Ministry of Justice

Revisions to the Medical Reporting Process for Road Traffic Accident Claims

A response by the Association of Personal Injury Lawyers

October 2023

Introduction

APIL welcomes the opportunity to respond to the Ministry of Justice (MoJ) consultation on revisions to the medical reporting process for Road Traffic Accident claims.

As an organization that represents injured people, our foremost concern in relation to medical reporting is that injured persons continue to have access to high-quality medical reports that are commissioned in the context of a litigation process or anticipated litigation structure of CPR 35 has been carefully considered by the courts and the actions of the court in relation to expert evidence have been within the system of the existing system of privilege. [1]Our response is based on this premise.

We support the proposals to regulate Administration Agencies, as they are currently a part of the injured person's experience and are not accredited or regulated by MedCo. It is key to ensure that the accreditation process established for obtaining medical reports for road traffic claims is working properly and holding MROs, DMEs and AAs to standards.

APIL has several concerns with the proposals to align the process for unrepresented and represented claimants. We argue that if the aim of the proposals is for the Motor Insurers' Bureau (MIB) and the MoJ to better understand the flow of cases and where and why there are blockages, changes should be made in relation to data collection and sharing. We argue against a radical change to the process for represented claims.

APIL has only responded to the questions within our remit.

Question 7: Do you agree with the proposed change to the MedCo offer for represented claimants as set out at paragraph 20?

Question 8: Do you agree with the proposal not to change the MedCo offer for unrepresented claimants as set out at paragraph 21?

APIL agrees with this.

Question 11: Do you think administration agencies providing services to DMEs should undertake audit interviews with MedCo on a voluntary basis?

Question 12: Do you think that administration agencies should be audited against specific qualifying criteria, similar to that used to audit MROs on MedCo?

Question 13: Do you agree that DMEs should only be allowed to contract with administration agencies who are authorised by MedCo?

[1] See for example Jackson v Marley Davenport Limited [2004] EWCA Civ 1225

Yes. APIL believes that Administration Agencies (AAs) should be required to register with MedCo and be subject to auditing of any relevant qualifying criteria and MedCo rules. As an organization that represents injured people, our foremost concern in relation to medical reporting is that quality reports are ensured and that the accreditation process is working effectively.

If there is a gap in the process and AAs are currently being used, we believe these should be regulated and held to standards and rules similar to the ones already in place for MROs and DMEs. We believe that the audit of AAs should not be on a voluntary basis, audits and rules must be compulsory for AAs as they will be part of the claimant experience in the Official Injury Claim (OIC) portal.

Question 16: Do you agree that the fixed cost medical reports regime relating to the RTA and Small Claims protocols as described in Part 45.19 of the CPR should be increased in line with the SPPI inflationary measure?

Please explain your reasoning for or against this proposal along with any evidence in support of your position.

APIL agrees with this proposal. The fixed cost of medical reports must be set at the right level and regularly updated considering inflation. This is important as the injured person needs access to the best quality medical report and thus the recoverable fee for medical experts needs to be regularly updated to ensure that they will continue to do this work.

We would propose that the Government consider the use of the SPPI index for legal services, as this is representative of the level of cost inflation being experienced by the legal services sector.

Question 20: Do you agree that claimants and/or their representatives must wait for the at-fault compensator to confirm their decisions on liability/causation before instructing their selected expert?

Please explain your reasoning for or against this proposal along with any evidence in support of your position.

APIL does not agree with this proposal. Waiting for the at-fault compensator to confirm decisions on liability/causation can lead to significant delays in the claims process.

We do not see the rationale behind this proposal. The key issue is not when the instruction occurs but when the expert's report is actually obtained. Later instruction would lead to a later appointment with the expert, which would exacerbate existing concerns about delays. We believe it is counterproductive to aim to address delays in the OIC in the consultation while simultaneously proposing something that could further impede the process.

Question 21: Do you believe that changes to the RTA Small Claims Protocol would also be necessary to underpin either of the proposals provided in questions 19 and 20 above?

Please explain your reasoning for or against this proposal along with any evidence in support of your position.

APIL has no comment on this. We believe this is an issue for the CPRC and any relevant sub-committee to consider.

Question 22: Do you agree that the process for sourcing medical reports for represented and unrepresented claimants should be the same?

Please explain your reasoning for or against this proposal along with any evidence in support of your position.

APIL strongly disagrees with this proposal. The paper does not acknowledge that the majority of users within the system are represented claimants. If there are any changes to the process then this should reflect this majority. Deviating from established processes for represented claimants will introduce unnecessary inefficiencies into the system.

There are other significant concerns if, as suggested by the consultation paper, this involves premature disclosure of medical reports. It has always been the process that a party has time to look at the reports for example for fact-checking. This is not problematic in practice and should not be changed. The information on the report is privileged and it is wrong to consider a process that removes that pre-existing right from a party and forces disclosure as soon as uploaded onto the OIC. This will undoubtedly risk significant satellite litigation as it is at least arguable that a party cannot be forced to waive privilege by an online process that is not part of the court system, let alone capable of ordering a party to do so. A litigant is entitled by the law of privilege to take time to fact-check the report or even consider whether they want to rely on the report. They may also want to wait for a prognosis or finalise other evidence.

We are concerned that this change would undermine the process. We suggest that if such change were to be made it should be consulted on in a dedicated consultation. Represented claims should continue to follow a separate process for checking, uploading to the OIC and disclosing the medical report.

APIL believes that in order for the Motor Insurers' Bureau (MIB) and the MoJ to better understand the flow of cases and where and why there are blockages, changes should be made in relation to data collection and sharing (see response to question 23). We do not believe making a radical change to the process is required.

The other practical point is that this change will inevitably require significant change for firms, including IT development and training for all parties. A change in the process would add substantial implementation costs for parties.

This issue was considered at the time the initial tram lines for the system were established by the CPRC. Circumstances have not changed and thus, the process should remain as it is. Even if the CPRC were to re-consider this point it is likely that it would require changes to primary legislation, or interfere with common law so would not be a matter the CPRC has the vires to take forward.

Question 23: Do you have any additional suggestions for how data collection on the medical reporting journey for represented and unrepresented claimants could be improved?

Currently, there is a lack of transparency in relation to how OIC data is collected and shared. APIL believes that an independent body should be established to identify data transparency

standards. This would be useful to ensure that the appropriate data is being collected and then published. This body could identify data which would both assist with evaluating the new process and help identify where problems exist. This could support work to improve the process.

There are several ‘data gaps’ with regard to the new OIC process. For instance, the OIC currently publishes data on settled claims by injury duration, but this data is not broken down by whether the claimant was unrepresented or represented. Another data gap is that data on average settlement values for unrepresented and represented claimants is not broken down by injury duration. This lack of breakdown means we cannot properly understand how compensation awards vary between unrepresented and represented claimants with similar injuries. Committing to transparency and segmentation of data collected in this way should not create any additional burden on either the OIC system or the MIB. APIL attended a recent stakeholder event where the MIB presented data that had been segmented in a different way from that it had released previously.

In addition, the MIB has not published all of the research it has commissioned/ undertaken into the experiences of people who have gone through the new process. APIL has only had access to that data through a freedom of information (FOI) request. This highlights the lack of transparency and the need for an independent oversight group to identify what data and research should be collected/undertaken and published.

Any queries relating to this response should, in the first instance, be directed to:

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