Competition Commission
Private Motor Insurance Market Investigation

LV= Response to the CC's Notice of Possible Remedies

Having engaged with the Association of British Insurers (ABI) to shape the insurance industry response to the CC, we are broadly supportive of the ABI submission.

The following is by way of further clarity and to highlight our specific concerns:

1A: First party insurance for replacement cars;

We see this as potentially the most complete solution to the problem of excessively expensive temporary vehicle replacement claims. With the caveats outlined below, we therefore urge the implementation of this remedy in some form as it represents the greatest chance to fundamentally address the excessive costs caused by credit hire law and practices to the ultimate detriment of the consumer of private motor insurance.

There are however some significant issues which would need to be addressed to ensure that this remedy was wholly effective as outlined below. Furthermore, as we are convinced that effective implementation of this remedy would require legislation and the inevitable delay that would involve, we additionally urge the implementation of forms of remedies 1C and 1G as interim measures to quickly address some of the excessive costs being passed on in private motor insurance premiums.

Issues needing to be addressed:

Non private motor insurance. The scope of this investigation is limited to private motor insurance. To be effective, this remedy would need to apply across all UK motor insurance. If not this creates a circumvention risk as potentially policy types are re-classified etc. If this approach is not across all insurance types then there would be the complexity of the same individuals having one set of rights when driving one of their vehicles (their private car) and another set when driving another (their trade van for example).

Non-comprehensive covers including covers with large deductibles which applies to commercial motor risks. If insurers were obliged to provide first party temporary replacement vehicle (TRV) cover as a first party cover, clarity is needed for policyholders who choose not to insure damage to their vehicle – e.g. TP only or TPFT covers. If insurers were still obliged to offer first party hire cover to such customers, they would then be faced with having to provide that TRV after an accident in which the customer's vehicle was damaged but have no control about how the damage claim was dealt with (if at all). There are 2 options to deal with this. Firstly the approach could be that in electing not to buy first party vehicle damage cover they are also opting out of the right to a TRV following an accident, irrespective of fault – this would be our favoured option. Or alternatively, there could be a set maximum period (say 7 days) for which insurers would be obliged to provide a TRV if the customer is opting for a non-comprehensive cover.

Subrogation between insurers. If subrogation is not allowed, this will effectively penalise lower risk drivers. Lower risk drivers have a lower frequency of fault claims than do high risk drivers. The benefit then to the pool of higher risk drivers through not having to pay for fault hire claims is greater than to the pool of lower risk drivers. The positive impact of this reform will therefore be weighted more towards higher risk drivers than lower risk drivers as premiums equalise to reflect this.

Allowing subrogation between insurers does of course limit the extent to which this remedy would address the issue of separation of cost liability from cost control. However this could be achieved by having fixed daily rates (set by an independent body) at which insurers can recover from each other for each class of vehicle. This would still allow for competitive advantage to be gained as each insurer would still compete to gain the lowest contractual rates from their supplier of TRVs meaning that the most efficient and most competitive could still gain a margin on those claims – but at a much more measured and reasonable level – whereas the least competitive may have to bear a margin of the cost themselves.

Period could be controlled by a requirement that insurers keep records (which could be audited by the FCA or other body) demonstrating that their average hire period on non-fault claims where they are seeking recovery is no more than their hire periods on fault claims.

Can this remedy be introduced without legislation?

We are aware that other responses to the Competition Commission will propose that this remedy could be introduced without legislation by way of an Enforcement Order requiring that all insurers transacting insurance in the UK would have to provide TRV cover on **a like-for-like basis regardless of fault for an accident.**

To deal firstly with the 2 points highlighted in the previous paragraph. Without legislation removing or modifying a motorist's common law entitlement to be compensated for a like-for-like TRV, the Order would have to require that TRV cover be on a like for like basis. If not, then a customer who had chosen courtesy car level cover (or opted out altogether) would, following the accident, still have their common law right in place to opt for a credit hire like-for-like vehicle.

In relation to this provision needing to be regardless of fault, this would be the only practical solution. Insurers are already regularly faced with difficulty in getting their customer's agreement that they are at fault for an accident. This affects insurers ability to resolve claims quickly and economically – particularly affecting their ability to manage personal injury claims within the time periods prescribed within the MoJ portal process. If customers had an additional incentive to be 'not at fault' for an accident (i.e. they only get their TRV if they weren't at fault) then this problem would be multiplied, litigation rates would increase as would costs for insurers. As such, this cover would have to be available regardless of fault.

Given these 2 factors, we do not believe that this remedy introduced by an Enforcement Order would actually have any significant impact on claims costs and thus would not achieve the objective of reducing insurance premiums.

To demonstrate this consider that currently out of 100 claims where an insurer's policyholder damages their vehicle (including not just fault claims but split liability and non fault claims) they will receive maybe 35 like for like credit hire claims made against them on the clear fault claims. If insurers had to provide first party cover for a like for like vehicle to their customer regardless of fault, they would then receive 100 claims from their policyholders for like for like vehicles. In other words, introducing this remedy in this way would potentially treble the volume of hire claims insurers receive.

Clearly this is an over-simplification and the numbers are simply representative. However essentially in order for any savings to be generated by this remedy enforced in this way, those first party hires would need to be 1/3rd cheaper than the credit hire claims currently being received. That may be possible as the claims would be at insurers contracted rates with the insurer having complete control of the period. However the level of any savings would be significantly lower than if the remedy were introduced in such a way as to remove or modify the common law entitlement. The first party cover could then be offered as anticipated at either like-for-like level, a lesser level or no cover at all with savings anticipated as a large number of customers trade off their entitlement for a like for like vehicle to achieve a lower premium.

As such, we do not believe that this remedy could be effectively introduced without legislation.

(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 one of the factors that would need to be considered when considering the detail of this remedy and other remedies being introduced. If there is still a rent to be made (either by insurers, brokers or accident management companies) on the resolution of the damage element of the claim – be that repair or total loss – then there would still be the incentive for the damage element of the claim either to be farmed to another party over whom the first party insurer has no control or to be managed by the at-fault insurer under an intervention process. This would have the effect of once again separating liability for the hire cost (with the first party insurer) from cost control with the party managing the damage claim having no incentive to manage the period.

This could be managed to some extent by allowing controlled subrogation between insurers (as outlined above) or by limiting the period that a first party insurer has to provide a replacement vehicle to say 14 days if they are not also managing the damage element of the claim.

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

As outlined above, without subrogation being allowed between insurers, the benefit of this measure would be weighted more to high risk drivers rather than low risk drivers.

Additionally there would be an unintended benefit to providers of other forms of insurance (such as public liability insurance) who may benefit from reduced credit hire claims being made against them with this liability (albeit at much reduced cost) being transferred to the motorists first party insurer.

This same unintended benefit would apply to commercial motor insurers if this remedy was not also applied to them. They would receive the benefit of less credit hire claims being made against them – whilst still being able to pursue credit hire claims against private motor insurers, adding further cost to private motorists' premiums and further eroding the benefit of this remedy.

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

As stated above, given the time this remedy would take to implement effectively, it is vital that remedies 1C and 1G are also introduced. The mechanisms created within 1C could ultimately become the mechanism by which subrogation rates between insurers are regulated (as recommended above) once remedy 1A is in place.

1B: At-fault insurers to be given the first option to handle non-fault claims

We do not favour this remedy given the process impacts and impact on the customer journey. If a customer has chosen LV as their preferred insurer and purchased cover on a basis which includes the repair to their vehicle, we believe that they should have the right to expect that LV will provide that repair service. We have sold the customer a promise that we will repair their vehicle - and **we do not favour a solution which requires us or our customer to give another insurer the first opportunity to manage our customer's claims journey.**

Furthermore there is little incentive for the non-fault claimant to choose that their claim be handled by the at-fault insurer. Claimants are more likely to prefer their own insurer, a brand that they will recognise and with whom they have chosen to enter into a contractual relationship, rather than an insurer they may not know and have no existing relationship with, or indeed that the consumer had actively chosen *not* to have a relationship with.

As such, if this proposed remedy were to be implemented, but the non-fault policyholder retained the right to decide which insurer to use, then this proposed remedy would be ineffective.

An additional impact on the customer's journey would be the inevitable delay built into the process from the point at which they report until the end of the period that the at-fault insurer has to take control. How are emergency mobility needs to be met in this interim period?

From the process perspective, this remedy would generate a whole new industry as insurers set up teams and processes to ensure that we respond to opportunities to intervene. Non fault insurers/brokers/accident management companies would generate ways to game the system to make it more difficult for at-fault insurers to intervene. There would need to be clear rules around the evidence that non-fault providers would need to have that at-fault insurers had been given the necessary option.

If the option is adopted which requires at-fault parties to disclose to others the costs they will incur in fulfilling the required services, there is the potential for this to undermine competition in the market for temporary replacement vehicles with a levelling of costs occurring and the reduction in natural competitive advantage.

If this remedy were introduced we would expect it to acknowledge the role that bilateral agreements between insurers could play. Insurers could agree with each other that they do not need to offer this opportunity to the other with the terms of recovery being agreed between them on a bi-lateral basis on pre-agreed 'net' terms.

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

Depending on what variation of the proposed remedy the CC ultimately adopts, if any, changes to the Road Traffic Act are likely to be required

1C: Measures to control the cost of providing replacement cars to non-fault claimants

If this were the only remedy to be introduced, we would see it as a missed opportunity to permanently change the way that replacement car claims are dealt with to the benefit of customers through reduced premiums. However, given that we believe option 1A is likely to take significant time and cost to be implemented, we consider that 1C, in combination with 1G, would be a step on the road.

We support 1C as a replacement for the GTA but independently managed and monitored. It would need to be a mandated solution (not voluntary as is the GTA) with participation in the framework a pre-requisite for writing insurance in the UK, being a UK insurance broker or being licenced as a credit hire organisation or accident management company. Rate setting would need to be independent and based on the reality of bulk-buying prices rather than commercial ‘spot rates’ – and also take into account the removal of the referral fee cost by the implementation of 1G.

One of the key failings of the GTA is that the 2 parties (insurer and CHO) benefit from opposite outcomes – the insurer from reduced periods, the CHO from increased periods, leading to intense friction and additional cost. The framework and costs allowable could be designed to align these benefits such that the CHO achieves greater profitability through shorter periods rather than longer, encouraging a collaborative approach which delivers not just cost savings, but a quicker repair or total loss resolution for the customer.

1D Measures to control non-fault repair costs

1D(A) Non-fault insurers would be required to pass on to at-fault insurers the wholesale price they pay to repairers, plus an allowance for an administration charge.

We support this remedy and what it is trying to achieve however we are concerned that it will be complex to effectively implement a solution which caters for all the ways in which a margin can be made on subrogated repair claims. We are also concerned that it only focusses on non-fault insurers.

We would emphasise that this remedy should also address the similar practices of other organisations which manage non-fault claims on behalf of customers – including insurance brokers, credit hire organisations and accident management companies.

It also does not seek to address the problem of credit repair – especially income generation from credit repair where the non-fault customer has comprehensive insurance but is persuaded not to use that cover but rather to go down the route of credit repair which generates an income for the insurer, broker or accident management company. We strongly recommend an additional remedy to address this; any reduction in subrogated repair costs should result in more competitive prices for insurers and brokers, ultimately benefiting the consumer.

It may be that it is considered that by implementing Remedy 1G this would effectively deal with the issue of credit repair. However, as detailed later, we are concerned about the effectiveness of a referral fee ban.

In terms of the remedy 1D(A) as recommended, the outcome must be that an insurer, broker, credit repair organisation or accident management company only seeks to recover from the other the actual net costs it has incurred in dealing with its customer's claims with such net costs managed to the lowest possible level it can reasonably achieve. The wording of the Enforcement Order (or other mechanism) to achieve this outcome, however, will be exceptionally complex. Negotiation of subrogation bi-lateral agreements has demonstrated how difficult this is to achieve even when both parties are committed to the outcome.

In essence, however, this remedy must seek to achieve that insurers and others handle all claims in an entirely undifferentiated manner, regardless of whether they relate to a fault or non-fault accident. Specifically:

- ⇒ the same labour rate and overall charging structure should be applied for fault or non-fault accidents.
- ⇒ No account should be taken of whether an accident is fault or non-fault when deciding which repairer will be used to repair the customer's vehicle.
- ⇒ No comprehensively insured customer should be referred through a credit repair arrangement.

Where a repairer is owned by the subrogating party, the subrogating party should not use unreasonable profit from a repairer as an expense-offset. For the avoidance of doubt, the value of any invoices presented from a subrogating party owned repair centre should not exceed the value of invoices presented for equivalent repairs by independently owned repair centres.

Subrogating insurers will retain the benefit of their expertise, capability and economies of scale on the majority of repair cases where they do not recover from another party. However for non-fault claims, they must only claim the net wholesale cost of the actual repair from the at-fault party.

We do not agree that an administration charge should be recoverable. Administration charges are to cover operational expenses which should not be recovered from an at-fault party.

1D(B) The repair costs recoverable through subrogated claims would be limited to standardized costs.

Whilst this appears to be a very neat solution, we believe it to be very complex and that the cost of putting this in place then regulating and maintaining it is out of proportion to the scale of the harm identified by the Competition Commission. Particularly complexities would arise from issues around the use of non-OE or green (secondhand) parts where potentially an insurer (or other) could subrogate at the standardized costs but having used cheaper parts.

1E: Measures to control non-fault write-off costs

We very much welcome the Competition Commission's intention to address this issue. We do believe it is a significant issue **which applies not just to subrogation between insurers but also to subrogation by Claims Management Companies and others.** Whichever remedy is implemented, the Competition Commission need to ensure that it is effective across the industry, not just in relation to insurers. 1E(A) as drafted does cover Claims Management Companies – 1E(B) does not.

We consider that option 1E(A) to be on the face of it a neat solution which would address the majority of this harm. The ABI in their response, have, however outlined a number of valid reasons why this would be problematic.

As the Competition Commission are aware, there are significant variations in models adopted to manage salvage returns ranging from straightforward PAV tables enhanced by a profit share on the sale of the vehicle (either individually or on a consolidated basis), repair and share schemes, models involving intermediary companies etc. As such, there is some concern that it would be difficult to effectively word an Enforcement Order to outlaw not just all existing revenue generating models but any that are created in the future.

As such, our recommendation would be that the Enforcement Order be worded in a broad way which simply requires that all value that an insurer (or accident management company or other) receives in relation to the sale of salvage whether that value is received immediately, as part of a profit share, as a referral fee or in any other way is credited to the subrogated claim being made. This could be enforced by CEO's being required to make an attestation to the effect that their companies are compliant with this. Salvage companies could also have an 'honest broker' role in attesting to the nature of their contracts with individual insurers.

In summary, we believe both remedies could be effective but there are difficulties associated with each. On balance, we favour 1E(B).

We would emphasise that we do believe it is a significant issue as we made clear in our earlier submissions and given that either of these remedies could be introduced by an Enforcement Order, urge the Competition Commission to implement the chosen remedy at the earliest possible opportunity.

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

Whilst we appreciate the intention of this remedy, we consider that as a standalone remedy it would simply be tinkering with a fundamentally flawed situation. It addresses the symptoms rather than the root cause of the problem.

Insurers, credit hire organisations and their respective lawyers have a long and expensive history of engaging in litigation battles over the minutiae of champerty, need, mitigation, enforceability, rates, period etc. etc. This remedy potentially will simply introduce a new area of argument and dispute.

As such, whilst we could see the remedy having a part to play as a supporting remedy to the effective introduction of 1C, we are concerned that it would create a distraction and a new level of complexity which is unnecessary if 1C and 1G are effectively and robustly implemented.

1G: Prohibition of referral fees

As with the personal injury referral fee ban, a ban on referral fees would simply be seen by some as a challenge to be circumvented one way or another. The drafting of the PI referral fee ban was complicated enough (and still ineffective) - the drafting of a ban to cover all the possible ways this income is structured and generated would be extremely difficult. There is also additional complexity around enforcement with not all of those who may pay or receive referral fees in relation to hire, repairs or total losses being part of a regulated industry – vehicle repairers, salvage companies etc.

As such, without other fundamental reforms which remove the excess money from the system which enables the payment of those referral fees, such a ban would be ineffective. Therefore, whilst **we support the implementation of such a ban**, this support is conditional on lessons being learned from the implementation of the PI referral fee ban and it being part of an effective package of measures incorporating the approaches set out in remedies 1A, 1C, 1D(A) and 1E(B).

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

We are very concerned at the additional cost implied by the introduction of this remedy. We believe that the sample size relied on by the Competition Commission was too small to justify such a remedy which will have the outcome of increasing insurance premiums for consumers.

LV receive only a very small volume of complaints regarding the quality of repairs – and we believe that the quality of repairs achieved by our own repair network driven by our requirements for appropriate accreditations (PAS125), adherence to Thatcham methodologies, guarantees on workmanship etc is likely to deliver better quality repairs than those delivered by repairers over whom we have less influence.

An alternative approach might be to mandate that any repairer completing a repair following an accident should be accredited to PAS125 or equivalent standards. As most vehicle repairs are already carried out by repairers who comply with these standards, this would add limited additional cost – unlike the introduction of compulsory post-repair quality audits.

Theory of harm 4: Add-ons

We welcome initiatives to further aid consumer understanding and agree that combined consideration is appropriate.

Given the multitude of PMI products and differing benefit levels available, we are concerned that the CC's proposals could lead to product standardisation and the potential hollowing out of core benefits. This would detrimentally impact competition and consumer outcomes.

PMI products are designed to meet the demands of target consumer segments with differing needs – a one size fits all approach is not practical, or appropriate.

It essential that the CC adopts a collaborative approach with the FCA and takes full account of the FCA's on-going investigation into the wider add-ons market. We assume the FCA will extend relevant PMI remedies to the sale of other general insurance products to ensure consistency.

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

(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?

We are supportive of this proposal. Consumers should have the opportunity to select their choice of add-ons to enable effective comparison. However, a solution would need to recognise that differing products and benefits are a function of the market and not result in a requirement for standardisation.

Consequently, it is vital that the CC is satisfied that the risk of market convergence to standardised products and benefit levels is effectively mitigated.

We urge the CC to consider implementation of a market code of conduct for PCWs to enforce minimum standards and agreed principles to ensure the consistent communication of key features.

We would also recommend a simple, visible mechanism (standards kitemark) to reassure consumers that the add-ons selected provide value. This is of course already the focus of the FCA's attention and it would seem sensible to defer to that review or at least to act in close consultation with the FCA.

(b) Should the remedy be extended to brokers?

Yes, a level playing field should apply to all parties selling through PCWs and to ensure a consistent customer journey.

Differing practices apply within the broker channel, which may add complexity. The capability of software providers, that support rating, will also require consideration.

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

Ideally, but the remedy must be balanced to avoid introducing complexity at point of sale and an unacceptable customer journey. A model whereby the most commonly purchased add-ons are initially highlighted seems a more practical option, but further clarity is required regarding solution design.

(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?

Whilst it should be relatively straightforward for insurers to provide add-on pricing, it is necessary to engage with PCWs in order to establish their requirements to effectively capture this information.

Remedy 4B: Transparent information concerning no-claims bonus

(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?

We do not believe it is necessary and are not convinced that consumers will refer to NCD scales at point of sale. There is added complexity as varying NCD scales apply across the market, bringing into question whether consumers can make effective comparisons.

For Direct business this information is provided on request. Our Direct Document of Insurance includes the NCD step back scale, clarifying the impact of claims on the number of years entitlement – also available on our website.

Publishing % NCD scales will restrict insurers' ability to introduce refinements, eg increasing discounts for more profitable customer segments. There will also be cost considerations (reissue of Documents of Insurance / communication updates), which may negate premium benefits.

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

It is possible that NCDs could be diluted or removed altogether in favour of discounts for other risk factors.

Remedy 4C: Clearer descriptions of add-ons

(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?

We agree that communication of key aspects should be consistent to enable consumers to make informed decisions. In some instances add-ons extend benefits under the core product offering, eg LV's Extended Personal Accident add-on increases basic £10K cover to £100K, so key features will initially be referenced under the core product.

We are of the view that the CC should engage with the FCA to define requirements, but with the caveat that the customer journey remains balanced and reasonable.

Insurers are aware of information requirements - significant research has already been undertaken to optimise the customer experience and to ensure their demands are met. It should therefore, be relatively straightforward to identify those providers that do it well and highlight examples to benchmark against.

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

Remedy 5A: Prohibition on wide MFN clauses

(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?

We are supportive of this remedy. The prohibition is best described as in relation to all MFN clauses, but with exception of insurers' own websites for the same risk (specifying the insurer brand or brands subject to PCW contractual obligations).

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

Removal of the clause could be immediate.

TOH5: Remedies not to be considered further (prohibition of all MFN clauses)

In the absence of a practical alternative remedy, we understand the rationale for maintaining narrow MFNs in order to underpin PCW business models.

However, we maintain our position that narrow MFN clauses restrict insurers' ability to apply differential pricing by channel to reflect the relative risk performance.