

GMB Response to DWP Consultation Document: Accessing Compensation-Supporting people who need to trace Employers Liability Insurance.

Introduction

GMB represents over 610,000 members across a wide industrial area encompassing both the private and public sectors. As a campaigning trade union GMB has been at the forefront of many areas where asbestos issues, such as the ban or the restoration of compensation, have needed to be challenged.

GMB welcome these government proposals, on the establishment of an Employers Liability Tracing Office, and the long overdue Employers Liability Insurance Bureau.

Q!-Is this the correct data to be recorded or is something else needed to properly identify EL policies? GMB agree that the suggested data relating to both the employer and insurer are correct.

Q 2-Is there a better unique employer identifier than the employers' reference number provided by Her Majesty's Revenue and Customs to facilitate tracing of EL insurance policies? As the purpose of the question is to establish employer identification for current or previous employees, perhaps the unique identifier HMRC number should be highlighted on the P60 given to employees, with a note explaining the significance of the number in the event of future claims. The proposed ELTO should collect the data in such a fashion that future identification of an employer should be feasible from different types of recorded information. For example the personal National Insurance numbers of senior directors/ owners should also be recorded.

Q 3- Which historic records would it be feasible and proportionate for the insurance industry to include any electronic database? All available data should be recorded electronically, including separate backup systems. FSA rules should be amended to include the requirement for all Employers Liability insurers to publish policy details.

Q 4- How should an electronic database be funded? The initial set up, and subsequent running costs of the electronic database should be funded by a levy on all insurers who sell policies within the UK. This should be more efficient and less costly and time consuming as in the previous voluntary agreement. Solicitors who need to access the data base could be charged a fee, recoverable through costs, for the information. Individual claimants should have free access to the information.

Q 5- Who should be represented on the board and what structure should such a board take? To be fully representative, Victims Support Groups, such as

the National Asbestos Support Group, should be represented on the proposed board, as all other involved organisations are already represented.

Q 6- Should the coverage of an ELIB be limited to where there is a legal requirement to insure, as is the case of the MIB, or should the ELIB provide universal coverage? The ELIB should have universal coverage where an employer is no longer in business or where an insurer cannot be traced. In addition coverage should not be limited to the post 1969 Employers Liability (Compulsory Insurance) Act.

Q 7- How should an ELIB be funded? The insurance industry should fund the ELIB.

Q 8- What would be the impact on insurers and employers of establishing an ELIB? As the insurance industry have contributed to liabilities, which they and other insurers had underwritten, though the policy details may now be missing, it should be the insurance industry which funds the ELIB. This would in reality be cost neutral, and would not justify an increase in premium costs.

Q 9- Should the level of general damages be based on amounts being awarded in the courts or on some different basis? The level of general damages should be based on the principle of assessment of damages for personal injury or death, and mirror the levels based on the amounts awarded by the courts.

Q 10- Should the level of compensation be decided based on an individual's needs or on a fixed tariff? Any compensation awards should be based on the statutory rules for assessment damages arising from the personal injury or death.

Q 11-Should special damages be incorporated within a fixed tariff or should they be dealt with on an individual basis? As above, any special damages should be based on the statutory rules relating to the claim.

Q 12- Should an ELIB cover all claims, long-tail disease claims only or just those with mesothelioma? An ELIB should cover all claims. Current "long tail" claims are dominated by asbestos related diseases but future claims might arise from using new technology where there is little or no existing evidence that there is a long term problem from exposure to low frequency radiation or nanotechnology.

Q 13- How could we ensure an ELIB paid out in all appropriate claims and not those that would not have been paid? GMB is unsure exactly why this question is present as we understand that there is a burden of proof standard which applies to claims and cannot see why this situation would be any different.

Q 14- What level of evidence is needed to settle claims if contemporary records have been destroyed? Again the same level of evidence as needed for any successful claim – there should be no difference. Some elements of contemporary records might still be available, such as National Insurance records detailing work.

Q 15- How should an ELIB start to meet claims to ensure fairness to claimants and funding at the start of any scheme? An ELIB should meet all claims from the introduction of the scheme. Future claims would be subject to the same time constraints as exist already.

Q 16- Should an ELIB meet claims to dependants after a person has died if a claim has not previously been compromised? Victims families should be able to complete a claim in the same way they can with existing provisions.

Q 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? Any limitation should be the same as existing limitations for other claims.

Q 18- Would the introduction of an ELIB have an impact on employer ELCI compliance? Any employer, particularly a small one, risks bankruptcy if there is an uninsured liability to meet. Most employers will continue to have ELI, irrespective of the introduction of the ELIB. Details held on the database could be checked to ensure employers are not trading without their adequate insurance cover.

Q 19- What more can be done to ensure that employers which are legally obliged to obtain ELCI do so? By ensuring high profile prosecutions for companies, and directors, who do not comply with the legislation, this could act as a deterrent for non-compliance.

Q 20- Is there anything else, not covered by these questions, which you would like to tell us? There are fears that in those sectors/industries where compliance is reluctant at best and often clouded by employment status issues that vulnerable workers will fall through the Employers Liability Insurance net. This could include agency/temporary workers, migrant workers who may not have the necessary language skills to check the insurance out, and bogus self employment where the reality is that the workers believe that they are working for themselves but in reality have an employer. The ELIB should include these categories of workers as long as they can prove that they have worked.