



## **Private Motor Insurance Market Investigation**

### **Response to Notice of Possible Remedies**

#### **Royal & Sun Alliance Insurance Plc**

#### **Chapters**

- A. Executive Summary
- B. Theory of Harm 1: Separation of cost liability and cost control
- C. Theory of Harm 2: Possible underprovision of service to those involved in accidents
- D. Theories of Harm 4 and 5: Add-ons and MFNs in PCW and insurer contracts

## A. Executive Summary

- A.1 Royal & Sun Alliance Insurance Plc ("RSA") continues to support the Competition Commission's ("CC") work on the private motor insurance ("PMI") market investigation and we look forward to working with the CC with a view to developing lasting and comprehensive market solutions.
- A.2 This paper addresses the proposed remedies set out in the CC's Notice on Possible Remedies ("Remedies Notice"). We do not comment in this response on the nature or extent of any underlying 'adverse effect on competition' ("AEC") and our comments made in respect of possible remedies are without prejudice to our ability to make specific representations on these points as part of our response to the Provisional Findings, which will follow.
- A.3 For the purposes of this paper we have therefore taken the CC's AEC findings as read and comment on each of the proposed remedies in turn.

### *Introduction*

- A.4 Whilst we recognise that the CC's terms of reference relate to the supply or acquisition of *private* motor insurance, as the investigation moves into the remedies phase it will be necessary to be mindful of the interaction between private motor vehicles and other road users. This is because, self-evidently, not every accident involves only private motor vehicles – private motor vehicles can, and do, crash into commercial vehicles and *vice versa*.
- A.5 The sheer number of commercial vehicles on the road makes this point clear – according to ABI data, there were 3.7 million commercial vehicles insured in the UK in 2012, accounting for around 1 in 7 of all insured vehicles<sup>1</sup>. Incidents can also arise between private motor vehicles and cyclists, pedestrians, other private motor vehicles without comprehensive insurance cover and of course uninsured drivers.
- A.6 Further, whilst some categories of commercial vehicle are clearly very distinct (e.g. HGVs, buses etc.), there are others where the lines are distinctly more blurred and where the commercial customer experience is far closer to PMI (e.g. a 'man and a van' who is an SME customer insured under a commercial policy or a company car driver who is insured under a commercial fleet policy).
- A.7 An outcome that resulted in enhancing the PMI customer experience, or lowering costs for PMI customers only where they are involved in a collision with another PMI driver, would clearly be undesirable. Depending on how the CC chooses to implement its remedies, a failure to take these issues into consideration could mean that a NAF PMI customer would not be able to recover at all if it is involved in an accident with a commercial vehicle, whereas a NAF commercial driver would be able to recover from an AF PMI driver. Thus, under the current proposals, an AF PMI customer would potentially face increased costs when it collides with a commercial vehicle as compared to a collision involving a PMI vehicle.
- A.8 Equally cost savings are likely to be greater where remedies apply to all road traffic incidents involving PMI drivers, rather than only those exclusively involving PMI drivers. Similar issues apply when considering incidents involving uninsured drivers, and those

---

<sup>1</sup> 'UK Insurance Key Facts 2013' published by the ABI, September 2013.

incidents which fall outside the normal subrogation model, e.g. private motor vehicles insured for third party, fire and theft only, cyclists and pedestrians.

- A.9 Unless due consideration is given to these complexities, many of the remedy proposals contained in the Remedies Notice risk giving rise to unintended consequences. For example, depending on how it is implemented, Remedy 1A might result in NAF PMI drivers having no right to a mobility solution at all where they are involved in a collision with another PMI vehicle, whereas a commercial NAF customer would have a right if it collides with a PMI vehicle. Hence, the commercially insured driver may have different, and potentially enhanced, rights over PMI customers.
- A.10 In addition, as RSA has previously submitted to the CC, it will be important to maintain consistency and avoid overlap with concurrent industry reviews, in particular those being conducted by the FCA on add-on products. Certain remedies lend themselves to be considered by the FCA and we would like to see these tied together and placed under the remit of the FCA to avoid unnecessary duplication and/or inconsistent outcomes.
- A.11 Overall, RSA welcomes the continued focus on TOH1, where most market participants are in agreement that the separation of cost liability and cost control (particularly with regard to credit hire and TRVs) is the key dysfunctional element of the PMI market which must be addressed to reduce costs and hence, ultimately, customer premiums.

#### *Outcomes*

- A.12 Throughout this investigation, RSA has reiterated its desire to see the following outcomes arising from the market investigation to the ultimate benefit of customers:
- (i) Protection of the NAF customer's right to full rectification;
  - (ii) Maintenance and enhancement of the customer experience, including with regard to the speed of claim, and reducing the scope for disputes;
  - (iii) Closer alignment of the incentives of the party controlling costs (i.e. the procurer of services) with the party ultimately responsible for paying for those services (i.e. the AF insurer); and
  - (iv) A reduction in overall costs, whilst protecting and strengthening incentives on insurers to operate as efficiently as possible, to ensure that savings can be passed through to customers in the form of lower premiums.
- A.13 We continue to believe that these should remain at the forefront of the CC's thinking during the remedies phase.

#### *Summary of RSA views by Remedy*

- A.14 We consider that a package of remedies drawing on a number of the proposals put forward by the CC would address the concerns identified in the Provisional Findings. However, we consider that a number of issues will need addressing for each of the proposals and we consider that Remedy 1A offers significantly greater benefits (and, if amended, fewer downsides) than Remedy 1B. Greatest among these issues is the concern that, as proposed, some of the remedies would have a detrimental impact on NAF customer rights:
- **Remedy A:** We support the inclusion of Remedy A as part of a comprehensive package of remedies, provided safeguards can be ensured to protect the customer experience. In particular, we believe that any necessary additional information

should be communicated well in advance of the point of claim and, if possible, before the point of sale;

- **Remedy 1A:** In principle, we consider that this remedy has the potential to address the concerns around over-costing arising from TRV provision. However, we consider that a selective ban on subrogation raises a number of issues, including a divergence in treatment between commercial and PMI customers, and we therefore believe that further consideration of the potential to include a variation with subrogation should be made. This would need to be supported by additional remedies to control cost (including hire duration), for example Remedy 1C. In addition, we consider there to be a need for some form of mandatory NAF mobility requirement in order to protect the NAF customer's rights;
- **Remedy 1B:** We have a number of concerns with this remedy, particularly regarding the customer experience. Whilst the variant of Remedy 1B set out in paragraph 41 of the Remedies Notice, if limited to TRVs alone, addresses some of our concerns, this still risks operating to the detriment of the overall customer experience;
- **Remedy 1C:** We consider that this remedy would work well alongside Remedy 1A with subrogation or, possibly, with some of the options under Remedy 1B. Consideration would need to be given to how to set and maintain rates at the right level in order to deliver cost savings and guidance must extend to hire duration;
- **Remedy 1D:** Properly implemented, we consider that both variations of Remedy 1D would address the issues identified by the CC. However, there are considerable practical difficulties in implementing the remedy to prevent the risk of circumvention, particularly as regards defining what is meant by 'wholesale'. We also note that subrogation at wholesale rates acts as a disincentive for insurers to provide efficient repair services whilst penalising more efficient models;
- **Remedy 1E:** Either of the two alternative remedy proposals would address the concerns identified by the CC. We consider there to be slightly more practical considerations that apply to Remedy 1E(a) concerning transportation and storage of the salvage. It will also be difficult to establish when a vehicle is a total loss until the salvage value is known. However, under Remedy 1E(b), it will be necessary (as for Remedy 1D(b)) to define precisely what is meant by 'actual salvage proceeds';
- **Remedy 1F:** We support a remedy that seeks to improve mitigation, including one which ensures this occurs at a more appropriate point in the customer journey. We do not however consider it necessary to allow for review of call records;
- **Remedy 1G:** Whilst a simple ban on referral fees will not work in isolation, we consider that this could be a supporting remedy, if combined with other solutions to lower costs;
- **Remedy 2A:** We do not accept there to be sufficient evidence of concerns with regard to repair quality to justify remedies and would be particularly concerned if any remedies proposed resulted in increased costs and higher premiums. We note that the only evidence relied on by the CC is drawn from a small sample that the CC itself accepts is "*small and not representative*". However, in principle, we support changes which would result in greater oversight of the quality of repairs;
- **Remedy 4A, 4B and 4C:** We consider that the issues identified in respect of add-ons fall more appropriately under the jurisdiction of the FCA and we would urge the

CC to proceed by way of recommendations to the FCA so that the FCA is empowered to consider remedies in the context of its ongoing thematic reviews into these issues;

- **Remedy 5A:** We support a ban on wide MFNs, but consider that the CC needs to assess how this remedy would interact with the use of MFNs in other contexts. We would like to see any remedy applied more widely than just to PMI. Again, however, we consider this to be an issue best addressed by the FCA.

### *Conclusion*

- A.15 It is of course necessary to consider the remedies in light of the CC's Provisional Findings and the provisional finding of a number of AECs. We will be responding separately to the Provisional Findings.
- A.16 Throughout its submissions to the OFT and the CC, RSA has broadly supported the focus on TOH1 and the need for there to be a package of remedies to deliver a lasting, comprehensive solution.
- A.17 We have set out in this document our views on the proposals put forward by the CC, highlighting the issues that we foresee in a number of them. However, we are confident that a solution can be reached in consultation with the industry, the CC, the FCA and customers.
- A.18 At present, we can envisage a package of remedies incorporating elements of A, 1A (amended to allow for subrogation and some form of mandatory NAF mobility requirement) supported by elements of 1C (to ensure that costs are reduced and that the remedy is bolstered by appropriate judicial guidance on rates and duration) and 1F which would comprehensively address the issues identified by the CC in respect of the separation of cost control as regards the provision of TRVs. This broadly reflects the remedy proposal we have previously put to the CC<sup>2</sup>.
- A.19 We are mindful however that significant complexities remain and we look forward to continuing to engage with the CC as these are identified and the proposals are further honed and revised.

---

<sup>2</sup> See, for example, paragraph D.6 *et seq.* of RSA's Response to the CC's Annotated Issues Statement and Working Papers (September 2013).

## **B. Theory of Harm 1: Separation of cost liability and cost control**

B.1 It is worth noting at the outset that none of the CC's remedies under TOH1 particularly address the issues that arise where liability is split or uncertain. This could not readily be addressed by Remedy A – providing different, and potentially confusing, pieces of information depending on whether or not liability is split/uncertain is unlikely to be a satisfactory solution to ensuring that customers are better aware of their rights.

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

B.2 RSA understands that Remedy A is essentially an over-arching information remedy which aims to give customers a better understanding of their entitlements under both their own insurance policy and those arising through tort law. The CC proposes that information will be provided to customers at two points – both in the information sent out to customers in their annual insurance policy documentation and at the first notification of loss ("FNOL").

B.3 RSA supports the inclusion of Remedy A as part of a package of remedies; however, care would be required to ensure that the customer journey at the point of claim and throughout the claims process is not adversely affected. Such a remedy is likely to be capable of implementation at minimal cost. In addition, Remedy A would have to apply to all industry participants in order to guarantee its effectiveness.

B.4 However, RSA considers that considerable care would need to be taken to ensure that this remedy does not have unintended consequences in the form of worsening the overall customer journey, particularly at the point of claim. We would therefore welcome an obligation on insurers to provide more information, preferably prior to the point of sale and, if possible, well in advance of the point of claim as this will be cheaper to implement and easier for the customer to understand. While additional information may be needed at other stages, including as part of the policy documentation and at policy renewal, care should be taken with regard to the level of detail that is required at FNOL.

B.5 Indeed, the CC should not lose sight of the fact that a NAF customer is likely to be distressed at the point of FNOL and is seeking reassurance from their insurer that they will be looked after in terms of being put back on the road. Hence we would expect that, whilst more information could be provided as part of the policy documentation (including being made available on relevant websites), at FNOL a NAF customer would be given only a brief reminder of the customer's basic legal entitlement in respect of both repairs and replacement vehicles (including his/her entitlement to choose provider) and what the position is with regard to payment of excesses and NCB status pending final resolution of the claim. In other words, at FNOL, the obligation should be no more than that which reflects existing good practice (i.e. a reminder of rights that should already be known to the customer) and should not increase the information burden on customers at that stage.

B.6 RSA also supports a wider attempt to educate drivers on legal entitlements generally, including the proposal to add appropriate questions into the driving theory test. We note however that educating customers under Remedy A will be rendered considerably more complicated unless the CC is able to address the issues with regard to commercial drivers and claims involving uninsured parties. Simple implementation of a package of remedies to PMI without such consideration would require an understanding of a variety of differing rights by customers, depending on the identity of the other party and the nature of their insurance position.

B.7 To be effective and to ensure a level playing field, Remedy A must apply to all industry participants, including brokers, CMCs and CHCs. For those players not involved at the

point of sale and to avoid any correlating negative impact on customer experience at FNOL, we would suggest that more detail on legal entitlement could be sent to the customer immediately following the FNOL call<sup>3</sup>.

- B.8 Given the nature of the remedy, RSA would expect that the monitoring of compliance with the terms of any enforcement order would fall most naturally to the FCA as regards insurers. However, the CC will need to ensure that appropriate enforcement and monitoring mechanisms can be applied to non-regulated industry players (such as CHCs/CMCs who are not currently regulated by the FCA).

*Theory of Harm 1: Separation of cost liability and cost control*

- B.9 The CC has proposed a number of different remedies to address the specific issues arising under Theory of Harm 1, some of which are likely to be alternative and others complementary. We comment below on each of these in turn.

*1A: First party insurance for TRVs*

- B.10 Under Remedy 1A, the CC proposes that TRVs could be insured on a first party basis for all policyholders (that is, in relation to both AF and NAF claims). However, unlike the remedy proposal put forward by RSA<sup>4</sup>, the CC is also proposing to ban subrogation, in respect of the recovery of TRV claims only, from the AF insurer.
- B.11 Pursuant to this model, the CC envisages that insurers would offer different levels of cover in the event of an accident (for example, no TRV provision, the provision of a courtesy car or a like-for-like vehicle) which would correspondingly be charged at varying premium levels depending on the customer's choice of cover. Policyholders would therefore retain the option to purchase a level of cover equivalent to their current entitlement under tort law or trade off this entitlement in return for lower premiums.
- B.12 RSA considers that Remedy 1A has the potential to address industry overcosting concerns. However, we have some concerns about the CC's proposal to ban subrogation. Such a proposal not only fundamentally alters PMI customer rights as a matter of tort law, it potentially does so in a highly selective manner given the interaction between PMI customers, commercial customers and parties outside of an insurance contract (e.g. NAF drivers with only third party fire and theft policies, cyclists, pedestrians and uninsured drivers)<sup>5</sup>.
- B.13 We consider that some of these issues under Remedy 1A could be addressed if the CC were to continue to allow subrogation, with controls on costs being imposed by underpinning this with Remedy 1C. We note that costs under Remedy 1A with subrogation would inevitably be lower than they are today as TRVs would be agreed at direct hire, rather than credit hire, rates. We also consider that in order to protect at least a basic level of entitlement to a mobility solution for NAF drivers, some form of mobility cover should be mandatory (with customers choosing whether to pay for optional extras in the form of enhanced cover). Care would also need to be taken to ensure that the remedy would not be susceptible to various potential circumvention strategies which would otherwise cause significant execution risks.

---

<sup>3</sup> This is similar to the existing situation, where detailed information is provided post-FNOL by the TRV provider. More detail on legal entitlement could be made part of that process with any additional information provided in writing subsequently.

<sup>4</sup> Please see paragraph D.6 *et seq.* of RSA's Response to the CC's Annotated Issues Statement and Working Papers (September 2013).

<sup>5</sup> We note above the difficulties that would arise under Remedy A in educating customers as to their rights depending on the insurance status of the other party.

B.14 We set out below further views on the two variants of Remedy 1A (i.e. with and without subrogation).

*(i) No subrogation to the AF insurer*

B.15 Remedy 1A is likely to give rise to distributional effects if subrogation of costs to AF insurers is banned. This is because the remedy would result in NAF drivers bearing the costs of accidents caused by AF drivers, resulting in a transfer of costs from high risk to lower risk drivers. This arises because each NAF claimant would have a policy entitlement to a mobility solution which, when exercised, gives rise to an unrecoverable cost for the NAF insurer (which – absent the remedy – would have been subrogated and hence recovered).

B.16 In addition, unless the remedy were implemented more widely, it would result in NAF PMI customers having a lower entitlement when they are involved in an incident with another privately insured party than would be the case for incidents involving commercially insured drivers, cyclists, pedestrians etc. This is because the proposal seeks selectively to alter the law of subrogation, preventing a NAF PMI customer from claiming against an AF PMI customer, but, depending on how this remedy is implemented, it may not prevent the existing law applying to claims by commercially insured parties or claims occurring outside the normal subrogation model.

B.17 Hence, Remedy 1A might result in NAF PMI drivers having no right to a mobility solution at all where they are involved in a collision with another PMI vehicle, whereas a commercial NAF customer would have a right if it collides with a PMI vehicle. One consequence of this divergence in treatment of commercial and PMI customers could be that an AF PMI customer would potentially face increased costs when it collides with a commercial vehicle as compared to a collision with a PMI vehicle.

B.18 Furthermore, the remedy could be technically and legally difficult to implement, requiring a change in the law that would alter the existing law of subrogation in respect of one aspect only of a motor insurance claim (i.e. the TRV element) and in respect only of claims involving only PMI customers. Clearly there is a risk that such a complex solution would be difficult for customers to understand and these complexities are likely to be higher where liability is split or uncertain. It is not clear that Remedy A would be sufficient to address these issues. Finally, such a fundamental change to the law would likely be costly and difficult to implement, requiring significant changes to policy documents, training and customer service guidelines.

*(ii) Subrogation to the AF insurer*

B.19 Many of the issues identified above would be addressed if Remedy 1A were amended to allow for subrogation. This would remove not only the concerns around distributional effects (indeed, subrogation has beneficial distributional effects as it passes costs from the NAF to the AF party), but also the concerns and complications that arise from seeking selectively to alter existing subrogation law.

B.20 In order to ensure that costs are controlled and reduced, Remedy 1A with subrogation would need to work in tandem with Remedy 1C. It would also be critical to ensure that Remedy 1C works efficiently as intended to lower costs, failing which it would undermine the effectiveness of Remedy 1A with subrogation.

*Further points in relation to Remedy 1A*

B.21 As currently envisaged (and irrespective of whether subrogation is permitted), Remedy 1A will result in policyholders being asked to make decisions at the point of policy purchase,



and potentially at the point of policy renewal, that will fundamentally alter their rights at the point of a NAF claim. This raises concerns of increased complaints at FNOL when customers realise that decisions made at the point of purchase have detrimentally altered their rights. We also note that Remedy A aims to improve customer awareness of their entitlements with regard *both* to their policy entitlements *and* to those arising under tort law, whereas Remedy 1A as envisaged by the CC may result in a reduction in both.

- B.22 Given the focus of many PMI customers on headline price, driven in part by the increasing usage of PCWs, Remedy 1A may result in large numbers of customers opting out of NAF TRV provision altogether, potentially resulting in an under-provision of TRV services industry-wide. The position of post-accident NAF drivers being potentially left with no TRV cover when a replacement vehicle was needed could lead to a lowering of customer service provision<sup>6</sup>.
- B.23 If the remedy made at least a minimum NAF mobility element mandatory, this would go some way to protecting existing NAF tort rights. However, only a mandatory NAF like-for-like mobility solution would fully protect the NAF customer's right to full rectification. Without any mandatory NAF mobility element, Remedy 1A would result in NAF drivers having no right to a mobility solution at all, or at least a lower mobility right, where they are involved in a collision with another PMI vehicle, whereas (depending on how the remedy is implemented) a commercial NAF driver would be entitled to their existing right to full rectification against an AF PMI driver. In other words, commercial drivers would likely have different, and potentially enhanced, rights over PMI customers.

*1B: AF Insurers to be given first option to handle NAF claims*

- B.24 Under Remedy 1B, AF insurers would be given first option to handle either the whole of the NAF claim, or the TRV element of the claim only. The CC presents this remedy split into the following five possible variants:
- (i) AF insurers have first option to handle the entire NAF claim (repair and TRV), with customers retaining the final choice of provider;
  - (ii) AF insurers have first option to handle the entire NAF claim (repair and TRV), with customers having no choice of provider if the AF insurer takes up this option;
  - (iii) AF insurers have first option to handle the TRV element only of a NAF claim, with customers retaining the final choice of provider;
  - (iv) AF insurers have first option to handle the TRV element only of a NAF claim, with customers having no choice of provider if the AF insurer takes up this option;
  - (v) AF insurers have first option to handle the TRV element only of a NAF claim, with customers retaining the final choice of provider subject to the amount of any subrogation being fixed at the AF insurer's costs.

- B.25 In short this requires an assessment of three distinct variations:
- (i) Whether Remedy 1B should apply to the entire NAF claim, or the TRV element only;
  - (ii) Whether the final choice should rest with the AF insurer or with the NAF customer; and

---

<sup>6</sup> This concern was addressed in RSA's initial proposal through making some form of cover a mandatory part of the basic insurance terms.

(iii) Whether, for the TRV element only, the amount available for subrogation should be fixed at the level of the AF insurer's costs.

B.26 RSA considers that Remedy 1B raises significant concerns in respect of its effect on the overall customer experience. It is likely to add delay and complexity to the process, ultimately leading to reduced customer understanding and hence ultimately is likely to increase, rather than lower, costs. RSA considers that Remedy 1A is a more preferable alternative solution to the issues that Remedy 1B seeks to address.

B.27 That said, any formulation of Remedy 1B should apply to TRVs alone. By far the greatest proportion of overcosting in the industry can be attributed to TRVs and consequently the remedy is likely to have the greatest impact on savings if applied to this service. Furthermore, it is unlikely that the remedy can be applied as effectively or as efficiently to repairs as the variables applying to repair categories are far greater and not subject to the same industry-wide standardisation as TRVs which would render implementation complex and would be likely to impact negatively on the customer experience.

B.28 With regard to choice, RSA is a strong proponent of the retention of the principle of customer choice as to the customer's ultimate service provider. This is a fundamental right of the customer and fosters and maintains good customer/insurer relationships. Indeed, without the choice element, it is difficult to see what incentive insurers would have to provide a good quality service.

B.29 Finally, RSA considers that whilst the variant of Remedy 1B set out in paragraph 41 of the Remedies Notice addresses a number of more general concerns, it still raises significant issues with regard to the overall customer experience.

B.30 We address these points, under each of the three variations listed in paragraph B.25 above, in further detail below.

*(i) AF insurer first option over entire NAF claim or TRV element only*

B.31 RSA notes that the CC has identified that the net total impact of overcosting on credit hire and credit repair on premiums can be quantified in the amount of c.£150m - £200m per year<sup>7</sup>. Within these estimates, the majority of overcosting relates to TRV provision (c.£95m of the £150m figure, c.£160m of the £200m estimate). These provisional findings are very similar to estimates provided by RSA at both the OFT and CC phases of the market investigation<sup>8</sup>. RSA has also estimated that approximately 80 – 90% of this overcosting can be allocated to credit hire.

B.32 We address below our concerns as regards the potential detrimental impact on the customer experience of the first option principle that underpins Remedy 1B. However, we consider that the outcomes are considerably more complicated and uncertain where the remedy applies across the entire NAF claim (as opposed to the TRV element alone).

B.33 Indeed, given that the possible variants in respect of repair are far more numerous, we would be very concerned that the resulting complexity would increase the time required for the AF insurer to make its election, with a significant detrimental impact on the customer experience both at FNOL and across the entire claims journey. Unlike TRVs which can at least be categorised according to industry standards and hence where cost comparisons can more readily be made, there are many elements of the repair process which are subjective and consequently likely to give rise to dispute and ultimately additional costs.

<sup>7</sup> CC's Provisional Findings (December 2013), paragraph 6.84.

<sup>8</sup> Please see RSA's Overview Submission to the OFT (February 2012), paragraph 8.18 and RSA's Summary Submission to the CC (October 2012), paragraph 2.3.

- B.34 The CC has itself recognised the difficulty in removing choice from the NAF claimant and has suggested that Remedy 1B might more appropriately apply only to the TRV element<sup>9</sup>. We agree. For the reasons set out below, we would be concerned by any remedy that sought to reduce the NAF claimant's right to full rectification and we consider that retention of choice in the final service provider should be front and centre of any remedy proposal.
- B.35 Whilst we can see merit in the proposal to fix the amount subrogated at the AF insurer's costs in respect of the TRV element, for the reasons described above we do not consider this to be a workable solution in respect of repairs. Given that the bulk of overcosting can be allocated to TRVs in any event, we do not consider Remedy 1B to be impacted adversely by restricting its scope in this way.
- (ii) Final choice of provider*
- B.36 Throughout this market investigation (and at the OFT stage before that), RSA has advocated strongly not only that the NAF customer's right to full rectification should be protected, but also that the customer experience, including the speed of claim, should be maintained and enhanced.
- B.37 It should not be forgotten that, by definition, a NAF claimant is faced with the need to procure services through no fault of their own. The legal position under tort law is also clear – the right to be put back into the position the claimant was in prior to the accident. The right of choice is a fundamental part of this process. Indeed, a NAF claimant with comprehensive insurance has already made a choice in selecting the preferred insurer to provide cover. It follows that in the event of a claim, the NAF claimant would expect to be able to draw on the service levels and support of its chosen insurer.
- B.38 Accordingly, RSA considers that any remedy which lowered the level of rectification and/or otherwise reduced customer choice would be a highly undesirable outcome. In addition, RSA has very significant concerns around how Remedy 1B would work in practice. There is clearly the risk of significant delay in the claims process, even if final choice remained with the customer - with the NAF claimant potentially being passed between the AF insurer and the FNOL handler. Where customers require roadside assistance or where a mobility solution is required immediately, potentially out of hours, it seems particularly uncertain that a workable system could apply.
- B.39 In addition, where the NAF insurer would lose control of the customer, including the ability to manage the customer experience, there is likely to be a lowering of service quality. Whilst the AF insurer will be incentivised to provide services at lower cost, there would be little or no incentive to maintain the service quality with a corresponding negative effect on customer experience. This position is clearly worse where the choice of provider rests entirely at the option of the AF insurer – having elected to control the claim, the AF insurer will have only a very limited incentive to maintain the service levels as there is no prospect of the NAF claimant moving to an alternative service provider. The limited incentive would apply only in respect of PMI only claims, where the AF insurer may see the claim as an opportunity to win a new customer at renewal. However, even this limited incentive would not apply where the AF party is insured under a commercial policy.
- B.40 Finally, it is unclear how the CC proposes to deal with split liability cases or cases when liability is unclear. Clearly it is not a satisfactory solution to remove choice of provider only for those customers who are least at fault. As with Remedies A and 1A, the CC will need to consider the potential for, and possible implications of, divergent treatment between commercial and PMI customers.

---

<sup>9</sup> CC's Notice of Possible Remedies (December 2013), paragraph 40.

*(iii) Subrogation of TRV costs capped at AF insurer costs*

- B.41 At paragraph 41 of the Remedies Notice, the CC considers limiting the NAF insurer's ability to recover costs to an amount equal to the AF insurer's costs. It is not clear whether this is intended to operate as a fixed recovery cost (i.e. irrespective of NAF costs, the NAF insurer recovers at the level of the AF insurer's costs) or as a cap on costs (i.e. the NAF insurer recovers actual costs, subject to a maximum recovery capped at the level of the AF insurer's costs).
- B.42 This variant does not address the significant customer detriment points discussed at paragraph B.38 above. We also consider that any attempt to cap the NAF insurer's costs whilst ensuring that only actual NAF costs are recovered would raise a number of issues around circumvention, including the difficulties in defining what are 'actual costs' and addressing issues such as rebates, profit-sharing etc. (see further the discussion of Remedy 1D(a) below).
- B.43 Fixing the level of costs that could be recovered by the NAF insurer at the AF insurer's costs would address this concern. It would also ensure that the customer's fundamental legal right to full rectification and to choice over its ultimate service provider is protected, whilst also addressing the over-costing of TRV services. It would remain open for the NAF claimant to elect to use the services of its own NAF insurer (even where these are more costly), subject to a possible requirement for the customer to pay any difference in costs.
- B.44 The practicalities of AF and NAF insurers establishing their respective TRV costs for any given accident could be eased by bilateral agreements on each insurer's daily rate for each vehicle type. This would allow for ad hoc bilateral discussions after each accident to be avoided and replaced by an automated comparison of applicable TRV rates for the insurers in question. The CC will be mindful, however, of the potential for such a system to result in other distortions, as it would result in market-wide transparency on each insurer's TRV rates for each market participant. In addition, the CC will be mindful that the AF insurer has little or no oversight or control over the duration of any TRV provision. Remedy 1C could be useful in seeking to address these concerns.
- B.45 Nonetheless, while there are potential variations to this remedy which may remove some of these concerns, RSA considers that Remedy 1A raises fewer concerns and would deliver a more comprehensive solution.

*1C: Measures to control the cost of providing a TRV to NAF claimants*

- B.46 RSA understands that Remedy 1C proposes new measures to be introduced which would replace the GTA and would contain, *inter alia*, guidance on hire period duration; a cap on daily hire rates (calculated according to an average basket of direct hire rates); and an allowance for administrative costs.
- B.47 In principle, Remedy 1C could operate to lower industry costs provided it were applied to all industry participants. RSA considers that Remedy 1C could work well as a supporting remedy alongside Remedy 1A (with subrogation) or, possibly, with some of the options under Remedy 1B. In short, the combination of Remedy 1C, which seeks to lower costs, with Remedy 1G, which bans referral fees, is analogous to the Bodily Injury solution adopted by the Ministry of Justice under the LASPO<sup>10</sup> reforms.
- B.48 RSA broadly agrees with the CC's provisional finding that credit hire TRV costs are around 2.5 times higher than direct hire costs; and, as per our previous submissions, we believe

---

<sup>10</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012.

that TRV margins earned by non-insurers give rise to leakage that raises customer premiums.

- B.49 In order to be effective, however, Remedy 1C would require the caps on daily hire rates to be set (and maintained) at the right level. In order to ensure adherence, RSA agrees that the measures should also either be underpinned by judicial guidance or that any organisation with ultimate responsibility (namely, a newly established and independent successor to the GTA) should be equipped with effective monitoring and enforcement powers.
- B.50 In addition, and in order to ensure and maintain a level playing field, the remedy must apply to all industry participants, including CHCs and CMCs, as well as to insurers and brokers. Equally, the remedy must include guidance on hire duration as well as rates in order to have the maximum impact on overall costs. Only such a comprehensive remedy would have the potential to lower overall TRV costs and would address the margin leakage previously identified by RSA.
- B.51 There will be set up costs associated with this remedy and ongoing administrative costs will need to be carefully managed to ensure they do not result in dispute.

*Remedy 1D: Measures to control NAF repair costs*

- B.52 RSA understands that Remedy 1D is intended to prevent subrogated claims for repair costs being marked up and to reduce frictional costs associated with repair claims. The CC envisages two alternative ways to achieve this aim. Remedy 1D(a) would require subrogation at wholesale rates, while Remedy 1D(b) would require subrogation at standardised rates. Both would be implemented by a CC enforcement order.
- B.53 RSA considers that, properly implemented, both variations of Remedy 1D would address the issues identified by the CC. As regards subrogation at wholesale costs, RSA notes that the critical difficulty will be how best to define 'wholesale', failing which the remedy suffers from significant circumvention risks.
- B.54 Any remedy addressing repairs must however consider the potential for unintended consequences that would impact on existing customer rights. We note that the present system gives the customer the right to choose a repair from an authorised repairer who will have been quality assured by the insurer and where the repair will be monitored, offering (at least as regards the RSA network) a life-time guarantee on the repair work.

*(i) Remedy 1D(a) Subrogation at wholesale rates*

- B.55 As RSA has previously submitted<sup>11</sup>, subrogation at wholesale rates acts as a disincentive for insurers to provide efficient repair services and penalises efficient repair models. In particular, RSA's previous submissions have demonstrated<sup>12</sup> that subrogation at cost benefits inefficient insurers at the expense of efficient insurers and thereby, all else equal, undermines incentives to control repair costs. As a result, subrogation at wholesale cost can be expected to place upward pressure on repair costs across the industry, leading to higher PMI premiums.

---

<sup>11</sup> See paragraphs A.11 and B.7 to B.9 of RSA's Response to the CC's Annotated Issues Statement and Working Papers (September 2013).

<sup>12</sup> See section 3, Annex I, RBB Economics Paper, 'PMI Market Investigation: economic analysis of mark-ups on subrogated NAF claims' to RSA's Response to the CC's Annotated Issues Statement and Working Papers (September 2013).

- B.56 In addition to undermining incentives to pursue efficiency in the provision of repairs, and as the CC has recognised<sup>13</sup>, this remedy would also risk encouraging inflated repair bills in exchange for referral fees.
- B.57 In any event, there are clear enforcement and circumvention risks inherent in this proposal. For example, it will be extremely difficult for the CC to ensure that 'wholesale' is defined sufficiently broadly to remove any risk of circumvention via referral fees, discounted rates, benefits in kind, profit sharing, rebate mechanisms or other similar models (including via vertical integration). It is axiomatic that failure to define what is meant by 'wholesale', or to address such potential for circumvention would quickly remove any benefit under this remedy and would not ensure a level playing field, to the detriment of competition and ultimately customers.
- B.58 In practice, in order to avoid circumvention of Remedy 1D(a) it would likely be necessary for insurers to establish their own true wholesale cost for any given repair in order to monitor the wholesale rates charged by other insurers for similar repairs. While, as discussed below, establishing ex-ante repair costs for every road accident that might occur is likely to pose significant practical difficulties for insurers, if such measures are required to monitor Remedy 1D(a), RSA would suggest that Remedy 1D(a) has nothing to recommend it over Remedy 1D(b), which raises the same practical difficulties, but does not undermine efficiency incentives.
- (ii) *Remedy 1D(b) Subrogation at standardised rates*
- B.59 We consider that subrogation at standardised rates addresses the undesirable efficiency effect of Remedy 1D(a). Given that Remedy 1D(b) will allow insurers to earn a margin to the extent that they can undertake NAF repairs at a cost lower than those standard rates, there will be an incentive for the industry to pursue efficiency in repairs. To assist in maintaining the quality of repairs, we have assumed that Remedy 1D(b) will also define the standard of repair (i.e. the parts used, labour time permitted etc.). This will lead to lower industry costs, and therefore to lower PMI premiums, than a system of subrogation at wholesale cost<sup>14</sup>.
- B.60 As explained in its previous submissions<sup>15</sup>, RSA believes that the current subrogation framework harms consumers insofar as there is 'leakage' of reasonable margins from the insurance sector due to the intervention of non-insurers. Provided standardised rates under Remedy 1D(b) are set at a level lower than the rates currently charged by CMCs/CHCs, this remedy will bring about a reduction in leakage, and therefore a reduction in insurance industry costs that will lead to lower customer premiums due to the highly competitive nature of the PMI market.
- B.61 Given the above, we consider there to be scope to explore further the practicalities of developing a remedy along the lines envisaged by Remedy 1D(b). However, we recognise that there are likely to be significant practical implications and that further work will be needed to try to identify the likely costs to the industry of implementing a standardised rate system.

---

<sup>13</sup> CC's Notice of Possible Remedies (December 2013), paragraph 51.

<sup>14</sup> The situation is analogous to the discussion of subrogation at reasonable cost in section 3, Annex I, RBB Economics Paper, 'PMI Market Investigation: economic analysis of mark-ups on subrogated NAF claims' to RSA's Response to the CC's Annotated Issues Statement and Working Papers (September 2013). The efficiency benefits do not depend upon the level at which subrogation takes place, but only on the principle that the subrogated rate does not vary according to the actual wholesale repair cost incurred.

<sup>15</sup> See paragraph B.4 of RSA's Response to the CC's Annotated Issues Statement and Working Papers (September 2013).

- B.62 One possibility would be to seek to develop the necessary standardised rates with the help of cost estimation systems such as Audatex. By necessity, this would require the installation of a uniform cost estimation system in every repair garage wishing to undertake insurance repair work, which may necessitate a competitive tender appointment process to overcome any competition issues and may be disproportionate for repairers only undertaking a small amount of insurance-related work.
- B.63 Remedy 1D(b) would also likely require some significant changes to how cost estimation systems currently work. For example, current cost estimation software is used to determine prices for individual products only, i.e. glass, paint etc. Estimating the cost of a total repair or category of repair may prove far more difficult than the CC envisages, as it would entail using a variety of different pieces of software and could require a large number of single product inputs resulting in a potentially unworkable number of possible variants. This type of system could also promote the replacement of all damaged parts, rather than the most appropriate method of repair in terms of cost, speed and the integrity of the vehicle.
- B.64 We also have some reservations on the general practicality of maintaining the effectiveness of this remedy, which could prove cumbersome (and costly) to monitor and maintain. Unless there is vigilance over the absolute level of rates set under the system, it could inevitably result in inflation over time, with the risk that this results in repair costs *increasing* as a result (as largely happened with the GTA).

*1E: Measures to control NAF write-off costs*

- B.65 The CC has proposed two alternative remedies for controlling NAF write-off costs.
- B.66 RSA understands that Remedy 1E(a) would give AF insurers the option to handle captured NAF write-offs (once the PAV has been agreed by the NAF insurer or CMC). In the alternative, RSA understands that Remedy 1E(b) would require insurers to use actual salvage proceeds (or as adjusted once actual salvage is received).
- B.67 Either of these options are potentially workable solutions though we note that, for RSA at least, Remedy 1E(b) would require the least effort to implement as this option closely resembles RSA's current salvage model. Both options are discussed in further detail below.

*Remedy 1E(a)*

- B.68 Under this proposal, the AF insurer would receive the actual vehicle itself and would then recover salvage value on its own behalf. This would remove the issue identified by the CC and hence reduce frictional costs, but we consider that safeguards would be needed to protect the customer experience. Moreover, there will be practical considerations for the CC to consider, including the need to deal with transportation and storage costs and any inherited charges prior to transfer. These would all need to be recoverable. It will also be difficult to establish when a vehicle is a total loss until the salvage value is known.
- B.69 In particular, before the vehicle is handed over to the AF insurer, it will be important that the NAF insurer has the opportunity to remove any customer belongings from the vehicle and to address any other necessary tasks (for example, where the vehicle has a personalised registration). Further, where the remedy operates at the option of the AF insurer, there would clearly be the potential for the AF insurer to 'cherry pick' only the most valuable salvage vehicles. This might result in the NAF insurer being left to salvage the most severely damaged vehicles (i.e. category A or B), where it is likely that there will actually be a cost to pay to salvage the vehicle. Conversely, the AF insurer would take only those with

the most minor damage (i.e. category C or D) where there remains the greatest salvage value to realise.

- B.70 Nevertheless, given that insurers are just as likely to be AF as they are NAF, such distortions are likely to even out over time (such that each insurer would be left with more of their own NAF category A and B vehicles but would collect more category C and D vehicles from other insurers where their driver was AF).

*Remedy 1E(b)*

- B.71 This variation has less potential impact on the customer experience as the salvage vehicle remains in the hands of the NAF insurer. This also largely reflects the present position for RSA, whereby subrogation is undertaken on actual salvage values.
- B.72 As with our comments above in respect of enforcement and circumvention risks for Remedy 1D(a), the CC will need to consider how to ensure that the definition of 'actual salvage proceeds' is sufficiently broad to capture all additional methods of revenue generation. For example, this would need to capture all receipts, including salvage value, profit share, rebates or other similar arrangements.

*1F: Improved mitigation in relation to TRVs provided to NAF claimants*

- B.73 RSA understands that this remedy is aimed at improving the obligation on NAF claims controllers of managing mitigation in relation to TRV needs. At present, mitigation statements are often provided only at the point of delivery of the vehicle and we would welcome a remedy that sought to address this issue earlier in the claims process, with a view to identifying and meeting a customer's actual needs.
- B.74 Whilst RSA would support the right of an AF insurer to seek sight of the mitigation declaration, we do not consider there to be a need to allow for review of the NAF insurer's call records. Such a remedy is likely to raise data protection issues and would be administratively very difficult and costly to manage. Provision of a properly completed mitigation statement which has been sent to the customer should be sufficient to address the concerns identified.
- B.75 With that caveat, RSA considers that Remedy 1F is likely to be a useful supporting remedy to help reduce unnecessary TRV costs<sup>16</sup>.

*1G: Prohibition of referral fees*

- B.76 Remedy 1G envisages a prohibition of referral fees aimed to support other remedies (for example Remedy 1D(a) or 1E(b)). To have any positive effect, such a proposal must address the risk of circumvention via alternative mechanisms such as profit-sharing, rebates or other routes that have an equivalent effect to referral fees.
- B.77 RSA has consistently submitted that a simple ban on referral fees will not work in isolation, as they are a symptom, not the cause, of the harm identified by the CC. However, RSA considers that they could be useful as part of a package of reforms and has provided comments above as to the need to ensure that Remedies 1D and 1E are not readily circumvented not only by referral fees, but also by other benefits-in-kind such as discounted rates, rebates, profit share arrangements or other models having a similar effect<sup>17</sup>.

---

<sup>16</sup> See also paragraph 1.25 of RSA's Response to the CC's Issues Statement (January 2013).

<sup>17</sup> Please see, for example, RSA's response to the CC's Annotated Issues Statement and Working Papers (September 2013), paragraph A.17.



## C. Theory of Harm 2: Possible underprovision of service to those involved in accidents

### *Remedy 2A*

- C.1 RSA understands that Remedy 2A would provide for compulsory audits of the quality of vehicle repairs and is currently envisaged to work together with Remedy A. Remedy 2A is intended to address the CC's concerns that, at present, repair audits generally focus on the cost of repairs and invoice reconciliation, rather than on repair quality.
- C.2 RSA continues to believe that there is no evidence of sub-standard repair quality or the systemic 'underprovision' of repair services and notes that the only evidence relied on by the CC in this regard is drawn from a sample the CC itself accepts to be "*small and not representative*"<sup>18</sup>. RSA reserves its right to comment specifically on the underlying AEC identified and the need for a remedy once it has been able to review the material the CC proposes to make available in the MSXI Data Room.
- C.3 That said, looking at the remedy proposal in isolation, RSA supports any initiative aimed at improving the overall customer experience, including any measures aimed at safeguarding a customer's expectation that repairs will be completed to a high standard, resulting in full rectification.
- C.4 We welcome the CC's recognition at paragraph 76 of the Remedies Notice that it will be necessary to control costs carefully when considering whether any remedy is necessary. The CC itself has provisionally found<sup>19</sup> that any increases in insurers' marginal costs will be fully passed through to customers due to the high degree of competition in the PMI industry. Consequently, by increasing the cost of underwriting PMI policies, compulsory audits can be expected to lead to increases in PMI premiums, all else being constant.
- C.5 RSA therefore considers that there is a need to balance the potential for any such remedy to result in higher PMI premiums, particularly where there appears little or no evidence that systemic problems exist.
- C.6 In particular, we consider that the CC must pay due regard to the cost and other implications of imposing a mandatory accreditation scheme (whether through PAS 125 or otherwise) for compulsory audits. For example, mandating accreditation on all repairs is likely to increase costs for repairers and may drive smaller repairers out of the market, driving up total industry costs. Further, repairers who work for insurers will do so to varying degrees, such that it may not be proportionate to mandate that all repairers undertaking insurance-related work must be accredited. Yet, without extending accreditation to all repairers (regardless of whether they carry out insurance work or not), repairs are likely to be directed away from repairers who work for insurers to those who do not, with a resulting reduction in quality.
- C.7 As an alternative to a potentially costly mandatory audit regime, RSA considers there may be scope to ensure that all customer expressions of dissatisfaction with repair quality or service are treated as regulated complaints for the purposes of the regulated complaints process. This would be a relatively low cost remedy to implement, but would incentivise each insurer to ensure appropriate audits on repair quality to maintain high standards of customer service.

---

<sup>18</sup> CC's Provisional Findings (December 2013), paragraph 7.38.

<sup>19</sup> *Ibid*, paragraphs 6.44 to 6.54.

## **D. Theories of Harm 4 and 5: Add-ons and MFNs in PCW and insurer contracts**

### *Theory of Harm 4: Add-ons*

- D.1 RSA understands that the CC's three proposed remedies to address the issues provisionally identified under TOH4 (Remedies 4A, 4B and 4C) are designed to work together as a single package, implemented either by way of an enforcement order or via a recommendation to another enforcement body. All of these remedy proposals are aimed at improving the level and detail of information provided to customers on add-ons and NCBs.
- D.2 As the CC itself notes, the FCA has already conducted a thematic review of add-ons across all lines of insurance. Given both the need to ensure a consistent approach that goes beyond PMI and that these issues in any event fall more squarely within its TCF remit, RSA considers that the FCA is best placed to consider remedies in the round.
- D.3 As regards Remedy 4A, we have some concerns as to whether such a remedy, requiring insurers to provide information on all PMI add-ons to PCWs, is capable of practical implementation. We also note that there will be a need to balance carefully the need to provide the customer with sufficient information at the point of sale without over-burdening to the point of 'information overload'. Again, these are issues that we would expect the industry to work through more appropriately with the FCA and we would therefore support the CC imposing remedies under TOH4 only by way of recommendations to the FCA.

### *Theory of Harm 5: Most favoured nation clauses in PCW and insurer contracts*

- D.4 RSA broadly supports the CC's Remedy 5A, which would prohibit 'wide' MFN clauses in agreements between PCWs and insurers.
- D.5 Nonetheless, we consider that the issues arising from MFN clauses are very unlikely to be limited to PMI. Given the degree of competition observed in the PMI market (and acknowledged by the CC), it is not clear why the supply of personal PMI would merit different treatment to the supply of other insurance products. Again, the FCA would seem better placed to take a holistic view of the insurance industry as a whole than the CC, which is operating under the narrower remit of the current market investigation.
- D.6 RSA also notes and agrees with the CC's supporting proposal to this remedy that will require PCWs not to use other mechanisms or strategies with equivalent effect to 'wide' MFNs, for example threats to delist if policies are offered more cheaply on other PCWs.
- D.7 We agree that Remedy 5A could be implemented either through seeking relevant undertakings from PCWs or by making an order to the same effect – indeed, RSA considers that market practice has largely already adapted along the lines envisaged by this remedy proposal.



---

**Neville Howe**

**General Counsel, UK & Western Europe**