Whiplash reform programme: Consultation on independence in medical reporting and expert accreditation

Chartered Society of Physiotherapy
Consultation response

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The Chartered Society of Physiotherapy (CSP) is the professional, educational and trade union body for the UK's 51,000 chartered physiotherapists, physiotherapy students and support workers.

The CSP welcomes the opportunity to respond to the consultation on independence in medical reporting and expert accreditation as part of the whiplash reform programme.

Our response is focussed on the areas in which we feel we can most effectively contribute to the debate. We would be pleased to supply additional information on any of the points raised in our response at a later stage.

The contribution of physiotherapy

Having accredited physiotherapists to provide expert assessments for whiplash claims supports the goal of improving standards of assessments. This goal is long overdue and one that the CSP wholeheartedly supports.

The assessment and management of soft tissue and neuromusculoskeletal (NMS) injuries is at the heart of physiotherapy expertise. Physiotherapists have made significant advances in the field of whiplash injury research, both challenging current practice and thinking, as well as suggesting new ways to approach this complex problem.

In the last decade, physiotherapists have become world leaders in the field of whiplash injury research, contributing seminal peer reviewed scientific papers which answer many of the questions raised in the consultation document. Physiotherapists have delivered much of the 'novel' research and also provided new and innovative ways to address this complex and costly issue.

Physiotherapists work across health and social care including on intensive care, medical and surgical wards and in the community. They are therefore well used to assessing patients with a range of co-morbidities.

Physiotherapists have been autonomous practitioners since 1977, allowing them to act as diagnosticians. The assessment and diagnosis of whiplash associated disorders is entirely within the scope of practice for physiotherapy. CSP members are fully insured to carry out activities within their personal and professional scope of practice.

1. Do you agree that the proposed amendments to paragraphs 7.1A (1) and 7.32A of the Pre-Action Protocol and miscellaneous amendments to the CPR in annex C are sufficient to ensure that claimant representatives comply with the requirement to commission an initial fixed costs medical report from an accredited expert via the MedCo Portal.

1.1 The CSP has no comments to make in answer to this question.

2. It is anticipated that access to the MedCo portal will be available to litigants in person. Do you have any views on whether use of the MedCo portal should be mandatory for litigants in person?

2.1 It would be consistent with the aims of the Whiplash reform programme to make it mandatory for litigants in person to be involved in identifying the expert who will provide the medical report. One of the current features of the industry around whiplash claims is that claimants have little input into the process. In fact this can be one of the selling points of solicitors who contact potential claimants to persuade them to make a claim following an accident. It may be more practical to make it mandatory for litigants to either use the MedCo portal or to be sent the list of experts identified within their postcode by the MedCo portal to choose from.

3. The results of a search in the MedCo portal can be displayed in different ways. Do you have any views on whether the MedCo search results should offer commissioning practitioners a choice of named medical experts and/or medical reporting organisations?

3.1 While not disputing the fact that MROs may serve a purpose, and that there is clearly an appetite within the industry for them by virtue of their conveneince the CSP is concerned about the impact that using MROs has on the end fee paid to experts, and therefore on the quality of assessments.

3.2 We understand that the concern from solicitors in the whiplash industry about using individually named practitioners is around practitioner's capacity and ability to provide the reports in a timely manner. The way the accreditation system and the MedCo portal are designed needs to address this concern fully. This would appear from the stakeholder meetings to be eminently feasible. Overtime it is likely that this will diminish or alter the need for MROs and the purpose that they serve.

3.3 To allow the market to effectively sort this out, it is essential that MROs do not dominate MedCo search results. Because of impact on the quality of assessments further down the line, the CSPs preference is that individual MedCo search results offer a choice of named practitioners. If MROs need to be included it is essential that this is as a choice, along with individual named practitioners, for the reasons outlined.

4. Do you agree that the proposed amendments to paragraphs 1.1 (A1) and 1.1 (10A) of the pre action protocol, rules 45.19, 45.291 of Part 45 and miscellaneous amendments to the CPR in annex C are sufficient to ensure that only accredited medical experts are instructed to provide fixed cost medical reports in whiplash cases? Do you agree that the transitional provisions in paragraph 4.7 are appropriate?

4.1 The CSP has no comments to make in answer to this question.

5. The Government is working closely with stakeholder representatives to develop a proportionate accreditation process; we would welcome any views or suggestions relating to standards, criteria or training.

5.1 There needs to be robust and clear standards and criteria in relation to legal, medical and professional competences.

5.2 In relation to legal competences we suggest that minimum criteria for accreditation should be:

- A working knowledge of expert duties under Part 35 CPR and Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents
- Experience of report writing
- Experience giving evidence in court

5.3 In relation to medical competences we suggest that minimal criteria for accreditation should be up to date knowledge of:

- Mechanism of injury and pathology
- Natural history of soft tissue injuries
- Clinical features of soft tissue injuries
- Examination and diagnosis of soft tissue injuries
- Prognosis in soft tissue injuries
- The role of physiotherapy in rehabilitation of soft tissue injuries

5.4 The CSP and the HCPC provide clear standards of practice. These include:

- HCPC standards of proficiency for physiotherapists
- HCPC standards of conduct, performance and ethics
- CSP code of professional standards and behaviours
- CSP Quality Assurance Standards

5.5 Since 1992 physiotherapy has been a graduate entry profession. Physiotherapists typically qualify via undergraduate degrees or pre-registration MSc programmes. To maintain HCPC registration, physiotherapists are compelled to engage with continued professional development. This may be through a variety of formal and informal learning opportunities relating to developing competency and enhancing personal scope of practice. Physiotherapists may undertake formal post-graduate training, attend short courses or develop competency through practice based learning.

5.6 The Health and Care Professions Council (HCPC) was set up with the primary purpose of ‘protecting the public’. They regulate a range of health and social care

professions, including where a clinician is a qualified prescriber (e.g. qualified physiotherapy independent prescribers) but not individual specialties or activities.

5.7 To develop a pool of accredited experts that can raise the quality of assessments and reports, it is important not to preclude those experts with the necessary clinical experience but without previous experience of 'soft tissue personal injury' work. Requirements such as references from solicitors or insurers who can give an opinion on the expert's quality of 'soft tissue personal injury' work would exclude competent experts from becoming accredited who have no prior experience. This should not be a feature of initial accreditation. If references are deemed to be necessary they should be drawn from the expert's current clinical practice. We have some concerns that the current draft plans for referee-based 'personal injury' peer review will advantage those already working in the system and become an obstacle to competent clinician-experts attaining accreditation, thus maintaining the status quo of the existing pool of experts.

6. Do you agree that the proposed new paragraph 6.3A in the Pre-Action Protocol is sufficient to ensure that claimant representatives undertake a 'previous claims' data search prior to accepting new claims?

6.1 The CSP has no comments to make in answer to this question.

7. Do you consider that the amendments contained in this consultation will impact on people with protected equality characteristics? If so please give details.

7.1 The CSP has no comments to make in answer to this question.

8. Further comments in relation to the amendments covered by this consultation.

8.1 To support the objective to reduce fraud and improve quality of assessments then action needs to be taken to stop current poor practice that sees assessments carried out in the briefest of appointments (5-10 minutes, or even less) and clinical examination forms being completed by the Claimant prior to seeing the expert.

8.2 This abuse of good practice is unfortunately driven by the low fee that the expert receives from MRO's – in some cases as low as £30. It would be impractical to impose a time limit upon the clinical examination. We therefore propose a mechanism whereby the expert must sign a mandatory declaration. This would be akin to the Statement of Truth - that they themselves completed the history taking and the physical examination as described in the report also stating the time taken to complete the examination. This can then be collected in the audit and utilised in appraising the performance of the expert.

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For further information on anything contained in this response or any aspect of the Chartered Society of Physiotherapy's work, please contact:

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