

# Do I need my own PI insurance?

## Employers provide professional indemnity insurance – Oh really?



Some pharmacy employers have recently explained to their employees that they do not need to take out their own professional indemnity insurance because they will insure them in the event that something goes wrong. However, pre-registration pharmacists are urged to think through the implications of such a proposition very carefully as employer-provided professional indemnity is a very different proposition to the independent indemnity carried by an individual.

Employer-provided indemnity allows the employer to control the defence. This can lead to situations where the interests of the employer become the primary concern for the lawyers handling the defence and not the protection of the employee. This can lead (and has in the past led) to poor outcomes for the individual pre-registration pharmacist.

PI insurance carried by the individual pre-registration pharmacist will focus upon protecting them; it will not seek to protect the reputation or interests of the employer. Defence efforts will look carefully at whether the error was down to the person who was actually blamed as well as factors other than human error alone, such as defective employer systems, an inappropriate skills mix, poor working environments or staff shortages. If such problems exist, then lawyers acting on behalf of the pre-registration pharmacist will make sure that the employer takes some responsibility. This may in part or entirely extract the pre-registration pharmacist from the firing line and could even result in the employer being investigated by the regulator.

### Challenging the employer's view

It is perhaps unsurprising that some employers would find such an approach challenging, and could be a reason why they may prefer their employees to rely on company-provided PI insurance. A recent statement from one major pharmacy employer, entitled "Indemnity provisions for pharmacists", says that the company does not require its employee pharmacists to arrange their own cover. It then describes certain conditions, which include;

- In some cases the employer may, as a condition of the indemnity, require pharmacists to give their full cooperation. The employer reserves the right to take over the conduct of such a claim, and pharmacists would be expected to provide reasonable assistance in its defence or settlement.
- The employer may, at its discretion, withdraw or discontinue an indemnity previously offered if an employee does not follow advice from the employer's legal or other advisors.

This makes it very clear that the employer would have ultimate control over the defence, and could even deny protection if the employee wanted the defence strategy to be organised in a particular way. This cannot be in the best interests of pharmacists or pre-registration pharmacists.

**The PDA helped nearly 200 pre-registration pharmacists during 2016**

### I get on extremely well with my line manager and they would never let this happen to me!

Well-meaning, hard-working employees often express this sentiment and often they are right in so much that their line manager would not "like" this to happen to them. The truth is that the people who make the decision to support the employer and not the pre-registration

pharmacist are not working alongside you on a day-to-day basis. Employers' lawyers dictate what happens and your line manager will have little or no say in the matter.

**The PDA dealt with over 5,000 incidents in 2016**

Individual pre-registration pharmacists are realising that it is in their interests to be protected by a professional indemnity insurance policy that is independent of their employer. The independent professional indemnity insurance provided as part of the wider PDA membership benefit puts pharmacists at the very centre of the defence strategy, and it will never allow that strategy to be subsumed by the interests of an employer.

### Benefits of FREE PDA membership for pre-registration pharmacists

- Ready access to independent expert advice from experienced pharmacists and lawyers
- Membership of the PDA Union; providing representation in employment disputes
- £5,000,000 of Professional Indemnity Insurance
- £500,000 of Legal Defence Costs Insurance, covering employment and regulatory tribunals and coroner inquests
- Pre-registration pharmacist conferences to support your training year
- Specialist risk management articles, newsletters and access to the PDA website
- PDA Plus; providing discounts and great deals on holidays, gym membership, mobile phones and car servicing etc...

**Remember, to be covered you must be a member so activate your Free PDA membership by visiting [www.the-pda.org](http://www.the-pda.org).**

# insight



The magazine of the **Pharmacists' Defence Association**

## FREE membership of the PDA for Pre-reg pharmacists

The PDA; the only pharmacist defence organisation that can truly say we only support individual pharmacists and pre-registration pharmacists and that our focus is only on pharmacy.

The year ahead will be full of new and different challenges. For many of you, this will be your first full-time job in pharmacy and you may find it to be a major culture shock. Importantly, the pre-registration year is all about learning how to apply all of that theoretical knowledge to practice and just to ensure that you have achieved this, the pre-registration exam awaits.

Already, you will have noticed that the world of pharmacy is dominated by employers and employer organisations, and many exert a lot of influence. Some large pharmacy organisations like the National Pharmacy Association exist to represent, promote and look after the interests of all pharmacy owners. Other organisations like Unite, who represent all healthcare workers in

hospitals, are so large and diverse that pharmacists only make up an extremely small percentage of their overall membership.

The primary role of the Pharmacists' Defence Association (the PDA) and the PDA Union is to look after the interests of the individual. We only look after pharmacists, pre-registration pharmacists and pharmacy undergraduates.

We articulate the concerns of individual pharmacists and pre-registration pharmacists at national level and influence the pharmacy agenda in a way that benefits the individuals. As the name suggests, we also defend pharmacists and pre-registration pharmacists when they find themselves in difficult situations.

You will enjoy free membership of the PDA throughout your pre-registration year, giving you access to a substantial amount of support, experience and a constant source of information. Simply visit the PDA website [www.the-pda.org](http://www.the-pda.org) and if you have not already done so,



join for free. Should you be unfortunate enough to have a problem, you can rest assured that you will have the full backing and support of the PDA. Over the last number of years we have defended and supported hundreds of pre-registration pharmacists, and in most cases secured favourable outcomes for the individuals. Little surprise then that in the past some employers have actively discouraged pre-registration pharmacists from taking up their PDA membership.

Get your year off to a good start and join us at the PDA-sponsored BPSA conference – designed to help you face your year with a lot more confidence.

## Aiming High



Annual Pre-Registration Conference sponsored by the PDA

**The Pharmacy Show. 8-9th October 2017. NEC Birmingham**

**Aim high and get your Pre-registration year off to the best start**

A fantastic opportunity to develop your skills, gather evidence, get a head start with preparing for the registration assessment and to visit the Pharmacy Show exhibition.

Booking costs £10 per day

Register now at [www.conferenceevent.com/pda](http://www.conferenceevent.com/pda)

# When it goes horribly wrong... the issues and support you can expect from the PDA

The pre-registration training year is a time of crucial importance for aspiring pharmacists. The transition from novice pharmacy graduate through to a registered pharmacist requires hard work, a committed tutor and a supportive learning environment.

There are times, however, that one or more of these ingredients are not present and the pre-registration year can go horribly wrong. It is at times like this that you need an independent source of advice and support to help you through your difficulties. This article deals with some of those issues and the support that you can expect from the PDA and the PDA Union.



The PDA Union was contacted by three pre-registration pharmacists all working for the same large community pharmacy chain who had all been informed in June or July that they were not going to be signed off by their tutors as suitable to register as pharmacists. The company was therefore terminating their employment on the grounds of capability. This had come as a terrible shock to all of them, as only weeks previously all three had been signed off as satisfactory at the 39-week appraisal stage and had been entered for and sat the registration examination.

The 39-week appraisal is a key milestone in a pre-registration pharmacist's training. A satisfactory sign-off permits entry to the exam and is a clear indication that progress towards a final sign-off at 52 weeks is on track. The GPhC gives unequivocal guidance in their tutor information pack as follows:-

**"A satisfactory Progress Report 3 is vital for the trainee to be eligible to take the Registration Examination. Therefore, if you do not feel confident that the trainee is ready to take the Examination or that they are not at the appropriate level based on 39 weeks of training, then you should not mark their Progress report 3 as satisfactory."**

One of the students who contacted the PDA early on wanted to exercise his right to take a PDA Union representative into the meeting convened to terminate his employment. However, he reported being given confusing information by company managers about his right to have representation at this meeting and was then placed under unwarranted pressure to attend on his own. The PDA Union intervened to ensure he was able to attend the meeting properly represented.

Following robust submissions by the PDA Union representative, the company backed down and agreed that his training would be extended to allow an opportunity for him to demonstrate the standards required.

The other two students unfortunately only contacted the PDA weeks after they had already been dismissed. However, even at this late stage, the PDA Union team felt they could rescue the situation and help these individuals who faced a very uncertain future. The PDA Union immediately wrote to the pharmacy superintendent to alert him to what appeared to be failings in the quality of support provided to some pre-registration pharmacists, and supported the trainees to lodge individual grievances.

The students attended grievance meetings accompanied by a senior PDA representative specialising in pre-registration issues, who drew attention to apparent failures in the level of support provided by the company and their tutors in these particular cases.

The key question to resolve was why had students, who had earlier been graded as satisfactory at a key assessment stage, unexpectedly found themselves facing dismissal by the company with limited or no opportunity to have additional training.

From the students' description of their training and the results of preliminary investigations completed by the company manager handling the grievance, there appeared to be very little structured or documented support provided after the 39-week stage to help the pre-registration pharmacists improve their performance in areas they were felt to be lacking.

One student whose first language was English and had initially been recruited through a telephone interview was told that customers had repeatedly complained they could not understand

him, but yet he was never informed of this problem until late into his training, nor were any specific examples provided.

The other student found that it was almost impossible to take training time because of the requirements to help out in the dispensary when they were short of staff or busy. This caused him problems when trying to keep on top of the huge amount of work needed to progress through the training programme.

The manager conducting the investigation conceded that communications were "conflicting and confusing", there was a lack of documentation outside formal appraisals, insufficient consideration was given to extending employment, and it was recognised that a tutor did not follow GPhC guidance when conducting appraisals.

Albeit only after the intervention of the PDA Union, both students were offered reinstatement back into the company training programme with a different tutor.

## Another example of how the PDA Union can help pre-registration pharmacists

A pre-registration pharmacist complained that she was being treated less favourably than other members of staff based on her religion. She was of a different religion to her colleagues and management of the company, who were of the same religion as each other, and consequently she felt that she suffered a detriment. She complained to her employer who did not investigate, and then shortly after sacked her for failure to follow the company's absence reporting procedure.

With the PDA Union's support, she made a claim to the Employment Tribunal for unfair dismissal on the grounds of victimisation because of her religion.

The Tribunal decided that although her dismissal was said to be due to bad timekeeping and failure to follow the absence reporting procedure, no disciplinary action by the company would have resulted had the pre-registration pharmacist not made her complaint about victimisation. The Tribunal held that her complaint was therefore the reason for the disciplinary proceedings and her dismissal which followed – not the reasons that the employer put forward.

The Employment Tribunal was a close-run decision and it found in the pre-registration pharmacist's favour sufficiently to award her substantial damages for loss of earnings and injury to feelings. Although this decision was vindication

of the pre-registration pharmacist's poor treatment, which was never doubted, it was overturned on appeal due to a technicality. The pre-registration pharmacist, however, expressed her gratitude and had the reassurance of knowing that the PDA Union would provide her with support to fight to the bitter end what she (and the PDA Union) believed to be a gross injustice.

Pre-registration pharmacists have a one-year contract, and as employees don't have grounds for an unfair dismissal claim as they have less than two years' continuous service. They can be at the complete mercy of their employer. The exception to this rule is if the employee can evidence that they have suffered discrimination, harassment or victimisation at any stage of their employment contract.

The PDA Union often comes across cases whereby the pre-registration pharmacist has obviously been subjected to discrimination but sadly they have not contacted us within the three-month time limit (from the discriminatory act) for making a claim in the Employment Tribunal.

Although it is understandable that pre-registration pharmacists do not want to 'rock the boat' during their training year, they are disadvantaged by failing to approach the PDA Union for advice at an early stage when the incidents happen.

## Top tips

- Many employers stipulate that a pre-registration pharmacist is entitled to a number of 'ring-fenced' protected training time hours per week, to be agreed with the tutor. It is the responsibility of the pre-registration pharmacist to take this time and seek help from the tutor or teaching practitioner if it is proving difficult to take this.
- Any appraisal that indicates progress is less than satisfactory should be taken very seriously. A student should meet regularly with their tutor to agree an action plan to address any shortfalls in performance. This plan should be regularly reviewed to ensure progress is being made and any training identified has been implemented.
- If a student is invited to a termination meeting to consider their employment being ended, it is imperative that the PDA Union is contacted at an early stage. Early involvement of the PDA Union can often help resolve problems and ensure that the interests of the pre-registration pharmacist are protected.
- If you believe that you have been victimised, harassed or discriminated against then you must lodge a complaint at the earliest opportunity. Keeping your head down in the hope that the issue will iron itself out will not help you, particularly if these indiscretions are affecting you and your performance. The PDA Union will be able to assess whether or not you have a case and if appropriate will support you in your grievance.