The Medical and Dental Defence Union of Scotland | Protecting you since 1902

Membership Agreement

Effective Date 1st March 2011

Membership Agreement

Part 1 – What your membership provides

Membership of MDDUS provides assistance, advice, representation and access to indemnity for circumstances that arise out of the bona fide practice of medicine, dentistry or an allied profession and that occur during a period of membership. As a mutual organisation, MDDUS always acts in the interests of its members and offers assistance, provided the need for help arises out of the practice of a profession.

Your membership provides (subject to the exclusions in Part 2 and the requirements on Parts 3 and 4):

A. Access to professional advice on the wide range of ethical, medico-legal and risk-related issues that may arise out of your practice of medicine, dentistry or an allied profession and that occur during the period of membership.

B. Professional assistance, advice, representation and, where necessary, appropriate legal representation in respect of:
– complaints made against you
– disciplinary proceedings taken against you
– fatal accident inquiries/coroner's inquests
– matters referred to the GMC/GDC

These circumstances must arise out of your practice of medicine, dentistry or an allied profession and occur during the period of membership.

And, either in the case of general medical or dental practitioners, other allied professions and hospital doctors working in whole or in part in the private sector:

C. Assistance, advice, representation (including legal representation) and access to indemnity for your legal liability to meet claims made against you in respect of claims arising out of your professional practice. This protection relates to circumstances occurring in Scotland, England, Wales and Northern Ireland during your membership, regardless of when the claim is actually made or intimated to you.

Or, in the case of doctors and dentists, or related allied professions indemnified by others, for example hospital doctors working exclusively in the NHS and hospital, community and salaried dental practitioners:

D. Assistance, advice, representation (including legal representation) in respect of your legal liability to meet claims made against you in respect of claims arising out of your professional practice for work undertaken by you which is not designated as Category 1 work (1) and which falls outside the duties specified in the NHS Contract of Service. Such work is designated as Category 2 work and examples include medical examinations undertaken on behalf of life assurance companies. Claims arising out of your professional practice in respect of such work are not covered by the NHS indemnity scheme.

E. Worldwide indemnity in respect of your legal liability to meet claims made against you arising from "Good Samaritan" acts (2).

There is no limit on the amount paid in respect of any one claim and no excess or deductible is applied that has to be met by you.

F. If you are an employer, access to professional advice on your legal liabilities, duties and obligations as an employer in the ordinary and usual course of your practice of medicine or dentistry.

G. If you qualify, the employer support and employer indemnity set out in Part 6.

Part 2 – What is not included in your membership

Membership of the MDDUS provides advice and protection for medico-legal problems arising from your professional practice as a doctor, dentist or allied health professional. You are, of course, exposed to a wide range of potential legal and contractual problems. For the sake of clarity and as examples, the following broad areas are not included within your membership:

- Matters that should be dealt with by public liability, employers' liability or directors' liability insurances.
- Employment issues not related to professional practice, e.g. disputes over employment contract terms, with exception to the Employment Support and Indemnity detailed in Part 6.
- Assistance with raising actions for defamation.
- Matters of a purely financial nature, and the pursuit of fees for services rendered.
- Representation in respect of criminal proceedings or any legal liability arising from criminal activities or from any trading or personal debts. However, cover may be extended to certain criminal proceedings which arise directly from clinical practice and where MDDUS accepts that the member has acted in good faith.
- The MDDUS does not reimburse a member's personal expenses incurred during the management of cases (e.g. travel, locum cover, etc.).
- Fines or Penalties.

Part 3 – Your responsibilities as a member

It is important that information held by the MDDUS about a member is correct. If circumstances change, members are obliged to inform the MDDUS. Failure to do so may affect or cancel access to all benefits of membership, including indemnity.

- A member must also advise the MDDUS of any change of address or if the member is unable to work for an extended period of time.
- Members are required to ensure that they are in the correct membership category and paying the appropriate subscription associated with the clinical work they undertake.
- Members should notify the MDDUS as soon as reasonably possible of any claims or circumstances that might give rise to claims made against them.
- Members must not contact their regulatory bodies directly, as this might compromise their case and that they should always advise the Union as soon as possible if they have received any communication from these bodies.
- Members should not take any steps to settle or compromise any claim without the written consent of the MDDUS or its solicitors.
- The benefits of membership, including indemnity, may be withdrawn if a member declines to accept the advice proffered by MDDUS or its solicitors or counsel. Members are required to cooperate fully in every respect with the MDDUS and its solicitors.
- Members must not hold membership with any other medical or dental defence organisation.
- If MDDUS request information of a professional type, you are required to provide it.
- Members who have Practice or Corporate Scheme Membership with MDDUS should note that it is their responsibility to ensure that membership is being adequately maintained by the person responsible within the practice for the administration of the scheme, such as the Practice Manager. Failure to maintain adequate cover, for example failing to inform us of a return to work following maternity or paternity leave, cannot normally be rectified retrospectively.
- MDDUS staff are required to treat all members of the Union fairly and display politeness, tolerance and respect at all times. As an employer we have a similar duty to ensure all our staff are treated in the same way. No one should be expected to endure offensive, intimidating or aggressive behaviour, and the Union will therefore not accept any verbal or written abuse directed towards its staff.

Part 4 – Conditions of membership

This Membership Agreement may be altered, amended or replaced by MDDUS at the sole discretion of the MDDUS. Any alteration, amendment or replacement of this Membership Agreement will be posted on the MDDUS website www.mddus.com and shall be effective from the date specified in the posting of the alteration, amendment or replacement on the MDDUS website or, if no effective date is specified in the posting, from the thirtieth day after the posting of the alteration, amendment or replacement on the MDDUS website.

- ### Eligibility

  All doctors and dentists who are professionally active and either are or wish to become members of the MDDUS must be registered with the GMC, GDC or, if necessary, both. In addition, members who are professionally active must also hold an appropriate licence to practice. Similarly, members of allied health professions must be registered with the appropriate registration body.

- ### Joining

  An official application form must be returned fully completed no later than 14 days after the requested start date of membership.

- ### Retrospective cover

  Under no circumstances will an applicant be allowed to backdate cover prior to the date the first request to join is made.

- ### Cover on joining

  Failure to return the official application form within 14 days after the requested start date of cover will result in the access to indemnity commencing on the date the application form is received by the MDDUS and not on the requested start date of cover. In the rare event of a membership application being rejected, cover will be provided from the requested start date until five working days after the posting of the rejection by the MDDUS.

- ### Past claims/advice

  The MDDUS reserves the right to decline applications for membership on the basis of previous claims, complaints, disciplinary action, GMC/GDC action, or for any other reason. If the MDDUS discovers or decides any response which it considers to be material, that has been made by a person in an application for membership is inaccurate in any respect, the MDDUS may, at its absolute discretion, declare that person's membership to be void from the outset and to have no effect such that the person shall not be a qualifying applicant.

- ### Private practice earnings

  In order to determine correct individual subscription rates, members must estimate their gross earnings from private practice for the coming subscription year. Members should monitor gross private earnings as their subscription year progresses and notify the MDDUS if significant variance appears likely. Gross earnings include, but are not limited to, fees, salaries, bonus payments and dividends before the deduction of any expenditure. The MDDUS reserves the right at any time to require evidence relating to private practice earnings and carries out periodic audits of member's private practice earnings. Falsifying or failing to provide full details of private practice earnings may affect the benefits of membership or result in the withdrawal of indemnity or the services provided by the MDDUS. Applicants who work as private consultants are usually expected to hold, or to have recently held a substantive NHS consultant post in the same specialty.

- ### Overseas

  The MDDUS specialises in the separate legal jurisdictions that exist within Scotland, England, Wales and Northern Ireland, and does not offer indemnity outside of these countries. Indemnity is not provided for events occurring in Isle of Man. If a member working in a Training Grade post plans to go abroad to work and eventually return to the UK, he or she can remain with the MDDUS free of charge as an Overseas Associate for up to two years but without any of the benefits of membership.

- ## Renewing members

  An annual subscription renewal notice is normally sent out by the MDDUS 28 days before the subscription is due and states the renewal date and amount due. In order to provide continuous cover, a subscription should be paid before the renewal date. If no payment is received after 2 reminders and a final notice, membership will terminate. All doctors and dentists whose membership has so lapsed are subject to the completion of a new application form to rejoin.

- ## Governing law

  The relationship between members and the MDDUS is governed by Scots law and, subject to any arbitration, the Scottish Courts shall have jurisdiction.

- ## Multiple Specialties

  If a member is involved in more than one specialty, the specialty with the highest risk band should be selected.

- ## Professional Football Doctors

Club Employees (full-time doctors)

MDDUS does not provide indemnity for members who are full time employees of clubs in the English Premiership, Championship or Scottish Premier League. Such members are advised to ensure their employing club has necessary arrangements in place for indemnity.

Doctors independently contracted by a professional football club

If a doctor is independently contracted by a professional football club to provide his professional services, then professional indemnity will be provided at the appropriate subscription rate. Members dealing with professional football players should note that their professional and contractual relationship is with the player alone, with contractual arrangements and subsequent invoicing being directed to the player, no matter whether he was subsequently reimbursed by the club or its medical insurers.

Doctors travelling overseas with a professional football club

MDDUS will extend cover to include indemnity for overseas events to the travelling party only and providing any claim is made in a UK court. Any claim made outside UK jurisdiction will not be indemnified by MDDUS.

Members are encouraged to obtain a recognised qualification related to working with sports professionals.

Part 5 – Refunds

Refunds are normally available to members when their circumstances change or when ceasing membership. Annual subscriptions are calculated on a daily basis and refunds are made pro rata and are subject to restrictions in some instances.

- ### Retirement
  Refunds will be issued to retiring members for unused portions of membership, and up to 3 months retrospectively if the MDDUS is notified of the retirement after the date of retirement. This category is available after one full year of active membership with MDDUS.

- ### Resignation
  Membership of MDDUS is on an annual basis and is normally only terminated at the end of your membership year. No refund will be payable should you cease membership before the end of your membership year, other than for reasons detailed elsewhere in Part 5 of the Membership Agreement.

- ### Maternity
  Refunds will be issued to members on maternity leave for unused portions of membership, and up to 3 months retrospectively if the MDDUS is notified of the maternity leave after its commencement. The benefits of worldwide Good Samaritan cover continue whilst on maternity leave. This category is available after one full year of active membership with MDDUS.

- ### Sickness
  Refunds will be issued to members on sick leave for unused portions of membership, and up to 3 months retrospectively if the MDDUS is notified of the sick leave after its commencement. The benefits of worldwide Good Samaritan cover continue whilst on sick leave. This category is available after one full year of active membership with MDDUS.

- ### Change of membership category
  If any change of active membership takes place in a member's practice, a refund of up to 1 year's subscription may be available. If the change is a reduction in earnings, proof of earnings must be supplied to validate the refund.

- ### Removal from membership
  Any member removed from membership by the MDDUS will be entitled to a refund of any unused subscription from the date of termination of membership. This also applies when membership of the MDDUS is terminated upon the withdrawal of the member's GMC/GDC or other professional registration.

- ### Death
  A full refund of any unused subscription, from the date of death of a member, will be issued on receipt by the MDDUS of written notification from the Personal Representatives of the deceased member. If a claim arising from an incident during a deceased member's full membership is intimated to that member's Personal Representatives, MDDUS will provide indemnity in respect of that claim notwithstanding the death of that member.

Part 6 – Employment Law Support and Indemnity

MDDUS provides assistance, advice and representation (together "employer support") and access to indemnity ("employer indemnity") to members of MDDUS and relevant partnerships (as defined below) who are employers, on the following basis and subject to the following conditions:-

- The "employer support and employer indemnity" covers legal liabilities, duties and obligations incurred by a member of MDDUS (or by a relevant partnership) as an employer, in the ordinary and usual course of practice of medicine or dentistry, to any former or current employee of that member or relevant partnership.

- If you carry on your practice of medicine or dentistry as a sole practitioner then you, and if you carry on your practice of medicine or dentistry in partnership, then you and each other partner in the partnership must (a) be a member of MDDUS and (b) have subscribed to the "employer support and employer indemnity" (a partnership which meets this condition being a "relevant partnership").

- The liability of MDDUS to any practice (whether the employer is a sole practitioner or a relevant partnership) in respect of the employer support and employer indemnity in any subscription year is capped at £250,000 in aggregate. Subject to that aggregate financial cap on the "employer support and employer indemnity" no excess applies to the employer support and/or the employer indemnity.

- "Employer support and employer indemnity" will not cover or extend to any liability which arises out of a circumstance which occurred, or out of a series of circumstances which commenced, prior to MDDUS agreeing to provide the "employer support and employer indemnity" to the employer, and will not extend to any liability which arises out of a circumstance which occurred, or out of a series of circumstances which commenced, after the employer ceased to be entitled to the "employer support and the employer indemnity". This means MDDUS will only support you in respect of problems that arise whilst you have a subscription to this product.

- The employer indemnity will not be available in respect of any circumstance or liability arising out of matters such as:

  - any change in the terms and conditions of employment of any employee; or
  - the disciplining of any employee; or
  - the termination of the employment for any reason of any employee; or
  - any other act or any failure to act, or any error or omission, in respect of any employee

    unless the employer of that employee has both (1) before changing the terms and conditions of employment or disciplining the employee or terminating the employment or otherwise acting or failing to act in respect of the employee, and before taking any steps to change the terms and conditions of employment, discipline the employee, terminate the employment or act or not to act, obtained advice (from an advisor nominated by MDDUS to give employment advice to that employer) that the employer is entitled to lawfully make the change and/or lawfully to discipline the employee and/or lawfully and fairly to terminate the employment and/or otherwise lawfully to act or fail to act in respect of the employee and (2) in making the change, taking the disciplinary action, terminating the employment or otherwise acting or failing to act, acted upon, followed and implemented that advice.

- The employer indemnity does not cover:-

  - any remuneration (including any salary, wages, bonus, holiday pay, benefit in kind, pension contribution or pension payment), PAYE, income tax (whether payable by employer or employee) or national insurance contribution (whether payable by employer or employee);
  - any sick pay or any holiday pay;
  - any redundancy payment (whether statutory, contractual, discretionary or otherwise);
  - any payment in lieu of notice;

- any interest, penalties or other charge in respect of the failure to make any payment on the due date;
- Any liability in respect of the death of, or any actual or alleged injury to, any employee;
- A claim brought in the civil courts for personal injury claims, interdict or injunction and any claim for breach of statutory duty save those arising in connection with the employment relationship or any claim in the criminal courts;
- Any liability in respect of the death of, or any actual or alleged injury to, any employee;
- Consequential loss and any liability for consequential loss; or
- Any settlement, compromise or other agreed payment unless the amount and terms of the payment have been approved by or on behalf of MDDUS; or
- Any liability which an employer deliberately, knowingly or recklessly incurs.

- MDDUS may, at its discretion, reduce or cancel the "employer support and employer indemnity" provided by MDDUS to any employer if MDDUS is not satisfied that that employer has followed and is continuing to follow good employment practice.

- The "employer support and employer indemnity" will not cover or extend to any liability in respect of an employee or potential employee who is a voting member of MDDUS (as defined in the Memorandum and Articles) or who is entitled to be a voting member of MDDUS.

- MDDUS may at is discretion extend the employer indemnity, or waive any condition or limitation on the employer indemnity, provided by MDDUS to any employer.

- The employer must seek the advice of an adviser nominated by MDDUS as soon as reasonably practicable after the employer becomes aware of a relevant claim or potential relevant claim. An employer must act upon, follow and implement the advice of that adviser as to how to mitigate, resist, challenge, defend, arbitrate, mediate and/or settle the claim.

- The terms of this section are subject to the Memorandum and Articles.

Confidentiality

The MDDUS regards all dealings with its members as strictly confidential and enforces an active policy to ensure that confidentiality is maintained. The MDDUS will hold information for administration of membership, claims handling, marketing, risk assessment and advisory purposes. The MDDUS may disclose information to legal or other advisers and other defence organisations as part of its advisory and claims handling process. All members' rights under the Data Protection Act 1998 are guaranteed.

Memorandum and Articles of Association

MDDUS is not an insurance company. All benefits of membership are discretionary as set out in the Memorandum and Article of association of MDDUS which is incorporated under the Companies Act as a company limited by guarantee. The Membership Agreement should be read subject to the Memorandum and Articles of Association of the MDDUS.

Quality of Service

MDDUS prides itself in being an organisation that delivers a high quality service to its members. As such we (MDDUS) are always eager to hear when contacts with and the service to members has been satisfactory or not. In particular we are interested to hear when service to members has been problematic or has caused a member to think of making a complaint. These would be about the way and perhaps the manner in which the member has been dealt with by us. We welcome such complaints in the expectation that they will assist us to improve our service and provide a useful learning mechanism for the organisation.

Whatever the nature of the complaint, we will endeavour to acknowledge that complaint within two days and give an indication as to when the member might expect a full response. All responses will be in writing.

Complaints about the service by a member will be received centrally by the Professional Services Division (PSD) Administrative Assistant, directed to the department concerned and responded to by the PSD Administrative Assistant. They will invite comments on the complaint from the relevant department and co-ordinate the response.

We are willing to receive complaints, verbally, in writing or by e-mail. Please ensure that when making a comment or a complaint that you quote your membership number. We would not normally process anonymous complaints.

We do and will treat all such comments, complimentary or critically, as a valuable source of information to help us maintain the quality of our service.

Making a complaint will not prejudice or affect the member's right to continuing advice or support.

There will be a right of appeal to the Chief Executive Officer in the event of dissatisfaction by the member with the response.

If you feel that you have either a comment or a complaint to make about the service you have received from us, please contact our Professional Services Administrative Assistant on 0845 270 2034 or by email (customerservices@mddus.com) quoting your membership number.

Please give as much detail as possible about the matter in order to allow us to carry out a full investigation. This Procedure is exclusively for the use of MDDUS members.

(1) Those working in the NHS are indemnified by the NHS in respect of claims arising from clinical acts or omissions for Category 1 work. The full definitions of Category 1 and Category 2 work are set out in the Hospital Medical and Dental Staff Terms and Conditions of Service but in essence, work related to the diagnosis, treatment and prevention of illness of an NHS patient and which forms part of the contractual duties of the Doctor or Dentist for which he or she is not permitted to seek payment from the patient is designated Category 1 work. ork that falls outside the duties specified in the NHS Contract of Service is designated as Category 2 work. Examples include medical examinations undertaken on behalf of life assurance companies. Clinical acts or omissions in respect of such work are not covered by the NHS Indemnity Scheme.

(2) Good Samaritan acts encompass the provision of medical and dental services in emergency situations, which are outside the scope of an individual's normal contractual obligations or clinical practice. When members assist in these circumstances, they would not normally be expected to charge for their services. The MDDUS offers indemnity for a qualifying applicant against any claims arising out of Good Samaritan acts anywhere in the world which are not covered by any other indemnity or insurance arrangement.

Notes

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