ABI RESPONSE TO MINISTRY OF JUSTICE'S MEDCO FRAMEWORK REVIEW – CALL FOR EVIDENCE

About the ABI

The Association of British Insurers is the leading trade association for insurers and providers of long term savings. Our 250 members include most household names and specialist providers who contribute £12bn in taxes and manage investments of £1.8trillion.

Executive Summary

Since the launch of MedCo earlier this year, a substantial amount of work has been contributed by the insurance industry and wider stakeholders to ensure that the MedCo operating system was launched on time and the governance and operational infrastructure was put in place so that MedCo can deliver on the Government's policy objectives as instructed by the Secretary of State for Justice.

Despite the collaborative working of stakeholders, the MedCo system has faced, and continues to face, some significant operational challenges as a result of the dynamic and fast-changing nature of the market MedCo is working in. There continue to be deliberate attempts by some market participants, notably some medical reporting organisations (MROs), to "game" the system by seeking to gain market share through manipulation of the "offer" and the random allocation process, thereby undermining the original policy objective of MedCo. There are also issues that have arisen in relation to direct medical experts (DMEs) offering their services through what, on the face of it appears to be an MRO but is simply an IT platform, and issues associated with the definition of "national coverage".

MedCo was neither designed as, nor has the powers associated with, undertaking a regulatory function; yet it has been required to consider issues associated with the behaviour of MROs in the evolving market as a pseudo-regulator. As such, now is right time to ask whether a regulatory framework should be applied to MROs in light of the behaviours witnessed in the market since MedCo became operational. This issue should also be considered in the context of the review of the regulatory framework applicable to claims management companies announced in the 2015 Budget.

Introduction

1. In the context of the Ministry of Justice (MoJ) having to bring forward the timing of their planned review on the operation of MedCo in light of some of the market behaviours witnessed since the system went live, it is potentially easy to lose sight of the fact that, fundamentally, MedCo is delivering what it was designed to achieve. The policy decisions underpinning MedCo were formed as a result of a number of consultation exercises by the MoJ on how to reduce the number and cost of whiplash claims and on how to improve the independence and quality of medical reporting for those claims.

2. These policy decisions were further refined and developed by a "core group" of key stakeholders from all of the sectors with an interest in MedCo and most of those stakeholder groups are now represented on the MedCo Board. Given the considerable time pressures the core group were under to develop the detail underpinning much of the policy framework; the nimble and dynamic market in which medico-legal reporting takes place; and the significant amount of money associated with the market for preparing medico-legal reports for soft tissue injury claims, it was always accepted that a review of the overall framework would be required to respond to any challenges that emerged in a live environment.
 (a)

3. As such, this review by the MoJ was anticipated and is welcomed. It is important, however, not to get distracted by current issues associated with the implementation of MedCo. While there are amendments that could usefully be made to the policy underpinnings of MedCo, however, it is important to ensure the high-level focus remains on the overall efficient and effective delivery of the Government's clearly articulated public policy objectives.
 (b)

The Qualifying Criteria for MROs

1) Are the Qualifying Criteria for all MROs and the additional criteria for high volume providers appropriate to ensure that the data suppliers registered on MedCo have sufficiently robust systems, procedures and financial protections in place?

2) Are there any aspects of the current qualifying criteria which you feel would benefit from further guidance or clarification?

These two questions have been addressed together.

Comments on Table One – Minimum qualifying criteria

Multiple Registrations
 (c)

4. Qualifying Criteria (QC) 1.3 relates to financial bonds and states that the requirement for a financial bond should act as a disincentive to the establishment of shell MROs designed to undermine the random allocation model. Since MedCo has gone live, however, it has become apparent that the requirement for a financial bond has not acted as a disincentive in the way anticipated as several MROs have sought to undermine the

policy objective of random allocation by registering several "shell" companies, despite the need to purchase separate bonds and insurance products for each company.

5. The issue of multiple registrations has already created significant difficulty due to smaller MROs seeing high volume, national MROs registering "shell" companies in order to undermine the random allocation model and to manipulate the "offer". From the perspective of a user of MedCo, the registration of "shell" companies offers challenges, given that the user may well undertake a search with the expectation of receiving an "offer" of seven unique MROs but where their actual choice is significantly reduced because the search results return several linked "shell" companies. From a wider public policy perspective, and when considering the reputation of MedCo overall, this has the potential to undermine confidence in the MedCo system and the public policy on whiplash reform being led by the MoJ.
   (d)

6. The ABI is aware that the MedCo Board is currently addressing a number of issues associated with multiple registrations both in terms of the organisation's overall operating framework and also in terms of the programme of MRO audits that is currently being undertaken. It would, however, be useful for it to be explicitly reflected in the QCs that there is a requirement for there to be a distinct separation between MROs, including a prohibition on one MedCo registered MRO being owned by, being part of the same corporate structure as, or not having the same named company Directors as another MedCo registered MRO.
   (e)

7. As part of the MedCo registration process, applicants should be required to declare that to the best of their knowledge no Directors, officers or employees of the registering MRO have any interest, financial or otherwise, in another MedCo registered MRO and this should be subject to audit by MedCo.
   (f)

8. By providing these additional criteria as part of the QCs, it should be explicitly clear that multiple MRO registrations and "shell" companies undermine the Government's policy objectives in terms of randomisation and the "offer". This will allow MedCo greater powers to prevent such firms from entering the system in the first place. In addition, it should be easier for MedCo to remove any "shell" companies once an audit has been undertaken of firms once they have been registered.
   (g)

9. At the very least, there should be a prohibition on one MedCo registered MRO having the same officers, e.g. Caldicott Guardians or Medical Officers as another MedCo registered MRO.

<u>Direct Management of Medical Expert Panels</u>

10. QC 1.12 sets out the requirement for MROs to have direct management of their panel of medical experts. There are a number of MROs that have registered with MedCo claiming to be "national" MROs when it appears unlikely that this is in fact the case. Some MROs are registering as national MROs based on the fact that they are part of a wider network which, through an IT platform, allows one "MRO" to pass on instructions that they receive

to another “MRO” in the claimants’ local area to arrange the medical examination. The report is then provided as if had been obtained through the MRO randomly allocated as part of the “offer” and originally selected by the claimant solicitor. In some instances, it appears that the “MRO” preparing a medical report in fact a medical expert or small group of medical experts which no one in the wider market would recognise as being an MRO. Such a model appears designed to undermine MedCo’s random allocation model with a view to influencing the “offer” in favour of the collective group of MROs and would appear to be in breach of the QC requirement for an MRO to have a direct management relationship with the medical experts who produce medical reports for them.

11. The ABI is aware that the MedCo Board is currently considering these issues as part of their audit programme and we remain hopeful that robust action will be taken by MedCo against firms operating in the ways described above.
   (h)

12. Greater clarity is required, however, with respect to QC 1.12 to make it clear that each individual MRO must hold and maintain a complete list of experts with whom they have a documented and direct contractual management relationship.
   (i)

13. Closely linked to this issue is QC1.5 in relation to information security. Where personal client information is being shared between organisations in the collective MRO model described above, there is a concern that a client’s personal information could be shared between organisations without the client’s explicit consent, potentially in a way that is inconsistent with the regulatory requirements associated with information security and in way that is inconsistent with QC1.5. Again, the ABI understand that MedCo is carefully considering the collective MRO model described above, however, the MoJ should consider whether QC1.5 could be redrafted in such a way as to make the requirements and rationale clearer.

Comments on Table 2 – Additional Qualifying Criteria

Operational Capability

14. QC 2.2 covers the operational capability of the MRO and some of the wording of the QC would benefit from being more specific to ensure absolute clarity of the MoJ’s intention. As we understand it, the MoJ was concerned to ensure that in developing this QC, competition in the market for medico-legal reporting would not be inhibited as a result of a requirement to demonstrate that a firm has produced a particular number of medical reports in a previous year. Such a requirement would have had the potential to protect incumbent high volume, national MROs from competition from smaller MROs with the potential to grow their market share.

15. The requirement to demonstrate the “capacity to process at least 40,000 independent medical reports each year” requires MedCo to undertake a subjective assessment of an MRO’s capacity to produce the defined number of medical reports. 40,000 medical reports is the correct volume of medical reports to demonstrate that the MRO is a high volume, national organisation. However, the test of capacity should become an objective one with a subjective element to be used if necessary. For example, the test could be rewritten so that the MRO needs to provide evidence that they have “either produced at

least 40,000 independent medical reports each year or have a clearly articulated and robust business plan demonstrating in detail how the firm intends to gain the capacity to produce at least 40,000 independent medical reports each year".

(j)

16. The advantage of the two alternative approaches is that the onus will be on those firms who have not produced 40,000 medical reports each year, but are of the view that they will soon have the capacity to do so, will be required to demonstrate how they will attain that capacity before MedCo can register them as a high volume, national firm.

3) There have been specific questions raised by stakeholders about the definition and scope of national coverage and we would be interested in stakeholder views on how "national coverage" could be defined.

17. The purpose of the national coverage criteria is to ensure that if a claimant solicitor chooses a high volume, national MRO firm from the random allocation "offer", the claimant solicitor has an assurance that the MRO will have the ability to provide or arrange a medical examination for the client anywhere in the country. The ABI is not aware that there are a significant number of claimants who are being required to travel an unreasonable distance in order to have their medical assessment undertaken. The MedCo system operates such that each MRO has to state which postcode areas that they cover. As noted above, there are some concerns that small MROs (or indeed a small group of medical experts) are stating that they operate on a "national" basis but then share the instruction, and associated personal information, with other MROs in order to locate a medical expert in the client's vicinity who can prepare the required medical report.

18. As part of the MedCo registration requirements, MROs are required to indicate the postcodes areas in which they are able to provide a medical expert to produce a medical report. As such, the reference to postcodes should be maintained in order to determine whether an MRO is operating on a "national" basis.

(k)

19. The MoJ should also specify the greatest distance that any claimant should be expected to travel if their solicitor has chosen to have a medical report prepared by an expert on the panel of an MRO that provides national coverage. Alternatively, or in addition, it could be decided that a "national" MRO must have experts available to prepare reports in a prescribed percentage of postcodes, e.g. 85 - 90% of postcodes. For the 10-15% of postcodes that the MRO does not provide medical experts in, however, it is possible that the claimant would be required to travel longer distances to access an expert despite their solicitor having chosen an MRO with "national" coverage.

(l)

20. To address this problem, these two requirements should be combined such that the MoJ specifies as part of the QCs that in order for an MRO to claim "national" coverage they need to demonstrate that they (a) have medical experts available in 85-90% of postcodes; and (b) for the remaining 10-15% of postcodes, the claimant will not be required to travel more than a defined distance to access a medical expert.

(m)

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21. The issue of some MROs claiming to operate nationally when they do not is part of a wider issue that is emerging with smaller MROs around service levels. To address this, smaller MROs should have to meet set minimum service levels as part of the QC and these should include the maximum distance claimants are required to travel, waiting times and the turn-around time for the production of a medical report. These service levels can be measured and would provide objective indicators against which these firms can be audited by MedCo.

The Offer

4) If you are a MRO, please provide evidence of the volume of reports you have been handling on a monthly basis since April 2014, i.e. before and after the introduction of MedCo on 6 April 2015.

22. The ABI is not an MRO.

5) What factors / data (if any) should the MoJ take account of when consideration is given to the number and type of MROs presented to users following a search?

23. The initial split of one high volume national and six smaller MROs was calculated by reference to the number of MROs who had notified their intention to register on the MedCo system as part of earlier evidence gathering by the MoJ. Any adjustment to the "offer" should take account of the actual number of MROs registered with MedCo. Now is not the appropriate time to undertake any reassessment, however, given that MedCo has not completed its current programme of audit of all MROs currently registered and which have indicated that they are compliant with the MoJ's QCs.

24. As discussed above, a number of high volume, national MROs have created numerous shell companies that have registered with MedCo as smaller firms in order to undermine random allocation and alter the "offer" for their benefit. This behaviour fundamentally undermines the MoJ's policy objective of random allocation and it is possible that a search could result in only one company in several different guises being offered to a claimant solicitor which undermines their right to a choice of provider.

25. MedCo must be provided sufficient time to resolve the issue of multiple registrations before any reassessment of the "offer" is undertaken. These issues of multiple registrations and the "offer" are fundamentally linked as it would appear that it is the limitation in the offer to one high volume, national MRO that may have driven some firms to create multiple shell company registrations and these two issues should be considered together to reach an appropriate solution.

26. It will also be important for the MoJ to consider whether MedCo should be given responsibility for determining the appropriate balance of high volume, national MROs relative to smaller MROs on the basis of the number of firms at each level at any one time. As has been demonstrated since MedCo became operational, the MRO market is one that is constantly and quickly evolving and it might be useful for MedCo to be provided the tools by the MoJ to respond to this changing market by adjusting the MRO offer in response to changing needs and circumstances.

6) If you are a MedCo user (e.g. claimant solicitor), how many different MROs/experts did you typically instruct before the introduction of MedCo?

27. The ABI is not a user of MedCo.

7) If you are seeking a medical report, what is your principal consideration when deciding which MRO/expert to select from the options provided in the search return.

28. The ABI does not commission medical reports.

8) What changes if any, should be made to the current offer of one high volume national and six low volume MROs?

29. It is too early to say definitively what the offer should be. As discussed in response to Question 5 above, MedCo must be provided with sufficient time to resolve the issue of multiple registrations before any reassessment of the "offer" is undertaken. Once MedCo's programme of audit of MROs has concluded, the offer should be amended to accurately reflect the actual numbers of MROs registered at each level and to ensure that there is a choice of high volume, national MROs as well as the smaller MROs.

<u>**Statement of Direct Financial Links**</u>

9) Do you feel that the current declaration meets the Government's objectives of enhancing independence in medical reporting through the breaking of unhealthy relationships between organisations operating in the personal injury sector?

30. The statement of financial links goes some way to achieving the Government's objective. Since MedCo has become operational however, it has become clear that a number of MROs, which remain an unregulated sector, have sought to undermine the entire system for their own commercial advantage, including in relation to declarations of financial links. Furthermore, the ABI understands that MedCo is currently considering whether a number of declarations of financial links that have been made are in fact fake, in that some declarations of a financial link are being made with a view to ensuring that a particular MRO is not produced as part of the random allocation process. This is potentially being done because there is a desire on the part of a claimant solicitor, for whatever reason, not to do business with a particular MRO but not because there is in fact a financial link.

31. As part of our earlier work in the establishment phase of MedCo, the ABI agreed a definition of financial links with the Association of Personal Injury Lawyers. This is attached at <u>Annex A</u>. This provides a more robust declaration than that currently in place. In order to prevent further dysfunctional behaviours by MROs, it will be important that there should at the very least be a reference to close familial relations as part of the declaration of financial links.

<u>**General Questions**</u>

10) Do you have any other views or evidence relating to whether the MedCo IT Portal is currently achieving the Government's stated policy objective to tackle dysfunctional behaviour in the personal injury sector?

What (if any) further suggestions for reform would assist the operation of the MedCo portal, in particular, to address the behaviours exhibited by some MROs since the MedCo portal was introduced.

Regulation of Medical Reporting Organisations

32. The establishment and operation of MedCo has highlighted exactly the kind of behaviour from MROs and the wider medico-legal reporting sector for soft tissue injury claims that led to the Government deciding to introduce MedCo in the first place. The dysfunctional behaviour witnessed has almost exclusively emanated from MROs in their attempts to undermine the system of random allocation for their own commercial gain.

33. MedCo is therefore currently operating almost in a "pseudo regulator" role - trying to ensure that the behaviours MROs are exhibiting are compliant with the MoJ's QCs. In addition, MedCo is applying its own requirements, in particular the ethics policy, in an outcomes focussed manner to achieve the MoJ's policy objectives; ensure that, to the extent possible, dysfunctional market behaviours are addressed; and maintain the credibility of MedCo in the wider market. This has been, and continues to be, an extremely resource intensive and challenging process.
    (n)

34. MedCo was not designed to be, does not have the powers associated with, and does not have the mandate to be a regulator of MROs. The introduction of MedCo, and the behaviours of MROs that have followed, have highlighted the need for regulation of this sector. The other main sectors involved in soft tissue injury claims – insurers, solicitors, claims management companies, medical experts - are all subject to regulation by the Financial Conduct Authority, Solicitors Regulation Authority, Claims Management Regulator and General Medical Council respectively. There are important principles that each of these regulated activities need to adhere to, in addition to standards of conduct and behaviour that are expected, which are monitored and enforced by the relevant regulatory body.
    (o)

35. MROs are not subject to any regulatory disciplines. Effective regulation has the potential to address some of the behaviours by MROs that have been witnessed to date and to assist MedCo in ensuring that only those firms which have been subject to regulatory disciplines are registered.
    (p)

36. It is possible that regulation of MROs could be delivered by the Claims Management Regulator given the similarities that exist between claims management companies and MROs in terms of their position in the insurance claims supply chain. We would be happy to give further thought to this proposal and to discuss this further with the MoJ. We recognise that the possible regulation of MROs is beyond the scope of this consultation. The ABI would, however, like to see this issue considered by the review of claims management regulation announced by the Chancellor in the Budget on 8th July.

How could regulation of MROs be achieved?

37. The Compensation Act 2006 (the Act) provides:

A person may not provide regulated claims management services unless –
He is an authorised person...

4.2.b. defines claims management services as "advice or other services in relation to the making of a claim"

4.2.e. Services are regulated if they are –
(i) of a kind prescribed by order of the Secretary of State or
(ii) provided in cases or circumstances of a kind prescribed by Order of the Secretary of State

The regulated services are set out in the Compensation (Regulated Claims Management Services) Order 2006:

4.—(1) For the purposes of Part 2 of the Act, services of a kind specified in paragraph (2) are prescribed if rendered in relation to the making of a claim of a kind described in paragraph (3), or in relation to a cause of action that may give rise to such a claim.

(2) The kinds of service are the following—

(a) advertising for, or otherwise seeking out (for example, by canvassing or direct marketing), persons who may have a cause of action;

(b) advising a claimant or potential claimant in relation to his claim or cause of action;

(c) subject to paragraph (4), referring details of a claim or claimant, or a cause of action or potential claimant, to another person, including a person having the right to conduct litigation;

(d) investigating, or commissioning the investigation of, the circumstances, merits or foundation of a claim, with a view to the use of the results in pursuing the claim;

(e) representation of a claimant (whether in writing or orally, and regardless of the tribunal, body or person to or before which or whom the representation is made).
It would appear that for the Order to be applicable to MROs it should include an additional item in 4.(2) along the lines of:

"Commissioning the obtaining of evidence in claims for soft tissue injuries."

This amendment would not apply to law firms or insurers, who are exempt from these provisions by virtue of The Compensation (Exemptions) Order 2007. The medical experts themselves would also be exempt by virtue of section 4.3 of the Act.

The process for amending the Order is clearly set out in the Act at section 15(3):

(3) An order under section 4(2)(e)

Compensation Act 2006

(a) may not be made unless the Secretary of State has consulted—

(i) the Office of Fair Trading, and

(ii) such other persons as he thinks appropriate, and

(b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

38. In summary, there is a short process of statutory consultation, which need not be a full public consultation, followed by the affirmative resolution procedure in Parliament i.e. the draft Order is tabled for debate in both Houses.

11) Do you have any other feedback in relation to the operation of MedCo that you think should be considered as part of this Call for Evidence?

Legal Aid, Sentencing and Punishment of Offenders Act

39. The operation of MedCo has highlighted that a number of firms are seeking to breach the provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) by paying referral fees. A number of law firms are offering terms of business that would breach section 56(2) LASPO. At present when these terms are made known to MedCo, the ABI understand that MedCo is referring the complainer to the Solicitors Regulation Authority (SRA) for investigation.

40. Whilst a breach of LASPO is a direct breach of the user agreement, MedCo does not have the resources to investigate each and every complaint. As such, the SRA should investigate some of these arrangements and publish their findings.
    (q)

41. In addition, if MROs are to be regulated, then LASPO should be amended. Section 56 of LASPO creates a prohibition around the payment or receipt of referral fees by or on behalf of a regulated person in certain specific circumstances. "Regulated person" includes entities regulated by the SRA, FCA or CMR. Section 56(1) prohibits payment in return for referral of an injury claim for the provision of legal services – both payment and receipt by regulated persons is prohibited. Section 56(2) prohibits receipt of a payment by a person providing legal services in return for arranging for another person to provide services to an injury claimant, but does not extend the prohibition to the person making payment.
    (r)

42. Once regulation is extended to MROs, it is clear that section 56(1)(b) of LASPO would be capable of applying to MROs as regulated persons. However in practice, MROs are neither referring prescribed legal business nor having prescribed legal business referred to them in return for a referral fee. Only section 56(2) could apply to transactions between solicitors and MROs.

(s)

43. Section 56(2) as currently drafted would not apply either, as it is only ever a solicitor providing legal services who can be caught by this section. It was not envisaged when section 56(2) was drafted that the person providing the additional services would also be a regulated person, although this section is designed to prevent the payment of referral fees when the solicitor arranges for other services to be provided to the client. If MROs are to be regulated, consideration should be given to an amendment to section 56(2) such that regulated persons both making and receiving a referral fee are caught by the provision, as they are in s56(1).

(t)

44. Without such an amendment to section 56(2), the regulation of MROs would create a situation where a regulated person would still be able to offer to pay a banned referral fee, even though the solicitor receiving the referral fee would be in breach of the Act. .

Physical Examination in Person

45. A behaviour that has come to light since MedCo became operational has been that some medical practitioners have attempted to conduct medical examinations for soft tissue injury claims via Skype or other methods that do not involve a physical examination by the expert of the claimant. MedCo has already issued a warning letter to one MRO who has been offering this service and have published a note on their website stating that this is not acceptable behaviour for the purposes of MedCo. This type of behaviour is completely at odds with the desire to improve the quality of medical reporting in soft tissue injury claims and to combat fraud.

46. Although it is understood that MedCo will seek to address this issue via the accreditation of experts, the MoJ should consider whether the QCs should be amended to make it explicit that medical experts providing medical reports in support of a soft tissue injury claim are required to carry out a physical examination.

Disclosure of the MedCo Reference

47. A recent behaviour that has emerged from claimant solicitors is a refusal to provide the insurer with the MedCo reference number applicable to the medical report that has been prepared on behalf of their client. It is important for the insurer to be able to cross-check the information that has been uploaded into the MedCo system with the content of the medical report submitted to the insurer. For example, it is possible for the medical expert or MRO to upload a prognosis period of 5 months into the MedCo system but then to submit the medical report to the insurer with a prognosis period of 24 months.

48. In order to address this problem, it should become a requirement, through Civil Procedure Rules, to provide the insurer with the unique MedCo reference number in a similar way to the recent introduction of the askCUE look-up facility and for the insurer to be able to cross reference both the MRO chosen and the prognosis provided.

Changing the content of medical reports

49. Whilst the MedCo system has separated financial links between claimant lawyers and medical experts, it is still not un-common for the claimant to seek to influence the content of a completed medical report. A claimant lawyer may ask for changes to be made to reflect what is perceived as a factual inaccuracy. More sinisterly however, it is understood that claimant lawyers have been asking for prognosis periods in the medial report to be extended or injuries or symptoms of the claimant to be amended.

50. Only the medical expert should contribute to the content of the medical report as they are the ones registered with the relevant professional body and has expertise in clinical matters. No alterations to the expert's view should be permitted. The best way to ensure that this is the case is to ensure simultaneous disclosure of the report by the medical expert to both the claimant and their solicitor as well as the defendant insurer. Should the claimant disagree with the medical expert's findings, this can be addressed in a written statement that can be subsequently provided.

Minimum service level agreement

51. One of the objectives of MedCo is to improve the quality of medical reporting. One of the issues that have been highlighted by users of MedCo is the poor quality of service offered by some within the system, including examples of firms not being able to examine a claimant until several months after the accident. See response to Q3 above.

52. In order to deal with issues such as these, the MoJ may want to consider asking MedCo to implement a mandatory minimum service level agreement for those producing medical reports.

Guaranteed Payment Levels for Experts

53. At present, insurers have not experienced any particular improvement in the quality of medical reports since MedCo became operational. Whilst it is accepted that improvements should follow once the accreditation of medical experts has been rolled-out from January 2016, there remain concerns, as noted above for example, about medical experts producing reports without conducting a physical examination of the claimant. In addition, where an examination takes place of the claimant by the medical expert, it is often very short and insufficient time is spent with the claimant to undertake an accurate prognosis of the claimant’s injury and insufficient time is allowed by the export to produce an accurate and high-quality medical report. The fee paid to experts from MROs is frequently only a small fraction of the £180 fixed fee paid.

54. The drive to improve quality may well be undermined unless experts are receiving a guaranteed minimum payment from the MRO for each medical report prepared. As such, it might be useful for the QC not only to state that the expert must be paid, but also indicate the minimum fee the expert should receive.

Roundtable meeting of stakeholders

55. The ABI attended at a roundtable of cross-stakeholders on 25 August 2015 to understand where there were shared views on what action should be taken to address the issues with MedCo that have been identified. While on some issues there remains a differing of views from stakeholders, there are also a number of issues upon which there

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is agreement. The note produced following the discussion is attached to this response at Annex B. The ABI is pleased to note that stakeholders continue to approach MedCo in a consensual manner and support the proposals made.

Extension of the Scheme

56. The ABI are aware of concerns as to the arrangements in place for the provision of rehabilitation treatment to claimants and also for the obtaining of medical evidence in Noise Induced Hearing Loss (NIHL) claims. In the medium-long term, the ABI consider it would be beneficial to extend the principles underpinning MedCo, or indeed MedCo itself, to other types of low value injury or disease claims. As consideration is given to improving the system it may be of benefit to keep a possible future extension of the scheme in mind.

Association of British Insurers
September 2015

Annex A

Statement on “links”

1. For Law firms/claims management companies/insurers

"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.

a) There is no medical reporting organisation (MRO) which is wholly or partly owned by me or by a partner, senior manager, member, director, employer or employee in my organisation, now or at any time during the past 12 months.
b) There is no MRO in which I, or a partner, senior manager, member, director, employer or employee in my organisation, am a partner, senior manager, member, director, employer or employee, now or at any time during the past 12 months.
c) There is no MRO in which I, or a partner, senior manager, member, director, employer or employee in my organisation, am a shareholder, with a shareholding above 3%, now or at any time during the past 12 months.
d) 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.
e) 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 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.
f) I or any partner in my partnership, senior manager, member of my LLP, or director of my company or group of companies, employer or employee in my organisation do not have any close relatives or close personal connections who now or in the last five years would answer yes to the questions above;
g) I or any partner in my partnership, senior manager or member of my LLP, or director of my company or group of companies, employer or employee in my organisation do not have any interests which might reasonably be supposed to influence my judgement, or which might affect my ability to act impartially, on matters in which I will be involved as a user of MedCo.

2. For Medical reporting organisations

"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.

a) 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, employer or employee, or has been during the past 12 months.
b) There is no law firm, insurer or personal injury claims management company in which I, or a partner, member, senior manager, director, employer or employee of your MRO, am

now a partner, member, senior manager, director, employer or employee, or have been during the past 12 months.

c) There is no law firm, insurer or personal injury claims management company in which a shareholder of my organisation, with a shareholding above 3%, is now a partner, member, director, senior manager, employer or employee, or has been during the past 12 months.

d) My organisation is not part of a group containing an ABS. I or any other director of my company or group of companies, senior manager, employer or employee in my organisation do not have any close relatives or close personal connections who now or in the last five years would answer yes to the questions above.

f) I or any other director of my company or group of companies, employer or employee in my organisation do not have any interests which might reasonably be supposed to influence my judgement, or which might affect my ability to act impartially, on matters in which I will be involved as a user of MedCo.

3. For Experts

a) There is no law firm, insurer or personal injury claims management company with which I have a contract of service or by which I am employed to provide medico-legal reports 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.

Annex B

Agreed issues from the MedCo Cross-sector Roundtable Event hosted by DAC Beachcroft on 25 August

The following specific items were agreed:

1. MedCo has not yet raised the standards of medico-legal reports - it is recognised it is early days and that some aspects of the regime, including accreditation, have not yet been introduced.
   (u)
2. The regime would be improved by the introduction of a system to include at least two genuine High Volume National (HVN) MROs in the offer.
   (v)
3. Minimum service standards should be introduced for Other (non-HVN) MROs.
   (w)
4. Whilst not acceptable it is recognised that multiple registrations of non-HVN MROs by HVN MROs providers is a symptom of concerns over the structure of the offer and the frequency with which HVN MROs appear. The multiple registration behaviours and the offer should be tackled together.
   (x)
5. At the same time as the problem of multiple registrations is addressed, the issue of 'hub and spoke' MROs must also be addressed. The issue here is 'invisible subcontracting' – instructions being transferred and reports delivered other than by the selected MRO, a practice which should be prohibited.
   (y)
6. A MedCo User Committee should be introduced, feeding into a programme of continuous improvement similar to that in place for the Portal.
   (z)
7. The definition of 'financial links' should be widened to include at least close family relationships as per the ABI/APIL draft.
   (aa)
8. To date, the introduction of MedCo has not solved the problem that commissioners of medical reports can still choose a specific individual expert through an MRO: this should be addressed through the accreditation process.
   (bb)
9. There is concern that some businesses involved in MedCo are in breach of the requirement to operate in a manner which is LASPO compliant. The SRA should investigate and take action as required. It would be helpful for the SRA to be actively involved in the proposed User Committee.
   (cc)
10. 'National coverage 'by HVN MROs should be defined as the ability to cover 85-90% of national postcodes. The issue of non-HVN MROs being able to self-certify national coverage

by indicating that they cover all areas should be addressed possibly through service standards.

(dd)

11. It was noted, as an overarching issue, that MROs are not regulated. The introduction of MedCo has highlighted and encouraged a number of business practices which are making it difficult for MedCo to achieve its stated aims. In addressing the issues, MedCo is being called upon to act as a pseudo-regulator when it has neither the power nor the resources to do so. We believe MRO's should be separately regulated under a statutory regime, as long as that regulation would be effective.