

The Ministry of Commerce for Northern Ireland entered into an agreement on 30th June 1947 with a corporation called the "Motor Insurers' Bureau" to give effect from 1st July 1947 to the principle recommended in July 1937 by the Departmental Committee under Sir Felix Cassel, (Cmnd. 5528), to secure compensation to third party victims of road accidents in cases where, notwithstanding the provisions of the Road Traffic Acts relating to compulsory insurance, the victim is deprived of compensation by the absence of insurance, or of effective insurance. That Agreement was replaced by an Agreement which operated in respect of accidents occurring on or after 22nd April 1971 which in turn was replaced by a new Agreement which operated in respect of accidents occurring on or after 8th March 1973. That Agreement was replaced by an Agreement which operated in respect of accidents occurring on or after 24th April 1989. The agreement of 1989 has now been replaced by a new Agreement which operates in respect of accidents occurring on or after 1st August 2002

The text of the new Agreement is as follows—

MEMORANDUM OF AGREEMENT made the 1st day of August 2002 between the Department of the Environment of Clarence Court, 10-18 Adelaide Street, Belfast BT2 8GB (hereinafter referred to as "the Department") and the Motor Insurers' Bureau, whose registered office is at Linford Wood House, 6-12 Capital Drive, Linford Wood, Milton Keynes, MK14 6XT (hereinafter referred to as "M.I.B.").

IT IS HEREBY AGREED AS FOLLOWS —

DEFINITIONS

General definitions

1. In this Agreement, unless the context otherwise requires, the following expressions have the following meanings -

"1981 Order" means the Road Traffic (Northern Ireland) Order 1981 as amended by the Motor Vehicles (Compulsory Insurance) Regulations (Northern Ireland) 1989;

"1989 Agreement" means the Agreement made on 20th December 1989 between the Department of the Environment for Northern Ireland and MIB;

"bank holiday" means a day which is, or is to be observed as, a bank holiday under the Banking and Financial Dealings Act 1971;

"claimant" means a person who has commenced or who proposes to commence relevant proceedings and has made an application under this Agreement in respect thereof;

"contract of insurance" means a policy of insurance or a security covering a relevant liability;

"insurer" includes the giver of a security;

"MIB's obligation" means the obligation contained in clause 5;

"property" means any property whether real, heritable or personal;

"relevant liability" means a liability in respect of which a contract of insurance must be in force to comply with Part VIII of the 1981 Order;

“relevant proceedings” means proceedings in respect of a relevant liability (and “commencement” in relation to such proceedings means, the date on which a Writ, Civil Bill or other originating process is issued by a Court);

“relevant sum” means a sum payable or remaining payable under an unsatisfied judgment, including -

- (a) an amount payable or remaining payable in respect of interest on that sum, and
- (b) either the whole of the costs (whether taxed or not) awarded by the Court as part of that judgment or, where the judgment includes an award in respect of a liability which is not a relevant liability, such proportion of those costs as the relevant liability bears to the total sum awarded under the judgment;

“specified excess” means £300 or such other sum as may from time to time be agreed in writing between the Department and MIB;

“unsatisfied judgment” means a judgment or order (by whatever name called) in respect of a relevant liability which has not been satisfied in full within seven days from the date upon which the claimant became entitled to enforce it.

Meaning of references

2.—(1) Save as otherwise herein provided, the Interpretation Act (Northern Ireland) 1954 shall apply for the interpretation of this Agreement as it applies for the interpretation of an Act of Parliament.

(2) Where, under this Agreement, something is required to be done -

- (a) within a specified period after or from the happening of a particular event, the period begins on the day after the happening of that event;
- (b) within or not less than a specified period before a particular event, the period ends on the day immediately before the happening of that event.

(3) Where, apart from this paragraph, the period in question, being a period of seven days or less, would include a Saturday, Sunday or bank holiday or Christmas Day or Easter Tuesday, that day shall be excluded.

(4) Save where expressly otherwise provided, a reference in this Agreement to a numbered clause is a reference to the clause bearing that number in this Agreement and a reference to a numbered paragraph is a reference to a paragraph bearing that number in the clause in which the reference occurs.

(5) In this Agreement -

- (a) a reference (however framed) to the doing of any act or thing by, or the happening of any event in relation to the claimant includes a reference to the doing of that act or thing by or the happening of that event in relation to a Solicitor or other person acting on his behalf, and
- (b) a requirement to give notice to, or to serve documents upon, MIB or an insurer mentioned in clause 9(1)(a) shall be satisfied by the giving of the notice to, or the service of the

documents upon, a Solicitor acting on its behalf in the manner provided for.

Claimants not of full age or capacity

3. Where, under and in accordance with this Agreement -

- (a) any act or thing is done to or by a Solicitor or other person acting on behalf of a claimant,
- (b) any decision is made by or in respect of a Solicitor or other person acting on behalf of a claimant, or
- (c) any sum is paid to a Solicitor or other person acting on behalf of a claimant,

then, whatever may be the age or other circumstances affecting the capacity of the claimant, that act, thing, decision or sum shall be treated as if it had been done to or by, or made in respect of or paid to a claimant of full age and capacity.

PRINCIPAL TERMS

Duration of Agreement

4.—(1) This Agreement shall come into force on 1st August 2002 in relation to accidents occurring on or after that date and, save as provided by clause 23, the 1989 Agreement shall cease and determine immediately before that date.

(2) This Agreement may be determined by the Department or by MIB giving to the other not less than twelve months' notice in writing but without prejudice to its continued operation in respect of accidents occurring before the date of termination.

MIB's obligation to satisfy compensation claims

5.—(1) Subject to clauses 6 to 17, if a claimant has obtained against any person in a Court in Northern Ireland a judgment which is an unsatisfied judgment then MIB will pay the relevant sum to, or to the satisfaction of, the claimant or will cause the same to be to paid.

(2) Paragraph (1) applies whether or not the person liable to satisfy the judgment is in fact covered by a contract of insurance and whatever may be the cause of his failure to satisfy the judgment.

EXCEPTIONS TO AGREEMENT

6.—(1) Clause 5 does not apply in the case of an application made in respect of a claim of any of the following descriptions (and, where part only of a claim satisfies such a description, clause 5 does not apply to that part)

- (a) a claim arising out of a relevant liability incurred by the user of a vehicle owned by or in the possession of the Crown, unless—
 - (i) responsibility for the existence of a contract of insurance under Part VIII of the 1981 Order in relation to that vehicle had been undertaken by some other person (whether or not the person liable was in fact covered by a contract of insurance), or
 - (ii) the relevant liability was in fact covered by a contract of insurance;

- (b) a claim arising out of the use of a vehicle which is not required to be covered by a contract of insurance by virtue of Article 90 of the 1981 Order, unless the use is in fact covered by such a contract;
- (c) a claim by, or for the benefit of, a person ("the beneficiary") other than the person suffering death, injury or other damage which is made either -
 - (i) in respect of a cause of action or a judgment which has been assigned to the beneficiary, or
 - (ii) pursuant to a right of subrogation or contractual or other right belonging to the beneficiary;
- (d) a claim in respect of damage to a motor vehicle or losses arising therefrom where, at the time when the damage to it was sustained—
 - (i) there was not in force in relation to the use of that vehicle such a contract of insurance as is required by Part VIII of the 1981 Order, and
 - (ii) the claimant either knew or ought to have known that that was the case;
- (e) a claim which is made in respect of a relevant liability described in paragraph (2) by a claimant who, at the time of the use giving rise to the relevant liability was voluntarily allowing himself to be carried in the vehicle and, either before the commencement of his journey in the vehicle or after such commencement if he could reasonably be expected to have alighted from it, knew or ought to have known that -
 - (i) the vehicle had been stolen or unlawfully taken,
 - (ii) the vehicle was being used without there being in force in relation to its use such a contract of insurance as would comply with Part VIII of the 1981 Order,
 - (iii) the vehicle was being used in the course or furtherance of a crime, or
 - (iv) the vehicle was being used as a means of escape from, or avoidance of, lawful apprehension.

(2) The relevant liability referred to in paragraph (1)(e) is a liability incurred by the owner or registered keeper or a person using the vehicle in which the claimant was being carried.

(3) The burden of proving that the claimant knew or ought to have known of any matter set out in paragraph (1)(e) shall be on MIB but, in the absence of evidence to the contrary, proof by MIB of any of the following matters shall be taken as proof of the claimant's knowledge of the matter set out in paragraph (1)(e)(ii)—

- (a) that the claimant was the owner or registered keeper of the vehicle or had caused or permitted its use;
- (b) that the claimant knew the vehicle was being used by a person who was below the minimum age at which he could be granted a licence authorising the driving of a vehicle of that class;
- (c) that the claimant knew that the person driving the vehicle was disqualified for holding or obtaining a driving licence;
- (d) that the claimant knew that the user of the vehicle was neither its owner nor registered keeper nor an employee of the owner or registered keeper nor the owner or registered keeper of any other vehicle.

(4) Knowledge which the claimant has or ought to have for the purposes of paragraph (1)(e) includes knowledge of matters which he could reasonably be expected to have been aware of had

he not been under the self-induced influence of drink or drugs.

(5) For the purposes of this clause—

- (a) a vehicle which has been unlawfully removed from the possession of the Crown shall be taken to continue in that possession whilst it is kept so removed,
- (b) references to a person being carried in a vehicle include references to his being carried upon, entering, getting on to and alighting from the vehicle, and
- (c) "owner", in relation to a vehicle which is the subject of a hiring agreement or a hire-purchase agreement, means the person in possession of the vehicle under that agreement.

CONDITIONS PRECEDENT TO MIB'S OBLIGATION

Form of application

7.—(1) MIB shall incur no liability under MIB's obligation unless an application is made to the person specified in clause 9(1)—

- (a) in such form,
- (b) giving such information about the relevant proceedings and other matters relevant to this Agreement, and
- (c) accompanied by such documents,

as MIB may reasonably require.

(2) Where an application is signed by a person who is neither the claimant nor a Solicitor acting on his behalf MIB may refuse to accept the application (and shall incur no liability under MIB's obligation) until it is reasonably satisfied that, having regard to the status of the signatory and his relationship to the claimant, the claimant is fully aware of the contents and effect of the application but subject thereto MIB shall not refuse to accept such an application by reason only that it is signed by a person other than the claimant or his Solicitor.

Service of notices etc.

8. Any notice required to be given or documents to be supplied to MIB pursuant to clauses 9 to 12 of this Agreement shall be sufficiently given or supplied only if sent by facsimile transmission or by Registered or Recorded Delivery post to MIB's registered office for the time being and delivery shall be proved by the production of a facsimile transmission report produced by the sender's facsimile machine or an appropriate postal receipt.

Notice of relevant proceedings

9.—(1) MIB shall incur no liability under MIB's obligation unless proper notice of the bringing of the relevant proceedings has been given by the claimant not later than fourteen days after the commencement of those proceedings—

- (a) in the case of proceedings in respect of a relevant liability which is covered by a contract of insurance with an insurer whose identity can be ascertained, to that insurer,
- (b) in any other case, to MIB.

(2) In this clause "proper notice" means, except in so far as any part of such information or any copy document or other thing has already been supplied under clause 7—

- (a) notice in writing that proceedings have been commenced by Writ, Civil Bill or other means,
- (b) a copy of the sealed Writ, Civil Bill or other official document providing evidence of the commencement of the proceedings,
- (c) a copy or details of any insurance policy providing benefits in the case of the death, bodily injury or damage to property to which the proceedings relate where the claimant is the insured party and the benefits are available to him,
- (d) copies of all correspondence in the possession of the claimant or (as the case may be) his Solicitor or agent to or from the Defendant or (as the case may be) his Solicitor, insurers or agent which is relevant to—
 - (i) the death, bodily injury or damage for which the Defendant is alleged to be responsible, or
 - (ii) any contract of insurance which covers, or which may or has been alleged to cover, liability for such death, injury or damage the benefit of which is, or is claimed to be, available to the Defendant,
- (e) subject to paragraph (3), a copy of the Particulars of Claim whether or not endorsed on the Writ, Civil Bill or other originating process, and whether or not served on any Defendant, and
- (f) a copy of all other documents which are required under the appropriate rules of procedure to be served on a Defendant with the Writ, Civil Bill or other originating process or with the Particulars of Claim,
- (g) such other information about the relevant proceedings as MIB may reasonably specify.

(3) If the Particulars of Claim (including any document required to be served therewith) has not yet been served with the Writ, Civil bill or other originating process paragraph (2)(e) shall be sufficiently complied with if a copy thereof is served on MIB not later than seven days after it is served on the Defendant.

Notice of service of proceedings

- 10** (1) MIB shall incur no liability under MIB's obligation unless the claimant has, not later than the appropriate date, given notice in writing to the person specified in clause 9(1) of the date of service of the Writ, Civil Bill or other originating process in the relevant proceedings.
- (2) In this clause, "the appropriate date" means the day falling -
- (a) seven days after -
 - (i) the date when the claimant receives notification from the Defendant that service of the Writ, Civil Bill or other originating process has occurred, or
 - (ii) the date of personal service, or
 - (b) fourteen days after the date when service is deemed to have occurred in accordance with the appropriate rules of court,

whichever of those days occurs first.

Further information

11. (1) MIB shall incur no liability under MIB's obligation unless the claimant has, not later than seven days after the claimant has been notified of the occurrence of any of the following events, namely -

(a) the filing of a defence in the relevant proceedings,

(b) any amendment to the Particulars of Claim or any amendment of or addition to any schedule or other document required to be served therewith, and

(c) either -

(i) the setting down of the case for trial, or

(ii) where the court gives notice to the claimant of the trial date, the date when that notice is received,

given notice in writing of the date of that event to the person specified in clause 9(1) and has, in the case of the filing of a defence or an amendment of the Particulars of Claim or any amendment of or addition to any schedule or other document required to be served therewith, supplied a copy thereof to that person.

(2) MIB shall incur no liability under MIB's obligation unless the claimant furnishes to the person specified in clause 9(1) within a reasonable time after being required to do so such further information and documents in support of his claim as MIB may reasonably require notwithstanding that the claimant may have complied with clause 7(1).

Notice of intention to apply for judgment

12. (1) MIB shall incur no liability under MIB's obligation unless the claimant has, after commencement of the relevant proceedings and not less than thirty-five days before the appropriate date, given notice in writing to the person specified in clause 9(1) of his intention to apply for or to sign judgment in the relevant proceedings.

(2) In this clause, "the appropriate date" means the date when the application for judgment is made or, as the case may be, the signing of judgment occurs.

Article 96 of the Road Traffic (Northern Ireland) Order 1981

13. MIB shall incur no liability under MIB's obligation unless the claimant has as soon as reasonably practicable -

(a) demanded the information and, where appropriate, the particulars specified in Article 96(1) of the 1981 Order, and

(b) if the person of whom the demand is made fails to comply with the provisions of that article—

(i) made a formal complaint to a police officer in respect of such failure, and

(ii) used all reasonable endeavours to obtain the name and address of the registered keeper of the vehicle

or, if so required by MIB, has authorised MIB to take such steps on his behalf.

Prosecution of proceedings

14. MIB shall incur no liability under MIB's obligation—

- (a) unless the claimant has, if so required by MIB and having been granted a full indemnity by MIB as to costs, taken all reasonable steps to obtain judgment against every person who may be liable (including any person who may be vicariously liable) in respect of the injury or death or damage to property, or
- (b) if the claimant, upon being requested to do so by MIB, refuses to consent to MIB being joined as a party to the relevant proceedings.

Assignment of judgment and undertakings

15. MIB shall incur no liability under MIB's obligation unless the claimant has -

- (a) assigned to MIB or its nominee the unsatisfied judgment, whether or not that judgment includes an amount in respect of a liability other than a relevant liability, and any order for costs made in the relevant proceedings, and
- (b) undertaken to repay to MIB any sum paid to him -
 - (i) by MIB in discharge of MIB's obligation if the judgment is subsequently set aside either as a whole or in respect of the part of the relevant liability to which that sum relates;
 - (ii) by any other person by way of compensation or benefit for the death, bodily injury or other damage to which the relevant proceedings relate, including a sum which would have been deductible under the provisions of clause 17 if it had been received before MIB was obliged to satisfy MIB's obligation.

LIMITATIONS ON MIB's LIABILITY

Compensation for damage to property

16.—(1) Where a claim under this Agreement includes a claim in respect of damage to property, MIB's obligation in respect of that part of the relevant sum which is awarded for such damage and any losses arising therefrom (referred to in this clause as "the property damage compensation") is limited in accordance with the following paragraphs.

(2) Where the property damage compensation does not exceed the specified excess, MIB shall incur no liability.

(3) Where the property damage compensation in respect of any one accident exceeds the specified excess but does not exceed £250,000, MIB shall incur liability only in respect of the property damage compensation less the specified excess.

(4) Where the property damage compensation in respect of any one accident exceeds £250,000, MIB shall incur liability only in respect of the sum of £250,000 less the specified excess.

Compensation received from other sources

17. Where a claimant has received compensation from -

- (a) the Policyholders Protection Board under the Policyholders Protection Act 1975, or
- (b) an insurer under an insurance agreement or arrangement, or
- (c) any other source,

in respect of the death, bodily injury or other damage to which the relevant proceedings relate and such compensation has not been taken into account in the calculation of the relevant sum MIB may deduct from the relevant sum, in addition to any sum deductible under clause 16, an amount equal to that compensation.

MISCELLANEOUS

Notifications of decisions by MIB

18. Where a claimant -

- (a) has made an application in accordance with clause 7, and
- (b) has given to the person specified in clause 9(1) proper notice of the relevant proceedings in accordance with clause 9(2),

MIB shall -

- (i) give a reasoned reply to any request made by the claimant relating to the payment of compensation in pursuance of MIB's obligation, and
- (ii) as soon as reasonably practicable notify the claimant in writing of its decision regarding the payment of the relevant sum, together with the reasons for that decision.

Reference of disputes to the Department

19.—(1) In the event of any dispute as to the reasonableness of a requirement made by MIB for the supply of information or documentation or for the taking of any step by the claimant, it may be referred by the claimant or MIB to the Department whose decision shall be final.

(2) Where a dispute is referred to the Department-

- (a) MIB shall supply the Department and, if it has not already done so, the claimant with notice in writing of the requirement from which the dispute arises, together with the reasons for that requirement and such further information as MIB considers relevant, and
- (b) where the dispute is referred by the claimant, the claimant shall supply the Department and, if he has not already done so, MIB with notice in writing of the grounds on which he disputes the reasonableness of the requirement.

Recoveries

20. Nothing in this Agreement shall prevent an insurer from providing by conditions in a contract of insurance that all sums paid by the insurer or by MIB by virtue of this Agreement in or

towards the discharge of the liability of the insured shall be recoverable by them or by MIB from the insured or from any other person.

Apportionment of damages, etc.

21. (1) Where an unsatisfied judgment which includes an amount in respect of a liability other than a relevant liability has been assigned to MIB or its nominee in pursuance of clause 15 MIB shall -

- (a) apportion any sum it receives in satisfaction or partial satisfaction of the judgment according to the proportion which the damages awarded in respect of the relevant liability bear to the damages awarded in respect of the other liability, and
- (b) account to the claimant in respect of the moneys received properly apportionable to the other liability

(2) Where the sum received includes an amount in respect of interest or an amount awarded under an order for costs, the interest or the amount received in pursuance of the order shall be dealt with in the manner provided in paragraph (1).

Agents

22. MIB may perform any of its obligations under this Agreement by agents.

Transitional provisions

23. (1) The 1989 Agreement shall continue in force in relation to claims arising out of accidents occurring before 1st August 2002 with the modifications contained in paragraph (2).

(2) In relation to any claim made under the 1989 Agreement after this Agreement has come into force, the 1989 Agreement shall apply as if there were inserted after clause 6 thereof—

"6A. Where any person in whose favour a judgment in respect of a relevant liability has been made has—

- (a) made a claim under this Agreement, and
- (b) satisfied the requirements specified in clause 5 thereof,

MIB shall, if requested to do so, give him a reasoned reply regarding the satisfaction of that claim."

IN WITNESS whereof the Department of the Environment has caused its Official Seal to be hereto affixed and the Motor Insurers' Bureau has caused its Common Seal to be hereto affixed the day and year first above written.

THE OFFICIAL SEAL of the
DEPARTMENT OF THE
ENVIRONMENT was hereto affixed in the
presence of :



A senior officer of
the Department of
the Environment

THE COMMON SEAL of the MOTOR
INSURERS'
BUREAU was hereunto affixed in the
presence of:



Directors of the
Board of
Management
Secretary



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.

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

**Motor Insurers Bureau
Linford Wood House
6-12 Capital Drive
MILTON KEYNES
MK14 6XT**

Tel: 01908 830001

Fax: 01908 671681

DX: 142620 Milton Keynes 10

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 Department of the Environment. 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 1st August 2002. Claims arising earlier than that are covered by the following Agreements:-

- 1.3.1 Claims arising in respect of an incident occurring between 1st July 1947 and 21st April 1971 are governed by the Agreement between the Ministry of Commerce for Northern Ireland and the Bureau dated 30th June 1947.
- 1.3.2 Claims arising in respect of an incident occurring between 22nd April 1971 and 7th March 1973 are governed by the Agreement between the Ministry of Home Affairs for Northern Ireland and the Bureau dated 15th April 1971.
- 1.3.3 Claims arising in respect of an incident occurring between 8th March 1973 and 23rd April 1989 1988 are governed by the Agreement between the Ministry of Home Affairs for Northern Ireland and the Bureau dated 1st March 1973
- 1.3.4 Claims arising in respect of an incident occurring between 24th April 1989 and 1st August 2002 are governed by the Agreement between the Secretary of State and the Bureau dated 20th December 1989.

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 VIII of the Road Traffic (Northern Ireland) Order

1981 requires a vehicle user to insure (see Article 90 of the 1981 Order). 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 article 90(2) of the Road Traffic (Northern Ireland) Order 1981. 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 McGregor* of 1st 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 article 96 of the Road Traffic (Northern Ireland) Order 1981 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 Driver and Vehicle Licensing at Coleraine 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.

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 will agree to 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 Department of the Environment dated 1st August 2002, the Second Defendant provides compensation in certain circumstances to persons suffering injury or damage as a result of the negligence of uninsured motorists and has a direct interest in these proceedings as set out in *Gurtner v Circuit (1968) IAER, 328*.
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.
- 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).
- 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 appropriate rules of procedure, 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 the claimant *must* inform MIB of the date of service (see clause 10(1) and (2)).
- 6.2 Notice should be given within 7 days from the earliest of the dates listed in clause 10(2)(a)(i) or (ii) or within 14 days from the date mentioned in clause 10(2)(b) (the date of deemed service under the court's rules of procedure). Claimants are advised to ensure that they are aware of the deemed date of service. 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(2)(a)(ii)).

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 knowledge of such events and a copy of the document must be supplied (clause 11(1)).
- 7.2 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)).
- 7.3 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.

- 7.4 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 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.