



Ministry
of Justice

MedCo: Additional Rules and Audit Process for Direct Medical Experts

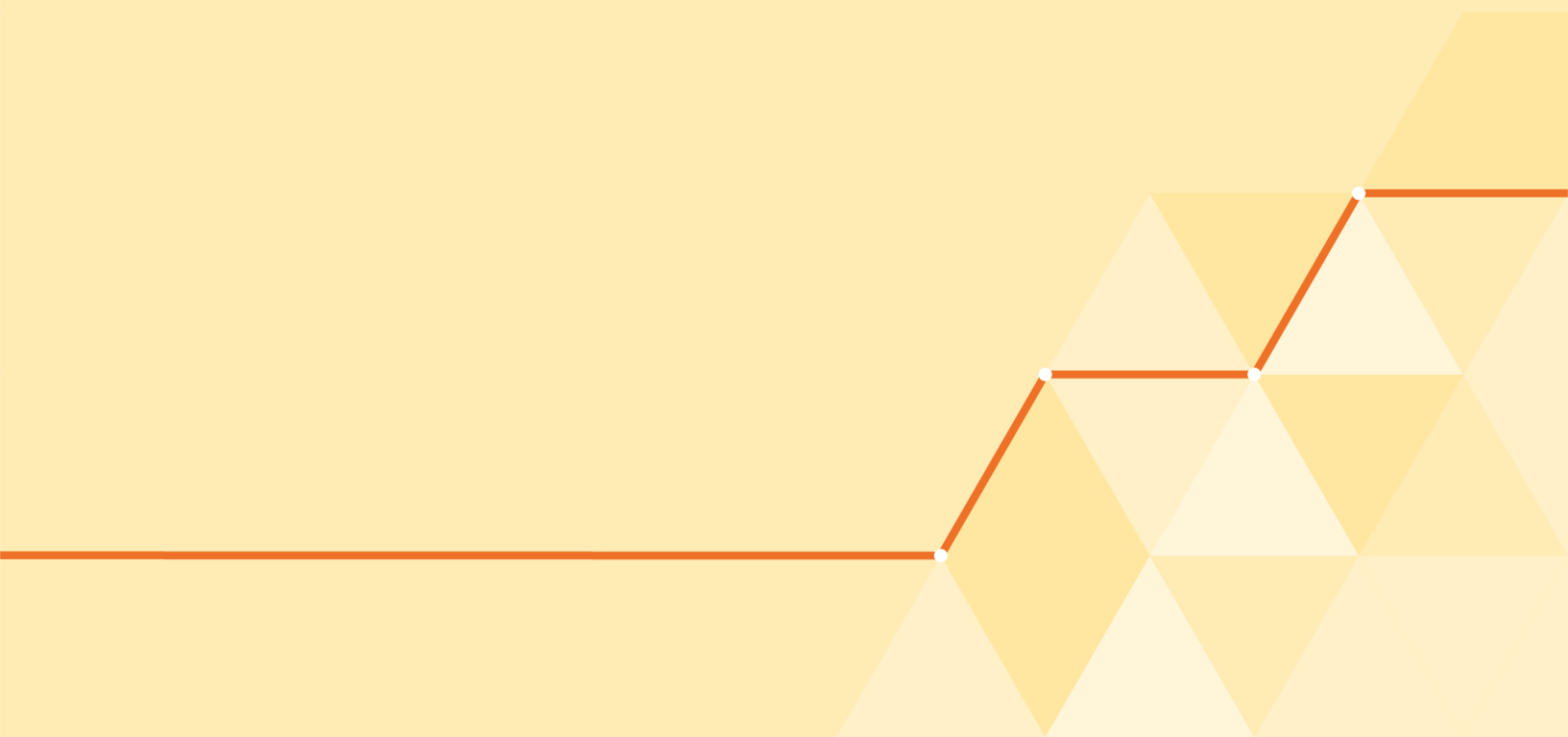
Stakeholder Engagement Exercise

12 March 2020

A decorative graphic in the bottom right corner consisting of a grid of triangles in various shades of yellow and orange, with a dark orange line connecting several vertices.



Ministry
of Justice



Contents

Introduction	2
New Rules for Direct Medical Experts	3
Survey Questions	4
Annex A: Rules specific to DMEs authorised to accept instructions from Unrepresented Claimants	6
Responding to this Survey	10

Introduction

1. The provision of good quality independent medical evidence to support road traffic accident (RTA) related personal injury claims under £5,000 remains a key element of the Government's whiplash reform programme. We remain committed to ensuring that **all** those who will provide medical reports to both represented and unrepresented claimants are competent, efficient and have well-run, transparent consumer protection policies and procedures in place.
2. In support of this, MoJ have, with the help of MedCo, developed and sought input new qualifying criteria for Medical Reporting Organisations (MROs) wishing to undertake unrepresented work. These criteria have been developed to ensure that MROs are well run organisations with the resources, processes and customer service capability to provide unrepresented claimants with the service they will expect.
3. However, MROs are not they only source of medical report provider operating in the market and Direct Medical Experts (DMEs) will also be able opt-in to provide medical reports in this area. In line with the new criteria for MROs we believe it is important to ensure that DMEs are also asked to demonstrate that they will be able to operate at similar high standards as MROs.
4. MoJ have therefore once again worked closely with MedCo to develop an enhanced set of rules which will supplement the existing MedCo rules for medical experts. These rules will ensure that DMEs who choose to opt-in have sufficient resources, processes and capacity to deal with the volume of instructions they choose to accept through the new Official Injury Claims¹ service when it becomes operational on 1 August 2020.
5. The new MoJ/MedCo rules for DMEs are attached at **Annex A** to this document and the questions included in this survey seek stakeholder input on these rules. The survey will close at midnight on 1 April 2020.

**MINISTRY OF JUSTICE
MARCH 2020**

¹ <https://www.officialinjuryclaim.org.uk/>

New Rules for Direct Medical Experts

Rules

Given their likely unfamiliarity with the medical reporting process, unrepresented claimants will require confidence that the medical report provider they select can demonstrate satisfactory standards and adherence to good customer service practices. MoJ therefore believe it is necessary that DMEs should demonstrate that they are competent and well-resourced. In addition, the staff working for them, particularly those who will be interacting with unrepresented claimants, should also be experienced and of good character.

Prior to the launch of the new service the MedCo Audit Team will begin a process of assessing all those who choose to opt-in to undertake unrepresented claimant work. To provide the necessary reassurance, the audit process will apply to both MROs and DMEs. MROs will need to show compliance with the new qualifying criteria and DMEs will need to complete a face to face audit interview based around compliance with the new rules.

We accept that some may consider this requirement an additional impact on DMEs. We believe however, that it will provide the necessary reassurance in relation to the service provided to unrepresented claimants. In addition, many DMEs will already have back office support functions available to them, for example GPs will usually have a support team in place to liaise with patients and arrange appointments. In these cases, we do not expect demonstrating compliance with these new rules will be onerous.

DMEs will need to consider the new rules and be ready to demonstrate compliance at their audit interview. Additionally, depending on the outcome of this initial interview, a further short audit may also be required at the DMEs registered address. We expect additional guidance will be provided in advance of the audit sessions.

Accreditation

MedCo have also agreed to develop a new optional 'Accreditation Training Module' for DMEs wishing to undertake unrepresented claimant work. This module is currently being designed and once complete we will be asking DMEs to complete this additional training module. Further information will be published shortly in relation to the new accreditation module.

Survey Questions

Question 1: Fit and Proper Persons

Rule 1 is designed to ensure that DMEs and their key staff are 'fit and proper' people who are experienced, competent and qualified to offer services to, and interact with, unrepresented claimants. Do you agree with this rule and is it sufficient for this purpose or should there be other requirements considered?

Please explain your reasoning.

Question 2: Audit and Accreditation

Rule 2 requires DMEs to complete both a face to face audit interview with the MedCo Audit Team and the new Accreditation Module on dealing with unrepresented claimants. Do you agree that this rule is sufficient for the purpose of testing a DME's capacity to provide these reports or should there be another way for DMEs to demonstrate that they can provide an acceptable level of service to unrepresented claimants?

Please explain your reasoning.

Question 3: Accreditation Training Module

MedCo is currently developing the new Accreditation Module for DMEs which will reflect the requirements included in these Rules. Are there any specific points or issues that you think MedCo should consider including in this new module?

Please explain your reasoning.

Question 4: Data Protection

Rule 3 relates to the responsibilities a DME has to comply with in relation to data protection legislation, including the recently introduced General Data Protection Regulation requirements. Would further explanatory material and/or links to information about data protection be helpful?

Please explain your reasoning.

Question 5: Interactions with Unrepresented Claimants

Rule 4 is drafted to provide reassurance that the DME selected by an unrepresented claimant (including vulnerable claimants), has effective, well-run systems, with sufficient experience and customer focussed processes to handle their requirements with courtesy, tact and sensitivity. Do you agree that this rule is sufficient for this purpose or should there be additional requirements?

Please explain your reasoning.

Question 6: Resources and Delivery

Rule 5 tests a DMEs back office capacity and ensures that they have sufficient resources, processes and customer service systems to interact with, and deliver an effective service to, unrepresented claimants. Do you agree that this rule is sufficient for the purpose of testing a DME's systems or should there be another way for DMEs to demonstrate that they can provide an acceptable level of service to unrepresented claimants?

Please explain your reasoning.

Question 7: Provision of Information

The purpose of Rule 6 is to ensure that DMEs understand their responsibility to clearly explain the medical reporting process to unrepresented claimants, who may have little or no knowledge of what is expected of them. Do you agree that this rule is sufficient for this purpose or is there an alternative way for DMEs to demonstrate their compliance with this responsibility?

Please explain your reasoning.

Question 8: Opting-in

Having considered the attached new rules, do you intend to opt-in and be audited by MedCo to provide medical reports for unrepresented claimants?

Please explain your reasoning.

Question 9: General Comments

Having considered the draft rules do you have any additional comments/suggestions in relation to these rules that are not already covered by the questions above?

Please explain your reasoning.

Annex A: Rules specific to DMEs authorised to accept instructions from Unrepresented Claimants

The following rules have been developed to enable DMEs to demonstrate that they have can provide a good level of service to unrepresented claimants seeking a medical report. Where appropriate, additional rationale for each rule has been provided below, and further guidance will be provided prior to audit interviews being undertaken.

Rule 1: Fit and Proper Persons

DMEs must adhere to the following fit and proper persons criteria, and ensure that any employee dealing with unrepresented claimants also adheres to these criteria:

- a) Be honest, of good character, credible, and must act with integrity;
- b) Be competent and capable of performing tasks intrinsic to their role, both in terms of their core medico-legal expert duties and related administrative tasks;
- c) Have the qualifications, knowledge, skills and experience necessary for the role they undertake; and
- d) Not have been responsible for, privy to, have contributed to or facilitated any serious misconduct or mismanagement in the production of Medco or non-Medco medico-legal reports; and

Additional Rationale: Given the imbalance in knowledge, experience and power in the relationship between unrepresented claimants and DMEs, a 'fit and proper persons' regime is appropriate to protect the claimants' interests. In the case of an employee of a DME, evidence that the employee is a fit and proper person may include references from former employers, references from professional advisers, or a review of social media profiles. This is in line with best practice in the NHS² and where in doubt, DMEs should contact MedCo to discuss any concerns.

² <https://nhsproviders.org/fit-and-proper-persons-regulations-in-the-nhs/the-fit-and-proper-persons-regulations>

Rule 2: Audits and Accreditation

DMEs will be authorised to undertake unrepresented claimant work only upon satisfactory completion of both:

- a) an audit in the form of an assessment interview and/or an onsite audit of their compliance with and adherence to the Rules specific to DMEs including the Rules specific to DMEs authorised to accept instructions from unrepresented claimants. In the event that a DME attending an assessment interview with the Medco Audit Team fails to satisfy the audit criteria, an on-site audit may at Medco's discretion be arranged at a later date, and
- b) the Medco Accreditation Training Unrepresented Claimant Module.

Additional Rationale: Passing an assessment interview provides reassurance that the DME understands the roles and responsibilities that they and their staff have in relation to providing services to unrepresented claimants. The new accreditation module will form part of the MedCo accreditation process which is designed to ensure the quality of training undertaken by medical experts undertaking MedCo work.

Rule 3: Data Protection

DMEs are required under paragraph 6 of the MedCo Rules to comply with all relevant requirements in relation to duties imposed under the Data Protection Act 2018³ and any additional relevant European legislation such as the EU General Data Protection Regulation⁴.

DMEs dealing with unrepresented claimants must be aware of and able to demonstrate compliance with all requirements relating to the processing of personal data under Data Protection Legislation and the requirement to treat individuals fairly, including but not limited to the requirements relating to consent.

³ <http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

⁴ <https://gdpr-info.eu/>

Rule 4: Interactions with Unrepresented Claimants

DMEs must be able to demonstrate timeliness when responding to unrepresented claimants' questions and a commitment to treating such claimants with respect, empathy, courtesy and professionalism. DMEs should also show an awareness of the differing needs of potentially vulnerable unrepresented claimants.

Additional Rationale: Compliance with this rule will demonstrate an understanding of how to engage in a sensitive way with unrepresented claimants and that DMEs and their staff know how to deal with the differing needs of individuals. Consideration could also be given to ensuring staff training/qualifications on customer services and obtaining external certifications e.g. ISO9001 (2015 and successor versions).

Rule 5: Resources and Delivery

DMEs must demonstrate they have the resources and structure necessary for operational delivery of the unrepresented claimant service on a consistent and stable basis including the ability to:

- a) be contactable outside normal office hours, as on occasion unrepresented claimants may only be available to pursue their claim at non-standard times; and
- b) operate across multiple channels (phone, email, livechat etc.) to cater for different unrepresented claimants' communication preferences and needs (e.g. the claimant is vulnerable and/or does not have web access).

DMEs should have robust end-to-end customer service systems, including sufficient resources (people, processes and technology). DMEs are personally responsible for their dealings with unrepresented claimants and will be held accountable for any interactions between the instructing claimant and any outsourced customer service providers.

DMEs opting-in to undertake unrepresented claimant work must be compliant with all MedCo Rules. They are also expected to be willing to accept instructions in relation to soft-tissue and (where applicable) non-soft tissue injury claims from represented and unrepresented claimants as an operational norm.

Additional Rationale: Unrepresented claimants may have different working pattern which could restrict their ability to engage with their claim during office hours. DMEs should be able to demonstrate that they have considered this and have sufficient systems or capability in place to ensure that these claimants also receive a good service, and that they can communicate through multiple channels.

Rule 6: Provision of information

DMEs must be able to verifiably demonstrate how they will provide unrepresented claimants with transparent, accurate, timely and up-to-date information, in plain English, about:

- their process for producing medico-legal reports, especially the consultation procedure and what the claimant's roles, responsibilities and rights are in this process;
- the contact details and the different communications channels they offer; and
- their service standards and how to make complaints, if necessary, about the DME and to initiate a dispute resolution process.

Additional Rationale: Unrepresented claimants may not have a good understanding of the medico-legal process, or be aware of what they need to do and when they need to do it. DMEs are responsible for ensuring that an unrepresented claimant understands the process of arranging and attending an examination as well as what the consequences are if they miss their appointment etc. It is also important that DMEs can demonstrate how they will explain this and that they have an effective complaints handling mechanism in place.

Responding to this Survey

This survey will close at midnight on Wednesday 1 April 2020. Respondents should complete the online survey at: <https://www.smartsurvey.co.uk/s/K6CUON/>

Or alternatively, paper copies of the questionnaire are available on request which can be completed and emailed to: Whiplashcondoc@justice.gsi.gov.uk; or posted to:

The Whiplash Reform Team
10.24, 102 Petty France
London
SW1H 9AJ

Further information on the changes to the medical reporting process following the implementation of the whiplash reform programme, including copies of the Future Provision of Medical Reports consultation and Government response, can be found at:

<https://www.gov.uk/government/consultations/future-provision-of-medical-reports-in-road-traffic-accident-related-personal-injury-claims>

Thank you for taking the time to respond to this survey.

MINISTRY OF JUSTICE - MARCH 2020



© Crown copyright 2019

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

