

## Success for Ed Ramsay in Court of Appeal

**On 15 March 2017, the Court of Appeal handed down its long-awaited decision in the conjoined appeals in *McBride v UKI* and *Clayton v EUI*.**

The decision represents a major victory for insurers.

In a unanimous judgment, the Court (Flaux LJ, Sir Timothy Lloyd, Sir Stanley Burnton) has reaffirmed the 'lowest reasonable rate' approach to the calculation of basic hire rates as set out in *Stevens v Equity Syndicate Management*.

At the same time the Court has accepted UKI's submissions that the purchase of an excess elimination product from a credit hire company forms no part of the *Dimond v Lovell* exercise to strip-out the irrecoverable benefits contained within the credit hire rate. A claimant is not entitled, as some have long argued, to recover the full credit hire rate where a defendant cannot adduce nil excess basic hire rate evidence. The provision of excess waiver products can no longer be used as a 'smokescreen to enable the credit hire companies to recover their charges in full' [68].

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" [76]. Whilst it will usually be reasonable for the claimant to seek a nil excess for the reasons set out in *Bee v Jenson*, "the only question for the Court will be how much should be recoverable as the cost of purchasing a nil excess" [76]. Evidence from the BHR company quoting the lowest reasonable rate as to its charge for reducing the excess to nil will usually provide the answer [79].

The Court has given a clear signal that stand-alone products (such as *Questor* and *insurance4carehire.com*) should be admitted and accepted as evidence as to the reasonable cost of reducing an excess to nil in cases where a quote can be provided for a comparable car for a comparable period [77; 105]

Where that is not the case a claimant may possibly recover the actual cost of reducing the excess to nil (as charged by the credit hire provider) unless the notional cost of doing so has been quoted by the basic car hire company [78; 79].

A link to the judgment can be found here: <http://www.bailii.org/ew/cases/EWCA/Civ/2017/144.html>

**Ed acted as junior Counsel for the Respondent in *McBride v UKI* (led by Steven Turner) and was instructed by Keoghs LLP.**