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Has The Indemnity Crisis Been Fixed, Or Has It Only Just Begun?

Presented by Tristan Lennox-Gentle Cert CII, BA (Hons)

"Caring for those that care the most"

Introductions

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About MIAB

MIAB was established in 2002, with the primary goal of being
To be the UK's most trusted medical insurance broker
and this remains our Mission Statement to this day.

15 years on MIAB are proud to have…

- ✓40 staff
- ✓4500 policyholders across locum, surgery and malpractice insurance products
- ✓Approved supplier status to LMC Buying Group Federation and First Practice Management
- ✓Relationships with NHSE, NAPC, RCGP and Capsticks

The Indemnity Dilemma

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The 12th October was a significant day in the history of medical indemnity.

Jeremy Hunt, on behalf of the Government, launched his own indemnity plan for those in Primary Care as a response to demands to make indemnity affordable.

But will it be the great golden gift the sector has been demanding or an empty gesture?

Information For Practices

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Nothing will change for at least 12-18 months.

No run in cover available. Only claims from work undertaken post April 2019 will be considered.

Private (non-NHS) work is excluded from cover.

Messages are unclear about the scope of included practitioners. **GPs are confirmed but what about others**?

We understand no cover for GMC issues, employment disputes, fitness to practice, no mention of medico/ethico legal helplines?

This suggests the Hunt scheme is akin to the **CNST offering** for secondary care, geared to allowing recourse against the clinician.

Concerns For Practices

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- How will the new indemnity be paid for and where will the cost attach?
- Will contract values be reduced to reflect "free" indemnity
- Will all clinicians will be eligible to join – claims history, sanctions?
- If the entity will benefit from cover
- How will this apply to new care models – MCPs, CICs, PCH?
- If practices will need to re-evaluate their services offered?
- Will the combined cost of Government indemnity, ancillary covers and indemnity for non-nhs work be more expensive than indemnity packages now?
- Is the Hunt scheme mandatory – primary care requires commerciality to function

Why Is Any Of This Relevant?

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GPs may not have any choice but to be covered under the Government scheme, especially if cover is awarded with the GMS/PMS/APMS contract rather than purchased at a practice level. If this is the case the GPs will lose the following MDO benefits when they leave and this affects you all:

- **Cascaded indemnity for AHPs, management and admin**
- **Medico legal support, GMC and employment disputes**
- **Vicarious liability for the entity**

You will need to consider an alternative solution to these exposures to maintain a robust indemnity position post April 2019.

Crystal Ball - MDOs Post 2019

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We understand MDOs will still exist post 2019 but have a lesser role in the indemnity market:

- Provide cover for private work outside scope of Hunt plan
- Offer ancillary covers not available via Government
- Coverage may change – already the MDU is moving from **occurrence** to a **claims paid** policy from November 2017
- Refined appetite to risk due to less income to meet historical claims obligations
- Possible higher premiums for occurrence cover

So Are MDOs The Only Solution?

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ALL Medical Defence Organisations operate using **discretion. At their discretion**, an MDO will support and assist you in the defence of your reputation and payment of compensation awards

Unlike an insurance policy, no policy wording exists and there is no external regulator monitoring outcomes. **Insurers do not use discretion. If it's covered, it's covered.**

While you shouldn't immediately discount traditional MDOs, **you should consider insurance options as part of a balanced scorecard review**.

Consider This…

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Would you entrust 'discretion' to any other arrangement, such as car insurance, contract for services or vehicle breakdown cover?

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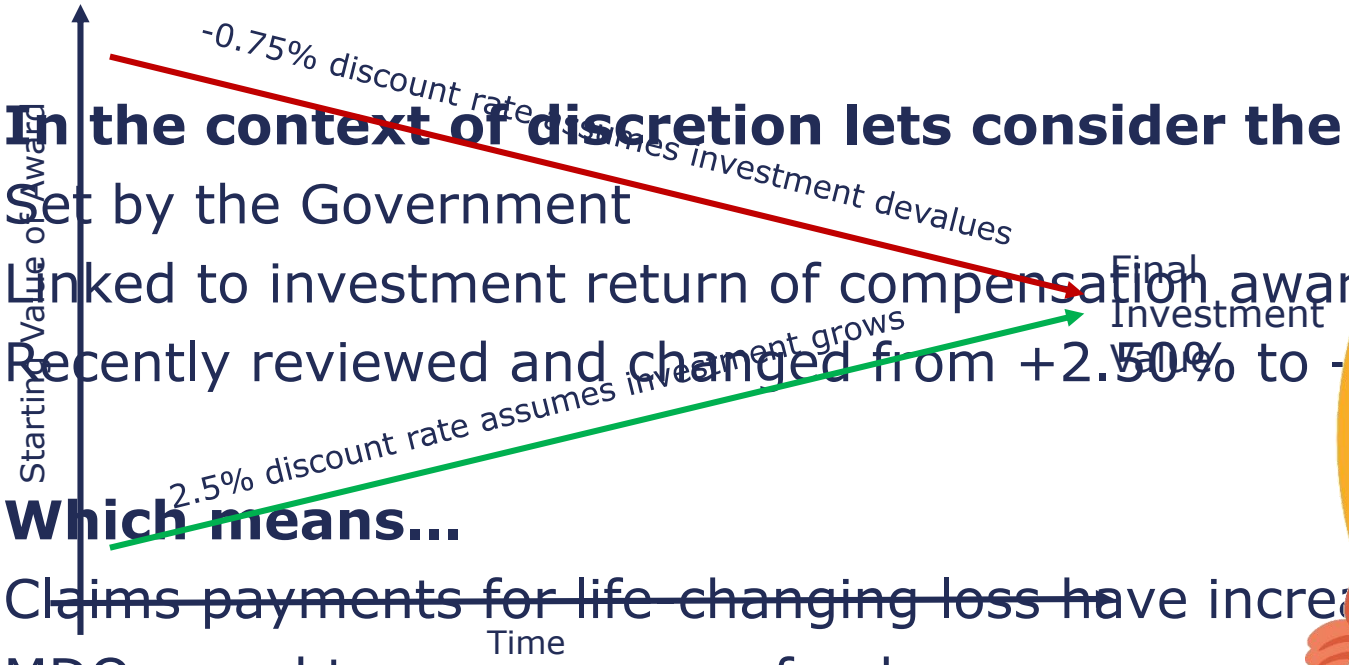
The Discount Rate



In the context of discretion lets consider the disc ogden

Set by the Government

Linked to investment return of compensation awar

Recently reviewed and changed from +2.50% to -

Which means…

~~Claims payments for life-changing loss ha~~ve increa

MDOs need to reserve more funds

With claims awards rising, will discretion be exercised more often?

Whatever You Decide...Golden Rules

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Step 1: Consider All Staff

- **Beware common assumptions.** "Our group scheme extends to all our staff". Does it?
- **AHP roles are complex and risky.** Some clinicians roles may fall outside of what an MDO is willing to cover. Check.
- **Consider variances in cover.** Each MDO will approach risk in different ways.
- **Ascertain your exposures.** You may have clinicians in your business who are presently unknowingly uninsured

Whatever You Decide...Golden Rules

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Step 2: Remember Your Entity

- **Litigation can attach at all levels**, including against the name of the business
- If clinicians have no insurance or the cover fails to respond, the employer is legally liable for any action and awards that follow

- **Employers are vicariously liable** for the actions of their staff. Protect yourself through contingent liability
- **You remain exposed** even if you don't employ staff, failure of your devised protocols and instructions can still attract liability and that includes CCGs

Whatever You Decide...Golden Rules

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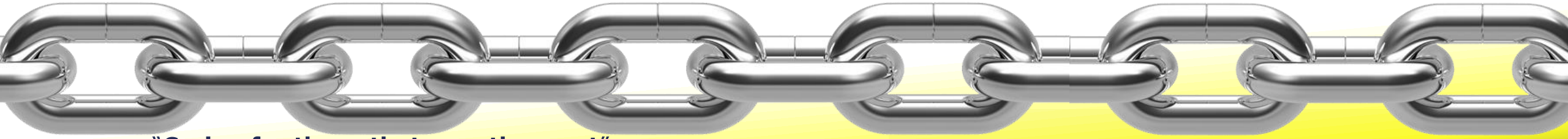
Step 3: Aim For Joined-up Cover

- Any solution should be co-ordinated and as streamlined as possible.
- A successful defence of a claim requires a cohesive and joined-up approach between all supporting parties
- Find a provider that can cover all of the practice's exposures including the business name, its clerical and all clinical staff to avoid deflection of responsibility

It is said "*too many cooks spoil the broth*" and this adage is never truer where multiple providers are involved in the defence of litigation.



Whatever You Decide...Golden Rules

Step 4: Is The Cover Level Adequate?

- Select cover that has a high ‘any one claim’ and ‘aggregate’ annual limit in the event of multiple claims arising
- If GPs are included for non NHS work, is the cover enough for the Performer’s List
- If your organisation is at the higher end of the patient population 20k+, more clinicians = a greater chance of multiple claims

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Step 5: Proceed With A Solution Which Limits The Most Risk

- Understand the difference between an MDO, Insurance and Government indemnity
- Find a plan that transfers as much risk as possible
- Protect yourself, the business and the patient – if something went wrong would your chosen option protect you regardless of where the claim was directed?
- Does the provider have the liquidity to meet their claims obligations? **Only insurers have to meet solvency criteria.**

Final Thoughts

Look before you leap - consider all options

Price and value are not the same

Speak with experts – the market is evolving daily

Consult your peers

Take your time

Questions?

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Thank you for listening.

Article published to support today's presentation at:

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www.miab.co.uk/latest-updates/