**The Royal College of Midwives**
**15 Mansfield Street, London, W1G 9NH**

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**The Royal College of Midwives' response to Appropriate clinical negligence cover consultation**

The Royal College of Midwives (RCM) is the trade union and professional organisation that represents the vast majority of practising midwives in the UK. It is the only such organisation run by midwives for midwives. The RCM is the voice of midwifery, providing excellence in representation, professional leadership, education and influence for and on behalf of midwives. We actively support and campaign for improvements to maternity services and provide professional leadership for one of the most established clinical disciplines.

The RCM welcomes the opportunity to respond to this consultation and our views are set out below. We will answer the questions we believe are relevant to our organisation and members.

**Q.14 What are your views on the proposed options for meeting the Government's policy objectives (please see paragraph 4.1)?**

We agree that the government is right to intervene in the way proposed. Current arrangements are leaving some patients without protection as some professionals do not have appropriate and adequate cover. However, as we explain in further comments below, for the majority of midwives working in the UK, this policy change will not affect them in any way.

**Q15. What are your views on the potential costs and benefits of these options, for example, the familiarisation and administrative costs for individuals, businesses, and other groups, in complying with potential changes to regulation?**

There are only a small number of midwives working privately ('independent midwives,' or IMs) for whom no employer's vicarious liability applies - probably less than 100 out of a workforce of around 26,000 in England currently.[1] The RCM is not able to provide a regulated insurance product for these midwives due to the nature of maternity incidents; the claims potential is very high. The insurance market for independent midwives therefore is already very limited, and this change may see the discretionary insurers leave the market completely, further shrinking the market and increasing costs for IMs even further. However, because of the nature of maternity claims, we think the policy objectives outweigh the potential negative consequences from such a move.

**Q16. Are there any other options that the government should consider?**

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[1] See Written question – 169178. 3 September 2018.
https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-09-03/169178/

No. We believe the policy suggested here is the right one, and it must be remembered that with the vast majority of registrants working in the NHS, this will only affect a small number of practitioners, where an obvious insurance deficiency has been identified. Being an employee of the NHS provides more than adequate insurance cover to healthcare professionals so it is right to keep the reform suggested to those who presently have a problem with being covered adequately.

**Q17. Do you agree with the Government's preferred option (ii), set out from paragraph 5.15, of ensuring that all regulated healthcare professionals in the UK hold appropriate clinical negligence cover that is subject to appropriate supervision by the FCA and PRA?**

Yes

**Q18. In order to achieve this aim, what would be the benefits or implications of introducing regulation via: (a) changing professional standards so that professionals have to hold a regulated product in order to practise; (b) changing financial regulation so that any organisation offering clinical negligence cover would need to be authorised to do so; (c) changing both financial and professional regulation?**

In regards to the a, b, and c options put forward, for our members who are regulated by the NMC, the situation described in (c) is already the case. For the process of revalidation, which a registrant must undertake every 3 years, the registrant must show how they have an appropriate indemnity arrangement in place. This is a mandatory requirement of the Code of Practice for midwives, nurses and nursing associates.[2] In other words, our members' ability to practice in the UK is already bound up in having appropriate clinical negligence cover. This seems a sensible approach to take towards other regulated professionals and their regulators.

**Q19. Do you have a view on when regulations should come into force and should these involve a transitional period, considering the potential impact on indemnity providers and healthcare professionals?**

We have no view on this

**Q20. Are there any measures that could mitigate the potential risks to introducing regulation as set out in paragraphs 5.32-5.35 (in terms of a stable transition for regulated healthcare professionals and indemnity providers, mitigating potential cost impacts, and run-off cover)?**

After some independent midwives were found to have inadequate insurance cover by the High Court (as you describe in para 2.18), some IMs were able to work for organisations that were contracted into the NHS. This gave them access to the vicarious liability insurance that NHS employees enjoy, to the satisfaction of NMC requirements, and mitigated against the impact of the court decision.

The court decision can therefore be seen as a road test of the policy put forwards in this consultation – what happens to practitioners outside of the NHS when their insurance is found wanting.

[2] 'When applying to join or renew your registration with us, nurses, midwives and nursing associates are required to self-declare that they have in place, or will have in place, an appropriate indemnity arrangement when they practise in the UK.' See NMC, *Professional indemnity arrangement*. December 2018. https://www.nmc.org.uk/registration/staying-on-the-register/professional-indemnity-arrangement/

It needs to be noted that independent practitioners may hold strong views about working for the national health service and that organisations that set themselves up outside the NHS will for various reasons, feel more like the natural 'home' for their scope and style of practice.

However, one of the organisations that can be seen as a 'good fit' for previously independent midwives was Neighbourhood Midwives, based in London. In January of this year it ceased trading because its economic model of contracting into the NHS was not sustainable. Therefore the policy change proposed now may not play out in the same way as after the court case, despite it looking like the same scenario. A potential mitigation available to IMs before – work for someone else who is ostensibly outside the NHS but enjoys NHS insurance cover – is not as readily available for them now.

**Q21. Specifically on the transition risk, are there any measures that could support the run-off of indemnity providers' existing liabilities on a discretionary basis, especially given the potential interaction with overseas business set out in paragraph 5.21?**

We have no view

**Q22 and 23. Specifically given the potential risk with claims-made and claims-paid policies and indemnity arrangements as set out in 5.35, should Government specify the type of insurance or regulated product required for regulated healthcare professionals?**

Midwives already have their ability to practice tied into having appropriate insurance, because of the rules of the NMC. However, the court case you describe in para 2.18 shows the NMC's definition of 'appropriate' has not been clear to registrants – going to court to get this clarity may not be the most effective way of getting this definition of 'appropriate' defined. Indeed, there is still no clarity about what is 'appropriate'.

NHS Resolution and the Department of Health are changing their approach to resolution in maternity claims, with plans to make the system faster, and more transparent and compassionate for parents, and ensuring the supportive learning from incidents takes place quickly, protecting health care professionals from blame and further traumatisation.

It may be helpful in light of these changes that the Government encourages the NMC, as a regulator, to look again at how they want to define 'appropriate' to give all registrants (and users of maternity services) some clarity.

**Q24-27.** We have no view

**Q28 Do you have further insight or data into the types of indemnity/insurance cover held by healthcare professionals?:**

*About the insurance cover of midwives in the UK*

Midwives who work in the NHS in the UK are protected by the vicarious liability insurance given to NHS employees. This cover also extends to midwives working in organisations contracted by the NHS, and those working in local authorities. The vast majority of midwives practicing in the UK work in the NHS.

In addition, the RCM itself provides its members with a regulated insurance product - contingency insurance - that covers them in instances where their NHS employer may not respond. This is an

insurance product bought through the UK insurance market. As such, the vast majority of midwives working the UK, and who are our members, are not affected by the policy change being put forward by the Department at this time.

A very small number of midwives in the UK will be practicing outside of the NHS:

1. For themselves/for profit, in self employment as IMs
2. In private providers, such as the Portland hospital for women and children, or One-to-One midwives in the North West.
3. Other agencies outside the NHS, such as in local government public health functions

For groups 2 and 3 above, these midwives are likely to have sufficient insurance arrangements, based on the NMC's rules around registrants having 'appropriate' insurance and belonging to larger organisations. In this way, midwives have a built-in safeguard around insurance that other professionals don't have by virtue of the approach of their regulator.

Therefore we agree that the midwives likely to be affected by the policy change suggested by the Department are only those midwives in self employment in group 1 above. We agree with the Department's summary of the problems some independent midwives have had with insurance as outlined in para 2.18. Our answers to questions above detail our views on this situation.

**Suzanne Tyler, Executive Director for Services to Members**
**The Royal College of Midwives**

**February 2019**