Views and Suggestions in relation to the Private Motor Insurance Market Investigation – notice of possible remedies under Rule 11 of the Competition Commission Rules of Procedure

This response is drafted by Jeff Winn, Managing Director of Winn Solicitors Limited. Winns act for innocent victims in road traffic accidents, arranging non fault services such as credit hire/credit repair where required. Winns' focus is customer centred and we are acknowledged as experts in this area. As we are receiving work directly from the public Winns take FNOL for insurance brokers to advise clients on the best route for them to take following an accident.

Overriding principle

We would ask that the Competition Commission bear in mind some overriding principles in looking at the various options for dealing with perceived "adverse effects on competition".

1. Avoid changing the English and European law away from the simple civil concept that the victim of a negligent act is entitled to be put back in the position he was before the accident. This concept is fair, morally correct (it ensures that the person at fault covers the cost, not the victim) and it is easy for the public to understand. Any attempt to vary or amend the English law/European law will make it very difficult for the public to understand and will make it unfair, i.e. it would be very difficult to explain to a client who is entitled to be put back in the position they were before the accident that as a result of a Competition Commission change you cant be fully put back in the position you would have been before the accident and there are now some complex rules to be applied. There is also the risk of unintended consequences – as soon as you move away from the simple legal concept it invariably causes complications/satellite litigation, greater admin and other costs. Any attempt to move away from the simple concept of English law and European law will inevitable lead to legal challenges and it is unlikely to be compliant with human rights and EU law directives. Challenging such a basic human right to be put back into the position you were before an accident by the perpetrator will inevitably involve controversy.

2. Nothing should be done in practical terms to prevent the innocent victim recovering from the perpetrator of negligence. Victims would inevitably view any system which results in them being unable to recover their reasonable and mitigated losses as unfair. If the losses are reasonable and mitigated why should they not recover?

3. Insurance is meant to be a benefit not a bind. No changes should be made which force a client to claim on their insurance. Case law and public policy grounds for ensuring clients need not claim on their insurance have been long settled. Victims must be in a position where they decide whether it is to their benefit to claim on their insurance or it is not. No action should be taken to take this right away without a full review of the long established public policy and case law which is in place.

4. Victims should not lose out so that perpetrators can gain, or those that are likely to be perpetrators in the future gain. The moral hazard of paying all costs if a person crashes into others should be maintained.

5. Cost savings – many insurers outsource their accident management investigation and case handling work on all non fault claims to accident management companies that undertake the credit hire and credit repair work. These companies typically include the cost of undertaking this work within the credit hire/credit repair charges. (Whilst seeking to maintain them within a

reasonable range of costs). If this was to no longer happen insurance companies themselves would bear these costs as well as the funding costs of providing those services themselves. Thus the cost to insurers would rise and this would offset any likely gain from changes. As insurers primarily deal with fault accidents and outsource their non fault work it would be reasonable to take their administration/legal/disbursement budget for the fault work and double it to work out what the likely offset of costs would be. We would submit that it is likely that the cost would be higher as insurers would surely keep the claims in house if they were more efficient at doing so. Thus the savings may not be anywhere near as good as indicated.

6. Protection of lives – as soon as a client is referred to us we assess any potential danger and arrange a replacement car immediately if the vehicle may be dangerous. We arrange for an independent engineer to inspect the vehicle and confirm whether it is drivable or not drivable. On a number of occasions clients had been driving in vehicles which appeared sound but which our engineer had found to be dangerous – in one case where the boot floor was split and carbon monoxide was leaking into the vehicle it would likely have killed the occupants had an immediate replacement vehicle not been provided and an engineer's inspection taken place. Thus there should be no delay in the provision of these services for the protection of life/the occupants. We fear that changes which lead to a delay could result in death/personal injuries occurring.

7. Choice – the customer should have a choice of hire company or repairer so that there is a clear link between the victim and the provider of services. In our experience the client chooses their supplier (particularly a repairer) and the repair is conducted to a much better standard than where the own insurer or third party insurer instruct the repair. We deal with thousands of cases a year and generally speaking the third party insurer repairs to the poorest standard, own insurers repair to a poor standard and with our approach where we use independent engineers to assess exactly the work required repairs are conducted to a high standard. There is a marked difference in quality, depending on who chooses the repairer and the basis of the repair, i.e. manufacturer's guide/manufacturer's panels and parts versus insurers' panel arrangements and secondary parts/panels.

8. Competition should be enhanced by giving clients more choice other than reduced by giving insurers more choice and thus competition should be maintained.

9. Restricting credit hire organisations would remove incentive on insurers to provide good hire service influence.

Remedy A

Agreed – clear information should be given to the policy holder on their options to pursue the third party as a tort or make a claim on their insurance.

To make the right effective the customer would need to have freedom of choice without impediment, i.e. would need to be able to choose the hire company/repairer themselves. There would need to be a general rule in force against insurers to prevent manipulation of that right by raising an excess if their panel repairer was not chosen or their hire car provider not chosen. Freedom of choice for claimants would dramatically reduce the issues which occur particularly in relation to repairs as repairers would need to keep the customer happy to obtain work and thus do a proper job whereas at present most repairers report that they have to cut corners to keep their insurer client happy, rather than the customer. The reputation of repairers would determine who received repair work and grew their businesses.

What information should be provided to consumers?

21.

a.

- They should be advised at FNOL on whether or not the assessor believes the customer is at fault.
- They should be provided with a risk/benefit analysis of proceeding with a claim on their insurance or alternatively proceeding with a tort action against the third party insurer.
- They should be advised as to the services available if a tort action is taken against the third party insurer and who may be able to assist, i.e. insurers/claims management companies/credit hire companies/solicitors.
- The customer should be given the freedom to choose their own hire company/repair company to pursue their case. In particular, they may have an injury case where the other claims are best dealt with by the same solicitors. (The claims all have to be submitted together on the portal).

b. It would be of benefit to have a small section in the annual insurance policies but the real point at which the advice should be given is FNOL.

c. No.

d. As it is generally better for clients to proceed via a tort claim if their case is a clear non fault there may be some increase in tort claims when customers are aware of their rights.

e. Insurers would potentially seek to raise the excess where their choice of provider is not chosen. They may amend their terms and conditions to make it more difficult for customers to exercise their legal rights.

f. Auditing/harsh punishment from regulator if there is a complaint upheld that it has not been done.

g. Minimal.

h. No.

i. Need clients to have a real and unimpeded right of choice for hire and repair provider.

j. Yes.

Remedy 1A

29. No harm in requiring insurers to provide a replacement car under their policy of insurance. (Assuming this would be a like for like car). There should be no compulsion on the innocent victim to use their insurance – in compliance with long established case law, the very sound principle that a victim should never be required to use their insurer. It is a benefit that they purchased and should only use if they determine that it is in their interests to do so. If there was to be compulsion (against case law/UK law and EU law) (also against public policy as enunciated in that case law) there should be a requirement that any such claim is not treated as a claim on the policy and thus would not effect any no claims bonus or could be taken into account in assessing any future insurance premiums; otherwise the innocent victim has a multiple hit, i.e. they don't get their choice of claims management company/car hire company, they lose their no claim bonus,

they have to pay their excess, the premiums go up at either an interim or on renewal and they are treated as having made a claim on their policy even though they were in no way at fault. This is not fair and not in keeping with public policy.

30. This remedy rides roughshod over the innocent victim's rights and long established public policy.

    It is not right that a customer should be forced to purchase something to cover a right which they already have and if they don't they lose their human right to protection.

    This will inevitably work against the interest of those who are poorest in society and can least afford the increased premium which this route would dictate.

    Even for those who could afford and do decide to purchase the cover, the terms would be hidden in the small print and there would be a lack of clarity as to what they had purchased and how far it meets their needs.

    Taking insurers out of the equation, if one party causes harm to another that party should be put back in the position they were before the accident. Insurance is simply laid over the top so parties only need to make a claim if they were at fault. Such a change would undermine the nature of insurance, cause complications in its understanding and implementation in the minds of policy holders/consumers, i.e. if this was applied to another area of business and the Competition Commission were approached and asked to ban a basic human right on the basis that companies would then charge for it, would this really be acceptable?

32. Frictional costs could be increased. Disputes would occur between the customer and the insurer to recover their losses and why they are now tied by whatever provisions are in their agreement, rather than receiving fair recompense. There would be a saving in costs but this would simply be because the majority of customers will not pay for the extra replacement car provision (as most already do not agree to pay) and thus the reduction will simply be as a result of victims having been deprived of their rights to fair recompense.

    Effectively paying additional insurance to cover another driver's risk of causing an accident in relation to the replacement car is the same as the customer paying a premium for covering someone else's insurance. This is fundamentally not appropriate. Why should one driver make a contribution to others who don't drive so well.

34.

    a. This would appear to require an override of current UK/EU law and case law and the public policy grounds that sit behind it. The implication of amending such a fundamental law could have significant untold consequences. It certainly complicates the legal position and advice in relation thereto.

    b. Most policy holders won't buy it and will simply feel aggrieved when they are a victim in due course.

    c. Add ons of this description tend to be far more expensive than the cost of providing the cover. Many of these add on services have a much higher mark up than occurs in relation to credit hire. If the Competition Commission undertake some research into other add ons and look at the uplift we are sure it will be significantly greater than the uplift which occurs in credit hire from the base hire costs. This would mean the significant possibility that the overall costs of premiums would increase if the cover is taken up. There would also be a significant increase

as a result of consumers being required to take out cover for fault replacement car cover as well as the non fault.

d. Customers will be extremely unhappy as the only way they can access a replacement vehicle is to claim on their insurance and when they do so they have to pay an excess and face increased insurance premiums moving forward. If the accident was not their fault they should not be put into this position be the Competition Commission.

e. If the customer loses control of the credit hire claim and is forced to put it through to his insurer, the quality of service will inevitably suffer to a major effect. At present the competition from credit hire organisations means own insurers and third party insurers have to provide a quality service in relation to replacement cars, otherwise they don't get the business. The Competition Commission would be eradicating competition in the industry which appears to be a strange thing for the Competition Commission to do?

This eradication of competition would inevitably lead to a poorer service at higher costs as it always does when competition is removed.

f. It is best that all services are dealt with by the same provider. This provider should be the choice of the customer to ensure quality of service is maintained and complexities do not occur. The separate issuing of different elements of the claim, claims left off when issuing proceedings etc. will lead to significantly higher legal costs/frictional costs etc.

g. My gut reaction is that this route would cost more over time with major injustice than the current system.

h. As it is taking away a basic human right/legal right of the innocent victim it would presumably have to go through parliament to be approved. On speaking to those in the industry to whom the rights of victims are important there will be considerable opposition in parliament to such a fundamental change.

i. Prevention of insurers treating a claim for a vehicle in non fault circumstances as a claim on the policy, otherwise customers who buy the cover may still be unable to use it as the costs to them of making a claim, i.e. excess/loss of no claims bonus/future premiums may be greater than the benefit they achieve by accessing it. This complicates matters as it is highly likely that many customers will be in a position where not only have they had a legal right removed, paid a premium to replace that legal right but they will not practicably be able to access those rights without significant additional cost to themselves (bearing in mind all other parts of non fault claims will be claimed against the third party insurer and will not require activation of a claim on the policy).

Remedy 1B

There appears to have been no mention that third party insurers already have a right of pre-emption under existing case law if they make a clear offer of a replacement vehicle before the client has been put into a vehicle. Very few insurers appear to put these offers forward.

35. At fault insurers have no contractual connection with the innocent victim and thus any and all parts of the procedure they handle are unlikely to result in a good service for the customer. We have seen first hand the practical problems that have occurred where clients have accepted third party insurer offers for help with their replacement vehicle and repair. In our experience the

service quality of providing the hires is significantly poorer than would be the case by one of our providers. There are also concerns with some of the paperwork whereby some third party insurers provide replacement vehicles giving the impression that they are at no cost but in the small print they reserve the right to reclaim the cost against the innocent victim in various situations including if they change their mind on liability. Fundamentally there is a major conflict of interest which would not be permitted in the legal sector for a party at fault to deal with an innocent victim's claim against itself. It is a bit like a solicitor saying this client has a claim against me for negligence but I don't need to send him elsewhere to put a claim in against me, I will advise him myself. It is not permitted under English law and there is very good reason to not permit it in relation to insurance companies. Insurance companies are financial organisations who look after their shareholders and by definition will seek to maximise their gain by maximising the pain upon the innocent party. Whilst I appreciate the Competition Commission are looking at costs, they should not lose sight of the complications and difficulties which can occur where cost control is put entirely above "justice" and "fairness".

36. I think it would be reasonable to put into regulatory format (if existing case law wasn't sufficient) to provide insurers of the at fault party the opportunity to offer a replacement like for like vehicle, providing there were no strings and it matched like for like terms which are standard in the industry. The offer confirming (in a set format) that a no strings offer of a like for like replacement vehicle would be binding on the claimants, providing they hadn't at that stage entered into a hire agreement with another party, i.e. an incentive on the at fault insurers to respond promptly when they decide liability is admitted.

    There must not be any statutory requirement to delay putting victims into a replacement vehicle as this could lead to deaths/serious injury where the victim decides because he can't have a replacement vehicle straightaway to drive a vehicle which may be dangerous.

37. For reasons stated above there should be no delay. If the Competition Commission wish to take the risk with people's lives a delay should be an absolute minimum, i.e. the at fault insurer returns confirming an unequivocal provision of a replacement vehicle and in one hour of contact by the CMC/non fault insurer. There would need to be a whole host of rules around the provision by the at fault insurer as they will seek to cut costs/service wherever applicable and the rules would need to ensure that they could not do so without incurring penalty compensation to the innocent victim. Agree that the at fault insurer should not be obliged to do so. It would only be appropriate for them to pick up the cost where they believe liability is established.

    The claimant should maintain the right to use their own hire company if they decide to match the terms of the offer by the at fault insurer.

38. The non fault claimant should still permit their chosen company to deal with the overall handling of their claim to ensure that the third party insurer acts properly.

39. This creates a conflict of interest between the innocent victim and the third party insurer. Removing the victim's legal rights is not beneficial to the public and large volumes of victims will suffer as a result.

40. There must be no delay in the provision of a replacement vehicle – as this would put the lives of the innocent victim and their family at risk. The at fault insurer should be required to decide immediately, i.e. in less than 1 hour whether they would provide a replacement vehicle on unequivocal free terms. The other terms need to be those standard in the marketplace and a system of compensation put in place for the claimant if the at fault insurer provides poor service.

Our experience has been that where at fault insurers have provided replacement vehicles the quality of service and care of the victim has been extremely poor.

41. This sounds simple but it won't be. There will have to be clear rules in relation to service/the contract etc. As independent advisors to clients, the fundamental problem we would have is the at fault insurers want to do the replacement vehicle as cheap as possible with virtually no service or support. We encounter delays in the provision of vehicles, late changes to the quality of vehicle, failures to deliver, failures to collect, requirements that customers have to take days off work in order to collect the car etc. In short, many at fault insurers make the offer but don't live up to proper delivery and the service which a victim should expect.

42. Agree – taking away the innocent victim's rights will require primary legislation and probably EU changes too.

43.

a.

i. A non fault claimant would have no incentive to choose the at fault insurer as they would correctly be advised that choosing the at fault insurer is highly likely to lead to them receiving a poorer service.

ii. a. Compensation payments would need to be draconian to offset the incentive on the at fault insurer to provide a poor service. Preventing competition and allowing the at fault insurer to provide the service when they have no incentive to do so is a recipe for disaster and complaints.

b. None – these are the rights he has at present to choose his service provider.

c. Could lead to death or personal injury – where they continue to drive in a vehicle which is dangerous and puts the occupants at risk. It should give the fault insurer no longer than one hour to respond. This minimises the risk of death or personal injury to victims who are awaiting a replacement vehicle whilst theirs is off the road – this will still cause some hardship, i.e. where clients' vehicles are undriveable and they need a vehicle immediately so it would be useful to have some exceptions, i.e. their vehicle has been recovered at the side of the road and they need to get on with their journey or return home and don't have a vehicle to do so.

d. They should be permitted their choice.

e. Given the identified problems with repairs undertaken by third party insurers/insurers, it would be unfair to take away from customers their choice of repairer.

There are benefits in having the repair dealt with by the same person who undertakes the hire as this allows for easier review of what is happening but splitting is manageable.

f. It depends on which option is chosen and how much time is provided.

g. I can see that at fault insurers and the hire companies that operate for them would manipulate the situation to act against the victim's interests if the rules are not extremely tight and what terms need to be offered and in what circumstances.

h. I don't think this would be a major problem. Third party insurers would simply not pay the credit hire invoice if they had not received notification following FNOL.

i. It would appear to take away the fundamental legal right of victims to choose their own supplier to be put back in the position they were before the accident. This would probably require primary legislation.

Remedy 1C – Measures to control the cost of providing a replacement car

45. Is it really worth replacing the GTA when it has worked so successfully in the past. Looking at the profit figures for credit hire/credit repair companies, their margins are low and thus it is difficult to argue there is a lot of fat to cut off. An enforced system is much more likely to operate unfairly and without the level of cooperation to work in everyone's interest that the GTA has.

a. This is a stand out area which could significantly reduce excessive hire periods. The scenario that could be challenged is the extremely long hires where the third party insurer doesn't admit liability but rather than enter into a credit repair the claimant's credit hire company keeps them in the vehicle until the dispute is resolved at trial which could be 18 month's time. The resulting bill ends up at 10 times the value of the car. The insurers rarely argued it in the past. There has to be an argument that failure to use a credit repair company (given they are readily available) to reduce the hire period to a reasonable level is a failure to mitigate. Action in this area would remove the high headline hire bills and have a significant effect on what are seen as excessive hire bills which are allowed under the current system. I suspect the courts would be sympathetic on this point, given the high level of availability of credit repair services.

b. Surely it would be anti-competitive to interfere in the marketplace. There are already court restrictions on the daily rate being unreasonable.

   The practicalities of setting a figure would be nigh on impossible. The hire rates, terms and conditions etc. set out on the internet are rarely what a customer will pay. There will also be anti-competitive pressure put on hire companies chosen for the selection to provide false or misleading information to the independent body fixing rates. It would be hot with satellite litigation and problematic.

   Maybe I am missing something but the GTA effectively does this by agreement of the parties to look at retail hire rates and effectively add on a small sum for credit charges/administration and a small element of profit. This profit element is not excessive so how is statutory interference going to improve the situation?

c. An allowance for administrative costs – yes – if credit hire/credit repair companies don't do the administration insurance companies would need to do so themselves. Many insurance companies are less efficient and thus the administrative costs are passed on and insurance premiums by insurers would be significantly higher if they had no competition.

46. In principle a portal is a good idea. However, in relation to personal injury we have experience that as it is mandated rather than something which the parties worked on to get right together, if there are major faults it takes longer and is less efficient than the old system pre-portal. An industry solution as opposed to an enforced solution would be better.

47. Disagree – there would be competition concerns. Insurers are some of the largest purchasers of hire company services. There would be indirect (and possibly direct) pressure on the hire

companies chosen to provide information in a way which was most palatable to insurers, i.e. not independent. Effectively control of the process would concentrate into the hands of the main insurers with the public losing out.

48.

a. Apart from the mitigation of loss point in relation to long hires where credit repair facilities are available, I think there would be need for primary legislation. All of the other remedies potentially have serious adverse consequences on the innocent victim and their torturous rights, i.e. it needs to be remembered that not all clients will use a credit repair/credit hire company – they may just get the repair done themselves, hire a replacement car whilst theirs is off the road and seek to recover those costs back from the insurer at fault. Are they suddenly to find out that they can't make a recovery? Is it really the intention of the Competition Commission that arrangements up and down the country whereby one party recovers their costs from another on a telephone call in agreement would then need legal advice at an early stage to discover what they could or couldn't recover? Has the Competition Commission looked at the potential for huge increases in legal costs by creating uncertainty into English tort law?

b. If anyone is going to be covered it should just be the insurance companies. Parties who want to deal with and reclaim their costs without going through their insurer should be permitted to do so without burdens and regulations.

c. The rules state that the repair should be commenced within a reasonable time. Is this not the best possibility. Any arbitrary decision on a time limit could act unfairly. The repairs aren't started because parts are awaited from Japan – that is not the victim's fault. If there is a move away from "fairness" and "reasonableness" it automatically means that the system is "unfair" and "unreasonable". Is this really what the Competition Commission wants to put in place? The current law is that the hire period must be "reasonable". Do you really want to move the boundary to something which is "unreasonable". In practical terms, a credit hire company tend to monitor the hire period to make it easier to recover but imposing sets of conditions would pull in all those other customers who just seek recovery on an informal and cheap basis back from the driver at fault/their insurer.

d. The current case law ties up with English law and principles and should be maintained. Any other arbitrary approaches to setting hire rates for replacement vehicles is likely to be flawed and subject to misuse. The Competition Commission has already reported on the poor quality of repairs in the repair sector where such interference is commonplace.

d. Allow competition in the market to set the administrative costs. Artificially setting the administrative costs risks setting them too high or too low. The current rule that only reasonable hire charges can be recovered is quick and easy compared to seeking to identify what administrative costs should be allowed and calculating them fairly.

e. Maybe in the future but more likely to succeed if there is industry effort rather than an imposed system.

f. Sounds very woolly and thus the measures to do it effectively could prove very expensive and have untold consequences. The major consequence is the risk to innocent victims that they suddenly find they can't recover what would be "fair" and "reasonable" and they need to seek legal advice (running up costs) to take advice on what they would be allowed to recover as a result of changes in the regulations/legislation.

There is a real danger the Competition Commission will introduce something which is more expensive/less fair/far more bureaucratic and far less just than what was in place beforehand.

g. As above – example: Mrs A is the innocent victim – she agrees with Mr B that he will pay for her replacement car and repair at a local garage. She sends him the bill and he pays it. This is what is happening up and down the country at present. Under a new system Mrs A submits her bill expecting to be paid but is then told that she won't be paid and there are various bureaucratic things she should have done beforehand/she has additional responsibilities and she may only get some of the money back. If she loses this is fundamentally unfair. Costs in administration are increased. Wherever a system is introduced which appears fundamentally unfair to a party (particularly an innocent victim) there is a higher risk of dispute/satellite litigation and increased costs.

h. Wherever legislation/bureaucracy is introduced to the detriment of an innocent victim they and others will seek to avoid it by developing new business models. No one will readily accept as an innocent victim they should contribute towards the costs incurred by the negligence of another party. They will seek to get round it. The more unfair the system the Competition Commission brings in the more likely it is that there will be attempts to circumvent it.

Remedy 1D

49. This is more acceptable if it is simply related to "subrogated claims", i.e. it is an enforcement order on the insurance industry as opposed to having an impact on victims who make their claims directly or via a solicitor.

50. This is fine providing it is between insurers and does not impact on the innocent victims, i.e. relates solely to subrogated claims.

51. This is fine providing this relates solely to insurance companies, i.e. preventing an abuse of the system.

    There should not be a prohibition on referral fees paid by repairers generally as the payment of referral fees in the wider market often ensures that victims are referred to those who can best help them following an accident.

Remedy 1D(b)

Ok if this simply relates to "subrogated claims" by insurers. I would say that there needs to be a corresponding rule that the non fault insurer must take the loss and not seek to pass it on to their insured client, thereby taking an excess/increasing his insurance premiums/giving him a claims record as not all of the costs have been recovered. The victims should be protected in these situations.

53. This is fine if it is an insurance solution that simply effects insurance companies and does not effect the wider market, i.e. Mrs A (victim) can still go out to any repairer of their choice and get a car repaired at retail rates under the existing law and reclaim the full amount from the 3rd party insurer. It is only if she makes a claim on her insurance company policy and they organise the repair that changes bite. Is my understanding correct? On this scenario, the own insurer should not be able to claim the mark up beyond some administrative costs and should not be permitted to load the client's premium/take an excess or otherwise treat their own customer unfairly.

55.

a. Enforcement against insurance companies/a change to their professional practice rules require no mark up above a set admin fee – this would be simple – whatever they were paying for the repair to their panel they pass onto the third party plus say £50 admin fee. Trying to work out standardised costs or other bits would prove problematic. They would have to verify there were no commissions paid on the job or they are counted back in.

b. Less distortion if the remedy is kept very firmly targeted at insurance companies who have been marking up their repairs. This should have no impact on the wider public seeking to exercise their remedy in the normal way.

c. Insurers place the vast majority of their work through panel repairers where they have negotiated a tight rate for the work to be done. It could be limited by their professional practice rules to recover what they have expended (plus a small admin fee) then there could be a general anti-avoidance clause put in place.

d. Possibly more difficult as this could be caught by a general anti-avoidance clause if they seek to claim and the repairer's costs are significantly higher than that which applies in the marketplace. I doubt insurers will vertically integrate with repairers for the sole reason of boosting their non fault claims. Any attempt to do so would drag profit from the insurer to the repairer and could have adverse consequences.

e. Better to have a simple rule that requires them to pass on the repair costs they have incurred. Seeking to standardised costs subrogated claims will always be problematic. It could drive further bad behaviour, i.e. if the subrogated standardised costs are set at £30 per hour it may drive some insurers to seek to reduce their real repair costs to £20 per hour by cutting corners with adverse consequences for the victim.

g. If you try to set standardised costs this is likely to be problematic. If a practice rule for insurers is brought into place which simply requires that they pass on the costs that they incur and give credit for any paybacks – this should be simple to operate.

j. Price control measures are likely to have an adverse impact on the quality of repairs. Innocent victims want their cars repaired to their pre-accident condition – price controls set by insurers over the last few years have significantly reduced the quality of repairs and the likelihood of having a vehicle returned to its original condition. Further price controls on non fault repairs are likely to have a similar impact. Regular auditing of repairs with consequences for insurers for poor quality repairs would be necessary. There is also in my view a big difference between an insurer actually paying a repairer £40 an hour on a non fault job to do it carefully and properly and ensure the vehicle is returned to its pre-accident condition versus paying them £30 per hour and for a fault repair. If they do this in principle this should be recovered as they have ensured their client who is not at fault is put back in the position they should have been. However, the mischief that should be prevented is those insurers who are paying £30 per hour as they would for a fault and are not doing a better job overall of a non fault but are seeking to mark it up to £40 per hour and then recovering it from the third party. This is surely the mischief to be avoided?

Remedy 1E

56.

a. I can see the logic but this should not impact on clients who wish to keep the vehicle, i.e. salvage may be of low value but to the client it has sentimental value and they wish to repair it in their own time.

b. It seems a better option.

57.

a. Providing it is restricted to "subrogation" i.e. where the insurer is acting, it shouldn't have any adverse consequences elsewhere.

b. Probably not – the money in salvage is relatively low – could run up administration costs if there is this extra layer of administration.

c. Needs to be at an early stage, otherwise storage costs would be running high – there is a risk with this remedy that storage costs increase whilst there is some discussion or negotiation on the salvage collection.

Remedy 1F

59. The number of questions would need to be limited. It would drive up costs/satellite litigation if they were extensive. The ability to review a call record would need to be limited to non fault insurers/CMCs and not include privileged recordings, i.e. where solicitors are involved.

60. Agreed – providing questions on the list were limited, targeted and easy to answer.

61.

a. Yes.

b. It would be best on its own. The use of the questionnaires would not require an additional legislative burden or amending the basic rights of the victims to pursue a tort case. It would simply be a matter of presentation of evidence which in theory is already required.

c. The provision of cover in a claimant's own insurance policy should not be considered in assessing the claimant's needs. It is long established case law that an insurance policy is purely for the claimant and not something which should be taken into account in mitigation. There is a good reason for this. The claimant if he is forced to access his own insurance policy may have to pay an excess/increased premiums etc. He should not be forced to use his own policy where he has had the foresight to take out cover for a replacement vehicle where he needs it, i.e. where he is at fault. Questions are likely to be very brief as follows:-

- Do you use your vehicle on a regular basis? – Yes/No

- Do you have another vehicle available to you to use whilst yours is off the road? – Yes/No

- If you have another vehicle available, is there a reason why it would not be appropriate for you to use that vehicle whilst your subject vehicle is off the road?

- Are you on holiday or away for other reasons which will mean that you do not need a vehicle for some of the time that your vehicle will not be available?

d. Yes – they will simply not pay if they are not satisfied. I would suspect the disclosure of the call records may give data protection issues, albeit non fault insurers and CMCs could cover this off in an initial script to the customer.

e. It would be relatively cheap providing the questions were kept short and uncomplicated.

f. I can't see any issues or consequences.

Remedy 1G prohibition of referral fees

62.

a. Prohibition on referral fees is likely to be anti-competitive. This will leave control of the process in referrals directly in the hands of a small group of insurers and reduce competition. If the prohibition on referral fees was restricted to insurers it should have less negative impact on competition.

63.

a. I believe this would be best restricted to referral fees paid to insurers for referring non fault claimants. The purpose of the ban on referral fees would be to prevent insurers from finding another route to bypass other regulatory change. It should not be taken beyond that aim.

b. As above.

64.

This ban would operate in relation to "subrogated rights". It would reinforce the other changes in relation to credit repair in particular.

Restricting the fees in other areas will inevitably restrict the referral fees paid thus requiring no referral fee ban.

c. Unlikely to be any material change.

d. Ban on referral fees does pose the risk of vertical integration and the lessening of competition.

e. There is a risk that other monetary transfers could make any referral fee ban difficult to enforce – it has been difficult to enforce in relation to personal injury.

f. Regulatory issue for insurers.

72. The focus of insurers on cost not quality of repairs.

This will only change if draconian penalties for insurers who provide repairs which are substandard are introduced.

The best option would be to allow clients their choice of repairer subject to a provision that their costs are reasonable. We have consistently found where a non panel repairer is chosen by the customer or recommended by us, the quality of repair is significantly higher.

78.

a. It depends on the audit process.

b. Initially audit should be very frequent, given the high level of failure to repair to pre-accident condition.

c. Independent body of standardised audit procedures and reporting.

d. Independent body – by insurer – at the end of the day the repairer dances to the insurer's tune and has to undertake the work as they say.

e. It wouldn't work.

f. Pas 125 is not enough – control needs to be taken of the insurers who decide what work should or should not be authorised. Opening up the competition by allowing the client to choose their repairer would prevent all these problems and raise proper competition into the sector. The high level of poor repairs is indicative of insurers' dominance of the repair market and lack of competition.

g. Freedom of choice of repairer. If audits are done by the insurance industry, rather than independent, there is likely to be no real progress for increased costs.

i. Introduce competition by allowing clients to choose their own repairer in all repairs. Prevent pressure being exerted to choose a panel repairer.