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Dear Sir,

I am writing in my capacity as Managing Director of Kindertons Accident Management (KAM) to outline our response to the Competition Commission's (CC) investigation into the private motor insurance industry, with focus on the 'Overcosting and Overprovision of TRVs', and 'Underprovision of TRVs' working papers.

KAM would be pleased to discuss the content of this response in further detail with members of the CC panel or provide additional information or data if required. This response should be read in conjunction with previous information submitted to the investigation.

Yours sincerely,

Shaun Ellison  
Managing Director, Kindertons Accident Management

## Executive Summary

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- Credit hire meets an important consumer need within the market, fulfilling the legal rights of non-fault drivers to a temporary replacement vehicle
- Credit hire and direct hire are completely different models and too much emphasis on comparing them will distort the CC's findings. Discounted credit hire rates agreed within the GTA are based on the basic hire rate, whilst direct hire is based on high volume sole supplier arrangements, which underlines the difference between the models
- Credit hire inevitably lasts longer than direct hire on average because liability still needs to be established which can be complex. Despite this, KAM's efficient process ensures this is resolved relatively quickly
- Use of the term 'overcosting' when referring to credit hire is inappropriate and has been fuelled by comparing the model with other unique solutions and unreliable evidence supplied by Autofocus to insurers
- During a period of insurance premiums fluctuating, credit hire has been ever-present in its current form. The added cost to insurance premiums of credit hire is relatively insignificant compared with other more pressing issues such as fraud, uninsured drivers, a rise in personal injury claims, higher vehicle repair costs, advertising spend by insurers, and a reduction in investment income earned on premiums. It should be noted again that credit hire rates within the GTA are discounted from the basic hire rates and therefore should not be seen as a significant factor in fluctuating insurance premiums
- Additional services provided by credit hire companies should be afforded greater importance; they enhance consumer rights and access to justice
- The potential for underprovision of services is greater when non-fault claims are captured by fault insurers
- A ban on referral fees would only serve to damage consumer awareness of their legal entitlement to a temporary replacement vehicle, and could result in higher premiums as a result of lost revenue for insurers (non-fault insurers receive referral fees paid by credit hire providers)
- A referral fee ban would have no impact on the cost of credit hire as the recoverable costs are predominantly governed by the General Terms of Agreement (GTA), hence are wholly unconnected to the cost incurred by paying referral fees
- KAM works tirelessly to ensure consumers are made aware of their legal rights; this must happen at all credit hire companies and insurers
- Stronger mechanisms and enforcement should be introduced to ensure consumers are made aware of their legal rights both verbally and in writing
- The GTA provides an effective and supported system for ensuring credit hire is of a high standard, at lower rates, and develops a collaborative environment for insurers and credit hire companies
- The majority of frictional costs incurred during credit hire are caused by insurers disputing daily rates and durations, as well as disputing liability, with credit hire companies attempting to settle claims; this is damaging for all parties involved
- The GTA should be mandated and an online portal should be created to make the process more efficient and transparent

- KAM strives to maintain positive relationships with insurers but this good will is not being reciprocated by certain insurers which is undermining trust in the industry
- Where insurers wish to take claims outside the GTA, there should be a pre-litigation mediation service to resolve disputes early and reduce recourse to legal action
- Evidence does not exist to suggest major changes to credit hire are necessary. KAM would like to continue assisting the CC in compiling a strong evidence base, as well as leading the drive towards a more transparent market

## **1. Kindertons Accident Management and Credit Hire**

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- 1.1 KAM is a credit hire organisation, helping almost a quarter of a million non-fault drivers to access credit hire vehicles following a road accident since 1993. We also provide a range of other services including credit repair, uninsured loss recovery and occasionally referring clients who have sustained a personal injury as a result of an accident.
- 1.2 We successfully provide a high quality service, enabling non-fault drivers to access their tort law entitlement to a similar replacement vehicle during what is an uncertain and stressful period for many following an accident that was not their fault. Before credit hire existed, non-fault motorists were not recognised by insurers as claimants and therefore received no assistance. KAM and other credit hire companies have successfully filled this gap in the market. Being left without a roadworthy vehicle post-accident can be deeply damaging to people's lives, preventing essential daily activities such as the school run or getting to work. The growth of the credit hire industry has significantly helped to alleviate this disruption.
- 1.3 The recent challenging economic period has seen a growing number of people attempt to secure a lower motor insurance premium in exchange for a higher insurance excess. Whilst this makes motor insurance more affordable initially, for the unfortunate motorists who suffer a road accident, their excess is high. Credit hire removes this burden for non-fault drivers and also ensures that no-claims bonuses remain intact. Given that the CC's main aim of the investigation is to ensure the private motor insurance industry is working in the interest of consumers, this is a pertinent example of the benefit credit hire provides.

## **2 Overcosting and Overprovision of Temporary Replacement Vehicles**

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- 2.1 We are concerned that too much focus has been placed by the CC on comparing the cost of credit hire with direct hire. Credit hire is a unique model, and has fundamental differences to direct hire which lead to an inevitable divergence in figures. It is crucial to acknowledge that General Terms of Agreement (GTA) rates for credit hire are discounted from the basic hire rate, the rate a consumer could achieve on his or her own. In contrast, rates for direct hire take into account high volume sole supplier arrangements. This makes the two models inappropriate to compare, and we would further highlight that the fact that GTA rates are discounted from the basic hire rates means any accusations of overcosting are weak.

- 2.2 As such, to compare the services is not assessing like-for-like and risks distorting the CC's findings. This comparison fuels an inaccurate misconception that credit hire costs are often excessive.
- 2.3 Another major difference between direct hire and credit hire is that liability has already been admitted from day one by the fault insurer for the former, meaning there is considerably less administrative complexity and liaison work involved and consequently the hire period and cost is inevitably less on average. To ignore this underestimates both the essential service provided and complex tasks undertaken by credit hire companies. Nonetheless, despite the added volume of administrative work, particularly during the initial stage post-accident, the credit hire industry is working efficiently and in the interests of the 500,000 consumers accessing credit hire each year.
- 2.4 In fact, in 2011 liability was admitted within 48 hours in 28.2% of cases, and in 7 days for 45.4% of cases dealt with by KAM. Similar figures can be observed in 2012 with liability admitted in 48 hours and 7 days in 27.9% and 47% of cases respectively. Therefore, we reject the notion that longer duration of credit hire compared with direct hire suggests overprovision, but rather reflects the noteworthy differences between the models and the need for each by those involved in an accident.
- 2.5 However, we appreciate that the period spent determining liability is disruptive for consumers, particularly in complex cases. To alleviate this, KAM offer a 'seven-day flyer' feature for individuals whose vehicle is not roadworthy to access a credit hire vehicle at no added cost, regardless of the final liability decision. This demonstrates our commitment first and foremost to protecting the legal rights and wellbeing of individuals, allowing their daily lives to continue with as little disruption as possible in difficult circumstances.
- 2.6 In addition to our processes to determine liability rapidly, we continuously scrutinise the vehicle repair process throughout the hire period to ensure it is appropriate and efficient. KAM uses a vetted subcontractor repair network, which meets a high standard, to ensure that non-fault vehicles are repaired as quickly and responsibly as possible. Prior to a repairer being invited to join our network they must have either PAS 125 accreditation or hold manufacturer approval. In addition, location is an important factor when we invite repairers into our network as offering nationwide coverage is crucial to speeding up the repair process and so reducing the credit hire duration. These important checks remove the risk of overprovision and a resultant overcosting of services.
- 2.7 We would urge caution in the use of what we perceive to be an inappropriate term, 'overcosting', when referring to credit hire, particularly as it has developed through an unsuitable comparison to other mobility solutions which are fundamentally different from credit hire. We firmly believe the evidence and makeup of our industry proves that this should not be a concern. Moreover, the recent legal dispute between Accident Exchange and Axa which were exacerbated by unreliable evidence provided by Autofocus has unfortunately fuelled an inaccurate perception of the credit hire industry.

- 2.8 It is crucial to note that whilst insurance premiums have fluctuated over the past three years, credit hire has remained ever-present and in its current form. With this in mind, we would flag other factors as having had a greater impact on premiums and requiring closer attention, notably insurance fraud and uninsured drivers. Research shows that uninsured drivers are responsible for increasing premiums by £33<sup>1</sup> whilst fraud accounts for a £50 rise<sup>2</sup>. In contrast, credit hire is found to add just £10 extra to premiums<sup>3</sup> and can be further justified through the invaluable service provided to many consumers each year. KAM take a strong stance against fraud and have set up numerous internal processes to help prevent this issue. We would be happy to provide ongoing assistance to the CC on our anti-fraud work as well as continuing to collaborate with others in the industry to combat the problem.
- 2.9 Other factors have also carried significantly more weight than credit hire in insurance premium changes, such as a rise in personal injury claims and attendant legal costs, an increase in the cost of vehicle repairs, advertising spend by insurance companies, and a reduction in investment income earned on premiums.
- 2.10 We were disappointed with the lack of attention given by the CC to the additional services provided by credit hire companies beyond the level provided by fault insurers, such as uninsured loss recovery. The prime reason for credit hire is to enhance consumer access to justice and to ease the disruption caused by a road accident; these additional services - provided by KAM with no respective cost to the client – further advance this principle and must not be overlooked.

### **3. Underprovision of Temporary Replacement Vehicles**

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- 3.1 The greatest risk of underprovision of services arises when claims are captured by fault insurers. Clearly, as the fault insurer is responsible for the final bill, there is an incentive to keep their costs down. Results of the CC's survey of whether claimants are made aware of their legal rights reinforce our view that insurers are less likely to ensure non-fault consumers are informed of their entitlements. Moreover, the higher level of dissatisfaction for temporary replacement vehicles amongst consumers in captured cases, for both the type of vehicle and duration of hire, underlines this point.
- 3.2 In contrast, credit hire companies are only motivated to deliver the highest quality of service possible, and we are pleased that the CC noted this salient point. We recognise there is still work to do on this, and are keen to take the lead on this; KAM's call handlers undertake a comprehensive training programme, and are scrutinised and incentivised as part of a performance management framework which consists of ten skill sets to be marked on. We are firmly committed to ensuring our staff provide consumers with the best service possible which includes, first and foremost, informing them of their legal rights. KAM would suggest that further

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<sup>1</sup> Written Evidence to the Transport Select Committee:

<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmtran/591/591we10.htm>

<sup>2</sup> ABI, 'UK Insurance Key Facts':

<https://www.abi.org.uk/~media/Files/Documents/Publications/Public/Migrated/Facts%20and%20figures%20data/UK%20Insurance%20Key%20Facts%202012.ashx>

<sup>3</sup> OFT, 'Private Motor Insurance: Report on the market study and propose decision to make a market investigation reference': [http://www.of.gov.uk/shared\\_of/market-studies/private-motor-insurance/OFT1422.pdf](http://www.of.gov.uk/shared_of/market-studies/private-motor-insurance/OFT1422.pdf)

work is undertaken by the CC to evaluate if all parties in the private motor insurance sector also adhere to this type of consumer-orientated approach.

- 3.3 KAM would highlight the positive contribution referral fees make to raising consumer awareness of their legal rights through credit hire. Referral fees act as an incentive for insurers and others to direct non-fault consumers to credit hire providers. Given that the average UK motorist has an accident about once every six years, the majority of people are unaware of how to manage post-accident services and their legal entitlements. A ban on referral fees would simply act as a detriment to consumer awareness of their legal rights and options. The CC's telephone records sample suggests there are existing issues, particularly amongst fault insurers, of advising consumers effectively; this problem would be further exacerbated in the absence of referral fees.
- 3.4 Crucially, without referral fees and credit hire providers, insurers would be less motivated and so less likely to offer temporary vehicle intervention to non-fault consumers because the presence of credit hire, and higher costs to insurers, would be less significant.
- 3.5 Therefore, we share the CC's assertion that there is greater potential for underprovision of services when consumers are unaware of their rights and believe that this would be an unintended consequence of banning referral fees.
- 3.6 Furthermore, a ban on referral fees would not be an end in itself as they are currently a cost of doing business in the market and are borne completely by credit hire companies. They would simply be replaced by other marketing costs, as has been the case in the personal injury space. It is also worth noting that the loss of revenue generated by non-fault insurers through referral fees paid by credit hire providers may be passed onto drivers in the form of higher premiums.
- 3.7 We are concerned that there is a temptation to view the use of referral fees in credit hire in the same light as personal injury claims. However, referral fees have no bearing on the recoverable costs of a credit hire claim - which are predominantly governed by General Terms of Agreement (GTA) daily rates - unlike the personal injury market. Any potential remedy involving a ban would have no impact on the cost of credit hire, but rather as stated above, would diminish consumer knowledge. Clearly, as GTA agreed rates start from basic hire rates, there is no evidence to suggest referral fees are creating higher costs.
- 3.8 To mitigate the risk of underprovision, we would call for stronger mechanisms and enforcement measures for ensuring non-fault consumers are made aware of their legal rights at the earliest possible opportunity following an accident. Given the significance of this, we feel it would be appropriate for consumers to be made aware of their rights at the start of a claim both verbally and in writing. Not only would the public benefit from this, but insurers would also experience greater consumer goodwill generated from having advised them of their legal rights and options.

## 4 Collaboration with Industry Stakeholders

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- 4.1 KAM would reiterate our firm support for the GTA which ensures cost levels are controlled, reviewed and discounted in credit hire. We are pleased that the CC shares our view on its positive contribution, and hope it features heavily in the final recommendations. This collaborative system already enjoys the widespread backing of credit hire companies and insurers. In fact, 86% of insurers that KAM deal with are already part of the GTA. It presents the industry with a ready-made mechanism that should be extended and developed in order to drive further market improvements.
- 4.2 As noted by the CC, dealing with claims outside the GTA leads to higher levels of disputes often resulting in litigation. Figures presented in sections 85-88 and 92 of the working paper, 'ToH 1: Overcosting and Overprovision of TRVs', are particularly valuable for demonstrating the benefits of the GTA. In addition, where a claim is settled under the GTA, discounts of 40% are available off the basic rate of hire and there are no legal fees claimed by credit hire companies.
- 4.3 Given that the majority of credit hire claims now go through the GTA, insurers are actively involved in assessing whether rates are reasonable from the outset. With this in mind, it is our view that fault insurers possess sufficient control in the system, thus limiting the prospect of service overprovision by credit hire companies. Moreover, in cases where the insurer disputes the claim it is their prerogative to withhold payment, although this may incur a penalty or lead to litigation. As an example, the fact that there was a 63 day difference in average payment time to KAM in 2012 between two insurers - both party to the GTA - demonstrates their ability to exercise a reasonable degree of choice. However, we would call for all parties to adhere to reasonable payment terms. All withheld payments carry financial risk for credit hire companies; a streamlined system for claims settlement would ensure credit hire companies can continue to thrive and deliver important benefits to consumers.
- 4.4 Regarding the hire duration, within the GTA it is the responsibility of credit hire companies to provide updates to insurers. This ensures that the process is effectively monitored, significantly reducing the threat of manipulation. Therefore, the risk of service overprovision and a resultant overcosting is significantly less.
- 4.5 KAM would urge caution in any potential remedy that transfers more control to insurers in determining the costs for the other party. This would create an inherent conflict of interests, as insurers would wish to see costs come down which could compromise the quality of service and the legal entitlements of consumers.
- 4.6 We are keen to see the GTA extended and mandated. As the CC notes, credit hire claims are resolved quicker and more efficiently within the GTA. For KAM in 2012, non-GTA insurer claims were paid in an average of 137 days compared to 67 days for GTA insurers. This 70 day difference is damaging for all parties and increases frictional costs. Whilst disputes cannot be avoided in all cases, mandating the use of the GTA will continue to foster a cooperative atmosphere, providing long-term benefits and reducing frictional costs to the industry and consumers.

- 4.7 To strengthen the GTA further, we support the creation and mandated use of an online portal for insurers and credit hire companies to provide an efficient tool for both parties for the management of claims. This approach is already running successfully for personal injury claims and should help to streamline credit hire claims and add further transparency to the GTA. The GTA provides greater comfort for insurers that there is not an overprovision of credit hire services; the online portal will improve transparency on hire periods even further, allowing credit hire companies to update insurers more effectively and regularly on repairs.
- 4.8 This industry-led approach and collaborative atmosphere will undoubtedly serve to strengthen consumer rights, as well as ensuring swifter settlement and appropriate rates. The industry as a whole must endeavour to remove the potential for confrontation as much as possible, and we believe this approach provides the perfect vehicle for achieving this.
- 4.9 KAM has always been committed to maintaining positive relationships with insurers and works hard to achieve this. However, regrettably the same good will is not reciprocated by all insurers. In our view, where frictional costs are incurred, the majority of these are caused by insurers attempting to dispute rates or delay payment. One insurer - despite being party to the GTA - is using insurance investigators to visit the homes of KAM's clients to take statements about the hire vehicle provided. Clearly this is increasing frictional costs and appears to be an attempt to delay settling genuine credit hire claims that have been presented in line with the GTA. Moreover, during an already stressful time for our clients post-accident, unannounced visits can be intimidating for consumers.
- 4.10 Practices such as this undermine trust in the system. Whilst we are eager to see the GTA developed further, all parties must acknowledge that the model relies on mutual cooperation and transparency. Obstructive insurers will only weaken the industry's ability to provide a good service. We hope that the uncovering of Autofocus' unreliable evidence used by insurers on credit hire rates is a first step to reinforcing relationships between insurers and credit hire companies, and will help reduce disputes and litigation long-term.
- 4.11 However, we appreciate that disputes cannot always be avoided even with a mandated GTA. As such, we also believe there would be value in establishing a pre-litigation mediation mechanism in order to resolve disputes early and reduce recourse to legal action. When disputes over claims do arise, it is important to avoid the situation escalating which will lead to unnecessary costs, longer periods for payment and long-term damage to the relationship between insurers and credit hire companies. Ongoing legal disputes between credit hire companies and insurers are damaging and should be avoided where possible. Recent cases going through the courts underline this need.
- 4.12 In combination, we believe that a mandatory GTA and pre-litigation mediation mechanism would be important steps to cultivating a more cooperative industry. We would not wish to overlook examples of positive cooperation and joint working that already exist, however, more can be done and this requires a commitment from all sides.



## 5 Evidence Gathering

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- 5.1 We would urge the CC to be cautious with any potential market remedy given that the evidence base is lacking in certain areas, as noted in the working papers.
- 5.2 KAM would reiterate that whilst there is always room for improvement in the industry – and we have provided our view on how this can be achieved – it is vital that the market works in the interest of consumers. We do not believe that sufficient evidence exists to suggest that the theories of harm apply or that the industry requires major changes.
- 5.3 We would like to offer KAM’s ongoing assistance to the CC in developing its evidence base and ensuring that any potential recommendations that might be made will not have the unintended consequences of limiting availability to or quality of credit hire for consumers.
- 5.4 The entire private motor insurance industry, including credit hire, has long been accused of lacking transparency; we are committed to being at the forefront of improving its reputation and ensuring that consumers feel comfortable and knowledgeable on issues which can be unsettling.