

COMPETITION COMMISSION INVESTIGATION INTO PRIVATE MOTOR INSURANCE

AGEAS UK'S SUBMISSION IN RESPONSE TO THE PROVISIONAL FINDINGS REPORT

This submission sets out the comments of Ageas UK¹ on the Competition Commission's Provisional Findings, published in December 2013. Ageas UK has already commented separately on the Notice of Possible Remedies, which were also published in December.

As Ageas UK has previously indicated, it is fully supportive of the Competition Commission's review of current practices in the motor insurance industry. Having reviewed the Provisional Findings report, Ageas UK is broadly in agreement with many of the issues that the Competition Commission has identified. Ageas UK looks forward to its continued engagement with the Competition Commission on these issues, including with regard to any remedies that achieve the principles of customer benefit, proportionality and practical effectiveness.

Ageas UK's more detailed comments on the Provisional Findings are set out below.

1 SEPARATION OF COST LIABILITY AND COST CONTROL (THEORY OF HARM 1)

- 1.1 Ageas UK supports the Competition Commission's provisional conclusion that the separation of cost liability and cost control leads to an adverse effect on competition, when combined with the various practices and conduct of certain non-fault parties that the Competition Commission has identified.
- 1.2 As the Competition Commission is aware, a significant contributing factor to this issue is the fact that the case law permits the party handling a non-fault claim to pass on to the fault insurer "reasonable" costs, with reasonableness being assessed by reference to the costs that the non-fault claimant would incur if it were to procure the services directly. The parties who in practice handle non-fault claims (i.e. claims management companies (CMCs), credit hire companies (CHCs), insurers etc) can invariably procure services much more cheaply than individual claimants. It follows that the current case law creates an opportunity (and incentive) for such parties to inflate their claims towards the maximum level that a court would consider reasonable.
- 1.3 The Court of Appeal's recent judgment in *Coles v Hetherington* will not alter the position described above and, indeed, it may make the position even worse. This is because the judgment arguably legitimises the conduct in question and may even create a commercial imperative on non-fault parties to adopt similar practices or otherwise face a competitive disadvantage.
- 1.4 Ageas UK therefore anticipates that the Competition Commission will seek to impose remedies to address the concerns that it has identified. However, as Ageas UK has noted in its response to the Notice of Possible Remedies, the Competition Commission will need to be mindful of achieving a solution that is both effective and proportionate, such that it results in genuine consumer benefit.
- 1.5 The Competition Commission estimates that the net detriment to consumers is about £150-200 million annually. Ageas UK is unable to verify this figure for itself, but it urges the

¹ In this submission, references to "Ageas UK" mean Ageas (UK) Limited and, where applicable, its subsidiaries, excluding Tesco Underwriting Limited. Tesco Underwriting Limited is a joint arrangement with Tesco Bank and its views do not form part of this response.

Competition Commission to ensure that it has fully and accurately reflected all aspects of the consumer detriment.

Temporary replacement cars

- 1.6 Ageas UK agrees with the Competition Commission that the most significant concerns relate to the provision of temporary replacement cars. In this regard, Ageas UK's own experience is that the concerns are by no means limited to excessive hire rates but that they also arise with regard to excessive hire durations.
- 1.7 The Competition Commission has established that credit hire durations (which are typically reflective of there being a separation of cost liability and cost control) are on average 31% longer than direct hire durations (which are typically reflective of captured claims, where there is no separation). However, whilst it recognises that there may be differences between the characteristics of the underlying repairs in each scenario, the Competition Commission appears to have disregarded longer hire durations in credit hire scenarios when assessing the cost impact of separation both for repairs and total loss. Ageas UK has hesitations whether this may have resulted in the Competition Commission underestimating the net detriment to consumers of the separation of cost liability and cost control with regard to replacement cars.
- 1.8 Accordingly, Ageas UK wonders whether the Competition Commission's estimate that credit hire adds an extra £640 to claims might be something of an underestimate. It urges the Competition Commission not to dismiss concerns over hire duration with regard to Theory of Harm 1. Excessive hire duration in repair and total loss situations not only leads to extra cost, but it may also be detrimental to consumers in the sense that consumers may regard the speed with which they get back their (repaired) car or the speed with which they receive payment on total loss to be important elements of the overall service level that they receive.
- 1.9 Ageas UK also notes the Competition Commission's comment that, of the estimated £640 extra cost of credit hire, £340 is accounted for by referral fees to non-fault insurers (with the remaining £300 relating to the higher costs of CHCs and any profits that the CHCs make). Whilst Ageas UK does not dispute this finding as such, as it has commented previously it would be wrong to assume that a ban on referral fees would remove £340 of cost from claims. History has shown that banning referral fees in isolation in personal injury cases has had limited impact on the problems in that sector which the ban was designed to address. The position would be the same in the motor insurance industry. Ageas UK's view is that a ban on referral fees would be likely simply to lead to certain parties adopting innovative practices to extract the same revenue through other means. The Competition Commission needs to focus on targeting such practices more generally, rather than focusing solely on referral fees as such.

Repairs

- 1.10 It is certainly the case that certain non-fault insurers and CMCs use strategies that have the effect of inflating the repair costs that they pass on to fault insurers. The Competition Commission has correctly identified several of these strategies in its Provisional Findings.
- 1.11 Ageas UK notes that the Competition Commission characterises such conduct as seeking to earn a rent from controlling claims rather than competing on the merits (and that it leads to an inefficient supply chain that involves excessive frictional and transactional costs). Ageas UK agrees with those sentiments. It is supportive of an industry in which participants compete to offer the lowest price and best quality of claims handling and other services to consumers, i.e. that competition takes place on the merits.

- 1.12 It is worth bearing in mind that not all parties engage in the conduct that the Competition Commission has identified. For example, some insurers (including Ageas Insurance) will pass on the discounts that they receive from repairers (meaning that the costs passed on to the fault insurer reflect the “wholesale price” that the Competition Commission would be seeking to achieve through Remedy 1D of the Notice of Possible Remedies). This inevitably brings down the average extra costs reflected in the Provisional Findings, meaning that those figures arguably understate the harm associated with the conduct in question. If all non-fault parties were to engage in the conduct that the Competition Commission has identified, the overall harm would be greater than the current average cost that the Competition Commission has calculated.

Write-offs

- 1.13 Ageas UK agrees that the practices of certain parties can lead to cost inflation with regard to write-offs. In a similar vein to the comment in the previous paragraph, it is worth bearing in mind that not all parties engage in the conduct that the Competition Commission has identified, meaning that the figures in the Provisional Findings arguably understate the harm caused by those parties that do. For its part, Ageas Insurance passes on to fault parties actual salvage values.

Quality and services differences

- 1.14 Ageas UK notes the Competition Commission’s observation that service differences associated with separation are currently small. This reflects Ageas UK’s own view.

2 POSSIBLE UNDERPROVISION OF SERVICE TO THOSE INVOLVED IN ACCIDENTS (THEORY OF HARM 2)

- 2.1 Ageas UK notes the Competition Commission’s provisional findings that:

2.1.1 insurers and CMCs do not monitor effectively the quality of repairs; and

2.1.2 there are significant limitations to claimants’ ability to assess the quality of car repairs, and that, in combination, these factors lead to an adverse effect on competition.

- 2.2 Ageas UK fully supports the proposition that consumers should be entitled to high levels of service in the event of a claim. It actively seeks to provide repairs that are of a high quality and are guaranteed. It would be fully supportive of any proportionate initiative to ensure that repairs are carried out to the appropriate standard.

- 2.3 However, Ageas UK is concerned that the Competition Commission’s provisional conclusions appear to run contrary to its previous findings as set out in its working paper “*Theory of Harm 2: Underprovision of repairs*” (the “Working Paper”) and instead seem to be based solely on the findings of the MSXI Report.

- 2.4 In common with many others in the industry, Ageas UK has considerable hesitations regarding the persuasiveness of the MSXI Report. As the Competition Commission itself appears to recognise, there are a number of reasons to be cautious about drawing any general conclusions from the report’s findings.

- 2.5 Ageas UK is concerned that over reliance on the MSXI Report may have led the Competition Commission to have overstated the extent of any issue under this head, which could ultimately lead to the imposition of a remedy that is wholly disproportionate to any actual adverse effect on competition.

2.6 These issues are considered in turn below.

Issue 1 – Provisional findings not supported by evidence other than MSXI Report

2.7 In summary, the Working Paper stated that the Competition Commission had found no evidence of systematic underprovision of repairs. This was supported by evidence from a wide range of sources:

2.7.1 Survey evidence (both from the Competition Commission's own survey and a survey undertaken by GIMRA in December 2012) indicates that customers are generally satisfied with the quality of vehicle repairs.

2.7.2 Data obtained from CMCs, repairers, GIMRA and others has shown that the frequency of customer complaints about repairs is low.

2.7.3 A number of the ten largest insurers require their approved repairers to have PAS 125 accreditation or manufacturer approval.

2.7.4 Insurers and CMCs generally provide a guarantee for the repairs they managed.

2.7.5 All of the ten largest insurers monitor the performance of their approved repairers.

2.8 A substantial majority of the evidence before the Competition Commission suggests, therefore, that there are no quality issues with regard to repairs. However, the Competition Commission appears to be discounting this evidence in light of apparently contrary evidence in the MSXI Report. Ageas UK would welcome further explanation from the Competition Commission as to why it considers it appropriate to adopt this approach, particularly in light of the comments made below which highlight considerable failings in the MSXI Report's approach and execution.

2.9 On a related point, Ageas UK would welcome further explanation from the Competition Commission as to the basis for its assertion that there are significant limitations to claimants' ability to assess the quality of car repairs. As noted above, the Competition Commission has survey evidence indicating that customers are generally satisfied with the quality of vehicle repairs. It appears that, in light of the MSXI Report which purports to show that a proportion of repairs are not adequate, the Competition Commission has in effect concluded that customers' own views are simply not reliable. However, it would be helpful if the Competition Commission could provide greater clarity on its thinking regarding this point.

2.10 In its Provisional Findings, the Competition Commission suggests that insurers have no incentive to monitor service quality. Ageas UK refutes this. Insurers have a very obvious incentive to ensure that their customers receive a good standard of service, since they otherwise face the risk of customers switching insurer on renewal. Even where the insurer does not have a contractual relationship with the consumer, they nevertheless have strong reputational reasons for ensuring that the consumer is satisfied with the quality of the service that they receive.

2.11 For its part, through its Solution Centre approach, Ageas Insurance works closely with its repairers to ensure that repairs are carried out to the appropriate standard. Repairers within the network are given the flexibility to decide what repair methods, materials etc to use for the repair in question. This enables Ageas Insurance to achieve high quality guaranteed repairs and market leading "key to key" times (i.e. the shortest repair times), at appropriate cost. This has an obvious benefit to its customers (as well as to non-customers whose repairs Ageas Insurance is handling, since the Solution Centre is also made available to them).

Issue 2 – Substantial risk in drawing general conclusions from the MSXI Report

2.12 The Competition Commission has stated that the results of the MSXI Report should be interpreted with care. Accordingly, Ageas UK urges the Competition Commission to be extremely cautious in drawing general conclusions from the MSXI Report.

2.13 First, there is a substantial risk of bias in the sample selected since:

2.13.1 captured claims were overrepresented in the sample; and

2.13.2 only those claimants who responded to the original non-fault survey and who subsequently agreed to a follow up inspection by MSXI were included in the sample.

Thus, it cannot be excluded that claimants who were more likely to be unhappy with the quality of the repair carried out on their vehicle were overrepresented in the sample.

2.14 Second, as the Competition Commission itself has noted, the sample size on which the MSXI Report was based was extremely small. Only 104 cars were inspected out of a total of the approximately 2 million vehicles repaired annually in the UK (in other words, around 0.005% of all repairs were inspected).

2.15 Third, MSXI were instructed to assess the repair estimate documentation provided by the Competition Commission and to select those cases in which they were most accurately able to assess the pre-accident condition (“PAC”) of the vehicle, based on the type and scale of repairs undertaken. It may be the case that those repairs prioritised and requiring more documentation were likely to have been more complex than average, which in turn may have made them statistically more likely to have been returned in non-PAC. Thus, it is again not possible to exclude the possibility of bias in the sample.

2.16 Fourth, Ageas’ own review of the data in the MSXI Data Room has revealed a number of potential issues:

2.16.1 The classification of repairs as either PAC or non-PAC may be too simplistic. For example, in one case a minor cosmetic defect in an otherwise “excellent” repair resulted in the entire repair being classified as non-PAC². The fact that the MSXI report does not distinguish between minor cosmetic defects and serious mechanical defects, simply labelling them as “non-PAC”, makes it extremely difficult to draw any general conclusions about repair quality from the report. In that respect, it is significant that in a substantial proportion of cases where minor defects had been highlighted, the customer was nonetheless very satisfied with the service received from the repairer.

2.16.2 In at least two cases, there had been post repair damage in a similar area on the vehicle, which would have made an accurate assessment of repair quality very difficult³.

2.16.3 In other cases, the fact that the vehicle was not returned to PAC appears to have been a result of customer choice rather than of poor quality repair work⁴. It is therefore questionable whether these should have been included in the sample.

² In case NAF336, the assessor commented that the repair was “excellent”. The only issue was a slight mismatch on the driver’s door, in respect of which the assessor noted that “pearl paint processes are often difficult to exactly replicate.”

³ See, for example, cases R0145 and NAF305.

- 2.16.4 In some of the cases, there are no photographs of the damaged vehicle. This begs the question of how the MSXI assessor was able to establish the pre-accident condition⁵.
- 2.16.5 There are apparent inconsistencies of approach by the MSXI assessors. It appears that some assessors deemed minor repair quality issues to be acceptable, whilst others judged faults of a similar type to be evidence of the vehicle being non-PAC. This demonstrates the inherent subjectivity of assessing the quality of repairs⁶.
- 2.16.6 The MSXI report does not identify repairs where the customer chose the repairer for itself. Inevitably, where a customer has for whatever reason chosen to have repairs carried out by a repairer of its choice (which the customer is free to do and which is a choice that Ageas UK supports albeit that the vast majority (85%) of Ageas UK's customers choose to use one of its Solution Centre repairers), this limits the insurer's ability to control and verify the quality of the repair.
- 2.16.7 It appears that some of the vehicles inspected by MSXI were vans and motorcycles. The way in which these repairs were handled might, for good reason, have been different to car repairs. As Ageas UK has previously commented, it is important that the Competition Commission does not lose sight of the fact that private car insurance cannot be looked at in isolation (particularly in the context of determining and assessing remedies, bearing in mind that many accidents will involve both a private car and a commercial vehicle or motorcycle). However, in the context of assessing the quality of repairs to private cars, evidence relating to repairs of vans and motorcycles should self-evidently not be considered by the Competition Commission.
- 2.16.8 It would also have been helpful to conduct a review of repairs carried out outside of the insurance sector (for example, claims paid for by the consumer themselves), to establish a "control" group. Absent a control group, it is difficult to draw any conclusion as to the cause of any detriment to repair quality.
- 2.17 Ageas UK's view is that the Competition Commission should be extremely cautious in drawing any general conclusions from the MSXI Report, particularly since these appear to run contrary to the other evidence before the Competition Commission. As noted above, Ageas UK is fully supportive of customers receiving high levels of service. However, it would not be in customers' interests for the Competition Commission to overestimate any apparent concerns and, consequently, risk imposing remedies that are disproportionate.

3 THE SALE OF ADD-ON PRODUCTS (THEORY OF HARM 4)

- 3.1 The Competition Commission's provisional conclusion is that an adverse effect on competition arises from information asymmetries between motor insurers and consumers in relation to the sale of add-ons, in combination with the point of sale advantage held by motor insurers when selling add-ons.

⁴ See case NAF212, in which a vehicle that was deemed to be a total loss was repaired with a non-genuine wing at the customer's request in order to keep the vehicle on the road. In case R0184, the owner of the vehicle had retained the vehicle as part of the settlement. The insurance engineers' report did not recommend this action and identified that the vehicle had previously been declared a total loss. This would have made it difficult for the insurer to determine the appropriate level of repair.

⁵ See, for example, NAF0058.

⁶ For example, in one case (R0031) the use of chrome rather than black rivets was deemed to be evidence that the vehicle had not been returned in PAC. By contrast, slight distortion of driver's side panel (NAF374); evidence of door repair (R0008); badge not being fitted (R0048) and unpolished paintwork and door (R0057) were deemed by other assessors not to affect the PAC quality of the repair.

- 3.2 Ageas UK is fully supportive of ensuring that consumers properly understand the products on offer such that they can make an informed choice whether to buy them. Ageas UK endeavours to provide transparency to its customers and to others involved in the supply chain.
- 3.3 Any assessment of this issue does of course need to consider what is the “right” level of information to provide to consumers. A balance needs to be struck between providing “too little” and “too much” information to consumers. Ageas UK wonders whether the most pertinent issue relates to the form in which the information is provided (bearing in mind the possibility of standardised formats, such as Key Facts summaries) rather than the amount of information provided as such.
- 3.4 The FCA last year concluded a study into motor legal expenses insurance (MLEI). It made certain recommendations and indicated that it would revisit the supply of MLEI later this year. The FCA is also currently conducting a market study into whether there is effective competition for add-on products across general insurance. In light of this ongoing work, Ageas UK’s view is that the FCA would be best placed to determine the existence or otherwise of any concerns with regard to add-ons and implement any remedy under this head. It goes without saying that it would be unhelpful if both the Competition Commission and the FCA were to review the same issues and reach potentially inconsistent conclusions.
- 3.5 As a point of detail, the Competition Commission should note that add-on products are in fact provided by both insurers and brokers. The Provisional Findings appear to suggest that they are offered only by insurers (either directly or by the insurer acting as a distributor).

4 PRICE COMPARISON WEBSITES AND MFN CLAUSES (THEORY OF HARM 5)

- 4.1 Ageas UK regards PCWs as an important part of the market and welcomes their existence. PCWs provide consumers with ready access to a wide variety of insurance providers and the ability to compare prices and products. For insurance providers, PCWs represent a valuable route to market and account for a significant proportion of sales.
- 4.2 Ageas UK has however expressed concerns throughout this investigation regarding PCWs’ use of MFNs. It has particular concerns regarding the potential for MFNs to constrain insurance providers’ ability to reward, through lower premiums offered to consumers, channels that demonstrate innovation in matters such as fraud detection.
- 4.3 Accordingly, Ageas UK welcomes the Competition Commission’s provisional conclusions that wide MFN clauses in contracts between motor insurance providers and PCWs (and practices having equivalent effect) have an adverse effect on competition.

Ageas UK looks forward to continuing its engagement with the Competition Commission on the above issues.

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