

21st December 1988

DEPARTMENT OF TRANSPORT
Motor Insurers' Bureau
(COMPENSATION OF VICTIMS OF UNINSURED DRIVERS)
Text of an Agreement dated 21st December 1988
between the Secretary of State for Transport
and the Motor Insurers' Bureau together with
some notes on its scope and purpose

In accordance with the Agreement made on 31 December 1945 between the Minister of War Transport and insurers transacting compulsory motor vehicle insurance business in Great Britain (published by the Stationery Office under the title "Motor Vehicle Insurance Fund") a corporation called the "Motor Insurers' Bureau" entered into an agreement on 17 June 1946 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 1 March 1971 which in turn was replaced by a new Agreement which operated in respect of accidents occurring on or after 1 December 1972. The Agreement of 1972 has now been replaced by a new Agreement which operates in respect of accidents occurring on or after 31 December 1988.

The text of the new Agreement is as follows:

MEMORANDUM OF AGREEMENT made the 21st day of December 1988 between the Secretary of State for Transport and the Motor Insurers' Bureau, whose registered office is at New Garden House, 78 Hatton Garden, London EC1N 8JQ (hereinafter referred to as "MIB")

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:
DEFINITIONS**

1 In this Agreement-

- "contract of insurance" means a policy of insurance or a security;
- "insurer" includes the giver of a security;
- "relevant liability" means a liability in respect of which a policy of insurance must insure a person in order to comply will) Part VI of the

Road Traffic Act 1972, and references to the Road Traffic Act 1972 are references to that Act as amended by the Motor Vehicles (Compulsory Insurance) Regulations 1987 (No.2171).

SATISFACTION OF CLAIMS BY MIB

2.1 If judgment in respect of any relevant liability is obtained against any person or persons in any Court in Great Britain whether or not such a person or persons be in fact covered by a contract of insurance and any such judgment is not satisfied in full within seven days from the date upon which the person or persons in whose favour the judgment was given became entitled to enforce it then MIB will, subject to the provisions of paragraphs (2), (3) and (4) below and to Clauses 4, 5 and 6 hereof, pay or satisfy or cause to be paid or satisfied to or to the satisfaction office person or persons in whose favour the judgment was given any sum payable or remaining payable thereunder in respect of the relevant liability including any sum awarded by the Court in respect of interest on that sum and any taxed costs or any costs awarded by the Court without taxation (or such proportion thereof as is attributable to the relevant liability) whatever may be the cause of the failure of the judgment debtor to satisfy the judgment.

2.2 Subject to paragraphs (3) and (4) below and to Clauses 4, 5 and 6 hereof, MIB. shall incur liability under paragraph (1) above in respect of any sum awarded under such a judgment in respect of property damage not exceeding £250,000 or in respect of the first £250,000 of any sum so awarded exceeding that amount.

2.3 Where a person in whose favour a judgment in respect of relevant liability which includes liability in respect of damage to property has been given, has received or is entitled to receive in consequence of a claim he has made, compensation from any source in respect of that damage, MIB. May deduct from the sum payable or remaining payable under paragraph (1) above an amount equal to the amount of that compensation in addition to the deduction of £175 by virtue of paragraph (4) below. The reference to compensation includes compensation under insurance arrangements.

2.4 MIB shall not incur liability under paragraph (1) above in respect of any amount payable or remaining payable under the judgment in respect of property damage liability where the total of amounts so payable or remaining payable is £175 or less, or, where the total of such amounts is more than £175, in respect of the first £175 of such total.

PERIOD OF AGREEMENT

3.1 This Agreement shall be determinable by the Secretary of State at any time or by MIB on twelve months notice without prejudice to the continued operation of the Agreement in respect of accidents occurring before the date of termination.

RECOVERIES

4.1 Nothing in this Agreement shall prevent insurers from providing by

conditions in their contracts of insurance that all sums paid by them or by MIB. by virtue of the Principal Agreement or this Agreement in or towards the discharge of the liability of their insured shall be recoverable by them or by MIB from the insured or from any other person.

CONDITIONS PRECEDENT TO MIB's LIABILITY

5.1 MIB shall not incur any liability under Clause 2 of this Agreement unless -

a) notice in writing of the bringing of the proceedings is given within seven days after the commencement of the proceedings

(i) to MIB in the case of proceedings in respect of a relevant liability which is either not covered by a contract of insurance or covered by a contract of insurance with an insurer whose identity cannot be ascertained, or

(ii) to the insurer 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;

Such notice shall be accompanied by a copy of the writ, summons or other document initiating the proceedings;

b) the person bringing the proceedings furnishes to MIB -

(i) such information (in such form as MIB may specify) in relation thereto as MIB may reasonably require; and

(ii) such information (in such form as MIB may specify) as to any insurance covering any damage to property to which the claim or proceedings relate and any claim made in respect of that damage under the insurance or otherwise and any report which may have been made or notification which may have been given to any person in respect of that damage or the use of the vehicle giving rise thereto, as MIB may reasonably require;

c) the person bringing the proceedings has demanded the information and, where appropriate, the particulars specified in Section 151 of the Road Traffic Act 1972 in accordance with that section or, if so required by MIB, has authorised MIB to do so on his behalf.

d) if so required by MIB and subject to full indemnity from MIB as to costs the person bringing the proceedings has taken all reasonable steps to obtain judgment against all the persons liable in respect of the injury or death or damage to property and, in the event of any such person being a servant or agent, against his principal; and

e) the judgment referred to in Clause 2 of this Agreement and any judgment referred to in paragraph (d) of this Clause which has been obtained (whether or not either judgment includes an amount in respect of a liability other than a relevant liability) and any order for costs are assigned to MIB or their nominee.

5.2 In the event of any dispute as to the reasonableness of a requirement by MIB for the supply of information or that any particular step should be taken to obtain judgment against other persons it may be referred to the Secretary of State whose decision shall be final.

5.3 Where a judgment which includes an amount in respect of a liability other than a relevant liability has been assigned to MIB or their nominee in pursuance of paragraph (l)(e) of this Clause MIB shall apportion any monies received in pursuance of the judgment according to the proportion which the damages in respect of the relevant liability bear to the damages in respect of the other liabilities and shall account to the person in whose favour the judgment was given in respect of such monies received properly apportionable to the other liabilities. Where an order for costs in respect of such a judgment has been so assigned monies received pursuant to the order shall be dealt with in the same manner.

EXCEPTIONS

6.1 MIB shall not incur any liability under Clause 2 of this Agreement in a case where:

(a) the claim arises out of the use of a vehicle owned by or in the possession of the Crown, except where any other person has undertaken responsibility for the existence of a contract of insurance under Part IV of the Road Traffic Act 1972 (whether or not the person or persons liable be in fact covered by a contract of insurance) or where the liability is in fact covered by a contract of insurance;

(b) the claim arises out of the use of a vehicle the use of which is required to be covered by a contract of insurance by virtue of section 144 of the Road Traffic Act 1972, unless the use is in fact covered by such a contract:

(c) the claim is in respect of a judgment or any part thereof which has been obtained by virtue of the exercise of a right of

subrogation by any person;

(d) the claim is in respect of damage to property which consists of damage to a motor vehicle or losses arising therefrom if at the time of the use giving rise to the damage to the motor vehicle there was not in force in relation to the use of that vehicle when the damage to it was sustained such a policy of insurance as is required by Part VI of the Road Traffic Act 1972 and the person or persons claiming in respect of the loss or damage either knew or ought to have known that that was the case;

(e) at the time of the use which gave rise to the liability the person suffering death or bodily injury or damage to property was allowing himself to be carried in or upon 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 the vehicle he -

- (i) knew or ought to have known that the vehicle had been stolen or unlawfully taken, or
- (ii) knew or ought to have known that 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 Road Traffic Act 1972.

6.2 The exception specific in sub-paragraph (1)(e) of this Clause shall apply only in a case where the judgment in respect of which the claim against MIB is made was obtained in respect of a relevant liability incurred by the owner or a person using the vehicle in which the person who suffered death or bodily injury or sustained damage to property was being carried.

6.3 For the purposes of these exceptions -

(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 in or upon or entering or getting onto or 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.

AGENTS

7.1 Nothing in this Agreement shall prevent MIB performing their obligations under this Agreement by Agents.

OPERATION

8.1 This Agreement shall come into operation on the 31st day of December 1988 in relation to accidents occurring on or after that date. The Agreement made on 22nd November 1972 between the Secretary of State and MIB shall cease and determine except in relation to claims arising out of accidents occurring before the 31st day of December 1988.

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

THE CORPORATE SEAL of the Secretary of State was hereunto affixed in the presence of D H Workskett

An Assistant Secretary in the Department of Transport duly authorised in that behalf

The COMMON SEAL of the Motor Insurers' Bureau was hereunto affixed in the presence of
T A Kent Members of
A Kilpatrick The Council
J L West Secretary

NOTES

The following notes are for the guidance of those who may have a claim on the Motor Insurers' Bureau under the Agreement, and of their legal advisers, but they must not be taken as rendering unnecessary a careful study of the Agreement itself. Communications on any matter connected with the Agreement should be addressed to Motor Insurers' Bureau whose address is 152 Silbury Boulevard, Central Milton Keynes MK9 1NB.

On the date of coming into force of the Road Traffic Act 1988 references to the provisions of the Road Traffic Act 1972 are by virtue of section 2(4) of the Road Traffic (Consequential Provisions) Act 1988 to be read as reference to the corresponding provisions of the Road Traffic Act 1988.

In order to up-date the Notes to the Agreement to reflect recent developments, an appendix has been added to the notes as published originally.

- 1.** The Agreement, which operates from 31st December 1988 supersedes earlier Agreements made on 17 June 1946 (which was operative from 1 July 1946), on 1 February 1971 (which was operative from 1 March 1971) and on 22 November 1972 (which was operative from 1 December 1972) in relation to claims arising out of accidents occurring on or after that date.
- 2.** If damages are awarded by a Court in respect of death or personal injury or damage to property arising out of the use of motor vehicle on a road in circumstances where the liability is one which was, at the time the accident

occurred, required to be covered by insurance and such damages, or any part of them, remain unpaid seven days after the judgment becomes enforceable, the Bureau will, subject to the limit specified in Clause 2(2), which corresponds with the limited insurance requirement in section 145(4)(b) of the Road Traffic Act, and the exceptions in paragraphs (3) and (4) of Clause 2 and Clause 6 of the Agreement, pay the unrecovered amount (including any interest awarded by the Court and costs) to the person in whose favour the judgment has been given against an assignment of the judgment debt. This applies whether the judgment debtor is a British resident or a foreign visitor.

3. Clause 1 defines "relevant liability" as a liability in respect of which a policy of insurance must insure a person in order to comply with Part VI of the Road Traffic Act 1972, which includes liability in respect of property damage caused by, or arising out of, the use of the motor vehicle on a road in Great Britain. This provision gives effect to Article 1.1 of Council Directive (84/5/EEC) of 30 December 1983 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ No.L8,11.1.84, p17). In the context of the Directive "damage to property" means damage to material property. Accordingly in this Agreement the reference to damage to property is understood in that sense. With regard to liability in respect of such damage which is covered by the Agreement, MIB would expect to meet the consequential loss elements of a claim flowing from damage to the claimant's material property which a Court would allow. It must be emphasised that MIB's obligation does not extend to those liabilities not required to be covered by the policy under section 145 of the Road Traffic Act 1972.

4. Nothing in the Agreement affects the position at law of the parties to an action for damages arising out of the driving of a motor vehicle. The Bureau's liability under the Agreement can only arise when the plaintiff has successfully established his case against the person or persons liable in the usual manner and judgment has been given in his favour. There is, of course, nothing to exclude the acceptance of compensation by the plaintiff under a settlement of his claim negotiated between the plaintiff and the alleged person liable or the Bureau.

5. The purpose of Clause 2(3) is to oblige any claimant in respect of property damage to give credit for compensation which he may have received or be entitled to receive under a claim he has made on another source or sources relative to that damage. The most common instances will involve compensation recovered under comprehensive motor or household policies. Policyholders with these covers cannot be forced to claim under them but will normally wish to do so for their convenience. Furthermore legal liability for the accident will not affect that claim and the MIB excess of £175 (Clause 2(4)) will not apply. Where such a claim has been made successfully MIB will only be concerned with the claimant's uninsured losses eg any excess he may have under his own policy, or loss of use of his vehicle subject to legal liability and the MIB excess of £175.

6. WHERE THERE IS A POLICY.

In cases where it is ascertained that there is in existence a policy issued in compliance with the Road Traffic Act 1972, the insurer will act as the agent of the Bureau even if entitled to repudiate liability under the policy and, subject to notice being given as provided for in Clause 5(l)(a)(ii), will handle claims within the terms of the Agreement.

In many cases, particularly where the vehicle was being used without the policyholder's authority, the provisions of the Road Traffic Act precludes repudiation by the insurer of a victim's claim. Victims and those acting on their behalf are expressly reminded of the requirements as to the giving of notice to the insurer if the protection afforded to third parties by section 149 of the Road Traffic Act 1972 is sought. It must be stressed that the above arrangements are without prejudice to any rights insurers may have against their policyholders and, to avoid any possible misunderstanding, it is emphasised that there is nothing in this Agreement affecting any obligations imposed on a policyholder by his policy. Policyholders are not released from their contractual obligations to their insurers, although the Road Traffic Act and MIB protect THIRD PARTY VICTIMS from the consequences of failure to observe them. For example, if a policyholder fails to notify claims to his insurers as required by his policy or permits an unauthorised person to drive, he may be liable to his insurers.

WHERE THERE IS NO POLICY OR THE IDENTITY OF THE INSURER CANNOT BE ASCERTAINED.

In cases where there is no policy, or for any reason the existence of a policy is in doubt or where there is a policy but the identity of the insurer cannot be ascertained, the victim or those acting on his behalf must notify the Bureau, and in practice it is desirable to inform the Bureau in all cases where the name of the insurer is not speedily forthcoming..

It is a condition of the Bureau's liability that they should be given notification in writing (with relevant documents) within 7 days after the commencement of proceedings against the alleged person liable. It should always be remembered that the requirement for notice of issue of proceedings under Clause 5(l)(a)(i) and (ii) must be complied with strictly. Notice should be given immediately on issue of the proceedings, and such notice must be accompanied by copies of the writ or summons.

Wherever possible MIB wishes to resolve any claim by negotiation and will deal with claims, by agreement with the claimant, under the pre-action Protocol set out in the Appendix

7. Claims arising out of the issue of uninsured vehicles owned by or in the possession of the Crown will in the majority of cases be outside the scope of the Bureau's liability (see Clause 6 of the Agreement - Exceptions). In such cases the approach should be made to the responsible authority in the usual way. The same benefits in respect of compensation will normally be afforded by the Crown to the victims in such cases as they would receive were the accident caused by a private vehicle, except where the victim is a serviceman

or servicewoman whose death or injury gives rise to an entitlement to a pension or other compensation from public funds.

8. The purpose of Clause 6(l)(c) is to relieve MIB of liability to meet judgments in respect of damage to property properly obtained by persons who have compensated the victim such as the victim's own insurers. Such insurers have the right to attempt to recoup their outlay by requiring an insured to lend his name to proceedings against the person responsible, but MIB will not meet such claims as the victim has already been compensated.

9. Claims for damage to a vehicle or for losses arising therefrom for which a policy of insurance issued in compliance with Part IV of the Road Traffic Act 1972 is required, are excluded from the Agreement if the vehicle was not insured and the claimant knew or ought to have known that it was not. See Clause 6(l)(d). The claim may also be excluded under Clause 6(l)(e).

10. It should be noted that the monetary limit applicable to property damage claims by virtue of Clause 2(2) corresponding with the insurance limit in section 145 of the Road Traffic Act 1972, and the excess prescribed by Clause 2(3) and (4) of this Agreement will be subject to review from time to time.

11. The Bureau have no liability UNDER THIS AGREEMENT to pay compensation in respect of any person who may suffer bodily injury or death or may sustain damage to property resulting from the use on a road of a vehicle, the owner or driver of which cannot be traced. A separate Agreement between the Secretary of State for Transport and the Bureau for the Compensation of Victims of Untraced Drivers in respect of bodily injury applies, but this Agreement does NOT embrace damage to property. (Copies of this Agreement may be obtained through Her Majesty's Stationery Office price £1.70).