



HOLDING TO ACCOUNT

Reinforcing the MIBI's recovery strategy



INTRODUCTION



When it comes to uninsured driving, the law is clear. Under the Road Traffic Act, 1961 it is a criminal offence to drive a vehicle without insurance. There is no ambiguity.

Despite this, every year the Motor Insurers' Bureau of Ireland (MIBI) deals with thousands of claims arising from road traffic accidents caused by uninsured motorists. Indeed, the most recently available figures estimate the number of uninsured vehicles on Irish roads as being as high as 151,000¹.

Those who drive without insurance are breaking the law and the repercussions for doing so are far-reaching. They face the prospect of a criminal prosecution, having their vehicle seized on the spot and being left at the side of the road, a financial fine, five penalty points and an automatic court appearance.

The penalties don't stop there. When an uninsured driver is responsible for an accident they are liable for the entire cost of the claim paid by the MIBI. This may include the cost to repair the claimant's vehicle, property, medical bills personal injury compensation along with all legal fees. In many instances this can easily reach hundreds of thousands of euro. This liability also extends to the owner of the vehicle, if they allow someone else to drive the vehicle without insurance.

The MIBI's role is to compensate innocent victims of road accidents caused by uninsured motorists. As a pro-victims' organisation we seek to help those who suffer the consequences of such an incident by paying compensation to claimants in an efficient and timely manner.

The MIBI also has the authority to make the uninsured driver financially liable for all the damage they caused. That means we can pursue them to recover the costs in full.

The recovery process can be undertaken in a number of different ways. We can make the uninsured motorist bankrupt. We can force them to pay significant monthly instalments until the full debt is cleared. We can obtain a judgment mortgage which may include forcing the uninsured motorist to sell their property. We can seek to have a sheriff recover the debt by seizing assets including other vehicles.

Whilst it is already part of the MIBI's procedures, it is our intention to bring a renewed focus to this recovery process.

This means that we will pursue all uninsured motorists who have caused an accident for which the MIBI has provided compensation. We will thoroughly investigate those who have disregarded the law. We will put the full investigative might of the MIBI into recovering these costs. Additional resources have already been devoted to this purpose and we will provide all resources necessary to ramp up our recovery efforts.

We believe this approach will have two significant impacts over time.

Firstly, it will help reduce the sums paid out by the MIBI on an annual basis.

Funding for the MIBI comes from insurance companies underwriting motor insurance in Ireland. We collect a levy from each of these companies based on their market share.

Effectively this means the MIBI is financed by every motor insurance policyholder in Ireland. Therefore, the more money we are able to recover from these guilty, uninsured motorists, then the less money we will require from the insurance companies, ergo from the policyholders in the future.

Our initial target is to recover a figure of €4 million through this mechanism over the next 4 years.

We believe the other positive impact which will result from this approach is to further highlight both the civil and criminal penalties for driving without insurance. By holding these guilty parties to account and showing just how expensive the punishment can be, we hope this will discourage the practice of uninsured driving.

We want uninsured drivers to understand not only are they breaking the law when they get behind the wheel, but they are also taking a gamble which could cost them, and perhaps even their families, hundreds of thousands of euro if they are involved in an accident.

David Fitzgerald
Chief Executive
Motor Insurers' Bureau of Ireland

¹ MIBI, November 2016.



LEGISLATION

The MIBI's powers of recovery have been set forth in a number of different pieces of legislation and legal judgments.

The Road Traffic Act, 2014 states:

Recovery of sums paid by Motor Insurers' Bureau of Ireland

16. The Principal Act is amended by inserting after section 78A (inserted by section 77 of the Act of 2010) the following:

"78B.(1) Any proceedings initiated by or on behalf of the Motor Insurers' Bureau of Ireland seeking recovery of liquidated sums paid by the Bureau pursuant to the MIBI Agreement may be brought under Order 2, rule 1 of the Rules of the Superior Courts (S.I. No. 15 of 1986).

(2) In this section "MIBI Agreement" means the Agreement on the Compensation of Uninsured Road Accident Victims dated 29 January 2009 between the Minister for Transport and the Motor Insurers' Bureau of Ireland and includes any subsequent agreement which amends or replaces that Agreement."

Section 16, Road Traffic Act 2014

This legislation was subsequent to a High Court Judgment in the matter of MIBI v John Hanley in 2006. In that decision the High Court granted the MIBI the ability to pursue recovery from uninsured defendants by means of Summary Summons.

Since the establishment of the MIBI, the authority to seek recovery has been made clear in all MIBI Agreements (from 1955 to 2009) between the Government and the MIBI. It is clear that judgments

obtained by claimants against uninsured motorists be assigned to the MIBI and thereafter following satisfaction of the judgment by the MIBI this mechanism entitles the MIBI to pursue recovery.

The current 2009 MIBI Agreement, states:

9. Recoveries

Nothing in this Agreement shall prevent any vehicle insurer from providing by conditions in its contracts of insurance or by collateral agreements that all sums paid by it on behalf of MIBI or by MIBI by virtue of the Principal Agreement or of this Agreement in or towards the discharge of the liability of its policyholders shall be recoverable by it or by MIBI from the policyholder or from any other person.

MIBI Agreement 2009



RECOVERIES PROCEDURE

The MIBI's recovery process begins shortly after the final payment is made to the claimant by the MIBI's claims' handling office.

Each claim is then assessed and reviewed with a view to pursuing the uninsured motorist for recovery.

Any information which is needed to aid the MIBI is requested from the relevant parties, e.g. the Gardaí or the solicitor acting on behalf of the claimant(s) and others relevant to the case.

The MIBI has engaged a range of solicitors who act as 'recovery agent' on behalf of the MIBI.

Following the initial internal review of the file by the MIBI, the file is then passed to one of the recovery agents.

The recovery agent will initially send a demand letter to the uninsured motorist who is now liable to reimburse the MIBI.

If no agreement is reached with the debtor for reimbursement to the MIBI of its outlay, legal proceedings are issued – subject to the circumstances of the debtor.

This may then lead to the MIBI obtaining a court judgment against the debtor for the amount paid out by the MIBI on behalf of the debtor.

Following judgment being granted against the debtor the recovery agent may seek to enforce the judgment through a range of different measures (*see next page for the different options available to the MIBI*).

RECOVERY OPTIONS

When the MIBI secures a judgment for recovery a range of different options are available to enable enforcement. The following sets out some of the recovery enforcement options available to the MIBI. Some cases will involve just one of these options, while in other cases a combination may be utilised by the MIBI.

SHERIFF

A sheriff can be instructed to recover the debt. This can involve the seizing of assets, for example vehicles or electrical equipment.

INSTALMENT ORDER

The MIBI can apply for a court order compelling the debtor to repay the debt in instalments.

COMMITTAL ORDER

If the debtor fails to repay the debt in instalments as set out in the instalment order, the MIBI can commence committal order proceedings against the debtor. This can lead to the debtor being arrested for failure to engage with the proceedings and imprisonment if the debtor is found to have the means to pay but refuses to do so.

JUDGMENT MORTGAGE

The MIBI can register a charge against property owned by the debtor. The judgment mortgage is attached to the property until the debt is satisfied or after a period of 12 years when the judgment expires. The MIBI also has the capacity to force the sale of the property.

PUBLISH JUDGMENT

Another option available to the MIBI is to have the judgment against the debtor published. This affects the debtor's credit rating up to the date where the debt is settled. If not satisfied the debtor's rating is affected indefinitely.

GARNISHEE ORDER

In the circumstances where a debtor subsequently makes a claim against the MIBI, or an insurer, the recovery agent is instructed to obtain a Garnishee Order against the debtor. This allows the MIBI to recover all outlay up to the full amount of the debt from the settlement of the subsequent claim.

BANKRUPTCY

If the judgment debt is not satisfied the MIBI has the ability to commence bankruptcy proceedings with the purpose of making the debtor bankrupt. If a debtor is made bankrupt bank accounts are frozen and assets are seized with a view to liquidation to repay the debt.



CASE STUDIES

CASE STUDY 1

After an incident in June 2008 the MIBI paid compensation of circa €60,000 to a passenger who suffered injury whilst travelling in an uninsured vehicle which was involved in a single vehicle accident.

The MIBI appointed a recovery agent to the case, who became aware that the uninsured driver was in the process of selling her house. The debtor was immediately pursued for recovery and a successful judgment was obtained.

This allowed the MIBI to recover the €60,000 paid to the claimant from the proceeds of the sale of the uninsured motorist's house.

CASE STUDY 2

Following an accident which occurred in May 2002, the MIBI compensated two claimants. The claimants had been travelling in a car which was struck by an uninsured motorist. The total outlay coming to approximately €80,000.

The MIBI immediately appointed a recovery agent to the case. Judgment in favour of the MIBI and against the uninsured driver was secured.

At a later date the uninsured driver was involved in a separate, subsequent accident and made a personal injury claim against an insurer. The MIBI's recovery agent was aware of the claim and obtained a Garnishee Order meaning any compensation paid out for the subsequent personal injury claim would first go to the MIBI until the uninsured driver's debt was paid. This allowed the MIBI to successfully recover the full sum of circa €80,000.

CASE STUDY 3

Subsequent to a serious road traffic accident in 1991, the MIBI paid compensation to two claimants, one of whom was a passenger in an uninsured

vehicle. The compensation was approximately €1.8 million of which, approximately €1.2 million was paid to the female passenger.

It transpired the driver of the uninsured vehicle was the passenger's husband and the uninsured vehicle was owned by her daughter – who allowed her father to drive uninsured. Both the uninsured driver and the owner of the vehicle had the ultimate responsibility to reimburse the MIBI for their outlays on this accident.

The female claimant died, without a will, in 2005. Under the terms of the Succession Act, 1965 the husband of the deceased, i.e. the uninsured driver, was entitled to two thirds of her estate including the compensation paid by the MIBI. While her daughter, i.e. the owner of the uninsured vehicle, was entitled to one ninth of her mother (the claimant's) estate.

The MIBI sought to recover damages from the uninsured parties involved and were able to recover approximately €750,000.

CASE STUDY 4

Arising from an incident in June 2008, the MIBI compensated a claimant who was travelling in a vehicle which was struck by an uninsured motorist. A total of €50,000 was paid.

Judgment in favour of the MIBI and against the uninsured driver was secured.

Through the investigation into the uninsured motorist, it was identified that he was a successful businessman. This was in direct contrast to the information being provided by the uninsured driver.

After numerous court appearances, the MIBI was awarded €29,000 from the enforced sale of two of the uninsured drivers' vehicles, along with monthly payments of €1,500 until the €50,000 debt is fully satisfied.



ABOUT MIBI

The Motor Insurers' Bureau of Ireland (MIBI) is a non-profit organisation registered in Ireland. The company was established in 1955 by agreement between the Government and those companies underwriting motor insurance in Ireland.

Our principal role is to compensate victims of road traffic accidents caused by uninsured and unidentified vehicles. The MIBI Agreement, 2009 sets out the rights given to, and obligations for, persons who sustain loss and/or injuries in a road traffic accident caused by an uninsured or untraced motorist.

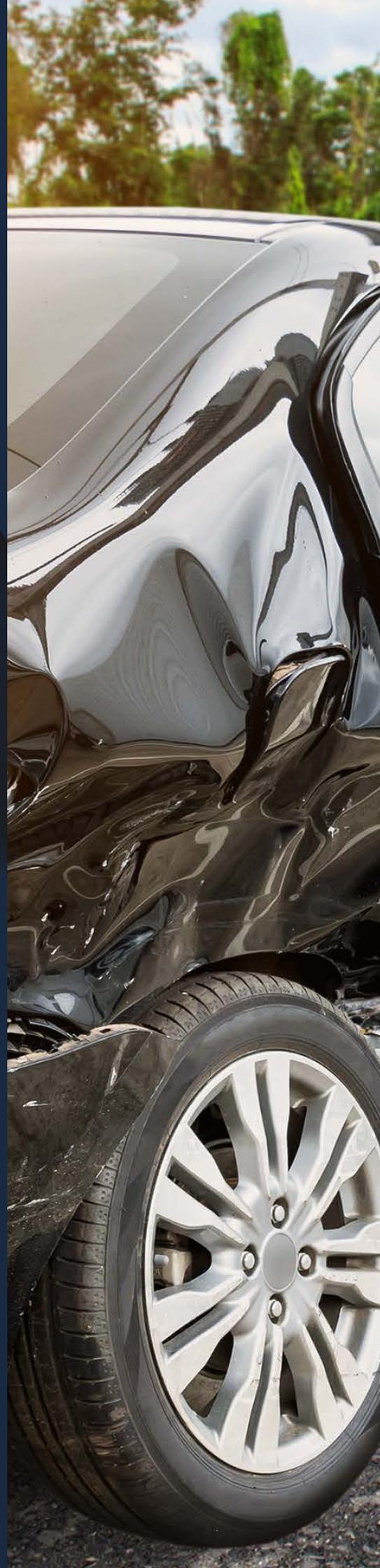
We are also responsible for operating the Green Card system in Ireland. As the Green Card Bureau for Ireland, the MIBI ensures that persons who sustain loss and/or injuries in a road traffic accident caused by a vehicle registered outside the State are not disadvantaged. The MIBI compensates such injured parties under the terms of the regulations signed with 47 other bureaus.

The MIBI operates the Motor Insurance Information Centre of Ireland (MIICI).

MIICI assists victims who have sustained damage and/or injuries in an accident by providing information on the insurer, and where applicable the claims representative, of the alleged offending vehicle.

The MIBI was appointed as 4th EU Motor Insurance Directive Compensation Body. This organisation deals exclusively with claims made by EU citizens who have been involved in a road traffic accident which has occurred outside their country of residence.

All insurance companies underwriting motor insurance in Ireland must, by law, be members of the MIBI and contribute to funding for claims in proportion to their market share.



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