



HOLDING TO ACCOUNT

Strategy Document

HOLDING TO ACCOUNT – THE KEY FIGURES



339
Judgments
Since 2018



**Uninsured driver
causes accident**



**Compensation to the victim of the
uninsured driver paid by MiBi**



**MiBi recovers full costs from
the uninsured driver**

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 having exceeded 174,000 in 2021.

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.

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.

When an uninsured driver is responsible for an accident they are liable for the entire cost of the claim paid by the MIBI. We can 'recover' our costs – in full – from the uninsured driver. 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 recovery process can be undertaken in a number of different ways. 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 and we can pursue bankruptcy proceedings against the uninsured motorist which will have a significant impact on their credit rating.

This is a key focus area and means that we pursue all uninsured motorists who have caused an accident for which the MIBI has provided compensation. We thoroughly investigate those who have disregarded the law. We will put the full investigative might of the MIBI into recovering these costs.

We believe this approach has two significant impacts. Firstly, it helps 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 law abiding motor insurance policyholder in Ireland. Therefore, the more money we can recover from these uninsured motorists, the less money we will require from insurance companies and their policyholders in the future.

Secondly, the other positive impact 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 punitive the costs can be, the aim is to 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





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 Court proceedings.

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:

After 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.



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 and documentation which is needed to aid the MIBI is obtained from the relevant parties. The MIBI has engaged a range of solicitors who act as 'recovery agents' 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 as a debtor to reimburse the MIBI.

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

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).



DEBT RECOVERY ENFORCEMENT OPTIONS

When the MIBI secures a judgment for recovery, a range of different options are available to the MIBI to enable enforcement. The following sets out some of the recovery enforcement options available to the MIBI.

Some cases 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 a 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 the debt is not satisfied the debtor's rating is affected indefinitely.

GARNISHEE ORDER

In the circumstances where a debtor 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 the debt from the settlement of another claim. This means that an uninsured driver who is injured in another accident, may not receive any compensation in the second accident as some or all of the money received in compensation will be paid over to the MIBI instead.

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 selling them to repay the debt.

CASE STUDIES

CASE STUDY 1

After an accident in May 2016 where the MIBI paid compensation of €20,000 to an injured party, the accident investigator identified the debtor may have the means to repay the debt. The file was forwarded to our recovery agent.

The debtor contacted the MIBI querying why we were attempting to recover the debt from them. They stated that as a levy is paid on each insurance policy to fund the MIBI then there should be no reason to reimburse monies paid out on a claim. After explaining that the MIBI is a not for profit organisation and the MIBI has the right to recover all monies paid out on a claim, negotiations took place with the debtor.

In April 2021, the debtor agreed to obtain a loan and pay a full and final settlement of €20,000.

CASE STUDY 2

The debtor was at fault for an accident whilst driving uninsured in February 2017. A total of €17,000 was paid out to settle claims related to the accident. A full review of the debtor's financial means took place once the claim was finalised in February 2019. A judgment was obtained against the debtor for €17,000 in September 2019.

We contacted the debtor's solicitor to confirm our debt and the judgment. The debtor denied they were involved in the accident and would not agree to reimburse the MIBI. A further full file review of the case took place and was presented to the debtor who then admitted being involved in the accident and responsibility for the debt.

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 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 €17,000.

CASE STUDY 3

Subsequent to a serious road traffic accident, 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 a 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 part of her mother's (the claimant's) estate.

The MIBI sought to recover damages from the uninsured parties involved and were able to recover approximately €750,000 from the estate of the deceased before it was paid over to the husband and daughter.

CASE STUDY 4

Arising from an incident, 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 our 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 driver's vehicles, along with monthly payments of €1,500 until the €50,000 debt is fully satisfied.

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