

September 2020

MPS submission to Health and Social Care Committee Inquiry on the Management of the Coronavirus Outbreak.

Opening remarks

The Medical Protection Society (MPS) welcomes the opportunity to submit our experience to the Health and Social Care Committee into the Management of the Coronavirus outbreak.

Healthcare professionals have been treating patients with a new disease of which we have a growing but still limited understanding. Many have been working with stretched resources, outside of their normal area of expertise and sometimes without adequate PPE. Others have made the selfless decision to join the workforce early or to return from retirement to support the NHS. In this context, healthcare professionals clearly need to be supported and protected.

The UK Government quickly identified the need to ensure there is clarity over indemnity arrangements for clinical negligence claims so that healthcare professionals could feel more comfortable about working in new ways and be focused on what needed to be done to provide the best possible treatment during this difficult time.

Unfortunately, much less progress has been made in providing healthcare professionals with reassurance that they will not face unfair action taken against them by their employer, regulator or – in the most extreme of cases – by the criminal justice system.

We would also like to see a clear plan on how the UK Government, NHS England and the devolved administrations will support the wellbeing of healthcare professionals.

In this submission we highlight to the Committee the measures that we believe the UK Government needs to put in place now in order to support healthcare professionals following the recent peak in cases in the UK as well as to protect them ahead of potential further waves in the near future.

We understand that the inquiry is not currently taking further evidence on this issue but given the strength of our concerns in this area we wanted to provide a written brief. We would be very happy to discuss this further with the Committee.

UK Government action on indemnity arrangements

The UK Government quickly identified the need to ensure clear indemnity arrangements were in place at the start of the pandemic.

This was particularly important for NHS services commissioned from non-NHS providers where healthcare professionals and others from the independent sector have been working as part of the Coronavirus response and where no existing indemnity arrangements were in place. This was

addressed by Section 11 of The Coronavirus Act 2020 which provides the Secretary of State for Health and Social Care with powers to provide indemnity for clinical negligence liabilities arising from NHS activities carried out for the purposes of dealing with, or in consequence of, the coronavirus outbreak, where there is no existing indemnity arrangement in place.

The UK Government and NHS Resolution were also quick to clarify through its communications what existing indemnity arrangements would apply to those working for trusts or GP practices, including any healthcare professionals returning to the workforce from retirement or joining as students.

Support needed by members of MPS throughout this time

MPS supports over 300,000 healthcare workers around the world, including over 121,000 active members in the UK. We have been closely monitoring the developments of the coronavirus outbreak around the world and responding to them in a timely manner, providing our members with the support they need.

Around the world, members had an unprecedented need for advice on a range of issues to help them provide the best possible care for their patients, with many of the themes being the same across all countries. The key issues where members have sought advice include:

- Remote consultations and telemedicine
- Working in unsafe environments
- Working outside their usual scope of practise
- Working without adequate personal protection equipment
- Implications of non-emergency patient care being delayed

Healthcare professionals have also needed support from MPS in different ways and at the beginning of the pandemic we announced several support packages for health workers in the UK, including:

- Free membership for fast-tracked medical students who joined the workforce early
- Free support for retired doctors who re-joined the workforce due to Covid-19
- Flexibility for GPs and consultants on the issues which they could request assistance at no extra cost to reflect the changing circumstances under which doctors in the UK were working in
- Extending our free counselling service for members to all of those who are experiencing work-related stress.

Protecting healthcare professionals from unfair action being taken against them

Although the UK Government has acted quickly to provide clarification on indemnity arrangements for clinical negligence claims, very little progress has been made to reassure healthcare professionals about the consequences they may face in terms of disciplinarys from employers or investigations by the regulator or by the criminal justice system.

Healthcare professionals have been contacting us, telling us they have concerns about the decisions they are having to make in very challenging circumstances and how they can be sure that they are acting in line with relevant guidance and with the law. While we provide the best possible advice we can, unprecedented times required unprecedented action to protect the healthcare professionals that society is expecting so much of during this time.

From the outset of the pandemic, the Medical Protection Society (MPS) has kept a determined focus on the need to plan for the aftermath. The legitimate fears of the medical profession – that the legal, regulatory and NHS apparatus is ill-prepared to deal with any adverse incidents that have occurred during this crisis – is a fear that we must address.

We strongly believe that both patients and the profession need reassurance that any investigations and subsequent actions will be fair and proportionate, reflecting the context in which doctors were practising during this pandemic.

MPS has called on the UK Government to introduce emergency laws to protect doctors and other healthcare professionals and the clinical decisions they have made – and may still have to make – during the coronavirus crisis. There is international precedent for this action, not least the steps taken to introduce similar legislative provision in the state of New York.

Such legal protections should be temporary and applicable only to the duration of the coronavirus crisis. This protection should also be limited so that it does not apply to wilful or intentional criminal harm or reckless misconduct.

It is simply not fair for doctors already under immense pressure to be asked to make difficult treatment decisions, based on a hope that the courts and the General Medical Council will treat them favourably and protect them in the future, if their decisions and actions are challenged. This call has received the support of the public as illustrated by a YouGov survey of over 2,000 British adults, commissioned by MPS, in which 84% of respondents said that doctors who have been working with stretched resources, outside of their normal area of expertise, or have returned from retirement to support the NHS on Covid-19, should be able to focus on saving lives without fear of prosecution or investigation following treatment of patients during the crisis.

There is still the specific and unresolved issue of what legal protection is in place to guide decisions on whether to administer or withdraw life prolonging treatments before a possible second wave of the virus. These decisions have long been made on a basis of what is in the best interest of the patient, but where these normal decision-making processes have been put under enormous strain during this pandemic, especially when surges in demand threatened the provision of critical care in certain hospitals. This is an issue we have addressed in more detail in the *British Medical Journal*¹.

Recommendation 1 for the Health and Social Care Committee

MPS strongly urges the UK Government and Parliament to consider the strong case for introducing protections for healthcare professionals against unfair action being taken against them by their employer, regulator or – in the most extreme of cases – by the criminal system as a result of the care they provide to their patients in good faith during this time

We understand that MPs will soon vote on whether to keep provisions of Coronavirus Act in force, a six-monthly review as required under Section 98 of the Act. This could serve as an opportunity for this issue to be properly addressed.

Mental wellbeing of the profession

The Medical Protection Society (MPS) has called for a clear plan and funding in place to support healthcare professionals' mental wellbeing.

We recommend the implementation of a strategy that support doctors' mental wellbeing in order to avoid huge numbers either leaving the profession or suffering in silence with psychological injuries. We believe this should include specialist support for those struggling with PTSD, alongside measures to ensure the system has capacity, and research into the impact of the pandemic on doctors' mental wellbeing.

This needs to be properly funded and we have suggested that this could be funded by new funding or by part of £3 billion funds announced for the NHS to prepare for a second wave of the virus. NHS England has since recently published its NHS People Plan which includes a range of measures that we hope will make a difference. It has committed to developing metrics to accompany and track the impact of the actions in this plan by the end of September 2020.

Recommendation 2 for the Health and Social Care Committee

MPS recommends that the Health and Social Care Committee supports the case for a clear plan to provide the wellbeing support that healthcare professionals need as a result of this pandemic, considers whether this is adequately addressed by the implementation of the NHS People Plan and whether sufficient funding has been allocated to provide the support that is needed.

About MPS

MPS is the world's leading protection organisation for doctors, dentists and healthcare professionals with more than 300,000 members around the world.

Our in-house experts assist with the wide range of legal and ethical problems that arise from professional practice. This can include clinical negligence claims, complaints, medical and dental council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal accident inquiries.

MPS is not an insurance company. We are a mutual non-for-profit organisation and the benefits of membership of MPS are discretionary as set out in the Memorandum of Articles of Association.

Contact

Should you require further information about any aspects of our response to this consultation, please do not hesitate to contact us.

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References

ⁱ Why legal protection is needed for doctors during the covid-19 crisis, Dr Rob Hendry, 12 May 2020
<https://blogs.bmj.com/bmj/2020/05/12/rob-hendry-why-legal-protection-is-needed-for-doctors-during-the-covid-19-crisis/>