

Dr Jonathan P. Berry
Chair



UK INDEMNITY, ADVICE & SUPPORT

ESTABLISHED IN 1902

MACKINTOSH HOUSE
120 BLYTHSWOOD STREET
GLASGOW G2 4EA
Telephone: 0333 043 4444
Membership: 0333 043 0000
Fax: 0141 228 1208
Email: info@mddus.com
Website: www.mddus.com
DX 561487 Glasgow 16

20 January 2020

Dear Member,

This letter contains important information about the way in which we are proposing to implement the transaction (the **Transaction**) which MDDUS has agreed with the Government's Secretary of State for Health and Social Care (**DHSC**) in relation to English GP liabilities.

Legal agreements (the **Transaction Documents**) were entered into with DHSC in relation to the Transaction in September 2019. Under the terms of the Transaction Documents, it has been agreed that DHSC will provide access, through the establishment of an existing liabilities scheme (the **ELS**), to discretionary indemnity to members and former members of MDDUS for liabilities arising from clinical negligence relating to incidents that occurred prior to 1 April 2019 (and while they were members of MDDUS) in the provision of NHS services in England as part of general practice. Throughout this letter I have referred to those members and former members as **English GPs**.

The Transaction is conditional upon the making and commencement of the Regulations (see below) which is expected to occur in the first half of 2020.

All members (and not just English GPs) are requested to take action in relation to the Transaction, as further explained in this letter.

1. **Background**

Following consideration of the options and noting concerns raised by the medical profession and others regarding the rising cost of clinical negligence indemnity, DHSC introduced a state-backed indemnity scheme for general practice in England. The Clinical Negligence Scheme for General Practice (**CNSGP**) came into effect from 1 April 2019. The CNSGP provides access to state-backed discretionary indemnity to GPs and those working in general practice in England in respect of their NHS funded work, which is performed on or after 1 April 2019. The CNSGP is similar to the existing arrangements for NHS hospital doctors.

The CNSGP is prospective, not retrospective. Therefore, DHSC also sought to put in place with the medical defence organisations arrangements substantially equivalent to the CNSGP in respect of the period before 1 April 2019. On 20 September 2019, MDDUS entered into the Transaction Documents with DHSC in this regard.

2. **What has been agreed with DHSC**

MDDUS members and former members have access to discretionary indemnity from MDDUS for liabilities arising from clinical negligence claims that relate to incidents that occurred during their period of membership.

THE MEDICAL AND DENTAL DEFENCE UNION OF SCOTLAND

Chief Executive Officer & Secretary, Chris Kenny

A COMPANY LIMITED BY GUARANTEE INCORPORATED IN SCOTLAND No. 5093

REGISTERED OFFICE: MACKINTOSH HOUSE 120 BLYTHSWOOD STREET GLASGOW G2 4EA

The MDDUS is not an insurance company. All the benefits of membership are discretionary as set out in the Articles of Association.

LONDON OFFICE

1 PEMBERTON ROW

LONDON

EC4A 3BG

DHSC has agreed to provide discretionary indemnity in respect of the historic liabilities arising from clinical negligence claims of our English GPs through the establishment of the ELS, subject to the making and commencement of the necessary regulations that will establish this scheme (the **Regulations**). Once this has happened, English GPs will have access to discretionary indemnity provided by DHSC, rather than MDDUS, for those liabilities. DHSC will also take on responsibility for making arrangements for the handling of claims arising in relation to those liabilities.

3. **Why we decided the Transaction with DHSC would benefit all members**

MDDUS was approached by DHSC to consider entering into the Transaction in 2018.

In deciding whether to proceed with the Transaction, the Board took advice from its legal and financial advisers, Ernst & Young, on the terms and structure of the Transaction. In reaching its decision to proceed, the Board considered a number of factors including:

- the interests of MDDUS and all its members, including English GPs;
- the financial and commercial terms of the Transaction;
- the suitability of claims handling service provision to English GPs;
- the operations and culture of MDDUS before, and after, the Transaction;
- enhancing MDDUS's ability to offer competitive products to its members; and
- the potential uncertainty in the medical indemnity market going forward.

Having considered those factors, the Board concluded unanimously that the Transaction would benefit all members for the following reasons:

- the price agreed to be paid to DHSC by MDDUS to assume the historic liabilities associated with the English GPs' NHS book of business was fair (the amount of that payment is not disclosed for reasons of commercial confidentiality);
- once implemented, the Transaction will provide MDDUS with the opportunity to focus on ongoing and new areas of business;
- the Transaction will not disrupt MDDUS's ongoing services to members; and
- English GPs will have access to state-backed indemnity schemes in respect of both their historic and future liabilities arising from performing NHS funded work in England.

4. **What does this mean for you as a member**

The Transaction only affects the MDDUS membership benefits of English GPs which relate to clinical negligence claims arising from their work for the NHS in England before 1 April 2019. The Transaction will not affect the membership benefits of other members and former members (e.g. those who provide primary medical NHS services outside of England, or who undertake private work in hospitals, or who provide dental care).

If you are a GP practising in England who is affected by the Transaction, you will remain a member of MDDUS. Your membership is not being transferred to DHSC. MDDUS will continue to provide you with access to your other benefits and/or categories of indemnity protection which fall outside the scope of the Transaction. Please see Appendix 1 of the Scheme Circular (referred to in paragraph 6 below), which details the benefits and categories of indemnity which will not be provided by DHSC under the ELS.

5. **The Scheme**

There are a number of ways in which the Transaction may be implemented. Having taken advice from Ernst & Young, our preference is that, to the extent possible, the Transaction be implemented by MDDUS by way of a scheme of arrangement between MDDUS and all of its members (the **Scheme**). The Scheme requires

the approval of members and involves a court process and will only become effective if approved by members and sanctioned (in other words, approved) by the Court of Session in Edinburgh (the **Court**).

In our view, the Scheme provides both clarity and transparency that the assumption of responsibility by DHSC for providing discretionary indemnity to English GP members has taken place, and therefore certainty to:

- those members that the discretionary indemnity and assistance in respect of their historic liabilities arising from the clinical negligence incurred in their NHS funded general practice work will be provided by DHSC going forward; and
- MDDUS that it is no longer responsible for providing these benefits.

We therefore urge you strongly to vote in favour of the Scheme. Members should be aware that, following the making and commencement of the Regulations, if the Scheme is, for any reason, not sanctioned, the Transaction will still proceed, but in this case without the sanction of the Court.

Full details of the Scheme, how it operates and how a member can object to it are set out in the Scheme Circular referred to in paragraph 6 below.

6. **What action are you being requested to take?**

You have the right to cast a vote to approve or vote against the Scheme. Members have been separated into two classes for the purposes of the Scheme: "In-Scope Members" and "Non-In-Scope Members". The Scheme requires approval from each class of members at the relevant members' meeting. English GPs are classified as "In-Scope Members", and all other members are classified as "Non-In-Scope Members" for the purposes of the Scheme. You are requested to cast your vote by completing, and returning, the enclosed form of proxy in the pre-paid envelope provided or by appointing a proxy online, in either case as soon as possible and, in any event, by 7 February 2020, even if you intend to attend your members' meeting in person. Alternatively, a completed form of proxy can be handed to the chair of the meeting before it begins. A corporate member may appoint a corporate representative to attend and vote on its behalf.

Please read the scheme circular which has been published by MDDUS in connection with the Scheme (**Scheme Circular**) and is available to view and download now on the following website: www.mddus.com/scheme. The Scheme Circular contains important information in connection with the Scheme and we would urge all members to read it carefully.

If you have any questions concerning the Scheme, or the action you are being requested to take, please call the MDDUS helpline on +44 (0) 333 043 4444.

7. **Recommendation**

The Board recommends unanimously that members vote in favour of the Scheme. All MDDUS directors who are entitled to vote on the Scheme by virtue of also being members will be voting in favour of the Scheme.

Many thanks for your continued support.

With best regards



Dr Jonathan P. Berry
Chair