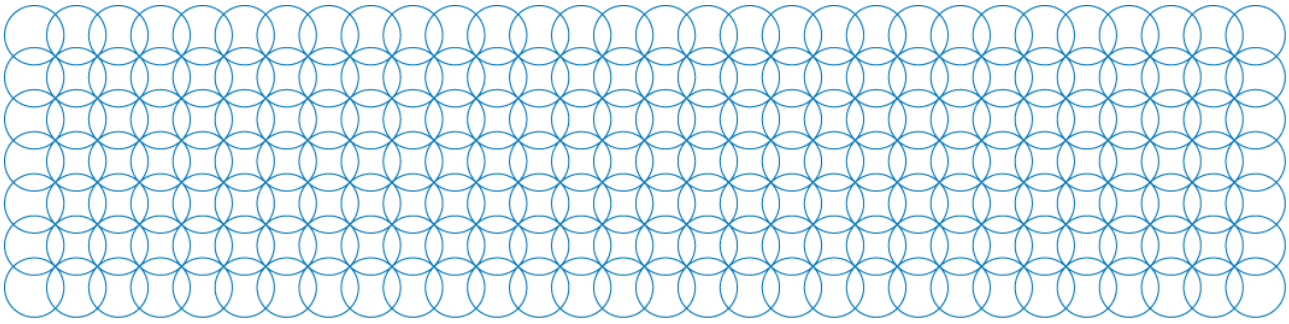
Ministry of Justice

MedCo Framework Review

Call for Evidence

This Call for Evidence begins on Thursday 16 July 2015 This Call for Evidence ends on Friday 4 September 2015



Guide Questionnaire

We would welcome submissions of evidence relevant to this Call for Evidence, please use the following guide questions to inform your response to this Call for Evidence. Please note it is important that your responses relate to the topics indicated below and that you provide evidence in support of your submissions.

Respondents may submit their replies using the following questionnaire, or alternatively you may submit your responses and/or evidence via the following routes:

- online at: http://survey.euro.confirmit.com/wix/p1845064200.aspx
- email to: Whiplashcondoc@justice.gsi.gov.uk; or
- post to: Whiplash Reform Team, 4.37, 102 Petty France, London SW1H 9AJ.

Respondents are encouraged to indicate in their responses if they are responding as an individual or on behalf of their firm/organisation. Responses received which cover topics unrelated to these areas will be read, but may not be considered in the final report or recommendations.

Guide Questions:
1: Are the qualifying criteria for all MROs and the additional criteria for high volume providers appropriate to ensure that the data suppliers registered on MedCo have sufficiently robust systems, procedures and financial protections in place? **i. If you agree, please explain why and provide evidence to support your argument.**
We have chosen to answer questions 1 and 2 together. The concept, logic and policy aims of MedCo are sound and are based upon a desire to crack-down on unscrupulous operators who are abusing the system. It is therefore both disappointing and concerning to receive feedback from members and the wider insurance market of the system being abused so soon after its creation. There have been examples given to us by members, as well as flagged by the wider insurance industry, where claimant lawyers and Medical Reporting Organisations (MROs) have sought play the system and have undermined random allocation of medical professionals – a key tenet in preventing fraud and ensuring success. Examples include reports from the industry that claimant lawyers have invented false financial links to MROs to ensure that they do not appear in the 'offer' to claimants. This means that other MROs are more likely to figure in the offer, and reduces the chances of a truly random allocation. Other examples include where MROs have claimed they are a national MRO, only to delegate this work out to third-party MROs, effectively removing the principle of random allocation from the system. Other examples of playing the system include MROs registering subsidiary companies, sometimes operating from the same address, with the presumable aim of ensuring they increase their chances of being included in the offer to claimants – effectively manipulating the system to increase their share of business. Other also achieve the same outcome by registering shell companies as both national and local MROs so they might appear twice in the offer. Data protection is also a concern as members have noted examples where an MRO was based in a café which very obviously has no physical security, as well as delegating work to third parties where the claimant may not have been given express permission to do so. An example of an 'expert liaison' team based outside the EU also raises data handling/processing issues under the Data Protection Act 1998 and the eighth data protection principle. There was also feedback from our members that some MROs had little or no understanding around the data transfer encryption of medical records, or securing of physical records in non-secure areas. Other comments from members include MROs registering as high-volume national MROs (HVNMRO), however not having the resources to actually deal with the volume of cases they are allocated. The feedback we received suggests that some of these supposed HVNMROs are neither set up to deal with high volumes nor national, with some subsequently making key appointments (Chief Medical Office and Compliance Officer) *after* they have been authorised by MedCo.

ii. If you disagree, please explain why and provide evidence to supportyour argument as to what changes to the criteria would be necessary toachieve the aim.

In reality, without a full accreditation check prior to MedCo authorisation it has become quite obvious some MROs/HVNMROs do not meet the qualifying criteria but have been granted a place on the MedCo panel.

The qualifying criteria currently in place should ensure that the MROs that are authorized by MedCo have sufficiently robust systems, procedures and financial protection in place.

Our solution would also include a more robust authorisation procedure where the number of cases an MRO can take on is better assessed. A ban on subsidiary firms being able to be registered, together with controls on the key staff (e.g. Officers) within MROs being able to be involved with other MROs should help to reduce the scope of MROs being able to play the system and increase their market share. This could be through a declaration that is checked and enforced by the MOJ.

2: Are there any aspects of the current qualifying criteria which you feel would benefit from further guidance or clarification?

If yes, please provide details of the criteria and any supporting evidence/suggestions for improvement.

Basic Qualifying Criteria

Compliance with all relevant regulatory requirements in relation to information security: This again needs to be proven prior to authorisation as feedback from BIBA members has indicated there are obvious gaps in what is required against what has been evidenced during due diligence exercises.

Direct Management of the expert panel: This needs a more rigorous process to manage the experts, than is currently experienced.

All MROs should be required to clearly evidence the following seven points:

1. What due diligence is conducted on new experts joining the panel
2. What is the frequency and level of communication between the MRO and their expert panel
3. How does the MRO conduct quality assurance checks on their experts.
4. How they measure and manage performance against SLAs
5. What initial and ongoing training is given to their experts
6. How are complaints about experts managed and who owns this process.
7. What is the role of the Chief Medical Officer in this process

Additional Qualifying Criteria

Ability to service cases allocated:

MROs, in particular HVNMROs need to provide evidence they have the ability to demonstrate the consistent delivery of quality medical evidence that is in line with industry set service level agreements and in respect of HVNMROs this has been produced in a high volume environment. This could be through proof of the volume of cases they already service, or how they expect to service a large volume of cases – including evidence that they employ the numbers of qualified staff necessary to perform.

A documented Disaster Recovery Plan (DRP) and Business Continuity Plan (BCP):

This requirement should be reviewed / extended to cover all MRO's with a minimum requirement to be agreed following the current audit process being undertaken by MedCo.

Information Security:

This needs to be standardised in line with current regulatory requirements and evidenced prior to authorisation or during the current audit process being undertaken by MedCo.

Standard SLAs:

MedCo needs to deliver one standard set of SLAs across all MROs and they should be able to evidence that they have the resources and infrastructure required to meet them as it clear from the due diligence our members have undertaken – this is not currently the case.

Definitions of HVNMROs and Regional MROs:

Clear definition of what constitutes an HVNMRO and Regional MRO as this is lacking at the moment.

Accreditation prior to MedCo authorisation:

This should have been the process from the outset. A BIBA member advised all of their their supply chain partners to be able to deliver the levels of service that meet clients' expectations. As a result of the lack of pre-authorization screening, there are a number of the MROs that do not meet the qualifying criteria and are unable to provide the level of service that we require and this has had a negative impact on our clients.

The current MedCo audits of the MROs will hopefully identify these issues and the information collected by MedCo during these audits will enable you to temporarily suspend or ultimately curtail the activities of any MRO failing to meet the required service levels. The information provided by these audits should be included in detail as part of this call for evidence to ensure future MRO applications only receive authorization following a rigorous accreditation process.

One member in particular wanted to place emphasis on the removal of the ability to game the system through having any financial interest or conflict with another registered MRO. They suggested the placement of an ethics or behavioral committee to help police and ensure that Medco is delivering to its overcharging objectives.

3: There have been specific questions raised by stakeholders about the definition and scope of national coverage and we would be interested in stakeholder views on how 'national coverage' could be defined - for example should it be a minimum of x% of postcodes.

i. If you have views on this aspect of the system please explain how/why the definition could be improved.

BIBA members who operate nationwide report issues with clients who live outside the main conurbations being asked to travel unacceptable distances for appointments in more urban areas due to the obvious lack of choice in the current 'one HVNMRO / six MRO' provision.

Once the MedCo audits have been completed and the MOJ has resolved the issues with organisations playing the system, a review of the mix of MROs provided in the offer to claimants should be urgently considered which should investigate whether more HVNMROs should be provided in the offer.

Furthermore, a maximum travel distance should be specified by the MOJ within the SLAs, requiring the MRO to evidence how it can achieve the SLA via its panel of experts.

ii. We would also be interested in your views and suggestions on what proportion of postcodes a 'national' MRO should be able to service; or whether an alternative such as 'regional coverage' should be considered.

All HVNMRO must provide nationwide cover evidenced within a set standard SLA with the capability to cover all postcodes, whilst complying with the service levels. Only when an MRO can demonstrate they have the infrastructure and capability to increase their coverage to national, then they should be able to apply for HVNMRO status.

With this in mind we believe that a second and possibly third HNVMRO option should be offered when booking a medical appointment via MedCo to ensure the customer's needs are met.

4. If you are an MRO, please provide evidence of the volume of reports you have been handling on a monthly basis since April 2014, i.e. before and after the introduction of MedCo on 6 April 2015.

N/A

5. What factors/data (if any) should the MoJ take account of when consideration is given to the number and type of MROs presented to users following a search?

Please provide details of the relevant factors you believe should be considered and why.

The main consideration when instructing an MRO must always be that they will deliver a good customer journey, meet all of the required SLAs and not introduce any frictional costs in to the process.

The current choice removes that consideration as claimants are only offered one HVNMRO but six regional MROs, who currently have no proven track record of delivery, expertise, reliability.

We believe that there should be a choice of HVNMROs provided once they have been authorised by MedCo and not the single option currently offered to claimants.

6. If you are a MedCo user (e.g. claimant solicitor), how many different MROs/experts did you typically instruct before the introduction of MedCo?

Please provide details of the number and type of MRO/expert you commonly instructed to provide medical reports in a typical year and please specify whether they are MROs or experts.

One of our members' legal service providers had access to two MROs (in addition to specialists medical experts directly where required) whom were chosen as they offered the following:

- Proven ability to deliver high volumes of medical reports
- Proven ability to cover all areas of England and Wales
- Proven ability to meet required levels of customer service to ensure that we are acting in our Client's best interests
- Financial stability
- Robust data security and data protection policies
- Robust business continuity plans
- Signed terms and conditions
- System integration

7. If you are seeking a medical report, what is your principal consideration when deciding which MRO/expert to select from the options provided in the search return?

For example describe the factors that affect your choice such as, whether you have used them before, standard terms and conditions or location in relation to claimant?

As per answer to question 6.

8. What changes, if any, should be made to the current offer of one high volume national and six low volume MROs? Please explain and/or supply evidence to support your view.

This is dependent on the numbers of MROs that exist in each category. We would like to have the ability choose from more than one HVNMRO all of whom have been fully audited before receiving MedCo authorisation. It would also make sense that given the increased registration fee and higher standard required to become an HVNMRO, they should be presented on a more frequent basis to the regional MROs.

MedCo should have the power to amend the ratio or HVNMROS/MROs as we have already seen the MRO market is quick to adapt and change. This ensures that the allocation model doesn't become distorted.

9. Do you feel that the current declaration meets the Government's objectives of enhancing independence in medical reporting through the breaking ofunhealthy relationships between organizations operating in the personal injury sector?

i. **If yes, please explain with evidence why the current declaration is sufficient and should not be extended.**

Answered below.

ii. If no, please explain with evidence how it should be extended and why.

As per the examples already given, BIBA members have concerns that the policy objective has not been fully achieved due to MROs and claimant solicitors playing the system to influence the offer.

Whilst medical professionals are regulated, MROs are not and are the only sector in the soft-tissue claims process which is not subject to regulation.

With this in mind, the MOJ should consider the regulation of the MRO sector, as MedCo cannot, and should not, be expected to perform this function.

Another example of where the policy objective is not being achieved at this time is the authorisation of some MROs / HVNMROs who are clearly unfit for purpose. A more robust authorization process, described in answers above, would help to resolve these issues.

10. Do you have any other views or evidence relating to whether the MedCo Portal is currently achieving the Government's stated policy objective to tackle dysfunctional behavior in the personal injury sector?

What (if any) further suggestions for reform would assist the operation of the MedCo portal, in particular, to address the behaviors exhibited by some MROs since the MedCo portal was introduced?

MedCo has only been established for a short period and therefore full judgement has to be reserved on the effectiveness of the scheme. However, reports from the market show that there is no reduction in claims notification, coupled with observations from BIBA members that no MRO has reported that a claimant has not been injured as they have claimed. We support MedCo, however, this is worrying as it seems to suggest that the scheme is not weeding out spurious claims which have blighted the industry.

11. Do you have any other feedback in relation to the operation of MedCo that you think should be considered as part of this Call for Evidence?

We believe that the following should be considered as part of this call for evidence:

- Integration between the MedCo portal and instructing party's case management systems would improve the integrity of the data and also deliver efficiency gains to the MedCo portal users.
- Management Information relating to performance – produced by the MedCo portal – should be publically available. This would build confidence in its ability to achieve policy objectives
- A list of all MROs that are registered with MedCo along with contact details to enable the instructing party to contact the MRO to complete due diligence and agree contractual terms with the MRO before proceeding to instruct them.
- Any listing should also highlight whether the MRO is an HVNMRO or a Regional MRO.
- To ensure transparency and confidence in the allocation process, data that shows selection of MROs and presentation frequency should be made publically available.