

# Medical Expert – Quality Assessments feedback

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Author: Expert Audit and Peer Review Committee

## Summary

MedCo regularly conducts Quality Assessments of reports prepared by accredited medical experts.

Feedback from Quality Assessments is provided to experts with appropriate action where required.

There are various recurrent issues coming up in these reviews. This document sets out feedback on the main issues for medical experts to review and consider when preparing medical reports.

## Common findings:

### 1. Long prognoses for whiplash injuries

MedCo data has long indicated that the vast majority of reports will give a prognosis of less than 6 months post-accident. OIC data for settled claims, indicates that 85% of whiplash injury claims are settled on the basis of a prognosis of 9 months or less post-accident. In only 4% of cases is the settlement based on a prognosis of 12 months or more. MedCo data indicates that 60% of reports give a prognosis of 6 months or less, 87% of reports give a prognosis of 9 months or less, and less than 4% a prognosis of more than 12 months. See Pages 13 – 16 of the [Statutory Review of the Whiplash Injury Regulations 2021 published on 21 November 2024](#)

These data sets taken together suggest that a prognosis of 9 months or less post-accident would be the normal range.

Where your opinion is that a longer prognosis is appropriate, it is essential that you indicate what prognostic factors you are taking into account in arriving at the prognosis. When reporting a claimant's account of the duration of symptoms where the claimant states they have made a full recovery before the medical examination, you should consider and state in your report whether it is probable that the symptoms described by the claimant were attributable to the accident. You should bear in mind the requirement, when expressing a view that is outside the normal range of opinion (i.e. where the prognosis is over 9 months or less post-accident), to set out in the report what the normal range of opinion is ([Civil Procedure Rules, Practice Direction 35, s.3.2 \(6\)](#)).

You should also bear in mind that an expert's duty is to help the court, and this duty overrides any obligation to the person from whom you received instructions or by whom you are paid. You are required to provide objective, unbiased opinions on matters within your expertise, and should not assume the role of an advocate.

### 2. Non-whiplash injuries

Following the introduction of the whiplash tariffs, non-whiplash injuries have become more significant in the valuation of damages and there has been an increase in the number of "mixed injury claims" reported on the OIC portal. It is essential where there are non-whiplash injury claims that you clearly identify the cause of the injury, your diagnosis and how it is arrived at, including with reference to any diagnostic tests carried out, and how you have arrived at your prognosis. As noted above you should also give the range of opinion where applicable. This is also relevant where you examine the claimant after they have made a full recovery from the injury described.

You should satisfy yourself that the mechanism of injury was consistent with the accident as described by the claimant, indicate the nature of the injury and, particularly where the duration of symptoms was longer than a few weeks, indicate why you consider this to have been the case. You should record in the report the enquiries you made of the claimant to exclude possible other causes of these symptoms other than the accident. Again, you should provide a range of opinions where appropriate.

### **3. Psychological reports**

The government considers that conditions such as shock or travel anxiety fall within the definition of a minor psychological injury covered by the tariff. All MedCo accredited experts should be able to comment on such conditions. The government's expectation is that a second report would normally only need to be sourced if there is a more significant clinically diagnosable psychiatric injury or post-traumatic stress disorder.

You should, when recommending that a report from a psychologist or psychiatrist be obtained, make clear in your report the grounds on which you consider the claimant to be suffering from a clinically diagnosable psychiatric injury, for example by specifying the symptoms described by the claimant which in your view suggest a more significant condition.

### **4. Civil Liability Act 2018, s.1(3)**

It seems to have become the practice among some experts to describe all injuries that are not whiplash injuries as defined in the s.1(1) and (2) of the Civil Liability Act (CLA) as falling under s.1(3). Most injuries so described do not fall under s.1(3), which only excepts injuries from s.1(1) and (2) where they are a soft tissue injury of the neck back or shoulder connected to another injury that is not a soft tissue injury of the neck, back and shoulder falling within s.1(2). Many of the injuries described in reports as s.1(3) injuries (for example, injuries to the knee or ankle) simply do not fall under the CLA at all as they are not soft-tissue injuries to the neck, back or shoulder.

Where you do not consider such injuries to be related to any whiplash injury the claimant has suffered in the accident, you should simply say so. MedCo understands some medico-legal reporting software is configured so that you cannot remove the reference to s.1(3). We suggest that these templates be amended as they are incorrect.

## 5. Non-MedCo cases

MedCo has seen a number of cases where a direct medical expert has been instructed via MedCo in a claim that does not fall under either the MedCo definition in the [Pre-Action Protocol for Low Value Claims in Road Traffic Accidents, s.1.1\(16A\)](#) (soft tissue injury suffered by the occupant of a motor vehicle) or the definition in [s.1.2\(38\) of the Pre-Action Protocol for claims below the Small Claims Limit in Road Traffic Accidents](#) (whiplash claims as defined in the Civil Liability Act 2018).

We have seen MedCo reports prepared for motorcyclists, pedestrians and cyclists, and even occasionally claimants injured at work. In none of these cases is a fixed cost MedCo report required. The error in carrying out a MedCo search is the instructing party's error, but ideally you should check before arranging an appointment for the claimant that the claim is in fact a MedCo claim, and if it is not, contact the instructing party. If the instructing party indicates that they want you to proceed to prepare a report, you should bear in mind that the MedCo fixed fee does not apply in non-MedCo cases. If an appointment is made in error and you become aware only when examining the claimant that it is a non-MedCo case, it is probably appropriate to proceed with the examination and prepare a report but the report must make it clear that the claimant was not the occupant of a motor vehicle, and ensure that if using a report template intended for standard RTAs, you adopt appropriate terminology and do not simply refer to whiplash/non-whiplash or "CLA 1(3)" injuries.

## 6. Report checking

MedCo regularly receives complaints about errors in reports, most of which appear to result from experts failing to check the contents of the report before signing it. Sometimes the error results in nonsense such as a stating that a claimant sitting in the back of a car injured their knee due to contact with the dashboard or steering column. At the very least these errors lead to the delay and inconvenience of reports having to be returned for amendment, but if the error is not identified by the claimant or their solicitor and the report is sent to the compensator, they can lead to the compensator challenging the claimant's credibility.

Please check your reports for inaccuracies before signing them, particularly bearing in mind that you are signing a statement of truth.