

# **Legal Expenses Insurance Group – views to Questions 9 and 10 of Chapter 3 (the cost and funding of litigation) of the Consultation paper of the Scottish Civil Courts Review.**

## **1. Introduction**

1.1 The Legal Expenses Insurance Group (LEIG) was formed in April 2006 by a number of leading legal expenses insurers and intermediaries. The full members are:

- Albany Assistance Ltd
- Angel Assistance Ltd
- DAS Legal Expenses Insurance Company Ltd (80e Ltd and Amicus Legal Ltd)
- LAMP Group Limited
- MSL Legal Expenses Ltd
- Red Sands Insurance (Europe) Ltd
- F and I Solutions Ltd
- ULR Norwich

1.2 Members represent in excess of eight million motor legal expense policyholders and over 16 million policyholders in general. It is estimated that members account for over half of the before the event (BTE) and after the event (ATE) legal expenses insurance market.

1.3 The aim of the Group is to work together to protect and advance the rights of claimants to justice and fair levels of compensation. Legal expenses insurance covers the legal costs involved in pursuing or defending a claim. Legal costs include the appointment of solicitors, barristers and expert witnesses.

## **2. 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?**

2.1 LEIG members consider it is important that any person who has suffered an injury as a result of the actions of someone else, should have access to justice in order to obtain any compensation to which they are entitled. This requires claims to be able to be pursued in as easy and affordable a way as possible.

2.2 It is considered that some claimants in Scotland are discouraged from claiming because of the current legal system. Most claimants need professional assistance to pursue a claim and a key need is for this to be paid for otherwise there is a totally uneven playing field.

2.3 Without professional assistance many people will not know what can or cannot validly be claimed for, let alone understand what is the appropriate evidence to substantiate and properly value the claim. Claimants should not be required to construct and manage their own claims essentially in their spare time and represent themselves against big business or defendant insurance companies, who inevitably have full legal advice and representation.

2.4 LEIG members have a range of insurance policies to meet the legal costs in pursuing claims. Unlike conventional insurance, LEI does not make a direct payment for a claim. Instead, the insurance covers the legal costs involved in pursuing or defending a claim. Legal costs include the appointment of solicitors, barristers and expert witnesses. Legal protection cover will provide usually in the region of £50,000 to £100,000 of legal costs. The main types of policies are before the event (BTE) and after the event (ATE).

2.5 BTE personal legal protection policies typically cover the policyholder and members of his or her household against the areas at greatest risk of potential legal dispute:

- Problems with employers
- Personal injury claims
- Disputes with suppliers of goods and services (including holidays)

Employment problems and disputes with neighbours are typically covered by most policies. Some policies add other areas of potential dispute or have them as an option.

Motor legal protection assists motorists that are involved in a road traffic accident involving their vehicle where there are good prospects of the claim succeeding. In such cases the motorist has a right to be able to claim back their uninsured losses from the driver responsible.

2.6 Encouraging before the event legal expenses insurance is the most cost effective way providing legal expenses insurance and thus should be encouraged to enable the costs of legal disputes to be spread as widely as possible. Premiums are typically under £25 when policies are an add-on to another insurance policy eg motor or household policy.

2.7 ATE policies are purchased when a claimant has good prospects of success in a claim for compensation but they do not have the benefit of BTE legal expenses insurance or do not have sufficient means to fund the case privately or prefer to enter into a conditional fee agreement with their solicitor. The insurance is usually marketed as a conditional fee agreement insurance.

ATE policies cover the same risks as a BTE policy the difference being that cover is arranged after the insured becomes aware of the need to make a claim. The insurance pays the opponent's fees and disbursements (e.g. expert reports) if the action is unsuccessful and the insured is ordered to pay them or fails to recover them from his/her opponent. If the case is

unsuccessful then the claimant's solicitor would not normally receive any payment for their work.

2.8 ATE premiums are much higher than BTE. This is because there is the certainty of a claim in each instance. Premiums are typically from about £400 to £1,000 depending on the type and complexity of a claim. Some premiums are on a staged basis, starting at say £400 and increasing as the claim progresses through the various stages to a court hearing.

2.9 In England and Wales, if a claimant is successful the cost of the ATE premium should, under the Access to Justice Act 1999, be recoverable from the losing party. This is not the case in Scotland and, as a result, the market has developed differently and it is thought there is less consumer access to justice.

2.10 Like any form of insurance, the many should pay for the claims of the few. If there are no premiums from the many, then there is no common pool to pay the claims and this specialist area of insurance will not develop. This is the case in Scotland; it is not possible to create a sustainable ATE market based on individuals willing to pay the premiums with no prospect of recovery. As ATE serves to improve access to justice, then the consequence is that claimants will suffer.

2.11 It is important that consumers are provided with a choice which requires both types of policy to be available and actively encouraged/promoted. In this way costs are placed in the insurance sector and do not become an unnecessary burden on the state or on an individual.

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

3.1 The ATE market developed in its present form just over ten years ago following the Government's decision to restrict severely the availability of legal aid in 1999. The recovery of ATE insurance premiums from unsuccessful parties has been essential in order to maintain access to justice for consumers.

3.2 ATE underwriters have, in the last decade, assisted the Government in its desire to provide access to justice by ensuring that genuine claimants need not fear the threat of having to pay defendant's costs. They have been able to develop robust rating and premium models with the knowledge that these premiums will be recovered where a case is won. The claimant knows they will not suffer financially if the case is lost, as the ATE policy will cover the other side's costs.

3.3 Speculative fee agreements are available in Scotland and these are very similar to CFA's. However, there is no certainty that premiums payable will be recovered and this means uncertainty and the filtering out of all but the best

cases. Only those cases with an extremely good chance of winning are often taken up which means many people remain uncompensated.

3.4 If ATE premiums were recoverable in Scotland there would be:

- Greater and easier access to justice for some claimants. The private sector will responded to the new opportunities and help to ensure that genuine claimants, especially those on limited means, have improved access to the opportunity to receive fair compensation.
- The development of an ATE market in Scotland with competition between providers and premium models developed to encourage more access to justice in a prudent and measured way.

Tony Baker  
Director, Legal Expenses Insurance Group  
Hampden House, 1 Hampden Hill  
Ware, Herts SG12 7JT  
Email: [thetonybaker@gmail.com](mailto:thetonybaker@gmail.com)

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