

# Designated Settings Indemnity Support FAQs

These FAQs have been prepared to help clarify Designated Settings Indemnity Support to manage the safe transfer of people who are being discharged from hospitals to care homes and who are infectious with COVID-19.

The indemnity arrangements will be supervised by DHSC and administered by NHS Resolution. For more information on the indemnity arrangements, please contact [CTIS@resolution.nhs.uk](mailto:CTIS@resolution.nhs.uk).

## **What is the new Designated Setting Indemnity Support?**

Designated Settings Indemnity Support will enable care homes assured by CQC as designated settings, or intending to be assured by CQC, and which are not able to obtain sufficient insurance, to overcome this barrier to accepting infectious COVID-19 positive patients from the NHS.

It will help to boost capacity in these settings and support wider NHS discharges. The support is state indemnity – for clinical negligence, public liability and employer's liability – to fill gaps in insurance cover for care homes operating or wishing to operate as a designated setting.

This indemnity support does not replace existing insurance for designated settings, but acts as a “gap-filler” to bring cover up to a sufficient level. This support is time-limited, and, following a recent extension, will run up to 31 March 2022. Designated Settings Indemnity Support will be kept under review throughout this period.

The indemnity support arrangements continue to apply, in relation to any patients discharged into designated settings up to 31 March, for a further 14 days after this date, but admissions from 1 April would not be covered under these arrangements.

## **Why have you introduced Designated Setting Indemnity Support?**

The care sector has responded impressively to the demand for designated care home settings and we now have many in place and in operation across the country. We acknowledge the role of the insurance industry in continuing to provide cover where possible, for this activity. However, we also know of a number of care providers which have found it difficult or impossible to obtain adequate cover, and have therefore been unable to take on this important role.

The Designated Settings Indemnity Support has therefore been put in place as part of a package of wider measures to support increased discharges from the NHS into care settings. The indemnity support aims to remove possible insurance obstacles to care providers registering – or continuing to operate – as designated settings. This will help complete coverage across the country where there are gaps, and help with efforts to ensure there is additional capacity should pressures arise over the coming weeks.

## **I am a provider not currently a Designated Setting, but interested in becoming one. How does this process work, and when do I apply for the Designated Settings Indemnity Support?**

Local systems – CCGs, LAs, NHS Trusts – should discuss and agree local needs for designated settings capacity and indemnity ahead of making an application for the Designated Settings Indemnity Support. Only if sufficient insurance provision cannot be obtained should the local system explore using the Designated Settings Indemnity Support route. Local authorities wishing to establish more Designated Settings in their area will approach local care providers to gauge interest.

If a provider agrees to be commissioned to provide services as a Designated Setting, they will first need to go through assurance process including an inspection visit from CQC to assure they can deliver the Infection Prevention and Controls (IPC) measures required of a Designated Setting. The relevant local authority will contact CQC on the provider's behalf and ask them to conduct this assurance. CQC will then contact them to arrange the inspection visit.

We advise that providers intending to become a Designated Setting have a conversation with their insurers at an early stage to discuss the implications – i.e., either before, or certainly in parallel with the CQC assurance process. We advise the provider to be open with their Local Authority about the outcome of these conversations.

Once the CQC has confirmed that provider has been assured – the provider will need to discuss with the Local Authority whether an application for the DSIS will be necessary (i.e., informed by the conversations with their insurer). At that point – if necessary, and if all local partners agree to proceed – then an application can be made for DSIS. The application will need to confirm that the provider is unable to access sufficient insurance and that this is the only barrier to operating as a Designated Setting.

A final decision on whether to provide Designated Settings Indemnity Support will be taken by DHSC. There is guidance on the Designated Settings scheme, [including how providers can become a Designated Setting](#).

## **Is access to the Designated Settings Indemnity Support automatic?**

No. DHSC will operate a swift process for approving all those who are able to benefit from the Designated Settings Indemnity Support, taking account of capacity needs and proportionality of the request for state support. This will operate alongside

existing CQC assurance processes for all new Designated Settings.

It is critical that local systems – CCGs, LAs, NHS Trusts - discuss and agree local needs for Designated Settings capacity and indemnity ahead of an application being made for the Designated Settings Indemnity Support.

## **How long will the Designated Settings Indemnity Support last for?**

The Designated Settings Indemnity Support came into operation on 19 January 2021. It will run up to 31 March 2022, but be kept under review throughout this period. The indemnity support arrangements will continue to apply in relation to any patients discharged into designated settings up to 31 March 2022 for a further 14 days after this date, but admissions from 1 April would not be covered under these arrangements.

As with other NHS indemnities, claims made or paid months or years later that stem from activity during the service period in respect of which the support is offered will be covered by the indemnity.

## **Are these indemnity arrangements retrospective?**

No. The Designated Settings Indemnity Support came into operation on 19 January 2021 and will run up to 31 March 2022, but be kept under review throughout this period. The indemnity support arrangements continue to apply, in relation to any patients discharged into designated settings up to 31 March 2022, for a further 14 days after this date, but admissions from 1 April would not be covered under these arrangements.

As with other NHS indemnities, claims made or paid months or years later that stem from the provision of services under these NHS contractual arrangements will be covered by the indemnity, but those which pre-date the introduction of the indemnity will not be covered.

## **How does the Designated Settings Indemnity Support interact with my existing insurance?**

The Designated Settings Indemnity Support does not replace existing insurance arrangements already in place for care homes operating as designated settings but fills gaps in commercial insurance in relation to those settings.

## **Eligibility**

### **Why does it only apply to care homes that are operating as CQC designated settings?**

We now have designated settings in place and operational across the country. DHSC acknowledges the role of the insurance industry in continuing to provide cover, where possible, for this activity. However, we also know of a number of care providers who have found it difficult or impossible to obtain cover and have therefore been unable to take on this important role.

This is limiting the ability of a small number of Local Authorities to operationalise Designated Settings capacity, and in other areas is limiting the expansion of such capacity in response to rising demand.

DHSC want to remove all possible obstacles to care providers coming forward as designated settings – both to complete coverage across the country where there are gaps, and to help Local Areas ensure we have additional capacity available should particular pressures arise over the coming weeks.

### **Does it apply to the whole of the UK?**

No. The Designated Settings Indemnity Support is for care homes assured by CQC, or intending to be assured by CQC, as designated settings in England only. The devolved administrations of Scotland, Wales and Northern Ireland are responsible for NHS discharge and Social Care policy in each of their respective nations.

### **What happens if I run multiple care homes, not all of which are designated settings?**

The Designated Settings Indemnity Support is intended to fill gaps in commercial insurance. As such, it may apply differently to individual providers depending on the commercial insurance policies they already have in place - including, for example, whether a commercial insurance policy applies to multiple care homes, or on an individual basis.

DHSC will offer a swift process for approving all those who are able to benefit from the Designated Settings Indemnity Support, taking account of capacity needs and the proportionality of the request for state support.

Providers will be made aware of the indemnities that will be available to them as part of the application process for the Designated Settings Indemnity Support.

## **I'm a non-designated setting care home provider and I am still receiving people who are COVID positive, why am I not covered?**

Anyone with a COVID-19 positive test report from the past 90 days who:

- has completed their 14-day isolation period,
  - has no new symptoms,
  - has not been in contact with anyone who is infectious in the last 14 days'
  - and is immunocompetent (has a normal, healthy immune system),
  - is considered by clinicians not to pose an infection risk, and can be discharged into a care home without going to a designated care setting.
- These individuals will be assessed by clinicians prior to discharge. This is set out in [this Government guidance](#).

This advice has been agreed by leading Government public health and clinical experts. The policy ensures that only people who are likely infectious with COVID-19 and need to go to a designated setting are discharged to one, while protecting the wider care home population from infection.

For every person being admitted to a care home, the care home manager will be provided with the results of that person's COVID-19 test conducted in the previous 48 hours, or if the person has previously tested positive for COVID-19 14-90 days previously, clear advice from a clinician as to whether they are still infectious to other people.

## **I have been offered insurance for operating as a Designated Setting but it is very expensive. Should I still apply for Designated Settings Indemnity Support?**

Designated Settings Indemnity Support is only available to providers who cannot obtain adequate insurance cover to operate as Designated Settings.

Care homes that have been offered insurance at an increased rate to operate as Designated Settings should speak to their local authority and CCG to explore whether these costs can be met through the £588 million discharge funding that has already been made available.

## **Operational questions / accessing the support**

### **How does the indemnity support work?**

Care providers assured by the CQC to operate, or are seeking CQC assurance to operate, as a Designated Setting but who are unable to secure sufficient insurance will be sub-contracted by NHS Trusts to provide services to people who need to be

discharged from hospitals to care homes but who, because they are infectious with COVID-19, require a period of isolation before they can be transferred to care home premises that are not a designated setting.

The sub-contracts will include contractual indemnities given to providers of designated settings which will be covered under the new Designated Settings Indemnity Support.

Subject to need, care providers will be provided with:

- clinical negligence cover via the contracting Trust's membership of the current Clinical Negligence Scheme for Trusts; and/or
- indemnity for public liability and employer's liability, which will be funded and administered by government via the new Coronavirus Temporary Indemnity Scheme (CTIS).

### **I am a provider and I have already passed the CQC assurance process required to be a designated setting but can't get insurance. How do I apply for the indemnities?**

If a care home has already passed the CQC assurance process to be a designated setting and the only barrier to being operational is insurance then they should contact their Local Authority. The Local Authority and other local partners will then explore using the Designated Settings Indemnity Support route. A final decision on whether to provide Designated Settings Indemnity Support will be taken by DHSC.

### **Is it possible for a Trust to sub-contract care to a COVID positive patient discharged from hospitals? If so, how does the Designated Setting Indemnity Support operate under these contractual arrangements?**

Trusts will be commissioned by CCGs to provide this pathway of care, which will enable them to sub-contract with the Designated Setting care provider to deliver it. The sub-contracts will include contractual indemnities given to providers of designated settings which will be covered under the new Designated Settings Indemnity Support.

Subject to need, care providers will be provided with:

- clinical negligence cover via the contracting Trust's membership of the current Clinical Negligence Scheme for Trusts; and/or
- indemnity for public liability and employer's liability via the new Coronavirus Temporary Indemnity Scheme (CTIS).



DHSC will provide Trusts entering into this arrangement with a letter of comfort to cover any indemnity they provide in relation to clinical negligence, employer's liability and -public liability through these contractual arrangements.

### **I am an NHS Trust sub-contracting with a Designated Settings care home. Does taking part in the arrangements for Designated Settings Indemnity Support by providing indemnity for clinical negligence under sub-contracts affect the contributions I make as part of my membership to the Clinical Negligence Scheme for Trusts (CNST)?**

No. The costs of any clinical negligence claims arising from the Designated Settings Indemnity Support arrangements will be recorded separately by NHS Resolution and funded by DHSC. Sub-contracting with Designated Settings care homes will not affect a Trust's contributions to CNST.

### **Who's running the claims process?**

NHS Resolution is administering the Designated Settings Indemnity Support on behalf of DHSC. NHSR is an arm's length body of DHSC which is responsible for handling NHS indemnity claims, including claims arising from the COVID-19 pandemic.

### **How do care homes make a claim under the Designated Settings Indemnity Support arrangements?**

Designated Settings should report claims to the sub-contracting Trust. Here you can find the full details of [when and how to report a claim to NHS Resolution](#).

### **I am a resident/family member/staff member/etc. in a designated setting and want to make a claim. How do I do this?**

Claimants should make a claim directly to the provider of the Designated Setting. NHS Trusts and NHS Resolution cannot accept claims directly from individuals.

### **How do I find out more?**

There is guidance on the Designated Settings scheme, including [how providers can become a Designated Setting, available here](#).

For any further queries relating to how providers become a Designated Setting, please email [england.d2a@nhs.net](mailto:england.d2a@nhs.net)

For questions about indemnity cover, please email [CTIS@resolution.nhs.uk](mailto:CTIS@resolution.nhs.uk)

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