Ministry of Justice

Government response to the Future Provision of Medical Reports

In Road Traffic Accident related personal injury claims consultation

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Response to consultation carried out by the Ministry of Justice.

This information is also available at:
https://www.gov.uk/government/consultations/future-provision-of-medical-reports-in-road-traffic-accident-related-personal-injury-claims

Contents

Introduction and contact details

This document is the post-consultation report for the Ministry of Justice consultation paper 'Future Provision of Medical Reports in Road Traffic Accident related personal injury claims'.

It covers:

- the background to the issues covered by the consultation;
- a summary analysis of the responses received;
- analysis of the responses received to the questions contained in specific parts of the consultation paper; and
- information on the Government's conclusions and recommendations on the way forward in relation to the issues raised.

Further copies of this response and the original consultation paper can be obtained by contacting the **Whiplash Reform Team** at the address below:

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This report is also available at https://www.gov.uk/government/consultations/future-provision-of-medical-reports-in-road-traffic-accident-related-personal-injury-claims

Alternative format versions of this publication can be requested from the Whiplash Reform Team using the contact details shown above.

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Background

The consultation paper 'Future Provision of Medical Reports in Road Traffic Accident related personal injury claims' was published on 18 April 2019. It ran for 4 weeks and closed on Friday 17 May 2019. The measures consulted on are related to the implementation of the increase to the small claims track limit for road traffic accident (RTA) related personal injury claims to £5,000. This is part of a package of changes including the provisions in Part 1 of the Civil Liability Act 2018.

The consultation invited comments on the future provision of medical reports for unrepresented claimants following the implementation of these reforms.

In particular, stakeholder views were sought on whether to:

- extend MedCo's scope to enable all initial medical reports for RTA related PI claims to be obtained via a single system;
- broaden the types of medical experts registered to provide initial medical reports on MedCo to include specialist medical practitioners;
- extend the existing fixed recoverable costs regime for the provision of initial soft tissue injury related medical reports to cover all initial RTA related medical reports; and
- change and/or update a number of other related aspects of the procedure for obtaining medical evidence by unrepresented claimants.

This report summarises the responses received to this consultation, including how the process influenced the final shape of the policy decisions taken in relation to the future provision of medical reports by unrepresented claimants.

A list of organisational respondents is attached at Annex A, and details of the Government's conclusions and recommendations are included in the analysis of each part of the consultation and are also summarised in the conclusions and next steps section of this report.

A formal Impact Assessment was not produced in relation to the issues contained in this consultation. The consultation did however, contain a targeted cost benefit analysis and a number of analytical questions seeking data in support of respondents' views. This report therefore, also takes account of any such evidence or data provided by stakeholders during the consultation period.

A Welsh language response paper will be provided and will shortly be made available at: https://www.gov.uk/government/consultations/future-provision-of-medical-reports-in-road-traffic-accident-related-personal-injury-claims

Summary of responses

A total of 76 stakeholder responses to the consultation paper were received. Responses were provided via a number of routes, including through an online questionnaire as well as email and postal submissions.

The consultation was aimed at the medical reporting community, but views from other stakeholders were welcomed and received. Responses were received from Medical Reporting Organisations (MROs), directly instructed medical experts (DMEs), insurers, claimant and defendant lawyers, trade unions, key representative bodies and others such as Claims Portal Limited and MedCo.

The table below provides a breakdown of respondents by sector:

Types of respondent	Responses	% of total
Claimant Lawyers	15	20%
Claims Management Company	1	1%
Defendant Lawyers	7	9%
Insurers	11	14%
Medical Experts	11	14%
Medical Reporting Organisations	14	19%
Representative Groups (4 x Claimant, 3 x Defendant, 2 x Medical)	9	12%
Trade Unions	2	3%
Others	5	7%
Not declared	1	1%
Total	**76**	**100%**

We are grateful to everyone who took the time to respond and shared their expertise, experience and insights into the questions relating to the provision of medical reports arising out of personal injury claims by unrepresented claimants. All of the responses received have been analysed and used to inform the final recommendations in this response. More detailed analysis is contained in parts 1 to 5 of this response.

In addition to the responses received to the questions posed in the consultation, a number of respondents also provided general comments on the Government's reform programme. Some of the suggestions provided whilst not relevant to this consultation have been helpful in identifying issues and validating the design solutions being developed by MoJ in conjunction with the Motor Insurers' Bureau (MIB) in relation to the new IT Platform. MoJ officials will continue to consider the points made outside of the formal consultation response process.

Part 1: Analysis of the responses relating to Medical Reporting

1. Part 1 of the consultation paper looked at the existing system for the provision of medical reports for low value soft tissue injury claims via the MedCo portal. This system was set up in April 2015 to introduce additional elements of independence into the process, and to enhance the quality of medical reports. The MedCo portal enables claimant representatives to obtain an independent medical report in support of a low value soft tissue injury claim from either a MRO or from a DME.

2. The current system is designed to support claims where there is a legal representative in place to liaise with the at-fault insurer, but at present it is inaccessible to unrepresented claimants. Following the implementation of the Civil Liability Act and associated reforms to increase the small claims limit for all RTA related personal injury claims to £5,000, unrepresented claimants will require additional support in relation to obtaining a medical report in support of their claim. The consultation therefore asked two specific questions in relation to whether and how the MedCo system for obtaining medical evidence should be extended. These were:

Question 1:	The Government proposes to extend the scope of MedCo so that all initial medical reports for all RTA related PI claims under the SCT are provided under a single system. Do you agree with this proposal? Please provide any evidence and further information in support of your answer.
Question 2:	If you have suggestions for alternative approaches please provide details and, in particular, how they would work in practice.

Analysis of responses to question 1: should the scope of MedCo be extended?

Responses received to Q1:	% who Agreed	% who disagreed	% who indicated no preference
69 (91% of total respondents)	51 (74% of responses to Q:1)	16 (23% of responses to Q:1)	2 (3% of responses to Q:1)

3. Over 90% of the total respondents answered question 1, and of those around 74% were in favour of extending the scope of MedCo, with around 23% of respondents disagreeing. There was support from across all stakeholder groups to extend the process to cover all RTA related claims under £5,000. The majority of insurers, defendant law firms and MROs were supportive, and there was also some support for the proposal from claimant groups and medical experts.

4. The most common reason given for supporting an extension to the scope of MedCo was that it would provide consistency with the existing system for soft tissue injury claims and will ensure independence is retained and extended to all RTA claims under £5K. It was also noted that extending MedCo would help speed up the process for unrepresented claimants, and ensure they have the information they require to easily arrange and obtain the medical report to progress their claim. It was also stated that MedCo is a more user-friendly solution than any of the alternative processes under consideration, but that care should be taken to ensure the new system is sufficiently clear, straightforward and easy to use by unrepresented claimants.

5. Respondents also supported the use of GPs and A&E consultants for the provision of initial reports for non-soft tissue injury claims, noting that their experience and training made them more suitable to provide these reports. There was also praise for the quality of their reports.

6. Of the respondents who disagreed, most were from the claimant representative groups with some opposition also from a limited number of MROs, DMEs and Trade Unions. The most common reason given for not extending the scope of MedCo was that the respondent's belief that the system doesn't work and the quality of reports provided are not of an appropriate standard.

7. In addition, there was a suggestion that further support for claimants needs to be provided and that all claims should be dealt with by claimant lawyers due to the complexities of the process. A variation on this was that unrepresented claimants lack the capacity to instruct medical experts and no system can be developed to assist them in navigating the process and ensure they receive a fair settlement.

8. Another theme, particularly in responses received from claimant representatives, was that there should be additional funding available to ensure that medical reports for unrepresented claimants are always provided free of charge.

9. However, along with comments directly related to either supporting or opposing the extension of the MedCo process, respondents also made other comments and suggestions. These included:

    - Stating that MedCo's existing safeguards would support claims by unrepresented claimants and that the MedCo process should apply to all PI claims up to £25,000 in value;
    - Agreeing that consistency is needed, but disagreeing that the proposal was the right way to achieve this;
    - Suggesting that medical reports should also contain details of suitable or recommended treatments and information should be provided to ensure that unrepresented claimants fully understood the purpose of the report, its content and the principle that getting a report doesn't guarantee compensation;
    - Stating that each case should be considered individually as there is not a one size fits all solution available for all RTA related personal injury claims;
    - Indicating a feeling that some GPs lack competence in specific areas and that there is a danger that initial reports will just be a triage service for unrepresented claimants who require specialist medical reports;
    - Indicating that if payment in advance is required by MROs and experts to produce a report, this would be a barrier to obtaining evidence for many unrepresented claimants; and
    - Extending MedCo would be anticompetitive and would stifle innovation in the market.

10. In addition, and separately to questions 3-5 on the subject, issues were also raised in relation to adding new specialists, including about the level of fixed costs required to undertake the work and also in relation to the type and level of accreditation specialists would need.

Analysis of responses to question 2: suggestions for alternative approaches

Number of consultation respondents who provided suggestions and/or alternative approaches
36 (47% of the total respondents to the consultation)

11. Just under half of the respondents (47%) indicated that they had alternative suggestions for consideration. But on further analysis the majority of these were additional comments on the process rather than suggestions for alternative models for the provision of medical reports.

12. Responses were mainly received from Claimant Lawyers and MROs, with some suggestions also put forward by insurers, claimant and defendant focussed Representative Groups, DMEs, Defendant Lawyers and other parties (including a CMC and Trade Union).

13. The main suggestions for alternative approaches were:

    - Keep the current system as it is rather than extending it by allowing recoverable costs from solicitors for PI claims;
    - MedCo should allocate claims equally to all MROS/experts with a guaranteed fee level for all experts, including those who work via an MRO or only allocate directly to experts to allow experts to receive an adequate fee;
    - Claimant lawyers should be allowed a greater freedom to choose preferred MROs/experts from a bank of selected providers maintained by an independent organisation paid for by the insurance industry;
    - Requiring the first report to either be a generalist medical report form a GP/A&E doctor or a specialist report from an Orthopaedic surgeon. This would allow a choice of a straightforward initial report to be provided in most cases, but would also allow for a specialist orthopaedic report without having to obtain an initial GP report first;
    - Formalise MedCo's status as a regulator and review the system before extending it;
    - Make it allowable for unrepresented claimants to go outside of MedCo if no provider is suitable;
    - Introduce regular reviews of the new system to ensure it continues to remain effective and user-friendly for all involved;

- Help unrepresented claimants with appropriate support from an information/telephone helpline;
- Only Tier one MROs should be made available to deal with unrepresented claimants;
- Reduce costs by introducing the international classification of diseases system, this will help with claims efficiency; and
- Allow unrepresented claimants to see a GP, who can refer them to the appropriate expert report provider.

14. In addition, a number of general points were made by respondents in relation to further reform, or changing the existing process, these included:

- Delaying the implementation of the reforms and piloting the new IT platform to ensure unrepresented claimants can engage effectively with medical report providers;
- Increase the scope of the new portal to cover all personal injury claims up to £25,000;
- Focus on the needs of the unrepresented and, if possible, have one system usable by both represented and unrepresented claimants, to allow for instances where legal representation is obtained part way through their claim;
- Providing claimants with information to give them realistic expectations for, and a good understanding of, the content of the medical report and end the CFA culture with an excessive demand for unnecessary medical reports; and
- Further reform is required to address the CFA claims culture to reduce the need for large numbers of medical reports.

Part 1: Medical Reporting - Conclusions and Government Action

Question 1: As indicated in the consultation document, officials have considered the issue of the provision of medical reports for unrepresented claimants in some detail. This has included discussion of the key issues with expert stakeholders, from across the PI sector (including both claimant and defendant representative groups and MedCo) at a number of workshops. The feedback from these sessions was utilised to inform the options presented for consideration in the consultation.

Taking into account the general level of support shown, in response to the question on extending MedCo to cover all RTA PI claims under £5,000 from across the sector, the Government has decided to widen MedCo's remit as proposed in the consultation. This was the Government's preferred option and feedback provided by stakeholders supports our initial analysis that this option will provide consistency for obtaining medical evidence in support of all claims of this nature irrespective of whether the claimant has legal representation. This decision will be taken forward and implemented as part of the ongoing work to draft revised Civil Procedure Rules (CPR) and a new pre-action protocol to support RTA related personal injury claims in the small claims track.

Additionally, for claims where there is a non-soft tissue injury (whether or not accompanied by a soft tissue injury) we will ensure they are provided by GPs/A&E consultants only. This is due to the concerns raised that only GPs and A&E consultants have a broad enough medical background to undertake initial reports for all types of injury. In cases where more specific evidence is required they will be able to recommend that further evidence is obtained, and in soft tissue only claims, the current rules will continue to apply.

Question 2: The views expressed by stakeholders were both constructive and helpful in highlighting issues to be considered in relation to implementing a system for the provision of medical evidence. Many of the points were put forward by stakeholders both in favour and opposed to reform in this area, but these still contained useful points and were helpful in identifying issues and validating a number of design solutions being implemented through the new IT platform and process.

Of the alternative options suggested, many were either based on not taking forward the reform programme or were, in the Government's view, likely to contravene competition law. On balance the Government view was that the proposed alternatives did not effectively support unrepresented claimants in the same way that the preferred option did. Therefore, these options were not appropriate to pursue, but a number of the additional points made by stakeholders will continue to be considered by officials outside of this consultation response.

Part 2: Analysis of the responses relating to medical experts

15. Part 2 of the consultation focussed on the types of medical expert available to complete medical reports. In particular, it looked at whether the existing cadre of experts registered on MedCo were sufficient to meet demand following implementation of the reform programme in April 2020. If MedCo were to be extended to cover the provision of medical reports for non-soft tissue RTA related personal injuries then consideration is also required as to who can provide them.

16. The Government sought stakeholder input on this issue and whether additional specialist experts needed to be added to the MedCo system. In addition, the consultation also asked respondents for their views about adding alternative types of non-GMC/HCPC registered practitioners to those currently allowed to provide medical reports by the CPR.

17. The consultation asked the following three questions:

Question 3: If MedCo is extended to cover all types of medical reports for RTA related personal injury claims under the SCT, should other types of medical expert be added to those currently available for the purpose of providing medical reports?

Please give examples of who should be added along with your reasons.

Question 4: If additional specialists are added, should they be restricted to providing initial reports for claims which involve their specialisms or should they be allowed to complete the full accreditation process and be allowed to provide all initial reports?

Please give reasons for your answer.

Question 5: Do you agree that other types of practitioner (such as osteopaths or chiropractors) be included in the list of experts who can provide medical reports for claims subject to the new RTA SCT limit?

If you agree, please describe which types of additional practitioner should be included and why?

If you disagree, please gives reasons why.

MoJ analysis of question 3 – should other types of specialist be added to MedCo to provide medical reports for RTA injuries?

Responses received to Q3:	% who Agreed	% who disagreed	% who indicated no preference
72 (95% of respondents to the consultation)	28 (40% of responses to Q:3)	43 (59% of responses to Q:3)	1 (1% of responses to Q:3)

18. Nearly all of the respondents to the consultation provided their views on this question with around 60% against the proposal and 40% in favour. Many respondents also added a number of caveats to their responses which meant their views could be considered either way.

19. Of those in favour of adding specialists, the most support came from the claimant representative sector, followed by some limited agreement from MROs and DMEs. The remaining positive responses came from insurers, defendant lawyers and Trade Unions. Conversely, there was firm opposition to adding additional specialists to the system for supplying initial medical reports from across the whole sector, including from MedCo itself.

20. Maintaining the current set of experts, plus restricting initial reports to GPs only, were the two most common responses provided to question 3 with around 50% of respondents suggested one or both of these points. Of those stating these views many also commented that specialist reports should only be obtained where specifically recommended in the initial report.

21. One further point worth noting is that a significant number of respondents, who opposed adding additional experts for initial reports, also called for them to be added to MedCo for the purpose of providing additional specialist reports following a recommendation in the initial report. This came from respondents drawn from across the sector and was supported by a number of large organisations operating in claimant lawyer, insurance and MRO markets, as well as by MedCo.

22. A number of other comments or suggestions were made in relation to this question including:

    - Non-medical experts could write reports in their own fields but these should not be referred to as medical reports, and should refer to their specialism e.g. physio report;
    - The current level of fixed recoverable costs is too low to attract specialists;

- Medical reports should only be completed by medically qualified doctors and not by non-medical experts such as physiotherapists, chiropractors or osteopaths; and
- Allowing specialists to provide initial reports would reduce the quality and increase the cost of reports as they would often need to cover issues outside of the report writers' specialism leading to unnecessary recommendations for reports on issues that would be covered in a standard GP report.

23. Those in favour of adding additional specialists suggested that this could improve choice, and enable the correct type of report to be obtained at the right time without unnecessary delay. Additional points made by respondents in favour of adding experts included:
    - The reports could be more specialised where necessary and non-GPs could easily learn additional skills required to supply reasonable quality initial reports;
    - It would help control costs if only one single specialist report is required and would add flexibility and increase the choices available;
    - Specialists could be helpful, but care is needed to ensure they are not used to 'game' the system so must be limited to one report only and must not be allowed to recommend they do a follow up report;
    - All additional experts added must be held to same standards as current MedCo experts and be fully accredited; and
    - Specialists must always be regulated and be members of a recognised professional body.

24. Overall, of those respondents in favour of adding specialists suggested the following types be added:
    - Psychiatrists;
    - Psychologists;
    - Maxillofacial experts;
    - Plastic surgeons;
    - Dentists;
    - Ear Nose and Throat (ENT) specialists;
    - Chiropractors;
    - Osteopaths;
    - Neurological surgeons;
    - Dermatologists;

- Nurses; and
- Sports physicians.

25. Additionally, some respondents just suggested generally widening the pool of experts without specifying any particular types of experts to include.

MoJ analysis of question 4 – if added, should specialists be able to provide all initial reports or should they be accredited and/or restricted to their specialisms?

Total respondents who answered Question 4:	% of respondents who supported no restrictions:	% of respondents who supported restrictions:
64 (84% of total respondents)	5 (8% of responses to Q:4)	59 (92% of responses to Q:4)

26. This question is connected to the final decision taken in regard to question 3 and sought views on the basis that additional types of medical specialist are added to MedCo. In particular, it asked whether such specialists should be allowed to provide initial medical reports only for cases falling within their specialism or whether they should be added to the pool of practitioners able to complete all initial reports. 64 respondents replied to this question of which over 90% felt that there should be some form of restriction in place if specialists are added to the MedCo system.

27. In particular, there was strong support from across the sector for specialists to be restricted to providing reports only in the areas they specialise in. Comments provided indicated that this is because stakeholders felt that it would be inappropriate for experts to produce reports in areas in which they are not qualified and experienced. In addition, a number of respondents either added to this point by suggesting that if any additional specialists are added they should also be required to complete the full MedCo accreditation process.

28. MedCo's view was that specialists could be included in the system for the purpose of acquiring additional recommended reports, but that it would be better to consider this post April 2020, as it would a considerable period to properly uprate both the IT system and the accreditation modules required to add them for the purpose of providing initial reports.

29. Those few in favour of extending without restrictions came from the claimant lawyer and medical sectors. Comments in support of this view included that doing so would help guard against 'gaming' of the system, and that it was ok if the compensator agreed that a specialist report should be directly sourced. Other respondents stated:

    - that adding specialists would allow the potential for misdiagnosis to creep in;
    - it would also make the process too complex for unrepresented claimants to choose the right expert and increase the time and cost of providing initial reports;
    - that there should be a restriction to ensure physios only do soft-tissue injury reports;
    - the current level of fixed recoverable cost regime is too restrictive and would deter specialists; and
    - the accreditation should be tailored to particular specialisms.

MoJ analysis of question 5: Do you agree that other types of practitioner (such as osteopaths or chiropractors) should be allowed to provide medical reports?

Total respondents who answered Question 5:	% of respondents who supported the proposal:	% of respondents who opposed the proposal:
70 (92% of total respondents)	9 (13% of those answering Q:5)	61 (87% of those answering Q:5)

30. Question five was included in the consultation following the receipt of a number of submissions to the MoJ relating to the type of practitioner who is allowed by the CPR to provide medical reports in relation to soft-tissue injury claims. The MedCo system, introduced in April 2015, built on the process included in the RTA pre-action protocol and ensured that initial medical reports in relation to RTA related soft-tissue injury claims could only be completed by certain types of expert registered with either the General Medical Council or the Health and Care Professionals Council.

31. It was therefore appropriate to use this consultation to explore this issue in more detail and question five sought views from across the personal injury sector on whether other types of practitioner could be added to provide initial medical reports in low value soft-tissue injury claims.

32. The vast majority of responses disagreed with the principle of including more practitioners from non-medical backgrounds. 62 of the 70 (87%) responses received from across all parts of the personal injury sector took this position. The main reason respondents gave against adding any additional experts centred around the point that chiropractors and osteopaths were complementary therapy providers. As such they lack the necessary competence and experience to complete reports to the required standard.

33. In addition, other comments included:

    - Additional practitioners are not required, as there is already sufficient capacity to provide soft tissue injury reports;
    - Medical reports should only be completed by medically qualified doctors such as GPs and accident and emergency consultants and not by non-medical experts such as physiotherapists, chiropractors or osteopaths; and
    - It would only cause confuse for claimants.

34. Those who agreed with the proposition to include additional practitioners were drawn from claimant lawyers, defendant lawyers, MROs, DMEs and from a Chiropractic representative body. The following suggestions were made in relation to the types of practitioner to be added:

    - Chiropractors;
    - Osteopaths; and
    - Nurses.

35. Despite the specific reference to the type of practitioner under consideration, a number of respondents also suggested a range of medically qualified specialists, including:

    - Psychologists;
    - Any qualified doctors;
    - Dentists;
    - ENT specialists; and
    - Ophthalmologists.

36. The main reasons respondents gave for adding additional practitioners included that greater choice would be helpful and that Chiropractors and Osteopaths are capable of completing reports for straightforward soft tissue injury claims, are already regulated, trained in how to deal with musculo-skeletal disorders and follow industry standards and codes of practices.

37. Some respondents also included a number of caveats to their agreement, including that any additional practitioners must complete MedCo accreditation, they must be properly regulated and the reports produced must be monitored to ensure consistency and quality; and Only if MedCo were given full regulatory powers to ensure/enforce consistent standards.

Part 2: Medical experts - Conclusions and Government Action:

Question 3: Having considered the responses provided in relation to Q:3, the Government will not be adding additional specialists to the MedCo process for the purpose of providing initial medical reports. From the views received it is clear that although a case can be made for allowing some specialists such as psychologists and dentists, identifying the need for such a report could be difficult for unrepresented claimants and the number of claims where it would be clear from the outset that such reports would be required are likely to be very few in number. The Government agrees that on balance this would not be helpful, and that the additional cost of obtaining both an initial and a secondary expert report outweighs the potential for confusion and incorrect selection of experts. In addition, the Government believes identifying, recruiting and accrediting sufficient specialists would be also be a time consuming and would not likely be a cost-effective exercise at this stage. The Government will however, keep this issue under review and will consider again following a suitable period for the new system to bed in.

Question 4: The issue of whether specialists should be restricted to their specialisms is superseded by the decision at question 3 to not allow such specialists to provide initial reports. Analysis of the responses to a number of the consultation questions does however, indicate that it may be worthwhile adding such specialists to MedCo for the purpose of sourcing additional recommended reports. The Government agrees that this is likely to be a sensible progression of the system, but that time is required to ensure that it can be done in an effective manner. Therefore, we intend to explore this option further with stakeholders, including the MedCo Board, with a view to assessing how this can be implemented at a later date. The additional option of restricting the provision of additional specialist reports to Tier 1 MROs only will also be explored, although, if this is to be pursued as an option, additional consideration would be required as to the competition law aspects of such a model. Also qualifying criteria will need to be developed and an additional audit of capability would also need to be undertaken by Tier 1 MROs.

Question 5: The views expressed by stakeholders were overwhelming in relation to question 5. 87% of respondents objected to any further extension to the types of expert allowed to provide medical reports for soft tissue injury claims as proscribed in the Civil Procedure Rules. There was, as would be expected from a trade body representing the interests of Chiropractors, a positive case put forward by the British Chiropractic Association. However, when coming to a decision weight has to be given to the views of those in market who source experts to provide reports, as well as those of medical organisations and professionals operating in the sector. The responses received from the majority of claimant representatives, defendant representatives, insurers and MROs indicated the general view of the majority of players in the personal injury sector was that the experience and qualifications of non-medical qualified practitioners was not at sufficient a level to support their addition and that the market would not support their inclusion.

The Government has considered the submissions made on this subject and on balance agrees that a persuasive case for extending the market in this way has not yet been made. There is potential to add a number of additional providers to a market which is already sufficiently resourced for the current volumes, and in doing so we would be adding an additional layer of choice and complexity for those who need to source a report. Bearing in mind these and the other arguments made, the Government has not been persuaded that there is a strong consumer benefit to amend the system and so does not propose to make any further changes to extend the current regime to alternative practitioners at this point in time. As in earlier questions, there were additional points made in relation questions 3, 4 and 5 on issues outside the scope of this consultation. These will continue to be considered by officials separately to this consultation response.

Part 3: Analysis of the responses relating to Fixed Recoverable Costs

38. In response to increasing concerns relating to the quality, independence and cost of medical reports used to support RTA related soft tissue injury claims, the majority of which were whiplash claims, the Government implemented a number of reforms between October 2014 and July 2015. This included the introduction of a new fixed recoverable costs (FRC) regime for soft tissue injury related medical reports which supplemented the introduction of the MedCo reforms and brought a measure of control to the cost of medical reports.

39. To implement this measure, changes were made to the RTA PAP and associated Civil Procedure Rules and Practice Directions to define the affected soft tissue injury claims, set the FRCs at an appropriate level and identify the type of medical expert who may provide the report. The rules ensure that the initial medical report sourced in a low value RTA related soft tissue personal injury claim are sourced from MedCo with a fixed recoverable cost of £180 + VAT attached.

40. Extending the scope of MedCo to cover non-soft tissue RTA related personal injury claims will also require changes to the current FRC regime. Part three of the consultation looked at this issue in more depth and asked the following two questions in relation to also extending FRC's for RTA related non-soft tissue injuries:

Question 6: Should the current fixed recoverable cost regime for initial soft tissue injury medical reports be extended to cover initial reports for all RTA related PI claims under the SCT?

Please give reasons to support your answer.

Question 7: Should the fixed recoverable cost regime be extended to all initial reports for claims that fall under the revised SCT in the new IT platform, if additional experts are added to and sourced through MedCo?

Please explain your answer.

MoJ analysis of question 6 – Should FRCs be extended to cover RTA related non-oft tissue injury claims under £5,000.

Total number of responses received to Q6:	% of responses in favour of extending FRCs	% of responses opposed to extending FRCs	% of responses indicating no opinion
68 (90% of total respondents)	45 (66% of responses to Q:6)	17 (25% of responses to Q:6)	6 (9% of responses to Q:6)

41. There was a good response to this question, with around 90% of respondents providing views on whether to extend the FRC regime as stated in Q: 6. There was support for extending the FRC regime to RTA related non-soft tissue injury claims from two thirds of responses drawn from across the sector. Support was particularly strong from insurers, defendant lawyers, and MROs with some support from claimant lawyers, DMEs and others including MedCo.

42. Generally, the accompanying comments suggested that extending the FRC regime made sense to provide clarity, consistency and certainty as to the cost of all initial reports. In addition, a number of respondents commented that GPs are well placed to deal with all the likely injuries requiring a report and that the current FRC regime works well so should be extended.

43. Another point regularly raised by respondents was the level of the current FRC regime. With insurers and defendant lawyers questioning this and suggesting that it should be lowered, particularly in relation to ‘whiplash tariff’ claims. There were though counter arguments from claimant solicitors that suggested that non-soft tissue injury claims were more complex, therefore, the FRC in relation to these reports should in fact be increased.

44. In relation to FRCs for additional specialist reports, there was support for applying such a regime. This was however, generally caveated by the view that the FRC had to be set at a realistic level to attract specialists and ensure there was sufficient coverage of suitably qualified experts.

45. In terms of those opposed to the proposal to extend the FRC regime, most came from claimant lawyers and MROs, with some further disagreement from a limited number of DMEs, TUs and others. The main reasons given against the proposal were that the current system doesn't work, the fee for the report should be considered on a case by case basis depending on the extent of the injuries and the type of expert used, and the cost of some expert reports following an RTA could be in excess of £1,000.

46. An additional issue was repeatedly raised by respondents from a variety of backgrounds in relation to the level of 'fee' received by medical experts working for MROs. A number of stakeholders are concerned that, as far as they can see, most of the £180 FRC is kept by MROs and little of the available money makes its way to the experts producing the reports. It was noted that there has been no increase to the FRC regime since implementation, which has potentially led to lower quality reports.

47. This is not however, an issue where Government can take direct action. It is important to note that the £180+VAT is not a 'fixed fee' payable to the medical expert, but it is the maximum amount recoverable to cover the cost of obtaining suitable medical evidence. The payment to the expert is part of the amount recoverable the remainder should be used to cover any additional overheads related to the report. The amount of money paid to experts in return for a medical report is therefore, a negotiation between the parties involved which will be by necessity subject to market forces.

MoJ analysis of question 7: Should the FRCs be extended all initial reports if specialists are allowed to undertake initial medical reports in their specialisms.

Number of responses received to Q: 7	% of responses in favour of extending FRCs for specialists:	% of responses in opposed to extending FRCs for specialists:	% of responses indicating no view on extending FRCs for specialists:
65 (78% of total respondents)	38 (60% of responses to Q:7)	21 (32% of responses to Q:7)	6 (8% of responses to Q:7)

48. Question: 7 looked at whether FRCs should be extended to all initial reports, if such were completed by specialists. It should be noted that many of the responses received to Q: 7 appeared to be the same as those provided to Q: 6. Some responses also chose to re-state their general opposition to specialists providing initial reports.

49. Support for extending FRCs to initial reports by specialists came from Insurers, defendant lawyers, claimant lawyers, MROs, representative groups, DMEs, TUs and others. Due to the repeated nature of many of the comments, most of the points put forward in response to Q6 also apply here.

50. In particular respondents in favour stated that it seems fair and logical to extend the current system to help provide consistency. FRCs provide transparency and certainty and mean unrepresented claimants won't face challenges from the compensator over the cost. It would also reduce the risk of users from "gaming" the system by using their own medical experts for claims which fall outside of the soft tissue definition.

51. Additional comments suggested that the current level of FRCs should be reviewed and no changes should be made until this is complete. Another recurring theme was the point that FRCs would need to be higher and related to the specialism to attract the best experts. A number of respondents also supported the concept of all additional reports provided by specialists following a recommendation in an initial report should attract FRCs.

52. In terms of those who were opposed to extending the FRC regime for initial reports by specialists, responses were received from claimant lawyers, defendant lawyers, Representative Groups, MROs, insurers, DMEs, Trade Unions and others. Again, a number of the responses received were repeats of submissions to Q:6.

53. In summary, the key points made were that extending the FRC regime to specialists would make the system more complicated and less reliable as there will be too many experts and the fees are likely to be set too low to attract experts and ensure good quality reports. Also, the current fixed fee system does not work as the fees are set too low, so it should not be extended and any consideration for extending the current system should wait until the reforms are reviewed to see if additional experts are actually required.

54. In addition, stakeholders commented that if the report being provided is an initial report then the experts specialism is adding no value and the issue is not should there be FRCs but who pays for the report.

Part 3: Fixed recoverable Costs - Conclusions and Government Action

Question 6: Analysis of the responses received indicates firm support for extending the FRC regime for soft tissue injury medical reports to cover the additional RTA related non-soft tissue injury claims which will be captured by the revised £5,000 small claims track limit. Nearly three quarters of those who responded to question 6 supported an extension mainly due to the clarity and certainty this would provide, plus the view that the work involved would be little different to that currently undertaken in respect of soft tissue injury claims. In addition, data was sought from respondents as to the average costs of initial non-soft-tissue injury reports for consideration. However, the limited data supplied was not conclusive and tended to vary between covering the amount paid to a medical expert (£35) and the cost of a particularly specialised report (£1,000) rather than focus on the cost of an initial report. A number of the supporting comments provided by respondents indicated that the work involved in a non-soft tissue medical report does not differ significantly from that for a soft-tissue injury report.

Therefore, having considered the data provided and the views of stakeholders, the Government has decided that it is appropriate to extend the FRC regime to include the provision of initial medical reports for RTA related non-soft tissue injury claims up to £5,000. In addition, we are not persuaded by either the views presented or the data submitted by stakeholders that it would be inappropriate to maintain the current level of £180 + VAT for initial soft tissue reports. These decisions will provide certainty to both claimants and to those providing reports as to the cost of obtaining medical evidence in support of a claim. We will however, continue to monitor this issue with a view to reviewing this at an appropriate point following the implementation of the reforms in April 2020.

Question 7: The position in relation to Q:7 refers back to the Government decision in relation to whether to allow specialists to complete initial medical reports in relation to RTA related personal injury claims up to £5,000. Bearing in mind the decision has been taken to not extend the service in this way, the Government has decided that the current FRC regime will also not be extended beyond those FRCs currently set for additional reports provided by Orthopaedic Surgeons and Accident and Emergency Consultants. We will however, continue to keep this situation under review and will likely revisit the question of FRCs for specialist reports once the reforms have been implemented and have had time to bed in.

Part 4: Analysis of the responses to questions on other changes to MedCo to support unrepresented claimants

55. Part 4 of the consultation considered the process for obtaining medical evidence by unrepresented claimants, and how MedCo's current systems and the MROs and DMEs who provide the reports can support these claimants. The consultation sought input on whether the qualifying criteria (QC), against which MROs are audited regarding competence to operate, should be amended for unrepresented claimants. It also asked for views on the information to be provided following a MedCo search, whether there should be standard service level agreements (SLAs) and would MROs/DMEs be opting in to provide medical reports for unrepresented claimants.

56. The IT Platform will need to be capable of providing a method for all claimants (whether they have legal representation or not) to obtain an independent and good-quality medical report. As MedCo already has efficient mechanisms in place for medical reports to be obtained by legally represented claimants, a system is also needed to allow unrepresented claimants to obtain a medical report.

57. The new system will also need to be embedded within the new accessible and user-friendly IT Platform being developed to support unrepresented claimants through the claims process. The service is being developed with safeguards built in to support the digitally disadvantaged through a telephone helpline. This means it is important that the system developed operates smoothly and efficiently and that the MROs and experts providing reports can interface appropriately with the service

Question 8: When extending the current MedCo search system to unrepresented claimants, what, if any, changes should be made to the current MedCo Qualifying Criteria?

Please give reasons for your answer.

Question 9: When extending the current MedCo search system to unrepresented claimants, what changes would you like to see as to how the information returned should be presented (i.e. currently only contact details are returned, but should more information about the provider and their service offering be provided)?

Please give reasons for your answer.

Question 10: If you are an MRO or a DME will you be opting in to the new service providing medical reports for unrepresented claimants at £180 (plus VAT) rate?

Please give reasons for your answer.

Question 11: When extending the current MedCo search to unrepresented claimants, do you think it should include a standardised set of service level agreements?

Please give reasons for your answer.

Question 12: What other changes do you think would need to be made to the current MedCo system for unrepresented claimants to be able to obtain a medical report?

Please give reasons for your answer.

MoJ analysis of question 8: When extending the MedCo search for unrepresented claimants, what, if any, changes should be made to the MedCo Qualifying Criteria?

Number of responses received to Q:8	% in favour of changes to the QC:	% opposed to changes to the QC:	% who indicated no opinion
68 (90% of total respondents)	52 (77% of responses to Q:8)	10 (15% of responses to Q:8)	6 (9% of responses to Q:8)

58. Many of the responses received, while generally helpful, were not directly relevant to the question asked and instead touched on the overall claims process. Comments received on the question indicated that new criteria should focus on the services provided and encompass systems for communicating with unrepresented claimants and how they meet specific customer care standards.

59. In addition, stakeholders suggested that the new criteria would need to cover how a MRO:

- would interface with unrepresented claimants;
- demonstrate a strong customer care approach and explain their contact processes;
- could achieve specific customer focussed ISO standards; and
- could demonstrate they have effective support mechanisms in place to help the claimant understand the process, including how and when they can ask to amend a report and how to make a complaint.

60. Of those stakeholders who felt the qualifying criteria did not need amending the key points made included:

- MedCo shouldn't be changed to allow unrepresented claimants to appoint their own experts;
- the current system works in breaking the links between claimant's representatives and the experts, so there is no need to change it; and
- keep the current criteria as it is not possible to make it understandable to unrepresented claimants.

MoJ analysis of question 9: When extending the MedCo search for unrepresented claimants, how should the information returned be presented?

Number of responses received to Q:9	% suggesting changes:	% indicating no change is required:	% who indicated no opinion
73 (88% of total respondents)	61 (84% of responses to Q:9)	6 (8% of responses to Q:9)	6 (8% of responses to Q:9)

61. Around 90% of stakeholders responding to this question provided suggestions in relation to the information given to unrepresented claimants following a MedCo search. Respondents generally felt that the system should present information to be helpful, but not overwhelm unrepresented claimants. It was suggested that information and weblinks detailing the services provided by MROs/DMEs should be provided.

62. Some stakeholders suggested that unrepresented claimants would be unable to cope with too much information, and commented that the service should be restricted to tier 1 high volume national MROs only. This is an interesting point which can be considered further, however there may be competition law considerations to be taken account of before any decision on this could be reached.

63. However, the main reason respondents given by those who supported no changes being made, related to a desire for MedCo to not be extended to allow unrepresented claimants to appoint their own experts. In addition, some stakeholders suggested that confirmation that the expert is accredited is the only information an unrepresented claimant would require.

MoJ analysis of question 10: If you are an MRO or a DME will you be opting in to the new service to provide medical reports for unrepresented claimants at £180 (plus VAT)?

Number of responses received to Q10:	Number of responses indicating they would opt in:	Number of responses indicating they would not opt in:	Number of responses unsure if they would opt in:
20 (26% of total respondents)	14 (70% of responses to Q:10)	4 (20% of responses to Q:10)	2 (10% of responses to Q:10)

64. As of June 2019, there are 46 operational MROs in the market, these are split between 10 tier 1 MROs and 36 tier 2 (usually regional based, low volume organisations) MROs. There are currently around 700 DMEs operational on MedCo. Anecdotal feedback received suggested that a number of MROs/DMEs would refuse to deal with unrepresented claimants, so the consultation also sought an indication of how many MROs/DMEs would 'opt in' to the service.

65. In total 15 MROs and 10 DMEs responded to the consultation, of which 11 MROs and 3 DMEs indicated they would take instructions from unrepresented claimants. Whilst 1 MRO and 3 DMEs said they would not. The remainder either indicated they were unsure or did not respond. Of those MROs who indicated yes, the majority were tier 1 MROs which suggests there will be sufficient operational capacity to support the assumed volume of unrepresented claimants.

66. Insufficient numbers of DMEs replied to the consultation to make accurate assumptions on the market capacity in this sector. Although we understand from consideration of industry data that MROs are selected in around 84% of searches, with DMEs selected in around 12% with the remainder resulting in no selection.

67. A number of respondents indicated in their supporting comments that their participation depended on receiving clarity in relation to how payment for the work done will be handled.

MoJ analysis of question 11: When extending the MedCo search for unrepresented claimants, should it include a standardised set of service level agreements?

Number of responses received to Q:11	% who agree to adding standard SLAs	% who oppose adding standard SLAs	% who are unsure about standard SLAs
67 (88% of total respondents)	58 (87% of responses to Q:11)	7 (10% of responses to Q:11)	2 (3% of responses to Q:11)

68. Around 88% of respondents were in favour of introducing SLAs for MROs and/or DMEs providing services to unrepresented claimants. The reasons given in support included that SLAs:

    - provide consistency;
    - help manage expectations; and
    - provide a necessary level of consumer protection.

69. Some stakeholders chose to caveat their responses, by stating that SLAs must be accessible, agreed with all stakeholders and apply to compensators as well as to MROs and DMEs. Most of those in support of the proposal were MROs, Claimant lawyers, Insurers, Representative groups, Defendant Lawyers, DMEs and others.

70. Those opposing changes generally suggested that the existing SLAs used were sufficient and any new MROs or experts should meet the standards set in these and that MROs and DMEs will not be in agreement with any SLAs developed.

MoJ analysis of question 12: What other changes do you think would need to be made to the current MedCo system for unrepresented claimants to be able to obtain a medical report?

Number of responses providing examples of other changes received to Q:12
57 (75% of total respondents)

71. We received 57 responses to this question from across the sector with most suggestions coming from MROs, Claimant representatives and defendant representatives. Additional points were put forward by stakeholders both in favour or opposed to the reforms. These included suggestions about:

    - user testing and developing a phone friendly platform;
    - introducing an online booking service for medical reports;
    - a clear payment structure for unrepresented claimants;
    - the provision of supporting information and guidance on the process and on how to prepare for the medical examination;
    - the use of clear templates;
    - the provision of multi-lingual support and of a telephone helpline; and
    - consideration of an online booking service for medical reports.

72. Some suggestions while useful were not practical for inclusion at launch and others have been helpful in identifying issues and validating design solutions. Officials will continue to consider the many points made outside of the formal consultation response process.

Part 4: Other changes to MedCo to support unrepresented claimants - Conclusions and Government Action:

Question 8: Analysis of the responses received indicates strong support for making changes to the qualifying criteria, in particular in relation to how to help, support and service the needs of unrepresented claimants. The Government agrees that this is an appropriate way forward, and will consider the helpful feedback from stakeholders on what such criteria should consist of. MoJ officials will also work through this issue with MedCo to develop the new criteria to be adopted. These will be optional criteria focussed on customer support and care requirements which will apply only to those MROs who decide to 'opt in' to the service to work with unrepresented claimants. Any who do so will be required to undertake an audit on these new criteria before taking on this work. Details of the new criteria will be published prior to implementation to enable stakeholders to consider whether to opt in to the service in relation to unrepresented claimants.

Question 9: A number of responses were received which made suggestions for assisting unrepresented claimants to navigate claims under the new system. This included presenting information in a helpful but not overwhelming way and providing additional information on the services provided by MROs. This is a sensible approach and MoJ will work with both MIB and MedCo to develop the information to be presented in an accessible way to claimants. This approach will be tested in the Autumn, to ensure that the information provided to unrepresented claimants is understandable, proportionate and helpful in enabling claimants to progress their own claim.

Question 10: Initial analysis of the responses showed a majority of MROs and DMEs who responded to the consultation will be prepared to work with unrepresented claimants. Whilst the limited volume of responses received make it difficult to make accurate assumptions on full market capacity, the numbers of Tier one MROs indicating they will opt in indicates that there will be sufficient capacity to service the expected volumes. MoJ officials and analysts will continue to work with MedCo to obtain additional market information in addition to undertaking further analysis of the responses received.

Question 11: Stakeholders have indicated firm support in favour of introducing standardised SLAs for MROs and/or DMEs providing services to unrepresented claimants. MoJ agrees that this would be both helpful to unrepresented claimants and useful in setting the expectations of MROs regarding the level of service expected. We will therefore continue to work with MedCo to develop appropriate standard SLAs, to be tested in the Autumn, which will ensure that the information provided to unrepresented claimants is accessible, proportionate and helpful and enables claimants to progress their own claim. Details of the new SLAs will be published prior to implementation to enable stakeholders to consider their requirements.

Question 12: Respondents, both in favour of or opposed to the reforms, have provided many additional points to be considered. These relate to things which will be taken forward, such as the qualifying criteria and standard SLAs to other issues which won't be part of the current process but which are worth considering further in due course. These include looking at regulatory requirements, the process for providing rehabilitation and the future provision of specialist medical evidence. MoJ officials will continue to review and consider these stakeholder suggestions for further improvements to the system, implementing those which are helpful and achievable within the current implementation timetable and beyond.

Part 5: Analysis of the responses to questions on statistics and impact

73. The consultation also tested several analytical assumptions and asked stakeholders to provide supporting empirical evidence. Respondents were asked to supply data on the current costs attached to non-soft tissue injury medical reports, as well as to consider assumptions on the volume of future claims, how many of these will be soft tissue claims and how many will have legal representation.

74. The consultation asked the following three specific questions:

Question 13: Please provide, with supporting evidence, the average cost of an initial medical report for non-soft tissue RTA related PI injuries.

Question 14: Do you agree with an assumption that around 400,000 claims would be processed through the MedCo portal; and of these, around 10,000 (5%) would be non-soft tissue claims?

Please explain your answer, preferably with supporting evidence.

Question 15: Do you agree with the assumptions that around two thirds of claims processed on the MedCo system would be with legal representation (made up of just under 50% of claims with BTE insurance and under 20% with other legal representation) and one third of claims without legal representation?

Please explain your answer, preferably with supporting evidence.

75. This part of the consultation response looks in more detail at the data available publicly and that submitted by respondents to this consultation.

RTA related PI claims: Current volumes

76. There were around 610,000[1] RTA related personal injury claims made in 2017/18 in England and Wales. Of which around 540,000[2] received a financial settlement.

Estimated volume post reform

77. The majority of our assumptions in the Statistics and Assessment of Impact sections in the consultation document were based on the Government's Impact Assessment (IA) accompanying the Civil Liability Act (CLA) which set out the wider reforms.[3] As part of this consultation process, information was sought concerning these assumptions. In the following paragraphs we provide a summary of the information and data received during the consultation period, and the consequent impacts on modelling assumptions.

RTA related PI claims: Estimated volume of post reforms

78. As set out in the CLA IA, it was assumed that around 375,000 RTA claims would proceed and qualify for the SCT provision. Responses from this consultation showed some support for the current estimate of around 400,000 (figures were rounded to a higher level in this consultation document as we appreciate it can be difficult for respondents to give views on precise estimates).

79. Many of the respondents who thought the estimate was too low did so on the basis of a comparison against total motor claim volumes on DWP's Compensation Recovery Unit (CRU). However, the 400,000 estimate takes into account claims that actually receive a financial settlement, are eligible for SCT provision (e.g. £5,000 or under for general damage awards) and assumptions on claims no longer proceeding following the wider reforms set out in the CLA.

80. Some respondents did acknowledge these assumptions but felt there would be no reduction, or it would be smaller or larger than anticipated. The majority of respondents felt they were not able to answer this question either because they do not hold relevant data or because it is not possible to predict future volumes due to uncertainty around how the market will react. Based on all of the above, we believe there is insufficient justification to amend the circa 400,000 estimated claim volumes.

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1 Based on DWP Compensation Recovery Unit (CRU) performance data

2 Based on DWP CRU. By financial settlement, we mean any claims that result in compensation being paid out, either where claims/damages are settled (i.e. by agreement, where liability is admitted/damages agreed) or won (i.e. where liability/damages are denied/disputed).

3 https://publications.parliament.uk/pa/bills/lbill/2017-2019/0090/civil-liability-IA3.pdf

However, in acknowledgement of the uncertainty around this figure, we have carried out some sensitivity analysis to show the variation in estimated claims volumes if the figure was 20% lower or higher (see Table 1, in Part 6 - sensitivity analysis).

Estimated volume of non-soft tissue claims

81. For the consultation stage assessment of impacts, we assumed that the proportion of non-soft tissue claims would be less than 5%. Many respondents suggested the figure should be between 4% - 7%, combining all responses where alternatives were provided, gives an average of 6%. Based on this our previous less than 5% assumption (which in the CLA IA the unrounded figure was 3%) will be increased to 6%, which results in an estimate of around 22,000 non-soft tissue claims.

Estimated volume of represented/unrepresented claimants and estimated provision of Legal Expenses Insurance (LEI).

82. The CLA IA and therefore this consultation assumed that two thirds of claims processed on the MedCo system would have legal representation (made up of just under 50% of claims with Before the Event (BTE) insurance and under 20% with other legal representation) and one third of claims would not have legal representation. Mixed responses where received from the consultation with almost an equal split between (i) those agreeing with these assumptions (ii) those stating the proportion with legal representation should be lower (iii) those stating the proportion with legal representation should be higher.

83. Based on the mixed responses of those who disagreed, there is not enough evidence to change the current assumptions, which works as a midpoint between the views received. However, to reflect the uncertainty in this area, we have undertaken some sensitivity analysis by modelling four scenarios considering different proportions in each category (in Part 6 - sensitivity analysis).

Current volume of claims supported by MedCo reports

84. In the following table we have provided updated MedCo statistics based on the June 2019 data release.

Current number of searches on MedCo	Current number and type of authorised users	Current numbers of MROs	Current numbers of indirect and direct medical experts
There were around **480,000** searches on Medco in 2018/19. • **83%** of these searches resulted in the selection of an MRO; • Around **13%** in the selection of a DME; and • around **4%** in no selection.	There are currently **1,850** operational Authorised Users on MedCo system.	There are currently **46** operational MROs registered with MedCo.	There are currently **200** operational indirect medical experts and **699** operational direct medical experts.

85. As set out in the consultation response document above, the following policy changes will be implemented in April 2020:

    i. The MedCo system will be extended to cover the provision of initial medical reports in relation to all RTA related personal injury claims under £5,000 and the provision of initial medical reports for non-soft tissue personal injury claims be limited to General Practitioners (GPs) and Accident and Emergency (A&E) consultants only;

    ii. The fixed recoverable costs (FRC) regime for soft-tissue injury medical reports will be extended so as to also apply to all initial RTA related non-soft tissue injury medical reports used to support claims under £5,000; and

    iii. New qualifying criteria on customer care, standard service level agreements and accessible information for claimants will be applied to/used by medical reporting organisations (MROs) and direct medical experts (DMEs) providing services to unrepresented claimants through the MedCo process.

86. The overall impact of these policies is expected to be small as the main change concerns the inclusion of non-soft tissue injuries as part of the Medco system. We estimate that there will be around 22,000 (approximately 6% of all RTA PI claims) non-soft injury claims on the new portal for which the medical report fixed costs would be extended to. A qualitative assessment of the costs and benefits on the groups most likely affected is presented below (it has not been possible to quantify these impacts).

Impacts

Costs

1. Government and Motor Insurers' Bureau (MIB)

87. The Government and MIB are responsible for extending the new IT Platform, including the interface with the MedCo system, that is, the portal from which medical reports are procured. As a result of these policies, there will be an impact on MIB to ensure the system also includes access for those with non-soft tissue injury claims. As these are estimated to be around 6% of RTA PI claims, and the changes are in line with the process already agreed for soft-tissue injury claims (around 94% of claims).

2. Medical Experts

88. Medical Reporting Organisations (MROS) or Direct Medical Experts (DME) registered on the MedCo system currently provide medical reports for claimants with soft tissue injuries. This will now be extended to include claimants with non-soft tissue injuries who require an initial medical report.

89. Overall it is assumed that the volumes of initial medical reports required does not change. This is because currently a medical report is not mandatory for non-soft tissue injuries, which will continue to be the case post-reform. However, there will be some redistribution between the practitioners providing the initial reports as only GPs and A&ECs will be able provide initial reports after reforms. It has not been possible to quantify this impact as we do not know the proportion of estimated 22,000 non-soft tissue injury claims who choose to/are required to have a medical report, and, of these, the proportion of the initial reports which are currently carried out by GP and A&ECs compared to other specialists.

90. It is important to bear in mind that GP or A&EC can recommend a secondary specialist report, in these cases medical reports will still be required from specialist medical experts and the cost will still be recoverable from the insurer.

91. GPs and A&ECs opting in to produce initial reports for non-soft tissue injury claims will be under the same FRC regime than for as soft-tissue injury, set at £180+VAT. The Government does not hold robust information on the fees currently charged for these initial reports. Therefore, information was sought as part of the consultation. Responses to this question varied substantially, ranging from £32 to over £1000. However, there was some support that these initial reports can be produced in line with the current £180 + VAT FRC regime.

92. The FRC is assumed to reflect the amount of work required in future to produce an initial report efficiently to the right quality and at the right time. Under the £180 FRC regime, those who currently charge a fee below this rate will benefit and those who

charge a fee above will lose revenue. Where medical experts choose not to opt in, it is assumed that they would reallocate their resources to other profitable activities.

93. The introduction of qualifying criteria and service level agreements for unrepresented claimants might place some additional administration costs on medical experts and some may have to improve their performance if they are currently not meeting the standards set. However medical experts have the choice to opt in.

94. The consultation responses indicated there was support for this option, for example around 85% of respondents were in favour of introducing SLAs for medical experts providing services to unrepresented claimants so it is assumed these additional criteria are not overly burdensome. Reasons why MROs and DMEs are supportive of these processes are included in the benefits section.

3. Insurance industry – defendant insurers

95. Defendant insurers are funding the costs for the new IT platform for procuring medical reports. As the extension to non-soft tissue injuries relates to a maximum of around 6% of additional RTA claims to be included on the portal, and is an extension of existing processes this is anticipated to have minimal impact.

96. There could be a cost to insurers for medical reports that are currently being charged at less than £180+VAT FRC, as post-reform this will increase to £180+VAT.

Benefits

1. Claimants

97. Claimants are expected to benefit from the extension of the current MedCo system of providing initial medical reports for soft tissue claims, to also provide these l report for non-soft tissue claims. This avoids confusion as to which system might be required if different systems operate alongside each other. In addition, claimants would benefit from the MedCo procedures as solicitors/claimants are provided with a choice of independent MROs/DMES, which is expected to increase the quality of medical reporting. Litigants in person will benefit by the implementation of the qualifying criteria as it is intended to provide a level of consumer protection and ensure best practice.

98. Under the new system, initial medical reports will be limited to only GPs and A&EC. The responses from the consultation noted their experience and training made them most suitable to provide these reports, and the quality of their reports were praised. In cases where more specific evidence is required, GPs and A&ECS will be able to recommend that further evidence is obtained. Therefore, if more specialist secondary reports are required, claimants will continue to be able to access these, and these costs will be recoverable from the at-fault insurer (as is the case now).

2. Medical experts

99. As mentioned in the cost section, some medical experts who currently charge less than the £180+VAT for initial medical reports for non-soft tissue injury claims are expected to increase this to the FRC rate of £180+VAT, increasing their revenue. Medical experts will benefit from the qualifying criteria and service level agreement for unrepresented claimants as it will ensure consistency and fairness in terms of what is deemed an acceptable service across the providers, and will manage expectations.

3. Insurance industry – defendant insurers

100. Insurers will benefit in clams where the medical report is currently being charged at a rate higher than £180+VAT, as this will reduce to £180+VAT post reform.

Part 6: Sensitivity Analysis

101. As discussed in the Statistics section, there is uncertainty around some of our assumptions on claims volume. To reflect this, we have modelled varying assumptions to highlight the range that claims volume could be within.

Sensitivity 1: Estimates of the volume of RTA related PI claims that would be processed through the MedCo portal.

102. In our central scenario we assume that there would be around 375,000 claims post reforms. In this section, we have tested two additional scenarios:

- Sensitivity 1.1 assumes that the volume would be 20% higher; and
- Sensitivity 1.2 assumes that the volume would be 20% lower.

103. Table 1 summarises the results. The difference in the total volume of claims is a change of around 75,000, suggesting the volume of claims could be within 300,000 to 450,000.

Table 1: Sensitivity analysis of volume of RTA related PI claims post reforms

	Assumption	Estimated volume of RTA PI claims on portal	Estimated volume of non-soft tissue claims
0	Base case	375,000	22,000
1.1	The volume of RTA related PI claims would be 20% higher	450,000	27,000
1.2	The volume of RTA related PI claims would be 20% lower	300,000	18,000

Sensitivity 2: Estimates of the proportion of represented and unrepresented claimants.

104. In our central scenario we assume that two thirds of claims processed on the MedCo system would have legal representation (made up of just under 50% of claims with BTE insurance and under 20% with other legal representation) and one third of claims would not have legal representation.

105. In this section, we look at a range of scenarios from 50% claims being with legal representation to 80% (and thereby between 20% to 50% without legal representation) with further breakdowns within the legal representation category. Overall this suggests the number of claims with legal representation could range between 185,000 to 300,000. Table 2 below shows the breakdowns within each group:

Table 2: Impact on estimated volumes with different assumptions on legal representation

	Made up of:				*Made up of:*			
	Proportion of represented claimants	**% BTE**	**% non BTE legal representation**	**Proportion of unrepresented claimants**	**Volume of represented claimants**	**Volume of BTE**	**Volume of non BTE legal representation**	**Volume of unrepresented claimants**
Base case	**67%**	47%	19%	**33%**	**250,000**	175,000	70,000	**125,000**
Sensitivity scenarios:								
2.1	**50%**	36%	14%	**50%**	**185,000**	135,000	55,000	**185,000**
2.2	**70%**	60%	10%	**30%**	**260,000**	225,000	35,000	**110,000**
2.3	**70%**	40%	30%	**30%**	**260,000**	150,000	110,000	**110,000**
2.4	**80%**	57%	23%	**20%**	**300,000**	215,000	85,000	**75,000**

Figures do not always sum due to rounding

Conclusion and next steps

106. The Ministry of Justice is grateful to everyone who took part in the consultation. All views provided have been considered and will help in the design on the new system. In moving forward with implementation, the Government will continue to work closely with a broad range of organisations and stakeholders.

107. Following consideration of the responses provided to this consultation, alongside a number of other factors, data and evidence, the Government will be taking forward the following conclusions and recommendations:

Question 1: As indicated in the consultation document, officials have considered the issue of the provision of medical reports for unrepresented claimants in some detail. This has included discussion of the key issues with expert stakeholders, from across the PI sector (including both claimant and defendant representative groups and MedCo) at a number of workshops. The feedback from these sessions was utilised to inform the options presented for consideration in the consultation.

Taking into account the general level of support shown, in response to the question on extending MedCo to cover all RTA PI claims under £5,000 from across the sector, the Government has decided to widen MedCo's remit as proposed in the consultation. This was the Government's preferred option and feedback provided by stakeholders supports our initial analysis that this option will provide consistency for obtaining medical evidence in support of all claims of this nature irrespective of whether the claimant has legal representation. This decision will be taken forward and implemented as part of the ongoing work to draft revised Civil Procedure Rules (CPR) and a new pre-action protocol to support RTA related personal injury claims in the small claims track.

Additionally, for claims where there is a non-soft tissue injury (whether or not accompanied by a soft tissue injury) we will ensure they are provided by GPs/A&E consultants only. This is due to the concerns raised that only GPs and A&E consultants have a broad enough medical background to undertake initial reports for all types of injury. In cases where more specific evidence is required they will be able to recommend that further evidence is obtained, and in soft tissue only claims, the current rules will continue to apply.

Question 2: The views expressed by stakeholders were both constructive and helpful in highlighting issues to be considered in relation to implementing a system for the provision of medical evidence. Many of the points were put forward by stakeholders both in favour and opposed to reform in this area, but these still contained useful points and were helpful in identifying issues and validating a number of design solutions being implemented through the new IT platform and process.

Of the alternative options suggested, many were either based on not taking forward the reform programme or were, in the Government's view, likely to contravene competition law. On balance the Government view was that the proposed alternatives did not effectively support unrepresented claimants in the same way that the preferred option did. Therefore, these options were not appropriate to pursue, but a number of the additional points made by stakeholders will continue to be considered by officials outside of this consultation response.

Question 3: Having considered the responses provided in relation to Q:3, the Government will not be adding additional specialists to the MedCo process for the purpose of providing initial medical reports. From the views received it is clear that although a case can be made for allowing some specialists such as psychologists and dentists, identifying the need for such a report could be difficult for unrepresented claimants and the number of claims where it would be clear from the outset that such reports would be required are likely to be very few in number. The Government agrees that on balance this would not be helpful, and that the additional cost of obtaining both an initial and a secondary expert report outweighs the potential for confusion and incorrect selection of experts. In addition, the Government believes identifying, recruiting and accrediting sufficient specialists would be also be a time consuming and would not likely be a cost-effective exercise at this stage. The Government will however, keep this issue under review and will consider again following a suitable period for the new system to bed in.

Question 4: The issue of whether specialists should be restricted to their specialisms is superseded by the decision at question 3 to not allow such specialists to provide initial reports. Analysis of the responses to a number of the consultation questions does however, indicate that it may be worthwhile adding such specialists to MedCo for the purpose of sourcing additional recommended reports. The Government agrees that this is likely to be a sensible progression of the system, but that time is required to ensure that it can be done in an effective manner. Therefore, we intend to explore this option further with stakeholders, including the MedCo Board, with a view to assessing how this can be implemented at a later date. The additional option of restricting the provision of additional specialist reports to Tier 1 MROs only will also be explored, although, if this is to be pursued as an option, additional consideration would be required as to the competition law aspects of such a model. Also qualifying criteria will need to be developed and an additional audit of capability would also need to be undertaken by Tier 1 MROs.

Question 5: The views expressed by stakeholders were overwhelming in relation to question 5. 87% of respondents objected to any further extension to the types of expert allowed to provide medical reports for soft tissue injury claims as proscribed in the Civil Procedure Rules. There was, as would be expected from a trade body representing the interests of Chiropractors, a positive case put forward by the British Chiropractic Association. However, when coming to a decision weight has to be given to the views of those in market who source experts to provide reports, as well as those of medical organisations and professionals operating in the sector. The responses received from the majority of claimant representatives, defendant representatives, insurers and MROs indicated the general view of the majority of players in the personal injury sector was that the experience and qualifications of non-medical qualified practitioners was not at sufficient a level to support their addition and that the market would not support their inclusion.

The Government has considered the submissions made on this subject and on balance agrees that a persuasive case for extending the market in this way has not yet been made. There is potential to add a number of additional providers to a market which is already sufficiently resourced for the current volumes, and in doing so we would be adding an additional layer of choice and complexity for those who need to source a report. Bearing in mind these and the other arguments made, the Government has not been persuaded that there is a strong consumer benefit to amend the system and so does not propose to make any further changes to extend the current regime to alternative practitioners at this point in time. As in earlier questions, there were additional points made in relation questions 3, 4 and 5 on issues outside the scope of this consultation. These will continue to be considered by officials separately to this consultation response.

Question 6: Analysis of the responses received indicates firm support for extending the FRC regime for soft tissue injury medical reports to cover the additional RTA related non-soft tissue injury claims which will be captured by the revised £5,000 small claims track limit. Nearly three quarters of those who responded to question 6 supported an extension mainly due to the clarity and certainty this would provide, plus the view that the work involved would be little different to that currently undertaken in respect of soft tissue injury claims. In addition, data was sought from respondents as to the average costs of initial non-soft-tissue injury reports for consideration. However, the limited data supplied was not conclusive and tended to vary between covering the amount paid to a medical expert (£35) and the cost of a particularly specialised report (£1,000) rather than focus on the cost of an initial report. A number of the supporting comments provided by respondents indicated that the work involved in a non-soft tissue medical report does not differ significantly from that for a soft-tissue injury report.

Therefore, having considered the data provided and the views of stakeholders, the Government has decided that it is appropriate to extend the FRC regime to include the provision of initial medical reports for RTA related non-soft tissue injury claims up to £5,000. In addition, we are not persuaded by either the views presented or the data submitted by stakeholders that it would be inappropriate to maintain the current level of £180 + VAT for initial soft tissue reports. These decisions will provide certainty to both claimants and to those providing reports as to the cost of obtaining medical evidence in support of a claim. We will however, continue to monitor this issue with a view to reviewing this at an appropriate point following the implementation of the reforms in April 2020.

Question 7: The position in relation to Q:7 refers back to the Government decision in relation to whether to allow specialists to complete initial medical reports in relation to RTA related personal injury claims up to £5,000. Bearing in mind the decision has been taken to not extend the service in this way, the Government has decided that the current FRC regime will also not be extended beyond those FRCs currently set for additional reports provided by Orthopaedic Surgeons and Accident and Emergency Consultants. We will however, continue to keep this situation under review and will likely revisit the question of FRCs for specialist reports once the reforms have been implemented and have had time to bed in.

Question 8: Analysis of the responses received indicates strong support for making changes to the qualifying criteria, in particular in relation to how to help, support and service the needs of unrepresented claimants. The Government agrees that this is an appropriate way forward, and will consider the helpful feedback from stakeholders on what such criteria should consist of. MoJ officials will also work through this issue with MedCo to develop the new criteria to be adopted. These will be optional criteria focussed on customer support and care requirements which will apply only to those MROs who decide to 'opt in' to the service to work with unrepresented claimants. Any who do so will be required to undertake an audit on these new criteria before taking on this work. Details of the new criteria will be published prior to implementation to enable stakeholders to consider whether to opt in to the service in relation to unrepresented claimants.

Question 9: A number of responses were received which made suggestions for assisting unrepresented claimants to navigate claims under the new system. This included presenting information in a helpful but not overwhelming way and providing additional information on the services provided by MROs. This is a sensible approach and MoJ will work with both MIB and MedCo to develop the information to be presented in an accessible way to claimants. This approach will be tested in the Autumn, to ensure that the information provided to unrepresented claimants is understandable, proportionate and helpful in enabling claimants to progress their own claim.

Question 10: Initial analysis of the responses showed a majority of MROs and DMEs who responded to the consultation will be prepared to work with unrepresented claimants. Whilst the limited volume of responses received make it difficult to make accurate assumptions on full market capacity, the numbers of Tier one MROs indicating they will opt in indicates that there will be sufficient capacity to service the expected volumes. MoJ officials and analysts will continue to work with MedCo to obtain additional market information in addition to undertaking further analysis of the responses received.

Question 11: Stakeholders have indicated firm support in favour of introducing standardised SLAs for MROs and/or DMEs providing services to unrepresented claimants. MoJ agrees that this would be both helpful to unrepresented claimants and useful in setting the expectations of MROs regarding the level of service expected. We will therefore continue to work with MedCo to develop appropriate standard SLAs, to be tested in the Autumn, which will ensure that the information provided to unrepresented claimants is accessible, proportionate and helpful and enables claimants to progress their own claim. Details of the new SLAs will be published prior to implementation to enable stakeholders to consider their requirements.

Question 12: Respondents, both in favour of or opposed to the reforms, have provided many additional points to be considered. These relate to things which will be taken forward, such as the qualifying criteria and standard SLAs to other issues which won't be part of the current process but which are worth considering further in due course. These include looking at regulatory requirements, the process for providing rehabilitation and the future provision of specialist medical evidence. MoJ officials will continue to review and consider these stakeholder suggestions for further improvements to the system, implementing those which are helpful and achievable within the current implementation timetable and beyond.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

Cabinet Office Consultation Principles 2018 that can be found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

Annex A – List of respondents

Association of British Insurers

Allianz

AML Reporting Ltd

Association of Personal Injury Lawyers

Ashfords LLP

Association of Consumer Support Organisations

Aviva

AXA Insurance

British Insurance Brokers Association

British Medical Association

British Chiropractic Association

Broadgate Legal

Carpenters Law

Chartwell Medical Limited

CL Medicall Aid Limited

Claims Portal Limited

Claimspace Limited

Curtis Solicitors Limited

DAC Beachcroft

Direct Line Group

Doctors Chambers (UK) Limited

DWF Law LLP

esure insurance

Express Solicitors

Forum of Insurance Lawyers

Foster Medco

Gerard McDermott QC Limited.

Graysons Solicitors

Horwich Farrelly

Irwin Mitchell

Kennedys

Keoghs LLP

LV=

MAPS Medical Reporting

Motor Accident Solicitors Society

MedCo Registration Solutions Limited

Medical Services Solutions Limited

Mobile Doctors

Munich Re

New Law

NFU Mutual Insurance Society Limited

Pegasus Medical

Personal Injury Barristers Association

Platinum Partnership Solicitors

Plexus

PLS Hard Consulting

Premex Services Limited

Premier Medical Group Limited

Ringrose Law

RSA

RSW Medico-Legal Limited

Sabre Insurance Company

SK Medical Practice

Speed Medical

Spencers Solicitors Limited

Thompsons Law

Tri Star Medicals Limited

UK Independent Medical

Unison

Unite the Union

Verisk Analytics Limited

Weightmans LLP

Zurich Insurance

Additional responses were also received from a range of individuals including from specific medical experts and other interested parties.

Alternative format versions of this report are available on request from whiplashcondoc@justice.gov.uk.