

Elite Insurance: Access to Justice System - 'If it ain't broke don't fix it'

27th October 2010

Jason Smart, CEO, of Elite Insurance, presented his views at the Claims Standard Council conference about the Jackson Review being 'fundamentally flawed' earlier this month. He believes that the current Access to Justice System works well but improvements could be made.

Jason suggests debate needs to be had as to whether Before the Event (BTE) insurance could be abolished as it's unaffordable and After the Event (ATE) insurance made mandatory in litigation. Often BTE insurance is only used for capturing cases without providing any real indemnity. Jason believes that if BTE insurance was abolished ATE insurance premiums would be reduced as greater volumes would go into the risk pool.

Jason believes that introducing a cap on defendants costs would also be a step towards improving the current Access to Justice System. He argues that this would reduce the amount an ATE insurer pays on losing cases which would in turn reduce the insurance premiums paid by consumers.

Additionally, Jason backs the view that third party claims capture should be outlawed as it 'prejudices victims'. This practice has been controversial as it encourages victims to accept an early compensation payment and settle quickly, often without getting legal or medical advice first. There are a mass of cases where victims have been denied proper compensation due to questionable tactics adopted by some insurers. Conversely, there is a plethora of cases where victims have been awarded far higher compensation when derisory offers have been made prior to the victim being legally represented by an independent and impartial solicitor.

Commenting, Jason Smart, said:

"It is clear that with the implementation of a few simple changes, the current Access to Justice System could be improved, resulting in a fairer process for victims whilst providing value for money and protecting their interests. It should be noted that the system has improved dramatically since the introduction of the Access to Justice Act in 2000, however, it is essential that consumers are made aware of their rights and aren't pressured and penalised by insurers wishing to settle cases on unfair terms. That said, a full scale overhaul of the current system isn't necessary, as Thomas Bert Lance once said, 'if it ain't broke, don't fix it'.

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For further information, please contact:

Elite Insurance Ltd.

Jason Smart, Chief Executive Officer

Tel: +44 (0) 147 656 0113

Bishopsgate Communications

Laura Stevens,
Natalie Quinn

Tel: + 44 (0) 207 562 3350

Notes to Editors:

Claims Standard Council

The Claims Standards Council is the trade association representing claims management businesses, and aims to ensure that the claims management sector is fairly and effectively promoted to lawyers, insurers, and the government.

Access to Justice Act

This Act was introduced in 1999 to replace the legal aid system with two new schemes; and makes provision about private methods of funding litigation; the provision of legal services; the handling of complaints about lawyers; appeals, courts, judges and court proceedings; magistrates and magistrates' courts; and immunity from legal action and costs and indemnities for certain officers exercising judicial functions.

The provisions in the Act form part of the wide-ranging programme of reforms to legal services and the courts described in the Government's White Paper, Modernising Justice, published on 2 December 1998.