

LLOYD'S MARKET ASSOCIATION



LMA Response to Competition Commission's Private Motor Insurance Market Investigation: Notice of Possible Remedies (17th December 2013)

About the LMA: The Lloyd's insurance market underwrites insurance business from over 200 countries and territories worldwide. In 2013, premium capacity was in excess of £24 billion.

The Lloyd's Market Association (LMA) represents the 57 Managing Agents at Lloyd's which manage the 90+ syndicates underwriting in the market, and also the 3 members' agents which act for third party capital. Managing agents will be "dual regulated" firms by the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) and members' agents will be regulated by the FCA.

Whilst this response is distilled from the views of our members, especially the 8 Lloyd's syndicates currently writing UK motor insurance, the views of individual members may differ.

Summary

Provisional Findings: In the short time period allowed for consultation the LMA has reviewed the Competition Commission's (CC) Provisional Findings in relation to the Adverse Effects on Competition (AEC). We welcome this review, and in general we strongly agree with the findings. It is critical that changes are made quickly to the dysfunctional motor insurance market. NB It is our view that any reference to insurers as the sole drivers of dysfunctionality is inaccurate - many aspects of the distribution and supply chain of the motor insurance market currently contribute to the AECs identified.

The only Provisional Finding we dispute is Theory of Harm 2 (possible under-provision of service to those involved in accidents), where we feel the suggested problems with the quality of insurer-funded repairs have been exaggerated. That said, we understand the concerns that are being raised, and support the principle of audit of repairs, provided this is proportionate.

Potential Remedies : In our view the CC has correctly identified the critical area requiring urgent reform in the first 'Theory of Harm'; the issue of separation of cost liability and cost control, and related practices and conduct of those managing claims on behalf of non-fault parties.

It is our understanding that the CC's primary aim here is to reduce costs for consumers, by eliminating illegitimate profit-making and cost-inflation which can arise through the management of vehicle hires and repairs by non-fault parties. In that context, and in the very short time permitted for consideration of the possible remedies, the LMA is not able to strongly recommend one specific remedy or combination of remedies as being the optimum solution to achieve the CCs objectives.

Some of our members felt that remedy 1A (compulsory 1st party cover for replacement vehicles) would best meet the CCs objectives, and some felt that 1B (at-fault insurer to be given first refusal to handle claims) would. 1A is a good solution re vehicle replacement, introducing a major structural market change to remove unnecessary intermediaries, but would be more difficult to implement, and doesn't satisfactorily address problems arising

from non-fault control of repairs (and neither does 1D). 1B would perhaps be easier and quicker to introduce, and is a more holistic solution, but could be problematic to manage.

Some LMA members felt that the mitigations set out in 1C and 1D offered the simplest practical route to improving the market in the short-term, especially given the drawbacks of 1A and 1B. Some members favoured a hybrid solution of 1A *and* 1B (whereby compulsory cover replacement vehicles is introduced alongside a requirement to refer the remainder of the claim to the appropriate at-fault insurer).

A difficulty is that none of the remedies as set out would fully address the CCs objectives, and each remedy has weaknesses or impracticalities as well as strengths. Notably neither 1A nor 1B would fully solve the primary AEC re the separation of cost liability from cost control (see below).

However, whilst there are always practical issues associated with implementation, on balance we believe that the various problems associated with either 1A or 1B could be mitigated to a degree, and either of these main remedies would improve the position for consumers, in conjunction with the other mitigating remedies (1C, 1D, 1E, 1F and 1G) where relevant.

Recommendations:

- Our overall recommendation is that further detailed discussion with insurers is necessary to produce a workable set of proposals.
- However the CC chooses to proceed, a very broad prohibition of referral fees is necessary to remove a clear incentive for unnecessary cost inflation.
- Given the urgent need for reform we would also recommend consideration of what changes could be introduced in the short-term. Specifically it may be prudent to consider implementing a variation of 1B and other supporting remedies, which can be introduced quickly via Enforcement Orders (and insurer-agreed Protocols), whilst the more complicated implementation of 1A - which represents greater structural change in the market - is further refined.

NB There is insufficient consultation time to consider the cost implications of the various potential remedies. We have provided answers to the consultation questions in the attached Appendix, and have provided a summary of our assessment of remedies A and B below.

Remedy 1A: Compulsory 1st Party Insurance for Replacement Vehicles - LMA Summary of the Advantages and Disadvantages

Advantages:

- 1st party cover for replacement vehicles largely resolves the problematic split between cost liability and cost control, in respect of hire claims, eliminating the need for credit hirers who are motivated to inflate vehicle hire costs.
- Promotion of competition; insurers would be free to price for replacement vehicle cover, with the most efficient insurers able to deliver the service at the lowest cost.

- 1A would remove claimants' exposure to credit hire bills where their claim is unsuccessful (NB this risk is often overlooked when considering this issue), and provide clarity on the basis upon which replacement vehicles are provided.
- 1A would also remove claimants' exposure to 'need' or impecuniosity challenges from defendant insurers. (Such challenges can be onerous for claimants, who may be required to disclose their financial accounts and give evidence in court).
- Whilst we have not undertaken any financial analysis, our instinct is that the increased cost of hires (that will be generated by introducing compulsory hire cover) will be more than met by the reduction in inflated costs caused by credit hire.

Disadvantages

- Where the at-fault insurer controls the repair/total loss they are incentivised to delay the process in order to maximise the 1st party insurer's hire bill. [Mitigation could be to grant the 1st party insurer a right of recovery against the at-fault insurer where the delay is unreasonable, although this would clearly be a new focus for disputes].
- Unless this remedy is extended to commercial insurance contracts there could be a disparity between the legal recovery rights of private car customers compared with commercial customers.
- The claimant would have to deal with two different insurers where the 1st party insurer is responsible for the vehicle hire and the at-fault insurer is responsible for managing the repair.
- By itself 1A doesn't address or prevent cost liability/cost control problems re non-fault management of repairs/total loss claims.
- It would be more complicated to introduce than 1B given change to the Road Traffic Act 1988 is needed to introduce the necessary compulsory cover, and also to remove an individual's right to pursue a liable 3rd party for replacement vehicle costs in tort. There may be some opposition to the principle of this proposal, despite expected net benefits. The timescale of introduction of 1A could also be unreasonably long.
- Most likely compulsory replacement vehicle cover would also need to be added to policies of non-comprehensive customers, increasing the costs for those customers seeking the very cheapest access to car insurance.

Other comments/issues re 1A

- LMA members did not favour customers being able to opt-out of compulsory replacement vehicle cover under 1A, on the grounds that even though the savings would be most likely fairly minimal, many customers would probably choose to opt out, and then end up in difficulty following a non-fault accident where they desperately need a vehicle but have no legal remedy to obtain one (other than paying for it themselves).
- There was a suggestion of introducing a subrogation variant of 1A, but with recovery limited by a fixed scale of costs/hire duration. This would give the customer a good service (as they can deal exclusively with their own

insurer/service provider), and would control costs to a degree, representing an improvement on the current position. The downside would be that this approach still contains the scope for abuse by failing to take the non-fault insurer/other agents out of the picture.

Remedy 1B: At-fault insurers to be given the first option to handle non-fault claims - LMA Summary of the Advantages and Disadvantages

Advantages

- Simpler and quicker to implement than 1A, as 1B may not require a change to primary legislation.
- Reflects long-standing common law position requiring the at-fault party to bear the cost of an accident.
- Prevents non-fault parties from intervening and separating cost liability from cost control where there is no immediate mobility need.
- At-fault insurers could still offer claimants a choice of which repairer would undertake the repair, and incentivise accordingly.
- Remedies 1C, 1D, 1E and 1F could be applied to mitigate costs where the at-fault insurer declines/fails to act, and the non-fault insurer takes over the claim. NB The threat of the non-fault insurers resuming control over the claim would provide a powerful incentive for the at-fault insurer to promptly review First Notification of Loss (FNOL) and take action as appropriate.
- A protocol to govern non-fault insurer intervention could be agreed to control cost and duration of hire where a replacement car is genuinely needed immediately.

Disadvantages

- Potential claimant detriment where there is an immediate mobility need following a non-fault accident:
 - a) where the party receiving notification of a claim is slow passing on the details to the at-fault insurer
 - b) where the at-fault insurer is slow responding to the claim
- Would not eliminate non-fault insurer intervention / credit hire in cases where there is an immediate mobility requirement. (This could be partly mitigated via a protocol to control costs and duration of hire as per above).
- Would remove a customer preference (right?) of appointing their own insurer to handle their claim.
- 1st party insurers receiving FNOL are much better placed to provide immediate assistance to claimants, such as arranging immediate vehicle hire, organising recovery of a damaged vehicle from the scene of an accident, and relay of that vehicle to a repairer.
- The at-fault insurer may feel obliged to provide a hire vehicle before they have had adequate time to consider the claim. (However, those that respond most efficiently could create a competitive advantage).

Other comments/issues re 1B

- In the context of 1B there was a strong preference for the variant suggested in Para 39, whereby the claimant would not be able to choose which service provider manages the claim; they would have to accept the service provided by the at-fault insurer (or their appointed agent). Claimants would still be able to choose where their vehicle was repaired, and insurers would be free to incentivise claimants to use their preferred repairer if they so wished.

We would be happy to discuss our response, and any of the issues arising, in greater detail at any point.

17th January 2014

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Appendix A

LMA Response to Consultation Questions

Remedy A: Measures to improve claimants' understanding of their legal entitlements

Issues for comment A

21. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:

(a) What information should be provided to consumers?

We support this proposal in principle, and the list provided describes most of the key areas that would help educate customers about their legal rights when making a claim. We would support the development of a standard template. The template would obviously need to take account of the changes currently under consideration.

However, it is vital that the below information should also be included:

a) Claimants have responsibilities as well as rights, most notably a legal duty to mitigate any losses. Failure to mitigate losses could lead to claimants being liable for part or all of the costs they have incurred.

b) In the event that a claim is unsuccessful, where claimants have used services provided on credit (such as car hire) claimants may be personally liable for the costs incurred.

(b) When is this information best provided to consumers—with annual insurance policies, at the first notification of loss, or at some other point? Should this information be available on insurers' websites?

With annual policy documentation would be simple enough to achieve. It would also be useful (and cheaper) to include this information on insurers' websites, and also on the website of the distribution channel that sells the policy.

It may also be appropriate for parties receiving FNOL to reinforce the advice at point of FNOL. Great care should be taken to ensure that the information provided is accurate and clearly explained, especially given some claimants may have very recently been involved in an accident.

(c) Would it be more effective for consumers to be provided with a general statement of consumers' rights prepared and periodically updated by a body such as the Association of British Insurers or are there any examples of existing best practice in relation to information given to consumers by insurers?

We would support the development of a standard template, made widely available, and which individual insurers/partners could then distribute to customers at policy inception.

(d) Would this remedy give rise to distortions or have any other unintended consequences?

It is possible that increased awareness of legal rights could lead to increased claiming, which would cause premiums to increase. Where non-fault parties are providing this advice they may be motivated to encourage claiming for heads of damage that may not otherwise have been sought. Whilst this may still be consistent with claimants' legal rights, it could cause increased costs for at-fault insurers.

However, if a better understanding of responsibilities (as well as rights) is encouraged, this could actually help to control costs.

(e) What circumvention risks would this remedy pose and how could these be addressed?

Some parties could provide misleading information, or exaggerate the importance/benefits of claiming for every possible head of damage (and vice versa).

(f) How would this remedy best be monitored, particularly in relation to a statement of rights at the first notification of loss?

By the appropriate conduct regulator, depending on which party is dealing with the customer.

(g) How much would it cost to implement this remedy?

Fairly minimal, particularly if materials are produced centrally by the ABI, regulator or other body as appropriate.

(h) Is there any reason why this remedy should not be implemented through an enforcement order?

No as long as the order is binding on any party advising the customer.

(i) Is this remedy more likely to be effective in combination with other remedies than alone and, if so, which combinations of remedy options would be likely to be effective in addressing the AECs that we have provisionally found?

This remedy will not be effective in isolation, and will need to progress alongside either 1A or 1B, and others as appropriate.

(j) Would the additional measure set out in paragraph 20 be likely to be effective in enhancing consumers' understanding of their legal entitlements?

Most likely the effect will be positive but marginal. Customers already suffer from information overload, most of which insurers are required to provide by statute/regulation.

ToH 1: Remedies that we are minded to consider further

24. In this section, we consider seven remedies:

- 1A: first party insurance for replacement cars;
- 1B: at-fault insurers to be given the first option to handle non-fault claims;
- 1C: measures to control the cost of providing replacement cars to non-fault claimants;
- 1D: measures to control non-fault repair costs;
- 1E: measures to control non-fault write-off costs;
- 1F: improved mitigation in relation to the provision of replacement cars to non-fault claimants; and
- 1G: prohibition of referral fees.

Issues for comment 1

28. Views are invited as to: (a) Whether the possible remedies under ToH 1 are likely to be more effective in combination with other remedies than alone and, if so, what

particular combinations of remedy options would be likely to be effective in addressing the AEC we have provisionally found.

As outlined above, both of the main remedies 1A and 1B have advantages and disadvantages.

Remedies 1C, 1D, 1E and 1F would be needed in conjunction with remedy 1B, although remedies 1C to 1F are essentially mitigations in a situation where the separation of cost liability and cost control would continue, which is clearly not ideal. Some of our members felt that these remedies were not worth pursuing in isolation if neither remedy 1A or 1B is implemented. Others argued that 1C and 1D(b) were relatively uncontroversial and could be quickly implemented to provide rapid benefit to consumers.

One query which arose in our discussions was why the CC had not considered a remedy which combines elements of 1A and 1B; whereby a compulsory 1st party cover for replacement vehicles is introduced alongside a requirement for any party to refer the remainder of the claim (repair, personal injury etc) to the appropriate at-fault insurer? However, not all LMA members felt a hybrid of 1A and 1B would best serve the CC's aims.

(b) Whether the possible remedies under ToH 1 should be implemented by the CC through an enforcement order or whether the CC should make recommendations to the Government (for example, the Ministry of Justice), regulators or other public bodies to implement the remedies.

Depends on the remedy/combination of remedies taken forward.

Issues for comment 1A

34. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:

(a) What aspects of the law would need to be changed?

This remedy would most likely require a change to the Road Traffic Act 1988, requiring contracts of (private?) insurance to provide 1st party cover for replacement vehicles, and removing claimants' right of action against an at-fault 3rd party in respect of replacement vehicle costs arising from a non-fault claim.

NB In respect of the compulsory insurance requirements the RTA 1988 does not currently differentiate between private customers and commercial customers, so if a differentiation were to be introduced this would also need to be defined in the Act.

(b) How should policyholders be given a choice as to the extent of replacement car cover?

All insurers should provide at least the most basic level of cover, with insurers free to provide like-for-like cover either as part of the basic contract, or offering the extra cover for an increased price. This remedy would cause a discrepancy for non-comprehensive customers unless the cover was also provided as compulsory in these contracts.

c) To what extent would the need for consumers to pay a premium for replacement car cover be offset by the effect on premiums of the overall reduction in replacement car costs that would occur as a result of this remedy?

Unknown. Detailed analysis is required on this point before this remedy can be progressed. Our instinct is that there would be a net saving.

(d) How might this remedy affect NCBs and the premiums of non-fault claimants? Would non-fault claimants have to pay an excess when provided with a replacement car under their own policy? If so, would this be treated as an uninsured loss which should be recoverable from the at-fault insurer?

Our suggestion is that under remedy 1A, given the customer (irrespective of fault) would have no remedy to recover any uninsured losses, this cover should be provided on a £0 excess basis.

The effect on NCB should be a commercial matter for insurers to consider. We expect that most insurers would treat hire-only claims in the same way as windscreen-only claims at present which do not affect NCB.

(e) How would this remedy affect the credit hire and direct hire activities of vehicle hire companies? How might the quality of service in the provision of replacement cars be affected if replacement car provision is contractually specified in motor insurance policies?

Credit hire firms would lose income derived from inflated hire charges, inflated hire periods and unnecessary upgrades in vehicles, which is all in the public interest.

However, credit hire firms would benefit from the increase in demand for hire cars, better cash flow and reduced litigation costs given hires would be arranged by contract rather than via the current adversarial model.

This measure would also allow credit hire firms to compete with the direct hire market on service and price.

(f) Would it be likely that the non-fault insurer providing the replacement car would also handle the repair of the non-fault claimant's vehicle? What would be the consequences of this? Would complexities and costs arise if the replacement car is provided by the non-fault insurer and the repair is carried out by a different service provider?

This is a key weakness in this remedy; either we have to accept the complexity for customers of two parties handling different aspects of a claim, or if the non-fault insurer (or other agent) is permitted to handle the repair element, some of the existing abuses will inevitably continue. Mitigations could reduce the scope for abuse.

(g) Would this remedy give rise to distortions or have any other unintended consequences?

Intermediaries (including brokers) would lose income currently earned from inducements from service providers to non-fault claimants (who recover their outlay by maximising the value of the claim). However, this would perhaps focus their earning potential on clear and transparent methods of earning income, such as commission and/or overt fees.

It would introduce a two-tier regime for replacement vehicle claims depending on if the non-fault motorist is insured under a private car contract or a commercial insurance contract, as the remedy would only apply to private car claims (unless this is specifically addressed, which may require significant further study).

Whilst we do not advocate permitting customers to 'opt out' of a compulsory 1st party cover for replacement vehicles, if this was permitted the remedy would need to remove the common-law right of action against the at-fault party where the non-fault customer does not buy the minimum cover.

(h) How long would it take to implement this remedy? What administrative changes would need to be made?

18-24 months preparation time should be adequate to make the appropriate changes to customer contracts and liaise with service providers to ensure that the increased demand in hire cars can be met.

(i) Would this remedy need any supporting measures? If so, what are those measures?

1D, 1E and 1G.

Issues for comment 1B

43. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:

(a) Which of the variants in paragraphs 38 and 39 are likely to be most effective:

(i) If the non-fault claimant retains the right to choose who handles the claim, what incentive would they have to choose to have claims handled by the at-fault insurer? Would this remedy favour larger insurers with stronger brands?

Yes, it would favour larger insurers with a stronger brand. Also how would the principle of avoiding the separation of cost liability from cost be met if the claimant can elect to appoint the non-fault insurer to manage the claim? Our members did not support this variant of 1B. NB It would still be possible for the claimant's representative (insurer, broker etc) to act as their liaison with the at-fault insurer managing the claim, provided that the non-fault party had no control over the claim (otherwise the purpose of the remedy would be compromised).

(ii) If the at-fault insurer is able to capture the claim should it wish to do so, what incentive would the at-fault insurer have to provide the standard of service to which the non-fault claimant is entitled? What measures need to be put in place to safeguard against this risk (see, for example, Remedy 2A)?

There were no strong concerns that the at-fault insurer would not be able to provide a good service. Insurers are heavily regulated to ensure that they do provide a good standard of service (and there is an existing industry Code of Practice relating to providing a good service to non-fault customers)

Customers also have free-of-charge access to redress via the statutory complaints process, the FOS and ultimately the Courts.

(b) What are the implications of the non-fault claimant having the right to choose an alternative service provider?

This right would represent a significant weakness in this proposal. The claimant would be motivated to choose (in their view) the best service, rather than the most cost-effective method of meeting their needs, which would partially defeat the object of these reforms. We would also expect a strong bias towards the claimant choosing the non-fault insurer, as the customer has already chosen to contract with that firm.

However, if the right of recovery was limited to the costs of the at-fault insurer (as per remedies 1D/1E for example), this could provide a check on cost inflation by the non-fault insurer. However, such mitigation is clearly open to abuse by the non-fault insurer. Any solution that provides recovery, or a separation of cost liability from cost control, is open to abuse.

(c) To what extent might this remedy inconvenience non-fault claimants, for example if they have to wait for the at-fault insurer to make contact? How long should the fault insurer be given to contact the non-fault claimant?

There would be some inconvenience caused by requiring any party taking FNOL to refer the claim to the at-fault insurer where there is an immediate need for a replacement vehicle. This must be accepted, or could be mitigated with a Protocol that (for example) permitted the claimant/non-fault insurer to instigate a hire for which the at-fault insurer would become liable should they accept liability, subject to meeting any mitigation requirements. However, it should also be accepted that permitting this mitigation re-opens an opportunity for abuse.

Technology should be used to promote fast identification of the at-fault insurer, and pass the notification directly to them. For example via a portal, or via the Motor Insurance Database in cases where the vehicle registration number of the at-fault party is available at FNOL. All insurers/brokers could be required to access the MID, identify the at-fault party, and put the call straight through to them. If the at-fault party declined to act within a certain time period, the claimant would be free to engage the non-fault insurer, or other party, to act on their behalf in pursuing the matter.

24-48 hours would be a reasonable timeframe for referring a new claim on to the at-fault insurer. However there is a risk of abuse where there is the possibility that the non-fault insurer can earn income out of managing the claim. Referral speed and accuracy, along with an appropriate response time for at-fault insurers would need to be strictly regulated, perhaps via the Civil Procedure Rules.

(d) Should non-fault claimants who make the first notification of loss to their own insurer, broker or CMC have to wait for an offer from the at-fault insurer before deciding who to appoint to handle the claim even if they want their own insurer or CMC to do so?

The claimant should not be permitted to appoint another party to manage the claim until the at-fault insurer has accepted the FNOL and declined to act, or failed to act within the appropriate timeframe (this would need to be defined). This presents a significant issue in that the at-fault insurer is entitled to a reasonable period of investigation, yet whilst this is taking place the non-fault claimant may have a mobility need that goes unmet.

A suitable FNOL Protocol could mitigate this risk, where there is a genuine need for an immediate replacement vehicle, but not without breaching the principle of not separating cost control and cost liability.

(e) Are there any advantages or disadvantages to the variant applying this only to replacement cars (see paragraphs 40 and 41) compared with applying this to both replacement cars and repairs? What might be the consequences of a replacement car being provided by the at-fault insurer but the repair being managed by the non-fault insurer?

There could be some minor complexity for the customer in having two parties managing different aspects of their claim, but this is not significantly different from the present position where a claimant may speak to an insurer (if not both insurers), and also liaise directly with a repairer and a credit hirer at various points in the process.

There is a clear risk of abuse where there is any involvement of non-fault insurers in managing subrogated claims. Perhaps more likely is the occurrence of unintentional delays in a repair leading to a dispute between insurers where one is responsible for the repair and the other is responsible for vehicle hire.

(f) Would this remedy give rise to distortions or have any other unintended consequences?

In addition to problems raised above where the claimant has an immediate mobility need, the period allowed for the at-fault party to respond is likely to be fairly short which means that there is less time available for insurers to conduct a thorough investigation and apply counter-fraud measures. This could lead to a reduction in access to justice for defendants.

(g) How might this remedy be circumvented? How could this circumvention be avoided?

The risk of abuse where there is any involvement of non-fault insurers in managing subrogated claims could be mitigated by strict rules on what could be recovered from at-fault insurers. It cannot be avoided entirely without introducing customer detriment by delaying the progression of their claim.

(h) How should insurers, brokers and CMCs be monitored to ensure that claimants are properly informed of their rights when making the first notification of loss? How should non-fault insurers and CMCs be monitored to ensure that the at-fault insurer is informed of the claim? Who should undertake this monitoring? What additional costs would arise as a result of monitoring?

It would need to be made a regulatory requirement, and perhaps reinforced in the Civil Procedure Rules. The at-fault insurer could also report late referrals for enforcement action. There should be clear consequences of a breach.

(i) How long would it take to implement this remedy? What administrative or legal changes would need to be made?

12 months from date of an Enforcement Order following publication of agreed details of the new regime.

Issues for comment 1C: Replace GTA with guidance re duration of hire period

48. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:

In isolation some of our members did not favour this remedy; as it would retain scope for abuse by parties with opposing interests which could continue inflating insurance costs for consumers. Guidance on the duration of hire periods could be wilfully misinterpreted, or at least open to a debate that could be manipulated by the unscrupulous. However, a fixed hire period, based on agreed scenarios could reduce the scope for abuse if the other benefits of this approach were overwhelming. NB Adoption of remedy 1A would render this remedy unnecessary.

If 1C is progressed it might make sense to create a trading platform akin to the MoJ Personal Injury portal for credit hire and repair (or at least cases exceeding certain criteria - re point 45 replacing the GTA and with a mandatory framework). This platform would permit at-fault insurers to exercise control over the claim subject to action within a finite working hour timeframe. Where the insurer fails to act in line with the protocol they risk relinquishing control of the claim.

(a) What would be the most effective way of implementing this type of remedy? Possible ways could be an enforcement order made by the CC, an under-taking to replace the GTA, or (in relation to the hire costs of TRVs subject to dispute) a

recommendation for judicial guidance on the level of hire costs recoverable from at-fault insurers by non-fault insurers and other providers of replacement cars.

An independent party (cheaper than the judiciary) could be appointed by agreement.

(b) Which parties should be covered by this remedy?

(c) What is the appropriate time period in which repairs should commence once a replacement car has been provided? How should the hire period be monitored and by whom?

(d) What is the most appropriate mechanism for setting hire rates for replacement cars? Who should determine the hire rates?

(e) What administrative costs should be allowed? At what level should administrative costs be capped?

(f) Is it practicable for the relevant documentation to be exchanged through a web portal rather than in paper form?

(g) What costs would the measures in this remedy entail?

(h) Would this remedy give rise to distortions or have any other unintended consequences?

(i) To what extent is there a risk that this remedy could be circumvented by the evolution of new business models that are not subject to it? How could this risk be avoided?

Issues for comment 1D: measures to control non-fault repair costs - limit recovery

55. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:

(NB 1B would largely resolve this issue as it would place the majority of repairs with the at-fault insurer).

(a) What would be the most effective way of implementing this remedy?

(b) Would either variant of this remedy give rise to distortions or have any other unintended consequences?

In isolation our members did not favour this remedy; as it would retain scope for abuse by parties with opposing interests which could continue inflating insurance costs for consumers.

1Da would be difficult to successfully implement as it contains the scope for firms to abuse the insurer-repairer relationship and pass on inflated costs to the at-fault insurer.

1Db reduces the scope for abuse, by restricting the amount recoverable by the non-fault insurer.

1Db also offers a level playing field to insurers of all sizes (whilst we agree that in general terms the most efficient insurers are able to achieve lower costs, it should also be borne in mind that volume gives large insurers a distinct competitive advantage).

A potential drawback is that a fair table of rates recoverable could prove difficult to agree. The friction will be most pronounced when a smaller insurer, with higher relative fixed costs, is seeking to recover from a larger insurer. If the larger insurer could conduct the repair for £750, but the smaller insurer must spend £1,000, at what level should the

rate be set? Anything over £750 would be unfair to the larger insurer, and anything less than £1,000 would be unfair to the smaller insurer.

However, it is possible that, in the interests of pragmatically trying to improve on the present position, the insurance market could develop and agree a standard cost list for labour, parts, paint times etc, to be used only for the purposes of subrogation as proposed. Insurers would still be free to negotiate better deals with repairers if they're able to.

Regarding Remedy 1D(a)

(c) How could repairers be prevented from inflating the wholesale prices they charge to non-fault insurers and passing excess profit to non-fault insurers through referral fees, discounts or other payments?

You would have to ban any financial link between repairer/agents and the instructing insurer, otherwise this measure would easily be defeated by 'profit shares', referral fees or other inducements. NB Bans of this sort are notoriously difficult to apply and enforce. This is a significant weakness of this approach. Vertical integration Between insurers and repairers is a key component of some insurers' commercial strategy.

(d) Could this remedy be circumvented by insurers vertically integrating with repairers?

Yes. This is exactly what has happened in the injury claims market with solicitors/insurers merging with law firms in order to side-step the referral fee ban on injury claims.

Regarding Remedy 1D(b)

(e) Is it practicable to set standardized costs for all aspects of repairs in subrogated claims? If not, what are the potential problems?

A standardised set of costs could be developed, by a body such as Thatcham.

There would be a risk of unfairness to one party or the other in many cases, as the standard rates would not always match the actual outlay of the insurer controlling the repair, leading to under or over-recovery.

(f) What are appropriate benchmarks for inputs into the price control? To what extent are cost estimation systems helpful? What other indices would need to be used?

(g) What would be the costs of implementing this arrangement?

(h) How would monitoring of this remedy work?

(i) What would be the most appropriate organization to review the inputs into the price control on a regular basis?

(j) What measures would be required to ensure that the price control arrangements would not have adverse consequences for the quality of repairs?

Issues for comment 1E: measures to control non-fault write-off costs

57. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following: (a) Would either variant of this remedy give rise to distortions or have any other unintended consequences?

1Ea could create tension where the non-fault insurer agrees an unreasonably high value in order to put the at-fault insurer at a disadvantage. Both the non-fault insurer and the

claimant are incentivised by the recovery to inflate the cost beyond the economic value of the salvage, and the at-fault insurer would be obliged to make good.

Any remedy which sees the non-fault insurer managing the salvage (or a repair for that matter) is open to abuse. The non-fault insurer should be taken out of the loop on salvage. That said the insurance market could agree, via bilateral arrangements for the non-fault insurer to manage salvage claims on behalf of the at-fault insurer, using a mutually agreed basis for settlement/fees.

Regarding Remedy 1E(a)

(b) Would at-fault insurers be likely to take up the option of handling the salvage?

Yes if it stops them being exploited by not-fault agents.

(c) At what point in the claims process should at-fault insurers be given this option?

As per 1B, the at-fault insurer should receive very early notification, and be given the opportunity to handle to salvage, or agree a price with the insurer in possession.

Customers could potentially receive a more protracted service, albeit with fairer underlying economic practice and behaviours.

Regarding Remedy 1E(b)

(d) What impact would this remedy have on salvage companies? To what extent would this proposal reduce the incentives for insurers to get the best salvage value from salvage companies?

(e) What administrative costs would the adjustment mechanism have? What evidence would need to be provided to verify the salvage proceeds (and any referral fee)?

Issues for comment 1F: Improved mitigation in relation to the provision of replacement cars to non-fault claimants

61. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:

(a) Could this remedy operate on a stand-alone basis?

This remedy it is not a bad idea per se, but it is still open to some abuse. The non-fault insurer would still have the opportunity to inflate costs ultimately payable by the at-fault insurer.

(b) Which other remedies would benefit from this remedy as a supporting measure?

1A would render this remedy unnecessary. It could operate in conjunction with 1B.

(c) What questions should the non-fault insurer or CMC ask non-fault claimants in order to assess the need for a replacement car, the appropriate type of replacement car and to demonstrate that the provision of a replacement car had been appropriately mitigated? Should the cover provided by the claimant's own insurance policy be considered in assessing the claimant's need: for example, if the claimant's own policy included provision of a replacement car in the event of an at-fault claim, would that be sufficient evidence of need for a replacement car in the event of a non-fault accident?

At present it is felt that those advising claimants may not always act in the claimant's best interest; there is obvious scope for abuse where the advisor is driven by the profit they will make from providing a credit hire car rather than addressing the claimant's true need where a hire car is unnecessary (for example).

(d) Would the right of the at-fault insurer to challenge the non-fault insurer or CMC and to see the ‘mitigation declaration’ and call record be sufficient for this remedy to be self-enforcing without additional monitoring? Would giving the at-fault insurer access to the non-fault insurer’s or CMC’s call records give rise to any data protection issues?

(e) How much would it cost to implement this remedy?

(f) Would this remedy give rise to distortions or have any other unintended consequences?

Issues for comment 1G

64. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:

(a) Could this remedy operate on a stand-alone basis?

Yes.

(b) Would remedies 1A to 1F benefit from a prohibition of referral fees as a supportive measure? Or would remedies 1A to 1F have the effect of reducing referral fees in any event?

Yes.

(c) What would be the impact on premiums if referral fees were prohibited?

Prohibiting referral fees is one essential step in bringing down the overall cost of claims. This will have a positive effect on premiums but much more analysis is required to understand the exact value.

Prohibition of referral fees is needed to help remove the incentive for parties to try to circumvent the processes which would be adopted in 1A or 1B.

Also, this question is effectively a re-phrasing of an earlier question as referral fees are initially paid by parties seeking to make a profit out of managing non-fault claims. The CC has already undertaken some work on estimating the value of removing unnecessary parties from the supply chain, the remaining part of the equation is to calculate the additional costs of whichever remedy is progressed. In relation to 1A it is our instinct that the costs of extending compulsory vehicle hire will be more than met by the savings made by eliminating credit hire, but we would need to undertake the analysis in detail before confirming this.

(d) Would this remedy give rise to distortions or have any other unintended consequences? In particular, would a prohibition on referral fees create a greater incentive for insurers to vertically integrate?

Yes. This is exactly what has happened in the injury claims market with solicitors/insurers merging with law firms in order to side-step the referral fee ban on injury claims.

(e) What circumvention risks would this remedy pose and how could these be mitigated? In particular, how could other monetary transfers (eg discounts) having the same effect as referral fees be prevented?

You would need broadly drafted regulations that prevent any method of using a non-fault claim to generate revenue for the non-fault insurer (or other intermediary).

(f) How could this remedy best be monitored and what costs would be incurred in doing so?

Issues for comment 1H

71. The CC invites views on these two possible remedies which we are not minded to consider further and on any other possible remedies that we have not included in this Notice which interested parties consider may be effective in addressing the AEC we have provisionally found in relation to ToH 1. Where parties are of the view that these remedies could be effective, they are asked to submit evidence to support their views.

Agreed.

Theory of harm 2: Possible underprovision of service to those involved in accidents

Remedy 2A: Compulsory audits of the quality of vehicle repairs

Issues for comment 2A

78. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:

In general, the it is our view that the suggested problems with the quality of insurer-funded repairs has been exaggerated. That said, we understand the concerns that are being raised, and largely support the suggested remedies. That said, large-scale audit of repair would be prohibitively expensive and impractical to arrange given the relatively small number of independent experts available to conduct repair audits.

Also, assessing quality of a complex/structural repair is not necessarily straightforward - an inspector may need to ascertain that certain actions had been taken at various stages during the repair, some of which cannot be verified after the event. This would mean that several inspections at different points in time would be necessary on a larger job, with an obvious effect on cost. It would also require notice of an audit before the job was complete, compromising the value of the audit given the repair will be on notice.

(a) What costs would be involved in auditing the quality of repairs?

A scale of charges depending on the complexity of the job would be necessary. At least £100 for the most basic audit of a simple job such as replacing damaged trim?

(b) How frequently should audits of repair quality be undertaken?

This is a vital consideration. The frequency would need to be sufficiently often to give public reassurance, but not so frequent that the cost becomes prohibitive, especially given costs will ultimately be met by customers. However, many insurers use the same repairers. Therefore, whilst any quality auditing needs to be proportionate, audit costs could be shared between insurers using the same repairers.

(c) Should audits of repair quality be undertaken by insurers and CMCs or an independent body? Is it necessary for the audits to be standardized and be performed by an independent body for the results to be comparable and credible? How would an independent body be funded?

(d) If the results of repair quality audits were to be published, who should collate the results? Should the results be categorized by repairer or insurer?

(e) If audits are carried out by insurers, how would consistent standards be achieved?

(f) If this remedy were to be implemented through expanding the scope of PAS 125⁹ and the scope of audits undertaken in relation to PAS 125, is it necessary for PAS 125 accreditation to be made mandatory for all repairers undertaking insurance-related work?

(g) Would this remedy give rise to distortions or have any other unintended consequences?

(h) Whether this remedy is best made by the CC through an enforcement order or whether the CC should make recommendations to another party to implement the remedy, and if so who that party should be.

(i) Whether this remedy is likely to be more effective in combination with other remedies than alone and, if so, what particular combinations of remedy options would be likely to be effective in addressing the AEC we have provisionally found.

We are minded not to consider further a remedy which gives consumers the right to have their repairs assessed by independent experts at no cost if there is a problem with the repair

Agreed.

Issues for comment 2C

80. The CC invites views on this possible remedy which we are not minded to consider further and on any other possible remedies that we have not included in this Notice which interested parties consider may be effective in addressing the AEC we have provisionally found under ToH 2. Where parties are of the view that this remedy could be effective, they are asked to submit evidence to support their views.

Other ideas?

ToH 4: Remedies that we are minded to consider further

83. We are minded to consider further the following three remedies:

- 4A: Provision of all add-on pricing from insurers to PCWs;
- 4B: Transparent information concerning NCB; and
- 4C: Clearer descriptions of add-ons.

84. At this stage we consider that Remedies 4A, 4B and 4C would be likely to work together as a package of remedies to address the issues we have provisionally identified under ToH 4.

Issues for comment 4

86. Views are invited as to: (a) whether the possible remedies under ToH 4 are likely to be more effective in combination with other remedies than alone and, if so, what particular combinations of remedy options would be likely to be effective in addressing the AEC we have provisionally found; and

(b) whether the possible remedies under ToH 4 are best made by the CC through an enforcement order or whether the CC should make recommendations to another

Remedy 4A: Provision of all add-on pricing from insurers to PCWs

Issues for comment 4A

89. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following: (a) Should PCWs be required to enable consumers to compare the policies offered by different insurers including all add-ons on their websites or are they sufficiently incentivized to do so without such a requirement?

The difficulty with this remedy is that it assumes that all add-on products are the exactly same. They aren't, and this remedy could promote an improper comparison focussed on price rather than quality or suitability of the product, and this could increase the risk of consumers purchasing unsuitable products.

(b) Should the remedy be extended to brokers?

(c) Should the remedy apply to all add-ons?

(d) How long would it take for insurers to prepare the pricing information to pass to PCWs and for PCWs to alter the design of their websites to accommodate this change?

(e) How much would it cost to make these changes?

(f) What circumvention risks would this remedy pose and how could these be mitigated?

(g) Would this remedy give rise to distortions or have any other unintended consequences?

Remedy 4B: Transparent information concerning no-claims bonus

Issues for comment 4B

92. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:

We support the principle of providing clearer information for customers.

(a) Is it necessary for consumers to be given the NCB scales both when choosing whether to take out NCB protection and when receiving their policy quotation?

How would this work for telesales?

(b) What wording could best be used to help consumers that NCB protection does not prevent premiums rising following an accident?

"Even with NCB protection your premium may increase in the future if you make a claim following an accident where you are not at fault. This is because we may incur costs in managing a non-fault claim on your behalf. NB There may also be other reasons why we need to increase your premium in future years."

(c) Are there any obstacles to effective implementation of this remedy?

There is no common definition of NCB/values. For example, one insurer may give a cheaper price than another, even though they might not recognise a customer's NCB.

(d) How long would it take for insurers to prepare the NCB scales?

(e) What circumvention risks would this remedy pose and how could these be mitigated?

(f) Would this remedy give rise to distortions or have any other unintended consequences?

Remedy 4C: Clearer descriptions of add-ons

Issues for comment 4C

95. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following: (a) What are the key aspects of each add-on product that need to be explained in such descriptions and how should the quality of these descriptions best be established?

(b) How should these descriptions be provided to consumers—for example, in the insurance policy documentation, on insurers' websites or on PCWs?

(c) How would this remedy best be monitored—both for initial approval of descriptions and ongoing approval?

This is another tricky area. We support the principle of providing clear product descriptions to customers. However, Motor Legal Expenses Insurance, for example, is quite a complex product because it is designed to serve customers' needs in a range of different scenarios where they may incur legal expenses. The product is complicated because the underlying needs are complicated, and it is difficult to explain the cover and benefits quickly in simple language.

Theory of harm 5: Most favoured nation clauses in PCW and insurer contracts

96. In this section, we consider remedies to address the AEC we have provisionally found in relation to MFN clauses in contracts between PCWs and insurers. Our provisional AEC relates to 'wide' MFN clauses and not 'narrow' MFN clauses.¹⁰ We have therefore considered remedies only in relation to addressing the issues we have found with 'wide' MFN clauses.

ToH 5: Remedies that we are minded to consider further

97. We have identified only one remedy that we consider to be effective in addressing the provisional AEC under ToH 5—a prohibition on 'wide' MFN clauses.

Issues for comment 5A

We support the prohibition of wide MFN clauses. However, it is our view that narrow MFN clauses also pose a threat to competition and require some urgent remedial action. There is a significant risk that narrow MFN clauses could still aid specious price inflation as they could restrict an insurer's ability to offer - on their own website - a price match against the cheapest price offered by any PCW. This means that narrow MFN clauses will still enable PCW's to ensure that their best price cannot be beaten by another PCW where this is possible, providing inappropriate protection to a PCW against the lower prices available from more efficient competitors.

Example: Insurer A wishes to sell a motor insurance product via three distribution channels; two PCWs and its own website. PCW 1 requires a commission of £50, PCW 2 requires a commission of £75, and the insurer's own equivalent costs are £40. The technical price for the risk is £300.

	<i>Technical price (inc profit)</i>	<i>CPA/equivalent distribution cost</i>	<i>Quote price to customer</i>
<i>PCW 1</i>	<i>£300</i>	<i>£50</i>	<i>£350</i>
<i>PCW 2</i>	<i>£300</i>	<i>£75</i>	<i>£375</i>
<i>Insurer Direct</i>	<i>£300</i>	<i>£40</i>	<i>£340</i>

If insurer A agrees a traditional narrow MFN clause with PCW1, this prevents the insurer offering the same product via its own website for less than £350. This is a commercial judgement about the value of using PCW1 compared to distributing directly at a lower cost.

However, if Insurer A agrees a narrow MFN with PCW2, they cannot offer the product via their own website for less than £375, even though they could sell it direct for £350 as per their agreement with PCW. It seems perverse to us that an MFN agreement with a more expensive PCW can override an MFN clause agreed with a cheaper competitor, leading to an inflated price for customers.

Solution: The Competition Commission's remedy on MFN clauses should also prohibit narrow clauses that prevent the insurer from matching the lowest price offered by any PCW, or more widely any MFN clause that seeks to override MFN clauses agreed with other parties.

Re the above example this would mean that any agreement with PCW2 would not prevent the insurer from offering the product via its own website for £350. This would drive competition between PCW's to reduce their costs and prevent price inflation for customers. Whilst this remedy may limit the value of these clauses to individual PCWs it will promote better competition between PCWs.

101. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:

(a) How would this remedy be best specified? Would the prohibition be best described in relation to all MFN clauses except those in relation to insurers' own websites?

Publish an executive order to prevent any subsequent 'creep' in contract terms etc.

(b) Could this remedy take effect immediately (or within a short period to remove the clauses) or would an adjustment period be required?

Insurers would need 12 months to discuss the implications with PCWs and agree new terms.

(c) What circumvention risks would this remedy pose and how could these be mitigated?

See d) below.

(d) In addition to threatening to delist an insurer, what other actions could a PCW take that might have the same effect as a 'wide' MFN? How could the risk of a PCW taking these actions be effectively mitigated?

PCWs could increase their commission (Cost Per Acquisition) until it was no longer economic for the insurer to use that site (i.e. price them out of the market). Mitigation? could take the form of PCWs being required to report to the regulator/competition commission any CPA quoted that is more than 10% higher than their median CPA?

(e) Would this remedy give rise to distortions or have any other unintended consequences?

It would limit PCWs ability to freely set different CPAs for different insurers.

ToH 5: Remedies that we are minded not to consider further

102. We are minded not to consider further a remedy which **prohibits all MFN clauses**. We consider that it would be disproportionate to prohibit all MFNs if the prohibition only of 'wide' MFN clauses were to be considered an effective remedy because the former would clearly be more onerous. We have significant concerns that a prohibition on all MFNs would threaten the existence of PCWs. Without 'narrow' MFNs, consumers could search for policies on a PCW but then might be able obtain the chosen policy more cheaply by visiting the insurer's website directly, and the PCW would not be rewarded for the service it had provided.

Agree.

Issues for comment 5B

103. **The CC invites views on the possible remedy in paragraph 102 which we are not minded to consider further and on any other possible remedies that we have not included in this Notice which interested parties consider may be effective in addressing the AEC we have provisionally found under ToH 5. Where parties are of the view that these remedies could be effective, they are asked to submit evidence to support their views.**

Relevant customer benefits

104. The CC may also have regard to the effects of any remedial action on any relevant customer benefits within the meaning of [section 134](#)(8) of the Act arising from a feature or features of the market giving rise to the AEC. Relevant customer benefits must comprise one or more of: lower prices, higher quality or greater choice of goods or services or greater innovation in relation to such goods or services. Relevant customer benefits must also clearly result from one or more features and be unlikely to have come about absent the feature or features concerned.

Issues for comment 6

105. **Views are invited on the nature, scale and likelihood of any relevant customer benefits within the meaning of the Act and on the impact of any possible remedies on any such benefits.**
