



General Q and A – Criminal Defence Insurance

We are aware that the Musculoskeletal Association of Chartered Physiotherapists (MACP) has sent an e-mail to its members suggesting that the CSP has made changes to the CSP PLI scheme for members relating to the defence of criminal allegations. We have had a number of enquiries from members concerned about this e-mail. This document aims to address and clarify some of the concerns raised.

What is the CSP PLI scheme?

The main CSP PLI scheme is a collective indemnity scheme for the benefit of the majority of CSP members. It provides medical malpractice, professional indemnity and public liability cover for an individual's physiotherapy work, for civil claims brought in the civil courts. It has a number of terms, conditions and exclusions in place. One of those exclusions is that it does not provide any cover for claims brought in the criminal courts.

Has the PLI scheme ever covered criminal claims?

No. The PLI scheme has never provided any cover for any criminal allegations against members.

Has the CSP made any recent changes to the PLI scheme?

No. the CSP PLI scheme was renewed on 1st July 2016 and the full terms and conditions of the scheme are available on the CSP website:

<http://www.csp.org.uk/professional-union/practice/insurance/csp-pli-scheme>

How are criminal complaints managed?

Following an allegation of a criminal act taking place, the police will investigate the matter, which may involve interviewing the 'accused' person under caution. The police will then gather their evidence and pass this to the Crown Prosecution Service which considers if there is a realistic prospect of a conviction, and makes the decision whether to charge a person with a crime. If a person is charged, they are entitled to have a person represent and defend them, usually a solicitor or barrister. The costs of defending a criminal charge may be met by the Government under the Legal Aid scheme (subject to qualifying terms), or by the individual themselves through an indemnity policy or from their own funds.

How did the CSP historically help members facing work-related criminal allegations? Prior to 2010 most CSP members facing criminal charges would have been eligible for Legal Aid and therefore the CSP was able to provide cover by accessing representation for members through the contract the CSP had with



Thompsons solicitors. Thompsons solicitors represented the member and Thompsons reclaimed their legal fees through the Legal Aid scheme. There was no cost to either the CSP or the member.

What changed to the Legal Aid scheme?

The Ministry of Justice changed Legal Aid thresholds in England and Wales in 2010. This meant that many individuals in these countries, including the majority of CSP members, were no longer eligible for Legal Aid and would need to meet their own costs unless they made alternative indemnity arrangements. At that point the CSP was no longer able to provide any cover through Thompsons, as to undertake to fund the costs for those in England and Wales would have been prohibitively expensive for the CSP itself. The CSP therefore sought to make alternative options available for affected members.

How does the CSP help members subject to work-related criminal claims against them since 2010?

Where members are not entitled to Legal Aid representation, the CSP offers members the option to purchase a separate 'criminal defence' insurance policy, that provides cover for all criminal allegations, not just work-related matters, subject to policy terms and conditions. The availability of this policy, and the reasons behind its' introduction, have been widely publicised on the website, through Frontline, and through the use of leaflets at relevant events since 2010, although the take up has remained low.

The CSP has also been able to continue to support members who are eligible for Legal Aid and facing work-related criminal charges through its arrangement with Thompsons solicitors. Therefore, members in Scotland and Northern Ireland have not been affected. Additionally, the law provides for everyone to access legal representation free of charge for an initial police interview under caution and so CSP members can still choose to access Thompsons Solicitors for representation at an initial interview in all countries, and information is available on the website.

What has changed recently?

The CSP has changed providers of the criminal defence insurance scheme, from Philip Williams and Co to Graybrook which is the same company that brokers the main CSP PLI scheme.

Which CSP members may still be eligible for Legal Aid funding?

All CSP members UK wide will be eligible for free legal representation at an initial police interview under caution. Eligibility for Legal Aid beyond this, to cover the costs of a legal defence, will be means tested on a case by case basis. Due to the different thresholds, members in England and Wales are highly unlikely to qualify for



Legal Aid, whereas members in Scotland and Northern Ireland are likely to still be eligible.

Why doesn't the CSP include criminal cover in the PLI scheme?

The PLI scheme is designed to cover civil claims of malpractice. Claims under the PLI scheme are managed by the CSP brokers, Graybrook, and legal services are provided by Kennedy's Law. The Kennedy's team that provides claims management for PLI claims are specialist lawyers in civil clinical negligence work, they are not criminal lawyers.

Why doesn't the CSP provide a group criminal defence insurance scheme?

Not all CSP members need separate criminal defence insurance. Members in Scotland and Northern Ireland continue to be eligible for Legal Aid funding. The CSP needs to take careful decisions how to spend member subscriptions and offers products and services that will benefit the majority of the membership.

Doctors may have the defence of criminal allegations funded, why don't CSP members?

We understand that doctors' indemnity arrangements are managed with a different funding model and the legal services required may be considered on a case by case basis. The CSP believes our members benefit from having a group civil PLI scheme with the terms and conditions clearly available, as well as having a separate criminal defence cost insurance policy available to those members who wish to purchase it.

How many physiotherapists are charged with work-related criminal events?

Although we cannot be certain of the numbers, as the CSP will not be automatically informed if someone is charged or convicted of a criminal offence, from the information we do have this has remained historically extremely low, and we will continue to monitor if there are any changes to this. CSP members who are HCPC registrants are obliged to tell the HCPC if they are charged with, or convicted of, any criminal matter.

We do believe there may be an increasing number of allegations against physiotherapists for inappropriate behaviour toward patients reported to the HCPC, although again the numbers overall remain very low. The burden of proof in HCPC cases is much lower and the test relates to a registrant's fitness to practice. Therefore, poor communication and/or lack of clear consent may lead to the HCPC considering a physiotherapist's fitness to practice is impaired, and therefore a sanction being imposed, even if it is not considered the action was intentionally inappropriate.

We also know that male physiotherapists are more likely to have an HCPC complaint made against them than female physiotherapists, in particular with regard to



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inappropriate touching. We have developed clear guidance on chaperoning, and whilst it is for all members, we urge all male physiotherapists to take particular heed of the guidance for both patient and staff protection, as it may help to reduce the number of cases caused by poor communication and/or misunderstanding.

The CSP continues to provide support to members who are reported to the HCPC, including legal representation at HCPC hearings if necessary.

What should I do now?

Take time to reflect on how and where you work and whether need to take any further steps to ensure the safety of both you and your patients in your workplace.

Consider whether you believe you have any additional insurance needs, including criminal defence insurance. Contact the CSP insurance brokers if you need any advice on your insurance needs.

Graybrook Insurance Brokers Ltd
8 Chandlers Way
South Woodham Ferrers
Essex CM3 5TB
01245 321185
www.graybrook.co.uk

We suggest you review the following CSP publications:

Consent <http://www.csp.org.uk/publications/consent>

Chaperoning <http://www.csp.org.uk/professional-union/professionalism/resources/chaperoning>

Full terms and conditions of the CSP PLI scheme to be clear for yourself what you are covered for: <http://www.csp.org.uk/professional-union/practice/insurance/csp-pli-scheme>

Other additional CSP insurance schemes has on offer via Graybrook and that you talk to Graybrook if you need your own insurance advice:

<http://www.csp.org.uk/professional-union/practice/insurance/additional-csp-insurance-schemes>

Dated 13 March 2017