



## **FORTHCOMING CHANGES TO THE CSP PLI SCHEME: FREQUENTLY ASKED QUESTIONS.**

### **July 2015 - Changes to the CSP PLI scheme: What you should know.**

This document contains important information about your insurance cover through the CSP and changes we need to make which will affect some members who work in the top two tiers of the English and Scottish Football Leagues including all comparable overseas football leagues, and national teams.

This advice will not affect the vast majority of members, only members providing physiotherapy services to the Defined Football Clubs and those treating affected footballers.

Please read this information carefully. The following FAQs aim to answer any questions you may have about the decision made by CSP Council. If you have any queries that are not answered by the FAQs, please contact us on 020 7306 6666 or email [enquiries@csp.org.uk](mailto:enquiries@csp.org.uk) and we will do our best to help you.

This information is dated 11<sup>TH</sup> May 2015. Any updates will appear on the dedicated CSP website page: [www.csp.org.uk/footballpli](http://www.csp.org.uk/footballpli)

The information contained in the following FAQ's is not intended to be exhaustive and does not in any way alter the terms and conditions of the PLI policy. In the event of conflict the policy terms and conditions will take precedence over this information paper. A copy of the full MPLC Endorsement wording entitled "Special Exclusion – Professional Footballers" is now available on the CSP website

### **1. The Changes**

#### **What is changing?**

The CSP has had to take a difficult decision. We will be withdrawing indemnity cover for the treatment of certain professional footballers from 1 July 2015. We will also be withdrawing

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the option for members to purchase individual top-up PLI insurance cover for the treatment of affected footballers. We have made this decision with regret and we understand the difficult situation affected members might be in.

### **When is it changing?**

From 1<sup>st</sup> July 2015. We have notified members well in advance of the actual change, so they will have time to consider their options. These include seeking confirmation of insurance cover from their employer, and/or arranging alternative insurance with specialist insurers.

### **Which members need to be aware of this change?**

This change affects all members providing or promoting their services to affected Clubs, or to Defined Footballers including:

- Self-employed members
- Members providing their services via a corporate entity
- Members working for clinics or private hospitals contracted to or promoting services to affected Clubs or players
- Members employed by national teams or football clubs in the top two tiers of English, Scottish and all other worldwide football leagues
- Members working with any lower league club whilst treating players on loan from an affected club.
- All members working temporarily overseas with a Defined football club and/or affected player in any capacity
- All members working with any National professional football teams of any age group.

### **How many physiotherapists will this affect?**

We estimate this may affect less than 500 out of 53,000 CSP members. However, it is difficult to precisely quantify how many members will be affected because members are not obliged to tell us who they work for. Members may also have portfolio careers, working in more than one context at any one time, and on a variety of terms, including casual contracts.

From work we have previously undertaken, we believe that most members working in football are directly employed by football clubs, where their employer should be responsible for providing indemnity for their work, these members should not be directly affected by this change.

### **Which football players does this affect?**

- Any male professional football player of any nationality, age 16 and over signed to a Club in the top two leagues of English and Scottish football.

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- Any male professional football player of any nationality, age 16 and over signed to a Club in the top two leagues of any other worldwide league, but **not** including clubs in the Welsh, Northern Ireland, the Isle of Man or the Channel Island leagues.
- Any male professional football player of any nationality, age 16 and over signed to a Club in the top two-tiers of English, Scottish or other worldwide football leagues whilst on loan to any club in a lower league.
- Male footballers playing for any National teams or whilst on International duty (including but not limited to training camps, practice matches, friendly matches etc.) anywhere in the world, at all age groups.

Please note this does not affect players

- under 16 years of age ( unless playing for National teams),
- female players,
- Signed to clubs in Wales, Northern Ireland the Isle of Man or the Channel Islands unless the club plays in one of the defined leagues.
- Players in any Disability Football Team.

### **What can I do to ensure I'm covered?**

You have an individual responsibility to read and understand the terms of the CSP PLI scheme and to make sure that it is suitable for your work. Follow the link for more information: <http://www.csp.org.uk/professional-union/practice/insurance/professional-public-liability-insurance>

If you are directly employed by an affected football club, you should find out what arrangements your club has in place to cover the negligent acts of its employees. If your Club, or other employer, is unwilling to give this to you, please contact us for support. AS your Trade Union, we will support you if your employer will not provide the assurances you can expect.

If you are self-employed, or run a private practice where physiotherapy services are promoted to the affected Clubs or footballers, or have contracts to treat the affected footballers, you will have to seek insurance independently for yourself and/or your business, or consider withdrawing from this work.

## 2. The CSP PLI scheme

### **What is indemnity insurance or PLI?**

It is the arrangements you have in place to ensure a patient will be financially compensated should they be harmed by your proven clinical negligence. One way to provide this is to have an insurance policy that covers risks that can arise from treating patients.

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The CSP offers an indemnity scheme for eligible CSP members which provides two separate insurance policies for you. One covers 'medical malpractice and professional indemnity' insurance and the other covers 'public liability' insurance. For ease, the CSP collectively refers to these as 'the PLI scheme'.

### **Why is indemnity cover important?**

It is a condition of your HCPC registration. Since July 2014 the HCPC has required mandatory indemnity to practise. You must be registered with the HCPC to work as a physiotherapist and they ask for evidence of your indemnity insurance cover.

Without insurance, you would need to meet any costs yourself if you were sued by a patient who felt you had harmed them either directly from your work or from your practice premises.

### **What is the CSP PLI scheme?**

The main CSP PLI scheme is a collective indemnity scheme for the benefit of the majority of CSP members. It provides **two separate** insurance policies for you. One covers medical malpractice and professional indemnity and a second policy covers public liability for your individual physiotherapy work. Both have a number of terms, conditions and exclusions in place. The following membership groups are eligible for PLI cover:

- individual HCPC registered physiotherapists considered to be 'full practising' in CSP membership categories B/B1, BE/BE1, L, or 'graduate unemployed';
- physiotherapy support workers with CSP 'Associate' membership ;
- student members of the CSP;
- retired non-HCPC registered physiotherapists in membership category E undertaking 'non-practising' activities.

You can find out more by logging in here: <http://www.csp.org.uk/publications/insurance-physiotherapy-practice>.

### **How does the CSP check that the scheme remains suitable for member's needs?**

We take advice from our insurance brokers, underwriters and legal advisers. We review the nature and frequency of professional liability insurance claims, the risk profile of the profession and the risk exposures our members face in their work. The CSP PLI team meet the underwriters at a least 3 times a year to discuss in detail the policy, the notifications made by members and the actual and potential claims against members.

The CSP leadership team – chief executive, deputy chief executive and directors – then decides if any changes need to be made to the scheme to preserve its integrity for the benefit of members as a whole. It advises Council accordingly, who act on behalf of members as a whole.

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**Does the PLI scheme have any existing exclusions?**

Yes. You must read the full policy wording to understand the full exclusions but for example, these things are excluded:

- the treatment of animals
- working permanently overseas
- working overseas for more than 180 days
- overseas-national physio's undertaking work in their home country for any length of time
- business cover
- company cover
- cover for employers
- cover for criminal allegations

**Has the CSP removed cover before and, if so, why?**

Yes. The CSP has faced actual or potential significant rises in premium payments in the past in response to frequent and large claim payouts. In 2004 it withdrew cover from Irish nationals who benefited from cover for their work in the Republic of Ireland, and in 1998 it withdrew cover from those CSP members working permanently overseas and subsequently in 2012 further limited temporary overseas cover to 180 days in any 12 month period.

**3. [About the announcement.](#)****Why have you announced this in January 2015?**

The PLI cycle runs from 1 July one year to the 30 June in the next year. Changes are generally effective from 1 July. Where there is a significant change proposed, the CSP aims to give members approximately six months' advance notice in order to allow members to consider their circumstances and make additional and/or alternative provision if necessary. This might include talking to their employer about providing insurance for them as an employee, or negotiating alternative insurance with a specialist provider.

**Why haven't you made this announcement directly to all CSP members?**

We have decided to try to identify those members affected, and tell them directly or via their football clubs, because they were the ones that needed to know about it. It does not affect the other members. We have highlighted the changes through information that is available to all members via the website and iCSP. We have also used the ebulletin and Frontline. The decision was a difficult one, made by the leadership group and CSP Council after careful consideration. We had to balance the needs of the wider membership – who could not be expected to cover these high costs through their membership payment – against those of the handful of members in the top two football divisions.

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#### 4. The special circumstances of treating top-tiers footballers

##### **What is different about clinical negligence claims from some footballers?**

The claims are far more costly than from other patients. Given the salaries some top footballers now command, the damages a player could receive if their career was affected by negligent physiotherapy treatment could run into millions of pounds. Any insurance cover needs to pay out not only the costs of any compensation awarded, but also the costs of the lawyers and others involved in working on any case, even if it is successfully defended. The vast majority of physiotherapists do not work in such a high risk area, and it is no longer possible to insure such high risks and keep the costs of the scheme affordable to the majority of CSP members.

##### **Why are only professional footballers affected?**

In recent years there has been an increase in successful claims for clinical negligence against physiotherapists from professional footballers. No other sport generates such frequency of actual and potential claims. There are significant costs to the PLI scheme with these claims, and the CSP scheme can no longer afford to run the risk of indemnifying work with professional footballers.

##### **Why is football different from other sports?**

Football now has a significant history of being a litigious sporting sector. Because of the nature of physiotherapy, a club physiotherapist is often involved with an actual or potential litigation claim. Even if they are subsequently found not to have been negligent, their defence costs can still be significant. Two high profile and recent cases are widely considered to be responsible for changing the indemnity landscape in professional football: *El-Safy-v-West Bromwich Albion (2009)* and *Hall and Others –v- Everton (2014)*.

##### **These claims are in the past. How can you estimate what future claims trends will be?**

In the medical malpractice insurance markets, past claims experience is a reliable and robust indicator of future claims exposure. The overall cost of the CSP indemnity scheme is driven by the number and size of reported claims. We can therefore predict that the trend for increasing litigation claims from professional footballers and their clubs will increase, which will threaten the viability of the CSP PLI scheme as a whole.

##### **Why have you included all non-UK worldwide top tiers clubs?**

Many former elite professional footballers continue to play football overseas once their main career has ended. Clinical negligence claims from these players can still be costly, so the CSP has decided to exclude players at all other top-tiers worldwide clubs from the PLI scheme. The UK is not the sole region where members work with elite footballers.

##### **Does this affect any other sport?**

No. This change only affects the treatment of professional footballers from the Clubs, Leagues and National teams as defined by the policy Exclusion. It does not affect any other

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sport, or sports employer. If other sports or contexts alter the risk exposure of the scheme, then we will take appropriate advice and review the cover provided to members.

#### 5. I believe I am affected by these changes – what should I do now?

This will depend on whether you are employed by your football club, a National team, you are self-employed, you treat affected footballers in your own, or someone else's private practice, (or a private hospital as part of a contract to treat footballers) or promote your services to the Clubs and players affected.

##### **I am employed by my Club – what should I do?**

An employer is legally liable for the acts and omissions of its employees that occur during the course of their employment. The Society has been advised that all affected football Clubs will have appropriate corporate medical malpractice in place on or before 1<sup>st</sup> July 2015. CSP members who work with affected Clubs and/or footballers should obtain a copy of their Club's policy summary directly from the policy provider SEMPRIS and direct any queries relating to the policy directly to Neil Redman at SEMPRIS on [Neil.redman@healthpartnerseurope.com](mailto:Neil.redman@healthpartnerseurope.com) and not to the CSP or Graybrooks. This is because the CSP is not part of the insurance policy between SEMPRIS and the Clubs.

We would also advise CSP members to contact their Club's HR department and SEMPRIS to ensure

- they are named as individuals within the corporate Club policy
- the policy is sufficient for the work the club requires members to undertake as part of their employed role
- the policy adequately caters for all of employed member's future and past work with the excluded players, even if undertaken at another club.

Head physiotherapists at Clubs are also advised to establish if the policy provides cover for physiotherapy students on placement who may work with affected players, and also that policies are in place to ensure that the 'named employee' list is kept up to date within Clubs to reflect staff changes.

If you are not employed by a football club, but work for another employer that provides services to football clubs, find out what cover your employer has in place to cover the medical malpractice liabilities of its employees. If your employer is unwilling to give you this information, or you discover that your employer does not hold medical malpractice indemnity for its employees, then please contact the CSP for trade union support.

The Employment Relations and Union Services (ERUS) function of the CSP has officers who can assist you with understanding your employment contract terms and conditions, workplace rights and your employer's obligations to you.

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**I am self-employed, what should I do?**

If you are self-employed, or a contractor, working directly for an affected Football Club you could discuss with your club the opportunity to move onto a contract of employment and becoming a full or part-time employee. This would mean your employer should be responsible for your indemnity.

If you are a self-employed physiotherapist, treating players in your own clinic or working in someone else's physiotherapy clinic, as part of a contract with an affected football club you will need to take out alternative indemnity if you want to continue working with affected footballers after 1<sup>st</sup> July 2015.

If you are a self-employed physiotherapist with a private hospital, and that hospital is contracted to provide services to affected players you will need to take out alternative indemnity if you want to continue working with affected footballers after 1<sup>st</sup> July 2015. The Clinics and Hospitals themselves will also need to confirm whether any changes are necessary to their Corporate Liability policies.

**I run a private physiotherapy clinic treating affected footballers, what should I do?**

You need to consider both your individual insurance and your business insurance. Check your business insurance and ensure it covers your business for the treatment of professional footballers. Many business policies already exclude treatment of professional footballers.

If you hold a direct contract with a football club to treat affected players you will need to arrange separate insurance to continue treating these players after 1<sup>st</sup> July 2015.

**6. Your employer and their role****Shouldn't the club cover my indemnity insurance?**

Yes. An employer is legally liable for the acts and omissions of its employees that occur during the course of their employment. The Society has now been advised that all affected football Clubs will have appropriate corporate medical malpractice in place for their directly employed medical staff on or before 1<sup>st</sup> July 2015. If you are not directly employed by a club, find out what cover your employer has in place to cover the medical malpractice liabilities of its employees. We know there has been a significant increase in the last few years in attempts by football clubs and their insurers to pass their indemnity responsibilities onto individual employees, where the employee holds their own cover. There are regular and ongoing attempts by clubs to establish if they can hold individual physiotherapists personally accountable for clinical negligence claims, even when those members are employed by the club. These attempts can relate to any actual or potential, current or future claim.

This employer's indemnity will only cover you for the work you do as part of your employment, and if you undertake any work with affected footballers in a private capacity, or work outside the terms of your contract, or beyond the scope of what you are employed

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to do, you will not be covered by your employer. If you undertake such work you will need to arrange separate personal Professional Indemnity/Medical Malpractice and Public Liability insurance. The CSP PLI insurance will cover any other private or voluntary work outside the scope of your employment, not involving the affected Clubs or players, subject to compliance with the policy terms and conditions.

Remember, there is no employer's cover if you are self-employed providing services to a Club, or are a contractor to the Club, and you will need to have personal arrangements in place for your work.

### **Does my employer's vicarious liability cover me for all my work?**

No. It only covers you for those tasks that your employer requires you to do as part of your defined job and is aware that you are doing. That is why it is essential that you have an up to date **written** job description, as this is the general agreement between you and your employer as to what do in your job. If you do anything that is clearly outside of your job, scope of practice or role, your employer could argue that they did not authorise you to do these tasks and thus not cover you.

### **Does my employer's vicarious liability cover me for any work I do elsewhere?**

No. It only covers you for your employed role in accordance with the terms of your contract. If you undertake any work outside your employment, such as treating family, friends, or working in any other paid, unpaid or voluntary capacity, then you will need separate insurance.

### **Can my Club sue me back if it has to pay out for my job related mistakes?**

Realistically this would be unlikely. An employer is liable for the negligent acts of its employees. An employer can usually only seek to recover the money it has to pay out for an employee's negligence if the employer can prove that the employee had breached their employment contract, and so was not acting 'in the course of their employment', and that the employer was entirely blameless in the event or from the employee's negligent actions.

We do not believe that any employed physiotherapist, in any setting, should need to worry about this, as no reasonable physiotherapist would seek to wilfully breach their employment contract and act outside the terms of the job they were employed to do.

Physiotherapists who are worried about this may find it helpful to review their written employment contract and job description and ensure they broadly match the job they do. If you do not have a written employment contract you should ask for one immediately.

### **My club pays for my individual indemnity on my behalf, does this make any difference?**

No. Some clubs believe that if they pay the indemnity subscription for their employee, then the club too is able to get indemnity. The CSP PLI scheme has never offered any form of indemnity to any type of employer. There has been an increase in attempts by Football Clubs to pass on their employer indemnity responsibilities onto individual employees, where the employee holds their own cover.

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### **What happens about insuring doctors working in professional football?**

As a result of *El-Safy* case, the Medical Protection Society and Medical Defence Union have modified their indemnity for doctors working in professional football. Doctors now also have an option to source their indemnity from specialist commercial providers or from Clubs signed up to bespoke schemes to provide indemnity to their employed medical staff.

## 7. CSP members sharing the cost of insurance

### **Why can't you ask members to pay more to cover the costs of insuring all CSP members?**

The CSP scheme is designed to cover the general risks of practice that the vast majority of members face in their work. We do not believe it is fair to ask all members to cover the costs of the greater risks that only a very small number of members are exposed to.

The CSP have to risk manage the PLI scheme to ensure it remains economically viable, and whilst the cover is wide in scope there are some extremes that pose potential threats, which would be irresponsible to ignore. We already exclude one client group from the CSP scheme – animals.

### **Did you consider anything else before just cutting cover?**

We have considered alternatives such as stratified cover, or revision to the top-up schemes available to individual members but these have proved impractical to implement. This is an area of insurance that requires particular expertise, and we understand the Clubs and members affected will all have access to alternative specialist insurers.

### **Isn't this just about the CSP making money?**

No. The CSP does not generate any income or profit from providing the PLI scheme to members. Any premium paid for cover is related to the claims experience known to date. Due to the rising frequency and cost of claims, the premium paid by the CSP for indemnity for its members has not covered the costs to the insurers of paying damages and costs for members' proven clinical negligence. In July 2014, there was a 50 per cent increase in the premium paid by the CSP for the PLI scheme for members, with no scheduled increase in membership subscriptions, to restore the integrity of the scheme. The PLI scheme needs to balance premiums paid with costs incurred, and can no longer run the risk of indemnifying work with professional footballers, as it threatens the overall stability of the scheme.

## 8. Understanding insurance risks

### **Isn't this a rather heavy handed approach given the risk of a claim as a result of physiotherapy is low?**

Compared with other professions, overall the physiotherapy profession has a good risk profile and this is reflected in the fact that physiotherapists benefit from lower indemnity premiums than, say, doctors. However, any patient who believes they have not received a 'reasonable standard of care' may seek to bring a claim for clinical negligence. All individual physiotherapists who have contact with patients can therefore be at risk of a claim against them. Some areas of practice are linked to a higher risk exposure to claims. Those working with highly paid footballers and football clubs are particularly vulnerable to high value claims.

### **What are the main drivers for a claim?**

An individual patient's underlying exposure to sustaining an injury, and the consequences of the management of that injury by a physiotherapist, are the main drivers and indicators of where a claim against the PLI scheme may materialise from.

### **What about the 'net worth' of an individual – does that matter?**

The 'net worth' of an individual patient in itself does not drive the risk of that person sustaining an injury, but will be a subsequent consideration where 'loss of actual and/or future earnings' form part of a negligence claim.

### **Does the complexity of what a physiotherapist does make any difference?**

No. A claim is most likely to arise from a 'failure to diagnose' or a 'failure to refer on' on the part of the physiotherapist. With the increasing autonomy of the profession, and the growing number of contexts where a physiotherapist has the first and/or only contact with a patient, there is a growing risk of a physiotherapist failing to either make an appropriate diagnosis, or failing to identify in a timely manner that a medical referral is required. The complexity of the intervention delivered by a physiotherapist does not alone indicate the likelihood of a claim.

### **Why have Physiotherapists been singled out?**

Along with Doctors, the Club's Physiotherapists hold positions of significant responsibility within the footballing profession. This exposes them to greater accountability if things go wrong with player's treatment/rehabilitation programmes. The same degree of responsibility does not generally extend to other healthcare professionals, although insurers are increasingly becoming aware of the risks associated by insuring healthcare professionals in this environment, and may at some point in the future take steps to modify the terms on which all cover is provided.

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## **Putting everything together, where does the highest exposure to risk of a claim come from?**

The circumstances whereby there may be a high exposure to the risk of a claim is from:

- An individual whose occupation is linked to participating in sport.
- An individual who has a high income related to their participation in sport.
- A context whereby a physiotherapist is included in the provision of rehabilitation following injury.
- A context whereby an employer engages both the sports person and the physiotherapist and they or their insurers seek to reduce their own exposure to the cost of a negligence payout.
- A context where there is already a history of claims arising from a particular type of environment.

## 9. What options do I have for cover for work with affected football Clubs?

### **Cover from your employer.**

This is the simplest solution and does not cost you anything, but of course, is only an option if you are employed. The Society has now been advised that all affected football Clubs will have appropriate corporate medical malpractice in place for their directly employed medical staff on or before 1<sup>st</sup> July 2015. If you are employed, find out what Medical Malpractice cover your Club has in place for the benefit of their employees.

### **Cover through an insurance broker.**

A broker will source certain types of insurance and find the underwriters that provide suitable policies of insurance. Not all brokers source all types of insurance. The CSP has an insurance broker – Graybrooks – that we use to source our insurance products that we provide as a membership benefit. If you choose to use your own insurance broker, what you are looking for is a ‘medical malpractice’ policy that covers the treatment of professional footballers.

We have asked our brokers to find an alternative medical malpractice insurance policy that may be suitable for our members who will no longer be covered by the CSP scheme. Whilst we understand that very few underwriters provide this type of policy, we are optimistic that we may have found a suitable provider. Updates will be given on our Treatment of Professional Footballers webpage: [www.csp.org.uk/footballpli](http://www.csp.org.uk/footballpli)

Because of the nature of the risks involved, many medical malpractice indemnity providers do not offer cover for the treatment of professional sports people and/or will limit the extent of activities you are indemnified for. You should read the full policy wording of any indemnity product, and take appropriate insurance advice to ensure the product is suitable for your needs.

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**How expensive is football indemnity cover?**

The annual cost for football indemnity cover is reflective of the risk profile of professional footballers and the costs involved in defending claims and/or paying out for proven clinical negligence. It is therefore significantly more expensive than the cost of the main CSP PLI scheme which is included as part of your CSP annual membership fee.

**What if I cannot afford to pay for football indemnity?**

We know this is a concern. If you are employed, you should not have to worry about this – your employer is required to provide you with indemnity for your work. If you find out they do not have proper cover in place, this is still a matter for them and not something you should worry about sorting out on their behalf. We have asked the HCPC to clarify their position towards employed registrants who discover their employer does not have proper employer's cover in place and we are currently waiting for their reply.

If you are self-employed directly with an affected Club you will need to make sure you have alternative cover in place. To maintain your HCPC registration you must have appropriate indemnity in place to cover all your work. Regrettably if you cannot ensure that appropriate indemnity is in place for your football work you will need to stop working with affected footballers.

**10. What happens after 1<sup>st</sup> July 2015**

For this paragraph, it is helpful to understand the meaning of the words 'retroactive cover' and 'run-off' cover.

Run- Off Cover: This is the term used to describe the ongoing cover afforded for your previous work. Run-off cover is necessary when you retire or stop doing the type of work in question or the existing insurance policy is cancelled or the terms of the existing policy remove cover for certain activities. There must always be some form of ongoing insurance to deal with claims that arise from previous work. This may be in the form of "Run-off cover" under a previous policy, or Retroactive cover under any new policy (see below).

Retroactive Cover : This is the term used to describe cover provided for your previous work when you take out an alternative insurance policy to cover work that is no longer covered under a previous insurance. For example where no "Run-off cover" is provided by your previous policy, any new insurance must include "Retroactive cover" that is sufficient to cover new claims that arise from your previous work.

**I will be continuing to treat players after the 1<sup>st</sup> July 2015.**

You must ensure that you have alternative indemnity in place to continue treating affected footballers. The new cover must include also 'retroactive' cover for your previous work, and run-off cover for when you finally stop treating affected footballers.

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There is no run-off cover from the CSP PLI scheme for any new claims from an affected footballer after 1<sup>st</sup> July 2015 regardless of the date of treatment.

**I will have stopped treating all affected players by 1<sup>st</sup> July 2015.**

You do not need to take any action. Your CSP PLI scheme will provide ‘run-off’ cover for any claim arising after 1<sup>st</sup> July 2015 for treatments completed before 1<sup>st</sup> July 2015, provided that you do not work with excluded footballers in any circumstances at all, at any time after 1<sup>st</sup> July 2015, and you otherwise satisfy the policy terms and conditions.

**I plan to stop treating players, but what happens if I start treating them again after 1<sup>st</sup> July 2015?**

If you start again, at any time after 1<sup>st</sup> July 2015, you must ensure that you have alternative indemnity in place to treat affected footballers. This must include retroactive cover to include all your previous work including work undertaken before 1<sup>st</sup> July 2015, and run-off cover for when you finally stop treating affected footballers. If you continue, or stop and then start again, the CSP scheme will not provide any cover for your previous work.

**I will be continuing to treat players but I plan to retire sometime after 1<sup>st</sup> July 2015.**

You must ensure that you have alternative indemnity in place to continue treating affected footballers; this cover must also include both retroactive cover for your work pre-1<sup>st</sup> July 2015 and run-off cover for all your work, when you retire.

**What if a life threatening event occurs to an affected footballer on the field of play, and a physiotherapist, who is not indemnified to treat top-tier footballers, renders lifesaving treatment?**

This is an extremely rare event. There have been cases whereby a physiotherapist has offered, or been called upon, to provide lifesaving intervention to a football player they were not expecting to treat. In such circumstances, indemnity will be provided under the terms of the ‘Good Samaritan’ clause within the CSP PLI scheme. The “Good Samaritan” cover is restricted to treatments administered at the scene of a medical emergency, accident or disaster by a member who is present either by chance, or in response to a medical emergency.

**11. What about footballers treated in NHS hospitals?**

**Do these changes affect NHS physiotherapists?**

No. This is because NHS physiotherapists are employed directly by their NHS organisation and not by football clubs. Nor are NHS organisations specifically contracted by football clubs to provide services to a Clubs players.

**Do these changes matter if a footballer needs NHS care for a condition?**

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No. Football players, like any other citizen, may be entitled to receive free NHS emergency or elective care. If a footballer believes his NHS treatment was negligent, any claim would be against the NHS hospital and handled by the NHS Litigation Authority. All NHS Trusts belong to a collective 'risk pooling' scheme, called the Clinical Negligence Scheme for Trusts (CNST), whereby all the Trust pay a sum of money into a pot, and when any one Trust has a claim against it, the collective pot pays out if negligence is proven.

## 12. What about footballers treated in, or by, private hospitals?

### **Do these changes affect physiotherapists employed by private hospitals?**

No. This is because employers stand liable for the negligent acts of their employees.

This will however affect you if you provide services to private hospitals on a self-employed basis, and where the hospital have a contract to provide medical services to the Clubs or players affected, or otherwise promote their medical services to them.

## 13. Top- Up and Alternative Insurances

We know the topic of insurance is extremely complex and difficult to understand. We have explained many of the terms in the glossary at the back of these FAQs, and here we explain why it is important to understand what they mean and how they interact.

### **What is the difference between 'top-up' and 'concurrent' insurance?**

A 'top-up' insurance is an additional indemnity provision that is only activated when the limits of the main underpinning scheme have been reached. A 'concurrent' insurance is where an individual has bought two policies that cover the same risks and/or circumstances. Members should be aware of the potential penalties contained in policies where concurrent (or dual) insurance is involved.

### **What difference does this make?**

Most insurance policies have a clause whereby they will not provide cover if it is found that an alternative source of indemnity is provided, for example by the existence of a concurrent policy covering the same risks. In effect, by having concurrent policies for physiotherapy work you may have inadvertently invalidated all of your policies and you may be uninsured for your entire work.

### **Can I still get individual top-up to the main CSP PLI scheme for work with professional footballers?**

No. From 1<sup>st</sup> July 2015 the option for individual top up for the treatment of professional footballers as defined in the Exclusion is being withdrawn. The PLI cover and top-up options relating to other footballers not affected by the Exclusion continue to be available.

### **Will my professional network 'top-up' offer cover instead?**

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No. The top-up provision for the PhysioFirst and AACP professional networks already excludes the treatment of some professional footballers, and the wording will be modified to exclude the treatment of other professional footballers as defined in the Exclusion.

#### 14. Why CSP membership is still a valuable asset to you.

##### **I'm going to lose my indemnity insurance for the main part of my work, one of the main reasons why I joined the CSP. Why should I stay a CSP member?**

You can be assured that your CSP PLI scheme will remain effective (subject to its terms and conditions) to cover claims for any other physiotherapy work you undertake, and for footballers within UK clubs not affected by this change. Even when the CSP scheme will not cover a claim against you, you can still access the advice and support of the CSP brokers.

However being a member of the CSP is about far more than indemnity insurance. For instance we offer:

- Support from the CSP Employment Relations and Union Services which includes legal representation if there is an HCPC complaint against you. They will help you manage your case and will ensure that you have full legal representation by a barrister if necessary, at no individual cost to you.
- Work Place Representation – ERUS support is on hand to help members with any problems at work. For member working with football clubs, this may be extremely important and can cover matter such as
  - Ensuring your employer understands their liabilities to you as their employee
  - Contract matters
  - Employment and dismissal concerns
- A range of benefits to members as part of the CSP membership package, the majority of which are free. These services are currently provided by Thompsons, a specialist employment, trade union and personal injury firm, and include the following:
  - Advice and claims management if you have suffered a Personal Injury, Road Traffic Accident injury or holiday injury
  - Free legal advice on non-employment related matters
  - Help with Wills and probate.
  - Advice on copyright
  - Advice if you believe you have suffered injury through the clinical negligence of a health professional.
  - Access to the CSP's library and the latest professional news in the fortnightly journal of Frontline.

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## 15. Where can I find further information?

Have a look at these resources in the first instance:

CSP PLI webpages:

<https://www.csp.org.uk/professional-union/practice/insurance>

CSP Information Paper PD027: Insurance & Physiotherapy Practice:

<http://www.csp.org.uk/publications/insurance-physiotherapy-practice>

The CSP Insurance brokers:

[www.graybrook.co.uk](http://www.graybrook.co.uk)

Graybrook Insurance Brokers Ltd

8 Chandlers Way

South Woodham Ferrers

Essex. CM3 5TB

**Date: 11<sup>th</sup> May 2015**

## Glossary of Terms

Insurance Broker	An intermediary who negotiates a policy of insurance between the policy holder ('insured') and the underwriters ('insurers').
Claim	To demand or assert as a right. Facts that combine to give rise to a legally enforceable right. To make a demand for compensation due to harm caused.

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Claimant	The person(s) making a claim.
CNST	Clinical Negligence Scheme for Trusts (Eng only).The risk pooling scheme operated by the National Health Service (NHS) whereby all organisations eligible to join the pool, pay a sum of money that is used to pay for clinical negligence claims against any of the member organisations. There are similar schemes in Scotland (Clinical Negligence and Other Risks Insurance Scheme - CNORIS), Wales (Welsh Risk Pool Service (WRPS)) and Northern Ireland (Clinical Negligence Central Fund (CNCF)) for their National Health Services.
Concurrent Insurance	Two or more insurance policies running at the same time and insuring the same risks.
Costs	The fees involved in bringing a litigation claim. Costs include fees for the lawyers, expert witnesses if used, charges, disbursements, expenses and damages awarded.
Damages	The financial compensation paid to a claimant to reimburse them for losses and/or injuries sustained as a result of a proven legal wrong-doing e.g. clinical negligence. The type of damages awarded in clinical negligence claims are classified into 'general' and 'special' damages.
Defence	The defendants opposing view, or denying the truth, of the claimant's case.
Defendant	The person(s) against whom a claim is made.
Indemnity	This means 'securing against loss' and refers to arrangements that are put in place to provide compensation for any losses incurred.
Insurance Policy	A legal contract between two parties to provide indemnity against specified risks materialising. The 'insurer' takes on liability for the risks after a 'premium' has been paid by the 'insured', so that any claims made will be covered by the policy, subject to its terms and conditions and only up to the financial limits insured
Insurers	The underwriters to an insurance policy.
Liability	Legal obligations and duties.
Litigation	An action brought in court to enforce a particular legal right.
Medical Malpractice	Improper, unskilled, or negligent treatment of a patient by a doctor, dentist, nurse, pharmacist, or other registered health care professional in the course of their work.
Professional Indemnity	In this context means the arrangements in place to cover civil liabilities from claims arising from medical malpractice and professional risk.

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Public Liability	In this context it means the arrangements in place to cover civil liabilities from claims arising from your work that are not associated with personal injury to your patient.
Retroactive Cover	This is the term used to describe cover provided for your previous work when you take out an alternative insurance policy to cover work that is no longer covered under a previous insurance.
Risk	Potential dangers that, if they occurred, could harm a person, object or event.
Risk Pooling	One method of risk management used in insurance, in this context most commonly used by NHS organisations. All organisations eligible to join the pool, pay a sum of money that is used to pay for clinical negligence claims against any of the member organisations within the pool.
Run-Off Cover	This is the term used to describe the ongoing cover for your previous work. Run-off cover is necessary when you retire or stop doing the type of work in question or the existing insurance policy is cancelled or the terms of the existing policy remove cover for certain activities. There must always be some form of ongoing insurance to deal with claims that arise from previous work.
Top-Up Insurance	A second, linked, insurance policy that kicks in once the limits of the primary underpinning insurance policy have been reached.
Insurance Underwriter	The 'insurer' which assumes the liability for the risks insured according to the policy terms and conditions, up to the financial limits specified. Underwriters evaluate the risk and exposures of their clients. Underwriting involves measuring risk exposure and determining the premium that needs to be charged to insure that risk.