Run-Off Cover – Little Understood But Crucially Important

Insurance vs Defence Organisations
Many GPs are surprised when they find there are inherent differences between insurance-backed contracts and medical defence organisation subscriptions. One of the biggest differences is the principle of discretion.

Under a discretionary arrangement, as used by the defence organisation, the willingness to support a member's claim is at the discretion of the indemnifying organisation. While this decline to support is a rare event, it creates uncertainty in whether the cover will respond when called upon to do so, and if it fails to respond there is often no recourse option available.

Insurers however operate FCA-regulated, insurance-backed contracts that are enforceable at law. There is a policy wording with clearly defined cover limits, and should this contract decline to respond when it should, the insured clinician has avenues to contest and overturn claims decisions.

Occurrence, Claims-Made and Run-Off Cover
A further difference is that defence organisation cover is usually provided on an 'occurrence' basis. This means that as long as there was cover in force at the time of an alleged failure in professional duty, the policy should respond even if the clinician was notified of the litigation many years after the event.

In contrast, insurance policies are usually offered on a 'claims-made' basis. Under this type of cover, failure in professional duty is picked up by the insurer at the time of the notification. For this reason, it is important that when an individual is insured on a claims-made basis, they consider maintaining cover even after retirement in the event claims come to light that have arisen from past works.

Failure to maintain this 'Run-Off' cover after cessation of practice means any new claims notifications become the responsibility of the individual to defend and settle.

Why Is Run-Off Cover Relevant To State-Backed Indemnity?
The *Government announced* that the new indemnity scheme will provide seamless cover for those presently insured on an occurrence basis. Such individuals will be able to roll-in their cover as it falls due. Some clinicians however are insured on claims-made policies, and while cover will be made available for these individuals from expiry of their current policy in 2019, it will only cover clinical activities (and claims arising from such activities) from the date of joining onwards, in 2019.

As we have explored already, such a condition will require those on claims-made policies to explore the need for Run-Off cover for their expiring policy, while also subscribing to a new state indemnity scheme. Historically,

those on claims-made policies have been relatively few in number and limited to those who have failed to secure coverage through the more traditional defence organisation routes.

However changes to the MDU policy in November 2017 has meant this form of cover is far more prevalent and is now offered as an alternative to all renewing and new members in exchange for a lower annual subscription. Referred to as *Transitional Benefits* or 'claims-paid', the MDU has moved away from its more traditional occurrence model, with a view to an interim solution until the Government assumes the cost of the claims exposure.

With specific reference to the MDU, the *Government has in response advised* "The Government does not currently plan to include this run-off cover in a state-backed scheme. GPs with claims-paid or claims-made indemnity policies would therefore be required to purchase such cover separately themselves at the point they move to a state-backed scheme."

Consequently, until further information is available, the Government's current position is that 'claims-made' and 'claims-paid type covers will require a Run-Off solution in tandem with any indemnity provision made by the state.