COMPETITION COMMISSION

PRIVATE MOTOR INSURANCE MARKET INVESTIGATION

Background to claims management process

Introduction

1. This working paper provides an outline of the claims management process.

2. The claims management process starts once a road traffic accident (RTA) has happened and usually involves repair to damaged property (eg vehicles or infra-structure) and/or compensation for any injuries and/or losses caused (eg personal injury (PI), vehicle write-offs, loss of vehicle use or loss of earnings). In many cases, the costs incurred in repair and compensation are covered by private motor insur-ance (PMI) and insurers are therefore closely involved in the claims management process.

3. This paper first provides a summary of the volume and value of PMI claims and then presents an overview of the claims management process, including the provision of vehicle repair and the provision of temporary replacement vehicles (TRVs) in relation to PMI (ie car (not motorbike) insurance for non-commercial customers).

Background on volume and value of PMI claims

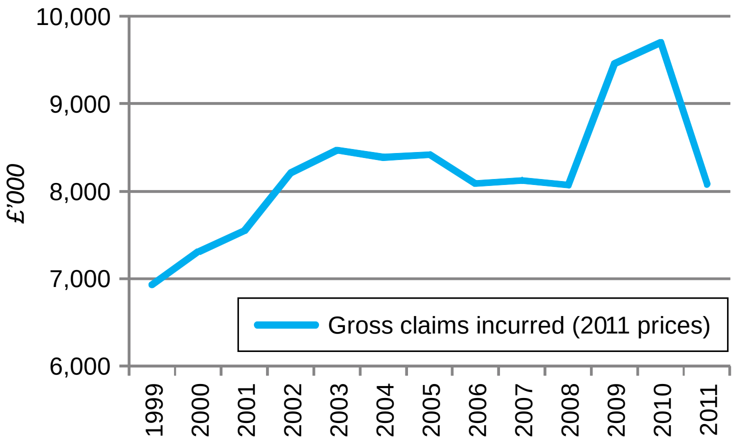
4. According to Datamonitor, total PMI claims costs were £9.3 billion in 2010, having increased by 8.7 per cent from 2009 (see the working paper ‘Background to PMI (insurers, brokers and PCWs)’. Datamonitor stated that this increase was the result of rising claims relating to PI, despite road traffic casualties declining due to cars and

roads getting safer.[1] Datamonitor also reported that the average PMI claim in 2010 was £2,541.

5. The ABI reported that, in 2011, PMI claims costs fell to £8.1 billion,[2] which was more in line with the annual level of claims through most of last decade (as shown in Figure 1, which shows gross PMI claims in the period 1999 to 2011 based on ABI data).

FIGURE 1

Gross PMI claims incurred in the UK



Source: ABI.

6. Table 1 shows data from Mintel on the number of claims and claims frequency. The table suggests that there were 3.3 million PMI claims in 2011, down from 4.4 million in 2006; and that the frequency of PMI claims (ie the number of claims in a year as a percentage of the number of insured cars) has declined from 18.9 per cent in 2003 to 14.2 per cent in 2011.

[1] Datamonitor, *UK Private Motor Insurance 2012*.
[2] ABI, *UK Insurance Key facts*, 2012.

TABLE 1 **Total number of private car insurance claims notified and claims frequency, 2003 to 2011***

	Exposure in vehicle years m†	*Annual change %*	*Number of claims notified m*	*Annual change %*	*Claims frequency %*
2003	20.9	1.5	4.0	1.5	18.9
2004	21.9	4.8	4.1	3.9	18.7
2005	23.6	7.4	4.3	3.7	18.1
2006	24.6	4.5	4.4	3.9	18.0
2007	24.4	–0.7	4.3	3.1	17.5
2008	24.0	–1.9	4.0	–6.7	16.7
2009	24.0	0.1	3.9	–3.7	16.0
2010	23.6	–1.9	3.6	–5.4	15.5
2011 (est)‡	23.4	–0.5	3.3	–8.7	14.2

Source: Mintel.

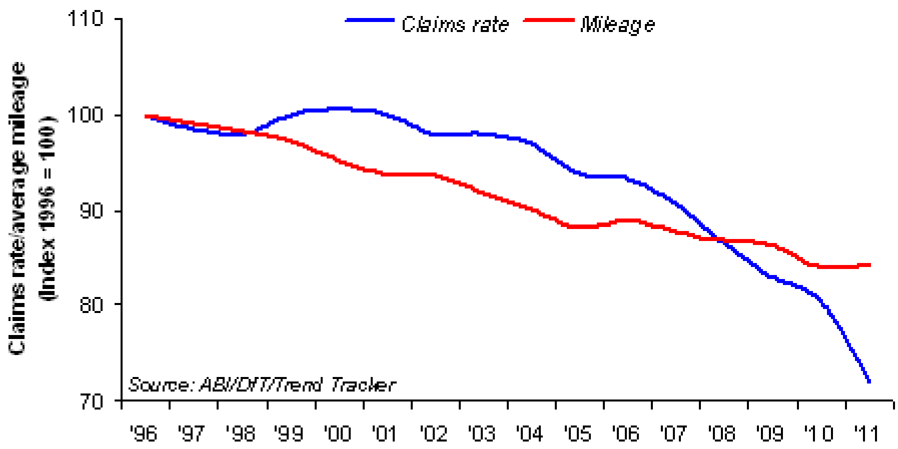
*The table covers private cars and excludes motorcycles and other personal vehicle claims.
†Exposure in vehicle years is a guide to the number of vehicles insured, measuring the period of time a policy is in force during a given year.
‡Mintel's estimate is based on data from the first three quarters.

7. We note that a decline in the number of PMI claims over several years (see Table 1) but a constant total claims cost (see Figure 1) is consistent with average claims costs having increased over the period (see paragraph 4).

8. One of the main reasons for the decline in claims frequency is that the average annual mileage of cars in the UK has fallen. Figure 2 shows the claims rate plotted against annual mileage (both indexed to 1996).

FIGURE 2

Insurance claims rate versus average annual mileage*



Source: www.trendtracker.co.uk/blog/2012/10/the-uk-car-body-repair-market.

9. Table 2 shows an analysis by the ABI of car insurance claims costs as a percentage of premium income in 2011. It shows that whiplash and other PI claims together accounted for 35 per cent of premium income in 2011, while repair costs and TRV costs together accounted for 29 per cent of premium income.

TABLE 2 **Car insurance claims costs**

per cent

Type of cost	*Estimated percentage of premium income 2011*
Repair and replacement vehicles	29
Whiplash claims	20
Other personal injury claims under £500,000	15
Personal injury claims over £500,000	9
Uninsured drivers	3
Theft	2
Staffing and overheads	26

Source: ABI.

Note: The numbers add to more than 100 per cent as claims costs exceeded premium income.

10. One insurer ([✂]) told us that PMI claims costs could be divided as follows:

- [✂] per cent related to claims by non-fault claimants (including PI and third party claims);
- [✂] per cent related to claims by fault drivers; and
- [✂] per cent related to other claims including fire and theft and windscreen claims.[3]

11. GIMRA (the General Insurance Market Research Association) reported that, in 2011 and 2012, accidents were the reason for approximately [✂] of claims made under comprehensive insurance policies.

12. We focus in this paper on vehicle collisions rather than other collisions (eg collisions with infrastructure (such as trees and walls) or collisions with bicycles or pedestrians)

[3] Based on [✂] claims experience.

as vehicle collisions account for the majority of PMI claims costs and because our theory of harm (ToH) 1 focuses on the provision of services to non-fault parties.

The claims management process

13. Following an RTA involving a vehicle collision, each driver involved is required by the Road Traffic Act 1988 (RTA 1988) to stop and, if required by any person on reasonable grounds, to give their name and address (and also the name and address of the owner of the vehicle) and the registration number of the vehicle. If any person involved in the RTA has been injured, the driver must also present his certificate of insurance at the time of the accident to *(a)* any person who has required the driver to produce it on reasonable grounds, or *(b)* a police officer. If the driver does not produce his certificate of insurance (this would be the case, for instance, where the other driver is injured and not in a position to exchange certificates of insurance), he must report the accident to the police as soon as is reasonably practicable and, in any case, within 24 hours of the occurrence of the accident.

14. In this section we describe how fault is typically established, the claims management process for fault and non-fault claims, including the provision of vehicle repairs and TRVs, and vehicle write-offs.

Establishing fault

15. The drivers involved in a vehicle collision may, or may not, know or agree at the time of the RTA which driver is the fault driver and which driver is the non-fault driver. The drivers' insurers need to identify which driver caused the accident in order to establish which insurer will need to pay any resulting claims (eg for repair costs and TRV costs). Drivers usually contact either their insurer or the broker which sold them their

insurance policy in order to inform them of the accident and to describe the circumstances of the accident, which is called the first notification of loss (FNOL).[4]

16. The claims handler at the insurer or the broker will seek to make an immediate assessment of whether its customer is the fault or non-fault driver. In order to establish fault, claims handlers ask customers relevant questions based on typical accident scenarios, types of accident damage, the accident scene and the highway code. If an immediate assessment is not possible, the claim will be passed to specialist claims handlers for further investigation, which may include gathering witness statements or other evidence from the scene of the accident.

17. We found that, at FNOL, insurers on average established fault in 75 per cent of cases; 20 per cent of cases were categorized as split liability; and 5 per cent of cases were not decided. Evidence from the ten largest PMI insurers suggested that the categorization of a driver as non-fault changed following FNOL in between 2 and 12 per cent of cases.

Fault claims

18. The legal entitlements of the fault driver involved in an RTA are as stipulated in their PMI policy.

19. Following a vehicle collision, the fault driver's vehicle may require repair and, if the repair means that the vehicle will be unavailable for a period, the driver may also require a TRV. If the fault driver has a comprehensive insurance policy then they are generally able to make a fault claim under their own insurance policy to cover the

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[4] In some cases, drivers will, instead of contacting their insurer or broker, contact another party such as a claims management company (CMC) or the car dealership from where they bought their car, or will be contacted by the fault insurer (see paragraph 26).

cost of repair to the vehicle, subject to a pre-agreed excess. Around 90 per cent[5] of insurance policies in the UK are comprehensive insurance policies. A comprehensive insurance policy will also sometimes include the provision of a TRV to the fault driver (often provided by the repairer) but, in other cases, a TRV will only be provided if TRV cover has been purchased as an add-on to the basic PMI policy (either for a basic courtesy car or on a like-for-like basis).

20. Fault repairs are usually managed by the fault insurer, sometimes using an out-sourced claims management company (CMC). The owner is entitled to have their vehicle repaired at a repairer of their choice but, under most PMI policies, the insurer retains a right to approve the repair estimate prior to the work being undertaken. Some PMI policies contain incentives for fault claimants to use the insurer's approved repairers, such as the provision of a courtesy car or the repairs being guaranteed only if the repair is carried out by an approved repairer, or the payment of an additional excess if a non-approved repairer is used.

21. If the fault driver does not have comprehensive insurance (ie only third party cover or third party, fire and theft cover), they will not be able to make a fault claim for their own loss and will need to pay for the repair of their vehicle and any TRV provision.

Non-fault claims

22. The legal rights of the non-fault driver involved in an RTA arise under tort law and entitle the non-fault driver to be put into as good a position as they would have been in had the accident not occurred, at the cost of the fault driver.

23. The non-fault driver may claim compensation from the fault driver to cover:

(a) repair of vehicle damage (see paragraphs 35 to 41);

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[5] Mintel, *Motor Insurance UK*, March 2012, p77; *UK Private Motor Insurance 2012*, Datamonitor, Table 1, p30.

(b) the reasonable costs of car hire, provided the reasonable need[6] for an alternative vehicle can be established, which, in practice, usually involves the provision of a TRV on a like-for-like basis for as long as is reasonably necessary, subject to the non-fault claimant's duty to mitigate their loss (see paragraphs 42 to 44);[7] and

(c) in the case of a write-off, a cash payment equivalent to the pre-accident value of the vehicle (see paragraphs 45 to 48).

24. The non-fault driver is also entitled to compensation for PI (eg damages for pain, suffering and loss of amenity, and the costs of care) and other consequential costs (such as loss of earnings, vehicle recovery and storage, public transport costs, etc).

25. Although the legal systems differ slightly between the UK jurisdictions (England and Wales, Northern Ireland and Scotland), the differences are not significant in relation to most areas of the claim management process, although they may result in variations in the ultimate claim costs.

Parties who may be involved in non-fault claims

26. Several parties might be involved in a non-fault claim process, including the non-fault broker, the non-fault insurer, the fault insurer, a CMC, a repairer and a TRV provider (eg a credit hire company (CHC)).[8] These parties might get involved in the claim management process in various ways:

(a) the non-fault driver is likely to contact their insurer or broker immediately after the accident, but might also contact a repairer or car dealership;

(b) the non-fault driver might be contacted by the fault insurer, in an attempt by the fault insurer to 'capture' the non-fault driver; and

[6] In the case of a private individual who has lost access to their vehicle following an RTA, the scenarios in which they would clearly not have need for an alternative vehicle are likely to be relatively limited (eg because they have access to another vehicle or because they are on holiday abroad for the period in which their own car is unavailable).
[7] The hire duration is usually determined by the repair duration.
[8] Others might also be involved, eg the emergency services, vehicle recovery providers, salvage firms, car dealerships, legal expenses insurers, etc.

(c) other service providers, such as CMCs and CHCs, might contact the non-fault driver following a referral from another party (eg the non-fault insurer or broker, a repairer, a vehicle recovery provider, the emergency services, etc).[9]

27. Our survey of non-fault claimants (see the working paper ‘Survey report’) found that, following an accident, 68 per cent of non-fault claimants first contacted their own insurer; 11 per cent had first contact with the fault insurer; and 20 per cent had first contact with another organization such as a garage, vehicle recovery provider or the police. We found that 84 per cent of non-fault claimants were proactive and made the first contact, rather than being contacted by another party.

Different claims management processes according to how claims are made

Claims by a non-fault claimant managed by their own insurer

28. When a non-fault claimant claims under their own insurance policy, the non-fault insurer will settle the claim in accordance with the terms of the policy and will then seek to recover damages from the fault insurer under the principle of subrogation. Subrogation allows an insurer, once it has indemnified its policyholder (the insured), to benefit from the rights of the insured in relation to the loss that the insurer has indemnified. The claims that are received by fault insurers from non-fault insurers are called ‘subrogated claims’.

29. When a non-fault claimant claims under their own insurance policy, some insurers require the claimant to pay the policy excess, although this can be recovered subsequently from the fault insurer.[10] Some non-fault insurers will treat the claim as a fault claim until the claims cost has been recovered from the fault insurer, with the

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[9] Where one of these parties provides some but not all of the claims management services needed by the non-fault claimant, the party may pass the details of the claimant to other parties which provide other services (eg a repairer might perform a repair but pass the claimant’s details to a CHC).

[10] On occasion, if the non-fault insurer is satisfied that the customer is not responsible for causing the accident, it may decide to waive the excess and to keep the no-claims bonus unaffected because it believes the costs can be recovered from the fault insurer.

effect that the non-fault driver may temporarily lose their no-claims bonus and may pay a higher premium if their policy is renewed during this period.[11]

30. In order to be restored to their pre-accident position, the non-fault claimant is entitled to recover from the fault insurer all reasonable costs of repairs and the reasonable cost of a TRV, subject to need (see paragraph 22). The non-fault claimant has the right to choose the provider of each of the services required. However, in practice, where a non-fault claimant claims under their own insurance, the non-fault insurer will typically manage the provision of services to the claimant by third parties (eg repairers or TRV providers). We consider under ToH 1 the separation of cost liability (ie the fault insurer) and cost control (in this case, the non-fault insurer); and we consider under ToH 2 the separation of the beneficiary of post-accident services (ie the claimant) and the procurer of them (in this case, the non-fault insurer).

31. CMCs/CHCs told us that, in the past, when insurers paid directly for the services they provided to non-fault claimants (ie under the old 'knock-for-knock' regime), the provision of TRV services to claimants was poor and often below a claimant's legal entitlement. CMCs/CHCs said that the emergence of credit hire had improved TRV services significantly for consumers. We did not hear views to the contrary, though we were told that this higher level of service to non-fault claimants was now the norm, regardless of whether the service was provided by a CMC/CHC or by the fault insurer (ie on a captured basis).[12]

Claims by a non-fault claimant managed by the fault insurer

32. Because the fault insurer bears the cost of a non-fault claim, it is usually interested in providing claim management services directly to the non-fault claimant in order to

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[11] We note that, even when liability is settled, a non-fault claimant may still see an increase in their PMI premium as a result of the accident, as insurers may perceive the driver to be a higher risk.
[12] We consider whether non-fault claimants receive a poor TRV service in the working paper 'ToH 2: Underprovision of TRVs'.

control these costs better. Typically, the fault insurer will seek to obtain the contact details of the non-fault driver from their fault customer and will contact the non-fault driver directly in order to try to 'capture' their claim.[13] Our survey of non-fault claimants found that in 51 per cent of cases when the non-fault driver did not contact their own insurer following an RTA, the reason given was that the fault insurer had already contacted them. The non-fault claimant is not obliged to accept an offer of services from the fault insurer, even though the fault insurer might be the first party to make contact.

33. We discuss under ToH 2, among other things, whether the incentives faced by the fault insurer might lead to the underprovision of post-accident services to non-fault claimants.

FNOL to a broker

34. If a non-fault claimant purchased their PMI policy though a broker, they will often make their FNOL to the broker rather than the insurer as the policy documentation will be in the broker's name. In these circumstances, the broker is likely to refer the non-fault claimant either to the non-fault insurer or to a CMC/CHC to provide claim management services.

Non-fault vehicle repairs

35. When the non-fault claimant's vehicle has been damaged, they will be entitled to either *(a)* the repair of their vehicle (or, more precisely, to the diminution in value of the vehicle due to the accident, which is generally assessed by reference to the reasonable cost of repairs),[14] or *(b)* if the cost of the repair is higher than the pre-

[13] This is also sometimes called 'third party intervention'.
[14] We note that there may still be a diminution in value after the repair has been completed as a result of the vehicle having an accident history. We were told that some CMCs were willing to pursue claims on behalf of non-fault drivers for this loss but that such claims were rare.

accident value of the vehicle, the pre-accident value of the vehicle in cash (ie the vehicle is a write-off (see paragraphs 45 to 48)).

36. Non-fault repairs are usually managed by the non-fault insurer, by a CMC or by the fault insurer (if the non-fault claim is 'captured'). Accordingly, the non-fault claimant might receive repair services from any one of the following:

(a) a repairer of the non-fault claimant's choice (whether captured or not);

(b) a repairer to which the non-fault claimant is referred by the non-fault insurer in which case the repair would be carried out either by:

(i) a repairer owned by the non-fault insurer;

(ii) a repairer in the non-fault insurer's approved repair network, which is dedicated to the non-fault insurer (ie it does not perform work for any other work provider); or

(iii) a repairer in the non-fault insurer's approved repair network, which is not dedicated to the non-fault insurer (ie it also performs work for other work providers);

(c) a repairer to which the non-fault claimant is referred by a CMC (with the same sub-categories as *(b)*); or

(d) a repairer to which the non-fault claimant is referred by the fault insurer (with the same sub-categories as *(b)*).

37. Whichever party manages the claim, it will usually require the repairer to submit a repair cost estimate for approval. For a non-fault insurer or CMC, this is important to ensure that the repair costs are 'reasonable', as 'unreasonable' costs may be challenged by the fault insurer and not be recovered in full; for a fault insurer which has captured a non-fault claim, it will wish to minimize the costs incurred.

Repair cost estimation software

38. Repair cost estimates are usually prepared by estimating systems which calculate the hours required to complete a repair job, using manufacturers' or Thatcham repair times, and specify the parts and paint needed in a repair and their cost. Work providers (eg insurers or CMCs) will have agreements with repairers which specify the remaining variables, eg the labour rate and the discounts for parts and paint off the system-generated price.

39. The two most commonly-used repair cost estimating systems are Audatex and Glassmatix. Most insurers which require or recommend their approved repairers to use a certain repair cost estimation system specify the use of Audatex. In 2009, Auto Body Professionals (ABP) reported that around 50 per cent of repairers used the Audatex system.

Credit repair

40. When a CMC manages a non-fault vehicle repair (whether following a referral of the customer or having attracted the customer directly), it may instruct the repair and only subsequently seek to reclaim the cost from the fault insurer, so assuming the credit risk of the repair.[15] This would be a credit repair (similar to the way in which a CMC/CHC might offer credit hire (see paragraph 43)).

41. The advantage of credit repair to non-fault claimants over the repair being performed by their own non-fault insurer is that no policy excess is payable (though this could be reclaimed subsequently from the fault insurer) and the no-claims bonus is not put on hold until the fault insurer settles the claim (see paragraph 29).

[15] Under the terms of a credit repair agreement, the customer is ultimately liable for the costs of the provision of credit repair services should the CMC be unable to recover the costs from the fault insurer. However, we understand that CMCs rarely seek to recover costs from non-fault customers.

TRVs for non-fault drivers

42. If the non-fault claimant's vehicle is temporarily unavailable (generally due to repairs), the claimant may seek recovery for the temporary loss of use of their vehicle. The non-fault claimant may recover the reasonable costs of car hire, provided the reasonable need for an alternative vehicle can be established, which, in practice, usually involves the provision of a TRV on a like-for-like basis for as long as is reasonably necessary, subject to the non-fault claimant's duty to mitigate their loss (see paragraph 23*(b)*).[16]

43. TRV services can be provided to non-fault claimants under a credit hire or direct hire agreement. Credit hire is where a TRV is supplied on credit to the non-fault claimant by a CMC/CHC[17] and the cost is subsequently recovered from the fault insurer; direct hire is where a TRV is supplied either by the fault insurer[18] or by the non-fault insurer, in the latter case often pursuant to a bilateral agreement between the non-fault insurer and the fault insurer, with the costs recovered from the fault insurer.

44. When non-fault claimants claim under their own PMI policy, they typically receive a TRV in accordance with the terms of their policy, which may be a courtesy car from the non-fault insurer's repairer (if the non-fault insurer is also managing the customer's repair) or, where the customer has purchased additional cover, a like-for-like TRV from the non-fault insurer's direct hire TRV provider.[19] On occasion, if the non-fault insurer is satisfied that the customer is not responsible for causing the accident,

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[16] A non-fault driver can only claim the costs of credit associated with a credit hire if they can demonstrate that it was reasonable in the circumstances to hire the TRV on credit (ie the customer is impecunious). However, the assessment of what the tort law entitlement requires in a given case will be informed by the specific facts of that case, which, in view of the nature of the 'impecuniosity test', may lead to some practical difficulties for CMCs/CHCs in assessing whether a non-fault customer requires a TRV on credit terms.

[17] Credit hire usually requires the non-fault claimant to enter into a credit agreement with the CMC/CHC, under which (as for credit repairs (see the footnote to paragraph 40)), the customer is ultimately liable for the costs of the TRV should the CMC/CHC be unable to recover the costs from the fault insurer. However, CMCs told us that they rarely sought to recover costs from non-fault customers.

[18] When a fault insurer captures a non-fault claim, the TRV is usually provided under direct hire, or the non-fault claimant might receive a TRV from the repairer.

[19] We discuss how the potential disadvantages for non-fault claimants from claiming under their own PMI policy could lead to consumer harm in the working paper 'ToH 2: Underprovision of repairs'.

it might provide a vehicle of a higher class (compared with the customer's contractual entitlement) because it believes the customer is entitled to it under tort law and therefore the cost of this vehicle can be recovered from the fault insurer.

Write-offs

45. A vehicle is deemed to be a write-off when:

(a) the estimated cost to repair the vehicle exceeds the estimated pre-accident value (PAV) of the vehicle less any costs that could be recovered for its salvage (the estimated salvage value); or

(b) where the vehicle is so significantly damaged to render the vehicle unable to be repaired (eg flood damage or in some cases where a vehicle has rolled over).

46. If a vehicle is being written off, a customer can elect to retain the vehicle or to give it up to the insurer or CMC managing the claim (which will then arrange for it to be taken away by a salvage company). The payment made to the customer by the insurer differs according to whether or not the customer retains the written-off vehicle, as follows:

(a) If the customer gives up the vehicle, they will receive a payment of the agreed PAV of the vehicle.

(b) If the customer chooses to retain the vehicle, they will receive a payment of the agreed PAV of the vehicle less the estimated salvage value.

(c) In a fault claim (and in some own-insurer non-fault claims), the customer will receive a payment in accordance with *(a)* or *(b)*, as applicable, less the amount of the excess in the PMI policy.

47. Non-fault insurers and CMCs will seek to recover from the fault insurer the agreed PAV and any other charges they incur (eg vehicle storage and collection costs), less the estimated salvage value.

48. We discuss vehicle write-offs in more detail in the working paper ‘ToH1/2: Vehicle write-offs’.