

**Disclaimer**

These notes, finalised in April 2002, relate to, but do not form part of, the Uninsured Drivers' Agreement 1999 between the then Secretary of State for the Environment, Transport and the Regions and the Motor Insurers' Bureau.

## **NOTES FOR THE GUIDANCE OF VICTIMS OF ROAD TRAFFIC ACCIDENTS**

The following notes are for the guidance of anyone who may have a claim on the Motor Insurers' Bureau under this Agreement and their legal advisers. They are not part of the Agreement, their purpose being to deal in ordinary language with the situations which most readily occur. They are not in any way a substitute for reading and applying the terms of this or any other relevant Agreement.

**At the request of the Secretary of State, these notes have been revised with effect from 15<sup>th</sup> April 2002 and in their revised form have been agreed and approved by MIB, the Law Society of England and Wales, the Law Society of Scotland, the Motor Accident Solicitors' Society and the Association of Personal Injury Lawyers. Any application made under the Agreement after this date (unless proceedings have already been issued) will be handled by MIB in accordance with these notes.**

**Where proceedings have been issued in Scotland, for the words "Claimant" and "Defendant" there shall be substituted in these Notes where appropriate the words "Pursuer" and "Defender" respectively.**

**Enquiries, requests for application forms and general correspondence In connection with the Agreement should be addressed to: -**

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### **1. Introduction - MIB's role and application of the Agreement**

- 1.1 The role of MIB under this Agreement is to provide a safety net for innocent victims of drivers who have been identified but are uninsured. MIB's funds for this purpose are obtained from levies charged upon insurers and so come from the premiums which are charged by those insurers to members of the public.
- 1.2 MIB has entered into a series of Agreements with the Secretary of State and his predecessors in office. Under each Agreement MIB undertakes obligations to pay defined compensation in specific circumstances. There are two sets of Agreements, one relating to victims of uninsured drivers (the "Uninsured Drivers" Agreements) and the other concerned with victims of hit and run or otherwise untraceable drivers (the "Untraced Drivers" Agreements). These Notes are addressed specifically to the procedures required to take advantage of the rights granted by the Uninsured Drivers Agreements. However, it is not always certain which of the Agreements applies. For guidance in such cases please see the note on **Untraced Drivers** at paragraph 11 below.

- 1.3 In order to determine which of the Uninsured Drivers Agreements is applicable to a particular victim's claim, regard must be had to the date of the relevant accident. This Agreement only applies in respect of claims arising on or after 1<sup>st</sup> October 1999. Claims arising earlier than that are covered by the following Agreements:-
- 1.3.1 Claims arising in respect of an incident occurring between 1<sup>st</sup> July 1946 and 28<sup>th</sup> February 1971 are governed by the Agreement between the Minister of Transport and the Bureau dated 17<sup>th</sup> June 1946.
- 1.3.2 Claims arising in respect of an incident occurring between 1<sup>st</sup> March 1971 and 30<sup>th</sup> November 1972 are governed by the Agreement between the Secretary of State for the Environment and the Bureau dated 1<sup>st</sup> February 1971.
- 1.3.3 Claims arising in respect of an incident occurring between 1<sup>st</sup> December 1972 and 30<sup>th</sup> December 1988 are governed by the Agreement between the Secretary of State and the Bureau dated 22<sup>nd</sup> November 1972.
- 1.3.4 Claims arising in respect of an incident occurring between 31<sup>st</sup> December 1988 and 30<sup>th</sup> September 1999 are governed by the Agreement between the Secretary of State and the Bureau dated 21<sup>st</sup> December 1988.

## **2. MIB's obligation**

- 2.1 MIB's basic obligation (see clause 5) is to satisfy judgments which fall within the terms of this Agreement and which, because the Defendant to the proceedings is not insured, are not satisfied.
- 2.2 This obligation is, however, not absolute. It is subject to certain exceptions where MIB has no liability (see clause 6), there are a number of pre-conditions which the claimant must comply with (see clauses 7 to 15) and there are some limitations on MIB's liability (see clauses 16 and 17).
- 2.3 **Nothing in the Agreement is intended to vary the limitation rules applying to claimants not of full age or capacity. Limitation for personal injury remains 3 years from the date of full age or capacity.**
- 2.4 MIB does not have to wait for a judgment to be given; it can become party to the proceedings or negotiate and settle the claim if it wishes to do so.

## **3. Claims which MIB is not obliged to satisfy**

MIB is not liable under the Agreement in the case of the following types of claim.

- 3.1 A claim made in respect of an unsatisfied judgment which does not concern a liability against which Part VI of the Road Traffic Act 1988 requires a vehicle user to insure (see section 145 of the Act). An example would be a case where the accident did not occur in a place specified in the Act. See the definitions of "unsatisfied judgment" and "relevant liability" in clause 1.

- 3.2 A claim in respect of loss or damage caused by the use of a vehicle owned by or in the possession of the Crown (that is the Civil Service, the armed forces and so on) to which Part VI does not apply. If the responsibility for motor insurance has been undertaken by someone else or the vehicle is in fact insured, this exception does not apply. See clause 6(1)(a).
- 3.3 A claim made against any person who is not required to insure by virtue of section 144 of the Road Traffic Act 1988. See clause 6(1)(b).
- 3.4 A claim (commonly called subrogated) made in the name of a person suffering damage or injury but which is in fact wholly or partly for the benefit of another who has indemnified, or is liable to indemnify that person. See clause 6(1)(c).

**It is not the intention of this Clause to exclude claims for the gratuitous provision of care, travel expenses by family members or friends, or miscellaneous expenses incurred on behalf of the Claimant, where the claimant is entitled to include such claims in his claim for damages.**

- 3.5 A claim in respect of damage to a motor vehicle or losses arising from such damage where the use of the damaged vehicle was itself not covered by a contract of insurance as required by law. See clause 6(1)(d).
- 3.6 A claim made by a passenger in a vehicle where the loss or damage has been caused by the user of that vehicle if:-

3.6.1 the use of the vehicle was not covered by a contract of insurance; and

3.6.2 the claimant knew or could be taken to have known that the vehicle was being used without insurance, had been stolen or unlawfully taken or was being used in connection with crime.

See clause 6(1)(e), (2), (3) and (4).

**For an interpretation of “knew or ought to have known” refer to the House of Lords judgment in White v White of 1<sup>st</sup> March 2001.**

- 3.7 A claim in respect of property damage amounting to £300 or less, £300 being the “specified excess”. See clause 16(2).
- 3.8 Where the claim is for property damage, the first £300 of the loss and so much of it as exceeds £250,000. See clause 16(3) and (4).

## **4. Procedure after the accident and before proceedings**

- 4.1 The claimant must take reasonable steps to establish whether there is in fact any insurance covering the use of the vehicle which caused the injury or damage. First, a claimant has statutory rights under section 154 of the Road Traffic Act 1988 to obtain relevant particulars which he must take steps to exercise even if that involves incurring expense and MIB will insist that he does so. See clause 13(a).

**MIB accept that if the MIB application form is sufficiently completed and signed by the Claimant, the Claimant will have complied with this Clause of the Agreement.**

- 4.2 Other steps will include the following:

4.2.1 The exchange of names, addresses and insurance particulars between those involved either at the scene of the accident or afterwards.

4.2.2 Corresponding with the owner or driver of the vehicle or his representatives. He will

be obliged under the terms of his motor policy to inform his insurers and a letter of claim addressed to him will commonly be passed to the insurers who may reply on his behalf. See clause 9(2)(d).

4.2.3 Where only the vehicle's number is known, enquiry of the Driver and Vehicle Licensing Agency at Swansea SA99 1BP as to the registered keeper of the vehicle is desirable so that through him the identity of the owner or driver can be established or confirmed.

4.2.4 Enquiries of the police (see clause 13(b) *and Note 4.1 above*).

4.3 If enquiries show that there is an insurer who is obliged to accept and does accept the obligation to handle the claim against the user of the vehicle concerned, even though the relevant liability may not be covered by the policy in question, then the claim should be pursued with such insurer.

4.4 If, however, enquiries disclose that there is no insurance covering the use of the vehicle concerned or if the insurer cannot be identified or the insurer asserts that it is under no obligation to handle the claim or if for any other reason it is clear that the insurer will not satisfy any judgment, the claim should be directed to MIB itself.

## 5. When proceedings are commenced or contemplated

5.1 As explained above, MIB does not have to wait for a judgment to be obtained before intervening. Claimants may apply to MIB before the commencement of proceedings. MIB will respond to any claim which complies with clause 7 and must give a reasoned reply to any request for compensation in respect of the claim (see clause 18) although normally a request for compensation will not be met until MIB is satisfied that it is properly based. Interim compensation payments are dealt with at paragraph 8 below.

**Application Forms are available from MIB's office or their website: [www.mib.org.uk](http://www.mib.org.uk).**

**Where a claim is made by the Claimant in person, who has not received legal advice, then if the claim is first made within 14 days prior to expiry of the limitation period, MIB will require the completed application form within the 21 days after the issue of proceedings.**

5.2 It is important that wherever possible claims should be made using MIB's application form, fully completed and accompanied by documents supporting the claim, as soon as possible to avoid unnecessary delays. See clause 7(1). Copies of the form can be obtained on request made by post, telephone, fax or the DX or on personal application to MIB's offices.

5.3 The claimant must give MIB notice *in writing* that he has commenced legal proceedings. The notice, the completed application form (if appropriate) and all necessary documents must be received by MIB no later than 14 days after the date of commencement of proceedings. See clause 9(1) and (2)(a). The date of commencement is determined in accordance with the definitions of "relevant proceedings" and "commencement" given in clause 1.

**When it is decided to commence legal proceedings, MIB should be joined as a defendant (unless there is good reason not to do so). Once MIB is a defendant, the Court will advise the relevant events direct and clauses 9(3), 11 and 12 will no longer apply.**

**The form of words set out below should be used for the joinder of MIB as second defendant:**

1. The Second Defendant is a Company limited by guarantee under the Companies Act. Pursuant to an Agreement with the Secretary of State for the Environment Transport and the Regions dated 13<sup>th</sup> August 1999, the Second Defendant provides compensation in certain circumstances to persons suffering injury or damage as a result of the negligence of uninsured motorists.
2. The Claimant has used all reasonable endeavours to ascertain the liability of an insurer for the First Defendant and at the time of the commencement of these proceedings verily believes that the First Defendant is not insured.
3. The Claimant accepts that only if a final judgment is obtained against the First Defendant (which judgment is not satisfied in full within seven days from the date upon which the Claimant became entitled to enforce it) can the Second Defendant be required to satisfy the judgement and then only if the terms and conditions set out in the Agreement are satisfied. Until that time, any liability of the Second Defendant is only contingent.
4. To avoid the Second Defendant having later to apply to join itself to this action (which the Claimant must consent to in any event, pursuant to Clause 14(b) of the Agreement) the Claimant seeks to include the Second Defendant from the outset recognising fully the Second Defendant's position as reflected in 3 above and the rights of the Second Defendant fully to participate in the action to protect its position as a separate party to the action.
5. With the above in mind, the Claimant seeks a declaration of the Second Defendant's contingent liability to satisfy the claimant's judgment against the First Defendant.

5.4 This notice *must* have with it the following:

- 5.4.1 a copy of the document originating the proceedings, usually in England and Wales a Claim Form and in Scotland a Sheriff Court Writ or Court of Session Summons (see clause 9(2)(b));
- 5.4.2 normally the Particulars of Claim endorsed on or served with the Claim Form or Writ (see clause 9(2)(e), although this document may be served later in accordance with clause 9(3) if that applies);
- 5.4.3 in any case the documents required by the relevant rules of procedure (see clause 9(2)(f).

**Provided that the documents referred to above are forwarded to MIB, it is not necessary to enclose the Response Pack or the Notice of Issue.**

- 5.5 In addition, other items as mentioned in clause 9(2), e.g. correspondence with the Defendant (or Defender) or his representatives, need to be supplied where appropriate.
- 5.6 It is for the claimant to satisfy himself that the notice has in fact been received by MIB. **However, where the Claimant proves that service by DX, First Class Post, Personal Service or any other form of service allowed by the Civil Procedure Rules, was effected, MIB will accept that such notice has been served in the same circumstances in which a party to litigation would be obliged to accept that he had been validly served by such means.**
- 5.7 It should be noted that when MIB has been given notice of a claim, it may elect to require the claimant to bring proceedings and attempt to secure a judgment against the party whom MIB alleges to be wholly or partly responsible for the loss or damage or who may be contracted to indemnify the claimant. In such a case MIB must indemnify the claimant against the costs of such proceedings. Subject to that, however, MIB's obligation to satisfy the judgment in the action will only arise if the claimant commences the proceedings and takes all reasonable steps to obtain a judgment. See clause 14(a).

## 6. Service of proceedings

- 6.1 If proceedings are commenced in England or Wales the claimant *must* inform MIB of the date of service (see clause 10(1) and (2)).
- 6.2 If service of the Claim Form is effected by the Court, notice **should** be given within 7 days from the earliest of the dates listed in clause 10(3)(a)(i) or (ii) or within 14 days from the date mentioned in clause 10(3)(b) (the date of deemed service under the court's rules of procedure). Claimants are advised to take steps to ensure that the court or the defendant's legal representatives inform them of the date of service as soon as possible. Although a longer period is allowed than in other cases, service may be deemed to have occurred without a Claimant knowing of it until some time afterwards.
- 6.3 Where proceedings are served personally, notice **should** be given 7 days from the date of personal service (clause 10(3)(a)(iii)).
- 6.4 However, by concession MIB will accept the notice referred to in note 6.1 above if it is received by MIB within 14 days from the dates referred to in notes 6.2 and 6.3.**
- 6.5** In Scotland, proceedings are commenced at the date of service (see clause 1) so notice should already have been given under clause 9 and clause 10 does not apply there.

## 7. After service and before judgment

**See Note 5.3 above.**

- 7.1 Notice of the filing of a defence, of an amendment to the Statement or Particulars of Claim, and the setting down of the case for trial should be given not later than 7 days after the occurrence of such events and a copy of the document **must** be supplied (clause 11(1)).
- 7.2 However, by concession MIB will accept the notice referred to in note 7.1 above if it is received by MIB within 14 days after the proven date on which it was received by the claimant**
- 7.3 MIB may request further information and documents to support the claim where it is not satisfied that the documents supplied with the application form are sufficient to enable it to assess its liability under the Agreement (see clause 11(2)).
- 7.4 If the claimant intends to sign or apply for judgment he must give MIB notice of the fact before doing so. This notice must be given at least 35 days before the application is to be made or the date when judgment is to be signed (see clause 12).
- The 35 days notice does not apply where the court enters judgment of its own motion.**
- 7.5 At no time must the claimant oppose MIB if it wishes to be joined as a party to proceedings and he must if requested consent to any application by MIB to be joined. Conflicts may arise between a Defendant and MIB which require MIB to become a Defendant or, in Scotland, a party Minuter if a defence is to be filed on its behalf (see clause 14(b)).

## 8. Interim payments

In substantial cases, the claimant may wish to apply for an interim payment. MIB will consider such applications on a voluntary basis but otherwise the claimant has the right to apply to the court for an interim payment order which, if granted, will be met by MIB.

## 9. After judgment

- 9.1 MIB's basic obligation normally arises if a judgment is not satisfied within 7 days after the claimant has become entitled to enforce it (see clause 1). However, that judgment may in certain circumstances be set aside and with it MIB's obligation to satisfy it. Sometimes MIB wishes to apply to set aside a judgment either wholly or partially. If MIB decides not to satisfy a judgment it will notify the claimant as soon as possible. Where a judgment is subsequently set aside, MIB will require the claimant to repay any sum previously paid by MIB to discharge its obligation under the Agreement (see clause 15(b)).
- 9.2 MIB is not obliged to satisfy a judgment unless the claimant has in return assigned the benefit to MIB or its nominee (see clause 15(a)). If such assignment is effected and if the subject matter of the judgment includes claims in respect of which MIB is not obliged to meet any judgment and if MIB effects any recovery on the judgment, the sum recovered will be divided between MIB and the claimant in proportion to the liabilities which were and which were not covered by MIB's obligation (see clause 21).

## 10. Permissible deductions from payments by MIB

- 10.1 Claims for loss and damage for which the claimant has been compensated or indemnified, e.g. under a contract of insurance or under the Policyholders Protection Act 1975, and which has not been taken into account in the judgment, may be deducted from the sum paid in settlement of MIB's obligation (see clause 17).
- 10.2 If there is a likelihood that the claimant will receive payment from such a source after the judgment has been satisfied by MIB, MIB will require him to undertake to repay any sum which duplicates the compensation assessed by the court (see clause 15(b)).

## 11. Untraced drivers

- 11.1 Where the owner or driver of a vehicle cannot be identified application may be made to MIB under the relevant Untraced Drivers Agreement. This provides, subject to specified conditions, for the payment of compensation for personal **injury**. It *does not* provide for compensation in respect of damage to property.
- 11.2 In those cases where it is unclear whether the owner or driver of a vehicle has been correctly identified it is sensible for the claimant to register a claim under both this Agreement and the Untraced Drivers Agreement following which MIB will advise which Agreement will, in its view, apply in the circumstances of the particular case.