



PUMP COURT
CHAMBERS

Credit Hire: a beginner's guide

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Credit hire: a beginner's guide

The underlying facts of a credit hire case

- Claimant involved in an RTA (usually non fault). They are directed to a claims “accident management firm”.
- Their vehicle requires repairs / is written off. Repairs can be sorted out by their insurer separately, or by the firm, or even by the Claimant;
- The firm will then put them in a “credit hire vehicle” during the period in which they are without a vehicle;
- **Use of that vehicle is on credit**, subject to terms that the Claimant will issue a claim against the ‘at fault’ driver to recover the cost of it if it is not recovered;
- But the cost of the credit hire vehicle, as invoiced by the firm, is often significantly higher than the cost of a hire vehicle on the general market.
- The reason for this is the hire vehicle comes with “additional benefits” (the most obvious being it is on credit - the hirer is not paying up front);

Diamond v Lovell [2002] 1 A.C. 384

- Lord Hoffman on “additional benefits”:

“But that does not necessarily mean that she can recover the full amount charged by 1st Automotive. By virtue of her contract, she obtained not only the use of the car but additional benefits as well.

She was **relieved of the necessity of laying out the money to pay for the car.**

She was **relieved of the trouble and anxiety of pursuing a claim against Mr Lovell or the CIS**

She was **relieved of the risk of having to bear the irrecoverable costs of successful litigation and the risk, small though it might be, of having to bear the expense of unsuccessful litigation.**

Depending upon the view one takes of the terms of agreement, **she may have been relieved of the possibility of having to pay for the car at all.”**

Diamond v Lovell [2002] 1 A.C. 384

- Lord Hoffman on the recoverability of those benefits:

“My Lords, English law does not regard the need for any of these additional services as compensatable loss....

How does one estimate the value of these additional benefits that Mrs Dimond obtains? **It seems to me that prima facie their value is represented by the difference between what she was willing to pay 1st Automotive and what she would have been willing to pay an ordinary car hire company for the use of a car....**

I quite accept that a determination of the value of the benefits which must be brought into account will depend upon the facts of each case. But the principle to be applied is that in the *British Westinghouse* case [1912] AC 673 and this seems to me to lead to the conclusion that **in the case of a hiring from an accident hire company, the equivalent spot rate will ordinarily be the net loss after allowance has been made for the additional benefits which the accident hire company has provided.”**

THE GENERAL PRINCIPLE

Copley v Lawn [2009] EWCA Civ 580 *“it is well settled that, although a claimant can recover the cost of hiring a replacement car, he can only recover the reasonable rate of such hire; that has been held in Dimond v Lovell [2000] R.T.R. 243; [2002] 1 A.C. 384 to be the market or “spot” rate.”*

Bent v Highways and Utilities Construction Ltd [2011] EWCA Civ 1384 *“The authorities establish that in the case of “pecunious” claimants, the damages to be awarded are normally to be assessed at “spot hire” rates - the rate at which a broadly similar car could be had on the market”*

Stevens v Equity Insurance [2015] EWCA Civ 93 *“If he could have afforded to hire a replacement vehicle in the normal way, that is to say without credit hire terms and by paying in advance, then the damages recoverable will be that sum which is attributable to the basic hire rate (or BHR) of the replacement vehicle.”*

BUT....

- The exception is where a Claimant is “impecunious”
- The full credit hire rate will be recoverable if the Claimant proves they are impecunious (ie they could not have afforded the ‘spot’ rate)
- To be continued later...

- PD 16 paragraphs 6.3 and 6.4:

6.3 Where the claim includes the cost of hire of a replacement motor vehicle following a road traffic accident, the claimant must state in the particulars of claim—

- (1) the need for the replacement vehicle at the relevant time;
- (2) the period of hire claimed (providing the start and end of the period);
- (3) the rate of hire claimed;
- (4) the reasonableness of the period and rate of hire; and
- (5) impecuniosity (if the claim relates to credit hire).

6.4 In paragraph 6.3—

- (1) “relevant time” means at the start of the hire and throughout the period of hire;
- (2) the obligation to state the matters there set out includes an obligation to state relevant facts.

Pleadings: the basics

- CPR 16

(1) Particulars of claim must include –

(a) a concise statement of the facts on which the claimant relies;

- PD 16 paragraph 7.3

7.3 Where a claim is based upon a written agreement:

(1) a copy of the contract or documents constituting the agreement should be attached to or served with the particulars of claim and the original(s) should be available at the hearing, and

Diriye v Bojaj [2020] EWCA Civ 1400

Coulson LJ: “[61] Parties to civil litigation need to make clear the important elements of their respective cases at an early stage. Gone are the days of ambush and keeping important points up your sleeve. The aim of much civil litigation is to bring about a cost-effective settlement. If a claimant delays in providing critical information, particularly where he has been ordered to provide it by way of an Unless Order, that delay adversely affects the other side's ability to take a view about the strength or weaknesses of the claim they face.”

Which track??

- Remember CPR 26.8(2)!

(2) It is for the court to assess the financial value of a claim and in doing so it will disregard –

(a) any amount not in dispute;

- Is it more cost effective for a Defendant to admit part of the claim to avoid having to pay fixed costs on the Fast Track?
- Beware Akhtar v Boland [2014] EWCA Civ 872! [16] *“Where an allegation made by one party in proceedings is admitted by the other party in unqualified terms, that other party must not, seek to adduce evidence or raise arguments to the effect that that admission is not binding on him.”*

The substantive issues:

ILLEGALITY

- Something of a “hot topic”!
- Claimant’s MOT had expired at the date of accident?
- Claimant disqualified from driving?
- Claimant uninsured?
- Can the Claimant then go on to claim for replacement vehicle?

- **Hewison v Meridien Shipping PTE [2002] EWCA civ 1821**; Is the illegality central to the claim, or merely collateral or insignificant?
- **Agheampong v Allied Manufacturing London Ltd [2009] Lloyd's Rep IR 379**
- *Ex turpi causa non oritur damnum* bars a particular head of loss, based on an illegal or immoral act.
- Recovery of damages can be defeated on public policy grounds where a claim or part of a claim is so closely related to substantial wrongdoing that the court cannot be seen to condone it. The onus is on the party raising the defence. The burden of proving illegality is on that party alleging it (the Defendant).
- See also **Shadbolt v Stefanatica** (unreported) [2019] on the Pump Court website!!

Enforceability

- Disclaimer; this talk is not going into issues under the Consumer Credit Acts. They rarely arise!
- **Other two main issues on enforceability are:**
 - Misrepresentation; and
 - Unsigned / late signed agreements.

Enforceability; no signature?

- Credit hire companies will rarely allow this to happen.
- Questions arise as to whether there was a binding agreement at all, whether there was intention to create legal relations, whether as a consumer credit agreement there is an enforceable liability.

Enforceability; late signature?

- Armstrong v Hussain [2015] Newcastle CC (unrep) HHJ
Freedman
- [18] “It is very well established and it is not necessary to cite authority for the proposition that there can be a contract in place without a signature appearing on a document and indeed without the finer details being ironed out. It is very often the case the contract comes into being and then it is formalised at a somewhat later stage. That is what happened here.”
- See also Borley v Reed [2005] Winchester CC (unrep) and Carson v Tasaki.

Enforceability; late signature?

- BUT!
- Company Call Centre v Sheehan [2009]
Birmingham CC (unrep)
- "past consideration is not good consideration"

Enforceability: misrepresentation

- **Kadir v Thompson [2016] Central London County Court (unrep) HHJ Luba QC**
- there was a false representation of fact or law (ie ‘free car’, ‘no liability to pay under any circumstances’);
- that misrepresentation induced the claimant to enter into the contract;
- the Claimant voids the contract.
- The burden is on the Defendant is to prove each of these steps

Enforceability: misrepresentation

- But see **Irving v Morgan Sindall [2018] EWHC 1147 (QB)**
- Assurances made to the Claimant by the hire company that the liability to pay is a contingent liability (ie a liability to pay which only arises on the condition the Claimant recovers damages in their claim against the Defendant) do not compromise a claim for credit hire.

- Giles v Thomsson [1993] 1 A.C. 142
- “The need for a replacement car is not self-proving. The motorist may have been in hospital through the accident for longer than his vehicle was off the road; or he may have been planning to go abroad for a holiday leaving his car behind; and so on.”
- “It is not hard to infer that a motorist who incurs the considerable expense of running a private car does so because he has a need for it, and consequently has a need to replace it if, as the result of a wrongful act, it is put out of commission, there remains ample scope for the defendant in an individual case to displace the inference which might otherwise arise.”

Need: Claimant is a company?

- Singh v Yaqubi [2013] EWCA Civ 23

[39] ... “Very large hire claims such as this one should be scrutinised carefully by the court and particularly when the business partnership, which was required to establish the need, had a fleet of seven prestigious cars on the same insurance. For such a business claim to succeed, the judge was entitled to require specific evidence of need, such as evidence of the actual use of the vehicle for business purposes before the accident and the use to which the hired vehicle was put during the period of hire. Such evidence as was given was vague and non-specific and the judge was entitled to hold that the need for a replacement Rolls Royce had not been established.”

See also *Park Lane BMW v Whipp* [2009] (unrep) HHJ Harris

Need: like for like vehicle?

- There are inconsistent results at county court level about whether a Claimant should mitigate by hiring a lesser vehicle.
- Bent no2 [2011] EWCA Civ 1384.
- Chatterton v AXA [2016] Stoke CC (unrep)
- Gow v NFU Mutual Insurance [2016] Central London CC (unrep)
- Defendants should consider submitting an alternative “non-luxury” alternative rate when obtaining BHR in luxury vehicle cases.

- Remember to properly plead it!
- Lagden v O'Connor [2003] UKHL 64:
- Lord Nicholls:
 9. There remains the difficult point of what is meant by 'impecunious' in the context of the present type of case. Lack of financial means is, almost always, a question of priorities. In the present context what it signifies is inability to pay car hire charges without making sacrifices the plaintiff could not reasonably be expected to make....

- But per Lord Hope:

[35] ... “The criterion that must be applied is whether he had a choice - whether it would have been open to him to go into the market and hire a car at the ordinary rates from an ordinary car hire company.”

[42] ... “In practice the dividing line is likely to lie between those who have, and those who do not have, the benefit of a recognised credit or debit card. It ought to be possible to identify those cases where the selection has been made on grounds of convenience only without much difficulty.”

IMPECUNIOSITY

- Beware debarring orders!
- Pre action disclosure for very large claims?

- Are there any delays for which the Claimant is responsible?
- Mattocks v Mann [1993] RTR 13; Burdis v Livsey [2002] EWCA CIV 510; and Clark v Ardington [2003] QB 36. Delays on the part of the garage are unlikely to be the Claimant's responsibility.
- Impecuniosity goes to period as well as rate: Zurich Insurance Plc v Umerji [2014] EWCA Civ 357.

- BUT in Zurich Insurance Plc v Umerji [2014] EWCA Civ 357 it was held to be reasonable for Claimant to wait:
 - until an assessment had been made as to whether it was economical to repair his damaged vehicle; AND
 - until the appellants had had the opportunity to inspect and agree the total loss.
 - It was then reasonable for Mr Umerji to wait until the car was disposed of before purchasing a replacement (which would take a couple of weeks).
 - So Defendants need to respond quickly with an indication as to whether they wish to inspect!

RATE: The Basic Hire Rate

- Usually in the form of a survey of local providers of hire vehicles.
- **Bent 2:**
- No need for the rates to be exactly contemporaneous
- No need for the rates evidence to be for the exact same vehicle as hired:

RATE: Stevens [2015] EWCA Civ 93

[34] ... “It follows that any attempt to value the benefits at a later stage in a proportionate way must necessarily involve a degree of imprecision. The best that can be hoped for, absent a very expensive exercise of disclosure and analysis, is a reasonable approximation.”

[36] “It follows that a judge faced with a range of hire rates should try to identify the rate or rates for the hire, in the claimant’s geographical area, of the type of car actually hired by the claimant on credit hire terms. If that exercise yields a single

- So to summarise:
- The lowest rate for the type of car hired (or its equivalent);
- In the geographical area;
- From a mainstream or local reputable supplier.

- In McBride v UK Insurance Ltd, the Court of Appeal reaffirmed the ‘lowest reasonable rate’ rule in Stevens.
- Then they went on to consider how the court should approach a situation where none of the BHR providers offer a nil-excess product.



- [68] (The Court) ... “should not allow the fact that the credit hire company offers a nil excess on prestige vehicles which other car hire companies are not prepared to offer to be used as a smokescreen to enable credit hire companies to recover their charges in full, notwithstanding that a comparison of rates ignoring the nil excess demonstrates that there are such irrecoverable elements.”

RATE: McBride [2017] EWCA Civ 144

- [76] ... “where a nil excess is not available from car hire companies, the correct approach is to treat the nil excess separately from the comparison exercise between the default credit hire rate and the basic hire rate with an excess. It will almost invariably be the case that it was reasonable for the claimant to seek a nil excess for the reasons given in *Bee v Jenson* and, on that hypothesis, the only question for the Court will be how much should be recoverable as the cost of purchasing a nil excess.”

- But the court went further and stated:

[77] ... “Given the availability of stand-alone products which offer the elimination of the insurance excess on a hired car for a relatively modest daily rate, provided by companies such as Questor and Insurance4carhire.com, it may well be that in a particular case the Court may decide that it was not reasonable to purchase the nil excess offered by the credit hire company at a much higher rate (in the present case AEL’s cost was £10 a day plus VAT against the £3.99 a day (inclusive of VAT) offered by Insurance4carhire.com). This is particularly so because the terms and conditions and the rates for these products are readily available over the internet.”



- In Clayton v EUI Ltd (heard with McBride) the court stated that these products should be widely admissible:
- [105] ... “I consider that where there is evidence of the availability of an excess elimination insurance as a stand-alone product from Questor or other providers such as Insurance4carhire.com, the Courts should admit and accept such evidence as evidence of the reasonable cost of obtaining a nil excess, provided of course that the quote obtained from such a provider is for a car which is comparable with the one hired from the credit hire company and is for the same period as the period of actual hire from the credit hire company.”
- But generally these products are only applied where there is no BHR provider who can provide a nil-excess product, per McBride.

Weekly or daily rates?

- See Bunting v Zurich Insurance Plc [2020] EWHC 1807 (QB)
- Re-affirms that the process of calculating a BHR is not a counsel of perfection!
- Whether weekly or daily rate is to be employed will depend on the estimated length of repairs, and other factors. Usually the saving is so large on hiring on a weekly rate that the Court will often utilise it for the BHR.

Extras?

- The BHR needs to take into account the features of the Claimant (eg their age, their driving history). There may be a ‘high risk driver’ charge.
- Courts will permit a sum for collection and delivery of the hire vehicle as being reasonable (especially if the Claimant’s damaged car is unroadworthy).
- If the spot hire company does not provide this, a taxi rate is often included in BHR statements.

What this talk does not cover!

- This talk has not gone into depth about the implications where the vehicle is a profit earning chattel such as a taxi.
- In that case see Hussain v EUI Ltd [2019] EWHC 2647 (QB). Very significant ramifications for pleading the case!!
- We have also not covered intervention letters. See Copley v Lawn [2009] EWCA Civ 580.