Ministry of Justice

Additional Rules and Audit Process for Direct Medical Experts Survey

Analysis and Government Response

FEBRUARY 2021

Contents

Introduction

1. The Government remains committed to the provision of good quality medical evidence, where it is required to support road traffic accident (RTA) related personal injury claims made by both represented and unrepresented claimants. The current system enables claimant solicitors to obtain medical reports in support of low value soft-tissue injury claims from medical reporting organisations (MROs) and direct medical experts (DMEs) via use of the MedCo system.

2. Following the implementation of the whiplash reforms, MedCo will be extended to cover all RTA related claims valued up to the new small claims track limit of £5,000. To provide the necessary reassurance that DMEs who opt-in to provide medical reports to unrepresented claimants have appropriate systems and procedures in place, MoJ has worked closely with MedCo to develop new rules for experts undertaking work in this area.

3. These rules have been developed to ensure that DMEs have the resources and consumer protection policies and procedures in place to provide unrepresented claimants who will have expectations of a good quality level of service. 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 Claims[1] service when it becomes operational on 31 May 2021.

4. A short, targeted survey was held between 16 March and 1 April 2020 to seek stakeholder views on these changes. This survey was specifically aimed at DMEs, but responses were also welcomed from other interested stakeholders including from indirect medical experts (IMEs) and MROs. The purpose of this document is to provide an analysis of the responses received to the DME rules survey and to also inform stakeholders of the resulting Government actions and next steps.

5. A similar but separate survey for MROs on revisions to the qualifying criteria and declaration of financial links has also been undertaken, and copies of this survey and response document can be found here:

   https://www.gov.uk/government/publications/medco-qualifying-criteria-stakeholder-engagement-exercise

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[1] https://www.officialinjuryclaim.org.uk/

Overall Statistical Analysis

In total, 117 stakeholders completed either a full[2] (99) or partial[3] (18) survey response. For the purpose of this analysis, a data cleanse process has been applied with duplicate[4] and blank[5] responses removed. In total 96 complete and 2 partial responses have been analysed which were received from the following:

- DMEs = 81
- DME/IMEs = 5
- IMEs= 2
- Tier 1 MROs = 1
- Representative bodies = 1
- Other = 8

The Association of Medical Reporting Organisations (AMRO) indicated their response was on behalf of all Tier 1 MROs. However, one Tier 1 MRO did submit an individual response which differs in several places from the AMRO response and this has been reflected in the analysis where necessary.

The following section of this response provides an analysis of the responses to each question asked in this survey, along with information on any Government action arising from the feedback provided.

2 Full responses are those where respondents have completed all questions included in the survey.

3 Partial responses are those where the respondent only filled in some, but not all of the survey.

4 Duplicate responses occur where the same respondent fills in the survey on more than one occasion, where this has happened the most complete response has been retained.

5 Blank responses are those where a respondent has merely clicked through all the questions without inputting any data.

Section 1: Questions on New Rules

Question 1: *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)?*

Analysis of responses: 98 responses were received in response to this question, with **92** respondents agreeing with the revision (76 x DMEs; 5 x DME/IME; 2 x IME; 1 x representative body; and 8 x other) and **6** disagreeing (1 X T1 MRO and 5 x DMEs).

Summary of comments: Most respondents who commented noted that the proposed rule was sufficient and appropriate to provide reassurance in relation to DMEs and their staff who opt to provide services to unrepresented claimants. Other stakeholders suggested that only experienced experts should be included, and that additional checks are not required as medical experts are already subject to similar scrutiny by professional bodies including the General Medical Council (GMC) and the Health Care Professional Council (HCPC). It was also noted that directors are also already subject to the fit and proper persons requirements in the Health and Social Care Act 2012 (HSCA).

Among those that opposed the rule, it was suggested that DMEs should be subject to all the same standards that MROs must meet through the qualifying criteria including Disclosure and Baring Service (DBS) checks. Other responses focused on additional requirements or stressed the need for DMEs to provide copies of their most recent NHS appraisals or feedback from unbiased external agencies.

Government Action: The rule and supporting rationale will be clarified in relation to employee qualifications. MoJ has also considered the points made in relation to experienced experts and that additional checks are not required but, deems the 'Fit and Proper' test as drafted is the most appropriate way to provide reassurance and assess the suitability of DMEs and their staff to deal with unrepresented claimants. The point made in relation to qualifying criteria is noted, but these will not be extended to DMEs undertaking unrepresented claimant work as this would be too restrictive. However, we do agree with the suggestion that DMEs undertaking unrepresented claimant work should undergo a DBS check. Therefore, the DBS basic check will be made mandatory and this requirement will be added to the new rule and we also recommend that an enhanced DBS rating should be considered as best practice[6].

[6] https://dbscheckonline.org.uk/which-dbs-check

Question 2: *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)?*

Analysis of responses: 98 responses were received in response to this question, with **71** respondents agreeing that an audit interview and accreditation module were sufficient to demonstrate an acceptable level of service (60 x DMEs; 5 x DME/IME; 1 x IME; 5 x others) and **27** disagreeing (1 x T1 MRO; 21 x DMEs; 1 x IME; 1 x representative body; and 3 x others).

Summary of comments: Respondents generally felt that the use of an audit interview, supported by a further accreditation module was a good idea. It was noted that advance notice of the audit requirements and accreditation module would be helpful. Of those opposed, most suggested that an audit interview would be too onerous or cumbersome. Some respondents queried the need for DMEs who already produce whiplash medical reports to undergo this new module arguing that their experience to date should be adequate or that random audits of reports or a multiple-source questionnaire was enough.

There was also some misunderstanding as to the purpose of question 2. It was apparent from the comments received that the audit interview requirement was being interpreted by some respondents as relating to medical report quality. This is incorrect, as the purpose of this question was to seek views on the process for ensuring DMEs have resources, systems and staff in place to deal with the specific challenges arising from processing claims made by unrepresented claimants not to consider the quality of their reports.

Many responses both in favour and against the proposed rule also focussed on the issue of 'face to face' interviews and asked about video meetings instead. It should be noted that the use of phrase 'face to face' was to indicate a conversation between the DME and the audit team and does not relate to how that interview shall take place (which will need to be in a fully Covid-19 compliant way).

Government Action: Having considered the responses provided to Question 2, we have decided that the proposed rule is appropriate, and this will be implemented as drafted. We will however, continue to work closely with MedCo to ensure that DMEs opting in to this process receive adequate notice, support and documentation to prepare for both the additional Accreditation module and the audit interview process.

Question 3: *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)?*

Analysis of responses: 46 respondents provided comments to consider in relation to the accreditation module as suggested in Question 3 (1 x T1 MRO; 3 x DME/IME; 37 x DMEs; 1 x representative body; 4 x others).

Summary of comments: The key suggestions made for consideration were:

- Conflict handling and a detailed complaints procedure;
- Information security and specific DPA/GDPR training;
- Information on the ethical considerations of dealing with unrepresented claimants to support training for admin staff;
- Information on the payment process for unrepresented claimants;
- Use of electronic booking software and on the importance of flexible appointment scheduling;
- A step by step guide to handling unrepresented claimants and example correspondence;
- Information on how to explain the claims process to unrepresented claimants;
- Dealing with recommendations for additional medical reports;
- How to give effective feedback and dealing with requests to amend reports;
- Information on the range of injuries to be assessed;
- Information on the new legal process, including on liability issues; and
- Qualifying criteria similar to that applied to MROs should also apply to DMEs to ensure that evidence of compliance is kept and is monitored over time.

Government Action: We will continue to work closely with MedCo to develop a new accreditation module which will support DMEs opting in to supply medical reports to unrepresented claimants, with full details of all suggestions made passed on to MedCo for consideration. As mentioned in response to Q1, however, the suggestion that MRO qualifying criteria be applied to DMEs will not be pursued.

Question 4: *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)?*

Analysis of responses: 97 responses were received in response to this question, with **59** respondents agreeing with the revision (1 x T1 MRO; 5 x DME/IME; 2 x IME; 47 x DMEs; and 4 x others) and **38** disagreeing (34 x DMEs; 1 x representative body; 3 x others)

Summary of comments: Of those respondents in favour the majority agreed that additional information and support of this challenging area would be welcome, especially for their key staff. There were also comments relating to the need for clear standards of what was expected by MedCo to ensure compliance, and there was support for the GDPR accreditation module.

Of those opposed to the provision of additional information the comments predominately stated that DMEs already knew all about confidentiality and GDPR and such additional information was not necessary. As above, there was also a call for clear examples of 'realistic and achievable' daily processes DMEs would need to comply with. In addition, one respondent contended that DMEs should face the same requirements as MROs and their staff be fully audited on their understanding of, and compliance with the GDPR requirements.

Government Action: The rule will be implemented as drafted with the addition of further sources of information on GDPR appropriate to a wide range of DMEs. MoJ also will discuss with MedCo what additional guidance can be provided in this area in advance of face to face audit interviews for DMEs wishing to undertake work with unrepresented claimants.

Question 5: *Rule 4 is drafted to provide reassurance that the DME selected by unrepresented (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)?*

Analysis of responses: 97 responses were received in response to this question, with **89** respondents agreeing with the revision (1 x T1 MRO; 5 x DME/IME; 1 x IME; 75 x DMEs; and 7 x others) and **8** disagreeing (1 x IME; 6 x DMEs; and 1 x representative body).

Summary of comments: There was strong support for Rule 4 and stakeholders understood the importance of the rule. Respondents were generally satisfied that the rule was enough to provide reassurance on customer focused processes.

Some DMEs were confident that their current systems placed customers first, while others acknowledged that they would need to make changes to their current systems to adhere to the rule. It was noted that staff would require training and that if this was adequate then experience was less important. It was also suggested that there needs to be a balance here and that unrepresented claimants must be made aware that reports are impartial and that they can't just ask for a more favourable report.

Comments opposed to the draft rule suggested that without proper service level agreements (SLAs), such as those MROs have, it would be difficult to test compliance with this rule. The use of such SLAs would ensure all claimants received the same level of service irrespective of their chosen DME. Documented lists to demonstrate clear processes and audit interviews with staff were also suggested.

Government Action: Having considered the points made in response to question 5 we have decided no further amendment is required to rule 4. The Government will work with MedCo to ensure there is sufficient clarity included in relation to measures in any MedCo guidance produced in support of this rule. The point made in relation to SLAs is noted and further consideration will be given to this issue. We note the concerns raised in relation to unrepresented claimant expectations and we will ensure that users of the new Official Injury Claim service are informed of the role of a medical report in supporting the court and that while they do have the right to ask for amendments to be made to correct any factual inaccuracies, they cannot ask an expert to change their professional opinion.

Question 6: *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)?*

Analysis of responses: 95 responses were received in response to this question, with **81** respondents agreeing with the revision (1 x T1 MROs; 68 x DMEs; 4 x DME/IME; 2 x IME; and 6 x other) and **14** disagreeing (12 x DMEs; 1 x DME/IME; and 1 x representative body).

Summary of comments: There was general support for the rule with respondents noting that it was important for a DME to be able to demonstrate they had sufficient operational support available to deal with enquiries and appointments. However, it was also noted that the availability of a variety of communication resources was also important in ensuring accessible contacts could be maintained with unrepresented claimants. Of those opposed, respondents noted that a DMEs experience should be taken into account and that customer surveys were likely to be a better measure of customer satisfaction. It was again suggested that the rule was subjective and that DMEs should be subject to SLAs similar to those applicable to MROs.

There were also a number of areas where both those opposed and those in favour agreed. This was mainly related to the issue of DMEs who worked on their own with no administrative support and on whether it was appropriate to insist on out of hours contacts. On the first point, both sets of respondents indicated that the rule was not universally applicable to all DMEs as some worked adequately a present without support staff, and there was a question of whether it could be fairly measured/applied.

Regarding out of hours contact, it was noted that having a process (e.g. email/voicemail) to ensure communications out of hours were logged and responded to would be enough, but there were also concerns about the impact of work-life balance on DMEs if there was a requirement was to answer phones at all hours. It was recognised, however, that DMEs had to be contactable beyond regular work hours but urged for this to be reasonable.

Government Action: The requirements included in rule 5 are important in providing reassurance to unrepresented claimants that they will be able to communicate with DMEs at a time convenient to them. However, changes have been made to simplify the wording of the rule and to extend its accompanying rationale to reflect the constructive comments made by stakeholders in relation to reasonableness. These include revisions relating to out of hours contact and staffing. The point made in relation to SLAs is noted and further consideration will be given to this issue.

Question 7: *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)?*

Analysis of responses: 96 responses were received in response to this question, with **87** respondents agreeing with the rule (1 x T1 MRO; 73 x DMEs; 5 x DME/IME; 2 x IMEs; and 6 x others) and **9** disagreeing (8 x DMEs; and 1 x representative body).

Summary of comments: Of the respondents who provided comments in favour of the rule a number noted that it would be helpful to have a written document which could be provided to unrepresented claimants and which explained the process in layman's terms. Other respondents suggested that many DMEs already carry out the process described in the rule, although others indicated that additional guidance and/or training (possibly via accreditation modules) would also be useful.

Comments in support emphasised that this was currently established behaviour for DMEs as part of their interaction with unrepresented claimants, irrespective of whether they are represented or not. In fact, one respondent felt that the rule was unnecessary precisely because this is expected behaviour for DMEs as part of GMC regulations.

Of those who indicated opposition to this rule, most focussed on complaints. It was noted that a lack of training and/or information in the area of complaints handling was a problem and that staff working for the DME could handle the information provision process via a leaflet or email. It was further suggested that the complaints procedure for DMEs should mirror the multi layered system of MROs, to ensure independent consideration is given to complaints against DMEs.

Government Action: The provision of easily understandable information to unrepresented claimants is an important one and it is MoJ's view that DMEs are well placed to explain the key aspects of the medico-legal system. The new Official Injury Claims system will include specific guidance on the PI claims process, including on medical reporting, but this does not exempt DMEs and their staff from a role in ensuring that unrepresented claimants are fully informed. This rule will be implemented as drafted, but additional contextual information to help DMEs in this area has been added to the supporting rationale (including on complaints).

Representative bodies can also help support unrepresented claimants as well as their members in this area. For example, the Association of British Insurers have previously developed guidance for their members and for all claimants on the claims process[7]. MoJ **recommends** that other representative bodies representing health professionals consider replicating this approach by working with their members and issuing consistent industry guidance to member organisations. Such guidance would be helpful and could also be made available more widely to support unrepresented claimants.

7 https://www.abi.org.uk/globalassets/files/publications/public/motor/2020/june-2020_abi-code-of-practice---third-party-assistance.pdf

Section 2: Questions on opting-in and additional comments

Question 8: *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)?*

Analysis of responses: 73 affirmative responses were received in relation to this question. However, for the purposes of this analysis, only responses from DMEs/IMEs have been considered. In total, **72** relevant responses were received (1 x IME; 3 x DME/IME; 68 x DMEs). A further 18 DMEs/IMEs indicated they would not opt in.

A further 4 unattributed responses were received (3 stating they would opt-in and 1 confirming they wouldn't), however these have not been counted as it is not possible to confirm their status as a DME. An affirmative response was also submitted by an MRO but as MROs are subject to a separate survey this has also been discounted.

Summary of comments: The majority of respondents to this question indicated they would choose to opt-in to the process for supplying medical reports to unrepresented claimants. Comments supporting this decision generally noted that were happy to do so due to their expertise and experience. However, a number of respondents indicated that they would opt-in, but there were caveats attached to their decision. These included more information in relation to payment options, the new rules, back office requirements, the audit process and the volume of claims they would likely receive.

There were also some general comments which suggested it is helpful to have high standards and safeguarding rules in relation to medical reporting. In addition, the idea of the instructions to come from the at-fault insurer rather than from an unrepresented claimant was also put forward. Stakeholders who indicated they would not be opting in expressed concerns about the resources required to set up a back-office function, that it was just too costly and time consuming to meet the required rules, or that the fixed recoverable costs available were not adequate. Others noted that they agreed with the rules but were just not interested in participating at this point.

Government Action: The majority of DMEs responding to this survey have indicated that they will be choosing to opt-in to supply medical reports to unrepresented claimants. However, MoJ notes the caveats made my respondents and we will continue to work closely with the MedCo Board and audit team to ensure that DMEs receive adequate support and explanation of the new rules and supporting processes to help inform their final decision.

Question 9: *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)?*

Analysis of responses: 24 respondents provided additional comments for consideration (1 x T1 MRO; 21 x DME; 1 x DME/IME; and 1 x representative body).

Summary of comments: There were a number of generally supportive comments received from respondents which welcomed the revisions to the rules for DMEs, whilst the question of payment terms was raised by 5 stakeholders. It was also suggested that a fair portion of the medical reporting fee should be 'ringfenced' for medical experts. Two respondents also suggested that MOJ or MedCo should provide additional information on the required support services, or that they should operate them on behalf of DMEs instead.

In addition, comments were also made about exempting DMEs from the rules on back office services if they didn't employ anyone to help them at present and that not every DME will be able to supply out of hours appointments. In relation to audit, it was suggested that more information is needed, that they should be delayed by six months to allow DMEs to decide if the volume of work meant they wished to continue and that the team designing the audit programme should consist of at least 50% medical experts.

In terms of quality, respondents noted that standards are important and that the quality and integrity of reporting should be monitored and protected. It was suggested that rules will not help unless there is also a fully independent review of medical reports and that independent evaluation should include IMEs as well as DMEs. It was also noted that as DMEs would be able to supply medical reports to unrepresented claimants, then similar rules and criteria as those which apply to MROs should also be applied to DMEs. Compliance with SLAs and rules on clinical governance are important and it is unreasonable to allow unrepresented claimants to choose between MROs and DMEs.

Government Action: The majority of points made in response to this question were raised to reinforce comments made by respondents to earlier questions. Where appropriate, these have already been addressed and no further changes or action are required. The points made in relation to providing extra information and the audit programme will be considered as part of the process for implementing the required rule changes in advance of the implementation of the reforms. It should however be noted that the points made in relation to experts' fees and on restricting an unrepresented claimants' choice, would, in the Government's view, be likely to contravene competition law. As such these issues will not be taken forward.

Section 3: Next Steps

The new rules for DMEs can be found at annex a to this document. They will also be available to download from the Gov.UK website here: https://www.gov.uk/government/publications/medco-new-rules-and-audit-process-for-direct-medical-experts

All DMEs intending to opt-in to undertake medical reports for unrepresented claimants, should consider their business processes and service provision against the new rules before contacting MedCo to schedule their audit interview. The MedCo audit team will schedule these on a first come, first serve basis and successful DMEs will be added to the system prior to the launch of the new service in May 2021.

The application and adherence to these new and revised rules will be monitored and kept under review following implementation. MoJ and MedCo will consider further amendments following consideration of evidence in relation emerging behaviours and feedback received.

A separate equivalent survey on new supplementary qualifying criteria for MROs has been undertaken and a response has been published. Copies of this report can be found here: https://www.gov.uk/government/publications/medco-qualifying-criteria-stakeholder-engagement-exercise

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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/or related administrative tasks;

c) Have relevant qualifications, knowledge, skills and experience necessary for the role they undertake;

d) Enhanced certification is considered best practice, but basic DBS certification is mandatory for all experts and key staff dealing with unrepresented claimants; 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.

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 their 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 NHS[8] and where in doubt, DMEs should contact MedCo to discuss any concerns. It is noted that there are a range of appropriate administrative qualifications available to employees, however DMEs will be responsible for ensuring qualifications claimed by staff are valid and suitable for the role undertaken.

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 2018 (http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted) and any additional

8 https://nhsproviders.org/fit-and-proper-persons-regulations-in-the-nhs

relevant European legislation such as the EU General Data Protection Regulation (GDPR) (https://gdpr-info.eu/).

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. Additional information on the application of the GDPR can be obtained from a wide variety of sources including from:

- the Information Commissioners Office: https://ico.org.uk/for-organisations/in-your-sector/health/health-gdpr-faqs/ and https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/
- the National health Service: https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/information-governance-alliance-iga/general-data-protection-regulation-gdpr-guidance
- the Health and Care Professions Council: https://www.hcpc-uk.org/news-and-events/blog/2018/gdpr-and-hcpc-standards-six-months-on/
- the British Medical Association: https://www.bma.org.uk/advice-and-support/ethics/confidentiality-and-health-records/gps-as-data-controllers-under-gdpr; and
- the Chartered Society of Physiotherapy: https://www.csp.org.uk/professional-clinical/digital-physiotherapy/data-ethics-gdpr.

Additional Rationale: DMEs will be assessed against this rule as part of the face to face audit process as described in Rule 1. Additional links to sources of helpful information on compliance with the GDPR rules have been provided.

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

Whether they employ staff or not, 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:

- be contactable at times when unrepresented claimants may wish to pursue their claims, which may be outside normal office hours; and
- operate across multiple channels to cater for different unrepresented claimants' communication preferences and needs (e.g. if vulnerable or 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 they have with the instructing claimant as well as those by their staff or 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 they also receive a good service, including an option of communicating through multiple channels. This may require an effective messaging process to be in operation and some responses/conversations may need to be made outside normal working hours. This does not mean however, that DMEs must be available 24/7 or that office phones must always be answered at any time outside normal hours.

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. It is important that all information and communications provided to unrepresented claimants uses easily understandable language and is available in an accessible format.

DMEs are responsible for ensuring that an unrepresented claimant understands the process of arranging and attending an examination, including what the claimant needs to do and when. This includes clearly explaining the unrepresented claimant's rights to challenge 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 complaint handling mechanism in place. If DMEs fail to address the claimant's complaint to his/her satisfaction, the claimant should have the process for how to report the DME to MedCo clearly explained to them. A complaints system does not need to be overly complex, but should be clear, fair and proportionate to the size of the practice.

Contact Details

Further copies of this response and the original stakeholder engagement paper can be obtained by contacting the Whiplash Reform Team at the address below:

Civil Justice and Law Policy
Whiplash Reform Team
Ministry of Justice
10th Floor, 102 Petty France
London SW1H 9AJ
Email:whiplash-reform-team@justice.gov.uk

This report and other associated documents are also available at:
https://www.gov.uk/government/publications/medco-qualifying-criteria-stakeholder-engagement-exercise

Alternative format versions of this publication can be requested from the Whiplash Reform Team using the contact details shown above.

Complaints or comments

If you have any complaints or comments about the engagement process you should contact the Ministry of Justice at the above address.