

RCN indemnity

The following information is valid until 30 June 2014. The current scheme is under review and any future changes would take effect from 1 July 2014. Any changes to the terms below shall be notified, in advance, to all RCN members, before taking effect.

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Introduction

Providing certain conditions are met, and subject to certain exclusions (all outlined below), the RCN has a discretion to indemnify (ie pay) the financial costs associated with a compensation claim against you for clinical negligence arising from your alleged carelessness, including the costs of defending the claim where this is appropriate.

The compensation may include:

- non-financial loss (such as physical injuries suffered by the patient)
- financial loss associated with the personal injury (such as cost of future care, lost wages)
- legal costs.

Currently, the RCN scheme may cover members for costs up to a maximum of £3 million for any one claim. Where more than one member is involved in the same incident of clinical negligence, the RCN's liability will be limited to £3 million in respect of all claims arising from that incident.

For the avoidance of doubt, the payment of any compensation and costs under the RCN indemnity scheme is entirely at the discretion of RCN Council, and subject also to the rules set out below. The RCN also reserves the right to withdraw the benefit of cover under the indemnity scheme given the claims history of the member.

The RCN scheme is not a policy of 'insurance' but rather a discretionary contractual indemnity arrangement.

Key factors to consider

- Cover may be affected by your employment status.
- You must be in the correct category of membership.
- The general conditions of the scheme must be met.
- General exclusions apply (and special exclusions in certain circumstances).
- Cover may be affected by the activity you are undertaking; it must be a health and social care service acceptable to the RCN.

Indemnity in the context of RCN member benefits

RCN indemnity cover only applies to members of the RCN and is one of a wide range of member benefits.

Provided you are in the correct membership category, your eligibility (or otherwise) for indemnity cover will not affect your ability to access these other benefits. For example, even if the RCN indemnity scheme is not available to you, (subject to conditions) the legal advice and representation scheme entitles you to:

- advice and support in relation to employment difficulties (for example, disciplinary proceedings, contractual disputes, dismissals, discrimination)
- legal advice and representation before the Nursing and Midwifery Council (NMC)
- legal support if you are involved in criminal proceedings arising in the course of employment
- legal support if you have an accident – anywhere, at any time.

In addition, members have access to learning resources via the RCN website, opportunities for continuing professional development and the chance to network with other nurses and health practitioners through the branch structure, RCN Congress and our specialist forums. Details of the full list of member benefits are available on the RCN website or you can consult the Members' Handbook.

To find out whether the RCN indemnity scheme applies to your practice, please read the general conditions set out below, together with any other special conditions applicable to your membership category or type of practice and the general exclusions.

General conditions

All members who wish to benefit from the RCN scheme must satisfy the following general conditions.

Professional standards

You must:

- have undertaken appropriate training which ensures that you can demonstrate competence in your area of practice (ie have the knowledge, skills and experience to perform the task or role to the appropriate standard of care)
- work within the protocols and policies which have been agreed with your employer, or within the scope of recognised best practice if you practice independently
- work within the law

- observe the NMC Code on Standards of Conduct, Performance and Ethics (if a registered nurse or midwife), and any other published standards.

Practical considerations

You must also:

- notify the RCN, as soon as reasonably practicable, of any claim against you for clinical negligence (if that claim is not covered by your employer)
- notify the RCN, as soon as reasonably practicable, of any circumstances known to you that may give rise to a claim
- act in good faith in all your dealings with the RCN
- co-operate with the RCN in providing information, including documentation, when requested to do so by us
- not, without the prior written consent of the RCN, admit any legal liability for a claim or settle a claim in respect of which the RCN may be required to indemnify you (which is not the same as offering an apology for the care given).

RCN indemnity and employed status

It is a general exclusion of the RCN indemnity scheme that members will not be covered to the extent that they are entitled to indemnity under a policy of insurance, another contractual indemnity arrangement, or have the benefit of the NHS indemnity.

Both NHS employers and independent sector employers have what is known as 'vicarious liability' for the actions of their employed staff. This means that employers have legal responsibility for tasks carried out or actions taken by their employees, connected with their employment. The injured patient or client will therefore ordinarily direct the claim to the employer, if an employee is careless.

To cover the risks of a claim most employers will arrange appropriate indemnity/insurance cover for their organisation and staff. For example, in the NHS in England this is through the Clinical Negligence Scheme for Trusts (CNST), administered by the NHS Litigation Authority. The equivalent to the CNST applies across Wales, Scotland and Northern Ireland. The vast majority of employers in the independent health care sector make similar arrangements through an insurance company. Therefore, if a member is an employee, and the employer has appropriate insurance cover/indemnity arrangements for its organisation and staff, the RCN scheme will generally not apply to that member's *employed* work.

The law currently allows an employer to recover from a negligent employee the costs of any clinical negligence claim arising from the employee's carelessness. In most cases however, the employer will never seek such an indemnity (ie reimbursement) from the employee, for a variety of reasons. See, for example, the NHS indemnity arrangements in England (www.nhs.uk). In very exceptional circumstances, where the employer does seek reimbursement of its costs from the negligent employee, the RCN scheme will generally apply (subject to the conditions and exclusions outlined below).

If members undertake health care work outside of their employed role, vicarious liability will no longer apply and the RCN indemnity scheme will cover the member for that work, subject to the rules below. For example, in the absence of an organisation with vicarious liability, the RCN scheme will cover members for voluntary or charitable work outside of employment, or if acting in a 'good Samaritan' capacity. Likewise, if the member undertakes self-employed work, they will remain covered subject to the conditions applicable to self-employed work.

In summary:

- employers will always have legal responsibility for the actions of their employees at work
- almost all employers will have insurance/indemnity arrangements in place to cover employees in the event that something goes wrong.

Therefore:

- personal cover (such as that provided by the RCN scheme) is generally not necessary for employees in relation to their employed work
- the RCN scheme does not apply to members who are covered by their employer's insurance/indemnity arrangements.

Disputes with your employer regarding indemnity cover

If any member is experiencing difficulties with their employer over the provision of indemnity cover, they should contact RCN Direct for further support and onward referral. Examples would be where an employer is trying to force a member to arrange their own personal indemnity cover for employed work, or is expecting the member to pay for cover through another provider. This is not generally acceptable and further advice should be sought from the RCN.

Categories of membership

Please check that you are a member in the correct category of RCN membership. Not all membership packages include RCN indemnity cover as a benefit. More information can be found in the membership section of the website (www.rcn.org.uk/membership).

Please also note that to benefit from the scheme you must be in membership at the time of the incident giving rise to the claim. The important date for eligibility will therefore be the date of the incident, not the date the claim is lodged or when a member first becomes aware of the patient injury/complaint.

General exclusions

The scheme will not indemnify you:

- to the extent that you are entitled to indemnity under a policy of insurance or contractual indemnity or have the benefit of the NHS indemnity
- in respect of a claim which is made or a circumstance which arises relating to the provision of professional services by another person not in membership of the RCN
- in respect of a claim not arising from the provision of a health and social care service acceptable to the RCN

- for any circumstances arising outside of any period of membership of the RCN
- in respect of any trading or personal debt incurred by you; any fine or civil or criminal penalty; or any punitive, aggravated, additional or exemplary damages; any indirect or consequential loss, or loss of profits or of earnings by you
- in respect of a claim or circumstances arising in any way out of the ownership, lease, use or occupation or state of any premises or anything done or omitted to be done in respect of the state of any premises; or out of the manufacture, distribution or sale of any products outside the proper course of the provision of a health and social care service acceptable to the RCN
- in respect of any claim or circumstances arising from allegations of defamation
- in respect of any claim or circumstances arising from any material published or broadcast by you or on your behalf to which you have contributed in any way
- in respect of any claim or circumstances arising in any way from your insolvency or bankruptcy
- in respect of any claim or circumstance arising in any way from proven or admitted criminal activity or criminal behaviour, whether or not within the provision of a health and social care service acceptable to the RCN
- in respect of a claim or circumstance arising in any way from proven or admitted sexual harassment, sexual misconduct, or unlawful discrimination
- in respect of any claim or circumstance arising in any way out of your deliberate intent to cause harm, or your fraudulent, dishonest, malicious or reckless act or omission or, where you were knowingly a party to any such act or omission, that of a person for whom you are vicariously liable
- where you are employed by a health care provider such as a social enterprise and the employer hasn't also appropriate insurance or indemnity cover for vicarious liability for the actions of its health care employees. This exclusion is limited to your work under a contract of employment with that particular provider
- if your negligence causes only a financial loss, not associated with any personal injury or damage to property (this exclusion does not apply to nurse expert witnesses or occupational health nurses, where the claim arises in the European Union)
- self-employed (or 'independent') midwives (not including antenatal or postnatal care, or parent education). From 1 July 2013 fetal scanning services (ultrasound) are not covered as part of the RCN indemnity scheme
- self-employed members (whether you operate as a sole practitioner, partner or through a limited company) who employ or otherwise engage in their business other health care workers who are not RCN members.
- members working or resident in the USA or Canada or where legal proceedings arise in either country
- members employed by a general practitioner, partnership of general practitioners or limited company operated, controlled or owned by general practitioners, are not covered for any work performed under their contract of employment. This exclusion took effect from 1 January 2012.

The RCN reserves the right to withhold cover under the indemnity scheme, as a benefit of RCN membership, given the claims history of the member.

Agency or bank work

The indemnity arrangements of members working for agencies or 'banks' may vary. The bank, supplying agency or end user may accept responsibility for workers providing services on their behalf, and may arrange their own appropriate organisational insurance or indemnity cover extending to the temporary worker. A member undertaking bank or agency work should therefore check with the bank/agency what arrangements are in place. Alternatively, the agency/bank may insist on the member having their own personal indemnity cover. The RCN scheme may apply to members in these circumstances, subject to the usual conditions and exclusions.

Voluntary work

The RCN scheme will generally cover members who work in a voluntary capacity, subject to the general conditions and exclusions, and dependent on the type of activity you are undertaking. This will include voluntary work undertaken overseas, with the exception of the USA and Canada.

The scheme will also cover members acting as 'good Samaritans', subject to the general conditions and exclusions.

Working on a self-employed basis or running your own business

The RCN scheme will cover members in their own business, subject to the general conditions and exclusions, and dependent on the type of activity you are undertaking.

Business insurance

Members who run their own businesses must read the scheme exclusions carefully. For example, the RCN scheme will not cover members for claims arising in any way from their insolvency or bankruptcy, and special considerations apply for claims against the member/business for a pure financial loss.

Self-employed members must also remember that the RCN scheme provides *personal* cover for the member, in relation to the performance of a health (or social) care service, when that performance results in physical or mental harm or damage, and associated financial loss to a patient/client. The scheme will not cover all liabilities that could potentially be incurred by the member's business.

Employing or 'engaging with' others

RCN indemnity cover is a benefit of RCN membership, ie personal to you as a member. People who are not RCN members will not be covered by the scheme.

Therefore, you will be excluded from the indemnity scheme if you at any time:

- *employ* under a contract of employment in your business other health care workers who are not RCN members
- *engage* (ie even on a self-employed basis) in your *business* other health care workers who are not RCN members, to perform tasks for the business.

You will need to make your own arrangements for insurance cover for your business, including your practice in the business. You should note that this exclusion applies irrespective of whether the other health care worker was involved in the care of the patient or client who is now suing you. You are free to work alongside other health care workers, but if they form *part of your business* at any time, then this exclusion will apply.

If the other health care worker(s) involved in your business are all RCN members, no difficulties should arise - if they also meet the conditions of the RCN scheme, you and they will be covered. It is therefore important that each individual RCN member checks the conditions and exclusions of the scheme carefully.

A self-employed member may operate as a sole practitioner, in a partnership, or through a limited company. You fall within the category of 'self-employed member' if you have any ownership or control of the limited company, even if you are also employed by the limited company. Where members operate through a social enterprise, the RCN scheme rules require the social enterprise to have its own insurance or indemnity arrangements for its vicarious liability for the members employed.

Below are some examples of what is meant by 'engaging non-RCN health care staff as part of your business'.

Example A

An RCN member who is a self-employed occupational health nurse is contracted by a client to provide occupational health (OH) services. The member occasionally refers an employee of the client to an OH physician. However, the OH physician contracts separately with the client for his or her consultant services, and invoices the client direct.

Outcome: the member remains covered by the RCN scheme. The member is working alongside another health care practitioner (the OH physician), but the latter is not engaged or employed *in the member's business*. The client is contracting with the OH physician separately.

Example B:

An RCN member who is a self-employed occupational health nurse contracts with a client to provide OH services. The member refers the client's employees to an occupational health physician, as above. However, the physician is paid by the member, and the client has no direct contractual relationship with the OH physician. The member's contract with the client in effect covers all of the OH services required,

and it is up to the member to decide how she/he will provide those services eg direct or through other health care practitioners.

Outcome: the member is no longer covered by the RCN scheme in relation to their own practice in the business (not just on this particular contract). The OH physician is not (and cannot be) an RCN member so cannot benefit personally from the RCN scheme. The member needs to take out cover for her business accordingly, and this will extend to all staff (including the member) working in the business.

If you are unsure of whether the RCN indemnity scheme applies to you, please contact RCN Direct on 0345 772 6100 for a discussion with an adviser.

Health and social care services acceptable to the RCN scheme

Only a health and social care service acceptable to the RCN will be covered by the RCN indemnity scheme. There is therefore a basic distinction to be drawn between health and social care services that are:

- generally acceptable to the RCN (as accepted practice) for health care workers
- acceptable to the RCN in relation to the indemnity scheme (which may not include all accepted practices above)
- not accepted by the RCN and hence not acceptable under the RCN indemnity scheme.

Health and social care services acceptable under the RCN indemnity scheme are those which:

- are clearly aimed at addressing an expressed patient or public health or social care need
- demonstrate how the practitioner is being personally accountable for their actions and omissions in their practice
- involve the application of rigorous clinical evidence or widely accepted professional practice to the care or support of others or their families.

Registered nurses must demonstrably address the requirements of the NMC Code of Conduct, for example:

- making the care of people your first concern, treating them as individuals and respecting their dignity
- working with others to protect and promote the health and wellbeing of those in your care, their families and carers, and the wider community
- providing a high standard of practice and care at all times
- being open and honest, acting with integrity and upholding the reputation of not only your profession (if you are a registered practitioner) but also of the wider health care worker community.

Health practitioner members, to be covered by the RCN scheme, must have their work delegated by a registered practitioner who is employed by the same entity. A health practitioner member should not be making stand alone clinical judgments but should be working within clear protocols and guidelines at all times (see further below).

Special conditions

Midwives

Please check that you are a member in the correct category of RCN membership. Not all membership packages include RCN indemnity cover as a benefit. More information can be found in the membership section of the RCN website (www.rcn.org.uk/membership). For example, members on the *Joint RCM* membership payment plan will have their indemnity cover provided through the RCM, subject to the conditions of the RCM scheme.

Please be aware that the scheme does not cover:

- self-employed (or 'independent') midwives providing intrapartum care (ie care during labour and delivery)
- any clinical practice carried out by midwife members which includes an incision of any kind eg circumcision and frenulectomy
- fetal (ultrasound) scanning.

The 'good Samaritan' cover does not extend to a midwife providing ante-natal care for an expectant mother who suddenly goes into labour.

Members employed or working in organisations run by general practitioners

Members employed by a general practitioner, partnership of general practitioners or limited company operated, controlled or owned by general practitioners, are not covered for any work performed under their contract of employment. The employer must make its own arrangements for covering its staff.

Members working for GPs nevertheless remain entitled to the full range of legal benefits under the RCN legal advice and representation scheme including:

- personal protection whenever and wherever you experience employment difficulties
- advice and representation before the Nursing and Midwifery Council (NMC)
- support if you have an accident
- access to all of the other benefits available to RCN members.

In addition, the indemnity scheme will continue to cover you for any 'good Samaritan' acts, charitable or voluntary work outside of your employment, and practice as a self-employed member (subject to the usual conditions and exclusions).

Health Practitioner members

To be eligible for indemnity cover, health practitioner members must have their work delegated by a registered practitioner who is employed by the same entity. They must also:

- have completed appropriate training/education for the service to be delivered (as approved by relevant body/bodies) and have demonstrated their competence by assessment of their performance
- confirm that they are competent to perform the service and maintain this competence throughout the period of indemnity.

A health practitioner member should not be making stand alone clinical judgments. They should be working within clear protocols and guidelines at all times.

To have the benefit of RCN indemnity cover, self-employed health practitioner members must be working in an environment that allows for this delegation.

Students

Placements

When working on placement for a health care organisation, arranged through a university, student members will generally be covered by the organisation's indemnity arrangements.

Paid work as a health care assistant or similar

If undertaking paid work as a health care assistant or similar, student members will be covered by their employing organisation.

Voluntary work and elective placements outside the UK

The RCN scheme will cover student members wishing to undertake elective placements abroad, subject to the conditions and exclusions explained above, and dependent on the type of activity you are undertaking.

Please note that the scheme's territorial cover does not extend to any claim made in either the United States of America (USA) or Canada, irrespective of where the alleged negligence occurred.

Specific practices, procedures and treatments

Aesthetic nursing and remote prescribing

The RCN currently indemnifies aesthetic practice with the exception of injections to dissolve fatty deposits such as lipodissolve, injectable mesotherapy and isologen. The RCN indemnity scheme covers topical mesotherapy, where needles are not used.

Examples of aesthetic practice that are currently covered by the RCN scheme:

- administering Botox (provided an appropriate prescription is obtained; see also 'engaging with' section)
- administering calcium hydroxyapatite (an injectable implant that stimulates collagen production)
- chemical peels
- dermal rollers
- dermal fillers
- laser therapy, such as removal of tattoos, scars and 'port wine stains'.

Please note: if you are a self-employed member who employs or engages with another health care professional who is not an RCN member (such as a medical practitioner), even if for only one aspect of your service (such as prescribing), you will no longer be covered by the RCN in relation to your business, and will have to take out your own separate cover for that business.

Complementary therapies and homeopathy

The RCN does not cover homeopathy in any circumstances.

The RCN believes that complementary therapies should be used alongside but never replace the treatment offered by clinicians as there are very few high quality studies about the effectiveness of such treatments.

Therefore the RCN scheme does cover the use of a limited number of complementary therapies within an acceptable health or social care service as an extension of health care practice where the practitioner (whether a registered practitioner or not) has undertaken a certified course of study within the last five years and is practicing such therapies with the knowledge and consent of the patient and their employer.

The RCN only provides cover for the following complementary therapies within the indemnity scheme:

- acupuncture
- hypnotherapy
- using essential oils within recognised health or social care settings
- Massage (note: members must also hold an accredited qualification in massage at level three or above on the National Qualifications Framework. Their qualification must be in the type of massage they are performing; for example, if they have a qualification in sports massage the RCN will not indemnify them for Swedish massage).

Counselling and psychotherapy

The RCN does cover members who apply counselling and psychotherapy techniques within the field of practice, providing they have undertaken a properly certified course of study. The RCN also covers members who practice as counsellors or psychotherapists in addition to any other role they may hold as a nurse or health care practitioner providing they meet the previous criteria.

Furthermore, members must be receiving clinical supervision for their counselling or psychotherapeutic activities.

The RCN will only indemnify members who are practising psychological therapies which are evidence-based.

Examples of counselling/psychotherapy that are covered by the RCN scheme:

- cognitive behavioural therapy (CBT)
- eye movement desensitisation and reprocessing

Circumcision and frenulectomy (tongue tie)

The RCN scheme does not provide cover for circumcision and frenulectomy.

Exercise classes

Exercise classes that are carried out in pursuit of a health-related objective will qualify for cover under the RCN scheme subject to the general conditions and exclusions outlined above and also to the member having completed a properly certified course.

A care plan must exist for each member of the class. Classes available to the public without the presence of an individual care plan (eg in leisure centres and sports centres) will not be indemnified.

The above also applies to antenatal exercise classes provided by registered midwives, subject to the general criteria of the scheme and the exclusion of cover for independent midwives providing intrapartum care (care during labour and delivery).

Expert witnesses

Indemnity will be provided for RCN members practising as expert witnesses as long as above exclusions and conditions are met, along with the following additional criteria.

The expert:

- should have a written contract with the instructing party once an agreement is reached that the expert is appropriate
- should have undertaken relevant training including report writing, courtroom skills and procedure
- must be able to demonstrate a level of expertise appropriate to the type of nursing undertaken by the nurse who is party to the proceedings
- must adhere to court guidance in acting responsibly as an expert.

Please note that the general exclusion relating to pure financial loss does not apply in the case of expert witnesses. In other words, the RCN scheme may indemnify expert witnesses notwithstanding that their negligence causes only a financial loss, not associated with any personal injury or damage to property.

First Aid

Members who have a recognised up to date first aid qualification (such as a qualification obtained through St John Ambulance or a commercial training company) will be covered by the scheme, subject to the general conditions and exclusions outlined in this document. This also applies to members providing first aid on a voluntary basis, for example at sports events.

First assistants/scrub nurses

A member who works as a scrub nurse or first assistant to surgeons on a self-employed basis would be covered provided that they meet the general conditions and exclusions of the scheme. A self-employed member who is paid by the surgeon to work as a scrub nurse or first assistant with them doing private work is not 'employing or engaging' another health care worker in their business if the surgeon is invoicing the patient/insurer/private hospital for all of the surgery and then paying the member. If the member is invoicing the patient/insurer/private hospital for all of the surgery (scrub, anaesthetics, surgery etc), and paying the surgeon for the surgeon's services then the exclusion would apply.

In-flight nursing

The scheme's territorial cover does not extend to any claim made in either the United States of America (USA) or Canada, irrespective of where the alleged negligence occurred. The laws on international jurisdiction and applicable law when incidents occur in-flight are highly complex.

Nurse partners

Members are covered by the indemnity scheme only if their business partners are all RCN members (see however, the general conditions/exclusions above for self-employed members).

The member will not be covered if they are entering into a partnership with another health care practitioner who is not an RCN member. They will need to arrange cover for their potential liability for the actions of their partners and staff, through a medical defence organisation or insurer.

Sexual health nursing and contraception

The RCN may indemnify nurse members for inserting contraceptive implants and fitting intrauterine devices, subject to the usual conditions and exclusions of the scheme.

Members must have completed a properly certified course in order to be covered by the scheme.

Telephone support/advice

There is no requirement for the health or social care service to be hands on or face to face. Members who offer advice or information via telephone may be covered by RCN indemnity, subject to the conditions and exclusions outlined throughout this document.

Training

The RCN may indemnify a trainer if they are held legally liable for bodily injuries caused directly to students whilst they were training them, or indirectly by students applying incorrect techniques to third parties due to negligent training, subject to exclusions and conditions outlined throughout this document.

Research

The RCN may indemnify nurses involved in conducting, managing or commissioning research provided the member concerned is carrying out such activities within approved national standards for ethical research and good governance (see the Health Research Authority (www.hra.nhs.uk) for a list of appropriate guidance and regulatory frameworks).

However, if the member undertakes research as part of a higher degree under research governance arrangements then generally their higher education institution is obliged to indemnify them.

If you are unsure of whether the RCN indemnity scheme applies to you, please contact RCN Direct for a discussion with an adviser.

Further help

RCN Direct

For help or advice you can telephone RCND 365 days a year – available from 8.30am-8.30pm.
0345 772 6100

RCN website

www.rcn.org.uk

Advice and information on your membership and a range of nursing topics.