# Private motor insurance market investigation

## Provisional decision on remedies

Notified: 12 June 2014

The Competition and Markets Authority has excluded from this published version of the provisional decision on remedies information which the Inquiry Group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂].

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# Summary

## Introduction

1. This document presents our provisional decision on the package of remedies required to remedy the adverse effects on competition (AECs) and the resulting customer detriment that we have provisionally found.

2. Our provisional decision on remedies was based on:

   *(a)* our provisional findings which were published in full on 19 December 2013 (provisional findings);

   *(b)* our consideration of the evidence we received, including in responses to our provisional findings and our Notice of possible remedies (Remedies Notice) published on 17 December 2013, through response hearings with parties, in responses to our questions, and in further submissions from parties; and

   *(c)* our further working papers following the provisional findings (ie WP 22: Revised evaluation of the possible underprovision of post-accident repair services (theory of harm 2 (ToH 2)); and WP 23: Estimation of the detriment from the separation of cost liability and cost control (ToH 1)), which we have published at the same time as this document.

3. Our final decisions on any AEC, and appropriate remedies, will take into account the responses we receive to this document, our provisional findings and our working papers.

## Revised finding on theory of harm 2

4. In WP 22: Revised evaluation of the possible underprovision of post-accident repair services (ToH 2), which we have published at the same time as this document, we explain that we are now of the provisional view that there is not an AEC in relation to ToH 2. We have reached this revised view having considered the responses to the provisional findings and the supporting evidence submitted. Therefore we are no longer proposing remedies in this area.

5. We have provisionally decided on a package of remedies which comprises elements to address each of the remaining three AECs.

## Remedies to address theory of harm 1

6. In our provisional findings, we found an AEC due to:

- *(a)* separation – the insurer liable for paying the non-fault driver's claim (the insurer to the at-fault driver) is often not the party controlling the costs; and
- *(b)* various practices of and conduct by the other parties managing such non-fault drivers' claims, which (i) were focused on earning a rent from the control of claims rather than competing on the merits; and (ii) gave rise to an inefficient supply chain involving excessive frictional and transactional costs.

7. We have provisionally decided that we should introduce the following package of remedies to address this AEC:

- *(a)* A dual rate price cap for subrogated claims relating to the provision of temporary replacement vehicles to private motor insurance (PMI) customers, with a low rate cap based on average direct hire daily rates plus fixed replacement vehicle arrangement costs and a high rate cap calculated as a multiple of the low rate cap. The rate cap would be indexed to a publicly available index.
- *(b)* Application of the rate cap to all replacement vehicle providers at the point of subrogation of the claim to the at-fault insurer.
- *(c)* Prohibition of financial inducements from replacement vehicle providers where such inducements are to encourage claimants to take a replacement vehicle at rates above the rate cap.
- *(d)* Insurers to tell claimants promptly if they are non-fault, with submission of each insurer's aggregate data on liability assessments.
- *(e)* Hire duration to end 24 hours after completion of the repair or seven days after the submission of the total loss payment.
- *(f)* Mitigation declaration statements to be completed by first notification of loss (FNOL) providers and countersigned by non-fault claimants upon receipt of a replacement vehicle.
- *(g)* Requirements regarding the acceptance of customers by replacement vehicle providers, monitoring of the hire and payment arrangements.
- *(h)* A CMA panel appointed to conduct periodic reviews, with the first periodic review occurring two years after the implementation of the remedy and thereafter every three years.
- *(i)* The rate cap would be applied with immediate effect following the making of the enforcement order and all the other requirements of the remedy

would be required to be in place within three months from the making of the order.

8. In our Remedies Notice we invited views on several other remedies to address ToH 1 which we are not minded to pursue further. Some of these remedies sought to address more directly the features we had identified which give rise to an AEC, ie by removing the separation of cost liability and cost control. However, having considered these remedies further we do not believe they should be pursued as they appear to us ineffective and/or disproportionate to the AEC and customer detriment we are seeking to address.

**Remedies to address theory of harm 4**

9. In our provisional findings, we found an AEC due to information asymmetries between motor insurers and consumers in relation to the sale of add-ons and the point-of-sale advantage held by motor insurers when selling add-ons. We found problems relating to add-ons generally and, in particular, in relation to no-claims bonus (NCB) protection.

10. We have provisionally decided that we should introduce the following package of remedies to address this AEC:

    *(a)* Requirements regarding the provision of information to consumers about the costs and benefits of NCB protection. This information covers: (i) the implied price of NCB protection; (ii) each insurer's step-back procedures, ie what happens to the number of NCB years with and without NCB protection in the event of one or more claims; (iii) each insurer's average NCB discount according to the number of NCB years; and (iv) two specific statements about how NCB protection works.

    *(b)* Recommending that the Financial Conduct Authority (FCA) looks at how insurers inform consumers about other PMI-related add-on products (see paragraph 12).

11. In considering remedies for add-ons, we have been aware that the FCA is currently undertaking two pieces of work which could have a significant effect on our analysis: first, it is conducting a market study into general insurance add-on products, with a consultation on remedies expected before the end of 2014; and second, it is conducting a thematic review of insurance price comparison websites (PCWs), with findings in mid-2014.

12. We have therefore provisionally decided to make two recommendations to the FCA. First, we recommend that the FCA considers:

*(a)* whether insurers and brokers should be required to provide their prices for the add-ons they offer to PCWs and, if so, whether this should be for all PMI-related add-ons or only for the most commonly-purchased add-ons; and

*(b)* more generally, how consumers' information needs in relation to PMI-related add-ons can best be met on PCWs.

Second, we recommend that the FCA works with insurers, brokers and PCWs to consider if and how these providers might improve their descriptions of PMI-related add-ons, either as part of the FCA's general supervisory work or as part of its remedy proposals resulting from its market study into general insurance add-ons.

**Remedies to address theory of harm 5**

13. In our provisional findings, we found an AEC due to the existence of 'wide' 'most-favoured nation' clauses (MFNs) in the agreements between PCWs and PMI providers (and/or behaviours with equivalent effects to such clauses), in conjunction with high single-homing rates. Wide MFNs require that the price quoted through the PCW will always be competitive with other prices available on other sales channels, be they on the insurer's own website or on other PCWs.

14. We have provisionally decided that we should introduce the following package of remedies to address this AEC:

*(a)* A prohibition on PCWs and PMI providers entering into or performing agreements that include an MFN relating to the sale of PMI, except narrow MFNs, where 'narrow MFNs' are defined as covering the insurance provider website but excluding possible aggregator platforms.

*(b)* A prohibition on behaviours which have as their effect the elimination or reduction of competition between PCWs in a similar way to the harm identified by wide MFNs (namely, restricting entry to the PCW market, reducing innovation by PCWs and increasing premiums for motor insurance to the retail customer). This measure will apply to those PCWs which generate more than 300,000 PMI sales per year.

15. PMI providers and PCWs would be required to comply with immediate effect following the making of the order.

16. In order to monitor equivalent behaviours, those PCWs above the 300,000 PMI sales per year threshold would be required to submit compliance statements to the CMA every quarter for the first two years following the order and

then once a year. These compliance statements would need to list all delisting actions during the relevant period, setting out the reasons for the delisting.

**Assessment of effectiveness and proportionality**

17. Given the independence of each AEC we provisionally identified, we considered effectiveness and proportionality separately for each package of remedies addressing each AEC.

18. We provisionally concluded that each of the proposed packages of remedies represents a comprehensive and effective solution to each of the AECs we provisionally found.

19. We further provisionally concluded that:

*(a)* each of the remedy measures that form part of our packages of remedies is capable of effective implementation, monitoring and enforcement, and ongoing monitoring and compliance costs of the package of remedies are expected to be small; and

*(b)* our proposed packages of remedies could be implemented and have a beneficial impact on market outcomes within a relatively short timescale following the publication of our final report.

20. In relation to the proportionality of our proposed packages of remedies, we provisionally concluded that, having evaluated the potential benefits and costs of these measures, the beneficial effects that would flow from addressing these AECs were likely to outweigh significantly the potential costs of our remedies. We provisionally concluded that our proposed packages of remedies represented proportionate solutions to each of the AECs and their resulting customer detriments.

21. Therefore we provisionally concluded that each of these remedy packages represents as comprehensive a solution as is reasonable and practicable to each of the AECs and the resulting customer detriments which we have provisionally found.

# Provisional decision on remedies

## 1. Introduction

1.1 On 28 September 2012, the Office of Fair Trading (OFT), in exercise of its powers under the Enterprise Act 2002 (the Act),[1] referred to the Competition Commission (CC) for investigation the supply or acquisition of motor insurance and related goods and services in the UK.[2]

1.2 On 1 April 2014, the CC joined with the competition and certain consumer functions of the OFT to form the Competition and Markets Authority (CMA) which will continue with this investigation and other work inherited from the two organisations.

1.3 In our provisional findings, a summary of which was published on 17 December 2013 and which was published in full on 19 December 2013, we provisionally found features in the supply of motor insurance and related services that prevent, restrict or distort competition, resulting in four AECs within the meaning of the Act:[3]

*(a)* First, in motor insurance non-fault claims, caused by two features which act in combination:

(i) separation – the insurer liable for paying a non-fault driver's claim (the insurer to the at-fault driver) is often not the party controlling the costs; and

(ii) various practices of and conduct by the parties managing such non-fault drivers' claims which (i) were focused on earning a rent from the control of claims rather than competing on the merits; and (ii) give rise to an inefficient supply chain involving excessive frictional and transactional costs.

*(b)* Second, in the quality of repairs, caused by two features in combination:

(i) insurers and claims management companies (CMCs) do not monitor effectively the quality of repairs; and

(ii) there are significant limitations to claimants' ability to assess the quality of car repairs.

[1] Sections 131 and 133 of the Act.
[2] The OFT's full terms of reference are provided in Appendix 1.1 of the provisional findings.
[3] Section 134(2) of the Act.

(c) Third, in the provision of add-on products, caused by two features in combination:

(i) information asymmetries between motor insurers and consumers in relation to the sale of add-ons; and

(ii) the point-of-sale advantage held by motor insurers when selling add-ons.

(d) Fourth, in the sale of PMI through PCWs, caused by wide MFN clauses in contracts between PCWs and PMI providers, and practices having equivalent effect where a PCW takes advantage of high single-homing rates to prevent a provider of PMI and its PCW rivals from competing on price.[4]

1.4 We set out further details on each of these AECs in the relevant sections of this document.[5]

1.5 If the CMA finds that there is an AEC, it is required under the Act[6] to decide whether action should be taken by it, or whether it should recommend the taking of action by others, for the purpose of remedying, mitigating or preventing the AEC, or any detrimental effect on customers (the customer detriment) so far as it has resulted from, or may be expected to result from, the AEC. If the CMA decides action should be taken, it must then decide what action should be taken and what is to be remedied, mitigated or prevented. In deciding these questions, the Act requires the CMA 'in particular to have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition and any detrimental effect on customers so far as resulting from the adverse effect on competition'.[7] To satisfy this requirement, the CMA considers how comprehensively potential remedies (or packages of remedies) address the AECs and resulting customer detriment, and whether they are effective and proportionate.[8]

1.6 On 17 December 2013, we published our Remedies Notice setting out and inviting comments on the possible actions which the CMA or others might take to address the AECs provisionally identified.

1.7 Since the publication of our Remedies Notice, we have held six multi-lateral response hearings, six bilateral response hearings and received views and

[4] See Section 10 of the provisional findings.
[5] Save for the second AEC, where we have changed our provisional view – see paragraph 1.8.
[6] Section 134(4) of the Act.
[7] Section 134(6) of the Act.
[8] Section 134(6) of the Act.

comments from a wide variety of insurers, brokers, CMCs, credit hire companies (CHCs), repairers, salvage companies, PCWs, government bodies and various other interested parties.

1.8 At the same time as publishing this document we are also publishing working papers on:

*(a)* the customer detriment relating to our first theory of harm, concerning the separation of cost liability and cost control (WP 23); and

*(b)* a revised evaluation of our second theory of harm, concerning the quality of repairs (WP 22). Having considered the responses to the provisional findings and the supporting evidence submitted, we are now of the provisional view that there is not an AEC in relation to this theory of harm. Therefore we are no longer proposing remedies in this area.

1.9 This document, together with its supporting appendices, forms our provisional decision on the package of remedies required to remedy the AECs and the resulting customer detriment we have provisionally found, and serves as a basis for further consultation with interested parties. This provisional decision has been reached based on our consideration of all the evidence we have received to date through the course of our inquiry.[9]

1.10 We have not, at this stage, made a final decision regarding the existence and form of any AEC and/or its resulting customer detriment. Our final decisions on any AEC, and appropriate remedies, will take into account the responses we have received to our provisional findings, and the responses we receive both to our provisional decision on remedies and to the two working papers we have published today.

1.11 The CMA invites views in writing on this provisional decision on remedies and on the two working papers we have published today by **5pm on Friday 4 July 2014**.

### *Structure of this provisional decision*

1.12 This document is structured according to the remaining three AECs we have provisionally found. In each of the next three sections, we set out:

*(a)* The AEC and the resulting customer detriment.

*(b)* A summary of the remedies we consulted upon in our Remedies Notice.

[9] Responses to our provisional findings and our Remedies Notice have been published on our website. We have also published the full transcripts of our multilateral response hearings and summaries of our bilateral hearings.

*(c)* Our assessment of each individual remedy measure which we are proposing to include within our package of remedies, including a discussion of how each measure addresses the AEC and/or customer detriment, and its design and implementation. Our discussion for each remedy measure is therefore set out under the following headings:

(i) a description of the remedy;

(ii) how the remedy addresses the AEC and/or resulting customer detriment;

(iii) a summary of the views of the parties – further detail on the views of parties is provided separately in Appendices 2.1 and 3.1;

(iv) the key considerations relating to the design of the remedy; and

(v) how the remedy should be implemented.

*(d)* The remedy measures that we have considered but have provisionally decided not to pursue further, and our reasons for this.

*(e)* Our consideration of any potential relevant customer benefits (RCBs) within the meaning of the Act,[10] and whether some or all of any such RCBs would be lost if we implemented our package of remedies.

*(f)* Our assessment of the effectiveness and proportionality of the package of remedies in addressing the AECs and/or resulting customer detriment that we have provisionally found. Given the independence of each AEC we provisionally identified, we considered effectiveness and proportionality separately for each package of remedies addressing each AEC. In assessing proportionality, we considered the following key questions:[11]

(i) Is the package of remedies effective in achieving its aim?

(ii) Is the package of remedies no more onerous than necessary to achieve its aim?

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[10] Section 134 of the Act. In deciding the question of remedies, the CMA may also in particular 'have regard to the effect of any action on any relevant customer benefits of the feature or features of the market concerned'. RCBs are defined in the Act and are limited to benefits to relevant customers in the form of *(a)* lower prices, higher quality or greater choice of goods or services in any market in the UK (whether or not the market to which the feature or features concerned relate); or *(b)* greater innovation in relation to such goods or services. The Act provides that a benefit is only an RCB if the CMA believes that: *(a)* the benefit has accrued as a result (whether wholly or partly) of the feature or features concerned or may be expected to accrue within a reasonable period of time as a result (whether wholly or partly) of that feature or those features; and *(b)* the benefit was, or is, unlikely to accrue without the feature or features concerned.

[11] *Guidelines for market investigations: Their role, procedures, assessment and remedies, April 2013, CC3 (Revised)*, (the Guidelines), paragraph 244.

(iii) Is the package of remedies the least onerous if there is a choice?

(iv) Does the package of remedies produce adverse effects which are disproportionate to the aim?

1.13 In the final section (Section 5), we set out our provisional decision on remedies.

## 2. Separation of cost liability and cost control (theory of harm 1)

### *The AEC and the resulting customer detriment*

2.1 In our provisional findings, under our theory of harm 1 (ToH 1), we found that the following two features of the supply of PMI and related services had led or may be expected to lead, in combination, to an AEC:

*(a)* separation – the insurer liable for paying the non-fault driver's claim (ie the insurer to the at-fault driver) is often not the party controlling the costs; and

*(b)* various practices of and conduct by the other parties managing non-fault drivers' claims, which (i) were focused on earning a rent from the control of claims rather than competing on the merits; and (ii) gave rise to an inefficient supply chain involving excessive frictional and transactional costs.[1,2]

2.2 These 'various practices and conduct' included *(a)* claims handling and car hire intermediaries charging at-fault insurers more than the costs incurred, leading to disputes with at-fault insurers and a high level of frictional cost and transactional costs; *(b)* some, but not all, non-fault insurers charging at-fault insurers more than the cost of repairs incurred; and *(c)* when cars are written off, at-fault insurers sometimes not receiving the full salvage value of the car.[3]

2.3 We found that, as high-risk drivers are more likely to cause accidents, the higher cost of at-fault claims has a larger impact on the premiums of those drivers insurers consider to be high risk than on the premiums of those drivers insurers consider to be lower risk. We said that prices to individual drivers were not fully reflective of expected costs.[4]

2.4 In our provisional findings, we found that the effect of this AEC was that motor insurance premiums are higher than would otherwise be the case. Our estimate of the customer detriment of higher premiums for consumers amounted to £150–£200 million per year. We also said that the detrimental effects we identified were greatest in the provision of replacement vehicles and that the

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[1] Frictional and transactional costs were defined as (i) those costs which the at-fault insurer incurs when dealing with and seeking to reduce subrogated bills sent to it by non-fault insurers, CMCs and CHCs, and (ii) those costs which the non-fault insurers, CMCs and CHCs incur when dealing with the subrogated bill and responding to challenges from the at-fault insurer. See paragraph 6.7 of the provisional findings.
[2] Provisional findings, paragraph 6.93.
[3] ibid, paragraph 6.87.
[4] ibid, paragraph 6.65.

effects were currently smaller in repairs and write-offs, though recent litigation[5] regarding the cost of repairs may affect the detriment for repairs.[6]

2.5 Further analysis since our provisional findings has led us to revise our estimates of the detriment. Our analysis is set out in full in our working paper 'WP23 Estimation of the detriment from the separation of cost liability and cost control (ToH1)', which is being published at the same time as this document. Our revised estimate for the size of the net detriment is about £113 million per year. In WP23 we explain our analysis of the detriment, seeking to separate it into detriments relating to the supply of replacement vehicles, and the handling of repairs and write-offs. We estimated the detriment for replacement vehicles to be about £87 million and the detriment arising from the handling of repairs and write-offs to be about £26 million (of which £11 million related to insurer-managed repairs and write-offs and £15 million related to credit repairs and write-offs).

2.6 We also considered further the impact of separation on different categories of drivers. We found that, whilst the higher cost of fault claims has a larger impact on the premiums of those drivers considered high risk by insurers compared with the premiums of those considered lower risk, the revenues that insurers receive when managing non-fault claims are likely to be passed through more evenly to their customer base (see WP23).

2.7 Our assessment of remedies for ToH 1 is based on the further analysis of the detriment as shown in WP23. This detriment analysis has been used in our assessment of proportionality of the remedies we are proposing to pursue and in our consideration of remedies which we are proposing not to take forward.

***Summary of remedies we consulted upon in our Remedies Notice***

2.8 In our Remedies Notice we consulted on eight measures which we said could potentially address the AEC and/or customer detriment we had provisionally found under ToH 1:

*(a)* Remedy A: Measures to improve claimants' understanding of their legal entitlements.

*(b)* Remedy 1A: First party insurance for replacement vehicles.

[5] *Coles and Others v Hetherton and Others, [2012] EWHC 1599 (Comm)* – see paragraph 3.11 of provisional findings.
[6] Provisional findings, paragraph 6.92.

*(c)* Remedy 1B: At-fault insurers to be given the first option to handle non-fault claims.

*(d)* Remedy 1C: Measures to control the cost of providing replacement vehicles to non-fault claimants.

*(e)* Remedy 1D: Measures to control non-fault repair costs.

*(f)* Remedy 1E: Measures to control non-fault write-off costs.

*(g)* Remedy 1F: Improved mitigation in relation to the provision of replacement vehicles to non-fault claimants.

*(h)* Remedy 1G: Prohibition of referral fees.

2.9 We noted that Remedies 1F and 1G were supporting measures which might enhance the effectiveness of other ToH 1 remedies if adopted in combination with them.

***Remedy measures that we are proposing to take forward***

2.10 In this section we set out the measures which we are proposing to take forward:

*(a)* information on consumers' rights following an accident (Remedy A); and

*(b)* measures to address features relating to replacement vehicles (remedies 1C and 1F).

In a later section we explain why we do not intend to pursue the other remedies listed in paragraph 2.8).

*Information on consumers' rights (Remedy A)*

*Description of the remedy*

2.11 This remedy aims to provide better information to consumers about their rights following an accident at two points:

*(a)* with the annual policy documentation; and

*(b)* at the FNOL following an accident.

2.12 We also considered the possibility of providing information to consumers as part of the driving theory test (see paragraph 2.20).

*How the remedy addresses the AEC and/or resulting customer detriment*

2.13 In our provisional findings, we found that consumers have a poor understanding of their legal entitlements following an accident. This affects how they are able to enforce their legal entitlements under both tort law[7] and their own insurance policy.[8]

2.14 The aim of this informational remedy would be to give claimants a better understanding of their entitlements under their own insurance policy and their entitlements which arise through tort law. We intended this remedy to support the measures we had proposed under ToH 1 and ToH 2 – ie it would ensure that claimants take into account what entitlements they have when making claims under tort law (ToH 1) and would enable at-fault and non-fault claimants to recognise better when they are provided with a level of service which does not meet their entitlements (ToH 2).

2.15 Alongside this document, we have published a working paper explaining why we no longer provisionally find an AEC in relation to ToH 2 (see 'WP22 Revised evaluation of the possible underprovision of post-accident repair services (theory of harm 2)'). As a result, this remedy no longer focuses on the need (previously identified under ToH 2) to enable both at-fault and non-fault claimants to recognise better when they are provided with a level of service which does not meet their entitlements. Instead, it focusses on ensuring that consumers are aware of their options when making a non-fault claim, thereby addressing ToH 1 only. We have, however, been careful to ensure that in specifying what information should be provided to consumers, we are not giving partial information that may be misleading (see paragraph 2.26).

*Views of parties*

2.16 Details of the views of parties are set out in Appendix 2.1. In summary, most parties supported this remedy with a preference for standardised information being provided with annual policy documentation and at FNOL. There were some concerns about information overload to consumers and that increased knowledge of rights could lead to an increase in tortious claims (and hence

[7] In this document, we refer to 'tortious rights' or entitlements, or entitlements or rights under tort law, when referring to the rights that individuals have when they have suffered loss or damage by the wrongful acts of others. A person who suffers a loss as a result of another person's negligence is entitled to be compensated by being put into 'as good a position as he or she would have been if no wrong had occurred' (*Livingstone v Raywards Coal Co (1880) 5 App Cas 25*). We have set out these tort law rights (including judgments in relation to direct and consequential losses and the duty to mitigate) in detail in Section 3 of the provisional findings.
[8] A contract of motor insurance is a contract of indemnity. The indemnity is essentially an agreement by the insurer that it will recompense the policyholder in the circumstances identified in the contract. In this document, we refer to 'contractual rights' or 'contractual entitlements' when referring to these legal rights.

premiums). There was little support for adding requirements on insurance to the driving theory test. We have considered all the comments we received in designing and assessing this remedy option.

*Design issues*

2.17 The intention of this remedy is to ensure that non-fault claimants are aware of and understand their entitlements in the event of an accident. There are three main remedy design questions:

*(a)* When should the information be provided to consumers?

*(b)* What information should be provided to consumers?

*(c)* Which parties should be required to comply with the remedy?

2.18 We discuss each of these questions in turn.

- *When should the information be provided to consumers?*

2.19 The Remedies Notice considered the provision of information at three possible points:

*(a)* questions in the driving theory test;

*(b)* with policy documentation; and

*(c)* at FNOL.

2.20 We considered whether to use the driving theory test as a point at which to improve consumers' understanding of their legal entitlements following an accident. However, we were concerned that this would not have the desired effect. In our provisional findings, we reported an average claims frequency of 12.5%, which implies that drivers have accidents on average every eight years.[9] Experience of a non-fault accident is likely to be significantly less frequent given that more claims are made where a party is at fault than not-at-fault.[10] Therefore, any knowledge of insurance learnt when taking the driving theory test is likely to be a distant memory for many drivers at the point of a non-fault claim.[11] In addition, testing the knowledge of legal entitlements when making an insurance claim may be outside the scope of EU Directives on

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[9] Provisional findings, Table 3.1.
[10] This is because fault accidents occur where another vehicle is not involved as well as in situations where another vehicle is involved whereas non-fault accidents only occur where another vehicle is involved.
[11] We recognise that newer drivers are more prone to accidents, but these would tend to be fault rather than non-fault accidents.

driving tests. Given these concerns about the effectiveness of the measure, we have decided not to pursue a recommendation to expand the driving theory test to cover insurance claims.

2.21 Many of the responses to the Remedies Notice were supportive of the idea of providing clearer information with policy documentation and at FNOL, but expressed concern with overloading consumers with too much information (see paragraph 2.16). We acknowledged this concern but sought to balance it against the benefits from consumers having more information. We noted that such concerns could be mitigated by ensuring that the information was provided in a clear and concise way (see the section below on ‘what information should be provided’).

2.22 We engaged GfK NOP Social Research (GfK) to undertake some qualitative consumer research to investigate how best to provide the information. GfK’s presentation of its results has been published on our website at the same time as this document and its report will be published in the next few days. The research found that:

*(a)* consumers have little awareness of their legal rights and entitlements in the event of an accident and look to their insurer for information and guidance;

*(b)* FNOL is the ideal time to provide information, but the information must be brief and focus on the key facts as the communication of a long script may cause consumers to lose interest; and

*(c)* information provided with policy documentation is likely to have limited impact, as it is likely to be filed unread along with the policy documentation.

2.23 We acknowledge that policy documentation may not always be read by all policyholders. However, we believe it is important to allow for different consumers preferring different ways of receiving information. Some policyholders will prefer detailed written documents, whereas others will prefer short-form information. In our view, the provision of information on consumer rights with a consumer’s policy documentation would encourage wider readership of the information at policy inception and act as a point of reference for the duration of the insurance policy. For some consumers, this information would be a point of reference at the moment when it is needed, ie following an accident. In addition, to ensure maximum accessibility to the information, we propose to require that this information is replicated on the websites of insurers and brokers with sufficient prominence alongside other

PMI policy documents. We are interested in views on how this information can be provided so as to have maximum impact.

2.24 Based on GfK's research, providing this information at FNOL would be likely to have more impact than providing it with policy documentation or online, as this is when the information is most likely to be of immediate interest and relevance to the consumer. On the other hand, the consumer may be distressed at FNOL (having recently been involved in an accident), and so might be less able to absorb it. It appears to us that the availability of information on rights is likely to be highly effective at FNOL provided that it is specifically targeted to the consumer's needs and concerns at that time.

2.25 Therefore we propose that targeted, short-form information should be provided orally at FNOL to any claimant that is not found to be immediately at fault following an accident (ie where the claimant is found to be not-at-fault or where liability is undecided).[12] This information should be capable of being delivered in a clear manner without significantly increasing the length of the FNOL call. We would also require that at FNOL the claimant is given the option of being sent via email a copy of, or a link to, the statement of consumer rights (see paragraph 2.23).

- *What information should be provided to consumers?*

◦ *Information to be provided with PMI policy documentation*

2.26 The information provided with policy documentation should provide an overview of the consumer's key entitlements under tort law. However, we believe that it is important also to provide consumers with information on their contractual entitlements under their PMI policy (see paragraphs 2.29(b) and 2.31), in order to provide in one document a balanced and comprehensive overview of consumers' entitlements and obligations following an accident. Providing information solely on tortious rights would be one-sided and potentially misleading.

2.27 We asked several insurers and brokers whether it would be necessary for different information to be provided in England and Wales, Scotland and Northern Ireland, given the differences between legal jurisdictions of the UK. Although some parties told us that the information provided to consumers

[12] Fault claimants' rights are determined by their PMI policy. The extension of the remedy at FNOL to cover fault claimants is not necessary to support Remedy 1C. We note that in the written documentation, we have included some Frequently Asked Questions on a claimant's rights when they are at fault. This is in order to provide a comprehensive set of information to claimants (see paragraph 2.26). In practice, FNOL providers may find it convenient to provide the information to all claimants at FNOL.

should reflect these differences, there was greater support for standardised information to be provided to all consumers (see Appendix 2.1).

2.28 We propose that the information provided to consumers should be standardised across the insurance industry in so far as practicable, in order to ensure that all consumers are adequately and accurately informed of their legal entitlements and so that a consistent message is delivered to consumers. The provision of standardised information (as opposed to allowing industry participants to develop their own wording) to consumers by all relevant industry participants would also minimise the risk of circumvention of the remedy.

2.29 The information provided with policy documentation would take the following form:

*(a)* *A statement of consumer rights*, which would focus on a non-fault claimant's rights under tort law. This statement should be designed to be capable of fitting on one double-sided piece of A4 paper in reasonable size font.

*(b)* *Responses to Frequently Asked Questions* (provided separately from or attached to the statement of consumer rights) to provide consumers with information specific to their PMI policy when making a claim following an accident. We note that it is difficult to provide standardised information in relation to consumers' rights under their insurance policy as some information may be specific to their contract. Therefore, each insurer/ broker would be required to answer the Frequently Asked Questions so as to reflect the contractual position of the specific policyholder.

2.30 In Appendix 2.2, we have set out our proposed statement of consumer rights and list of Frequently Asked Questions. This information reflects feedback gained through the consumer testing conducted by GfK and reflects many of the comments we received in response to the consultation on the Remedies Notice (see Appendix 2.1). The precise formulation of this information will be revised as necessary following the responses we receive to this document.

2.31 We propose that the statement of consumer rights focuses on the following information:

*(a)* a driver's responsibilities following an accident;

*(b)* a driver's rights following an accident in which they are found to be at fault or not at fault or where responsibility for the accident is undetermined or shared; and

*(c)* how claims can be handled.

2.32 In the Frequently Asked Questions, we propose to focus on those issues relating to a consumer's PMI policy which we have found to be poorly understood, or where there are differing approaches between insurers which we believe should be clarified to policyholders, as follows:

*(a)* when a claimant may have to pay the excess[13] or lose an NCB[14] and how any excess paid can be recovered;[15]

*(b)* when a claimant is entitled to choose their own repairer[16] and whether this affects their liability to pay an excess;

*(c)* what type of replacement vehicle a claimant is entitled to;[17] and

*(d)* what rights the claimant has in relation to the recovery of other losses.[18]

2.33 We have not included the following information suggested by some respondents to the Remedies Notice:

*(a)* Any information which relates to ToH 2 (eg the publication of complaints ratios), as this remedy is no longer intended to focus on the need to enable both at-fault and non-fault claimants to recognise better when they are provided with a level of service which does not meet their entitlements (see paragraph 2.15).

*(b)* An explanation of any additional cover purchased by the policyholder and an explanation of what is not covered by their PMI policy, as the focus of this remedy is on the consumer's key tortious and PMI contractual entitlements following an accident.

*(c)* An analysis of the risks and benefits for the claimant of proceeding with a claim on their insurance or alternatively proceeding with a tort action against the at-fault insurer, as this remedy intends to inform rather than advise consumers about their legal and contractual entitlements following an accident.

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[13] See provisional findings, paragraphs 3.24, 3.25, 3.58 & 3.59 and Appendix 6.2, footnote 8.
[14] ibid, Appendix 8.1, paragraphs 10 & 11. See also Section 3 of this document for a discussion of the issues surrounding NCB protection.
[15] ibid, Appendix 6.3, paragraph 12(c) and footnote 5.
[16] ibid, paragraphs 3.23, 3.59, 7.9(a) & 7.54.
[17] ibid, paragraphs 3.24, 3.25 & 3.58 and Appendix 8.1, paragraphs 18–25.
[18] ibid, paragraph 8.18 and Appendix 6.5, paragraphs 29(b) & 80.

- ◦ *Information to be provided at FNOL*

2.34 We propose that a number of statements be read out at FNOL to any claimant that is not found to be immediately at fault following an accident (ie where the claimant is found to be not at fault or where liability is undecided). These statements are set out in Appendix 2.2 and are designed to make clear individuals' key tortious entitlements. This information is a subset of the information given with policy documentation but is intended to be brief enough for oral communication. Again, this information reflects feedback gained through the consumer testing conducted by GfK and reflects many of the comments we received in response to the consultation on the Remedies Notice (see Appendix 2.1). The precise formulation of this information will be revised as necessary following the responses we receive to this document.

- *Which parties should be required to comply with the remedy?*

2.35 In order to be effective, the remedy would need to be binding on:

*(a)* all PMI providers (for the provision of a statement of consumer rights with policy documentation); and

*(b)* all industry participants handling FNOL (primarily insurers, brokers, CMCs/CHCs), because it is not just insurers who perform FNOL and/or interact with consumers in the provision of post-accident services (for the provision of a statement of consumer rights at FNOL).

*Implementation issues*

2.36 Given the wide range of participants who would be affected by the remedy, this suggests an enforcement order is the most effective mechanism. This would also ensure that the information provided to consumers is applied consistently across the industry by those required to comply with the remedy.

- *Timeliness*

2.37 The time required for this remedy to take effect will be determined by the extent of the administrative changes required to facilitate the provision of the information to consumers (eg changes to policy documentation, telephone scripts and websites).

2.38 We asked a sample of insurers, brokers and CMCs/CHCs to estimate the implementation time required and received a wide range of responses. Estimates varied between one and nine months, with most respondents saying three to six months. We noted that this wide range was because the time required to make the necessary administrative changes was dependent on a number of variables (eg the extent and complexity of the changes; the extent of the IT changes and the extent of any systems testing required).

2.39 Based on these responses and given that there will be a period between the publication of our final report and the making of an enforcement order (a statutory maximum of six months, extendable by four months) where any administrative and IT changes could be initiated in advance of the enforcement order being made, we propose that the implementation of the remedy is staged as follows:

*(a)* The statements to be read out to claimants at FNOL should be incorporated into existing FNOL processes within three months from the making of the enforcement order.

*(b)* The provision of the proposed statement of consumer rights and Frequently Asked Questions should be provided:

(i) online within three months of the making of the enforcement order;

(ii) to new policyholders after three months from the making of the enforcement order; and

(iii) to existing policyholders at their first renewal after three months from the making of any enforcement order, such that all existing policyholders would have received the information on or before 15 months from the date of the enforcement order.

- *Laws and regulations*

2.40 This remedy will not require changes in any laws and/or regulations.

- *Monitoring and enforcement*

2.41 The FCA is responsible for the regulation of insurers and brokers; while the regulation of CMCs and CHCs is undertaken by both the FCA and the Ministry of Justice (MoJ).[19] The CMA will be responsible for monitoring this remedy in

[19] CMCs are regulated by the MoJ’s Claims Management Regulation (CMR) Unit, although some may also be regulated by the FCA where they are involved in debt management (ie debt counselling and/or debt adjusting). The MoJ's CMR Unit is responsible for regulating claims management services in England and Wales under the provisions of the Compensation Act 2006, which defines claims management services as ‘advice or other services in relation to the making of a claim’. Regulated activities include: *(a)* advertising for persons who may have a cause of action; *(b)* advising a claimant in relation to their claim; *(c)* referring details of a claim or claimant for a fee to another person; *(d)* investigating the circumstances of a claim; and *(e)* representing a claimant.

accordance with the Act, but we will work with the FCA and MoJ to discuss how best to do this, recognising their roles and responsibilities.

2.42 Respondents to the Remedies Notice suggested a number of methods by which to monitor compliance with the proposed remedy:

*(a)* monitoring by existing regulators as part of their existing regulatory regime;

*(b)* regular audits/inspections;

*(c)* a scripting and call monitoring programme; and/or

*(d)* post-claim surveys, testing consumers' understanding of their contractual and legal position following an accident.

2.43 In our view, compliance with this remedy can be ensured by requiring insurers, brokers and FNOL providers to submit annual compliance statements,[20] stating that *(a)* the statement of consumer rights and Frequently Asked Questions has been sent out with all annual policy documentation and published on the provider's website (with a copy of the relevant documents provided); and *(b)* claims handlers have read out the mandatory statements at FNOL, and given the option of sending by email a copy of, or a link to, the statement of consumer rights and Frequently Asked Questions. We believe that this is sufficient to support the nature of this remedy and that the cost of post-claims surveys and call monitoring would be likely to be disproportionate, given that a substantial volume of consumers would require surveying in order to obtain a representative sample.[21]

*Summary of proposed remedy*

2.44 The proposed remedy is:

*(a)* A statement of consumer rights and responses to Frequently Asked Questions to be distributed with annual policy documentation and replicated on the websites of insurers and brokers with sufficient prominence alongside other PMI policy documents.

[20] These compliance statements will be in a standard format and will be required to be submitted at the same time each year. They will be required to be signed off by a nominated compliance officer.
[21] The CMA may decide, from time to time, to give directions as to compliance with the order, ie to take certain actions or to refrain from taking certain actions for the purpose of carrying out, or ensuring compliance with, the order. In the event that any interested party believed that a party were in breach of the order, it could seek to enforce the order by civil proceedings and obtain compensation for the losses it had suffered as a consequence of the alleged breach. Similarly, pursuant to section 167 of the Act, the CMA may seek to enforce the order by civil proceedings within the context of its duty to monitor orders. The relevant court for enforcing orders would be the High Court.

(b) Communication of specified information at FNOL to reiterate the claimant's key tortious entitlements, giving the option of being sent via email a copy of, or a link to, the statement of consumer rights and Frequently Asked Questions.

(c) The proposed text for these statements is set out in Appendix 2.2.

(d) Submission of annual compliance statements, as described in paragraph 2.43.

*Measures to address features relating to replacement vehicles (Remedies 1C and 1F)*

*Description of the remedies*

2.45 In the Remedies Notice, we said that we were considering a remedy to control the cost of providing a replacement vehicle to non-fault claimants (Remedy 1C). We said that these measures could replace the relevant parts of the General Terms of Agreement (GTA)[22] and would include:

(a) guidance on the duration of hire periods for replacement vehicles; and

(b) a cap on daily hire rates for each category of replacement vehicle.

2.46 We also proposed a remedy which would require replacement vehicle providers[23] to ask non-fault claimants standard questions about their need for a replacement car (Remedy 1F).[24] Replacement vehicle providers would be required to provide the at-fault insurer with adequate documentation showing that the appropriate vehicle had been provided by completing a 'mitigation declaration'. This declaration would set out details of the claimant's responses, and so confirm that the cost of the replacement car had been appropriately mitigated. The at-fault insurer would be entitled to be sent the mitigation declaration. We asked in our Remedies Notice whether the at-fault insurer should also be entitled to review the replacement vehicle provider's call record in the event of a dispute.

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[22] The GTA is a voluntary, non-binding protocol between a number of insurers and CMCs/CHCs which sets out the terms, conditions and rates of credit hire for replacement vehicles provided to non-fault claimants.
[23] By replacement vehicle provider, we mean the company that bills the at-fault insurer for the replacement vehicle.
[24] A non-fault claimant is entitled to a broadly equivalent replacement car while their own vehicle is unavailable subject to a duty to mitigate their loss with consideration to their need. In our provisional findings, we found that often replacement vehicle providers do not enquire in detail about a non-fault claimant's need for a broadly equivalent replacement car.

2.47 We have considered Remedies 1C and 1F together as they are both concerned with addressing the AEC and detriment relating to replacement vehicles and they both overlap with aspects of the existing GTA.

*How the remedies address the AEC and/or resulting customer detriment*

2.48 In the provisional findings, we found that disputes between at-fault insurers and CHCs/CMCs (and hence frictional costs) typically relate to one or more of the following aspects of replacement vehicle provision:

*(a)* liability;

*(b)* hire rate;

*(c)* hire duration; and

*(d)* need.

2.49 We have therefore considered ways in which each of these aspects could be addressed through our remedies.

- *Remedy 1C*

2.50 The intention of this remedy is to reduce the cost of replacement vehicle provision to non-fault claimants without compromising claimants' tortious entitlements by:

*(a)* limiting through the imposition of a rate cap the cost of non-fault replacement vehicle claims subrogated to at-fault insurers; and

*(b)* reducing the administrative and frictional costs arising in relation to the provision of replacement vehicles both directly (eg through making the administration of claims more efficient) and indirectly (through lower replacement vehicle claims costs leading to fewer disputes).

2.51 We would expect that Remedy 1C, by reducing the gross cost of replacement vehicles, would also reduce the differential effects between higher-risk and lower-risk drivers (see paragraph 2.6).

2.52 While a rate cap lowers the hire rate and so reduces friction from disputes over hire rates (paragraphs 2.48(b) and 2.50(b)), it would not directly address frictional costs incurred in disputes of liability, hire duration and/or need (paragraph 2.48(a), (c) and (d)). However, we expect that disputes over these matters might also reduce because the lower hire rate payable is expected to reduce overall disputes. In designing Remedy 1C we have sought to complement the rate cap with measures *(a)* to speed up liability resolution; *(b)* to cap hire duration; and *(c)* to assess need more effectively (see Remedy 1F). In our view, these measures are an important part of the effective functioning of Remedy 1C.

- *Remedy 1F*

2.53 Remedy 1F is expected to:

*(a)* Reduce frictional costs incurred by insurers and CMCs/CHCs which arise when there is a dispute over the replacement vehicle provided to a non-fault claimant where the at-fault insurer alleges that the replacement vehicle exceeds the non-fault claimant's needs. The completion and signing of a mitigation declaration by the replacement vehicle provider prior to the provision of a replacement vehicle to the non-fault claimant, in addition to the review and countersigning of the mitigation declaration by the non-fault claimant upon delivery of the replacement vehicle, would provide greater transparency over the assessment of need and the claimant's mitigation of their loss, thereby reducing the likelihood of dispute.

*(b)* Support Remedy 1C by ensuring that the hire rate cap proposed under Remedy 1C cannot be circumvented by providing the non-fault claimant with a replacement vehicle that exceeds their needs.

*Views of parties*

2.54 Details of the views of parties on each of Remedies 1C and 1F are set out in Appendix 2.1. We have considered these responses in designing and assessing these remedies.

*Design issues*

2.55 In designing the remedies, we considered the following key questions:[25]

*(a)* To whom and to what should Remedy 1C apply?

*(b)* How should the rate cap be set (Remedy 1C)?

*(c)* What other measures should be put in place to assist with the effectiveness of Remedy 1C?

[25] We discuss the monitoring of these remedies under 'implementation issues' (see paragraphs 2.141–2.150).

(i) Should measures be put in place to cap hire duration?

(ii) How should measures to address need be designed (Remedy 1F)?

(iii) What other aspects of the GTA should be adopted or developed?

(iv) Should an online portal for credit hire claims be developed?

*(d)* Are there any risks of distortion from Remedies 1C and 1F?

We discuss each of these questions in turn.

- *To whom and to what should Remedy 1C apply?*

2.56 There was widespread agreement among respondents to the Remedies Notice that there would be a risk of circumvention in a rate cap, which would result in rates returning to levels above the cap, thus making the remedy ineffective. For the remedy to be effective it would therefore need to cover all replacement vehicle provision to non-fault PMI claimants.

2.57 We propose to require that the remedy is mandatory for all those involved in the provision of replacement vehicles to claimants (insurers, brokers, CHCs/ CMCs, repairers and vehicle recovery providers). This means it would be significantly wider in scope than the GTA because currently around 23% of credit hire claims are handled either outside of the GTA or initially within the GTA but then 'fall out' of it.[26]

2.58 The remedy would apply at the point a claim is submitted by the replacement vehicle provider to the at-fault insurer (ie the daily hire rate could not exceed the relevant cap at any point in the hire duration for any claim that is submitted to an at-fault insurer). This avoids complications relating to claims where liability is undetermined or disputed immediately following an accident.

2.59 We do not propose that the remedy be extended to cover replacement vehicle claims charged to at-fault insurers directly by non-fault claimants who have organised the hire of a replacement vehicle directly themselves, without the assistance of an insurer, broker, CMC or CHC (ie the self-provision of replacement vehicles by non-fault claimants). To do so would require a change in law in order to prohibit the recovery of costs incurred in the provision of replacement vehicles at basic or retail hire rates. Any need to change the law to implement this remedy (so as to reduce individuals' rights

[26] Provisional findings, Appendix 6.1, paragraph 7.

to recover retail rates) would significantly reduce its advantages compared with a remedy such as Remedy 1A (see paragraphs 2.161 to 2.169).

2.60 We considered whether this approach might allow circumvention of the remedy. For example, a replacement vehicle provider could offer a claimant a vehicle on credit at a higher rate than the cap imposed by the remedy, with the claimant then pursuing the claim themselves, reimbursing the provider following settlement of the claim. The claimant could receive, for example, some cash back in return for using the replacement vehicle provider. However, in our view the risk of this type of circumvention is likely to be low, because:

*(a)* On the demand side, self-provision of replacement vehicles by non-fault claimants does not currently occur on a significant scale, as non-fault claimants typically report an accident to their insurer (or repairer or dealer) and are then referred to a CHC/CMC for the provision of a replacement vehicle. There is significant risk for individuals in assuming responsibility for the management of their claim rather than having their claim managed by a professional party.

*(b)* On the supply side, replacement vehicle providers could pursue a business model whereby they provide non-fault claimants with the funding to arrange the self-provision of replacement vehicles but there would appear to be significant risks involved. The vehicle provider would have to rely on the consumer submitting and defending the claim in order to recover its costs, and would have no control over the claims management process. In our view, this is likely to make such a business model unattractive.

2.61 Although this risk is relatively low, we intend to ensure that Remedy 1C is as effective as possible by limiting such opportunities for circumvention. Therefore, we propose to prohibit replacement vehicle providers from using financial inducements to encourage claimants to take a replacement vehicle at rates above the cap. The intention of this is not to prohibit the ability of hire vehicle providers in general modifying the way in which they offer services to consumers, or to prevent consumers from taking a hire vehicle themselves, but specifically to limit the potential use of inducements following an accident in return for claiming from the at-fault insurer at a higher replacement vehicle hire rate.

2.62 One insurer ([✂]) submitted an alternative way in which Remedy 1C could be designed. [✂] said that Remedy 1C could work if the CMA were to make an order limiting the amount a replacement vehicle provider could charge a customer, thus limiting the amount for which the customer would be liable under their contract with the replacement vehicle provider. It said that this would mean that any claim made on behalf of the non-fault party against the at-fault insurer for a sum greater than this amount would not succeed because the claim was a consequential loss (loss of use) which might be mitigated by the hiring of a replacement vehicle. Where such a loss was mitigated, or action was taken which resulted in a substituted expense, the claimant was only entitled to recover the actual expense or liability which they had incurred.

2.63 We considered whether this alternative method could work with our dual rate cap proposal (see paragraphs 2.76 to 2.96 below). The idea would be that the remedy would cap the amount a replacement vehicle provider could charge a non-fault claimant (where this amount would depend on the speed with which liability is accepted), such that the insurer/CHC/CMC standing in the shoes of the non-fault claimant could not seek to recover a higher amount as the loss suffered would have been mitigated to the capped amount. We are content that our approach to implementing Remedy 1C (see paragraphs 2.57 to 2.61) is effective but we invite views on whether this alternative approach would be more effective and capable of working with the proposed remedy.

- *How should the rate cap be set?*

2.64 The way in which, and the level at which, the rate cap is set will affect the incentives for the provision of replacement vehicles. We are seeking to set a cap on subrogated claims for replacement vehicles which:

*(a)* remedies the AEC and the detriment by limiting subrogation of non-fault claims to those costs efficiently incurred in the provision of a replacement vehicle to a non-fault claimant; but

*(b)* continues to incentivise replacement vehicle providers to provide non-fault claimants with their tortious right to mobility following an accident.

2.65 We have taken these two objectives into account when setting the rate cap. We have recognised that:

*(a)* If we set a rate cap that is not low enough, there is a risk that we only reduce referral fees and do little to reduce the incentives for parties to dispute the cost of replacement vehicles, maintaining frictional costs. This could have little effect in reducing the net detriment we have identified.

*(b)* If we set a rate cap that is too low, there is a risk that replacement vehicle provision to non-fault claimants becomes unviable and, consequently, claimants might not be provided with their tortious entitlement of mobility.

2.66 On the basis of the above, we believe that a cap slightly above the level of cost efficiently incurred in providing a replacement vehicle is likely to provide the best balance of incentives. In addition, we wish to make consumers more aware of their tortious rights (see Remedy A).

2.67 When setting the rate cap, we are not favouring one business model over another. We are seeking to ensure that replacement vehicles are provided to non-fault claimants so that their tortious rights are met. The precise method of provision will be determined by competition. We have therefore considered the relevant costs incurred by different replacement vehicle providers as we believe the structure of the rate cap should follow the structure of these costs. We have considered costs incurred by insurers using direct hire and costs incurred by CHCs. We note that there are two distinct ways in which CHCs gain replacement vehicles to provide to their customers:

*(a)* Some CHCs (eg Accident Exchange, Helphire and Kindertons) have their own fleet of replacement vehicles, which are acquired through contract hire or leasing agreements and/or outright purchase, and only source replacement vehicles from other suppliers when they require a specialist vehicle, they do not have the required vehicle available within their own fleet, or the customer's location is remote from their own depots.

*(b)* Other CHCs (eg ClaimFast and Quindell) do not own a replacement vehicle fleet and source all of their replacement vehicles from other suppliers.

2.68 We have considered what types of costs are incurred under these models and whether they should be recoverable. We have categorised these costs into:

*(a)* Replacement vehicle arrangement costs – costs incurred in providing each replacement vehicle, irrespective of its type or the length of the hire, as follows:

(i) Upfront costs in the provision of a replacement vehicle (eg the preparation of the vehicle for hire and the delivery of the vehicle to the customer). We invite views on the extent of these costs and who typically incurs them (eg whether those CHCs which do not own their own fleets incur different costs). In our view these costs should be recoverable.

(ii) Administration costs relating to the claim. The GTA includes an administration fee of £37 + VAT. It appears to us that this may be a reasonable estimate of the fixed administration cost under credit hire. In the case where an insurer purchases direct hire the relevant costs would be the fixed costs of direct hire,[27] plus any additional costs incurred by the insurer.[28] However, we see no reason why these costs should exceed the fixed administration costs incurred under credit hire.[29]

(iii) Costs in determining liability. The replacement vehicle provider and the at-fault insurer have to determine liability irrespective of whether a replacement vehicle is provided. Hence, the cost of determining liability is not an additional cost of replacement vehicle provision and does not need to be recoverable under the rate cap.

(iv) Frictional costs. These are the costs we are attempting to reduce through this remedy. We discuss these costs in detail below (see paragraphs 2.76 to 2.83).

*(b)* Daily costs – costs which vary with the type of vehicle and the length of the hire period.

2.69 In our view, the structure of the rate cap should therefore comprise a fixed replacement vehicle arrangement element and a variable daily cost element. We next discuss how to determine the daily costs.

° *Daily costs*

2.70 At least in principle, a market-determined measure of daily costs is available, which is the cost of direct hire. Direct hire is currently used for non-fault temporary replacement vehicles mainly by at-fault insurers on captured claims, but it is also used by non-fault insurers where there is an insurer-insurer bilateral agreement. There are several providers of direct hire and we have no reason to believe that this market is not reasonably competitive. Therefore we believe it is suitable for assessing efficient fleet costs. We noted that in considering direct hire rates we needed to recognise that these rates often included some element of arrangement costs, which we had proposed to separate out.

2.71 We considered whether we should use the average (mean or median) direct hire daily rate for each class of vehicle. We noted two main issues:

*(a)* Daily direct hire rates tend to be lower when average hire length is longer (ie as a way of recognising there are some fixed arrangement costs

[27] This is excluded from the daily costs.
[28] Since the claims manager subrogates for repair/write-off anyway, we see no reason why there should be additional costs of subrogating for a replacement vehicle as well.
[29] Aviva has told us that its handling costs in regard to direct hire are about £[✂] per claim.

associated with each hire) so average daily rates (which include this fixed arrangement cost) will tend to overstate the true incremental daily rate.

(b) Some insurers will be paying less than the average daily rate but some will be paying more. Therefore, maintaining the incentives for providers to meet the temporary replacement vehicle entitlement of non-fault drivers would require setting the level of the cap above the average.

2.72 We noted that these two factors had opposing effects, and we propose that both should be considered in determining a rate cap (eg see paragraph 2.85 for a discussion of the interaction between the daily rate and the fixed arrangement costs). In our view, these factors do not preclude the use of the average direct hire daily rate as a competitive benchmark with which to begin a calculation of the variable element of the rate cap. Therefore, we propose to use it for this purpose.

2.73 Several parties told us that it was important to consider the impact of extraneous factors (eg geographical differences in hire rates, seasonal fluctuations in demand, etc) on direct hire rates. However, we noted that introducing variations for seasonal or geographic differences would add significant complexity to the remedy, which would need to be balanced against the likelihood and extent of such distortions. We also noted that many insurers have direct hire agreements which apply across the UK for a year, essentially averaging any variations. Our design of the remedy has been guided by these existing contracts.

2.74 [✂] proposed an alternative approach by which to set the daily hire rate cap which was to calculate it on the basis of the average retail spot rate for each category of vehicle in a particular geographic area for that particular service. [✂] suggested that this would lower the benchmark currently used by the courts (which was the highest retail spot rate in an area, not the average).[30]

2.75 In our view, there were weaknesses associated with using average retail rates as a comparator due, for example, to different marketing costs, hire lengths, seasonality and waivers. On the other hand, we recognised that average retail rates could be easily collected (though they tended to vary across locations and seasons). Overall, we believe that direct hire rates are a more appropriate benchmark to use as our starting point for the calculation of the variable element of a rate cap as these rates are likely to be closer to the relevant costs. Nevertheless, we acknowledge that using an average retail rate could

[30] [✂] also said that the fee charged for waiving the usual level of excess associated with the hire of a replacement vehicle should be linked to the retail rate for the same or similar product provided by an independent stand-alone provider, rather than being set substantially above that rate (as the courts currently allow).

be an alternative approach if it were evident following consultation that our preferred approach was not going to be practicable. We therefore invite views on the use of average retail rates as an alternative benchmark.

- *Ways to reduce frictional costs by speeding up liability determination*

2.76 We considered ways in which we could reduce frictional costs arising from liability disputes as part of our package of measures under Remedy 1C.

2.77 Replacement vehicle provision in line with tortious rights requires an early assessment of liability. If liability is undetermined, a consumer will only get a replacement vehicle if a provider takes a risk on the consumer ultimately being found to be not at fault. Insurers told us that they made an assessment of fault at FNOL but in some cases fault was undetermined and in some cases the initial assessment changed. This uncertainty has implications for the incentives to provide replacement vehicles. If, to take a simple example, the initial assessment at FNOL is that a claim is non-fault but there is a 20% chance it will turn out to be at fault, and if the provision of replacement vehicles is charged at cost, the expected recovery is 80% of the costs incurred. In this scenario, the party taking the risk (ie the replacement vehicle provider) must expect to incur a loss of 20% of its costs.

2.78 Therefore, we have considered ways in which we can link the cost of replacement vehicles to the speed of liability determination. We propose the following:

*(a)* If the at-fault insurer accepts liability within a short period (we propose a period of three days from being informed that a replacement vehicle is being provided to the non-fault claimant) a low rate cap will apply (see paragraphs 2.84 to 2.93 below for discussion of the appropriate rate). In this scenario, the at-fault insurer is committed to paying for the replacement vehicle regardless of any subsequent change to liability (eg with relevance to a repairs claim or a personal injury claim).

*(b)* If the at-fault insurer does not accept liability within the short period, a high rate cap will apply (even if the at-fault insurer accepts liability on day 4). This cut-off point is required to provide incentives for insurers to accept liability swiftly and to give replacement vehicle providers sufficient incentive to provide a replacement vehicle when liability is not admitted within the time period. In this scenario, the at-fault insurer will only pay the costs if the claimant being provided with a temporary replacement vehicle is found to be non-fault, but the costs will be higher than if the at-fault insurer had accepted liability early (see *(a)* above).

(c) The at-fault insurer can withdraw an acceptance of liability, eg as a result of receiving new information, but this would only affect future hire charges, not any hire charges already incurred. So if the at-fault insurer withdraws its acceptance of liability, the low rate cap and the commitment to pay (regardless of the final liability assessment) would apply up to the end of the next working day after the changed view, and the high rate cap, with a risk of non-payment, would apply thereafter.

2.79 We considered frictional costs separately for the low rate cap and the high rate cap.

2.80 We would not expect undue frictional costs (eg beyond those already reflected in direct hire rates) under the low rate cap, where liability is agreed. We noted, for example:

*(a)* Enterprise provides credit hire under its subscriber model (ie when the at-fault insurer accepts liability) effectively at direct hire rates;[31] and

*(b)* bilateral agreements between insurers provide for subrogation at the cost of direct hire without any addition to allow for frictional costs;

(i) Aviva suggested that very little validation was required when direct hire was involved;[32]

(ii) esure told us that the claims handling costs of its recovery team, FNOL team and its internal team handling own customer claims for the provision of a direct hire replacement vehicle as a non-fault insurer pursuant to a bilateral agreement are equal to the costs it incurs for those teams for a repair claim as a non-fault insurer. However, esure noted that the costs incurred in providing a direct hire replacement vehicle as a non-fault insurer pursuant to a bilateral agreement will not include certain costs which arise in relation to repair, such as the provision of an engineer.

2.81 It appears to us that frictional costs are currently high under the GTA because prices are high and liability is often not agreed. Frictional costs are even higher outside of the GTA because prices are usually even higher and liability takes even longer to agree.

2.82 The aim of the high rate cap would be to facilitate early determination of liability as it will be significantly more costly for an at-fault insurer to pay for a temporary replacement vehicle for a non-fault claimant under this higher rate.

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[31] Rental is provided at direct hire rate plus referral fee and FNOL fee.
[32] It estimated frictional costs as at-fault insurer for direct hire cases at £1 per claim.

However, we recognise that liability cannot always be determined early and frictional costs are inevitable when liability is not agreed. The high rate cap will mean that there is still an incentive to provide a temporary replacement vehicle to potential non-fault claimants even recognising that, in these cases, frictional costs will be high and the costs of some provision may not be recovered.

2.83 We propose also to introduce other measures which will help to minimise other causes of friction (eg measures to combat long hire durations (see paragraphs 2.105 to 2.107) and measures to address insufficient mitigation (see paragraphs 2.108 to 2.113). To the extent that there are any residual frictional costs in excess of those which occur in direct hire arrangements, and which are therefore covered in direct hire rates, these costs would need to be covered in our caps by the fixed replacement vehicle arrangement element.

- *How to set a dual rate cap*

2.84 Reflecting the cost structure discussed above (see paragraphs 2.68 and 2.69), we propose that the subrogated charge for each claim should be capped at an amount comprising: *(a)* a fixed replacement vehicle arrangement cost per hire, which would comprise upfront costs and administration costs; and *(b)* a flat average daily rate which would differ according to the class of vehicle provided. We believe this structure of cap will ensure there is adequate incentive to provide the class of vehicle needed for the time that it is needed. As described in paragraph 2.78, we propose that there are two rate caps, each reflecting this structure, depending on the timely acceptance of liability.

2.85 We note that, currently, daily hire rates tend to be lower when average hire length is longer. Therefore, a flat daily rate may create incentives for longer hires. However, the caps we propose to introduce have an effective declining total cost as they include an upfront fixed element. Indeed, this upfront fixed cost element will need to be cost-reflective in order to ensure the cap does not create undue incentives for shorter hires. These two incentives work in opposite directions: if we set the fixed element too high (and the daily element low), we will encourage very short hires; while if we set the daily element too high (and the fixed element low), we will encourage long hires. In setting the relevant rates, we believe we should err on the side of allowing higher daily rates and a lower fixed element so as not to encourage undue very short (and very costly) hires, notwithstanding that some incentive to prolong a hire might remain.

2.86 For the high rate cap, we considered two further important issues:

(a) How to ensure that the prospective at-fault insurer has the incentive to accept liability when its initial assessment suggests it is liable. If the prospective at-fault insurer does not have sufficient incentive to accept liability the low rate cap would apply too infrequently and the high rate cap too frequently, with the result that little will have been achieved by our remedy.

(b) How to ensure that the replacement vehicle provider has the incentive to provide a car when it considers the claimant is non-fault even if the prospective at-fault insurer does not accept liability (and hence the high rate cap applies).

2.87 On the first issue, we considered it desirable for a prospective at-fault insurer to have the incentive to accept liability if its initial assessment suggested that the probability of its driver being at fault is over 50% because this would lead to claimants receiving a replacement vehicle if it was more likely than not that they were non-fault. This might suggest a high rate cap of about double the low rate cap.[33] (We note that, currently, daily GTA rates are about twice direct hire daily rates).

2.88 On the second issue, we noted that the replacement vehicle provider's incentives would depend on:

(a) Its own assessment of the likelihood of the claimant being non-fault.

(b) The extent of the difference between the high rate cap and the cost to the provider of providing a replacement vehicle.

(c) The additional transactional/frictional costs which would be likely to result from a situation where liability has not been agreed early on. Based on current credit hire costs (including profit), average transactional/frictional costs would be about £194 in excess of the low rate cap.[34] However, it is the marginal rather than average costs that are relevant to the replacement vehicle provider's incentives and, given that some costs are fixed,[35] marginal costs are likely to be below average costs. On the other hand, marginal cases are those where disputes are most likely and hence

[33]This assumes the at-fault insurer reaches its decision independently of the replacement vehicle provider and does not take into account any additional frictional costs the at-fault insurer expects to incur as a result of not accepting liability. If we allow for the at-fault insurer incurring some additional frictional costs, the critical probability with a high rate double the low rate cap would be slightly less than 50% since P=(L-f)/U where P is critical probability, L is the low rate cap, f is additional frictional cost and U is the high rate cap.
[34] We estimate the difference between the cost of credit and direct hire less the average referral fee to be £238 (see WP 23). This is £194 above the low rate cap, if we assume the low rate cap includes a fixed fee of £37 + VAT = £44.
[35] See WP23, Appendix D.

expected transactional/frictional costs are likely to be higher than is currently the case across all credit hires.

As a high rate cap of double the low rate cap is approximately similar to the current GTA level, we considered it would imply a broadly similar incentive to at present for a replacement vehicle provider to provide a replacement vehicle to a claimant, who was probably but not certainly non-fault.[36]

2.89 We therefore considered that a high rate cap of about double the low rate cap would encourage the prospective at-fault insurer to accept liability when its driver genuinely was at fault, and would maintain the incentive to provide a replacement vehicle at a broadly similar level to that which exists currently under the GTA. Moreover, the high rate cap would only apply when the replacement vehicle provider believed the claimant was non-fault but the other party's insurer did not do so.

2.90 In the light of this, and the evidence from insurers that there was not a large amount of disagreement about liability, we would expect the high rate cap to occur rarely. Moreover, this rate cap structure would discourage some of the disagreement which currently exists. Consequently, we believe:

*(a)* the low rate cap will apply in a high proportion of situations, in particular those where initial information suggests claimants are non-fault; and

*(b)* excess frictional costs will be low (since they only occur under the high rate cap which applies in a low proportion of cases).

For these reasons, we believe a dual rate cap will be effective in addressing the AEC.

2.91 A key part of the mechanism is that, in those circumstances where the at-fault insurer has accepted liability, it must be committed to paying the daily rate for the vehicle, otherwise the replacement vehicle provider assumes risk and potentially incurs frictional costs.[37] The at-fault insurer would still be able to dispute excessively long hire periods,[38] or the provision of a more expensive

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[36] The critical probability would be P = (L+F)/U where F is the replacement vehicle provider's additional trans-actional/frictional costs in excess of the low rate cap. If we assume U=2L, L is £583 (based on average direct hire cost plus fixed fee of £44) and F is £194 (on the basis that the two factors mentioned in (b) approximately cancel out), then P would be 0.67.

[37] The at-fault insurer would be committed to paying for the necessary hire period unless new information emerges about liability during the necessary hire period in which case the at-fault insurer would be committed to paying up to that point (see paragraph 2.78(c)).

[38] We propose that rate caps will be based on hire duration ending 24 hours after the end of the repair (see paragraph 2.107), but it might still be possible to unduly extend hire lengths, for example by extending the length of repair.

vehicle than needed by the non-fault claimant,[39] but would not be able to dispute liability or the hire rate. If the at-fault insurer did wish to dispute liability, the high rate cap would begin to apply (see paragraph 2.78(c)).

2.92 In summary, we have provisionally concluded that we should set a dual rate cap where:

*(a)* each rate cap has (i) a fixed upfront and administration element, and (ii) a flat average daily rate element; and

*(b)* the high rate cap should be set at a multiple of the low rate cap. At present, we propose that the high rate cap should be about twice the low rate cap.

2.93 We propose that these rate caps should enable an efficient replacement vehicle provider to recover its costs and earn a profit. Therefore, we believe the dual rate cap scheme we have proposed will provide a replacement vehicle provider with a sufficient incentive to provide a replacement vehicle to a potential non-fault claimant, satisfying their tortious entitlement.

° *Initial and subsequent determinations of a rate cap*

2.94 We propose that, in the enforcement order, we would set the initial rates of the cap based on the evidence we have received to date and our further consultation now and in the implementation phase following our final report.

2.95 There are two options for subsequent determinations:

*(a)* an annual reappraisal of the two rate caps; or

*(b)* annual indexation of the rate caps with reviews held on a periodic basis to check the rate is appropriately set.

2.96 It appears to us that the first option is unnecessary as costs do not change significantly from year to year.[40] Therefore, the second option seems preferable as it is more practicable. However, we note that the following will be required:

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[39] Such situations would, however, be limited by our proposal that need is better assessed through a mitigation declaration statement (see paragraphs 2.108–2.113). We are proposing that the variable element of the low rate cap would be set close to cost, implying that replacement vehicle providers would not gain much from unduly lengthening hire periods or by providing a more expensive car than the non-fault claimant needs. The low rate cap, and in particular the lower variable rate, would also mean that the at-fault insurer would have less incentive to challenge hire length or a claimant's need.

[40] A number of insurers told us that the cost of direct hire has remained fairly constant over the last five to ten years.

(a) A roll-forward from the rates we set initially. We note that any indexation is an approximation and will therefore need periodic correction. We also note that it is important to use an index which is transparent and which reflects the costs relevant to the car hire industry. We would anticipate using a publicly available index such as RPI or CPI but we invite views on this.

(b) A clear scope for the periodic reviews. We would expect that this process would involve gathering data on: (i) the costs of direct hire; (ii) the extent of referral fees being paid, as an indicator of the difference remaining between the costs incurred by a provider of replacement vehicles to non-fault claimants and the costs charged to at-fault insurers; (iii) the extent of dispute and friction; and (iv) the extent of utilisation of the high rate cap. It would also involve considering developments in the market for the provision of replacement vehicles. This information would enable a re-determination of the caps. We propose that the first periodic review should occur two years after the implementation of this remedy, but that reviews thereafter would occur every three years.

◦ *Distortion risks*

2.97 In this section, we discuss the effects of the dual rate cap and whether it may lead to distortions.

2.98 At the rates we propose (see paragraphs 2.84 to 2.93), we would not expect replacement vehicle providers to be able to pay significant referral fees. Consequently, insurers (and brokers, dealers, repairers, etc) would have less incentive to refer non-fault claimants to a CHC/CMC.[41] We recognise that reductions in the level of referral fees paid by replacement vehicle providers to insurers and brokers could require some other marketing costs to be incurred by replacement vehicle providers. However, it is not clear to us that such increased costs would be required unless there were no referral fees at all; and, even in the absence of referral fees, it is not clear to us that such marketing costs would be particularly significant because these are business-to-business transactions which involve tendering processes and it is unlikely that there would be much direct marketing.

2.99 Another consequence of lower referral fees could be that insurers (and others) seek a different way in which to provide replacement vehicles to potential non-fault claimants. One option is that they would make the provision themselves, subrogating the claim to the fault insurer, and not referring the

[41] Currently, on average, referral fees are around £330 per referral.

claimant to a CHC/CMC. Other options could also emerge. However, we are not concerned with the specific type of contractual arrangements which might arise under our proposed remedy. Rather, we are focussed on delivering a consumer's entitlements while addressing the AEC and detriment we have identified (see paragraph 2.50).

2.100 Nevertheless, we do need to consider whether the remedy might have unintended consequences. In this context, we considered whether non-fault claimants would continue to be able to obtain their rights under tort law to a like-for-like replacement vehicle subject to need, and whether a rate cap could distort incentives for the efficient provision of these services. We discuss these two issues in turn.

- - *Delivery of entitlements*

2.101 Under our proposed remedy, replacement vehicle providers (ie CHCs/CMCs, insurers, etc) would continue to have an incentive to provide non-fault claimants with a like-for-like replacement car subject to need. However, we noted that the practice of some insurers to treat non-fault claimants with comprehensive cover as if they were claiming under their own policy might have the effect of restricting access to this entitlement.[42] Under this practice, non-fault claimants are put in the position of claiming against their own policy even when it is entirely predictable that it will eventually be agreed that the claim is against the other insurer. Effectively, the non-fault insurer takes control of the claim but does not manage it in a way that enables the non-fault driver to obtain their legal entitlement under tort law. We note that this is not the practice of all insurers. For example, several insurers have agreed bilaterally to provide non-fault claimants with a like-for-like replacement vehicle, which is a level of provision in excess of most claimants' rights under their own policies. Nevertheless, it appears to us that there is a risk that the continuation of this practice could mean that some non-fault claimants would receive only the quality of replacement vehicle they are entitled to under their own policy (usually a courtesy car but sometimes nothing) rather than their entitlement under tort law.

2.102 We note that Remedy A goes some way to informing claimants of their tortious rights, but it does not prevent the insurer from initially taking an 'undecided' determination on liability, so encouraging a customer to claim under their own policy, and only later adopting a non-fault determination. In

[42] For example, CISGIL told us that it provided non-fault claimants without legal expenses cover with the level of replacement car they were entitled to under their own policy, ie a courtesy car; and Admiral and Zurich told us that, when managing non-fault claims for claimants without legal expenses cover, they sought to recover from the at-fault insurer only the repair cost less the non-fault claimant's excess (see provisional findings, paragraph 6.34).

our view, this risk can be mitigated by requiring insurers to inform claimants of their current assessment of whether they are at fault or not at fault, and requiring them to explain the implications of this – in particular, the consumer's entitlement to a like-for-like replacement vehicle subject to need if they are not at fault (ie Remedy A). We therefore propose that:

*(a)* Each insurer would be required to inform the claimant before the start of the repair of their vehicle if it is of the view that the claimant is non-fault and that therefore the claim will be against the other party's insurer.[43] If the vehicle is not roadworthy after the accident, this would need to happen immediately.

*(b)* Each insurer's aggregate data on liability assessments would be monitored. Insurers would be required to report on the overall proportion of assessments of fault/non-fault/undetermined/split (i) at FNOL, (ii) at the time the above information is provided, and (iii) the final liability decision is agreed. They would also be required to report in what percentage of cases they have changed their liability assessment. The purpose of this information would be to identify those insurers which, in a high proportion of cases, make an assessment of 'split liability' or 'impossible to determine fault' which is subsequently changed into a non-fault assessment. We set out the proposed monitoring arrangements in paragraphs 2.141 to 2.147.

2.103 In our view, this proposal should apply only to insurers. It does not need to apply to other parties (eg brokers and CMCs) involved in FNOL because they do not have the same incentive to leave liability undetermined.

◦ ◦ *Efficient delivery of services*

2.104 There are some broader issues commonly associated with a price cap remedy, which we considered. In general, imposing a cap on prices is regarded as an onerous remedy because it directly overrides market signals (including incentives to innovate) and suppresses price competition.[44] However, our proposal is to cap the amount that can be subrogated to the at-fault insurer. In itself, it does not suppress price competition because, due to the separation of control and liability, there is no competition over the amount that can be charged to the at-fault insurer. Rather, the amount that can be charged to the at-fault insurer is currently determined by GTA rates or, for

[43] It would also be necessary to explain the implications for the consumer if the insurer's view changes during or after the period of replacement vehicle provision.
[44] A price cap will suppress price competition unless competition results in prices below the price cap, in which case the price cap is ineffective.

claims outside the GTA, by the basic hire rate. Competition between CHCs/ CMCs is instead over the referral fee paid to referring parties. Our proposed remedy would not reduce competition between CHCs to obtain business from referring parties, though it would affect the level of any referral fee paid (see paragraph 2.98). Where currently replacement vehicles are provided to non-fault claimants by the at-fault insurer (having been captured) or under a bilateral agreement, there is competition between direct hire providers over the direct hire fee charged to the insurer. Our proposed remedy would not affect this competition. The only way in which competition would be affected would be if our remedy led to tacit coordination on price by direct hire companies. However, we note that direct hire is provided under contract to insurance companies so it is the insurers which control the bidding process, and this would be likely to limit the ability of direct hire companies to effect tacit price coordination. In addition, we note that our remedy uses a competitive market price as a benchmark (ie the direct hire rate), which means that many of the usual concerns with market distortions arising from price caps are further reduced.

- *What other measures should be put in place to assist with the effectiveness of Remedy 1C?*
  - *Should measures be put in place to cap hire duration?*

2.105 We would not expect our remedy to increase the incentives to unduly lengthen hire periods. Indeed, we would expect the remedy to reduce such incentives as currently exist. However, some incentive to unduly lengthen hire periods would be likely to remain (see paragraphs 2.85 and 2.91). We considered whether other measures should be put in place to limit hire durations. We noted that:

*(a)* Paragraphs 4.6 to 4.9 of the GTA set out clear guidelines on hire duration, which are largely driven by repair duration. For example, the hire period ends not later than 24 hours after repairs to the customer's vehicle have been completed (see paragraph 4.8 of the GTA).

*(b)* Hire duration appears currently to be a significant source of disputes between insurers and CHCs.[45]

2.106 Several respondents to the Remedies Notice suggested measures by which we might impose more rigid guidelines in relation to hire duration. For example:

[45] See, for example, provisional findings, Appendix 6.1, paragraphs 50 & 97.

(a) Linking the hire duration more closely to the duration of repair. We do not think that this is feasible, as the current GTA guidelines on hire duration are already linked to repair duration and they place considerable reliance on the CHC to monitor the repair duration closely. For example, under the GTA, the CHC must:

(i) check with the repairer that the repair has been authorised within three working days of the vehicle being accepted by the repairer;

(ii) make further checks with the repairer after five working days and/or three working days before the hire should have ended; and

(iii) end the hire duration 24 hours after completion of repairs.

(b) Designing the framework so that a replacement vehicle provider achieves greater profitability through shorter hire periods (eg by allowing higher daily hire rates to be charged at the start of the hire period and lower daily hire rates as the hire progresses). Although this would create stronger incentives to minimise hire durations and may also result in the speedier resolution of liability, there is also the risk that it may encourage the completion of repairs below the standard required, in order to minimise repair durations, or incentivise replacement vehicle providers to terminate hire periods before the completion of repairs, thus leaving the consumer without mobility.

(c) A fixed hire period based on agreed scenarios. This does not appear to be feasible, because it is difficult to prescribe rigid guidelines on hire duration, as hire duration is typically determined by repair duration, which is influenced by a number of uncontrollable variables (eg make and model of the vehicle, extent of the damage to the vehicle, availability of replacement parts, etc).

2.107 In our view, the current GTA framework for tying replacement vehicle hire duration to the repair duration provides the right additional measure for limiting hire duration. Once a repair is completed and the vehicle returned to the non-fault claimant, there is no need for a hire to continue. Therefore, we propose to allow no recovery of hire costs 24 hours after the completion of the repair or seven days after the submission of the total loss payment in order to encourage the swift return of repaired vehicles and the processing of total loss payments to customers. This is in line with existing GTA requirements and provides the replacement vehicle provider with sufficient time to complete the necessary processes and to terminate the hire.

- *How should measures to address need be designed (Remedy 1F)?*

2.108 In our view, the mitigation questionnaire prescribed by the GTA provides a good basis from which to develop a more effective mitigation framework. We propose that a replacement vehicle provider should complete a mitigation declaration prior to providing a replacement vehicle to the non-fault claimant. This is in contrast to the process under the GTA where the mitigation questionnaire is signed by the claimant upon receipt of the vehicle. We think that requiring the replacement vehicle provider to assess need fully, and to state that it has done so, and asking a claimant to confirm the answers they provided when the car is provided to them, will result in a more effective fulfilment of the legal duty of mitigation. This is our Remedy 1F.

2.109 We propose to replace the existing mitigation questionnaire with a mitigation declaration as follows:

*(a)* When assessing whether or not to provide a replacement vehicle (and prior to the provision of the replacement vehicle), the replacement vehicle provider would ask the non-fault claimant a number of prescribed questions in relation to their need for a replacement vehicle.

*(b)* The replacement vehicle provider would complete and sign a mitigation declaration, which would confirm that they have adequately assessed and recorded a non-fault claimant's need for a replacement vehicle and advised the claimant of their duty to mitigate their loss (with consideration to their need).

*(c)* The replacement vehicle provider would provide a copy of the mitigation declaration to the non-fault claimant upon delivery of the replacement vehicle.

*(d)* The non-fault claimant would review and countersign the mitigation declaration and return it to the replacement vehicle provider before being given the keys to the replacement vehicle.

*(e)* The non-fault replacement vehicle provider would submit the mitigation declaration to the at-fault insurer with the payment pack at the end of the hire period (see paragraphs 2.124 and 2.125).

2.110 We have set out in our draft mitigation declaration the questions which we propose should be asked of non-fault claimants in relation to their need for a replacement vehicle (see Appendix 2.3). The questions take into account the questions already asked of the non-fault claimant under the existing mitigation questionnaire in the GTA and questions suggested by various parties in their responses to the Remedies Notice.

2.111 We considered whether to include a question which asks about a non-fault claimant's replacement vehicle cover under their own PMI policy. Two respondents to our Remedies Notice suggested that this would give a good rebuttable indicator of the claimant's need for a replacement vehicle in the event of a non-fault claim (see Appendix 2.1). However, we did not believe this would be an appropriate question because the questions outlined in the mitigation declaration are intended to assess a non-fault claimant's need with reference to their rights under tort law and are not designed to minimise the cost of replacement vehicle provision through any restriction of these rights.

2.112 Several CMCs/CHCs expressed concern that at-fault insurers may seek to impose overly demanding mitigation questions and thereby place unnecessary pressure on both the CMC/CHC and the non-fault claimant in assessing need, with a view to deterring non-fault claimants from taking a replacement vehicle. However, it appears to us that this risk exists now and the provision of a standardised mitigation declaration would, if anything, mitigate the risk of excessive pressures being applied.

2.113 One party told us that this remedy might affect the provision of credit hire. However, in our view the remedy will not undermine the basic premise or principle of credit hire and it will not in any way weaken the non-fault claimant's entitlement under tort law to a like-for-like replacement vehicle (subject to the non-fault claimant's duty to mitigate their loss with consideration to their need).

- *What other aspects of the GTA should be adopted or developed?*

2.114 We found that the GTA has many positive elements which encourage the efficient resolution of claims and help to reduce frictional and transactional costs between CHCs/CMCs and at-fault insurers. We have already considered hire duration and mitigation (see paragraphs 2.105 to 2.113), though on mitigation our approach develops the GTA. Other GTA measures include:

*(a)* dispute resolution (paragraph 2.7 of the GTA);

*(b)* acceptance of customers (paragraphs 3.1 to 3.6; paragraphs 4.3 to 4.5; and Appendix C);

*(c)* monitoring during hire (paragraphs 4.10 to 4.14); and

*(d)* payment arrangements (paragraphs 6.1 to 6.5).

2.115 We have also reviewed the bilateral agreements between insurers in relation to replacement vehicle provision to non-fault claimants, which aim to reduce both the cost of the replacement vehicle and the administrative and frictional costs incurred in the management and settlement of claims. The overall claims management framework provided under these agreements (eg proactive monitoring of hire duration; assessment of the claimant's need for a like-for-like replacement subject to their duty to mitigate their loss; a clear dispute resolution process, etc) is similar to that provided under the GTA. This suggests that the procedural matters described above are adopted when parties reach bilateral as well as multilateral agreements.

2.116 We propose to adopt those features of the GTA which are important for the effective functioning of our remedies and which encourage the efficient management and settlement of claims. We summarise below our views on each aspect (see paragraph 2.114). Further detail on these GTA requirements are set out in Annex A of Appendix 2.4.

- - *Dispute resolution*

2.117 The dispute resolution process within the GTA applies where there are issues of principle or interpretation concerning the operation or wording of the GTA. The process is managed by the GTA Technical Committee within 60 days from the dispute first being raised. It helps reduce the number of claims falling outside of the GTA and therefore mitigates frictional costs.

2.118 As our remedy would apply to all parties providing replacement vehicles and subrogating claims, there is no longer a need to try to minimise the risk of claims falling outside the mechanism. Any failure to meet the requirements of the remedy would amount to a breach. Additional dispute procedures therefore seem unnecessary. For this reason, we do not propose to adopt this aspect of the GTA, instead relying on the force of the remedy and parties taking claims to court in the event of disputes.

- - *Acceptance of customers*

2.119 The GTA contains the overriding principle of ‘first to a customer’ – ie the first provider to provide the customer with a suitable offer that they can understand should provide the service and all other subscribers to the GTA should not intervene.

2.120 Under the GTA, this principle has customer benefits as it prevents delay in replacement vehicle provision and it avoids claimants being contacted by many replacement vehicle providers once an acceptable replacement vehicle has been provided. It also prevents unnecessary duplication of costs between replacement vehicle providers and situations where replacement vehicles may have to be returned once delivered.

2.121 However, once our remedy is implemented, we would expect that the reduced hire rates imposed by the cap would reduce the incentive of at-fault insurers to capture non-fault claims in order to provide them with a replacement vehicle. Such customer benefits of a 'first to the customer' principle are therefore likely to be substantially reduced under our remedy.

2.122 On balance, we decided to adopt this principle in order to retain the benefits described in paragraph 2.120, but we invite views on whether parties believe it is necessary.

- ◦ *Monitoring during hire*

2.123 Under the GTA, the CHC must perform a number of monitoring checks during the duration of the hire, with the effect of limiting the CHC's ability to unduly extend hire durations. We propose to adopt this process as a requirement in order to achieve the same benefits. These measures would apply irrespective of whether the high or low rate cap is being charged.

- ◦ *Payment arrangements*

2.124 The GTA's payment arrangements have two elements: *(a)* the submission of a payment pack by the CHC to the at-fault insurer upon completion of the hire; and *(b)* the application of late payment penalties in the settlement of claims.

2.125 We propose to adopt both elements under our remedy: the payment pack encourages transparency between insurers and CHCs in the management and settlement of replacement vehicle claims; and late payment penalties incentivise settlement within three months of the submission of the payment pack to the at-fault insurer. These measures would also apply irrespective of whether the high or low rate cap is being charged.

◦ *Should an online portal for credit hire claims be developed?*

2.126 In assessing whether the remedy should include a requirement for an online portal for credit hire claims, we considered:

*(a)* The functioning of the portal for personal injury claims, in order to assess whether any of its functionality could be replicated in a possible credit hire portal; and

*(b)* The work performed to date by the GTA Technical Committee in assessing the feasibility of an online portal for credit hire claims, in particular the expected implementation cost and timescale.

2.127 Further details about the personal injury portal and the GTA proposed portal are provided in Appendix 2.4. In summary, the portal for personal injury claims is run by Claims Portal Limited, which told us that it was developed in response to a policy objective identified by the MoJ to deliver a speedier and lower-cost procedure for the resolution of low-value injury claims. Subject to rules being agreed, requirements gathered and costs agreed, the portal is potentially capable of facilitating the exchange of claims information relating to other types of claims too.[46]

2.128 The GTA Technical Committee's proposed credit hire portal is intended to reduce frictional costs through standardising the information shared between subscribing insurers and CHCs. The GTA Technical Committee told us that although, in very broad terms, the proposed credit hire portal was similar to the portal for personal injury claims, in that it would provide an electronic platform for the processing of claims, there were material differences (see Appendix 2.4). The GTA Technical Committee told us that a final decision (by both the proposed supplier and by the GTA subscribers) on whether to proceed with the portal was likely to be influenced by the outcome of our investigation and the likely relevance of the GTA (or a similar arrangement) in the future. It said that [✂].

2.129 Respondents to our Remedies Notice were largely in favour of an online portal. We were told that it would be capable of delivering improvements in administrative processes and speed up claims. This would be a customer benefit as it would reduce the time taken to process claims and reduce costs incurred in managing claims. However, given the work performed to date by the GTA Technical Committee in assessing the feasibility of a credit hire portal, we would expect that, once our remedies package has been implemented, the industry would be able to work together to implement such a portal. For this reason we do not propose to implement it as part of our package of remedies.

- *Risk of circumvention and/or distortion*

2.130 We have already discussed some risks of circumvention (see paragraphs 2.60 to 2.63) and some risks of distortion (see paragraphs 2.97 to 2.104). However, in this section, we discuss the risk of distortion between PMI and non-PMI because under our terms of reference our remedy would only be applicable to PMI.

[46] See Appendix 2.4 for an expansion of Claims Portal Limited's views.

2.131 Several parties have suggested to us that, as the proposed remedies under ToH 1 only apply to PMI, they would distort other areas of motor insurance (eg commercial motor insurance), because claims arising from different market segments have an interconnected relationship. For example, where an accident concerns a non-fault commercial vehicle and an at-fault privately-insured vehicle, our remedy would not apply; but where it concerns a non-fault privately-insured vehicle and an at-fault commercial vehicle, our remedy would apply. Our remedies would reduce the cost of providing replacement vehicles to private motorists who are not at fault in accidents, but such accidents could involve either a private or a commercial motorist being at fault. Hence we would expect our remedies to reduce both private and commercial motor insurance premiums.[47] Similar issues could arise in relation to other parties which would not be covered by our remedies, eg motorcycle users.

2.132 We believe that any distortion to competition which might arise from these effects is likely to be small as the relative impact on price is not likely to be sufficiently large to cause any significant substitution between commercial vehicles or motorcycles and privately-owned cars.

2.133 We note that, in principle, our Remedies 1C and 1F could be extended to other insurance sectors. For example, the GTA currently applies to taxis, private hire vehicles, motorcycles and commercial vehicles. However, this is outside of our terms of reference and we have not conducted any analysis of whether similar concerns arise in relation to the separation of cost liability and cost control in these other insurance sectors. In due course, the CMA will need to consider whether to conduct further investigations into these other areas. We note that, if voluntary bilateral agreements similar to our Remedy 1C were widely adopted in these other sectors, such an investigation might not be necessary.

*Implementation issues*

2.134 In this section, we discuss implementation issues. We discuss:

*(a)* how the remedy would be implemented and what role there would be for the GTA;

*(b)* whether there is a role for judicial guidance to assist with Remedy 1C;

[47] As commercial motor insurance premiums would continue to benefit from referral fee income (assuming no change in referral fees for credit hire to commercial motorists), while PMI premiums would not, our remedies could reduce commercial motor insurance premiums more than PMI premiums.

(c) how monitoring and enforcement would work;

(d) timeliness of the remedies; and

(e) the impact of the remedies on existing laws and regulations.

- *How the remedy would be implemented and what role there would be for the GTA*

2.135 We said above that Remedies 1C and 1F should apply to all replacement vehicle provision to non-fault claimants, excluding the self-provision of replacement vehicles by non-fault claimants (see paragraph 2.59). This means that the possibility of seeking undertakings from the GTA Technical Committee (responsible for the administration of the GTA) in order to amend the GTA would be ineffective, because the remedy would only affect the members of the GTA. Therefore, the remedy must be delivered through an enforcement order.

2.136 Our remedies would supersede the GTA's existing daily hire rates and mitigation declaration in relation to PMI claimants. The GTA also has many other positive elements which encourage the efficient management and settlement of claims, some of which we have proposed to adopt (see paragraphs 2.114 to 2.125). Through our remedies, our intention is to set a minimum standard for non-fault PMI claims but insurers and CHCs/CMCs would continue to be able to subscribe to the GTA, which might set out additional requirements, and they would continue to be able to negotiate mutually beneficial bilateral agreements. We believe that such further steps to reduce inefficiencies should be encouraged.

2.137 In addition, after the implementation of our proposed remedies package, the GTA would continue to have an important role for those aspects not covered by our remedies. In particular, the GTA would still cover credit repair (see paragraphs 2.194 to 2.217 for an explanation of our decision not to pursue a remedy in relation to repairs) and non-fault non-PMI claims (see paragraph 2.56).

- *Is there a role for judicial guidance to assist with Remedy 1C?*

2.138 Under tort law, a non-fault claimant is entitled to recover from the at-fault insurer the reasonable costs of vehicle hire. In relation to the hire rate, this has typically been accepted by the courts to be a reasonable basic or retail hire rate charged by vehicle hire companies to retail customers in the wider vehicle hire market.

2.139 Although the proposed design of Remedy 1C would not impact upon the non-fault claimant's tortious entitlement, it is important that the courts are aware of our findings and the role of this remedy in addressing the AEC. There are several ways in which this could be achieved:

*(a)* make an enforcement order and leave parties to refer to the order in the courts in the event of a dispute;

*(b)* produce an explanatory memorandum to accompany the enforcement order, which explains the role of the remedy so as to assist parties disputing claims before the courts; and/or

*(c)* make a recommendation to the MoJ or The Law Society to produce some judicial guidance to accompany the enforcement order.

2.140 Several respondents to the Remedies Notice supported the production of judicial guidance. However, our intention is to make the basis of our remedy and its rationale clear in both the final report and the enforcement order and, on this basis, we did not see value in producing judicial guidance to accompany these documents. Instead, we propose to attach an explanatory memorandum to the enforcement order. This will assist parties in the event that issues upon which we have made requirements are disputed before the courts.

- *Monitoring and enforcement*
  - *Remedy 1C*

2.141 We considered what framework should be put in place to set, monitor and enforce the rate cap and the other requirements of Remedy 1C. To do this we first considered how the GTA Technical Committee currently functions. We then considered what key principles we would wish to underpin the monitoring and enforcement of the remedy and what alternative options would be available.

2.142 The GTA Technical Committee is currently responsible for reviewing and setting on an annual basis the GTA's credit hire rates, late payment penalties, administrative fees and other charges. The GTA Technical Committee comprises an independent Chairman and Secretary and an equal number of voting representatives from the credit hire and insurance industries. The subscribing CHCs and insurers each appoint a lead negotiator and the respective lead negotiators attempt to find an agreed position on the settlement rates for the following year (see Appendix 2.4 for further details).

2.143 In our view, a key principle for the monitoring of this remedy is for there to be independence in setting the rate cap, whilst using existing frameworks as much as possible. In our view, using the GTA Technical Committee in its current structure to undertake the role would lack independence and would not be appropriate due to each party's voting rights.

2.144 Possible alternative options that we considered included:

*(a)* Responsibility for setting the rate cap would lie with a reconstituted GTA Technical Committee,[48] with its work reviewed by an independent body, in order to ensure that it would reflect the interests of all relevant market participants. The responses to the Remedies Notice suggested a number of existing bodies which could assume this role, including the Association of British Insurers (ABI), the CMA, the FCA, the Financial Ombudsman, the MoJ or an accountancy firm or economic consultancy.

*(b)* An independent panel within the CMA would set the rate cap. The panel would be appointed in the same way that all CMA panels are appointed.[49] The GTA Technical Committee would have a role in assisting with the gathering of the relevant evidence but individual replacement vehicle providers' evidence would be submitted directly to the independent panel (given its commercially sensitive nature) and the GTA Technical Committee would have no say in the decision of the independent panel.

*(c)* A new independent body would set the rate cap.

2.145 We were concerned that the first option would add unnecessary cost (due to the independent body's duplication of the work performed by the reconstituted GTA Technical Committee in reviewing the cap). The third option would require additional regulatory bodies to be developed and would also be costly. The second option seemed to us to be a practicable solution and had a number of merits:

*(a)* The rate would be set by an entirely independent panel.

*(b)* Costs would be lower than under the other two options and would amount primarily to those of a CMA panel. These costs would be for the CMA as part of the costs of monitoring and enforcing the remedy rather than having to be apportioned between relevant parties.

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[48] By 'reconstituted GTA Technical Committee' we mean the GTA Technical Committee (or some subset of it or an expanded form) which would have an involvement in our remedies as well as the GTA.
[49] See, for example, of *CC3 (Revised)—Guidelines for market investigations: Their role, procedures, assessment and remedies*, April 2013, paragraphs 47 & 48.

*(c)* The existing skills of the GTA Technical Committee would not be lost as its evidence would form part of the decision-making process.

*(d)* The CMA exercising its powers of review pursuant to section 92 of the Act would, utilising the independent panel procedure at the same time as conducting a review of the rate caps, be able to review the remedy for effectiveness and would consider if it is appropriate to vary the order in respect of the rate caps. A regular review mechanism would therefore be embedded within the design of the remedy

*(e)* The CMA panel would have recourse to the CMA's information-gathering powers (pursuant to section 174 of the Act) and would have access to all the evidence gathered from this investigation.

2.146 We therefore provisionally decided on the second option (ie option *(b)* in paragraph 2.144).

2.147 We do not believe that there will be a significant ongoing monitoring and enforcement requirement between these reviews. This is because any breach of the hire rate caps would be transparent to insurers and could be enforced through the courts. However, we note that some monitoring by the CMA would be required of insurers' aggregate data on liability assessments (see paragraph 2.102).

- *Remedy 1F*

2.148 We suggested in the Remedies Notice that this remedy could be enforced and monitored without the need for external intervention by providing the at-fault insurer with the mitigation declaration and, in the event of a dispute, access to the call record of the conversation between the replacement vehicle provider and the non-fault claimant.

2.149 In our view, the completion of a mitigation declaration by the replacement vehicle provider provides sufficient incentive to the replacement vehicle provider to ensure that an accurate and adequate assessment of need is routinely performed without the need for additional monitoring. Moreover, the failure of the replacement vehicle provider to complete and disclose a completed mitigation declaration would allow the at-fault insurer to challenge the validity of the claim (through the courts if necessary).

2.150 We considered the submissions we received in relation to the provision of call records to the at-fault insurer in the event of a dispute and, on balance, found that this did not seem likely to be practicable because:

*(a)* It may cause data protection issues, as both the non-fault claimant and relevant claims handler would be required to provide their consent to the call being shared with other parties. This would add unnecessary complexity and cost to the process.

*(b)* It would be costly both to record calls (as not all relevant industry participants currently do so and would therefore have to incur significant costs in installing the necessary technology to allow this) and to provide the records to the at-fault insurer upon request.

Therefore we do not propose to require, in the event of a dispute, the at-fault insurer to be given access to the call record of the conversation between the replacement vehicle provider and the non-fault claimant.

- *Timeliness*

  ◦ *Remedy 1C*

2.151 The key milestones to be achieved, in order to ensure the timely implementation of Remedy 1C are:

*(a)* setting the initial rate cap; and

*(b)* administrative and IT changes required to incorporate the new regime into existing systems and processes for those parties which are not currently part of the GTA (eg monitoring hire durations, payment arrangements, etc).

2.152 As we intend to set the initial rates ourselves (see paragraph 2.94), the formation of a further CMA panel is not required prior to the implementation of the rate cap. Further, there will be a period between the publication of our final report and the making of an enforcement order (a statutory maximum of six months, extendable by four months), where any administrative and IT changes could be initiated in advance of the enforcement order being made. Therefore, we propose that the implementation of the remedy is staged as follows:

*(a)* the rate cap is applied with immediate effect following the making of the enforcement order; and

*(b)* all other requirements of the remedy are required to be in place within three months of the making of the enforcement order.

- *Remedy 1F*

2.153 We would expect replacement vehicle providers to be able to implement Remedy 1F quickly, as it requires minimal changes to their existing processes and only some small additional training for claims handlers in order that they understand the new process and the questions that they will be required to put to non-fault claimants.

2.154 Insurers, brokers and CMCs/CHCs told us that to make the necessary administrative changes required to incorporate the mitigation declaration into their existing processes for replacement vehicle provision would take between one and six months (see Appendix 2.4). We noted that the significant variation in the estimates we received reflected that the time required to make the necessary administrative changes was dependent on a number of variables (eg the extent and complexity of the administrative changes, the extent and complexity of the IT changes and the extent of any systems testing required).

2.155 Based on this evidence, we propose that the mitigation declaration should be fully incorporated into existing replacement vehicle provision processes by three months from the making of any enforcement order. We believe this to be a reasonable time frame, as there will also be a period between the publication of our final report and the making of an enforcement order (a statutory maximum of six months, extendable by four months) where any administrative and IT changes could be initiated, in advance of the enforcement order being made.

- *Laws and regulations*

2.156 On the basis that we allow consumers to recover the costs they incur in the self-provision of replacement vehicles at basic hire rates, which is considered reasonable and recoverable under case law, we do not think that the implementation of this remedy will require a change of law (see paragraphs 2.56 to 2.63). Remedy 1F will also not require any changes to existing laws and regulations, as it is improving an existing administrative process built into the GTA and not changing any legal rights.

*Summary of proposed remedy*

2.157 We have provisionally concluded that the following remedy would be effective in addressing the AEC and detriment we have identified under ToH 1, in so far as it relates to replacement vehicles:

*(a)* A dual rate cap, with a low rate cap based on average direct hire daily rates plus fixed replacement vehicle arrangement costs and a high rate

cap set as a multiple of the low rate cap. The rate cap would be indexed to a publicly available index (see paragraphs 2.64 to 2.96).

*(b)* Application of the rate cap to all replacement vehicle providers at the point of subrogation of the claim to the at-fault insurer (see paragraphs 2.56 to 2.59).

*(c)* Prohibition of financial inducements from replacement vehicle providers where such inducements are to encourage claimants to take a replacement vehicle at rates above the rate cap (see paragraph 2.61).

*(d)* Insurers to tell claimants promptly if they are non-fault, with submission of each insurer's aggregate data on liability assessments (see paragraph 2.102).

*(e)* Hire duration to end 24 hours after completion of the repair or seven days after the submission of the total loss payment (see paragraph 2.107).

*(f)* Mitigation declaration statements to be completed by FNOL providers and countersigned by non-fault claimants upon receipt of a replacement vehicle (see paragraphs 2.109 to 2.110 and Appendix 2.3).

*(g)* Requirements regarding the acceptance of customers by replacement vehicle providers, monitoring of the hire and payment arrangements (see paragraphs 2.119 to 2.125).

*(h)* A CMA panel appointed to conduct periodic reviews, with the first periodic review occurring two years after the implementation of the remedy and thereafter every three years (see paragraphs 2.144 to 2.146 and paragraph 2.96).

*(i)* The rate cap would be applied with immediate effect following the making of the enforcement order and all the other requirements of the remedy would be required to be in place within three months from the making of the order (see paragraphs 2.152 and 2.155).

***Remedy measures not included in our proposed package of remedies***

2.158 We considered a number of other remedy options which we have provisionally decided not to include in our proposed package of remedies. These include certain options set out in our Remedies Notice as well as proposals from some parties:

*(a)* Remedy 1A – First party insurance for replacement cars;

*(b)* Variants to Remedy 1A (proposed by Aviva, CISGIL and Enterprise);

*(c)* Remedy 1B – At-fault insurers to be given the first option to handle non-fault claims;

*(d)* Remedy 1D – Measures to control non-fault repair costs;

*(e)* Remedy 1E – Measures to control non-fault write-off costs; and

*(f)* Remedy 1G – Prohibition of referral fees.

2.159 For each of the remedy options listed in paragraph 2.158, we set out below a description of the remedy option and the views of parties on it, before setting out our reasons for not taking the remedy option forward.

2.160 In our Remedies Notice, we set out our reasons why we were not minded to pursue remedies concerning: *(a)* first party insurance for all PMI; and *(b)* the prohibition of credit hire. We received limited responses and comments in relation to these remedy options, and found no compelling arguments or reason to overturn our initial reasons for not pursuing these remedy options. Therefore we do not revisit these arguments here.

*First party insurance for replacement cars (Remedy 1A)*

*Description of remedy option*

2.161 We set out in our Remedies Notice a remedy which would require replacement vehicles, but not repairs, to be insured on a first party basis such that a policyholder would be provided with a replacement vehicle by their own insurer in the event of an accident, irrespective of whether the policyholder was at fault or not.

2.162 Under this remedy, non-fault claimants (and hence non-fault insurers via the principle of subrogation) would not be allowed to recover the costs of a replacement vehicle from the at-fault insurer. Instead, insurers would be responsible for bearing the cost of providing a replacement vehicle to their own policyholders in the event of a non-fault claim. We envisaged that insurers would offer policyholders the option to choose the level of cover they would require in the event of an accident (ie no replacement car, a courtesy car or a like-for-like replacement vehicle) for different premium levels. As a consequence, individuals would have the option to purchase a level of cover equivalent to their current entitlement under tort law or to trade off their legal entitlement with a lower premium.

2.163 Unlike some of our other remedies under ToH 1, this remedy would directly address the provisional AEC by removing the separation of cost liability and cost control in relation to the provision of replacement vehicles to non-fault claimants. This would have a number of benefits:

*(a)* As the non-fault insurer would bear the cost of providing the replacement vehicle to its policyholder, the non-fault insurer would be incentivised to procure the replacement vehicle for the lowest cost (both in terms of rate and type of vehicle).

*(b)* Frictional costs would be reduced because there would be no reason for disputes to arise between at-fault insurers, non-fault insurers and CMCs over the cost of replacement vehicle provision.

*(c)* It would be likely to lead to greater mitigation because consumers would have revealed their willingness to pay for a like-for-like replacement vehicle.

*Views of parties*

2.164 Seven of the ten largest insurers were supportive of Remedy 1A in principle, telling us that it had the potential to assist the insurance industry in managing the cost of credit hire effectively. However, they had reservations about the timeliness of the remedy, its effectiveness and the risk of unintended adverse effects. Three of the ten largest insurers (Admiral, DLG and esure) were opposed to Remedy 1A.

2.165 The CHCs/CMCs were strongly opposed to Remedy 1A.

2.166 Appendix 2.1 sets out further details of the concerns raised. In summary, the following key points were made:

*(a)* Increasing premiums – There would be potential for premiums to rise if replacement vehicle cover were to be included as an add-on and, in particular, premiums for safer drivers would rise relative to premiums for high-risk drivers. Costs were also likely to increase through the greater provision of replacement vehicles to at-fault drivers. Some respondents identified the possibility that costs could be duplicated if the non-fault insurer did not also control the cost of repairs because a third party would have no incentive to control the repair duration, which could give rise to additional costs for the non-fault insurer which had provided the replacement vehicle and would create the potential for disputes and duplicated claims management costs.

*(b)* Loss of tortious rights – The remedy would change the long-established principle of tort law which entitles the non-fault party to look to the at-fault party to be put back in the position they would have been without the

accident. Consequently, consumers would be in a worse position as they would be required to pay a premium for insurance cover in order to be entitled to a replacement vehicle in the event they were non-fault in an accident.

*(c)* Reduction in the quality of service – The removal of non-fault claimants' tort law rights would result in a lower-quality outcome for drivers who are either unable or unwilling to bear the extra cost of replacement vehicle cover when they are not at fault in an accident. Policyholders who did not purchase replacement vehicle cover could be left without mobility following an accident. This could apply to policyholders who were most concerned to minimise their premium, as well as those who believed they would not need a replacement vehicle in those circumstances.

*(d)* Loss of competitive constraint from CHCs/CMCs – The CHCs/CMCs were concerned that the proposed remedy would lead to the disappearance of CHCs/CMCs and the services provided to non-fault claimants would deteriorate because non-fault insurers would seek to minimise the cost of claims. The main point made by CMCs was that they could provide a replacement vehicle to a non-fault claimant within a few hours of being notified of a claim, whereas non-fault insurers did not have the resources to determine liability so quickly. CHCs/CMCs also noted that they assisted non-fault claimants in other ways (eg to recover any excess that has been paid and other losses (such as loss of earnings), to ensure that an NCB was reinstated, to monitor the progress of the repair, and to negotiate the pre-accident value of vehicles in write-off cases) and if CHCs/CMCs did not exist, claimants would have to deal directly with their insurer on these matters.

*(e)* Timeliness – The remedy would not be timely as legislation would be required to implement it and, consequently, there would be no certainty about when it would come into effect and what the enabling legislation would look like.

*(f)* Differential treatment for vehicles with PMI – If the remedy applied only to PMI there would be different arrangements for commercial vehicles and motorbikes which may lead to different levels of quality of supply.

*(g)* Greater confusion for customers – The proposed remedy would create a new add-on and policyholders would have to be provided with a clear explanation of the terms of the cover to enable them to make an informed choice about what to purchase. Consequently, consumers would be faced with a more complicated choice than at present when purchasing a PMI policy.

*Our reasons for not taking the remedy option forward*

2.167 This remedy could not be implemented without a change to the law because it would change the rights non-fault claimants currently have under the common law.[50] It would therefore require a recommendation to be made to Government to legislate.

2.168 Having considered the efficacy and proportionality of this remedy, we identified two significant issues in relation to the reasonableness and practicability of it:

*(a)* This remedy would remove drivers' current legal entitlement. In our Remedies Notice, we identified that the remedy would reduce the overall cost of providing replacement vehicles to non-fault claimants compared with the current entitlements under tort law because replacement vehicles would be provided according to the level of cover chosen by the policyholder and would no longer be provided to policyholders who had not taken out the appropriate cover. Whilst this would undoubtedly reduce costs, this remedy would mean that some drivers would no longer receive compensation (in the form of a replacement vehicle) when they are not at fault in an accident.[51] In our view, this would be too fundamental a change in tortious rights given the size and nature of the detriment we have found.

*(b)* The fact that this remedy would need a change in the law makes the timeliness of its implementation uncertain. If we believed that the remedy was the only effective and proportionate remedy, we would pursue it and accept the delay but we believe that we have identified a more timely remedy package which is effective and proportionate.

2.169 For these reasons, we have provisionally decided not to pursue Remedy 1A further.

*First party insurance for replacement cars – variants (Remedy 1A variants)*

*Description of remedy option*

2.170 We received proposals for three variants of Remedy 1A:

*(a)* Aviva proposed that insurers should be required to provide claimants with a replacement vehicle in the event they are not at fault in an accident as a standard policy cover. The replacement vehicle would be required to be

[50] Affected legislation would include the Road Traffic Act 1988 and the EU Directive relating to insurance against civil liability in respect of the use of motor vehicles.
[51] We also note that there would be a transfer of cost from high-risk to low-risk drivers.

equivalent or similar to the policyholder's vehicle, subject to a maximum size (eg 2.0 litre engine). Under Aviva's proposal, non-fault insurers would continue to subrogate their costs to the at-fault insurer. Aviva envisaged that its proposal would be combined with informational remedies (our Remedy A) and a ban on referral fees.

*(b)* CISGIL proposed that a minimum level of replacement vehicle cover should be made mandatory in all insurance policies and should cover both fault and non-fault situations. CISGIL said that subrogation would not be necessary.

*(c)* Enterprise proposed that insurers should be required to provide a like-for-like replacement vehicle to all non-fault policyholders. (In contrast to Aviva's proposal, the remedy would apply to non-fault claims only and there would be no maximum size). Enterprise proposed that there would be controls on the amount of the subrogated claims.

2.171 Aviva and Enterprise told us that their variants would not require a change in law:

*(a)* Aviva said this was because the remedy would be drafted so that there was no restriction on the level of recovery (which would be up to the level of cost the customer could reasonably recover as a retail rate).

*(b)* Enterprise said this was because non-fault claimants would be provided with the same level of replacement car to which they would be entitled under tort law, and the right to sue could remain.

2.172 CISGIL said that its variant would require significant revisions to the existing legislative framework for motor insurance. However, it said that the Road Traffic Act 1988 and the EU Directive 2009/103/EC 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 did not appear to constitute obstacles to the implementation of the remedy. It said that a baseline level of compulsory cover would ensure that consumers' legal entitlements under tort law would be met, though it acknowledged that non-fault claimants who had a need for a bigger vehicle than the basic provision would be disadvantaged compared with the current situation, unless they opted to pay an additional premium to receive a larger vehicle or a like-for-like vehicle. In its view, however, the removal of excess costs would result in lower premiums for all motorists, thereby outweighing this disadvantage.

2.173 Each party considered that its variant had benefits:

(a) Aviva submitted that, combined with informational remedies, its proposal would be likely to result in the non-fault insurer providing a replacement vehicle (except above the size limit where credit hire would continue to prevail). Since insurers would procure replacement vehicles at direct hire rates, it said that its proposal would reduce insurers' net costs by reducing the frictional and transactional costs associated with replacement vehicle provision, while providing for non-fault claimants to continue to receive a similar quality replacement vehicle to their existing vehicle.

(b) CISGIL said that its proposal would have the advantage of spreading the cost of providing replacement vehicles among all policyholders.

(c) Enterprise said that its amendments to Remedy 1A would ensure there was no additional cost to consumers, while maintaining their current legal entitlement.

2.174 We considered each of these options and discussed them with parties in our hearings and in subsequent discussions.

*Views of parties*

2.175 Some insurers supported Aviva's proposal in general terms but other insurers opposed it.

2.176 The CHCs/CMCs strongly opposed all the variants of Remedy 1A. Their concerns included that:

(a) individuals tortious rights would be lost under the Aviva and CISGIL variants;

(b) there would be no mitigation under the Enterprise variant, hence increasing costs;

(c) premiums would increase as universal cover would be more expensive;

(d) costs would be redistributed on to lower-risk drivers;

(e) Enterprise's variant needed Remedy 1C to be effective; and

(f) Enterprise's variant would create confusion in cases of split or disputed liability.

*Our reasons for not taking the remedy option forward*

2.177 In our view, none of the three variants of Remedy 1A had overall advantages compared with our proposed remedies package.

- *Aviva's variant*

2.178 By requiring insurers to provide a similar-sized replacement car to all claimants (not just non-fault claimants) Aviva's proposal would increase insurers' costs of providing comprehensive insurance (taken by over 90% of customers). This would be because at-fault and split liability claimants would receive a similar quality replacement car, whereas currently most at-fault and split liability claimants receive something less (usually a courtesy car). While Aviva's proposal would benefit at-fault and split liability claimants to the extent that they get a better quality replacement car than currently, it would have the disadvantage of requiring consumers to purchase a higher-quality product than they appear to want (eg [✄]% of DLG's Direct Line new business customers who are not currently offered a courtesy car as standard pay extra for like-for-like temporary replacement vehicle cover as an add-on).

2.179 We would expect that, if all insurers experienced higher costs, this would result in higher premiums. The overall impact of Aviva's proposal on premiums therefore depends on the balance between, on the one hand, lower frictional and transactional costs and, on the other hand, higher costs of providing replacement vehicles to at-fault and split liability claimants. Initial modelling submitted by Aviva showed that premiums could reduce, but may increase. In its modelling, Aviva assumed a substantial fall in frictional and transactional costs as it expected insurers to arrange direct hire for non-fault as well as at-fault claimants, and also to agree bilaterally to subrogate to each other at direct hire rates. [✄] disagreed with these assumptions. [✄] told us that CHCs would be able to find other means of capturing non-fault claimants (eg through breakdown assistance companies). [✄] also stated that a ban on referral fees could increase the net consumer detriment if there were not a cap on credit hire rates. Under [✄] view, Aviva's proposal would be likely to lead to additional costs (as a result of, for example, mandatory provision of replacement vehicles and like-for-like provision of replacement vehicles) and therefore higher total premiums.

2.180 Even on the basis of Aviva's own assessment of the effects of its proposal, the benefits would be similar to our proposed Remedy 1C (lower frictional and transactional costs), but the additional costs would be significant as it would provide at-fault and split liability claimants with a costly service of unknown value which most appear not to wish to pay for. Overall, in our view, it appears a less net-beneficial remedy than Remedy 1C.

- *CISGIL's variant*

2.181 In our view, it was not clear that the CISGIL variant could be implemented without a change in law, given the proposal not to allow subrogation and to cap non-fault claimant's rights at a specified maximum size vehicle. We also found that CISGIL's variant suffered from the same concern as Aviva's proposal because the mandatory cover would relate to both fault and non-fault situations.

- *Enterprise's variant*

2.182 It seemed to us that Enterprise's variant envisaged a cap on hire rates similar to Remedy 1C. Therefore, the question we considered was whether the additional requirement in Enterprise's proposal (ie that insurers provide non-fault claimants with a like-for-like replacement vehicle) was necessary for non-fault claimants to continue to obtain their tortious rights and whether it was practicable. In our view, our remedies package is likely to be effective and sufficient and therefore requiring insurers to provide non-fault claimants with a like-for-like replacement vehicle goes further than is necessary. As regards practicability, we noted that it was not clear in Enterprise's proposal what would happen in cases where it was initially unclear whether a claimant was not at fault.

- *Provisional conclusion on all three variants*

2.183 For the reasons set out above, we have provisionally concluded not to proceed with any of the proposed variants of Remedy 1A.

*At-fault insurers to be given first option to handle non-fault claims (Remedy 1B)*

*Description of remedy option*

2.184 In our Remedies Notice, we proposed a remedy which would give at-fault insurers the first option to handle either the whole of a non-fault claim or only the replacement vehicle part of a non-fault claim. The aim would be to introduce competition from at-fault insurers at FNOL, placing a greater constraint on the behaviour of non-fault insurers and other parties (such as CMCs).

2.185 We identified a few variants of this remedy, which we said could be applied to replacement vehicles (and in the case of (a) and (b) potentially to repairs as well), as follows:

(a) *Give the option to the non-fault claimant to choose between the at-fault insurer, their own insurer or broker, or a CMC to handle their claim:* When a non-fault claimant makes the FNOL to their own insurer or CMC (or to a broker who refers the claim to the insurer or a CMC), the insurer or CMC should inform the at-fault insurer of the claim. The at-fault insurer would have a limited period of time to contact the non-fault claimant to offer to provide a replacement vehicle and manage the repairs. The at-fault insurer would not be obliged to make an offer to the non-fault claimant. In addition, this remedy would not apply in cases where liability is undecided or split, such that the distinction between the at-fault insurer and non-fault insurer cannot be made. The non-fault claimant would then be able to elect to have their own insurer, broker or a CMC handle the claim instead of the at-fault insurer.

(b) *Remove the choice of the customer, giving the at-fault insurer the option to capture the claim:* If the at-fault insurer wanted to capture the claim having seen the circumstances of the case, the claimant would be obliged to accept the at-fault insurer managing the claim and would arrange the provision of services such as a replacement vehicle and repairs.

(c) *Provide the at-fault insurer with the option to provide a replacement vehicle to the non-fault claimant (note: this variant would not apply to the repair of a vehicle):* When a non-fault claimant makes the FNOL to their own insurer or CMC (or to a broker which refers the claim to the insurer or a CMC), the non-fault insurer or CMC would agree with the claimant the type of replacement vehicle to be provided having worked through the legal entitlements of the claimant. The non-fault insurer or CMC would then advise the at-fault insurer of its daily hire rate for the vehicle. The at-fault insurer would then have the option to provide an equivalent replacement vehicle itself. We then identified two variants of this remedy:

(i) if the at-fault insurer elected to provide the replacement vehicle, the claimant would be obliged to accept the provision of the replacement vehicle by the at-fault insurer; or

(ii) a non-fault driver would retain their legal entitlement, including the right to choose their service provider, but if the at-fault insurer offered a replacement vehicle to the non-fault claimant, making clear that it was going to pay a lower hire rate than the non-fault claimant (or the non-fault insurer or CMC) was going to pay, then the non-fault claimant would only be able to recover an amount equal to the at-fault insurer's costs for supplying the vehicle.

*Views of parties*

2.186 Parties generally did not support Remedy 1B. The main reasons for opposing the remedy were that that it would remove a claimant’s right to choose their provider for post-accident services. Parties were also concerned about practical aspects of the various variants of the remedy, which could lead to unintended consequences. CMCs/CHCs and some third parties also told us that Remedy 1B might be ineffective. In summary, the concerns raised were:

*(a)* Limited impact of the remedy. CMCs/CHCs told us that Remedy 1B would not be effective as it would not have any impact on many non-fault claims. Helphire suggested that up to 40% of non-fault accidents would not be affected by this remedy.

*(b)* Removal or reduction in consumers' right to choose their service provider for post-accident services. Insurers and brokers noted that consumers purchase insurance products not only because of price but also because of other factors, such as trust and service differentiation, which are reflected in their premium. Under Remedy 1B, post-accident services would not be provided by their chosen insurer but by a third party insurer. Several parties submitted that the change of legal rights of consumers would require a change in law, which would be disproportionate to the financial benefits of the remedy. However, some other parties were concerned that, if the claimants' right to choose their post-accident services were maintained, the remedy might be ineffective.

*(c)* Reduction of service provision. Some parties told us that at-fault insurers would have less incentive to meet claimants' legal entitlements. This would affect in particular vulnerable consumers (eg those who have suffered a personal injury). However, some insurers told us that their incentive would be to provide a high-quality service because a captured claim was an opportunity to acquire a new client. Brokers, CMCs/CHCs and some third parties said that, because the scope of this remedy was limited to replacement vehicles and, possibly, repairs, other service requirements of customers would not be met. In particular, this remedy would allow at-fault insurers to deal with other aspects of a claim (eg in relation to personal injury). As the incentive of at-fault insurers is to minimise costs, the concern was that this would lead to an overall decrease in the quality of these services.

*(d)* Additional steps and unnecessary complexity in the claim process. Some parties said that this remedy would cause delays in the provision of post-accident services and introduce greater uncertainty and confusion for customers.

*(e)* Practical difficulties where liability is uncertain or split. At-fault insurers would be required to make a quick and uninformed decision on whether to accept the claim without the benefit of any detailed evidence.

(f) Increase of frictional costs, in particular when repairs and replacement vehicles were provided by different parties.

*Our reasons for not taking the remedy option forward*

2.187 We identified some potential benefits from this remedy option as it would increase the constraints on the service providers which control costs but which are not liable for them. However, we also identified a number of significant concerns with it, and with each of its variants, as follows:

- *Delays in replacement vehicle provision*

2.188 This remedy necessarily involves delay as, in order to be effective, at-fault insurers must be given sufficient time to understand the circumstances of the case, to decide whether to accept liability and to make an offer to the non-fault claimant. During this period, claimants would not be provided with a replacement vehicle and, assuming their vehicle is not roadworthy, their legal entitlement would not be met. Under the third variant of this remedy, the delivery of the replacement vehicle would be further delayed as the offers of different parties would have to be compared on quality and costs.

2.189 Although we received submissions from some insurers that a short time frame (some suggested no longer than 24 hours from FNOL) would be required for at-fault insurers to take a decision, with few disadvantages to claimants, others suggested that it could take longer. We noted that, although a longer time frame would increase the effectiveness of the remedy, this would risk lowering the quality of service to the non-fault driver.

- *Added complexity to the claim process*

2.190 We were also concerned that the procedures required by this remedy might increase the costs incurred by parties and claimants, eg through increased management costs and litigation relating to compliance. We noted that the additional procedures at the start of the claims process might also be more confusing for claimants.

- *Loss of choice of service provider*

2.191 In relation to the second and third variants, we noted that the claimant would be obliged to accept the at-fault insurer managing the claim and arranging the provision of services, such as a replacement vehicle and repairs. This variant would remove the legal entitlement which the non-fault claimant currently has to choose their service provider. We considered that this risk was more acute for repairs given that some claimants like to choose their repairer.

- *Risk of under-provision*

2.192 While we recognised the benefit from at-fault insurers having a strong incentive to control the costs of non-fault claims, we were concerned that this also created a risk of reduced service provision because at-fault insurers would have less incentive to meet claimants' legal entitlements. This risk would be particularly high for the variant of the remedy which removed the claimant's right to choose the service provider. In that variant, at-fault insurers would not be constrained by the threat of claimants choosing another provider.

- *Provisional conclusion*

2.193 Based on these considerations, we provisionally concluded that the three variants of Remedy 1B were not sufficiently practicable and hence would be ineffective in addressing the AEC and/or customer detriment which we had identified.

*Measures to control non-fault repair costs (Remedy 1D)*

*Description of remedy option*

2.194 In our Remedies Notice we proposed a remedy which aimed to prevent subrogated claims for repair costs being marked up above the costs incurred, with the aim of reducing frictional costs. We said that, if claims amounts were lower, the frictional costs associated with repair claims should be lower because lower claims should result in fewer disputes.

2.195 The Remedies Notice set out two possible ways in which these aims might be achieved:

*(a)* Remedy 1D(a) – the repair costs recoverable through subrogated claims would be limited to the 'wholesale price' paid by non-fault insurers to repairers, plus, possibly, an allowance for an administration charge.

*(b)* Remedy 1D(b) – the repair costs recoverable through subrogated claims would be limited to standardised costs. If the actual repair cost were higher than the standardised cost, then the non-fault insurer would not be able to recover that cost and would incur the costs. Conversely, if the actual repair cost were lower than the standardised cost, the benefit could be retained by the non-fault insurer.

*Views of parties*

2.196 Several respondents to our Remedies Notice supported Remedy 1D. They said that, if the remedy could be implemented effectively, it would address the issues we had identified. There was more support for Remedy 1D(a) than 1D(b). However, both those parties which supported the remedy and those which did not identified some potential difficulties with the design and implementation of the remedy. These concerns are summarised below.

- *Definition of wholesale costs*

2.197 Many parties told us that wholesale costs could not be defined clearly, which would make the remedy impractical and difficult to enforce. Parties also said that, because the remedy did not envisage an objective benchmark for wholesale costs, repair costs could still be inflated in the subrogated claim.

- *Reduced incentive to minimise repair costs*

2.198 Some parties told us that a requirement for subrogated repair costs to be equivalent to the wholesale costs incurred by the non-fault insurer (Remedy 1D(a)) might lead to an increase in repair costs. They said this could arise if the remedy reduced the incentive for non-fault insurers to negotiate with repairers and parts/paints suppliers to minimise repair costs.

- *Circumvention*

2.199 Some parties raised the concern that Remedy 1D(a) could be circumvented by insurers which are vertically integrated with repairers. This could be achieved by the repairer artificially increasing the repair cost charged to the insurer and rebating the excess profit to the insurer parent company by way of a dividend or other monetary transfer.

- *Determination of standardised costs*

2.200 Many parties told us that it would be impractical or very complex to set standardised costs and, if the remedy were implemented, an independent body would have to be established to set the standardised costs. One difficulty would be the number of parts used in repairs and, while some parties acknowledged that the use of cost estimating systems might facilitate the remedy, they told us that these systems did not cover all aspects of the costs of repairs. In particular, the labour rates to be used in calculating the repair cost would also have to be set, taking account of regional variations and the provision of different types of labour. In addition, discounts would have to be applied to parts and paint supplies from the standard system rates in order to reflect better the market rates. Identifying the actual discounts would be complicated by the number of parts involved, the number of suppliers and the variety of pricing arrangements which insurers and repairers have in place. An additional complexity would be that guidelines would need to be set governing the circumstances in which parts should be repaired rather than replaced and whether original equipment manufacturer (OEM) parts or non-OEM parts should be used.

- *Distortion*

2.201 Another concern which some parties identified with the use of standardised costs was that it could benefit larger insurers which could negotiate bigger discounts with suppliers, in contrast to smaller insurers which might not be able to recover the full amount of the costs they incur. Some respondents told us that this could reduce competition if it enabled the larger insurers to offer lower premiums than smaller insurers. However, we noted that it was a normal result of competition that some companies benefited from buying at lower prices than others.

*Our reasons for not taking the remedy option forward*

2.202 Our working paper setting out our revised estimation of the detriment from ToH 1 (WP23) shows our current assessment of the net detriment arising from insurer-managed and CMC-managed repairs. Our main estimates are summarised in Table 1 below. The net detriment associated with repair is considerably smaller than that associated with credit hire. The main reasons for this are: *(a)* repair bills subrogated to at-fault insurers are closer to cost than credit hire bills; and *(b)* most non-fault repairs tend to generate lower frictional/transactional costs than non-fault credit hire, in particular when the repair is insurer-managed rather than CMC-managed.

TABLE 1 **Summary of detriment calculations: repair, write-off and credit hire**

| | *Insurer-managed repair* | *Credit repair* | *Insurer-managed write-off* | *Credit write-off* | *Credit hire* |
|---|---|---|---|---|---|
| Average bill less cost to at-fault insurer of captured claim (£) | 95 | 290 | 53 | 125 | 566 |
| At-fault insurer's average transactional/ frictional costs (£ per claim) | 32 | 45 | 32 | 45 | 78 |
| At-fault insurer's average management costs saved (£) | (111) | (111) | (111) | (111) | (27) |
| Average cost of separation to at-fault insurer (£ per claim) | 17 | 224 | (25) | 59 | 618 |
| Average revenue to non-fault insurer (referral fees etc, £ per claim) | (20) | 53 | (62) | 53 | 328 |
| Net detriment (£ per claim)* | 37 | 170 | 37 | 6 | 289 |
| Number of claims (thousand) | 240 | 85 | 64 | 21 | 301 |
| Net detriment (£ million)* | 9 | 15 | 2 | 0 | 87 |

*Source:* CMA calculations.

*Net detriment is average cost of separation to non-fault insurer less average revenue to non-fault insurer.

2.203 We estimated that the total detriment associated with non-fault repair is around £24 million, of which £9 million is from insurer-managed repairs and £15 million from credit repairs. In considering remedies, we recognised that some transactional/frictional costs were an inevitable result of separation and that such costs were currently low for insurer-managed repairs. We noted that it would be very difficult to make substantial reductions in frictional costs, which were already relatively low, without requiring claimants to have their claims managed by the at-fault insurer (which we considered under Remedy 1B (see paragraphs 2.184 to 2.193)). Nevertheless, we considered the extent to which either remedy 1D option would address the detriment we had identified.

- *Remedy 1D(b)*

2.204 In light of the responses to our Remedies Notice concerning this remedy option, we judged that its design would be complex and it would be costly to regulate. This is because of the very high number of different parts which would need to be captured (the Audatex cost estimating system has a parts database of over four million items), the difficulties of setting the appropriate labour rates and discounts, and the likelihood that a new body would have to be established to update the standard costs on a regular basis. We were also mindful of the possible distortions which might result if some insurers could recover more than the costs they incurred while others could not recover the full amount of the costs they incurred.

2.205 We noted that at-fault insurers currently conducted checks on repair bills from non-fault insurers and CMCs by using cost estimating systems. In our view, a remedy requiring the price to be set for all repair component costs (on an annual basis) and then monitored was likely to be complex and would add significantly to the costs of the checks which are currently (and would probably continue to be) performed by non-fault insurers.

2.206 We also noted that the remedy would address only the net detriment we had found in relation to CMC-managed repairs, which we estimated to be around £15 million. This is because the remedy would be unlikely to reduce significantly the level of transactional/frictional costs on insurer-managed repairs, which was already low. We would also not expect the remedy to eliminate entirely the £15 million detriment we had identified.

2.207 Taking these factors into account, we judged that Remedy 1D(b) would be likely to be impracticable and disproportionate and therefore we provisionally decided not to pursue this remedy option further.

- *Remedy 1D(a)*

2.208 We noted that bilateral agreements between some insurers required that subrogated repair claims were limited to the actual repair costs incurred by the non-fault insurer, taking into account any discounts and rebates. These agreements indicated to us that the objective of this remedy option to reduce costs to a 'wholesale level' was feasible, at least when parties were mutually willing to operate under these terms. In our view, these bilateral agreements could form a basis for the possible design of this remedy option. We also noted that the GTA credit repair agreement set out procedures for managing repair costs and required that CMCs pass on standard discounts to at-fault insurers (although it applies only to those GTA subscribers which have elected to apply it). We were not aware of any bilateral agreements between CMCs and insurers relating to repair costs.

2.209 However, we found that there were some important differences between parties entering into bilateral agreements voluntarily and a remedy which would be mandatory, as follows:

*(a)* The existing bilateral agreements relied on each party trusting the other to calculate the wholesale cost of repairs, which would not apply in all cases if the remedy were mandated.

*(b)* A party could withdraw from a bilateral agreement so there was little need for significant monitoring, whereas, by contrast, a mandatory regime would require greater monitoring to ensure compliance.

2.210 We were concerned that there was a possibility that the remedy would increase frictional costs if it led to an increase in at-fault insurers disputing the repair claims submitted to them on the grounds that the claim did not properly reflect the wholesale cost of the repair to the non-fault insurer or CMC.

- *Insurer-managed repairs*

2.211 Given the current low level of transactional/frictional costs for insurer-managed non-fault repairs, and the potential for these costs to increase as a result of this remedy (see paragraph 2.210), we provisionally concluded that Remedy 1D(a) was not likely to be effective in addressing the detriment arising from these repairs.

- *CMC-managed repairs*

2.212 In our view, there was more possibility of Remedy 1D(a) reducing the existing level of detriment in relation to CMC-managed non-fault repairs. However, we noted that there were risks that this level of benefit might not be achieved because:

*(a)* the remedy would remove the incentive for CMCs to control their repair costs as they would not derive any benefit from any discounts and rebates they achieved (this is in contrast to insurers which also conduct at-fault repairs, and therefore would have a continuing incentive to negotiate such discounts and rebates to keep their costs low); and

*(b)* there could be an increase in frictional costs (see paragraph 2.210).

2.213 In our view, these factors cast significant doubt on the likelihood of the remedy addressing the detriment arising from CMC-managed repairs. In addition, we were concerned that it would be inappropriate to apply the remedy option to CMC-managed repairs but not to insurer-managed repairs as this would produce inconsistent price caps for the cost of repair (one at 'retail' rates (for insurers) and one at 'wholesale' rates (for CMCs)) according to which party was managing the repair.

2.214 For these reasons, we provisionally concluded that Remedy 1D(a) would be impracticable and most likely ineffective in addressing the detriment arising from CMC-managed repairs.

- *Overall view on Remedy 1D(a)*

2.215 Overall, we provisionally concluded that Remedy 1D(a) was unlikely to be sufficiently effective in addressing the net detriment arising from repairs which we had identified in order to be a remedy which we should pursue.

2.216 Nevertheless, we noted that the bilateral agreements which existed between insurers were providing benefits in reducing frictional costs. In our view, these bilateral agreements can provide a route to reducing the net detriment we have identified. Whilst they involve some transactional and monitoring costs for those party to them, they are less onerous than Remedy 1D(a) would be because they occur in situations where parties build trust and transparency. These bilateral agreements should therefore be encouraged where insurers and CMCs can form sufficient trust such that an agreement will allow frictional costs to be reduced. Similarly, we believe that measures in the GTA to reduce frictional costs associated with credit repair should also be encouraged (see paragraph 2.137).

2.217 We noted that, for those insurers which are not currently adopting the practice of marking repair bills up to retail rates and are therefore suffering from receiving non-fault repair bills from other insurers which are higher than the non-fault repair bills they subrogate, the solution to removing this asymmetry was in their own hands through reaching bilateral agreements with the other insurers.[52]

*Measures to control non-fault write-off costs (Remedy 1E)*

*Description of remedy option*

2.218 In our Remedies Notice we proposed a remedy which aimed to ensure that subrogated claims in relation to write-offs reflected the actual salvage proceeds received by the non-fault insurer rather than an estimated value.

2.219 The Remedies Notice set out two possible ways in which this aim might be achieved:

*(a)* Remedy 1E(a): require that at-fault insurers are given the option to handle the salvage of non-fault vehicle write-offs in non-captured claims; and/or

*(b)* Remedy 1E(b): require that all write-off claims handlers either use actual salvage proceeds (including any referral fee paid by the salvage company to the claims handler) or subrogate the claim to the at-fault insurer based on the estimated salvage value but adjust it (up or down) once the actual salvage proceeds (and any referral fee) have been received from the salvage company.

[52] We acknowledge that it might be necessary for the insurers not currently marking up repair bills to threaten to do so in order to encourage some of those insurers which are currently doing so to agree bilaterally to subrogate repair bills at cost.

*Views of parties*

2.220 The majority of the ten largest insurers told us that they supported Remedy 1E in principle. There was more support for Remedy 1E(b) than 1E(a). However, these parties, as well as the parties which did not support the remedy, identified some potential difficulties with the design and effectiveness of it. Parties also told us that very few claims for write-offs were challenged by at-fault insurers, though a higher proportion of claims handled by CMCs were challenged than claims handled by non-fault insurers.

- *Remedy 1E(a)*

2.221 Many parties told us that this remedy option would not be effective because at-fault insurers would not take up the option of handling the salvage of non-fault vehicle write-offs. This was because they would not want the additional costs of handling the salvage (eg storage of vehicle, transfer of ownership, etc).

- *Remedy 1E(b)*

2.222 A majority of the ten largest insurers told us that this remedy option was similar to their current practice. Other parties told us that an adjustment mechanism could increase administration costs and delay the final settlement between the insurers.

*Our reasons for not taking the remedy option forward*

2.223 In our working paper setting out our revised estimation of the detriment from ToH 1 (WP23) we estimate that the net detriment arising from non-fault write-offs is approximately £2 million. This almost all relates to insurer-managed write offs.

- *Remedy 1E(a)*

2.224 In light of the responses to our Remedies Notice which set out why at-fault insurers would not take up the option of handling the salvage of non-fault vehicle write-offs, we judged that this remedy option was unlikely to be effective and provisionally decided not to pursue it further.

- *Remedy 1E(b)*

2.225 In order to explore this remedy option further we obtained additional information on how insurers and CMCs manage non-fault write-offs. In particular, we asked those insurers and CMCs which had told us that subrogated claims for write-offs were based on actual salvage proceeds to explain what they meant by this term. Our analysis of these responses is set out in Appendix 2.6. In summary, we found that some insurers and CMCs received profit shares or volume commissions from salvage companies, the benefit of which was not always reflected in the claims they subrogated to at-fault insurers.

2.226 In our view, this issue was very similar to the issue in relation to non-fault repairs, where some subrogated claims for repair costs do not reflect the discounts and rebates received by non-fault insurers or CMCs. For this reason, and reflecting our revised understanding of how monies flow between insurers/CMCs and salvage companies, we considered a variant of Remedy 1E(b) which would be similar to Remedy 1D(a), ie that subrogated non-fault write-off claims should take account of any profit share, volume commission and/or any other similar payment received from a salvage company, either at the time of making a claim or via an adjustment to the claim once the salvage proceeds are known.

2.227 However, in view of the small scale of the net detriment we had identified in relation to write-offs, and given the similarities between Remedy 1D(a) and this variant of Remedy 1E(b), we judged that this variant of Remedy 1E(b) should only be considered for implementation as a package with Remedy 1D(a). In our view, without a system to monitor the profit shares, volume commissions and any other similar payments insurers and CMCs received from salvage companies, such as would be required in relation to Remedy 1D(a), this remedy option would be unlikely to be effective. In addition, we found that there was a significant circumvention risk with such a remedy, and also a risk of introducing new frictional costs (see paragraph 2.210).

2.228 Therefore, given that we had provisionally decided not to pursue Remedy 1D(a), we provisionally concluded that we should also not pursue Remedy 1E(b) (or any variant of it).

*Prohibition of referral fees (Remedy 1G)*

*Description of remedy option*

2.229 In our Remedies Notice we said that a prohibition of referral fees would aim to support other remedy options (eg Remedy 1D(a)) where usage of referral fees might otherwise undermine the effectiveness of the remedy.

2.230 This remedy would prohibit:

*(a)* referral fees or commissions paid by CMCs/CHCs/repairers/others to non-fault insurers/non-fault brokers/others for referring non-fault claimants in relation to the provision of replacement cars and repairs; and

(b) referral fees or commissions paid by salvage companies to non-fault insurers.

*Views of parties*

2.231 Of the parties which supported this remedy, the majority told us that it could not operate in isolation, as it would not directly address the AEC or consumer detriment which we had identified under ToH 1, and would be more effective as a measure to support the other remedies we had proposed, which could be undermined or circumvented if the payment and receipt of referral fees remained.

2.232 Several parties rejected the remedy on the basis that the other remedies proposed under ToH 1, which were intended to reduce the cost of non-fault claims (most notably Remedy 1C, Remedy 1D and Remedy 1E), would restrict the ability of post-accident service providers to pay referral fees by reducing the margin they generated from the provision of these services. As a result, the need for an outright ban of referral fees would be removed.

- *Possible adverse effects*

2.233 There were a range of views on the likely impact of the remedy on PMI premiums. Some parties told us that a prohibition of referral fees would result in an increase in premiums because, under the current system, referral fees gained from post-accident service providers were (at least to a significant extent) passed from insurers to consumers in the form of reduced premiums. However, other parties, including insurers, suggested that the remedy could reduce the incentive to refer for costly credit hire and hence reduce the overall cost of non-fault claims, thus resulting in a reduction in premiums.

2.234 Several CHCs told us that the prohibition of referral fees would have an adverse impact on their business model, as it would reduce their ability to obtain referrals from insurers, thus reducing the competitive pressure on insurers in the servicing of non-fault claims.

2.235 Several parties suggested that the remedy would encourage vertical integration or the formation of alternative business structures by insurers to extract referral fee income through other means.

- *Circumvention*

2.236 Several parties told us that the remedy would require a broad definition of referrals fees (ie including rebates, profit shares and other financial mechanisms) in order to minimise the risk of circumvention.

*Our reasons for not taking the remedy option forward*

2.237 We considered first whether a ban on referral fees would support the other remedies we were pursuing. The only remedy on which such a prohibition would have an effect would be Remedy 1C. Under Remedy 1C, the rate cap would be set at, or close to, the efficient level of providing replacement vehicles. Therefore, in our view, we did not additionally have to prohibit referral fees. Indeed, allowing referral fees to continue would mean that, in the event that the rate cap is set too high, referral fees will ensure any replacement vehicle providers' excess profits are competed away and fed back to insurers, resulting in lower PMI premiums for consumers.

2.238 We considered next whether we should prohibit referral fees in relation to repairs and write-offs, where we are not pursuing Remedies 1D and 1E. We considered that this would not be an effective or proportionate remedy because:

*(a)* Referral fees are not part of the net detriment which we are trying to address (because they feed back into lower PMI premiums). Therefore, any prohibition would not reduce the net detriment (though it might reduce some of the distributional effects we have identified due to different effects on low-risk and high-risk customers).

*(b)* Referral fees are not common in relation to write-offs and are small in relation to repairs (see Appendix 2.6 and our working paper setting out our revised estimation of the detriment (WP23)). Therefore, any prohibition would be unnecessary and ineffective.

*(c)* Banning referral fees carries high circumvention risks (see paragraph 2.236).

2.239 Therefore, we provisionally decided not to pursue this remedy.

***Assessment of relevant customer benefits***

2.240 In deciding the question of remedies, we may 'have regard to the effect of any action on any relevant customer benefits of the feature or features of the market concerned'. RCBs are defined in the Act and are limited to benefits to relevant customers in the form of *(a)* lower prices, higher quality or greater choice of goods or services in any market in the UK (ie not necessarily the market to which the feature or features concerned relate); or *(b)* greater innovation in relation to such goods or services. The Act provides that a benefit is only an RCB if the CMA believes that: *(a)* the benefit has accrued as a result (whether wholly or partly) of the feature or features concerned or may be expected to accrue within a reasonable period of time as a result (whether wholly or partly) of that feature or those features; and *(b)* the benefit was, or is, unlikely to accrue without the feature or features concerned.

*Views of parties*

2.241 Several respondents to our provisional findings and Remedies Notice commented on the benefits of separation of cost liability and cost control (see paragraph 2.166 and Appendix 2.1), in particular the CHCs/CMCs. These parties told us that their existence led to constraints on the behaviour of insurers and a higher quality of service being provided to non-fault claimants. The benefits suggested by CHCs and CMCs included:

*(a)* The presence of CHCs/CMCs cause liability to be resolved more often and more quickly.

*(b)* Bilateral agreements between insurers for the provision of replacement vehicles, which limit the possibility of CHCs/CMCs to provide their services, can cause a reduction in the quality of service which non-fault claimants receive.

*(c)* Many CHCs/CMCs offer uninsured loss recovery services to claimants free of charge, which are not offered in insurer-managed claims (unless the customer has purchased an add-on (ie motor legal expenses insurance (MLEI))). The benefit consumers get from these services should be deducted from the detriment.

*(d)* Captured claimants are not sufficiently protected by FCA rules concerning the fair treatment of customers, which do apply to most CHCs/CMCs.

*Our assessment of RCBs*

2.242 We considered each of the suggested benefits of separation in our working paper on the net detriment (see WP23). We found that:

*(a)* the presence of CHCs/CMCs did not seem to have any impact on the frequency of resolution of liability and there was no evidence to suggest that a higher speed of liability resolution was associated with separation;

*(b)* the evidence was unclear on whether the provision of replacement vehicles was any different in situations with and without bilateral agreements; and

*(c)* the cost of uninsured loss recovery services was relatively small, and most likely less than £1 million per year.

2.243 We also said that we should adopt a benchmark in our AEC assessment where the quality of service received by non-fault claimants in relation to their replacement vehicle is kept at the level of their tortious entitlement.

2.244 We noted that benefits *(a)* and *(b)* in paragraph 2.241 would only be lost if our remedies lead to either (i) the removal of the separation of cost liability and cost control, or (ii) a reduction in the level of replacement vehicle provision received by non-fault claimants. With regard to (i), the remedies we are proposing do not remove the separation of cost liability and cost control. Rather, our remedies are designed to reduce the inefficiencies which arise from separation. With regard to (ii), the remedy we are proposing which could have a potential effect on the provision of replacement vehicles is Remedy 1C. Under this remedy, if the price cap is set too low, there is a risk that the level of replacement vehicle provision would reduce. However, it is not our intention to prevent non-fault claimants from obtaining their legal entitlement under tort law (see paragraph 2.50), and therefore we will take care to ensure that the price cap is not set too low. We would not therefore expect there to be a reduction in the level of replacement vehicle provision because efficient replacement vehicle providers should be able to continue providing a service as they do now. Our intention is to reduce the transactional/ frictional costs between parties and we have taken care in designing Remedy 1C to consider the possible effects on replacement vehicle provision.[53] These considerations will continue to apply as the precise values of the first rate cap are set, and in their subsequent determinations.

2.245 We noted that some customer benefits could be reduced by our remedies. In particular, we noted that there was a risk of a reduction in help to non-fault claimants without MLEI on uninsured loss recovery. We acknowledged that it was uncertain whether replacement vehicle providers would continue to offer these services. However, we found that the overall costs of these services was small (see paragraph 2.241(c)).

*Conclusion on RCBs*

2.246 We provisionally concluded that there was no evidence to suggest that the introduction of our proposed package of remedies would result in a material loss of RCBs. Therefore, we provisionally decided not to alter our proposed package of remedies to take account of RCBs.

[53] If the remedy leads to the removal of any inefficient firms from the market then this should not be seen as a lost RCB.

***Effectiveness and proportionality of the proposed package of remedies***

2.247 In summary, we propose that the following measures be included within the package of remedies to address the AEC and detriment identified under ToH 1:

*(a)* information on consumers' rights (Remedy A);

*(b)* measures to control the cost of providing replacement vehicles to non-fault claimants (Remedy 1C); and

*(c)* improved mitigation in relation to the provision of replacement vehicles to non-fault claimants (Remedy 1F).

2.248 In this section, we set out our provisional views on the following:

*(a)* how the package of remedies effectively addresses the AEC and/or customer detriment; and

*(b)* the proportionality of our proposed package of remedies.

*How the package of remedies addresses the AEC and/or customer detriment*

2.249 We have discussed the rationale for each element of the proposed package of remedies within our discussion of each remedy. In evaluating the effectiveness of our package of remedies, we have considered the following factors:[54]

*(a)* those aspects of the AEC and detriment which we are not addressing;

*(b)* the extent to which the measures are capable of effective implementation, monitoring and enforcement;

*(c)* the timescale over which the measures will take effect;

*(d)* consistency with existing and likely future laws and regulations; and

*(e)* the coherence of the remedies as a package.

*Those aspects of the AEC and detriment which we are not addressing*

2.250 The remedies we have proposed focus on the AEC and detriment in so far as it relates to replacement vehicles. We have not addressed the AEC or detriment in so far as it relates to repairs and write-offs (other than where

Remedy A provides information on consumers' rights in relation to repairs and write-offs). This is because:

*(a)* In relation to insurer-managed repairs and both insurer-managed and CMC-managed write-offs, the level of transactional/frictional costs was low, and the remedies we identified (Remedies 1D and 1E) would not address effectively the small detriment we had identified (see paragraphs 2.211 and 2.228). Therefore we were unable to identify any practicable and proportionate remedy which would be capable of addressing these aspects of the AEC and detriment.

*(b)* In the case of credit repairs, we found that Remedy 1D might have some effect on the detriment but we identified significant risks in relation to the practicability of the remedy and some potential adverse consequences arising from it (see paragraphs 2.212 to 2.214). These concerns were sufficient for us to conclude that the remedy was unlikely to be an effective solution to this aspect of the AEC and detriment.

2.251 Therefore, our decision to remedy the detriment in relation to replacement vehicles and not in relation to repairs and write-offs followed from two key considerations:

*(a)* The detrimental effects which are capable of being addressed without removing the separation of cost liability and cost control are larger for replacement vehicles than for repairs and write-offs. In addition, the pricing effect on high-risk drivers appears much larger for replacement vehicles than for repairs and write-offs, even if all insurers were to inflate costs on repairs and write-offs.

*(b)* The nature of replacement vehicle provision makes it easier to design a remedy which can practicably cap subrogated bills. Replacement vehicles can be categorised into a number of different classes of vehicles, whereas repairs vary according to the make and model of car and the nature of the damage to the vehicle, such that there are thousands of potential repairs.

2.252 Whilst we have chosen not to remedy the detriment in relation to repairs and write-offs, we noted that bilateral agreements and measures by the GTA in relation to credit repairs should be encouraged (see paragraphs 2.216 and 2.217).

*Implementation, monitoring and enforcement*

2.253 For each remedy measure, we considered how it could best be implemented, monitored and enforced. These considerations are set out in our assessment of each remedy. In summary, we have provisionally concluded:

(a) All of our measures will be implemented by means of an enforcement order, given the need to address a wide range of market participants with the remedies, as follows:

   (i) Remedy A will be made to PMI providers and all parties responsible for handling FNOL; and

   (ii) Remedies 1C and 1F will be made to all parties responsible for subrogating claims for replacement vehicles.

(b) Monitoring and enforcement will be conducted as follows:

   (i) Remedy A will be monitored and enforced by the CMA. Insurers, brokers and FNOL providers will be required to submit annual compliance statements (see paragraphs 2.41 to 2.43).

   (ii) Remedy 1C will require a CMA panel to be appointed to conduct periodic reviews of the rate cap, with the first periodic review occurring two years after the implementation of the remedy and further reviews occurring thereafter every three years (see paragraphs 2.143 to 2.147). There will not be a significant role for the CMA to conduct any overall monitoring and enforcement of the rate cap once it has been set as any breach would be transparent to insurers and could be enforced through the courts. There will be some monitoring of the annual reports which insurers will be required to submit setting out their aggregate data on liability assessments (see paragraph 2.102).

   (iii) Remedy 1F can be enforced and monitored without the need for external intervention by providing the at-fault insurer with the mitigation declaration (see paragraphs 2.148 to 2.150).

2.254 We provisionally concluded that each of the measures is capable of effective implementation, monitoring and enforcement.

*Timescale over which the remedy measures will take effect*

2.255 In evaluating the timescale over which the remedy measures within our proposed package of remedies were likely to take effect, we considered:

(a) the time that it was likely to take to implement the remedy measures, following the publication of our final report; and

(b) the time that it was likely to take for the remedy measures, once implemented, to remedy the AEC and/or the resulting customer detriment.

2.256 The implementation of remedies following a market investigation typically involves two stages. In the first stage, we agree undertakings with the relevant parties or make an enforcement order. This stage has a statutory period of six months, extendable by four months,[55] and includes a period of formal public consultation (see Schedule 10 to the Act). In the second stage, the parties subject to any undertakings or orders take the action required.

2.257 In our view, Remedies A and 1F would be relatively straightforward to implement, while Remedy 1C would be potentially more complex. We believed that it would be both realistic and desirable to aim to conclude the first stage of the remedy implementation process within six months of the publication of our final report. However, we noted that the complexity of Remedy 1C may mean that there are exceptional circumstances which lead to a longer implementation period (ie up to ten months in total).

2.258 Once an order has been made, the timescale for action to be taken will vary according to the remedy measure:

*(a)* Remedy A (see paragraph 2.39): In summary, within three months of the order being made, we would expect that statements should be read out at FNOL and the statement of consumer rights should be available online and to new policyholders. For renewal customers, the distribution of statements should begin within three months of the order being made as policies come up for renewal, such that it is completed for all customers on or before 15 months from the date of the order being made.

*(b)* Remedy 1C (see paragraphs 2.151 to 2.152): In summary, the price cap should be able to take effect upon the making of the order, on the basis that we will be setting the initial caps. Other requirements of the remedy relating to administrative changes might require slightly longer, in particular for those parties which do not currently subscribe to the GTA. We expect the remedy would be implemented in full within three months from the date of the order being made.

*(c)* Remedy 1F (see paragraphs 2.153 to 2.155): In summary, the mitigation declaration should be fully incorporated into existing replacement vehicle provision processes within three months of the order being made.

2.259 Based on the above, we would expect all elements of our remedy package to be fully implemented within 15 months of the making of an order (ie by mid-2016). However, we would expect the vast majority of these remedies and the benefits accruing from them to be fully realised within three to six months of

[55] See section 138A(1) and (2) of the Act, as amended by the Enterprise and Regulatory Reform Act 2013.

the making of an order. As these remedies, and in particular Remedy 1C, control outcomes, we would expect, once implemented, that they would have immediate effect in addressing the AEC and/or the resulting customer detriment. The principal benefits of the remedies are therefore likely to be realised within three to six months of the making of an order, and less than one year after the publication of our final report.

*Consistency with existing and likely future laws and regulations*

2.260 As part of our consideration of the design of each of the measures in our proposed package of remedies, we considered whether they would be inconsistent with other relevant laws and regulations applicable in the UK or the EU. We did not identify any such inconsistency. Moreover, we have designed Remedy 1C specifically to avoid the need for a change in law (see paragraphs 2.56 to 2.63).

*The coherence of the remedies as a package*

2.261 We considered whether the remedy measures contained within our proposed package of remedies were likely to be mutually reinforcing.

2.262 Our principal remedy is Remedy 1C, which addresses the AEC and detriment by reducing the cost of non-fault replacement vehicles through a rate cap, and reducing transactional/frictional costs. Transactional and frictional costs will be reduced because *(a)* we are putting in place measures to incentivise quicker resolution of liability and to tie hire duration to the duration of the repair; and *(b)* the lower cost of replacement vehicles will result in fewer disputes.

2.263 Remedies A and 1F are designed to work with Remedy 1C:

*(a)* Remedy 1F will reduce frictional costs incurred from at-fault insurers challenging the type of replacement vehicle provided.

*(b)* Remedy A helps mitigate any risk of under-provision of replacement vehicles by making consumers more aware of their tortious rights when they are not at fault in an accident. Increasing non-fault claimants' awareness of their rights should help them make better-informed decisions when choosing a claims manager and repairer.

2.264 Therefore, in our view, this package of remedies represents a coherent package with important synergies between each measure.

*Conclusions on the effectiveness of the proposed package of remedies*

2.265 We have provisionally concluded that the proposed package of remedies represents as comprehensive a solution as is practicable to the AEC and customer detriment we have identified.

*The proportionality of the proposed package of remedies*

2.266 We have discussed in considering the design of each of the measures in our proposed package of remedies various issues which relate directly to proportionality. For example, we have noted that the level at which we set the rate cap on replacement vehicles is affected by the desire to ensure the remedy is no more onerous than necessary. Also, our rejection of Remedy 1A was heavily influenced by proportionality concerns.

2.267 However, in this section we discuss whether our proposed package of remedies would be a proportionate response overall to the AEC and customer detriment we have provisionally found. We considered the following four questions:

*(a)* Is the package of remedies effective in achieving its aim?

*(b)* Is the package of remedies no more onerous than necessary to achieve its aim?

*(c)* Is the package of remedies the least onerous if there is a choice?

*(d)* Does the package of remedies produce adverse effects which are disproportionate to the aim?

*Effective in achieving its aim*

2.268 We provisionally concluded that our proposed package of remedies would be effective in its aim of remedying the AEC and the customer detriment which results from it (see paragraphs 2.249 to 2.265).

*No more onerous than necessary*

2.269 In assessing whether the proposed package of remedies is no more onerous than necessary, we considered:

*(a)* whether each measure within the proposed package of remedies is required to remedy the AEC and detriment which we have provisionally found; and

(b) whether the design of each remedy measure within the package of remedies is no more onerous than it needs to be.

- *Is each element of the package of remedies needed to achieve a comprehensive solution?*

2.270 We considered whether it would be possible to achieve a comprehensive solution to the AEC without implementing all of the measures in our proposed package of remedies.

2.271 We have explained in each section why each measure helps address the AEC and detriment. We have also explained why each element of our proposed package of remedies is needed to achieve a comprehensive solution and why there are synergies from the measures (see paragraphs 2.262 and 2.263). For these reasons, we provisionally concluded that all of the measures in our proposed package of remedies were necessary to achieve a comprehensive solution to the AEC and customer detriment.

- *Is the design of each remedy measure within the package of remedies no more onerous than it needs to be?*

2.272 Our consideration of the design and implementation of each of the measures in our package of remedies is set out in our discussion of each measure.

2.273 In reaching our provisional decisions on the design of each measure, we have sought to avoid imposing costs and restrictions on parties which go beyond what is needed to achieve an effective remedy. For example, we have sought to build on existing mechanisms in the GTA (such as payment procedures and vehicle hire monitoring), to use existing CMA panel procedures for setting the rate cap and to set appropriate timescales for the implementation of each remedy.

2.274 Therefore we believe we have ensured that no measure within the proposed package of remedies is more onerous than it needs to be in order collectively to address the AEC and customer detriment.

*Least onerous if there is a choice*

2.275 Where it is possible to choose between two remedy measures which appear to be equally effective, we should choose the remedy measure which imposes the least cost or is least restrictive. Therefore, we considered if there was any such choice in this case.

2.276 In addition to the measures included in our proposed package of remedies, we considered various other possible ways of addressing the AEC and/or customer detriment. These included measures which we put forward in our Remedies Notice and other measures which were put to us by parties (eg variants to Remedy 1A).

2.277 Our consideration of these alternative measures which we are not minded to pursue is set out in paragraphs 2.158 to 2.239. We found that each of these alternative measures was of limited effectiveness and/or was not needed to remedy the AEC if the measures in our proposed package of remedies were pursued. We were not able to identify an alternative package of measures which would be less onerous and effective in remedying the AEC.

2.278 Therefore, we provisionally concluded that, to the extent we had any choice between effective remedies, we had identified the package of remedies which would impose the least cost and be least restrictive.

*Does not produce disadvantages which are disproportionate to the aim*

2.279 We considered whether our proposed package of remedies, or any specific measure within it, was likely to produce disadvantages which were disproportionate to the aim of remedying the AEC and the customer detriment we had identified.

2.280 In reaching a judgement about whether to proceed with any remedy measure, we consider its potential effects, both positive and negative, on those persons most likely to be affected by it. We pay particular regard to the impact of remedies on customers. We also have regard to the impact of remedies on those businesses subject to them, and on other affected parties, such as other businesses (eg potential entrants, or firms active in upstream or downstream markets), government and regulatory bodies, and other monitoring agencies.

- *Benefits of the remedies*

2.281 We expect that the remedies which we propose to take forward will substantially address the AEC and detriment in so far as it relates to replacement vehicles. However, our expectation is that the level of transactional/frictional costs under our remedies package will continue to be greater than if there were no separation. The reasons for this are that some transactional/frictional costs are an inevitable result of separation and therefore will continue to apply in relation to replacement vehicle provision, repairs and write offs (see paragraph 2.203). For example, we expect some replacement vehicles to be provided at relatively high cost under our high rate cap due to the risks and uncertainties which separation inevitably creates in some circumstances.

2.282 In paragraph 2.294 below, we consider how much of the detriment we would need to address in order for our remedies to be proportionate.

- *Costs of the remedies*

2.283 In this section we summarise the costs which we have identified in relation to each remedy we are proposing to take forward.

- *Remedy A*

2.284 The costs likely to be incurred in the implementation of Remedy A will include:

*(a)* one-off preparation and ongoing distribution of the statement of consumer rights and motor insurance policy Frequently Asked Questions;

*(b)* one-off changes in call centre scripting to reflect the information to be provided to consumers at FNOL;

*(c)* additional one-off training of claims handlers at FNOL to ensure they are suitably placed to provide the information to consumers;

*(d)* an increase in the cost of FNOL due to an increase in the length of the FNOL call caused by the need to allow the claims handler to read out the mandatory statements; and

*(e)* other ongoing costs, though these are likely only to be due to the need to update periodically the information to reflect current legal and contractual entitlements.

2.285 The main other possible cost is the risk of overload of information to consumers. However, we have sought to minimise this risk by undertaking consumer testing of the information. We do not consider this risk to be high in the light of that consumer testing.

2.286 Further details on these costs are set out in Appendix 2.5. In summary, we found that these costs would be unlikely to amount to more than small one-off costs and ongoing costs of £1–£2 million per year, arising principally from increased call lengths:

*(a)* The one-off costs of document preparation are likely to be small across the industry. The inclusion of additional documents with the existing policy documentation may increase the weight of the policy pack, thus

increasing annual distribution costs (if distributed by post rather than online), but this is likely to be more efficient than sending out the documents separately following the implementation of the remedy. We would not expect this cost to be material if the information is no more than two sheets of paper contained within a pack of information which is already of some weight. Moreover, many insurers are now only providing documentation online, such that there would be no extra distribution cost.

*(b)* The costs of script changes and training are one-off costs and are not likely to be significant.

*(c)* The length of the FNOL statement in Appendix 2.2 is likely to add no more than 1 minute to an FNOL call. Based on the evidence provided by insurers, brokers and CMCs/CHCs, the cost of a 1-minute longer call is likely to amount to around £1 million per year across the industry.

*(d)* Any increase in the length of an FNOL call will also have a cost for consumers in terms of the additional time spent on the call, but we think that this is a necessary cost to ensure that they are able to pursue their legal entitlements following an accident. Based on a value of non-work time of 10p/minute[56] and 3 million claims a year, an extra 1 minute on an FNOL call would add no more than £300,000 per year in consumer time cost.

*(e)* We do not expect other ongoing costs to be material.

- *Remedy 1C*

2.287 The principal cost likely to be incurred in the implementation of Remedy 1C is that incurred in the establishment of an appropriate hire rate cap. Similarly, the principal ongoing cost will be the periodic review and setting of the hire rate cap. The extent of this cost depends on the monitoring and enforcement framework. Given that the framework we have proposed is for a CMA panel to be appointed to conduct periodic reviews, with the first periodic review occurring two years after the implementation of the remedy and thereafter every three years (see paragraphs 2.144 to 2.146, and paragraph 2.96), the costs incurred in a straightforward CMA regulatory appeal would appear to be a good indicator of the relevant costs for the remedy. These costs are typically

[56] An academic study for the Department for Transport (DfT) from 2003 recommends a use of 6p/min for non-commute transport times. 'The Value of Travel Time Savings in the UK', Institute of Transport Studies, University of Leeds, January 2003. By using 10p/min, we are both adjusting for inflation (which would raise the value to 7.6p) and increasing the value to be conservative in our calculation.

£300,000 to £500,000 for the CMA.[57] In addition, there would also be costs for those parties subject to the rate cap responding to the CMA's requests for information. Given that the scope of the rate cap is relatively narrow, these costs are likely to be only a small proportion of the average costs for appellants in past regulatory appeals (about £1 million).[58] Although the scope of our periodic price cap redetermination would be significantly narrower than a typical regulatory appeal, we have nonetheless assumed conservatively an average total cost for parties of £1 million at each redetermination. Combining the costs of the CMA with the costs of the parties results in a total cost of about £1.5 million, occurring every three years. We note that in the framework we are proposing there will be some years where annual costs are low and other years where they are higher because of the periodic nature of the redetermination of the rate cap.

2.288 We would also expect there to be implementation costs for those CHCs/ CMCs and insurers which are not currently part of the GTA. However, our understanding is that currently only around 23% of credit hire claims are either handled outside of the GTA or are handled initially within the GTA but then 'fall out'. This implies that the majority of CHCs/CMCs and insurers are already subscribers to the GTA. Therefore we do not believe that these costs are likely to be significant.

2.289 The other costs we considered in relation to Remedy 1C are any which arise from distortions created by the remedy. However, based on our discussion of these issues, we have not identified any material distortions (see paragraphs 2.97 to 2.104 and 2.130 to 2.133).

2.290 Therefore, we found that the implementation and monitoring costs of Remedy 1C were likely to be around, at most, £500,000 a year.

- *Remedy 1F*

2.291 The costs likely to be incurred in the implementation of Remedy 1F are:

*(a)* One-off changes in call centre scripting to incorporate the mitigation declaration into existing replacement vehicle provision processes.

[57] See www.gov.uk/government/uploads/system/uploads/attachment_data/file/192738/12-644-competition-regime-for-growth-final-impact-assessment.pdf: 'With regard to regulatory appeals, the costs of these vary hugely, dependant on both the size of the case and the type of appeal. For example, in the last 3 years, the costs of water appeals to the CC have ranged from £0.3m - £0.5m but the Stansted price control review cost over £1m.'
[58] See www.gov.uk/government/uploads/system/uploads/attachment_data/file/192738/12-644-competition-regime-for-growth-final-impact-assessment.pdf: 'If the charge payable by the appellant were to be based on the average cost of past cases it would be £950k per case'.

*(b)* Additional one-off training of claims handlers to ensure they are able to complete the mitigation declaration.

*(c)* An increase in the cost of the call to arrange replacement vehicle provision due to an increase in the length of the call caused by the need to complete the mitigation declaration. This document is a similar length to the existing GTA mitigation questionnaire but is likely to take longer to administer as the claims handlers will be required to record the responses of the non-fault claimant. We have also found that the GTA mitigation questionnaire is currently not always used, or not used in its entirety, by call handlers, whereas Remedy 1F will be obligatory.

*(d)* Other ongoing costs, which are likely to include the monitoring of compliance with the remedy.

2.292 Further details on these costs are set out in Appendix 2.5. In summary, we found that these costs would be unlikely to amount to more than £1 million per year, arising principally from increased call lengths:

*(a)* One-off script changes and related training costs do not appear to be significant as the need for a series of mitigation questions is not new. Moreover, as these costs would be incurred at the same time as Remedy A, they are unlikely to increase much the one-off costs which arise due to the implementation of Remedy A (ie there is little incremental cost of script changes and training from Remedy 1F if Remedy A is also implemented).

*(b)* We would not expect this measure to increase the length of calls by much more than 1 or 2 minutes if the party has been appropriately assessing need to date. Based on the evidence provided by insurers, brokers and CMCs/CHCs, it appears that a 1-minute increase in the length of a call is likely to cost in the region of £1 million across the industry.

*(c)* Longer call times would also mean an added cost for the consumer due to additional time spent on the call. However, if these questions are asked and answers recorded at the call stage, the consumer will save time completing the questionnaire when receiving the replacement vehicle, and the lost time on the call and time saved later are likely approximately to balance out.

*(d)* On the basis that we will not require at-fault insurers to be given access to call records, other ongoing monitoring costs are no different to the existing costs of challenging claims.

- *Balance of benefits and costs*

2.293 Having evaluated the potential benefits and costs of these measures, we considered whether their potential costs were likely to be disproportionate to their beneficial effects in remedying the AEC and detriment.

2.294 We found that the expected costs of the remedies package were unlikely to be more than £3–£5 million per year (based on the evidence in paragraphs 2.283 to 2.292). This is only 3.5% of our estimate of the net detriment. We expect our remedies to address substantially more than this proportion of the detriment such that the expected annual benefits are likely significantly to outweigh the expected costs. Given the significant difference in the benefits and the costs and the timely implementation of the remedies, we did not believe it necessary to conduct a detailed NPV analysis.

*Conclusions on the proportionality of the proposed package of remedies*

2.295 Overall, we provisionally concluded that the beneficial effects of introducing the measures in our proposed package of remedies were likely to outweigh significantly their costs. We also found there to be synergies between the measures in the package. Therefore we provisionally concluded that the package of remedies represented a proportionate solution to the AEC and the resulting customer detriment.

***Our provisional decision***

2.296 We have provisionally decided to introduce the following package of remedies to address the AEC and customer detriment which we have provisionally found under ToH 1:

*(a)* A dual rate cap, with a low rate cap based on average direct hire daily rates plus fixed replacement vehicle arrangement costs and a high rate cap set as a multiple of the low rate cap. The rate cap would be indexed to a publicly available index (see paragraphs 2.64 to 2.96).

*(b)* Application of the rate cap to all replacement vehicle providers at the point of subrogation of the claim to the at-fault insurer (see paragraphs 2.56 to 2.59).

*(c)* Prohibition of financial inducements from replacement vehicle providers where such inducements are to encourage claimants to take a replacement vehicle at rates above the rate cap (see paragraph 2.61).

*(d)* Insurers to tell claimants promptly if they are non-fault, with submission of each insurer's aggregate data on liability assessments (see paragraph 2.102).

*(e)* Hire duration to end 24 hours after completion of the repair or seven days after the submission of the total loss payment (see paragraph 2.107).

*(f)* Mitigation declaration statements to be completed by FNOL providers and countersigned by non-fault claimants upon receipt of a replacement vehicle (see paragraphs 2.109 to 2.110 and Appendix 2.3);

*(g)* Requirements regarding the acceptance of customers by replacement vehicle providers, monitoring of the hire and payment arrangements (see paragraphs 2.119 to 2.125);

*(h)* A CMA panel appointed to conduct periodic reviews, with the first periodic review occurring two years after the implementation of the remedy and thereafter every three years (see paragraphs 2.144 to 2.146 and paragraph 2.96).

*(i)* The rate cap would be applied with immediate effect following the making of the enforcement order and all the other requirements of the remedy would be required to be in place within three months from the making of the order (see paragraphs 2.152 and 2.155).

2.297 In our judgement, this represents as comprehensive a solution as is reasonable and practicable to the AEC and customer detriment which we have provisionally found.

## 3. The sale of add-on products (theory of harm 4)

### *The AEC and the resulting customer detriment*

3.1 In our provisional findings we identified the following two features of the supply of motor insurance which we provisionally concluded have, in combination, an AEC:

*(a)* information asymmetries between motor insurers and consumers in relation to the sale of add-ons; and

*(b)* the point-of-sale advantage held by motor insurers when selling add-ons.

3.2 We provisionally concluded that these two features distorted competition in the motor insurance market. This is because they make it more difficult for consumers to identify the best-value offers in the market and may lead to consumers purchasing products at an inflated price.

3.3 We found that there were particular information asymmetries associated with NCB protection as consumers do not understand the level of discount earned through their NCB, and how this level of discount will be affected in the event of one or more claims if they do or do not take out NCB protection. We found that, without this information, consumers could not accurately assess the value of NCB protection.

3.4 We noted that the net earned premium (NEP) of those add-ons which caused us concern was about £390 million a year. For NCB protection, the aggregate NEP across the whole PMI market was approximately £210 million in 2012 (see paragraph 3.101 for an explanation of this figure).

### *Summary of remedies we consulted upon in our Remedies Notice*

3.5 In our Remedies Notice, we consulted on three remedies:

*(a)* provision of all add-on pricing from PMI providers to PCWs (Remedy 4A);

*(b)* transparent information concerning NCB (Remedy 4B); and

*(c)* clearer descriptions of add-ons (Remedy 4C).

### *Remedy measures that we propose to take forward*

3.6 In this section we set out those measures which we are proposing to take forward ourselves. These measures are in relation to Remedy 4B, which concerns giving consumers more transparent information about NCB and

NCB protection. We later discuss those measures where we propose to make recommendations to the FCA.

*Transparent information concerning no-claims bonus (Remedy 4B)*

*Description of the remedy*

3.7 In the Remedies Notice we proposed that all insurers should be required to:

*(a)* make available to consumers details of their NCB scales both when the customer is choosing whether to take out NCB protection and when they receive their policy quotation; and

*(b)* include in the description of NCB protection a clear statement that a policyholder's premium may increase following an accident in which that policyholder was not at fault even when that policyholder had taken out NCB protection.

*How the remedy addresses the AEC and/or resulting customer detriment*

3.8 The aim of this remedy is to reduce the significant informational asymmetries between insurers and consumers when purchasing NCB protection. Provision of information relevant to the purchase of NCB protection will allow consumers to understand and assess better the costs and benefits of taking out this product. This will improve competition constraints on insurers when selling NCB protection and we expect that this will lead to a reduction in prices for NCB protection so that they properly reflect the value of the product to consumers.

*Views of parties*

3.9 The majority of parties supported the principle of providing better explanations to consumers of the benefits of NCB protection. However, specific concerns were raised about how this information should be provided, which we note in the relevant sections below.

3.10 More detail on the comments we received from parties is provided in Appendix 3.1.

*Design issues*

3.11 Having considered the views of parties and having questioned insurers, brokers and PCWs further about the ways in which information on NCB and NCB protection could be provided, it appeared to us that there were several different options, which could be grouped into three different areas, as follows:

*(a)* Provision of information on PCWs (when comparing products):

(i) require quotes on PCWs to include the insurance premium before and after the NCB discount is applied; and

(ii) require PCWs to set out separately the insurance premium with and without the cost of NCB protection.

*(b)* Provision of information by an insurer/broker (at point of sale):

(i) require disclosure of the insurer's NCB scales or typical NCB discounts (ie the percentage discount for each number of NCB years, on average for that insurer); and

(ii) require disclosure of the insurer's 'step-back procedures' (ie what would happen to a consumer's number of NCB years as a result of one or more claims), with and without NCB protection.

*(c)* Clearer statements to inform consumers about how NCB protection works.

3.12 We discuss each of these areas in turn in this section.

3.13 To assist us in our consideration of these options, we engaged GfK NOP Social Research (GfK) to undertake qualitative consumer research to test different ways of providing consumers with information on NCB and NCB protection. We have published a presentation from GfK showing the results of this research at the same time as this document, and we intend to publish GfK's report within the next few days. Our assessment in this section is informed by the results of this consumer research.

3.14 In summary, GfK's findings on NCB and NCB protection were that:

*(a)* NCB has an assumed high value and is considered very important by consumers;

*(b)* NCB protection is not a key point of differentiation when purchasing motor insurance;

*(c)* consumers would like to see NCB protection presented as an add-on, with a clearly marked price; and

*(d)* NCB protection is not well understood:

(i) there is limited knowledge of how it works;

(ii) consumers do not know how much it costs; and

(iii) many consumers think it provides greater protection than it actually does (eg that it would protect their NCB years irrespective of the number of claims they made in any given year).

3.15 In our view, GfK's findings support our provisional finding of a lack of information and consumer understanding about NCB protection.

- *Provision of information on PCWs*

3.16 We considered whether, when consumers obtain a quote for PMI from a PCW and are considering taking out NCB protection, it would be helpful for them to be provided with one or more of:

*(a)* the premium before and after the NCB discount is applied (ie showing the benefit of their NCB); and

*(b)* the premium with and without NCB protection (ie showing the implied price of NCB protection).

3.17 We considered whether this information would enable consumers to compare the cost of NCB protection with the value of the NCB discount and so be able to make better purchasing decisions.

3.18 However, we were told by some insurers that this information might give consumers a misleading impression of the value of NCB protection as a consumer might not lose all their NCB discount in the event of a claim. Insurers also told us that quotes for PCWs would have to be generated up to three times, ie *(a)* the premium with no NCB discount; *(b)* the premium with the relevant NCB discount but without NCB protection, and *(c)* the premium with the relevant NCB discount and with NCB protection. We were told by some insurers that there is not necessarily a separate 'price' for NCB protection as the selection of NCB protection by a consumer provides information about the consumer's risk profile and so can be used by an insurer in determining the consumer's PMI quote. There is therefore an implied price for NCB protection but not a stand-alone price.

3.19 Some insurers told us that PCWs would need to gather all three quotes from each of the PMI providers on their panel, which would increase the cost of providing quotes to PCWs and could increase the time taken by consumers to search for PMI quotes. Several insurers told us that significant changes to systems would be required to implement this proposal.

3.20 GfK found that if we were to require PCWs to present consumers with their PMI quote before and after their NCB discount has been applied, this would not be well understood and would not be considered by most consumers to be of much help in their purchasing decision. GfK found that consumers are primarily interested in the final price they pay for their PMI and they see their NCB discount as one input into that price. GfK found that the extent of the NCB discount is relevant more when considering whether to purchase NCB protection.

3.21 We also recognised that the information in paragraph 3.16 was likely to be only partially effective because it would not provide the consumer with any information about what would happen to their NCB years (or discount) in the event of one or more claims (so-called 'step-back procedures').

3.22 In our view, as NCB protection cannot be sold separately to the insurance policy (because it is only sold as an add-on to the main policy), there is limited value in enhancing comparability on a PCW. Instead, consumers need to understand the value of NCB protection when deciding whether or not to purchase it through their chosen insurer or broker. As the purchasing decision is typically made on the insurer's/broker's website (or over the telephone with the insurer/broker), this would seem the more appropriate place to require the improved provision of information.

3.23 We therefore decided not to pursue further the provision of pricing information on PCWs (though we are proposing that the descriptions of NCB protection include specific statements (see paragraphs 3.45 to 3.54)).

- *Provision of information by an insurer/broker (at point of sale)*

3.24 We considered two options for providing consumers with more information about the costs and benefits of NCB protection at the point of sale: *(a)* disclosure of the insurer's NCB scales or typical NCB discounts; and *(b)* disclosure of the insurer's step-back procedures. We considered whether a combination of some or all of this information, in parallel with informing consumers about the implied price of the product (see paragraph 3.16(b)), would help consumers to understand what NCB protection is protecting and how much it costs, and would enable them to make better informed purchasing decisions. This information would be provided when NCB protection is being offered to the consumer by the insurer/broker or, if NCB protection has already been selected, prior to confirming purchase of the product.

  - *NCB scales or typical NCB discounts*

3.25 The majority of insurers who responded to the Remedies Notice told us that it was not practicable for them to publish an NCB scale showing the percentage discount applicable to the number of NCB years. We were told that many insurers use a number of rating factors to determine a policyholder's NCB discount with the result that one policyholder with a certain number of NCB years is likely to have a different NCB discount from another policyholder with the same number of NCB years.

3.26 In our view, how insurers identify risk factors and price policies on the basis of them is outside the scope of our investigation and, for this reason, we did not wish to interfere in this process. We did not identify an AEC due to the design of NCB protection as a product; however, we have found an AEC due to the quality of information that is provided to consumers about the product. Consumers do not have a good understanding of the value of their NCB years and are often provided with little information about the discount their number of NCB years has earned. Without some information about this discount, consumers are unable to value NCB protection. Therefore, in our consumer research we explored whether it would be helpful to consumers to require each insurer to publish a table showing a 'typical' NCB discount for each number of NCB years, in a similar way to that shown in Figure 1.

FIGURE 1

**Example disclosure of typical NCB discounts**

| Number of years No Claims Bonus at this renewal | Typical NCB discount |
|---|---|
| One year NCB | 5% |
| Two years NCB | 10% |
| Three years NCB | 20% |
| Four years NCB | 30% |
| Five years NCB | 40% |
| Six years NCB | 45% |
| Seven years NCB | 50% |
| Eight years NCB | 55% |
| Nine years or more NCB | 60% |

3.27 This information would be specific to each insurer and would be updated by the insurer annually. By 'typical', we meant the average (mean) NCB discount which was awarded by the insurer across the policies it had written in the last year for each number of NCB years.

3.28 We would expect this average to be a reasonable guide for many consumers when deciding whether to purchase NCB protection, while not preventing insurers from determining the level of NCB discount they award to each individual customer differently, according to their specific risk factors.

3.29 GfK found that there was a very positive response to this information, which consumers found helpful and easy to understand. GfK found that there was some confusion over use of the phrase 'typical discount', so we would propose instead to refer to it as the average discount from that insurer.

3.30 We noted that there was some risk that this remedy would not completely remove the information asymmetry between insurers and consumers because an average discount would not necessarily reflect the discount that an individual consumer would actually get. This might cause some consumers not to purchase NCB protection when it might be in their interests to do so, and other consumers to purchase NCB protection when their discount was not as high as the average. While we recognised that this continuing information asymmetry was not ideal, in our view it was important that consumers were given some information when purchasing NCB protection about the value of what the product protects. At present, consumers are given little or no such information and these average NCB discounts, while imperfect, would represent a significant, easily-understandable improvement.

3.31 Overall, we provisionally decided that the disclosure of average NCB discounts, specific to each insurer, should be provided to consumers. These discounts should be based on the average for each insurer for each NCB year reflecting the policies written in the previous calendar year and should be updated annually by insurers. We would expect this remedy to lead to consumers making better-informed purchase decisions and this could have an effect on the sales of NCB protection. Accordingly, we welcome views on the possible effect on sales, and on different categories of customers, and whether (and, if so, why) this should be considered as a cost of the remedy.

3.32 We recognised that the disclosure of average NCB discounts for each NCB year would not on its own be particularly informative, as although this would give some indication of the value of NCB years, it would not give the value of protecting the NCB years. Therefore, we provisionally found that we would also need to require disclosure of *(a)* the implied price of NCB protection (see paragraph 3.39), and *(b)* each insurer's step-back procedures (see paragraphs 3.33 to 3.38).

- *Stepback procedures*

3.33 We considered whether, when consumers obtain a motor insurance quote and are considering taking out NCB protection, it would be helpful for them to be given information as to what would happen to their NCB discount in the event of one or more claims in both the situations where NCB protection had been bought and the situation in which NCB protection had not been bought.

3.34 Most insurers told us that each insurer should make available to consumers its step-back procedures, which specify the number of NCB years a consumer loses in the event of one or more claims, both with and without the protection. However, many insurers were concerned that providing numerical examples of what might happen to consumers' NCB discount might confuse consumers as it would be based on the price of the current policy and would not be the same as the actual discount they would receive on renewal in a year's time.

3.35 From our consumer research we found that there was a strong desire for information on an insurer's step-back procedures. Some respondents said that this information was essential for consumers as it challenged the perception that NCB protection provided unlimited protection. Other respondents said that it helped them understand how many claims they could make in a year before their NCB years would be affected. However, it was also evident that the way in which this information was presented was very important as sometimes the step-back procedures could be quite confusing.

3.36 In our view, while on its own this information was partially helpful, it was likely only to be really effective in informing decision-making when combined with an indication about the level of NCB discount earned by the NCB years and the implied price of NCB protection. Therefore, based on GfK's findings and taking into account the responses of insurers, we provisionally decided that an insurer's step-back procedures should be provided to consumers, alongside a table of the insurer's average NCB discounts.

3.37 We considered that it was most helpful for the step-back procedures to be set out according to each individual consumer's circumstances. This would mean that a consumer would be shown the step-back procedures both with and without NCB protection according to the number of NCB years they currently had. Figure 2 shows an example of how this table might look for a consumer with three NCB years.

FIGURE 2

**Example disclosure of step-back procedures**

| | No Claims Bonus at next renewal date <u>without</u> NCB protection | | | No Claims Bonus at next renewal date <u>with</u> NCB protection | | |
|---|---|---|---|---|---|---|
| Number of years No Claims Bonus at this renewal | 1 claim in next 12 months | 2 claims in next 12 months | 3 claims in next 12 months | 1 claim in next 12 months | 2 claims in next 12 months | 3 claims in next 12 months |
| Three years NCB | One year | Nil | Nil | Three years | One year | Nil |

3.38 This information would be presented alongside the average NCB discount table (see Figure 1).

◦ *Implied price of NCB protection*

3.39 Although aware of the challenges of finding a price for NCB protection (see paragraph 3.18), we provisionally decided that the information about an insurer's step-back procedures and the average discount awarded according to a consumer's number of NCB years would need to be presented alongside a 'price' in order for consumers then to be able to make an informed purchasing decision. In our view, a statement explaining how much purchasing NCB protection has added to the consumer's PMI premium is the most appropriate price to show. This implied price would be the difference in the cost of the same PMI policy between taking out the policy with NCB protection and without it. We recognised that this would require the insurer to make two quotations and to calculate and present an implied price on the basis of the difference between them.[1] However, it is currently the case that if a consumer requests an initial quote and then subsequently adds NCB protection, the insurer has to recalculate the premium, so the only additional requirement of our remedy would be to require the insurer to calculate the difference between the premium when NCB protection is selected and the premium when it is not.

◦ *Our proposed package of information*

3.40 The overall statement provided to a consumer would then read broadly as follows (using illustrative figures in this example):

> You have opted to purchase NCB protection. This has increased your premium by [£20]. You have a current NCB of [3] years. The tables below show: (i) what would happen to your NCB years if you were to make one or more claims in the next 12 months with and without this protection; and (ii) the average NCB discount we

[1] The alternative for an insurer would be to cease using the decision to take NCB protection as a risk factor. If that were the case, one quotation could be provided with a simple add-on price for NCB protection.

awarded to our motor insurance policyholders last year according to their number of NCB years.

The tables that would be set out below this text would broadly reflect Figures 2 and 1 above (respectively).

3.41 This information would be provided to the consumer by the insurer/broker when it is making the offer of NCB protection; or, if NCB protection has already been selected by the consumer, prior to confirming the purchase of the product.

3.42 We believe that this package of information would ensure consumers have the three pieces of information they most need in order to assess the value of NCB protection:

*(a)* the implied price of NCB protection;

*(b)* the step-back procedures, ie what happens to the number of NCB years with and without NCB protection in the event of one or more claims; and

*(c)* the average NCB discount according to the number of NCB years.

3.43 For telesales, we judged that the provision of information should be broadly the same, but would need to reflect the fact that it is being provided orally rather than visually. We would require insurers/brokers to tell consumers prior to purchasing NCB protection:

*(a)* the implied price of the NCB protection;

*(b)* the customer's current number of NCB years;

*(c)* the average NCB discount for that number of NCB years; and

*(d)* a statement of how many claims can be made before the number of NCB years is affected, both with and without NCB protection.

In this case, (c) and (d) would be subsets of the information set out in paragraph □.

3.44 Based on insurers' responses to our questions, we believed that these approaches would be practicable and effective. We are not requiring insurers to apply standard NCB scales when pricing PMI policies, nor are we requiring insurers to disclose a stand-alone price for NCB protection. The information we are requiring to be displayed is information which we understand is either currently or should be easily available to insurers.

- *Clearer statements to inform consumers about how NCB protection works*

3.45 GfK's research confirmed a general lack of understanding among consumers about what NCB protection protects. Therefore we considered two further ways in which we could enhance this understanding:

*(a)* by explaining what factors affect a consumer's NCB discount; and

*(b)* by explaining the benefit of NCB protection.

3.46 Insurers told us that a consumer's NCB discount was based on their number of NCB years and their risk profile, and therefore was affected by similar variables to those which were considered in determining their PMI policy premium. In our view, it would improve consumers' understanding of NCB protection if they appreciated this. We believed this could be achieved through a short specific statement.

3.47 We also thought that, at the same time, it should be possible to explain to consumers clearly the benefits of NCB protection.

3.48 We initially considered two statements:

*(a)* 'Your premium may increase following an accident in which you are not at fault even if you have No Claims Bonus Protection'; and

*(b)* 'Your premium may increase and your No Claims Bonus discount may decrease following an accident in which you are at fault even if you have No Claims Bonus Protection'.

3.49 Most insurers told us that they had no objections to the first of these statements. However, several insurers told us that the second statement could be misleading to consumers as NCB protection would prevent a consumer's NCB years reducing (assuming the claim was within the insurer's step-back rules). Some insurers were also concerned that these statements did not make it clear that there were many factors which can affect a consumer's NCB discount and that they might cause consumers to undervalue NCB protection.

3.50 In our market research we tested these two statements with consumers. We found that many consumers were surprised by them. Many consumers did not appreciate that their premiums may increase following the submission of a non-fault claim (as it affected their risk profile) and others did not appreciate that NCB protection did not provide unlimited protection (ie protection against all claims made in any given year).

3.51 In our view, the statements in paragraph 3.48(a) and (b) (or a variant of them) would be effective in helping consumers better understand the value of NCB protection. We believe that these statements express simple facts which explain to consumers something about which many are unaware, providing information which could be significant to consumers when deciding whether to purchase NCB protection. Therefore, we believe they represent a helpful contribution to a package of remedies seeking to reduce the extent of the information asymmetry between PMI providers and consumers in relation to NCB and NCB protection.

3.52 In light of the evidence from the market research, we have refined the two statements. As we would require these statements to be displayed on both a PCW and an insurer's/broker's website, we also considered whether they needed to be modified according to where they were to be displayed. Our revised proposed statements are:

*(a)* A statement about what NCB protection protects:

(i) On a PCW: 'No Claims Bonus protection varies between insurers but in general it allows you to make one or more claims before your number of No Claims Bonus years falls (please consult the insurer's website for its policy)'

(ii) On the insurer's/broker's website: 'No Claims Bonus protection allows you to make one or more claims before your number of No Claims Bonus years falls (please see our step-back procedures for details [with a link to these stepback procedures])

*(b)* A statement about what NCB protection does not protect to be provided on a PCW and an insurer's/broker's website and to be read out by call handlers in telesales: 'No Claims Bonus Protection does not protect the overall price of your insurance policy. The price of your insurance policy may increase following an accident even if you were not at fault.'

3.53 In our view, the wording of these statements should be standardised across the industry to ensure that a clear, consistent message is delivered to all consumers. PCWs, insurers and brokers would be free to add further explanations on NCB protection, but these statements would be mandatory.

3.54 We propose that the statements are:

*(a)* included on PCWs when consumers click for more information on NCB protection; and

*(b)* presented by insurers and brokers to consumers before NCB protection is purchased.

- *Summary of proposed remedy*

3.55 We propose that the following information is provided by insurers and brokers at the point of sale of NCB protection:

*(a)* the implied price of NCB protection;

*(b)* the step-back procedures, ie what happens to the number of NCB years with and without NCB protection in the event of one or more claims; and

*(c)* the average NCB discount according to the number of NCB years.

3.56 We also propose that the statements in paragraph 3.52 are presented on PCWs when consumers seek more information about NCB protection, and provided by insurers and brokers at the point of sale of NCB protection.

*Implementation issues*

3.57 In our view, as this package of remedies in relation to NCB would need to cover insurers, brokers and PCWs, and potential new entrants, we would need to implement these remedies by an enforcement order.

- *Timeliness*

3.58 The main factor which would affect the timeliness of the remedy is the period of time required by insurers and brokers to amend their systems for direct online sales so as to generate the necessary information. We noted that there would be a period between the publication of our final report and the making of an enforcement order (a statutory maximum of six months, extendable by four months) during which any administrative and IT changes could be initiated in advance of the enforcement order being made. Since all of the information we are requiring to be disclosed should already be available to insurers and brokers we did not consider that longer than six months from the date of the order should be required for the implementation of these remedy measures.

3.59 In our discussion of Remedy A and Remedy 1F in Section 2 we noted that changes to call centre scripts for telesales do not require substantial time and therefore we do not believe this should extend the timescale for the implementation of this remedy.

- *Laws and regulations*

3.60 We have not identified any inconsistency between this remedy and other relevant laws and regulations.

- *Monitoring and enforcement*

3.61 The CMA will assume responsibility for monitoring compliance with this remedy and, to assist it with monitoring the accurate calculation of average NCB discounts, we propose that insurers and brokers be required to submit an annual compliance statement setting out the information on their average NCB discounts which they propose to provide to consumers in the forth-coming year, and the basis for these figures from the prior year.[2]

3.62 In light of the FCA's ongoing development of remedies to address concerns in general insurance add-ons (see paragraph 3.80), we recommend that the FCA reviews the proposed remedy within two years of the date of the order in order *(a)* to assess how well the remedy is working in meeting consumers' needs; and *(b)* to ensure consistency with its wider regime. In the event that the FCA identifies aspects of the remedy which are not working well, or which it believes need to be varied or revoked, it can make a recommendation to the CMA to conduct a review of the remedy.

*Conclusions on the effectiveness of Remedy 4B*

3.63 Overall, we provisionally found that the measures summarised in paragraphs 3.55 and 3.56, supported by the monitoring requirements described in paragraph 3.61, would be effective in remedying the asymmetry of information between PMI providers and consumers in relation to NCB protection.

***Remedy measures for which we are proposing to make recommendations***

3.64 We are proposing to make recommendations to the FCA in relation to Remedies 4A and 4C. We explain below our reasons for this provisional decision.

*Provision of all add-on pricing from PMI providers to PCWs (Remedy 4A)*

*Description of the remedy*

3.65 In the Remedies Notice we suggested that a possible remedy would be to require each PMI provider which wishes to offer add-on products to provide pricing information on all the add-ons it offers to the PCWs which list its PMI policies. The PCWs would then be able to display the full range of add-ons available from each PMI provider with prices, so that a consumer could compare the total price of the policies offered by different PMI providers

[2] These compliance statements would be in a standard format and would be required to be submitted at the same time each year. They would be required to be signed off by a nominated compliance officer.

including the add-ons they want. A PCW could choose to rank the policies available by the total price of the package selected in advance by the consumer.

*How the remedy addresses the AEC and/or resulting customer detriment*

3.66 This remedy would enable consumers to compare more easily the total prices offered by different PMI providers for their desired package of products and so would help them to identify the best-value offers available. This would, at least in part, address the concern we identified in paragraph 3.2.[3]

*Views of parties*

3.67 In Appendix 3.1 we describe the comments we received from parties on this remedy.

3.68 In summary, the majority of parties which responded to the Remedies Notice on this remedy supported it. However, one insurer told us that it was not persuaded that the additional information proposed under this remedy would generate better outcomes for consumers as the diverse nature of add-on products would make it difficult or impossible for customers to make meaningful comparisons between polices. There was also some concern that the remedy might lead to a standardisation of add-on products, thereby reducing innovation and consumer choice.

3.69 Insurers provided us with estimates of the time it would take and the costs they would incur in adapting their systems to provide pricing on all their add-ons to PCWs. These estimates ranged widely from one week to 18 months, and from £300 to £4 million, with most insurers estimating up to 12 months and up to £500,000. The PCWs told us that, while it could take several months to adapt their systems, they were dependent on receiving the necessary information from the PMI providers whose products are listed on their sites.

*Design issues*

3.70 We considered the following issues relating to the design of this remedy:

*(a)* whether the remedy should apply to the provision of information to PCWs by brokers as well as insurers;

[3] In our provisional findings, we described this as the point-of-sale advantage that the insurer has when the customer is passed from the PCW to the insurer's website.

(b) whether the remedy should require that:

(i) insurers and brokers provide pricing on add-ons to PCWs (with no additional requirements on how PCWs should use the information); and

(ii) in addition, PCWs should use the information to rank search results by the total cost of policies including the add-ons selected by a consumer.

(c) whether the remedy should apply to all add-ons or the most commonly selected add-ons only; and

(d) whether the remedy might have any unintended consequences.

- *Brokers and insurers?*

3.71 As both brokers and insurers sell PMI through PCWs, we see no reason why the remedy should not cover brokers as well as insurers. Brokers did not raise any concerns with us on this point.

- *Requirements on PCWs*

3.72 We found that, currently, the four largest PCWs (CTM, GoCompare, MSM and Confused) receive pricing information from insurers and brokers on the five most common add-ons: breakdown cover, courtesy car cover, motor legal expenses insurance, personal accident cover and windscreen cover.[4] However, for those add-ons which have options for the level of cover the consumer can select (eg an insurer may offer several options for breakdown cover) the PCWs may receive only a price for a basic level of cover.

3.73 The four largest PCWs display the add-on pricing in similar ways on their websites, as follows:

- If the add-on can be purchased separately and the cost is fixed, the quote screen shows the price provided to the PCW by the provider.

- If the cost of the add-on is not fixed and is determined by the level of cover selected (eg breakdown cover), the quote screen shows only a ‘price from’, where the price quoted is typically the price for a basic level of cover. In this case consumers select the level of cover they require for the add-on when they click through to the provider’s website.

[4] Some receive pricing on other add-ons too (see Appendix 3.1).

- The quote screen ranks the search results according to the price of the core PMI policy, not including the price of the add-ons selected by the consumer.

  - *Provision of pricing information to PCWs*

3.74 It appears to us that it would be feasible for insurers and brokers to provide PCWs with more detailed pricing information on the add-ons which have optional levels of cover, although in order to utilise this information in compiling search results PCWs would have to ask consumers to select in advance the level of cover they require from these add-ons. We were told by insurers and PCWs that they would incur costs to develop this capability (see paragraph 3.69 and Appendix 3.1).

  - *Need to require PCWs to use the information in a certain way*

3.75 It also appears to us that, if insurers and brokers were required to provide more pricing information on add-ons to PCWs (to include all the add-ons they offer and different prices for different levels of cover), the factors which should be taken into account in deciding whether and how PCWs might be required to use that information would include:

*(a)* what incentives PCWs have to use the information they are provided with in displaying the search results; and

*(b)* the implications of PCWs being required to use the information they are provided with to rank policies by total cost.

3.76 In our view, if the remedy were to require insurers and brokers to provide pricing information on the add-ons they offer to PCWs but did not specify how the PCWs were to use that information, there would be a risk that the PCWs would not use the information at all because:

*(a)* we have been told that if a PCW were to rank policies by total price, including add-ons, but other PCWs did not, the first PCW would lose market share because its policy prices would appear to be more expensive;

*(b)* as PCWs do not (currently) generate income from the sale of add-ons, they have little incentive to display information on all add-ons on their websites;

*(c)* in order to allow consumers to select the level of cover required from add-ons which offer different levels of cover, PCWs would have to include

additional questions which would increase the time it would take to complete the process of obtaining quotes; and

*(d)* incorporating information on many add-ons will complicate the presentation of the search results on quote screens, possibly confusing some customers.[5]

3.77 We also considered whether requiring PCWs to rank polices by total cost, including those add-ons selected by a consumer, might give rise to some adverse effects. We identified the following concerns:

*(a)* Add-ons may become standardised and ‘hollowed out’: if offering an add-on with enhanced features at a higher price led a provider’s total package of PMI and add-ons to be ranked lower on a PCW’s quote screen, the provider would have an incentive to simplify and hollow out the policy, leading overall to reduced differentiation in the add-on products available.

*(b)* Consumers might not understand that the cover provided by add-ons offered by different insurers and brokers might vary if they look only at the description of the add-ons on the PCW’s website when making their buying decision and not at any information from the add-on providers.

*(c)* The quote process may become longer and more complicated if a consumer is required to answer more questions before the search results are returned in order to specify the level of cover the consumer requires from the add-ons.

*(d)* It might become more difficult for a consumer to compare the search results from PCWs with the renewal quote they receive from their current PMI provider as the renewal quote may be stated without any add-ons or with only those add-ons that the consumer had previously selected, which might not be the same as the ones the consumer wishes to select now.

3.78 In our view, these issues need careful consideration in deciding whether and how PCWs should be required to display search results including the price of add-ons.

- *All add-ons or most common add-ons?*

3.79 In our view whether the remedy should apply to all add-ons or only the most commonly purchased add-ons is likely to depend on whether PCWs are required to use the information. If it were left to PCWs to decide how to use

[5] We note that this is particularly true for consumers who access a PCW through a handheld device.

the information, it might be appropriate to require PMI providers to provide to PCWs their pricing on all the add-ons they offer. However, if PCWs were required to display information in a certain way, the remedy might be better implemented by requiring PMI providers to provide only pricing for the most commonly purchased add-ons so that there is consistency between PCWs and to limit the amount of information displayed on quote screens. In this case the list of add-on products falling within the remedy would need to be specified and periodically reviewed. PCWs would clearly be able to state prices for other add-on products if they wished, assuming they managed to obtain the necessary pricing information from providers.

*Provisional conclusion*

3.80 We have identified several factors which we believe need to be taken into account in the design of this remedy (see paragraphs 3.70 to 3.79). However, we are also aware that the FCA is currently undertaking two pieces of work which could have a significant bearing on some of those factors: first, it is conducting a market study into general insurance add-on products, with a consultation on remedies expected before the end of 2014; and second, it is conducting a thematic review of insurance PCWs, with findings expected in mid-2014.

3.81 We are concerned that if we were to implement a form of Remedy 4A it might not be consistent with the outcome of either or both of the FCA's reports. Such an inconsistent outcome would not be in the interests of consumers as it would lead to a confusing display of information for different types of insurance products. Moreover, the FCA has responsibility for ensuring that when insurance products are sold by firms regulated by the FCA, consumers are provided with appropriate information in good time so that they can make an informed buying decision. Therefore we believe that the FCA is in a better position to ensure an effective and proportionate remedy is implemented in relation to the concerns we have identified.

3.82 We therefore propose not to implement this remedy ourselves but instead to recommend that the FCA considers further whether this remedy should be implemented. We recommend that the FCA considers:

*(a)* whether insurers and brokers should be required to provide their prices for the add-ons they offer to PCWs and, if so, whether this should be for all PMI-related add-ons or only for the most commonly-purchased add-ons; and

*(b)* more generally, how consumers' information needs in relation to PMI-related add-ons can best be met on PCWs.

3.83 We recognise that in our discussion above we have expressed some views on these questions but, in light of the FCA's ongoing work, we have chosen to express openly the questions which we recommend the FCA to consider. We hope that our discussion of the design issues will assist the FCA in its process.

3.84 In light of this proposed approach, we have not undertaken significant work in assessing the effectiveness of this remedy or its proportionality. When the FCA considers the proportionality of this remedy, we would expect the factors that it might wish to consider to include:

*(a)* the benefit consumers would derive from the pricing of more add-ons being displayed on PCWs and/or the search results being ranked by the total cost of packages, including the add-ons selected;

*(b)* whether the provision of this information would reduce the point-of-sale advantage providers have in relation to add-ons;

*(c)* the possible disadvantages to consumers in terms of the additional time it might take to obtain quotes on PCWs and any added complexity in the display of the search results; and

*(d)* the cost to insurers, brokers and PCWs of developing their information technology systems to implement the remedy.

*Clearer description of add-ons (Remedy 4C)*

*Description of the remedy*

3.85 In the Remedies Notice we proposed that this remedy would require all insurers to revise their descriptions of add-ons to meet Plain English standards[6] and to strike an appropriate balance between providing the relevant information to the consumer and ensuring that the information is understandable and not unnecessarily complex.

*How the remedy addresses the AEC and/or resulting customer detriment;*

3.86 The aim of this remedy would be to improve the quality of add-on descriptions so that consumers could better understand the cover provided by an add-

[6] Plain English (sometimes referred to more broadly as plain language) is a generic term for communication in English that emphasises clarity, brevity, and the avoidance of technical language, particularly in relation to official government or business communication.

on from different insurers and make better informed decisions when purchasing it.

*Views of parties*

3.87 In Appendix 3.1 we describe the comments we received from parties on this remedy.

3.88 In general, parties supported the principle of providing clearer descriptions of PMI-related add-ons but told us that this was something which should be considered and developed by the FCA.

*Design issues*

3.89 We considered that there were two design aspects to this remedy:

(a) *The generic descriptions of add-ons provided by PCWs:* PCWs typically provide a generic description of the add-ons displayed on their websites, with more information being available to consumers when they click through to individual providers' websites. In our view, a remedy should not specify the number or form of generic descriptions provided by PCWs as these descriptions might need to change over time to accommodate product developments.[7]

(b) *The description of individual add-ons provided by insurers and brokers:* In our view, the remedy would need to cover the descriptions of add-ons offered by all insurers and brokers, and would need to accommodate changes to those descriptions to reflect product developments and the introduction of new products. These descriptions would need to meet the rules set out in the FCA's Insurance Conduct of Business Sourcebook (ICOBS), which require that, where a firm sells a product, it must give the customer information about the firm, its services and the product. Specifically, firms must provide appropriate information about the policy so that the customer can make an informed decision.

*Provisional conclusion*

3.90 In light of the role of the FCA in regulating the sale of add-on insurance products, including the descriptions provided by insurers, brokers and PCWs for those products, we do not think it would be appropriate for us to pursue this

[7] Our proposed remedy to require statements on what NCB protection protects and does not protect (see paragraph 3.52) does not prevent PCWs from giving further information on the product; it only requires a specific statement to be added to the product descriptions in order to reduce a particularly severe information asymmetry we have identified.

remedy ourselves. Rather, we propose to recommend that the FCA works with insurers, brokers and PCWs to consider if and how these providers might improve their descriptions of PMI-related add-ons, either as part of the FCA's general supervisory work or as part of its remedy proposals resulting from its market study into general insurance add-ons.

3.91 We have provided in Appendix 3.2 some examples of descriptions which demonstrate the wide variety which exists. We have highlighted some examples of descriptions which we believe are not as clear as they could be.

3.92 In light of this proposed approach, we have not undertaken significant work in assessing the effectiveness of the remedy or its proportionality. In our view, based on the responses of parties (see Appendix 3.1), we would not expect the costs of this remedy to be material but this would be a matter for the FCA.

***Assessment of relevant customer benefits***

3.93 In deciding the question of remedies, the CMA may 'have regard to the effect of any action on any relevant customer benefits (RCBs) of the feature or features of the market concerned'[8]. RCBs are defined in the Act and are limited to benefits to relevant customers in the form of *(a)* lower prices, higher quality or greater choice of goods or services in any market in the UK (whether or not the market to which the feature or features concerned relate); or *(b)* greater innovation in relation to such goods or services. The Act provides that a benefit is only an RCB if the CMA believes that: *(a)* the benefit has accrued as a result (whether wholly or partly) of the feature or features concerned or may be expected to accrue within a reasonable period of time as a result (whether wholly or partly) of that feature or those features; and *(b)* the benefit was, or is, unlikely to accrue without the feature or features concerned.

*Views of parties*

3.94 No party made explicit reference to RCBs but many insurers and brokers highlighted the value that consumers place on NCB and NCB protection.

*Our assessment of RCBs*

3.95 We have not identified any RCBs arising from the information asymmetries between PMI providers and consumers for NCB protection. Our remedy

[8] The Act, section 134(7).

measures should lead to better informed purchasing decisions for PMI-related add-ons and, in particular, for NCB protection.

### *Proportionality of the proposed remedy*

3.96 In this section, we set out our provisional views on the proportionality of our proposed remedy measures. This section relates only to Remedy 4B as the FCA will subsequently have to consider the proportionality of any remedies it wishes to implement pursuant to considering our remedies 4A and 4C.

*Effective in achieving its aim*

3.97 In our view the additional information provided to consumers in accordance with Remedy 4B would assist consumers in understanding NCB and NCB protection, better enabling them to understand the costs and benefits of taking out NCB protection. This will improve competition constraints on insurers when selling NCB protection and we expect this will lead to a reduction in prices for NCB protection so that they properly reflect the value of the product to consumers (see paragraph 3.8).

*No more onerous than necessary*

3.98 We considered whether the remedy could be effective without all of the proposed measures but, in our view, it would not be possible to achieve a comprehensive solution without all elements. We noted that we had not included certain possible measures (such as the provision of information on PCWs) where we believed these measures did not add to the effectiveness of the remedy. We also noted that the measures we had included were all needed to provide consumers with information necessary to make an informed decision. In our view, a remedy with only some of these measures would not be effective (see paragraph 3.32).

*Least onerous if there is a choice*

3.99 We have not identified any alternative effective remedies and, therefore, we believe we have identified the remedy which imposes the least cost and is the least restrictive.

*Does not produce disadvantages which are disproportionate to the aim*

3.100 We considered whether our remedy was likely to produce disadvantages which were disproportionate to the aim of remedying the AEC and the resulting customer detriment.

*Benefits*

3.101 In our provisional findings we noted that, in 2012, the aggregate NEP for NCB protection for seven of the ten largest insurers was £152 million, which equated to 2.7% of their total NEP (see Table 8.3 of the provisional findings). This suggested that the total annual premiums for NCB protection across the whole PMI market were approximately £210 million in 2012.

3.102 We also found that there was a limited understanding of NCB protection. In paragraph 8.33(b) of our provisional findings we noted that, while a high proportion (77%) of respondents to our customer survey thought they had a good understanding of this product, 59% of those who claimed to understand it well wrongly thought that NCB protection would prevent their motor insurance premium going up as a result of a claim. In addition, our assessment of the descriptions of NCB protection given by providers on their websites found that none of the providers explained that the effect of an accident typically increased a consumer's risk premium, irrespective of fault and regardless of their level of NCB. GfK's recent market research has reinforced these findings, demonstrating a lack of consumer understanding about how NCB protection works and what value it has.

3.103 Based on the evidence in paragraphs 3.101 and 3.102, it appeared to us that the premiums spent on NCB protection by consumers who had a limited understanding of the product were likely to amount to over £120 million a year.[9] We did not place significant weight on this precise figure but it suggested to us that consumers were currently paying substantial amounts (in aggregate) on a product many did not understand. In our view, it was clear that consumers could only make decisions on the value of NCB protection when presented with some information which went towards making that decision. By improving consumers' understanding of NCB protection, the asymmetry of information would be reduced, enabling consumers to make more informed purchasing decisions.

*Costs*

3.104 In considering the costs of the remedy measures, we identified the costs likely to be incurred by insurers, brokers and PCWs in updating their websites and

[9] 59% of £210 million. We have used 59% on the basis that those who said they understood the product well were most likely to consider purchasing it. However, in addition, 23% of respondents to our survey admitted that they did not understand NCB protection well. Therefore we believe our estimate is a conservative estimate and the figure could be higher.

telephone scripts to reflect the information required to be provided to consumers. We also noted that consumers, with more information, would likely take longer to purchase NCB protection.

3.105 Regarding the updating of insurers' and brokers' websites, our remedy measures only require the information (on average NCB discounts, the implied price for NCB protection and the insurer's step-back procedures) to be provided to consumers on the insurer's own website. Insurers and brokers did not provide us with evidence on such costs (or on the costs of including statements on their websites) but in our view they are likely to be substantially less than the costs of providing information to PCWs (which insurers said would be substantial (see paragraph 3.19 and Appendix 3.1)).

3.106 We noted in Section 2 that the cost of updating telephone scripts is not likely to be significant (see Appendix 2.5).

3.107 In terms of the cost of the additional time taken when purchasing NCB protection:

*(a)* For insurers and brokers, we found in Section 2 that adding 1 minute to a call is likely to cost insurers and brokers around £1 million across the industry.

*(b)* For consumers, we can use our estimate of the value of time in Section 2 (10p per minute) to estimate that for every extra minute on average taken by consumers to consider the information, the cost would amount to around £2.5 million[10] (25 million policies[11] x 10p). However, it is difficult to predict how long consumers would spend considering the information. In Section 4 we noted evidence from a PCW which suggested that searches take an average of 5 minutes. As NCB protection is only one part of the PMI purchasing process and the information we propose is designed to be relatively simple to digest, it seems to us unlikely that consumers on average would spend more than one or two minutes considering the additional information. Therefore we believe the additional cost of time to consumers is unlikely to be significantly more than £2.5 million per year.

[10] We note that actual take-up rates of NCB protection are between 24% and 66%, with an unweighted average of 49% (see provisional findings, Appendix 8.1, paragraph 84). Therefore some consumers may not even consider NCB protection. However, in our calculations, we have assumed conservatively that all consumers consider the information presented.
[11] See provisional findings, paragraph 2.4.

*Balance of benefits and costs*

3.108 Having evaluated the potential benefits and costs of the Remedy 4B measures, we considered whether their costs were likely to be disproportionate to their beneficial effects in remedying the AEC and detriment.

3.109 We noted that our estimate of the costs was low (see paragraphs 3.104 to 3.107). When set against an uncertain but potentially high detriment (see paragraphs 3.101 to 3.103), we judged that the benefits of the remedy were likely significantly to outweigh its costs.

*Conclusions on proportionality of the proposed remedy*

3.110 Based on our assessment in paragraphs 3.96 to 3.109, we provisionally concluded that the beneficial effects of introducing these measures were likely significantly to outweigh their costs. We also concluded that the measures all worked together in creating an effective remedy. Therefore we provisionally concluded that the package of remedies represented a proportionate solution to the AEC and the resulting customer detriment.

***Our provisional decision***

3.111 We have provisionally decided to introduce the following remedy. The following information must be provided by insurers and brokers at the point of sale of NCB protection:

*(a)* the implied price of NCB protection;

*(b)* the step-back procedures, ie what happens to the number of NCB years with and without NCB protection in the event of one or more claims; and

*(c)* the average NCB discount according to the number of NCB years.

In addition, the statements in paragraph 3.52 must be presented on PCWs when consumers seek more information about NCB protection, and provided by insurers and brokers at the point of sale of NCB protection.

3.112 We have also provisionally decided to make two recommendations to the FCA:

*(a)* That it considers:

(i) whether insurers and brokers should be required to provide their prices for the add-ons they offer to PCWs and, if so, whether this should be for all PMI-related add-ons or only for the most commonly-purchased add-ons; and

(ii) more generally, how consumers' information needs in relation to PMI-related add-ons can best be met on PCWs.

*(b)* That it works with insurers, brokers and PCWs to consider if and how these providers might improve their descriptions of PMI-related add-ons, either as part of the FCA's general supervisory work or as part of its remedy proposals resulting from its market study into general insurance add-ons.

3.113 In our judgement, this represents as comprehensive a solution as is reasonable and practicable to the AEC and customer detriment that we have provisionally found.

# 4. Price comparison websites and MFN clauses (theory of harm 5)

***The AEC and resulting customer detriment***

4.1 In our provisional findings, we examined the effects on competition of 'narrow' and 'wide' MFNs.[1] We defined these as follows:

*(a)* **Narrow MFNs** state that the price quoted through the PCW will always be competitive with the price on the *insurer's own website*, ie the price on the insurer's own website will never be cheaper than the price on the PCW.

*(b)* **Wide MFNs** state that the price quoted through the PCW will always be competitive with other prices available on other sales channels, be they on the insurer's own website (as for narrow MFNs) or on other PCWs.

4.2 The main difference between a wide MFN and a narrow MFN is that a narrow MFN permits different prices on different PCWs whereas a wide MFN does not.

4.3 In our provisional findings, we found an AEC between PCWs due to the existence of wide MFNs in conjunction with sufficiently high single-homing rates. We found that wide MFNs restrict price competition between PCWs. We said that wide MFNs restrict entry to the PCW market, reduce innovation by PCWs and increase premiums for motor insurance to the retail customer. We found that sufficiently high single-homing levels might allow adverse effects equivalent to wide MFNs to be sustained by other behaviour.

4.4 Conversely, we found that narrow MFNs have only limited anticompetitive effects and that there would be a risk to the survival of PCWs without them because they provide both credibility and prevent free-riding by motor insurance providers. We said that competition in the motor insurance market would be weaker without PCWs and that there was not therefore an AEC from narrow MFNs. We considered the possibility that in some circumstances narrow MFNs might have the same effect as wide MFNs. However, we found that this was only a concern when there was significant investment in the provider's brand, own website sales were substantial, and insurers had not adopted a dual-brand strategy. We did not find it to be generally the case that narrow MFNs substantially decreased competition between PCWs.

[1] In our investigation we have been referring to retail MFNs. Retail MFNs refer to the final price available to consumers, including commission fees.

4.5 In our provisional findings, we did not estimate the detriment to consumers caused by wide MFNs. However, in paragraphs 4.97 to 4.102 below, we have considered the likely benefits of a remedy prohibiting wide MFNs.

### *Summary of remedies we consulted upon in our Remedies Notice*

4.6 In the Remedies Notice, we proposed a prohibition of wide MFN clauses. We said that the aim of this remedy was to strengthen rivalry over premiums offered on different PCWs. This remedy would prohibit the use of wide MFN clauses in agreements between PCWs and insurers. It would require all PCWs to stop using MFN clauses which restrict a motor insurance provider from offering a motor insurance policy more cheaply on other PCWs or through any other channel than on the PCW's own website. However, a PCW and an insurer could still agree that the insurer would not offer a motor insurance policy more cheaply on the insurer's website than on the PCW, ie narrow MFNs would not be prohibited.

4.7 As a prohibition of wide MFN clauses relates only to the contractual arrangements between PCWs and motor insurance providers, we said that we would also want to ensure that PCWs could not use other mechanisms or strategies which might have the same outcomes or effects as a wide MFN clause, for example threatening to delist an insurer if it offered motor insurance policies more cheaply on other PCWs.

### *Views of parties*

4.8 Eighteen out of 19 insurers or brokers who responded to the Remedies Notice supported the proposal to ban wide MFNs. The one party which disagreed was the broker BGL, which owns (via BISL Limited) 100% of CTM, one of the leading PCWs. Of the 18 which supported the proposal, seven wanted the ban to be extended to narrow MFNs. The other two insurers with ownership interests in PCWs (esure (50% owner of GoCompare) and Admiral (100% owner of Confused)) agreed with our proposed remedy to prohibit wide but not narrow MFNs.

4.9 Of the four largest PCWs, two supported our proposed remedy and two opposed it. All of the four largest PCWs opposed the extension of the remedy to include banning narrow MFNs.

4.10 BGL (the owner of CTM) argued that its agreements with insurers and brokers were exempt under EU competition law. It also argued that it was important to its business model always to be able to claim truthfully that its search results represented the best prices available on the Internet for those products. BGL believed wide MFNs to be a key means of securing this end.

4.11 We have summarised below the responses to each question asked in our Remedies Notice.

*Specification*

4.12 Most insurers and brokers told us that the remedy should ban all MFNs and carve out the permitted exceptions. Supporters of this view included Ageas, Aviva, esure, LV, Zurich and the Association of British Insurers (ABI). Admiral told us that the prohibition of all MFNs which referenced other PCWs would be sufficient.[2] Acromas emphasised that, however the remedy was specified, it should prohibit MFNs from being extended to new channels like social media.

*Timeliness*

4.13 A number of insurers and brokers told us that the remedy could be implemented either immediately or very swiftly. These included Acromas, Ageas, Allianz, Aviva, LV and the ABI. Zurich pointed out that renegotiation would be needed but would occur in whatever time period was permitted under the remedy. [✂] argued that it would require substantial and onerous renegotiation of all contracts.

*Circumvention risks through equivalent behaviours*

4.14 Several insurers (including the ABI, Zurich, RSA, First Central, [✂], Aviva, Allianz and Ageas) said that there was a threat of achieving price parities through 'equivalent behaviours'. Several other insurers (including CISGIL and DLG) argued that the absence of a prohibition of narrow MFNs constituted a circumvention risk in that a collection of narrow MFNs was equivalent to a wide MFN.[3]

4.15 To mitigate these risks, the ABI thought that a regime of fines and legal recourse should be sufficient.[4] DLG suggested some form of price monitoring to ensure that PCW commission rates were kept within reasonable bounds (eg linked to inflation), and that, if rates increased beyond this, the MFN would no longer be enforced. Aviva suggested that a prohibition of narrow MFNs would mitigate the risk of equivalent behaviours by increasing competition

[2] The full context of what Admiral told us was as follows: 'In terms of specifying this remedy, potentially the absence of the cross-PCW MFN clause from a contract is sufficient. Alternatively, a standardised clause could be added to specify that this does not apply, but we would have thought the former should be sufficient.'
[3] Their arguments are considered in greater detail in Appendix 4.2.
[4] Although the ABI also said that it had not had time to evaluate the most effective solution.

faced by PCWs. Allianz suggested that PCWs should be required to display quotes on fair terms.

*Distortions*

4.16 [✂] told us that ordinary commercial relations between insurers and PCWs would be distorted by a prohibition of equivalent behaviours because insurers would refer spuriously to it.

4.17 Acromas said that, by not prohibiting narrow MFNs, its negotiations would be distorted in that narrow MFNs would be considered to be without legal risk and therefore no longer resistible. Acromas told us that the remedy could cause PCW advertising costs to go up and premiums might therefore rise.

4.18 Admiral said that an unintended consequence of the remedy would be more price dispersion and therefore a need to educate consumers that by shopping around the PCWs they may be able to find better deals. AXA told us that the increase in competition brought about by the remedy could potentially lead to consolidation among PCWs.

4.19 CISGIL said that the incentive to create brands which were not listed on PCWs would continue to be present under the remedy, with associated costs.

### *Remedy that we are proposing to take forward*

4.20 In this section we set out the remedy which we are proposing to take forward to address the AEC and/or customer detriment under ToH 5. The remedy is a prohibition on wide MFNs and 'equivalent behaviours' (as described in paragraphs 4.6 and 4.7). We explain in paragraph 4.74 and Appendix 4.2 why we are not extending the prohibition to narrow MFNs.

*Design issues*

4.21 We have identified two main design issues: first, how to define wide MFNs; and second, whether to adopt measures which discourage or prohibit equivalent behaviours (and, if so, what measures).

*Definition of prohibited MFNs*

4.22 The prohibition needs to cover wide MFNs only and exclude narrow MFNs. There are two ways to do this:

*(a)* prohibit all MFN clauses and list the exceptions; or

*(b)* prohibit specific types of MFN clauses.

4.23 The first approach runs the risk of excluding MFN clauses which may be acceptable in the future but it mitigates against the risk of circumvention by PCWs. The second approach requires a clear description of the types of MFN clause being prohibited and leaves a risk of new types of wide MFN clause emerging in the future. In the first approach, we would need to define what we mean by narrow MFNs, whereas in the second approach we would need to define wide MFNs.

4.24 Under the first approach, which requires a definition of narrow MFNs (eg those clauses which require that the price on the insurer's own website (the 'direct channel') is never cheaper than the price on the PCW), there is a specification risk – if the direct channel is defined too widely, and hence the definition of permitted MFNs is too wide, the remedy may not be effective. For example, imagine that an insurer's customer acquisition costs remain at around £50 per customer through PCWs but reference selling through, say, the insurer's Facebook page generates business at a cost of £10 per customer. If the insurer's Facebook page is included in the definition of the direct channel, then insurers which are bound by a narrow MFN would not have a strong incentive to explore these potentially cheaper ways of selling because they would not be able to gain market share through sharing the cost saving with consumers. Aviva told us that social media might become the most efficient way of acquiring and pricing customers in the future, while Acromas said that technological innovations made it difficult to know what medium might in future become the most efficient way of acquiring and pricing customers. It said that social media, for example, had the potential to become a significant route to market.

4.25 However, under this first approach, if the direct channel is defined too narrowly, there might be a risk of prohibiting MFNs which are legitimate. We believe that narrow MFNs protect the credibility of PCWs and that PCWs increase competition in the market, such that limiting the effectiveness of narrow MFNs could represent an adverse consequence of the remedy. To extend the example above, if 'direct channel' were defined so as *not* to include social media, consumers might learn to use PCWs for preliminary research but before buying to check the insurer's Facebook page to find if there is a cheaper deal. Use of the Facebook page in this way could undermine the business model and the credibility of the PCWs, leading to a risk to their continued existence in the market.

4.26 Under the second approach, there is the problem of not knowing how insurance will be sold in the future, or how MFN clauses will develop, such that excluding only certain MFNs could be ineffective.[5] It is also much harder to define something broad, such as a wide MFN, when the channels over which it applies might vary from provider to provider, than something narrower.

4.27 We have examined the way in which wide and narrow MFNs have been defined in existing contractual arrangements between the PCWs and insurers. For example, one PCW's narrow MFN clause with an insurer is worded as follows: 'The Insurance Provider warrants that it will not provide a quotation […] that has a higher premium payable than would be payable by that potential customer should they have accessed the relevant Insurance Provider Website directly […]'. The contract defines the 'Insurance Provider Website' as 'the Internet websites operated by or on behalf of the Insurance Provider […] which provide quotations for and the facility to purchase Products'.

4.28 The same PCW's wide MFN clause, in a contract with another insurer, simply appends to the wording of the narrow MFN clause above: '[ …] than would be payable by that potential customer should they have accessed the relevant Insurance Provider Website directly **or via a different source of introduction**' (our emphasis added).

4.29 The MFN clauses in contracts between the other PCWs and PMI providers appear to be essentially similar.

- *Our proposed approach*

4.30 On balance, given the anticompetitive effects of wide MFNs, we have provisionally decided that all MFN clauses should be prohibited except for those narrow MFN clauses which we have found to have consumer benefits (ie option *(a)* in paragraph 4.22 above).

4.31 Although there is a risk that the definition 'over-prohibits', we believe this is preferable than to 'under-prohibit' because:

*(a)* this is likely to result in a more effective remedy because it does not require the anticipation of all possible ways in which wide MFNs could be designed so as to circumvent it;

*(b)* it does not require us to anticipate future different sales channels; and

*(c)* although it may result in certain types of MFNs not being allowed even though they may have limited anticompetitive effects, we would expect

[5] Although we are able to vary a remedy in the future, we are not able to enhance it through a variation.

PCWs to alert us to a change in the ways in which motor insurance is bought and to seek a variation to the remedy if appropriate (they would have an incentive to maintain the effectiveness of their narrow MFNs).

4.32 We would prohibit entry into or performance of contracts between PCWs and insurers/ brokers which prevent the insurer/broker from quoting for PMI at a cheaper price through any distribution channel. This prohibition would then exclude 'narrow MFNs', which we would define as covering the insurance provider website (but excluding possible aggregator platforms like Facebook). We would also make clear that our intention is to permit MFNs where their absence might threaten the credibility and long-term viability of PCWs. Under this approach, it would be open to PCWs to request a review of the remedy to reconsider the definition of the channel to which an MFN can legitimately relate if consumer behaviour should change to such an extent that PCWs were endangered.

*Measures to discourage or prohibit equivalent behaviours*

4.33 In the absence of wide MFNs, PCWs might seek to enforce non-contracted price parity by delisting PMI providers which price cheaper on other PCWs. As was discussed in the provisional findings, this could have similar effects to wide MFN clauses. For the purposes of our analysis, we call such behaviours 'MFN-equivalent behaviours', or just 'equivalent behaviours'. We discuss in this section whether measures to discourage or prevent such behaviours are necessary in order to remedy the AEC and/or customer detriment we have provisionally found.

- *Effectiveness and credibility of 'MFN-equivalent behaviours'*

4.34 If a PCW sees that an insurer has listed a lower premium on a competing PCW, it might seek price parity by asking the insurer for an equivalent price. Failing that, the PCW could threaten to delist the insurer.

4.35 Several insurers and brokers described to us certain 'commission sacrifice deals', which are discussed in detail in paragraphs 9.60 to 9.64 of our provisional findings. Under these deals, MSM offered to reduce its commission in exchange for a matched reduction in premium from the insurer on the basis that the posted premium on MSM would reflect the combination of the two savings. In the cases described in our provisional findings, some PMI providers were threatened with delisting by another PCW as a result of these deals.

4.36 In our multilateral hearing with PCWs, one PCW said that it would be an option to not list the price of an insurer which was pricing more cheaply on another PCW. It said that it would be in the consumer's interest for the PCW not to list an insurer's price when that insurer is providing a cheaper price to another PCW.[6]

4.37 We also received anecdotal evidence from insurers that PCWs have threatened to delist PMI providers if they do not get the best price. For example, one insurer, [✂], in responding to our Remedies Notice, stated:

> We have been verbally advised by senior executives at one PCW, since the publication of the Competition Commission's findings, that it is the PCW's own choice who they have on their panel and they can delist a provider if they feel they are not offering, what is, in their view, the 'best customer proposition'. We have been advised that if we present cheaper prices on a rival PCW that this *may* be considered that we are not offering their customers the best proposition and they would consider whether we were an appropriate partner for their panel.

4.38 If the PCW commands a sufficient number of consumers that use only its PCW (single-homers), the delisting threat may be effective in dissuading the insurer from accepting commission sacrifice agreements. The insurer gains from having a low-priced product on the alternative PCW, but loses from not selling any product to the single-homers while it is delisted. The costs to the insurer from being delisted will depend on the proportion of consumers who single-home: if all consumers checked many PCWs before buying, then the threat of delisting would have little consequence on the insurer, as a customer lost through one PCW could be gained on another. Appendix 4.1 uses our estimates of single homing rates and the price elasticity of demand to assess how insurance providers might weigh up the costs and benefits of delisting (or a threat to delist). We find that single-homing rates are sufficiently high at the four largest PCWs to make delisting an effective threat.

4.39 However, the credibility of the threat depends on the incentives of the PCW. The possible costs for a PCW from delisting a given insurer are likely to depend on the importance of the brand of this insurer: if a PCW feels that it loses in the quality, reputation and attractiveness of its platform from losing the listings of a given insurer, delisting will be more costly to the PCW and the threat of delisting will be less credible.

4.40 We reviewed some of the negotiations around commission sacrifice deals and noted two ways in which these negotiations have occurred:

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[6] See line 4, p78, to line 4, p79 of the transcript of PCWs hearing on 28 February 2014.

*(a)* The more expensive PCW has tried to negotiate a similarly good policy price with the insurer but has been unwilling to cut its own commission rates. In these cases, we observed that the insurer, faced with a threat of delisting from the more expensive PCW, has abandoned the commission sacrifice deal with the lower-commission PCW. We have seen three instances in which this has happened.

*(b)* The more expensive PCW has asked for price parity and has been willing to cut its own commission rate to achieve it. Delisting has not occurred and lower premiums have been achieved for retail consumers on both PCWs. We saw one instance in which this happened.[7]

4.41 In the first case, the high-commission PCW successfully prevented commission-rate competition between PCWs. In the second case, competition worked to deliver lower prices to consumers.

- *Measures to prevent MFN-equivalent behaviours*

4.42 In order to prevent MFN-equivalent behaviours, we can either prohibit directly such equivalent behaviours, or address the underlying causes which make such equivalent behaviours effective and credible. We considered three possible approaches:

*(a)* measures to decrease retail consumer single-homing rates;

*(b)* measures to increase the negotiating power of insurers in delisting negotiations; and/or

*(c)* a behavioural remedy which prohibits equivalent behaviours when they are for the purpose of stopping insurers from pricing differentially based on different commission rates and other costs of doing business.

4.43 We propose to adopt approach (c) for the reasons explained below (see paragraphs 4.44 to 4.51). We explain in paragraphs 4.75 to 4.82 why we have decided not to adopt approaches (a) or (b).

° *Prohibition of equivalent behaviours*

4.44 The aim of a prohibition of equivalent behaviours would be to prevent PCWs from using behaviours against insurers if this behaviour were intended to reduce competition between PCWs.

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[7] [✂]

4.45 Delisting is not the only behaviour which could be used to create MFN-equivalent effects. Aviva highlighted that PCWs may use other methods such as:

*(a)* less-favourable commission terms;

*(b)* less-favourable solicitation rights for insurers with customers introduced by the PCW;

*(c)* unreasonable IT change lead times;

*(d)* changes to the timeliness, cost and quality of market intelligence; or

*(e)* other additional charges.

4.46 Each of these are ways in which a PCW could reduce the value to an insurer of being listed on the PCW. To that extent, they may be effective in dissuading an insurer from accepting commission sacrifice deals (or equivalent) elsewhere. For this reason, in our view, 'equivalent behaviours' needs to be sufficiently flexibly defined for circumvention not to be easy.

4.47 However, there are some legitimate reasons for a PCW to delist an insurer or to engage in any of the practices listed in paragraph 4.45. For example, a PCW might choose to delist an insurer if it found a PMI provider referring customers to an unregulated underwriter or if there were legitimate fears about the financial future of the PMI provider. Evidence submitted to us by the PCWs showed that around 15 delistings occur each year. A prohibition preventing delistings, or some other behaviours, could limit legitimate competitive behaviour.

4.48 In our view, the key distinction between anticompetitive equivalent behaviours and normal commercial practices is in the effect of the behaviour, ie whether the behaviour reduces or eliminates competition between PCWs as wide MFN clauses do. For example, if a PCW responded to a PMI provider agreeing a commission sacrifice deal and lowering its premium quotes on another PCW by delisting that PMI provider, this is behaviour we would find harmful. However, we would not wish to restrict a PCW's ability to negotiate with insurers and sanction them, especially if those actions are in response to behaviour by insurers that undermines the business models of PCWs (eg not declaring leads from PCWs), or where the PCW has legitimate concerns about the financial future or regulatory compliance of the PMI provider.

4.49 We believe that competition between insurers (inter-brand competition) is strong, especially when selling through PCWs, and it is this competition which provides the strongest pressure on insurers to offer competitive rates to

PCWs net of any PCW commission. The concern with PCWs seeking price parity is that it softens competition on the proportion of the premium which is unaffected by inter-brand competition, ie the PCWs' commission rates and the quality of business written through that PCW. The discipline on this comes from intra-brand competition, competition between PCWs, and, to an extent, competition between different channels. Delisting that has the effect of maintaining price parity between PCWs is therefore the behaviour which we are seeking to prohibit.

4.50 In light of the issues raised above, we intend to prohibit behaviours which have as their effect the elimination or reduction of competition between PCWs in a similar way to the harm identified by wide MFNs (namely, restricting entry to the PCW market, reducing innovation by PCWs and increasing premiums for motor insurance to the retail customer). We propose to provide guidance setting out examples of the sorts of behaviours and effects which are of concern and which we would consider would amount to a breach of the remedy.

4.51 We have considered whether this measure needs to be applied to all PCWs. Our view is that it does not as the threat of delisting or other equivalent behaviours is only credible when a PCW is above a certain size. We therefore propose that this remedy should apply to those PCWs which generate more than 300,000 private motor insurance sales per year.[8]

*Implementation issues*

4.52 As this remedy would need to cover both existing PCWs and potential future entrants, we would need to implement it using an enforcement order.

*Timeliness*

4.53 This prohibition would take effect immediately following the making of any enforcement order. Only one party told us that it would take considerable time to renegotiate contracts, with all other parties telling us that such renegotiation, if necessary, would not be burdensome. We noted that most contracts between PMI providers and PCWs contained severability clauses, stating that, if a provision of the contract were to be held invalid, illegal or unenforceable, the remaining provisions would continue in full force and effect. Some contracts further provided that provisions which were held unenforceable would be construed so as to most closely reflect the original intent of the parties but

[8] This represents approximately 5% of all PCW sales. The single-homing model found delisting to no longer be a credible threat when market shares were below 5%. Currently, only CTM, Confused, GoCompare and MSM would be above this threshold.

would still be enforceable. Other contracts provided that if any provision or any part of a provision of the contract is held invalid or unenforceable, the remainder of the provisions in the contract will not be affected and each remaining provision or part thereof will be valid and enforceable to the full extent permitted by law. Also, it does not appear to us that the removal of wide MFNs (or their enforcement as narrow MFNs) would fundamentally change the character, purpose, scope, substance or intention of the contracts between PMI providers and PCWs.

4.54 Therefore we believe that there is no need for a transition period following the making of the order to allow for the renegotiation of contracts. The order would specify that existing wide MFN clauses in relation to the provision of PMI would be void and unenforceable as from the date of the order. The wide MFN clause could be severed from the contract or, if so drafted, construed as a narrow MFN. PCWs would not be prevented by our order from enforcing agreements including narrow MFNs. All remaining provisions of the contracts between PMI providers and PCWs would remain in full force. We welcome evidence from parties on whether there are any agreements where a wide MFN clause could not be severed in this way.

*Laws and regulations*

4.55 One party, BGL, told us that Article 3(2) of EU Regulation 1/200[9] (the Modernisation Regulations) prevents the CMA from prohibiting MFN clauses. CTM said that this was the case '[…] even if [MFNs] were held to have any effect on competition […] and considered to fall within the scope of Article 101(1) of the Treaty on the Functioning of the EU'.

4.56 CTM told us:

> [MFNs] are permissible under Article 101(3), whether because of a lack of impact or by reason of justification or exemption (including under the vertical agreements block exemption). It follows that irrespective of the Competition Commission's inability to demonstrate any real adverse effects associated with such clauses (notwithstanding the positive benefits connected to them), it is not legally open to the Competition Commission to prohibit such clauses as part of any possible remedies in the light of Article 3(2) of the Modernisation Regulation (EU Regulation 1/2003).

[9] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, *OJ* L 1, 04/01/2003, pp1–25.

4.57 However, BGL/CTM did not set out any analysis to support its conclusion that MFNs were permissible under Article 101 TFEU, such as by making representations on the following:

- Why the MFNs would not be prohibited under Article 101(1) TFEU.
- Why the agreements in question would meet each of the four conditions set out under Article 101(3) TFEU so as to benefit from individual exemption.
- Why the agreements in question would benefit from exemption under the Vertical Block Exemption Regulations.[2]
- Why Article 3(2) of the Modernisation Regulations precludes the CMA from prohibiting the relevant agreements.

4.58 In our provisional findings, we have shown that wide MFNs have adverse effects on competition. We have also assessed efficiency arguments raised by parties and concluded that these restrictions were not necessary for the survival of PCWs.[10] We have also examined whether these agreements could give rise to relevant customer benefits but we concluded that this was not the case (see paragraphs 4.83 to 4.85 below).

*Monitoring and enforcement*

4.59 A clearly defined prohibition of wide MFNs is likely to be simple to monitor because PMI providers, which do not like wide MFNs, would be swift to inform the CMA of any breaches.

4.60 The prohibition of equivalent behaviours would be more complex to monitor and enforce. For any case of delisting or contract termination, it is not immediately apparent whether the action has been taken to limit competition between PCWs or for some other legitimate reason. The flexibility required for this behavioural prohibition means that disputes may arise.

- *Monitoring*

4.61 In order to monitor the prohibition of equivalent behaviours, we intend to request compliance statements from those PCWs caught by the order (ie those above the threshold in paragraph 4.51). These compliance statements would be submitted every quarter for the first two years following the order

[10] See provisional findings, paragraph 9.85.

and then once a year. We would require that they list all delisting actions during the relevant period, setting out the reasons for the delisting.

4.62 The CMA may also decide, from time to time, to give PCWs directions as to compliance with the order, ie to take certain actions or to refrain from taking certain actions for the purpose of carrying out, or ensuring compliance with, the order. For instance, directions for compliance may include the appointment of a monitoring trustee to supervise compliance with the order, in particular to investigate any behaviour which is of concern to the CMA.

- *Enforcement*

4.63 Enforcement could be done either through:

*(a)* use of the general judicial procedures implied by CMA enforcement orders; or

*(b)* setting up an adjudication process (similar to that used in previous CC remedies, such as in the cases of ITV Contracts Rights Renewal and Macquarie/National Grid).

4.64 We discuss the relative merits of each of these options in turn.

- *Use of civil proceedings*

4.65 Under this option, we would publish an explanatory note setting out the scope and purpose of the order, for the purpose of facilitating its interpretation by parties and by the courts. In particular, this explanatory note would include illustrative examples of the types of behaviours which would cause us concern.

4.66 In the event that a PMI provider (or any interested party) believed that a PCW were in breach of the order, it could seek to enforce the order by civil proceedings and obtain compensation for the losses it had suffered as a consequence of the alleged breach. Similarly, pursuant to section 167 of the Act, the CMA may seek to enforce the order by civil proceedings within the context of its duty to monitor orders. The relevant court for enforcing orders would be the High Court.

4.67 In order to obtain a temporary remedy against an alleged breach of an order, and to prevent certain behaviours until the dispute has been resolved, a PMI provider may also apply for an interim injunction.

- *Adjudication*

4.68 An alternative option would be the appointment of an adjudicator.[11] If a PMI provider believed that behaviour adopted by a PCW were in breach of the order, it would be able to submit a Notice of Adjudication to an appointed independent adjudicator. The PCW would be given a right to issue a Notice of Reply and the adjudicator would then be given a specified period of time in which to make its decision. The adjudicator would need to have information-gathering rights and enforcement powers.

4.69 The cost of the adjudicator would depend on the frequency of recourse to it. If the adjudicator is effective and has sufficient deterrence power, then recourse should be infrequent. However, setting up an adjudicator would entail certain fixed costs which would have to be paid for even if it were to have no cases. On the other hand, if cases brought to the adjudicator were frequent, the cost of the remedy would increase.

- *Provisional conclusion on enforcement options*

4.70 We believe that compliance statements, complemented with directions given by the CMA and recourse to civil proceedings, would be an effective enforcement mechanism. This option is likely to incur lower costs than an adjudicator[12] and therefore appears to be more proportionate.

*Conclusion on the effectiveness of the remedy*

4.71 In summary, we believe that the following remedy would be an effective solution to the AEC and/or customer detriment which we have provisionally identified in relation to ToH 5:

*(a)* A prohibition on PCWs and PMI providers entering into or performing agreements that include an MFN relating to the sale of PMI, except narrow MFNs, where ‘narrow MFNs’ are defined as covering the insurance provider website but excluding possible aggregator platforms.

*(b)* A prohibition on behaviours which have as their effect the elimination or reduction of competition between PCWs in a similar way to the harm

[11] The Enterprise and Regulatory Reform Act 2013 has amended Schedule 8 of the 2002 Act, which sets out the kinds of provisions which can be included in remedies orders made by the CMA. The new paragraph 20C enables the CMA to appoint a third party expert to monitor the implementation of remedies, including compliance with orders and to determine disputes. Although this type of mechanism had already been used in the past by the CC in mergers, this new provision would facilitate the implementation of our contemplated remedy in relation to alternative behaviours having equivalent effects to wide MFNs.
[12] The exception would be if there were lots of lengthy appeals with high legal costs ensued which outweighed the costs arising from the shorter timescale of adjudication. However, we do not believe that this is likely to be the case.

identified by wide MFNs (namely, restricting entry to the PCW market, reducing innovation by PCWs and increasing premiums for motor insurance to the retail customer). This measure will apply to those PCWs which generate more than 300,000 PMI sales per year.

*(c)* PMI providers and PCWs will be required to comply with immediate effect following the making of the order.

*(d)* In order to monitor equivalent behaviours, those PCWs above the 300,000 PMI sales per year threshold will be required to submit compliance statements to the CMA every quarter for the first two years following the order and then once a year. These compliance statements would need to list all delisting actions during the relevant period, setting out the reasons for the delisting.

***Remedies we are not proposing to take forward***

4.72 We are proposing not to take forward the following measures:

*(a)* a prohibition on all MFNs;

*(b)* measures to decrease retail consumer single-homing rates; and

*(c)* measures to increase the negotiating power of insurers in delisting negotiations.

*Prohibition on all MFNs*

*Description of the remedy*

4.73 This remedy would extend the prohibition on wide MFN clauses to all MFN clauses

*Our reasons for not taking the remedy forward*

4.74 In the Remedies Notice we set out our reasons for not taking this remedy forward. However, we received a number of arguments from insurers as to why this remedy would be necessary. We discuss these arguments in Appendix 4.2 but, overall, they have not changed our provisional view that narrow MFNs have limited anticompetitive effects and, by prohibiting them, we may undermine the PCWs' ability to drive inter-brand competition on their websites.[13]

*Measures to decrease single-homing rates*

*Description of the remedy*

4.75 The aim of this measure would be to reduce single homing by informing consumers that policies from the same insurance provider may be available through alternative channels at a cheaper price. One version of this remedy would be to require that PCWs contain such a message at the point of choice on the website.

*Our reasons for not taking the remedy forward*

4.76 The advantage of such a remedy is that it goes to the root cause of the problem. Without single homing, delisting threats are ineffective. However, the disadvantage of the remedy is that it may not be effective. Appendix 4.1 derives the critical levels to which single-homing rates must fall in order for delisting threats to be ineffective. These are typically significantly below the rates which insurers currently report. Such a large change in consumer behaviour seems unlikely from a relatively minor increase in consumer information. Another barrier to multi-homing is likely to be the time that it takes to search many PCW sites. When we asked PCWs what retail consumers typically believed they were getting from the use of a PCW, it seemed to be 'money savings compared with renewal quotes'.[14] This view of consumer motivation casts further doubt on whether this informational remedy would be effective. In addition, this remedy may also undermine trust in PCWs, which would undermine our reasons for maintaining narrow MFNs.

4.77 For these reasons we have provisionally decided not to adopt this remedy.

*Measures to increase the negotiating power of insurers in delisting negotiations*

*Description of the remedy*

4.78 A PCW might hesitate to delist an insurer if it believed that such a delisting would reduce the perceived quality of the PCW and drive consumers to other alternative PCWs offering PMI from more providers.

[13] Similarly, several parties proposed other remedies to address narrow MFNs but we have not considered these further as we have not found an AEC in relation to narrow MFNs (see Appendix 4.2).
[14] See transcript of response hearing with PCWs.

4.79 One remedy to increase the cost to a PCW of delisting an insurer or broker might be to require that PCWs state the size and composition of their panel of PMI providers at the point of choice. This would make a delisting more visible to consumers than it otherwise would be, and so increase the cost to PCWs. If the information on panel composition were publicly available, delistings could easily and verifiably be used in the advertising campaigns of competing PCWs. This measure could be effective if it were to increase the number of cases in which a PCW considered that the cost of delisting was too great and thus decrease the number of cases in which commission sacrifice agreements were refused by insurers for fear of retaliatory delistings.

*Our reasons for not taking the remedy forward*

4.80 The effectiveness of this remedy rests on whether PCWs would perceive this to be an important factor to consumers. This may not be the case if consumers are in fact just seeking to save money rather than to find as many different quotes as possible (see paragraph 4.76).

4.81 There are a number of other concerns with this measure:

*(a)* Specification: We would need to specify what information on panel composition would be made available. Focusing only on the top 20 PMI providers would risk being distortionary towards these providers as it would neglect enhancing the negotiating position of all the other providers. It would also require the PCWs to understand by what measure to define the top 20 PMI providers each year. An alternative would be for the PCW to say how many PMI providers, or PMI brands, are listed on its site. However, as these numbers would be large, the information would be of less value to consumers and so of less value in enhancing the negotiating position of PMI providers.

*(b)* Distortion: This measure may have the unintended consequence of interfering with legitimate delistings as it would alter the balance of power in PCW/PMI provider negotiations.

*(c)* Circumvention: Delisting is only one of a number of courses of action which might be used to dissuade a PMI provider from pricing differently through different PCWs.

4.82 For these reasons we have provisionally decided not to adopt this remedy.

### *Assessment of relevant customer benefits*

4.83 In deciding the question of remedies, the CMA may also 'have regard to the effect of any action on any relevant customer benefits of the feature or features of the market concerned'. RCBs are defined in the Act and are limited to benefits to relevant customers in the form of *(a)* lower prices, higher quality or greater choice of goods or services in any market in the UK (whether or not the market to which the feature or features concerned relate); or *(b)* greater innovation in relation to such goods or services. The Act provides that a benefit is only an RCB if the CMA believes that: *(a)* the benefit has accrued as a result (whether wholly or partly) of the feature or features concerned or may be expected to accrue within a reasonable period of time as a result (whether wholly or partly) of that feature or those features; and *(b)* the benefit was, or is, unlikely to accrue without the feature or features concerned.

*Views of parties*

4.84 No party made explicit reference to RCBs but GoCompare told us that MFNs were essential for the existence of PCWs. [✂] said that wide MFNs were critical to the positive operation of the market and the development of effective PCWs which supported more competitive pricing for consumers.

*Our assessment of RCBs*

4.85 We have not identified any RCBs arising from wide MFNs or equivalent behaviours, and hence we believe that a prohibition of wide MFNs and equivalent behaviours does not give rise to RCBs which might be lost. In particular, in our provisional findings we did not find that wide MFNs were necessary for PCWs to survive.

### *Proportionality of proposed remedy*

4.86 In this section, we set out our provisional views on the proportionality of our proposed remedy.

*Effective in achieving its aim*

4.87 For the reasons set out in paragraphs 4.6 and 4.97 to 4.102, we provisionally find that this remedy would be effective in its legitimate aim of remedying the AEC and the customer detriment resulting from it.

*No more onerous than necessary*

4.88 We considered whether it would be possible to achieve a comprehensive solution without implementing all of the measures in our remedy.

4.89 In our consideration of the remedy measures, we ruled out a number of options which we did not believe added to the effectiveness of the remedy. These included the use of an adjudicator (see paragraphs 4.68 to 4.69), behavioural measures to reduce single-homing (see paragraphs 4.75 to 4.82) and extending the prohibition to all MFNs (see paragraphs 4.73 to 4.74).

4.90 We did not believe that the remedy would remain effective if we were to dispense with any part of it. Therefore, we provisionally concluded that the remedy was no more onerous than necessary.

*Least onerous if there is a choice*

4.91 If we are choosing between two remedy measures which appear to be equally effective, we should choose the remedy measure which imposes the least cost or is the least restrictive.

4.92 In addition to the measures included in our remedy, we also considered a variety of other possible ways of addressing the AEC and/or the customer detriment. These included measures which we had put forward ourselves for consideration in the Remedies Notice and measures which were put to us by parties in response to the Remedies Notice.

4.93 Our consideration of these alternative measures is set out in paragraphs 4.72 to 4.82. We found that each of these alternative measures was of limited effectiveness and/or was not needed to remedy the AEC if the measures in our proposed package of remedies were pursued. We were not able to identify an alternative package of measures which would be effective in remedying the AEC and less onerous. However, we took care to avoid including measures in our proposed package of remedies which did not make a material contribution to remedying the AEC (see paragraph 4.89).

4.94 We provisionally concluded that, to the limited extent we had a choice between effective remedies, our proposed remedy imposed the least cost and was the least restrictive.

*Does not produce disadvantages which are disproportionate to the aim*

4.95 We considered whether our remedy, or any specific measure within it, was likely to produce disadvantages which were disproportionate to the aim of remedying the AEC and the resulting customer detriment.

4.96 In reaching a judgement about whether to proceed with a particular remedy, we consider its potential effects (both positive and negative) on those persons most likely to be affected by it. We pay particular regard to the impact of remedies on customers. We also have regard to the impact of remedies on those businesses subject to them and on other affected parties, such as other businesses (eg potential entrants, or firms active in upstream or downstream markets), government and regulatory bodies, and other monitoring agencies.

*Benefits*

4.97 The benefits of banning wide MFNs and equivalent behaviours are commensurate with the harm of wide MFNs. An effective remedy will lead to the harm being eliminated.

4.98 We would expect commission fees to fall as rivalry between PCWs for market share leads to price cutting. As argued in the provisional findings, the PMI market has become more price competitive as a result of PCWs and we would expect the lower commission fees to be passed through as lower premiums to customers.

4.99 PMI providers should have more flexibility to price differentially according to the different terms which they agree with different PCWs, eg with regard to which party bears the risk in the case of mistakes or fraud. The absence of wide MFNs provides opportunities for PCWs to differentiate themselves, using all the contract terms which have an impact on premiums, not simply commission rates. MSM told us that, because of wide MFNs, it was currently unable to invest its marketing funds into lower prices, which could be done if wide MFNs were banned. We would expect that if competition were based on price as well as advertising expenditure, the incentive to spend as much on advertising may fall. Therefore, price reductions could be expected from both profit reductions and cost reductions by PCWs in the face of greater competition.

4.100 We would also expect PCWs to seek to innovate more, especially to lower the costs for a PMI provider. As things stand, a PCW cannot be rewarded with market share for such innovations but, in the absence of wide MFNs, this would be possible. These types of innovations are likely to lead to lower premiums overall.

4.101 In our provisional findings, we identified that, due to wide MFNs, the threat of entry from a low-cost entrant was reduced as its lower costs could not be reflected in lower premiums to customers. The extent to which entry would increase is difficult to assess as other barriers to entry, such as advertising, exist in this market and are likely to still be significant.

4.102 We considered the size of the costs against the potential benefits of the remedy. If CPA fees[15] overall were to fall by between £5 and £10,[16] and this was passed through to customers, this would result in a benefit to PMI consumers of £31–£62 million.

*Costs*

4.103 We identified the following costs from the remedy: *(a)* contract renegotiation costs; and *(b)* consumer search costs.

- *Contract renegotiation costs*

4.104 Insurers and brokers told us that the implementation cost of the remedy would be small as existing wide MFN clauses would simply be rendered unenforceable.

4.105 However, [✂] told us that a prohibition would require a renegotiation of its contracts with insurers, and that this would be lengthy and costly. [✂] said:

> Any proposed prohibition would need to allow for the individual renegotiation of in excess of [✂] provider agreements. The terms of each agreement relating to price were not negotiated separately from the other operative terms and, accordingly, each of those terms would be the subject of a fresh negotiation if [✂] is not to be significantly commercially disadvantaged. This would involve very considerable time and cost.

4.106 Some of the contracts affected by wide MFN clauses contain severability clauses pursuant to which wide MFN clauses could be severed from the contract or construed as narrow MFNs (see paragraph 4.53). This suggested that any renegotiation of contracts would therefore be a choice.

4.107 We also noted that contract terms (eg commission rates) were typically renegotiated annually. Therefore, if our prohibition triggered a renegotiation, we would expect that renegotiation to occur in place of the next annual renegotiation and not to represent a significant additional burden. The cost would be that of bringing forward the annual negotiation, which we would expect to be modest.

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[15] Cost per acquisition fees, ie the charge PMI providers pay to PCWs for each sale.
[16] We have seen this type of price reduction in commission sacrifice agreements.

- *Consumer search costs*

4.108 Our remedy is likely to increase the dispersion of prices available across different PCWs. This may lead to an increase in the number of consumers who search several PCWs, especially if the benefit of searching more outweighs the additional search costs. More consumers will therefore spend more time searching for insurance under our remedy, which therefore represents a cost of the remedy.

4.109 In order to estimate the order of magnitude of this cost, we performed a simplified calculation of search costs. If we assume that searches take 20 minutes[17] and that the value of non-work time is 10p/minute,[18] each search therefore costs £2. In the scenario in which the impact of our remedy was to induce all those who searched just one PCW in their purchasing to now search two PCWs (approximately 33% of consumers), then we can say that the additional search cost for 33% of consumers would be an increase of £2, or approximately 5% of current commission rates. The search cost increase for the average consumer would therefore be less than 66p. The intention of this calculation is to indicate that this cost is significantly smaller than PMI premiums and the potential cost savings which a consumer may make by shopping around when there is increased price dispersion.

- *Balance of benefits and costs*

4.110 Based on this analysis (see paragraphs 4.95 to 4.109), we provisionally concluded that the benefits of the remedy were likely to outweigh significantly any costs, such that the remedy would not produce disadvantages which were disproportionate to its aim. Given the significant difference in the benefits and the costs and the timely implementation of the remedies, we did not consider it necessary to conduct a detailed NPV analysis.

*Conclusions on proportionality*

4.111 We provisionally concluded that our remedy represented a proportionate solution to the AEC and the resulting customer detriment.

[17] In its modelling of search costs, MSM has reported to us that it assumed an average of 5 minutes per search. Therefore 20 minutes is a conservative assumption.
[18] An academic study for the DfT from 2003 recommends a use of 6p/min for non-commute transport times. The Value of Travel Time Savings in the UK, Institute of Transport Studies, University of Leeds, January 2003. By using 10p/min, we are both adjusting for inflation (which would raise the value to 7.6p) and increasing the value to be conservative in our calculation.

***Our provisional decision***

4.112 We have provisionally decided that we should introduce the following remedy:

*(a)* A prohibition on PCWs and PMI providers entering into or performing agreements that include an MFN relating to the sale of PMI, except narrow MFNs, where 'narrow MFNs' are defined as covering the insurance provider website but excluding possible aggregator platforms.

*(b)* A prohibition on behaviours which have as their effect the elimination or reduction of competition between PCWs in a similar way to the harm identified by wide MFNs (namely, restricting entry to the PCW market, reducing innovation by PCWs and increasing premiums for motor insurance to the retail customer). This measure will apply to those PCWs which generate more than 300,000 PMI sales per year.

*(c)* PMI providers and PCWs will be required to comply with immediate effect following the making of the order.

*(d)* In order to monitor equivalent behaviours, those PCWs above the 300,000 PMI sales per year threshold will be required to submit compliance statements to the CMA every quarter for the first two years following the order and then once a year. These compliance statements would need to list all delisting actions during the relevant period, setting out the reasons for the delisting.

4.113 In our judgement, this remedy represents as comprehensive a solution as is reasonable and practicable to the AEC and the resulting customer detriment which we have provisionally found.

# 5. Provisional decision on remedies

5.1 We have provisionally decided that we should introduce the packages of remedies summarised in paragraphs 2.296, 3.111 and 3.112, and 4.112.

5.2 In our judgement, for the reasons set out in Sections 2, 3 and 4, this represents as comprehensive a solution as is reasonable and practicable to the AECs and resulting customer detriment that we have provisionally found.