

Hitting the headlines

Mark Solon provides a whiplash update



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The Ministry of Justice (MoJ) continues its crusade to curb the country's alleged compensation culture and rid the UK of its title of the whiplash capital of Europe by implementing the second part of its "whiplash reform programme" last month.

Meanwhile, the soft-tissue injury has had the Hollywood treatment. It has become a BAFTA-winning film about a college drummer and his ferocious conductor and infamous pop legend Madonna told Jonathan Ross that she had suffered the condition after a wardrobe malfunction that caused her to tumble while performing at the Brit awards.

The government's long-awaited reforms, introduced on 6 April, are far less entertaining. They follow a four-week consultation last autumn, and mean that all medical reports in whiplash claims will now have to be commissioned through a single online portal (www.medco.org.uk).

Medical experts must be fully trained and registered with the company behind the hub, MedCo Registration Solutions, in order to provide £180 fixed fee medical reports. They are required to pay an annual £150 registration fee to join up.

New allocating system

Solicitors looking to commission reports also have the choice of one top-tier or high volume Medical Reporting Organisation (MRO) and six second-tier smaller ones from which to do so.

In announcing the provider numbers, the Ministry of Justice explained that having fewer than six smaller MROs risked "excessively favouring" the high volume, national MROs, while including more than six would compromise the independence the new system was set up to ensure.

The top tier MROs have to pay annual registration fees of £75,000, while the smaller ones must cough up £15,000 a year.

The volume MROs must have the capacity to process at least 40,000 reports a year and show they have at least 250 individual medical experts on their books. They must have at least five distinct clients that are not associated with the MRO, none of which represents more than 40% of its total instructions.

They also need to lodge a bond or other financial instrument of £100,000 to demonstrate they have sufficient funds to pay medical their experts in the event that they shut. All classes of MRO must have on place at least £1m of professional indemnity insurance and £3m of public liability insurance.

Many of the big guns have got their applications in. Doctors Chambers, together with sister company Bodycare Clinics, Premex, with its sister company UK Independent Medical, Speed Medical and its sister company MLA have also registered to be high-volume providers. In addition, outsourcing giant Capita is also believed to have made an application.

MedCo's website explains that those seeking reports will be able to search for either individual experts or MROs and the

system will return a selection of "randomly generated" results from which they chose. Those commissioning reports will no longer be able to approach them directly or select a particular expert.

The government said its intention behind the new allocating system was designed to ensure independence by cutting any financial link between the solicitors' firms' commission reports and the medical experts and MROs from which they seek them, thereby reducing the number of exaggerated or fraudulent claims.

Blunt tool

The Law Society voiced concern that the new arrangements were a "blunt tool" for addressing the perceived problems and solicitors themselves have suggested the move will increase cost and complexity and remove any control from the claimant over the medic instructed.

They have also warned that lawyers could be driven out of the system altogether as the portal will be used for third party capture. There is to be a judicial review challenge to the change on the basis that it will impede a claimant's ability to prepare their own case and ultimately deny access to justice to those with personal injury claims.

While medical experts are concerned that the move will break down the relationships between insurers and experts and lead to a diminution in the quality of reports as poorer quality providers will be given the same opportunity to provide reports as those of a higher quality.

Consultation

Responding to its consultation on the reforms, the MoJ said it is aware that the reforms may have an impact on longstanding relationships between claimant representatives and the organisations or experts they use to source medical reports. But it said: "We consider that the impact of the introduction of a random allocation process is justified when set against the strong public interest in removing financial or other conflicts of interest from the system, and providing a more robust evidence base for those who are genuinely injured."

The reforms also introduce mandatory accreditation and reaccreditation of experts, which will be operated by MedCo, though that will not come into effect until January 2016. All current experts will be allowed to register with MedCo, but any who fails to gain accreditation will have their details removed from the system and will only be able to re-register once they have gained accreditation.

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