

Summary of Legal Advice Received

This paper summarises the advice provided to MedCo on whether its powers are sufficient for the purposes of bringing into effect the various policy decisions taken by the Ministry of Justice (MoJ) and communicated to the Board. The legal advice is provided to MedCo alone and reliance should not be placed on the advice or this summary by anyone other than MedCo.

Publication of this summary does not waive privilege to the full advice, which remains confidential to MedCo.

- MedCo has wide powers to monitor and enforce compliance with the Data Contributor and User Agreements, based on the incorporation of the broadly worded Ethics Policy into those Agreements and supported by the policy objectives outlined for MedCo by the MoJ.
- Data contributors and users contract with MedCo to abide by the Ethics Policy and compliance issues are therefore governed by that contract. The Ethics Policy enables MedCo to adopt a purposive approach to such issues.
- The application of those powers is controlled by the Compliance Procedures. The Data Contributor Compliance Procedure and the Authorised User Agreement Compliance Procedure are both published on the MedCo website.
- MedCo should act promptly in cases of non-compliance. Anonymised details of decisions should be circulated to all data contributors/users.
- MedCo's powers to interpret the qualifying criteria for MRO applicants are narrower, due to the setting of those criteria by the MoJ. The wording of each of the criteria needs to be applied as drawn, with recourse to the rationale and MedCo's policy objectives only in the event of doubt.
- That said, nearly all the criteria are clearly worded and do not need interpreting. MedCo can afford to apply these robustly (as long as it does so fairly and objectively) via its powers of inspection/audit.
- MedCo needs to decide on and publish guidance as to the type of financial bond or other financial instrument which it considers demonstrates that an MRO has sufficient funds available. The options are limited and may need to be confined to bonds and instruments issued by banks and insurance firms authorised by the Financial Conduct Authority (FCA).
- The Compliance Procedures and Agreements provide suitable escalation and review procedures for compliance issues between MedCo and its contracted data contributors and users. No further review or appeal process is recommended.
- There is no similar contractual process available for an MRO, expert or user whose application is refused. A limited review process is proposed for MedCo to implement.
- All decisions on compliance and refusal are made by the Board. These decisions should be recorded and published in anonymised form, once those affected have been suitably notified.
- Similar issues as to interpretation of qualifying rules and as to the process for reviews/appeals will arise when accreditation is introduced later this year and can be addressed in advance.