

The history of independent midwifery and indemnity insurance

The history of independent midwifery and indemnity insurance has been a long and challenging one. The NMC, together with the Royal College of Midwives (RCM) and other interested bodies and individuals, have worked for many years to try and reach a satisfactory solution in the public interest. The concern of the NMC has always been to balance the need for public protection and public confidence in the midwifery profession with the interests of women in having access to safe and effective midwifery care in the setting of their choice.

Until 1994, the RCM provided indemnity insurance for all midwives, including those practising independently. Following a significant increase in the cost of such indemnity cover due to a number of claims for compensation involving the negligence of independent midwives (IMs), the RCM withdrew its cover for IMs. This decision was reached after a full consultation with all its midwife members.

From 1994 until 2014, independent midwives were not legally obliged to hold indemnity insurance, but from 2002 onwards the NMC Code recommended holding such cover and required them to advise their clients if they did not hold indemnity cover. Before introducing this new requirement in the Code, the NMC ran a full public consultation. All the issues being raised today by IMUK and others were raised at that time.

This situation protected pregnant women's right to choose and the right of independent midwives to practise in the way they wished, but left women and babies with no means of securing appropriate compensation to pay for their ongoing care and treatment following rare incidents where the negligence of independent midwives led to life-changing injuries, including cerebral palsy.

By 2009 the Labour government had reached a firm policy position that it wished to introduce a requirement for mandatory indemnity cover for all health professionals and preliminary discussions took place about proposed changes to the NMC's legislation, to make insurance or indemnity a condition of registration. This change in policy apparently followed a high profile case in 2005 involving an independent midwife who did not have any insurance, and whose negligence led to serious injuries to a woman and her baby, who were left without any form of redress.

During those discussions concerns were again expressed that the market was unable to offer appropriate insurance or indemnity cover to independent midwives and that without such cover, they would lose their registration and livelihood. In response to these concerns, the Government commissioned an independent review led by Finlay Scott.

In June 2010 Finlay Scott completed his [review](#) on whether making it a statutory requirement of registration was the best means of meeting the Government's stated policy objective that all healthcare professionals must have indemnity cover. The likely negative impact on independent midwives practising as individuals was highlighted by

IMUK and others in their responses to that review and in his report Finlay Scott made a specific recommendation addressing these concerns:

"Recommendation 20: In relation to groups for whom the market does not provide affordable insurance or indemnity, the four health departments should consider whether it is necessary to enable the continued availability of the services provided by those groups; and, if so, the health departments should seek to facilitate a solution."

PricewaterhouseCoopers (PwC) also compiled an [evidence report](#) as part of the Finlay Scott review which concluded:

"However, there are some groups of registrants for whom no commercial coverage is currently available in the market. The most significant of these are independent midwives operating outside of the NHS. From our discussions with representatives from the insurance and broking industry, our understanding of some of the reasons for the lack of commercial coverage include:

- Viability. Too small a number of members to make insurance a viable option – insurance works on the basis of pooling risks across a large group of policy holders, such that the average expected cost of claims for each policy holder is a reasonable and affordable amount. The numbers of independent midwives are too small to allow effectively pooling of risk and reduce average costs (and therefore premiums) to an affordable level.*
- Quantification of risk. The nature of the work performed by independent midwives, for example, is such that there is considered to be a relatively small probability of an event which may lead to a claim, but that the average size of each claim is expected to be significant. As such, the quantification of the total expected cost of claims for all independent midwives is highly uncertain, resulting in insurance providers requiring additional premiums to accept this uncertainty of outcome. Again, this would increase premiums beyond affordable levels. "*

In 2010, the Coalition Government, in [responding to the Finlay Scott](#) report, confirmed its intention to proceed to introduce mandatory indemnity cover, notwithstanding these potential impacts on independent midwives.

The NMC and RCM then jointly commissioned a [report](#) into the feasibility of a model for supporting the continuity of independent midwifery which found a viable solution for securing insurance using a social enterprise or corporate structure.

In 2012 an EU directive was introduced which was binding on the UK and made it mandatory for all EU healthcare professionals to have appropriate cover. The UK had a period of two years to introduce this legislation or face infraction proceedings.

In 2014 the Government proposed UK legislation in line with the EU directive, following a full public consultation and impact assessment. At each stage of this process, the likely negative impact on independent midwives practising as individuals was again highlighted by IMUK and others.

In its published response to the consultation, the Government stated:

"However, it is recognised that a small sector of independent midwives (self-employed midwives working in the private sector) will be affected by these proposals and they have raised their concerns both through this consultation and via additional engagement with the Departmental officials and Ministers. The Government remains committed to offering women a choice of place of birth through the NHS Choice Framework 2014/15 which set out a range of choices women have over maternity services.

It is for the individual practitioner themselves to determine a suitable operating model under which they are able to continue to practise and the Department recognises that the new requirements may require self-employed midwives to change their own governance and delivery practices to comply with the terms of an indemnity policy. Some midwives practicing in the private sector, and as part of a corporate structure, have obtained cover that will enable them to provide care in an independent way, either commissioned by the NHS or by private clients."

Following a further challenge by IMUK and others, the Government revised its impact assessment, considered a request from IMUK to provide £10 million funding for a new indemnity scheme and then eventually issued a [statement](#) in March 2014 (see link below) refusing the request for funding and confirming its intention to proceed with the legislation.

The NMC's legislation was then changed in July 2014, giving it a duty to enforce this new mandatory legal requirement for all its registered nurses and midwives to hold an appropriate indemnity arrangement. This change was made in the full knowledge of all concerned that it was unlikely that any individual independent midwives, who were not prepared to join co-operatives or private companies of the type identified by the Department of Health, would be able to secure a suitable indemnity arrangement.

This was also the understanding of the RCM who issued a set of [FAQs](#) for IMs in July 2014.

They confirmed their understanding that the insurance would need to cover midwives for "the likely pay out in the case of a claim for damages being made" against them. They stated "this changes over time but currently pay-outs stand at between £6-10m in cases of cerebral palsy caused due to negligence during intrapartum care."

Following the introduction of the new legislation, a concern was raised with the NMC about the indemnity cover held by IMUK midwives. Given the history, and the evidence previously presented by RCM, IMUK, PwC and others about the likelihood of affordable insurance being obtainable, the NMC was under a duty to investigate the cover being relied on by IMUK members.

Between mid-2014 and mid-2015 IMUK members relied on an indemnity scheme arranged by IMUK which did not provide cover for the most serious types of injuries, including cerebral palsy. After concerns were raised by the NMC with IMUK about the limitations of this scheme, reliance on this scheme was ended by IMUK and a new indemnity scheme was set up by IMUK in its place.

Since mid-2015, IMUK members have been relying on indemnity cover provided by a small limited company set up solely for this purpose. It is not provided by an established insurance or indemnity provider and only provides cover for the 80 or so independent

midwives who are members of IMUK. It relies solely on the premiums paid by the individual members and a personal guarantee from its managing director. Its current financial assets are limited and it is not backed by any additional policy of insurance.

The NMC has undertaken a very thorough investigation into the cover provided by IMUK's current indemnity provider and has given IMUK and its indemnity provider every opportunity to increase its resources or arrange insurance in order to provide the NMC with the necessary level of assurance. Unfortunately we remain unsatisfied that it would have sufficient resources to actually pay out on any high value claim when it fell due for payment. In short, the challenges facing the IMUK indemnity provider are in line with the concerns identified by PwC in 2010. This situation would again leave women and babies with no means of securing appropriate compensation for damages following a high value claim, such as for cerebral palsy, and would leave the independent midwives concerned in breach of their legal requirement.

A number of IMUK midwives have now adopted the course suggested by the Government in 2014 and secured indemnity cover by adopting different operating models which still offer women continuity of care and the option of a home birth. The Government is also committed to making these options more widely available on the NHS, rather than only to those who can pay privately. The only midwives who are affected by this decision are therefore those who wish to retain their existing operating models and are not prepared to change their governance and delivery practices as advised by the Government.

The NMC exists to protect the public using the statutory powers it has been given. This includes ensuring that all its registered nurses and midwives have appropriate indemnity insurance. The NMC does not have the power to remove, waive or disregard this statutory duty, nor could it be in the public interest for it to do so.

So what we are seeing now is an entirely foreseeable consequence of Government policy (of successive governments since 2009) and the EU Directive which introduced this mandatory requirement in the interests of public protection.

As Finlay Scott advised in 2010 and remains the case today, if the UK or any of the devolved administrations consider it is necessary to enable the continued availability of the services provided by entirely independent midwives, acting outside the alternative governance structures which are available to them, then they must seek to facilitate a solution, as the solution does not lie with the NMC.