



Summary of the advice prepared by counsel, Robin Hopkins

In light of the concerns that have been raised with the MedCo Board around the provision of Management Information (MI) by medical experts to MedCo by the medical expert the board have sought advice from Counsel as to any Data Protection Act (DPA) implications. This note summarises the advice received. 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.

MedCo is implementing an accreditation and peer review process, by which it will assess whether the prognosis provided by the medical experts fall within expected norms. To this end, it requires the medical experts to provide it with certain information about their cases. This is the MI referred to in this note. The medical experts are the "Data Contributors" of the MI.

The MI requested is set out in MedCo's Data Validation Rules and is as follows: MedCo case ID; expert's GMC number; date of report; date of examination; time spent with claimant; number of diagnoses; claimant's examination outcome; claimant's injury diagnosis; additional report; additional treatment; type of additional treatment; claimant's injury prognosis; claimant's injury prognosis duration. The MI does not include any overtly personal information about the claimants examined by the medical experts. It does not for example include identifying information such as their names, date of birth, addresses, or contact details.

In addition to the MI, MedCo holds the following information relating to individual cases: claimant's representative's reference (a reference code linked to the solicitor and not the claimant that they represent) and the first half of the claimant's post code.

Personal data is defined in section 1 DPA defines personal data as: data which relate to a living individual who can be identified (a) from those data; or (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual. Part (b) is relevant for present purposes. The pivotal question is whether the MI, which is *prima facie* anonymised, is *fully anonymised*, or whether – when combined with other potentially relevant information – the data subjects (claimants) to whom the MI refers can be identified.

The standard as to the possibility of identification taking place is "reasonable likelihood". If there is a reasonable likelihood of the data subject being identified then the definition of personal data is satisfied. If, on the other hand, there is only a hypothetical or remote possibility of identification taking place the definition will not be satisfied.

It should be noted that if the MI does constitute personal data, then – given its context – it will also constitute sensitive personal data within the meaning of section 2e DPA. It cannot however be sensitive personal data if it is not personal data in the first place.

In Counsel's view, there is nothing in the MI, taken in isolation, which gives rise to anything other than a remote or hypothetical prospect of claimant's being identified. The analysis is *potentially* different when considered with the other data held by MedCo, in particular whether the fact that MedCo hold the first half of the postcode materially affects the risk of identification.

Email: enquiries@medco.org.uk

www.medco.org.uk



Based on Office of National Statistics data it is clear that even where the population is least dense, the first half of the postcode always encompasses many households, and thus many more individuals. The claimants involved have soft tissue injuries which will not particularly distinguish them as a result of the injury sustained.

On that basis Counsel's conclusion is that the information held by MedCo does not satisfy the definition of personal data. It should be noted however that the question of what is reasonable is one of judgment rather than hard edged law.