

## 399a - Insurance

With Steven Bruce and Nick Elwell

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**Steven Bruce** 00:05

I have the ever sexy subject of insurance for you. This is, I don't know, this is a tricky one to cover, for reasons you'll be all too familiar with. There are relatively few insurance providers around, and we're never comparing like for like. So simply looking at premiums is only part of the story also, and I've seen this with a number of members who've come to me for help and advice recently, most people don't care about their cover until they actually need it. You know, as long as they've got the legal minimum, then they're happy. And I've got a juicy story to illustrate just that in a little while,

I suppose. I have to begin with a disclaimer. I'm not a financial advisor, and I am probably every bit as confused by insurance as you are. The policy wording seems purposely designed to conceal every salient aspect with jargon, and I'm endlessly suspicious that there will be a hidden exclusion clause somewhere, which means I can't get any help with what can be an extraordinarily expensive process.

And just to illustrate that, if you find yourself up in front of the beak, as it were, a decent barrister could well set you back £50,000 for a week's court appearance. So where do you turn to for insurance advice? After all, insurance reps are a sleazy, untrustworthy species lurking somewhere down there with the used car and double glazing salesman.

My guest today is Nick Elwell, welcome, Nick, you're an insurance rep, I believe.

**Nick Elwell** 01:30

Thank you for the invitation.

**Steven Bruce** 01:32

You're actually the managing director of BGI, which is a fairly hefty insurance broker, aren't you? And you are the people that we at APM use and recommend. But as I say, I'm not a financial advisor or anything like that.

We have had so many questions recently about insurance, and I have promised everybody that this is not a sales pitch for BGI, but I need someone who knows what insurance policies are talking about when they use all those jargon expressions. So we're hoping you can be fairly even handed about what you say.

**Nick Elwell** 02:02

Fair enough. I think I make the worst salesman on the planet. So you're fairly safe.

**Steven Bruce** 02:06

Well, the first thing I wanted to talk about was the whole business of what types of insurance that people might want to take out and what they're obliged to take out. And I've listed a few of them on a slide which is going to pop up in here in a second.

So we're legally obliged to have what I call medical malpractice insurance, but which is referred to in the osteopathic and chiropractic acts as professional indemnity insurance. So they must be the same thing.

**Nick Elwell** 02:43

Yes, no, right, okay, professional indemnity insurance is much the same as medical malpractice insurance, but generally speaking, professional indemnity insurance will exclude physical damage or injury, okay, whilst medical malpractice, clearly is designed specifically to include that damage.

**Steven Bruce** 03:11

So the important thing in here is that if your policy says medical malpractice, it will include professional indemnity.

**Nick Elwell** 03:17

That is the intention of what the Act says, it just hasn't said it very clearly.

**Steven Bruce** 03:24

Again, people are going to be wondering, when they see these terms bandied around, that they're getting the right policy. Clearly, there are other things that we need to think about. I've got several up on this board here. Let's look at public liability and Employers Liability first. Are we required to have those separately from our medical malpractice insurance?

**Nick Elwell** 03:46

Yes is the obvious answer. Generally speaking, I think that the regulatory material includes public liability as a matter of course, along with professional indemnity and then employers liability is a legal requirement, with or without being an osteopath.

**Steven Bruce** 04:07

you said, generally - generally you think, but presumably you can speak definitively about the policies that you offer to practitioners.

**Nick Elwell** 04:14

We will always give public liability with professional indemnity and also product liability. Product Liability relates specifically to things you sell or give, or treatments you give using a machine or a mechanism of some sort,

**Steven Bruce** 04:29

Okay, I'm pretty confident that all the policies I've looked at in preparing for this show, I've looked at the policies offered by the Institute of osteopathy (and I use their name rather than a broker, because theirs is what's called a block scheme - you can only get it through the IO) I've looked at the policy offered by the British Chiropractic Association, again, another one of those block schemes. And I've also looked at Balens who are independent, and they all cover public liability and product liability, I think within their policies.

Employers Liability, presumably, you only need if you have staff,

**Nick Elwell** 05:10

you've got to be careful about the term staff. If you employ someone just for a couple of days and you're instructing them what to do, technically, they are an employee.

**Steven Bruce** 05:24

Well, you'll know that a lot of osteopaths and chiropractors work in group practices where the osteopaths or chiropractors are called associates. They turn up in the principal's building, maybe with other people there, maybe not with other people there. But they're not acting under direction. They are simply doing their own thing, as medical professionals

**Nick Elwell** 05:45

in that circumstance, who would raise the invoice for the work that they were doing?

**Steven Bruce** 05:51

That's a very good question. So, not invoicing the patient, but the invoice that the practitioner would raise for their money at the end of the month? Yeah, we probably can't answer that question, because it will differ across practices

**Nick Elwell** 06:06

Absolutely So, so that's what people need to look at to begin with. If you are part of a clinic, and people come through the door and you see them as you will, and then you invoice those individuals, then you're not employed. But if there's a receptionist and it's the clinic that invoices for the work done, and then you get paid by the clinic, the chances are you are an employee in the terms of not PAYE, but in the terms of the employment legislation,

**Steven Bruce** 06:39

Well, that further confuses things, and it's probably outside the scope of today's discussion, because as far as I was always thought, if you're an employer, then you have to pay PAYE and national insurance. But there are exceptions,

**Nick Elwell** 06:59

if you think of labor-only subcontractors. They are by definition, employees in the eyes of the law,

**Steven Bruce** 07:07

We won't go down that route, because it's going to get very, very complicated

**Nick Elwell** 07:09

The best thing is, if anybody's got any queries or questions, ask when you're asking about insurance,

**Steven Bruce** 07:15

That does bring me neatly on to entity insurance, though, which is something which has been brought up by a number of people prior to this show. Entity insurance, as I understand

it, is where a client, in our case, a patient with an ax to grind, can decide to pursue the business, which is an entity, rather than the person that carried out the treatment.

**Nick Elwell** 07:45

Indeed, that would be normal. If you go into a clinic and you are treated by a person within that clinic and something goes wrong, but you have been invoiced by the clinic. Your contract is with the clinic, not with the person who gave you the treatment. So you will always have your first right of call, if you like, against the clinic and that is the entity. The individual is then the employee or the subcontractor, depending on how the business has been set up.

The world of osteopaths and chiropractors is slightly different, because they each individually have to have insurance, whilst if you just run another business of any sort, you can insure all of your staff under one collective policy.

**Steven Bruce** 08:39

Excuse me, this is more complicated than I expected, because, let me use my own clinic as an example, and I don't think it's vastly different to a lot of other clinics. A patient comes into the clinic at the end of their treatment, they're not actually given an invoice. They're presented with a card machine or a click on a button on the clinic software whereby their payment is taken and they only get a receipt if they ask for one.

I suspect that in the past, our receipts have had the clinic name on them, although that will be changing in the future. But if they don't get that, all that's happened is some money has been paid, and at the end of the month, we issue an invoice to our practitioners saying, you owe us this much money for room rent, and by the way, we've now deducted it from the money we took on your behalf - here's your money back.

**Nick Elwell** 09:25

That's more complicated because of the way that it's done. So I wouldn't like to speak in general terms. We need to look at each case individually

**Steven Bruce** 09:35

So entity insurance is probably a good thing to have if you are running a clinic, regardless?

**Nick Elwell** 09:39

absolutely the entity is going to have some form of value to it. It's going to perhaps own the clinic. It may indeed employ other people, such as receptionists and what have you. They all need employers, liability insurance. And if the clinic owner stipulates when the Osteopath or Chiropractor can and can't work, they will almost certainly be deemed employees, right?

**Steven Bruce** 10:04

Okay? And to be an entity, do you have to be a partnership or company

**Nick Elwell** 10:12

No. as an individual, you are a legal entity. You could be a partnership, and that partnership would be a separate legal entity, and you can be a limited liability company, and that, again,

can be separate, so the entity is a legally recognizable body, be it individual or corporate, okay?

**Steven Bruce** 10:33

The last thing on this list, which I hadn't covered so far, is legal expenses, because I think that's one of the things that scares people, but it doesn't really scare them until the prospect of a complaint is raised. And I mentioned earlier on, this is very recent. I was speaking to a barrister about a case that he might have taken on, and it was going to cost 50,000 pounds for what would probably have been a week at the Professional Conduct Committee, which is not a court in the sense that, as you know, they're slightly different. That's an awful lot of money. Perhaps you could talk to us about legal expenses. I imagine that legal expenses is automatically included with policies for practitioners.

**Nick Elwell** 11:20

Generally speaking, it's not included. It's normally done by a separate, independent organization.

**Steven Bruce** 11:30

but if I go to the BCA or to the Institute of osteopathy or Balens and say, I'm an osteopath, I want cover, will they not bundle that legal expenses in with the other policy,

**Nick Elwell** 11:42

they will almost certainly bundle it, but it is a separate policy, a separate contract,

**Steven Bruce** 11:47

okay, right? Do I pay you a separate fee from my legal expenses? Or is it all just one bill?

**Nick Elwell** 11:54

You tend to pay what you're charged, and that could be five or six different policies for each of the different sections, or it could just be one invoicing.

**Steven Bruce** 12:06

And are all legal expenses policies equal? No, okay, give us some detail on that. What should we be looking for?

**Nick Elwell** 12:16

It's really difficult to tell what people should be looking for, because each person is going to have a different value to the services they can get.

Recently, we've changed the one that we do to include complaints. Complaints isn't normally considered a legal issue. It's just an irritation. But we've adopted the principle that if somebody gets a complaint, if you can get a solicitor to send that report back, even if the solicitor is instructed to send it back in nice, warm, cuddly words. It is still coming from a solicitor, and that will make the complainant think twice about continuing.

If it's a genuine complaint, then it'll go through anyway. So we're not trying to stop complaints. We're just trying to avoid those irritations that aren't really complaints, they're irritations.

**Steven Bruce** 13:04

Interestingly we did a show quite a few years ago now on the subject of fitness to practice, and we had a whole lot of people on the panel, including the barrister I just mentioned, and he was saying that if insurers employed a legal representative to deal with complaints at an early stage, they would probably save a lot of money in the long term, because they wouldn't be paying for a barrister at 50,000 pounds a week to cover the complaint. It could be dealt with as you described

**Nick Elwell** 13:37

We have now put in place,

**Steven Bruce** 13:42

I can't expect you to know about other people's policies, but do other insurers do the same thing?

**Nick Elwell** 13:47

A couple of the other insurers will provide defense costs for industrial tribunals, if you like, or being had up by the general osteopathic counsel or the chiropractic equivalent, yeah, but they don't actually deal with soft complaints. Soft complaints, meaning, when I came last week, I didn't like the way you treated me, and I'd like my money back please.

**Steven Bruce** 14:13

Okay, yeah, so you're calling that a soft complaint, because it's not likely to lead to significant damages of any sort. I'm sorry, I should be clear, if you go to either The General osteopathic Council's or The General chiropractic Council's, professional conduct committees, they can't award damages. They can't make any financial award against you as a registrant.

But of course, and we've explored this on many occasions, a complainant might see this as a free way of finding out whether they could get a successful outcome in a civilian or a criminal court. So yeah, I'm thinking about compensation for the patient, rather than money back.

**Nick Elwell** 14:58

Well, lots of people, unfortunately, will just try and get some money back out of the person that they've taken a service from. It's not a real complaint, it's just a try. So if we can persuade people to not continue with that try, then less osteopaths and less chiropractors are going to land up in front of their respective bodies.

**Steven Bruce** 15:23

I have a bit of paper here, and I didn't bring down all of the policies or anything like that. This one is actually from the Institute of osteopaths legal expenses cover and but it's pretty much the same you've assured me across the board, but it says in terms of being awarded legal expenses, your case must have at least a 51% chance of success. If it's 50% or below, then they won't cover you, which seems to me to be like that get-out clause, because the insurer themselves will determine whether it's going to be successful or not, won't they? Again, that's not that's not a criticism of the iO's policy because they're all the same, you told me

**Nick Elwell** 16:01

They are very similar, and it could be viewed as a get-out clause. But on the other hand, if every event that went to the lawyers was taken on, all of the lost causes would just push everybody else's premiums up by enormous amounts. And so you have to draw a line somewhere. The idea of being 50% I think, is rational, but very often, the 50% can be shifted a little bit, because if you're trying to defend a claim where someone's after you for a million pounds, and you know that you're not going to win it, then perhaps, if you were looking at a lower number, then the chances would change. And so your 50% odds would alter also,

**Steven Bruce** 16:54

indeed, but equally, if you were an osteopath or a chiropractor facing the Professional Conduct Committee, and instead of being struck off the register, you were merely suspended, you would possibly regard that as a success,

**Nick Elwell** 17:13

I would agree, but that's I would say, where most of the policy wordings are slightly weak, and you then depend on your broker to have that conversation on your behalf.

**Steven Bruce** 17:22

So what do you do in those circumstances?

**Nick Elwell** 17:25

At BGI, we've never had anybody in a situation where they're going to be struck off, but we have had situations where we've changed the goal post a little bit so that we fit within the parameters of the policies that's written.

**Steven Bruce** 17:43

I'm going to move on to this particular issue, which is about legal expenses. We've had a question from Martin, who says, can we choose any lawyer to represent us under your policy (he's talking about yours at BGI), or does it need to be one you recommend?

Now the reason I put this up is because same barrister Jonathan Goldring, who I have enormous respect for, and who both you and I know well, has pointed out to me that under the insurance company's legal expense insurance regulations 1990 the insured has the right to direct who they have represent them at a hearing.

However, some policies are written in a way that gets around that,

**Nick Elwell** 18:28

they are indeed, again, what the insurers are trying to do is limit their exposure, rather than not pay claims. And I think that's an important thing to understand.

The way that our policy does it is to pay a limited percentage of the individual's choice of barrister. So I think it's 40% currently, sometimes it can be more than that, if going to that barrister might actually produce a better result than going elsewhere.

**Steven Bruce** 18:59

So if I want to use a barrister, and it costs 50,000 pounds a week, I'm going to be paying a significant proportion of those fees. And if I don't choose my own barrister?

**Nick Elwell** 19:13

all of the fees are paid in accordance with the policy terms.

**Steven Bruce** 19:16

Okay? That's probably as much as saying, No, you can't pick your own legal representative, isn't it? Because no one's going to be able to say, well, right, I'll pick up the 30,000 pounds of these fees.

**Nick Elwell** 19:29

It depends, really on the nature of the claim. I think it's one of those things where the insurers cannot promise everything all the time, because the clients wouldn't want to pay the premiums, yeah, and therefore they have to draw a line, and different insurers will draw that line in slightly different ways.

**Steven Bruce** 19:51

And you were saying, as we were talking over coffee earlier, that you only need a couple of claims of £50,000, £60,000 or more to whack everybody's premiums up in a small market like osteopathy and chiropractic.

**Nick Elwell** 20:01

Indeed, if there are 1000 osteopaths and each paid 10 pounds a year for their legal expenses, that wouldn't cover one significant claim.

**Steven Bruce** 20:10

Yeah, yeah, and it probably accounts for the reason that chiropractic insurance fees are so much higher than osteopaths. I don't think they are worse practitioners than osteopaths, but of course, they had that big string of complaints a few years ago largely provoked by the Good Thinking Society, which I think led to quite a few payouts.

**Nick Elwell** 20:32

It created havoc for a little while in the UK market, even worse in the Irish market. But it didn't spread quite so badly to the rest of Europe.

**Steven Bruce** 20:41

Paul says, "I'm a director and employee of my own company. If I have BGI insurance with entity, do I need insurance in my personal name? Does the GOsC require individual insurance, which I think you answered a moment ago.

**Nick Elwell** 20:54

My understanding is that to be a member of the GOsC, you need to have insurance in your own name, yes, so there is no benefit in doing anything else.

The way that we get around that, and I think we're slightly different to most of the others, is that we will do a policy in the joint name of you and your business so that you have the cover you need, but then we can also provide contingent cover on all the other people who work



for you to make sure that you're covered for claims made against you, for accidents or incidents that they're responsible for,

**Steven Bruce** 21:26

Paul hasn't explained whether he's the sole employee of his company? I guess if you're a company there must be two employees

**Nick Elwell** 21:37

You can be a one man band and a limited company. That's fine, right?

**Steven Bruce** 21:41

Martin's followed up with his question, saying, how do the insurers decide which lawyers they recommend

**Nick Elwell** 21:50

all of the insurers have got legal firms on hand, if you like, and they've agreed special rates with them, and those rates are notionally discounted for the amount of work they pass through. So what we tend to look at is the quality of the firm, rather than the amount that they might not pay. That's a deal between them. We don't have any knowledge or control over it, right? Currently, the firm that we use is Kennedy's, who are a fairly well known London firm

**Steven Bruce** 22:23

And do they specialize in medical malpractice?

**Nick Elwell** 22:27

They specialize in all manner of things. So they have a marine department, a medical department, you name it, and they seem to have it.

**Steven Bruce** 22:35

Obviously you're going to be biased towards saying that BGI have got it right, but do you think it's important that someone looking for an insurance needs to assess the quality of the legal firm which is used by that insurer for their legal expenses?

**Nick Elwell** 22:52

I think it would be valuable to do so. In reality, I doubt very much that anybody would, because they rely on the broker to do that for them.

**Steven Bruce** 23:02

well, the chap that I was talking about earlier on in my introduction, I know that he was quite unhappy when he got his legal advice, because he felt that the lawyers didn't specialize in medical malpractice at all, and that their biggest business was elsewhere, and I don't know the size of the firm, and I don't want to give away who the firm is, because that then makes this sound a little bit less of a fair hearing, as it were, but he was able to find out who the lawyers were, and was very unhappy with the advice he was offered. Possibly he wasn't getting any advice he wanted. I'm not sure.

**Nick Elwell** 23:43

That's a fair point too, because everybody's always right until they're proven wrong.

**Steven Bruce** 23:46

Indeed, Dom says, Do you think we're adequately insured for any pre Investigating Committee advice, and could we be insured for judicial review of the GOsC?

I think he probably means hearings at the PCC, which, of course, is separate from the general osteopathic council. So pre investigating committee advice. Have we covered that already?

Just to refresh people's minds about this, when a complaint comes in it goes to a screener at the general osteopathic Council, although not at the GCC, then if it's got some credibility to it, it will go to the investigating committee who will decide whether it is something which falls within their remit. And if it does, it'll go to the Professional Conduct Committee to then hear the case.

So up until the point where the investigating committee make a decision, the Osteopath doesn't get involved, or the chiropractor doesn't get involved that much, other than to provide basic information.

How much do we need? Are we insured properly for it? Could we be better insured for it?

**Nick Elwell** 24:48

I suppose the answer is yes, you can always be better insured for things, because you never know what's going to come out of the woodwork that hasn't been seen before. Yeah, and that's part of the trick, is to try and second guess what's going to happen in the future. Again, in the policy that we've put together, by including complaints, we hope to get over some of the gap between a formal complaint actually being registered and the irritation factor of it making its way down that line. It's fairly limited, in so far as I think the total we'll pay during that period is only £1800. And because we don't want every person to just do it all the time, there's a 20% co-insurance. So effectively it means that if there is £100 claim, you have to pay £20 pounds towards it. The £80 is what the insurers would pay,

**Steven Bruce** 25:43

Which I guess, if you're the person who's in the position of needing it, will sound a bit unnecessary, but of course, as you said earlier on, it's the only way that you and other insurers, excuse me if I use the same term, insurers to cover brokers as well, but it's The only way that you can keep the premiums down. By trying to minimize the extent to which policies are called on.

**Nick Elwell** 26:07

what we like to do, and I can speak, I think, for the entire insurance industry here, not just ourselves, is look after people who've got valid claims, and what we would like to avoid is those where we have frivolous claims. And so this is one way of getting rid of some of those frivolous claims. The reason that we introduced it was that we thought some of the complaints that were being made weren't being dealt with soon enough on a commercial basis. So we wanted to get a lawyer in front of the clients so that they could see that there was a professional response coming out, and they were then not tempted to push their luck

by just taking it on to the osteopathic Council or the chiropractic Council, whatever it might be

**Steven Bruce 27:00**

Simon made a very valid point here a little while ago. He says it's worth pointing out that many malpractice issues, he thinks about 70%, go to the legal stage because of lack of communication. For example, an osteopath doesn't return calls or reply to letters from the complainant.

I think it applies to the chiropractic world as well, and it's far better to avoid these complaints completely than have to draw on your insurance, isn't it, but the bulk of them are down to poor communication in one form or another.

**Nick Elwell 27:32**

Absolutely. I guess we could go down the line of providing advice on what to do with individual letters that come through, but until we know enough about what does come through, send them through, and we'll get them off to the lawyer, and then they can give us the advice on it. If it costs them 80 pounds to send out a letter and you have to pay 20 pounds towards it, it's got to be good advice and good experience, because you'll know for next time,

**Steven Bruce 27:58**

Everyone that I have spoken to who has been through the complaints process has said What an unbelievable strain it is. I think I'm the only person who's had a complaint against them, which went as far as the investigating committee, and I didn't feel under any stress, because I actively wanted it to go to the Professional Conduct Committee, I wanted to bring the issues out into the open. But I don't depend for my living on my title as an osteopath. So if, if they had struck me off, it didn't matter. But for everybody else, it does matter

Now I'm going to bring up that, that interesting case that I mentioned earlier on in more detail. I've promised that I'll try not to give away anything that would reveal who the registrant is, but the registrant treated a friend a year or so ago. The friend was insured through Bupa and submitted invoices to Bupa, and Bupa then sent a copy of what had been submitted to the registrant, asking him to confirm that it was correct, which he did. It turned out that not only had the patient claimed for 18 treatments rather than eight treatments, they'd also inflated the cost from 40 to 55 pounds. Bupa, of course, quite rightly said, we want to see the patient's notes, but they'd also checked and they knew that the price being claimed was wrong because they checked with the clinic itself, through the receptionist and through the website, which puts the registrant in a very difficult position. BUPA made a complaint to the general council about this. So the reason I bring it up here is because I'm wondering what support that registrant will get from their insurer in a situation like that,

**Nick Elwell 29:49**

I very much doubt that he would get very much support at all, because criminal actions, and this is what it would be, would be just that.

So a claim would be made where the charge was made against him, the insurers would look at the likelihood of it being successfully defended, and we're talking about the claim itself being proven right or wrong, rather than any consequences. Then they would say, Well, if

you were aiding and abetting someone to steal money, why would you expect us to insure you? I don't think it would be reasonable for all of the other osteopathic members to pay their premiums to help keep effectively a felon, he probably didn't think of it that way at the time, but that's what he is, out of prison.

I don't suppose he'll go to prison for it, but in reality, if it was serious enough, that would be the option, and that really isn't what insurance is for.

**Steven Bruce** 30:54

No, and we are talking in this case about a few hundreds of quid in the case of the registrant, but the person committing the fraud itself was actually also claiming 10s of 1000s of pounds on a separate medical issue and is clearly trying to defraud Bupa,

I suppose for me, the success for that particular registrant would be whether he was struck off, or whether he was simply suspended. I can't see any other possible outcome from the hearing than those two things. He is, by his own admission and by the facts guilty - he has done what they have claimed he's done. So, he's basically going to have to defend himself.

**Nick Elwell** 31:40

I would go so far as saying, I don't think any insurers would be happy in a defence being offered when he had basically already admitted that he had done wrong and it was his fault. He made a mistake

**Steven Bruce** 31:57

we talked about sexual misconduct before we came on air and you had something to say about that.

There was a case which I became aware of some years ago where an osteopath had been filming himself having sex with patients in his treatment room.

So you might not want to talk about a wider spectrum of possibilities than that, but that, again, would suggest to me that the insurer would say there is no possibility of you defending this successfully, given the evidence. So we aren't insuring you for the proceedings.

**Nick Elwell** 32:27

Again, that would be a criminal act. Yes, and the insurance is designed for civil action, not for criminal action. There is an element of criminal action covered within the legal expenses sections of most policies, and that will offer some help, but as soon as you turn around and say, well, actually, I'm guilty, it's really difficult to know what the insurers could do

**Steven Bruce** 32:53

I'm not sure he ever admitted he was guilty until he was found guilty, but the evidence was clearly there

**Nick Elwell** 33:01

Well, the legal expenses insurers, I think, would have kicked in to begin with and started defending. But then the defence, as well as the prosecution, both have to look at all the

details, and when it had become very clear that it would be theft, fraud, any other number of things, and what they actually hang it on doesn't really matter.

**Steven Bruce** 33:26

Take something simpler. You're fond of bra straps. I believe

**Nick Elwell** 33:31

Bra straps are quite interesting. Again, I won't mention names, but it's quite difficult for a person sometimes to defend actions because they have no means of defending it, rather than because they're guilty of the charge. And the particular case that we had is one where a person went in to have, effectively, a massage on her back that involved undoing the bra strap. She went in for a second time. She went in for a third time. On the third time, she complained that he didn't ask permission. This was an osteopath. Now, the way we looked at that is that it wasn't what he was doing, that was the charge. It's whether or not he was following procedures. And so we moved it away from being a sexual offense into being a procedural offence that we could defend.

**Steven Bruce** 34:29

Jules has asked whether you need to be a paid member of APM to have access to BGI's insurance. Jules, no, you don't have to be a paid member of APM to get access to BGI, but you get slightly lower premium if you are a member of APM, and you also get the wonderful support from people like me that being a member of APM brings together with over 70... that's enough of my sales pitch for APM. I hope people know us well enough to know that we're, you know, a fairly well meaning and good quality organization!

We've been asked, what the hell is the difference between claims made and claims occurring and this business of runoff cover? And I apologize to people, you're going to have to sit and listen very closely to this because it's confusing terminology

**Nick Elwell** 35:21

Most medical malpractice type insurance policies will be written on what's called a runoff basis. That is to say, every time you buy insurance, you are buying it for **claims** arising during the current year, irrespective of when those **events** may have happened. A claims made policy is more like your home insurance, that if you found that there was something that happened to your home five years ago, you would then claim against the policy that you had five years ago, not the policy you've got now,

**Steven Bruce** 35:56

So claims made means that the policy you had five years ago, will cover you for claims made now about something that happened then. Claims occurring means that any claim happening now will be dealt with by the policy you have now?

**Nick Elwell**

completely the other way around!

**Steven Bruce**

The other way around! I told you it's confusing. We talked about this before and you've managed to confuse me again. Does it matter, though, to somebody taking out a policy? Surely what we need to know is we're covered, and they all cover us.

36:25

Well, you need to make sure the broker is aware of what you had before so that he can build into the policy that he's giving you the cover that you need now, and covering back if it needs to cover back, and covering forwards, if it needs to cover forwards.

**Steven Bruce** 36:37

I've seen a question here from somebody who apologized for being late, but said, since they are employed in a practice, do they need to have their own policy? The law says, in the Chiropractic Act, the Osteopathy Act, that the individual must have personal indemnity insurance. Doesn't it?

**Nick Elwell** 36:58

It does, we can't get around that. All we would recommend is that the employing company make sure they have contingent cover in case the individual's cover doesn't respond to a claim for any reason.

**Steven Bruce** 37:11

Darcy wants to know if specialist advice from, say, a psychiatrist acting on behalf of an osteopath is also covered by our standard osteopathic insurance.

**Nick Elwell** 37:24

the advice given by the psychiatrist or third party, whoever it might be, if that was part of the treatment, it would be covered under the terms of the policy. However, that person would most likely have their own insurance, and if he was clearly responsible for the claim that was being made, then the insurance would have the right to go back against his insurance for the error that he made during that treatment.

**Steven Bruce** 37:55

I wanted to address the stuff that's on the screen here. I had a lady emailing me really cross about the fact that you BGI were saying she had to tell you if she had any elite athletes on her books. But I've looked at the other policies, and that's not unusual - you'd want to know if any of their clients were high earner, Premier League football players, for example, where a week off work is worth several million quid.

**Nick Elwell** 38:22

Exactly so currently, the premiums for osteopaths are 350 pounds, or whatever it is, and that's based on a general client base of people who walk in off the street. Yeah, if you specialize in treating football players that earn a million a week, you are putting yourself in a situation where any claim made against you for not doing it right will be millions rather than 1000s. Yes. So yes, we asked that question,

**Steven Bruce** 38:53

And I would imagine that most other insurance policies will need to know that, wouldn't they?

**Nick Elwell** 38:58

I would have thought all but I can't obviously speak for the internal rumblings of the others.

**Steven Bruce** 39:03

Cover for adjunctive therapies is quite important, because by adjunctive therapies, I mean people who do dry needling, who do ultrasound, electrotherapy, shock wave therapy. Maybe they do hypnotherapy within their own practice, but it's not their core business of osteopathy or chiropractor.

**Nick Elwell** 39:20

All of the different insurers, treat this slightly differently. Our perspective is that if you are an osteopath or a chiropractor, then if you are trained to do anything, including all of those adjunctive therapies within your practice, providing you've been trained to do it, you're insured to do it.

**Steven Bruce** 39:41

People need to be very sure that they are insured if they're doing these things. I think the BCA's policy, possibly the iO's policy, I'm not sure, says that, for example, dry needling, where you've had some problems recently, they don't accept weekend courses, but anything longer than that, they will accept

**Nick Elwell** 40:02

All of the requirements differ quite markedly. So do take care and basically ask to read the policy before you buy it. I think that we're the only people who will give you everything that you need, because it's all covered under the chiropractic *[or osteopathic]* title, but you need to tell us what you're doing if it's outside of that. So for example, if you're what we call a medical osteopath, who might do being spinal injections or something like that, there is a higher rate for that because it's a higher risk

**Steven Bruce** 40:36

I said you had problems with dry needling - you've had some claims arising from dry needling recently because of punctured lungs, I think.

**Nick Elwell** 40:43

I think indeed, that's the one area where probably the other insurers have pushed their prices up because of events similar to that.

**Steven Bruce** 40:50

Yeah, I was quite impressed when I asked you about this. After we ran some courses here in dry needling, you didn't want to see the qualifications of the instructor, as you said, as long as they are respected people who know their stuff, then you're happy to accept that

**Nick Elwell** 41:02

The way that we write insurance generally is on I suppose the principle of utmost good faith. So if our insured person tells us that he's had the right training for doing it, then we will take his word for it. If they're an osteopath, they have to go through certain hoops to be an

osteopath anyway. And we only say that you have to have the training appropriate to the service that you're providing your clients.

**Steven Bruce** 41:32

Again, I raised this with you at the time, if you have gone on a three day dry needling course, such as the ones we run here, and you decide to do a technique which wasn't taught in those three days, which we can easily show from the course records, then you wouldn't be covered for that. You've got to be honest about it.

**Nick Elwell** 41:49

Well indeed, the insurance would have the right to share the cost of the claim with you. Might be a nice way of putting it, and it depends on how much of that treatment was relevant, and how far down the line you gone? I don't want to draw a black and white line because if people look train themselves properly, then we respect their judgment as to what that is, and we will look after them accordingly.

**Steven Bruce** 42:17

Tax investigations. We've got a few questions about that as well.

**Nick Elwell** 42:21

That's included, I think, without exception, within all legal expenses insurance.

**Steven Bruce** 42:26

Which means what? I can't imagine what the expenses on that are. Sure, give them your books from Xero or whatever it is, and then get on with it.

**Nick Elwell** 42:33

People make mistakes because the law changes, and sometimes they declare the wrong figures because of that. If there's an error made somewhere, the legal expenses will help cover that. Sometimes the authorities get it wrong, so they'll come after you, and then you'd like a bit of legal help to defend them.

**Steven Bruce** 42:50

I've put in here Good Samaritan as well, not least because we do run first aid training courses here, and everybody's worried about what will happen if you're doing first aid on somebody as an osteopath or a chiropractor and they don't survive or whatever,

**Nick Elwell** 43:05

We automatically include Good Samaritan cover. We do for any groups that we insure really, because if you're walking down the road and you see someone keel over, you've got two choices. You either go and help them or you don't. And we don't want the thought of not having insurance being the reason for not saving their life.

**Steven Bruce** 43:23

Do you know if that's the case with other providers?

**Nick Elwell** 43:27

I don't. I know that one does and I know that one doesn't.



**Steven Bruce** 43:30

Which one does,

**Nick Elwell** 43:31

I'm not allowed to say,

**Steven Bruce** 43:33

So check your own insurance policy will be the answer on that one. Scotty says, "What about treating abroad? I've previously been to less developed countries, including India, to provide osteopathic care for free. How is that covered?"

**Nick Elwell** 43:51

The BGI cover is exceptional in that we will cover you anywhere on the world that you go to, except America and Canada.

**Steven Bruce** 44:00

I wonder why that is.

**Nick Elwell** 44:01

Well, the interesting thing you've got to bear in mind is that we can insure you when you go to some places, China, India, for example, we may not be able to actually appoint lawyers to defend you in the event of there being a claim there, so it's a different process of dealing with it, but we will pick up the charges anyway

**Steven Bruce** 44:21

That's quite encouraging. Don says, "Is there any mechanism insurance has set up to reduce the number of PCC hearings that happen due to osteopaths or chiropractors lapsing cover with no email in no malicious intent for short periods".

Now, this, this has come up several times, and you and I have had dealings over this. I know one of the people who's been on the question list already has had an issue with this. We're talking here about people who fail to see the reminders from the insurance company saying your policy has lapsed and therefore go for some months without insurance cover and either realize themselves or are sent something from the General Council saying, please show us evidence of your insurance.

Because strangely, the General Council seemed to know when you haven't got it.

**Nick Elwell** 45:16

I know that some of the market will not assist in any way whatsoever. We do what we can to assist. Technically, if you don't have insurance and you're an osteopath or a chiropractor, then you are breaking the law. So you've got to bear that in mind. The first line of fault is yourselves for not following the regulations that you've agreed to, but we will help where we can.

**Steven Bruce** 45:47

And I fell foul of this myself once. At the time I was insured with Balens, and I realised that I had not had my insurance *[renewed]* and they simply backdated my insurance with the proviso that there had been no claims that I knew about in that period

**Nick Elwell** 46:05

That would be a quite reasonable way of doing things.

**Steven Bruce** 46:09

I also know that you have done the same for another practitioner. I think it was an osteopath. When I think Balens refused in that case to backdate it. So it's, maybe it's a case by case basis.

**Nick Elwell** 46:22

I think it wasn't Balens to be fair. I think it was another firm. But, it is a case by case logic.

**Steven Bruce** 46:32

But what you said is important, isn't it? You are breaking the law if you are not insured as an individual, and you hold yourself out to be, if you're registered

**Nick Elwell** 46:41

If you don't have insurance, you are in breach of their regulations.

**Steven Bruce** 46:46

The general council seem to understand, provided you can get that back dated cover. They don't pursue this down the Professional Conduct Committee route, necessarily. And they also have an abbreviated process for dealing with issues where a registrant hasn't got insurance. Certainly at the GOsC, they now have, I think, what's called a section seven, method of dealing with it, whereby, as long as you admit that it's happened, and they say we're going to admonish you, there's no hearing. So you get an admonishment, which is next to nothing, and the whole process goes away.

I only looked at four different policies here, listed in alphabetical order, which is Balens, the BCA, BGI and IO. And the reason I'm putting premiums up on the board here is because, although I said earlier on, that premiums aren't everything, you can see the difference in the fee for chiropractors between Balens or the BCA and your own fee, which is getting on for half the cost the BCA. I've put an asterisk next to that one, because you have to also pay their £600 pound a year membership fee.

So there is more to it than that. What is it you think that you are getting if you pay £1000 pounds for your cover that you're not getting for £683 pounds, if you're a chiropractor?

**Nick Elwell** 48:14

to be honest, you're getting the same as everybody else, and it's just the perception from the underwriters as to the risk that they're carrying.

**Steven Bruce** 48:26

But you are offering £683. Your underwriters are different to theirs, I guess. It's like when you go and buy something online, isn't it, you don't pick the expensive one or the cheap one.

You go for the middle one, but you are way below the premium for the chiropractors. Are you cutting something out?

**Nick Elwell** 48:41

I'll quite happily increase it! Our claims experience on the chiropractic side does not just genuinely does not warrant charging the higher premiums.

**Steven Bruce** 48:56

if you're a Mctimoney chiropractor, it's clearly worth you being insured through Balens, which is what the MCA will offer because it's only £180. But interestingly, if you are a Mctimoney chiropractor who practices diversified techniques, actually, BGI have got a lower premium.

**Nick Elwell** 49:16

I think we were competing on that last year, and we were slightly less expensive than our friends at Balens, and they reduced their rates fairly significantly to make sure they kept that business which is fair enough. All is fair in love and war.

**Steven Bruce** 49:31

I put that up out of interest, if people want to compare premiums, but as you say, they've got to look at the policies themselves to make their own decision on what suits their purposes. We're out of time. And I've got a whole lot of other questions here. If I find ones that need your advice, can I send them on to you after the show? Yes, of course.

It's not been intended to be a sales pitch for BGI or for anybody else, just trying to be clear about what the different policies are for you.

As I said, I'm going to put some questions to Nick after the show, but if you need more help I am always here at the end of a phone line. And of course, you can always call Nick at the BGI.

The BCA and the iO will also offer members advice, and I found Balens surprisingly responsive when I called them recently. And given that I left Balens because they were so unresponsive, I'm impressed that they've changed their working methods that way.