

# Chapter 1: Introduction

## *Introduction*

This book is about credit-hire. Whilst it should appeal to anyone engaged in bringing or defending credit-hire claims, my target audience is anyone keen to understand more about the commercial and operational aspects of the industry rather than the legal challenges that regularly confront it. Hopefully, my words will fill a gap and shine a light on some of the idiosyncrasies and mysteries of the credit-hire world.

The market for credit-hire exists because of the predictable outcomes from a road traffic collision. Typically, a motorist who was not at-fault for an accident will instruct a credit-hire company (“CHO”) to act for them to recover compensation for the losses that flow from the negligence of the at-fault driver. To make the narrative easier to follow, I will always refer to the party that was not at-fault as a female and will call her Rosie<sup>1</sup> rather than the at-fault driver although I may also refer to her as the Claimant. As for the driver who caused the accident, the negligent at-fault party, I will refer to him either as Jim or the Defendant. Even though I may use the terms Claimant and Defendant, that does not necessarily mean that the dispute between Rosie and Jim following the accident has yet been litigated. Fortunately, most credit-hire claims settle before proceedings are started. Looking beyond the involvement of Rosie and Jim, I need to introduce a couple more actors. Both Rosie and Jim should both have motor insurance in place and so I have imagined two fictional insurance companies that I will refer to, where necessary, throughout the text. Those insurers are Rubrik Motor Insurance (“Rubrik”) and Unethical Motor Insurance (“Unethical”).<sup>2</sup> Using a name just makes it easier than continually having to refer to the insurer acting for the not at-fault party. Further, where I have referred in any worked example to a CHO, then I have created another fictional entity, Accidental Rental.

I mentioned earlier that a CHO usually becomes involved in the aftermath of a road collision because Rosie will be looking to recover compensation for any losses or damages she incurs because of Jim’s negligence. Those losses might include financial compensation for the loss of use of her damaged vehicle whilst it is being repaired, money that Rosie might use to hire a car so that she can keep herself in the position that she would have been in had the accident with Jim not occurred. Compensation for loss of use is usually determined by reference to the reasonable cost of hiring a replacement vehicle, like the one damaged, from a hire company in the local area. In practical terms though, the hire car has to be hired before any compensation is paid and so Accidental Rental will agree to act for Rosie and supply her with a hire vehicle on interest free credit until Jim, or his insurer, settles the claim for the

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<sup>1</sup> This should appeal to at least 50% of my potential audience

<sup>2</sup> Rubrik Motor Insurance and Unethical Motor Insurance are both a figment of my imagination. In the unlikely event that the names belong to, or are later adopted by, entities working in the motor insurance market, no linkage is intended or inferred.

hire charges. As well as losing the use of her car until it is repaired, Rosie might have suffered other losses following her collision and these will be pursued along with the recovery of the credit-hire charges. She might decide not to ask her motor insurer to deal with repairs to her car and so those other losses might include a claim against the at-fault insurer for the cost of repairs to her damaged vehicle, a claim for personal injury, a claim for loss of earnings and a claim for diminution in value of the damaged vehicle.

After almost 40 years pursuing credit-hire claims, I find it hard to name anything that insurers despise more. Even insurance fraud, which purportedly costs the general insurance sector £billions, does not generate as much heat as the battles that insurers wage with the credit-hire sector. Over my lengthy career, the battle lines along which credit-hire claims were drawn have been signposted by litigation, defined by precedent and fuelled by suspicion and mistrust. Defendant insurers rely upon a veritable army of solicitors, all of whom are keen to build profitable revenue streams by designing strategies that offer insurers a route to resist or reduce the fiscal impact of credit-hire claims. I struggle to think of any other service that has generated as much emotion as the fight against credit-hire apparently inspired by a clear determination to wipe out an industry. In support of that statement, I offer the following quote. It came from Neil Forsyth, a former solicitor at Morgan Cole solicitors, in a lecture he gave for the benefit of Allianz Cornhill in Luton on 24th October 2001 where he claimed that credit-hire was far from over but:

***“... we are approaching the final lap!... and, in two or three years, and subject to some work being undertaken by the Government in respect of an overhaul to the Consumer Credit Act, it is hoped that credit-hire will be over! Watch this space...”***

### ***A life in credit-hire***

I first experienced the need for credit-hire in 1981. My stationary car was hit in the rear and, behaving as I thought I was meant to, I sought help from my insurance broker, a nice bloke called Ian. He was happy to fill out the claim form and process my claim and he arranged for repairs to be carried out at the insurance company's approved repairer. However, when I raised the question of a replacement car, he told me that I would need to use the bus. That presented quite a challenge for me. At the time, I was a police officer, working shifts, in the West Midlands Police and, whilst Birmingham might have been well served by a functioning public transport network, I lived in rural Warwickshire which was not. There was absolutely no prospect of me using public transport and, even if I did live on a bus route, it would have been impossible to get into work for the early turn at 5.30am or to get home after 10.30pm if I was on the late shift.

Ever helpful, Ian suggested I might speak with a solicitor. He proved to be as much use as a chocolate fireguard. He told me that if I needed a car to get to and from work that I should go ahead and hire one. In the same breath he told me that I would have to pay the hire charges myself and then he would ask the insurer of the at-fault driver to recompense me. Of course, he also explained that there were no guarantees about recovering the cost of the hire and, even if he did make a recovery, he could not guarantee that he would recover the

charges in full. The options of either walking 12 miles to and from work every day or using a solicitor to pursue my claim for hire charges, seemed to be the only options I had. The trigger for a different outcome was my solicitor's proposal that I would have to pay him £500 on account if I wanted to instruct him as well as funding the cost of hiring a car for a fortnight.

Way back in 1981, it was clear that even though the Defendant insurer was obliged to indemnify their policyholder for the consequences of his negligence they could easily sidestep any obligation to deal with the innocent victim. They knew that it was expensive, inconvenient and fraught with risk for the man in the street to hire a car. They also knew that it was highly improbable that he would pay to instruct a solicitor to exercise his common law rights to obtain compensation. My gross monthly salary at the time was about £432. For me, the cost of hiring a car and instructing a solicitor to get my money back would easily consume several months of my police officer's salary.

### ***The birth of an industry***

I do not think that the obstacles I faced were any different than those faced by hundreds of thousands of other innocent motorists. Fortunately for consumers, although perhaps less so for insurers, the credit-hire industry has dramatically improved the opportunity Claimants now have to access mobility, to obtain legal representation to empower them to secure their rights at common law and to recover any damages arising after a road collision without having to spend a single penny. For better or for worse, I was a pioneer in the industry that appeared out of nowhere in the early 1980s and stayed an active player until I almost retired 37 years later.<sup>3</sup>

I was a pioneer in 1981 because I opted for a different approach. I registered a company which bought a used Volkswagen Passat from my brother. A day later, that company began trading as a car rental company. It did not have to wait long to find its first customer. It was a bit artificial really, but I entered into a hire agreement with a car hire company that I owned, agreeing to hire the Passat until my damaged car was repaired. The hire agreement recorded on its face that I had hired the car at a price comparable with the rate that Hertz or Avis would have charged had I hired a car at one of their Birmingham depots. When my own car was repaired, I returned the hire car and the hire company raised an invoice for its charges which I then sent, along with a covering letter, to the Defendant insurer. That letter set out my allegations against their policyholder. It also outlined a claim for the recovery of the hire charges I had incurred and asked them to reimburse my policy excess. In less than a month I received a cheque which included payment for the full amount of the hire period claimed. I must confess that it was a fortuitous result because I had no idea what I would have done if they had refused to pay.

It was at that point, however, that I figured that I might be on to something and, almost 40 years later, I think that I might have been right. So why write a book about it? In part it is

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<sup>3</sup> Amongst other things, I now supply consultancy services to some CHOs, the occasional insurer and, more often, to those financial institutions that invest in or lend money to them.

because the credit-hire industry has been subject to such intense criticism and, on many occasions, inappropriate censure and I wanted to try to put the record straight. That is not to say that those working in the credit-hire industry always have clean hands. Sometimes, the criticism was justified but, even then, it was often based on anecdotal evidence or was inspired and magnified by journalists writing with a hostile agenda at worse or a clear insurer bias at best. The more persuasive motivator, however, was that I have never managed to find an authoritative work that properly examines and chronicles the intricacies of the credit-hire marketplace. In an industry that is now 40 years old, has seen CHOs raise significant funding on both public and private markets, I came to the conclusion that there is a place for a textbook directed at those wanting to explore the strategic, commercial, financial and operational challenges which underpins an industry that now generates annual revenues of more than £1 billion.

### ***About this book***

Other than for putting events in context, I have chosen not to focus on the incredibly early years of the industry, the period from 1981 to 2001. It is a period that has as much relevance as ancient history for most of those working in the sector today. Whilst it is true that many of the legal precedents were determined during that period and those precedents have been the foundation on which the credit-hire industry has evolved, my real focus is elsewhere. I want to address the commercial, operational and strategic challenges rather than the legal environment in which credit-hire claims might be litigated.

Since 2009, the credit-hire industry has been the subject of unprecedented attention from regulators, from parliamentarians, from insurers and journalists as the establishment has conspired to curtail the activities of those entities that have engaged with credit-hire and personal injury claims. At times it has felt that Neil Forsyth's prognosis for the demise of the credit-hire industry was right, but it just came 20 years too early. More recently, the Government has altered the economic fundamentals which dictate how legal professionals and others can support the unfortunate and innocent victim of a road accident. Over the last 10 years, and especially after David Cameron opened a direct communication channel between his office and the insurance industry, the credit-hire industry has suffered from expensive and often misdirected investigation and scrutiny.<sup>4</sup> The House of Commons Transport Committee, the Competition and Markets Authority ("CMA"), the Claims Regulator, the Financial Conduct Authority ("FCA") and the Ministry of Justice ("MoJ") have all purported to explore the impact of credit-hire claims on the cost of private motor insurance and on the indemnity spend of the motor insurance industry. Whilst the credit-hire industry has responded to each of those investigations with clarity, unanimity and focus, the collective response from insurers has always been louder, although not necessarily any more valuable for the noise. There is definitely an information deficit that needs to be addressed.

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<sup>4</sup> David Cameron was a former Prime Minister who will probably be best forgotten for his alleged affection with livestock, leaving one of his children in a pub after a lunch in the Cotswolds and for his inspired decision to hold a referendum on leaving the EU.

With regard to credit-hire litigation, there is one authoritative and enduring volume of work which is indispensable and now in its 6<sup>th</sup> edition.<sup>5</sup> Tim Kevan and Aiden Ellis have co-authored the only book aimed at anyone who has any involvement with the credit-hire industry. They intended that their work would offer help both to those tackling the subject for the first time as well as to those experienced in its most intricate details. Their readership extends from garage and credit-hire company employees to insurance claims handlers, solicitors and barristers. From my perspective, *Ellis on Credit-Hire* belongs on the desk of anyone actively engaged in litigating credit-hire claims. However, as an author, my aspirations are somewhat different. I wanted to produce a textbook that covered the entire range of marketing, strategic, financial and commercial challenges that engage a CHO daily. I also wanted to explore the current opportunities available to a CHO and to consider the operational processes and highlight where there might be the ability to drive improvement. Whether it is the strategic challenge of understanding the size and composition of the market or defining a strategy to compete effectively and win business in a preferred channel; whether it is the administrative challenge of processing a referral and then managing a hire-period or proposing a protocol relationship with an insurer; or whether it is the unexpected problem of dealing with fraudulent claims or acquiring the skills to run a fleet of hire cars for profit. These are just a few of the elements that can challenge a credit-hire company working and I hope that the way I have addressed the issues will help those engaged in the credit-hire sector to do so more effectively.

I make no serious attempt at analysing the legal arguments. They are in a permanent state of flux and they have already been covered extensively and with great clarity elsewhere. I do, however, acknowledge the commercial and operational limitations that various precedents impose on a CHO. Instead, my focus has been on operational practices and the economic issues which both motivate and constrain the sector, and which have precipitated the tension between the credit-hire industry and insurers. I have explored the philosophy behind, and the role of the GTA Technical Committee, which oversees the Association of British Insurers (“ABI”) General Terms of Agreement (“GTA”), the protocol for settling hire claims outside the GTA. I have also considered alternate strategies pursued by certain CHOs that ignore the GTA in its entirety, preferring to pursue settlement based wholly on the remedies available at law. I hope that the result is an honest reflection of the credit-hire sector, enriched through a review of some common mistakes made by CHOs and an analysis of the various approaches adopted by Defendant insurers and their solicitors. To deliver on my aim I have considered everything that might confront a CHO from the first idea for a marketing strategy through to reaching a profitable settlement of a credit-hire claim. I have reviewed the market as it exists in 2020, considered the different strategic approaches from some of the key competitors and articulated a view about the sustainability of the multiple channels from which credit-hire referrals are generated. I have also looked at the market from the point of demand as well as supply. I have considered the philosophy of individual CHOs as they chase a reducing volume of leads and have also explored the motivations of those referrers capable of generating those leads. As a result of my research, I have categorised credit-hire competitors into one of three classifications; primary, secondary and

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<sup>5</sup> “*Ellis on Credit-hire*”, published by Law Brief Publishing.

small or niche suppliers. Adopting that approach provides an opportunity to consider what works best, for whom and why. It also helps to define the obstacles faced by individual CHOs and highlight the opportunities, or lack of opportunity, they have for growth. I have adopted a similar approach with referral sources. Showing a complete lack of imagination, I have classified referrers as belonging to tiers three, two or one and have suggested which of those three tiers individual referrers occupy and the effect that their approach to the market has on the fortunes of individual CHOs and how they might fare in the future. Each tier aligns individual referrers using common characteristics defined by their commercial and economic aims. They also define the basis of the relationship that referrers in those tiers will look for with individual CHOs. It is a helpful approach to looking at the market because it shows, for example, why relationships with tier one referrers are less desirable and less sustainable for CHOs than those in tier three.

Beyond the theory, the second part of the book follows the life of a claim from referral to settlement. At each stage, in what should be a mechanical process, I have set out the procedural challenges that a CHO might face, including the various countermeasures that an insurer might deploy to delay or avoid settling a claim. These are issues which will be familiar to larger CHOs, but they are also issues that every credit-hire company should be responsive to if they are to achieve success. Continuing that approach, I also examine the factors likely to inspire litigation where negotiation fails. Tracking the metaphorical journey of a claim through to litigation, I have also focused on the financial implications of litigation, the operational pitfalls of instructing solicitors and the difficulty of predicting the attitude of the courts to those involved in credit-hire litigation. Because of the attention that regulators have paid to the sector, I have also considered the work undertaken by the CMA and others and the impact it has had on the sector. To add some perspective, I have also looked at the resistance to tort claims from insurers in the United States and the more recent reaction to credit-hire claims in Australia. In Australia, credit-hire companies have a much larger geographic market than the UK but a far smaller population of accidents to service. The credit-hire industry has grown in Australia. In part that is because it has been easy for companies to emulate the business practice of their UK peers in the knowledge that much of the legal precedent that shaped the UK market has been routinely adopted by Australian courts. In effect, the credit-hire industry in Australia was a ready-made market where emerging CHOs did not have to face the 30 or more years of legal and regulatory conflict that shaped the credit-hire environment in the UK. However, applying the same logic in reverse, Australian insurers can also learn from decades of strategic thinking by their UK equivalents. That might mean that the Australian market for credit-hire is likely to become more challenging soon as the two markets align in terms of their maturity. However, there is another consequence of the credit-hire model evolving in two different jurisdictions, represented by a risk that recent adverse judicial decisions in Australia have started to penetrate thinking by regulators and the judiciary in the UK, something I explore in the concluding chapter. I have also analysed the competitive landscape in the UK, not just in respect of the credit-hire industry, but also in relation to those keen to disrupt the existing market, the potential impact on the future of the GTA and the sustainability of the credit-hire industry in its current form.

At times, the tension between insurers and CHOs has been visceral. In 2011, Lord Justice Aikens characterised it as a “saecular war”<sup>6</sup> which had engaged the parties for more than 30 years. I have, therefore, also focused on the economics of the sector. I make some suggestions for those responsible for managing the finances of a CHO and consider the sustainability of the sector in the light of regulatory and legislative challenges largely inspired by the insurance industries determination to neuter it. As you must expect, the perspective I have taken throughout this book is based on my own first-hand experiences. Those experiences are drawn from a lengthy career in the sector spanning almost 40 years. Between 1981 and September 2018, I have managed several successful credit-hire companies, the largest and most recent of which was Accident Exchange Group plc<sup>7</sup> which was listed on the Official List of the London Stock Exchange. I also have real world experience from the daily rental sector as both a shareholder, and as Group Marketing Director, of a very large privately-owned daily rental company.<sup>8</sup> In addition, and on behalf of the credit-hire industry, I have served as an executive member of two trade bodies. They were the Accident Management Association (“AMA”) and, following its merger with the National Association of Credit-Hire Operators, the CHO<sup>9</sup>. For several years, I was Chairman of both the AMA and the CHO and between 2005 and 2016 I also sat, together with other representatives of the credit-hire and the insurance industry, on the GTA Technical Committee.<sup>10</sup> I played what I hope was a valuable role on behalf of the CHO, in advancing the interests of the credit-hire industry in both written submissions and oral representations to the House of Commons Transport Committee, the Office of Fair Trading and subsequently the CMA, the Claims Regulator and the MoJ. I also sat on the CMA working party when they were considering potential remedies arising from their investigation into the Private Motor Insurance market.

I currently spend my time researching, consulting, writing, speaking at conferences and providing expert opinion to financial analysts engaged with existing and potential investors or funders in the sector as well as on issues associated with insurance claims involving credit-hire and fraud. In February 2018 I completed a four-year research project involving critical criminology and insurance fraud<sup>11</sup> for which I was awarded the degree of Doctor of Philosophy. Researching an issue and then writing 80,000 words about it before defending the conclusions with a panel of leading academics was one of the most intellectually challenging and satisfying things that I have ever done. I only hope that the objective rigour which underpinned that programme of research is clear in the way I have tackled the issues in this book. The book was written during 2019 and this edition was reviewed and first published in February 2020. As with any written work, the moment it was printed things change. Accordingly, I have suggested various online resources throughout the book. They each merit inclusion because of the frequency and quality of information they supply relating

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<sup>6</sup> Vasani Pattni and First Leicester Buses, Darren Bent and Highways Utilities Construction and Allianz Insurance [2011] EWCA Civ 1384.

<sup>7</sup> Subsequently renamed to Automotive and Insurance Solutions Group plc

<sup>8</sup> United Kenning Rental Group Ltd

<sup>9</sup> The Credit-hire Organisation

<sup>10</sup> The ABI General Terms of Agreement was a protocol that evolved in response to criticism by Lord Justice Tuckey of the volume of credit-hire litigation destabilising the court system in the 1980s

<sup>11</sup> Victim Inequality and Offender Impunity; the asymmetric outcomes of insurance fraud

## Credit Hire by Stephen Evans

to the topic of credit-hire. They include the websites of several Defendant law firms including Keoghs, DAC Beachcroft, Kennedys and Clyde & Co and are useful sources of information on a continually evolving market. In addition, I should add that I also publish articles and updates on my website and some of those involve legal, procedural, regulatory or practical developments in the sector.<sup>12</sup> Please feel free to bookmark those pages.

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<sup>12</sup> [www.96sae.com](http://www.96sae.com)