Summary of Responses to the Consultation on the Review of the Uninsured and Untraced Drivers' Agreements.

Introduction

The purpose of the consultation was to seek views on changes that we propose to make to the Agreements between the Department for transport (DfT) and the Motor Insurers Bureau (MIB). The consultation document concentrated on the most significant issues which we consider require updating, but also included reference to some minor changes intended to clarify existing clauses.

The 19 issues were listed under four main section headings:-

- Procedural requirements;
- Appeals and Disputes;
- Provisions concerning costs; and
- General issues.

The consultation was targeted at those who we believed to have the most interest in the agreements however in accordance with departmental procedure a copy of the document was placed on the Department for Transport's pages on Gov.uk.

A total of 26 stakeholders were consulted of whom 7 responded. 16 responses were received from those who had either seen the consultation on Gov.uk or had been passed a copy from a targeted consultee. The breakdown of respondents is:-

- 3 insurance industry representative bodies (including the MIB)
- 3 Insurers
- 5 organisations representing lawyers and solicitors
- 12 Solicitors (firms and individuals)
- 1 highway maintenance contractor

The highway maintenance contractor raised the issue of debris on the road and subrogated claims from contractors hired by the Highways Agency but did not commented on the consultation questions themselves.

Four solicitors had not responded directly to the consultation questions but suggested that the current agreements fail to represent the intentions of the 1930 and 1934 Road traffic Act 1934 and the requirements of the EU motor insurance Directives. They suggested that the agreements be scrapped and that provisions for victims of uninsured/ untraced drives should be written into legislation.

Another solicitor who had directly addressed the consultation questions also shared this view.

Summary of responses to questions (16 responses).

SECTION 1. PROCEDURAL REQUIREMENTS

Question 1 - [Uninsured Agreement Only]

Do you agree that, if the MIB is required to be named as a second defendant in a claim and the claim form is submitted to the MIB within a reasonable time frame, then the procedural or notice obligations on the claimant in clauses 8 to 12 of the present Uninsured Agreement can be removed? If you do not agree, can you please explain your reasons why?

There was general agreement to this proposal with no outright disagreement. Nichols Bevan, Stewarts Law and MASS thought that the MIB should be restricted to civil procedure rules and not be entitled to any superior rights in respect of sanctions that it can impose.

Question 2 - [Uninsured Agreement Only]

Do you agree that clause 13 serves no useful purpose any more?

Most respondents agreed with this proposal with only the RSA being firmly against. MASS and DWF thought that clause 13 was useful if a vehicle was not

on the Motor Insurance Database (MID) and the Forum of Insurance Lawyers (FOIL) thought that it could be used as a tool rather than a condition.

Question 3 - [Uninsured Agreement Only]

What do you consider to be a reasonable timeframe for the claim form to be submitted to the MIB and when it should run from?

Respondents interpreted this question in different ways. Of those that replied (20) 5 assumed that the question referred to the time to make a claim from the date of the accident and replied "3 years from the accident or maturity if the victim was a minor at the time of the accident."

Of the remainder 5 respondents suggested a limit of 14 days, 3 suggested a month, 2 suggested up to 6 months and 5 responded ' as soon as is reasonably practicable.

Question 4 - [Untraced Agreement Only]

Do you agree that a claimant should be able to serve documents by any of the forms allowed under the Civil Procedure Rules? If not why not?

Of those that responded (16) 11 agreed with the suggestion, 4 thought that the proposal should apply to uninsured cases but not to claims made under the Untraced drivers' Agreement. 2 respondents disagreed outright and thought that the current arrangements should be retained.

Question 5 - [Untraced Agreement Only]

Do you agree that, for protected parties without legal representation, an arbitrator should be appointed to approve any award made by the MIB? If you do not agree, please give your reasons?

All respondents agreed with the suggestion. 8 respondents agreed completely. 2 had unspecified reservations. 4 thought that the panel should be widened to include barristers and solicitors with 10 years or more of experience. And 2

thought that there should be a financial threshold below which an arbitrator would not be appointed.

SECTION 2. APPEALS AND DISPUTES

Question 6 - [Untraced Agreement Only]

Do you agree that, under the Untraced Agreement, an independent arbitrator could be appointed to determine whether an extension of time should be allowed or whether an appeal is in time? If you do not agree, please explain your reasons?

Most respondents agreed with the proposal. 12 respondents agreed without qualification. 2 respondents agreed with reservations: RSA suggested that the applicant should give notice of appeal within 6 weeks without lodging documents which would have to be supplied within a month with the use of an arbitrator only if the applicant were to be unable to give notice; DWF questioned whether costs would exceed benefits and suggested the use of an arbitrator could be limited.

There were 2 organisations that disagreed. BIBA suggested that the six week period should remain with arbitration being the exception. The Forum of Insurance Lawyers (FOIL) suggested that no time period greater than that allowed for litigated claims should be allowed on the understanding that extensions can be obtained at present if reasonably required.

Question 7 - [Untraced Agreement Only]

What narrow range of circumstances do you think would help prevent abuse of the process?

Respondents again interpreted this question in a number of different ways. Many suggested certain medical conditions that may need to be taken into account when considering a case.

Others noted the specific circumstances in which an appeal might be allowed. These included:-

- Legal minority of applicant
- Non-receipt of award/ rejection letter
- Bereavement

Leigh Day and the RSA thought that each case should be considered on its own merits. DWF thought that the number of appeals should be limited and FOIL thought that this should be limited to cases where the claimant is not represented and could prove serious incapacity throughout the period of appeal.

Question 8- [Untraced Agreement Only]

Do you agree that there should be a single dispute resolution process?

All respondents agreed with this proposal. Esure Group Ltd added that the time limits for giving notice of appeal should be the same irrespective of the nature of the appeal (currently 6 weeks for disputing an award and 4 weeks for other reasons).

Question 9 - [Untraced Agreement Only]

Do you agree that the MIB as well as the claimant should be required to agree that they accept the arbitrator's decision as final? If not, why not?

12 respondents agreed with the proposal with no reservations. B L Law agreed provided the right to an oral hearing was retained and MASS agreed unless a serious error had been made by the arbitrator.

Question 10 - [Untraced Agreement Only]

Do you agree with our proposal that a claimant should be entitled to an oral hearing for all disputes, including those not related to the award? If not, what are your reasons?

12 respondents agreed with the proposal.

BL Law felt that Civil Procedure or First Tier tribunal Rules should be used. RSA and DWF felt that oral hearings should only be allowed in exceptional circumstances e.g. a complex or expensive case or where an arbitrator accepted the reason for a request. FOIL felt that an increase in oral hearings would go against the thrust of reform for civil procedures and should only be allowed in exceptional circumstances.

Question 11- [Untraced Agreement Only]

Do you agree that there should be the potential for an arbitrator to impose a costs penalty if unreasonable challenges are made and pursued to an oral hearing? If not, what are your reasons?

Nine respondents agreed, although RSA felt that it might be difficult to agree on the level of penalty. Irwin Mitchell thought that the MIB should also have the right to request an oral hearing. FOIL felt that an upfront fee might be a better approach.

MASS replied that it was difficult to comment without an indication of the likely cost although the proposal seemed a little harsh. BL Law felt that there should not be a costs penalty as payments for costs are already limited. Leighton Day felt that a penalty should only be imposed where the case was frivolous or wholly without merit. Stewarts Law and the Forum of Complex Injury Solicitors felt that section 61(2) of the 1996 Arbitration Act already made such a provision.

Question 12 - [Uninsured Agreement Only]

Do you agree that claimants should be able to appeal to an independent arbitrator rather than the Secretary of State if they dispute the reasonableness of the MIB's request for information under the Uninsured Agreement (present clause 19)? If not, what are your reasons?

11 respondents agreed although PIBA felt that there should be a reasonable time clause to prevent delays in arbitration decisions, Irwin Mitchell thought that greater examination of this area was needed. DWF felt that there should be a costs sanction where the appeal was unreasonable.

Nicholas Bevan, Stewarts Law and FOCIS felt that the Secretary of state should continue to be involved. Esure Group PLC felt that the requirements should be simplified. B L Law felt that clause 19 was never used.

SECTION 3. PROVISIONS ON COSTS

Question 13 - [Untraced Agreement Only]

Do you agree that there should be more flexibility for the MIB to award more for legal expenses in exceptionally complex cases? If so, in what circumstances do you feel that such a discretion should apply?

With the exception of BIBA (who preferred a fixed fee) all other respondents agreed with the proposal, although only 6 agreed unconditionally. RSA and DWF felt that some form of banding would be appropriate. Leighton Day thought cases should be decided on merit. Irwin Mitchell and FOIL felt that such discretion should only apply in exceptional circumstances. PIBA, Nicholas Bevan, Stewarts Law and FOCIS felt that such discretion should only apply to cases worth over £10K.

Question 14 - [Untraced Agreement Only]

Do you agree that the claimant should have the right of appeal to an arbitrator to challenge the MIB's refusal to award supplementary costs in an exceptionally complex case?

10 respondents were in favour of this proposal. Stewarts Law and FOCIS thought that it should only apply to cases worth over £10K. RSA DWF and FOIL thought that rather than giving the right of appeal to an arbitrator the introduction of some form of banding for costs would be a better solution.

Question 15- [Untraced Agreement Only]

Do you have any comments on how fixed costs at the bottom end of the scale could be amended to more accurately reflect the actual amount of legal fees which will necessarily be incurred in a low value, straightforward claim?

Many felt that the £500 minimum payment for costs should be removed. Some felt that the portal fees proposed by the MOJ should be used while others believed that no costs should be paid on claims within the small claims track value limits. Some suggested that the element of costs attributable to investigating liability should be removed. Some suggested a form of 'banding' could be introduced for higher value cases. Three respondents suggested that nothing should be changed.

Question 16 - [Untraced Agreement Only]

Do you agree with our proposal that the Agreement should be amended to make it clear that the MIB will include interest as if the claim was before a civil court? If not, please explain why not?

Most agreed with this proposal; with the MIB believing that the trigger point in the Untraced Driver Agreement should be the date of the formal award. FOIL thought that the principles in civil proceedings should be replicated as far as possible.

RSA and DWF did not accept that interest should be paid on every single award.

SECTION 4. GENERAL ISSUES

Question 17 - [Both Agreements]

Do you agree that we should remove clauses 5(2)(d) and 6(3)(d) of the Untraced and Uninsured Agreements respectively. If not, why not?

10 respondents agreed with the proposal.

APIL believed that article 10.2 of the Sixth Motor Insurance directive permits only one exception for the MIB to escape liability; namely that "Member States may exclude the payment of compensation by the body in respect of persons who voluntarily entered the vehicle which caused the damage or injury when the body can prove that they knew that it was uninsured". In light of this, APIL has concerns with numerous exceptions being in section 6 of the Uninsured Drivers Agreement, which allow the MIB to escape liability, outside of what is permitted in the Motor Insurance Directives.

Blake Lapthorn also felt that the wording of Article 1(4) of the second Motor insurance Directive, which is the same as that given above, should be used instead.

RSA felt that the scenarios were not adequately covered by other provisions.

DWF considered the aim of the clause (which they considered useful and not excessively complex) is to cover situations where the claimant is being carried in a vehicle knowing that the driver is neither the owner nor the keeper of the vehicle, has no other vehicle, and as such is unlikely to have any insurance to cover the use of that vehicle.

FOIL would like the burden of proof of not being aware of the uninsured status of the vehicle to be on the claimant.

Question 18 - [Uninsured Agreement only]

Do you agree that we should introduce a definition of crime in the Uninsured Agreement like that in the Untraced Agreement? If not, please explain why not?

11 respondents were in favour of this proposal.

5 respondents were against the proposal. PIBA and Nicholas Bevan were concerned that the exceptions had not been sanctioned by the European Court. B L Law felt that the clause was unsound in law. Stewarts Law and FOCIS were concerned that any extension in the scope of existing exclusions would be a breach of community law.

Question 19 - [Both Agreements]

If there are any grounds why the Agreements should not be changed to reflect that the Lord President has powers to appoint arbitrators in Scotland, let us know.

There were no positive responses to this question. Presumably it was felt that this was a question for the Scottish Parliament.

Annex - List of Respondents

1. AMEY I G Ltd
2. Peter Chase Williams
3. Personal Injuries Bar Association (PIBA)
4. Nicholas Bevan
5. Craig Lowe
6. Esure Group PLC
7. Association of Personal Injury Lawyers (APIL)
8. Liberty Insurance
9. Blake Lapthorn (B L Law)
10. Amelans Solicitors
11. Association of British Insurers (ABI)
12. Motor Insurers Bureau (MIB)
13. British Insurance Brokers Association (BIBA)
14. Leigh Day
15. RSA
16. Express Solicitors
17. Slater & Gordon (UK) LLP
18. Stewarts Law
19. The Forum of Complex Injury Solicitors (FOCIS)
20. Irwin Mitchell
21. Motor Accident Solicitors Society (MASS)
22. DWF
23. Forum of Insurance Lawyers (FoIL)