

**Response from DAS Legal Expenses Insurance Company Ltd to Questions 9 and 10 of Chapter 3 (the cost and funding of litigation) of the Consultation paper of the Scottish Civil Courts Review.**

DAS is the largest specialist legal expenses insurance company in the UK with premium income in excess of £100 million. We also trade under the brand names of 80e Ltd and Amicus Legal Ltd. Our core business is underwriting Before the Event and After the Event legal expenses insurance as well as providing legal advice and assistance services.

**Question 9 – Should legal expenses insurance, including ‘before the event ‘ and after the event’ insurance, have a greater role to play in the funding of litigation in Scotland**

DAS’s mission statement is ‘affordable justice for all’. We firmly believe that if any person has been wronged they should be entitled to affordable justice and consequently we have developed a range of insurance policies to meet the legal costs in pursuing claims.

Tailor made before the event policies, covering a range of legal disputes, for both commercial and personal insurances have been developed which are sold primarily as add on covers to personal insurance policies (eg motor, travel and household policies) and to commercial insurance policies. (We do have the option of also selling commercial legal expenses covers as standalone policies). In addition, DAS also develop bespoke scheme arrangements for affinity and other groups. The premiums for these risks vary dependent on whether the cover is marketed as an add on or standalone and whether, for add on covers, the scheme is compulsory or optional. Net premiums for add on covers are relatively very small but the final selling price is clearly influenced by the commission or mark up applied by the broker or general insurer.

The DAS range of After the Event ‘ policies is generally sold through solicitors. A range of policies has been developed for non motor and motor personal injury (including clinical negligence) as well as for both commercial and personal contract disputes. Premiums do vary according to the risk and the stage of the claim for certain risks (eg pre proceedings, post proceedings and pre trial).

It is our view that encouraging before the event legal expenses insurance is the most cost effective way providing legal expenses insurance and that this form of protection should be encouraged as much as possible to ensure that the costs of legal disputes are spread as widely as possible.

After the event insurance has been developed to enable the consumer to have access to justice where there is no before the event insurance and enables us to complete the jigsaw from a consumer perspective. Costs for after the event insurance are inevitably higher than before the event but premiums are kept as low as possible with only relatively modest returns for insurers.

So that consumers are provided with choice it is essential that both types of policy are available and promoted so that the costs are placed in the insurance sector and do not become an unnecessary burden on the state or on an individual.

**Question 10 – What impact would the ability to recover after the event insurance premiums from unsuccessful parties have on litigation**

The recovery of after the event insurance premiums from unsuccessful parties in the England and Wales has been very beneficial, particularly to the consumer. It enables insurers to develop robust rating and premium models with the knowledge that these premiums will be recovered where a case is won and supports the Government's aims of access to justice for consumers.

Whilst speculative fee agreements (very similar to CFA's) are available in Scotland, there is no certainty that premiums payable will be recovered . DAS would view the recoverability of premiums as a positive step in providing certainty and , because premiums will not be recoverable when a case is lost , it would ensure that only those cases with a better than 50/50 chance of winning are proceeded with by an insurer.

The ATE market in the UK is still in its infancy with examples of insurers entering the market only to withdraw two to three years later. Now that in England and Wales we have the certainty of recoverability of premiums , ATE insurers have a competitive market in which to operate which results in an enhanced customer service and proposition .