

Review of Employers' Liability  
Compulsory Insurance



# Contents

	<b>Page</b>
Ministerial Foreword	4
1. Executive Summary	6
2. Update on the Employers' Liability market	10
3. Cost of resolving claims	12
4. Enforcement	19
5. Risk-based underwriting and renewal notification periods	22
6. Long-tail disease risks	28
7. Rehabilitation	29
8. Summary and next steps	35
Appendix A – list of contributors to the EL Review	

# Ministerial Foreword

On 3 June the Government published its First Stage Report into Employers' Liability Compulsory Insurance. In response to problems for business caused by rapid increases in premiums for this insurance, the report analysed the nature of the difficulties within the Employers' Liability (EL) market, the causes, and their impact on business. It identified an 'agenda for action' committing Government to work with stakeholders to bring about improvements. Government promised to report on progress in the autumn.

This second and final report meets that commitment. It describes the work that has been undertaken since June, identifies the further actions we intend to take and sets these in the context of a strategic approach aimed at improving the efficiency, sustainability and outcomes of the employers' liability system.

The First Stage Report contained some difficult messages. That there were no quick solutions; that premiums had been held artificially low prior to recent rises; and that the current levels of premiums were reflecting the true economic costs of accidents, injuries and ill health in the workplace. But it also recognised that the pricing behaviour within the market meant that far too many businesses had – quite out of the blue – faced acute price increases; late renewals; and premiums that often have not reflected individual health and safety efforts. The market has not failed but in many instances it is simply not working well enough.

So – as this report demonstrates – the Government is acting. We have been facilitating improvements in the short term while helping stakeholders begin to tackle the difficult long term issues. In the past six months we have worked with business, the insurance industry, lawyers and unions to build a real and constructive partnership.

This partnership is already having beneficial results for business, particularly smaller businesses, in areas such as renewals and making underwriting more risk-based. Providing better risk information has improved Small and Medium Sized Enterprises' (SMEs') access to the EL insurance market and in some cases delivered lower premiums. And there is more to come, mapped out in detail in this report. Further work is aimed at encouraging better health and safety and occupational health, and thus fewer costs to firms from injury, illness and absence. Action to reduce process costs will also help keep premium increases under control, as could greater use of rehabilitation in some cases.

To deliver significant, sustained improvements we must tackle the underlying problems together. And we are.

We have helped stakeholders identify ways to reduce process costs, and are working with them to pilot these measures. We are working on ways to improve companies' management of health and safety, and so cut both the incidence and the costs of claims. And – in the light

of increasing evidence that effective and timely rehabilitation can reduce overall costs whilst delivering a better outcome for the victim – we are making a significant step-change in our approach to rehabilitation.

Our safety performance in the UK is good – that is one reason why the costs of employers' liability are still much lower than our international competitors. But there is more to be done, particularly on occupational health. Absence management, incident management, and follow-up can help cut both the incidence and the costs of claims. And Government is working with the Health and Safety Executive (HSE) and insurers to provide guidance and to help business present hard evidence on their management of health and safety to the market thereby ensuring they get value from their health and safety investment. This should help tackle the problems faced by small firms with good health and safety practices.

As we address the problems in the market and for businesses, particularly smaller businesses, it is important to remind ourselves why employers' liability compulsory insurance is important:

- To provide an incentive to reduce accidents at work and improve health and safety
- To properly compensate employees who are injured through their employers' negligence; and
- To protect businesses by spreading the risk of workplace accidents which might otherwise ruin them financially.

Employers' Liability Compulsory Insurance (ELCI) has served us well for nearly thirty years. However, as risks evolve, so too must employers' liability and our response to those risks. A lot has been done since June. We are committing to do much more. But we also recognise that there is no simple, quick solution. It is not a problem that Government can take away and fix.

An effective response, sustainable improvement, will require a long term partnership. The past six months have seen such a partnership develop and start to deliver. Government is determined to play its part. This may be a final report, but it is not an end to our work.



**Des Browne MP**  
Minister of State  
for Work,  
Department for  
Work and Pensions



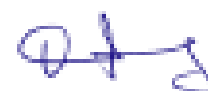
**The Hon  
Ruth Kelly MP**  
Financial Secretary  
to HM Treasury.



**Rosie Winterton MP**  
Minister of State,  
Department of Health



**Nigel Griffiths MP**  
Parliamentary Under  
Secretary of State  
for Small Business  
and Enterprise,  
Department of Trade  
and Industry



**David Lammy MP**  
Parliamentary Under  
Secretary of State,  
Department for  
Constitutional Affairs

# 1. Executive Summary

On 3 June 2003 the Government published the "First Stage Report on Employers' Liability Compulsory Insurance". This examined the nature and extent of the difficulties which had affected and continue to affect the UK Employers' Liability Market and caused problems for many businesses, particularly SMEs. The report examined the causes of these problems and, from this analysis, outlined an agenda for future action.

The First Stage Report noted:

*"The Government will closely monitor developments in the market, looking at any new information about the workings of the market for employers' liability that becomes available. And we will report in the autumn on the progress that has been made and any further steps we intend to take."*

This final report fulfils that brief. It examines trends in the market over the last 6 months. It also describes the work that is underway in each of the areas identified within the First Stage Report and how this work joins up into a programme for action.

## Market Trends

The First Stage Report found that there had not been a general failure in the EL insurance market. This remains the case. While the EL market remains difficult, the outlook is more stable than six months ago. Premiums appear to be rising less quickly. And some new underwriters have entered or re-established themselves in the EL market providing new capital.

Economically unrealistic pricing practices within the insurance market contributed substantially to the problems faced by business in 2002-03. Discussions with insurers and the Financial Services Authority (FSA) suggest the price rises of the last 18 months have acted to close the gap between premium income and underwriting losses. In future, inflationary pressures (e.g. increases in the level of claims settlements) are likely to be the most significant factor in premium increases.

In this climate, the Government continues to believe that any pricing interventions in the market on the part of Government would be unwise and short-sighted.

No-one expects prices to decrease: higher EL premiums are here to stay. Management of the factors driving these premiums, both the costs of operating the ELCI system and the health and safety risks that underlie it, is the only way to mitigate these effects.

### **The Agenda for Action**

The agenda for future action outlined in the First Stage Report recognised that there are no quick or easy solutions for businesses hit by significant price increases in the EL market. However it identified a number of key areas in which Government would work with stakeholders to take action during this difficult period. These included short term initiatives and improvements to help businesses – in particular SMEs. It also identified a longer-term agenda focused on addressing the structural pricing and performance issues within employers' liability insurance. This final report describes the progress that is being made across the whole agenda for action.

The nature and ownership of solutions is important. At the heart of the issue lie difficulties within a commercial market and the stakeholders in that market are key to developing the way forward. Effective solutions will require a co-ordinated approach by the participants within the market. Insurers, brokers, lawyers, businesses and their representatives all have a significant part to play. And Government must continue to provide encouragement, facilitation and leadership as well as ensuring an appropriate regulatory framework.

The last six months has seen the development of just such a partnership. Communication between parties has been frequent and constructive; there is a shared commitment to making positive improvements. This spirit of co-operation was demonstrated at two workshops focusing on rehabilitation and the claims resolution process that each involved over 40 representatives of diverse interest groups working together to identify some of the practical proposals and actions described in the main body of this report.

In looking at these proposals and actions it is important to distinguish between large and small business. Of necessity, pilot activity and other work on tackling the cost of resolving claims and promoting rehabilitation can often be tested most quickly at a big business level. Indeed this may be the best way to establish and evaluate the principles which we then intend to roll out to smaller business where the difficulties have been felt most acutely.

Although the report is organised by subject themes, it is worth recognising two strands of activity:

First, there are a series of initiatives designed to tackle some of the immediate difficulties faced by businesses in securing employers' liability insurance. These include action on renewal periods, on the availability of advice and information and from Trade Associations to assist their members to secure more favourable premiums. For the Government, there are issues of enforcement and proposals to consider lifting the ELCI requirements from 300,000 of the smallest owner-operated companies. As a series of measures these should have a cumulative practical benefit in the short term. But they are not likely - or intended - to tackle the more fundamental issues underlying the cost of EL insurance.

# Review of Employers' Liability Compulsory Insurance

## Second Stage Report

So, underpinning current initiatives is a longer-term strategy targeting three more fundamental areas:

- **Tackling costs.** The agenda for action identified a reduction in the legal and administrative costs of resolving claims and an increased role for rehabilitation as key issues for reducing the upward pressure on premiums and improving outcomes for claimants. Government and stakeholders are working together to explore new ways to resolve claims more efficiently, to make costs more predictable and to promote rehabilitation where it will have the double benefit of improving the outcome for people with injuries while limiting costs. The Government also continues to engage in a wider debate about the most effective way of insuring long-tail risks.
- **Improving the availability and flow of information.** The fundamental aim in this area is for insurers to be better able to recognise businesses with good health and safety practices, and for good health and safety practice to be better reflected in premiums. Businesses need good information to manage health and safety effectively and insurers need to access and understand this information in order to assess risk and therefore enable them to price ELCI accordingly. Our aim is to improve knowledge of what management practices lead to better claims records and to find cost-effective ways for businesses - especially SMEs - to implement and present these management practices. This will make it easier for better performing organisations to get access to a market that will write a broader range of risk and discriminate better between individual risks, and over time begin to enjoy favourable premiums as a result. It will also put a further pressure on those who have not addressed these issues to raise their game.
- **Working to improve health and safety practice in the UK.** There are obvious social and economic imperatives to reduce the number of incidents that may give rise to claims. Improving health and safety in the UK will tackle a key driver of ELCI costs. But this agenda is also about improving the reporting and response to occupational injuries and illness. The Government wishes to engender a system that, even when it fails in prevention, nevertheless responds positively to the incident and the injured person rather than waiting for a claim to be generated. The Health and Safety Commission's (HSC's) new Strategy for Workplace Health and Safety in Great Britain to 2010 and beyond, also recognises these linkages and places more emphasis than ever before on seizing the synergies between the operation of the insurance market, the needs of business, and the HSE's own regulatory objectives - including its capacity to provide advice and guidance.

So this report describes a range of activities. In some cases it is reporting on schemes and initiatives that have been introduced within the marketplace over this summer and are already beginning to take effect. In other instances it describes specific, timetabled actions to which the Government and stakeholders have committed; these will be implemented over the next 6 – 12 months. Finally, it sets this activity in the context of a longer term agenda in which stakeholders will continue to play their part.

Some initiatives have been generated and implemented independently by stakeholders; some the Government has facilitated. In many cases responsibility for future actions will be shared, though often with an emphasis on stakeholder implementation. However, there are also areas, particularly around the strategic policy agenda, that can only be delivered by Government or where political leadership is key.

The Government is committed to providing that leadership. This report demonstrates what has already been achieved, and it gives a clear timetable for future action. Whilst this will be the last overall report on this Review, the Government will separately continue to report progress against the individual work streams described throughout this report and summarised in Section 8.

A Regulatory Impact Assessment is available on the Department for Work and Pensions (DWP) website at [www.dwp.gov.uk](http://www.dwp.gov.uk)

## 2. Update on the Employers' Liability market

The conclusion of the First Stage Report that there has been no general market failure continues to hold true. Although the market remains fragile and price increases continue, the market is working and there are some signs of improvement.

In Stage One we reported that the employers' liability markets in the devolved administrations of Wales, Scotland and Northern Ireland appeared to have moved consistently with the market as a whole. This continues to be the case.

Whilst there have been some signs of a stabilising of personal insurance rates and to some extent commercial property rates in the general insurance market, employers' liability rate increases have continued throughout the current renewal cycle.

However, employers' liability insurance rating increases and insurers' estimates of increases going forward are lower than during 2002. The average level of premium increase in the commercial liability market, as reported by insurers, appears to have fallen for each of the first two periods of 2003/04 and this trend is forecast by the industry to continue in employers' liability for the year as a whole. Research undertaken by the Association of British Insurers (ABI) found that leading EL insurers are forecasting average employers' liability rating increases of 10%-15% over the coming renewal cycle. However, above-average increases for some sectors or trades cannot be ruled out.

Insurers believe that the transitional price increases of 2002/03 have substantially closed the historic gap between premium income and underwriting losses within the employers' liability insurance market. In future, inflationary pressures (e.g. increases in the level of claims settlements) are likely to be the most significant factor in premium increases. This was one of the findings of the FSA in reviewing risk management practices in liability insurers.

In terms of the availability of capital there are positive signs of capacity returning to the market.

- In the Lloyd's market, Illium Insurance Group Limited is to establish a new specialist liability syndicate writing around £100m of employers' and public liability business in 2004
- Brit Insurance Holdings Ltd is likely to maintain its underwriting capacity at Lloyd's during 2004 whilst looking to significantly increase premium income from Brit Insurance, its commercial insurance subsidiary. Brit insurance is looking to expand in the commercial SME market
- Quinn Direct, a major Irish insurer has entered the UK liability market. The company has already started writing business primarily for the construction industry – a sector which appears to have been particularly hit in 2002/03.

In the first stage report Government noted that insurers had held EL premiums at an unsustainable level for many years, an uneconomic form of pricing subsidy that had resulted in substantial underwriting losses. Continued premium hardening in the market demonstrates that insurers have moved away from cross-subsidising EL premiums. Indeed figures from the ABI show that the claims ratio on EL has decreased from 118% in 2001 to 98% in 2002. EL remains unprofitable but the position is improving. Figures from the ABI show that the combined ratio (a measure of claims costs plus expenses as a proportion of premiums received) has improved from 139% in 2001 to 117% in 2002. This indicates that insurers are still paying out more money than they receive in premiums, but the gap has narrowed significantly. This does not hold out the prospect of lower premiums in future.

It is against this background that the work of the insurance industry, Government and other stakeholders to reduce the costs underlying EL insurance is taking place. The Office of Fair Trading (OFT) has said that they will keep liability insurance markets under review. In particular, the OFT will look again at premiums during late 2004 by which time, assuming there is no single significant effect, such as the attack on the World Trade Centre, premiums should have adjusted to take account of cost increases.

The FSA also has a role both in prudential regulation of insurers and, from January 2005, in regulating the selling of general insurance. The FSA will need to continue to monitor trends and best practice in risk management in the market with a view to improving standards in regulated firms and to continue to monitor the impact of requirements that it sets, such as the risk based system of calculating regulatory capital and the standards applied to how firms conduct their business.

## 3. Cost of resolving claims

### Background

A sustained pressure on the EL system has been the progressive rise in the cost of resolving claims. Legal costs flow directly through to the cost of claims and hence on to premiums. The aim of Government/stakeholder action in this area is to tackle one of the main cost drivers in the EL system, to improve the efficiency of the claims resolution process and to develop alternative mechanisms for resolving claims fairly. The promotion of faster and more efficient claims settlement processes has a key link to the Government's goal of improving the take up of rehabilitation. Early intervention is critical to the success of rehabilitation.

Government has been working collaboratively with all stakeholders (employers, employees, unions, lawyers and insurers) both to explore how the claims process could be streamlined and to increase each party's understanding of the effect of their actions on others. Our aim in doing this is to break down barriers of mistrust and to engender a less confrontational approach to EL claims. As well as making the system more effective, this should lead to faster claims settlement.

Legal costs and the process of resolving claims can be most disproportionate in relation to smaller claims. Therefore action is aimed primarily at smaller, low complexity claims. There can often be a high degree of homogeneity in these claims and thus there is an element of routine in resolving them. The challenge is to remove frictional costs where possible from such claims by reducing the number of interactions between parties needed to resolve a particular claim.

### Actions

In Stage One the Government said it would:

- Report on research into the legal costs of EL cases up to £15,000 and on the ongoing evaluation of the Access to Justice and Woolf reforms
- Develop understanding of the role of the various parties in relation to the claims process for EL, and identify areas for effective cooperation among stakeholders
- Facilitate the best use of current initiatives in this area and encourage the development of further proposals, particularly around Alternative Dispute Resolution
- Improve awareness and understanding of Alternative Dispute Resolution or alternative methods of insuring and their possible application in EL cases.

### Further Research

The first stage report detailed the research carried out by specialist costs researchers Professor Paul Fenn and Dr Neil Rickman on the "Costs of Low Value RTA (Road Traffic Accidents) Claims 1997-2002". The same researchers produced a report in October on "Calculating 'Reasonable' Success Fees for RTA Claims". From this research has developed an agreement on success fees for motor insurance claims, which is discussed later in this chapter.

With this in mind research was also commissioned on success fees in EL and Public Liability (PL) claims and this work is currently informing further discussions being facilitated by the Civil Justice Council (CJC) and supported by the Department for Constitutional Affairs (DCA) aimed at fixing appropriate success fees for these types of cases. It is anticipated the outcome of this initiative will be known by spring 2004 and, if agreement is reached, implemented by the summer.

The first stage report further committed that the Government would report on the legal costs of EL cases up to £15,000. This research, "Costs of Low Value EL Claims 1997-2002", also by Paul Fenn and Neil Rickman has been completed and was published by DCA today. The findings include that:

- Base costs of EL cases rise proportionately with damages in a fairly predictable manner up to a case value of approximately £10,000.
- Between 2000-2002 EL accident claims appear to have been fairly constant in volume terms and combined claimant costs and disbursements for sub-£15,000 accident claims increased from approximately £2,000 to approximately £2,800 between 2000 and 2002, during a period when mean damages for such claims were relatively constant at just over £3,000 on average.
- The increase in total costs including disbursements was much larger in non-litigated EL cases than litigated ones between 2000 and 2002, perhaps indicating a 'Woolf-effect' due to front-loading. This appears consistent with the effect of Woolf on the 'front-loading' of case-work (which needs to be balanced against the fact that more claims are settling without the need for issue of court proceedings).
- There is little difference between Conditional Fee Agreement (CFA) and non-CFA EL claims with respect to the level and growth rates of mean agreed total costs including disbursements and success fees and After the Event Insurance (ATE) premiums. Thus, the cost increases observed cannot readily be ascribed to the recoverability rules introduced in April 2000.

# Review of Employers' Liability Compulsory Insurance

## Second Stage Report

The Government now intends to use the research findings to better inform our subsequent work aimed at managing claims costs. This approach has proved successful in relation to the work on RTA claims.

In addition, the ABI are currently carrying out research on the make up of legal costs in the employers' liability system. This work will also be useful in pinpointing the key issues and informing solutions.

### **Understanding the Role of Stakeholders and Building Co-operation**

The Government has facilitated three-way dialogue between the insurance industry and representatives of both claimant and defendant lawyers on the costs of resolving claims. Firstly, to encourage stakeholders to scrutinise their existing processes and interactions and to develop options to reduce the costs of resolving claims particularly for the lower complexity "fast-track" claims (i.e. under £15,000). Secondly, to explore the potential for alternative ways of handling and resolving claims.

As a first step in this dialogue Government ran a Claims Process Stakeholder Workshop involving key stakeholders from the legal profession, the insurance industry, trade associations and the Trades Union Congress (TUC) on 16 October 2003.

The conference focused on three key themes:

- Exploring ways of making the system work more quickly
- Exploring ways of making the system more cost effective
- Generating better outcomes.

The day was welcomed and viewed as productive by all participants. A number of proposals for action were generated which will now be taken forward by stakeholders facilitated by Government. These are discussed at the end of this chapter.

### **Making Best Use of Current Initiatives**

The Government has been examining if the current initiatives in other parts of the legal system could be applied to EL. There is a range of initiatives underway aimed at providing costs stability in the lower value, higher volume end of the personal injury market. These initiatives are aimed at finding joined up solutions to ensure the funding regime for injury claims works efficiently, fairly and equitably for all parties involved.

The initiatives include the fixed recoverable legal costs scheme for pre proceedings RTA claims involving personal injury under £10,000 introduced on 6 October. This scheme will provide for a fixed set of reasonable recoverable costs for this high volume sector. The scheme brokered by the CJC and implemented by the DCA will help stabilise the market

which has been subject to extensive satellite litigation that has delayed settlement of claims but also act as a building block for further brokered agreements in other contentious legal cost areas. A research programme will be set up to monitor and evaluate the operation of the scheme.

This scheme is in the process of being added to with fixed recoverable success fees in cases run under CFAs. In early October the same groups that developed the fixed costs scheme reached an agreement in principle on fixed recoverable success fees for all RTA cases. Various implementation issues are to be resolved but it is expected the necessary rules of court will come into force by March 2004 for cases which fall under the fixed recoverable costs scheme and in the Spring for all other RTA cases, including those that go to trial. The 'fixing' of success fees should contribute to the more speedy resolution of claims at lower overall cost.

### **Improving awareness and encouraging development of alternative resolution and claims handling processes**

The Government now intends to build on the newly available research evidence and the improved understanding generated by the recent workshop to take the next steps in encouraging better and more cost-efficient resolution of claims.

The workshop identified a number of practical areas where we could productively focus collective efforts. These included:

- Reducing delay and duplication throughout the process: cutting down delay between the incident itself and insurer notification and investigation. Currently there can be delays between the date an accident occurs and the date that a letter of intention to claim is sent to an employer and subsequently an insurer. This can mean that evidence gathering and decisions as to liability become unnecessarily protracted
- Reducing duplication of investigation into the circumstances of the accident first by the claimant solicitor and then by the insurer once they are notified of the claim
- Streamlining the process of gathering data from the other party as part of this investigation which can often be lengthy and unnecessarily adversarial
- Improving staff experience to reduce the likelihood of log-jams in the system. Many claims seem to get to a certain point where unnecessary friction has built up on both sides and there is lengthy sequential correspondence dealing with, for example, questions of contributory negligence on comparatively small sums. This leads to delays and confrontation which prevent settlement and often add unnecessary cost.

## Review of Employers' Liability Compulsory Insurance Second Stage Report

Furthermore, the workshop discussed a number of realistic options to tackle these issues in relation to smaller claims:

- **Incident** – standardisation of the initial accident report to meet the needs of recipients (HSE and insurers) should cut out duplication of recording.
- **Notification** – Employers, once notified of an incident that may or may not give rise to a claim, could immediately notify their insurers who would then be able to investigate the circumstances of an accident and the question of liability.
- **Investigation** – standardisation of a form to record full circumstances of the incident and the nature, extent and severity of injuries to save subsequent investigation
- **Communication and Information exchange** – Greater use of the telephone in particular as well as electronic methods of communication such as e-mail by parties in the resolution process, with correspondence used purely for formal confirmation, to speed up the process
- **Staff Expertise** – Having a senior point of upward referral for both insurers and solicitors would enable someone with a fresh pair of eyes to look at the case objectively. Such a person would have the authority to negotiate and settle these claims quickly once the claim had remained outstanding for a set period of time.
- **Legal Advice** – One suggested option could be for any proposed settlement in lower value claims to include provision for employees to seek legal advice to check that the settlement is fair, but otherwise for the insurer or employer to deal directly with the claimant. Where the claim is more complex, then a greater degree of legal input is likely to be necessary. Employees would retain the right to litigate should they so choose, for instance if they were not satisfied with a decision on liability or on settlement levels.

The Government will now work with stakeholders to develop ways of putting these proposals into practice. In most cases, we believe that the best way to start to do this will be to develop pilot schemes which will enable us to test and evaluate the practicality and outcomes of new approaches. If successful, such approaches could then be applied more generally, perhaps by establishing Codes of Practice between insurers and clients or between insurers and lawyers, in particular to cover the crucial early stages of any claim, before the pre-action protocol comes into effect.

The first and fastest way to make progress might be to seek to work with a large, heavily unionised employer, with a single insurer and a key interest claims solicitor. But we will also look closely at ways to extend our piloting to smaller businesses - either collectively or singly. Our intention in all cases is to use pilots, whether with large or small businesses, to develop approaches which can be applied generally. For this reason we will be closely involving the Federation of Small Businesses and a major insurer specialising in underwriting SMEs in the development of our proposals.

## Scotland

Court procedures generally are different in Scotland. The Scottish Executive, in conjunction with the Scottish Judiciary, during 2002 and 2003 implemented new rules for both the Sheriff Courts and the Court of Session in an effort to encourage litigating parties to act quickly to resolve areas of dispute and achieve earlier settlements. However, insurers estimate that only about 10% of personal injury claims are litigated and less than 1% proceed to trial. The new Rules do not extend to pre-litigated cases, as a consequence of which, litigation can ensue without parties being afforded an opportunity to effect settlement.

Although there is no statutory foundation for a pre-litigation protocol in Scotland, the key stakeholders in the personal injury litigation process including insurers, the Scottish Claims Managers and the Forum of Insurance Lawyers (FOIL), have actively engaged the market in an effort to streamline the process by proposing a voluntary pre-action agreement and an amended extra-judicial scale fee. Such an agreement would set out what in effect would be a pre-litigation protocol, with a view to reducing the need for litigation.

The aims of the protocol are to:-

- Encourage greater pre-action contact between parties
- Encourage better and earlier exchange of information
- Encourage less duplication of pre-accident investigation by both sides
- Put parties in a position where they may be able to settle cases fairly and early without litigation
- Enable proceedings to run to the court's timetable and with a greater narrowing of the issues, if litigation does become necessary
- Ensure rehabilitation will be jointly explored at an early stage where appropriate

There are a number of benefits to complying with the voluntary protocol:-

- It ensures that the parties are on an equal footing and encourages a more consensual approach;
- It saves on expense by removing transactional cost
- It deals with cases in ways which are proportionate to the amount of money involved, the importance of the case, the complexity of the issues, and the financial position of each party
- It results in a greater transparency between the parties ensuring cases are dealt with expeditiously and fairly
- It ensures that the injured party is provided with rehabilitation, where appropriate, at the earliest possible opportunity
- It provides fair compensation to genuine claimants faster

# Review of Employers' Liability Compulsory Insurance

## Second Stage Report

The Law Society of Scotland is receptive to the proposals. Stakeholders are now working on agreeing the terms of the voluntary protocol and the amended extra-judicial scale fee, which it is then hoped will be rolled out in the early part of 2004.

Government will continue to work closely with the Scottish Executive and Scottish stakeholders to compare and contrast our systems and initiatives in an effort to learn from each other about successful methods of reducing the cost of resolving claims.

### Next Steps

**Proposals to pilot solutions** – Government is already engaged in more detailed work with small groups of stakeholders to develop practical ways to develop, test, and evaluate the options arising from the Claims Process Stakeholder Workshop. We aim to be developing more detailed proposals into the New Year, with the goal of starting to pilot some new approaches by June. If these prove successful then the Government will work with business, unions, insurers and the legal profession to examine ways in which they might be used more widely – and specifically applied to the circumstances of SMEs.

**Wider Initiatives** – The Government believes that stakeholders should consider whether the fixed costs approach working in RTA could be extended to EL and PL claims. There is an important momentum that needs to be maintained but the Government accepts that sustainable solutions, which work fairly for all, take time to achieve and it is also important to learn from the operation of the RTA scheme. The Government hopes that the objective research on legal costs will provide the necessary starting point for further consideration and discussions to commence in 2004.

The Government is pleased that the CJC has indicated it is prepared to continue to play a pivotal role in bringing all the right parties together to work in a constructive atmosphere to find workable solutions. Much has been achieved through working with key stakeholders including the senior judiciary, the insurance industry, the legal professions, consumer groups and others. The Government will support further research, mediations and pilots that are necessary to make progress and will ensure agreements are implemented quickly.

**Other Initiatives** – The Government is also reviewing the CFA regime to simplify the regulatory requirements, to get the level of consumer protection right and bring about greater transparency and stability for legal representatives, claimants and defendants. The aim is to have a new simplified legislative regime in place by summer 2004.

In taking ELCI initiatives forward Government will stay in touch with other work being undertaken, such as the current Better Regulation Task Force study on the regulatory aspects of litigation and compensation, to ensure that we take a joined up approach and respond appropriately.

## 4. Enforcement

### Background

Although levels of compliance with the legal requirement to hold employers' liability insurance remain high all non-compliance is serious. Employers that are trading without EL cover potentially leave employees personally exposed to more of the financial consequences of their employer's negligence; they transfer liabilities to the state benefits system; and they have an unlawful competitive advantage over companies holding EL insurance because their overheads are lower. They also leave themselves in a precarious position where the cost of a single claim could wreck their business. Effective enforcement must be a key component of the compensation system.

Smaller employers in particular have raised the issue of the unlawful competitive advantage enjoyed by non-compliant firms. Evidence suggests that such unlawful competition is more likely to impact on SMEs. We recognise that rising EL premiums have had a direct impact on compliant employers' costs and thus profitability. It is important that compliant employers do not suffer as a result of the illegal activities of others in their sector. Action in this area will ensure that Government's enforcement effort will be better targeted and more cost effective. In the same way as Government is keen to ensure that premiums are better linked to an employers' health and safety policies and performance, there is a principle of fairness about enforcement.

The law currently requires small limited companies employing no one but their owner to purchase EL insurance. Although the circumstances of a limited liability company are different there is an argument of inconsistency here since employers who are not incorporated are not required to purchase the insurance for themselves or close family members. It is estimated that of the 2.6m one-employee companies in the UK 300,000 are incorporated.

### Actions

In Stage one Government said that it would:

- Implement systems to ensure Government contractors and sub-contractors comply with EL requirements
- Work with the HSE/HSC alongside ABI and the key insurers to develop proposals for reforming the system of enforcement, considering a range of options including annual recording of insurance policy numbers
- Evaluate the resource implications of proposals to improve enforcement
- Consider the extension of enforcement powers to local authorities.

## Review of Employers' Liability Compulsory Insurance

### Second Stage Report

- Review the current regulations

Since then Government has met with a range of stakeholders to explore and develop proposals to reform and improve the existing enforcement arrangements. Government has been actively working with the ABI, insurers, HSE and Information Technology (IT) solutions providers to consider how technology might play a role in the capture of the insurance industry's employers' liability policy details and from this in the identification of non-compliant traders. Government Departments have also worked with the Office of Government Commerce (OGC) to further develop the guidance issued to Departments on employers' liability insurance requirements for contractors to Government. Finally, the HSE has undertaken new and extensive research in order to better understand current levels on non-compliance.

- Proportionate regulation for small business

Government is currently reviewing the Employers' Liability (Compulsory Insurance) Act 1969 and the supporting regulations in respect of incorporated companies consisting of one owner who is the sole employee. The consideration is whether to waive the requirement to obtain employers' liability insurance from limited companies that employ only their owner, so bringing the treatment of these companies into line with that of unincorporated employers. This would lift the requirement to insure from over 300,000 of the smallest UK businesses.

- Government procurement – compliance of bodies that contract with the public sector with EL requirements

The DWP is working with the OGC to amend, reissue and raise the profile of guidance on contracting issued to other Government Departments. This guidance deals with the systems of checks to be employed by Departments when checking the EL compliance of their contractors. The aim here is to ensure that all bodies that contract with the public sector have valid EL insurance. The OGC works with Government to improve procurement and project/programme management.

It is proposed that revised guidance will be delivered via the OGC's Successful Delivery Toolkit website and to all procurement offices via a centrally issued notice. The Government will be working with the OGC to ensure this guidance is put into practice by all Government departments from April and followed up.

- Enforcement Database

To identify firms trading without EL insurance, DWP is exploring with stakeholders the feasibility of creating a database of current valid EL policies. The ABI are liaising with insurers to explore how duplicate electronically generated EL certificates might be forwarded directly to HSE. Government is now talking to IT solutions providers about cost and data capture issues. Going forward Government is exploring issues of legality in terms of data protection and the resourcing of such a database. The thrust of the

proposals is to find a simple and cost-effective way of better targeting HSE's ELCI enforcement efforts. With ready access to a database of those who definitely do have insurance the HSE would be able to better focus future enforcement action on those who may not.

- Extension of enforcement powers to local authorities

Government has spoken to local authority representatives about the idea of extending the powers of enforcement beyond health and safety inspectors to local authority inspectors. Government has put this particular proposal on hold pending the outcome of the assessment of the costs and benefits of developing an enforcement database.

### Next Steps

**Government Procurement** – The Government will review in October 2004 the take-up and operation of the new guidance on ensuring employers' liability compliance from bodies that contract with the public sector.

**Enforcement Database** – The Government will work with the ABI and HSE to assess the costs and benefits of this project. If the result of this is positive Government will develop a tender specification and accompanying Regulatory Impact Assessment by April with a view to tendering for the work by autumn 2004.

**Proportionate regulation for small business** – The Government will produce a Regulatory Impact Assessment considering the options for relaxing the regulations in respect of family-run limited companies by March 2004. If favourable, it will move regulations as soon as possible thereafter.

**HSE Research into non-compliance** – The HSE has commissioned Greenstreet Berman to carry out an anonymised survey of employers to assess current levels of non compliance and to better understand the nature of the problems being encountered in obtaining EL cover. 18,000 employers were contacted by the researchers to participate in the survey. Data provided by insurers shows an increase in the number of EL policies in force in autumn 2003 than at the beginning of 2002 not a decrease. Overall 0.54% of organisations reported that they did not possess EL or a combined insurance policy that includes EL, excluding exempt organisations. The research indicates that EL compliance remains high – 0.9% of micro organisations, 0.37% of small organisations (11- 50 employees), 0% of medium sized organisations (51 – 250 employees) and 0.6% of large organisations (over 250 employees) lacked EL cover. HSC/E is planning to publish the results of this survey shortly. Based on the survey findings the research estimates that 22,000 organisations comprising 0.5% of employees (over 112,000 employees) lack EL cover. The detailed results of this research will help inform future enforcement effort.

## 5. Risk-based underwriting and renewal notification periods

### Overview

This section pulls together a number of themes identified in the First Stage Report:

- Renewal notification periods
- Risk based underwriting and provision of information to insurers
- Communication and guidance for business

Most of these themes are amenable to short term market driven action to improve the situation for business, particularly smaller firms. Indeed, a number of market led initiatives are already underway. Government has encouraged and facilitated market action, made linkages between separate initiatives and where appropriate developed separate initiatives.

### Background

Timing of renewals is important. Late notification of renewal terms causes a real problem for businesses, giving them insufficient time to seek alternative quotes and specialist advice or to budget accordingly. This can lead to businesses paying over the odds for their cover in an already difficult market.

In addition, insurers find it difficult to identify smaller firms with good health and safety practices. Improving the flow of risk management information to insurers and its link into the underwriting process should improve access to the market and incentivise good health and safety practice, particularly for smaller firms. Greater certainty about the management of risk should help insurers broaden the range of risk they are prepared to write. Once good information about firms' risk management is available to insurers, it is expected that good risk management practices will have a favourable effect on premiums for some smaller firms in particular.

Businesses seeking EL insurance cover are often in need of expert advice to track their way through a complex and changing market. In the past market difficulties have been exacerbated by a lack of communication and understanding of the likely future movement in premiums, the need to shop around, the need to seek specialist advice and the need to ensure that insurers get the risk information they need from business in a timely fashion.

## Actions

In Stage one Government said that it would:

- Engage with insurers, brokers and relevant associations to encourage improvement in renewal notice periods offered to business
- Make the necessary linkages between currently separate initiatives and promote the dissemination of best practice
- Develop a common approach to risk-profiling and safety assessment which can be used by insurers, the HSE and business to assess how health and safety is managed
- Ensure that delivery targets in the next HSE/C strategic plan play a significant role in reducing the number of EL qualifying incidents.

Since then there have been a number of developments arising from the work of stakeholders and Government:

- ABI/ British Insurance Brokers Association (BIBA) code of practice on renewal notification periods – effective from 1 November 2003

Under the Statement of Good Practice published by the ABI and BIBA [www.abi.org.uk](http://www.abi.org.uk) liability insurance policyholders will receive at least 21 days notice of their renewal terms. The Statement will give businesses increased confidence that they will have time to budget for proposed levels of premiums, seek specialist advice or 'shop around' for alternative cover if they wish to do so.

The Statement applies to both employers' and public liability insurance, including products where these are part of a package with other insurance.

The guidance states that insurers will notify the broker of the information required for renewal not less than 40 calendar days prior to renewal date; brokers will provide the required information to the insurer not less than 30 calendar days prior to renewal; insurers will notify the broker of the renewal terms not less than 21 calendar days prior to renewal and the broker will pass the terms to the policyholder as quickly as possible.

Although the Statement of Good Practice is not mandatory insurers have signed up to it. The Statement sets a benchmark against which businesses can now assess their insurer. The Government welcomes the introduction of longer, notice periods in a complex market and will watch the implementation of the guidance with interest to evaluate whether the current arrangements serve business well enough.

# Review of Employers' Liability Compulsory Insurance

## Second Stage Report

- FSA Liability Insurance Good Practice Indicators – issued 23 June 2003

During the latter part of 2002, the FSA began research into the liability insurance market. Although this was undertaken at the same time as the First Stage of the EL Review and the OFT's Liability fact-finding study, its main purpose was to look at current risk management practices in the liability market, any areas in which improvements could be made, and key business issues. The project team liaised closely with DWP and OFT throughout its study. The results were used primarily to inform supervisors of insurance companies about risks and market trends that should be taken into account in assessing firms writing liability business. As part of feedback to the insurance market on the review's conclusions and recommendations, the FSA released a number of good practice indicators that it had identified with a view to raising standards in all relevant firms.

The good practice indicators tie in very closely to the five strands of work announced in the EL Review First Stage Report. Full details can be found at [www.fsa.gov.uk](http://www.fsa.gov.uk). The indicators covered amongst other things:

- Renewal notification periods
  - Pricing strategies and underwriting for profit
  - Communication with business on market developments
  - Insurers/Businesses working together to improve risk management
  - Rehabilitation referral
- On 8 September 2003 the ABI launched an initiative called 'Making the Market Work', a joint ABI/Insurer committee set up to assess Trade Association health and safety assessment schemes.

Trade associations or other similar bodies will be able to submit details of their health and safety schemes to an ABI Joint Standing Committee for assessment against best practice features that insurers expect to see in place. These features have been drawn up by the ABI, in conjunction with several trade groups. The Committee comprises of senior underwriters from the leading EL insurers.

The Committee will report back to the trade association with a specific assessment of their scheme, together with any suggested improvements. There is no 'pass' or 'fail'. Once completed, details of the assessment will be sent by the ABI to all ABI members writing EL insurance. Insurers will take into account this information when assessing the risk from firms who belong to the particular trade association or body's health and safety scheme. The aim is that businesses will understand the health and safety practices insurers are looking for, while insurers will be able to reflect good health and safety in the terms they can offer.

- HSC/E's Index to measure the health and safety management performance of large organisations for use by business, investors, insurers, employees, the regulator and other stakeholders

HSC/E has commissioned Greenstreet Berman to develop a generic index for the measurement of the management of health and safety for the use of business and other stakeholders. This Index tool is designed to assess how well an organisation is managing its risks to occupational health and safety. The index will enable employers to benchmark their own performance against others in the industry sector, or against their own performance over a number of years. It is not intended to be a predictor of claims. HSE is planning to launch an electronic version of the Index for large and medium employers in early 2004. The launch will be followed by a validation exercise involving some 100 employers. A version of the Index is also being developed specifically for small businesses; HSE plans to launch the Index for small businesses in spring 2004.

The HSC/E Index sits well alongside those from the ABI/Trade Associations since it is a generic tool relevant to all businesses rather than to one specific sector.

Government and the ABI have worked closely together in the development of their respective health and safety assessment tools. HSE is currently talking to the ABI about securing ABI support for the Health and Safety Index. The HSC/E, ABI, British Insurance Brokers' Association (BIBA) and other insurance stakeholders will have a vital role to play in encouraging employers to measure and report their performance against the Index. This would enable organisations to use a single package for insurance and contractor assessment and may assist them in demonstrating compliance.

- A number of insurers have developed more risk-based packages. To take two examples:

AXA and National Britannia Group have formed an alliance – AXA health and safety solutions for small businesses looking for EL cover. National Britannia will be recommended by AXA to its customers as its risk reduction business partner. Companies' progress in implementing change will be monitored via National Britannia's e-risk MANAGER, an interactive web-based risk management system. It is being piloted with 40 of AXA's 'Premier' brokers with a company-wide roll-out planned for the end of 2003.

Norwich Union has launched a Liability Fact finder in an effort to encourage good health and safety standards and to reduce the number of workplace injuries/illnesses. In conjunction with brokers, it is asking customers to provide information about their use of quality and environmental management standards, their health and safety policy and how it is implemented, together with how risk assessment training is carried out.

## Review of Employers' Liability Compulsory Insurance Second Stage Report

This sort of activity is welcome, in that it represents a genuine improvement for business rather than another burden. In the longer term, businesses recognised by insurers as having better than average health and safety practices should be able to obtain favourable terms for ELCI cover.

- Trade Association initiatives to help small business tackle premium costs

The Government has met representatives of the National Federation of Roofing Contractors (NFRC) - and other small businesses in the construction sector - to talk about the difficulties facing some of their members.

NFRC is part of the ABI working party (see 'Making the Market Work' above) considering the assessment of trade association health and safety management schemes.

The NFRC has set up with the Electrical Contractors' Insurance Company their own insurance via a captive cell fund exclusively for NFRC members to offer insurance roughly 10% below current market rates and with longer notice periods and more certainty of gaining cover. NFRC has also taken an active interest in the Department of Trade and Industry (DTI) inspired Quality Mark scheme. This scheme offers smaller contractors up to a 20% reduction in premiums from Groupama for Quality Mark Registered Contractors.

The work by the NFRC provides just one example that demonstrates how current initiatives are working to ensure that premiums for small businesses reflect good health and safety practice even in the hardest hit sectors.

- Government dissemination of best practice - insurance guidance for the construction sector

During the first stage of the EL Review the DTI Construction Unit employed a secondee from the insurance industry with a brief that included the preparation of best practice guidance on construction insurance issues. This guidance was released in early November [URN 03/ST99] and covers:

- The workings of the liability insurance market
- Finding an insurance broker
- Presenting an employers' liability risk to an insurer

Government, led by the DTI's Small Business Service, is discussing with Trade Associations and other interested parties how to develop this into more general guidance for the small business population as a whole. General business guidance on EL insurance is due to appear on the new business-focused website [www.businesslink.gov.uk](http://www.businesslink.gov.uk) in February 2004.

### Summary – next steps

**Renewals** – The Government welcomes the new BIBA/ABI guidance and will watch its implementation with interest. The FSA has completed further consultation about regulatory guidance and rules for insurers (including the Lloyd's market) which includes specific consideration of renewal periods. The FSA's decisions about renewal periods – which could include more binding rules – will be published in January.

**Risk-Based Underwriting** – HSC/E are planning to launch the Health and Safety Management Index for large and medium employers in February 2004 and the small business Index in spring 2004. At the same time it will seek to get this methodology accredited by the ABI Joint Standing Committee. However, the transition towards more risk-based underwriting will take time. At present there is little hard information about the relationship between management practices and future claims outcomes. Although the HSE Health and Safety Management Index will provide a measure of performance many profiling questionnaires remain relatively high-level and generic. Initially, therefore, these approaches may be of only limited value. However, Government, insurers and the HSE are determined to pursue this risk-evaluation agenda in the longer-term. As assessment becomes more sophisticated it will enable businesses to better target health and safety risk management and insurers will be confident in writing a range of risks and in discriminating between business performance. This will make it easier for good organisations to access the market at a fair rate and put pressure on poor performers to raise general standards. The Government is determined to continue to work with insurers and the HSE to help realise these longer-term benefits.

**Information provision** In February 2004 the government will use the radically improved Business Link website to provide guidance to all SMEs on access to advice and cover within the liability insurance market (including ELCI).

**Tackling Health and Safety** The HSE has set targets through to 2010:

- To reduce the number of working days lost per 100,000 workers from work related injury and ill health by 30% by 2010
- To reduce the incidence rate of fatal and major accidents by 10% by 2010
- To reduce the incidence rate of cases of work-related ill health by 20% by 2010

Realisation of these ambitious goals would have a direct bearing on the number of qualifying incidents within the employers' liability system. HSC/E have recently consulted on their new strategy, "A Strategy for Workplace Health and Safety in Great Britain to 2010 and beyond" – see [www.hse.gov.uk/consult/condocs/strategycd.pdf](http://www.hse.gov.uk/consult/condocs/strategycd.pdf) The new strategy anticipates a step-change in the approach of HSE, particularly in relation to occupational health, and proposes new ways of working by the regulator to deliver its ambitions. New ways of working with small businesses and insurers are prominent within the draft strategic plan. The Government is determined to capitalise on these linkages.

## 6. Long-tail disease risk

### Background

As set out in the first stage report insurers have argued that they face forecasting difficulties in determining what to charge now and how much to reserve in respect of long-tail claims. Some stakeholders have argued that separation of the funding of long-tail diseases would help to stabilise prices and ensure adequacy of market capacity.

At the time of the first stage report Government made it clear that more evidence was needed to assess whether such a radical separation was justified; in particular to quantify the impact of uncertainty on premium increases and to establish whether changes would lead to improvements or simply a repackaging of the problem.

### Actions

In Stage one Government said that it would:

- Provide a forum for stakeholders to set out concerns about the arrangements for insuring long-tail disease risks and to propose options for dealing with these risks
- Assess the case for change to the current arrangements in the light of the evidence presented and discussion, ensuring that outcomes are equitable and efficient.

Since June Government has continued to engage with the insurance industry in relation to this area.

The ABI have commissioned research through external consultants. Government is liaising with the ABI and its consultants to try and help ensure that the work is as useful as possible, that all relevant stakeholders are consulted and also to assist our assessment of its value. Their consultants will report back formally shortly. This initial report will consider the case for separation of long-tail disease risk. More specifically it will review the impact of long-tail diseases on the EL insurance cycle, reproduce past results excluding disease claims and illustrate whether or not there is a reduction in uncertainty/variability in rating levels and results caused by the removal of disease claims. This will include assessing and quantifying any changes in economic efficiency and in the financial burden on employers, Government and insurers.

### Next Steps

**ABI Report on Long-tail Disease Risk** – This will be published by the ABI shortly. It will help to inform the discussion about whether there is a case for change. The Government will consider the report, discuss the findings with key stakeholders and assess the case for any changes.

## 7. Rehabilitation

### **Background**

In its broadest terms, vocational rehabilitation is the process whereby those who are ill, injured or have a disability are helped to access, maintain or return to employment or other useful occupation.

Whilst the employers' liability system has served the UK well for over 30 years, all parties recognise that the UK has far less active rehabilitation services than many other countries. The First Stage Report found support for rehabilitation to play a greater role in our response to injury, illness or health-related inactivity. It found both an appetite and opportunity for a radical change in objectives and culture, putting rehabilitation at the heart of the response to injury and ill health.

Minimising the extent and adverse effects of injuries can be a better, fairer solution for all parties than assessing a financial value for this remediable harm. However, there is also increasing evidence that there can be financial benefits from action too. Rehabilitation trials by a major insurer in relation to 'low-end' motor insurance claims have indicated an overall cost saving of 7%-10%. The ABI believes the potential may be higher.

At the same time the Government is investing over £40m in the rehabilitation elements of its 'Job Retention and Rehabilitation' and 'Pathways to Work' pilots which are designed to help those coming into the benefit system or already on long-term inactive benefits to re-enter the open job market.

For victims rehabilitation is about the mitigation of loss and fast access to rehabilitation that will help. It may also be about gaining or improving skills and learning new ways to do things. For Government, employers and insurers it is about identifying common interests and approaches and making best use of the money already being paid in compensation and benefits, and the hidden costs to business and the taxpayer of lost productivity. It is not about imposing additional costs or burdens on any of these parties.

# Review of Employers' Liability Compulsory Insurance

## Second Stage Report

### Actions

In Stage one Government said that it would:

- Provide a forum for businesses, unions and insurers to develop proposals for increasing the use of rehabilitation
- Review the cost incentives on business and insurers in relation to the provision of rehabilitation and other occupational health services, including the account taken of rehabilitation in determining levels of compensation
- Develop ways forward based on research and other proposals, including consideration of an appropriate and manageable timetable for implementation.

Since then the Government has convened a high-profile Conference involving key stakeholders. This took place on 2 October. It involved over 40 stakeholders from across Government, from the TUC, from the legal profession, the insurance industry, trade associations and occupational health providers.

### Work Already Underway

The rehabilitation increasingly being promoted by insurers in the context of liability claims is just one part of an overall picture which also includes the work being done by employers and the HSE on occupational health in the workplace, work by the Department for Education and Skills (DfES) and DWP on improving basic skills through the Skills for Life programme, and the pilot initiatives which government has commenced from a benefits perspective.

In a Welfare to Work context, the DWP's aim is to enhance rehabilitation provision through engaging primarily the NHS and private/voluntary sectors to help people with manageable health problems or disabilities return or move into employment. Alongside the development and provision of identifiable employment rehabilitation services (frequently delivered alongside Jobcentre Plus) DWP is also seeking to build return to work activity as a normal part of everyday clinical and other specialist advice. (Further information is given in the DWP Green Paper - 'Pathways to Work: helping people into employment' published in November 2002).

Similarly, as part of its 'Securing Health Together' initiative, HSE is already working with employers to improve advice about, and access to, Occupational Health provision. It too has supported a number of pilot schemes. It is also targeting its efforts on key priority programmes relating to stress and musculoskeletal disorders that, jointly, account for over 50% of work-related ill health. The HSE has clear targets to reduce both the incidence of work-related injury and ill-health, as well as the time off per incident.

These actions by Government work in tandem with the focus on absence management that is increasingly a part of the agenda of business organisations, such as the Confederation of British Industry (CBI). As indicated above, rehabilitation is also a growing issue for insurers. As well as the schemes provided both by insurers and risk-management consultants, the ABI has recently commissioned significant and positive research into the case for rehabilitation. This focus was mirrored by the NHS and Department of Health in the “Making Amends” report published earlier this summer which saw effective rehabilitation as a key component of any response to clinical negligence injuries.

However, despite these efforts, take up of rehabilitation remains very patchy, with some evidence that the availability of occupational health for employees may even be declining.

### **Challenges**

There is an increasing momentum behind rehabilitation but challenges remain. With such a broad agenda, as described above, it is important to recognise the links between different initiatives particularly when diverse organisations are involved in piloting or delivering them.

A key benefit of a joined-up approach is to deliver better evidence of what works and the costs and benefits of the system. The DWP-sponsored workshop identified that there is probably much more evidence than has currently been analysed. But neither the Government nor the private sector is presently well placed to answer the question of “what works for whom, and in what circumstances”. Whether from the perspective of the Government’s benefit expenditure, or a company’s bottom line, a key requirement for increased rehabilitation is being able to show that tangible investment up-front will lead to equally tangible savings further down the line. The Government wants the benefits of rehabilitation to be shared by all parties to ensure all have a reason to cooperate when rehabilitation is appropriate.

This links to the challenge of providing the right incentives for the individual parties concerned to adopt an intervention regime, or for an employee to participate within it.

Meeting these challenges is central to delivering a rehabilitation culture. Without them take up of rehabilitation remains very patchy, with some evidence that the availability of occupational health for employees may even be declining.

## Evidence

The limitations of the existing evidence base have already been identified. But this does not mean that there is no evidence.

- **Multi-dimensional rehabilitation:** In terms of facilitating a return to work for those for whom a natural healing process or traditional health care is not sufficient, there is an increasing evidence base to support the effectiveness of a 'multi-dimensional' approach combining, as necessary, interventions that are both medically-focused (whether mental or physical) or address other obstacles to work (e.g. ergonomic changes or working hours).
- **Early Intervention:** There is evidence to support the contention that the early application of such interventions is a major factor affecting job retention or a return to work. Conversely there is evidence that inactivity and a lack of intervention is associated with physical and mental deterioration and lower chances of a return to work. This is why, in England, one of the main strands of the Department of Health's current "Patient Choices" proposals includes options focusing on more effective management of, and timely interventions with, people with long term conditions.
- **Common Conditions:** The evidence suggests such an approach to rehabilitation can be effective in relation to some of the most common conditions of work-related ill-health and injury (mental health, musculoskeletal, cardio-respiratory). For instance, a Canadian programme of combined intervention for sufferers of back problems lead to return to work 2.4 times faster than usual care and reduced subsequent sickness absence by 70% over the next 6 years (Loisel et al. quoted by Waddell, Burton). In the UK back pain alone accounts for 17% of all days off work due to ill health caused or made worse by work (HSE 2001/02).

However, whilst there is considerable evidence to support the broad concepts of vocational rehabilitation, we do not yet know what factors are most critical in which circumstances – more precise evidence is needed about the details of effective interventions. In the UK it remains, as the Advisory Committee for Disabled People in Employment and Training observed in 1999, "difficult to judge how best to intervene" and difficult to establish the cost/benefit values for doing so.

## Next Steps

From this it is clear that we need to improve both our practice and understanding. That is why the Government is persuaded that the time has come to provide leadership and help establish a new approach to rehabilitation within the UK.

As a first step, the Government is now committing to develop and publish "A Framework for Vocational Rehabilitation". This framework will be a significant step forward. It will:

- Define the scope of the issue. In broad terms 'vocational rehabilitation' is the process whereby those who are ill, injured or have a disability are helped to access, maintain or return to employment or other useful occupation. But it will be important to clearly establish the definition, focus and range of our work.
- Develop a framework for effective intervention. This will set out basic principles and approaches which can be applied in the management of a range of individual conditions and business circumstances. It will be based on an improved evidence base about what forms of rehabilitation are most effective and in what circumstances.
- Present an overview of the work that is currently taking place. And set this in the context of a strategic consideration of the full range and timing of interventions, from prevention at work and absence management, through to the work with those on long-term inactive benefits. We believe that although implementation is and will continue to be delivered by a range of interests both public and private, that it is Government which is in the best position to pull together these disparate strands, to give this overview and provide a sense of impetus and collective direction.

Alongside the development of the Framework, the Government will consider:

- The incentives or obligations which would support the take-up of such a model and guide employers, employees and others through each of the steps in the process; and how these might be improved. This work will be based on an analysis of the costs and benefits of intervention to different participants in the process. In particular it will need to consider the relationship between the timing of the interventions and the timing of the establishment of any liability.
- The role for Government and others in developing the market for rehabilitation services, and the availability of the specialist infrastructure to support this market. This needs careful consideration. There is evidence that rehabilitation may be most effectively – and cost effectively – delivered through the better and widespread application of a 'rehabilitation process' which brings together a range of separate interventions as necessary. Progress in developing the capacity of the market to deliver the necessary skills and expertise will be a key driver of progress on rehabilitation.

## Review of Employers' Liability Compulsory Insurance Second Stage Report

Our analysis of these issues must be evidence-based to demonstrate the value and effectiveness of any changes – and we intend to put in train work to gather and assess the available evidence.

This strategic action by Government will be a substantial step forward but we need to be clear about its necessary limits:

- It is not intended to build a 'State delivered', 'State managed' or 'State funded' infrastructure solution, some form of comprehensive, national vocational rehabilitation service. Indeed the balance of evidence we have suggests that a more diverse and flexible range of provision would be more effective.
- It is based on making better use of existing resources whether provided by business or the taxpayer. Through EL premiums and benefits both already contribute significant sums of money each year. Our emphasis is on using that money more effectively; reducing not adding to cost burdens.
- It is not intended to transfer rehabilitation costs to the employee by way of reduced compensation per se. But where rehabilitation does offer real improvement it is appropriate for final compensation levels to reflect this.

Government has a key role in making rehabilitation play a more central role in the UK workers' compensation system. We will provide leadership. We are best placed to provide an overview, build the evidence, make the case and set a sense of direction. There are policy questions that only Government can answer; incentive structures only Government can establish. Government's commitment to playing its part is reflected in our commitment to developing the Framework set out above.

But delivery must be a shared effort, which sees other stakeholders – business, insurers and unions – step up to the mark and share the development and delivery of solutions. Indeed, as capacity in the market is established, the Government is likely to become one purchaser among many. There is a very real desire among stakeholders to play a full part in effecting change through a partnership approach. Over the coming months the Government will continue to work with these stakeholders, such as the medical profession and service providers; business representatives and the insurance industry; unions and others to consolidate this partnership building on our recent workshop.

Government intends to publish the Framework in the late summer of 2004. But we will not have finished then. Publication will be a significant step, but it will remain just the first step on the path to lasting cultural change and better outcomes for all.

## 8. Summary and Next Steps

Whilst the employers' liability market remains difficult for some businesses, it is more stable than it was 6 months ago and the outlook is for the rate of price increases to slow.

Neither stakeholders nor Government have stood still. A number of initiatives to help businesses and improve the functioning of the market have been developed over the summer. These include:

- A joint code of practice from the ABI and BIBA on renewal periods
- The 'Making the Market Work' initiative from the ABI designed to help businesses understand the health and safety practices insurers are looking for, while allowing insurers to reflect good health and safety in the insurance terms they can offer
- Information produced by DTI to assist businesses in the construction sector access and present themselves to the liability market
- New guidance by the FSA as to the good practice indicators which it will use in assessing firms writing liability business
- A range of individual initiatives from trade associations, brokers and insurers aimed at better enabling small businesses to access the market either singly or jointly, and where possible obtain lower premiums.

In addition there are a number of specific proposals, either to develop these themes or to introduce new initiatives which will take place over the next six months. These include:

- The FSA has completed further consultation about regulatory guidance and rules for insurers (including the Lloyd's market) which includes specific consideration of renewal periods. The FSA's decisions about renewal periods – which could include more binding rules – will be published in January.
- The Business Link website will provide guidance to all SMEs designed to help them access and present themselves to the liability market more effectively (January)
- The HSE will produce an Index of Health and Safety Management for small business; it is intended that this will be accredited by the ABI (April).



## Appendix A

### **The following Organisations, Associations and individuals met with, or made representations to, the Department during the course of the EL Review**

Association of Risk Management Consultants  
Aluminium Federation Ltd  
AON Ltd  
Asbestos Removal Contractors Association  
Association of British Insurers  
Association of Personal Injury Lawyers  
Aston University  
AXA Insurance UK  
Beachcroft Wansbrough Solicitors  
Betws Anthracite Ltd  
Brian Cotter MP  
British Aggregates Association  
British Apparel and Textile Federation  
British Chambers of Commerce  
British Furniture Manufacturers Ltd  
British Hardware and Housewares Manufacturers' Association  
British Insurance Brokers' Association  
British Marine Federation  
British Printing Industries Federation  
British Retail Consortium  
Campaign Against Arms Trade  
Civil Engineering Contractors Association  
Civil Litigation Committee  
Coal Merchants' Federation  
Confederation of British Industry  
Confederation of Paper Industries  
Confederation of UK Coal Producers  
Confederation of Wool Textiles Ltd  
Construction Confederation  
Construction Employers Federation (Northern Ireland)  
Doug R Seal  
Electrical Contractors' Association  
Engineering Construction Industry Association  
Engineering Employers' Federation  
Federation of Independent Mines  
Federation of Master Builders  
Federation of Small Businesses  
First Assist Group Ltd  
Food and Drink Federation  
Forum of Insurance Lawyers

Review of Employers' Liability  
Compulsory Insurance  
Second Stage Report

Greenstreet Berman  
Groupama Insurances UK  
Health and Case Management Ltd  
Heating and Ventilating Contractors Association  
Hippo Campo Ltd Foodservice  
ICS Ltd  
Institute of Directors  
Institute of Insurance Brokers  
International Underwriting Association  
J.R. Flat and Slate Roofing (South West) Ltd  
John Everett  
Lloyd's of London  
Management Consultancies Association  
Manningham Concrete Ltd  
Mark Day  
Marsh Ltd  
Milliman UK  
Motor Insurers Bureau  
National Federation of Demolition Contractors  
National Federation of Roofing Contractors  
National Specialist Contractors Council  
Nigel Goodlad  
Norwich Union Insurance  
P.I. Castings  
Pickfords  
PKS Scaffolding Services  
Pudsey Local Timber & Building Supplies  
Pyranha Mouldings Ltd  
QBE International Insurance Ltd  
Re:Liability (Oxford)  
Royal Society for the Prevention of Accidents  
Royal and Sun Alliance Insurance UK  
Sealex Ltd  
Shipbuilders and Ship Repairers Association  
Simone Plaut  
T.A. Colbourne Ltd  
Union of Construction, Allied Trades and Technicians  
UNISON  
Thompsons Solicitors  
Trades Union Congress  
Trevor Standbury  
Warren Hill Insurance Brokers Ltd  
WellWork Ltd.  
Wright & Crawford Solicitors  
Zurich Insurance



Produced by the Department for Work and Pensions.  
Extracts from this document may be reproduced for  
non-commercial education or training purposes on  
condition that the source is acknowledged.

Ref: ELCI 2

PPSPG/1103/23

**The Department for Work and Pensions**  
The Adelphi  
1-11 John Adam Street  
London WC2N 6HT

**4 December 2003**