

Withdrawn

This publication is withdrawn.

This publication is no longer current.

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

1 January 2009 – 31 December 2009

Contents

- Ministerial Foreword 3
- Introduction..... 5
- Report for the period from 1January 2009 to 31 December 2009 7
 - Post 1999 Tracing 8
 - Pre 1999 Tracing 8
 - Fast Track Mesothelioma Service 8
 - Summary of comments from the Review Body 9
 - The Future of Tracing 9
 - Issues to consider 10
 - The Review Body 10
 - Complaints 11
 - Next Review 11
- Appendix 1: Summary of the review procedure 12
 - The Review Body 12
 - How the Review was done 12
 - Signatories to the Code 13
- Appendix 2: The Complaints System..... 14
 - ABI Procedures 14
 - Action by the Insurer..... 14
 - Action by ABI..... 14
 - LMA Procedures..... 14
 - DWP procedures 15
 - Contacting DWP 15
 - How your complaint will be dealt with 15
 - Where DWP concludes that a complaint is justified 15
- Appendix 3: Railway Industry Liabilities..... 17
- Appendix 4: British Coal Liabilities..... 18
- Appendix 5: Key Review Body members..... 19
 - Associated Review Body members 19
- Appendix 6: Joint report by ABI and LMA (1 JAN 09 - 31 DEC 09) 20
 - 1. Introduction 22
 - 2. EL claims: the overall context 22
 - 3. Insurers’ commitment to tracing EL policies 23
 - 4. Tracing service results 25
- Annex A – Tracing Service Results 27
- Annex B – Non-Mesothelioma Disease Types 33

Ministerial Foreword

The UK has one of the best health and safety records in the world; still some people will become injured at work and there is always the need to ensure they are adequately protected. The Employers’ Liability (Compulsory Insurance) Act 1969 exists to ensure workers have protection in the event of them being injured or made ill as a consequence of their employment.

But, we still need reassurance that employees can make legitimate claims for occupational diseases, even when they arise many years after the worker left the job that caused their illness. In 1999, a review of Employers’ Liability (EL) insurance found that some individuals suffering from long tail industrial diseases could not trace their employer’s EL insurance policy. That is why, in conjunction with the insurance industry, the Employers’ Liability Code of Practice (ELCOP) for tracing EL insurance policies was launched. Since then insurers agreed to keep the historical data they held and to record and maintain all existing and future policies for 60 years in a searchable format. Under ELCOP, the insurance industry runs an online Tracing Service to help such employees find the relevant policy. A Review Body, chaired by the Department for Work and Pensions, has provided close scrutiny on the operation of the Code on behalf of claimant representatives.

Since its introduction the ELCOP tracing service has resulted in more people being able to access the compensation to which they are entitled. But many individuals are still left without help. Although only a relatively small number of individuals need to use the tracing service in order to locate their employer’s insurer, in 2009, of the 8,017 claimants who needed to use the service only 56% were successful in finding a relevant insurer. It is a particular concern that only 48% of enquiries made to the tracing service, to find a relevant EL policy issued after 1999 were successful in doing so. In theory all of those policies should have been traceable. This is not acceptable and we want insurers to do more to improve tracing rates in the future.

I am therefore greatly encouraged by the work the Association of British Insurers is undertaking to establish an Employers’ Liability Tracing Office (ELTO) to help more people to find their employer’s insurer. The ELTO is developing a comprehensive electronic database (which will eventually absorb the ELCOP) to hold all new and renewed EL policies, as well as old EL policies that have a new claim made against them, and all successful traces. The database’s search facility, which became operational this May, is a positive step that I gladly welcome.

While I realise that some historic records are irretrievably lost or may have been destroyed which can make it impossible to trace some policies, especially for those individuals suffering from those dreadful diseases caused by exposure to asbestos, such as mesothelioma, I expect to see the ELTO deliver a substantial improvement in tracing rates in the next review.

We are also actively working with stakeholders to see what can be done for those injured people, who after all avenues have been exhausted, are still unable to find an

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

insurer to claim against. In particular we are carefully considering the responses we received to the consultation document published last year, "Accessing Compensation – supporting people who need to trace Employers' Liability Insurance. The issues raised are complex and we are carefully considering how to progress the matter to achieve an appropriate outcome and we will bring forward our proposals in due course

I am pleased to introduce this Statement of the Review Body on the Code of Practice and I thank the Review Body for their efforts in the preparation of this document and for their continual work on this agenda.

A handwritten signature in black ink, appearing to read "Freud".

Lord Freud
Minister for Welfare Reform

Introduction

1. The ABI and the Lloyd’s Market Association (LMA) have been operating the Code of Practice (ELCOP) for tracing employer liability insurance policies since 1 November 1999.
2. The objective of the ELCOP is for insurers to retain, and do their best to search, those employers’ liability policy records that exist.
3. The ELCOP addresses the difficulties experienced by a small number of employees when seeking compensation from their employer, in identifying the insurance policy held by their employer at the same time an injury or disease was caused. The problem is most common in occupational disease cases that have taken a long time to develop, where the employer has ceased trading and details of their insurance have been lost or destroyed.
4. To help insurers fulfil their commitment to the ELCOP, the Association of British Insurers (ABI) runs the Tracing Service. Claimants fill in an online enquiry form, and the enquiries are then sent out to all ELCOP signatories. Insurers then respond if they find a match with their policy records, and this information is sent to the claimant.
5. 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, and some records had already been destroyed or, in very old cases, never existed.
6. So that policies issued since November 1999 can 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 imposes an obligation on the insurance industry to ensure that they store records of policies in a format which they can readily search.
7. Post 99 tracing should, in theory, always be successful, however Post 99 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. Therefore the industry introduced the Protocol for Recording EL Policies in October 2008, which requires insurers to record information about subsidiary companies, and brokers to provide this information.
8. Further changes will be made to improve tracing with the introduction of the Employers’ Liability Tracing Office (ELTO) by the Association of British Insurers in April 2011. The ELTO will hold a database of all new and

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

renewed EL policies, as well as old EL policies that have a new claim made against them, and all successful traces.

9. ELTO will continue to run the tracing service. It will send enquiries that do not match records on the database to EL insurers for them to check against their own records. Successful responses will be uploaded onto the database.
10. DWP will consider any employers' liability issues surrounding those businesses that choose to self-insure, including, privatised solvent companies whose liabilities currently reside with government departments, and some run-off companies.
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's and LMA's joint report is attached at **Appendix 6**.

Report for the period from 1 January 2009 to 31 December 2009

12. The ABI report indicates that 15,503 enquiries have been circulated over the period covered by the report. There has been an increase in the number of enquires made to the Tracing Service, however the success rate, at 45%, remains the same as in 2008. This remains the highest rate since the launch of the ELCOP in 1999; see Table 1 for more details.

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)	11245	3939	35%
2006-2007 annualised	9639	3376	35%
2008	13098	5878	45%
2009	15503	6995	45%

Table 1: Number of enquiries (submitted by claimants and defendants) per review period.

13. This year the number of enquires were broken down to give a clear idea of the number of queries from claimants and defendants using the service and the success of their traces. There were 13,195 claimant queries with 5926 queries receiving information about at least one insurance policy. There were also 2308 defendant enquires of which 1069 were successful in finding details to reconstruct previous insurance cover. See Table 1 and 2 of the ABI/LMA’s joint report at Appendix 6, for further details.

Review Statement – Code of Practice for tracing Employers’ Liability Insurance

14. The Protocol for Recording EL policies is intended to help make the Tracing Service even more accessible and efficient in the future. However, while it has not impacted on this year’s success rates, the ABI firmly expects to see improvements to the success rate next year.

Post 1999 Tracing

15. Traces for policies issued on or after 1 November 1999 should, in theory, always be successful, providing the search contained the required information and is covered by the ELCOP, (i.e. if the employer is required to have ELCI). 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.
16. The post 1999 success rate for this period is 48% for non-mesothelioma cases and 56% for mesothelioma cases. The Review Body are disappointed that the success rate continues to be poor, in light of the fact that post 1999 tracing should always be successful. The assurances given in the past by the industry to hold data in an accessible format have not come to fruition.
17. Other than the hope that the Protocol for Recording EL Policies introduced in October 2008 will improve these figures in the next reporting period. The Review Body expect the ABI to investigate why the tracing results are not as high as expected and do more to increase the post 1999 success rates in the future.
18. This is particularly important given the changes to the ELCI regulations introduced on 1 October 2008, which removed the legal requirement for employers’ to retain certificates of insurance for 40 years. This change was made in response to the enforcement difficulties identified in the review of the regulations and failure to ensure the security of records from businesses that have ceased to trade. The only information on some historic policies and on policies issued to businesses that have ceased to trade will continue to be that held by insurers.

Pre 1999 Tracing

19. The success rate for post-1972¹ ELCI policy traces for the year under review is 49%. Pre-1972, the success rate is 31%.

Fast Track Mesothelioma Service

20. Mesothelioma is a terminal disease with terrible effects on peoples’ lives and is now the most common cause of work-related death. The Review

¹ The date the ELCI 1969 Act came into force.

Review Statement – Code of Practice for tracing Employers’ Liability Insurance

Body acknowledges that no amount of money can ever fully compensate individuals and families for the suffering and loss caused by mesothelioma. The Mesothelioma fast track facility helps speed up the tracing process for these people providing a response on average within a week and within a maximum of 5 weeks for potential claimants. In this reporting period, the ABI processed 1702 enquires on behalf of 1025 mesothelioma sufferers. Of this number 487 were successful. An increase in the number of enquiries has not translated into an increase in the success rate for traces. However, the Tracing Service is still important to terminally ill people. For further details about enquires Mesothelioma, please see the joint ABI/LMA report on pages 21 to 36.

21. 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 sum compensation to workers 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, which came into force in October 2008, provides lump sum compensation for all mesothelioma sufferers, regardless as to whether the disease was caused through employment.

Summary of comments from the Review Body

22. The Review Body are very concerned about the results from this review period. The overall success rate has remained the same as last year at 45%; however the number of enquiries had increased. This has been compounded by the fact that tracing results in all other categories have also decreased; across the board success rates are lower than last year. The Review Body asked the ABI, if there were any reasons for the decrease. ABI could not identify any one reason for the decrease. The Review Body agreed that more information on where traces go wrong is needed in order to resolve any difficulties and increase results in the future.
23. The Review Body agreed that the tracing results may have reached a plateau given that there are a finite number of policies that can be identified.

The Future of Tracing

24. The ABI is introducing an Employers’ Liability Tracing Office (ELTO) - a database of Employers’ Liability (EL) policies which will start operations in April 2011.

Review Statement – Code of Practice for tracing Employers’ Liability Insurance

25. ELTO is being set up as 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 will build and 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 existing EL Tracing Service, which is supported by a voluntary code of practice and relies solely on insurers checking against their own policy records.
26. Insurers will join ELTO on a voluntary basis and ABI confirmed that over 98% of the EL market has signed up to ELTO. The Financial Services Authority is consulting on proposals to compel all insurers to make tracing information available.
27. 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 paper includes questions about, the structure, governance and composition of the database that have yet to be addressed. It was suggested that an ELIB would be relevant to the on going work.

Issues to consider

28. The issues encountered with tracing through ELCOP to achieve results must not be carried forward to ELTO. If the ABI are to achieve high and fully successful tracing results, the Review Body expect to see more work on the analysis required to achieve this. Insurers also need to be seen to be doing all they can for effective tracing, especially in the post 1999 tracing.
29. The ABI would also like to see progress on work to identify ‘self insured’ businesses and privatised solvent public bodies whose liabilities currently remain with government. The ABI has reported that the Tracing Service is currently being used to search for these types of employers, and this may be having a negative effect on its success rate, because this information may not be held by insurers. The Department for Work and Pensions will continue to pursue this work with other Government Departments. These issues will be discussed at the next Review Body meeting.

The Review Body

30. The Association of Run-Off Companies (ARC) agreed to join the Review Body as an associate member. This is to help ensure that all insurers who 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”) are represented. Although, they have been unable to attend Review Body meetings or directly input to

Review Statement – Code of Practice for tracing Employers’ Liability Insurance

discussions about the ELCOP, other Review Body members have been able to deal with issues about insolvent companies in run off as well as provide details on how tracing has been managed and audited within insolvent insurers. Any changes to their role will be discussed at the next Review Body meeting in 2011.

31. The Review Body agreed that the Financial Services Compensation Scheme (FSCS), the Financial Services Authority (FSA) and the International Underwriting Association (IUA) will continue to attend future meetings in an observer capacity.
32. The Asbestos Victims Support Forum has agreed to join the Review Body as an associate member to provide insight into the claimants need when tracing insurance policies for liable employers.
33. The Review Body will continue to monitor the impact of ABI’s improvement measures closely and scrutinise success rates.

Complaints

34. Appendix 2 details the formal complaints procedure that attaches to the ELCOP.
35. The Review Body noted that no complaints about the performance of any insurer under the ELCOP were made to the ABI or to the LMA in 2009. Also, DWP has received no formal complaints under the prescribed procedures since the inception of the ELCOP during the review period.

Next Review

36. The Review Body agreed that the next review of the ELCOP’s operation should take place as early as practicable in the year. Consequently, the operation of the ELCOP’s 11th year’s performance from 1 January 2010 to 31 December 2010 will be reviewed early summer 2011. The Review Body expects improvement measures in 2008 to demonstrate material improvement in post-1999 traces in particular, for that review period.
37. This will be the last ELCOP review prior to the introduction of the Employers’ Liability Tracing Office (ELTO) in April 2011.
38. The Review Body thanked both the ABI and LMA for their continued hard work and effort in 2009. The Review Body endorsed their own commitment to pro-actively engage with the ABI, LMA and relevant stakeholders to ensure an effective and efficient Employers’ Liability Code of Practice that is fit for purpose while meeting the challenges of the Review Body.

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 Tuesday 29 June 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.

Review Statement – Code of Practice for tracing Employers’ Liability Insurance

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 2009 to 31 December 2009, 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 concerned and allow them a final 14 working days to review the matter.

Review Statement – Code of Practice for tracing Employers’ Liability Insurance

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 Body should draw attention to it in its published Annual Statement –

Review Statement – Code of Practice for tracing Employers’ Liability Insurance

naming the insurer or syndicate concerned². 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.

² 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

Alison Scott	Department for Work and Pensions (Chair)
James Dalton	Association of British Insurers
Karl Tonks	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

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
Chris Gordon	Thompsons (Scotland)

Appendix 6: Joint report by ABI and LMA (1 JAN 09 - 31 DEC 09)

**This is a joint report by the Association of British Insurers (ABI) and
Lloyds Market Association (LMA) covering the period 1 January 2009 –
31 December 2009**

Review Statement – Code of Practice for tracing Employers’ Liability Insurance

Alison Scott
Department for Work & Pensions
Workplace Health Division
Caxton House
3rd Floor
Tothill Street
London SW1H 9NA

Dear Alison

Code of Practice for Tracing Employers’ Liability Insurance Policies

Attached is our report on the Code of Practice and the Tracing Service for 2009.

The key points to note in this year’s report are:

- Insurers remain committed to supporting those employees who need to trace an insurer. The insurance industry is taking this commitment a step further by developing an independent body, the EL Tracing Office (ELTO), which will capture all future compulsory EL policies on a central database from April 2011, allowing employees immediate access to this information.
- In 2009 the tracing service:
 - Received over 15,000 enquiries, and responded to around 7000, maintaining its success rate of 45%;
 - Helped 4496 potential claimants find one or more insurer to claim against;
 - Helped 487 potential mesothelioma claimants find one or more insurer to claim against.

I look forward to discussing these issues with you and Review Body colleagues when we meet on 29 June. In particular, we hope to use the opportunity to discuss the role of the Review Body members in the set up and governance of ELTO. We look forward to working with you on this initiative, as a natural development from the Code of Practice which we have worked on together over the last ten years.

James Dalton

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

Code of Practice for Tracing Employers’ Liability Insurance Policies ABI/ LMA report for 2009

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 is demonstrated in the industry’s commitment to the 1999 Code of Practice for Tracing EL Insurance Policies (the Code of Practice) and online tracing service, which helps an employee to identify their former employer’s EL insurer if the employer is insolvent or untraceable and the employee wants to make a claim for injury or disease in the workplace.
- 1.2 This report explains how the industry is taking this commitment a step further by setting up an independent body, the EL Tracing Office (ELTO), which will continue to run the tracing service and will capture all future compulsory EL policies on a central database from April 2011, allowing employees and their representatives immediate access to this information.
- 1.3 This report provides an overview of the performance of the tracing service in 2009. Future reports will provide information on both the performance of the ELTO database and the continued tracing service for old policies.

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 billion³ to around 129,000 employees⁴ 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, 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 2010⁵. Only

³ Average gross claims incurred per year over the five year period from 2005 to 2009, ABI statistics.

⁴ Average number of claims settled per year over the five year period from 2004/05 to 2008/09, Compensation Recovery Unit (CRU) statistics. This does not include claims notified for Noise Induced Hearing Loss where the exposure was under 50dB.

⁵ 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.

Review Statement – Code of Practice for tracing Employers’ Liability Insurance

around 4%⁶ 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 less than 3% of all claimants who make an EL claim each year.⁷ Of these 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.⁸ 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 insurer⁹; 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.
- 2.4 This 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.

3. Insurers’ commitment to tracing EL policies

- 3.1 The Code of Practice is a voluntary commitment undertaken by insurers to help an employee identify their former employer’s EL insurer(s) if the employer is insolvent or untraceable and the employee wants to make a claim for injury or disease caused in the workplace.¹⁰ Insurers have committed to retain, and do their best to search, EL policy records that exist, and retain future policy records for 60 years in a format that will make it easier to answer future enquiries from potential claimants and their representatives. As part of the commitment to search existing records, the ABI runs the tracing service, an online system which circulates enquiries to insurers to check against their EL policy records and send details to the potential claimant via the ABI.
- 3.2 Over the last ten years the industry has helped trace EL policy records matching more than 25,000 enquiries, from as early as the 1930s. We have worked with the DWP and Review Body members to improve the tracing service success rate and speed of response to potential claimants. 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 Policies, committing brokers to provide insurers with relevant information about employers, including subsidiary names, and insurers to recording this more detailed information. The aim of the Protocol

⁶ 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.

⁷ 3% calculated by comparing 3539 unsuccessful Tracing Service claimants to average of 128,965 claims notified to CRU over the five year period from 2004/05 to 2008/09.

⁸ This applies to pre-1999 EL policies only.

⁹ 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.

¹⁰ The original Code of Practice was agreed in 1999 <http://www.dwp.gov.uk/docs/codedocument.pdf>.

Review Statement – Code of Practice for tracing Employers’ Liability Insurance

is to ensure that an EL policy record can be easily traced if, for example, a claimant only knows one of the subsidiary names as the employer.

- 3.3 Over the next ten years, insurers will invest £30 million¹¹ to establish an independent tracing body, the EL Tracing Office (ELTO), as the next step in our commitment to supporting those who need to trace. ELTO will create a central database of all new and renewed policies from April 2011 onwards, and all old policies that relate to claims received by insurers on an ongoing basis. ELTO will also continue to run the tracing service that will send enquiries that do not match any records on the database out to EL insurers to check against their own records, and will then upload those successful responses onto the database. As an independent body, ELTO will have more resource to help individual potential claimants to trace, and will allow for more involvement from Review Body members in overseeing the performance of the database and the tracing service.
- 3.4 ELTO will ensure that all new EL policies are recorded from across the industry in a standardised, accessible format. It is expected that new FSA regulations¹² will introduce requirements for all EL insurers to publish EL policy information on the employers that have insured, and will therefore ensure that any insurers cannot enter and leave the market without recording and providing this information. This potential FSA requirement will be seen as fulfilled if insurers become members of, and supply data to, ELTO. ELTO will ensure all the necessary details about the insurer and the insured employer for all new EL policies are recorded in an accessible format, so that employees and their representatives will more easily be able to trace an insurer. ELTO will provide a single template for all EL policy records that will ensure consistency across the industry.
- 3.5 ELTO will improve the tracing performance and speed up the claims process for potential claimants. With the current tracing service, enquiries that match against previous enquiries receive an immediate response, but for those that do not match, potential claimants wait up to eight weeks for insurers to respond to enquiries. Through ELTO, any enquiries relating to policies on the database will receive an immediate response. ELTO will have dedicated account managers to support and audit insurers’ tracing processes, so that insurers continue to trace their old EL policy records to the best of their ability.
- 3.6 ELTO may be able to provide other important services over time, such as helping to identify failure by employers to purchase compulsory EL insurance. In 2003 the Health and Safety Executive (HSE) undertook research on compliance rates of employers purchasing EL insurance¹³ and at the time the HSE admitted that it had no meaningful way of accurately gauging compliance levels. HSE is currently undertaking a new survey to measure compliance rates. Centralised policy record systems have proven indispensable in other areas of the insurance industry, including the Motor Insurance Database and the Pensions Tracing Service.

¹¹ ABI estimate based on the DWP consultation *Accessing Compensation* <http://www.dwp.gov.uk/docs/elci-compensation-consultation.pdf> and expected insurer internal costs.

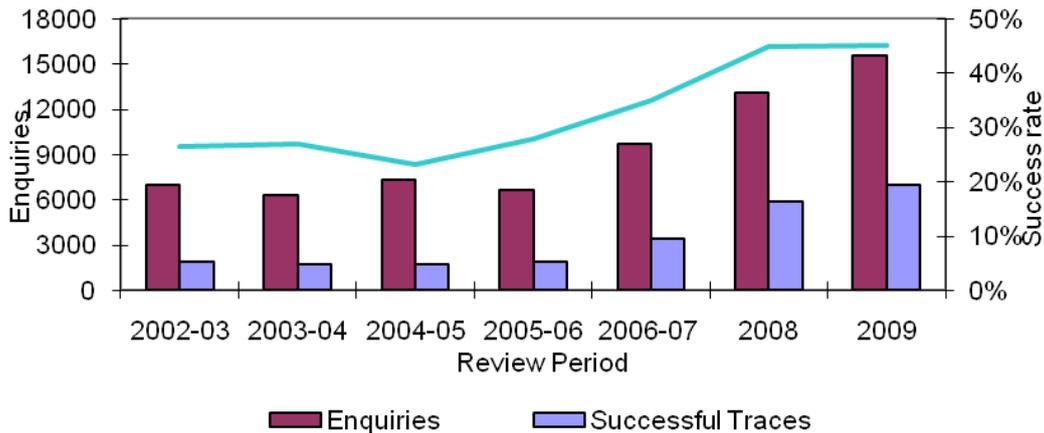
¹² See FSA consultation 10/13 *Tracing Employers’ Liability insurers* http://www.fsa.gov.uk/pubs/cp/cp10_13.pdf.

¹³ *Survey of compliance with ELCI Act*, Greenstreet Benman for HSE, 2003

4. Tracing service results

4.1 In 2009, the tracing service received over 15,000 enquiries and provided information in response to almost 7,000, maintaining its success rate per enquiry of 45%, as shown in Chart 1 below. As well as helping defendant employers to find their own insurance details, the tracing service helped 4,496 potential claimants to find details of one or more insurer to claim against.

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



- 4.2 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 a week, and all potential mesothelioma claimants are responded to within a maximum of five weeks. In 2009 the tracing service provided information in response to 631 enquiries, raising the success rate per enquiry to 37%, and helping 487 potential claimants to find one or more insurer to claim against.
- 4.3 Of those potential mesothelioma claimants who did not find an insurer through the tracing service, ABI analysis indicates that around 37% were able to access compensation through another route. For 12% of potential mesothelioma claimants there was also a defendant enquiry for the same person, indicating that the potential claimant had found at least one defendant to claim against.¹⁴ A further 25% of potential claimants went on to make a claim against an insurer, indicating that they had found another route to trace the insurer.¹⁵
- 4.4 The tracing service results per periods of exposure were similar to those for 2008. In 2009:
- the success rate for pre-1972 exposure was 31%;
 - the success rate for 1972-1999 exposure was 49%;
 - the success rate for post-1999 exposure was 48%.

¹⁴ 63 of 538 potential claimants.

¹⁵ 134 of 538 potential claimants. ABI analysis, 2009: 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.

Review Statement – Code of Practice for tracing Employers’ Liability Insurance

- 4.5 EL insurance only became compulsory in 1972 so some employers before this time would not have had EL insurance. Many records from before and after 1972 have regrettably been lost or destroyed, as there was little awareness about the length of time between exposure and diagnosis of some diseases, and therefore the need to keep and preserve such records. We expect the rate for post-1972 enquiries to improve over time under ELTO, as the database will include reconstructed EL policy records from insurers when they have accepted a claim, based on evidence provided by the claimant.
- 4.6 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. As only 5% of post-1999 enquiries relate to exposure in 2009, it is unlikely that the Protocol will have had much effect on the post-1999 success rate this year. The targets and support system for ELTO are akin to those for the Motor Insurers Database, and there is reason to believe that all compulsory EL policies will be included on the database within a very short time. This should ensure the success rate for enquiries relating to post-2012 EL policies will be much higher.

Review Statement – Code of Practice for tracing Employers’ Liability Insurance

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.

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

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%

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

B. Enquiries submitted by defendants only

Table 2: Enquiries from defendants

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

C. Enquiries submitted by claimants only

Table 3: Enquiries from potential claimants and total potential claimants

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%

Review Statement – Code of Practice for tracing Employers’ Liability Insurance

Table 4: Mesothelioma

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%

Table 5: Non-mesothelioma conditions

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%

Review Statement – Code of Practice for tracing Employers’ Liability Insurance

Table 6a: Periods of exposure (pre-1972, 1972-1999, post-1999)

Period of exposure	Pre-1972			1972-1999			Post-1999		
	Enquiries	Successful traces	Success rate	Enquiries	Successful traces	Success rate	Enquiries	Successful traces	Success rate
Review period: 2005-2006									
Total	1809	268	15%	4849	1583	33%			
Review period: 2006-2007 (collected over 10 month period)									
Total	2676	659	25%	5278	2055	39%	928	383	41%
Review period: 2008									
<i>Non-meso</i>	1817	701	39%	6566	3015	46%	1637	814	50%
Review period: 2009									
<i>Meso</i>	806	233	29%	857	376	44%	39	22	56%
<i>Non-meso</i>	2131	686	32%	7697	3818	50%	1665	791	48%
Total	2937	919	31%	8554	4194	49%	1704	813	48%

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.

Review Statement – Code of Practice for tracing Employers’ Liability Insurance

Table 6b: Periods of exposure (1999-2004, 2005-2009)

Period of exposure	1999-2004			2005-2009		
	Successful traces	Success rate	Enquiries	Successful traces	Success rate	Enquiries
Review period: 2009						
<i>Meso</i>	28	17	61%	11	5	45%
<i>Non-meso</i>	946	520	55%	719	271	38%
Total	974	537	55%	730	276	38%

+ 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.

Review Statement – Code of Practice for tracing Employers’ Liability Insurance

Annex B – 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.
Chrome Ulceration	Crusted, painless lesions revealing a 2-5mm pitted ulcer.

Review Statement – Code of Practice for tracing Employers’ Liability Insurance

Disease	Definition
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>	
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.