

LUG Conference – 7th September 2010

Towards an Employers' Liability Insurance Bureau?

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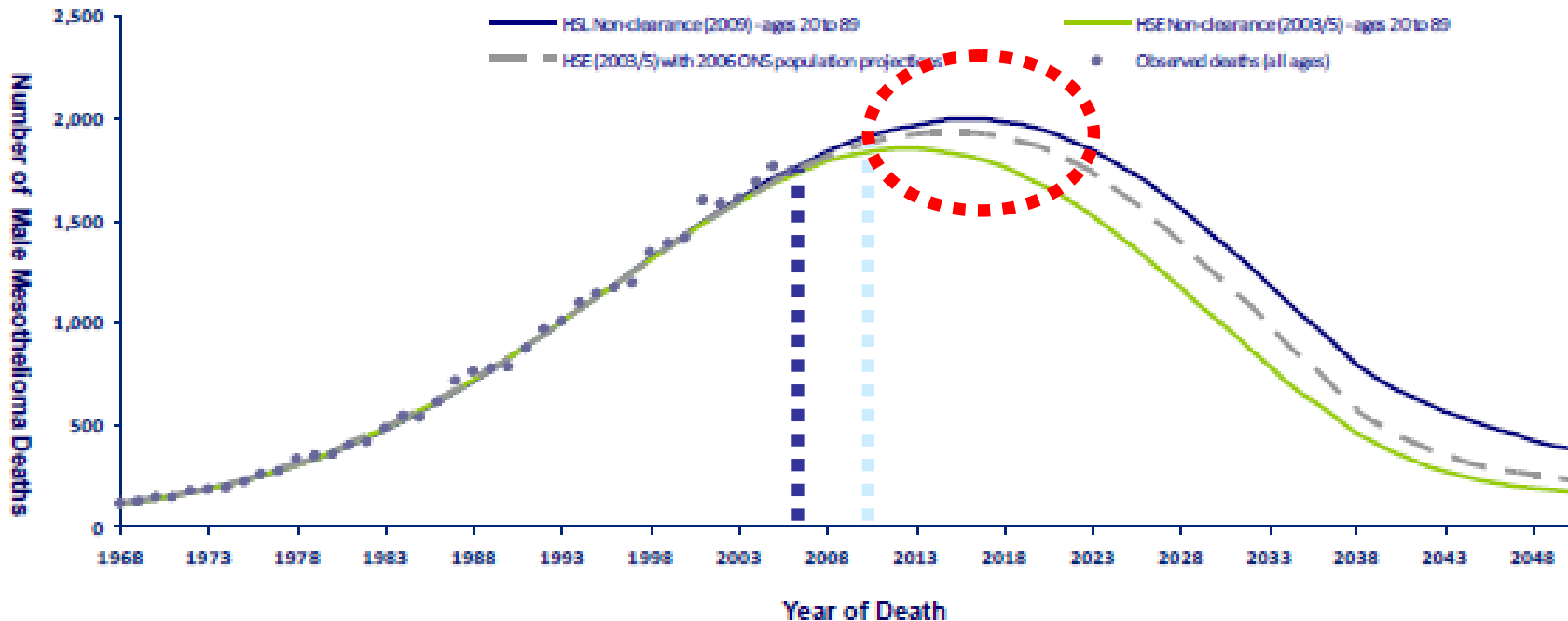
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This is all about mesothelioma

“Mortality amongst all males is expected to keep increasing, reaching a peak at around 2,040 deaths in the year 2016, with a rapid decline following the peak year. Around 91,000 deaths are predicted to occur by 2050 with around 61,000 of these occurring from 2007 onwards.” [HSE RR728 August 2009]



The social context of UK EL insurance

Motor insurance

- compulsory in 1930
- societal rational
- all motor vehicles
- Unlimited BI cover
- MIB set up 1946



Employers' liability ins.

- compulsory in 1972
- societal rational
- NOT all employers
- LIMITED BI cover of £5m
- ELIB NOT set up ...

1. How has the debate arrived here?

“The grievance we set out to remove was the grievance that, where people had a legitimate claim for damages and had succeeded and proved their claim, they did not get the money.”

Earl Russell, 17 December 1929

“...the purpose of the Bill is not to alter the existing liabilities but merely to extend the present insurance cover under basically existing conditions to all employees.”

Lord Pargiter, 14 October 1969

“... there will be some people, especially those who suffer from long-tail diseases like mesothelioma, who are unable to trace their insurance records and thus are denied full compensation. The government therefore proposes to establish an Employers' Liability Insurance Bureau.”

Jack Straw MP, 25 October 2010

Health, Work and Well-being	
	Accessing Compensation
	Supporting people who need to trace Employers' Liability Insurance – public consultation
February 2010	DWP Department for Work and Pensions

- “... the creation of an Employers’ Liability Tracing Office (**ELTO**) to manage an electronic database of EL policies and to operate the existing tracing service ...
- The Government are also persuaded that an Employers’ Liability Insurance Bureau (**ELIB**) should form part of the package of measures to improve the lives of those who are unable to trace an old employer or their insurer. An ELIB would be a compensation fund of last resort ...”

2. The jargon: ELTO, ELIB, FSCS


- ELTO (Employers Liability Tracing Office)
 - run by the industry
 - funding, time table and implementation
 - January 2011- voluntary load of data
 - April 2011 – compulsory load of data, collect additional information
 - April 2012 - compulsory load of additional information
 - October 2012 – sanctions implemented
- ELIB
 - a compensation fund of last resort – but who wants it?
- FSCS
 - general compensation mechanism funded by levy

The Employers' Liability Tracing Office (ELTO) - Windows Internet Explorer provided by BLM

http://www.elto.org.uk/

File Edit View Favorites Tools Help

The Employers' Liability Tracing Office (ELTO)



ELTO Employers' Liability Tracing Office

Anyone who is injured or develops a disease in the course of their employment in the UK as a result of the employer's negligence can claim compensation from that employer's insurance provider.

The Employers' Liability Tracing Office (ELTO)

ELTO will give claimants and their representatives quick and easy access to a database of employers' liability (EL) policies through an online facility.

Customers will be able to access this facility via elto.org.uk from early 2011. In the meantime, customers can access the existing tracing service by visiting the [Association of British Insurers \(ABI\) website](#).

Insurers who are interested in becoming ELTO members can receive further details by sending an email to membership@elto.org.uk.

Internet 100%

Foreword

It is envisaged that all Insurers underwriting EL business will be required to become a member of ELTO. As part of ELTO membership insurers are required to supply Policy Identification Records to populate a database of all new and renewed EL policies after 01 April 2011. This will be used by claimants to trace EL policies. The implication of this is for each member insurer to extract a record from their EL systems for every insured they have. This will include the insured details and subsidiary details, policy details and will also require a unique identifier, the insured's Employer Reference Number (ERN).

Insurers and 'run off' organisations will also be required to supply Policy Identification Records for Claims that they accept against EL policies, where the occurrence date of the Claim is prior to 01 April 2011.

Following the extraction of this data it will be loaded onto the EL database on a monthly basis. In the event of problems, the ELTO account management team will be available to help resolve issues with the insurer.

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<p>green = current practice orange = untraced insurer red = untraced employer</p>		EMPLOYER'S LIABILITY INSURER			
		known		unknown (so no FSCS)	
		solvent	insolvent		
DEFENDANT	known	solvent	<ul style="list-style-type: none"> Conventional EL claim. Insurer pays under terms of conventional 'ground up' EL policy. 	<ul style="list-style-type: none"> Conventional EL claim. Employer pays and may recover 100% from FSCS for post 1972 claims (or FSCS may pay claimant direct) 	<ul style="list-style-type: none"> Conventional EL claim. Employer pays. No FSCS involvement because no insurer is identified. In this scenario, the ELTO search and/or the disclosure provisions of the new TP Rights Bill will have drawn a blank. Query ELIB cover for this scenario, given the employer is solvent. Is not the ELIB the compensator of last resort?
		insolvent	<ul style="list-style-type: none"> TP Rights Act claim (under the 1930 or 2010 Acts) Insurer pays. Claim is generally subject to same conditions as would have applied had the insured employer notified the claim. 	<ul style="list-style-type: none"> Potentially a TP Rights Act claim (under the 1930 or 2010 Acts) if for example an insolvent insurer disputes cover FSCS pays 100% for post 1972 claims. 	<ul style="list-style-type: none"> No-one pays – a problematic scenario because no assets are available to meet the claim. The employer is insolvent and there is no FSCS involvement because no insurer is identified In this scenario, the ELTO search and/or the disclosure provisions of the new TP Rights Bill will have drawn a blank. Probable ELIB cover given that it is the compensator of last resort.
	unknown	<ul style="list-style-type: none"> No-one pays. If the employer is unknown, then EL the insurance position cannot be ascertained. Hence no claim is possible because there is no identified defendant to sue. This may be an unlikely scenario for post-72 accidents or exposures because of the availability of HMRC schedules. Query ELIB cover for such claims? The argument seems to be that if there was exposure at work after 1972 there should have been (and very probably was) EL cover (for which premium was taken by the industry). 			
EMPLOYER					

3. Is ELIB merely a New Labour legacy?



- The problem has not evaporated with the change of government.
- Look again at the aims of the ELIB consultation.
- Were the proposed scope and cost of ELIB too extensive?
- Are the industry-led ELTO and other current measures appropriate solutions to the problem?
- The social context?

4. Likely future developments?

It's time for a reality check

- UK mesothelioma claims are not going away
- there will be many untraced and/or unfunded cases
- the Government will not subsidise them, and
- the courts may again prove flexible on causation

Avoiding an ELIB, now or later, requires feasible alternatives

- Insurers and risk carriers doing nothing is simply not an option
- The main current approaches are the ELTO, an MoJ working group, the mesothelioma PD and a proposed PAP
- Watch this space for political indications on ELIB this autumn ...

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