Zurich Insurance plc (UK Branch) ("Zurich")'s Response to Notice of Possible Remedies to Private Motor Investigation by Competition Commission ("CC")

1. Executive Summary of Zurich's response to the CC's Possible Remedies

Zurich has welcomed the CC's motor insurance market investigation. As it has explained to the CC in previous submissions, it has long considered that there are structural features of the market which inhibit the best outcomes for consumers, and that a CC market investigation may be the most effective mechanisms for addressing those features.

Theory of Harm 1

Zurich welcomes the focus of many of the CC's proposed remedies on addressing the structural problems that generate poorer outcomes in relation to repair and the provision of temporary replacement vehicles. Several of the remedies proposed by the CC – in particular remedies A, 1C, 1D(a), 1E, 1F and 1G should be relatively uncontentious and should be implemented urgently. In particular, Zurich believes that a ban on referral fees and a ban on the practice of artificially inflating repair costs are demonstrably in consumers' interest, and would be both proportionate and effective mechanisms to tackle some of the problems in this market.

In order for a ban on referral fees to be effective, the overall cost of the services must also be reduced proportionally otherwise this may lead to vertical integration within the market.

Zurich also welcomes the CC's attempts to grapple with more fundamental issues in this area through remedies 1A and 1B. Both of these are clearly well-intentioned, though both present some complexities (for example, it will require careful consideration of the spill-over effects in relation to commercial vehicle insurance and the application to foreign drivers).

Zurich encourages further dialogue between the CC and all relevant stakeholders in relation to these remedies, including market participants, the FCA, the European Commission and the Ministry of Justice.

Theories of Harm 2 and 4

Zurich welcomes other remedies proposed by the CC which would increase consumer confidence. These are, in particular, 2A and 4C (as well as remedy A). Zurich is absolutely committed to ensuring that its customers can make well-informed purchase decisions, and get the best outcomes from repair in the event of an accident. It believes that these remedies would support these outcomes and is strongly supportive of these remedies.

There are a small number of the remedies proposed by the CC which Zurich considers would not be either effective or proportionate. These are:

(a) remedy 4A, which is likely to lead to a reduction in innovation and competition. We do not consider that this remedy could be implemented effectively without considerable negative effects in these areas; and

(b) remedy 4B, where the CC has fundamentally underestimated the complexity of the NCB calculation. Attempting to provide this information to customers would lead to confusion rather than clarity, and would not assist customers in making good purchase decisions. Zurich's commitment to making sure that its customers are able to act on clear information means that it considers that this remedy would not be effective.

Theory of Harm 5

Zurich strongly supports the CC's proposal to prohibit "wide" MFN clauses in agreements between PCWs and insurers/brokers. We agree with the analysis in the provisional findings that these clauses restrict competition in a way that cannot be justified, and so lead to poorer outcomes for consumers in terms of price competition, choice and innovation.

However, we do not agree that "narrow" MFN clauses should remain permissible. We disagree with the conclusions of the provisional findings that these can be justified by reference to PCWs' position in the market or consumer confidence in the PCW offering. We find neither of those reasons persuasive, and we see no good reason justifying these demonstrably restrictive clauses. We will provide further details in our response to the provisional findings, and urge the CC to reconsider both its analysis in this respect and its initial proposal not to consider further a prohibition of "narrow" MFN clauses.

In conclusion, Zurich would welcome further dialogue with the CC in relation to the remedy proposals it has set out, and looks forward to a period of positive engagement on what will be important reforms to the operation of the market.

2. Zurich's responses to the specific issues raised by the CC in relation to its possible remedies

Paragraph 21 – Remedy A : Measures to improve claimants' understanding of their legal entitlements

General Comment in respect of Proposed Remedy A

We agree that the CC's proposed Remedy A offers a means by which to improve claimants' understanding of their legal entitlements. In particular, we believe that the provision of the information to the claimants at the point of claim could provide additional clarity.

However, we do have some reservations in relation to certain aspects of the remedy which require an interaction between claimants and organisations which

have not chosen to do business with each other. For example, in our view, it is probably not appropriate for an insurer to provide advice to a third party insured in respect of their contractual relationship with another insurer. We have highlighted our reservations regarding aspects of this remedy in our response below.

(a) What information should be provided to consumers?

We believe the information suggested in paragraphs 18 (a) to (d) would constitute useful information to be provided to a policyholder in relation to a claim. Much, though not all, of this information is currently provided by Zurich to claimants. It may however, assist claimants if all such relevant information were to be passed to them in a consolidated pack.

The information provided could also include details of the claimant's rights and obligations under common law, and include a summary of who to contact (i.e. a solicitor or the C.A.B. perhaps) depending upon the nature of the claim.

We also believe that it is important to make very clear that some circumstances, particularly when liability is disputed (and ultimately the claim is settled on a split liability basis), will precipitate outcomes which the claimant may not have otherwise anticipated. This may occur because at fault claimants do not always recognise themselves as such and it is sometimes necessary for their expectations to be appropriately managed. This could be achieved by providing examples of such circumstances in the information pack provided to the claimant.

It will be important that the information is appropriately tailored to the circumstances of the individual claimant. For example, insurers will need to remain mindful that some of the information may not be relevant to a particular claimant (e.g. one who is not a policyholder). An example would be a third party claimant where we could not discuss any part of a claim he/she may be making under the contract with their own insurer.

For Zurich's policyholders, while such information could be provided by us at point of sale, for the reasons indicated in paragraph (b) below, we believe it is unlikely that the average consumer would take the time to fully review the information at that time.

The point at which such information would be provided during the application process (i.e. either before the point a buying decision is made, or after that time during the documentation fulfilment process) will also need to be determined. Our view is that the provision of this information is unlikely to be a significant factor in the product buying process, and would be more usefully provided during the documentation fulfilment phase.

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

We believe information should be provided both at the same time as policy documentation is issued (that is, at either new business, renewal, or when relevant, at the time of a mid-term adjustment), and at the point of claim.

However, it will be at the point of claim that the communication will be most effective, not only because the situation will attract far greater consumer focus and attention, but also because, in our experience, not all customers take the time to read in detail the documents sent when cover is arranged. We believe our understanding in this respect to be a well-known behaviour recognised by other insurers; therefore our view is that because the provision of information is unlikely to be a significant factor in the product buying process, at this stage it would be more usefully delivered in document fulfilment processes (rather than at the actual point of sale). It may be that particularly relevant information can be reiterated at the relevant time as the claim progresses.

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

We do not believe that the forms of words used by all insurers need necessarily be the same, but the principal points of information should be supplied as a minimum to all claimants at the relevant time.

We agree this could be achieved by an agreed best practice document prepared and periodically updated by, say, the ABI and other key stakeholders (with its use monitored by the usual regulators). This would indicate the minimum amount of information to be passed to a claimant at (a) the point of purchase/fulfilment and (b) the point of claim. However, as indicated previously, individual cases may require additional information beyond just a general statement, and insurers would need to be alert to this possibility.

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

We do not believe that this proposal would lead to material distortions or unintended consequences. We believe the remedy would ensure that all claimants receive the minimum level of information (although, as indicated previously, an insurer would still be obliged to extend the amount of information provided to take into account the particular circumstances of a given case – this would be particularly relevant at the point of claim).

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

If the provision of a minimum standard of data were subject to regulatory supervision and enforcement, we believe this would be an adequate disincentive to deter circumvention.

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

This remedy would be best monitored through the usual regulatory regime. As applies in respect of other activities, an insurer would need to offer evidence to the regulator that the minimum requirements were being followed.

We prefer this to, say, the potential inflexibility of a formal code of conduct because it offers a solution consumers are likely to find more convincing – regulators already effectively monitor adherence to the rules which govern communications between insurers and consumers.

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

Costs would be restricted to those incurred to alter existing documentation, call scripts etc. While those will be a consideration in an insurer's future pricing decisions, we believe that they will be relatively low.

We would anticipate introduction of the remedy over a 12 months' rolling period insofar as non-point of claim notification is concerned. A relatively quick change for use at point of claim could be achieved.

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

No, although our strong preference is to incorporate any requirements into existing FCA rules governing the conduct of business.

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

Any additional emphasis on consumer rights in such circumstances can only go to improve the process, so more general publicity from all key stakeholders will help to embed the information. However, greater awareness of rights in itself will not automatically reduce frictional costs associated with credit hire, repair practices etc., such that the remedy will not, of itself, be fully effective in addressing the issues raised by the CC in the Provisional Findings.

As explained in the introduction, Zurich believes that a combination of the following remedies would constitute the most effective and proportionate means of addressing the issues raised in the Provisional Findings:

- **Remedy 1A or 1B**
- **Remedy 1C**
- **Remedy 1D**
- **Remedy 1E**
- **Remedy 1F (with some reservation as to its consistency with Remedy 1A)**
- **Remedy 1G**
- **Remedy 2A**

- **Remedy 4C**
- **Remedy 5A**
- **Remedy 5B**

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

Yes, it would certainly add to the likelihood of consumers understanding their legal entitlements. The opportunity could also be taken to ensure that any other relevant aspects of motor insurance are included in the driving theory test. These could include emphasising to consumers the need to affect valid insurance cover in the first instance and the consequences of making a misrepresentation to the insurer at the point of application for cover.

Consideration should also be given to opportunities to provide information in other media, e.g. the Highway Code.

Paragraph 28 – Views are invited as to:

(a) Whether the possible remedies under ToH 1 are likely to be more effective in combination with other remedies than alone and, if so, what particular combinations of remedy options would be likely to be effective in addressing the AEC we have provisionally found.

Zurich is of the opinion that it would need a combination of the proposed remedies to address the AEC in full. In particular, we believe that the following combination of remedies would address the AEC in the most effective and proportionate manner:

- **Remedy 1A or 1B**
- **Remedy 1C**
- **Remedy 1D**
- **Remedy 1E**
- **Remedy 1F (with some reservation as to its consistency with Remedy 1A)**
- **Remedy 1G**
- **Remedy 2A**
- **Remedy 4C**
- **Remedy 5A**
- **Remedy 5B**

In particular, this combination would remove the frictional costs and operational costs (as well as the additional inflated hire costs and extended hire durations) identified in the Provisional Findings from the system.

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

The most appropriate means of implementation for each remedy requires specific consideration for each of the specific proposals. While several will be most appropriately implemented by enforcement order, Remedy 1A would require changes to the law, and hence could only be implemented by way of recommendation to the Ministry of Justice. In some other cases, we believe that the remedy could most proportionately and effectively be implemented via the existing regulatory regime and so would best be implemented in cooperation with the FCA (and/or any other relevant regulator).

We have set out our comments on the appropriate means of implementation in relation to each separate remedy proposal below.

Paragraph 34 – Remedy 1A : First party insurance for replacement cars

Remedy 1A appears to us to be a proportionate and effective means of addressing the issues identified under ToH1: in particular, it goes directly to the frictional and related costs identified by the CC in the Provisional Findings by better aligning cost control and cost liability.

While some practical and legal issues would have to be explored by the CC in greater detail over the period of remedies appraisal, we hope that these would not be insurmountable.

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

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

It is well established in English tort law that a claimant may recover from the fault party (and, therefore, in effect, the fault party's insurer) for the cost of obtaining a temporary replacement vehicle[1]. The Competition Commission is thus correct to state that tort law would have to be amended in order to accommodate the proposed remedy[2].

The consequences with respect to the Road Traffic Act would also need to be examined. As the Competition Commission notes, the proposal would have implications for the extent of the obligation under section 145(3) of the Road Traffic Act as to mandatory motor insurance coverage for third party liability. The extent of such coverage is defined in this section by reference to the tortious liability of the fault party ("*any liability* which may be incurred by him or them in respect of the death or bodily injury to any person or damage to property caused by, or arising out of, the use of the vehicle on a road or other public place in Great Britain" [emphasis added]). Specific exclusions from this obligation are set out in section 145(4) of the Road Traffic Act. It therefore appears to us that, were the tortious liability of fault parties to be amended in law, this would not require any consequent change in text of the Road Traffic Act itself.

The Competition Commission further notes that any such change in tort law would need to be considered in the context of the Motor Insurance Directive[3].

Article 3 of the Motor Insurance Directive states that:

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1 The establishment of this principle may be traced back to *The Mediana*, [1900] AC 113, where the Court held that where a claimant is deprived of his chattel for a time, he can recover a sum by way of general damages for that deprivation.

2 The CC should note that, were it to consider amending the legal position by means of an amendment to the Road Traffic Act, that certain vehicles are exempt from the provisions of the Road Traffic Act.

3 Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability.

> ***"Each Member State shall, subject to Article 5, take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance."***

The Directive does not purport, though, to harmonise the content of "civil liability". This remains a matter for national law[4]. The Court of Justice of the European Union noted in *Mendes Ferreira and Delgado Correa Ferreira* (Case C-356/05) that:

> ***"As Community law stands at present, Member States are free to determine the type of civil liability applicable to road traffic accidents."***[5]

However, this general position would have to be considered in the context of the principle of effectiveness to which Member State governments are required to give effect. That is, in implementing the Directive in national law or otherwise providing for the national regime for compensation for motor vehicle accidents, the Member State government may not deprive the principles set out in the directive of their effectiveness.

We are not aware of any case law on the specific question of whether limiting a non-fault party's ability to claim compensation for the costs of obtaining a temporary replacement vehicle could be said to compromise the effectiveness of the underlying purpose of the Directive that non-fault parties should be able to obtain compensation for their loss. However, the Competition Commission will wish to consider this question in the context of the following:

(a) Recital 30 to the Directive states that:

> ***"The right to invoke the insurance contract and to claim against the insurance undertaking directly is of great importance for the protection of victims of motor vehicle accidents. In order to facilitate an efficient and speedy settlement of claims and to avoid as far as possible costly legal proceedings, a right of direct action against the insurance undertaking covering the person responsible against civil liability should be provided for victims of any motor vehicle accident."***

This elucidates in an important way the underlying purpose of the Directive;

(b) in the case of *Candolin v. Vahinkovakuttusosakeyhtiö* (Case C-537/03), the Court of Justice of the European Union examined a limitation under Finnish law to the rights of the injured party to obtain redress in circumstances where he or she should have been aware that the driver of the vehicle was drunk (and thereby demonstrated contributory negligence). The Court of Justice stated the following:

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4 See in particular, *Carvalho Ferreira Santos*, paragraph 32 and the case law cited therein (Case C-484/09).

5 Paragraph 29.

> ***The Member States must exercise their powers in compliance with Community law, and, in particular with Article 3(1) of the First Directive, Article 2(1) of the Second Directive and Article 1 of the Third Directive, whose aim is to ensure that compulsory motor insurance allows all passengers who are victims of an accident caused by a motor vehicle to be compensated for the injury or loss they have suffered.***
>
> ***The national provisions which govern compensation for road accidents cannot, therefore, deprive those provisions of their effectiveness.***
>
> ***Such would be the case specifically where, solely on the basis of the passenger's contribution to the occurrence of his injuries, national rules, established on the basis of general and abstract criteria, either denied the passenger the right to be compensated by the compulsory motor vehicle insurance or limited such right in a disproportionate manner.***
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> ***It is only in exceptional circumstances that the amount of the victim's compensation may be limited on the basis of the assessment of his particular case."***[6]

(c) the same principle of effectiveness was underlined by the Court of Justice of the European Union in *Lavrador v. Companhia de Seguros Fidelidade-Mundiale SA* (Case C-409/09), noting that:

> **"*Member States must exercise their powers in that field* [i.e. of determining the extent of civil liability] *in compliance with European Union law and…the national provisions which govern compensation for road accidents may not deprive the First, Second and Third Directives of their effectiveness.*"**[7]

(d) the principle of effectiveness may have particular salience in the context of drivers from other Member States. Those drivers generally will not have had the opportunity to purchase cover for temporary replacement vehicle costs. It is notable in this context that Recital 2 to the Motor Insurance Directive states that:

> ***"Motor insurance also has an impact on the free movement of persons and vehicles."***

We believe that it is likely that these legal issues would require further consideration, and the CC may wish to consult with the European Commission as to its views on the application of the Directive.

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6 Paragraphs 27-30. The Articles of the First, Second and Third Directives referred to are consolidated in the Motor Insurance Directive referred to above.

7 Paragraph 28. The First, Second and Third Directives referred to are consolidated in the Motor Insurance Directive referred to above.

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

The choices available would be part of the application process and effectively the options would be treated as add-ons (unless an insurer chose to provide the cover to all applicants).

The elements of cover and associated price options would need to be clearly identified and explained to applicants.

Consumers would need to be absolutely clear on the consequences of their decision (and make acknowledgements accordingly). Insurers would need to introduce systems which avoid the possibility of subsequent disputes and complaints (which, were they to increase, would tend to introduce extra costs).

There would be a 12 month period (as policies renew) where some customers would still be on the old basis, while others would move to the new. We would expect any legislation and/or other implementation measures to take this into account, i.e. that a right of recovery would be maintained for losses incurred under policies arranged on the old basis until they were renewed.

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

This would need further evaluation work, but essentially would become part of an insurer's overall pricing considerations. However, such a change would likely introduce a cross-subsidy. That is prices for low-risk drivers will go up more than those of high risk drivers. The impact on non-compulsory policies will be particularly marked.

Other dependencies would be relevant, e.g. the percentage of customers who decide not to select a replacement car and the risk profile they represent. For instance, if all higher risk (and therefore higher priced) customers chose not to have a replacement car, that would present quite different pricing decisions to a scenario where they chose to have a replacement car.

The actual pricing structure for such an add-on would need to be considered by an insurer. For instance, would it offer universal prices, or use a granular risk-based approach? Our current view would be that the latter would be employed (to ensure the most effective structure is implemented).

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

Effect on NCB

Currently we regard a claim as being 'non-fault' (and therefore having no effect on NCB) when we secure a full recovery of any outlay we make in connection with a loss.

As presented, the remedy would mean that where we supply a replacement car and we incur a cost, because we will not have a right of recovery from the 'at fault' driver (or their insurer), our customer's NCB will be affected (or the provisions of their NCB protection cover would be triggered, as applicable).

If the add-on cover was supplied on the basis that it would not affect NCB if triggered (and not be subject to any policy excess which might otherwise apply), then this would have to be factored into overall pricing (e.g. the lost revenue because NCB has not been reduced, the costs of changing claims operating systems to recognise the difference between claims handled where a net cost has to be disregarded for the purposes of considering the NCB entitlement).

Effect on excess payment

Currently, whether the non-fault claimant would still be required to pay their excess, even if provided with a replacement car, would depend if the insurer dealt with the cost of repairs as well. The excess relates to damage to the vehicle. If the at-fault insurer dealt with the repairs and the non-fault insurer vehicle replacement, then no excess would be applicable. This would remain an uninsured loss which would be recoverable from the at-fault insurer if the non-fault insurer dealt with the repairs. Alternatively, we could write into the policy that any excess is not applicable for claims in respect of replacement car only.

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

Competition between vehicle hire providers

An insurer would need to have access to hire companies' vehicles in such a way as to allow it to meet its obligations. Until the market was fully active on this basis, it is difficult to tell whether the hire car market would need to alter its supply model, but the market is currently generally well-supplied and the model would retain competition between hire providers to provide the facility to meet insurers' demands (with insurers looking to secure discounts through the scale of their requirements).

The quality of the service (in the sense of what replacement vehicles will need to be made available) will be determined by the dynamics created by customers' choices in terms of the level of replacement cover they choose to purchase. For instance, like-for-like replacements may be less likely if the cost to secure one is significantly greater than for a Class A vehicle.

Currently some companies operate in both the credit hire and direct hire arenas and it would mean that they move more towards a more direct hire model with less credit hire activity.

These companies would then be able to compete to provide the replacement cars which the insurers would be providing under their own policies (on a like-for-like basis).

Many insurers currently have contracts with CHOs to provide replacement vehicles within a very short period of time for cases where the non-fault third party has been captured – this is necessary in order to ensure that the non-fault party utilises the insurer's supplier. Therefore, if these contracts are extended there would be no detrimental effect on the quality of service.

Competition between insurers

In addition, this could become a differentiator in product supply with insurers guaranteeing in the policy that a replacement vehicle would be available within a specified period.

It would also become a brand issue for insurers. If customers were unhappy with the length of time taken to provide a vehicle by their insurer, they would more likely move to another insurer at renewal.

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

We believe that it is likely that if the non-fault claimant has comprehensive cover and has to contact their own insurer for a replacement vehicle, then they will also arrange for the repair of their vehicle, unless that at-fault insurer contacts them first in this regard and persuades them otherwise. For non-comprehensive policies it is unlikely that the non-fault insurer will undertake the repair.

Where the replacement car is being provided by the non-fault insurer and the repair is being carried out by a different service provider, there is potential for an increase in complexity and cost. The party responsible for the repair of the vehicle would not necessarily be incentivised to complete repairs as quickly as they are not incurring the cost of ongoing hire and therefore the insurer paying for the hire may end up paying more than reasonable for the actual repair required on the vehicle.

This could also lead to frictional cost, with the repairer of the vehicle stating for instance, that a part is not available for weeks but the insurer providing the replacement vehicle arguing that the length of time was unreasonable (although if implemented with remedy suggested under paragraph 45a this may be mitigated to some extent).

Furthermore, it would be important in this context to ensure that the remedy was supplemented with one or more of the others proposed by the CC in the Remedies Notice. In particular, without the introduction of other remedies (such as 1D), if the non-fault insurer handled the repair of the non-fault claimant's vehicle, the current situation where certain insurers inflate the actual cost of repair in cases where they seek subrogation from the at fault insurer would remain unremedied, to the detriment of consumers.

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

In implementing this remedy, the CC would have to take into account the potential spillover effects on the commercial vehicle insurance market (which is outside the scope of the market investigation, but which could easily be impacted). The CC will also wish to consider the implications for foreign drivers and for vehicles that are exempt from the provisions of the Road Traffic Act.

Apart from the 'lower risk' drivers being seen as subsidising the 'higher risk' drivers we do not see any other distortions.

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

Once the necessary legislative changes were in place, as indicated above, there would need to be a 12-month implementation period (before all policyholders were on the same basis).

Administrative changes would arise in the selling process of what would be a new add-on. These costs would need to be investigated in more detail before a precise figure could be indicated.

However, we anticipate that the timetable to implement this remedy would be driven primarily by the length of time it would take to make the required changes to the law.

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

The legal framework must be robust enough to ensure the remedy is entirely workable.

Insurers would need to negotiate new commercial arrangements with replacement car providers.

Insurers would need to affect the changes necessary to, in effect, introduce a new add-on. That will carry a cost, although there will be some mitigation by virtue

of it being a market-wide initiative (e.g. all insurers would require PCWs to make the same change).

Paragraph 43 - Remedy 1B : At-fault insurers to be given the first option to handle non-fault claims

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

Zurich considers that Remedy 1B is closer to the underlying principles of insurance, namely the right of the wronged party to be made good, while having the duty to mitigate the cost. However, Zurich also recognises it introduces significant complexity into the claims process, particularly at the most stressful moment for the innocent party.

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

In paragraph 38, the CC has recognised the potential issue with the separation of cost liability and cost control. In our view, the non-fault customer is likely to choose to have the services provided by their own insurer with whom they have taken out the insurance in the first place. This would mean that the fundamental issue identified by the CC about the lack of alignment of cost control and cost liability would go entirely unremedied.

Paragraph 39 does have the potential to be more effective from this point of view - because it removes the issue with separation of cost liability and cost control – but as the CC has noted that it does take away the individuals' right to choose their service provider and so may reduce incentives to provide a good service to the non-fault claimant.

Therefore, we agree that some solution, such as paragraph 41 or industry agreement, backed up by enforcement would be necessary to ensure the remedy is effective without introducing too much complexity.

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

The incentive would be that the risk of not being able to recover all their costs would be removed as the at-fault insurer would effectively be accepting that the claimant has mitigated the cost. If the claimant chooses his own supplier they would need to understand they may be liable to recover some costs if they are held to have not mitigated the loss in line with accepted practice at the time.

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

To ensure that the at-fault insurer provides the standard of service to which the non-fault claimant is entitled, it would have to be part of the remedy that if certain criteria are not met then the non-fault claimant would be entitled to return to their own insurer or another party to supply the services. This would add additional complexity but claimants might reasonably consider that such a backstop was necessary to ensure that they received an appropriate standard of service.

Whilst remedy 2A would assist in ensuring the quality of repairs are adequate, the claimant is also entitled to have these completed in a reasonable timeframe and to be provided with a 'like-for-like' replacement vehicle within a reasonable timeframe. Therefore, the additional criteria around these other service levels need to be factored in to any remedy.

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

As mentioned previously, the implications of allowing the non-fault customer to choose an alternative service provider is that the issue of separation of cost liability and cost control will remain. The at-fault insurer will remain liable for these costs and have no influence over them – this would equally apply to repairs and vehicle replacement. This could, to some extent, be mitigated by other remedies limiting the amount recoverable for both repairs and vehicle replacement to standard costs and timeframes, but the structural issue would remain.

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

The key objection to this remedy is that it does not provide a good customer journey, with the non-fault claimant being passed from one party to another for hire of a vehicle and having to wait for a replacement vehicle whilst their vehicle is not driveable.

This may be mitigated if there is an agreement allowing the non-fault claimant to exit the process and use their own supplier(s) where the at-fault insurer does not meet reasonable obligations e.g. supplying a like-for-like replacement car within an agreed reasonable timeframe. There would need to be an agreement in place specifying what is considered reasonable for the supply of each type of service.

Once the at-fault insurer has been notified of the need for services, Zurich believes that they should contact the non-fault claimant within a specified period with their proposal of services. If this is not met the non-fault claimant should be entitled to engage their own service provider.

Zurich's belief is that for this reason this remedy would only be effective if backed up by an industry wide solution, e.g. claims portal to ensure claimants can be contacted quickly.

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

Zurich is of the opinion that this depends on which remedies are adopted and the detail within these. If costs of repair, and the length and cost of hire are standardised then Zurich does not consider it an issue whether or not the non-fault claimants would have to wait.

Otherwise, if the non-fault claimant is given the choice of which supplier to use, they should have to wait to hear what the offer from the at-fault insurer is, provided that this is given within a reasonable time period. This will enable the non-fault claimant to make an informed choice based on what is offered.

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

Whilst this would be an advantage for the non-fault claimant as they can choose the supplier to repair the damaged vehicle, there will, in our opinion, be two main disadvantages with this approach.

Firstly, there would remain an issue of separation of cost liability and cost control. The non-fault insurer will subrogate for the cost of repairs against the at-fault insurer and the amount subrogated may be inflated above the actual cost to the non-fault insurer as per the Court of Appeal decision in Coles v Hetherton. This could be mitigated to some extent by the introduction of possible remedies in 1D but the structural issue would remain.

The other disadvantage is that the at-fault insurer would not be able to exercise any control over the timeframe of the repairs and this may have an impact on the length of hire of a replacement vehicle and therefore the cost (and thus the overall effectiveness of the remedy). The non-fault insurer would not necessarily be incentivised to complete repairs to the damaged vehicle as quickly as possible.

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

Unless there is an appropriate agreement in place, this remedy could lead to frictional costs around when an at-fault insurer was notified of an accident, when contact was made with the at-fault claimant (or reasonable attempts to) etc. with additional costs created in the system from arguing over these issues.

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

Unless there are clear agreements around at-fault insurers' contact with the non-fault claimant, the remedy could be circumvented by arguing that the actions of the at-fault insurer were not reasonable. This could be avoided by having a definitive agreement over actions and timeframes to be met by the at-fault insurer.

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

All parties should keep an audit trail of the initial contact with the claimants, with proof being provided by call recording and the claimant always being notified of their rights in writing (even following verbal confirmation).

Monitoring should be done internally by the respective companies who should be able to provide evidence of this if requested. Ultimately, the FCA should ensure that the monitoring and actions taken are acceptable.

The costs of this process should be taken into account by the CC in considering the proportionality of this remedy.

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

This remedy may require a change in the law since it may limit the legal rights of claimants to choose the provider of their repair and temporary replacement vehicle. Alternatively, it may be implemented through market practice but that would likely require deployment of an IT solution.

In addition, the market would need to reach agreement on timeframes for contact etc. and the organisational structure would need to be adapted within each company to administer the process. This would likely take at least 12 months to put in place.

Paragraph 48 – Remedy 1C: Measures to control the cost of providing a replacement car to non-fault claimants

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

Zurich is broadly in favour of Remedy 1C. While it considers that the effective precursor of this remedy, the GTA, has not been sufficiently effective on its own in addressing the problems in the market, this remedy could, in combination with those other remedies supported by Zurich (see above) be broadly effective in addressing the issues identified under TOH1.

(a) What would be the most effective way of implementing this type of remedy? Possible ways could be an enforcement order made by the CC, an under-taking to replace the GTA, or (in relation to the hire costs of TRVs subject to dispute) a recommendation for judicial guidance on the level of hire costs recoverable from at-fault insurers by non-fault insurers and other providers of replacement cars.

Zurich believes the quickest and most effective way of implementing this remedy would be by an enforcement order.

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

All organisations involved in the provision of a replacement vehicle following an accident should be covered by this remedy. One of the principal problems of the current system is that not all parties are covered by the GTA.

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

Whilst repairs should commence as soon as possible once a replacement vehicle has been provided (or as soon as possible following the accident if the vehicle is not driveable) it is not possible to be prescriptive concerning the time period. This may depend on type of vehicle, availability of parts and capacity for the repairers.

The hire period should be monitored by both the party putting the non-fault claimant into the replacement vehicle and the party who is arranging repairs.

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

Zurich is of the opinion that the mechanism for setting hire rates for replacement cars should be based on direct hire rates with a small allowance to cover credit charges (where appropriate) and that these rates should be set by an independent body (which may have to be an new independent group as we cannot see that this fits within the remit of any existing body).

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

Zurich does not see that additional administrative charges should be allowed as these are built into the basic rates already.

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

Yes it would be practicable to do this in a similar way to how the MOJ Portal currently works. However, this is not the major issue - which is around hire rates and duration.

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

The main costs we envisage with this remedy would be the build of a credit hire portal, and costs of an independent body to set hire rates and guidance on duration. We do not, however, believe that these costs should be significant. The GTA has been administered at relatively low cost over a significant period of time.

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

If appropriately combined with the other remedies supported by Zurich, this remedy should not give rise to undue distortions or other unintended consequences.

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

If the remedy is subject to an enforcement order, Zurich believes this should be sufficient to avoid circumvention.

Paragraph 55 – Remedy 1D : Measures to control non-fault repair costs

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

Zurich strongly supports this remedy. It would be both effective and proportionate in removing an obvious problem in the market that acts to the detriment of consumers. The CC will be aware of the recent judgment of the Court of Appeal in *Coles v. Hetherton*[8] , which has left unabated this obvious inefficiency. We believe that it is critical that the CC acts to address this. In order to ensure its effectiveness, it would have to be combined with remedy 1G.

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

We have not considered in detail whether the recent judgment of the Court of Appeal in *Coles v Hetherton* would mean that a change in the law might be required. Assuming that no such change would be required, Zurich believes the most effective way of implementing this remedy would be by enforcement order.

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

The CC has recognised that, unless combined with remedy 1G, this remedy could encourage inflated bills from repairers in return for referral fees, which would be contrary to consumers' interests. It would therefore have to be paired with remedy 1G, banning referral fees.

The CC also correctly notes that it could encourage insurers to integrate vertically with repairers. While this could be mitigated through remedy 1D(b), this variant would itself create considerable complexity, as we explain below.

Remedy 1D (a)

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

The existing bilateral agreements for subrogated claims in the market (which, as the CC is aware, are far from comprehensive, so do not in themselves provide a solution to this problem) mitigate this by specifying that all discounts, fees or other payments are deducted and that it is only the net cost to the non-fault insurer that is recovered. The remedy should specify this as well.

The costs charged by the repairer should also be the same, irrespective of whether it is a fault or non-fault repair.

8 ([2013] EWCA Civ 1704)

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

Yes potentially.

Remedy 1D (b)

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

In Zurich's opinion, this is possible but it could become complex as you start to examine the detail. Repairers are made up of different types of businesses (e.g. independent body shops, main dealers etc.), with different overheads and in different locations which would require them to set their prices according to their profit margins. Existing costs rely on the repairer being provided with some indicative volumes and vehicle makes/models which allow them to arrive at a blended set of rates and charges for that contract.

For these reasons, we consider that this variant is not as practicable as Remedy 1D(a).

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

Average repair cost broken down into parts, labour and paint. Average cost per hour and the ratio of parts cost to labour cost all provide a reasonable indication as to whether the costs are within the norm.

Cost estimation systems provide a level of standardisation and accuracy in relation to vehicle repair estimates. Other benefits include efficiency savings achieved through the electronic processing of repair estimates between the insurer and the repairer. Repairers further benefit from being able to quickly determine the correct repair method when preparing the estimate which helps to ensure that the vehicle is repaired in line with the manufacturer's specifications.

Other indices could include vehicle off road time - this would impact on rental vehicle duration, level of parts discount, paint discount, price of tyres, use of non- genuine parts and glass.

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

Zurich is unable to estimate the cost of implementing this arrangement.

(h) How would monitoring of this remedy work?

This remedy should be monitored by the organisation that reviews and set the standardised costs and also the engineers carrying out the quality inspections.

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

Thatcham would be the obvious choice as they are widely respected within the industry as an expert and independent provider of accurate cost estimation information.

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

To help mitigate the risk of price control affecting the quality of repairs, remedy 2A, which mandates audits of the quality of repairs, should be implemented.

Paragraph 57 – Remedy 1E : Measures to control non-fault write off costs

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

Zurich is broadly in favour of this remedy (in combination with the others identified above). However, it could give rise to certain distortions noted below which will require careful consideration.

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

Potentially yes. Remedy 1E(a) could lead to the non-fault insurers passing on additional charges (such as storage) to the at-fault insurer when they are not being paid by the non-fault insurer. Also, it could lead to delayed release of the vehicle which might increase these charges. Both of these points would require careful consideration to avoid these damaging outcomes.

Remedy 1E(a)

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

Yes we believe that insurers would take up the option of handling the salvage. However, this could make the process more complex with the potential for the distortion noted above in the response to paragraph 57(a).

In addition, this could lead to friction between insurers and salvage agents, with regard to the length of time the at-fault insurer might take to pick up the vehicle. This could be mitigated with timescales built in before any charges can be levied by the salvage agent for storage.

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

The at-fault insurer should be given this option as soon as the pre-accident value of the vehicle has been agreed.

Remedy 1E(b)

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

If this remedy was introduced with a ban on referral fees it would mean salvage companies not having to pay such fees. This would be to the benefit of all involved in the supply chain, including consumers.

Insurers usually have contracts in place that deal with all salvage, whether fault or non-fault and this should therefore not impact the salvage value obtained. It

should be mandated that insurers receive the same salvage whether the vehicle was involved in a fault or non-fault accident.

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

Zurich believes that an adjustment mechanism would be too complex to operate between insurers, lead to operational inefficiencies and potentially further frictional costs. Subrogation should be sought from the at-fault insurer only once the salvage proceeds have been confirmed.

Paragraph 61 – Remedy 1F : Improved mitigation in relation to the provision of replacement cars to non-fault claimants

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

Zurich broadly supports this remedy, although it would not strictly be necessary if remedy 1A were implemented.

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

Yes, this remedy could operate on a stand-alone basis although we believe it would have limited impact in addressing the issues within the credit hire market. We believe that it needs to be combined with other remedies in order effectively to address the concerns set out in the Provisional Findings. Currently, under the GTA, mitigation statements are signed by the non-fault claimant hiring a credit hire vehicle even though on occasions it later transpires there was no need for a replacement vehicle. We do not believe that the position would be materially altered by this remedy.

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

Assuming that subrogation and credit hire remain, then this remedy could support all the other possible remedies.

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

Consultation across the industry will be required in order to create a universally applicable list of questions, but, for the present, Zurich considers the following questions/issues are likely to be relevant:

- **Is the damaged vehicle roadworthy or not?**
- **What is the vehicle is used for?**
- **Could their customer use a small courtesy vehicle or do their personal circumstances prevent this?**
- **Whether or not the customer has any holidays in the near future and could the vehicle be repaired whilst they are on holiday, thus avoiding the need for alternative transport.**
- **If the customer has another vehicle in their household, or access to any other vehicle. If they do have access to another vehicle is this vehicle suitable for them use whilst their own damaged vehicle is off the road?**

- **What type of vehicle does the claimant need and why? E.g. often when asked, a prestige vehicle owner, will accept a standard vehicle as it is for a temporary basis.**
- **Whether they have funds to replace or repair vehicle.**
- **Is a replacement vehicle provided by their own insurance policy?**

Zurich is of the opinion that whether the non-fault claimant has cover under their own policy for a replacement vehicle should be considered but only as to why they consider the need to use credit hire.

The inclusion of a provision under their own policy for a replacement car does not prove need, only preference.

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

This would be self–enforcing if the at-fault insurer had the right to see the mitigation declaration and call records. However, this would still leave the frictional (and litigation) costs – i.e. there could still be a dispute as to whether these represented a true picture of the non-fault claimant's position.

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

We believe costs would be minimal.

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

Zurich does not foresee any additional distortions as a result of this remedy.

Paragraph 64 – Remedy 1G : Prohibition of referral fees

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

Zurich strongly supports this remedy. We believe that being seen to act in this area is essential to show the strength of commitment within the industry to address the issues raised by the CC's investigation. We believe that this remedy is both effective and proportionate.

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

Zurich believes that this remedy could operate on a stand-alone basis but would be more effective in conjunction with the other remedies identified at page 4 above to address the fundamental issues around the rate and rental period of credit hire.

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

While other remedies may have some impact in this area, an explicit prohibition has the advantage of making clear the intention that parties in the supply chain should not introduce incentivisation practices that ultimately increase the cost of insurance to consumers. We strongly support this remedy being introduced and consider that the CC could not be confident that the remedies package would effectively address the AEC identified without the inclusion of remedy 1G.

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

The absence of referral fees would eliminate a significant aspect of cost which currently needs to be included in the premiums offered. We are confident that it would result in lower premiums over time. However, without detailed analysis it is difficult to predict the precise impact of an absence of referral fees at some point in the future.

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

It is conceivable that this remedy could lead to vertical integration, but we do not believe that many insurers are likely to take this option and we therefore do not consider that this risk is significant.

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

Zurich believes the key would be to use this remedy in conjunction with the other remedies to ensure that all discounts, rebates, fees etc. are taken into

account when arriving at the net cost of an accident (repair, salvage and vehicle) which is subrogated with the at-fault insurer.

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

This remedy would be best monitored by the FCA together with the SRA and Claims Management Regulator.

Paragraph 71 – 1H : Remedies that we are minded not to consider further

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

Zurich agrees that neither remedy in respect of First Party motor insurance nor Prohibition of credit hire should be considered further, for the reasons outlined by the CC. Neither remedy would be either effective or proportionate.

Currently we do not have other possible remedies to offer.

Paragraph 78 – Remedy 2A : Compulsory audits of the quality of vehicle repairs

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

Zurich is broadly in favour of this remedy. While Zurich considers that its systems are already effective in ensuring high quality repairs, it would welcome an industry-wide scheme to ensure that consumers have confidence in the system. It considers that this remedy would, if properly specified, be both effective and proportionate.

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

As most insurers already carry out audits of repairers (whether exclusively focused on quality or not), we would not anticipate the additional costs to be significant as the focus of these audits could be changed where necessary.

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

Zurich believes that a minimum of 2% of all repairs over 12 month period per repairer should be inspected for repair quality. There should also be a provision for more in-depth intervention if particular repairers are failing to meet required standards.

The vehicles should be inspected either on the point of being returned to the customer or shortly after they have been returned to the customer.

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

Costs of an independent body to carry out the audits could well be disproportionate to the issue and Zurich has no reason to consider that it would be more effective in addressing the problem. Zurich considers a more proportionate (and equally effective) solution would be that the audit is carried out by a suitably qualified engineer. The audits could be standardised across all engineers acting for insurers/CMCs with specific training provided by Thatcham. When the engineer has received the training they would have a 'licence' to carry out the audit.

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

Each insurer should collate the results of the audits and be responsible for publishing these categorised by repairer. This would assist in identifying potential issues with both insurers and repairers.

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

A specific scoring matrix could be drawn up that would provide a score for each inspection. As long as the training was provided by an independent body such as Thatcham, consistency could be achieved. If further assurance was required, a system similar to that used in the RIPE initiative, where an insurer audits another insurer's inspections annually, could be employed. This would avoid the cost of setting up a separate body, and would, in Zurich's view, be equally effective.

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

If this remedy was to be achieved through PAS 125, then we do believe it would be necessary for repairers to be PAS 125 accredited. This may also give an additional level of comfort to consumers.

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

We do not believe so.

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

Zurich believes that this remedy would be best made by an enforcement order to ensure that it is carried through and momentum to change is continued.

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

Zurich are of the opinion that whichever remedy or remedies are adopted this will support them (except, of course, 1C, 1E & 1F, which relate to a different issue) and should be adopted.

Paragraph 80 – Remedy 2C : Remedies that we are minded not to consider further

Zurich agrees with the CC that the remedy to give consumers the right to have their repairs assessed by independent experts at no cost if there is a problem with the repair should not be pursued for the reasons given. Such a remedy would be highly disproportionate and would be no more effective that Remedy 2A noted above. (Zurich notes that no remedy 2B is set out in the Remedies Notice.)

Currently we do not have other possible remedies to offer.

Paragraph 86 – Remedy 4 : Add-ons

Zurich considers that the CC has wrongly assessed the evidence in its Provisional Findings in relation to TOH4:

(a) first, we believe that consumers get good outcomes in relation to add-on products and make good decisions in relation add-on products based on the information already provided. While Zurich is happy to provide such further information as consumers may find useful, it is not persuaded that the additional information proposed by the CC under remedies 4A will generate better outcomes for consumers. Furthermore, we believe that this remedy is likely to lead to product standardisation, so reducing innovation and customer choice, to the significant detriment of consumers; and

(b) second, we believe that it is impractical to provide the complex information that goes into the NCB calculation to customers. The NCB calculation will differ markedly from one insurer to another, based on models that each insurer has developed over a long period of time, and reflecting actual risk. Consumers are likely to find it difficult to make a meaningful comparison, and this information is therefore unlikely to help the consumers.

Views are invited as to:

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

As noted above, Zurich considers that remedies 4A and 4B are neither necessary nor proportionate. Were they nonetheless to be implemented, Zurich considers that the relationship between each is uncertain and there is no good reason to believe that they would be mutually reinforcing with other remedies.

(b) Whether the possible remedies under ToH 4 are best made by the CC through an enforcement order or whether the CC should make recommendations to another party to implement the remedies, and if so who that party should be.

Were the CC to conclude (we believe wrongly) that these remedies were necessary, we do not feel that an enforcement order is necessary for the remedies to be implemented; rather supervision should be through the usual regulatory regime. As applies in respect of other activities, an insurer would need to offer evidence to its regulator's contact that agreed best practices are being followed.

Paragraph 89 – Remedy 4A: Provision of all add-on pricing from insurers to PCWs

We believe that, while transparency for customers is to be supported, this will not be best achieved by looking to implement remedies which will simply lead to product standardisation, which we believe would inhibit innovation and competition. We believe that this is a significant risk under the proposed remedy. If products remained diverse (as they are now) it would be difficult or impossible for customers to make a meaningful comparison, leading to customer confusion. We therefore are not persuaded that this remedy would be either effective or proportionate.

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

(a) Should PCWs be required to enable consumers to compare the policies offered by different insurers including all add-ons on their websites or are they sufficiently incentivized to do so without such a requirement?

It is difficult to see how an obligation on PCWs to provide details of all add-ons could practically be achieved. Many insurers (and brokers) offer a wide range of add-ons, within which there may be many variations. Seeking to mandate the level of disclosure by PCWs is likely to be unduly prescriptive and would risk ossifying the market. We do not believe that this would be an effective approach.

(b) Should the remedy be extended to brokers?

In principle, this remedy ought to be implemented for all channels of sale, but this merely underlines that it is unlikely to be a practicable remedy. Given the differences in sales mechanisms, it is difficult to see how a remedy could effectively place this obligation on brokers.

The picture is complicated further by the fact that how add-on products are sold via brokers will differ to PCWs (in that typically, for the latter, all elements of cover are offered by one insurer, whereas a broker may place the main cover with one insurer and the add-on(s) with other(s) – that is, a comparison between 'integrated' and 'stand-alone' may be more difficult to achieve).

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

In principle, this remedy ought to apply to all add-on products, but this again underlines the practical difficulties with this remedy. For instance, in our evidence we indicated our view that NCB protection is an option within our standard product, not an additional benefit which is priced and sold using entirely separate underwriting acceptance criteria (and often supplied by an external partner).

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

In principle, the provision of information to PCWs could be easily achieved.

The second part of the question is one for the PCWs themselves, but our own view is that it would be difficult for PCWs (and brokers, were the remedy to include them) to implement this in practice.

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

Zurich is unable to provide details in this respect.

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

We are not aware of significant risks in this respect.

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

A regime of product (add-on) standardisation would have the effect of inhibiting innovation and reducing competition. Such standardisation is a likely, and possibly necessary, effect of the remedy proposed by the CC, since it will otherwise be difficult for PCWs (and, if specified, brokers) to provide the necessary information to enable a meaningful comparison to be made. Given the wide variety of add-on products, and their multiple variants, this could lead to an immediate reduction in product choice, and a long-term reduction in innovation. We believe that this would not be in the interests of consumers. Those whose cover requirements are "non-standard" are going to find it difficult to secure a complete solution.

Paragraph 92 – Remedy 4B: Transparent information concerning no-claims bonus

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

Zurich is supportive of providing an explanation to consumers as to the nature of NCB protection. This would help consumers understand better the protection that they will receive.

However, Zurich considers that a remedy relating to providing details of the NCB scale would be neither effective nor proportionate. The CC has misunderstood the nature of the information that would have to be provided to consumers. The information in question varies significantly between insurers, and it will be difficult or impossible for consumers to make meaningful comparisons. The provision of the information in question would be likely to lead to greater consumer confusion, leading in turn to poorer outcomes. At this stage, we are unsure of the costs that would be necessary to implement this remedy, but they could be material.

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

No, we believe that even if it were practical to do so (and without investigation we are unsure whether it is), it is more likely to create significant customer confusion than any increased transparency.

NCB is only one element within complex rating structures and will differ from one insurer to the other. Today NCB is only one of many factors, and, indeed, far from the main factor, which determines the premium payable.

In any event, not only will 'like-for-like' comparisons be difficult to achieve, they will not provide a greater understanding for customers, e.g. a consumer may well secure a significantly lower premium from an insurer which uses a lower NCB amount in its particular scale – a higher percentage NCB does not necessarily correlate to a lower premium payable.

Giving customers all possible permutations at any given time for one particular rating factor is unnecessary when the principal item which determines a consumer's buying decision is (entirely appropriately) the final premium payable.

We believe that NCB protection has, in effect, become a means to mitigate (should a claim occur) significant fluctuations in premiums payable from one year to the next, and that knowing the level of NCB which forms part of the calculation to derive the amount payable will not offer any greater level of transparency to customers in their decision-making at the point of purchase.

Twenty years ago it may have been possible for a customer to acquire a reasonably insightful like-for-like comparison, but that is no longer the case.

We therefore believe this proposed remedy is unnecessary and would be ineffective in generating better customer outcomes.

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

Each insurer would need to consider the form of words necessary to be consistent with its own format and style. We would develop appropriate wordings for our PMI contracts.

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

No (as the question relates to the issue mentioned in (b) above), although there will be additional costs involved in effecting the implementation and drawing the wording to customers' attention.

In relation to the proposed remedy cited in (a) above, there would be significant obstacles. Indeed, we consider that it is likely to be impossible to create an approach that would allow for meaningful comparisons to be made.

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

We have not been able to investigate this requirement in the time available. If enforcement was made in this area we envisage additional costs. Even if such an exercise were undertaken, we do not believe that this would provide meaningful information for consumers.

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

With regard to remedy 4B(a), while we do not envisage any circumvention risks as such, we do see it being more likely that NCB will be dropped as a rating factor (with its effects being taken into account within other factors).

We do not foresee any such risks for remedy 4B(b).

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

Remedy 4B(a) would introduce extra on-going costs which will ultimately need to be considered in any pricing model. Indeed, the requirement may be regarded as so onerous and disproportionate that some insurers may consider whether to stop using NCB as a rating factor.

Remedy 4B(b) would not give rise to any such risks.

Paragraph 95 – Remedy 4C: Clearer descriptions of add-ons

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

Zurich is absolutely committed to ensuring that its customers have clear information on its products. We support remedies that ensure this outcome for consumers.

(a) What are the key aspects of each add-on product that need to be explained in such descriptions and how should the quality of these descriptions best be established?

We believe each insurer will (and should) have its own view on what key aspects need to be communicated to its particular customers, based on its own research into customer behaviour and consistent with its regulatory obligations to those customers.

For these reasons, we believe supervision in this area should be through the usual regulatory regime, led by the FCA. As applies in respect of other activities, an insurer would need to offer evidence to the regulator's satisfaction any minimum requirements specified as part of this remedy were being followed.

Zurich is absolutely committed to ensuring that it meets the highest standards in this area.

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

Policy documents should contain the full contract wording. While insurers look to make policy wordings as clear as possible, ultimately they are technical documents which must bear legal scrutiny, and therefore the forms of words used there must take this into account.

Websites and PCWs (and other media, e.g. summary of cover documents) are better places for more less technical explanations and ensuring that appropriate standards are met in these areas is more likely to be an effective remedy.

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

See our response to (a) above. We believe the requirements of the proposed remedy can be contained within existing supervision by regulators.

Paragraph 101 – Remedy 5A: Prohibition on 'wide' MFN clauses

Zurich believes that both "wide" and "narrow" MFN clauses in the context discussed by the CC are demonstrably restrictive of competition and that there are no good reasons to justify either type of clause. We believe that both contribute to an adverse effect on competition and poorer outcomes for consumers in terms of higher prices and reduced innovation.

For this reason, we would like to see all MFNs in the market under consideration by the CC prohibited. We believe that this would consistent with the direction of travel in other markets where competition authorities have intervened to assess the impact of MFN clauses – both in the UK and internationally.

We do note that there is an argument that PCWs may wish to have some certainty in their business models and that narrow MFNs may provide that assurance. However, we feel that prohibiting all MFNs would avoid any distortions to normal and pro-competitive market dynamics. We do not believe that the removal of MFNs would in any way endanger the market position of PCWs. Because of the established presence of PCWs in the market place, we believe they would remain an important mechanism for consumers to purchase our products and those of other insurers and brokers. PCWs can remain integrated into the marketplace without needing the added protection of MFNs.

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

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

If the CC were to conclude that only wide MFNs should be prohibited, then the solution intimated would be sufficient, but with the addition of any other necessary safeguards (see our response to (d) below). We believe any renegotiated contract between an insurer and a PCW would need to clearly articulate the effect of any prohibitions.

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

Depending upon its other clauses, an existing contract which includes any MFN clause, may need to be renegotiated immediately (in whole or part) or alternatively it may be possible for it to be maintained in all other respects – the detail of those other clauses will determine the status of the contract.

Once the terms of a prohibition order are known (we assume that will include an implementation date) this will trigger the necessary renegotiation processes. That is, the enforcement mechanism will be instrumental in determining the timescales for changes.

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

We believe it should not be possible to circumvent the remedy as such. Rather, if a PCW believes that the remedy could negatively affect its income, then they will need to consider innovations which make it more likely that enquirers will chose to purchase the insurers' products presented on its website than from elsewhere. This should generate better outcomes for consumers than the current position whereby innovation is stifled by the MFN provisions.

However, maintaining narrow MFNs will still exert some strictures on the market. In effect, an insurer will still be compelled to offer the premium for the same product which it sells directly at a price which matches or exceeds the highest price available for the product through a PCW (albeit that cheaper prices may be available from other PCWs). This limits innovation and price competition and we do not believe that this reduction in innovation in price competition can be justified by reference to any benefits generated by the narrow MFN.

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

To a greater or lesser extent, any MFN regime has the effect of supressing those normal market forces which would otherwise exist to ensure the most competitive premiums (and most innovative products) are always made available to customers.

To circumvent the intention of their prohibition a PCW may look to introduce measures such as insisting that an insurer's own product sold directly must have a significant number of differences (beyond just a minimal one which would negate the MFN).

The enforcement mechanism which prohibits MFNs should make clear that any replacement provisions which have the same effect would be regarded as anti-competitive.

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

We do not believe that this remedy would give rise to any distortions or negative unintended consequences. We believe it would be pro-competitive.

Paragraph 103 – ToH 5: Remedies that we are minded not to consider further

Issues for comment 5B

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

Zurich does not share the CC's view that "narrow" MFNs can be justified. The CC will be aware that these have attracted a lot of scrutiny in the recent past, and Zurich considers that there is an emerging consensus that they are difficult to justify without the clearest evidence that they create specific and verifiable benefits.

In particular:

(a) Zurich does not consider that the market position of PCWs would in any way be jeopardised by the removal of such MFNs – PCWs now have a very high profile and an established market position such that consumers will continue to make use of them regardless of the presence or absence of MFNs. Their ease of use and the continuing migration to online channels makes it very likely that use of PCWs would increase regardless of the presence or absence of MFNs;

(b) it does not consider that customer confidence in PCWs would in any way be negatively affected by the absence of narrow MFNs. Indeed, it might encourage positive customer behaviours such as shopping around;

(c) as such, it does not consider that there are any good reasons justifying the demonstrable reduction in competition to which a narrow MFN gives rise. The result is reduced price competition, reduced choice and reduced innovation for consumers. We do not believe that the CC should allow this obvious detriment to go unremedied.

However, should PCWs consider that they need time to adjust to a "no MFN" world, we believe that an appropriate solution could be to prohibit wide MFNs immediately followed by a transitional period after which narrow MFNs would also be prohibited.

Paragraph 105 – Relevant customer benefits

Issues for comment 6

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

We have addressed the issue of customer benefits within the meaning of the Act in remedy-specific responses above. We would note in particular that:

a) **the standardisation that would be a likely unintended consequence of remedy 4A would have a significantly detrimental effect on innovation in this area, so removing a customer benefit of the current market structure (which is effective in generating innovation); and**
b) **Zurich does not believe that there are any customer benefits within the meaning of the Act in relation to MFN clauses, for the reasons set out above.**

Zurich's conclusions in relation to the CC's possible remedies

In conclusion:

a) **Zurich welcomes many of the remedies which are designed to address features of the market which create frictional and other unnecessary costs relating to vehicle repair and the provision of temporary replacement vehicles. With careful consideration of the form of the remedy, Zurich believes that remedies 1C, 1D, 1E, 1F and 1G should be implemented as proportionate and effective remedies to the concerns identified in the provisional findings;**

b) **Zurich acknowledges the CC's attempt to grapple with some of the fundamental structural issues in the market through remedies 1A and 1B. Both solutions have advantages and disadvantages and Zurich believes that the CC should explore both with a view to creating an effective and proportionate remedy;**

c) **Zurich supports measures to provide customers additional confidence – specifically those set out in remedies A, 2A and 4C;**

d) **Zurich is concerned that remedies 4A and 4B would be neither effective nor proportionate. Neither is likely to generate better outcomes for consumers; and**

e) **Zurich is supportive of the CC's proposal to prohibit "wide" MFN clauses, but believes that the same reasoning applies equally to "narrow"**

MFN clauses. There are no good reasons justifying these demonstrably restrictive provisions.

Zurich looks forward to a period of constructive engagement with the CC over the next several months to ensure that an effective and proportionate remedy package emerges from this market investigation process.