Ministry of Justice

MRO Qualifying Criteria Stakeholder Engagement Survey

Analysis and Government Response

FEBRUARY 2021

Contents

Introduction

1. The Government remains committed to the provision of good quality medical evidence to support road traffic accident (RTA) related personal injury (PI) claims made by both represented and unrepresented claimants. Currently, claimant solicitors can obtain medical reports in support of low value soft-tissue injury claims via MedCo. However, following the implementation of the Government's latest whiplash reforms on 31 May 2021, MedCo's role will be extended to cover all RTA related PI claims valued at no more than the new small claims track limit of £5,000 for both represented and unrepresented claimants.

2. To provide the necessary reassurance that medical reporting organisations (MROs) 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 supplementary qualifying criteria (QC). Additionally, we have also revised and clarified the existing MRO QC and the declaration of financial links.

3. A short, targeted survey was held between 21 February and 11 March 2020 to seek stakeholder views on these changes. This survey was aimed at MROs but responses were also welcomed from other interested stakeholders such as direct medical experts (DMEs), solicitors and insurers. The purpose of this document is to provide an analysis of the responses received to the MRO QC survey and to also inform stakeholders of the resulting Government actions and next steps.

4. Copies of this response document along with the revised QC and Declaration of Financial Links documents can be found at: https://www.gov.uk/government/publications/medco-qualifying-criteria-stakeholder-engagement-exercise

5. A similar but separate survey for DMEs on revisions to the MedCo rules has also been undertaken, and copies of this survey and response document can be found at: https://www.gov.uk/government/publications/medco-new-rules-and-audit-process-for-direct-medical-experts

MINISTRY OF JUSTICE
FEBRUARY 2021

Overall Statistical Analysis

6. In total, 91 stakeholders completed either a full[1] (24) or partial[2] (67) survey response. Of these, 90 were submitted via the online survey, and one was received by email.

7. For the purpose of this analysis, a data cleanse process has been applied with duplicate[3] and blank responses[4] removed. In total, 21 complete and 5 partial responses were received from the following:

    - Tier 1 MROs = 1
    - Tier 2 MROs = 10
    - DMEs = 6
    - Claimant PI Solicitors = 4
    - Representative bodies = 3
    - Other = 2

8. Of the representative bodies who responded, the Association of Medical Reporting Organisations (AMRO) indicated their response was on behalf of all Tier 1 MROs. Although, one Tier 1 MRO did submit an individual response, which differed in several places from the AMRO response and this has been reflected in the analysis.

9. In addition, a full response was provided by the Association of British Insurers and a partial response focussed on elements of the new supplementary QC was submitted by the Association of Personal Injury Lawyers.

10. The following section of this response provides an analysis of the responses to each question asked in this survey It also provides information on any amendments and/or actions taken following consideration of feedback on the revised QC and declaration of financial links, including that provided by stakeholders responding to this survey.

---

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

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

3 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.

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

Table 1 Questions: QC for all MROs

Question 1: *The wording of the rationale to QC1.1 has been revised in relation to the establishment of 'shell' companies and clarified to provide guidance on the management and payment of medical evidence. Do you agree with the highlighted changes, and do you have any suggestions to further update and improve this QC (please explain your reasoning)?*

Analysis of responses: 25 responses were received in response to this question, with **20** respondents agreeing with the revision (1 x T1 MROs; 8 x T2 MROs; 4 x DMEs; 3 x claimant solicitors; 2 x representative bodies; and 2 x others) and **5** disagreeing (2 x T2 MROs; 2 x DMEs; and 1 x claimant solicitor).

Summary of comments: Comments in support of the revisions to QC1.1 centred on two areas, namely acceptance of the clarification around shell companies, and support for specific requirements in relation to MROs responsibilities in their interactions with third parties and the payment of experts. This was highlighted as a grey area and without action there is space for unregistered MROs to operate, which would undermine Government policy and the integrity of the market.

Of the five respondents who disagreed to the drafting changes, one provided a supporting comment. This was generally critical of the MedCo process and noted that there may still be potential for solicitors to exploit the system in relation to selecting MROs/experts.

Government Action: The suggested revisions to QC1.1 were supported by a clear majority of respondents and these will be implemented in full in the revised QC. MoJ will, however, discuss the further potential for the process to be exploited with MedCo to assess whether additional action can or should be taken in this area.

Question 2: *QC1.6 has been updated to include reference to the General Data Protection Regulation (GDPR) requirements. Additional clarification on MROs responsibilities has also been included in the rationale for this QC. Would further explanatory material and/or links to information about data protection be helpful (please explain your reasoning)?*

Analysis of responses: In relation to question 2, **24** responses were received with **16** respondents requesting additional information in relation to data protection (8 x T2 MRO; 3 x DME; 3 x claimant solicitor; 1 x representative body; and 1 x other), with **8** suggesting

that the current level of information was adequate (1 x T1 MROs; 2 x T2 MROs; 3 x DMEs; 1 x claimant solicitor; and 1 x representative body).

Summary of comments: The comments provided in relation to this question raise issues about the management of data and the responsibilities of MROs to understand how their and clients' data is managed in relation to current legislation. Some comments noted that some MROs still lacked understanding of the new GDPR on data retention, including on whether they were a data processor or a data handler. There was also concern about responsibilities in relation to the requirements when using a third-party booking system for appointments.

In addition, other respondents state that MROs should already be able to demonstrate their understanding of their responsibilities on request, in line with the requirements in the MedCo user agreement, so no further advice is necessary. The final points raised both relate to ISO27001[5], which is referred to in the MedCo QC guidance material. It was suggested that this should be a requirement for all MROs and alternatively that it should be accepted that a third party which attains this ISO standard should automatically be deemed compliant to handle data on a client MROs behalf.

Government Action: The proposed amendments will be implemented in the revised QC. In considering the points made by respondents, it is clear that further information and/or guidance will be beneficial to MROs. It is imperative that they understand their responsibilities and can demonstrate compliance with all legal requirements. To this end, additional links to further information have been included in the QC and ISO27001 certification has been included in table one of the QC as an example of best practice. In addition, MoJ will discuss ways to provide additional guidance to MROs with MedCo.

Question 3: *QC1.8 has been strengthened in relation to MROs business ethics policies, in particular, it now provides more detail in relation to an MROs controlling Party. Do you agree with the highlighted changes, and do you have any suggestions to further update and improve this QC (please explain your reasoning)?*

Analysis of responses: 23 respondents answered question 3 and comments were made both in support of, or in opposition to, the amendment. Of these, **20** (1x T 1 MRO; 8 x T2 MROs; 4 x DMEs, 4 x claimant solicitors; 2 x representative bodies and 1 x other) agreed with the changes and **3** (1 x T2 MRO, 2 x DMEs) opposed them.

[5] https://www.iso.org/standard/54534.html

Summary of comments: Those in favour stated that the changes would give instructing parties insights into the ethical stance of MROs, which would help authorised users to make informed choices. In addition, it was noted that the amendments were not onerous and that failure to comply with a business's ethics policy would be an indicator of more serious issues within that MRO. There were also suggestions to provide additional guidance on legislation and industry standards and to make the Institute of Business Ethics 'Understanding Business Ethics[6]' training mandatory for all MROs.

One respondent who opposed the change, stated that MROs knowingly allowed authorised users to breach the Civil Procedure Rules. They also noted that MROs could stop such breaches from happening and that MedCo could publicly criticise MROs complicit in ethical breaches. It was also suggested that MedCo could seek input from and do more to support experts in relation to ethics.

Government Action: The proposed changes to QC1.8, which were again supported by the clear majority of those who responded, will be retained. However, links to further helpful guidance related to business ethics will also be provided and attendance at Institute of Business Ethics training will not be mandatory but will be recommended as best practice. The comments made in relation to abuses of the ethics policy have been noted and will be passed on to MedCo for consideration.

***Question 4**: In relation to QC1.9 we have taken the opportunity to strengthen and clarify the requirements related to an MROs complaints procedure, including the provision of a new definition of what constitutes a 'complaint'. Do you agree with the changes and definition, and do you have any suggestions to further update and improve this QC (please explain your reasoning)?*

Analysis of responses: 16 responses in total were received in relation to question 4. Of these, **13** agreed with the amended definition of what constitutes a complaint (1 x T1 MRO, 5 x T2 MROs, 3 x DMEs, 3 x claimant solicitors, 1 x representative body), whilst **3** respondents opposed the change (1 x T2 MRO, 1 x DME and 1 x representative body).

Summary of comments: Stakeholders who were supportive of the proposed changes noted that the definition would help MROs to improve and provide a better service to claimants. It was also described as clear, in line with ICO guidance and helpful in explaining minimum standards. Additionally, the links provided were helpful and aided understanding of the importance of dealing promptly with complaints professionally.

[6] https://www.ibe.org.uk/events-training/ems-event-calendar/understanding-business-ethics-sept.html

In relation to those opposed to the revisions to QC1.9, it was suggested that this was a substantial change which would lead to increased paperwork. It was felt by one stakeholder that the definition was too broad and that it would be applied to simple misunderstandings rather than to issues which were genuinely causes for complaint.

On the other hand, both representative bodies who responded agreed that, in their opinion, the definition was in fact too narrow and that it should not just relate to the provision of the medical report, but should be widened to encompass all aspects of the service provided by MROs. It was also suggested that complaints should be monitored and that a clear statement be made that MROs reporting no complaints would be investigated for underreporting.

Government Action: The proposed definition was intended to cover a full range of services provided by an MRO. Therefore, MoJ has, having considered the feedback received, decided to amend and clarify its scope. Additional rationale and links to good practice guidance have also been identified and included. The comments made in relation to workload have been noted, but we believe that a pragmatic application of this QC will not result in undue burdens on MROs.

Question 5: *QC1.12 deals with MRO ownership, and the revised text looks to tighten the wording to ensure that owners/controlling funders are of good character with no fraud convictions etc. Additional definitions of who would be considered owners, controlling shareholders or principal funders have also been provided. Do you agree with the highlighted changes and definitions, if not what would you change and do you have any suggestions to further update and improve this QC (please explain your reasoning)?*

Analysis of responses: In all, **23** responses were received to question 5 with **22** respondents agreeing with the proposed amendments (1 x T1 MRO; 9 x T2 MROs; 5 x DMEs; 4 x claimant solicitors; 2 x representative bodies; and 1 x other) with just **1** respondent disagreeing (1 x DME).

Summary of comments: Those in favour indicated that the changes would help to eliminate fraudulent activities, although further guidance was also sought on what ‘appropriate checks’ should take place. Stakeholders also commented that the amendment strengthened the provisions on ownership where greater clarity was required and there was a suggestion that the criteria should also cover indirect funding.

The response opposed to the change noted that there were too many restrictions and rules imposed on businesses, making it harder for smaller MROs to compete. It also suggested that additional non-binding guidance on best practice would be helpful.

Government Action: The proposed amendments will be retained and a link to FCA guidance on background checks has been added. MoJ will also discuss with MedCo whether additional guidance would be helpful. Expanding to indirect funding was considered, but on balance MoJ believe this would be too wide and difficult to monitor.

Question 6: *We have provided additional explanatory material in the rationale for QC1.13. This covers requirements for the management and control of an MROs expert panel. Do you agree with the highlighted changes, and do you have any suggestions to further update and improve this QC (please explain your reasoning)?*

Analysis of responses: A total of **23** responses were received to this question on the addition of extra explanatory text in the rationale for QC1.13. In all, **21** were in favour (1x T1 MRO; 8 x T2 MROs; 5 x DME; 4 x claimant solicitors, 2 x representative bodies; and 1 x other), and **2** respondents disagreed (1 x T2 MRO; and 1 x DME).

Summary of comments: In relation to the comments received, it was noted that the new rationale was clear that MROs must take ownership of the process and not blindly delegate to third-party providers. It was also suggested by stakeholders who supported the changes to QC1.13 that quality control should be managed by experts themselves and that experts should be paid even when claimants do not turn up. It was also noted that MedCo should introduce a ceiling of up to 50% of the fixed recoverable cost available in order to pay the expert.

Of those opposed, it was suggested that one size does not fit all and whilst there are both good and bad practices, different MROs should be able to have different systems.

Government Action: The proposed amendments will be retained as drafted. The Government accepts that one size does not always fit all, but that the QC provides a helpful structure to enable MROs to effectively manage their panels to an acceptable standard. It should also be noted that it is not possible for either MedCo or the Government to fix the payment an expert receives as this would contravene competition law.

Table 2 Questions: Additional QC for Tier 1 MROs

Question 7: *QC2.1 has had additional wording included to clarify and strengthen the requirements in relation to the provision of financial statements for MROs applying for high volume national status. Do you agree with the highlighted changes, and do you have any suggestions to further update and improve this QC (please explain your reasoning)?*

Analysis of responses: 21 Responses were received to this question, with **20** in favour (1x T1 MRO; 8 x T2 MROs; 5 x DME; 4 x claimant solicitors, 2 x representative bodies; and 1 x other) and **1** opposed (1 x DME).

Summary of comments: Respondents were overwhelmingly in favour of the amendments to QC2.1 stating that they were reasonable and highlighted the need for financial transparency of T1 MROs. In addition, it was noted that having financial qualifications will not automatically mean a breach of the QC, but that disclosing such would enable MedCo to examine the reasons and context. This does not obstruct MROs and protects other MedCo users. There was also a request for further information on what financial qualifications would be considered and to provide examples. The response which opposed this amendment was generally critical of the service and indicated that the main issue was that MROs could go bust and leave large debts.

Government Action: The amendments will remain as drafted with the inclusion of some additional explanatory text added to the rationale. The comments in relation to guidance are noted, but the need for stakeholders to receive such guidance has to be balanced against the requirements of the MedCo audit team. Auditors will require sufficient freedom to judge the context and reasons for any qualifications which may be in place for legitimate reasons. The supporting guidance is a matter for MedCo to consider and MoJ will discuss with MedCo what further advice and audit guidance on financial qualifications might be appropriate.

Question 8: *We have reviewed the number of active medical experts required by MROs seeking to apply for high volume national status which is included in QC2.2 and reduced this to 225. Do you agree with this reduction, and if not at what level do think this should be set (please explain your reasoning)?*

Analysis of responses: 21 respondents answered question 8 with **18** in favour (1x T1 MRO; 7 x T2 MROs; 5 x DME; 4 x claimant solicitors; and 1 x representative body), and **3** respondents disagreeing (1 x T2 MRO; 1 x DME and 1 x representative body).

Summary of comments: Supportive comments included references to the reduction making the QC more achievable, and being helpful as more T1 MROs are needed. It was also indicated that the QC should reflect the market capacity where possible and that 225 would represent a wide enough range of experts. There was also a call from AMRO for a review of related QC such as QC2.2.1 and 2.2.2 in light of an expected drop in volume following implementation of the reforms. These QC cover the total volume of reports required to be considered a T1 MRO, and the number of reports an expert is required to produce to be considered active.

Of those opposed one respondent suggested the limit was too low and should be increased to 400 experts, and the other main point made by one DME stakeholder was that there are around 3000 experts and that using a 15-mile radius a T1 MRO should have an expert in around 80% of these areas.

Government Action: The proposed reduction better reflects the operational requirements of the market and the number of required experts will be reduced to 225. The other related QC will remain in place for now, but MOJ will be monitor the volume of claims following the implementation of the reforms and will return to this area if necessary.

Question 9: *QC2.6 deals with the appointment by high volume national MROs of a 'Caldicott Guardian', and we have strengthened the rationale for this QC. Do you agree with the highlighted changes, and do you have any suggestions to further update and improve this QC (please explain your reasoning)?*

Analysis of responses: 22 responses were received to question 9 on strengthening the rationale for appointing a Caldicott Guardian with **21** in favour (1x T 1 MRO; 9 x T2 MROs; 5 x DME; 4 x claimant solicitors; and 2 x representative bodies), and **1** opposed (1 x DME).

Summary of comments: The majority of responses supported this amendment with respondents commenting that the change was reasonable, and that having an individual appointed in this role would help protect the confidentiality of claimants' data. Further guidance on the role of a Caldicott Guardian was also requested. The response opposing this change came from a DME who indicated that the role of a Caldicott Guardian was to protect confidential medical information but that there was conflict as an experts' duty to the court could override their responsibility to the claimant.

Government Action: The proposed amendments will be retained as drafted, and additional information and links to guidance for Caldicott Guardians have also been added to the rationale for QC2.6.

Table 3 Questions: New Supplementary QC

Question 10: *QC3.1 is drafted to provide reassurance that the MROs offered to unrepresented claimants, are effective, well run businesses, with sufficient experience and customer focussed processes to handle their requirements. Do you agree that this QC is sufficient for this purpose or should there be other requirements (please explain your reasoning)?*

Analysis of responses: In total **22** responses were received to question 10, with **17** in favour of the proposed changes (1 x T1 MRO; 8 x T2 MROs; 4 x DMEs; 2 x claimant solicitors, 1 x representative body; and 1 x other), and **5** against (1 x T2 MRO, 2 x DMEs, 1 x claimant solicitor; and I x representative body).

Summary of comments: Respondents who answered this question positively noted that MROs should be fully functioning entities as set out in table 1. This confirms they meet a wide range of points to demonstrate they are well-run organisations. This also ensures that any new entrants also operate at the required standard and that MROs have the staff and systems in place to meet the needs of unrepresented claimants.

Whilst not disagreeing with the principle behind the QC, other respondents commented that further clarification would be helpful in relation to rationale for 'consideration of warning letters by MedCo'. It was suggested that an MROs responses and actions following the receipt of a warning should be explicitly included in the QC, and clarification was sought on the period to be covered, i.e. warnings issued since the start of MedCo or just the last 12 months.

It was also asserted that all MROs/DMEs opting-in to unrepresented claimant work should have to meet the more stringent QC requirements for T1 MROs. This would enable the service levels on appointments, customer service and data security to be applied to all.

Government Action: Suggestions were made in relation to the rationale supporting QC3.1, which has been amended to include both an appropriate time limit and additional text on what is to be considered under the MedCo warnings rationale. The Government considers that a period of three years is appropriate as this provides a reasonable period on which to assess an MROs adherence to the rules. 12 months would be too short a time to demonstrate continued compliance and 5 years would be excessive.

The point made in relation to service levels is noted, but table 2 will not be extended to all MROs/DMEs undertaking unrepresented claimant work as this would be too restrictive. However, separate service level agreements for unrepresented work are under consideration and the points made here will be considered as part of this process.

Question 11: *QC3.2 ensures that owners, controlling parties and key staff of MROs opting-in are 'fit and proper' people to offer services to and interact with unrepresented claimants. Do you agree that this QC is sufficient for this purpose or should there be other requirements (please explain your reasoning)?*

Analysis of responses: 20 responses to question 11 were received, including **17** in favour (1 x T1 MRO; 8 x T2 MROs; 4 x DMEs; 2 x claimant solicitors; and 2 x other), and **3** responses which disagreed (1 x T2 MRO; 1 x DME; and 1 x representative body).

Summary of comments: QC3.2 covers requirements for the use of a 'fit and proper' persons test. Respondents noted that this will ensure staff have been properly vetted and trained before working with unrepresented claimants. Respondents also remarked that MROs should be required to meet 'fit and proper' criteria and inclusion of this QC is welcome. It was suggested that it would be an important tool to protect against 'phoenixing' and it is key that individuals running MROs are sufficiently experienced and competent to do so. It was also suggested that this requirement be added to table 2.

In addition, other stakeholders agreed that controls were needed but queried whether a 'fit and proper' persons test wholly applied in relation to MROs. Further clarification was requested from MedCo on their expectations when auditing against this QC. It was also stated that MROs should by default already be run by 'fit and proper' persons.

Government Action: MoJ notes the comments made in relation to the 'fit and proper' persons test. However, in line with the majority of respondents who answered the survey we are content that this QC is appropriate as drafted. Whilst the provision of additional guidance on audit expectations is an issue for MedCo to consider, MoJ will discuss whether material such as that provided by both the GMC and the SRA in relation to their own 'fit and proper' tests would be helpful in relation to supporting MROs.

Question 12: *QC3.3 explains the requirements in relation to the operational capability and back office resources of MROs wishing to opt in to produce medical reports for unrepresented claimants. Do you agree that this QC is sufficient for this purpose or should there be other requirements (please explain your reasoning)?*

There were **21** responses received to question 12, of which **15** were supportive (7 x T2 MROs; 4 x DMEs; 2 x claimant solicitors; 1 x representative body; and 1 x other), and **6** were opposed (1 x T1 MRO; 2 x T2 MROs; 1 x DME; 1 x claimant solicitor; and 1 x representative body).

Summary of comments: Respondents to this question commented that the QC seems to cover all aspects of a professional service. In addition, as currently instructions were received from lawyers during normal office hours, some flexibility in relation to unrepresented claimants who may require access outside of these times was sensible. Such claimants are also more likely to need additional help and guidance, as is supported by the requirement for permanent premises and staff.

Comments from those against suggested that the requirements were too restrictive, and that open-ended out of hours functionality was unnecessary. It was also suggested that most injured claimants would be capable of performing normal day to day tasks such as organising appointments, so such cover was largely unnecessary. Other stakeholders were supportive of the principles but concerned whether it would be financially viable to provide services when the volume and timing of instructions was unknown. Clarification was sought on the self-employed staff exclusion and it was suggested that the QC be amended to refer to staff involved in the day to day running of the MRO.

Additional comments were also received stating that small MROs would be disadvantaged by these requirements if they were forced to hire permanent offices and additional staff despite the uncertain volume of work.

Government Action: The requirements included in QC3.3 are important in providing reassurance to unrepresented claimants that they will be able to communicate with MROs at a time convenient to them. However, a number of changes to the wording of QC3.3 and its accompanying rationale have been made in light of the constructive comments made by stakeholders. These include revisions relating to out of hours contact, premises and staffing requirements.

Question 13: *QC3.4 requires MROs to directly manage the full end to end process for unrepresented claimants using their services. Do you agree that this QC is sufficient for this purpose or should there be other requirements (please explain your reasoning)?*

Analysis of responses: 21 responses were received to this question, including **15** responses in favour (1 x T1 MRO; 7 x T2 MROs; 4 x DMEs; 1 x claimant solicitors; 1 x representative body; and 1 x other) and **6** which disagreed (2 x T2 MROs; 2 x DMEs; 1 x claimant solicitor and 1 x representative body).

Summary of comments: Stakeholders suggested that this QC would ensure a good service was provided to claimants. In addition, unrepresented claimants need to be able to clearly identify who is responsible for providing their medical report and answer their questions. MROs should have clear ownership of this as they have a contractual relationship with MedCo and can be held to account. MedCo has no such oversight of third party agencies even though they are involved in the sourcing of medical reports.

Other stakeholders were supportive of the principles underpinning QC3.4, but requested clarification of what was meant by 'end to end' service and 'catering for non-soft tissue injuries. It was also suggested by one stakeholder that if QC3.4 restricted MROs from using third party suppliers then this could be viewed as a restraint of trade, and that there needs to be a balance which enables both the large well-resourced and smaller MROs to operate.

Government Action: It is MoJ's view that QC3.4 is essential to ensure a good customer journey for unrepresented claimants. In addition, MROs opting-in should also have ownership and control of their relationship with an unrepresented claimant who instructs them. This includes ensuring a third party does not have control of aspects of this relationship without full oversight of their interactions by the MRO. Therefore, the QC has been amended to reflect the need for this oversight. We have also provided additional clarification in relation to what is entailed by the provision of an end to end service for non-soft tissue injuries.

Question 14: *QC3.5 requires MROs to provide unrepresented claimants with full explanations of the medico-legal system, so that they fully understand the steps and processes involved in obtaining a medical report. Do you agree that this QC is sufficient for this purpose or should there be other requirements?*

Analysis of responses: 23 responses were received with **18** in favour (1 x T1 MRO; 9 x T2 MROs; 4 x DMEs; 1 x claimant solicitor, 2 x representative bodies; and 1 x other) and **5** against (1 x T2 MRO; 2 x DMEs; 1 x claimant solicitor and 1 x representative body).

Summary of comments: Respondents noted that providing information on the provision of clear, accurate information to unrepresented claimants on process, contact details and performance standards would be beneficial. It would help to manage expectations and in doing so will likely reduce the number of inquiries and complaints received by MROs. Providing such information and dealing with queries in a dynamic way will support the understanding of unrepresented claimants who may view the medico-legal process as an unnecessary delay to progressing their claim. It was also suggested that the wording of QC3.5(b) could be amended to ensure any information provided was done so in accessible language and formats.

Other stakeholders suggested the QC was insufficient and required clarification with regard to its interaction with the currently unpublished Civil Procedure Rules for the new online IT service. It was also felt that information on the roles and responsibilities of MROs and claimants in the medico-legal process shouldn't be provided by MROs, and that this was for the new 'Official Injury Claim' service to provide. They indicated that MROs would likely be inconsistent and official guidance was needed to ensure a common approach to the information provided.

An additional concern related to a lack of clarity about who was responsible for resolving disputes between medical report providers and unrepresented claimants was also noted. The final point made suggested that there is a difference between providing and understanding information and that producing explanatory videos to support understanding may be helpful.

Government Action: QC3.5 will remain as drafted with additional rationale included on the clear presentation of information to unrepresented claimants.

The provision of easily understandable information to unrepresented claimants is vital and it is MoJ's view that MROs are best placed to explain the various aspects of the medico-legal system. The new Official Injury Claims system will include specific guidance on the PI claims process, including on the MedCo system, but this does exempt MROs from a role in ensuring that unrepresented claimants are fully informed.

Representative bodies can also help support claimants as well as their members in this area. For example, the Association of British Insurers have previously developed, and are currently updating, guidance for their members and claimants on the claims process. MoJ recommends that other representative bodies in the sector consider replicating this approach by working with their members and issuing consistent industry guidance to member organisations and which could also be made available more widely.

Question 15: *QC3.6 requires MROs to have effective performance management systems in place to monitor their performance against MedCo's quality standards and service level agreements. Do you agree that this QC is sufficient for this purpose or should there be other requirements (please explain your reasoning)?*

Analysis of responses: 20 responses were received overall, with **17** in favour (1 x T1 MRO; 9 x T2 MROs; 4 x DMEs; 1 x claimant solicitor; 1 x representative body; and 1 x other) and 3 opposed (1 x DME; 1 x claimant solicitor; and 1 x representative body).

Summary of comments: Comments received in support remarked that effective performance management systems are important for ensuring that MROs are meeting the expectations and needs of unrepresented claimants. MROs monitoring their own performance effectively will be able to identify and deal with emerging issues without waiting for an audit or complaint to flag up issues. This has the benefit of ensuring the audit/re-audit process is less resource intensive for both MROs and MedCo.

Other stakeholders agreed that there should be standard quality and service level agreements, but as such have not yet been announced by MedCo any agreement to this QC is qualified. It was also noted that unrepresented claimants can be difficult to please and are likely to argue about mundane issues such as the venue and timing of appointments. One stakeholder suggested that any service levels agreed would therefore need to be flexible and MROs will need to ensure they provide a range of options when arranging appointments.

Government Action: The ability of an MRO to monitor its performance and address any developing issues, is important in ensuring the service they provide is fit for purpose and will stand them in good stead in terms of future audit assessments. QC3.6 therefore remains as drafted, but the rationale has been amended to reinforce the need for flexibility when dealing with unrepresented claimants. MoJ will also discuss the need to publish information on the effective service levels required prior to the go-live date of the new service.

Question 16: *QC3.7 covers the information to be supplied to unrepresented claimants on the medical reporting process by the MRO handling their medical report. Do you agree that this QC is sufficient for this purpose or should there be other requirements (please explain your reasoning)?*

Analysis of responses: We received **20** responses to question 16, of which 17 agreed with QC3.7 (1 x T1 MRO; 9 x T2 MROs; 4 x DMEs; 1 x claimant solicitor; 1 x

representative body; and 1 x other) and a further 3 respondents disagreed (1 x DME; 1 x claimant solicitor; and 1 x representative body).

Summary of comments: The comments received in favour of this QC indicated that it was both reasonable and proportionate, but that it should be specified that the services to be provided were medico-legal, otherwise it could be considered too broad in scope.

Of those who answered no, there was support for the principle that MROs should have to demonstrate robust services. However, they suggested that the rationale was too subjective and that the QC could be more prescriptive in terms of measures or the keeping of records. It was also felt that obtaining ISO9001 certification may not be beneficial if the MRO already had robust customer service systems in place. It was also pointed out that MROs will be on a steep learning curve following implementation of the whiplash reforms and will need FAQs and alternative methods for answering questions.

Government Action: The comments made in relation to the bullet points in the rationale for QC3.7 are noted. However, whilst it is accepted that some are subjective in nature, the Government believes that they are specific where it is appropriate for them to be so. In addition, flexibility and context are both key areas which auditors need to consider when judging compliance, and introducing an inflexible list of set requirements would impact negatively on this area. Therefore, other than a minor change to clarify 'medico-legal', no further amendment is necessary.

Question 17: *QC3.8 deals with MROs responsibilities in relation to registering with and being audited by MedCo. Do you agree that this QC is sufficient for this purpose or should there be other requirements (please explain your reasoning)?*

Analysis of responses: 21 responses were received to question 17, of which **16** agreed with the new QC (1 x T1 MRO; 7 x T2 MROs; 4 x DMEs; 1 x claimant solicitor; 2 x representative bodies; and 1 x other). A further **5** respondents were opposed (2 x T2 MROs; 1 x DME; 1 x claimant solicitor; and 1 x representative body).

Summary of comments: The responses to question 17 were largely supportive of the suggested approach to auditing MROs wishing to opt-in to provide medical reports for unrepresented claimants. Stakeholders agreed that a pre-registration audit was essential, and that MROs should not be made active in this area until the audit fee had been paid and the on-site audit completed. In addition, it was stated that MedCo cannot begin an on-site audit until the audit fee was paid and MROs who cannot comply with this would likely have wider issues which would impact on completion of their audit.

Of those who answered no, further information on the audit process was requested, and some stakeholders questioned the need for a further audit and asked whether refunds of MedCo fees would occur if they failed an audit for this additional work.

Government Action: MROs undertaking an on-site audit on the table 3 criteria is an important part of the process of reassuring unrepresented claimants as to the service they receive. No additional changes will be made to this QC but MoJ will discuss the provision of further audit guidance with MedCo prior to audits commencing. In addition, it should be noted that questions raised in relation to the payment of MedCo membership fees should be directed to MedCo.

Questions on Financial Links, Opting-in and additional comments

Question 18: *Minor changes have been made to the MoJ Statement of Financial Links to reflect the amendments to the QC. Do you have any comments in relation to this revised statement or do you have any suggestions to further update and improve this document (please explain your reasoning)?*

Analysis of responses: 19 responses were received to this question, of which **7** respondents (3 x T2 MROs; 2 x DMEs; 1 x claimant solicitor; and 1 x representative body) provided comments with a further **12** (1 x T1 MRO; 6 x T2 MROs; 3 x DMEs; 1 x claimant solicitor; and 1 x representative body) making no additional suggestions.

Summary of comments: The comments received included criticism that currently, section 4 allowed for the continued misuse of 'commissions', and that whilst the latest MedCo guidance and 'ethics policy' were an improvement, MoJ needed to strengthen the referral fee requirements in the declaration. Respondents also suggested updates to ensure that MROs were party to, and conformed with, the declaration signed by the experts they use.

Other respondents noted that financial links with unrepresented claimants were likely to be rare, and that the declaration in relation to experts needed to be amended to take account of the widening of MedCo's remit to cover RTA related claims. It was also suggested that 'officers of the company' should be added to the list of notifiable positions.

Government Action: Comments made by stakeholders in relation the Declaration of Financial Links have been considered and changes have been made to make clear that following the implementation of the whiplash reforms it will apply to the provision of medical reports provided in support of both:

- soft tissue injury claims within the meaning of paragraph 1.1(16A) of the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents; and
- RTA related personal injury claims, valued at not more than £5,000, to which the Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents.

Amendments have also been made to include the term 'Officer of the Company' where appropriate, but no further amendments will be made to the statement at this point in relation to the use of commissions. MoJ will consider this point again if additional verifiable evidence of malpractice becomes available.

Question 19: *Having considered the revised QC and statement of financial links, 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: For the purposes of this question, only responses from MROs and the MROs representative body have been considered. Responses were received from DMEs who are subject to a separate survey on this issue, and one response was received from a firm of solicitors for whom this question isn't relevant.

In total, **12** relevant responses were received to this question. Of these, **7** MROs indicated they would be opting-in to provide medical reports to unrepresented claimants (6 T2 MROs and 1 T1 MRO). In addition, AMRO, the representative body for MROs indicated that all **11** of the current T1 MROs would also be opting-in to this work. A further **2** T2 MROs indicated they wouldn't opt-in and **2** T2 MROs also stated they were not yet sure what they would do.

Summary of comments: Supporting comments were supplied by stakeholders who intended to either opt-in, not opt-in or who were unsure. This included a request for more information from MedCo on the audit process itself. In relation to those who were either unsure or who had decided to not opt-in, respondents indicated that this was largely due to uncertainty over the volume of claims, the level of staffing required to support the work and the costs involved in meeting the new supplementary QC.

Government Action: No specific further action is required in relation to this question, and the data gathered will be assimilated with other sources of data and used to support the whiplash reform programme implementation planning process.

Question 20: *Having considered the revised QC and statement of financial links, do you have any additional comments or suggestions in relation to these documents not already covered by the questions above (please explain your reasoning)?*

Analysis of responses: 21 responses were received in relation to question 20. Of these **6** provided additional comments and suggestions (3 x T2 MRO; 1 x DME; and 2 x representative bodies), whilst **15** indicated that they had nothing further to add (1 x T1 MRO; 6 x T2 MROs; 5 x DMEs; and 2 x claimant solicitors).

Summary of comments: There were a number of generally supportive comments received from respondents which welcomed the revisions to improve and tighten the QCs in the existing tables 1 and 2. In addition, the need for all MROs to undertake pre-registration audits was reiterated and that there should be a programme of regular re-audits. The new supplementary QC in table 3 was also welcomed, as these will support

the aim to enable unrepresented claimants to be able to make informed choices in relation to obtaining medical evidence.

Additionally, it was also noted that the QC only apply to MROs, and that DMEs would also be able to supply medical reports to unrepresented claimants. It was therefore suggested that similar rules should also be applied to DMEs as they need to be held to the same standards. A final point (unrelated to the issues included in the consultation) was raised in criticism of the potential MedCo offer[7] for unrepresented claimants.

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.

It should however be noted that in relation to the point made on the MedCo offer for unrepresented claimants, that figures discussed at earlier whiplash reform roadshows were based on the current offer and were used for illustrative purposes only. A new offer for unrepresented claimants will be published in due course.

[7] The offer covers the number and type of MROs or DMEs presented to an authorised user following a MedCo search.

Next Steps

The revised QC and declaration of financial links have now been published on: https://www.gov.uk/government/publications/medco-qualifying-criteria-stakeholder-engagement-exercise.

In addition, all MROs intending to opt-in to undertake should review their business processes and service provision against the new supplementary QC, and then contact MedCo directly in order to schedule their on-site audit. The MedCo audit team will schedule audits on a first come, first serve basis and successful MROs will be added to the system prior to the launch of the new service in May 2021.

A separate survey on equivalent rules for DMEs has also been undertaken and a response has been published. Copies of this report can be found here:

https://www.gov.uk/government/publications/medco-new-rules-and-audit-process-for-direct-medical-experts

MINISTRY OF JUSTICE
FEBRUARY 2021

Annex A: MoJ Qualifying Criteria for Medical Reporting Organisations

Table 1: 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 1 (below) in order to achieve and retain MRO status on MedCo.

Minimum Qualifying Criteria for all MROs	Qualifying Criteria Rationale
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. 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: (i) independent (ii) properly staffed and resourced; and	The practice of MROs registering shell companies with MedCo undermines the Government’s policy principles of independence, fair competition and public confidence in MedCo. Shell companies are not allowed to be registered on the MedCo system. MedCo will continue to monitor for breaches and will investigate and take action to remove any MROs identified as ‘shell companies’. This definition has been developed to provide clarity as to what functions an MRO providing medico-legal reports on the MedCo system should undertake. It is acknowledged that some MROs may fall under a common third-party ownership. However, 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. The direct management and control of experts by MROs includes MROs making payments direct to experts and not third-party providers. It is central to the policy underpinning random allocation that the MRO receiving the instruction subsequently carries out the work.

Minimum Qualifying Criteria for all MROs	Qualifying Criteria Rationale
(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". Each MRO must: a) establish and maintain the direct management and control of a panel of MedCo accredited experts; 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 invoicing, direct payment of experts and debt collection processes; c) manage the appointments process for claimants (including identifying appropriate dates, times and venues for medical examinations, and processing cancellation and rescheduling of appointments); d) oversee and quality assure (clinically and non-clinically) the report production process and have systems in place to	This definition, in conjunction with other criteria, will provide customer reassurance regarding quality of service. An MRO should be fully resourced and accountable, and not be a clearing house with some/all of its functions outsourced to a linked (parent) or another 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. Compliance with this definition will be assessed by MedCo as part of the formal MRO audit process. This will be in accordance with: • the terms set out in the MedCo User 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. 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. For the avoidance of doubt a key intention of these qualifying criteria is to restrict and control the deliberate establishment of "shell" MROs which undermine the Government's policy of randomisation.

Minimum Qualifying Criteria for all MROs	Qualifying Criteria Rationale
effectively manage any complaints from instructing parties; and e) comply fully with the MedCo User Agreement, including its Ethics Policy, and operate in a way which is not contradictory to the Government's stated policy objectives.	
1.2 Obligation to declare all direct financial links. In order to achieve and retain MRO status, an organisation is required to sign and comply with the declaration contained in the revised MoJ 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).	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. 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 MoJ Statement on Direct Financial Links. This document is included as a schedule in the MedCo User Agreement which is provided to and signed by MROs when they register with MedCo.
1.3 Commitment to pay medical experts direct, on set credit terms irrespective of the outcome of the case.	MROs must commit to and demonstrate the ability to pay medical experts direct and 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.

Minimum Qualifying Criteria for all MROs	Qualifying Criteria Rationale
	This provision removes any suggestion that the medical expert has an interest in the outcome of the case and is consistent with paragraph 88 of the "Guidance for instruction of experts in civil claims[8]" produced by the Civil Justice Council, which came into force on 01/12/14.
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.	The availability of sufficient financial resources is required to ensure that medical experts are protected in the event of a failure of an MRO. Obtaining this financial instrument is also a disincentive to the establishment of "shell" MROs which undermine the random allocation model.
1.5 Evidence of a minimum of £1m for professional indemnity insurance and £3m for public liability insurance.	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. 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. The level of insurance included in this criterion is a reflection of the premiums that the industry currently pays.
1.6 Compliance with all relevant regulatory requirements in relation to information security, including all duties imposed under the Data Protection Act (DPA) 2018[9] and any additional relevant European	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 the necessary systems, controls and checks in place in relation to information security. This provision includes within its scope all an MRO's outsourced or external suppliers to whom data is transferred or that are able to access it including e.g. externally hosted

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

[9] http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted

Minimum Qualifying Criteria for all MROs	Qualifying Criteria Rationale
legislation such as the EU General Data Protection Regulation[10].	applications (case management or report writing software), appointment booking platforms and administrative agencies. The MRO is responsible for ensuring that the data it transfers or enables access to, is processed in accordance with regulatory requirements and cannot delegate it. 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. Additional information on data protection can be found at the following: https://www.gov.uk/data-protection https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/ 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 For organisations wishing to establish, implement, maintain and continually improve an information security management system ISO27001 is recommended as best practice. More information can be found here: https://www.iso.org/standard/54534.html
1.7 Commitment to, and compliance with, anti-bribery legislation.	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 to comply with anti-bribery legislation.
1.8 Commitment to, and compliance with, a business ethics policy by the MRO and all individuals controlling it. This includes a	Instructing parties need to be reassured that the organisations they instruct (and those controlling them) act ethically on a continuous basis. Also, that they have the means and

10 https://gdpr-info.eu/

Minimum Qualifying Criteria for all MROs	Qualifying Criteria Rationale
demonstrative understanding of the impact that controlling individuals'* behaviour may have on maintaining, monitoring and enforcing the ethics policy. * shareholders (including beneficial owners), directors (including shadow directors) and day-to-day operational management.	understanding to effectively monitor and enforce the policy, including following all relevant legislation and industry standards. All MROs must both comply with the ethics policy contained in the MedCo user agreement and implement and follow an appropriate business ethics policy for their business. Helpful guidance for both regulators and businesses on implementing ethical policies can be found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/497539/16-113-ethical-business-regulation.pdf In addition, attending the Institute of Business Ethics one-day training course on 'Understanding Business Ethics' should be considered as best practice in this area. More information on this training can be found here: https://www.ibe.org.uk/events-training/ems-event-calendar/understanding-business-ethics-sept.html
1.9 Documented, published and functional complaints handling process with a full audit trail of all complaints received and how they have been handled.	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. 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. A complaint is defined as any expression of dissatisfaction, whether oral or written, whether justified or not, from or on behalf of an eligible complainant about the MROs services including, but not limited to the provision of, or failure to provide, a medico-legal report. It is important to treat complaints seriously as they can highlight problems or areas for improvement in your organisation and handling them well can protect your reputation and prevent future complaints. Helpful guidance and example procedures can be found here:

Minimum Qualifying Criteria for all MROs	Qualifying Criteria Rationale
	https://www.legalombudsman.org.uk/downloads/documents/publications/Guide-Good-Complaints-Handling.pdf https://www.england.nhs.uk/wp-content/uploads/2016/07/nhse-complaints-policy-june-2017.pdf
1.10 Appointment of a Responsible Officer/Compliance officer.	All MROs must have a single point of contact responsible for demonstrating full and proper knowledge of and compliance with MedCo requirements. This point of contact will be responsible for liaison with MedCo and/or its audit team.
1.11 Restriction on providing medical evidence in any case where a Related Party is involved.	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.
1.12 MROs should not have controlling Shareholders, Directors, Officers or non-equity funders who have been declared bankrupt or convicted of fraud in last 5 years. Where an MRO is financed by material non-equity funding, e.g. loans from individuals, those individuals are covered by this provision unless the MRO can demonstrate that the individuals exert no direct control as a result of their funding.	MROs must be owned and operated by people of appropriate character. Directors include shadow directors. Officers include company secretary, chief medical officer and day-to-day operational management. Non-equity funders exclude UK regulated lenders / debt providers e.g. banks, investment management / private equity firms and listed debt securities. The FCA provides helpful information on checks which can be undertaken to cover areas such as identity, employment, finances and educational checks: https://www.ukemployeechecks.co.uk/employee-screening-packages/fca-screening
1.13 Direct management of an MRO's panel of medical experts.	An MRO is responsible for the recruitment, validation and management of the independent MedCo accredited medical experts on its panel.

Minimum Qualifying Criteria for all MROs	Qualifying Criteria Rationale
	Management includes such processes as contract management, appointment capacity, changes to panel due to suspension/removal/reinstatement, quality assurance (clinical and non-clinical) and geographical coverage. 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, and that all on their list retain operational status).
1.14 Payment of the requisite fees for registration with MedCo by the due date.	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.
1.15 Upload of anonymised medical case data and collection of relevant management by MedCo, within a time period defined by MedCo.	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. All data uploads will need to be compliant with the DPA.
1.16 All MROs must demonstrate understanding of their performance in order to monitor, manage and comply with the minimum standards and service levels as defined by MedCo.	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.

Table 2: Additional Qualifying Criteria for High Volume National MROs

The qualifying criteria listed in Table 2 (below) cover the extra requirements needed for an MRO to be reclassified as a high volume, national MRO.

Additional Qualifying Criteria for HVN MROs	Qualifying Criteria Rationale
2.1 Minimum two years of trading history as an MRO providing MedCo compliant medical reports with all audited financial statement qualifications disclosed.	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. A qualified report does not necessarily mean that there are issues with an organisations financial health; it can also mean that there was insufficient data provided to form an opinion on aspects of the accounts provided for audit. The specific circumstances relating to instances of insufficient data will be considered but the nature of any specific audit qualifications may result in rejection by MedCo.
2.2 Operational Capability: An MRO must be able to demonstrate that: i. 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). If an MRO has not previously processed 40,000 independent medico-legal reports, it may be	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. 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’. 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.

Additional Qualifying Criteria for HVN MROs	Qualifying Criteria Rationale
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: a) an appropriate business strategy with respect to the growth required to meet that capacity; b) operational functions (including human resources and IT systems) which are sufficiently robust and scalable such 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; and c) meets (ii) – (v) below. ii. It has contractual arrangements with at least 225 individual active MedCo accredited medical experts who provide MedCo whiplash reports;	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. 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.

Additional Qualifying Criteria for HVN MROs	Qualifying Criteria Rationale
iii. 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; iv. It has a minimum of five distinct clients, which are not associated organisations with it, and no client represents more than 40% of the total instruction volume (to prevent an in-house MRO serving its own commercial ambitions); and v. It has the ability to comply with the SLAs for high volume, national MROs as defined by MedCo.	
2.3 A financial instrument of £100,000 demonstrating that the MRO has sufficient funds to remunerate medical experts from whom it has commissioned medical reports in the case of failure of the MRO.	The availability of sufficient financial resources is required to ensure that medical experts are protected in the event of a failure of an MRO. Payment of this financial instrument is also a disincentive to the establishment of “shell” MROs designed to undermine the random allocation model.
2.4 A documented and tested Disaster Recovery Plan and Business Continuity Plan, including testing schedule and outcomes and fixes, which demonstrate that the MRO can return to normal operation within a maximum of 72 hours.	It is good industry practice for an MRO handling a significant volume of cases to have a documented disaster recovery plan and business continuity plan. 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.

Additional Qualifying Criteria for HVN MROs	Qualifying Criteria Rationale
2.5 Appointment of Chief Medical Officer.	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 required for those providing high volumes of medical reports and this requirement demonstrates commitment to clinical governance.
2.6 Appointment of nominated Caldicott Guardian.	All NHS organisations and local authorities that have access to patient records are required to have a Caldicott Guardian, i.e. a senior person responsible for protecting the confidentiality of a patient and enabling appropriate information sharing. To ensure claimant data is protected and used legally, ethically and appropriately for the correct purpose only, HVN MROs must also appoint a Caldicott Guardian to provide leadership and informed guidance on complex matters involving confidentiality and information sharing. This is an example of “best practice” and MROs providing medical reports should demonstrate their commitment to the protection of sensitive information through the appointment of a Caldicott Guardian. Further information on the roles and responsibilities of a Caldicott Guardian can be found here: https://www.ukcgc.uk/manual/role
2.7 Payment of the requisite fees for registration with MedCo and onsite audit.	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. 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.
2.8 Demonstrable A2A capability to solicitors.	A2A functionality streamlines the claims process for all stakeholders, including the claimant, making the system efficient and timely and also removing unnecessary costs for both MROs and solicitors.

Table 3: Supplementary Qualifying Criteria for MROs providing unrepresented claimant reports

The qualifying criteria listed in Table 3 (below) cover the requirements for carrying out unrepresented claimant work.

Supplementary Qualifying Criteria for Unrepresented Claimants	Qualifying Criteria Rationale
3.1 MROs opting in to unrepresented claimant work must be fully functional organisations which are compliant with all relevant qualifying criteria including that contained in table 1. This includes accepting instructions in relation to both represented and unrepresented claims as an operational norm.	This will give unrepresented claimants confidence that their selected provider consistently operates to high standards, which is necessary given an unrepresented claimants' likely unfamiliarity with the medical report process. MROs should be able to demonstrate adherence to good practice approaches and where weaknesses are identified, they should be few in number, the implications are not material and they are capable of resolution within a short timescale. Consideration will be given to any MedCo warning letters, suspensions or removals from the system related to any aspect of an MRO's compliance with any other applicable QCs issued within the last three years. This includes both the warnings issued and the MROs response to issues covered.
3.2 Key individuals working for the MRO adhere to the following fit and proper persons criteria: • honest, of good character, credible and with integrity; • competent and capable to perform tasks intrinsic to their job, taking into	Given the likely imbalance in knowledge, experience and power in the relationship between unrepresented claimants and MROs a 'fit and proper persons' regime is required in the claimants' interests. Evidence may include references from former employers, professional advisers and social media profiles. This requirement is in line with best practice in the NHS and other sectors. For an MRO, key individuals are those with significant control over the MRO strategically, financially and operationally, i.e. shareholders, directors (including shadow directors) and day-to-day management.

Supplementary Qualifying Criteria for Unrepresented Claimants	Qualifying Criteria Rationale
account appropriate factors such as location and other business interests; • have the qualifications, knowledge, skills and experience necessary for their office; and • have not been responsible for, privy to, contributed to or facilitated any serious misconduct or mismanagement in the production of MedCo or non-MedCo medico-legal reports.	When the MRO assesses themselves against this QC, they should take into account all their dealings with MedCo or as an MRO in the past 3 years under any registration application in any capacity (including shareholder, beneficial owner, director, shadow director and employee) for any User type, together with equivalent non-MedCo activities. Where concerns arise, the extent to which the MRO/DME acknowledges failings, takes corrective action and demonstrates compliance thereafter are relevant mitigating factors, dependent upon the number, frequency and significance of the relevant concerns. An MRO that fails to demonstrate that it meets this QC will be suspended from conducting unrepresented claimant work, irrespective of their existing tier status or performance against any other QC. Where in doubt, MROs should contact MedCo immediately to discuss any concerns. In the interests of protecting unrepresented claimants, MedCo may suspend a MRO's B2C status whilst any concerns are being investigated.
3.3 Has the resources and structure necessary for operational delivery of the unrepresented claimant service on a consistent and stable basis i.e.: a) Ability to operate at times when unrepresented claimants may wish to pursue their claims, which may be outside normal office hours; b) Ability to operate across multiple channels to cater for different unrepresented claimants' communication preferences and needs (e.g. if vulnerable or not have web access); c) No key person involved in the day to day operation of the MRO	MROs should be able to provide a high level of customer service irrespective of owner availability and employed staff (including director) turnover, holidays and sickness. All key functions, activities and knowledge should be available to the MRO at all trading times. This means that each key function, activity or area of knowledge has to be capable of being performed / known by more than one person. An appropriate range of communications channels should be available to claimants across a range of times, including outside of normal office hours (9-5). This may involve staff being available to take calls before or after these hours or other methods of recording and answering queries being used. The minimum number of channels operated by an MRO should cater for the full spectrum of unrepresented claimants' contact preferences. For example, at least one option from each of the following 3 categories: physical (e.g. letter), audio (e.g. telephone) and electronic (e.g. email, SMS/text, social media and livechat or similar). The types of premises which would usually be considered inappropriate include residential homes (except those adapted to include private consulting rooms equipped to an equivalent standard to medical facilities), virtual offices, retail space (e.g. above shops),

Supplementary Qualifying Criteria for Unrepresented Claimants	Qualifying Criteria Rationale
should work on a temporary, self-employed or consultancy basis; and d) Operates from substantive, standalone, physical and professional business premises.	offices of fellow group companies either related to the insurance industry (e.g. GP practices) or not (e.g. property management, car hire), offices of legally separate companies related to the insurance industry (e.g. claims management companies) and general co-working offices hired out on a temporary basis as and when needed. The individual circumstances of each MRO will, however, be considered during their audit. Contact details for the MRO should be specific to the MRO i.e. email/physical address and telephone number; forwarding details e.g. post-office box numbers are not acceptable.
3.4 Direct management of the unrepresented claimant experience.	The MRO is 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. The customer service function should not be outsourced to a third party and MROs should always retain oversight of, and be accountable for, any dealings such providers have with the instructing party. Following the implementation of the whiplash reforms, MedCo's remit is being extended to cover all road traffic accident related personal injury claims where damages for pain, suffering and loss of amenity are valued at up to £5,000. Therefore, the end-to-end service (receipt of instruction to uploading of report) provided to the unrepresented claimant by the MRO should also cater for non-soft tissue injuries, where appropriate.
3.5 MROs must provide the unrepresented claimant with transparent, accurate, timely and up-to-date information about: a) its process for producing the medico-legal report, especially the consultation procedure; b) what its and the claimant's roles, responsibilities and rights are in this process;	It is important that all information and communications provided to unrepresented claimants uses easily understandable language and be available in a range of accessible formats. This means that information must be displayed prominently, timely and consistently. It must also be clear and in plain English, with information presented in a straightforward manner with important details clearly highlighted. The communication channels used should be such that no unrepresented claimant can be misinformed no matter how they choose to engage with the MRO, including such channels as website, social media, telephone, letter, email and livechat or similar. The onus is on the MRO to manage expectations and make sure that it is clear on the medico-legal report production process, including what the claimant needs to do and when.

Supplementary Qualifying Criteria for Unrepresented Claimants	Qualifying Criteria Rationale
c) its contact details and availability by channel; d) its performance against the service standards specified at QC 3.6; and e) how to make complaints about the MRO and to initiate any dispute resolution process.	This includes clearly explaining the unrepresented claimant's rights to challenge the MRO on matters of fact pre- and post-report provision. MROs should inform unrepresented claimants of their performance levels, how to complain if they experience poor service and the details of any dispute resolution process. If MROs fail to address the claimant's complaint to his/her satisfaction, the claimant should have the process for how to report the MRO to MedCo clearly explained to them.
3.6 All MROs must understand, monitor and manage their performance in order to comply with the enhanced standards and service levels as defined by MedCo.	It is important that unrepresented claimants have confidence that those suppliers they select to produce their medico-legal reports operate to the required standards. Monitoring performance will enable MROs to be flexible when accommodating requests made by unrepresented claimants. This will be auditable as part of the MedCo audit process.
3.7 Demonstrates a robust end-to-end claimant customer service capability in terms of medico-legal services offered, resources (people, processes and technology) deployed and the quality of outputs.	Particular customer services skills that should be demonstrable and evident in dealing with unrepresented claimants include: • Timeliness i.e. questions answered promptly, issues identified, and problems resolved quickly with specific details given of if/when something will happen; • Attitude i.e. unrepresented claimants must be treated with respect, courtesy and professionalism; • Empathy i.e. treat others how one would like to be treated; • Awareness of the needs of vulnerable claimants and that specific additional actions/services may be required to support their application; • Ownership i.e. make sure that the unrepresented claimant does not get bounced around trying to find the right person to help them;

Supplementary Qualifying Criteria for Unrepresented Claimants	Qualifying Criteria Rationale
	• Active listening i.e. MROs should not assume to know what the unrepresented claimant wants, but should listen first, then act in response to their specific needs; • Expertise i.e. be knowledgeable about the service, say if you do not know the answer and then quickly get the information from someone who does and revert back to the unrepresented claimant; • Dependability i.e. do what you say, when you have said you will do it and do not leave it up to the unrepresented claimant to follow up; and • Be prepared to follow up regularly with the unrepresented claimant to make sure that everything is proceeding satisfactorily. • Consideration should be given to staff training/qualifications on customer services and obtaining external certifications e.g. ISO9001 (2015 and successor versions) to substantiate the above.
3.8 Payment of the requisite fees for registration with MedCo and onsite audit.	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. All MROs opting in to undertake unrepresented claimant work will be required to undergo an onsite audit of their compliance with and adherence to the additional criteria set out in this paper for this purpose.

MINISTRY OF JUSTICE
FEBRUARY 2021

Annex B: MoJ Statement on Direct Financial Links

1. For law firms, claims management companies & insurers

1.1 "Organisation" will include a partnership, an LLP, a company, group of companies, unincorporated organisation and an individual/sole proprietor". For the purposes of this document "Law Firm" includes an organisation practising under an Alternative Business Structure (ABS) licence.

1.2 Signatories of this declaration should apply an appropriate degree of judgement in relation to “employees” and/or shareholders when ascertaining whether they have declarable links. For example, employees or shareholders who are in a position to influence company policy or who have a direct influence on the workflow of the organisation should be covered, but a proportionate approach to other employees in non-influential junior positions may be considered.

- There is no medical reporting organisation (MRO) which is wholly or partly owned by me or by a partner, senior manager, member, director, officer of the company, employer or employee in my organisation, now or at any time during the past 3 years.
- There is no MRO in which I, or a partner, senior manager, member, director, officer of the company, employer or employee in my organisation, am a partner, senior manager, member, director, officer of the company, employer or employee, now or at any time during the past 3 years.
- There is no MRO in which I, or a partner, senior manager, member, director, officer of the company, employer or employee in my organisation, am a shareholder, with a shareholding above 3%, now or at any time during the past 3 years.
- Where my organisation practises under an ABS licence or is part of a group containing an ABS, there is no MRO which forms part of, or is wholly or partly owned by, the ABS or group.

- There is no medico-legal expert employed by my organisation or under contract of service with my organisation for the provision of medico-legal reports:
    - (i) in soft tissue injury claims within the meaning of paragraph 1.1(16A) of the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents[11]; or
    - (ii) in road traffic accident related personal injury claims, valued at not more than £5,000, to which the Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents applies.

2. For medical reporting organisations

2.1 "Organisation" will include a partnership, an LLP, a company, group of companies, unincorporated organisation and an individual/sole proprietor". For the purposes of this document "Law Firm" includes an organisation practising under an Alternative Business Structure (ABS) licence.

2.2 Signatories of this declaration should apply an appropriate degree of judgement in relation to “employees” when ascertaining whether they have declarable links. For example, “employees” in a position to influence company policy or who have a direct influence on the workflow of the organisation should be covered by this declaration. This may include major shareholders (including beneficial owners), directors (including shadow directors) and day-to-day operational management, but a proportionate approach to other employees in non-influential junior positions may be considered.

2.3 By signing this statement, you declare that there is no law firm, insurer or personal injury claims management company in which:

- a whole or part owner of my organisation is now a partner, member, senior manager, director, officer of the company, employer or employee, or has been during the past 3 years.
- I, or a partner, member, senior manager, director, officer of the company, employer or employee of my MRO, am now a partner, member, senior manager,

[11] https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-low-value-personal-injury-claims-in-road-traffic-accidents-31-july-2013

director, officer of the company, employer or employee, or have been during the past 3 years.

- a shareholder of my organisation, with a shareholding above 3%, is now a partner, member, director, senior manager, officer of the company, employer or employee, or has been during the past 3 years.

2.4 In addition, you declare that your organisation is not part of a group containing an ABS.

3. For experts

3.1 For Medical Experts receiving instructions directly from law firms, insurers or personal injury claims management companies you declare that there is no law firm, insurer or personal injury claims management company in which I have a contract of service or by which I am employed to provide medico-legal reports in support of:

- soft tissue injury claims within the meaning of paragraph 1.1(16A) of the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents; or
- (ii) road traffic accident related personal injury claims, valued at not more than £5,000, to which the Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents applies.

4. Information on referral fees/the payment of commissions

4.1 It is apparent that there is an ongoing issue with the use of commissions in the medical reporting sector in relation to guarantees of instructions. It remains the view of MoJ that whilst these are not classified as direct financial links, the circumstances are likely to be covered by the referral fee ban as implemented by Sections 56-60 of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012.

4.2 Section 56 (2) of LASPO is clear that whilst currently Medical Reporting Organisations are not directly covered by the ban in terms of being able to offer such incentives, the provisions as implemented in LASPO prevent regulated persons such as lawyers, insurers or claims management companies from requesting/accepting such an offer in return for the commissioning of a medical report.

4.3 If you have concerns in this area or evidence of malpractice, then in the first instance you should report this to the appropriate regulator(s) for action. The regulators are:

- The Solicitors Regulation Authority – for Lawyers
- The Bar Standards Board – for Barristers
- CILEx Regulation – for Legal Executives
- Financial Conduct Authority – for insurers and CMCs

4.4 The full text of the referral fee ban can be accessed here: http://www.legislation.gov.uk/ukpga/2012/10/part/2/crossheading/referral-fees/enacted

5. Re-signing and misuse of this declaration

5.1 Signatories to this declaration should monitor any changes in their organisation's circumstances and update this document as and when necessary. Notwithstanding any amendments made due to changing financial circumstances, data contributors must re-sign and resubmit this declaration when renewing their annual subscription to the MedCo system. Other authorised users should re-sign and resubmit their declaration annually either on the anniversary of their authorisation to use the system or on a specific renewal date to be set by MedCo.

5.2 The purpose of this document is to identify direct financial links between those organisations who commission initial medical reports used to support road traffic accident related personal injury claims valued at less than £5,000, and those medical experts and reporting organisations who supply them. It should not be used to arbitrarily deselect organisations' authorised users or data contributors as a means of controlling those with which you wish to do business.

5.3 Please note that data relating to this declaration is monitored and any organisation or individual found to be misusing the declaration will likely be in breach of their MedCo user agreement. As such, they will be subject to both investigation and disciplinary action.

MINISTRY OF JUSTICE

FEBRUARY 2021

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.