



## **Ministry of Justice Consultation**

### **Whiplash Reform Programme: Consultation on Independence in Medical Reporting and Expert Accreditation**

**Response from the Motor Accident Solicitors Society**

**September 2014**

#### **Introduction**

This response is prepared on behalf of the Motor Accident Solicitors Society (MASS) and submitted by the Chairman, Craig Budsworth.

MASS is a Society of solicitors acting for the victims of motor accidents, including those involving personal injury (PI). MASS has over 150 solicitor firm Members, representing over 2000 claims handlers. We estimate that member firms conduct upwards of 500,000 PI motor accident claims annually on behalf of the victims of those accidents. The Society's membership is spread throughout the United Kingdom.

The objective of the Society is to promote the best interests of the motor accident victim. This is central, and core to our activity. We seek to promote only those policy and other objectives which are consistent with the best interests of the accident victim. We seek to set aside any self interest in promoting these arguments, recognising that we are in a position of trust, and best placed to observe the best interests of motor accident PI victims first hand. We are a not for profit organisation, which requires specialism in motor accident claimant work as a pre-requisite for membership. We also have a Code of Conduct which member firms are required to abide by, which is directed to the best interests of the motor accident victim.

-----

#### Contact:

If you have any queries or would like further information, please contact at first instance - Jane Loney at:

MASS  
St Bartholomew's Court  
18 Christmas Street  
Bristol  
BS1 5BT

Tel: 0117 925 9604  
Email: [jane@mass.org.uk](mailto:jane@mass.org.uk)  
[www.mass.org.uk](http://www.mass.org.uk)

## Executive Summary

- The Motor Accident Solicitors Society (MASS) welcomes the opportunity to respond to the Ministry of Justice's consultation on independence in medical reporting and expert accreditation. We support the general approach proposed by MOJ, but have several specific issues around the implementation and operation of the new MedCo Portal.
- MASS strongly believes that claimant solicitors should be given the option to choose the expert they instruct, rather than one which is allocated via the MedCo Portal. We believe that the results of a search conducted through the MedCo Portal should be presented to allow the selection of a medical expert or MRO on the basis of being geographically local to the claimant, but that an element of randomness is introduced to restrict automatic re-use of the same expert/MRO for each case.
- In order to ensure high professional standards acceptable to all parties, we suggest that there should be different types of accreditation for individual experts and MROs, allowing for review of individuals in the event of accusations of the production of unsuitable reports or behaviour.
- We agree with the transitional provisions proposed and the undertaking of a "previous claims" data search prior to accepting new claims.
- We would also suggest that confirmation of time periods for examination and reporting are included within the accreditation process and that provision for service level agreements, which are currently offered by many MROs, are carried forward into the new process.
- MASS looks forward to continuing to work with the MoJ and other stakeholders in the implementation of the new accreditation scheme which we believe will contribute to the fight against fraudulent claims by providing more consistent, professional medical reports.

## MedCo Portal

**Question 1: Do you agree that the proposed amendments to paragraphs 7.1A(1) and 7.32A of the Pre-Action Protocol and miscellaneous amendments to the CPR in Annex C are sufficient to ensure that claimant representatives comply with the requirement to commission an initial fixed costs medical report from an accredited expert via the MedCo Portal?**

Whilst MASS agrees that the changes will be sufficient to ensure that claimant firms must use the accredited expert via MedCo, there appears to be a discrepancy between the rules and the words contained within the consultation. Page 9 of the consultation states: “Anyone commissioning a medical report will go to MedCo and will receive a list of appropriate experts and/or medical reporting organisations (‘MROs’) from which they may obtain the required medical report”. However, the draft rules state “from an accredited medical expert **allocated** via the MedCo Portal”.

The clear indication from the consultation is that the claimant’s representative will continue to get a list of experts or MROs to select from. Yet the draft wording of the rules implies that there will be no selection involved and an expert will merely be allocated randomly. MASS believes that claimant solicitors should be given the option to choose the expert they instruct and therefore suggests that the word ‘allocated’ in the rules be replaced with ‘selected’.

## Litigants in Person

**Question 2: It is anticipated that access to the MedCo Portal will be available to litigants in person. Do you have any views on whether use of the MedCo Portal should be mandatory for litigants in person?**

MASS agrees that the use of the MedCo portal should be mandatory irrespective of who is bringing the claim.

## Commissioning Medical Experts or MRO’s

**Question 3: The results of a search in the MedCo Portal can be displayed in different ways. Do you have any views on whether the MedCo search results should offer commissioning practitioners a choice of named medical experts and / or medical reporting organisations?**

As stated in question 1, MASS believes that the results of the search should be presented in a way that provides for selection of a medical expert or MRO. Our suggestion would be to use a geographical search that provides for a number of experts, or MROs who can provide experts, within a 10 mile radius of the claimant’s desired postcode for the examination, accounting for claimants to enter a postcode that suits them for the examination, such as nearer to work. This should provide a wide location area of 20 miles and yet will mean that the claimant should never have to travel more than 10 miles, therefore giving a selection of a number of experts/MROs. Should that number exceed say 10 of either experts or MROs then there should be a random provision where only 10 are provided.

This second aspect would therefore produce a random selection in every case. Alternatively, an option would be to restrict the selection of expert/MRO on the next subsequent case. As an example, the claimant representative chooses expert A for a claimant in Manchester and then next time the representative has a client in Manchester expert A is not shown on the list but would be there for the third case.

## Accreditation Process

**Question 4:** Do you agree that the proposed amendments to paragraphs 1.1(A1) and 1.1(10A) of the Pre-Action Protocol, Rules 45.19, 45.291 of Part 45 and miscellaneous amendments to the CPR in Annex C are sufficient to ensure that only accredited medical experts are instructed to provide fixed cost medical reports in whiplash cases? Do you agree that the transitional provisions in paragraph 4.7 are appropriate?

MASS agrees with the proposals.

## Accreditation - Standards and Training

**Question 5:** The Government is working closely with stakeholder representatives to develop a proportionate accreditation process; we would welcome any views or suggestions relation to standards, criteria or training.

MASS believes there are two types of accreditation to consider - that of the individual expert and that of the MROs.

In relation to an individual expert, a recent history of treating soft tissue injuries should be required. Individual doctors should require accreditation and not simply be covered under the umbrella accreditation awarded to the MRO. We would suggest a sitting panel consisting of soft tissue experts approve applicants. The same panel could then decide who loses their accreditation at some later point if the situation arises following unsuitable reports or behaviour from the expert.

We have seen the proposal for accreditation proposed by AMRO and agree in principle that there should be a robust accreditation scheme for MROs, although we have some concerns in particular over the level of net assets required and the trading period proposed. We also suggest that the level of fees and bond requirements be given careful consideration to ensure that users of the system are protected but a fair and competitive market is preserved.

## Data Sharing

**Question 6:** Do you agree that the proposed new paragraph 6.3A in the Pre-Action Protocol is sufficient to ensure that claimant representatives undertake a 'previous claims' data search prior to accepting new claims?

MASS agrees with the proposals.

## Equality

**Question 7:** Do you consider that the amendments contained in this consultation will impact on people with protected equality characteristics? If so, please give details.

We do not feel that the amendments will impact on people with protected equality characteristics.

## Further Comments

### **Question 8: We would welcome any further comments you may have in relation to the amendments covered by this consultation.**

We would suggest that, as part of the accreditation, the examiner, or the MRO, should confirm the time periods within which they can carry out the examination and provide the report.

MASS believes that there are some positives from the current system that can be taken forward into the new process. One particular element is that of service level agreements which many MRO's operate with the solicitor firms they work with. MASS believes that such agreements benefit the smooth running and efficiency of the medical reporting process and consequently protect the accident victim in the service they receive. We would therefore recommend that the Ministry consider such agreements are incorporated.