Inquiry Manager
Private Motor Insurance Market Investigation
Competition Commission
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**Submission of Evidence – Private Motor Insurance Market**

## 1. Background

1.1 Granite Financial Limited is the holding company for a number of related businesses providing access to a range of motor vehicle accident services from vehicle recovery, hire, repairs, medical rehabilitation and insurance. The main trading style of the company is CRASH, see www.crashservices.com. We have provided our services in Northern Ireland since 1996, and have assisted approximately 50,000 customers.

1.2 CRASH deals with all motor accidents **regardless of fault** i.e. we provide differing degrees of our services depending upon whether the person is deemed 'at-fault', not at fault or partially at fault.

1.3 The company was founded by the sole shareholder and Managing Director, Michael McKeown, who has been involved in the insurance industry since 1976 when he began as a high street motor insurance broker. In 1984 he founded Expert Information Systems Plc which developed software to assist in providing online quotations for motor insurance. The software was licensed by British Telecom and widely used in the UK and in Australia. In the 1990's 'Expert' provided underwriting services on delegated authority from fourteen UK motor insurers servicing schemes for motorists in the UK. The client base included Bank of Scotland, Abbey National, GRE, Vauxhall, BMW and Mercedes Benz and Porsche. In 1995 that business was sold to Provident Capital Plc.

1.4 CRASH is the leading brand name in its market in Northern Ireland and receives introductions from motor insurance brokers, vehicle repairers, roadside recovery agents, and the private motorist. The Directors and advisers of CRASH are attuned to the issues involved in the insurance market in Northern Ireland and in Great Britain. There are features of the motor insurance market in mainland UK which are not present in the Northern Ireland market and vice-versa.

## 2. Reason for Submission

2.1 Michael McKeown is a founder member and the longest serving executive member of the The CHO, the trade group for the credit hire industry who have made submissions to the OFT. The business of The CHO is focussed on UK mainland issues and does not deal with any Northern Ireland issues but decisions made by government, insurers and courts in mainland UK often have a carryover influence.

2.2 As stated (Para 1.3 above) CRASH's business model involves more than credit hire and repair. A direct submission to the Competition Commission is appropriate to raise awareness of other issues that should be considered during the market reference whilst reiterating some other points. CRASH believes that as a result of its experiences in Northern Ireland and the insight of its

Directors and advisers that it is well placed to provide relevant evidence to the Commission. Furthermore any potential resolution of the Commission that does not have an element of focus on Northern Ireland may bring in changes that are not appropriate for this jurisdiction.

### 3. Format of the Submission

This submission uses the reference numbers of the paragraphs as used in the OFT's publication of September 2012 named, '*Decision to make a market investigation reference'*. However, where additional issues arise these are dealt with in the summary at the end of this submission.

### 4. Submission on matters raised in the OFT's September 2012 MIR

**OFT Decision Para 2.6**

The insurers of ''at-fault'' drivers have no right or entitlement to control which services are provided to 'non-fault' parties. The common law sets out basic principles that victims are not compelled to put themselves in the hands of the tortfeasor ('at-fault' party), nor should their possession of insurance have any bearing whatsoever on their entitlement to make claims from the 'at-fault' party.

These basic rights should not in any way be infringed by the outcome of the Competition Commission's investigation into the behaviour of insurance companies.

It must be remembered that there is a difference between judicial practice and insurance industry practice. Whilst the latter can adapt and create opportunities for cost reduction that many of the commercial participants in the insurance market may agree to, it should never come at the sacrifice of the common law principles upon which tort law rests.

Insurers claim not to have any way of assessing the extent to which the costs are reasonable. This is not true; the judiciary at the highest levels have been called upon and have given clear guidance to the industry on how to assess reasonableness. Insurers simply chose to ignore the guidance as it is not in keeping with their desire to suppress the market for independently supplied hire and repair.

The so-called 'Basic Hire Rate' companies, such as Hertz, AVIS, SIXT etc advertise their hire charges in a manner akin to the low cost airlines that advertise a low price to entice customers. The price ultimately paid after a number of, legitimate, add-ons bears little resemblance to the alluring promise. Insurers point to the low-low advertised price as the market rate of hire. The Courts see through this stratagem and add on the other charges when making a comparison between the rates charged by 'Basic Hire Rate' companies and credit hire companies. The credit hire costs could not be recovered if they were not in line with the market rates.

As an illustration we can provide a copy of a forensic accountant's report prepared for a Northern Ireland High Court Appeal in early 2012. The report neatly shows the actual costs of the competing rates that were submitted by the defending insurers, that initially looked to be a fraction of our own.

Another issue is the assumption that an insurance company should have control over costs of repairs to the vehicle of their policyholder when their policyholder is 'at-fault'. Insurers have assumed control over the vehicle repair trade leading to a confirmed belief in the mind of the public and the repairers that insurers have the right to set and control the charges for repair. The repair trade should operate as a free market. It is distorted by the insurance industry. Certain practices employed by insurers fulfil the test of market detriment. This is more fully explained in **OFT Decision Para 2.9** below**.**

**OFT Decision Para 2.7**
The OFT merely says that the costs of hire and repair are higher than they might otherwise be because insurers make a choice as to whether to offer credit hire and repair. The choice is allegedly based on a desire to increase competitor's costs. The OFT does not say that credit hire is an inappropriate service. Indeed credit hire has been endorsed at all levels of the legal system. The Court of Appeal has been keen to point out the inappropriateness of the insurers who make offers of vehicle hire and repair services to non-fault parties.

The OFT acknowledges that the insurers have two reasons for making a referral to credit hire;
-increased income through fees generated and
- increasing competitors costs.
This demonstrates that the insurance industry is not actually concerned with customer care. In the event that a recommendation was made by the Competition Commission that restricted the common law rights of the public, the insurers could not be trusted to treat customers fairly and provide mobility and proper compensation to victims of accidents. Insurers did not meet the needs of victims until the credit hire sector filled the gap. The gap occurred by the inability and unwillingness of Insurers to provide the much needed service.

Up until circa 1980 two major insurers did provide replacement vehicles as part of their private car policies at an extra optional cost. With the increased commoditisation of motor insurance, these policies did not survive the downward pressure on rates and the accompanying removal or reduction of policy benefits. It is submitted that the market will not be able to reinstate motability options and that any legislative attempt will create a more unsatisfactory situation.

**OFT Decision Para 2.8**
The rates charged by credit hirers are in keeping with market rates for the car hire market. Where they are found to be above those rates the common law has deemed that where the consumer is impecunious that they should be allowed to recover the full cost of hire even if that cost is above the market rate. This is a noble principle which is in keeping with the desire to ensure that those who are the most vulnerable in society are not left disadvantaged and at the mercy of the insurance companies who have historically failed to offer assistance. In the traumatic aftermath of a motoring accident the insurer is equipped with power and knowledge. Such an entity should not be allowed, or assisted by legislation, to act in ways that fail to protect the common law rights of the individual.

Duration of hire is not a constant. Insurance companies seek to impose limits of the time for the use of a replacement car. Every case is different and this is why proving durations proves costly. The courts have set down guidelines for common sense approaches. These guidelines are being ignored by insurers because it conflicts with their settlement model that hire periods should be of broadly similar lengths in all cases.

**OFT Decision Para 2.9**
There are features of the insurance market which have kept vehicle repair costs at artificially, but apparently, low levels to the detriment of consumers, but also to the detriment of informed debate on this issue of proper repair rates. Credit repair rates reflect more closely the actual costs incurred in supplying repair services and nothing should be recommended by the Competition Commission that further restricts competition in the car repair market.

A comparison with car servicing and mechanical repair rates (which are arguably a lower skilled activity) will show that the rates for car body repair do not reflect the actual costs in the market. The independent repair trade is working for unsustainable rates of pay due to unfair practices by insurers

in the market. Insurers pressure bodyshops to reduce prices for labour, and to pass on trade discounts on parts supplied and as discovered by the OFT they devised a way to extract revenue from paint supplies, in a manner that increases costs to their competitors. The Competition Commission must reduce insurer's power to enforce their will on the independent repair trade.

The contractual obligation of insurers is to indemnify policyholders for the reasonable costs of repairs. It is the reasonable expectation of the policyholder that these repairs will be of quality and yet insurers are increasingly including policy terms to the effect that their appointed garages will fit used parts or non-genuine parts. Policyholders are not being made aware of these provisions.

It is for the repair trade to set the rates, not insurance companies. There is evidence that insurers allow different rates of pay to the same garage when the repair is 'non-fault'. These arrangements are calculated to allow the garage to subsidise with profitable work, the uneconomic work carried out for that insurer.

**OFT Decision Para 2.11**
The OFT conclusion that insurers are focussed on competitive advantage rather than customer service endorses the view that insurers cannot be left alone in this market to do the right thing by customers. A number of years ago the FSA abandoned a rule based regime for regulating the conduct of the general insurance market. The rules were replaced by a principle 'Treating Customers Fairly'. The evidence of continuing levels of complaints to the FSA Ombudsman demonstrate the issues.

**OFT Decision Para 3.13 and 3.14**
The GTA is evidence that the market can come to an agreement that creates more certainty and reduces costs. Such an agreement should not be made compulsory, as to do so would inhibit the common law rights of ;
-consumers who may have no desire to avail of either credit hire or insurer supplied hire through having the financial means and ability to make their own arrangements
-companies who wish to provide services in keeping with the common law rights to ensure they remain enshrined in the law and not eroded by the desires of commercial interests to decide what the victim should be entitled to.

A representative of Admiral, an insurer with multiple brand names, confirmed that they had trialled settling claims early without dispute under one of their brands whilst with another they fought every case. They discovered that they made greater savings by not disputing claims. This is the ethos of the GTA. However the market should not be bound to such an agreement.

**OFT Decision Para 3.15**
The arrangements that insurers have put in place, which look like they have access to cheaper rates come at a price to the open market. This issue needs to be challenged. Like the proverbial 'House of Cards', much of the rest of the comments in this MIR will fall as the root cause of the market distortion is unearthed I.e. the Insurance industry's long-term commercial strategy which acts to unfairly control prices in a market rather than to meet the obligation to indemnify for losses at reasonable **free market** rates.

**OFT Decision Para 3.19-3.20**
Where an insurance company negotiates a bulk buying rate with a supplier that rate should not be used as a reflection of the market rate. It is presumed that the OFT is pointing out that the insurer, who has a choice over which cost is incurred and chooses to encourage a more expensive route is the party who is causing the detriment in that situation. The detriment is not being caused by the

independent credit hire company who is acting for individual consumers at market rates. An individual consumer who chooses to arrange their own repair and replacement vehicle and who pays for it at market rates should not be prevented from recovering those costs as the common law rules demand he should.

**OFT Decision Para 3.21**
The OFT's statement is correct, that the focus is on **who** has control of the claims cost is the issue, however, it would be incorrect to make recommendations that would inadvertently place more control in the hands of the insurance industry.

**OFT Decision Para 3.22-3.23**
This issue is covered by the common law principles and does not need any new analysis. The courts have set tests for what should be done where the rates of hire are greater than the market rate and those costs are not recoverable over and above the market rate. The reality is that the rates of hire even though they do cover the risks of losing on liability etc, are usually in keeping with the market for mainstream car hire which does not include an element of costs for these services. This is the true reason why insurers cannot challenge the rates effectively. The debacle of the Autofocus expert witness company shows that the evidence on rates put forward by insurers does not reflect the reality. The MIR is into the insurance companies' behaviour and not car hire companies' behaviour.

**OFT Decision Para 3.24**
We would again reiterate that credit hire and repair is a service well endorsed by the judiciary at the highest levels and is meeting a market demand the insurers ignored until the space was taken up by others i.e. the credit hire organisations.

It is an absolute tenet of the common law that the injured parties are free to make their own choices about how to reinstate themselves after an accident. Many brokers understand that credit hire and accident management companies facilitate this in a way in which Insurers cannot. The broker retains clients by the level of service provided in the aftermath of an accident. That is fundamentally why they recommend these services.

Referral fee arrangements tend to be offered rather than sought by brokers. There is no evidence that brokers pass clients to independent claims advisors solely because they have been paid to make that recommendation. If there were no financial incentives brokers would continue to make referral to credit hire companies because it would provide superior levels of service and choice. It is right that the public should be afforded more protection from their insurers when a claim arises than currently exists.

Despite TCF principles insurers continue to find ways to avoid paying claims in full. Insurers are incapable of giving impartial advice to their policyholders on what they are entitled to reasonably claim from the insurer. The Competition Commission should be looking at ways to put control and power in the hands of the consumer rather than the insurer who has a disincentive to meet a claim in full. What is required is a risk assessment type process for the broker to complete which affirms the reason for choosing to recommend the service that they do which requires them to make some attempt to check the levels of ability and quality of service being provided by the independent claims company.

**OFT Decision Para 3.25**
There are cases that are more complex on liability where an early investigation by the hire company can be completed more quickly than by the insurer. The credit hire company can make a decision to provide assistance well ahead of the insurer.

This situation arises in a high number of straightforward cases where the insurer is;

- unable or unwilling to make an assessment on liability
- awaiting a claim form or other notification
- making indemnity enquiries
- confirming the extent of the claim as regards injuries etc
- setting of a reserve.

Insurers' decisions to dispute cases can have more relation to the quantum than the complexity of the liability aspect.

**OFT Decision Para 3.26**

To even begin to use this test as an assessment of the apparent effects of a credit repair claim on the market is to assume that the rate for an 'at-fault' repair is actually a fair one in the market and it is not. There are many practices of insurance companies around repair costs that have stifled competition. These practices are not unique to the UK and have in fact been banned or restricted in other jurisdictions. Any reference to the open market rate for car servicing, mechanical and warranty labour rates show that those rates are well in excess of those of car repairs. The market is not working well for consumers and the insurers are providing a lower quality service to consumers. The OFT say that evidence of this is not forthcoming and the cause of this lack of evidence is dealt with in 5.1.4 below.

**OFT Decision Para 3.33**

The OFT's assertion that savings will be passed on the same way as costs are, is ill founded. Insurance companies operate either by making underwriting profits or investment income. There is a greater incentive for an insurer to keep premiums high than there is to lower them more than is required to attract business. Some insurers subsidise motor to attract business, having, say a lower margin or loss leader motor policy that attracts the policyholder into a higher margin home policy. The entire basis for how pricing of risk actually operates and is related to premium levels would need to be looked at to enable confidence in the OFT's assertion. The entire OFT MIR focuses on what insurers are doing with regards to claims that arise but makes no recommendations on what the industry can do to prevent accidents e.g. through greater use of technology such as 'telematics'. CRASH is heavily invested in the promotion of accident prevention through telematics but is finding a lukewarm interest among insurers.

**OFT Decision Para 3.34-3.35**

The OFT again are not saying that credit hire rates are too high, only that insurers who currently chose to refer to credit hire when they had a cheaper option may be creating a detriment to the consumer. This is a very welcome statement but the insurance industry is pushing a media agenda which uses the OFT investigation to create the impression that the OFT does say that credit hire rates are too high. The Competition Commission investigation should continue to make this distinction clear and the CC should look at the other uncompetitive attributes of the industry.

**OFT Decision Para 3.36 – 3.47 Availability of Remedies**

An appropriate remedy is to be found with reference to Para 3.45 and judicial involvement. It is somewhat frustrating to read the comments that there is not enough judicial guidance. There is an abundance of guidance; the guidance does not suit the insurance industry's objectives. There are many common law protections for claimants **and defendants** in general but there some specific to credit hire and repair. The problem is not the lack of guidance; it is the lack of understanding or willingness to understand what already exists. It may also occur that judges who are not experts in this area of the law simply do their best to glean what they can from expert witnesses or counsel.

The Scottish Parliament intends to create a specialist Personal Injury court to ensure that the judiciary with the relevant expertise can specialise in such cases.

**OFT Decision Para 3.55**
The Household insurance market should be looked at by the OFT. There are uncompetitive practices similar to those which exist in the motor market, especially with regards to ''at-fault'' claims. These practices deserve detailed consideration and assessment.

**OFT Decision Para 4.21**
There are features of the market which may be producing lower costs but this is at the price of lower quality and unfair distortion of market prices. The issues need to be addressed in the round even if that means that costs and premiums rise. The OFT and Competition Commission should look at the fairness of business practices rather than cheapest price.

## 5. Additional Submissions

### 5.1 Claims processes detrimental to consumers

5.1.1 Insurance contracts are effected to ensure that policyholders have peace of mind that when an insured event occurs that they are able to reinstate themselves using the insurance funds they have paid into. Policyholders risk being taken advantage of when they make a claim from their policy of insurance, especially when they are at fault for the event.

5.1.2 It is imperative that policyholders have access to guidance and independent claims advice to ensure that they may challenge their entitlement. There is a degree of protection where a broker is involved. Brokers can however feel inhibited in challenging an insurer because of the trading relationship with the insurer and unfortunately there can be prejudice to the interests of the policyholders.

5.1.3 However, the growth in numbers of policyholders dealing with insurers writing direct business means that there is no one between the insurer and the policyholder to give impartial claims advice or to ensure that customers gets full and proper entitlement. AXA confirmed to a client's solicitor that they believe they owe no duty of care to ensure policyholders receive advice as they are not in the role of a professional advisor. The position articulated in the letter makes sense but policyholders do not understand this. Direct insurers should be obliged to refer their claimants to an independent advisor.

5.1.4 These situations arise at a time when the policyholder is under stress and when they are more likely to accept what they are being told rather than challenge. They may have no awareness of being misled. If they do feel abused in this way, they may be unable to make an FOS complaint or take a small claims action due to perceptions of the 'hassle' involved. A number of practices go on that are detrimental to policyholders but the issues are not well enough publicised.

5.1.5 Clear examples from CRASH's records, include insurers misleading policyholders about the valuations of their vehicles in 'write-off' situations. In a recent case, the insurer told the customer that their staff engineer had assessed the vehicle as being worth £2800, yet after strenuous efforts a copy of that engineer's report was obtained indicating a figure of £3150.

5.1.6 In another case, a customer had been charged an additional £100 excess by his insurer for wishing to use a garage of his own choice rather than the insurer nominated garage. After this was challenged the insurer agreed to reimburse him but also it was discovered that they had charged

him an additional £200 two years earlier and they reimbursed him for that also. This would not have come to light without CRASH being willing to help.

5.1.7 It is normal practice for insurance companies of 'at-fault' parties who capture the repair of 'non-fault' parties into their repair network that no advice is given on additional losses such as diminution in value. Thousands of vehicle owners are under compensated as a result.

5.1.8 Insurance company 'approved repairer schemes' are contrary to Competition law. The safeguards, via undertakings given by the insurers to the OFT many years ago, are not being respected. Insurers undertook to give policyholder's freedom of choice of repairer. In practice a variety of tactics are employed to steer policyholders towards their approved repairers. These tactics include;
- slandering the policyholders choice of garage
- imposing limitations of cover when using 'non approved' repairers
- increasing excess
The net result is that the undertakings given to the OFT are ignored and that policyholders do not get their choice of vehicle repairer.

5.1.9 The largest motor insurer in the Northern Ireland market, AXA, has a limit on windscreen cover of £150 less a £75 excess (net £75) where the policyholder chooses his own windscreen repairer, but cover is **unlimited** where an 'approved repairer' is selected. This condition clearly drives trade into the' approved repairer' and away from the 'non-approved'.

5.1.10 Some household policies stipulate that the settlement amount agreed with adjusters will be reduced by 10% where policyholders make their own choice of builder or home repairer.

### 5.2 Approved Repairer schemes unfair to the repair industry

5.2.1 The operation of the approved repairer schemes works against the interests of the owners of vehicles. The scheme is not solely focussed on the cost of labour, paints or parts. Economies are made by the choice of repair method. It is the insurer's preference that the repairer uses the most expedient method irrespective of the effect on the future value of the vehicle. The interests of the insurer are set above the interests of its policyholder. The vehicle is the property of the policyholder and only a suitably experienced repairer (with the benefit of independent advice if required) should make decisions on the appropriateness of repair methods. The insurer should be in the background ready to meet the costs but should have no say over what those costs should be. It is prima facie anti-competitive for one industry to control the costs in another.

5.2.1 The approved repairer schemes are also used by insurers to exert excessive downward pressure on repair rates in the wider market. There is evidence in Northern Ireland that the insurers insist on one rate of labour across the entire market regardless of the expertise or experience or quality of premises and equipment that a bodyshop possesses. Insurers will pay a single operative who works from a shed at his house the same rate as the repairer in the major prestige dealership with the latest technology and facility. It cannot be correct that the repair labour rate is the same across an entire industry and across an entire country.

5.2.2 The Northern Ireland Bodyshop Alliance has commissioned a recent survey which shows that bodyshops cannot operate at the rates that insurers are offering. The independent trade will cease to be viable if the stranglehold that insurers have is not removed. Evidence of these tactics is slowly emerging but in Northern Ireland the market is too small for repairers not to feel intimidated by the bullying tactics of insurers. The bullying is done on the ground by appointed assessors or by claims

staff who slander the repairer businesses to the policyholders. The Competition Commission should find a way to take evidence from the repair trade in a way which did not expose individuals.

### 5.3 International endorsement for our submissions on anti-competitive behaviour in approved repairer schemes

Whilst the Competition Commission must look at UK laws, it is important to be informed of the existence of these issues in foreign markets. Several countries have taken action to curb and ban the insurers' approved repairer schemes.

For example in the United States, see as far back as The 1963 Consent Decree, and the practice is still banned in several states, although insurers continue to flout the regulations.

We also believe the same to be the case in Australia. There may be other jurisdictions with similar concerns about the behaviour of insurers and we would ask that the Competition Commission take soundings at the very least throughout the EU to see if other countries have remedies to recommend to curb practices which are limiting choice and quality for consumers.

We accept that there is limited complaints on this issue and we say that this is regard to a lack of awareness by customers as to what to do to make a complaint and also how to and that the personal cost is too high in terms of time and also a fear that the insurer can withhold cover in subsequent years.

Again a call for evidence and greater awareness of the issue may bring about more evidence.

## 6. Conclusion

CRASH is willing to provide further assistance to the Competition Commission in relation to these submissions and we feel very strongly that there are wider issues that have not been fully fleshed out in the market study and we would wish to urge the Competition Commission to take the opportunity to have a very detailed and wide ranging investigation into all aspects of motor claims and not just the process of where there is a non-fault accident. There are many other issues of concern that will show that greater availability of independent claims handling advice is required.

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