

Item 16

Date	Tuesday, 10 November 2015
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Title of paper	Indemnity
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Clinical Lead	CCG Chair			
Confidential	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/> Items are only confidential if it is in the public interest for them to be so

The Governing Body is asked to:

Resolve that:

A Chair, Lay Member, any other Governing Body member or Clinical Lead who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her CCG function, save where the person has acted recklessly.

Summary of purpose and scope of report

1. Clarity regarding Governing Body members' personal liability whilst acting in a CCG capacity has been requested and this paper aims to elucidate the position and assurance accordingly. The principles at play, and their constitutional basis, are set out below.

- i. The CCG must use reasonable skill in carrying out its functions and is liable for the acts or omissions of its staff in the course of their employment and of its members and officers in carrying out CCG duties.
- ii. Any claim for damages in relation to these executive decisions (for example, agreement of contracts) would need to be brought against the CCG as a body corporate rather than individual members or employees of the CCG. A right of action does not attach to the individual member, officer, employee or other person concerned.
- iii. As the CCG is responsible for the risks arising from its executive decisions, it is necessary to make arrangements to manage those risks. The CCG is a member of the NHSLA Liabilities to Third Parties Scheme (LTPS) and the Property Expenses

Scheme (PES) and includes Director's Liability Insurance. LTPS typically covers employers' and public liability but also extends to cover the personal liabilities of the members of NHS boards and governing bodies, including non-executive directors and lay members.

- iv. Claims for damages for clinical negligence are likely to be made against providers so it would be very unusual for a clinical negligence case to be brought against a commissioner. In the unlikely event of such a claim, this, again, would need to be brought against the CCG as a body corporate. A right of action would not attach to an individual member, officer, employee or other person concerned.
- v. Section 265 of the Public Health Act 1875 provides protection for members and officers of certain authorities from personal liability provided their actions are bonâ fide. Section 69 of the NHS Act 2006 draws on this and extends cover to NHS bodies. All officers and members, whether employed by the CCG or otherwise, are indemnified by the Department of Health as being the holder of a public office when acting in their CCG capacity.

2. This existing blanket cover is not, however, tested in law for whether it extends to legal action being taken personally against an individual from a member practice acting in an official CCG function. Given it would be unreasonable for members to be personally at risk when acting on behalf of the CCG, and given primary legislation's recognition of this, it is proposed to clarify Parliament's intended coverage of the indemnity through the CCG using its power to do things incidental to its functions (Section 2 NHS 2006 Act). This achieved by the Governing Body resolving that:

A Chair, Lay Member, any other Governing Body member or Clinical Lead who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution or his or her CCG function, save where the person has acted recklessly.

3. It is important to note that the proposed indemnity would only cover those acting in a commissioning capacity where the work is clearly being carried out on behalf of the CCG. **The indemnity would not in any way extend to other capacities in which they operate, for example, as practicing clinicians, for which members remain responsible for making their own arrangements.**

4. Finally, it is noted that a significant number of CCGs apply the wording above, in one form or another.

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Quality & Safety/ Patient Engagement/ Impact on patient services:

N/A

Finance, resources and QIPP

None.

Equality / Human Rights / Privacy impact analysis

N/A

Risk

None.

Mitigating actions

Supporting documents

The Seven Principles of Public Life, set out by the Committee on Standards in Public Life (the Nolan Principles)

Governance and reporting

This paper has been produced specifically for Governing Bodies.