

DEPARTMENT FOR THE ENVIRONMENT – NORTHERN IRELAND

**REVISION OF AN AGREEMENT BETWEEN THE MOTOR INSURERS’
BUREAU (MIB) AND DEPARTMENT OF THE ENVIRONMENT –
COMPENSATION TO VICTIMS OF UNTRACED DRIVERS**

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

SEPTEMBER 2003

The Association of Personal Injury Lawyers (APIL) was formed in 1990 by plaintiff lawyers with a view to representing the interests of personal injury victims. APIL currently has over 4,800 members in the UK and abroad, of which 118 are based in Northern Ireland. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured plaintiffs. APIL does not generate business on behalf of its members.

APIL's executive committee would like to acknowledge the assistance of the following in preparing this response:

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MIB UNTRACED DRIVERS AGREEMENT – NORTHERN IRELAND

Introduction

1. Nothing can fully compensate people for their injuries. But if an accident is someone else's fault they should be held accountable, and the civil justice system is often the only way to ensure the improvement in standards for the future. Injured people have a legal right to be compensated, and this can be a start in buying the care needed to help them rebuild their lives. The aims of the Association of Personal Injury Lawyers (APIL) are:
 - To ensure accident victims receive fair, just and prompt compensation;
 - To improve access to our legal system by all means including education, the exchange of information and the enhancement of law reform;
 - To provide a communication network exchanging views formally and informally.

2. In achieving these aims APIL feels the law should be reformed so as to benefit the victims of accidents. As such APIL calls for the Motor Insurers' Bureau to be subject to legislation which will ensure the MIB acts in the best interests of the victim.

3. Until the appropriate legislation is introduced, however, APIL welcomes the opportunity to comment on the updating of the current Untraced Drivers Agreement, and the possible inclusion of revisions from the recent Great British MIB Untraced Drivers agreement (February 2003). APIL's response only addresses proposed changes that directly affect victims suffering from personal injury, and that other changes (such as the ability to claim for damage to property) are outside of our remit to comment.

4. In summary, APIL generally supports the addition of a provision for payment of interest on compensation awards and the inclusion of an explicit requirement for payment of legal costs. We have concerns, however, in regard to the scope of the agreement and the exclusions detailed within.

Scope of the Agreement

5. APIL is concerned about the obscure drafting of the time limitation clauses. By clause 4 (3)(a)(i), the victim has three years from the date of the incident to make a claim for compensation if it relates to personal injury. By clause 4(3)(a)(ii), however, if a victim makes a claim for damage to property then the limitation period is nine months. This relates to “whether or not injury has arisen”. The two limitation provisions are mutually exclusive because they are separated by the word “or”, thus it would seem that if a victim wishes to claim for both personal injury and property damage a claim needs to be made within nine months. This time limitation appears to be without extensions and overly restrictive. If an injured plaintiff was unable to get to a solicitor to make a claim because he was hospitalised for a significant amount of time it would be unfair to deny him compensation on this basis for his personal injuries.
6. A further restriction on the plaintiff’s ability to gain compensation from the MIB is the need to report the accident to the police under clause 4 (3)(c). This requires any injured victim of an accident to report the incident to the police no later than 14 days after its occurrence otherwise the MIB claim is invalid. Again the example of the injured man hospitalised for a significant period of time would seem to be pertinent. Admittedly there is an additional clause stating that “where that is not reasonably possible [to report the incident within 14 days] the event must have been reported as soon as reasonably possible”. The concern is that the MIB judge what is

'reasonable' in these circumstances, and there is a possibility that this clause could be used to restrict compensation payments due to time limitations.

7. In addition, the time limitation involved in reporting an accident to the police acts as discriminating factor for anyone who does have prior knowledge of the MIB agreement and its restrictions. This may mean that a plaintiff is disqualified from a claim due to the fact that they may have gone on holiday with the intention of reporting the injury on their return. The inability to claim in this context would seem to be unjust.
8. APIL is additionally concerned that the claim requires detailed information that the plaintiff is unlikely to have, or have easy access to. By clause 4 (3)(c)(ii) a written receipt from the police is required showing the crime number. APIL considers this an undue burden on an injured plaintiff as the police command and control numbers are only known by the police and these are rarely provided to the victim. A possible solution would be for the police officer who records the complaint to provide the victim with a card bearing the name of the relevant police officer and the crime reference number.
9. In addition there is anecdotal evidence suggesting that road traffic accidents, especially those involving a non identifiable and non prosecutable person, are treated as low-priority by police officers. This may lead to a lack of co-operation and make gaining the crime number more difficult. For example, within the Uninsured Drivers Agreement there is a need to issue an article 96 request against the uninsured person before a claim will be processed. If this request is not replied to, then the plaintiff is required to contact the police to help with an investigation into the uninsured person. An APIL member has found that the police are reluctant to be involved in any article 96 investigation of any uninsured

driver. It is logical to assume that if the police will not be involved in an investigation into an identifiable, but uninsured person, then any investigation into a non-identifiable person will be even less stringent.

Payment of Interest on Compensation

10. APIL strongly supports the payment of interest on compensation claims within all sectors of personal injury. As such we concur with the ruling of the Advocate General in Sidney Evans v The Department of Transport and the MIB that *“we must proceed on the assumption that victims of untraced vehicles are compensated to the same extent as victims of insured vehicles. ... interest and costs are a necessary component of compensation claims ...”* The ability to claim interest, however, only occurs in “an appropriate case”. Unfortunately, there is no guidance in the notes as to what constitutes “an appropriate case”. APIL is concerned that this discretion may be used by the MIB to limit the number of cases that interest will be applied to.

11. A further limitation is that the calculation of interest only commences from one month after the MIB receive a police report of the accident. This could be problematic if the relevant police report is not easily and quickly forthcoming. There is some suggestion that the priority given to accident cases may not be particularly thorough, thus the production of any police report may be slow and possibly inaccurate. For example, a police report will not be released if the case is proceeding to court. Naturally this will usually involve an identified driver that is uninsured (i.e. a joyrider). However if the identified person is acquitted, then the case is relabeled as being attributable to an ‘untraced’ driver. Delays due to this above scenario can be as long as 18 months; that means 18 months without the calculation of interest.

Payments for Legal Costs

12. APIL is pleased that the awarding of legal costs has been amended and improved. The ability of solicitors to continue to represent injured clients is partly based on commercial pressures; the new system of costs will mean that more solicitors will be inclined to undertake cases under the MIB agreement.

Appeals against MIB's decision

13. APIL considers the incorporation of the oral hearing procedure an improvement on the current procedure. The public nature of the oral hearings also adds to the transparency of the appeals process. Indeed APIL is currently consulting on the facility for oral hearings within the GB jurisdiction for the Untraced Drivers Agreement 2003. APIL firmly believes that any legal process, particularly any appeals system, should be totally independent and transparent.

Exclusions

14. APIL deems that the exclusions for passengers in claiming compensation are overly restrictive and can lead to unjust refusal of potential redress. The MIB will not pay a victim if he travelled voluntarily in the vehicle as a passenger and before he got in, or after he had a reasonable chance to alight, he knew, or ought to have known, that the vehicle was stolen, uninsured or being used in the furtherance of a crime or to escape lawful apprehension. The problem that this causes is that it may allow the MIB to further unjustly restrict the parties available to claim compensation. For instance many people, either rightly or wrongly, automatically assume that the person they are sharing a car with is fully insured (as the majority of cars on the road are). It would be harsh to force people to assume that

any car that they climb into is not insured and/or that the driver is unfit to drive. An example of the potential problem this could cause is that of a 16 year old girl who climbs into the car of her recent boyfriend. The boyfriend's car, however, is stolen. Upon discovering the car is stolen, is it reasonable to expect the girl to get out of the car at petrol station many miles away from home with the dangers that this could in itself present? Under the above scenario, the 16 year old girl would be deprived of compensation if the car was involved in an accident with an untraced driver because of her choice to be taken home, rather than left at the petrol station.

Interviewing the victim

15. Whilst not in the main document itself, the accompanying notes provide for the MIB to interview the victim of an accident. APIL is strongly opposed to such a provision unless legal representation is present from the beginning. Any attempt to cross examine the victim without legal representation would be highly improper.

Lack of Protection

16. APIL deems the lack of protection provided for minors, disabled people and victims of major trauma incidents that require ongoing care as unacceptable. For example the long-stop limitation period for physical injuries being set at 15 years within the agreement means that children and people suffering from a disability will be discriminated against. The current law states that for negligently caused physical injury a claim can be brought three years from the date the plaintiff discovers, or ought to have discovered, the injury. It would seem reasonable to use this current personal injury standard as it would mean that children who are adversely

affected by an accident can be appropriately compensated when the full extent of their injuries are ascertained.

17. APIL feels that MIB should be able to be joined in proceedings in order to provide protection for vulnerable members of society. For example in a normal non-MIB case of a minor being awarded between £5,000 - £7,500 for a personal injury caused by a road traffic accident, a County Court Judge would accept and scrutinise the award once it was paid. This scrutiny by an independent authority provides a valuable safety mechanism. The judge invests the compensation award amount until the minor reaches 18 years old. This provides a failsafe mechanism for the appropriate protection of money after the award has been given. With the MIB handling all aspects of the award, this independence is lost.

18. In respect of the mechanism that the MIB has suggested for the protection of compensation funds for vulnerable victims, APIL feels that it will be both expensive and slow. The Office of Care and Protection (OCP) is considered an expensive method of looking after such funds as there is considerable expense involved in their administration procedures. Due to there being no supervision of the funds the OCP will administer the trust for the minor, yet this administration will cost an additional fee. Taking this example to its logical conclusion, in the case of a serious injury (a person being left a quadriplegic) the costs involved in the simple administration and maintenance of the compensation award would in turn reduce the award and thus reduce the amount of money available for the continuing care of the injured victim. This is unacceptable.

Payment of Award

19. The MIB propose in clause 17(2) that they may *“offer to pay the award in instalments in accordance with a structure described in the decision letter*

(the “structure settlement) and if the applicant notifies MIB in writing of his acceptance of the offer”. APIL supports the use of structured settlements in the payment of compensation as it can provide constant incremented money for the injured person. This support, however, is qualified with respect to the wishes of the injured patient; any compensation award should accurately reflect the wishes and needs of the injured plaintiff. APIL also supports the right to appeal the amount of the award for compensation and the *“proposal for a structure settlement”* (clause 18(b)) with the use of a public (if requested) oral hearing.

Order for costs against a solicitor

20. APIL is concerned about the provision within the appeals procedure (clause 24 (2)(b)) allowing the Arbitrator to order the plaintiff to pay his solicitor’s fees if he feels that there were no reasonable grounds for the making of the appeal. We feel this provision would restrict a person’s access to justice, as a plaintiff could be liable for costs. The difficulty is that ‘no reasonable grounds’ is defined by the arbitrator, and this may encompass appeals that are only 50/50 in respect of winning. Thus in order to avoid the potential financial cost of bringing an appeal a plaintiff may choose to forgo a legitimate appeal.