



Response to the Department of Work and Pensions Consultation Accessing Compensation – Supporting people who need to trace employers' liability insurance

Introduction and summary

This response is submitted by Unite the Union. Unite is the UK's largest trade union with 2 million members working in the private and public sectors. The union's members work in a wide range of industries including docks, construction, manufacturing, food manufacturing distribution and retail, agriculture, financial services, road, rail, air and sea transport, print, media, not for profit sectors, local government, education and the health service.

Unite welcomes this consultation and is broadly in favour of the proposals being made. We believe that the introduction of these changes will make a real difference to people (and their families) who develop long-tail diseases as a result of their employer's negligence

Unite believes that these proposed changes are long overdue. For too long many thousands of people are being denied compensation because of the failures of the insurance industry and government to develop an effective and efficient system of maintaining records.

In particular we believe that both an Employers' Liability Tracing Office and an Employers' Liability Insurance Bureau should be entirely funded by the insurance industry. This is because the compulsory nature of EL insurance means that the insurance industry receives EL premiums for all workers. It follows that the industry should pay out when any worker is injured, regardless of whether a record of the insurance policy exists and there is of course an existing scheme to cover claims against uninsured drivers.

We urge that the legal requirement to display the Employers' Liability Certificate of insurance in the workplace is reinstated without delay and that a robust campaign of enforcement of the requirement to insure is undertaken and publicised.

We will now respond to the questions posed by the consultation document.

Question 1: Is this the correct data to be recorded or is something else needed to properly identify EL policies?

Unite agrees that the consultation document lists the correct data to be recorded. Care should be taken to ensure that provision is made to ensure that all company names are recorded to avoid confusion which may arise as a result of company name-swapping, for example when a company ceases to exist and their name is bought for use by a different company.

Question 2: Is there a better unique employer identifier than the employer's reference number provided by her Majesty's Revenue and Customs to facilitate tracing of EL insurance policies?

The employer's reference number provided by HMRC is the most appropriate identifier to use.

Question 3: Which historic records would it be feasible and proportionate for the insurance industry to include in any electronic database?

As many records as possible should be transferred in addition to those currently kept electronically to ensure that the database is as comprehensive as possible. Doing this from the start will ultimately

save costs. Information should be kept on all cases where there has already been a claim against an employer or where there has been successful search of the existing databases. Electronic copies of all existing paper records of those industries where there is a history of claims activity for long-tail diseases should be included on the database.

Unite also believes that relevant records made by the HSE and local authority enforcers should be kept for longer than 6 years to cover long-tail diseases. This includes HSE records created by the Asbestos Licensing Unit in relation to licensed contractors.

Another issue which needs to be addressed is the retention of records where there is an issue of bogus self-employment. In particular we believe that records should be retained in all cases both by the principal contractor and by the contractor directly involved in obtaining the operative's services.

Similarly we urge that specific provision is made to require the retention of records relating to agency workers including migrant workers.

Question 4: How should an electronic database be funded?

The electronic database should be funded by the insurance industry as they receive the premiums. A source of funding could be a levy on insurance policies by the insurance industry.

Question 5: Who should be represented on the board and what structure should such a board take?

Unite believes that the current review body should be expanded to include a representative of victims' groups (we understand that steps have already been taken to give effect to this) and there should be an equal number of insurer representatives and non insurer representatives, including trade union representation. At present the insurance industry is over-represented on this body.

Question 6: Should the coverage of an ELIB be limited to where there is a legal requirement to insure, as is the case with the MIB, or should the ELIB provide universal coverage?

The ELIB should provide universal coverage including agency and temporary workers. Most employers insured their workforce prior to the insurance becoming compulsory. The ELIB should cover all cases where the insurer cannot be traced. It should not be forgotten that the crucial issue is ensuring that all victims receive just compensation for their injuries regardless of whether there was a legal requirement to insure at a particular time. If universal coverage is not provided then there is a real danger that people who contract long latency diseases will not be able to recover compensation.

Question 7: How should an ELIB be funded?

The bureau should be funded by the insurance industry, either directly by a levy on members, or through a levy on premiums.

Question 8: What would be the impact on insurers and employers of establishing an ELIB?

The establishment of an ELIB and a national tracing office is a positive move which will have the following benefits to society.

- It will make it easier to ensure that there is employer compliance with the legal requirement to take out employers' liability insurance and identify those who are not complying.
- It will also ensure that the industry is more careful with its records than in the past.

Question 9: Should the level of general damages be based on amounts being awarded in the courts or on some different basis?

Unite believes that the level of general damages should be based on amounts being awarded in the courts.

Question 10: Should the level of compensation be decided based on an individual's needs or on a fixed Tariff?

Unite believes that the level of compensation should be assessed on an individual's needs **not** by application of a tariff.

Question 11: Should Special Damages be incorporated within a fixed tariff or should they be dealt with on an individual basis?

Unite believes that special damages should be dealt with in an individual basis, **not** by application of a tariff.

Question 12: Should an ELIB cover all claims, long-tail disease claims only or just those with mesothelioma?

Unite believes that **all** claims should be dealt with by an ELIB. We believe this is only fair bearing in mind that the insurance industry will have collected premiums notwithstanding the fact that the policies cannot now be traced.

Question 13: How could we ensure an ELIB paid out in all appropriate claims and not those that would otherwise not have been paid?

The insurance industry should have kept copies of the policies. As stated above ELIB should make payments on the same basis and applying the same criteria used in civil cases. It is, after all, the claimant's responsibility to prove their claim.

Question 14: What level of evidence is needed to settle claims if contemporary records have been destroyed?

Decisions to settle claims should be made on the balance of probabilities. The bureau should consider whatever evidence is provided by the claimant and make an assessment. Any form of evidence, whether documentary or otherwise should be considered by the bureau.

Question 15: How should an ELIB start to meet claims to ensure fairness to claimants and funding at the start of any scheme?

We believe that initially the ELIB should provide extra resources to ensure that all claims are dealt with as speedily as possible. Priority should be given to claims from living claimants.

Question 16: Should an ELIB meet claims to dependents after a person has died if a claim has not previously been compromised?

Dependants should be treated in exactly the same way as they are currently treated in the civil courts.

Question 17: Should there be limitations on the time a person can take to bring a claim to the ELIB; if so, when should that time start and end?

In the initial period, any person who has been unable to make a claim because the insurer or employer could not be traced should be allowed to make a claim to the ELIB. After the initial period the same time limits which apply to personal injury claims should apply to claims against the ELIB, including exercising discretion to disapply the limitation period

Question 18: Would the introduction of an ELIB have an impact on employer ELCI compliance?

No. We believe that the introduction of an ELIB would instead put greater pressure on the insurance industry to monitor compliance and ensure that it is maximised.

Question 19: What more can be done to ensure that employers which are legally obliged to obtain ELCI do so?

The proposed national tracing centre could act as a database to identify those employers who do not have a current insurance certificate.

Robust enforcement is also key to ensuring compliance.

We also urge that the legal requirement to display a copy of the certificate in the workplace is reinstated. It is not practicable in most workplaces for employees to get easy access to a certificate if it is only stored electronically.

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Dear Mr Towers

**Department of Work and Pensions Consultation
Accessing Compensation – Supporting people who need to trace employers' liability
insurance**

We are pleased to enclose Unite's response to the above-mentioned consultation and thank you for the opportunity to contribute to this extremely important discussion.

Yours sincerely

Joint General Secretaries