Inquiry Manager
Private Motor Insurance Market Investigation
The Competition Commission
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17th December 2013

Dear Sirs,
Re: Competition Commission Enquiry into the Private Motor Insurance Market

I write further to previous correspondence and directly to comment upon your provisional findings published on the 17th December 2013.

Can I firstly state my correspondence to you is my own as a repairer, McLaren AutoBody ltd, as a consumer, Bob McLaren and as Chair of Motor Association Body (not for profit organisation).

Whilst we would like to compliment the enquiry team on the thoroughness of the work Completed to date, there are some key points which we would like your investigations to consider.

I will begin outlining this article examining insurer approved network-repair agreements. Why? Because to examine approved network repair agreements without examining their history and evolution would – in my opinion – be a failure on my part.

I've seen a lot of dramatic changes and would like to provide the best of service to consumers with a sustainable business model to embrace the future. I started in the insurance/claims Repair industry back in the mid '90s in Edinburgh, Scotland, when body labor rates were suppressed to around £21 an hour, mechanical rates was far higher. Here in 2013 not much has changed in rates under insurer SLA but operating and material costs have increased. I now own and operate a vehicle repair centre since 2007 dealing with claims in difficult economic times for the Globe and insurers intent in changing their ways but to what outcome we have yet to see.

Insurance Fraud: A Historical Perspective

A fair and objective examination of “Approved “ Repairer agreements has to begin with an acknowledgment that, in those days, insurance fraud – as practiced by many Accident repair shops (in concert with claims reps) – was a serious problem. Among the most widely practiced techniques for "picking" the insurance company's pockets was the practice of "conversion." The shop would fight for full panel replacement (parts and labor) and then "convert" those pounds to labor by straightening the panel.

A close second was the use of the "supplement store." Inside that locker would be a stash of damaged A/C compressors, condensers, radiators, fan blades, fan clutches, water pumps, motor mounts, chain covers, p/s pumps, pressure and return-side lines, alternators, etc. When a shop owner wanted to "increase" his profit margin and he knew he could get away with it with a particular adjuster, he'd call in a supplement for hidden damage. The adjuster, being buried with work, would say, "Take a picture and send me the supplement." At that point, the shop owner would go to the supplement store, pull out a damaged part, take a picture of it, throw the part back in the store, attach the photo to the supplement and send it in for payment.
At that time, there was a symbiotic relationship between some shops and certain adjusters. This was most commonly true with independent adjusters/appraisers. When a potential customer came into a shop for an estimate, the shop would first try to determine which insurance company was involved. Based on that answer, the shop would know who most likely would be coming out to inspect the damage. When the opportunity was appropriate, the shop would increase the estimate by 20 percent so the adjuster could come out and pull 10 percent back off. The shop got some premium money, the adjuster/appraiser looked good to his superiors, the customer got a quality repair and everybody was happy.

Well, almost everybody.
Undoubtedly, some of you will be offended by what appears to be an indictment of the Accident repair industry in those days. But if you'll notice, I used qualifying terms such as "many" and "some." That's because there were also some stand-up shops that took pride in their workmanship and their professional reputation. Sad to say, however, using the unethical techniques I described here were so widespread as to be described as pervasive.
Clearly, from the insurance industry point of view, something needed to be done to gain control of their loss severity.

Along Came Approved Shops ...
The Vehicle insurance industry made a considered decision to re-institute some of the forbidden practices and programs. Without memorializing any specific terms and conditions, Vehicle insurance companies began identifying the more ethical, reliable shops and approaching them with an "informal understanding."
The insurers would "refer" their claimants to the "Approved" shop in exchange for some negotiated concessions. The shops would typically give a 10 percent discount on domestic, write the repair estimates (free breakdown as necessary), absorb any recovery costs, waive any storage on vehicles that became totals and hold the line against labor rate increases. Notoriously unethical shops would not make the Approved list.
The early stages of these casual agreements were beneficial to all parties concerned. Better shops got more work, adjusters became more efficient, insurers began reducing their loss severity, repair quality increased and vehicle owners got their properly repaired cars back faster. It seemed that a win-win-win situation had been developed.

Early Fraud Techniques

1. Conversion. The shop would fight for full panel replacement (parts and labour) and then "convert" those pounds to labour by straightening the panel.

2. The supplement store. The shop owner would call in a supplement for hidden damage, and the adjuster would say, "Take a picture and send me the supplement." So the shop owner would pull out one of the many damaged parts stored in the stores, take a picture of it, throw the part back in the store, attach the photo to the supplement and send it in for payment.

The Sears Syndrome

A number of years ago, I took a business management course that described what was then referred to as the "Sears Syndrome."

To sum it up, it goes like this: Sears would find a target manufacturer and negotiate a contract with them to produce x number of widgets. Typically, this would be about 50 percent higher than the manufacturer could then supply. The manufacturer, with their signed contract in hand, would go to their bank and secure a loan for necessary modernization and expansion of their facility. When that contract was due to expire, Sears would offer a new contract requiring three to five times the number of widgets called for in the previous contract. The manufacturer would then go back to their bank and go into serious debt to cover even more necessary expansion costs. Then, when that contract came up for renewal – with the manufacturer seriously in debt and wholly dependent upon Sears – Sears would make the manufacturer an offer it couldn't afford to refuse. Or, if the manufacturer did refuse the offer, Sears would spread the contract out over several other manufacturers for a year or two and then buy their "target" manufacturer's business out of foreclosure or bankruptcy court.

Is there a reason I'm telling you about the Sears Syndrome? Absolutely. Trust me. It'll make sense momentarily.

Approved repairer Agreements: the Early Versions
In the early days of Approved shop programs, the only unibody cars were either European, or the much-looked-down-upon Japanese. HSLA steel was all but unheard of and MIG welders were limited to non-vehicle manufacturing uses.
Then came the gas shortages of the mid-70s.
The government mandated higher minimum MPG requirements, OEMs went to lighter-weight HSLA steel, passenger safety was enhanced via unibody construction, compression ratios and cubic inches were reduced, thereby lowering horsepower, and product appeal was enhanced via the use of "Metallic" finishes.
That's when insurer bean counters (who presumably took the same Business Management course) saw opportunity in these developments. With the casual Approved shop programs having been in place for a few years – and the Justice Department not objecting – it was time to formally memorialize some new terms and conditions in what now was being generically referred to as "insurer Approved repairer service level agreements."
Shops that wanted to continue their workflow benefit now had to formally agree to update their facility to meet the demands of evolving technology. The SLA required extensive expenditures that shops typically had to leverage. Such increased overhead made shops that much more dependent on their insurer "partners" for survival.
That's when the first of several major changes showed up in the new service level agreements. "Partner" shops no longer wrote their own estimates. Instead, staff appraisers began writing more and more of their own estimates, consistent with ever-increasingly conservative guidelines as dictated by the insurers.
But "partner" or "Approved" shops were just beginning to feel the squeeze.

Aftermarket Body Parts Get Their Start
Prior to the early 1980s, aftermarket parts (as they relate to vehicles) meant batteries and water pumps. Then came the introduction of A/M body parts. Insurer bean counters crunched their numbers, saw their projected savings, began dancing in their cubicles and determined such parts were "good."

Since the new formalized service level agreements committed their partner shops to assume repair-related liability, insurers were free to mandate the use of A/M body parts by their dependent and vulnerable partner shops. This is when the insurers' grip on their partner shops began to hurt.
But insurers weren't done yet.
Insurers then broadened their net.

They told non-Approved shops something to the effect: "That's all it will cost at any of our Approved shops, so that's all we're going to pay you."
In fact, this phrase (or variations of it) became a part of the word-track mantra directed at any vehicle owner who had the audacity to consider having his car repaired anywhere other than at a subservient Approved facility.

Whether this constitutes price fixing is for others to determine. And based upon what I'm hearing, such a determination won't be long in coming.(competitions commission)

Relevant info from the United States of America (as usually at some point it reaches the UK shores);

New Approved Repairer service level Agreements: a Vicious, More Virulent Strain
Insurers were well on their way to achieving their agenda of total control when they encountered a problem: a $1.2 billion problem. Some pesky consumer attorneys read State Farm's policy contract and felt State Farm had no contractual right to mandate the use of aftermarket body parts. Those attorneys felt State Farm had breached their own contract and, by virtue of their conduct, had also committed criminal fraud. An Illinois Court (and subsequently the Illinois Court of Appeals) agreed.

The Illinois Supreme Court has accepted this case for review. The legal point upon which the Illinois Supreme Court accepted certiorari is the question as to whether the Illinois State Court has authority to define criminal conduct for acts committed in other states and impose fines related thereto. The court's decision is expected before its summer break.
By way of opinion, I'd caution State Farm to be careful what they ask for – they just might get it. It's possible the Illinois Supreme Court could agree on the authority point of law – exclude all states other than Illinois from participating in the award – but let the amount of the award stand. That could leave the way open for all other state attorneys general to bring criminal fraud actions against State Farm and to seek their own criminal fines. State budgets being what they are, such a contingency could well happen. An extra $500 million could go a long way to easing the strain on many state budgets.

It's also worth mentioning that something significant happened during trial testimony. Robert Shultz, State Farm's lead attorney, went on record as taking the position that: "State Farm does not fix cars. State Farm pays to fix cars."
While that official position didn't have the desired effect on the trial outcome, it has the potential of being the catalyst that will liberate shops from insurer control. (More on this later.)
Looking at the bigger picture, the State Farm case brought insurers to the realization they need to pay more attention to consumers' rights and state criminal fraud statutes. Insurers expect this case will lead to a flood of other similar cases. Whether other such cases have merit or not, insurers will have a cost-of-defense factor to consider. Hence, the new strain of DRP agreements.

Many new DRP agreements (SLA) include an "Indemnification Clause" – a poison pill for shops and a golden parachute for insurers.

Let's suppose, for the sake of this discussion, your shop repaired Mr. Kabibble's car. You repaired the car in accordance with the guidelines as set down by the controlling DRP/ SLA agreement and as dictated by the insurer.

Mr. Kabibble takes his repaired car for a post-repair inspection, which discloses a series of indiscretions. Mr. Kabibble then retains an a Lawyer who sues the repair shop as the insurer partner.

Back to my point,

- The repair shop is obligated to reimburse (indemnify) your partner insurer for their defence expense and/or a portion of any settlement they tender.
- You have to pay your own defence costs and potentially your own separate settlement.
- Your Garage owner Legal Liability and/or Umbrella Insurance will not pay for your defence or your settlement. "Liability assumed under the terms of a contract" or "Intentional Acts" are not covered by these policies.
- If criminal activity is alleged (such as consumer fraud), you could be found guilty and subject to sizable fines that could break you and which aren't dischargeable in bankruptcy. You could lose everything, including half your salary for years to come (assuming you find another job when you get out).

Don't take my word for it. Dig out some of the most recent Approved Repairer service level agreements, including any seemingly innocent addendums you've been asked to sign or initial. Take everything to your lawyer and ask him to review and explain it to you.
While some shop owners understand what they've signed, are comfortable assuming this liability and know their numbers well enough to know the agreement can still benefit them, other shop owners are signing on the dotted line for the wrong reasons – they're trying to guarantee their shop's future, but aren't fully understanding the legal repercussions and if what they've agreed to will actually be profitable.

Insurer Fraud
Approved Repair shop programs began as an effort to address insurance fraud because some body shops and some consumers were picking insurer pockets. It now almost appears as though some insurers have decided to accept fraud as a way of doing business, and they intend to control that action to their advantage. I know that sounds extreme. But after many years of observing and participating in the process, it becomes increasingly difficult to reject this hypothesis.
Let's look at what I mean by insurer fraud (as it relates to the repair process):

- Artificially suppressing insurance claim settlements without contractual authority to do so falls within the commonly accepted definition of fraud.
- Intentional failure to properly address all accident-related damage falls within the commonly accepted definition of fraud.
- Failure to notify a vehicle owner of a relevant factor of repair to his vehicle (A/M parts usage, employment of other-than-approved repair techniques, the impact repairs have on factory warranty, the impact repairs have on vehicle's resale value, etc.) falls within the commonly accepted definition of fraud.
- Failure to fully disclose potential negative consequences a vehicle owner could encounter if he chooses to have his vehicle repaired under the terms of a Approved repairer service level agreement falls within the commonly accepted definition of fraud.
- Failure to strictly adhere to the terms and conditions of the insurance contract would be "Breach of Contract" and, if demonstrated as being a standard business practice, could fall within the commonly accepted definition of fraud.

You know as well as I do that at least one (if not more) of these examples happens thousands of times each and every day.

And don't expect the "I was just doing as I was told" defense to be of any help. It won't work. In fact, because shops are expected to be the repair professionals, they could well be held to a higher level of accountability than the insurer.

Claims Settlement Options Available to Insurers

First insurers turned 90 degrees from informal Approved shop programs to formal service level agreements. Then insurers turned another 90 degrees from early service level agreements to more predatory versions. As we speak, some insurers are turning yet another 90 degrees away from service level agreements toward consolidators, claims administrators and insurer-owned repair facilities. But this isn't over. We see yet another turn on the horizon.

All Property / General Motor, insurance contracts. The document clearly sets out three very separate and distinct options available to insurers for settlement of claims:

1. REPLACE the damaged property;

2. REPAIR the damaged property;

3. PAY for the loss in MONEY.

It's important to note the policy contract doesn't allow the insurer to select part of one option and blend it with part of another option. These are separate options distinct and inclusive unto themselves.

1. **REPLACE the damaged property.** This means the insurer has the option under the terms of the insurance contract to literally take the damaged property and replace it with another item of like, kind and quality. Though rarely selected by insurers, this option is occasionally exercised when dealing with commercial policy losses or in the event of theft of jewellery or collectibles covered by a homeowner policy. In the event the insurer selects this option, the insured pays his excess deductible directly to the insurer and receives the replacement item. In my entire career, I've never seen an insurer exercise this option in the settlement of an auto damage claim – but they could.

2. **REPAIR the damaged property.** Were the insurer to select this option, the insurer could literally take the damaged property and make their own arrangements to have it repaired. The insured pays his deductible directly to the insurer and the repaired property is returned to the insured.

It's not uncommon for insurers to elect this option when dealing with damaged jewelry covered by an Inland Marine Floater (all-physical-loss endorsement). If a diamond ring were to lose one of its diamonds, the insurer would elect this settlement option, have a jeweller pick up the ring and a copy of the appraisal describing the lost stone, replace the lost stone and return the repaired ring to the insured.

It should be noted here that it would not be permissible for an insurer to replace a lost diamond with a cubic zirconium imitation diamond.

We rarely see insurers exercise this option in auto damage claims because courts have clearly held that in such cases, the insured has a direct and exclusive right of recourse against the insurer for any down-line consequences, including liability. That is why insurers so publicly took the position that "We do not fix cars. We pay to fix cars." insurers are trying escape the liability inherent in the "repair" settlement option. It didn't work.

3. **PAY for the loss in money.** Clearly, far-and-away, this is insurers most-utilised option. However, strict interpretation of this option affords insurers the least latitude in their cost-containment efforts. When an insurer selects this option, it's the duty of the insured to prove his loss in terms of money. That's why the "Proof-of-Loss" form was created and why a timetable for submission of "Proof-of-Loss" is set forth in the contract.

In terms of practical application, once the insured has defined the damage or loss in terms of money, the insured would then document the loss, define the amount of loss in terms of money on a Proof-of-Loss form. He'd then submit the signed and completed Proof-of-Loss form (together with supporting documentation) to the insurer as demand for payment in money.
Having received the insured's Proof-of-Loss in a timely fashion, the insurer then has to review the Proof-of-Loss and supporting documentation for the sole purpose of determining appropriate coverage and the extent thereof. Absent any coverage exclusions or limitations and absent any indications of fraud on the part of the insured, it's then the duty of the insurer to "accept" the "Proof-of-Loss" and pay money to the insured.
The benefit to the insurer in this scenario is the absence of any down the line liability. The insured has proven his loss in money, the insurer has paid the money and the insurer now stands clear of any consequential damages or post-claim liabilities. Do you now see why State Farm took the position they did in open court?
But insurers attempt to deflect their liability didn't work because they attempted to co-mingle the settlement options available to them. They involved themselves in the "Repair" process in an attempt to minimize what they'd have to "Pay in Money" in an attempt to avert any liability. Insurers cannot co-mingle the benefits without assuming the corresponding liabilities.

Turn – Turn – Turn
I've gone to all the trouble to review these options to lay the foundation as to why I see yet another 90-degree turn on the horizon.
Consumer attorneys aren't going to overlook the potential consequences of insurers co-mingling settlement options. Litigation will be filed. And insurers and their Approved partners will feel the effects of that litigation. Insurers will be paying a high price, and some Approved shops will be paying the highest price of all.

Based on this, I feel it's only logical that we'll see a return to informal preferred shop programs. Shops will be called upon to define the scope and cost of repairs. Shops will assume responsibility for all down the line liability and consequential damages. And shops will once again enjoy the benefits of their Garage owners Legal Liability and Umbrella policies as was intended. Good Vehicle repair facilities will regain control of their own businesses, tempered by a desire to preserve relations with good insurers.
Benefits to the insurer will be of a collateral (expense) nature, not impacting the damage settlement due the policyholder. Insurers will experience a moderate increase in loss severity (relative to current levels), which would be more than offset by the savings of not having to defend multiple lawsuits and paying out multiple eight- or nine-figure settlements.
Consumers will once again receive quality repairs in a timely fashion. And with less stress over the physical damage claim, consumers will be less likely to seek legal assistance on their minor personal injury claims.
I honestly believe that "for everything, there is a season," and the season of common sense will be returning. Only then will the issue of insurance and insurer fraud be appropriately addressed.

With a passage of a Policyholders' Bill of Rights, insurance premiums and insurability will be stabilized.

But getting from here to there will involve a lot of work by a lot of people – including a lot of lawyers extracting a lot of money from a lot of unethical insurers and their Approved Repairer partners.

Sooo ... What Do Repair Shops Do Just Now?
Perhaps nothing! After all, what are the odds that your shop will be named in a civil lawsuit or be charged with criminal fraud? Only you can assess that probability. But, if you're thinking, "With my luck ..." then perhaps some changes would be in order ...

1. Gather up all your Approved Repairer agreements and sit down with your local legal eagle. Do a worst-case-scenario assessment of your potential civil and criminal exposure. Be candid with your Lawyer about the details of how your business operates.
2. Extricate yourself from the more dangerous of the "Poison Pill" Approved service level agreements. Choosing which SL agreements to revoke should be based upon the risk-benefit analysis that you and your lawyer will have done.
3. Consider modifying the less dangerous agreements. Where insurers are calling for the use of A/M parts, consider offering a discount on OEM parts. Such an approach would improve your reputation with consumers and should improve the flow of the repair process. Other compromises may also come to mind. Be flexible, and consider them all. The point here is to minimize the potential for fraud charges.
4. Begin a marketing campaign focused directly on consumers. Pretend there are no insurer approved shop agreements or partner shops. Pretend you're competing directly against the other shops in your market area.
5. Consider cultivating referrals from other sources.
6. Consider expanding the utilisation of your facility and expertise into areas other than strictly accident repair.
7. Get involved in interactive discussions with other like-minded shop owners/managers who are dealing with the same issues you face. Go online to participate. There are both insurer approved and non-insurer approved shop owners of note there who would be happy to share with you the benefit of their experiences.

For some of you, the information, opinions and suggestions I've shared here will provide an insight into the Vehicle repair industry not previously considered. If this includes you, then I've done my job!

The Vehicle repair industry will be going through some serious changes over the next few years. Some of those changes have already begun. I sincerely hope my shop will be among the "good" ones still standing when the dust settles.

Arming yourself with the knowledge of your legal rights and your customer's legal rights is an integral part of ensuring your long-term success.

Today's Vehicle repairer needs to be a savvy businessman as well as a master craftsman. And part of being a savvy businessman and running a profitable, efficient and ethical repair facility involves knowing one's legal rights and obligations that not only affect him or her but the entire industry.

Repairers can address these legal issues by understanding the rights and duties owed to customers as well as the lack of duties owed to anyone outside of the repair contract. Also, certain necessary business documents can help repairers comply with the United Kingdom' laws and outline the expectations of the parties involved in the repair.

Rights and Obligations

It's clear that many repairers don't understand their rights relating to customers, partly because they're confused as to whom the financially responsible party is and why. An area that causes significant confusion for the repair industry is distinguishing between the statuses of customers when an insurance company is involved in "paying" for the repairs.

First, let's understand that, unless you're involved in an insurance company Approved-repairer program under a service level Agreement (SLA), the insurance company never technically "pays for the repairs." Instead, the consumer is obligated to pay the repairer for the work performed on the vehicle, and the insurer is obliged to indemnify the consumer or pay for damages caused by its insured. This concept has become blurred by insurers' injecting themselves directly into the repair process and has resulted in consumers and repairers becoming confused about their rights and obligations to each other. Accordingly, it's easier to understand these rights and obligations if they're broken down to their elements.

There are two types of insurance company claimants entitled to payment: first parties and third parties. These two types of claimants have entirely different legal rights in relation to the insurance company, and it's important for repairers to truly understand what they're obliged to give to a customer, irrespective of the wishes or dictates of an insurance company.

First party: A first party is a person or entity recovering directly against his or her own insurance policy. This is typically the at-fault driver, but need not be. Fault isn't the operative issue for determining the party's status; the person's relationship to the insurance policy being claimed against is. A first party's rights and obligations relating to the insurance company and insurance policy are governed by contract law.

Third party: A third party is a person or entity seeking to recover against another (the at-fault driver) for the damages caused to his or her vehicle. A third party doesn't have any direct contractual rights against the insurance policy that will ultimately be subject to paying the claim. A third party's rights to recover against the at-fault driver arise from tort law.

Creation of Status Confusion

Because a third party has no direct rights against the insurance policy of the first party (at-fault driver), to be entitled to recover for the damages caused to the vehicle, he or she would be required to sue the first party for negligence and claim monetary damages. Once the third party obtained a judgment against the at-fault driver, only then does he or she have the right to legally demand and obtain payment of the judgment from the at-fault driver's insurance company.

Given this situation, you might ask yourself, "Why would an insurance company ever become involved with and pay out on a third-party claim without a lawsuit?" There are a few reasons why insurers become involved in the payment of third party claims prior to any litigation. First, it's simply less expensive for an insurer, which agrees that its insured is liable for the damage, to pay the claim – as the insurer knows it will be responsible for paying the claim at a later point in time, with interest, as well as paying for the costs associated with defending its insured. Other reasons associated with the cost issue including speedy settlement, certainty, non-involvement of legal counsel, etc., which make it tactically beneficial to settle third party claims without litigation. Additionally, united kingdom' regulations can be interpreted as requiring insurers to make a good faith attempt to settle third party claims without litigation.

The other reason insurers resolve third-party claims without litigation is that they may be subject to bad faith lawsuits by their insured's for causing them to become involved with indefensible litigation. As a result, insurers have incentives for resolving third-party claims without requiring the third party to first jump through the hoops of suing the insured and obtaining a judgment.

Insurers' willingness to resolve first- and third-party complaints, however, doesn't alter what the customer is entitled to for the vehicle repair in the contract between the customer and the repairer. Therefore, it's important for repairers to understand who their customer is, what the region of the United Kingdom laws (English law, Scottish law etc) requires them to provide to the customer, and the potential danger involved with allowing someone other than the customer to interfere with the vehicle repair.

Consumer is the Customer

In today's marketplace, the agreement to repair a vehicle is always entered into between the consumer and the repair shop. This is true even for consumers using a insurer Approved network and remains true for consumers' vehicle repairs that are "arranged for" by an insurer – as the authorising document signed by the consumer to enable the insurer to make these arrangements on behalf of him or her states that the insurer is "assisting" the consumer and, therefore, the insurer is acting as an agent of the consumer. While this might sound like an unnecessary distinction, it's important for consumers as it relates to insurers' elections of remedies under the insurance policy for a first-party claim, the insurers' shared liability for the vehicle repair and the obligations insurers may have incurred to act in the best interests of the consumer. As a result, no matter how the arrangement to repair a consumer's vehicle occurs in today's practice, the contract for repair is always between the consumer and the repairer.

There's a possible situation in which the repair contract could be entered into between the insurer and the Accident Repair shop for the repair of a consumer's vehicle, but this currently never occurs in practice. It can only occur with a first-party claim and has no application to any third-party repair. The insurer-repairer contract for repairing a first-party claimant's vehicle would take place only if an insurer: 1) initially informed the first-party insured of the insurer's election to repair the vehicle under the terms of the policy; 2) the insurer took possession of the vehicle, selected a repair facility, deposited the vehicle with the repairer and signed the necessary paperwork; and 3) paid for the repairs.

The insurance company estimate is not a blueprint (invoice) for repair.

Again, you might wonder why insurers don't take advantage of this provision in their policies with their insured's to actually be the customer in the contract for repairing the insured's vehicle, which would enable them to exercise a customer's decision-making power. The reason is pretty straightforward: liability.

If insurers elected this option with first-party claimants, the law is clear that the insurer is equally liable with the shop for the quality and safety of the repairs. Insurers have been loath to accept liability for the repairs they seek to impose on consumers and have instead tried to inappropriately mix the first-party insurance policy remedies of "pay money for the damage" and "have the vehicle repaired" on both first- and third-party claimants.
The end result is that repairers must be aware that their agreements to repair vehicles – irrespective of how repairs are arranged – currently only exist with the consumer as the customer.

Obligations Owed to Customer

Because contracts for repair only exist between consumers and repairers, only the consumer can make decisions about how the vehicle is repaired when there are discretionary decisions (other than safety decisions) to be made. Repairers have the sole power to make safety-related decisions, as they are liable for returning safe vehicles to the roads. Therefore, unless the repairer determines it to be an issue of safety, only the consumer can decide to have his or her vehicle repaired with used, aftermarket or reconditioned parts; forego colour, sand and buff; agree to repair versus replace; and/or any other decision about the manner of repair.

Issues often arise, however, with the injection of the insurer into the repair process. Insurers may say "we don't pay for that" or "we only pay for aftermarket parts." Yet, these statements have no effect on the obligations the repairer owes to the customer. They only have an effect on how much the customer will be reimbursed for the repair costs after repairs have been made and the repairer has been paid. A repairer allowing the insurer to sway his or her judgment and interfere with the consumer-repairer's agreement is typically a breach of the repair contract and should be avoided at all costs.

In fact, if a repairer allows an insurer to inject itself into the repair process, it can render him or her liable for a number of causes of action. Therefore, it's important for repairers to begin to refocus on their obligations to consumers.

No Insurer Right of Entry

Unless you've agreed to allow insurers into your facility as part of an insurer Approved Repairer arrangement, or unless the United Kingdom Region law expressly requires it, a vehicle repairer has no legal obligation to allow an insurer to enter the property or to inspect a vehicle at any point. If a repairer does allow this, he or she is allowing the insurer onto the property or to inspect a vehicle solely as a courtesy to his or her customer. Repairers forgetting this principle and failing to enforce their rights as business owners has led to many of the issues the Vehicle Repair industry currently faces.
Likewise, third parties have absolutely no obligation to allow an insurer to see or to inspect their vehicles at any point of the repair Process. As third parties have no direct right of action against an at-fault driver's insurer prior to any judgment, the at-fault driver's insurer has no rights to inspect the vehicle of involved in the repair process.

First parties only have a contractual obligation via the insurance policy to allow the insurer to verify that there's a legitimate claim and to allow it to appraise the damage. There's nothing in consumers' Vehicle insurance policies that gives an insurer the right to "only write what you can see" for the initial estimate, and later return repeatedly to "re inspect" additional damage for a supplement. This practice is detrimental to efficient Accident repairs and is not supported by the contractual obligations of insurer and insured under the policy.

The Insurer Estimate

What's the purpose of an insurance company writing an estimate and what impact, if any, does it have on the Vehicle repairer?

The purpose of the insurance company estimate is twofold: a) it allows the insurer to determine that there's a legitimate claim, and b) it enables the insurer to identify the amount of money it needs to place in reserve to properly pay the claim.

The insurance company estimate is not a blueprint for repair. Performing a damage analysis and crafting a blueprint for repair is the sole responsibility of the repairer. As a result, the insurer's estimate is irrelevant to the repair process and has no impact on the repairer.

Furthermore, as only the consumer can determine how his or her vehicle will be repaired (other than issues of safety), Vehicle repairers need to be careful about allowing anyone else to interfere with or try to change the terms of the blueprint for repair created by the repairer and agreed to by the consumer. United Kingdom consumer protection laws typically require repairers to obtain the consumer's express consent to changes in the repair blueprint (invoice). Failure to do so can render the repairer liable for treble damages and the automatic payment of Legal fees.

Also, a repairer's act of "negotiating" the repair with an insurer is construed as the unauthorised practice of law.
Therefore, any attempts by an insurance company to draw the Vehicle repairer into discussing, negotiating or changing the blueprint invoice for repair compromises the customer's claim and subjects the repairer to charges of engaging in a unauthorised practice of law.

Writ of Replevin In creditors' rights law, **replevin**, sometimes known as "claim and delivery,"

Scots law

- Flunter on Landlord and Tenant (4th ed., Edin., 1876)
- Erskine's Principles (20th ad., by Rankine, Edin., 1903)
- Rankine's *Law of Landownership in Scotland* (3rd ed., Edin., 1891)
- Rankine's *Law of Leases in Scotland* (2nd ed., Edin., 1893)

Many repairers are confused when confronted with a “writ of replevin” to force them to relinquish possession of a vehicle. But they aren’t alone in their confusion as not even most attorneys are likely to ever encounter such a writ during the course of their careers.

Just what is a writ of replevin? It’s an ancient writ that enables a person to recover personal property that’s being wrongfully withheld by another. To be successful, the person suing for the return of property must be able to prove that the property belongs to him/her and that the property is being wrongfully withheld by the person currently in possession. Rightful possession defeats a replevin action.

For the Vehicle Repair industry, writs of replevin are seen almost exclusively in the total loss context. An insurer will sometimes threaten to sue a Vehicle repairer for a writ of replevin to obtain the release of a vehicle it has declared to be a total loss that the repairer is holding until he or she receives payment for outstanding charges. Provided the repairer has legal grounds to refuse to turn over the vehicle – including the rights relating to a possessory lien – the repairer will likely prevail. However, there’s a simple mechanism for ensuring that payment will be received and the repairer will prevail: a formal repair contract. As the insurer acquires the rights the consumer had in the vehicle, it cannot negate the terms of an enforceable contract the consumer and Vehicle repairer entered into.

Repair Contract

For too long, the repair industry has relied upon an “authorisation for repair” as a substitute for a genuine contract. While the authorisation for repair obtains the necessary permission for the undertaking of work, it’s woefully inadequate for spelling out the terms and obligations of both customer and repairer.

Historically, repairers have performed collision repairs largely based on oral agreements – with the formalised authorisation for repair stemming from united kingdom consumer protection laws requiring consumers be given an estimate prior to any work beginning, and requiring consumers to give their “informed” consent for the work. The bottom line is that repairers need to be able to rely on a written contract that says: “[Customer] would like you to fix my car, and I promise to pay [Repairer] for your work.”

For too long, the repair industry has relied upon an “authorisation for repair” as a substitute for a genuine contract.

Now, I know what you’re thinking. It can’t be that easy. Well, it can be, but an agreement this simple may not serve your needs. It might also not be in compliance with your Regional laws if you use an agreement this simple in place of any other documentation, like the formal providing of an estimate and obtaining the customer’s express consent to those repairs. As a result, there are a few more elements you might consider adding to your agreement.

The repair contract should include elements identifying its date and the parties to it. The date establishes when the agreement was entered into, and the identification of each party demonstrates those involved. The customer should also agree that he or she is the vehicle owner, has legal possession of it and/or has the right to authorise repairs. Creating an agreement that formalises the customer’s obligation to have the right or ability to legally authorise repairs if that person is not the vehicle owner can save repairers headaches if disputes occur later on.
How many repairers demand to see the registration documents to ascertain the consumer’s right to authorise work when a vehicle is brought in for repair? Not many, unless the Regional law demands it. How many times does a spouse, child, parent or friend bring in another’s vehicle for the necessary work? Probably every working day. So, you need to take some simple steps to ensure that you’re legitimately relying on the customer’s statement that he or she has the right to authorise repairs. The repair contract should also be signed by the parties to it – the vehicle owner, lessee or authorised person, and the repair facility or repairer agreeing to perform the work.

Discussing the repair contract with the customer is also a perfect opportunity to inform consumers that you must make all appropriate decisions on issues of safety and about your potential use or refusal to use aftermarket, used, rebuilt or reconditioned parts, and to obtain the customer’s consent for them. It allows the repairer to establish an expectation of and right to receive complete payment – even in the event part or all of the work is not performed if the agreement is breached; the right to retain the vehicle until all charges are paid in full; and the assignment of any proceeds payable by an insurer to the consumer for the costs associated with the vehicle repair. Finally, a formal agreement allows the repairer to inform the consumer about any charges that may be incurred and to obtain the consumer’s express consent to those charges.

Conclusion -Vehicle repair professionals are best able to run efficient, profitable businesses when they understand their duties to their customers and that they owe no duty to accommodate anyone outside of the repair contract. If repairers streamline their business practices as much as they’ve streamlined their repair techniques, they’ll be better able to serve their customers and make a sound profit.

To open the market for consumer choice ... Essentially banning insurer’s powerful steering efforts backed by the government would allow fair trade and consumer rights to choose, but this means the policy contracts sold by the insurance market would not be allowed to financially penalise the consumer, When the consumer chooses to mitigate their own loss by selecting their own independent repair agent.

Level the playing field for the consumer cc.

Commenting on specific provisional findings:

Replacement vehicles (credit hire)

"Insurers want control of this area in the market; some of the worst behavior causing harm to the consumer is when the insurer's third party capture teams engage with the consumer first. They first get the unsuspecting consumer to accept their illusion of great service, only then does the consumer relies what a mistake they have made. As the consumer that has had an accident that is not their fault, then has allowed the at fault insurer to take control of their life time and money.... with no ability to complain via the likes of the financial ombudsman service. As the fault insurers contract was sold to the at fault driver not the poor persons that has suffered and shall suffer again due to allowing powerful insurers to abuse one claimant at a time. I was personally informed by a third party capture team acting on behalf of the at fault insurers when I called to discuss processes was.... The main part of their process was the hire car and to reduce hire length.... the repairer is the smallest part of the process and the consumer is not even in the process. I have witnessed some very unfortunate frail consumers being extremely messed around, in a car out a car back in a car then turn up to collect their car mid repair all conducted by the third party capture at fault insurers process"

Add-ons

"It is essential that consumers have all the information they need to make an informed choice about the total cost of the policy they are buying and the cost and purpose of all of its individual parts. Especially the financial penalty clauses the insurers hide in the appendix or endorsement sections of double excesses if the consumer wants to utilize their freedom of choice to mitigate their own loss not just that of the insurers costs, not providing insurance cover for courtesy cars or hire car previsions if the consumer wishes to choose their own independent repair agent. All these types of policy terms are geared to take away the consumers freedom of choice. To force the consumer with financial penalty clauses in the terms of the policy to accept the insurance agent as the repair agent also, is a conflict of interest for the consumer trying to recover and mitigate their own loss"

Vehicle repairs

"Some may say the Commission's findings are largely based on an inspection report which contains fundamental flaws and is based on an analysis representing 0.001% of the 1 to 2 million vehicles insurers repair each year." The post repair inspection results must be considered to raise more than just alarm bells. (Scratch to the surface)
In fact insurer control over the cmc and their repair networks which ultimately is the insurer. Huge controlling share volumes being purchased from insurance banking arms and abs structured firms at present form a conflict of interest and cause harm to the consumer. Working under the poison pill service level agreement we carried out many Repairs for Amc's Cmc's that were linked together with many large insurers who had ultimate control....

2x particular AMC's that were working together decided to split from each other. A battle commenced over their repairers by flooding us with work essentially taking away any booking controls that the shop under contract could perform as in the contract any non drivable vehicle had to be dealt with immediately.....
My shop could comfortably manage 60 - 80 jobs per month. I received letters from both providers demanding I choose which one to do work for as they are now once again competitors in the market. My fax machine went with around 50 jobs per week for 3 weeks stating on the instruction vehicle non drivable with pre booked date.... agreed by line engaged (I had no one working for me by this name) we did our level best to service these consumers but the sla contract agreements were laced with penalties reducing my already Squeezed margins eg our Repair invoice £4000 ... amount paid by AMC £2000 after applying their own notional charges.

We had to submit estimates through Audatex giving insurer, cmc etc the ability to instantly slash methods and authorise a fraction of the required job whilst tying us to a incorrect completion date based on their own loss adjuster "engineer" slashed figures which could be 1 day when the job required min 12 day and charged the shop per day we went over there completion date incurred "liquidated damages".

It was apparent at this point I was involved in something that does not match my pro consumer business model....

I serviced the consumer at my own cost to retain my good quality name. Whilst the two AMC companies in-house loss adjuster “engineers” slashed safety related items plus more off our estimates with no way for me the shop owner to challenge them.... I did wheel alignments, electronic system resets and additional tasks at my own cost rather than accept their tortuous interference with repair methods that I was liable for.

AMC’s were not always like this and did once provide a good level of engineering to ensure there was provision for proper repairs but dramatic changes have taken place over the past 5 years and banks/insurers etc swallowing up controlling levels of shares (may just be a coincidence)

Some AMC CMC insurer influenced ones are just BAD through and through for the consumer and Repair shop alike....middle men that add no value just complexity and charges and act as a additional shield for their insurer/banking partners liability for conducting poor unfair practice and poor quality unsafe repairs.

I have received many threats from the powerful people, yet my own morals and judgment on right and wrong forced me to close my state of the art facility in June 2013 as between Direct line, Royal sun alliance and Admiral they collectively forced my remaining accident management and fleet provisions to provide me with a ultimatum.... Do as they say Bob or we can no longer supply you with work as you are causing us a problem.... Remember Bob insurers are ba£$%*ds and they stick together. Echoed, through my work provisions.

Even my bank manager changed, and he came in to discuss reduction in my service whilst talking about direct line... yes I was with RBS.

We are currently setting up a smaller operation that will hold no contracts connected to the insurance industry, staying completely independent. We only serve the consumer and exist to educate our local community on what is fair and reasonable whilst providing safe quality repairs and post repair inspections.

Information for consumers post-accident

"We truly appreciate that it is difficult for consumers to understand from their insurance policy what they are purchasing also exactly what their legal entitlements are following an accident. So the Commission’s recommendations to improve the clarity of policy wording are helpful for the consumer and insurer alike to understand exactly what loss is indemnified."

Eg AXA policy wording.. “We cover the value of the loss” ? What is this? Who determine the value of the loss? AXA and their preferred discounted suppliers? Is this a conflict of interest for the consumer?

Insurers are masters of human behavior.