

In Motor Insurers' Bureau v Lewis [2019] EWCA Civ 909 the finding of Mr Justice Soole upheld in the Court of Appeal

In *Motor Insurers' Bureau v Lewis* [2019] EWCA Civ 909 the Court of Appeal has upheld the finding of Mr Justice Soole that the Motor Insurers Bureau were liable to indemnify the driver of a vehicle that was being driven 'off road'.

The Claimant suffered serious injuries when he was hit by a 4x4 vehicle when walking on private land. The vehicle had been driven by Mr Tindale along a road, footpath and through a barbed wire fence before it collided with the Claimant. Mr Tindale was uninsured. The MIB did not dispute that Mr Tindale caused the accident, but it argued that it had no contingent liability to the claimant pursuant to the Uninsured Drivers Agreement ('UDA') 1999 because the accident and injuries were not caused by or arising out of the use of the vehicle on a road or other public place under section 145 of the Road Traffic Act 1988.

The Decision at First Instance

At first instance Mr Justice Soole found that the MIB were liable to indemnify the Claimant. The court held that liability for an incident on private land did not need to be insured under the provisions of the Road Traffic Act.

The court went on to find that the MIB in the UK is an emanation of the state, and as such, the Motor Insurance Directive ("MID") has direct effect against the MIB, to the extent that the MID and EU law is clear and precise. It followed that as against the MIB, cover would be required, as applied in *Vnuk*. The MIB was liable to indemnify the Claimant at least to the minimum requisite cover of 1 million Euros.

Court of Appeal

The Court of Appeal held that, following the CJEU decision in *Vnuk*, there was no doubt that the MID required insurance cover to be in place for the use of vehicles on private land. Where the insurance requirement was not met, the guarantee body, which Art 10 of the Directive required each Member State to establish ('the Art 10 body'), was liable to meet the claim.

The Court held that Art 3 and Art 10 of the MID created directly effective rights which could be enforced against the MIB as an emanation of the state. The Court said *'that the MIB, albeit a private law body, has had conferred on it by the UK government the task under Article 10, which as [para 39] of Farrell v Whitty (No 2) makes clear, includes remedying the failure of the government to institute in full a compulsory insurance regime, in the present case in respect of the use of vehicles on private land.'*

The Court further added that *'The fact that the UK government has failed to legislate for compulsory insurance in respect of the use of motor vehicles on private land and then specifically to delegate to the MIB the residual liability where the relevant vehicle is uninsured can legitimately be described as a breakdown in the system put in place by the government ... The MIB may well have rights of contribution over against the Department of Transport.'*

The MIB is seeking permission to appeal from the Supreme Court and an indemnity/contribution from the government arguing that it was the government's failure to comply with the requirements of EU law by way of the original enactment of the 1988 Act or any amendment thereto which has brought about MIB's extended liability.

Click here (<https://www.bailii.org/ew/cases/EWCA/Civ/2019/909.html>) to read the full judgment.

The MIB were represented by Hugh Mercer QC (Essex Court Chambers) and Richard Viney of 12 King's Bench Walk. The Claimant was represented by Mr Philip Moser QC and Mr David Knifton QC.