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Review Statement – Code of Practice for tracing Employers' Liability Insurance Policies

1 January 2010 – 31 December 2010

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Ministerial Foreword

The voluntary Employers’ Liability Code of Practice (ELCOP) for tracing employers’ liability (EL) insurance policies was established in 1999 to assist people in tracing their former employer’s EL policy when they need to claim compensation for an occupational injury or disease. Under ELCOP insurers committed to retain and do their best to search existing historic EL policy records, and to retain future records in ways that would make it easier to answer future enquiries.

In the twelve years since its introduction, almost 91,000 enquiries have been made to the ELCOP tracing service, with around 35,000 of them resulting in successful matches. This has meant that approximately 20,000 people have been able to trace an EL insurance policy, and are more likely to get compensation that they might otherwise not have received.

Without doubt the ELCOP tracing service has provided a valuable service, resulting in more people, especially those with long tail diseases, being able to access the compensation to which they are entitled. But, insurers’ historic data is not always a complete record of all the EL policies they have issued and consequently the success rate of the tracing service has not been as good as we had all hoped, with many vulnerable individuals still left without help. In 2010, of the 8,017 claimants who needed to use the tracing service only 56% were successful in finding a relevant insurer. This cannot be acceptable and is why, in 2010, the DWP published the consultation, “Accessing Compensation – supporting people who need to trace Employers’ Liability Compensation”, which set out proposals for people who need to find their employers’ EL insurance policies.

One of the proposals to help more people to find their employer’s insurer was the introduction of an Employers’ Liability Tracing Office (ELTO). I was therefore greatly encouraged when the insurance industry introduced an ELTO earlier this year. Their ELTO has built and will maintain a comprehensive electronic database of all new and renewed EL policies, as well as old EL policies that have a new claim made against them, and all successful traces. More than 98% of the active EL insurance market has joined ELTO and since May 2011 it has absorbed the ELCOP tracing service. Unlike the ELCOP tracing service, which relies on insurers checking against their own policy records, ELTO provides claimants and their representatives with access to an electronic database of EL policies through an online enquiry facility.

We are working hard to see what can be done for those injured people, who after all avenues have been exhausted, are still unable to find an insurer to claim against. I appreciate that the Government’s response to the consultation is taking longer to publish than many had hoped, but the issues raised are complex and we remain in active discussions with all stakeholders to make sure we get this right.

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The introduction of the ELTO in no way pre-empts the content of the Government's response to the consultation. We are still carefully considering all the issues and will bring forward our proposals in due course. In the meantime the Government supports the development of the ELTO and waits with interest to see its first results next year.

As ELTO has now replaced ELCOP this is the final Statement of the Review Body on the Code of Practice. I would like to take this opportunity to thank the Review Body for their efforts in the preparation of this document as well as their unflinching work on this agenda over the past twelve years.

A handwritten signature in black ink, appearing to read 'Freud', is centered on the page.

Lord Freud
Minister for Welfare Reform

Introduction

1. The Association of British Insurers (ABI) and the Lloyd’s Market Association (LMA) has operated the Code of Practice (ELCOP) for tracing employer liability insurance policies since 1 November 1999. Under ELCOP insurers agreed to retain, and do their best to search, those employers’ liability policy records that exist.
2. The ELCOP was set up to address the difficulties some employees experience in identifying the relevant employers’ liability insurance policy, in order to claim compensation for injury or disease sustained at work. The problem is most common in occupational disease cases, which can take many years to develop, and by the time a person needs to make a claim the employer has ceased trading and details of their insurance have been lost or destroyed.
3. To help insurers fulfil their commitment to the ELCOP, the ABI has run a tracing service. Claimants fill in an online enquiry form, and the enquiries are then sent out to all ELCOP signatories. Insurers respond if they find a match with their policy records, and this information is sent to the claimant.
4. The ELCOP was introduced to ensure that, from its introduction, insurance records would be much more accessible. However, it has not always been possible to capture data on policies which had lapsed earlier, as some records had already been destroyed or, in very old cases, never existed.
5. So that policies issued since November 1999 could be traced easily, one important feature of the ELCOP was an undertaking by insurers to keep records of current and future policies for 60 years. The ELCOP therefore imposed an obligation on its members to ensure they stored records of policies in a readily searchable format.
6. In theory, post 1999 tracing should always be successful. However post 1999 tracing success rates are not as high as hoped. Part of the reasons identified was that the insurance industry had not been capturing full and complete information about both the insured employer and their subsidiary companies. Also policy records were not always being stored in an accessible format. For these reasons, in 2008, the industry introduced the Protocol for Recording EL Policies, which requires insurers to record information about subsidiary companies, and for brokers to provide this information.

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7. Further changes were made to improve tracing with the introduction of the Employers' Liability Tracing Office (ELTO) in April 2011, which has succeeded ELCOP as the system to search for EL insurers. ELTO has built and will maintain a complete electronic EL Database (ELD) of all new and renewed EL insurance policies from April 2011, policies from before April 2011 that have new claims made against them and policies that were identified through the previous tracing service.
8. The ELD improves upon the ELCOP tracing service, which relied solely on insurers checking against their own policy records, to make it easier to find records and identify the insurer to enable claimants to pursue compensation. The ELD allows claimants and their representatives can carry out an immediate search.
9. Any enquiries submitted to ELTO that do not match records on the database will undergo an extended search, where enquiries will be circulated to EL insurers, for them to check against their own records (in a similar way as to how the ELCOP tracing service operated). All successful responses will be uploaded onto the database.
10. Although the ELCOP tracing success rate has not always been as high as hoped for, especially in the area of post 1999 tracing, its contribution towards helping people find an insurer still must be recognised. Since 1999, the ELCOP has helped around 20,000 claimants source an EL insurer. This enabled these people to potentially be able to receive compensation, that without the ELCOP they would not receive. The Review Body expects the ELD to deliver a substantial improvement in tracing rates in the future.
11. This Performance Report was produced by the Review Body (See **Appendix 5** for membership details), demonstrating their commitment to closer stakeholder working and trust between partners. The ABI and LMA joint report is attached at **Appendix 6**.

Report for the period from 1 January 2010 to 31 December 2010

12. The ABI report shows 18,590 enquiries were circulated during this reporting period. This represents an increase of 17% on the number of enquiries made in 2009 (which is broadly in line with previous year on year increases in the number of enquiries made to the tracing service). However, the success rate, at 46%, has remained fairly level since 2008.

Review Period	Enquiries	Successful traces	Success rates
1999-2000	1062	262	25%
2000 - 2001	2239	896	40%
2001 - 2002	3753	1576	42%
2002-2003	6992	1861	27%
2003-2004	6299	1700	27%
2004-2005	7326	1700	23%
2005-2006	6658	1851	28%
2006-2007 (14 months)	11,245	3939	35%
2006-2007 annualised	9639	3376	35%
2008	13,098	5878	45%
2009	15,503	6995	45%
2010	18,590	8465	46%

Table 1: total number of enquiries per review period.

13. In 2010 the number of enquiries submitted by defendants rose to 2680. Of these 45% were successful in finding details to reconstruct previous insurance. Defendant enquiries represented more than 14% of total enquiries made. During the reporting period there were 15,910 claimant queries with 7,249 (46%) receiving information on at least one insurance policy.

Post 1999 Tracing

14. Traces for EL policies issued on or after 1 November 1999 should, in theory, always be successful, providing the trace request contains all the required information and is covered by the ELCOP. At the onset of the ELCOP, signatories undertook to keep future policy records in a robust searchable format for 60 years, and their tracing systems should be effectively resourced with adequate IT and ample staffing.
15. During this reporting period, the post 1999 success rate for non-mesothelioma cases is 52%, and 64% for mesothelioma cases. Although this is an improvement on the previous year, the Review Body remains extremely disappointed that the success rate for post 1999 enquiries remains so low.

Pre 1999 Tracing

16. In 2010, the success rate for pre 1972 tracing (prior to EL insurance becoming mandatory) is 30%. The 1972 - 1999 success rate is 49%.

Fast Track Mesothelioma Service

17. Mesothelioma is a terminal disease with terrible effects on peoples' lives and is now the most common cause of work-related death. The Review Body acknowledges that no amount of money can ever fully compensate individuals and families for the suffering and loss caused by mesothelioma.
18. A fast track facility was set up to help speed up the tracing process for mesothelioma claimants. This facility aims to respond to enquiries within 5 weeks. Currently, responses to enquiries that go through the mesothelioma fast track facility are provided within 2 weeks.
19. In 2010, the ABI processed enquires on behalf mesothelioma 1103 sufferers. 566 (51%) mesothelioma sufferers who needed to use the tracing service were able to find an insurer to make a claim against. Although there has been an increase in the number of enquiries this has not translated into an increase in tracing success rates. Still, it is recognised that the tracing service can be of great value to some terminally ill people.

Existing state schemes

20. Existing state schemes already ensure early support for people with industrial diseases. Industrial Injuries Disablement Benefit (IIDB) is a non-contributory benefit paid to employees who, as a consequence of their employer's negligence, become disabled through an accident at work or as a result of an occupational disease. The Pneumoconiosis etc. (Workers' Compensation) Act 1979 provides lump payments to workers

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with certain dust related diseases (including mesothelioma), whose employer or insurer cannot be traced. Part 4 of the Child Maintenance and Other Payments Act 2008, provides lump sum payments for all mesothelioma sufferers, regardless as to whether the disease was caused through employment.

Summary of comments from the Review Body

21. The Review Body is disappointed with the results from this review period. The overall success rate has not improved over that past three reporting years. Still, members acknowledge that the ELCOP service has been of valuable support to some people.
22. The ABI expressed a view in their report that there was limited awareness, especially in the early years of ELCI, about the length of time between exposure and diagnosis of some diseases. This view was not shared by all members, some being of the opinion that the long latency nature of asbestos related disease has been widely reported for many years, although this knowledge may not have been given due recognition previously.

Employers’ Liability Tracing Office

23. The Employers’ Liability Tracing Office (ELTO), including a database of Employers’ Liability (EL) policies became operational in April 2011.
24. ELTO is a separate body to help claimants find the insurer of their former employer, where they are suffering from a disease/injury caused at work. To do this, ELTO has built and will maintain a complete EL Database of all new and renewed EL policies, all old EL policies that have new claims made against them, and all successful traces from the existing EL Tracing Service. This differs from the ELCOP tracing service, which was supported by a voluntary code of practice and relied solely on insurers checking against their own policy records.
25. Although insurers will join ELTO on a voluntary basis the ABI has confirmed that 101 active EL insurers (over 98% in Gross Written Premium market share) and 43 run-off insurers have signed up to ELTO. The Financial Services Authority (FSA) has recently consulted on proposals to compel all insurers to make tracing information available and will consult further on how EL registers will be certified and audited.
26. Some Review Body members and associates expressed concern about the introduction of the ELTO ahead of the Government’s response to the consultation paper ‘Accessing Compensation - Supporting people who need to trace Employers’ Liability Insurance’. The consultation included questions about, the structure, governance and composition of the ELTO that have yet to be addressed.

Issues to consider

27. Existing Review Body members are keen to engage with ELTO however some feel it is inappropriate to take up the offer of a place on the ELTO board, whilst the response to the Government’s consultation is outstanding. ELTO board members agreed to consider what more they can do, short of board membership, to engage further the stakeholder community in advance of the Government’s response to the consultation. They will look into holding ELTO stakeholder meetings later in 2011.

Complaints

28. Appendix 2 details the formal complaints procedure that attaches to the ELCOP.

29. There were no complaints about the performance of any insurer under the ELCOP made to the ABI or to the LMA in 2010. DWP received no formal complaints under the prescribed procedures since the inception of the ELCOP in this review period.

Future reviews

30. This is the final ELCOP review. ELCOP was succeeded by ELTO in April 2011. ELTO will make separate arrangements for future reporting. The Review Body is keen that the ELTO has a greater success rate than the ELCOP and believes future reporting should enable comparisons to be made between the two.

31. The Review Body thanked both the ABI and LMA for their continued hard work and effort in 2010. The Review Body endorsed their own commitment to pro-actively engage with the ABI, LMA and relevant stakeholders to ensure an effective and efficient tracing service for the future.

Appendix 1: Summary of the review procedure

The Review Body

1. The Review Body that produced this Review Statement is chaired by the Department for Work and Pensions. Appendix 5 provides details of the organisations represented at the Review Body.
2. Representatives are nominated by their representative bodies. A list of the members involved in this review statement is at Annex B of the ABI/LMA report.
3. Between them, the ABI and the LMA represent the majority of the UK insurance industry. The ABI is a trade association that represents insurance companies, some of whom underwrite or have underwritten employers’ liability insurance, and the LMA is the trade association for insurers transacting business in the Lloyd’s market, some of who underwrite or have underwritten employers’
4. Some insurers are not represented by either the ABI or LMA but also underwrite or have underwritten employers’ liability insurance policies, including companies and syndicates that are solvent and active, solvent and in “run-off” and insolvent and in “run-off”. For this reason, other representative bodies are also on the Review Body, including the Association of Run-Off Companies (ARC), the International Underwriting Association (IUA) and the FSCS.

How the Review was done

5. The Review Body met on Thursday 1 September 2010.
6. In producing this Review Statement, the Review Body has taken into account the Annual Reports produced jointly by the ABI and LMA on how they operated the ELCOP, and the performance of the Tracing Service, during the period of the Review. The ABI and LMA Report is reproduced in full at Appendix 6 of this report.
7. An employer may buy employers’ liability insurance from:
 - i. an insurance company, or
 - ii. an underwriting syndicate at Lloyd’s
8. Findings in the last report indicated that the majority of enquiries under the ELCOP are received by Association of British Insurers under the Tracing Service. When enquiries are received by the LMA, they are almost invariably also received by the ABI from the same enquirer.

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9. Annex A of the ABI/LMA report details the numbers of Tracing Service enquiries circulated by the ABI to signatories to the ELCOP. It also shows the number of successful traces and success rates for the period of the Review.

Signatories to the Code

10. The joint report (Appendix 6) provides a list of the ABI/LMA members who are ELCOP signatories, statistical information on the working of the Tracing Service and further background information.
11. ELCOP signatories were asked by the ABI or LMA, as appropriate, to sign end-of-year compliance statements along the following lines:
12. “For the period 1 January 2010 to 31 December 2010, I confirm that [name of Insurance Company/Managing Agency] has enforced the Code of Practice for Tracing Employers’ Liability Insurance records and made every practical effort within reasonable bounds to try and establish for a potential claimant whether it was on risk at the time their injury occurred or during the period of exposure to cause an occupational illness or disease.”
13. Each of the signatory companies has also been asked (by the ABI or LMA) to set out what information they hold on historical policies. This statement lists the years for which records are available, and the format they were stored in – paper, microfiche or computer. A copy of an insurer’s statement can be obtained by application to the relevant insurer, the ABI or LMA.

Appendix 2: The Complaints System

ABI Procedures

1. There is a formal complaints system under the ELCOP. If an enquirer has a complaint about the conduct of a particular insurer in relation to their operation of the ELCOP, this should in the first instance be referred in writing to that insurer.

Action by the Insurer

2. The insurer must acknowledge a written complaint within 5 working days of receipt, giving details of their complaints handling procedure. A definitive response must be provided within 40 working days. If the enquirer is not satisfied with the explanation provided, they may refer the complaint in writing to ABI, who will take up the matter with the company concerned.

Action by ABI

3. A complaint which is referred to ABI will be acknowledged within 5 working days of receipt. ABI will forward correspondence to the senior management of the insurer concerned, for their review and action, as appropriate. If the enquirer is not satisfied with the explanation provided, they may refer the complaint in writing to the Department for Work and Pensions.

LMA Procedures

4. Any complaint made by an enquirer about the conduct of a particular syndicate subscribing to the ELCOP should, in the first instance, be referred in writing to that syndicate. Every syndicate at Lloyd's is required to have written complaint procedures to enable the prompt and proper handling of complaints. If it is felt a syndicate has failed to resolve the matter, the dispute can be referred to Lloyd's Policy holder and Market Assistance. Correspondence should be addressed to:

The Manager - Lloyd's

Policyholder and Market Assistance

1 Lime Street

London

EC3M 7HA

5. The Lloyd's Policyholder and Market Assistance Department will acknowledge the complaint within 5 working days of receipt, and will initially refer the matter to a senior representative of the syndicate

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concerned and allow them a final 14 working days to review the matter. Lloyd’s Complaints Department can be asked to investigate the matter if it still remains unresolved after that time. In the event that the matter remains unresolved after investigation by Lloyd’s Policyholder and Market Assistance, the dispute may be referred to the Department for Work and Pensions.

DWP procedures

6. Consideration of a complaint by DWP is the final stage of the complaints process. DWP will only consider a complaint if, in the case of an insurer, the insurer and the ABI, or a Lloyd’s Syndicate, the Syndicate and Lloyd’s Policyholder and Market Assistance have first been given the opportunity to resolve it.

Contacting DWP

7. Complaints should be made in writing and sent to:

Department for Work and Pensions
Health, Work and Wellbeing Directorate
Code of Practice on Tracing Employers’ Liability Insurance Policies
Caxton House
2ND Floor
Tothill Street
London
SW1H 9NA

How your complaint will be dealt with

8. DWP will acknowledge the complaint within 5 working days of receipt. DWP will decide if the insurer or syndicate acted in accordance with the ELCOP or not, on the basis of written evidence from the complainant and the insurer. The complainant should state clearly what aspect of the ELCOP they believe has not been observed, and provide supporting evidence. The insurer or syndicate will be asked to explain their view of the case and provide relevant supporting evidence.

Where DWP concludes that a complaint is justified

9. It will inform the insurer or syndicate in writing (with a copy to the ABI or Lloyd’s Policyholder and Market Assistance as appropriate), giving the reasons for its decision. DWP will give the insurer or syndicate one calendar month in which to rectify the situation. If the insurer or syndicate does not do so, DWP’s report to the Review Body on the complaints it has received that year will highlight the case, and recommend that the Review

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Body should draw attention to it in its published Annual Statement – naming the insurer or syndicate concerned¹. DWP will inform the complainant of its final decision on their complaint, and the reasons for this.

10. Where DWP concludes that a complaint is unjustified, it will inform the complainant and the relevant insurer or syndicate (with a copy to the ABI or Lloyd’s Policyholder and Market Assistance as appropriate), and give the reasons for its conclusion.

¹ DWP will report to the Review Body on the number of complaints which have been referred to it and their nature, the numbers which were found to be justified, and the numbers which were not justified.

Appendix 3: Railway Industry Liabilities

Soon after the ELCOP started, the Department for Transport, Local Government and the Regions was asked by the British Railways Board to distribute contact details on the appointed claims handler for BRB liabilities. This was incorporated into the first Annual Review Statement 1 November 1999 – 31 October 2000. The information below has been updated and provided by the Department for Transport.

Under the Transport Act 2000, the residuary liabilities of the former British Railways Board have been vested in BRB (Residuary) Limited. These include liabilities for certain (but not all) pre-1994 liabilities of the railway industry, including liabilities of the old pre-nationalisation railway companies. No insurers were involved due to the existence of self-insurance arrangements

Further information can be obtained from BRB (Residuary) Limited appointed claims handling agents Crawford & Company Adjusters (UK)

All correspondence, including letters of claim, should be sent to this address and not to BRB (Residuary) Limited.

Tempus

249 Midsummer Boulevard

Central Milton Keynes

Bucks

MK9 1YA

Appendix 4: British Coal Liabilities

Capita's Coal Health Contract (CHC) handles all claims from former British Coal miners on behalf of the Department for Business, Innovation and Skills (BIS).

The liabilities of British Coal passed to BIS in 1998 (liabilities moved to the Department of Energy and Climate Change in December 2008) and the resulting schemes form the largest piece of personal injury litigation ever to pass through the British courts, with a total estimated liability of £7 billion.

The majority of claims handled by the business fall into two main categories:

Respiratory diseases - chronic obstructive pulmonary disease or COPD

Those relating to the use of vibrating power tools, often referred to as Vibration White Finger (VWF)

Appendix 5: Key Review Body members

James Wolfe	Department for Work and Pensions (Chair)
James Dalton	Association of British Insurers
Briony Krikorian	Association of British Insurers
Karl Tonks	Fentons Solicitors
Lorraine Gwinnutt	Association of Personal Injury Lawyers
Neil Carberry	Confederation of British Industry
Malcolm Keen	Forum of Insurance Lawyers
David Powell	Lloyd’s Market Association
Hugh Robertson	Trade Union Congress
Steve Foulsham	British Insurance Brokers Association
Paul Corver	Association of Run Off Companies

Associated Review Body members

(Those parties invited as observers and/or contributors of market information to the Review Body).

Karl Jefferies	Financial Services Compensation Scheme
Peter Furby	International Underwriting Association
Christopher Jones	International Underwriting Association
Mike Klaiber	Zurich Insurance
Anthony Whitston	Asbestos Victims Support Group
Steve Browne	AXA Insurance
Tony Sherman	Motor Insurers Bureau

Appendix 6: Joint report by ABI and LMA (1 JAN 10 - 31 DEC 10)

**This is a joint report by the Association of British Insurers (ABI) and
Lloyds Market Association (LMA) covering the period 1 January 2010 –
31 December 2010**

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James Wolfe
Department for Work & Pensions
Workplace Health Division
Caxton House
3rd Floor, Tothill Street
London SW1H 9NA

18 August 2011

Dear James,

Code of Practice for Tracing Employers’ Liability Insurance Policies

Attached is our report on the Code of Practice and the Tracing Service for 2010. This is the seventh and final report² on the voluntary Code of Practice, which has been replaced by the FSA regulations on tracing employers’ liability insurers.³

Insurers have taken their commitment to tracing EL policies a step further by creating the EL Tracing Office (ELTO), which is compliant with the FSA requirements for tracing offices under the regulations.⁴ From April 2011, ELTO has begun to capture all new and renewed EL policies on a central database, allowing employees immediate access to this information, and has also taken over the circulation of enquiries relating to past EL policies to insurers.

In 2010, the tracing service:

- Received over 18,500 enquiries, and responded to around 8,500, with a success rate of 46%;
- Helped 5,469 potential claimants find one or more insurer to claim against;
- Helped 566 potential mesothelioma claimants find one or more insurer to claim against.

As the Code of Practice ceases this year and the ABI no longer operates the tracing service, the ABI will not be reporting to the Review Body or the DWP on future tracing performance. ELTO has its own reporting structures, and we envisage current Review Body members and the DWP will have a role in overseeing ELTO in the future.

James Dalton
Assistant Director, Property, Motor and Liability
Association of British Insurers

² Previous reports covered the periods 2000-03, 2003-05, 2005-06, 2006-07, 2008 and 2009.

³ See Policy Statement (PS11/4), published on 25 February 2011, and associated transitional provisions (ICOBS TP 12), both available at http://www.fsa.gov.uk/Pages/About/Who/Management/Teams_1/Insurance/employers/index.shtml.

⁴ See 8.4.9-10 in Policy Statement (PS11/4) for tracing office requirements.

Code of Practice for Tracing Employers’ Liability Insurance Policies

ABI/ LMA report for 2010

1. Introduction

- 1.1 The insurance industry is committed to supporting those people who have been injured at work and need to make a claim against an Employers’ Liability (EL) insurance policy. This has been demonstrated by the industry’s commitment to the 1999 Code of Practice for Tracing EL Insurance Policies (the Code of Practice) and online tracing service over the past eleven years. Under the Code of Practice, insurers committed to help an employee identify their former employer’s EL insurer(s) if the employer is insolvent or untraceable and the employee wanted to make a claim for injury or disease caused in the workplace.⁵ The tracing service is the automated online system for employees to use to make such enquiries, and has been run by the ABI over the last ten years.
- 1.2 Insurers have taken their commitment to tracing EL policies a step further by creating the EL Tracing Office (ELTO). From April 2011, ELTO has begun to capture all new and renewed EL policies on a central database together with policies where a new claim is recorded and the policy is not already on the database. This allows employees immediate access to this information. ELTO has also taken over the circulation of enquiries relating to past EL policies to insurers.
- 1.3 This report provides an overview of the performance of the tracing service in 2010. The report refers to several terms which have been used in previous years to measure the effectiveness of the tracing service. We have defined these terms in Annex A. Future reports on tracing will be provided by ELTO, and these will aim for continuity with Code of Practice reports as far as possible.

2. EL claims: the overall context

- 2.1 Employers’ Liability insurance plays a vital role in the UK economy. It provides security and protection for the majority of the 1.2 million businesses in the UK with one or more employees. Accidents and ill health at work are distressing for the employee and disruptive for the employer. Insurers not only provide assurance that employees will be looked after, paying out £1.5 billion⁶ to around 163,394 employees⁷ a year under EL policies, but also guide businesses through risk management processes to better protect the health and safety of their employees. Initiatives from the insurance industry have made workplaces and equipment safer and the industry has been at the forefront of improving occupational health. By providing these vital services,

⁵ The original Code of Practice was agreed in 1999 <http://www.dwp.gov.uk/docs/codedocument.pdf>.

⁶ Average gross claims incurred per year over the five year period from 2005 to 2009, ABI statistics.

⁷ Average number of claims settled per year over the five year period from 2006/07 to 2010/11, Compensation Recovery Unit (CRU) statistics. This does not include claims notified for Noise Induced Hearing Loss where the hearing loss is less than 50dB in one or both ears.

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the insurance industry contributes to a reduction in the demands that would otherwise fall on the welfare system.

- 2.2 Most employees who have suffered an injury or disease through work are able to make a claim quickly and easily against their employer; or, where their employer has ceased trading, are able to identify and make a claim directly against the relevant insurer. The process for claiming directly against insurers has now been simplified further for these employees, or potential claimants, by the Third Parties (Rights Against Insurers) Act 2010⁸. Only around 4%⁹ of potential claimants cannot identify an employer or insurer to claim against, and therefore need to use the tracing service to access compensation, usually in cases where the potential claimant is suffering from a disease that has only recently been diagnosed but the exposure took place a long time ago.
- 2.3 Potential claimants who are not able to find an insurer through the tracing service represent 2% of all claimants who settle an EL claim each year.¹⁰ Of this small sub-set of potential claimants, some will be able to access compensation through other routes, for example, by providing employers’ records of an EL policy to insurers, where the insurer no longer has the relevant record.¹¹ We recognise that some potential claimants who receive results from the tracing service may only receive details of insurance cover for one of their former employers or for part of their exposure period and therefore may not be able to receive full compensation. However, mesothelioma claimants should be able to receive full compensation from one insurer¹²; and other potential claimants may be already in receipt of compensation from other employers and/or insurers. The tracing service is part of a wider process undertaken by claimant solicitors and insurers to reconstruct insurance cover to ensure that the potential claimant has access to compensation.

3. *Insurers’ commitment to tracing EL policies and ELTO*

- 3.1 Over the last eleven years, the industry has been committed on a voluntary basis to the 1999 Code of Practice, and has helped trace EL policy records matching almost 35,000 enquiries, from as early as the 1930s. The industry has recognised that the way in which some EL policies are sold, for example in commercial business packages, has led to some employer details not being accurately recorded by brokers and insurers. This led, in 2008, to the Protocol for Recording EL Policies¹³, and in 2009 to an undertaking by the industry to build a central database of EL policies going forward to ensure future claimants were protected.

⁸ Under this Act, claimants will be able to make a claim directly against an insurer, without the need to bring proceedings against an insolvent employer, or to restore the insolvent employer to the register.

⁹ Analysis based on survey conducted by ABI members, in which they assessed a representative sample of successful EL claims from 2006/07, ABI statistics, 2008.

¹⁰ 2% calculated by comparing 3,559 unsuccessful tracing service claimants to average of 163,394 claims settled according to CRU over the five year period from 2006/07 to 2010/11.

¹¹ This applies to pre-1999 EL policies only.

¹² Through joint and several liability; see the Compensation Act 2006 for more details http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060029_en.pdf.

¹³ For more information on this, see the 2008 and 2009 ELCOP reports at <http://www.dwp.gov.uk/publications/policy-publications/tracing-elci-policies.shtml>.

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- 3.2 In 2010, the industry began work to establish an independent tracing body, the EL Tracing Office (ELTO), to create and run the database. The ABI worked alongside DWP and FSA to ensure that there would be sufficient regulatory underpinning to compel all insurers to publish information on their EL policies. In February 2010, the DWP issued a consultation *Accessing Compensation: Supporting people who need to trace Employers’ Liability Insurance*¹⁴ on particular aspects of ELTO. In June 2010, FSA issued a consultation *Tracing Employers’ Liability Insurers*¹⁵ on proposed regulations.
- 3.3 On 25 February 2011, FSA published a policy statement and regulatory instrument in response to its consultation.¹⁶ The instrument applies to any firm that sells general insurance in the UK. All such firms must notify FSA whether they carry out contracts for EL insurance in the UK – in other words, if they hold EL insurance liabilities for current or past UK employers. Any firm that does hold EL liabilities must:
- produce an employers’ liability register. The register must include certain stipulated information for each EL policy entered into or renewed on or after 1 April 2011; and for each policy not falling into this category, and in relation to which a claim is made on or after 1 April 2011, it must include all stipulated information that the firm holds.
 - obtain a written statement, by a director of the firm responsible for the production of the employers’ liability register, that to the best of the director’s knowledge the register has been properly prepared in accordance with the requirements;
 - obtain an independent assurance report addressing the accuracy and completeness of the employers’ liability register.
- 3.4 According to the regulations, firms must make their employers’ liability register available either on a website at an address notified to the FSA, or by arranging for a tracing office which meets certain conditions to make the information available on the tracing office’s website.¹⁷ On 31 May 2011 FSA confirmed that ELTO meets these conditions.¹⁸ There are currently 136 members of ELTO, representing over 98% of the active EL market.
- 3.5 Since April 2011, ELTO has been collating a central database of all new and renewed policies in a standardised format from its members, and all old policies that relate to claims received by insurers on an ongoing basis. ELTO has dedicated account managers to support each insurer in data supply and full compliance with FSA regulations has been required from 1 July 2011. Claimants, claimant representatives, employers, brokers and insurers can make immediate enquiries against the database via the ELTO website – a ‘simple search’.¹⁹ From April 2012, these policy records will include additional information, including the Employer Reference Number and subsidiary details for each employer, to ensure further accuracy of the records.
- 3.6 In addition, in May 2011, the tracing service transferred across from ABI to ELTO. If an enquirer does not find all of the policy information they need from their ‘simple search’ result, or there is no match against the database, they

¹⁴ See <http://www.dwp.gov.uk/docs/elci-compensation-consultation.pdf>.

¹⁵ Consultation 10/13 *Tracing Employers’ Liability Insurers* http://www.fsa.gov.uk/pubs/cp/cp10_13.pdf.

¹⁶ PS11/4, ICOBS TP 12, as above.

¹⁷ A list of firms notified to FSA is available at

http://www.fsa.gov.uk/pages/consumerinformation/product_news/insurance/employers_liability/table/index.shtml.

¹⁸ See

http://www.fsa.gov.uk/pages/consumerinformation/product_news/insurance/employers_liability/index.shtml#specialist

¹⁹ www.elto.org.uk.

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can request an ‘extended search’. The extended search works as the tracing service did previously - ELTO sends enquiries out to EL insurers to check against their own records, and sends any response back to enquirers within eight weeks of the search request being made (or five weeks for mesothelioma enquiries). Existing successful responses have been uploaded to the database, as will be future successful responses. ELTO members are required to abide by a Tracing Policy, which is based on existing best practice in the industry.²⁰

- 3.7 The FSA will be consulting on the appropriate audit regime for insurers later in 2011, and ELTO has developed its own audit proposals in anticipation of this.²¹ ELTO has its own internal reporting structure, with quarterly reports provided to the ELTO Board (currently in provisional state).²² Key performance indicators include membership levels, customer satisfaction, data supply, enquiry levels and tracing response rates. We envisage that future reports on tracing EL policies will be provided by ELTO to stakeholders and DWP. While the aim will be to ensure continuity with current Code of Practice reports, statistical methods may vary from those used in previous reports.

²⁰ This will be available on the ELTO website shortly www.elto.org.uk.

²¹ These will be made available on the ELTO website following the outcome of the FSA consultation www.elto.org.uk.

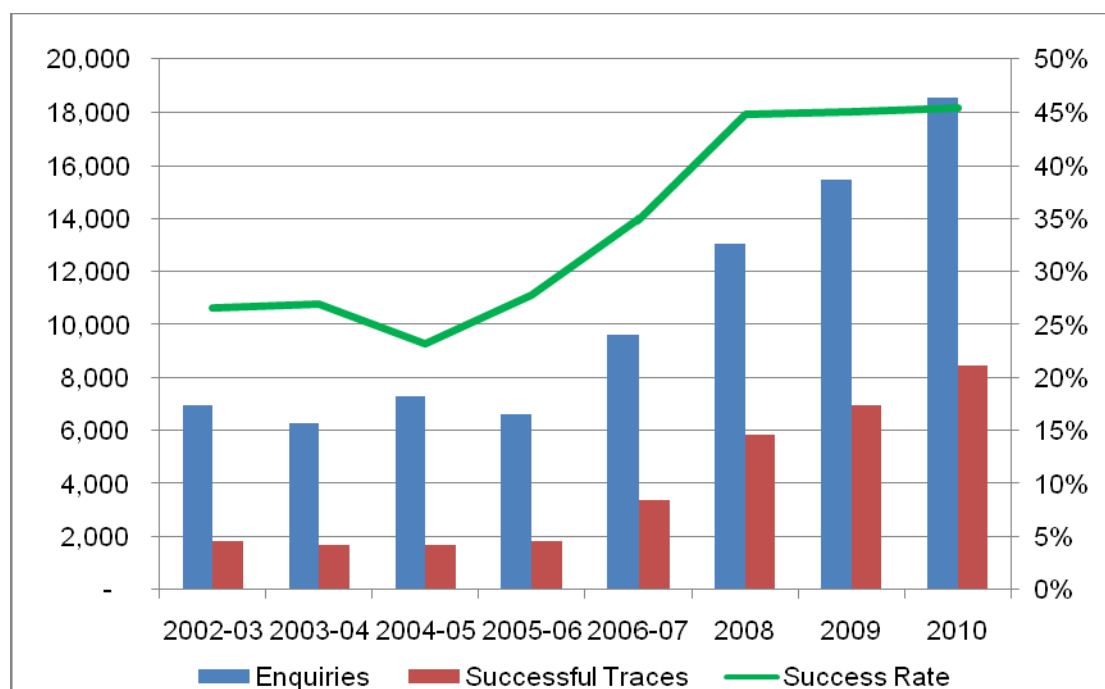
²² It is expected that the ELTO Board will be fully constituted pending the outcome of the DWP consultation.

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4. Tracing service results

- 4.1 The number of enquiries received by the tracing service has increased by an average of 30% every year since 2006-07, which demonstrates a growing confidence in the enquiry system.
- 4.2 In 2010, the tracing service received over 18,500 enquiries and provided information in response to almost 8,500, increasing its success rate per enquiry slightly to 46%, as shown in Chart 1 below. As well as helping defendant employers to find their own insurance details, the tracing service helped 5,469 potential claimants to find details of one or more insurer to claim against.

Chart 1: Enquiries, successful traces and success rate per review period



- 4.3 The industry recognises the unique and pressing situation for those with mesothelioma, and prioritises tracing enquiries for potential mesothelioma claimants. If successful, potential mesothelioma claimants are responded to on average within two weeks, and all potential mesothelioma claimants are responded to within a maximum of five weeks. In 2010 the tracing service provided information in response to 715 mesothelioma enquiries, with a success rate per enquiry of 34%, helping 566 potential claimants to find one or more insurer to claim against.

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- 4.4 Of the 537 potential mesothelioma claimants who did not find an insurer through the tracing service, we estimate that a further 258 were able to access compensation through another route.²³

²³ Numbers based on an ABI exercise undertaken in early 2011. Unsuccessful mesothelioma enquiries were circulated to a group of ABI members to investigate whether they had received a subsequent claim matching the same claimant details and exposure period.

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- 4.5 The tracing service results per periods of exposure were similar to those for 2009. In 2010:
- the success rate for pre-1972 exposure was 30%;
 - the success rate for 1972-1999 exposure was 49%;
 - the success rate for post-1999 exposure was 53%.
- 4.6 EL insurance only became compulsory in 1972 so some employers before this time would not have had EL insurance. In fact there is little evidence that the introduction of the 1972 regulations significantly increased the level of employers' liability insurance coverage. There has never been an enforcement regime in place equivalent to motor insurance. There was limited awareness, especially in the early years of compulsory EL insurance, about the length of time between exposure and diagnosis of some diseases. Little was done to keep and preserve records of EL insurance for longer than a few years until the 1998 ELCI regulations²⁴, requiring employers to keep records, and the ELCOP, requiring insurers to keep records, both came into effect in 1999. Regrettably many records from before and after 1972 have been lost or destroyed. Recognition that the post-1999 success rate remains lower than anticipated was a motivating factor for putting in place the Protocol for Recording EL Policies and subsequently setting up ELTO.
- 4.7 In its infancy, we do not expect ELTO results to mark a significant improvement to the past performance of the tracing service. Where records no longer exist and there is no external evidence of the policy, ELTO will not be able to fill the gaps. However, ELTO is an improvement on the current system in that insurers are required to upload policies that they have received a new claim against. This includes policies for which they do not hold any evidence, but for which they have accepted liability based on evidence provided by the claimant. In these cases, the insurer will create a 'dummy policy' to be uploaded to the database, covering the dates for which they have accepted cover. Over time, this requirement should grow the collection of older records on the database. The ELTO Tracing Policy and new audit regime may also lead to some improvement in performance, and should provide more assurance that insurers are committed to tracing.
- 4.9 We do expect the success rate to improve significantly once ELTO begins to receive enquiries against EL policies in 2012 onwards. The focus of ELTO is to ensure that future claimants are able to trace their employer's insurer quickly and effectively.

²⁴ Employers' Liability (Compulsory Insurance) Regulations 1998, SI 2573 Regulation 4(4) <http://www.legislation.gov.uk/uksi/1998/2573/regulation/4/made>. This provision was revoked in the Employers' Liability (Compulsory Insurance) Regulations 2008, SI 1765 Regulation 2(2) <http://www.legislation.gov.uk/uksi/2008/1765/regulation/2/made>.

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ANNEX A TRACING SERVICE RESULTS

Key

Term	Definition
Enquiry	An enquiry submitted to the tracing service. This does not include any enquiries that are removed because of duplication or missing information.
Successful trace	An enquiry that receives information about at least one insurance policy
Success rate	The percentage of enquiries that receive information about at least one insurance policy
Potential claimant	An employee who has suffered an injury or disease through work and has submitted at least one enquiry to the tracing service, to find an insurer to claim against.
Successful potential claimant	A potential claimant who receives at least one successful trace.
Success rate by potential claimant	The percentage of potential claimants who receive at least one successful trace.

Notes

All 2006-07 figures were captured over 14 month period and have been annualised to allow for comparison.

Where data is not available, these areas have been shaded.

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A. ALL ENQUIRIES (SUBMITTED BY CLAIMANTS AND DEFENDANTS)

TABLE 1: Total enquiries

Review Period	Enquiries	Successful traces	Success rate
1999-2000	1062	262	25%
2000-2001	2239	896	40%
2001-2002	3753	1576	42%
2002-2003	6992	1861	27%
2003-2004	6299	1700	27%
2004-2005	7326	1700	23%
2005-2006	6658	1851	28%
2006-2007	9639	3376	35%
2008	13098	5878	45%
2009	15503	6995	45%
2010	18590	8465	46%

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B. ENQUIRIES SUBMITTED BY DEFENDANTS ONLY

TABLE 2: Total enquiries

Review Period	Enquiries	Successful traces	Success rate
2008	1664	868	52%
2009	2308	1069	46%
2010	2680	1216	45%

C. ENQUIRIES SUBMITTED BY CLAIMANTS ONLY

TABLE 3: Total enquiries

Review Period	Enquiries	Successful traces	Success rate	Potential Claimants	Successful potential claimants	Success rate by potential claimant
2006-2007*	9639	3376	35%	7071	2956	42%
2008	11434	5010	44%	7775	4565	59%
2009	13195	5926	45%	8017	4496	56%
2010	15910	7249	46%	9028	5469	61%

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TABLE 4: Mesothelioma enquiries

Review Period	Enquiries	Successful traces	Success rate	Potential Claimants	Successful potential claimants	Success rate by potential claimant
2006-2007*	1047	368	35%	660	302	46%
2008	1414	480	34%	806	419	52%
2009	1702	631	37%	1025	487	48%
2010	2076	715	34%	1103	566	51%

TABLE 5: Non-mesothelioma enquiries

Review Period	Enquiries	Successful traces	Success rate	Potential Claimants	Successful potential claimants	Success rate by potential claimant
2006-2007*	8592	3008	35%	6411	2654	41%
2008	10020	4530	45%	6969	4146	59%
2009	11493	5295	46%	6992	4009	57%
2010	13834	6534	47%	7925	4903	62%

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TABLE 6a: Enquiries by periods of exposure (pre-1972, 1972-1999, post-1999)

Review Period	Pre-1972			1972-1999			Post-1999		
	Enquiries	Successful Traces	Success Rate	Enquiries	Successful Traces	Success Rate	Enquiries	Successful Traces	Success Rate
2005-2006 Total	1,809	268	15%	4,849	1,583	33%			
2006-2007 Total	2,676	659	25%	5,278	2,055	39%	928	383	41%
2008 Non-Meso	1,817	701	39%	6,566	3,015	46%	1,637	814	50%
2009 Meso	806	233	29%	857	376	44%	39	22	56%
2009 Non-Meso	2,131	686	32%	7,697	3,818	50%	1,665	791	48%
2009 Total	2,937	919	31%	8,554	4,194	49%	1,704	813	48%
2010 Meso	1,019	246	24%	1,024	448	44%	33	21	64%
2010 Non-Meso	2,447	787	32%	9,272	4,637	50%	2,115	1,110	52%
2010 Total	3,466	1,033	30%	10,296	5,085	49%	2,148	1,131	53%

N.B. As the majority of mesothelioma enquiries fall into the pre-1999 category, mesothelioma enquiries were not included in the breakdown for the 2008 review period. A breakdown for mesothelioma and non-mesothelioma enquiries was instated for the 2009 review period, following a request by DWP.

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Table 6b: Enquiries by periods of exposure (1999-2004, 2005-2010)

Review Period	1999-2004			2005-2010		
	Enquiries	Successful Traces	Success Rate	Enquiries	Successful Traces	Success Rate
2009 Meso	28	17	61%	11	5	45%
2009 Non-Meso	946	520	55%	719	271	38%
2009 Total	974	537	55%	730	276	38%
2010 Meso	34	22	65%	9	4	44%
2010 Non-Meso	1,593	844	53%	832	421	51%
2010 Total	1,627	866	53%	841	425	51%

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TABLE 6c: Enquiries by periods of exposure – disease breakdown (pre-1972, 1972-1999, post-1999)

2010 Review Period

Disease type	Pre-1972			1972-1999			Post-1999		
	Enquiries	Successful Traces	Success Rate	Enquiries	Successful Traces	Success Rate	Enquiries	Successful Traces	Success Rate
Noise Induced Hearing Loss (NIHL)	1,335	477	36%	7,750	3,929	51%	1,853	1,005	54%
Mesothelioma	1,019	246	24%	1,024	448	44%	33	21	64%
Asbestosis	449	122	27%	427	201	47%	17	7	41%
Pleural Thickening	221	71	32%	258	117	45%	11	2	18%
Hand Arm Vibration Syndrome (HAVS)	9	2	22%	291	146	50%	160	60	38%
Asbestos Related Illness	128	31	24%	125	56	45%	3	2	67%
Pleural Plaques	144	40	28%	108	49	45%	3	3	100%
Asbestos Related Cancer	117	31	26%	112	43	38%	2	1	50%
Repetitive Strain Injury (RSI)				22	7	32%	15	6	40%
Asthma	2	1	50%	9	3	33%	9	6	67%
Others	42	12	29%	170	86	51%	42	18	43%
Total	3,466	1,033	30%	10,296	5,085	49%	2,148	1,131	53%

NON-MESOTHELIOMA DISEASE TYPES

This list is the drop-down option list from the tracing service online form. The definitions are taken from the Health and Safety Executive website www.hse.gov.uk.

Asbestos-related conditions

Disease	Definition
Mesothelioma	Malignant cancerous cells in the mesothelium (a protective sac that covers most of the body’s internal organs).
Asbestosis	Lung fibrosis (build-up of scar tissue) resulting from the inhalation of asbestos fibres.
<i>Asbestos Related Cancer</i>	
Asbestos Related Illness	
Pleural Thickening	Thickening through fibrosis of the pleura (two-layered membrane surrounding the lungs).
Hand Arm Vibration Syndrome (HAVS)	Slight but repeated injury to the small nerves and blood vessels in the fingers, which can cause ‘white finger’ syndrome, numbness, and aches and pains triggered by the cold. (Vibration White Finger changed to HAVS as other symptoms may occur in addition to white fingers.)
Noise Induced Hearing Loss (NIHL)	Damage caused to the sensitive cells in the cochlea, which affects hearing of certain frequencies.
Asthma	A chronic inflammatory disorder of the airways.
<i>Bladder Cancer</i>	
Byssinosis	An obstructive airway disease.

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Chrome Ulceration	Crusted, painless lesions revealing a 2-5mm pitted ulcer.
Chronic obstructive pulmonary disease (COPD)	A narrowing of the airways due to chronic bronchitis (inflammation of the bronchi) or emphysema (damage to the smaller airways and alveoli).
Cumulative Back Injury (CBI)	A repetitive micro-trauma involving micro-tears in spinal disks, which may result in a bulging or ruptured disk.
Deep Vein Thrombosis (DVT)	A blood clot (thrombus) that develops in a deep vein, usually in the lower leg.
Dermatitis	An inflammation of the skin often seen as red, scaling, vesicular eruption, including eczema.
Isocyanate Poisoning	Exposure to high concentrations could result in severe damage to the lungs and lead to death.
Legionnaires Disease	A type of pneumonia caught by inhaling small droplets of water suspended in the air which contain the Legionella bacterium.
Mucous Membrane Imbalance	A sinus, bronchial, ear or lung infection.
Multiple Chemical Sensitivity (MCS)	A chronic condition affecting different parts of the body.
<i>Non Asbestos-related Cancer</i>	

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Non-Ferrous Metal Poisoning	
<i>Occupational Stress</i>	
<i>Other Poisoning</i>	
Paralysis (Following Disease)	
Pneumoconiosis	A lung condition characterized by formation of nodular fibrotic changes in lungs.
Repetitive Strain Injury (RSI)	A soft tissue injury including carpal tunnel syndrome and tendonitis.
Whole Body Vibration (WBV)	Back pain caused by vibration transmitted through the seat or feet.