

## Ed Ramsay represents family of Narayan Gurung in widely reported BMW safety recall inquest

**Edward Ramsay (instructed by Emma Potter of Barlow Robbins LLP) represented the family of the late Narayan Gurung, a Gurkha veteran, who died on Christmas Day 2016 when he swerved, whilst driving, to avoid a stationary BMW vehicle on the Hogs Back that had suffered a total electrical failure. Mr Gurung managed to avoid the BMW but lost control of his vehicle and collided with a tree. He died instantly. His wife, a passenger, was badly injured but survived.**

The particular fault with the BMW related to a failure of the B+ power cable, which caused the vehicle to lose all electrical and motion power, including the ability to activate hazard warnings lights.

In a wide ranging and complex inquest, HM Assistant Coroner for Surrey, Anna Loxton, heard evidence over three days in April 2018. The scope of the inquest had been determined at two previous Pre-Inquest Review Hearings in 2017, at which Ed represented the family's interests, securing extensive disclosure from BMW UK Ltd (the wholly owned subsidiary of the manufacturer, BMW AG, based in Munich) and the Driving Vehicle Safety Agency (DVSA), the government agency responsible for regulating automotive safety in the UK. The court called extensive evidence regarding the legal and regulatory framework for safety related vehicle recalls in the UK.

On application by the family, following examination of the DVSA's involvement on Day 1 of the inquest, HM Coroner ruled that the enhanced investigative duty under Article 2 of the European Convention on Human Rights was engaged because the evidence disclosed an arguable breach of the state's duty to protect life. Accordingly, pursuant to Section 5(2) of the Coroners and Justice Act 2009 the court was required to determine the broader circumstances in which Mr Gurung came by his death.

Following the conclusion of the evidence on 30 April 2018, HM Coroner indicated that she would be sending two statutory Prevention of Future Death Reports to BMW UK Ltd and the DVSA.

On 9 May 2018 BMW decided to recall all potentially affected vehicles in the UK, over 300,000.

On 8 June 2018 HM Coroner delivered a judgmental Narrative Conclusion, in accordance with her statutory duties, and in the following terms: –

*“Early in the morning of 25<sup>th</sup> December 2016, Mr Gurung died from traumatic injuries he sustained whilst driving his Ford Fiesta motorcar, when he swerved to avoid a stationary unlit black BMW car, spun out of control and collided with a tree on the A31 Hog's Back, Seale. The BMW he swerved to avoid had suffered a complete electrically failure as a result of a problem with the B+ power cable. Both BMW UK Limited and BMW AG were aware of the potential B+ cable fault in categories of vehicles manufactured between March 2007 and September 2011 and the fact that this could lead to a total loss of power at any time and without warning to the driver. Despite that knowledge no recall of the vehicles affected was instigated. Incidents involving this fault had been reported to the Driving Vehicle Safety Authority from October 2014 and was subject to an on-going investigation. During a meeting between the DVSA and BMW UK Limited on 26 February 2016, some 16 months after the initial reports had been received by the DVSA, the DVSA recognised and highlighted the risk this fault posed to other road users, as they would not be able to see the powerless unilluminated car on an unlit road. However, despite recognising this risk the DVSA failed to call for and BMW AG and BMW UK Limited failed to initiate a recall until after Mr Gurung's death.*

In addition, HM Coroner indicated that she would be making a statutory Prevention of Future Death Report in relation to her concerns regarding the systems in operation at the DVSA. The Regulation 28 Report will be sent to

the Secretary of State for Transport and the Chief Executive of the DVSA.

The inquest has been widely reported in the national media, including on the front page of *The Times* and by the *BBC*.