

10 October 2003

Miss Diana Cotton QC  
Devereux Chambers  
Devereux Court  
London WC2R 3JH

Dear Miss Cotton QC

### **MIB Untraced Drivers Agreement 2003**

The Association of Personal Injury Lawyers (APIL) was recently asked by T W Harrison of the Motor Insurers Bureau (MIB) to contribute written suggestions concerning a process for undertaking oral hearings under the new MIB Untraced Drivers Agreement 2003. APIL welcomes the opportunity to comment on the new Untraced Drivers agreement.

APIL's executive committee would like to acknowledge the assistance of the following in preparing this response: Richard Langton (executive committee member – APIL); Francis McCarthy (member – APIL); and Gordon Exall (member – APIL).

APIL was formed in 1990 by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has over 4,900 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants. APIL does not generate business on behalf of its members.

APIL feels that any process undertaken to incorporate oral hearings should make the needs and wishes of the injured claimant paramount. Thus in order to minimise the stress and anxiety to the claimant that a oral hearing may

cause, there should be prescribed time limits for the associated processes and the opportunity to instruct legal representation as he sees fit.

Prior to any hearing taking place, APIL asserts that there should be a pre-hearing conference (PHC) between the representing solicitors, MIB and tribunal chairman to agree a general direction for the hearing. To minimise costs and keep the process moving this PHC should be conducted via telephone. This will give all parties flexibility in terms of deciding the issues in dispute, which witnesses are being called, service of schedules, need for service of witness statements, etc. Due to the fact that the oral hearings will usually take place because the parties have been unable to settle, the PHC will allow the chairman to indicate to either party about the case they are running / opposing and perhaps promote the concept of compromise / mediation.

Continuing on from the concept of a pre-hearing conference, the following are APIL's views on what form the hearings should take and how they should be managed:

APIL would suggest that the oral hearing should be preceded by:

- 1) Full disclosure of the written evidence (statements, reports, documents) which the MIB intends to rely on to the applicant well before the hearing;
- 2) A full written explanation of the reasons for the original award on each item of damages together with details of the calculations;
- 3) A reasonable period for the applicant to obtain further evidence and reports and to serve them; (clause 22(4) (b) does not allow for this).
- 4) A reasonable period for the applicant to obtain legal advice and make written skeleton submissions/serve a "hearing schedule".
- 5) A "hearing counter schedule" from the MIB, if it disputes any item on the claimant's "hearing schedule" and in default an implied admission by the MIB.
- 6) The MIB and the applicant to serve their comparables and

authorities (on pain, suffering and loss of amenity and on multipliers etc) on each other and the arbitrator at least seven days before the hearing.

- 7) The tribunal having sufficient time to read the bundle before the hearing.

At the hearing APIL would suggest that:

- 8) The hearing should concentrate on the sums in issue on the “hearing schedules”.
- 9) Short oral evidence should be given by witnesses whom the arbitrator has been informed (at least one month before the hearing) will be called.
- 10) Counsel’s fees should be allowed in a proper sum.\*
- 11) A reasoned judgment should be delivered in writing within at least one month of the hearing.
- 12) There should be no unreasonable delay in listing hearings.

\*We realise that this suggestion is not wholly in accordance with the terms of the Untraced Drivers Agreement signed by the Secretary of State. We rather fail to see how it is fair, however, arbitrarily to restrict the applicant’s legal fees to £500 per half day.

If you need any further information, or I can help you with anything else, please do not hesitate to contact me.

Yours sincerely,

Miles Burger

Policy Research Officer