

# Q&A on insurance for Individual Employers and Personal Assistants (PAs)

## 1. What types of insurance need to be considered by individual employers and PAs?

There are four main types of insurance that need to be considered for individual employers and their PAs:

- i. **Employers' liability** – This is a legal requirement under the Employers' Liability (Compulsory Insurance) Act 1969. Employers are responsible for the health and safety of their employees while they are at work. Employers' liability insurance provides a level of insurance cover for a business or employer in the event that an employee is injured at work or becomes ill as a result of their work and seeks redress or compensation from a responsible employer. Employers' liability insurance enables the employer to meet the cost of a compensation claim arising out of, or in the course of, the employment.

Anyone who employs PAs through a Direct Payment MUST take out Employers' Liability insurance and there are a number of companies that offer insurance at reasonable rates.

- ii. **Public liability** - Provides cover if a third party (.i.e: not an employee) suffers injury or damage to their person or property for which you are held legally responsible. If a PA causes injury or damage to a third party arising out of their employment with the individual employer, it is likely that the individual employer would be found vicariously liable for their actions. The employer therefore needs insurance cover against such liability.

Public liability insurance covers you for claims made against you by members of the public or other businesses, but not for claims by employees.

- iii. **Clinical Indemnity** – Some insurers will insure PAs to carry out a wide range of complex healthcare tasks, provided they have proof of appropriate training. If a PA causes an injury to the person they are supporting, this may result in a clinical negligence claim against the PA by or on behalf of the person they are supporting
- iv. **Insurance for PAs** - There are also specific policies designed to protect PAs from claims against them, for example where the PA accidentally harms the employer (eg spilling a cup of hot tea on the employer).

All four types of insurance may be necessary, depending upon the circumstances, to provide adequate protection for the employer, the PA and

third parties who may be affected by the employment relationship in some adverse way. This will not be the case in every circumstance, however, and each situation should be considered upon its own facts, having regard to the nature of services provided. Brokers may be able to offer insurance packages as a cost effective method of protection.

## **2. Should the NHS insist on PAs and individual employers having insurance cover?**

All individual employers and self-employed PAs<sup>1</sup> are required by law<sup>2</sup> to have Employers' Liability insurance.

There is an order<sup>3</sup> requiring regulated professionals to have indemnity cover. However, PAs employed via a direct payment do not need to comply with this legislation, even if carrying out activities which might otherwise be performed by health professionals, unless they are a member of a regulated health profession.

The NHS Litigation Authority is clear that if a person is harmed by their PA when carrying out medical procedures such as PEG care, and the PA does not hold appropriate clinical indemnity insurance then, strictly speaking, the responsibility would not fall back to the NHS to pay any compensation or take any blame, as the NHS is not the employer of the PA: the direct payment recipient is.

However, where an untoward incident such as this occurs, the NHS is very likely to be seen by the individual, family members or members of the public as having some responsibility towards the direct payment recipient. Questions might arise as to whether or not the individual employer and the PA were given adequate support and advice about obtaining appropriate insurance or whether there was enough money in the budget to cover the costs of insurance.

If a service user were injured by the action of a PA employed through an agency commissioned directly by the clinical commissioning group (CCG), the individual injured would have recourse via the agency's insurance cover. Where an individual employs their own PAs, however, it is the individual's responsibility to check that the PAs have adequate clinical indemnity cover.

## **3. Should the NHS fund the insurance?**

The costs of insurance should be seen as part of the costs of providing an appropriate support package through a personal health budget and should therefore form part of the budget allocation.

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<sup>1</sup> It should be noted that under most circumstances HMRC consider PAs to be employees and not self-employed. Anyone operating as or employing, a PA who considers themselves as self-employed should confirm this status with HMRC

<sup>2</sup> Employers' Liability (Compulsory Insurance) Act 1969

<sup>3</sup> The Health Care and Associated Professions (Indemnity Arrangements) Order 2014

#### **4. What training do PAs require in order to be protected by any insurance policy?**

Health care tasks that will be delegated to PAs should be identified in the care planning process and considered again at review. There are no specific rules about what constitutes appropriate training although individual insurance policies may have their own requirements as a condition of cover.

#### **5. What should CCGs be doing in relation to individual employers, PAs and insurance?**

- CCGs should discuss insurance directly with individual employers (and PAs where possible) as part of the care planning process and ensure they have access to good information and advice about available insurance policies and necessary cover.
- CCGs should include funding within the personal health budget so that the personal health budget holder and PAs are provided with a level of protection that reflects the risk associated with the care package. They should ensure there is enough money in the budget year on year to cover the annual cost of insurance.
- CCGs should note that accidents to individuals whilst receiving personal care from PAs employed by a direct payment recipient cannot reasonably be predicted as part of a risk assessment and could occur in any situation. Insurance cover should include cover for personal injury for the individual employer and not just liability cover in the event of injury to others.