defend claims to trial where appropriate (including low value claims) and fully appreciate the need to protect and support GPs, their staff and their reputations. NWSSP L&R fully support clinicians throughout the legal process, listening and responding to concerns.

How far back will claims be covered by the scheme? / What is the relationship with the Limitation Act 1980?

- The ELS has the potential to cover any claim for clinical negligence against a GP, who was a member of an MDO covered by the Scheme, where the act or omission complained of took place prior to 1 April 2019.
- In cases of clinical negligence resulting in personal injury or death, the limitation period is three years from the date of the negligent act or the date of the claimant's knowledge of damage, whichever expires later. However, judges have discretion to extend the limitation period and parties may at times agree to extend or waive the period to save or reduce the risk of legal costs.
- For the ELS, the relevant date is likely to be the date of the claimant's knowledge.
- The ELS will apply to GPs even if they are retired (as is the case for the FLS).

What about the duty of candour and the need for GPs to comply with other legal duties that they may be subject to?

Nothing in the Scheme for Existing Liabilities or the Scheme for Future Liabilities Scheme is intended to contradict other legal duties to which primary care providers may be subject to. Furthermore the Scheme is not intended to prejudice primary care providers in relation to the operation of the Scheme, in circumstances where they have complied with such legal duties. A non-exhaustive list of examples of such duties may include:

- providing honest witness testimony to the coroner for the purpose of an inquest; or
- providing honest witness testimony to the police or to the courts in the context of criminal proceedings; or
- compliance with a subject access request under GDPR; or
- exercising a duty of candour (after such time as it becomes implemented in Wales).

However there may be circumstances in which the Welsh Ministers or the operator of the Scheme disagree with a primary care provider that such a legal duty existed or that it was exercised appropriately. In such circumstances discretion may be exercised as permitted by the Scheme

For incidents on or after 1 April 2019, the Scheme for GMPI guidelines requests the primary care provider to contact L&R's GMPI team before providing a response which amounts to an admission of breach of duty or acknowledges errors in the care, diagnosis and treatment of a patient. In most cases, this will be possible and L&R's GMPI team are happy to address any queries regarding indemnity at that point also.

The Scheme for GMPI guidelines can be accessed here

<http://www.nwssp.wales.nhs.uk/sitesplus/documents/1178/LR%20Scheme%20for%20General%20Medical%20Practice%20Indemnity%20Guidelines%20v27%20and%20App%20A%2003%2004%202019.pdf>

For incidents before 1 April 2019, until further notice, a GP who is a member of a participating medical defence organisation (MDO) should contact their MDO which provided cover at that time for advice as to the next steps before providing a response which amounts to an admission of breach of duty or acknowledges errors in the care, diagnosis and treatment of a patient pursuant to a legal duty or otherwise. The MDO will refer the matter to NWSSP L&R as appropriate.