

**THIS AGREEMENT** is made the *thirteenth* day of *August* 1999 between the **SECRETARY OF STATE FOR THE ENVIRONMENT, TRANSPORT AND THE REGIONS** (hereinafter referred to as "the Secretary of State") and the **MOTOR INSURERS' BUREAU**, whose registered office is at 152 Silbury Boulevard, Milton Keynes MK9 1NB (hereinafter referred to as "MIB") and is **SUPPLEMENTAL** to an Agreement (hereinafter called "the Principal Agreement") made the 31st Day of December 1945 between the Minister of War Transport and the insurers transacting compulsory motor insurance business in Great Britain by or on behalf of whom the said Agreement was signed and in pursuance of paragraph 1 of which MIB was incorporated.

**IT IS HEREBY AGREED AS FOLLOWS:-**

INTERPRETATION

**General definitions**

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

"1988 Act" means the Road Traffic Act 1988;

"1988 Agreement" means the Agreement made on 21 December 1988 between the Secretary of State for Transport 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 VI of the 1988 Act;

"relevant proceedings" means proceedings in respect of a relevant liability (and "commencement", in relation to such proceedings means, in England and Wales, the date on which a Claim Form or other originating process is issued by a Court

or, in Scotland, the date on which the originating process is served on the Defender);

“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 Secretary of State 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 1978 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 Good Friday, 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 October* 1999 in relation to accidents occurring on or after that date and, save as provided by clause 23, the 1988 Agreement shall cease and determine immediately before that date.
- (2) This Agreement may be determined by the Secretary of State 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 Great Britain 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 so 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 VI of the 1988 Act 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 section 144 of the 1988 Act, 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 VI of the 1988 Act, 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 VI of the 1988 Act,
  - (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 Claim Form, Writ, or other means,
  - (b) a copy of the sealed Claim Form, Writ or other official document providing evidence of the commencement of the proceedings and, in Scotland, a statement of the means of service,

- (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 the Defender 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 or Defender 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 Defendant or Defender,
  - (e) subject to paragraph (3), a copy of the Particulars of Claim whether or not indorsed on the Claim Form, Writ or other originating process, and whether or not served (in England and Wales) on any Defendant or (in Scotland) on any Defender, and
  - (f) a copy of all other documents which are required under the appropriate rules of procedure to be served on a Defendant or Defender with the Claim Form, Writ 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, in the case of proceedings commenced in England or Wales, the Particulars of Claim (including any document required to be served therewith) has not yet been served with the Claim Form 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) This clause applies where the relevant proceedings are commenced in England or Wales.



- (2) 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 Claim Form or other originating process in the relevant proceedings.
- (3) In this clause, "the appropriate date" means the day falling -
  - (a) seven days after -
    - (i) the date when the claimant receives notification from the Court that service of the Claim Form or other originating process has occurred,
    - (ii) the date when the claimant receives notification from the Defendant that service of the Claim Form or other originating process has occurred, or
    - (iii) the date of personal service, or
  - (b) fourteen days after the date when service is deemed to have occurred in accordance with the Civil Procedure Rules,

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 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.

**Section 154 of the 1988 Act**

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 section 154(1) of the 1988 Act, and
  - (b) if the person of whom the demand is made fails to comply with the provisions of that subsection -
    - (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, ~~and~~ *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 Secretary of State**

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 Secretary of State whose decision shall be final.
- (2) Where a dispute is referred to the Secretary of State -
- (a) MIB shall supply the Secretary of State 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 Secretary of State 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 the Principal Agreement or 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 1988 Agreement shall continue in force in relation to claims arising out of accidents occurring before *1<sup>st</sup> October* 1999 with the modifications contained in paragraph (2).

(2) In relation to any claim made under the 1988 Agreement after this Agreement has come into force, the 1988 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 hereof,

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

Seal Ref: No.  
DETR/0578

**IN WITNESS** whereof the Secretary of State has caused his Corporate Seal to be hereunto affixed and the Motor Insurers' Bureau has caused its Common Seal to be hereunto affixed the day and year first above written.

THE CORPORATE SEAL of the SECRETARY OF STATE FOR THE ENVIRONMENT, TRANSPORT AND THE REGIONS hereunto affixed is authenticated by: -



Authorised by the Secretary of State



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, nor are they intended to control or influence the legal interpretation of the Agreement. Any enquiries, requests for application forms and general correspondence in connection with the Agreement should be addressed to: -**

**Motor Insurers Bureau  
152 Silbury Boulevard  
Central Milton Keynes  
Milton Keynes  
MK9 1NB**

**Tel: 01908 830001  
Fax: 01908 671681  
DX: 84753 Milton Keynes 3**

### **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 1st July 1946 and 28th February 1971 are governed by the Agreement between the Minister of Transport and the Bureau dated 17th June 1946.

1.3.2 Claims arising in respect of an incident occurring between 1st March 1971 and 30th November 1972 are governed by the Agreement between the Secretary of State for the Environment and the Bureau dated 1st February 1971.

1.3.3 Claims arising in respect of an incident occurring between 1st December 1972 and 30th December 1988 are governed by the Agreement between the Secretary of State and the Bureau dated 22nd November 1972.

1.3.4 Claims arising in respect of an incident occurring between 31st December 1988 and *30<sup>th</sup> September* 1999 are governed by the Agreement between the Secretary of State and the Bureau dated 21st 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 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 or another who has indemnified, or is liable to indemnify, that person. See clause 6(1)(c).
- 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).
- 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).

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)).

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.
- 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.
- 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)).
- 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. Clause 8 applies to service of documents by post and fax. MIB prefer service by fax as it is almost instantaneous and can be confirmed quickly. Claimants should note that service of documents by DX is not permitted under the Agreement since delivery cannot be proved.
- 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 must 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 must be given 7 days from the date of personal service (see clause 10(3)(a)(iii)).
- 6.4 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**

- 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 must be given not later than 7 days after the occurrence of such events and a copy of the document must be supplied (see 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).
- 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 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.