TRAINEES AND INDEMNITY INSURANCE

Introduction

There are a number of different views within the profession of clinical psychology about the desirability of taking out personal indemnity insurance. This document lays out some of the issues relevant to the decision and the pros and cons of taking out insurance.

BPS Position

The Professional Affairs Board of the BPS considers, ‘that for the protection of the public, there is a moral obligation on every Chartered Psychologist to ensure that, in one way or another, they are covered for third party liability for their activities as a psychologist’. Cover can be provided by Crown indemnity in the case of the NHS, by other employers or by personal indemnity insurance.

Crown Indemnity

As employees of Sheffield Health & Social Care NHS Foundation Trust (SHSC) or any other NHS Trust or Primary Care Trust, individuals are covered by Crown Indemnity and the rules on vicarious liability in the same way as all other members of staff including the medical profession. Since 1st April 2002 the NHS Litigation Authority, operational since 1996, has managed all client litigation against any Trust or PCT. They organise the defence, nominate solicitors and deal with all other aspects of the litigation process including the payment of any compensation. (Hitherto, NHS Trusts have locally managed small claims and paid the compensation).

Beechcroft Wansbroughs (SHSC solicitors) advise that individual indemnity insurance is needed if you are carrying out private work, facing disciplinary action, personal criminal prosecution, or professional proceedings by the BPS, or, unusually, giving Good Samaritan assistance at the roadside when off duty. Crown indemnity would not apply to give you personal support if you have acted outwith the terms of your employment, for example, if you are being prosecuted for a criminal offence as when a patient has been killed by gross negligence. This would normally be in extreme cases such as those of Beverley Allitt and Harold Shipman. The Trust would handle any complaints made against you by patients through the Trust complaints procedure and would seek legal advice as appropriate. The Trust would also support staff required to attend a Coroner’s Inquest, providing there were no outstanding disciplinary proceedings.

Unite

If you are a member of a Trades Union, they will usually defend you in a disciplinary matter unless it is extremely serious.

Types of Proceedings

Patients in the NHS can make a Civil claim in negligence with regard to issues such as failure to make a proper diagnosis, or where a client has caused harm to self or others and a psychologist had not taken appropriate steps to prevent this. This would be covered by Crown Indemnity and any compensation would be payable by the NHS Litigation Authority.

Another route is through the Criminal Justice System where the prosecution would be made with a view to obtaining a conviction for a criminal offence, as in the case of Harold Shipman. This would not usually apply to clinical errors.
The client might make a complaint to the BPS who could take action only if you were a member of the Society. The BPS would investigate and decide whether there was a case to be heard. If so, there would be a hearing adjudicated by a lay panel. The Society would conduct the prosecution on behalf of the client. You could represent yourself or the Trades Union would provide a defence through their legal services, or you could be covered by your own indemnity insurance. Beechcroft Wansbroughs’ view is that a trades union would normally cover you in this instance.

It is worth noting that the professional liability insurance recommended by the BPS, ‘is designed to be reactive rather than proactive. It is not a legal expenses policy and is therefore not designed to allow the psychologist to take action against other persons. The most usual instance of a proactive claim would be where the psychologist thinks that he or she has been defamed; the insurance is not designed to provide funds for psychologists to take action to clear their good name’.

**Frequency of Prosecution**

- The Trust fails to support the trainee because he or she has acted outwith its policies and procedures.
- Alternative forms of support, such as Unite, fail to support a trainee who has acted with gross professional misconduct.
- If the NHS Litigation Authority were to have the goal of limiting their damages, thereby settling out of court or defending another employee at the expense of the psychologist. Indemnity insurance would allow the psychologist to defend her or his own professional reputation.

**Conclusion**

Providing that you work within Trust policies and procedures and follow the advice of your supervisor, it is highly unlikely that you will need indemnity insurance. If you act outside Trust policies and procedures, you may be subject to disciplinary procedures in which you would usually be supported by your trades union. If you are carrying out private work, facing disciplinary action, personal criminal prosecution, or professional proceedings by the BPS, or, unusually, giving Good Samaritan assistance at the roadside when off duty, indemnity insurance would constitute appropriate cover.

*BPS (2007): Professional Liability Insurance*