

OTSIS News

Professional indemnity update for OTSIS members

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Medico-Legal Director Appointment

MPI Group, the Medical Defence Organisation for OTSIS are delighted to welcome Juliette Mellman-Jones as Medico Legal Director.

Juliette was a partner and former head of insurance and risk law firm, BLM's Health & Care sector group. She has undertaken a wide variety of medical malpractice claims, regulatory and disciplinary investigations, on behalf of members of medical defence organisations, insurers and private healthcare providers.

She has worked on a number of high profile cases including the longest-running General Medical Council case ever to be heard – which related to alleged serious professional misconduct arising out of the controversial research which considered the relationship between autism and the MMR vaccine. Juliette's client in that case was the only doctor to be acquitted of the charges in full.

Juliette also lectures on topics including the professional, statutory and contractual duty of candour.



Juliette Mellman-Jones

Extended Reporting Period

Policies available to members of OTSIS are written on a "claims made" basis, this means your policy responds to a claim or circumstance which arises during the policy period and is notified accordingly in line with the policy terms and conditions. When your policy expires, all cover ceases, unless you have notified the particular circumstance to your insurer during the policy period.

This means that, even when you retire and stop operating or giving advice, you still need to have a policy in force for matters you first become aware of after you have stopped operating.

Therefore, when a surgeon retires, there is a need for continuing cover. This is offered as an 'extended reporting period'. Assuming certain requirements have

been met (including written notice to the insurer of your intention to retire) the OTSIS policy will cover claims for an additional period of 21 years, in relation to operations performed or advice given when you were still in practice and insured with a policy for OTSIS members.

This cover is only activated on permanent retirement from private practice, ill health or death during the policy period.

If you are considering retirement or are unfortunately in poor health, then please do contact MPI Group as soon as possible so we are able to advise further on the extended reporting period.

...even when you retire and stop operating or giving advice, you still need to have a policy in force...

Not a member yet? Surgeons who have completed their training and whose names are on the GMC Specialist Register can apply for OTSIS membership using the contact details below:

Contact OTSIS: info@otsis.co.uk || www.otsis.co.uk || 0845 094 3915

New OTSIS Board

OT SIS, working with MPI Group, provides access to comprehensive indemnity cover for UK orthopaedic and trauma surgeons.

Medical indemnity used to be the preserve of the MDU, MPS and MDDUS but since 2010 the number of providers has mushroomed.

There are now three distinct groups of providers: membership groups like OTSIS which are speciality specific offering contractually guaranteed benefits overseen by a board of directors drawn from the membership, the old medical defence organisations providing discretionary membership benefits and commercial insurance companies offering contracts of insurance to individual surgeons.

The problem with the medical defence organisations and their discretionary membership benefits is that as a member all you can do is ask for help, but as illustrated by the recent Paterson case, there is no guarantee that you will get it. This applies to clinical negligence claims, GMC cases, allegations of criminal misconduct and NHS Trust disciplinary cases. The medical defence organisations are not regulated by the Financial Conduct Authority, so there is no way of challenging their decision not to assist you.

Having a contract of insurance on the other hand gives you defined rights. Provided that you have abided by the terms of the contract the insurer is bound to provide you with the assistance you need. That holds true for all insurance contracts but in addition OTSIS membership provides greater support as your colleagues on the Board, together with the MPI Group, regularly meet the scheme underwriters to discuss enhancing benefits, new requirements and if necessary to discuss individual cases.

So with OTSIS membership you have the

The main business of the OTSIS AGM on 6th September 2017 was the election of the new board of Directors

benefits of an insurance contract and the influence of being part of a group whose business is highly sought after.

Garth Allardice

Mr Garth Allardice is a Consultant Orthopaedic Surgeon, with a special interest in foot and ankle surgery, lower limb trauma, and foot and ankle sports injuries. He is an NHS Consultant at the North-West London Hospitals NHS Trust (NWLH) and practises privately at BMI Clementine Churchill Hospital, Bishops Wood Hospital and Syon Clinic, as well as One Stop Doctors.

He graduated from medical school at the University of Witwatersrand, South Africa in 1986 and completed his Orthopaedic training at the University of Natal. He became a Consultant and Lecturer at the University of Natal, Durban and was appointed to the national faculty of the Advanced AO Trauma Symposium in South Africa.

In 1997, he completed a Fellowship at the prestigious Charnley Hip and Knee Centre at Wrightington, UK before being appointed as Consultant and Trauma Lead at Kettering General Hospital (1998 - 2002).

In 2004, Mr. Allardice established a Specialist Foot & Ankle Unit at Northwick Park Hospital. The vast majority of primary and tertiary referrals are seen in this unit. The foot & ankle service manages a wide spectrum of disorders including degenerative and inflammatory arthritic conditions, sports injuries and trauma, hallux valgus and other forefoot deformities. Integral links with physiotherapy, orthotics, and podiatry have been established to provide a cooperative network. Additionally, the majority of foot surgeries are performed as day-case

procedures limiting hospital stays. Apart from his consultant and clinical Mr Allardice is also involved in teaching and preparing the next generation of orthopaedic registrars for their exams. Mr Allardice lectures on various Orthopaedic Revision courses, Trauma courses and Speciality Foot and Ankle courses. He is also involved in teaching Physiotherapists and local General Practitioners.

More recently, Mr Allardice has been invited to membership of International Faculty in a project development role for the development and design of foot and ankle products/surgical equipment in the USA. He has also been invited to other International Faculty to lecture and demonstrate at their European Laboratory facility.

Gavin de Kiewiet

Gavin is a consultant orthopaedic surgeon at Sunderland Royal Hospital and a private practice based in Washington. He has a special interest in limb reconstruction joint preserving and trauma surgery. He is a member of BOA, BSCOS, BLRS, ISHA and AAOS in addition to his NHS practice.



Mr. Garth Allardice



Mr. Gavin de Kiewiet

► If you have any questions for the new board members please contact the OTSIS office on 0845 094 3915, or email: info@otsis.co.uk

Gavin says: *"Increasing challenges are being placed on the provision of orthopaedics services in the NHS and private sector. Mounting scrutiny, restriction, revalidation and patient demands has escalated complaints and promoted a litigious society. Maintaining and advancing a high standard of care remains challenging. For this a medical indemnity scheme like OTSIS that is responsive to and provides for the specialty of orthopaedics is essential."*

Ian McDermott

Ian McDermott is a Consultant Orthopaedic Surgeon specialising purely in knees.

Ian was a consultant at Ealing Hospital, but he left the NHS in 2008 and he now works in full-time private practice in Central London. Ian is the founder and the Managing Partner of the London Sports Orthopaedics practice, based in The City of London.

As a trainee Ian was the President of BOTA. He then became the youngest ever surgeon to be elected as a Council Member and Trustee of the Royal College of



Mr. Ian McDermott

Surgeons, and he served a 6-year term of office. Ian has also been a member of the Orthopaedic Subcommittee of the CCSC of the BMA, and he has been a Board Member of the Federation of Independent Practitioners Organisations (FIPO) for the last 10 years.

Ian has maintained strong academic interests, and he is an Honorary Professor Associate in the School of Sport & Education at Brunel University. Ian is also the co-founder and the current President of the UK Biological Knee Society. Ian's clinical interests lie in field of complex knee reconstruction, including meniscal transplantation and articular cartilage grafting, as well as the use of custom-made knee replacements.

Ian says: *"The reason I've got my professional indemnity with my OTSIS membership goes much deeper than just lower premiums. With OTSIS I have a proper guaranteed insurance policy : not cover that's just 'discretionary' and the expertise of OTSIS's legal advisory services. Finally, my interests are best served by an organisation with a board of directors who are surgeons themselves."*

Ian was appointed Chairman of the Board of Directors of OTSIS in September 2017.

Joel Melton

Joel is a specialist consultant knee surgeon at Cambridge University Hospitals NHS Trust, having previously trained in the Wessex region.

He has a personal interest in biomechanics and was awarded a masters degree in Orthopaedic Engineering from the University of Cardiff.

Joel also spent a year of fellowship training in Sydney, Australia working at the world renowned North Sydney Orthopaedic and Sports Medicine Centre.



Mr. Joel Melton

There he gained further experience in all aspects of sports medicine, the management of knee ligament injuries, the management of knee arthritis and knee replacement surgery. I have also spent time completing fellowship training in limb reconstruction techniques in Russia and as an AO fellow in Marseille, France. As a sub-specialist knee surgeon in Cambridge, I provide an acute knee service for soft tissue/multiligament knee injuries and I enjoy ongoing involvement in arthroplasty as a regional clinical co-ordinator (East of England) for the National Joint Registry. Joel is clinical lead for Hip and Knee services.

Joel says: "I chose OTSIS membership for my indemnity due to the 'non-discretionary' nature of the cover they provide combined with the personal

medico-legal advice facilities that exist with my policy. I was keen to find cover that provided value for money combined with rapid access to quality advice should it ever be required. I have been pleased with the cover provided and am delighted to be involved with moving OTSIS forward in the interests of orthopaedic surgeons."

Gerard Panting

Qualified in medicine and with a Masters degree in Medical Law and Ethics, Gerard has over 25 years of experience in clinical negligence litigation, complaints procedures, disciplinary processes and medical regulation in the UK and a special interest in developing practical risk management solutions.

Gerard spent 20 years at the Medical Protection Society where he held the posts of Head of UK Medical Services and Communications and Policy Director and is a Foundation Fellow of the Faculty of Forensic and Legal Medicine of the Royal College of Physicians.



Dr. Gerard Panting

Instrumental in founding and running several specialist indemnity schemes Gerard is now focused upon supporting the OTSIS board and delivering value to OTSIS members.

"... professional indemnity with my OTSIS membership goes much deeper than just lower premiums. With OTSIS I have a proper guaranteed insurance policy : not cover that's just 'discretionary' and the expertise of OTSIS's legal advisory services. Finally, my interests are best served by an organisation with a board of directors who are surgeons themselves."

Mr. Ian McDermott

What is the GDPR

and how is it going to affect you?

The new General Data Protection Regulation ('GDPR') is a European regulation and will apply for as long as the UK remains in the EU. In any event, its provisions will be adopted by the UK government and will be transposed into UK law by the new Data Protection Bill currently making its way through Parliament. The GDPR (and all UK privacy legislation) is and will be enforced by The Information Commissioner's Office ('ICO').

Healthcare is a particularly data-rich industry, and the GDPR will place greater responsibilities on healthcare organisations and practitioners in terms of how they use, share, store and protect data. The aim of the GDPR is to give individual "data subjects" more control over their Personal Data, and to help ensure that such data is kept safe once collected.

So, what's happening on 25 May 2018?

This is the date upon which the GDPR comes into force and becomes a part of UK law. It is important that you start preparing for the changes that the GDPR will bring, and ensure that you have a plan in place regarding how you and your healthcare organisation manage data, as well as an understanding of the measures that need to be put in place to ensure compliance with the new, enhanced, privacy regime.

What information does the GDPR apply to?

The GDPR applies to the "processing" (or use) of all "Personal Data".

What is Personal Data and what rules apply to that?

"Personal Data" is, for the purposes of GDPR, any information relating to a living individual who can be directly or indirectly identified from it, either alone or in combination with other information. Such individuals are referred to as a "Data Subject".

Personal identifiers which will constitute "Personal Data" include names,

identification numbers, location data or other online identifiers. You must have a valid lawful basis in order to process Personal Data. These lawful bases are set out in **Article 6** of the GDPR and are:

- **consent** (where the Data Subject has given their explicit consent for the processing of their Personal Data),
- **contractual obligation** (the processing of the relevant Personal Data is necessary for the purposes of complying with the terms of a contract you have with the relevant Data Subject),
- **legal obligation** (where it is necessary to process a Data Subject's Personal Data to comply with the law),
- **vital interests** (where the processing of Personal Data is necessary to protect the Data Subject's life or other interests),
- **public task** (where the processing of Personal Data is necessary to perform a task in the public interest or through your official functions, and that task or function has a clear basis in law) and
- **legitimate interests** (where the Processing of Personal Data is necessary to advance your legitimate interests or those legitimate interests of a third party).

What is sensitive Personal Data and what different rules apply to that?

All Personal Data must be processed lawfully under one or more of the Article 6 grounds set out above. In addition, the GDPR prohibits processing of certain categories of data including "sensitive" Personal Data unless a specified exemption applies. This includes data revealing race, ethnic origin, politics, religion or trade union membership. Importantly for surgeons, this also includes data revealing genetic details, biometric data, sexual orientation or health. Any clinical record concerning an identifiable patient will contain "sensitive" Personal Data.

If a surgeon wishes to process

sensitive Personal Data, then the processing must be **necessary** (a reasonable and proportionate way of achieving the relevant purpose) **and** one of the ten exemptions under Article 9 of the GDPR must apply. In the healthcare context, the most likely will be

- Explicit consent (from the patient)
- Where processing of the sensitive Personal Data is necessary to protect the vital interests of the patient (usually where the patient is incapable of giving consent)
- For the purposes of health and social care (such as where necessary for the purposes of preventative or occupational medicine, for assessment of the working capacity of the employee, medical diagnosis, provision of health or social care or treatment)
- Public interest in the area of public health

If you can reasonably achieve the same purpose without processing sensitive Personal Data, you will not usually have a lawful basis to process it.

In order to lawfully process sensitive Personal Data, a Data Controller (which is the person or organisation who decides how and for what purpose Personal Data is collected for processing) must identify a lawful basis under the Article 6 grounds, and a separate condition for processing sensitive Personal Data under Article 9. These do not have to be linked.

What different rules apply to the personal data of deceased patients?

The GDPR does not apply to Personal Data relating to deceased patients. However the common law of confidentiality, regulatory obligations, general expectations of privacy and human rights, and relevant legislation relating to

access to health records remain applicable when considering the Personal Data of the deceased.

What are the key changes introduced by the GDPR in relation to the processing of Personal Data/sensitive Personal Data?

The GDPR introduces a higher bar for relying on consent.

- Consent, when required for the processing of Personal Data, must be freely given, specific, informed and unambiguous and involve a positive indication of that consent. Consent cannot be inferred from silence, pre-ticked boxes or inactivity and it must be separate from other terms and conditions. Your organisation will need to provide simple ways for patients to withdraw consent at any time and for any reason.
- Parental consent will always be required when processing the data of children.
- Patients will be entitled to ask for Personal Data to be deleted or removal of Personal Data where there is no compelling reason for its continued processing, notably where it is irrelevant or excessive.
- Patients will be entitled to ask for Personal Data in their records to be rectified if it is inaccurate or incomplete.
- Patients will have greater rights to access, free of charge, to any Personal Data held about them by your private clinic or hospital. Subject access requests must, in most cases, be responded to without delay but in any event within 1 month.
- You must keep clear records to demonstrate consent (including details of the date, the mechanism by which consent was obtained, and the wording used).

Governance and Accountability Measures

- The GDPR introduces the concept of “accountability” which requires you to be able to demonstrate, through robust policies and procedures how you comply with its terms.



Data Breaches

- If you are the data controller, you will have a duty to report certain types of data breaches to the ICO within stringent timescales, and usually within 72 hours of the event. You may also need to inform the individual Data Subjects affected by any breach, who may look to pursue a civil claim against you as part of their new right to an “effective judicial remedy”. Further details of the requirements to notify the ICO / Data Subjects are set out below.

Transfer of Data Outside the EU

- Personal Data may only be transferred outside the EU in certain permitted circumstances and to places with equivalent standards of privacy protection to those within the EU.

Does the private hospital/clinic where I work have to put in place any other governance measures?

The private hospital/clinic will be expected to put in place comprehensive, but proportionate, governance measures. Your organisation will need to demonstrate that it has implemented appropriate measures such as the development of internal data protection policies with provision for ongoing staff training, record keeping, internal audits of processing activities and reviews of internal HR policies. It must also maintain relevant documentation on processing activities. Many may already be considering carrying out a “Privacy Impact Assessment” (which is not compulsory now but will become so in certain circumstances once the

GDPR comes into force) and a Data Audit to assist with this process. Where appropriate, organisations must appoint a Data Protection Officer.

Is it mandatory to appoint a Data Protection Officer?

A Data Protection Officer (DPO) is responsible for overseeing data protection strategy and ensuring compliance. Data Protection Officers must have expertise in Privacy Law, and their Job Description must reflect this requirement. NHS organisations must appoint a DPO. If your clinic/hospital carries out large scale processing of sensitive Personal Data, it must also appoint a DPO. An example of “large-scale processing” includes processing of patient data in the regular course of business by a hospital. It does not include processing of patient data by an individual surgeon.

What is a data breach and what do I need to do if I discover a data breach?

A Personal Data breach is any breach of security infrastructure leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data. It includes sending Personal Data to an incorrect recipient and computing devices containing Personal Data being lost or stolen.

If a data breach is likely to risk a person’s rights and freedoms, then it must be reported to the ICO within 72 hours after becoming aware of it. It is likely that all data breaches in a healthcare context would be reportable to the ICO. If your organisation has a DPO, then you

should notify that person without delay in the event of a breach as they, along with your Management and Communications Teams, will guide you on next steps.

Do I need to notify my patient of the breach?

If a breach is likely to result in a “high” risk to the rights and freedoms of your patient, the GDPR indicates that you must inform them without delay. The threshold for informing an affected patient is higher than for informing the ICO.

Accidental disclosure of patient records, given that they contain sensitive Personal Data, would certainly require notification to the affected patient, as well as the ICO.

What power does the Information Commissioner’s Office have under the GDPR?

The ICO’s powers include the following:

- To request controllers/processors to provide relevant information.
- To carry out data protection audits.
- To gain access to premises and data processing equipment.
- To issue warnings, reprimands and orders to bring processing operations into compliance where infringements have been discovered.
- To impose temporary or definitive limitations including a ban on processing.
- To require the rectification, restriction or erasure of data.
- To impose Monetary Penalties for breaches of the GDPR’s obligations.

What is the maximum fine for a breach of the GDPR?

The GDPR establishes a “tiered” approach to the imposition of Monetary Penalties for data protection breaches, which the ICO will be able to levy against both data controllers and data processors. For serious infringements relating to breaches concerning

The ICO have published guidance setting out 12 steps to take now:

1. Awareness Ensure that key people in your organisation are aware that the law is changing. They need to appreciate the impact that the GDPR will have and the resources that will be required to ensure compliance.

2. Information held by your practice Document what personal data you hold, where it came from and who you share it with. The GDPR requires that you maintain records of your processing activities.

3. Communicating privacy information You should review your current privacy notices and put a plan in place for making any necessary changes in time for the GDPR's implementation.

4. Individuals’ Rights

Check your privacy notices, policies and procedures to make sure they cover and include all of the Data Subject Rights introduced and expanded upon by the GDPR. These are the right to be informed, right of access, right to rectification, right to erasure, right to restrict processing, right to data portability, right to object and rights in relation to automated decision making and profiling. You should also provide details of how those rights can be easily exercised.

5. Subject Access Requests Update your procedures and plan how you will handle requests so that they will be dealt with in accordance with the new rules. Subject access requests must, in most cases, be responded to without delay but in any event within 1 month.

6. Lawful Basis for Processing Personal Data

Identify the lawful basis for your processing activity, document it and update your privacy notice to explain it and your reasons for relying upon it.

7. Consent Review how you seek, record and manage consent and whether changes are needed. Refresh existing consents if they do not meet the GDPR standard.

8. Children Consider how you will handle the data of children and the necessary parental consents required by GDPR.

9. Personal Data Breaches Make sure you have the right procedures in place to detect, report and investigate a Personal Data breach.

10. Data Protection Impact Assessment

Familiarise yourself with the ICO’s code of practice on Privacy Impact Assessments as well as the guidance from the Article 29 Working Party and focus on how to implement them into your practice.

11. Data Protection Officers Designate someone to take responsibility for data protection compliance and assess where this role will sit within your practice structure and governance arrangements, if necessary.

12. Transfer of Data Outside the EU Consider whether your business needs to transfer personal data outside the EU and if it does put procedures in place to ensure compliance with GDPR.

international transfers of data, or of basic principles for processing such as conditions for consent, fines of up to the higher of 4% of turnover or 20 million Euros can be imposed. Other specified infringements (including failing to notify the ICO in the event of a breach) will attract fines of up to the higher of 2% of annual turnover or 10 million Euros.

Are there any exemptions?

The new UK Data Protection Act is expected to include exemptions and derogations from certain requirements of the GDPR. One such exemption is expected to apply to subject access requests where the disclosure of health

data would likely cause serious harm to the physical or mental health of the data subject or another individual. Another exemption is expected to apply to the Personal Data of minors and people incapable of managing their own affairs where they have an expectation that that information will not be disclosed to their parents or the person appointed to manage their affairs.

How can I best prepare for the implementation of the GDPR?

It is essential to plan your approach to compliance now, as you will almost certainly need to put new procedures in place, and to demonstrate that you

recognise the need to do so.

The GDPR places greater emphasis on the documentation that data controllers must keep to demonstrate their accountability, and the policies, procedures and operational changes which must follow once the need to implement them has been identified.

Organisations that already have policies, controls and procedures in place that ensure compliance with the Data Protection Act 1998 can use these as a starting point to build from, especially as many of the concepts and principles of GDPR are similar to those contained in the 1998 Act.

A Data Audit and Privacy Impact Assessment are good starting points.

Resources

- The GDPR Regulation - <https://gdpr-info.eu/>
- ICO Website - <https://ico.org.uk/>
- Article 29 Working Party Guidance - http://ec.europa.eu/newsroom/article29/news.cfm?item_type=1360

▶ Not a member yet?

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For more information about OTSIS and to apply online visit: www.otsis.co.uk or call the OTSIS team on **0845 094 3915**.

ABOUT OTSIS

W/R/B Underwriting

W/R/B Underwriting are honoured to continue to be the appointed insurer for the members of OTSIS. As among the first insurers to offer Medical Malpractice insurance to surgeons in the UK, we provide a wealth of experience which enables us to deliver tailored solutions, flexible products and authoritative underwriting.

W/R/B Underwriting have reviewed their current offering provided to members to ensure that it is best in class. Following this analysis they have enhanced the product and made improvements to the policy (subject to policy terms, conditions and exclusions) including offering cover at the same net premium (subject to certain conditions being met annually), no claims bonuses, contract disputes cover which may provide assistance to you in a disagreement with a private hospital in relation to admitting rights, an enhanced, extended reporting period of 21 years, maternity, paternity and sabbatical cover where you take a break from your practice and personal accident insurance. In addition, W/R/B Underwriting are launching a range of risk management tools for OTSIS members. We will update our members in our next edition of OTSIS news.



a W. R. Berkley Company

OTSIS is a not for profit company
 The directors do not have access to any personal, professional or financial information about members or potential members that might be provided on an application form. Their personal interest is the same as for all OTSIS members.

OTSIS is an Introducer Appointed Representative of Lucas Fettes & Partners Limited, trading as MPI Group which is an independent insurance intermediary authorised and regulated by the Financial Conduct Authority.