

Legal Reforms and Whiplash Reporting

The Ministry of Justice has undertaken a review of the legal system in England and Wales. Scotland and Northern Ireland are unaffected. Find out what the changes mean for physiotherapists.

Reforms to the Legal System and Processes

The Ministry of Justice (MOJ) has undertaken a wide ranging review of the legal system in England and Wales, and Scotland and NI are unaffected. As a result of this review there have been changes to how criminal and civil cases are managed by the legal system.

Criminal Cases: The Legal Aid scheme has been reformed. This has changed affect the fees paid to barristers doing work funded by the Legal Aid scheme. It has also raised the threshold for eligibility for individuals to access public money through Legal Aid to defend themselves against criminal allegations.

Civil cases: Changes known as 'Jackson Reforms' have been introduced to ensure more efficient legal process including Court process, with greater pressure on parties to settle cases without going to Court. The changes affect how costs are recovered by solicitors, and introduced the use of costs budgets, the use of deadlines to cut down unnecessary delays, and changes to how expert witness can be used.

Personal Injury: These claims are a particular category of civil claims. Personal injury claims cover a spectrum of injuries from a minor **whiplash (soft tissue)** injury caused by a motor vehicle accident, to major catastrophic life changing injuries sustained through accident or **clinical negligence**. Because of the high level of fraud involved with soft-tissue claims arising from road traffic and motor vehicle accidents the MOJ has reformed how these cases are managed.

Medicolegal work and physiotherapy practice.

An understanding of medicolegal matters is beneficial in all areas of physiotherapy practice and at all stages of career progression. Physiotherapists may be required, or choose, to be involved in medicolegal work at any stage of their career in three main ways.

You should be clear on the ways in which you could be involved in medicolegal work and the training that might be required if you work in certain areas.

Types of physiotherapist involvement in medicolegal work

- **Witness of Fact.**

As the 'treating physiotherapist' you may be asked to provide information for one of your patients who is involved in a civil litigation process, usually a personal injury or clinical negligence claim. A

physiotherapist who is a witness of fact is required to comply with an appropriate request to provide the patient’s physiotherapy records and/or a report. The physiotherapist cannot decline to co-operate with the request, although for many employed physiotherapists, a dedicated person within the hospital/ clinic will deal with the request. No specific training is required, and the solicitor in charge of the case would be expected to provide appropriate support and information, should the physiotherapist need to be directly involved.

- **Expert Witness**

Some physiotherapists, who have developed expertise in a specific area of practice as well as the legal litigation process, may choose to undertake **expert witness** work. These physiotherapists are wholly independent of the patient and have never been involved in their treatment. This work involves preparing reports, joining conferences and giving evidence during a legal case for compensation following an accident or injury as part of a personal injury or clinical negligence claim. It can also involve work in the criminal courts. Not only must you be a recognised expert in your clinical and/or practice area but you must also have specific training in the expert report writing process and Civil/Criminal Procedure Rules, and maintain your fitness to practise in this area.

- **Coroners Witness / Interested Person**

You may be asked to assist in a coroner’s inquest in order to determine the cause and circumstances of a person’s death. A physiotherapist may be asked to give factual or opinion evidence depending on the coroner’s investigation. No specific training is required. A person who is called to give evidence as a **‘witness’** is not entitled to be legally represented whereas a person who has been given the status of **“interested person”** by the Coroner is entitled to be legally represented and have questions asked on his or her behalf. The definition of an **“interested person”** is someone whose act or omission may have caused or contributed to the death of the deceased.

Whiplash (Soft-Tissue) Reporting

Whiplash claims usually arise as a result of a motor vehicle collision and are ‘low value’ in terms of the compensation paid. Whiplash claims are dealt with as part of ‘personal injury’ litigation. Physiotherapists providing medical reports for low value whiplash claims will see significant changes to how cases and reports are managed as well as how they are paid. The changes relate to:

- **Fees**

The MOJ has introduced fixed fees for all types of medical report for whiplash claims.

These fees are:

First Report	£180 – GP/ Physiotherapist/ A&E Consultant/ Orthopaedic Consultant Surgeon.
Second Report	£180 – GP/ Physiotherapist

	£360 – A&E consultant £420 – Orthopaedic consultant surgeon
Obtaining medical records	£30 plus direct costs incurred by record holder, capped at £80 in total
Addendum Report	£50 (not applicable to orthopaedic consultants as their fee includes time review of medical records)
Answers to Part 35 questions	£80

No fee is payable where the expert has provided treatment to the claimant, associated with any person who has provided treatment, or proposes or recommends that they or an associate provide treatment. This is to ensure there is no incentive to offer unnecessary treatment, nor can the impartiality of the report be compromised because the expert has been involved in the treatment of the patient.

- **Claims Management**

Low value soft tissue injury claims management has changed, in particular to ensure that the experts are properly independent and appropriately qualified to undertake whiplash reporting.

There is now an independent hub for the allocation of experts to soft tissue injury claims, called 'MedCo'. Anyone wanting to obtain a soft tissue injury medical report must go through MedCo to obtain a randomly generated list of MedCo approved individual experts or medical reporting companies. MedCo allocates experts to claims to ensure that there is no link between the claimant and the expert. There will also be compulsory data sharing with regard to previous claims from the same applicant to seek to reduce fraudulent claims.

CSP members should be aware that as the fee for reports is fixed, where members work through a medical reporting company rather than as a directly appointed expert, then the fee the physiotherapist actually receives for their report may be considerably less than £180.

- **Accreditation with MedCo for soft tissue injury claims**

Expert witness work is not independently regulated, although medical and health professional experts are regulated by their relevant professional regulator. For physiotherapists, this is the HCPC. Expert witnesses do not have to be accredited, but it is usual for experts, particularly in high value clinical negligence work, to be required to have specific recognised training in expert witness reporting, and to understand their reporting obligations under Part 35 of the Civil Procedure Rules.

In an attempt to ensure quality standards on soft tissue injury reporting, in order for a physiotherapist to be listed with MedCo, they will have to prove they are appropriately trained in expert reporting, and be accredited by MedCo. The physiotherapist will have to pay for both MedCo registration and accreditation, but payment of these fees does not guarantee that you will get any subsequent work through MedCo.

MedCo is now accepting individual applications from physiotherapists to join the MedCo register of approved whiplash report experts. You can apply to join the register as a 'direct expert' and there is no need for you to be part of a larger 'medical reporting company' if you don't want to be. There is a £150 registration fee to join the MedCo register.

Other types of expert witness reporting

Major personal injury and clinical negligence claims are rarely low value and so are not subject to the MOJ reforms. Physiotherapists working in clinical negligence expert reporting will continue to work directly with the instructing solicitors, and their work will be paid according to their agreed hourly rate and terms of business.

Useful Links

CSP PLI pages <http://www.csp.org.uk/professional-union/practice/insurance>

Criminal Defence Costs Insurance

<http://www.csp.org.uk/professional-union/practice/insurance/additional-csp-insurance-schemes>

MedCo <http://www.medco.org.uk/>

MedCo is a non-profit organisation established to improve the process for managing soft-tissue injury low value personal injury claims. Its Board of Directors includes organisations from across the legal, professional and motor insurance industry. The CSP is a Director of MedCo, and our views are represented on MedCo by Mr Brian Simpson DSA, MCSP.