

Subject	Location	Start	Minutes Available Y/N	Notes	Email/Note Available Y/N	Notes
DfT/Dfl Catch-up: MIB Agreements	Microsoft Teams Meeting	Wednesday 18/01/2023 12:00	N	No minutes available	N	No record available
MIB/DFI Catch up	Microsoft Teams Meeting	Thursday 19/01/2023 10:30	N	No minutes available	N	No record available
MIB Visit		Friday 10/02/2023 11:00	N	No minutes available	Y	Record available. Request for release refused under s42(1) of the FOI Act, Legal Professional Privilege
Arbitrator Competencies	Microsoft Teams Meeting	Friday 17/02/2023 11:00	N	No minutes available	N	No record available
MIB HQ Visit		Wednesday 01/03/2023 00:00	N	No minutes available	N/A	N/A
MIB/DfT/HMT/Dfl introductions & lunch	Motor Insurers Bureau (Linford Wood House 6-12 Capital Drive, Milton Keynes, Buckinghamshire, MK14 6XT)	Wednesday 01/03/2023 11:00	N	No minutes available	N/A	N/A
MIB Draft Review	Microsoft Teams Meeting	Monday 06/03/2023 15:00	N	No minutes available	Y	Record available. Request for release refused under s42(1) of the FOI Act, Legal Professional Privilege
Dfl - Motor Insurance Agreement between Dfl and MIB (Ref: 75033)	Microsoft Teams Meeting	Wednesday 08/03/2023 14:00	N	No minutes available	N	No record available
MIB/Dfl Monthly call	Microsoft Teams Meeting	Wednesday 22/03/2023 11:00	N	No minutes available	N	No record available

Subject	Location	Start	Minutes Available Y/N	Notes	Email/Note Available Y/N	Notes
Review of REUL Legislation (Driving Policy Branch)	Microsoft Teams Meeting	Friday 31/03/2023 10:00	N	No minutes available	N	No record available
MIB/Dfl Monthly call	Microsoft Teams Meeting	Tuesday 02/05/2023 14:00	N	No minutes available	N	No record available
MIB/Dfl catch up	Room 6-06	Thursday 08/06/2023 10:30	N	No minutes available	N	No record available
MIB/Dfl Agreements	Microsoft Teams Meeting	Monday 19/06/2023 14:00	N	No minutes available	Y	Released
MIB/Dfl Agreements	Microsoft Teams Meeting	Friday 07/07/2023 13:30	N	No minutes available	Y	Released'
MIB/Dfl Agreements	Microsoft Teams Meeting	Monday 17/07/2023 14:00	N	No minutes available	Y	Released
MIB/Dfl Agreements	Microsoft Teams Meeting	Wednesday 26/07/2023 11:00	N	No minutes available	N	No record available
Dfl - Motor Insurance Agreement between Dfl and MIB (Ref: 75033)	Room 4-34, Clarence Court	Wednesday 02/08/2023 14:00	Y	Minutes available. Request for release refused under s42(1) of the FOI Act, Legal Professional Privilege	N/A	N/A
MIB/Dfl - Agreements	Microsoft Teams Meeting	Friday 04/08/2023 10:30	N	No minutes available	Y	Record available. Request for release refused under s35(1)(a) of the FOI Act, the formulation or development of Government Policy
FW: MIB Agreements meeting	Microsoft Teams	Wednesday 09/08/2023 14:30	N	No minutes available	Y	Released

Subject	Location	Start	Minutes Available Y/N	Notes	Email/Note Available Y/N	Notes
Discussion - Interpretive Effects : Motor Insurance	Microsoft Teams Meeting	Monday 14/08/2023 16:00	N	No minutes available	Y	Record available. Request for release refused under s35(1)(a) of the FOI Act, the formulation or development of Government Policy and under s28(1), Relations within the United Kingdom.
Clause 6	Microsoft Teams Meeting	Tuesday 22/08/2023 13:30	N	No minutes available	Y	Released
Insurance Interpretive Effects	Microsoft Teams Meeting	Tuesday 22/08/2023 14:30	N	No minutes available	Y	Record available. Request for release refused under s35(1)(a) of the FOI Act, the formulation or development of Government Policy and under s28(1), Relations within the United Kingdom.
MIB/Dfi Agreements	Microsoft Teams Meeting	Thursday 31/08/2023 11:30	N	No minutes available	Y	Released
MIB Agreements Review		Thursday 07/09/2023 14:00	N	No minutes available	N	No record available
MIB/Dfi Agreements	Microsoft Teams Meeting	Wednesday 13/09/2023 11:00	N	No minutes available	N	No record available
MIB/Dfi Catch-Up	Microsoft Teams Meeting	Wednesday 27/09/2023 11:00	N	No minutes available	Y	Released
MIB/Dfi Catch-Up	Microsoft Teams Meeting	Wednesday 18/10/2023 11:30	N	No minutes available	N	No record available

Subject	Location	Start	Minutes Available Y/N	Notes	Email/Note Available Y/N	Notes
MIB/Dfi Catch-Up	Microsoft Teams Meeting	Tuesday 07/11/2023 14:00	N	No minutes available	N	No record available
MIB/Dfi Catch-Up	Microsoft Teams Meeting	Thursday 23/11/2023 10:30	N	No minutes available	Y	Record available. Request for release refused under s42(1) of the FOI Act, Legal Professional Privilege
MIB/Dfi Catchup	Microsoft Teams Meeting	Thursday 30/11/2023 10:30	N	No minutes available	Y	Released - '301123.pdf'

From: [REDACTED]
To: [Mullan, David](#); [McGonigle, Chris](#)
Subject: NI UNT Agreement 0.9b
Date: 19 June 2023 15:08:30
Attachments: [image001.png](#)
[NI UNT DA v0.9b.docx](#)

Caution – This email has been received from outside the NICS network. Please ensure you can verify the sender's name and email address. Treat all attachments and links with caution.
FOR INTERNAL NICS STAFF ONLY - If you have any concerns regarding the email please forward to spam@finance-ni.gov.uk.

Hi David, Chris.

Thanks for your time earlier.

Attached is our latest version of the Untraced Agreement. I have added comments reflecting recent conversations with our legal team, as discussed there are a good few format-based observations however if you could look through all comments and if possible return the document with any responses you feel are necessary to reflect your position.

Kind regards

[REDACTED]

[REDACTED]

Technical Claims Integrity Controller



Email: [REDACTED]

Mobile: [REDACTED]

From: [McGonigle, Chris](#)
To: [REDACTED]
Cc: [Mullan, David](#)
Subject: UtDA NI v0.9b
Date: 07 July 2023 14:00:00
Attachments: [UtDA NI v0.9b.DOCX](#)
[image001.png](#)

Hi [REDACTED],

As discussed please find attached v0.9b of the Untraced Drivers Agreement.

Each of your comments have been responded to and marked as Resolved where the Dept is in agreement.

As advised, we await advice from Counsel on seven remaining comments as highlighted in the text.

Kind regards

Chris

**Christopher McGonigle | Driving Policy Branch | Safe & Accessible Travel Division
Department for Infrastructure**

Rm 3-09 | Clarence Court | Adelaide Street, Belfast, BT2 8GB

Tel: [REDACTED]

From: [REDACTED]
To: [Mullan, David](#); [McGonigle, Chris](#)
Cc: [REDACTED]
Subject: Untraced Agreement v0.11
Date: 21 July 2023 15:51:48
Attachments: [image001.png](#)
[UtDA NI v0.11 .docx](#)
[UtDA NI v0.11 guide table.docx](#)

Caution – This email has been received from outside the NICS network. Please ensure you can verify the sender's name and email address. Treat all attachments and links with caution.
FOR INTERNAL NICS STAFF ONLY - If you have any concerns regarding the email please forward to spam@finance-ni.gov.uk.

Good afternoon, David, Chris.

Since our call on Monday, we have moved forward to produce a proposed draft for the Untraced Drivers' Agreement.

Attached is a copy (v0.11) with an accompanied guide as to the changes made.

We have time in the diary for next Wednesday 26th, though if in the interim you have any questions, please let me know.

Kind regards

[REDACTED]

Technical Claims Integrity Controller



Email: [REDACTED]

Mobile: [REDACTED]

Confidential

From: [DfI Driving Policy Branch](#)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Revision of NI MIB Agreements
Date: 17 August 2023 15:02:00
Attachments: [image002.png](#)
[image003.png](#)

Good afternoon [REDACTED],

Many thanks for your correspondence which has been passed to David and Chris for consideration.

Kind regards,

Driving Policy Branch | Safe & Accessible Travel Division
Department for Infrastructure
Rm 3-09 | Clarence Court | Adelaide Street, Belfast, BT2 8GB

From: [REDACTED]
Sent: Thursday, August 17, 2023 2:55 PM
To: DfI Driving Policy Branch <DrivingPolicyBranch@infrastructure-ni.gov.uk>
Cc: [REDACTED]
Subject: Revision of NI MIB Agreements

Caution – This email has been received from outside the NICS network.
Please ensure you can verify the sender's name and email address.
Treat all attachments and links with caution.
FOR INTERNAL NICS STAFF ONLY - If you have any concerns regarding the email
please forward to spam@finance-ni.gov.uk.

Good afternoon, David and Chris.

Thank you for meeting with Law Society members on the 9th August 2023 to discuss concerns regarding the imminent revision of local MIB Agreements. We found the exchange extremely useful and informative.

As agreed, we now set out below, case law and specific concerns that Society members have regarding any potential changes to aspects of the current Agreements.

It has long been a recognised principle of mitigation (founded in Judicial precedent) that the victim of a road traffic accident has 2 options in respect of their vehicle damage: -

- A. Utilise their comprehensive insurance i.e., ask their own insurers to fix the vehicle.
- B. Ask the at fault driver's insurers to fix the vehicle.

The authorities in this regard are numerous. Inter alia they include the following: -

1. **McMullen v. Gibney and Bibney [1999] NIQB 1 (13th January 1999)** - Para 6 - *But they were not entitled to require Mr McMullan to invoke this clause in his policy of insurance, assuming that it was a term of that policy as distinct from an offer of a courtesy car if available.* (Nicholson LJ).
2. **Salt v Helley [2009] NIQB 69 (29 July 2009)** - Para 27 –... *in effect the plaintiff cannot be required by the tortfeasor to invoke her contractual entitlement on foot of her insurance policy...* (McCloskey J).
3. **Smyth v Diamond [2010] NIQB 74 (17 June 2010)** - Para 27 - In McMullan – v- Gibney [1999] NIQB 17, Nicholson LJ adverted to "*the well-known legal principle that a tortfeasor cannot require*

the injured party to invoke his contract with his insurers in order to mitigate his loss": see p. 18A. His Lordship noted how the Court of Appeal in *Giles – v- Thompson* had determined this issue, quoting in particular from the judgment of Sir Thomas Bingham MR, [1993] 3 All ER 321, at p. 349:

"As a general principle it is of course true that a Plaintiff's claim for special damage can only succeed to the extent of losses he has actually sustained and liabilities he has actually incurred. But the rule is not absolute: the proceeds of private insurance and charitable benevolence are, for differing reasons, disregarded. Nor, in my view, does it relieve the Defendant of liability if the Plaintiff's liability to pay charges to a third party is contingent on his recovery against the Defendant." (McCloskey J).

4. **McCauley v Brennan & Anor [2017] NIQB 41 (26 April 2017)** - Para 34 - *If I were to find that the plaintiff should have invoked her own policy that leads to a situation where the conscientious person who takes out comprehensive insurance and pays for that is penalised. The person who takes the other often cheaper option of third-party insurance may be placed in a better position. I find it hard to contemplate that the law would intend such an outcome.* (Keegan LCJ)

There are more but the above 4 examples clearly make the point.

When utilizing an insurance policy, it does not matter as to fault. It is a claim on your insurance and affects the policy accordingly. The "no claims bonus" may well be lost. As a result, the premium will rise. This position may be resolved if the comprehensive insurers later receive the money back from the other driver's insurance company but that is not guaranteed. If the other driver is uninsured then there is no prospect whatsoever of this occurring.

A victim may, on the other hand, present the repair bill to the other side's insurance company directly and ask them to pay it. Their "no claims bonus" will not be affected. The victim could also have the vehicle repaired on credit and then present the bill to the at fault insurers after repairs are completed.

That is a common scenario.

Under the current MIB agreement, operating in NI, a victim can present the vehicle damage directly to the MIB for payment. If, on the other hand, they utilize their comprehensive insurance their insurers cannot recover their outlays. As a result, a victim will lose their no claims bonus if they are in an accident with an uninsured driver and use their comprehensive insurance.

It should also be noted that utilising their comprehensive policy of insurance has several other consequences for a victim. They will not be able to use the body shop of their choice, the options for a temporary replacement vehicle will be limited, they may have to agree to 2nd hand replacement parts. They will also have to pay an insurance excess, which can often be £500.

The option to not go through their own insurers and instead, present the repair account to the MIB is therefore a very important and a popular option for victims of uninsured drivers.

When MIB Agreements were last revised in England and Wales the following clause was inserted: -

Other sources of recovery:

6. (1) Subject to paragraph (2), MIB is not liable for any claim, or any part of a claim, in respect of which the Claimant has received, or is entitled to receive or demand, payment or indemnity from any other person (including an insurer), not being the Criminal Injuries Compensation Authority or its successor.

(2) Paragraph (1) does not apply –

a) does not apply where the claim is for sums to meet the claimant's ability to reimburse an employer provided the employer is not insured for that loss, or.

b) in respect of the Plaintiff's legal costs.

(3) An entitlement to receive or demand, payment or indemnity in paragraph 1 extends to where the insurer, under a contract of insurance or any other insurance, regardless of when such insurance was incepted, does not make the payment, or provide indemnity because the claimant:

a) has not made or does not make a claim under that insurance.

b) has made or does make a claim under that insurance but not within its stipulated timeframe; or

c) has incurred a liability to any other person where that liability could have been avoided by making a claim under and in accordance with the provision of that insurance.

As can be seen this clause means that victims of uninsured drivers MUST use their comprehensive motor insurance after an accident. That result means a number of things inter alia: -

1. A person with cheaper third party only insurance is in a better position than a victim who has prudently purchased comprehensive insurance.
2. A comprehensively insured victim of an uninsured driver will suffer significant financial loss that under the previous agreement they had the option to avoid.
3. The victim's own contract of insurance will often fetter their consumer choice as to the body shop used, the type of temporary replacement vehicle available and the quality of replacement parts.
4. The victim will have to pay an excess (often £500).
5. Not requiring a victim to use the fruits of their insurance policy is a long-standing rule of mitigation founded in decades of authority in common law. The new agreement deprives this right.

Whilst the excess is repayable by the MIB under the new England & Wales Agreements, it represents a significant amount of money for the average victim to both find and then be out for a significant period of time.

It should further be noted that whether a victim claims off their own insurance or the MIB the funds are still coming from the overall pot of paid insurance premiums. It is therefore very hard to see how this fundamental change to victims' rights will lead to a reduction in premiums. The Society would be very surprised if there was any specific evidence from England & Wales of a reduction in premiums due to the insertion of this clause. Indeed, the Society suggests that the only result of the insertion of this clause will be to increase premiums for policyholders who are the victims of uninsured drivers.


In the letter to the Law Society from the Department for Infrastructure, dated 30th June 2023 it was stated:


"The Department can advise that there is no intention or requirement to conduct a public consultation exercise due to the proposed revisions being minor in effect."

As we have hopefully demonstrated that the inclusion of the above clause (Other sources of recovery), if anticipated, will not be minor in effect. It represents a significant alteration to the rights of victims of uninsured drivers under the common law and has serious financial consequences.

Please come back to us at any point if you wish to engage further with our members on this issue.

We would be grateful to receive a copy of the finalised version of the revised Agreements when they are ready for issue.


Head Of Practice & Procedure
Law Society of Northern Ireland
96 Victoria Street
Belfast
BT1 3GN

Telephone: 

Fax: 

Email: 

Website: <https://www.lawsoc-ni.org/>

From: [McGonigle, Chris](#)
To: [Mullan, David](#)
Subject: FW: Revision of NI MIB Agreements
Date: 23 August 2023 10:57:00
Attachments: [image003.png](#)
[image004.png](#)
[image001.jpg](#)

Hi David,

Please find below MIB's response to the Law Society concerns raised in their email of 17 August below.

A point to note is their confirmation that this has not been raised as an issue in GB since their agreement versions became live in 2017, and that insurance companies have already attempted to address the issues raised through the introduction of the '[Uninsured Drivers Promise](#)'.

I've had a quick search of it would seem all the major players in the industry offer this as a feature of their Comprehensive policy.

We can discuss before [REDACTED] return from leave.

Best regards,

Chris

Christopher McGonigle | Driving Policy Branch | Safe & Accessible Travel Division
Department for Infrastructure

Rm 3-09 | Clarence Court | Adelaide Street, Belfast, BT2 8GB

Tel: [REDACTED]

From: [REDACTED]
Sent: Tuesday, August 22, 2023 5:51 PM
To: McGonigle, Chris [REDACTED]
Subject: RE: Revision of NI MIB Agreements

Caution – This email has been received from outside the NICS network.
Please ensure you can verify the sender's name and email address.
Treat all attachments and links with caution.
FOR INTERNAL NICS STAFF ONLY - If you have any concerns regarding the email please forward to spam@finance-ni.gov.uk.

Good afternoon, Chris.

Further to our call earlier today, the points raised by the law society make for an interesting discussion although we don't feel the revised draft Uninsured Agreement needs further amendment in this respect.

Its very common practice for insurers these days to provide an "Uninsured Drivers promise" as part of their policy, meaning if a policy holder has an accident with an at fault uninsured motorist it will not affect their policy when making a claim.

We don't unfortunately have data to hand to share, though for reassurance to the DfI, MIB has not seen difficulties in this area under the GB agreements and the number of cases being rejected that involve

compressively insured claimants is very minimal.

It is important to remember a Comprehensive policy holder will have occasions where they are better placed than another who has Third party cover, such as collisions with Untraced vehicles which cannot be identified as they have a policy to utilise whereas the other policy holder will not be able to claim to the MIB. A comprehensive policy holder will also have all the other benefits of the policy to cover for other non MIB related risks.

The cost-of-living crisis does put focus on premiums, the consumer is impacted by how many claims the MIB funds. The more the MIB must ask from the insurers the more is added to the premium, therefore MIB should remain to be the last fund of resort when a victim has no alternative. A comprehensively insured individual does have an alternative.

It is likely that there are revenue streams for the legal community in Northern Ireland putting claims to the MIB where they include losses recoverable under a Comprehensive policy. This will inevitably cause some resistance to change, though we do not see the victim/ consumer is impacted negatively by the amendment which reflects the GB agreements.

I do hope this assists you, please let me know.

Kind regards

[Redacted]

Technical Claims Integrity Controller



Email: [Redacted]

Mobile: [Redacted]

Confidential

From: McGonigle, Chris [Redacted]
Sent: Friday, August 18, 2023 10:45 AM
To: [Redacted]
Subject: FW: Revision of NI MIB Agreements

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi [Redacted],

Hope you'd a nice break, and apologies for lumping this on you the first day you arrived back!

We've finally received in writing the concerns of the Law Society.

You'll see they are concerned about Clause 6, Other Methods of Recovery. My initial understanding of this

Clause was that it was to ensure that the MIB remains “insurer of last resort”, and if other means of compensation are liable and appropriate, that those avenues should be followed first.

David has also asked for clarification on “I would also be interested to learn how many victims “present the repair account to the MIB” – defined as “a very important and **a popular option** for victims of uninsured drivers”. Perhaps [REDACTED] could make us aware of the process followed for NI drivers, and that followed by GB drivers.”

We also now know what the focus of any JR would be, so at least that’s something.

I know we are due to meet on Thursday but if you want to give me a shout before then to talk this over just drop me a line.

Kind regards

Chris

**Christopher McGonigle | Driving Policy Branch | Safe & Accessible Travel Division
Department for Infrastructure**

Rm 3-09 | Clarence Court | Adelaide Street, Belfast, BT2 8GB

Tel: [REDACTED]

From: DfI Driving Policy Branch <DrivingPolicyBranch@infrastructure-ni.gov.uk>

Sent: Thursday, August 17, 2023 3:28 PM

To: McGonigle, Chris [REDACTED]

Subject: FW: Revision of NI MIB Agreements

From: [REDACTED]

Sent: Thursday, August 17, 2023 2:55 PM

To: DfI Driving Policy Branch <DrivingPolicyBranch@infrastructure-ni.gov.uk>

Cc: [REDACTED]

Subject: Revision of NI MIB Agreements

Caution – This email has been received from outside the NICS network.

Please ensure you can verify the sender’s name and email address.

Treat all attachments and links with caution.

FOR INTERNAL NICS STAFF ONLY - If you have any concerns regarding the email please forward to spam@finance-ni.gov.uk.

Good afternoon, David and Chris.

Thank you for meeting with Law Society members on the 9th August 2023 to discuss concerns regarding the imminent revision of local MIB Agreements. We found the exchange extremely useful and informative.

As agreed, we now set out below, case law and specific concerns that Society members have regarding any potential changes to aspects of the current Agreements.

It has long been a recognised principle of mitigation (founded in Judicial precedent) that the victim of a

road traffic accident has 2 options in respect of their vehicle damage: -

- A. Utilise their comprehensive insurance i.e., ask their own insurers to fix the vehicle.
- B. Ask the at fault driver's insurers to fix the vehicle.

The authorities in this regard are numerous. Inter alia they include the following: -

1. **McMullen v. Gibney and Bibney [1999] NIQB 1 (13th January 1999)** - Para 6 - *But they were not entitled to require Mr McMullan to invoke this clause in his policy of insurance, assuming that it was a term of that policy as distinct from an offer of a courtesy car if available.* (Nicholson LJ).
2. **Salt v Helley [2009] NIQB 69 (29 July 2009)** - Para 27 –... *in effect the plaintiff cannot be required by the tortfeasor to invoke her contractual entitlement on foot of her insurance policy...* (McCloskey J).
3. **Smyth v Diamond [2010] NIQB 74 (17 June 2010)** - Para 27 - In McMullan – v- Gibney [1999] NIJB 17, Nicholson LJ adverted to "*the well-known legal principle that a tortfeasor cannot require the injured party to invoke his contract with his insurers in order to mitigate his loss*": see p. 18A. His Lordship noted how the Court of Appeal in Giles – v- Thompson had determined this issue, quoting in particular from the judgment of Sir Thomas Bingham MR, [1993] 3 All ER 321, at p. 349:
"As a general principle it is of course true that a Plaintiff's claim for special damage can only succeed to the extent of losses he has actually sustained and liabilities he has actually incurred. But the rule is not absolute: the proceeds of private insurance and charitable benevolence are, for differing reasons, disregarded. Nor, in my view, does it relieve the Defendant of liability if the Plaintiff's liability to pay charges to a third party is contingent on his recovery against the Defendant." (McCloskey J).
4. **McCauley v Brennan & Anor [2017] NIQB 41 (26 April 2017)** - Para 34 - *If I were to find that the plaintiff should have invoked her own policy that leads to a situation where the conscientious person who takes out comprehensive insurance and pays for that is penalised. The person who takes the other often cheaper option of third-party insurance may be placed in a better position. I find it hard to contemplate that the law would intend such an outcome.* (Keegan LCJ)

There are more but the above 4 examples clearly make the point.

When utilizing an insurance policy, it does not matter as to fault. It is a claim on your insurance and affects the policy accordingly. The "no claims bonus" may well be lost. As a result, the premium will rise. This position may be resolved if the comprehensive insurers later receive the money back from the other driver's insurance company but that is not guaranteed. If the other driver is uninsured then there is no prospect whatsoever of this occurring.

A victim may, on the other hand, present the repair bill to the other side's insurance company directly and ask them to pay it. Their "no claims bonus" will not be affected. The victim could also have the vehicle repaired on credit and then present the bill to the at fault insurers after repairs are completed.

That is a common scenario.

Under the current MIB agreement, operating in NI, a victim can present the vehicle damage directly to the MIB for payment. If, on the other hand, they utilize their comprehensive insurance their insurers cannot recover their outlays. As a result, a victim will lose their no claims bonus if they are in an accident with an uninsured driver and use their comprehensive insurance.

It should also be noted that utilising their comprehensive policy of insurance has several other consequences for a victim. They will not be able to use the body shop of their choice, the options for a temporary replacement vehicle will be limited, they may have to agree to 2nd hand replacement parts. They will also have to pay an insurance excess, which can often be £500.

The option to not go through their own insurers and instead, present the repair account to the MIB is therefore a very important and a popular option for victims of uninsured drivers.

When MIB Agreements were last revised in England and Wales the following clause was inserted: -

Other sources of recovery:

6. (1) Subject to paragraph (2), MIB is not liable for any claim, or any part of a claim, in respect of which the Claimant has received, or is entitled to receive or demand, payment or indemnity from any other person (including an insurer), not being the Criminal Injuries Compensation Authority or its successor.

(2) Paragraph (1) does not apply –

a) does not apply where the claim is for sums to meet the claimant's ability to reimburse an employer provided the employer is not insured for that loss, or,

b) in respect of the Plaintiff's legal costs.

(3) An entitlement to receive or demand, payment or indemnity in paragraph 1 extends to where the insurer, under a contract of insurance or any other insurance, regardless of when such insurance was incepted, does not make the payment, or provide indemnity because the claimant:

a) has not made or does not make a claim under that insurance.

b) has made or does make a claim under that insurance but not within its stipulated timeframe; or

c) has incurred a liability to any other person where that liability could have been avoided by making a claim under and in accordance with the provision of that insurance.

As can be seen this clause means that victims of uninsured drivers MUST use their comprehensive motor insurance after an accident. That result means a number of things inter alia: -

1. A person with cheaper third party only insurance is in a better position than a victim who has prudently purchased comprehensive insurance.
2. A comprehensively insured victim of an uninsured driver will suffer significant financial loss that under the previous agreement they had the option to avoid.
3. The victim's own contract of insurance will often fetter their consumer choice as to the body shop used, the type of temporary replacement vehicle available and the quality of replacement parts.
4. The victim will have to pay an excess (often £500).
5. Not requiring a victim to use the fruits of their insurance policy is a long-standing rule of mitigation founded in decades of authority in common law. The new agreement deprives this right.

Whilst the excess is repayable by the MIB under the new England & Wales Agreements, it represents a significant amount of money for the average victim to both find and then be out for a significant period of time.

It should further be noted that whether a victim claims off their own insurance or the MIB the funds are still coming from the overall pot of paid insurance premiums. It is therefore very hard to see how this fundamental change to victims' rights will lead to a reduction in premiums. The Society would be very surprised if there was any specific evidence from England & Wales of a reduction in premiums due to the insertion of this clause. Indeed, the Society suggests that the only result of the insertion of this clause will be to increase premiums for policyholders who are the victims of uninsured drivers.

In the letter to the Law Society from the Department for Infrastructure, dated 30th June 2023 it was stated:

"The Department can advise that there is no intention or requirement to conduct a public consultation exercise due to the proposed revisions being minor in effect."

As we have hopefully demonstrated that the inclusion of the above clause (Other sources of recovery), if anticipated, will not be minor in effect. It represents a significant alteration to the rights of victims of uninsured drivers under the common law and has serious financial consequences.

Please come back to us at any point if you wish to engage further with our members on this issue.

We would be grateful to receive a copy of the finalised version of the revised Agreements when they are ready for issue.

[REDACTED]
Head Of Practice & Procedure
Law Society of Northern Ireland
96 Victoria Street
Belfast
BT1 3GN

Telephone: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]
Website: <https://www.lawsoc-ni.org/>

Text Description automatically generated with medium confidence



- This e-mail (and any attachment) is intended only for the attention of the addressee(s). Its unauthorised use, disclosure, storage or copying is not permitted. If you are not the intended recipient, please destroy all copies and inform the sender by return e-mail. Internet e-mail is not a secure medium.
- Any reply to this message could be intercepted and read by someone else. Please bear that in mind when deciding whether to send material in response to this message by e-mail. This e-mail (whether you are the sender or the recipient) may be monitored, recorded and retained by the Law Society of Northern Ireland.
- E-mail monitoring and blocking software may be used, and e-mail content may be read at any time. You have a responsibility to ensure laws are not broken when composing or forwarding e-mails and their contents.

From: [REDACTED]
To: [McGonigle, Chris](#)
Subject: Uninsured & Untraced Agreements - Fina Drafts
Date: 31 August 2023 12:13:14
Attachments: [image001.png](#)
[image002.jpg](#)
[image003.jpg](#)
[image004.jpg](#)
[NI Untraced Drivers Agreement 2023 \(FINAL DRAFT\).docx](#)
[NI Uninsured Drivers Agreement 2023 \(FINAL DRAFT\).docx](#)

Caution – This email has been received from outside the NICS network. Please ensure you can verify the sender's name and email address. Treat all attachments and links with caution.
FOR INTERNAL NICS STAFF ONLY - If you have any concerns regarding the email please forward to spam@finance-ni.gov.uk.

Hi Chris,

As discussed, please find attached our final drafts of the agreements.

Hopefully, these will be suitable for signature of which we can discuss in due course the process of doing so.

Kind regards.

[REDACTED]
Technical Claims Integrity Controller




Email: [REDACTED]

Mobile: [REDACTED]

Find out more: www.mib.org.uk



MIB is a not-for-profit organisation. Our mission is to reduce uninsured driving, compensate victims of uninsured and untraced drivers, and manage insurance data securely for the industry.

 Please consider the environment before printing this email

Confidential

From: [McGonigle, Chris](#)
To: [REDACTED]
Cc: [Mullan, David](#)
Subject: Query on Uninsured Drivers Agreement
Date: 27 September 2023 11:37:00
Attachments: [image001.png](#)

Hi [REDACTED],

On final review we have spotted a possible issue with how paragraph 16(3) is drafted, and want to confirm with MIB that they are content how this Clause as drafted.

16(3) currently reads ***"The arbitrator, whose written decision is final, will determine the dispute solely by reference to the written submissions received pursuant to paragraph (4)..."***

Are MIB content that this does override the ability of an arbitrator to request an oral hearing? Or is it the situation whereby that because MIBs obligation to settle claims under the Uninsured Agreement comes after a claimant has obtained an unsatisfied judgment against any person in a court, as a hearing has already occurred, a second one under appeal would be deemed unnecessary?

The ability for an arbitrator to request oral hearings had been raised by the MIB in relation to the Untraced Drivers Agreement (specifically around scarring cases), and we wanted to ensure that the intent here is consistent with the approach in the Uninsured Drivers Agreement.

Kind regards,

Chris

**Christopher McGonigle | Driving Policy Branch | Safe & Accessible Travel Division
Department for Infrastructure**

Rm 3-09 | Clarence Court | Adelaide Street, Belfast, BT2 8GB

Tel: [REDACTED]

[REDACTED]

From: [McGonigle, Chris](#)
To: [REDACTED]
Cc: [Mullan, David](#)
Subject: Motor Insurance Agreement between DfI and MIB
Date: 30 November 2023 11:20:00
Attachments: [image002.png](#)
[Revised NI Untraced Agreement - \(highlighted\) final draft version.docx](#)
[2023 Revised NI Uninsured Agreement - final draft version.docx](#)

Hi [REDACTED],

As discussed, please find attached the agreed versions of the Untraced and Uninsured Drivers Agreement, approved by our Counsel and Departmental Solicitor's Office.

We will present these to our Director, Dr. Chris Hughes at the beginning of next week for his approval. We have highlighted four key changes in the new draft agreements:

1. The introduction of the arbitration process for awards to minors
2. Changes to the definition of an "authorised person"
3. Addition of definition of a "legal representative"
4. Digitisation of MIB claims process

Once we then receive the signed copies from your CEO, we will arrange for Chris to sign on behalf of DfI.

Kind regards,

Chris

**Christopher McGonigle | Driving Policy Branch | Safe & Accessible Travel Division
Department for Infrastructure**

Rm 3-09 | Clarence Court | Adelaide Street, Belfast, BT2 8GB

Tel: [REDACTED]