

Indemnity Arrangements During the Coronavirus Pandemic

NHS Wales Shared Services Partnership



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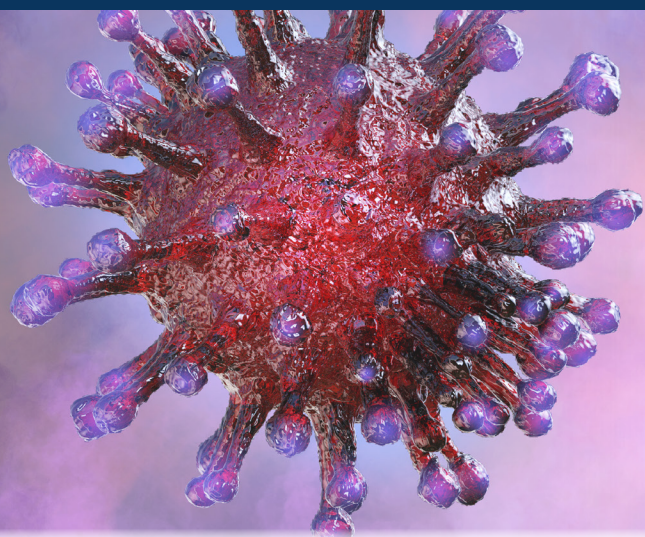
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A summary of indemnity arrangements
related to the management of the
pandemic, now updated to include the
arrangements for vaccinations



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Introduction

All staff in the health and social care sector are working incredibly hard to increase capacity and to provide care to patients in these very challenging circumstances.

It is important that indemnity concerns do not become a barrier to effective care arrangements and the development of alternative delivery models to support patient needs.

Existing schemes operated within Wales, including the Scheme for General Medical Practice Indemnity, NHS Indemnity and the Welsh Risk Pooling arrangements extend to the provision of care to patients who are diagnosed with, or suspected to have, Covid-19.

Under section 11 of the Coronavirus Act 2020, the Welsh Government will provide indemnity for clinical negligence liabilities associated with Covid-19 **which are not already** covered by alternative indemnity arrangements such as those provided by the GMPI and NHS Indemnity schemes, insurance companies or medical defence organisations.

Health bodies in NHS Wales are prevented from purchasing commercial insurance in all but a few exceptional circumstances.

The common law principle of vicarious liability means that an NHS health body employing a member of staff is liable for the acts and omissions of those individuals in the course of their employment.

The NWSSP Legal & Risk Service has established a hub of experienced lawyers to provide advice on legal issues arising from the Coronavirus pandemic. This is co-ordinated by Senior Solicitor Sarah Watt and enquiries should be emailed in the first instance to Sarah.Watt@Wales.nhs.uk.

Sarah will coordinate the appropriate teams to assist with the enquiry and ensure the matter is progressed appropriately.

The team who manage the Scheme for General Medical Practice Indemnity (GMPI) can be contacted via email gmpi@wales.nhs.uk or by telephone on 02920 905454 during standard business hours 0900–1700 Monday to Friday.

The Welsh Risk Pool Operations Team is able to provide advice on indemnity arrangements. The main WRP office is of course closed but voicemails will be picked up. Anyone who has an indemnity query should address it in the first instance to the Head of Safety & Learning, Jonathan Webb, via email: Jonathan.Webb@wales.nhs.uk or by telephone on 07850 521999.

Temporary Sites and Alternative Premises

Where a field hospital, reception centre or other facility is set up by the NHS, indemnity arrangements can be established. A lead body (which would usually be the Health Board responsible for setting up the temporary site) would become responsible for the indemnity of staff, volunteers and partners deployed to work at that location.

It is essential that contracts, memorandums of understanding and service level agreements are prepared appropriately to ensure that requirements of premises owners are maintained and that the duties of the NHS are clear. The Legal & Risk Commercial and Property teams can provide prompt advice to NHS organisations. It is therefore important that during negotiations and setup arrangements, the Legal & Risk team is involved as early as possible.

Staff Returning to Practice

Healthcare professionals who have responded to the call to assist the NHS in these unprecedented circumstances will be indemnified by the NHS organisation who is in the command and control of the activities which the individuals perform.

The Coronavirus Act 2020 facilitates an expedited approach for professional regulators to register healthcare professionals and it is important that individual organisations have clear records of who has been tasked to work on specific sites.





NHS Volunteers

There has been a very positive response to the call for additional volunteers to support the NHS during the pandemic. The existing arrangements for indemnity within the NHS already cover volunteers.

Indemnity of these new volunteers is applied by the organisation who is in command and control of their activities. It is essential that clear records are maintained of who is appointed to what task. It is also vital that volunteers are appropriately briefed and provided with appropriate equipment and guidance to carry out the tasks required of them.

Requirements for the engagement of volunteers involved in the vaccination programme is further outlined in the Covid-19 Vaccinations section.

Staff Working Outside of Their Normal Specialty or Service

During the pandemic, it will be necessary for existing NHS staff to work in areas and locations which are not their normal duties. Welsh Government and NHS Wales are incredibly proud of the efforts of NHS staff.

The indemnity of staff while working at a different location, carrying out different duties or, for a different NHS organisation, is provided by the health body who is in command and control of the activities performed. There does not need to be an honorary contract in place for the indemnity to apply. For example a GP working at a hospital location would be indemnified by the Health Board or Trust that is responsible for the hospital.



Alternative Guidelines or Procedures

It may be necessary for guidelines and pathways to be adjusted to deal with capacity issues and NHS staff will have difficult decisions to make during the pandemic. There is regularly updated national guidance, specialty guidance and local guidance issued by organisations. Whilst it may be different to previous practice, staff should follow the revised guidance and be assured that they are indemnified in doing so.



Scheme for General Medical Practice Indemnity (GMPI)

The Scheme for General Medical Practice Indemnity (GMPI) provides indemnity for clinical negligence claims arising from incidents on or after 1 April 2019 to all general medical practice staff undertaking NHS 'primary medical services' (as defined in Legal & Risk Services' GMPI FAQs).

Therefore, the care and treatment of patients confirmed of or suspected to have COVID-19 are captured by GMPI if a primary medical service is being carried out.

As per the standing arrangements for the GMPI scheme:

- Locum GPs need to apply to NWSSP to be included in the All Wales Locum Register (AWLR) if they want access to GMPI.
- Specific requirements for locum GPs are set out within Appendix B of the Scheme for GMPI Guidelines. Detailed information relating to locum GPs can be found on the GMPI website [here](#).



Any queries about Appendix B should be directed to NWSSP's Employment Services Team by email to:

NWSSP.PrimaryCareWNWRS@wales.nhs.uk

Or by telephone to: 01792 860498/0490

- It is necessary for Practices to keep a record of staff working on the National Workforce Reporting System (WNWRS).

For further information for GPs and other Health professionals returning to NHS Wales to assist during this emergency please [click here](#).

Covid-19 Vaccinations

Information regarding the vaccination programme will be updated as necessary.

1. [The Primary Care \(Oxford/AstraZeneca Vaccine COVID-19 Immunisation Scheme\) Directions 2020](#) [‘The PCCIS Directions 2020’] came into force on 18 December 2020. Providers (e.g. GP Practices) engaged in the delivery of the Scheme established by these Directions, fall within the scope of existing discretionary indemnity arrangements pursuant to regulation 8 of the NHS (Clinical Negligence Scheme) (Wales) Regulations 2019 [‘the 2019 Regulations’]. Therefore, provided that a Health Board engages such providers (e.g. GP Practices) as per the requirements of the PCCIS Directions 2020, such providers fall within the Scheme.

This indemnity arrangement is limited to civil clinical negligence claims and does not extend to matters such as inquests, investigations by regulators, or criminal proceedings, which are outside the scope of the 2019 Regulations. Providers must therefore ensure that they have in place the appropriate level of professional indemnity cover with a medical defence organisation or insurer for out of scope matters.

Please note that although this arrangement operates slightly differently to the GMPI scheme, any clinical complaint or claim arising out of administering the vaccine pursuant to the PCCIS Scheme, should be notified to us at GMPI@wales.nhs.uk.

2. In addition to the arrangements set out above, healthcare professionals (and those who are not healthcare professionals but administer the product in accordance with a protocol that is approved by the Welsh Ministers) are afforded immunity from civil liability in respect of claims in relation to the safety or efficacy of the temporarily authorised vaccine itself. [Regulation 345 of The Human Medicines Regulations 2012 as amended by The Human Medicines (Coronavirus and Influenza) (Amendment) Regulations 2020].
3. Volunteers - The categories of staff referred to in ‘The PCCIS Directions 2020’ include those that are engaged by providers on a voluntary basis. However, we recommend that providers put in place a written volunteer agreement for any volunteers engaged.
4. Returning GPs (returning for the purpose of administering this vaccine) are captured by this indemnity arrangement. Before commencing work, they should undertake all the necessary requirements the Health Board or provider has identified for all vaccinators to undertake.
5. Where the Oxford/ AstraZeneca Vaccine is administered by the Health Board’s staff or locums (e.g. in mass vaccination centres and Health Board sites) standard NHS indemnity arrangements apply).

6. There is in place a Vaccine Damage Payment Scheme which now applies to COVID vaccines also. The UK Government provides a guaranteed payment of £120,000 (which is treated as a payment of account of damages in any later civil action) if you have suffered severe disability as a result of vaccination against a list of diseases. Under that scheme, there is no need to show fault to obtain a payment, just causation on the balance of probabilities and severe disability (which is defined). Claims are made to and decided by the Vaccine Damage Payment Unit with medical assistance. Nb. This scheme would not apply to the negligent administration of a vaccine.

For further information [click here](#).

Pfizer BioNTech Vaccine

Where the Pfizer BioNTech Vaccine has been administered by Health Boards existing NHS Indemnity arrangements apply.

Nb. Mass vaccination centres and Health Board sites use the Oxford/ AstraZeneca Vaccine as well as the Pfizer BioNTech Vaccine. The indemnity arrangement set out in the 'The PCCIS Directions 2020' (paragraph 1 above) are only relevant when primary care providers are engaged to provide it (e.g. General Practitioners, clusters, pharmacists etc). Where the Oxford/ AstraZeneca Vaccine is administered by the Health Board's staff or locums standard NHS indemnity arrangements apply.

If a primary care provider (e.g. GP Practice) is asked by a Health Board to use a different COVID-19 vaccine from the Oxford/ AstraZeneca Vaccine, before administering any other type of vaccine the primary care provider will need to confirm the specific arrangement(s) under which they are being asked to do so with the Health Board (e.g. for GMS contractors, a LES), as this will determine their eligibility for both payment and indemnity coverage. For the avoidance of doubt, the terms of the PCCIS do not enable an engaged provider to administer the Pfizer BioNTech vaccine.



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Contact

For any questions on the information provided, please contact:

Jonathan Webb
Head of Safety & Learning
Companies House

Email: Jonathan.Webb@wales.nhs.uk