DEKA
CHAMBERS

# PERILS OF EXPERT EVIDENCE IN PI

16.10.25

Presenter: Roger André

# Outline

- Duties of Expert Witnesses
- High Court examples
- Volume RTA PI  e.g Basharat x 2 v Collazo [2025] 7 WLUK 888

# Duties of Expert Witnesses

DEKA CHAMBERS

- CPR Parts 35.1 to .4 Overriding Duty to Court
- 35PD
- Form and Content of an Expert's Report
- **3.1** An expert's report should be addressed to the court and not to the party from whom the expert has received instructions.
- **3.2** An expert's report must:
- (1) give details of the expert's qualifications;
- (2) give details of any literature or other material which has been relied on in making the report;
- .....
- (6) where there is a range of opinion on the matters dealt with in the report –
- (a) summarise the range of opinions; and (b) give reasons for the expert's own opinion;
- (9) contain a statement that the expert –
- (a) understands their duty to the court, and has complied with that duty; and
- (b) is aware of the requirements of Part 35, this practice direction and the Guidance for the Instruction of Experts in Civil Claims 2014.

# Expert Witness Duties / Guidance

- **35PD 3.3** An expert's report must be verified by a statement of truth ....

- SRA **Reminders about expert evidence in high-volume work** 12 May 2025
- Also, MedCo, the organisation used to source medical report providers in low-value claims, has issued new Medco Guidelines April 25 for how examinations must be administered.
- These include making sure examinations are not carried out in solicitors' offices... refers to Medco
- The MedCo guidelines for examination volumes and durations are;

- a maximum of 35 examinations in a day; and • a minimum of 15 minutes spent face to face with a claimant. These figures are guidelines only ...
- MedCo does not object to the use of questionnaires, however the use of these should not extend to all areas and as a minimum, the following subjects should be discussed face to face;
- the claimant's account of the accident circumstances; • the injuries sustained; • progress of injuries since the accident; • any treatment received; • relevant medical history; • impact on work, lifestyle and daily activities

# Duties / Responsibilities

DEKA
CHAMBERS

# In practice

- An expert must be open to correcting factual inaccuracies and providing clarification. However, they "should constantly remind themselves through the litigation process that they are not part of the claimant's or defendant's 'team'" (*Muyepa v MOD* [2022] EWHC 2648 (KB)).

- An expert's opinion must be well-researched, well-reasoned and unbiased to withstand cross-examination in court. An expert must prepare for the possibility scrutiny and that every case they take instruction on could reach the point of XE in court.

- High value versus volume cases.

# **Samrai & Ors v Kalia** [2024] EWHC 3143 (KB)

DEKA CHAMBERS

- A case concerning sexual abuse allegations against a Hindu guru. Dr Blyth Clinical Psychologist instructed by Cs.
- Declarations, paras 250, 251
- Instructions, 252
- Summary of conclusions 252
- Duty to Court 253
- Plagiarism and failure to cite sources 255
- Relevant material (life histories) 256
- Lack of prep for trial 257
- Inaccuracies or at worst misleading 260

# **Samrai & Ors v Kalia** [2024] EWHC 3143 (KB)

DEKA CHAMBERS

Spencer J:

261: “In consequence of the above, in my judgement no reliance whatever can be placed on the reports and opinions of Dr Blyth. She demonstrated herself to be an expert who had little or no regard to the provisions of Part 35, the Practice Direction and the Guidance in preparing her reports and who was prepared materially to mislead the court by passing off the views of another person as her own by lifting large passages from that person’s article and setting them out in her report as if they represented her own views without acknowledgement or reference to the originating source. In the circumstances, I consider that I have no choice but to reject Dr Blyth’s evidence in its entirety.”

# *Basharat x 2 v Collazo* [2025] 7 WLUK 888, Leeds CC DJ Dawson.

Roger André for D / Aviva instructed by Chloe Cheung of DWF

DEKA CHAMBERS

- Side shunt, Cs instructed Mr Matthew Akal, Psychologist
- Cs claimed soft tissue injuries and psychological injuries. C1 awarded limited injuries, C2 claim FD s.57 CJCA 2015.
- However, expert evidence of Mr Akal rejected:
- Background of Mr Akal's Health Care & Professions Council outstanding proceedings and Interim Conditions of supervision, in which, (yet to be tested at full hearing) Mr Akal has been criticised by the HCPC expert.
- 'appalling' behaviour at his previous ET in 2017, para 21
- Failure to amend his practices, having received Judicial criticisms, 25-27
- Mr Akal baldly stating each DSM-V criteria is met without further explanation or analysis of the same 30, 39
- Inconsistencies on most significant point in / copy paste / lack of care in reports 31 - 34
- Mr Akal's advocating for the Claimant as opposed to acting in his duties as an independent expert, 35 - 38
- In addition, DJ Dawson's judgment suggests not instructing first tier physiotherapists for anything more than minor soft tissue injuries, 74
- see also Judicial recognition of claims layering in *Khan v Aviva* [2022] 11 WLUK 663, para 36

DEKA
CHAMBERS

# CIVIL FRAUD & CREDIT HIRE UPDATE

16 October 2025

**Robert Parkin**

# Wiltshire v Aioi Nissay Dowa Insurance Company of Europe [2025] EWCC 13

- Or, “how not to run credit hire litigation”

- The claim concerned a straightforward RTA. The Defendant’s insured reversed into contact with the Claimant’s vehicle, causing damage to it, while he was on holiday in Wales. Liability was admitted.

- So far, so straightforward. Matters, however, then took a somewhat sinister turn.

# Wiltshire v Aioi Nissay Dowa Insurance Company of Europe [2025] EWCC 13

DEKA CHAMBERS

- The Claimant's oral evidence- accepted by the Court- was that he telephoned his insurers to make a claim under his own fully comprehensive policy. He was concerned only with repairs to his vehicle and provision of a replacement vehicle to return from his holiday.

- He was, however, transferred to a firm of solicitors specialising in bulk credit hire claims. At no point did was it made clear to the Claimant that he was dealing with anyone other than his insurers.

# Wiltshire v Aioi Nissay Dowa Insurance Company of Europe [2025] EWCC 13

DEKA CHAMBERS

- He was provided with a replacement vehicle which he was led to believe was supplied by his insurers. In fact, it was a credit hire vehicle procured by an agreement with the solicitors.

- He denied signing anything other than a document relating to the condition of the replacement vehicle. He denied having signed the Credit Hire Agreement, a document which purportedly indicated he would be eligible for £500 per day hire charges on a credit basis and storage charges.

# Wiltshire v Aioi Nissay Dowa Insurance Company of Europe [2025] EWCC 13

DEKA CHAMBERS

- Despite all that, a witness statement was produced by the solicitors, stating, *inter alia*:
- That he instructed the solicitors to pursue a claim
- That they had advised him that they would be able to deal with his claim for vehicle damage, which included assisting him with any additional services he needed including such as credit repair, credit hire and credit recovery and storage.
- He was aware they offered a "one stop shop" and could arrange everything on his behalf with no upfront cost. This was what he wanted as using On Hire meant that I did not have to go to the expense and hassle of trying to obtain multiple quotations from other providers for similar services.
- He was informed both orally and in writing that the directors of solicitors are also the directors of the credit hire company and that they have a financial interest in the company. He understood this and agreed to the use of the company. He was also told that he could use alternative companies if he preferred. He did not wish to do so and agreed to use the services.
- An engineer would inspect his vehicle and if it was damaged beyond repair or required repairs, the credit hire company could provide me with a hire vehicle if he needed one. He was informed that the services would be provided on a credit basis, which meant that he would not have to pay anything upfront. He was advised that he would be liable for the charges, but they would be claimed against the "at fault driver" as part of the claim.

# Wiltshire v Aioi Nissay Dowa Insurance Company of Europe [2025] EWCC 13

DEKA CHAMBERS

- None of that was true. The Claimant was “adamant that these were not his words and not his understanding” and the court accepted that. The wording of the statement were copy-pasted from many similar examples produced by the same solicitors.

- Additionally, the claim had been pursued for two different hire vehicles, when, in fact, only one had been supplied.

# Wiltshire v Aioi Nissay Dowa Insurance Company of Europe [2025] EWCC 13

- The Claimant appears to have had no involvement with proceedings  prior to attendance at the trial.

- The judgment conspicuously does not say whether the Claimant had personally signed the witness statement or Particulars of Claim, though it accepted his evidence that he had signed nothing at all except a document relating to the condition of the vehicle.

# Wiltshire v Aioi Nissay Dowa Insurance Company of Europe [2025] EWCC 13

- The Court found (unsurprisingly) that the Credit Hire Agreement was not enforceable as against the Claimant and so dismissed the claim for hire and storage.

- The Claimant succeeded in his claim for loss of use of his vehicle and (presumably) vehicle damages had already been paid, which, on the face of it, was all he had ever wanted in the first place.

- He also effectively had the use of the credit hire vehicle for free at the offending company's expense, who lost a purported outlay of around £50,000.

- The judgment does not say what became of costs. One wonders if the Defendant did not at least consider an application for wasted costs, if not a regulatory referral.

# Wiltshire v Aioi Nissay Dowa Insurance Company of Europe [2025] EWCC 13

DEKA CHAMBERS

- There are some pretty self-explanatory lessons here. Just about everything that could go wrong with this area of the industry did go wrong on this occasion.

- Without wishing to appear condescending, it is sometimes easy to lose sight of the fact that these cases belong to the Claimants, and they have to be actually involved at each stage. Quite apart from the ethical implications, businesses engaging in these practices are likely to come unstuck when acting with a particularly honest client.

# Wiltshire v Aioi Nissay Dowa Insurance Company of Europe [2025] EWCC 13

DEKA CHAMBERS

- The DJ concluded with:

*Many people unfamiliar with credit hire claims... may also question why the Courts have not intervened in this industry which, given the figures involved paid out by the insurers of the culpable motorists, must surely have an impact on rising motor insurance premiums. The answer to that may be that the Senior Courts have exhausted the arguments at Common Law and only new legislation by Parliament could alter the position. Whether that will happen remains to be seen.*

- Watch this space.

# Parker v (1) Skyfire Insurance Company Limited (2) Spectra Drive Limited [2024] EWHC 1060 (KB)

DEKA CHAMBERS

- Or, “how to get away with it”

- Again, this started with a fairly simple accident where the Defendant’s insured drove into collision with the Claimant’s vehicle. Liability was admitted

# Parker v (1) Skyfire Insurance Company Limited (2) Spectra Drive Limited [2024] EWHC 1060 (KB)

- The Claimant (again) attempted to contact his insurers to obtain replacement vehicle hire.

- A claims management company had adopted a practice known as “Google Spoofing”, meaning that it had created a websites that falsely imitated the names of several well-known insurers, including the Claimant’s, and then used SEO techniques to ensure that this false website came first on a list of Google searches, ahead of the genuine website for the insurers.

- The Claimant found and called a number on this website, believing he was speaking to his insurers. He was set up with a vehicle on credit hire, again, seemingly under the impression that this was being provided by his insurers. He did, however, accept the hire of the car.

# Parker v (1) Skyfire Insurance Company Limited (2) Spectra Drive Limited [2024] EWHC 1060 (KB)

DEKA CHAMBERS

- The third party insurer Defendant “strongly suspects that in the course of the claim management company’s discussions with the Claimant, some misrepresentation was made, whether as to any association between the credit hire company and the Claimant's own insurers, or as to the circumstances in which the Claimant might or might not himself be called upon to pay the charges under the agreement.”

- Its argument was that “if any misrepresentation were made, the agreement would be voidable for misrepresentation and that if the Claimant were to avoid it, he would not be under any subsisting liability to pay the credit hire charges and would not have suffered any corresponding loss. The Defendant would accordingly be relieved *pro tanto* of any obligation to indemnify him.

# Parker v (1) Skyfire Insurance Company Limited (2) Spectra Drive Limited [2024] EWHC 1060 (KB)

DEKA CHAMBERS

- However, the Defendant could make no positive case to that effect without the recordings of that telephone call. The pleaded defence simply put the Claimant to proof.

- Plainly, the Claimant had not recorded the phone call, but the claims management company had. The Defendant accordingly applied for non-party disclosure of that recording under CPR 31.17.

# Parker v (1) Skyfire Insurance Company Limited (2) Spectra Drive Limited [2024] EWHC 1060 (KB)

DEKA CHAMBERS

- The requirements of a non-party disclosure application are set out at CPR 31.17(3)

*(3) The court may make an order under this rule only where—*

*(a) the documents of which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings; and*

*(b) disclosure is necessary in order to dispose fairly of the claim or to save costs.*

# Parker v (1) Skyfire Insurance Company Limited (2) Spectra Drive Limited [2024] EWHC 1060 (KB)

- The application was refused at first instance and the Defendant appealed. However, the appeal was dismissed because:

- On the one hand, the court was satisfied that the disclosure sought "may well" support the Defendant's case on misrepresentation and is accordingly likely to do so. It is not a mere fishing expedition. I stress, however, that this is a decision which rests on the particular facts of this case. It may well be that in cases involving other claims management and credit hire companies, there is not sufficient evidence to satisfy the threshold condition of likelihood with regard to the existence of a misrepresentation. This must always be a fact-specific assessment which may vary from case to case and it is not possible to lay down any general rules.

# Parker v (1) Skyfire Insurance Company Limited (2) Spectra Drive Limited [2024] EWHC 1060 (KB)

DEKA CHAMBERS

- However, “However, that is not the end of the matter because the Defendant must also satisfy me that the disclosure is necessary in order to dispose fairly of the claim or to save costs”. So:

- Even if there had been misrepresentation, that did no more than render the credit hire agreement voidable rather than voice.
- “A voidable contract does not depend for its validity on whether it has been affirmed or not. Rather it is valid unless and until it is avoided. The correct question is therefore not whether the Defendant has produced sufficient evidence of affirmation, but whether the Defendant can point to a real prospect that the contract is both capable of being avoided in principle, and, if so, might in fact be avoided by Claimant”
- “It is the latter consideration to which the question of affirmation is primarily relevant. As to this, the Defendant lays much emphasis on the fact that there is no positive or direct evidence of affirmation from the Claimant. However, a contract can be affirmed by conduct as much as by express words and statements.”

# Parker v (1) Skyfire Insurance Company Limited (2) Spectra Drive Limited [2024] EWHC 1060 (KB)

DEKA CHAMBERS

- The Claimant had affirmed the contract by accepting the car hire. He might not have known of the misrepresentation at the time, but he was “in attendance at the hearing below and even if he was unaware at that stage that he might potentially have a right to avoid the contract, he cannot have failed to grasp the point following that hearing. Yet he continues to maintain his opposition to the application”.

- The appeal was accordingly dismissed, because in the absence of any appetite by the Claimant to rescind the agreement, it did not matter if it was dishonestly obtained.

# Parker v (1) Skyfire Insurance Company Limited (2) Spectra Drive Limited [2024] EWHC 1060 (KB)

DEKA CHAMBERS

- The DJ left with this remark:

- This and other similar cases turn a spotlight on what some clearly view as questionable practices by certain credit hire and claims management companies. This is a point which appears to have troubled Mr Justice Constable who considered that the prevalence of these practices raised a point of principle. Indeed, I was informed by counsel that the questions raised by this appeal are ones on which an authoritative decision is eagerly awaited.

# Tescher v Direct Accident Management Ltd [2025] EWCA Civ 733

DEKA CHAMBERS

- Third party costs orders in credit hire cases
- Very often the vast majority of the value of the claim is pursued in respect of sums that will be payable directly to the credit hire company, and in respect of which the Claimant might have little direct interest.
- In *Wiltshire v Aioi*, that was some some £50,000 of the £52,000
- The Court of Appeal was asked to decide earlier this year if this fact exposed the credit hire company to third party costs orders if the underlying claim failed.

# Tescher v Direct Accident Management Ltd [2025] EWCA Civ 733

DEKA CHAMBERS

- The consequences are self-explanatory. CPR 44.16 provides that:

*44.16*

*...*

*(2) Orders for costs made against the claimant may be enforced up to the full extent of such orders with the permission of the court, and to the extent that it considers just, where –*

*(a) the proceedings include a claim which is made for the financial benefit of a person other than the claimant or a dependant within the meaning of section 1(3) of the Fatal Accidents Act 1976 (other than a claim in respect of the gratuitous provision of care, earnings paid by an employer or medical expenses); or*

*...*

*(3) Where paragraph (2)(a) applies, the court may, subject to rule 46.2, make an order for costs against a person, other than the claimant, for whose financial benefit the whole or part of the claim was made.*

# Tescher v Direct Accident Management Ltd [2025] EWCA Civ 733

DEKA CHAMBERS

- And in CPR PD44:

*12.5 The court has power to make an order for costs against a person other than the claimant under section 51(3) of the Senior Courts Act 1981 and rule 46.2. In a case to which rule 44.16(2)(a) applies (claims for the benefit of others) –*

*(a) the court will usually order any person other than the claimant for whose financial benefit such a claim was made to pay all the costs of the proceedings or the costs attributable to the issues to which rule 44.16(2)(a) applies, or may exceptionally make such an order permitting the enforcement of such an order for costs against the claimant.*

*(b) the court may, as it thinks fair and just, determine the costs attributable to claims for the financial benefit of persons other than the claimant.*

*12.6 In a case to which rule 44.16(1) or rule 44.16(2)(a) applies, the court will normally order the claimant or, as the case may be, the person for whose benefit a claim was made to pay costs notwithstanding that the aggregate amount in money terms of such orders exceeds the aggregate amount in money terms of any orders for damages, interest and costs made in favour of the claimant.*

# Tescher v Direct Accident Management Ltd [2025] EWCA Civ 733

- In *Tescher*, the Court of Appeal made third-party costs orders against two credit hire companies, one for 100% of the Defendant's costs, another for 65%.

- The question was the extent to which the credit hire company was "the real party" with "tacit control" over the litigation.

# Tescher v Direct Accident Management Ltd [2025] EWCA Civ 733

DEKA CHAMBERS

- These matters are inherently fact sensitive. However, the following were all held to be of no significance either way:

- The credit hire company did not decide when to issue proceedings, that they were not given copies of the court documents, and that they were not informed about settlement, strategy or other significant events in the case.
- The fact that the terms were  commonplace in the industry
- The fact of a close personal or business relationship between the Claimant's solicitors and the credit hire company.
- The fact that the claim would or might well have succeeded had it not been discontinued faced with an allegation of fundamental dishonesty.

# Tescher v Direct Accident Management Ltd [2025] EWCA Civ 733

DEKA CHAMBERS

- These matters are inherently fact sensitive. However, the following were all held to be of no significance either way:

- The credit hire company did not decide when to issue proceedings, that they were not given copies of the court documents, and that they were not informed about settlement, strategy or other significant events in the case.
- The fact that the terms were  commonplace in the industry
- The fact of a close personal or business relationship between the Claimant's solicitors and the credit hire company.
- The fact that the claim would or might well have succeeded had it not been discontinued faced with an allegation of fundamental dishonesty.

# Tescher v Direct Accident Management Ltd [2025] EWCA Civ 733

- The decision is rather less good at saying what considerations *are* relevant rather than those that are not.

- It does appear that this decision exposes credit hire companies to fairly routine third-party costs orders- unlike in some of the cases above, it is hard to see what they had done “wrong” beyond the simple act of providing, and seeking to recover, credit hire.

- Again, watch this space.

# Tescher v Direct Accident Management Ltd [2025] EWCA Civ 733

- The decision is rather less good at saying what considerations *are* relevant rather than those that are not.

- It does appear that this decision exposes credit hire companies to fairly routine third-party costs orders- unlike in some of the cases above, it is hard to see what they had done “wrong” beyond the simple act of providing, and seeking to recover, credit hire.

- Again, watch this space.

# Armstead v RSA Insurance Company Limited [2024] UKSC 6

DEKA CHAMBERS

- One of the rare Supreme Court cases of minimal value but broad importance on a key area.

- The Claimant “was unlucky enough to be involved in two road traffic collisions within a short space of time, neither of which was her fault.”

- The first accident caused damage to her vehicle.

- She obtained a replacement vehicle on credit hire.

# Armstead v RSA Insurance Company Limited [2024] UKSC 6

DEKA CHAMBERS

- One of the rare Supreme Court cases of minimal value but broad importance on a key area.

- The Claimant “was unlucky enough to be involved in two road traffic collisions within a short space of time, neither of which was her fault.”

- The first accident caused damage to her vehicle.

- She obtained a replacement vehicle on credit hire.

# Armstead v RSA Insurance Company Limited [2024] UKSC 6

- That credit hire agreement included a clause that if there was damage to that hire vehicle which caused it to be out of action for a period of time, the Claimant would pay:

a) the cost of the repairs and

b) up to 30 day's hire in respect of the period where the vehicle would be unavailable to the credit hire company, the "Clause 16 sum"

# Armstead v RSA Insurance Company Limited [2024] UKSC 6

- The predictable happened, the second car was damaged in an accident which was the Defendant's fault.
- The hire car was in fact out of action for 12 days.
- The Claimant sought to recover the cost of repairs, and the Clause 16 sum (based on 30 days).
- At first instance, this claim was refused on the basis that as the Claimant had no proprietary interest in the car, the "loss was irrecoverable pure economic loss."

# Armstead v RSA Insurance Company Limited [2024] UKSC 6

- The Supreme Court concluded, bluntly, that this was simply wrong:

*Of the various reasons given for rejecting the claim, only one was in principle a legally valid reason. This was that the loss was too remote to be recoverable because the clause 16 sum was not a reasonable estimate of the hire company's likely loss of revenue while the car was off the road for repairs. However, the Defendant, on whom the burden of proof lay, did not plead or adduce any evidence to show that the clause 16 sum was not a reasonable estimate of the hire company's likely loss. In the absence of any such pleaded allegation or evidence, it was not open to the Court of Appeal to reject the claim on this ground. We would therefore allow the appeal and enter judgment in favour of Ms Armstead for the clause 16 sum of £1,560.*

# Armstead v RSA Insurance Company Limited [2024] UKSC 6

- The first appeal succeeded in respect of the repairs, but failed in respect of the clause 16 sum, on the basis that it was unjust for the Claimant to recover the full Clause 16 sum where only 12 days actual loss had been incurred.

- The Court of Appeal dismissed the appeal on the basis that:

*(i) that clause 16 of the hire agreement was an "internal arrangement" between a bailee and the bailor and, as such, could not be a basis for recovering losses from a third party; (ii) that clause 16 was not negotiated at arm's length and was not a "true independent agreement" between Helphire and Ms Armstead; (iii) that clause 16 did not represent a genuine and reasonable attempt to assess the likely losses to be incurred by Helphire as a result of loss of use of the hire car; (iv) that the clause 16 liability was a form of irrecoverable pure economic loss because it arose from the internal agreement between Helphire and Ms Armstead; and (v) that because clause 16 did not represent a genuine and reasonable attempt to assess the likely losses to be incurred as a result of loss of use of the hire car, the loss claimed was not reasonably foreseeable and was too remote to be recoverable.*

# Armstead v RSA Insurance Company Limited [2024] UKSC 6

DEKA CHAMBERS

- The sole requirement is that the sum claimed be a reasonable pre-estimate of the insurers actual outlay.

- It might be noted that the sums involved in this particular claim were wildly disproportionate to the effort put into the appeal. It is likely to be of defining importance in this area, however, for a large number of litigants.

# Thank you for your attention

contact our clerking team -

clerks@dekachambers.com

DEKA

CHAMBERS

www.dekachambers.com