

## **MEDCO CONFERENCE – 18 JANUARY 2018**

**The RT HON. LORD KEEN OF ELIE QC**

### **KEYNOTE ADDRESS: THE IMPORTANCE OF MEDCO**

Good morning to you all, may I start by thanking Martin Heskins for inviting me to provide the key note address at this, the first ever MedCo conference. And follow that with an apology for not being present in person due to a number of unexpected commitments.

It is encouraging that a wide range of representatives have come together to discuss important issues for the medical reporting sector. And I'm sure today's conference will prove to be an interesting and valuable exercise.

As you will be aware, the origins of MedCo lie in the implementation of a number of Government reforms to improve both the independence and quality of medical reporting used in support of low value soft tissue injury claims. The Government consulted on a number of issues back in 2012, and in response members from a wide range of different stakeholder groups representing the views of lawyers, insurers and medical experts came together and agreed a joint plan for the way forward.

This cross-sector agreement was crucial to the successful development of the MedCo Portal, and this collaborative approach continued as the original MoJ working group developed the MedCo IT Portal before it eventually became the MedCo Board.

Such collaborative working with stakeholders has enabled us to move forward with these reforms constructively to meet the Government's objectives, and I would argue to the benefit of the industry as a whole. That said, I recognise this process has not been without its teething problems.

I know that many people, from across the personal injury sector both those Directors and sub group members in this room today, as well as those who are not here, but who have been previously involved, have given considerable amounts of their time to ensure Medco is an effective part of the claims process for soft tissue injury claims.

The reasons for establishing MedCo are still as valid as ever and the good work of MedCo is due the efforts of a lot of people. So, I would like to take this opportunity to thank them for all their hard work and willingness to work together to make these significant changes in the medical reporting sector. That said, it is also important to acknowledge that MedCo is still grappling with a number of important challenges as it continues to evolve. But perhaps more of that in a moment.

Now if I may, I would like to say a few words about the Government's wider whiplash reform programme, of which MedCo remains—a crucial part. The Government is committed to tackling the continuing high number and cost of whiplash claims, as well as ensuring that

meritorious claims are backed by good quality medical evidence, provided by properly accredited medical experts. This led to the announcement in February 2017 of the Government's new whiplash reform programme, following a consultation on the issue.

This new reform programme builds on previous reforms in the sector, such as those taken forward in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which was implemented in April 2013 and brought in measures proposed by Lord Justice Jackson in his review of costs within civil litigation. Following these changes, as you know, work was taken forward to establish MedCo.

The Government remains committed to MedCo and, if anything, the new reform programme means that MedCo is more important than ever as in future, all whiplash claims will be required to have a medical report.

MedCo's accreditation of medical experts carrying out medical reports in support of soft tissue injuries is essential to improve the quality of these reports. This is integral to the success of the new reform programme, and will ensure that there is confidence in the prognosis periods provided by medical experts. MedCo's work to improve the independence of medical reporting through randomisation and the breaking of financial links between organisations involved in the claims process is equally important to the success of these reforms.

To achieve these aims, it is important that MedCo continues its work to ensure the quality of the medical reporting organisations which are registered on the system, through rigorous enforcement of the qualifying criteria set by the Government.

Auditing MROs to make sure they are compliant with the qualifying criteria is a vital part of MedCo's functions. It is imperative that MROs understand the reasons for these audits and that they work collaboratively with MedCo to complete their audits and act on any recommendations. Collaboration to resolve differences is the most positive way to achieve consensus, and I urge you all to work positively with MedCo as they move forward with their audit programme.

One of MedCo's key successes has been the collation of a broad range of management information, which was previously not available. This information has provided MedCo, the Regulators and the Government with significant amounts of evidence to identify and take firm action against adverse behaviours.

For example, I'm sure you will all be aware of the problems caused by the setting up of 'shell' companies to flood the system. This led to the Government initiating a review and implementing a number of changes to the system, which enabled MedCo to take firm enforcement action resulting in a significant number of suspensions and removals from the system.

Indeed, MedCo has sent out 352 warning letters and has suspended over 247 users from the MedCo register for a number of reasons. 91 of these have since been reinstated after

making significant changes to their behaviour. 129 'Shell' MROs have been terminated from the Service.

I am also pleased to note the clear channels of communication that have been developed between MedCo and Regulators such as the SRA which will, I'm sure, result in further regulatory action being taken where necessary.

These are just some of the obstacles that we have encountered, and by working together we have been able to overcome them. So I am confident that MedCo will continue to play a vital role in the new whiplash reform programme to be taken forward by the forthcoming Civil Liability Bill and secondary legislation. I will say a few more words about these further reforms shortly, but first I'd also like to just say a few words about the technical and administrative strides forward taken by MedCo since it was introduced about two years ago.

MedCo continues to grow into its role, and it is good to see that it has reviewed and revamped its management structure to better support its work, as well as taking on dedicated staff to provide administrative support and increased its capacity to complete further audits.

It is also pleasing to see significant technical improvements which have led to a substantial increase in its recorded traffic. In particular, new features providing increased functionality in the areas of account renewal; expert look up; MedCo Case verification and the accreditation interface have all helped to improve the system.

I started to talk briefly about the Government's current reform programme in relation the number and cost of personal injury claims in general, and whiplash claims in particular, and I would like to return to this important issue.

Despite recent modest reductions in the number of personal injury claims since the introduction of the LASPO reforms in 2013, the number of road traffic accident related personal injury claims remains more than 50% higher than they were just 10 years ago. This is despite extensive improvements in vehicle safety and a decline in the number of reported accidents.

Indeed, research published by the Insurance Fraud Taskforce shows that, although there are on average 79% more cars per kilometre on our roads than in other EU countries, there are proportionately fewer fatal or serious accidents. This makes the UK one of the safest places to drive in Europe. In addition, in recent years there have been significant advances in vehicle safety, including to head restraints, which has led to fewer whiplash claims in other jurisdictions.

One of the major consequences of dealing with the continuing high volume of claims in this country is to the consumer through increased insurance premiums.

The Government accepts that many personal injury claims are genuine, but there are also many fraudulent, exaggerated and trivial whiplash claims made each year. The level of compensation paid out for such claims is, in our opinion, out of all proportion to any genuine

injury suffered, especially when balanced against the inflationary effect they have on the price of premiums paid by ordinary motorists.

There is also no doubt that many such claims are driven by a substantial industry that encourages unnecessary, inappropriate or even fraudulent claims through cold calling and other social nuisances. This is why in addition to the whiplash measures to be included in the Civil Liability Bill, the Government has recently announced that it will be bringing an amendment to the Financial Guidance and Claims Bill to introduce a ban on cold calling by CMCs. This is I know a measure that will be welcomed by many of you here today.

It's also worth mentioning there is broader work within the personal injury sector. For example, the Civil Justice Council is currently undertaking work considering the issues surrounding and behaviours relating to low value personal injury claims.

The observant among you would have noticed that I have now mentioned the Civil Liability Bill a couple of times, so it is time I said a bit more about what it will contain. As announced in the Queen's Speech in June 2017 the Civil Liability Bill will, when it is introduced, include the whiplash reform measures originally introduced in the Prisons and Courts Bill, which you may be aware fell from Parliament last year due to the General Election.

Whilst I cannot at this time confirm the exact date, I can confirm that we will be introducing this Bill during the current Parliamentary session. Therefore, I want to briefly touch on the reform process and where the opportunities and challenges might lie for Medco following the implementation of these new reforms.

To recap, there are two main strands to the whiplash reforms.

First, are the measures to be included in the Civil Liability Bill. These include the introduction of a tariff for compensation for pain, suffering and loss of amenity for whiplash claims. This will ensure that genuinely injured claimants receive a fair and proportionate amount of compensation, and I should also state that all claimants will still be able to receive 'special damages' to cover the costs of treatment, such as rehabilitation or loss of earnings.

In addition to the tariff, the Bill will also introduce a ban on the seeking or making of offers to settle whiplash claims without medical evidence. The introduction of a prohibition on pre-medical offers will ensure that all claims received are investigated and supported by medical evidence to identify the extent of any injury.

The other element of the reform programme will be to make secondary legislative changes to the Civil Procedure Rules to increase the small claims limit for road traffic related personal injury claims to £5,000, and for all other personal injury claims to £2,000.

The Government believes that the claims that will fall into the new small claims track limits are minor and straightforward enough to be dealt with in the small claims track, without the need for legal representation - although I should stress that claimants are not, and will not be, be precluded from engaging legal representation in the small claims court should they

wish to do so. The small claims limit for personal injury claims has been set at £1,000 since 1991 and in the same period the limit for nearly all other types of claim has risen to £10,000.

The Government fully expects insurers to pass on the savings from these reforms to consumers through lower premiums, which will end the cycle in which car owners pay higher premiums as a result of false claims or unnecessary claims. We will however, be monitoring the effect of these reforms on the price of motor insurance and will consider taking further action if necessary.

There will be an impact on the whole sector from these reforms, and we expect to see the current high volume of claims decrease. This will affect the medical reporting community as fewer claims will mean fewer reports will be needed. This impact will, however, be mitigated by the introduction of the ban on pre-medical offers to settle, as that group of claims will now be required to have supporting medical evidence.

To fully support the implementation of these proposals requires the development of a significant number of products including helpful guidance notes, a new pre-action protocol for claims which fall into the small claims track and the development of a new accessible IT system which will enable claimants to access the Claims Portal, MedCo and other required services such as AskCue.

There will also be issues to be resolved in relation to who commissions a medical report under the new rules, and as to when and how they are paid for. The Ministry of Justice acknowledges these issues, and is working closely with a broad range of stakeholders to identify these concerns and to develop ways to tackle them. This includes working with both MedCo and the Claims Portal, as well as with representative bodies such as MASS, APIL and the Law Society.

MoJ officials have set up a number of expert working groups to consider the specific challenges faced and to help us to develop effective solutions. As well as working with experts in this field such as lawyers, insurers and medical experts, we have also begun the process of engaging with specific third sector advice providers on what is required to support the needs of litigants in person and those with whom they will need to engage. This work is progressing well, and I'd like to take this opportunity to thank all those who have contributed to these working groups in a pragmatic and helpful way.

Finally, I should add that MedCo remains central to the Government's reform plans and as it beds in and improves its effectiveness, the Government is keen to explore how MedCo might be expanded in the future. There are other types of claims which may benefit from a similar approach. For example, holiday related gastric illness claims or the provision of rehabilitation. That is a discussion for the future, so I'll leave you with that thought for now.

The issue of rehabilitation of course, will also feature in Part two of the Governments consultation response, which I know is long awaited. I will, however, have to leave you waiting just a bit longer in regards to when this will be published, but I can assure you it is on its way.

To conclude, I would like to thank Martin and the MedCo Board for their invitation to address your conference. I hope my speech has given you a small insight into the considerable amount of work going on to reform our civil justice system and in particular in the area of personal injury. The Government remains fully supportive of and engaged in the important work of MedCo in the provision of good quality medical evidence, both now and in the future. This is particularly important as together we embark on an ambitious reform programme to make a civil justice system work for the 21st century.

Thank you

**The Rt Hon. The Lord Keen of Elie QC**  
**MoJ spokesperson in the Lords**