



**Ministry of Justice:
MedCo Framework Review:
Call for Evidence**

Response from the Motor Accident Solicitors Society

September 2015

Introduction

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

MASS is a Society of solicitors acting for the victims of motor accidents, including those involving personal injury (PI). MASS has 140 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.

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Executive Summary

The Motor Accident Solicitors Society (MASS) is pleased to have the opportunity to set out our views on the operation of MedCo. We are fully supportive of the objective of improving the quality of medico-legal reporting in whiplash claims and recognise that MedCo is an important element of this process, alongside stronger accreditation and auditing of MROs which will be in operation from January 2016. We have been pleased to work alongside colleagues from across the legal, insurance and medical sector in getting MedCo up and running and will continue to play an active role as a Board Member of MedCo Registration Solutions. We are committed to helping make the system work more effectively on behalf of claimants and all related stakeholders.

We do, however, recognise that there have been some initial problems with MedCo. Claimant solicitors have been experiencing difficulties with the current structure of the system which has led to some unforeseen behaviours that are acting detrimentally for claimants.

MedCo will take time to effect change, but has the potential to make real improvements so that medical reports give a true indication of the injury the claimant has suffered. We hope that our comments in this response are viewed as being constructive in this context. It will take time for the system to evolve to a more satisfactory level of operation and must be judged in the future only once the accreditation and auditing elements are fully functional.

We believe that MedCo will have a significant impact on improving the market if it is given the chance to work and that collectively this series of reforms could play a part in helping drive fraudsters and opportunistic claimants out of the system and deliver an improved process for both insurers and claimants.

MASS proposes that minimum service standards should be set by MedCo, which are agreed to and signed by all MROs, whether national or otherwise, so that there is confidence throughout all users that basic standards are set. This should address some of the problems that have been encountered around poor or inadequate service levels.

Further clarification must be provided on the issue of multiple applications and the practice of high volume national (HVN) providers creating additional entities that have been accepted amongst regionally based (RB) providers should not be allowed. The definition of 'sub-contracting' needs careful consideration in order to avoid unforeseen and undesirable commercial arrangements which may be detrimental to the overall objectives of MedCo and importantly the service provided to the accident victim. This should assist in countering the problems that have sometimes been experienced where experts are designated long distances away from claimants.

MASS believes that national coverage should mean national and therefore those MRO's should be able to provide an expert within a reasonable distance (10-15 miles) from the claimants home or place of work. We do not however believe that breaking down the definition of national coverage to a certain percentage of postcodes is appropriate, although we recognise that there may be some issues for the more remote areas of England and Wales.

MASS believes that the policy of restricting the choice of selecting only one national MRO runs contrary to the wish to avoid unduly impacting the market and that the unintended consequences of this approach has already resulted in significantly affecting the market. In order to rebalance the market, we believe that 2 national MRO companies should appear within a search and 6 RB MROs. The principle of one firm equaling one entity must be enforced to ensure that smaller companies are not unduly disadvantaged.

MASS does not agree with the policy of randomisation and believes that it has already had a significant impact on the competitiveness of this market. We submit that the insertion of a field that shows the name of the solicitor firm that is instructing the expert/MRO would greatly assist in identifying any consistent links (financial or otherwise) and could be regularly monitored. We also make several suggestions about how the principle of independence in reporting could be improved such as strengthening the rules around 'family' links and a complete ban on referrals between associated businesses.

As a Board member we believe that it and the sub-committee structure have worked well and been generally successful in acting on issues brought to its attention. We do though make some suggestions about how transparency, improved publicity and better communication could improve the system further.

MASS also suggests that careful consideration be given to fully regulating MROs, currently the only area within the personal injury claims process that is not covered by existing regulations and the current Rules.

Qualifying Criteria

Question 1: Are the qualifying criteria for all MRO's 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**
- ii) If you disagree, please explain why and provide evidence to support your argument as to what changes to the criteria would be necessary to achieve the aim**

MASS believes that whilst many of the qualifying criteria are adequate, unforeseen consequences have developed which need to be reviewed and clarified.

MASS has concerns surrounding the service levels that some MRO's are providing, which is having an adverse effect on the accident victim. This includes issues like poor communication, delay in appointments, delay in producing a report and distance to travel for the claimant. There are also instances of companies not providing the coverage that they have said they can (ie providing a national coverage when practically they are not able to do so).

Consequently MASS proposes that minimum service standards should be set by MedCo, which are agreed to and signed by all MROs (whether National or otherwise) so that there is confidence throughout all users that basic standards are met, for example, administration capabilities, communication and reporting timelines and coverage capabilities. Such basic standards should be set in line with industry standards many of which have been offered for a number of years by reputable MROs, and would include, set periods of time for sending instructions to experts and returning reports after examination; distance to travel for examination etc. Additional service level agreements can then be arranged on an individual basis if required by the claimant representatives. By setting this minimum standard, this will also provide MedCo with a minimum benchmark on which to audit, alongside the qualifying criteria.

MASS is particularly concerned that MROs applying as a high volume national (HVN) provider have been accepted to show in an 'offer' without first evidencing that they meet the criteria. Any new applications for any MRO should have the evidence before being authorised to show within the 'offer'. Whilst audits should assist in identifying those that should remain as a HVN, to avoid future issues for new entrants, there should be a minimum trading history, empirical evidence of their ability to service the work, demonstrate their expertise and their capacity to process over 40,000 reports nationally. With respect to this last point, agencies should be required to provide evidence on office space options, recruitment pool, business plans (past and present) and historical volumes. Ideally all high volume providers should also have the capability to offer A2A solutions so ensure the best possible customer journey for the client.

Question 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.

MASS believes that further clarification must be provided on the issue of multiple applications.

It would appear that multiple registrations have occurred as a commercial reaction to randomisation and has created the undesirable effect of a larger firm creating additional entities that have been accepted within regionally based (RB) MROs. MASS does not believe that such practice should be allowed. It should be one firm = one entity, whereby one MRO is either eligible as a HVN or RB MRO.

MASS would also question the development of an overarching company that multiple firms have associated with. A model of this nature can provide the opportunity for any form of sub-contracting or 'links' to take place (for example, between MRO's in how they provide coverage or the doctors they instruct). In order to ensure complete transparency and to provide the user with the confidence that the MRO they instruct is and remains the company that is providing and responsible for the service that has been agreed, this kind of model should not be permitted within MedCo. Consequently the definition of 'sub-contracting' needs careful consideration in order to avoid unforeseen and undesirable commercial arrangements which may be detrimental to the overall objectives of MedCo and importantly the service provided to the accident victim.

In the interests of fairness and the overall objectives of MedCo, MASS believes it is important to ensure that any overarching company model, multiple registrations and the number of firms 'offered' in the original search are all addressed simultaneously.

MASS also believes that MROs should not be able to advertise which 'level' they are affiliated to (ie HVN or RB) and should not have anything in their title identifying them as linked with an overarching company, should the same be allowed to continue.

National Coverage

Question 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% postcodes?

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

MASS believes that national coverage should be about the ability to provide an expert within a reasonable distance (10-15 miles) from the claimant's home or place of work. It is important to consider this from the claimant's perspective and what should be reasonably expected from them. It is of considerable concern that the current system is allowing many companies to 'say' they can provide national coverage, but practically they are unable to do so. This is particularly evident amongst those RB MRO's who do not have any specific criteria on this point, in which to adhere to. Consequently when provided with the opportunity to select which regions they are able to cover, some are selecting all the regions, thereby indicating that they can provide national coverage, when in many cases they cannot. This then leads to the opportunity of sub-contracting / 'arranging' with other MRO's to service the areas that are unable to be covered. As explained previously, MASS believes that this is wrong and that the user should have the confidence that when selecting a specific company, then it is that company who is providing the entire service and retains control of the various service requirements.

MASS understands that the audit committee are looking at the definition of 'national' and therefore believe that it is equally important to determine a definition for those companies who may perhaps be only able to provide coverage in specific regions of England and Wales. This is an element that could be included within the minimum service standards as suggested in question 1.

- 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.**

MASS does not believe that breaking down a national coverage to a certain percentage of postcodes is appropriate. National coverage should mean just that and therefore a ‘national’ MRO should be able to provide an expert within 10-15 miles of a postcode within England and Wales. That said, MASS does recognise that there are many remote areas that may not be possible to cover. An alternative therefore could be through setting a set distance from an NHS GP surgery / health clinic.

Question 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.

Not applicable

Selecting an MRO / Expert

Question 5: What factors/data (if any) should the MoJ take account of when consideration is given to the number and type of MRO’s presented to users following a search? Please provide details of the relevant factors you believe should be considered and why.

Throughout the development of MedCo and these reforms, the Ministry of Justice have consistently maintained that they do not wish to “unduly impact on the market” and affect the ability of the smaller MROs from either entering the market or developing their business and increase their market share. Indeed from the March statement the MoJ stated “The aim is for this mechanism to maintain consumer choice with sufficient flexibility so as not to prevent MROs from developing their business”.

MASS believes that the policy of restricting the choice of selecting only one HVN MRO is contrary to this intention and the unintended consequence that has subsequently evolved has significantly affected the market.

MASS believes in order to rebalance the market, 2 national / HVN MRO companies should appear within the search and 6 smaller / regional MROs. In line with this, there should only be one firm = one entity to ensure that the smaller companies are not unduly disadvantaged through the reduced opportunity of increasing their market share.

Question 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?

Following research amongst our membership, the majority of member firms would typically instruct between 2 and 3 MRO’s prior to the introduction of MedCo.

However, since the introduction of MedCo, the number of different MROs instructed has greatly increased from anywhere between 4 and 60, with an average of around 16. Though smaller in number, the number of experts engaged has also dramatically increased.

It is however important to recognise that the majority of firms, especially those handling large volumes of cases have had to undergo significant work in order to satisfy themselves that the MROs that are offered and those that are ultimately selected, can provide the service

level to suit their firms and clients' needs. Whilst this was perfectly feasible and acceptable when dealing with 2 or 3 MROs prior to MedCo, undertaking this level of investigation for over 20 (and significantly more in some cases) has been extremely time consuming, with additional expense and raised much concern especially when having to select a relatively new and / or unknown MRO without causing undue delay for the client.

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 MRO's or experts.

The majority of our members would instruct MRO's to provide GP medical reports for the majority of their cases. However, for the more complex and higher value claims, some would instruct experts direct who are perhaps more specialist, for example, Consultant Orthopaedics.

Question 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 the claimant?

MASS members have had a broad range of experiences of using MedCo and have a variety of opinions on how it could be improved, depending upon the size of firm, the quantity and type of cases being conducted, the nature of the injury and their geographical scope for conducting business.

They believe that there are a range of important factors in deciding which MRO / expert to select through MedCo. However, the importance of the distance from the client and having an existing Service Level Agreement are generally considered to be the two most important factors by our members. Other factors taken into consideration include:

- Convenience for the client
- Quality of report
- Reliability of MRO / expert
- Trust of MRO / expert
- Reputation of expert
- Level of service to meet the needs of the client (ie options of examination locations / time / communication (email/text/telephone))
- Existing working relationship
- The ability to provide A2A links to ensure an improved customer journey and ultimate efficiency

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

See question 5

Independence

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

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

MASS believes that the current declaration does to some extent meet the objectives of enhancing independence. As part of the stakeholder group, MASS has spent a significant amount of time considering this aspect and the financial links that could occur.

We have however, consistently aired our concerns about the possibility of links being put in place by family members and would therefore urge the Government to consider more closely this element, as the rules currently do not prevent siblings / partners / other family members from forming a financial link or other relationship between organisations operating within the sector.

MASS believes that this potential 'loophole' could be exploited further and therefore more robust rules should be applied and linked with the auditing process. We understand that the Ministry were provided with a more detailed definition prior to finalising the qualifying criteria, which extended to family members / close personal connections. We would therefore urge the Ministry to reconsider this document.

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

As previously advocated both prior to the new rules and since, MASS does not agree with the Government's policy of randomisation and believes that it has already had a significant impact on the competitiveness of this market.

MASS submits that an alternative to randomisation and a method in which to identify any consistent links (financial or otherwise), could be easily obtained by inserting a field that shows the name of the solicitor firm that is instructing the expert / MRO. Regular monitoring of this can be put in place, which would easily highlight if there have been specific / continual links and patterns established between particular solicitor firms and MROs/experts. To further enhance this, if required, a policy could be put in place whereby a maximum percentage is allowed for instructions to one firm or expert.

It is well known that no-one within this process agrees with the policy of randomisation as there are other more effective ways to enhance independence without effecting the competitiveness within this market and adversely affecting the efficiency of the process.

MedCo Portal

Question 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 behaviour in the personal injury sector?

As MASS has a director representing the Society on the MedCo board, we believe that generally where information has been fed back to the board on poor behaviour or issues that need to be addressed, then the Board and their sub-committees have worked well and been successful in acting on those issues. We would however submit that it would be beneficial if

MedCo publicised this area, especially where issues of poor or unacceptable behaviour have been addressed and where / if companies registration to MedCo have been suspended. It is too early to categorically comment on the success of the MedCo portal as there are a number of issues that need to be addressed, as indicated within this response. However, going forward and learning from the experiences of the RTA Portal, MASS would submit that a MedCo user committee should be introduced and maintained which can develop and feed into a programme of continuous improvement.

With regard to the technological side of the portal, it is too early to comment as feedback on the information being fed into the portal by experts following an examination has yet to occur in sufficient volume to be able to monitor and assess. Equally, it is important to wait for the appropriate accreditation of experts to take place.

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

MASS believes that robust implementation of the data contributor agreement must be undertaken to act quickly on any poor behaviour or practices that are breaching the agreement or rules.

It may also be worth considering a permanent 'behaviour' committee, with appropriate powers to enable it to enforce its decisions, which includes users, as there have already been some concerns raised that some businesses may not be LASPO compliant. Consequently this should involve other regulators like the SRA, who perhaps should also be co-opted onto the proposed user committee.

Furthermore, MASS notes that according to the current Rules for all those involved within the personal injury claims process, the only area that is not regulated are MRO's. We would therefore suggest that the Ministry consider whether this aspect of the industry needs to be regulated. At present the rules governing the MedCo board and the resources they have available, does not provide them with any form of robust regulatory authority and therefore are not in the position to adequately ensure that all those involved in this process are operating and behaving in accordance with the Rules governing the MedCo portal and to achieve the Governments objectives. MASS would therefore suggest that the Government considers whether such regulation is appropriate or required and if so, to consider who should undertake that responsibility.

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

Operationally it would assist if MedCo had a manned IT helpdesk for issues that arise, with email notifications to the registered user when the system has technical issues.

A weekly updated MRO report emailed to the registered user would be useful so that firms can keep track of who is registered and attempt to agree terms, and undertake their own due diligence and IT links.