

UNISON's professional indemnity cover for health staff

“Do I have professional indemnity cover?” is one of the most frequently asked questions UNISON reps get from their members. As a result we have produced this factsheet in which we have listed some of the facts and myths around professional indemnity cover.

FACT: The NHS provides indemnity cover for all its employees

The NHS takes its' responsibilities regarding vicarious liability very seriously. The booklet *NHS Indemnity Arrangements for clinical negligence claims in the NHS* says: “NHS bodies should accept full financial responsibility where negligent harm has occurred, and not seek to recover their costs from the health care professional involved”.

The NHS fully accepts its responsibility for the actions of not only those working under a contract of employment with an NHS body. It also covers other staff who work within the NHS including agency staff, students and volunteers. Therefore, although UNISON continues to provide such cover, there are no foreseen circumstances in which an NHS employee is likely to be sued for their actions.

FICTION: Private sector employers and GPs would not be vicariously liable and therefore I have to provide my own cover.

No, this is not true. Employers cannot choose whether they are vicariously liable. All employers are by law vicariously liable for the actions of their employees. This means they are responsible for what you do in the course of your employment, including where you make a mistake.

All organisations involved in the provision of healthcare, both inside and outside the NHS, will be vicariously liable for the actions of their employees. This includes voluntary organisations. UNISON's cover is in the unlikely event that the employer's cover fails to provide adequate protection.

However, UNISON's cover does not extend to those who are self-employed or independent contractors.

FACT: UNISON provides professional indemnity cover for all its healthcare members.

Yes this is true, subject to the limited exempt groups listed below. UNISON provides cover for all healthcare employees including nurses, health visitors, midwives, ambulance workers, professions allied to medicine, PTA and PTB staff, administrative and clerical workers, managers and ancillary staff. It means that UNISON will cover you for any claim made because of your professional actions as a healthcare worker in the course of your employment on a contingent basis.

FICTION: UNISON only provides cover if you are working solely or mainly for the NHS.

No this is not true. UNISON provides cover for all its members who work in healthcare as employees regardless of whether they work for the NHS, voluntary organisations, or in the private sector. All employers are responsible for the actions of their employees. It's one of the reasons why they should go through a detailed recruitment process and ensure that they have recruited the right person. It's also their responsibility to manage or support an employee if there is an issue with their performance.

FACT: There is a limit to UNISON's indemnity cover.

Yes, there is a limit of £1million for any one claim.

FICTION: Nurses must have cover of at least £3million.

No this is not true. In fact there is no minimum amount for which you must be covered in law. But as stated above the claim will invariably be against your employer and you will be covered by their insurance. If, in the very unlikely event you are sued because of your actions in the course of your employment, the amount you are sued would depend on the consequences of your actions.

FACT: I am covered if I work overseas.

Yes, UNISON provides cover for all its members who are working overseas, with the exception of any work carried out in the USA (including protectorates) and Canada.

UNISON advises all its members to seek the advice of the relevant trade union for the country they are working in. Just because UNISON provides you with professional indemnity cover it does not mean that you don't have a responsibility to learn the relevant local working practices, and what professionally is expected of you.

Although UNISON does all it can to provide advice and support to members regardless of where they work, we also believe that if you are working abroad you need the best advice and support you can get and this can only be provided by the trade union based in the country where you are working, as they will be fully aware of the employment legislation and rights in addition to employment practice. This is why UNISON has a number of reciprocal arrangements with unions in other countries such as the New South Wales Nursing Association in Australia, They in Finland and the CCOO in Spain – we have developed relationships with organisations that have similar aims and values to UNISON.

FICTION: I am not covered if I am a student.

The same principles apply to students as to other employees. If you are a student working on a placement you are required to be supervised whether your placement is in the NHS, independent or private sector. As a result the organisation where your clinical placements are being held will be responsible for your actions in the course of your employment.

UNISON's scheme provides cover if for any reason your employers insurance should fail to cover you as long as appropriate supervision is provided.

FACT: UNISON provides me with cover in the event I act as a Good Samaritan

Yes, this is true. UNISON's cover extends to where nurses are called upon to provide emergency care (a Good Samaritan act) outside their normal working hours, as long as they can demonstrate they were acting within their competence and were aware of their own personal safety.

FICTION: I am not covered by vicarious liability or UNISON Professional Indemnity Cover if I am working as an agency nurse.

In almost all cases the organisation you are working for will be vicariously liable. The courts look at the "reality of the situation". Agency nurses who are working under the direction of their managers at a hospital/clinic will almost always be treated as an employee of the nursing home, NHS trust or hospital where they are based. As such they will usually have cover through their employer's insurers or possibly cover arranged by their agency, and if such cover were to fail UNISON's professional indemnity cover would apply.

FACT: Neither vicarious liability or UNISON's cover applies to self employed independent practitioners.

Yes, this is the case. If someone is self-employed or an independent contractor, working on their own and taking responsibility for their own actions, for example where they are genuinely acting and practising independently on a fee-for-service basis, there is no employer who has a duty of care and is vicariously liable for their actions. If you think this could be you it would be sensible to check in case you want to arrange your own cover. Although UNISON's cover is very comprehensive UNISON's insurers have not agreed to extend cover to this group of workers. The following groups are also exempt from UNISON's professional indemnity cover:

- midwives working outside the NHS
- medical practitioners
- expert witnesses
- self-employed independent practitioners and individuals working on a fee-for-service basis
- beauty treatments or medico legal work (other than those employed by the NHS)
- all claims relating to transmission of hepatitis non A (outside the NHS).

The reality is that individuals employed within these areas are working within areas of practice where the risks are believed to be high. As a result it has proved impossible for many organisations, including other professional associations, to negotiate cover for these individuals.