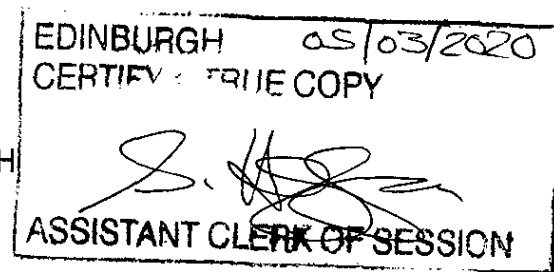


COURT OF SESSION, EDINBURGH

Certified Copy Interlocutor



PETITION

of

THE MEDICAL AND DENTAL DEFENCE UNION OF SCOTLAND, a private company limited by guarantee without share capital, registered in Scotland with registered number SC005093 and with its registered office at Mackintosh House, 120 Blythswood Street, Glasgow, G2 4EA

for

Sanction of a Scheme of Arrangement

05 March 2020



SCT *S92E5AEY* #40
06/04/2020
COMPANIES HOUSE

Lord Ericht

Act: Howlin QC

The Lord Ordinary, having heard Senior Counsel on the motion of the Petitioner, no answers having been lodged:

1. approves the report of Brian H. Moore, no.11 of process;
2. waives the failure by the Petitioner to comply fully with paragraph 14 of the first order in this Petition, pronounced on 16 January 2020;
3. sanctions the Scheme under Part 26 of the Companies Act 2006 which is set out in Appendix 1 to the Petition and which is to be between the Petitioner and the Scheme Members (as defined in the Scheme);
4. appoints the Company to deliver to the Registrar of Companies for Scotland ("**the Registrar**"), for registration, a certified copy of this order and a copy of the Scheme as certified by the solicitors to the Company;
5. directs the Registrar to register this order;
6. directs that notice of the registration by the Registrar of this order be given once in each of the "*Edinburgh Gazette*", "*The Herald*" and "*The Times*" (English and Scottish editions); and
7. decerns. *SIGNED BY ANDREW F. STEWART*

I certify that this is a true copy of the original.



Charlotte Edgar
Solicitor
CMS Cameron McKenna
Nabarro Obwegyie LLP
Saltire Court
20 Castle Terrace
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EH1 2EN

THE SCHEME

SCHEME OF ARRANGEMENT
(under Part 26 of the Companies Act 2006)

between

THE MEDICAL AND DENTAL DEFENCE UNION OF SCOTLAND

and

THE SCHEME MEMBERS
(as hereinafter defined)

THE SCHEME

BACKGROUND

- (A) MDDUS is a not-for-profit mutual society which, among other things, provides discretionary benefits (including indemnity and other assistance) to its Members and Former Members, including general practice staff providing health care services as part of the NHS for England.
- (B) Under Article 2.2(b) of the Articles and the terms of the Membership Agreement, the Board may, at its absolute discretion, provide advice, assistance and defence to, amongst others, Members and Former Members, in respect of, amongst other things, clinical negligence claims made against such Members and Former Members, arising from their professional practice.
- (C) Under Article 2.2(c) and Article 6 of the Articles and the terms of the Membership Agreement, the Board may, at its absolute discretion, grant or arrange indemnities (to such extent and on such terms and, subject to such conditions, exclusions or limitations as the Board from time to time determines) to, amongst others, any Member or Former Member.
- (D) DHSC has agreed, subject to the Regulations Condition being satisfied, or waived, to assume responsibility, through the establishment of the ELS, for providing to In-Scope Members and In-Scope Former Members, access to discretionary benefits that match the In-Scope Benefits.

1. Interpretation

1.1 In the Scheme (including the Background), unless the context otherwise requires, the following expressions shall bear the following meanings:

Act	the Companies Act 2006;
Articles	the articles of association of MDDUS;
Board	the board of directors of MDDUS, from time to time;
Business Day	a day other than a Saturday, or Sunday, on which banks are generally open for the transaction of normal banking business in London;

Court	the Court of Session in Edinburgh;
Court Order	the order of the Court, sanctioning the Scheme, under section 899 of the Act;
DHSC	the Secretary of State for Health and Social Care of 39 Victoria Street, Westminster, London SW1H 0EU;
Effective Date	the date on which the Scheme becomes effective in accordance with Clause 4.1;
ELS	the existing liabilities scheme to be established by DHSC pursuant to the Regulations, the purpose of which is to provide access to discretionary indemnity to healthcare practitioners for their clinical negligence liabilities arising as a result of incidents that occurred prior to 1 April 2019 and during the provision of NHS services as part of general practice in England;
Former Member	any former member of MDDUS at the Effective Date, in whose favour MDDUS may exercise its discretion, under the Articles or the Membership Agreement or both, to provide assistance or an indemnity;
Framework Agreement	the framework agreement which was entered into by DHSC and MDDUS on 20 September 2019;
Good Samaritan Act	any act, or omission to act, of a healthcare practitioner during the provision of medical assistance to a member of the public in a bona fide medical emergency, which the healthcare practitioner happens upon in a personal, rather than a professional, context;
In-Scope Activities	<p>any alleged or actual tortious acts or omissions to act (including, but not limited to, such acts or omissions to act which constitute professional negligence) of any Member or Former Member (or any person for whom such Member or Former Member is, or is alleged to be, vicariously or jointly liable, but without prejudice to any right of that Member or Former Member to seek contribution from any other person in respect of such liability) that occurred prior to 00:01 a.m. on 1 April 2019, where those acts or omissions to act were, or were alleged to have been, carried out or occurred or were in connection with the diagnosis, care or treatment of a third party for the purposes of providing:</p> <p>(A) primary medical services pursuant to contractual arrangements made under Part 4 of the National Health Service Act 2006 (including primary medical services which were provided as part of a set of arrangements under which other services</p>

were also provided and integrated urgent care pursuant to Schedule 2L of the NHS England standard contract); or

- (B) services, other than primary medical services, which were provided as part of the NHS for England by a person whose principal activity is the provision of primary medical services or provided by a person providing such services under a sub-contract arrangement with that person,

and where the tortious act, or omission to act, resulted, or was alleged to result, in physical or mental harm, or loss to a third party;

In-Scope Benefits

the discretionary benefit which MDDUS may provide, as set out in the memorandum and articles of association of MDDUS (and as further described in the applicable membership information and documentation provided by MDDUS to such Members or Former Members), by way of the provision of assistance, or indemnity, in respect of claims, losses, damages, costs, charges and expenses which arise from In-Scope Activities, but excluding any request for:

- (A) indemnity or assistance, in respect of claims, losses, damages, costs, charges and expenses which arise from In-Scope Activities, and in respect of which the Member or Former Member may request such indemnity, or assistance, from MDDUS as a result of having selected Run-Off Benefits from MDDUS after 00:01 a.m. on 1 April 2020 (or such earlier date as agreed in writing between DHSC and MDDUS);
- (B) indemnity or assistance, in respect of claims, losses, damages, costs, charges and expenses which arise from Good Samaritan Acts;
- (C) indemnity or assistance, in respect of any act or omission to act of a healthcare practitioner during the provision of medical assistance to a member of the public at a public event at which the relevant healthcare practitioner has been engaged to provide assistance on a paid or voluntary basis, and in either case where such engagement is outside the scope of the healthcare professional's duties in providing primary medical services pursuant to contractual arrangements made under Part 4 of the National Health Service Act

2006 (including, for the avoidance of doubt, integrated urgent care pursuant to Schedule 2L of the NHS England standard contract) or of duties ancillary to the provision of such services;

(D) advice in respect of, or professional representation for a Member or Former Member at, criminal, disciplinary, investigatory (including coroners' inquests) or regulatory proceedings; and

(E) the provision of access to general professional advice in respect of ethical, medico-legal and risk-related issues arising out of the professional practice of a Member or Former Member, other than legal advice provided to a Member or Former Member in the context of handling an In-Scope Claim;

In-Scope Claim

any claim against a Member or Former Member, or any notification made to MDDUS by, or on behalf of, or in respect of, a Member or Former Member of circumstances that may result in such a claim, which may give rise to In-Scope Benefits;

In-Scope Former Member

a Former Member to whom MDDUS may provide In-Scope Benefits;

In-Scope Member

a Member to whom MDDUS may provide In-Scope Benefits;

In-Scope Members Court Meeting

the meeting of the In-Scope Members which is to be convened by order of the Court under section 896 of the Act to consider and, if thought fit, approve the Scheme (with or without amendment) and any adjournment of that meeting;

Long-Stop Date

00:01 a.m. on 1 April 2021, or such later date, if any, as MDDUS and DHSC may agree in writing, and the Court may allow;

MDDUS

The Medical and Dental Defence Union of Scotland, a private company limited by guarantee without share capital, incorporated in Scotland with registered number SC005093, with its registered office at Mackintosh House, 120 Blythswood Street, Glasgow G2 4EA;

Member

any member of MDDUS, being a person whose name is entered on the Register of Members at the Effective Date;

Membership Agreement	the membership agreement in force at the Effective Date between MDDUS and any Member;
NHS	the National Health Service for England;
Non-In-Scope Member	a Member who is not an In-Scope Member;
Non-In-Scope Members Court Meeting	the meeting of the Non-In-Scope Members which is to be convened by order of the Court under section 896 of the Act to consider and, if thought fit, approve the Scheme (with or without amendment) and any adjournment of that meeting;
Register of Members	the register of members of MDDUS;
Regulations	the regulations proposed to be made by DHSC, with the consent of Her Majesty's Treasury, under section 71(1) of the National Health Service Act 2006, to establish the ELS;
Regulations Condition	the making, under section 71 of the National Health Service Act 2006, and commencement, of the Regulations;
Run-off Benefits	the discretionary benefits which MDDUS may provide, at their request, to Members and Former Members, by way of the provision of assistance, or indemnity, which is on an occurrence basis, and which is in respect of claims, losses, damages, costs, charges and expenses, that arise from acts, or omissions which are In-Scope Activities and constitute professional negligence;
Scheme	this scheme of arrangement in its present form or with or subject to any modification, addition or condition which MDDUS may consent to and, if required, the Court may approve or impose;
Scheme Members	the members of MDDUS, being persons whose names are entered on the Register of Members as its members: <ul style="list-style-type: none"> (A) at 5:00 p.m. on 20 January 2020; or (B) after 5:00 p.m. on 20 January 2020 but prior to the Voting Record Time; or (C) on or after the Voting Record Time, but prior to the Scheme Record Time, upon terms that they shall be bound by the Scheme or having undertaken to be bound by the Scheme;
Scheme Record Time	5:00 p.m. on the Business Day immediately preceding the Effective Date;

Transaction Documents

the Framework Agreement and the interim arrangements deed which was entered into by DHSC and MDDUS on 20 September 2019; and

Voting Record Time

5:00 p.m. on 7 February 2020 or, if either the In-Scope Members Court Meeting and/or the Non-In-Scope Members Court Meeting is adjourned, 5:00 p.m. on the day which is two Business Days before the date of such adjourned meeting.

- 1.2 In the Scheme, unless the context otherwise requires or otherwise expressly provides:
- 1.2.1 references to Clauses and Sub-Clauses are references to the Clauses and Sub-Clauses respectively of the Scheme;
 - 1.2.2 references to a "*person*" include references to an individual, firm, partnership, company, corporation, other legal entity or unincorporated body of persons;
 - 1.2.3 references to a statute or a statutory provision include the same as subsequently modified, amended or re-enacted from time to time;
 - 1.2.4 references to an agreement, deed or document shall be deemed also to refer to such agreement, deed or document as amended, supplemented, restated, verified, replaced and/or novated (in whole or in part) from time to time and to any agreement, deed or document executed pursuant thereto;
 - 1.2.5 the singular includes the plural and vice versa and words importing one gender shall include all genders;
 - 1.2.6 headings to Parts, Clauses and Sub-Clauses are for ease of reference only and shall not affect the interpretation of the Scheme; and
 - 1.2.7 references to time are to time in London, United Kingdom.

2. The Scheme

- 2.1. With effect from the Effective Date, Article 1.1 of the Articles shall be amended by adding the following definition, namely:

*"(q)(A) "**The Scheme**" means the scheme of arrangement which is between MDDUS and the Scheme Members, who are defined in it, which was sanctioned by order of the Court of Session in Edinburgh made on [date to be inserted] 2020 and which became effective, in accordance with section 899(4) of the 2006 Act, on [date to be inserted] 2020;"*

- 2.2. With effect from the Effective Date, Article 2.2 of the Articles shall be amended by inserting after the words "*Article 2.1 above*" the following, namely:

"and subject to Articles 2.3 to 2.4 (inclusive) below, which limit Articles 2.2(b) and (c),"

- 2.3. With effect from the Effective Date, Article 2 of the Articles shall be amended by adding the following new Articles 2.3 to 2.4, namely:

"2.3 Article 2.2(b) shall not apply to any advice, assistance or defence which would be given to a Member who is an "In-Scope Member", or to a "Former Member" who is an "In-Scope Former Member", each as defined in the Scheme, and which would constitute "In-Scope Benefits", as also defined in the Scheme.

2.4 *Article 2.2(c) shall not apply to any indemnity which would be given to a Member who is an "In-Scope Member", or to a "Former Member" who is an "In-Scope Former Member", each as defined in the Scheme, and which would constitute "In-Scope Benefits", as also defined in the Scheme."*

2.4. With effect from the Effective Date, Article 6 of the Articles shall be amended by adding the following new Article 6.6, namely:

"6.6 *This Article 6 shall not apply to any indemnity which would be given to a Member who is an "In-Scope Member", or to a "Former Member" who is an "In-Scope Former Member", each as defined in the Scheme, and which would constitute "In-Scope Benefits", as also defined in the Scheme."*

2.5. With effect from the Effective Date, the Membership Agreement shall be amended to the effect that MDDUS shall not exercise its discretion to provide any In-Scope Benefits to In-Scope Members or In-Scope Former Members.

3. **Further documentation**

Insofar as any act or thing needs to be done, or document executed, to give effect to Clause 2, each Scheme Member hereby irrevocably, and unconditionally, appoints any one of the directors of MDDUS for the time being to be their agent to do such acts and things, and execute such deeds and documents, as may be required for that purpose.

4. **The Scheme becoming effective**

4.1. Subject to:

4.1.1. the Transaction Documents not being terminated in accordance with their terms before the Effective Date; and

4.1.2. the Regulations Condition having been satisfied, or waived, in accordance with the terms of the Framework Agreement,

the Scheme shall become effective as soon as a certified copy of the Court Order has been delivered to the Registrar of Companies in Scotland for registration.

4.2. Unless the Scheme has become effective on, or before, the Long-Stop Date, the Scheme shall never become effective.

5. **Modification**

MDDUS may, at any hearing by the Court to sanction the Scheme, consent on behalf of the Scheme Members to any modification of, or addition to, the Scheme or to any condition which the Court may think fit to approve, or impose, and which would not directly, or indirectly, have a materially adverse effect on the interest of the Scheme Member under the Scheme.

6. **Governing law and jurisdiction**

The Scheme shall be governed by Scottish law and is subject to the jurisdiction of the Court.

Dated: 20 January 2020