



QUALIFYING CRITERIA FOR MEDICAL REPORTING ORGANISATIONS REGISTERED WITH MEDCO

Preamble

The provision of good quality independent medical evidence in support of road traffic accident (RTA) related soft tissue injury claims is an important strand of the Government's reform programme for the personal injury sector. The following qualifying criteria are intended to ensure that medical reporting organisations (MROs) already registered as well as those wishing to register with MedCo Registration Solutions (MedCo) are properly constituted businesses with satisfactory systems and sufficient resources in place to operate to the minimum required standards.

Since the implementation of the MedCo reforms in 2015 a number of practices and business models have developed which have the effect of subverting the Government's policy intention to introduce greater independence through the introduction of the MedCo system. When the Ministry of Justice (MoJ) announced the outcomes of its MedCo review in early 2016, it made clear its view that these practices and the business models that supported them should cease. In support of this position it was also announced that the qualifying criteria for MROs applying to register on MedCo would be amended to provide greater clarity, and also that a definition of an MRO for the purposes of MedCo would be introduced.

Following this announcement, a short stakeholder survey was held to seek views and identify potential issues with the proposed definition. The definition is included in the following table at Criteria 1.1. It is designed to demonstrate the types of MRO model acceptable for the purposes of providing medical reports via the MedCo system. Under the definition, organisations set up purely as a 'shell' to gather instructions and forward them on to a 'parent' or other related organisation are not allowed. It is acknowledged that some MROs may fall under a common third party ownership model but MROs must be fully functioning entities in their own right and must have a principal function of providing medical reporting services.

MedCo will make sure that MROs applying for registration do not undermine the random allocation model by ensuring they meet these qualifying criteria. MedCo's role is to implement and enforce compliance with these qualifying criteria in accordance with the terms set out in the MedCo Data Contributor Agreement between MROs and MedCo, together with any guidance published by MedCo and any instructions and/or recommendations provided by the MoJ, including the terms of any Memorandum of Understanding agreed between the MoJ and MedCo. Failure to meet the qualifying criteria may lead to further action being taken against that MRO including suspension and/or removal from the system.

Qualifying Criteria for all Medical Reporting Organisations

The qualifying criteria for all MROs to register on the MedCo IT portal are set out in Table One below. The additional qualifying criteria for MROs classified as having high claims capacity and national coverage are set out in Table Two.

These revised criteria have been agreed by Ministers following analysis of the responses received to both the MoJ's 'Call for Evidence', which ran from 16 July 2015 to 4 September 2015, and the subsequent 'definition' stakeholder survey held between 24 March 2016 and 15 April 2016.

The revised criteria will take effect on a staggered basis from the date of publication of this document.

The following specific arrangements will apply:

- for all new MROS registering on MedCo and those applying for reclassification as a high volume, national MRO the new criteria will be implemented from the date of publication of this document;
- for all existing shell companies the criteria will be implemented on 8 November 2016; and
- for all other MROs the criteria will be implemented three months following the publication of this document. MedCo has already announced on its website its intention to carry out a full audit programme to ensure all remaining MROs meet the revised qualifying criteria.

Applications by MROs applying for registration for the first time and those applying for reclassification as a high volume national MRO before the publication of this document, including those currently before MedCo, will be considered against the revised criteria. If they consider it necessary, these MROs may resubmit their applications, which MedCo will prioritise.

MedCo will interpret and apply the qualifying criteria in considering applications from MROs to register on the system and/or auditing MROs that are already registered. MedCo will publish guidance to MROs to assist applicants with the interpretation of the following criteria.

The MoJ will continue to keep these qualifying criteria under review and will consider future changes to meet the MoJ's policy objectives, as required.

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Table One – Minimum Qualifying Criteria for all MROs Registered with MedCo

All MROs applying for inclusion on the MedCo system must meet (and on an ongoing basis must continue to meet) each of the criteria in Table One in order to achieve and retain MRO status on MedCo. The criteria in Table Two cover the additional requirements for high volume, national MROs.

1. Qualifying Criteria for all MROs	Rationale for criteria
<p>1.1 All Medical Reporting Organisations (MROs) wishing to register on the MedCo system must provide documented assurances that their organisation meets the terms below.</p> <p>MRO Definition: For the purposes of registration and remaining registered on MedCo an MRO is defined as “an organisation whose principle function is to provide medico-legal reporting services and which is—</p> <p>(i) independent¹;</p> <p>(ii) properly staffed and resourced; and</p> <p>(iii) directly and solely responsible for all work associated with receiving instructions via the MedCo portal and instructing a medical expert to provide an initial medical report”.</p> <p>Each MRO must directly:</p> <p>a) establish and maintain, the direct management and control of a panel of MedCo accredited experts;</p> <p>b) employ staff in-house with responsibility for managing the instructions received from authorised users and for directly undertaking all administrative work associated with the commissioning of reports from MedCo accredited experts on their own panel, including managing the</p>	<p>The practice of MROs registering numerous shell companies with MedCo has undermined the Government’s policy principles of independence and fair competition and could undermine public confidence in MedCo.</p> <p>This definition has been developed to provide clarity as to what functions an MRO providing medico-legal reports on the MedCo system should undertake.</p> <p>It is acknowledged that some MROs may be may fall under a common third party ownership but MROs must be fully functioning entities in their own right and must have a principal function of providing medical reporting services. MROs should not outsource the core functions or significant areas of the MRO role to third party service providers. It is central to the policy underpinning random allocation that the MRO that receives the instruction carries out the work.</p> <p>This definition in conjunction with other criteria will provide customer reassurance regarding quality of service. MROs should be fully resourced and accountable and not be clearing houses with some/all of their functions outsourced to a linked (parent) or other organisation. It must have sufficient employees and resources available to it to service all accepted instructions to a minimum accepted standard of service to instructing parties.</p> <p>Compliance with this definition will be assessed by MedCo as part of the</p>

¹ Whilst acknowledging the third party ownership model, the Government defines an independent MRO as a stand-alone company with separate management structures and located in physically different premises from any other MRO, including a different registered address for VAT or incorporation purposes. An MRO selected via the MedCo Portal will be directly and solely responsible for carrying out the work for all instructions received.

1. Qualifying Criteria for all MROs	Rationale for criteria
<p>invoicing, payment and debt collection processes;</p> <p>c) manage the appointments process for claimants (including identifying appropriate dates, times and venues for medical examinations, processing cancellation and rescheduling of appointments);</p> <p>d) oversee and quality assure the report production process and have systems in place to effectively manage any complaints from instructing parties; and</p> <p>e) comply fully with the MedCo Data Contributor Agreement, including its Ethics Policy, and operate in a way which is not contradictory to the Government’s stated policy objectives.</p>	<p>formal MRO audit process. This will be in accordance with:</p> <ul style="list-style-type: none"> • the terms set out in the MedCo Data Contributor Agreement; • guidance published by MedCo; and • instructions and/or recommendations provided by the MoJ, including the terms of any Memorandum of Understanding agreed between the MoJ and MedCo. <p>Organisations which (in the opinion of the MedCo Board) do not meet this definition will be identified and remedial action will be required. Failure to meet the definition could lead to removal from the system. This includes MROs that fail to provide MedCo, within timescales defined by MedCo, with all such documentary evidence and/or additional information as MedCo may reasonably request for the purpose of determining whether or not an MRO meets the qualifying criteria.</p> <p>For the avoidance of doubt these qualifying criteria are intended to restrict and control the deliberate establishment of “shell” MROs which undermine the Government’s policy of randomisation.</p>
<p>1.2 Obligation to declare all direct financial links</p> <p>In order to achieve and retain MRO status an organisation is required to sign and comply with the declaration contained in the Revised Statement on Financial Links. Signatories to this declaration must keep it up to date at all times. In addition as a minimum all organisations are required to sign this declaration upon registration as an MRO, and thereafter they must re-sign the declaration on an annual basis (or as and when required in accordance with the MedCo Data Contributor Agreement).</p>	<p>The Government has consistently stated its commitment to tackling the issue of direct financial links between those who commission reports and those who produce them.</p> <p>In order to ensure this public policy objective is delivered, MROs are required to declare all those individuals and organisations to which they have a Direct Financial Link, as required in the Revised Statement on Direct Links. This document is included as a schedule in the MedCo User Agreement provided to and signed by MROs when they register with MedCo.</p>

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<p>1.3 Commitment to pay medical experts on set credit terms irrespective of the outcome of the case.</p>	<p>MROs must commit to, and demonstrate the ability to pay medical experts within, payment terms agreed with their medical experts. These payment terms must not include any element of contingency based on a particular outcome of the case in order to remove any suggestion that the medical expert has an interest in the outcome of the case.</p> <p>This is consistent with paragraph 88 of the “Guidance for instruction of experts in civil claims²” produced by the Civil Justice Council and which came into force on 01/12/14.</p>
<p>1.4 A financial instrument of at least £20,000 demonstrating that the MRO has sufficient funds available to remunerate medical experts from whom it has commissioned medical reports in the case of failure of the MRO.</p>	<p>The availability of sufficient financial resources is required to ensure that medical experts are protected in the event of a failure of an MRO.</p> <p>Obtaining this financial instrument is also a disincentive to the establishment of “shell” MROs which undermine the random allocation model.</p>
<p>1.5 Evidence of a minimum of £1m for professional indemnity insurance and £3m for public liability insurance.</p>	<p>If an MRO mismanages a case (e.g. misses a limitation date or court deadline) then the claimant and the claimant’s representative might suffer significant financial loss. Therefore, a minimum level of Public Liability cover is required for MROs.</p> <p>On the same basis, if a claimant sustains any loss or injury during the course of the medico-legal process, the MRO must have appropriate insurance cover to mitigate any losses arising from a claim.</p> <p>The level of insurance included in this criterion is a reflection of the premiums that the industry currently pays.</p>

² <https://www.judiciary.gov.uk/wp-content/uploads/2014/08/experts-guidance-cjc-aug-2014-amended-dec-8.pdf>

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<p>1.6 Compliance with all relevant regulatory requirements in relation to information security including all duties imposed under the Data Protection Act (DPA) 1998, any replacement legislation, and any additional supporting European legislation.</p>	<p>MROs, irrespective of their size, handle sensitive information often medical in nature. Therefore, this requirement will ensure that all MROs can demonstrate that they have all necessary systems, controls and checks in place in relation to information security.</p> <p>This will give confidence to instructing parties that MROs registered with MedCo all adhere to a consistent minimum standard and, if necessary that they can demonstrate compliance if audited.</p>
<p>1.7 Commitment to, and compliance with, anti-bribery legislation.</p>	<p>MROs, irrespective of their size, may be susceptible to bribery. Therefore all MROs are required to demonstrate that they have all necessary systems, controls and checks in place from to comply with anti-bribery legislation. This will give confidence to instructing parties that MROs that are accredited through MedCo all adhere to consistent minimum standard and, if necessary that they can demonstrate compliance if audited.</p>
<p>1.8 Commitment to, and compliance with, a business ethics policy.</p>	<p>Instructing parties need to be reassured that the organisations they instruct act ethically and follow all relevant legislation and industry standards appropriately.</p> <p>All MROs must both comply with the ethics policy contained in the MedCo user agreement and to implement and follow an appropriate business ethics policy for their business.</p>
<p>1.9 Documented complaints handling process.</p>	<p>It is a consequence of the operation of the MedCo system that instructing parties will have to utilise MROs that they previously may not have chosen.</p> <p>As such, and in order to retain MedCo credibility, any MRO must demonstrate that it handles all complaints seriously and in a professional manner. A documented process must be in place and be auditable.</p>
<p>1.10 Appointment of a Responsible Officer/Compliance officer.</p>	<p>All MROs must have a single point of contact responsible for demonstrating compliance with MedCo requirements, who will be responsible for liaison with MedCo and/or its audit team.</p>
<p>1.11 Restriction on providing medical evidence in any case where a Related Party is involved.</p>	<p>No MRO may provide a medical report in support of a case in which a related party is involved in order to avoid conflicts of interest.</p>

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<p>1.12 MROs should not have Directors and Officers who have been declared bankrupt or convicted of fraud in last 5 years.</p>	<p>MROs must be owned and operated by people of appropriate character.</p>
<p>1.13 Direct management of an MRO's panel of medical experts.</p>	<p>The MRO is responsible for the recruitment, validation and management of the MedCo accredited medical experts on its panel. For example, MROs must be able to demonstrate on request that its medical experts comply with all legal and regulatory requirements (including confirmation that every expert providing a report on behalf of that MRO has attained accreditation).</p>
<p>1.14 Payment of the requisite fees for registration with MedCo by the due date.</p>	<p>MROs will only be able to become registered with MedCo upon receipt of the requisite fee as determined by the MedCo Board and published at www.medco.org.uk.</p>
<p>1.15 Upload of anonymised medical case data and collection of relevant management data, requested by MedCo, within a time period defined by MedCo.</p>	<p>In order to underpin effective management of the MedCo system and to monitor its effectiveness, MROs must provide to MedCo the data set out at www.medco.org.uk, including the uploading of medical case data, within timescales defined by MedCo.</p> <p>All data uploads will need to be compliant with the DPA.</p>
<p>1.16 All MROs must be able to comply with minimum standards and service levels as defined by MedCo.</p>	<p>In line with the accreditation process for medical experts, it is important that MROs will be able to provide confidence to users of the MedCo system that they operate to the required minimum standards. This will be auditable as part of the MedCo audit process.</p>

Table Two – Additional Qualifying Criteria

The qualifying criteria listed in Table Two below cover the extra requirements needed for an MRO to be reclassified as a high volume, national MRO.

2. Additional Qualifying Criteria	Rationale for criteria
<p>2.1 Minimum two years of trading history as an MRO providing MedCo compliant medical reports.</p>	<p>This will give the instructing party confidence in the sustainability of the chosen MRO and provide reassurance in the market that the random allocation model will only produce MROs that have a demonstrable record of delivery.</p>
<p>2.2 Operational Capability: An MRO must be able to demonstrate that:</p> <ul style="list-style-type: none"> • It has the capacity to process at least 40,000 independent medico-legal expert reports each year (where instructions are received from an unlinked source). Medico-legal reports, for these purposes, are not restricted to MedCo whiplash reports and may be of another type (e.g. non soft tissue personal injury reports). <p>If an MRO has not previously processed 40,000 independent medico-legal reports, it may be considered to have the requisite capacity, if it can provide evidence to demonstrate to the satisfaction of Medco, that it nonetheless has the ability to reach such capacity within the following 12 months and, to that end, possesses:</p> <ol style="list-style-type: none"> i. an appropriate business strategy with respect to the growth required to meet that capacity; and ii. operational functions (including human resources and IT systems) which are sufficiently robust and scaleable such 	<p>It is important that MROs will be able to provide confidence to users of the MedCo system that they operate to the required minimum standards, this is particular important for organisations who process a high volume of instructions. This will be auditable as part of the MedCo audit process.</p> <p>The requirements as to the number of experts and availability within each region are intended to ensure that there are a sufficiently large number of medical experts available in any particular region. It is accepted that 80% coverage of available postcodes in England and Wales will be considered ‘national’.</p> <p>A larger number of experts with whom an MRO has a contractual relationship will mean that there is likely to be a much greater ability for those MROs to offer appointments that are geographically convenient and at a time that suits for those members of the public who require a medical report to be produced. A small number of experts in any region could restrict choice in this respect.</p> <p>A distinction is made between instructions received from a linked source and an independent source, as an independent source will require a more demanding and challenging service accessed from a free and open market.</p> <p>The requirements for there to be a minimum of five distinct clients, which are not organisations associated with the MRO, and that no client represents more than 40% of the total instruction volume, are requirements for MedCo. These are to ensure that larger MROs have the capacity to deal with a high volume of clients to the required standards.</p>

2. Additional Qualifying Criteria	Rationale for criteria
<p>that they can demonstrate the ability to deliver the increase in capacity, over the following 12 months without adversely affecting their ability to process and deliver reports of sufficient quality in a proper and timely manner and without adversely affecting their financial stability or profitability.</p> <ul style="list-style-type: none"> • it has contractual arrangements with at least 250 individual active MedCo accredited medical experts who provide MedCo whiplash reports; • it has contracted medical experts in 80% of the postcodes in England and Wales and for 80% of its cases the injured party has to travel less than 15 miles to attend an appointment with a medical expert; • it has a minimum of five distinct clients, which are not associated organisations with it; • no client represents more than 40% of the total instruction volume (to prevent an in-house MRO serving its own commercial ambitions); • it has the ability to comply with the SLAs for high volume, national MROs as defined by MedCo. 	

2. Additional Qualifying Criteria	Rationale for criteria
<p>2.3 A financial instrument of £100,000 demonstrating that the MRO has sufficient funds available to remunerate medical experts from whom it has commissioned medical reports in the case of failure of the MRO.</p>	<p>The availability of sufficient financial resources is required to ensure that medical experts are protected in the event of a failure of an MRO.</p> <p>Payment of this financial instrument is also a disincentive to the establishment of “shell” MROs designed to undermine the random allocation model.</p>
<p>2.4 A documented Disaster Recovery Plan (DRP) and Business Continuity Plan (BCP), including testing schedule, which demonstrates that the MRO can return to normal operation within a maximum of 72 hours.</p>	<p>It is good industry practice for an MRO handling significant volumes of cases to have a documented disaster recovery plan and business continuity plan.</p> <p>Clients currently and typically expect that plans of this nature are in place. Lawyers are likely to require such plans so that, in the event of any significant problems, they can be assured that this will not have a prolonged detrimental impact on their own business and their clients.</p>
<p>2.5 Appointment of Chief Medical Officer.</p>	<p>A retained General Medical Council of Health Care Professionals Council registered CMO would ensure clinical governance and dispute resolution. Whilst not mandatory for all MROs, it is clearly preferable for those providing high volumes of medical reports and this requirement demonstrates commitment to clinical governance.</p>
<p>2.6 Appointment of nominated Caldicott Guardian.</p>	<p>To ensure claimant data is protected and used for the correct purpose only.</p> <p>Organisations that have access to patient records are required to have a Caldicott guardian, a senior person responsible for protecting the confidentiality of a patient and enabling appropriate information sharing.</p> <p>This is required by the NHS and is an example of “best practice” and demonstrates further commitment to the protection of sensitive information.</p>
<p>2.7 Payment of the requisite fees for registration with MedCo and onsite audit.</p>	<p>MROs will only be able to become registered with MedCo upon receipt of the requisite fee as determined by the MedCo Board and published at www.medco.org.uk.</p> <p>All high volume, national MROs will be required to undergo an onsite audit of their adherence to the criteria set out in this paper. The report resulting from the audit must be provided to MedCo.</p>
<p>2.8 Demonstration of the ability to offer A2A functionality to solicitors.</p>	<p>A2A functionality streamlines the claims process for all stakeholders, including the claimant, making the system more efficient and timely and also removing unnecessary costs for both MROs and solicitors. MedCo is currently a web based tool. Compliance with this criterion will enable MedCo to grow the IT platform to encompass A2A technology in the future.</p>