

MIBI - A New Approach to Processing Claims

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Introduction

A new MIBI agreement was concluded on the 31st March, 2004. It is proposed to set out in this article the main practical differences between this new agreement and the preceding agreement of the 21st December, 1988¹. Furthermore, the essential criteria that must now be met by a claimant under the new regime will also be discussed.

Clause 14 - Operation of the agreement

The new agreement will only affect claimants involved in accidents that arise on or after the 1st May, 2004. Claims pursuant to accidents before that date will be dealt with under the 1988 agreement.

One should note that the 1988 agreement has been brought to an end by the new agreement, but without prejudice to the continued operation of that agreement in so far as it relates to accidents occurring before the 1st May, 2004². Thus cases concerning accidents which occurred before the 1st May, 2004 will continue to be assessed under the old regime.

Clause 2 - Enforcement of the Agreement

It seems that the means by which one may seek compensation from the MIBI, as set out in Clause 2 of the 2004 agreement, remain identical to the means set out in the old agreement.

The wording has been amended slightly in that the 1988 agreement lists means by which a claimant 'may' seek compensation from the MIBI, whereas the new agreement sets out how the claimant 'must' seek to enforce the agreement.

Perhaps this merely represents a tightening up of loose language; despite the use of the word 'may' in the old agreement one cannot envisage any other means that might have been invoked to seek compensation from the MIBI other than those listed in that agreement and therefore the use of the word 'must' changes nothing.

The notion that the abovementioned amendment represents a tightening up of loose language is further corroborated by the addition in clause 2.2 of 'and/or', which, in the 1988 agreement, had read simply as 'or'³. The need to change the wording to 'and/or' could, on a strict interpretation, infer that under the old regime, the MIBI could only be cited as co-defendants in proceedings where *either* the owner or user of a vehicle was the other defendant but not where *both* owner and user were joined as defendants. Clearly this is not the case.

Clause 3 - Conditions precedent to the MIBI's liability

Clause 3 of the new agreement lists the matters to be done by the claimant in order for his claim to come within the terms of the agreement and in general it lists the terms which shall be conditions precedent to the MIBI's liability. It is here that some major changes have been introduced.

Clause 3.1: Before the issue of Court proceedings that will involve the MIBI, the claimant must have given the MIBI notification of his intention to seek compensation. In other words, it would not suffice to serve pleadings on the MIBI without having first complied with the obligation to give notice of the intention to do so. In this regard, the new agreement does not differ from the 1988 agreement. Where the agreements do differ though is in relation to *how* that notice must be given.

The new agreement sets out that notice may be given by registered post or 'electronic mail as specified in the website www.mibi.ie'; the 1988 agreement had provided solely for the giving of notice by way of registered post.

The addition of e-mail as a means of notifying the MIBI of intention to seek compensation represents an acceptance of changing business practices and is overall to be welcomed.

It is assumed that it is in light of the introduction of e-mail as a means of notifying the MIBI that the new agreement has recanted from the need to give 'notice in writing' as was required by the 1988 agreement and instead requires only 'prior notice'. Electronic mail is not strictly speaking a form of 'writing' but rather computer data; the removal of the need for written notice reflects this position.

Both agreements specify the time limits within which the above notification must be made. The 1988 agreement provided that the notification, in the case of death or personal injuries, had to be given within three years. The new agreement provides that notification, again in the cases of death or personal injuries, must be given 'within the time limits prescribed in the Statutes of Limitation'.

Having the time limit for personal injuries mirror the time limits in the Statute of Limitations permits a claimant to more readily invoke arguments regarding discoverability of injuries should the claimant for some reason be outside the strict three year limit imposed under the 1988 agreement. Likewise, a minor claimant can now wait until he attains majority rather than having to act within three years.

1. The preceding MIBI agreement is that dated the 21st day of December 1988 which came into force on the 31st day of December 1988 'in respect of claims arising out of the use of a vehicle in a public place on or after that that date' (Clause 13 of the 1988 agreement). Incidents arising before that date were subject to the terms of the 1964 MIBI agreement.

2. Clause 1 of the 2004 agreement entitled 'Determination of the Agreement of 1988'

3. '...citing MIBI as co-defendants in any proceedings against the owner and/or user...'

4. The website, as well as offering information about the MIBI, has an area in which one may process a claim notification. This invites the claimant (or his representatives) to enter information regarding the incident in question. When all details have been entered the details are submitted. An e-mail acknowledgement is assured within four hours and the claimant is advised to retain that as proof of his compliance with the agreement. It is specifically pointed out to the claimant that receipt of that e-mail acknowledgement obviates the need to send notification in writing.

A more cynical view might be that the agreement refers to the Statutes of Limitation, rather than fixed lengths of time, in preparation for the proposed reduction of the time limits within which personal injuries claims will have to be instituted.

The Civil Liability Act, 1961 imposes a two year limit, in some circumstances, where it is proposed to bring proceedings against the estate of a deceased person. This time limit will need to be heeded in circumstances where, for example, an uninsured driver who bears responsibility for the plaintiff's injuries has died; the notification will need to mirror the statutory time limits on bringing proceedings.

The one-year time limit in respect of damage to property is unchanged.

Clause 3.2 is unchanged except that the 2004 agreement clarifies that the MIBI is entitled to sight of a claimant's medical reports where reasonably required. The 1988 version did not specify this.

Clause 3.3 This is a new addition in the 2004 agreement. Here the MIBI confirms its right to interview the claimant in claims that arise from an accident caused or contributed to by an untraced driver.

This right of interview will assist the MIBI to investigate claims that are, by their definition, notoriously difficult to adequately investigate. It is a measure by which it is hoped to reduce fraudulent claims. In this regard, it should be noted that the answers given by the claimant at such an interview, whilst they may be used in the course of any subsequent court hearing related to the MIBI's liability to that claimant, may not be used 'in any circumstances in any criminal proceedings'. (Emphasis added). The answers are to be used solely for the purposes of progressing the claimant's claim and cannot be used by anyone other than the MIBI or its servants or agents. The claimant is entitled to have his solicitor present at such interviews. The MIBI will be liable for the 'reasonable costs' of such an interview⁵; it is not clear if this will include legal costs incurred. Certainly clause 4.2 of the 2004 agreement makes it abundantly clear that the MIBI will not be responsible for the costs a claimant may have incurred in order to provide the MIBI with the information it seeks

Clause 3.4 is also new and is also an anti-fraud measure. It simply states that the claimant must co-operate fully with An Garda Síochána or any other authorized person in their investigations of the claim. It does not specify who 'any other authorized person' encompasses but it must be assumed that where an insurance company is appointed to handle a claim, that an official of that company will be covered by the scope of this clause. Furthermore, along the same lines of reasoning, any persons to whom the insurance company contracts work (e.g. motor engineers or private investigators) should also come within the rubric of clause 3.4.

Clause 3.5 is a transcript of the 1988 agreement's clause 3.3; it obliges the claimant to furnish the MIBI with copies of all relevant documents and legal pleadings, statements, etc.

Clause 3.6 largely transposes clause 3.4 of the 1988 agreement but there is a significant addition to that as well.

The clause essentially places on the claimant the duty of establishing whether or not an approved policy of insurance covering the use of any vehicle involved in the accident the subject matter of the claim. The old agreement states that he need only determine if a policy exists which would cover such a vehicle for use in a public place; the 2004 agreement requires him to go further than that and is not confined to use in a *public place* alone. In other words he will need to establish whether or not any form of insurance exists whatsoever.

The claimant, or his legal representatives, must establish if such a policy exists by demanding particulars from the owner or user in accordance with s. 73 of the Road Traffic Act, 1961. Practitioners should note that s.73 of the Act requires that this demand be made in writing and sent by registered post. Theoretically at least, failure to do so may leave the claimant in breach of the agreement.

The clause goes on (and it is this continuation which is the significant addition alluded to above) to impose a cooling off period of sorts. It states that the claimant must wait at least three months before he can declare his attempts to secure the insurance details to be unsuccessful.

One means by which this three month period can be circumvented is for the claimant to present to the MIBI 'written confirmation from [a Garda] or the owner and/or user of the vehicle' which gave rise to the claim; then the notification may take place immediately.

If there is an approved policy in existence, then there is no need to wait for three months to elapse if you are in a position to have a Garda or the owner/user confirm this in writing.

It seems that if no policy exists, then the claimant will have to issue his letters of demand under s. 73 and then wait for three months to pass before he can notify the MIBI.

Clauses 3.7 and 3.8 These are the same as the 1988 clauses 3.5 and 3.6

Clause 3.9 By this clause, the claimant is obliged to give the MIBI at least 28 days notice before he obtains judgment against someone where obtaining that judgment might give rise to an obligation on the part of the MIBI.

This clause ties in with Clause 4.1 of the new agreement, which is not significantly different to Clause 4.1 of the 1988 agreement. Clause 4.1 states that where judgment has been obtained in respect of any liability for damage, injury or death which is required to be covered by a policy of insurance and such judgment is not satisfied in full within 28 days, then the MIBI will pay to the person in whose favour the judgment was given such sum as remains payable (subject of course to the limitations of the agreement). Clause 3.9 obliges the person who is pursuing such a judgment to give the MIBI 28 days *advance* notice rather than seeking satisfaction when judgment has already been obtained, as was the procedure under the old regime.

Clause 3.10 is similar to Clause 3.7 of the 1998 agreement. Both impose on the claimant the duty to take all reasonable steps against any person against whom the claimant might have a remedy. Here the MIBI guarantees a full indemnity as to reasonable costs incurred in taking such steps.

The final arbiter of disputes as to the reasonableness of the steps the MIBI requests the claimant to take is the Minister.

The 1988 agreement referred to the claimant as '*the person bringing the proceedings*'. Such a reference is missing from the 2004 agreement.

Clauses 3.11 and 3.12 These are not materially different to clauses 3.8 and 3.9 of the 1988 agreement.

The remaining sub clauses at clause three are new to the 2004 agreement.

Clause 3.13 imposes a new duty on the claimant. Any accident which gives rise to a claim made to the MIBI must be reported to An Garda Síochána within two days of the event or as soon as the claimant reasonably can.

5. Clause 4.2 of the 2004 agreement

In most instances, the Gardai will no doubt be informed in any event. The aim of this new sub clause is to deter bogus claims against the MIBI.

Clause 3.14 seems superfluous given the requirements made of the claimant at clause 3.12

Clause 3.15 is a significant addition to the agreement. As discussed above, the claimant clearly has a duty to notify the MIBI of his intention to seek compensation. Clause 3.15 sets out exactly what must be included in that notification. It states that any notification that lacks the requisite information (or does not show good reason as to why it lacks it) shall not be deemed to be duly notified to the MIBI.

Notification by way of the MIBI website requires that the claimant fill in all boxes before he may submit the notification and thus the issue of invalid notification is less likely to arise through that method.

However, notification by way of registered post (the more common method at present at least) has now changed in that it will be deemed invalid if the requisite information has not been supplied. One wonders will the MIBI be so obliging as to inform claimants that their notification has been deemed invalid *before* the expiry of the time limit set out in the agreement at clause 3.1 or is it a matter that will be brought to their attention at a later stage e.g. when the claimant seeks to enforce the agreement.

Practitioners should be cautious regarding this aspect and it might prove prudent to end such letters with a paragraph to the following effect:

'Unless we hear to the contrary within the next 10 days it will be assumed that this notification has been deemed valid by your offices'.

The information that clause 3.15 requires to be contained in a notification is:

- a) Name, address and PPS no. of claimant
- b) Registration number of vehicle alleged to be uninsured and make and model (if known)
- c) Garda Station to which the matter was reported
- d) Why claimant feels the vehicle was uninsured
- e) Steps taken to establish if there was a valid policy of insurance
- f) Name and address of owner and/or user of vehicle
- g) Date and time and place of accident
- h) Description of accident
- i) If other vehicles involved, then the registration numbers, makes and models of same
- j) Names, addresses and insurance details of other drivers and/or owners involved

'Intention to seek compensation' notification checklist:

- a) Notify of intention to seek compensation *before* issuing proceedings
- b) Done within time limits as per clause 3.1

c) Registered post letters to user or owner to determine if insurance exists; must wait three month if no success or if certified in writing by owner/user/Garda that insurance exists, then sooner than three months

d) Incident reported to Gardai within two days or as soon as claimant reasonably can

Thereafter:

- a) Claimant to comply with Garda investigations
- b) Claimant to attend interview if MIBI request (where claim arises from untraced driver). Claimant may have solicitor present.
- c) Furnish MIBI with material information reasonably required, including medical reports
- d) Notice of proceedings (to either insurer or MIBI as the case may be under clause 3.8) *before* issue of proceedings
- e) Claimant to take any reasonable steps the MIBI require of him; if dispute regarding reasonableness, then Minister decides

The manner in which pleadings are drafted has also changed due to the introduction of the new agreement, but this is a matter which will postdate the notification procedure and is thus not within the remit of this article.

Clause 4 – Satisfaction of Judgements by MIBI

Clause 4 has not changed significantly compared to the 1988 agreement. It clarifies two aspects related to the costs of claiming compensation from the MIBI. Firstly, as mentioned earlier, at Clause 4.2 it specifies that the MIBI will not be liable for the costs incurred by the claimant in supplying the MIBI with the information it requires (subject to the costs reasonably incurred in attending for interview at the request of the MIBI).

Secondly, clause 4.3 establishes that the MIBI is not to be a 'soft touch' in relation to the legal costs. The legal costs or expenses recoverable against the MIBI will not be higher than those that would be recoverable where the owner or user of the vehicle was covered by an approved policy. Furthermore, the legal costs in excess of what would be payable will not be allowed merely because the MIBI is or may be a defendant or co-defendant to proceedings; simply put - because the MIBI is involved does not entitle the claimant to seek higher legal costs than in other similar cases not involving the MIBI.

Clauses 5 and 6- 'Exclusion of Certain User and Passenger Claims' and 'Unidentified or Untraced Vehicle, Owner or User' respectively: These clauses are the same as the wording in the 1988 agreement.

Clause 7 - **Damage to Property** This clause also remains the same, bar the conversion of the Irish pound figures to euro figures; the figures have not increased since the 1988 agreement; in fact due to rounding down, they have reduced slightly.

The agreement is signed by the Minister for Transport, who replaces the Minister for the Environment as signatory of the agreement.●