Summary of views on remedies relating to theory of harm 1

Introduction

1. In this appendix, we set out a summary of the views of parties on remedies relating to ToH 1. We have published the responses we received to our provisional findings and our Remedies Notice on our website.[1]

Remedy A

What information should be provided to consumers?

Brokers

2. BGL told us that the information should cover the issues set out in paragraph 18 of the Remedies Notice and that supplemental information might be supplied, depending on the customer's circumstances and the status of the FNOL provider, and that the wording should be standardised and prescribed by law.

CMCs/CHCs

3. Accident Exchange told us that the information provided at the point of sale and FNOL should not be the same and that consumers should be made aware that there were many different sources of provision of repair and replacement vehicle services.

4. Accident Exchange told us that the information which could be provided about a consumer's legal entitlement would differ depending on when it was given and by whom. Accident Exchange also told us that consumers should be made aware that there were many different sources of provision of repair and replacement vehicle services.

5. Quindell told us that, in addition to the information set out in paragraph 18 of the Remedies Notice, the following information should be provided to consumers:

   (a) Entitlement to choose between using own insurance policy or not.

[1] See www.gov.uk/cma-cases/private-motor-insurance-market-investigation#responses-to-provisional-findings-report-and-notice-of-possible-remedies.

(b) Disclosure as to whether OEM or non-OEM parts will be used in the repair of their vehicle.

(c) Disclosure of whether repair or replace strategy will be used by the insurer.

(d) Rights to rehabilitation (for driver and passengers), other medical treatment and compensation for losses, pain, suffering and loss of amenity.

(e) Publication and disclosure of complaints ratios allowing the consumer to make an informed decision as to whether they can trust the provider.

(f) Information regarding any commission payable in relation to the services provided.

Insurers

6. Most insurers agreed that the information to be provided to consumers should be standardised and adopted by all market participants.

7. Aviva told us that as a minimum and in addition to the information set out in paragraph 18 of the Remedies Notice, all consumers needed to be made aware of the following:

(a) An explanation that their policy is a legally binding contract of indemnity and that they have separate rights in tort.

(b) A brief explanation of any additional cover purchased.

(c) A brief synopsis of what is not covered by the policy and how they can be helped in these instances (either through Motor Legal Expenses Insurance (MLEI) or advice or services from other providers).

8. CISGIL suggested that it may be necessary for different statements to be provided in England and Wales, Scotland and Northern Ireland, given the differences in the legal jurisdictions in these regions of the UK.

9. DLG told us that the Road Traffic Act was defined as any acts, laws or regulations, which governed the driving or use of any motor vehicle in Great Britain, Northern Ireland, the Isle of Man and the Channel Islands.

10. esure told us that a policyholder’s entitlements under the Scots law of delict was the same under tort law in England and Wales (ie to put a claimant in the same position as they would have been had they not sustained the wrong), although further analysis would be required to confirm the extent of any

differences once the level of detail to be included in any further documentation was known.

11. RSA told us that the FCA regulated all financial services undertaken and provided in the UK such that there were no differences in customer-facing regulation in the different nations of the UK.

12. esure told us that consumers should be made aware that when they entered into a credit agreement with a credit repairer or CHC, they may be potentially liable for the costs incurred by that provider in the event that the provider was unable to recover its costs from the at-fault insurer.

Lawyers

13. Keoghs told us that the information should include the benefits to the consumer of using the insurer's approved network (eg use of OEM parts (where applicable); warranty on repairs; and repairs carried out to Publicly Available Specification (PAS) 125 standard (where applicable).

14. Winn Solicitors told us that the consumer should be provided with a risk/ benefit analysis of proceeding with a claim on their insurance or alternatively proceeding with a tort action against the at-fault insurer.

Trade associations

15. The Lloyds Market Association (LMA) told us that consumers must be informed that they have responsibilities as well as rights, most notably a legal duty to mitigate any losses, and that failure to mitigate losses could lead to the consumer being liable for part or all of the costs they incur.

16. The Liverpool Law Society (LLS) told us that the information should include:

(a) a description of the rights available contractually through the provision of insurance and in tort as far as being put back into the position they would have been but for the accident;

(b) the need for the consumer to report an accident, provide their details and ensure that they do not prejudice their insurer's position;

(c) guidance for both at-fault and non-fault drivers;

(d) the consumer's entitlement to a replacement vehicle;

(e) the process of vehicle recovery, engineer inspection, repair authorisation and the repair work itself with advice relating to choice of repairer, quality of repair and storage during repairs;

(f) the responsibility to mitigate;

(g) the impact of a claim on the consumer's insurance policy; and

(h) advice about the type of bodies which would or could be involved in the claim.

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

Brokers

17. Acromas told us that providing information with annual insurance policy documentation would risk overloading the consumer with information at a time when they were unlikely to be focused on the issue.

18. Swinton recommended the provision of information both with the annual insurance policy documentation and at FNOL.

CMCs/CHCs

19. There were varying views as to whether the information would be most effective if provided with the annual insurance policy documentation or at FNOL or at both points.

20. WNS told us that a consumer would not necessarily be receptive to much information about their legal entitlements at FNOL.

Insurers

21. There was no consensus among insurers as to the most suitable point to provide information to consumers about their legal entitlements following an accident. For example:

(a) Admiral told us that information should be provided in the policy documentation (ie at policy inception), as this information could potentially be both lengthy and detailed, and could also be provided in the Frequently Asked Questions (FAQs) section of an insurer's website.

(b) AXA told us that the provision of additional information to policyholders with policy documentation would not be effective, because consumers were already informed of their rights and entitlements in their policy documentation and it was not clear whether policyholders read this documentation in its entirety.

Legal

22. DAC Beachcroft told us that information should be provided at policy inception and then reiterated (in greater detail) at FNOL, as this would ensure (as far as is possible) that the information had been reiterated to the consumer at the time it is needed most (ie following an accident).

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

Brokers

23. Swinton told us that the key principles of the information to be provided to consumers should be agreed by the ABI and the British Insurance Brokers' Association (BIBA).

24. Acromas told us that the GTA Technical Committee would be better placed to prepare the information, because it included representatives from both CMCs, CHCs and insurers.

CMCs/CHCs

25. A number of CMCs/CHCs, including Accident Exchange, Kindertons and Quindell, told us that the ABI was not suitable for preparing the information to be provided to consumers (as it represents insurers) and that an independent body, such as The Law Society, was better placed to assume this role.

Insurers

26. There was a general consensus among insurers that the ABI was a suitable body to prepare the information to be provided to consumers. However, CISGIL told us that the CMA or another regulatory body, such as the FCA, would be better placed to take responsibility for this remedy. DLG also told us that the FCA was a suitable body to perform this role.

Lawyers

27. DAC Beachcroft told us that a general statement of consumer rights would ensure uniformity in the information being provided to consumers.

Trade associations

28. The ABI told us that it could lead the preparation of the information in consultation with other industry stakeholders.

29. The LLS advised that it would be inappropriate for any organisation involved with the provision of accident-related services to be responsible for the drafting of the information.

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

Brokers

30. Acromas expressed concern that the provision of too much information at FNOL might confuse consumers.

31. BGL told us that the remedy would not give rise to distortions or have any other unintended consequences if the information provided to consumers was prescribed by law and applied consistently across the motor insurance market.

CMCs/CHCs

32. A number of CMCs/CHCs told us that the implementation of this remedy would result in an increase in the cost of claims and, consequently, an increase in premiums. For example:

    (a) Quindell told us that increasing awareness among consumers about their rights to have their vehicle repaired at a repairer of their choice and not accept the fitting of non-OEM or repaired parts to their vehicle would increase repair costs, which would likely lead to an increase in premiums.

    (b) WNS told us that the provision of further information at FNOL would increase the cost of handling the claim.

Insurers

33. RSA told us that care would be required to ensure the provision of the recommended information did not adversely affect the customer journey at the point of claim and throughout the claims process.

Lawyers

34. Winn Solicitors told us that there might be an increase in tort claims, as it would be generally better for non-fault claimants to proceed via a tort claim if liability was clear.

Trade associations

35. The LMA told us that an increased awareness of legal rights could lead to an increase in claims, which would cause premiums to increase. However, this could be mitigated by increased consumer understanding of their responsibilities (as well as their rights), thereby only encouraging legitimate claims.

What circumvention risks would this remedy pose and how could these be addressed?

Brokers

36. There was agreement among brokers that the provision of standardised information would mitigate the risk of circumvention of the remedy.

CMCs/CHCs

37. Quindell told us that, where insurers were responsible for providing information, there was a risk that they could use it as an opportunity to increase the chance of capture of non-fault parties and then under-provide services to them.

Insurers

38. Most of the insurers echoed the views of the brokers in suggesting that the provision of standardised information would reduce the risk of circumvention.

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

Brokers

39. Acromas told us that the FCA would be best placed to monitor implementation of the remedy, as it supervises insurers, brokers and PCWs.

40. BGL told us that, as the proposed remedy would be a legal and regulatory obligation of each service provider, there would be no requirement for additional monitoring, as all existing legal obligations were already adequately monitored by the relevant regulator.

CMCs/CHCs

41. Kindertons suggested that effective implementation of the remedy could be monitored through audits.

42. Quindell told us that the remedy could be monitored by the FCA or The Law Society.

Insurers

43. Insurers suggested various methods of monitoring the remedy, including an effective scripting and call monitoring programme, which would be for the FCA to monitor as an external regulatory body (Admiral); regular audits/inspections by the FCA (Allianz); and post-claim surveys (Aviva).

44. RSA told us that the monitoring of compliance with the terms of any enforcement order would fall most naturally to the FCA as regards insurers, but it was important to ensure that appropriate enforcement and monitoring mechanisms could be applied to non-regulated industry players (eg CMCs/CHCs).

Trade associations

45. The ABI told us that compliance could be encouraged by ensuring that the agreed wording was displayed on the websites of all relevant parties (ie insurers, brokers, solicitors, replacement vehicle providers, repairers and CMCs).

How much would it cost to implement this remedy?

Brokers

46. Acromas told us that the provision of information (orally) at FNOL would not be costly.

47. BGL estimated that an additional minute on all FNOL calls would cost approximately £40,000 a year.

Insurers

48. Insurers told us that the costs which would be incurred in the implementation of this remedy would include:

    (a) costs incurred in the preparation of the information to be given to consumers. NFU Mutual told us that it would be unlikely that this could be achieved without legal consultation;

    (b) administrative costs in changing policy documentation, call centre scripting and websites; and

    (c) ongoing operational costs due to an increase in the length of FNOL calls and additional training of claims handlers.

Lawyers

49. DAC Beachcroft told us that implementation costs should not be high on the basis that information was already supplied to policyholders and simply required improving and making uniform.

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

CMCs/CHCs

50. Accident Exchange told us that an enforcement order would not be required, as undertakings would be sufficient and more appropriate and would allow industry participants to negotiate on the information to be provided by each category of market participant to consumers.

Insurers

51. Allianz, Aviva and CISGIL supported the implementation of the remedy through an enforcement order, as it would ensure a consistent and standard approach across the industry.

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

Brokers

52. Acromas told us that this remedy could be implemented effectively on a stand-alone basis, but would also be effective in conjunction with Remedy 2A: compulsory audits of the quality of vehicle repairs.

CMCs/CHCs

53. Accident Exchange told us that as a stand-alone measure, this remedy would not address the AEC identified under ToH 1.

Insurers

54. Allianz told us that this remedy could be effectively implemented on its own. Admiral told us that this remedy was sufficient in conjunction with effective monitoring. Other insurers (Aviva, NFU Mutual and Zurich) told us that this remedy would only be effective in combination with other remedy measures.

Would the recommendation that a few questions on the legal entitlements of at-fault and non-fault claimants in relation to insurance claims following an accident be included in the driving theory test be likely to be effective in enhancing consumers' understanding of their legal entitlements?

55. Some parties told us that informing and educating consumers about motor insurance at any and at all opportunities could only be beneficial to consumers, and providing this information before consumers had been introduced to the motor insurance industry would enable them to have the facts at the earliest chance.

56. However, other parties told us that:

(a) the driving theory test was designed to test a driver's understanding of road traffic law, predominantly from a road safety perspective and, therefore, the provision of questions in relation to insurance was not relevant; and

(b) there was a significant risk that drivers would forget this information in the period between taking their theory test and being involved in an accident.

57. The DfT requested additional detail on the proposal and told us that its preliminary view on the information available was that questions on how to behave in the event of an accident, such as emergency action and first aid, were in line with EU law and were already part of the test, but testing knowledge of legal entitlements when making an insurance claim was likely to be outside the scope of EU Directives on driving tests.

Remedy 1A

The ABI

58. The ABI told us that while the remedy proposal had the potential to assist the insurance industry to manage the cost of credit hire effectively, there were a number of issues with the remedy which would impact significantly on the ability of the remedy to be introduced and for it to be effective. The main points highlighted by the ABI were:

(a) the introduction of the remedy would require primary legislation which would take several years;

(b) in the absence of subrogation, the non-fault insurer would bear the cost of its policyholders' non-fault accidents so low-risk drivers would subsidise high-risk drivers; and

(c) the proposed remedy would create a new add-on enabling the policy-holder to choose the level of replacement vehicle cover. 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.

Insurers

59. Six of the ten largest insurers (Ageas UK, Aviva, CISGIL, LV, RSA and Zurich) told us that they supported the remedy in principle and/or that it would lead to lower replacement vehicle costs and/or that it had the potential to address the concerns around the cost of replacement vehicles. However, all these insurers raised a number of caveats to their support, as set out below.

60. AXA told us that it strongly believed that the remedy would remove the excessive costs which were created through the separation of cost liability and cost control. AXA considered that in order to be effective, claimants must not have the ability to recover costs of a replacement vehicle from the at-fault insurer.

61. Three of the ten largest insurers (Admiral, DLG and esure) told us that they did not support this remedy.

62. The main concerns raised by the insurers with the remedy proposal were:

(a) If the remedy applied only to PMI there would be different arrangements for commercial vehicle and motorbikes (raised by six of the ten largest insurers).

(b) A consequence of non-fault insurers bearing the cost of providing replacement vehicles to non-fault claimants would be that premiums for safer drivers would rise relative to premiums for high-risk drivers (raised by six of the ten largest insurers). One insurer pointed out that this effect would create a moral hazard by reducing the incentive to drive safely.

(c) Policyholders who did not purchase replacement vehicle cover could be left without mobility following an accident (raised by six of the ten largest insurers). 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. To address this concern, four insurers proposed that some level of replacement vehicle cover should be mandatory under PMI policies, although views varied as to whether that should be a like-for-like vehicle or a basic courtesy car.

(d) If replacement vehicle cover were sold as an add-on, consumers would be faced with a more complicated choice than at present when purchasing a PMI policy (raised by two insurers).

(e) The remedy would not be timely: as legislation would be required to implement the remedy, there is no certainty when it would come into effect (raised by five insurers).

(f) If a third party were to control the repairs, that 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 (raised by three insurers). There would be duplicated claims management costs.

(g) If insurers responded to the remedy by selling replacement vehicle cover which applied equally when the driver was non-fault or at fault, there would be a greater level of like-for-like replacement vehicle cover for at-fault drivers than at present (often consumers do not take out like-for-like cover for when they are at fault) and this could lead to higher costs overall (raised by two insurers). Two insurers also noted that, if at-fault drivers with non-comprehensive polices were able to take out replacement vehicle cover, they would be provided with a vehicle following an accident but have no cover for the repair costs.

(h) Taking away non-fault claimants' tort law entitlements to be put back into the same position as they were before the accident would either raise premiums for safer drivers who are risk-averse and choose to purchase replacement vehicle cover, or 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 non-fault in an accident (raised by one insurer).

CMCs/CHCs

63. The CMCs/CHCs told us that they did not accept there was an AEC and that they objected strongly to the remedy.

64. The CMCs/CHCs main concerns with Remedy 1A were:

(a) The remedy would change the long-established principle of tort law that entitles the non-fault party to look to the at-fault party to be put back into the position they would have been in without the accident. The remedy was not a proportionate response to the AEC (even assuming that the CHCs/ CMCs accepted that there was an AEC, which they did not) because of the consequences of the remedy.

(b) Consumers would have to pay a premium for insurance cover which would provide a replacement vehicle in the event they were non-fault in an accident. This puts consumers in a worse position than at present because they are entitled to a replacement vehicle (subject to need) under existing tort law.

(c) Some consumers may choose not to pay an additional premium for replacement vehicle cover in order to minimise their total premiums. These consumers would be left without mobility in the event of a non-fault accident ie worse off than at present. Some consumers may choose not to pay an additional premium for replacement vehicle cover because they expect not to need a replacement vehicle in the event of an accident. If these consumers find themselves in need of a vehicle following an accident they will be worse off than at present.

(d) The cost of providing replacement vehicles to non-fault claimants would be transferred from at-fault insurers to non-fault insurers which would lead to an increase in the premiums for low-risk drivers relative to high-risk drivers.

(e) As set out in the Remedies Notice, consumers would be able to choose whether or not to take out replacement vehicle cover as an add-on to a basic PMI policy. This would complicate consumers' decisions when purchasing a policy and may give rise to the concerns identified under ToH 4 (insurers may not provide sufficiently clear explanations of add-ons).

(f) The remedy would lead to the disappearance of 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 can provide a replacement vehicle to a non-fault claimant within a few hours of being notified of a claim, whereas non-fault insurers do not have the resources to determine liability so quickly. CMCs also noted that they assisted non-fault claimants in other ways (for example, to recover any excess that has been paid and other losses (such as loss of earnings), to ensure that an NCB is reinstated, to monitor the progress of the repair and to negotiate the pre-accident value of vehicles in write-off cases). They said that, if CMCs did not exist, claimants would have to deal directly with their insurer on these matters.

Enterprise

65. Enterprise told us that it believed that if Remedy 1A were implemented with some key amendments it could be a highly effective basis for the industry to enhance the services offered to customers while improving costs.

Other parties

66. The responses to the Remedies Notice we received from other parties raised many of the same points as those from the insurers and CMCs/CHCs. Additional concerns raised were that the remedy would:

(a) favour large insurers who could access large discounts from providers of rental vehicles;

(b) reduce non-fault claimants' choice of which party handles their claim; and

(c) lead to an immediate increase in premiums for the replacement vehicle cover, while any reduction in claims costs as a result of the remedy would be reflected in reduced premiums only after a period of time once insurers had been able to assess the impact.

Variations to Remedy 1A

67. Aviva told us that it supported Remedy 1A but that it was concerned that a change in law would take time to effect. Aviva proposed a variation to Remedy 1A which it believed would avoid the need for a change in law:

(a) Mandatory first party insurance to be provided by the insurer which would provide the policyholder (regardless of fault) with an equivalent or similar-sized replacement vehicle, subject to a cap on the class of vehicle (eg executive premium vehicle or 2000cc engine).

(b) A policyholder would still be able to use credit hire if the cover provided under their policy did not materially meet their needs (eg they drive a larger vehicle) as subrogation rights would still apply in this case.

(c) Alternatively subrogation rights could be retained generally, provided that the cost of hire were controlled as proposed in Remedy 1C or by way of bilateral agreements with the fault insurer.

68. Aviva told us that it expected that if this proposal were adopted, insurers would offer the same level of replacement vehicle to non-fault and at-fault claimants. Aviva expected the impact on the overall level of premiums to be neutral or to reduce.

69. AXA told us that it thought that a change in law would be required to alter claimants' rights so that they could not obtain a replacement vehicle from a CMC/CHC if the vehicle offered by their insurer were adequate.

70. CISGIL told us that Remedy 1A could create a potentially significant consumer detriment, as it would remove a non-fault claimant's legal entitlement to mobility, where reasonable need can be established. Therefore, it proposed a variation to Remedy 1A whereby:

(a) A minimum level of replacement vehicle cover (eg a Class A replacement vehicle) is made mandatory in all insurance policies regardless of fault, which would ensure that consumers' legal entitlements under tort law would be met. 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.

(b) The cost of provision would be spread among the entire policyholder base, resulting in a lower unit cost to be incorporated into product pricing.

(c) No excess would be payable and the submission of a claim would have no impact on the claimant's NCB.

(d) For non-fault claims, no excess would be payable and the submission of a claim would not affect the motorist's claims record or adversely influence any no claims discount.

71. Enterprise proposed a similar variation to Aviva:

(a) Insurers should be required to provide a like-for-like replacement vehicle for all non-fault policyholders.

(b) Insurers should be able to subrogate the replacement vehicle costs against the at-fault insurer.

(c) There should be controls on the amount of the subrogated claims.

72. Enterprise told us that this variant would not require a change in law because non-fault claimants would be provided with the same level of replacement vehicle to which they would be entitled under tort law, and the right to sue could remain. By retaining subrogation, the cost of providing replacement vehicles to non-fault claimants would remain with at-fault insurers.

73. RSA told us that Remedy 1A with mandatory like-for-like replacement vehicle cover and with subrogation:

(a) would not require any change to the existing and long-standing law of subrogation; but

(b) although it might initially be implemented without a change in law, would ultimately require a change in law to mandate insurers to offer like-for-like replacement vehicle cover as a core policy benefit.

Remedy 1B

74. Parties generally did not support Remedy 1B. The main reasons for opposing the remedy was 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 variants of the remedy, which could lead to unintended consequences. CMCs/CHCs and some third parties also argued that Remedy 1B might be ineffective.

Removal of claimants' right to choose their service provider

75. Remedy 1B would remove or reduce 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 argued that the change of legal rights of consumers required a change in law which would be disproportionate to the financial benefits of the remedy.

Unintended consequences

76. There was a shared concern by many different parties that this remedy would introduce additional steps and unnecessary complexity into the claim process. This would cause delays in the provision of post-accident services and possibly uncertainty and confusion for customers.

77. Insurers and brokers also identified practical difficulties for insurers and claimants in cases 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. This could cause further difficulties for insurers in identifying fraudulent claims. LV said that non-fault insurers, brokers and CMCs/CHCs would generate ways to game the system to make it more difficult for at-fault insurers to intervene. Most insurers also said there was a risk that Remedy 1B might lead to an increase in frictional costs, in particular when repairs and replacement vehicles were provided by different parties.

78. Brokers, CMCs/CHCs and some insurers also suggested that Remedy 1B would inevitably result in a reduction of service provision because at-fault insurers had fewer incentives to meet claimants' legal entitlements. This would affect in particular vulnerable consumers (eg who have suffered a personal injury). However, other insurers argued that their incentives would be to provide a high-quality service as a captured claim was an opportunity to acquire a new customer. CISGIL said that the third variant of this remedy could lead to overprovision as parties would engage in a bidding war in order to capture the claimant, whilst the second variant could conceivably lead to underprovision. 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 pave the way for at-fault insurers to deal with other aspects of a claim (for instance in relation to personal injury). As their incentive was to minimise costs, the concern was that this would lead to an overall decrease in the quality of these services.

79. CMCs/CHCs were also concerned that, because the proposed remedy would give at-fault insurers the option to take claims from them, they would face a drop in volume and would not be rewarded for situations where work would be started but then aborted. The remedy, and in particular the second variant which removed claimants' choice, would therefore lead to the disappearance of CMCs and the services provided to non-fault claimants would deteriorate because non-fault insurers would seek to minimise the cost of claims. A few law firms and law societies raised similar concerns.

Effectiveness

80. CMCs/CHCs were concerned 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.

81. Some parties were concerned that if a claimant's right to choose their post-accident replacement vehicle provider were maintained, the remedy might be ineffective. LLS noted that insurers had generally been unsuccessful in making offers compliant with *Copley vs Lawn* to claimants, which raised the question as to whether insurers were able or motivated to provide early intervention in the form of an appropriate replacement vehicle.

82. DAC Beachcroft endorsed this remedy. However, it stated that the remedy would be ineffective if claimants' right to choose their own insurer or another provider were maintained. This remedy would reverse the GTA 'first to the customer principle' and should remove the uncertainty and unpredictability of so-called 'Copley' strategies. Another advantage of the remedy would be that

consumers would not need to enter into credit hire contracts. As regards the inconvenience caused to a claimant by a delay in provision, DAC Beachcroft stated that this would vary on a case-by-case basis. For instance, a delay of more than 24 hours might inconvenience many claimants whose vehicle was not deemed roadworthy after the accident, but a seven-day delay might not inconvenience a claimant whose vehicle was still roadworthy after the accident.

Remedy 1C

What would be the most effective way of implementing this type of remedy?

Brokers

83. Acromas told us that the remedy could be implemented by way of an enforcement order.

84. BGL told us that the GTA could be developed to become an independent regulatory function, which was either replaced or managed by a regulatory body (such as the FCA) and it could undertake a more prescriptive role in the determination of prices to reduce disputes (ie setting specific rates for credit hire replacement vehicles as opposed to caps or indicative rates).

CMCs/CHCs

85. Kindertons told us that an independent body would be required to oversee the implementation of the remedy.

86. Quindell told us that the remedy would require the GTA to be replaced or to be made mandatory.

Insurers

87. There was no common consensus among insurers' responses:

   (a) Allianz and Zurich told us that an enforcement order was the most appropriate method of implementation.

   (b) Aviva, LV and NFU Mutual told us that an undertaking to replace the GTA with a new mandatory, independent body was more appropriate.

   (c) Aviva, esure, NFU Mutual and RSA stressed the importance of judicial guidance in ensuring that the principles of a new system were enforceable by courts and adhered to in contentious cases. esure told us that the guidance could take a similar form to the Guidelines for the Assessment of General Damages in Personal Injury issued by the Judicial College.

Trade associations

88. The ABI told us that an enforcement order would be the only effective way of implementing the proposed remedy, as it would make the measures and rates legally binding on all parties, whereas an undertaking to replace the GTA would mean that the replacement mechanism would be voluntary, allowing participants to withdraw from the protocol if and when they wished to do so. The ABI also commented that, if the solution imposed did not apply to the whole market, competition would be distorted as some CHCs would be operating under controlled rates and others would not.

Which parties should be covered by this remedy?

89. There was a general consensus among respondents that this remedy should cover all parties engaged in the provision of credit hire activities (both the parties which procure the services, eg insurers, CMCs and brokers, and the parties which provide the services, eg CHCs and other vehicle hire providers).

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

Brokers

90. Both Acromas and BGL referenced the current GTA framework, which provides guidance on hire duration and the responsibility of the CHC in monitoring the repair process (as the repair duration is typically a proxy for hire duration).

91. Acromas also noted that the implementation of a rigid formula in respect of hire/repair duration would be ineffective, given that customer needs differ on a case-by-case basis.

CMCs/CHCs

92. A number of CMCs/CHCs told us that the GTA had an appropriate framework in place in relation to hire duration.

93. Accident Exchange told us that the existing test of reasonableness under tort law was appropriate when assessing hire duration, because it was impossible to specify for all circumstances when repairs must be commenced, as the circumstances of accident and repair were unique.

94. Accident Exchange also noted that we had not identified an AEC in relation to hire duration and, therefore, to the extent that this remedy impacted hire

duration, it would extend beyond the AEC identified in our provisional findings and was not necessary.

Insurers

95. A number of insurers, such as Allianz, CISGIL and Zurich, repeated the views expressed by brokers and CMCs/CHCs that there was no standard repair/hire duration, as the length of each repair could depend on a number of variables, such as the type of the vehicle requiring repair, the availability of parts, the capacity of the repairer, etc.

96. esure told us that the maximum hire duration could be linked to the labour hours necessary to repair the vehicle plus an allowance for administration of the repair and the sourcing of parts. In the event that a vehicle hire and associated repair continued for longer than the maximum duration, the non-fault insurer (or other subrogating party) would have an obligation to explain to the at-fault insurer the reason for the delay, at which point the at-fault insurer would then have the opportunity to challenge. At-fault insurers could monitor the duration of replacement vehicles and ensure that they were not provided for longer than necessary.

97. LV told us that the framework and costs allowable in relation to hire duration could be designed to ensure that a CHC achieved greater profitability through shorter hire periods.

Lawyers

98. Lawyers stressed the difficulty in standardising hire duration.

99. Keoghs told us that the current GTA framework had no punitive measure for non-compliance to the hire duration guidelines.

100. The LLS said that the provision of guidance in relation to hire periods appeared to be beyond the scope of the AEC identified.

Trade associations

101. Most parties underlined the inherent difficulty in prescribing definitive rules in respect of hire duration. However, the LMA suggested that a fixed hire period based on agreed scenarios could reduce the scope for abuse.

What is the most appropriate mechanism for setting hire rates for replacement vehicles? Who should determine the hire rates?

Brokers

102. Acromas told us that an independent body (eg an accountancy firm or economics consultancy) should determine the framework for the calculation of a cap on daily hire rates and that the mechanism for setting hire rates would need to:

(a) ensure that the basket of hire rates was genuinely representative of the market rate and would not enable the major vehicle rental providers to manipulate or otherwise distort the data set in order to gain a competitive advantage; and

(b) consider how extraneous factors (such as geographical differences in hire rates and seasonal fluctuations in demand) were built into the methodology used to calculate the average retail hire rate.

CMCs/CHCs

103. The majority of CMCs/CHCs told us that the GTA was operating successfully in setting appropriate hire rates for insurers and CMCs/CHCs.

104. Helphire told us that daily rates were affected by supply and demand, local trading conditions and macroeconomic factors and therefore rate changes could be very significant and very fast.

Insurers

105. There was a general consensus among insurers that the rate should be set by an independent body (suggestions included the ABI, CC/CMA, FCA, Financial Ombudsman, and Ministry of Justice (MoJ)) and that credit hire rates were not the appropriate benchmark for determining the new hire rates.

106. A number of insurers (Aviva, DLG, LV, NFU Mutual and Zurich) told us that the appropriate benchmark for determining hire rates was the direct hire rates agreed between insurers and their respective replacement vehicle providers. Both Aviva and NFU Mutual suggested that only a fixed or small percentage should be added to cover credit charges. Aviva told us that if the at-fault insurer admitted liability within 24 hours of FNOL, there should be no allowance for credit charges, as recovery of the cost of the claim (including replacement vehicle provision) was guaranteed.

107. esure told us that a cap should be set with reference to a blended average of the high street rates of the top five providers of direct hire vehicles (by vehicle

class) less a reasonable discount to reflect the stronger negotiating position of market participants (eg insurers). esure told us that there could be a separate cap for costs of credit set with reference to recognisable financial market benchmarks.

Lawyers

108. DAC Beachcroft told us that the rate would need to be reviewed annually and there was a need to consider whether discounts for prompt payment should still apply.

109. The LLS told us that the capping of recoverable rates effectively amounted to price fixing, which would seem to be anticompetitive.

Trade associations

110. The ABI told us that in the eventuality of a claim coming before a court, the court should apply the rates that had been determined under this remedy and not the rates a claimant could reasonably achieve in person (ie the basic or retail hire rate).

111. In contrast, the Credit Hire Organisation (CHO) told us that the appropriate basic hire rates were those established in law as falling within the range of rates available to the consumer.

What administrative costs should be allowed? At what level should administrative costs be capped?

Brokers

112. Acromas told us that the allowance for administrative costs should be set at a level which enabled CHCs to earn a reasonable rate of return and continue to provide non-fault claimants with a replacement vehicle that met their needs.

CMCs/CHCs

113. Quindell told us that the GTA allowed for an administration charge of £37 per hire, but this was insufficient to cover all the costs associated with providing credit hire services.

114. Accident Exchange told us that it would not be possible or proportionate to set a level of administrative charges at a fixed level on the basis that to do so would give an advantage to operators with scale and disadvantage small operators, potentially creating a barrier to entry into the CHC market.

Insurers

115. The majority of insurers told us that there should be no separate allowance for administrative costs and these costs should be incorporated into the daily hire rates.

Lawyers

116. Winn Solicitors suggested that competition between replacement vehicle providers would determine an appropriate level of administrative costs.

Trade associations

117. The Motor Accident Solicitors Society (MASS) told us that although recommended rates were contained within the GTA, it was ultimately for the court to consider on a case-by-case basis the reasonableness of any administrative costs.

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

118. There was a general consensus in favour of the use of a portal to improve the efficiency of managing and resolving replacement vehicle claims. A number of parties noted that a portal was already being developed by the GTA Technical Committee and a portal was currently administered by the MoJ for personal injury claims.

119. Allianz questioned the need for a separate portal for replacement vehicle claims (given that the implementation of a portal would incur cost).

120. Both Aviva and NFU Mutual told us that the introduction of a portal for the management of replacement vehicle claims would reduce administrative costs.

121. NFU Mutual told us that any portal should cover all elements of a claim and not just mobility.

What costs would the measures in this remedy entail?

122. Parties noted that costs would be incurred in the following areas:

(a) Establishment of hire rates would include the appointment of an independent body to calculate and review the rates. Zurich told us that these costs should not be significant as the GTA had been administered at relatively low cost over a significant period of time.

(b) Monitoring of compliance to the new rates.

(c) Establishment of a portal. Parties suggested that these costs should not be significant given that work has already commenced. DAC Beachcroft suggested that the costs incurred in the development of the MoJ portal for personal injury would be an appropriate benchmark.

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

Brokers

123. BGL told us that if the daily hire rates were set at levels which were commercially unsustainable for some vehicle hire providers, they might be forced to exit the market.

CMCs/CHCs

124. A number of CMCs/CHCs told us that a reduction in credit hire rates might result in the:

(a) Reduction or elimination of referral fees, as the CHCs would have no profit margin from which to pay such fees. They noted that we had found in our provisional findings that referral fees were currently passed on to consumers (to a significant extent).

(b) Exit from the credit hire market of some CHCs, thus reducing competition and allowing the remaining CHCs to retain referral fees rather than pass them on to insurers and ultimately consumers.

(c) Elimination of the credit hire industry, thus removing the incentive of at-fault insurers to provide mobility to non-fault claimants through direct hire.

125. Coral Insurance Services told us that CHCs might seek to make up the shortfall caused by a reduction in hire rates through further inflation of costs in the repair or total loss process.

Insurers

126. Both Ageas UK and esure told us that there was a risk that the reduction in daily hire rates could be recovered through an extension of the hire duration.

127. DLG told us that there was a risk of collusion or attempted market manipulation among market participants when submitting information on rates (ie submitting rates which did not accurately reflect true market conditions in order for the cap to be set at a level which reflects their interests).

Lawyers

128. Keoghs and Winn Solicitors told us that if the ability to recover losses was capped (through a cap on rates within the GTA), claimants may still be liable for unrecovered charges exceeding the cap as was the case today.

Trade associations

129. The LLS said that the remedy might result in the exit of CHCs from the credit hire market, thus reducing both the choice of replacement vehicle provider and the incentive of insurers to provide a quality replacement vehicle service to non-fault claimants.

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

CMCs/CHCs

130. Quindell told us that the remedy could be circumvented unless a consumer's tort law entitlement to pursue a claim for loss or to take receipt of a mobility solution was removed. Quindell told us that a consumer had a right in law to pursue damages for losses caused in a road traffic accident.

Remedy 1D

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

Insurers

131. A number of insurers, such as Allianz, NFU Mutual and Zurich, told us that this remedy would be most effectively implemented by an enforcement order.

132. Aviva told us that any such cost control was most effectively implemented through the use of a mandated industry portal, which should include an estimating system that was used to determine the cost of repair in an auditable fashion and could adjust the cost using the agreed capped rates.

133. CISGIL told us that neither proposed Remedy 1D(a) nor proposed Remedy 1D(b) would be effective. Therefore, CISGIL proposed an alternative remedy, whereby there would be a mandatory prohibition of discrimination or differentiation between the repair rates charged for fault and non-fault repairs.

Lawyers

134. DAC Beachcroft told us that it would be necessary for this remedy to be part of a package of measures that prohibited referral fees and also any other form of arrangement that may be in place which achieves the same ends.

Trade associations

135. The ABI told us that this remedy would be most effectively implemented by an enforcement order.

136. MASS told us that the non-fault insurer should be required to provide to the at-fault insurer a repair invoice with a statement of any discounts or allowances applicable to the invoice together with confirmation that no commission or other payment is due from the repairer to the non-fault insurer.

137. The National Association of Bodyshops (NAB) told us that this remedy could be effectively implemented through the establishment of an Independent Lead Body, a pan-industry adjudicator/watchdog to oversee any outcomes of the CMA market investigation and to prevent future insurance market dysfunction.

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

Insurers

138. RSA told us that the subrogation of repair costs at wholesale rates would reduce incentives for insurers to lower costs through buying efficiencies by requiring them to pass on the benefit of their efficiency gains to their competitors, which would place upward pressure on repair costs across the industry, leading to higher PMI premiums. RSA told us that subrogation at standardised rates addressed this undesirable efficiency effect by allowing insurers to earn a margin to the extent they could undertake repairs at a cost lower than those standard rates, thereby creating an incentive for the industry to pursue efficiency in repairs.

139. esure told us that the standardisation of repair costs would increase insurers' incentives to reduce the quality of a repair where the actual cost of a repair was below the generated standardised cost. esure also told us that the costs of establishing and maintaining the accurate assessment of repair costs would outweigh any potential benefits of remedy 1D(b), leading to higher private motor insurance premiums.

140. Allianz and NFU Mutual told us that the standardisation of repair costs would allow larger insurers to build in a profit against the standardised costs, as they

would be able to agree commercial rates below the standard costs and this would penalise the smaller insurers in the market.

Brokers

141. BGL told us that the standardisation of the price of repairs could drive repairers to look to repair vehicles for less than the standardised price, in order to increase profit, which could be detrimental to consumers.

CMCs/CHCs

142. Quindell told us that if the rates were set too low, it might make some smaller insurers' models unviable due to them not being able to bargain with their supply chain at the level which would be necessary in order to recover their costs.

Repairers

143. Halo told us that a move to standardised costs would lead to demands from insurers, CMCs and others that repairers adopt these standardised costs in their contracts, which would severely distort fair competition between repairers who were able to offer lower-priced repairs due to their superior operational efficiencies.

Trade associations

144. The ABI told us that a standardised tariff might introduce frictional costs which were not present in the current system, including:

(a) a standardised cost would need to be agreed/arbitrated between multiple stakeholders; and

(b) keeping a standardised cost fair and equitable to all parties would require those costs to be regularly reviewed and updated, potentially leading to incremental costs.

Remedy 1D(a)

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

Insurers

145. Allianz told us that the enforcement order should stipulate that entitlement to recovery was limited to the actual cost of the actual repairs net of all commercial discounts, referral fees, rebates, profit share agreements and any other financial benefit secured by the non-fault insurer. Further, it should mandate that the at-fault insurer must not differentiate between at-fault and non-fault accidents.

146. Aviva told us that the only way to make this remedy work was for a clear and enforceable order or method by which a definition of reasonable rates for non-fault repairs which were subrogated or given to the market could be reached (eg via an independent, technically capable authority).

147. Zurich told us that the remedy should specify that:

(a) all discounts, fees or other payments were deducted from the repair bill and that it was only the net cost to the non-fault insurer which was recovered from the at-fault insurer; and

(b) the costs charged by the repairer should also be the same, irrespective of whether it was a fault or non-fault repair.

Brokers

148. BGL told us that all invoices presented by the repairer would need to be transparent and list line by line all of the elements of the invoice.

Other

149. Audatex told us that it was difficult to see how repairers could be prevented from inflating wholesale prices in the context of Remedy 1D(a), but that its cost estimation system would provide tools and solutions for an insurer to review and audit the submitted estimate prior to authorisation.

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

150. A number of parties, such as the ABI, Acromas, Aviva and Zurich, told us that this remedy could potentially be circumvented by insurers vertically integrating with repairers. For example, the ABI told us that the possibility of

circumvention by insurers vertically integrating with repairers would need to be considered in any remedy design. The ABI told us that Alternative Business Structures (ABSs) were being adopted between insurers and legal service providers and it was possible that this model could be extended to repairers.

151. In contrast, BGL told us that this was unlikely due to the lack of availability of repairers in the marketplace which would be willing to vertically integrate with insurers.

Remedy 1D(b)

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

Insurers

152. A number of insurers (Admiral, Allianz, CISGIL, esure, LV and Zurich) told us that it would not be workable or practicable, or would be difficult, to set standardised costs for a number of reasons. For example, CISGIL told us that Thatcham's escribe platform had 400 vehicle repair ranges and 1.5 million separate repair options.

153. However, Aviva told us that for the majority of repair costs it would be possible to set standardised costs. For labour rates, parts and paint discounts, this would be relatively simple as there was an abundance of data available to set the standard rates. In respect of other costs, this may be a bit more complex. However, through, for example Audatex, a menu pricing for the majority of additional costs could be constructed and there was enough information available in the market to enable the setting of standardised costs.

Brokers

154. Acromas told us that, although not straightforward, it should be possible in principle to set standardised costs for all aspects of repairs in subrogated claims, using cost estimation systems to provide the necessary inputs. Acromas told us that it doubted that it would be possible to implement this remedy by way of an enforcement order.

155. BGL told us that the setting of standardised repair costs would not be practical, because:

(a) the system could not account for repairing (rather than replacing) the damaged part – replacing the part was usually more expensive;

(b) it would not reflect any additional damage to the vehicle, which only became evident once the vehicle was stripped down; and

(c) the use of Audatex or Glassmatix systems would give these providers a high level of influence over repairers and insurers.

CMCs/CHCs

156. Helphire told us that the standardisation of labour rates was impractical, as they varied by geography, marque (labour rates for prestige vehicles were generally higher) and certain specialist areas (eg aluminium and low temperature welding).

Trade associations

157. The ABI told us that a standardised tariff had the potential to be detrimental to the accurate assessment and safe repair of policyholders' vehicles, because it:

(a) would remove the clear transparency of the cost of repair that the current sophisticated assessment systems provide;

(b) might encourage some insurers to adopt an approach where they refused to offer insurance cover for those vehicles which were more expensive to repair; and

(c) could lead to repairers and CMCs sacrificing safety and quality in order to provide the repair so as not to exceed the tariff price.

158. The NAB told us that it was practicable to set standardised costs but that the terms and operational standards would need to be set by an independent body and reviewed regularly to take account of changing market conditions.

Other

159. Audatex told us that its vehicle database covered 97 per cent of the UK vehicle market with vehicle manufacturers' published data. It said that its estimation system processed two million estimates a year covering all sorts of vehicles and repairs.

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

160. The respondents to the Remedies Notice put forward a number of appropriate benchmarks for inputs into the price control, including cost estimation systems (eg Audatex and Glassmatix) and Thatcham.

161. Zurich told us that cost estimation systems provided a level of standardisation and accuracy in relation to vehicle repair estimates. Zurich told us that other benefits included efficiency savings achieved through the electronic processing of repair estimates between the insurer and repairer, and that repairers further benefited from being able to determine quickly the correct repair method when preparing the estimate (which helps to ensure that the vehicle is repaired in line with the manufacturer's specifications).

Trade associations

162. The ABI told us that Thatcham maintained a representative database of estimates from all three UK estimating systems used by insurers and CMCs and that this could be used to determine the average labour cost, which would be used to finalise a representative standardised price. This calculation could be refreshed on a six-monthly basis.

What would be the costs of implementing this arrangement?

163. Implementation costs would include:

(a) the setting of standardised costs;

(b) the annual review of standardised costs; and

(c) the recalibration of existing cost estimation systems to accommodate the level of detail required to accurately present standardised costs.

164. Admiral told us that implementation costs would not be prohibitive.

165. The ABI told us that the costs of implementing the remedy were not likely to be substantial as the systems, processes and database required for the solution were already in place and funded.

How would monitoring of this remedy work?

Insurers

166. Admiral told us that an independent body with a mix of stakeholders representing all parties within the market could complete periodic audits and that insurers could also be required to submit periodic data.

167. Aviva told us that an independent, technically capable organisation could be appointed to review the standardised rates in a transparent manner or, alternatively, the industry could accept that the standardised rates increased annually by whatever the retail price index (RPI) dictated.

168. NFU Mutual told us that this remedy would be self-policing, as it would not change the cost control arrangements between the insurer and the repairer.

Brokers

169. Acromas told us that the auditing of repairs would be onerous and expensive.

Trade associations

170. The ABI told us that its members and CMCs could be requested to report on a regular basis at an aggregate level the differences between the standardised and actual cost of their repairs, and these results would be reviewed against predefined tolerance levels. The ABI told us that revisions to any elements of the standardised costs could be submitted via the ABI Motor Committee for approval prior to adoption.

Other

171. Audatex told us that if the business rules and underlying mechanisms to produce the standardised costs were agreed, maintained and updated with openness and transparency, then the remedy should be self-monitoring.

What would be the most appropriate organisation to review the inputs into the price control on a regular basis?

172. The respondents to the Remedies Notice suggested a number of organisations which could be tasked with reviewing the price control, including the FCA, NAB or Thatcham.

173. Aviva told us that an independent, technically-capable review organisation could be formed from a number of existing trade associations (eg Thatcham,

ABI, CHO, BIBA, etc) or alternatively, the price control could be reviewed by an independent auditor (eg an accountancy firm).

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

174. A number of parties, including Admiral and BGL, told us that audits would ensure that the quality of repairs were maintained to the required standard.

175. The ABI told us that it would be essential to ensure that any base data that was used to construct the standardised cost would be defendable, transparent and fit for purpose.

Remedy 1E

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

Insurers

176. Aviva told us that:

(a) under Remedy 1E(a), if the at-fault insurer did not take up the option of handling the salvage of non-fault write-offs, this could lead to insurers simply accepting each other's imperfect salvage models; and

(b) Remedy 1E(b) might encourage reduced salvage monies from salvage companies to insurers in exchange for referral fees or simply to build sums into at-fault insurers' costs.

177. Aviva proposed an alternative to Remedy 1E, whereby a standardised percentage salvage return was adopted for each salvage category and, if an insurer obtained a higher return than the percentage for that category, it would keep the difference, but if it sold the salvage for a figure below the set percentage, it would absorb the difference.

178. CISGIL told us that Remedy 1E(a) was unlikely to be effective, as it would introduce extra costs and liabilities for the at-fault insurer, thereby increasing overall claims costs. For example:

(a) Where a total loss claim decision took an extended period of time to resolve or where there was outstanding finance on a vehicle (in which case ownership of the vehicle salvage was with the finance company and the vehicle must remain in storage until the issue of finance was resolved), the fault insurer would incur significant salvage storage costs (often in excess of £20 per day).

(b) There would also be additional costs arising from (and delays to the claim due to) the physical transfer of the vehicle and the legal transfer of vehicle ownership.

(c) There would also likely be issues for claimants as a result of the transfer, including recovery of personal effects from written-off vehicles.

(d) Additional costs would also be incurred where a written-off vehicle must be scrapped (ie Category A or B salvage categories), as such vehicles would be considered to be hazardous waste and would require licences to be transported and handled.

179. CISGIL told us that Remedy 1E(a) would also result in regulatory and compliance difficulties, including:

(a) Under the Road Vehicles (Registration and Licensing) Regulations 2002, the insurer handling the salvage is required to notify the DVLA and ensure that the registration certificate for the vehicle (Form V5C) is surrendered or destroyed. The notification is carried out via the Motor Insurers Anti-Fraud and Theft Register (MIAFTR) and this process would be delayed until the at-fault insurer agreed to take over the disposal of the salvage.

(b) Continuous registration requirements, given that this remedy could lead to several changes of ownership before a vehicle was scrapped and deregistered.

180. NFU Mutual told us that the remedy options did not rule out the possibility of the different handling of at-fault and non-fault claims, which would need to be addressed to prevent insurers from applying a matrix approach to at-fault claims and an individual elements approach to non-fault claims.

CMCs/CHCs

181. Helphire told us that under Remedy 1E(a), if at-fault insurers were given the option to handle the salvage, they would be incentivised to set a low pre-accident value (PAV), thus reducing the total loss payment received by the non-fault claimant.

182. Kindertons told us that this remedy would increase the length of the claim through disputes over who handled the salvage and further arguments over the PAV of the vehicle, which would increase both administrative and temporary replacement vehicle hire costs.

183. Quindell told us that Remedy 1E(a) would expose the consumer to the at-fault insurer with which they did not have a contractual or any other relationship

and which would be under no duty of care to assist the consumer or provide them with adequate service.

Salvage companies

184. HBC Vehicle Services told us that the at-fault insurer had no insurable interest in the vehicle, nor any interest in the policyholder, and therefore these vehicles would be left in storage for excessive periods of time.

185. Copart told us that under Remedy 1E(b), the additional information provided to insurers in relation to the actual salvage value would increase the length of the claim and reduce the overall salvage proceeds recovered once additional administration costs were taken into account, thus increasing the overall cost of claims.

Trade associations

186. The ABI told us that Remedy 1E(a) could result in a potentially unnecessarily lengthy claims process, which would result in increasing costs. For example:

   (a) The at-fault insurer may inherit outstanding finance on the vehicle and, as a result, the vehicle would have to remain in storage until this was resolved (given that ownership of the vehicle salvage rests with the finance company), which may increase costs as insurers negotiated with each other over who was responsible for inherited storage charges.

   (b) Under the Road Vehicles (Registration and Licensing) Regulations 2002, the insurer handling the salvage is required to notify the DVLA and ensure that the registration certificate (V5C) is surrendered or destroyed. Notification is carried out via the MIAFTR database. MIAFTR requires that the insurer handling the salvage enters the vehicle's details when the vehicle is declared a total loss and not when the claim has been paid. To transfer responsibility for the legal registration of a write-off until after the claim is settled would result in significant delays at the DVLA.

Remedy 1E(a)

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

Insurers

187. Aviva told us that take-up would be low, because:

   (a) there was a claims handling cost in processing salvage and the at-fault insurer would be absorbing this cost into its expenses;

(b) it was not financially beneficial for the at-fault insurer to handle the non-fault write-offs for Category A, B and C salvages; and

(c) cherished plate, outstanding finance, and gap insurance cases would be unlikely to be handled by the at-fault insurer, because there would be an increased operational expense in handling these claims.

188. NFU Mutual told us that it would be unlikely that there would be any desire on the part of the at-fault insurer to deal with non-fault salvage, as it could involve handling the vehicle remains, and the transfer of recovery, towing and storage costs, all of which would add unnecessary cost.

Brokers

189. Acromas told us that it would be unlikely that at-fault insurers would take up the option of handling the salvage, because it would entail additional administration costs and might therefore increase claims costs.

190. BGL told us that it would be unlikely that at-fault insurers would take up the option of handling the salvage unless they had an interest in a salvage company, because they would have to arrange for the collection of the vehicle and recover it to a salvage yard and, depending on the speed of the collection, there may be reasonable storage charges that they may incur or dispute.

Salvage companies

191. Copart told us that it would be advantageous to the at-fault insurer to have the option of controlling salvage, as it would allow it to maximise the value of salvage at disposal and to use that value to reduce its claims costs.

Trade associations

192. The ABI told us that at-fault insurers could take up the option of handling the salvage, but this would cause areas of additional frictional cost (and thus detriment to consumers), because of the delays associated with the transfer of ownership, keys, personalised number plates and salvage storage fees from one owner to another.

193. The British Vehicle Salvage Federation (BVSF) told us that the smaller insurers would be unlikely to entertain the option of handling third party salvage, but the larger, leading insurers may well consider this a benefit.

194. MASS told us that at-fault insurers may be reluctant to absorb the additional administration and costs associated with collecting and disposing of the non-fault vehicle and realising the salvage proceeds.

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

Insurers

195. Allianz told us that, if Remedy 1E(a) were implemented, at-fault insurers should be given this option as soon as the vehicle was assessed as a write-off.

196. Aviva told us that the at-fault insurer should be engaged the moment the non-fault insurer believed its customer's vehicle might be a write-off, because:

(a) it would remove the fear of the non-fault insurer stalling settlement to build up storage and replacement vehicle costs for the at-fault insurer;

(b) the at-fault insurer could consider other cost mitigation measures early on in the claims process (eg moving the salvage to a salvage partner who charged reduced storage fees compared with where the vehicle is currently situated); and

(c) the at-fault insurer could consider and offer constructive total loss settlements if the damage to the non-fault vehicle was borderline repair, in order to reduce its overall claims cost.

Brokers

197. BGL told us that this option could only be given once the vehicle had been assessed and confirmed as a total loss.

Salvage companies

198. HBC Vehicle Services told us that it was strongly against this proposal but, if accepted, it had to be at the point that settlement had been agreed, because if the at-fault insurer intercepted the claim prior to settlement then it would become unclear to the insured who was actually in control of their claim.

Trade associations

199. The ABI told us that at-fault insurers would need to be given this option as early in the claim process as possible.

200. The BVSF told us that this option could only be given to the at-fault insurer upon settlement of the claim, in order to avoid the accumulation of vehicle storage costs.

201. The LMA told us that the at-fault insurer should receive very early notification and be given the opportunity to handle the salvage or agree a price with the non-fault insurer. The LMA told us that, under this option, customers could potentially receive a more protracted service, albeit with fairer underlying economic practice and behaviours.

202. MASS told us that the at-fault insurer should not be given the option to dispose of salvage until the non-fault claimant had agreed their vehicle was a write-off and its pre-accident value.

Remedy 1E(b)

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

Insurers

203. Allianz told us that this remedy would have no impact on salvage companies, as they would always pay the actual salvage value to the insurer.

204. Aviva told us that it would not reduce the number of salvage companies, affect their core operation or adversely affect their profit margins.

205. NFU Mutual told us that the remedy was unlikely to impact salvage companies, as the current salvage market was dominated by a small number of dealers who operated a variety of models.

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

Brokers

207. BGL told us that the incentive of salvage companies to seek higher salvage prices might reduce if they were passing any value that was in excess of the estimated salvage value back to the at-fault insurer.

Salvage companies

208. Copart told us that the extra cost of accounting for the actual salvage proceeds would be imposed by insurers on salvage companies.

Trade associations

209. The ABI told us that Remedy 1E(b) largely reflected the present position of most insurers and therefore it was likely to have a limited impact on salvage companies, as they normally paid the actual salvage value to the insurer. The ABI told us that a standardised salvage process might help counteract the possibility of the non-fault insurer selling salvage at an artificially low amount.

210. The BVSF told us that the larger salvage companies would benefit enormously from the at-fault insurer taking ownership of the salvage, but it would place many of the smaller salvage companies at considerable risk.

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

Insurers

211. Allianz told us that administrative costs were an operating expense which was incorporated into the premium received and were not currently recoverable by insurers.

212. Aviva told us that the following administrative changes would arise:

(a) Salvage companies would have to produce a salvage sale receipt, which would need to be provided if the salvage value was challenged by the at-fault insurer.

(b) There would be an operational cost for both at-fault and non-fault insurers in the interim settlement model based on an estimated salvage return, as both insurers would wait for the actual cost and then reconcile the actual return against the estimated sum and either seek a further sum or draw a cheque as an adjustment.

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

Trade associations

214. The ABI told us that some insurers suggested that the subrogated salvage claims should take account of the actual cost of handling and selling the salvage by the non-fault insurer, including commissions, claw backs and volume discounts, but other insurers suggested that claims handling costs

needed to be removed from the process (in line with some of the other proposed remedies).

Remedy 1F

Could this remedy operate on a stand-alone basis? Which other remedies would benefit from this remedy as a supporting measure?

215. Most parties told us that that although this remedy could operate independently of the other remedies proposed under ToH 1, it did not directly address the consumer detriment caused by the separation of cost liability and cost control and therefore it would be more effective as a supporting remedy to those remedies which directly addressed the cost of replacement vehicle provision (eg Remedy 1C).

What questions should the non-fault insurer or CMC/CHC ask the non-fault claimant, in order to assess their need for a replacement vehicle, the appropriate type of replacement vehicle and to demonstrate that the provision of a replacement vehicle has been appropriately mitigated?

Brokers

216. The questions suggested by brokers included:

- *(a)* What are your main uses for your vehicle?
- *(b)* What is your weekly mileage?
- *(c)* Do you have access to another vehicle that fulfils the same requirements? If so:
  - (i) Is this alternative vehicle available when you require it?
  - (ii) Will it inconvenience other users of the vehicle?
  - (iii) Do you feel safe driving the alternative vehicle?
- *(d)* Do you want a replacement vehicle?

CMCs/CHCs

217. Both Kindertons and Quindell told us that the current version of the mitigation questionnaire under the GTA was an appropriate benchmark to assess a non-fault claimant’s need and to ensure that they demonstrated that the provision of a replacement vehicle had been appropriately mitigated.

Insurers

218. The questions suggested by insurers included:

- *(a)* Do you have access to another vehicle? If so would the other vehicle be suitable?
- *(b)* Do you need a replacement vehicle?
- *(c)* How often will you use the vehicle on a weekly basis?
- *(d)* Is a courtesy car available? If so, would that be suitable?
- *(e)* What is your average daily mileage?
- *(f)* What is the vehicle used for?
- *(g)* Do you have any particular family needs?
- *(h)* Do you need a vehicle of the same size or could you manage with something smaller?

Lawyers

219. The questions suggested by lawyers included:

- *(a)* Is there a certified need (ie no access to other vehicles)?
- *(b)* Do you have provision for a replacement vehicle through your own insurer? If so, why have you not accepted it?
- *(c)* Did you check your policy to see whether you had provision for a replacement vehicle?
- *(d)* Did the at-fault insurer offer you a replacement vehicle? Did you enquire with them as to whether they would provide one? If not, why not? Why was any offer not accepted?
- *(e)* What use was your original vehicle put to and how often was it used?
- *(f)* Certified need and necessity of type and model of vehicle?

Should the cover provided by the claimant's own insurance policy be considered in assessing the claimant's need?

Brokers

220. BGL told us that the policy entitlement to provide a replacement vehicle in the event of an at-fault accident should not be considered in assessing the need for a replacement vehicle in the event of a non-fault claim, because some motor insurance policies now provide courtesy cars as a standard benefit for the consumer, so the presence of this feature is not indicative of need.

CMCs/CHCs

221. Accident Exchange told us that a non-fault claimant had a right to a replacement vehicle under tort law regardless of the replacement vehicle entitlement under their policy.

Insurers

222. Aviva told us that if a non-fault claimant's insurance policy provided cover for a replacement vehicle, there should be a (rebuttable) presumption that the claimant failed to mitigate their loss if they did not take advantage of this option or if they did not even look to check and establish the vehicle which would have been provided.

223. NFU Mutual told us that the non-fault claimant's replacement vehicle provision under their own policy should not be taken as evidence of their need for, or limit their entitlement to, mobility.

224. Zurich told us that the non-fault claimant's replacement vehicle provision under their own policy should not be taken as evidence of their need for a replacement vehicle. Zurich told us that the inclusion of such provisions in a policyholder's policy proved preference and not need.

Lawyers

225. Winn Solicitors told us that the provision of cover in a claimant's own insurance policy should not be considered in assessing the claimant's needs, as it was long-established case law that an insurance policy was purely for the claimant and not something which should be taken into account in mitigation.

Trade associations

226. The ABI told us that if a claimant's own policy provided cover for a replacement vehicle that was adequate for their actual need at the relevant time,

there should be a (rebuttable) presumption that the claimant had failed to mitigate their loss if they took out a credit hire replacement vehicle.

227. MASS told us that *Daniels v Farish* stated that it was not for the at-fault insurer to dictate that the claimant should pursue their right in contract when they had a claim in tort, and therefore assessing the claimant's need with reference to the cover provided by their own insurance policy would require a change in law.

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

Brokers

228. Acromas told us that the right of the at-fault insurer to see the revised mitigation declaration would be sufficient for this remedy to be self-enforcing without additional monitoring and that it would not be necessary or proportionate to provide call records to the at-fault insurer.

229. BGL told us that the cost of producing and sending the call recordings could be prohibitive and might cause issues with data protection (the customer would have to give their consent to the call being shared).

CMCs/CHCs

230. Accident Exchange told us that the right of the at-fault insurer to see the mitigation declaration would be sufficient for this remedy to be self-enforcing without additional monitoring and that providing call records might have data protection issues.

231. Quindell told us that the at-fault insurer, which has no contractual or other relationship with the non-fault claimant, should not be entitled to the call records, which could contain information which could prejudice other elements of the claim (eg personal injury).

Insurers

232. Allianz told us that a standard set of questions produced to evidence need would result in the development of a set of standard responses engineered over a period of time to be accepted as proving appropriate mitigation. Therefore, seeing the mitigation statement and/or call record would not result in the remedy being self-policing.

233. NFU Mutual and RSA told us that providing the at-fault insurer with call records would be likely to raise data protection issues. NFU Mutual told us that this would require the permission of the non-fault claimant and the claims handler and, without explicit permission, there would have to be formal application for non-party disclosure. NFU Mutual also commented that accessing call records where they existed (as call records were not universal across the motor insurance industry) would be time-consuming and costly. However, Aviva told us that these issues could be resolved if the provision of call records was a part of the standard industry claim process and the non-fault party was informed of the sharing of these records at the outset of the claim.

234. DLG told us that there would be practical difficulties under the Data Protection Act in sharing call records.

Lawyers

235. DAC Beachcroft told us that there should be no data protection issues with the provision of call records to the at-fault insurer if the non-fault claimant was advised that the call might be used.

236. Keoghs told us that it would be very easy to circumvent the remedy by leading the consumer with additional questions or phraseology to persuade them of a particular view.

237. Winn Solicitors told us that the disclosure of the call records might give data protection issues, albeit that non-fault insurers and CMCs could cover this off in an initial script to the customer. Winn Solicitors added that there would be data protection issues where solicitors undertook the initial call, as these would be subject to legal privilege.

Trade associations

238. Both the ABI and MASS told us that recording and releasing the call to the at-fault insurer would require the consent of the non-fault claimant.

How much would it cost to implement this remedy?

Brokers

239. BGL told us that costs would include:

(a) improved phone technology (some market participants might not currently record calls);

(b) downloading, producing and sending call recordings;

(c) insurer technology upgrades to allow access to call recordings;

(d) development of new mitigation statements; and

(e) staff training for new process.

CMCs/CHCs

240. Kindertons told us that there would be minimal cost involved in the implementation of this remedy, as it formed part of its normal process in assessing need.

Insurers

241. Admiral, Allianz, Aviva and Zurich told us that implementation costs would be minimal.[2] However, NFU Mutual told us that significant costs would be incurred in the installation of call recording systems and in the managing of requests for call records.

Lawyers

242. DAC Beachcroft and Winn Solicitors told us that implementation costs would be minimal.

243. Keoghs told us that the cost of standard wording should be minimal but there would be an expectation in the market of more calls and questions from policyholders, in addition to the cost of monitoring adherence.

Trade associations

244. The ABI told us that the provision of call records to the at-fault insurer would likely lead to costs which were disproportionate to the AEC found under ToH 1.

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

Brokers

245. BGL told us that the remedy would likely re-position frictional costs to disputes around the validity of the mitigation statement.

[2] Admiral noted that, on their own, these proposals would be unlikely to lead to any savings and arguably add to the total costs by adding a further area of dispute.

CMCs/CHCs

246. Accident Exchange told us that at-fault insurers might seek to impose overly demanding mitigation questions with a view to deterring victims from taking up credit hire, and thereby reducing their incentives to provide direct hire.

247. Quindell told us that the implementation of this remedy would increase frictional costs, because at present there were very few disputes in relation to the type of replacement vehicle provided to non-fault claimants, as they generally had the right to a similar vehicle to their own. Therefore, this remedy would encourage the interrogation of a consumer's vehicle use and need.

248. WNS told us that additional questions and the provision of a mitigation declaration to the at-fault insurer would result in cost increases in the handling of the claim and that any such cost increases would need to be offset by reductions in replacement vehicle costs to avoid a negative impact on insurance premiums.

Insurers

249. Aviva told us that the remedy might reduce the value or size of the credit hire market, if need was not self-proving and/or if it could be proved that a non-fault claimant's need could have been satisfied by a lesser replacement vehicle.

250. CISGIL told us that increasing the number of questions and allowing the at-fault insurer access to, and review of, call records in the event of a dispute (where available) might increase disputes and frictional costs.

251. NFU Mutual told us that the cost of challenging a mitigation statement in all but the highest value claims would be prohibitive.

Lawyers

252. Keoghs told us that there was a risk that some at-fault insurers would request access to call records too readily, resulting in an increase in administration and frictional costs.

Remedy 1G

Could this remedy operate on a stand-alone basis?

253. Most parties which supported this remedy agreed that it could not operate in isolation (as it would not directly address the AEC or consumer detriment identified under ToH 1) and said that it would be more effective as a supporting measure to the other remedies proposed under ToH 1, which

could be undermined or circumvented if the payment and receipt of referral fees remained allowable.

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

CMCs/CHCs

254. Coral Insurance Services told us that if credit hire rates were sufficiently capped (as proposed under Remedy 1C) and the level of administration fees also made sufficiently low then the levels of referral fees available would naturally reduce.

Insurers

255. Aviva told us that the combination of Remedy 1G with a reduction in the claims cost either by lower credit hire charges (as proposed under Remedy 1C) or subrogated repair costs (as proposed under Remedy 1D) and an increase in the salvage value (as proposed under Remedy 1E) would result in the reduction in the ability to pay a referral fee.

256. DLG told us that the reduction of credit hire rates and hire durations (as proposed under Remedy 1C) would reduce and may even eliminate referral fees.

Trade associations

257. The ABI told us that remedies 1A to 1F would likely reduce the amount of money available to pay referral fees but, in the absence of banning referral fees explicitly, they would likely continue to exist, adding unnecessary costs.

258. ACIS Limited told us that measures to prevent subrogated claims from being marked up (as set out in Remedy 1D) might have the effect of reducing referral fees without the requirement for a separate remedy.

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

259. There were a range of views on the impact of the remedy on motor insurance 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 were (to a significant extent) passed from insurers to consumers in the form of reduced premiums. However, other parties, including insurers, told us that the remedy would reduce the overall cost of non-fault claims, thus resulting in a reduction in premiums.

260. Keoghs told us that the impact of the remedy on premiums may depend on whether revenue generated from referral fees was greater than the cost saving envisaged by the other proposed remedies. Keoghs added that it could be an unintended consequence that in the short term premiums could rise, though over time savings should offset this loss.

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

Brokers

261. BGL told us that the prohibition of referral fees would likely result in:

(a) the reduction of FNOL services, exposing the consumer more frequently to direct interaction with the at-fault insurer, resulting in poorer consumer outcomes.

(b) a major move to vertical integration across the industry, because there were a limited number of large-scale hire providers in the marketplace. However, as the cost of acquisition would deter insurers and the integration of repairers would be unlikely to provide nationwide coverage for the consumer, there would still be need for a second-tier network.

CMCs/CHCs

262. Accident Exchange told us that the prohibition of referral fees would likely result in a dramatic reduction in the ability of CHCs to promote themselves and capture the needs of non-fault drivers, thereby removing the competitive pressure on insurers in the servicing of non-fault claims and thereby reducing their incentive to provide replacement vehicles under direct hire.

263. Helphire told us that insurers (and others) might form entirely legal joint ventures to extract value from claims (in the absence of referral fee income).

Insurers

264. Aviva, NFU Mutual and Zurich told us that the remedy could result in vertical integration.

265. AXA told us that the remedy could result in vertical integration if referral fees were removed without controlling the cost of hire, as this may lead to an increase in profits, which may induce vertical integration.

266. Admiral told us that insurers would adapt to gain the transfer of value via alternative methods, as any commercial operation had a duty to its stakeholders to consider amendments to its current models.

267. esure told us that if the remedy extended to repairer networks, the costs subrogated to at-fault insurers by vertically integrated insurers would increase, because the vertically integrated insurer would be in a position to increase the level of profits in its upstream business, rather than in its insurance unit. esure also told us that the removal of payments such as volume discounts would increase the costs of repairs, as insurers would not be incentivised to use their economies of scale to generate greater efficiency in the repair process.

Trade associations

268. The ABI told us that the remedy could give rise to firms seeking to substitute their lost referral fee income with other sources of income (eg increased commission rates or increased repair bills).

269. The LMA told us that vertical integration was a possibility as, following the ban of referral fees in relation to personal injury claims, some insurers had merged with law firms in order to sidestep it. Similarly, MASS told us that the referral fee ban for personal injury claims had coincided with the introduction of ABSs, which had enabled fees to be shared or charged in alternative ways.

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

Brokers

270. Acromas told us that the risk of circumvention could be addressed by including within the scope of the remedy behaviours which had the equivalent effect of paying a referral fee.

Insurers

271. Allianz told us that this remedy would pose no circumvention risks if the scope of the remedy were extended to rebates, profit share agreements and other financial mechanisms.

272. NFU Mutual told us that circumvention risks could be mitigated by enforced disclosure of all financial transactions, rigorous audit by regulatory bodies, such as the FCA, or by a strictly controlled mandatory portal arrangement across the entire industry.

Trade associations

273. The LMA told us that the risk of circumvention could be mitigated by applying broadly drafted regulations preventing any method of using a non-fault claim to generate revenue for the non-fault insurer (or other intermediary).

274. MASS told us that there was a need for clear and precise rules surrounding the definition of a referral fee and guidance as to what constituted a referral fee.

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

Brokers

275. BGL told us that the remedy would need to be accompanied by a wide-ranging regulatory structure to ensure that referral fees were not paid and/or received by any market participants and the cost of setting up and administering such a structure would be wholly disproportionate to the value derived for consumers.

Insurers

276. Zurich told us that monitoring could be undertaken by the FCA together with the Solicitors Regulation Authority (SRA) and Claims Management Regulator.

277. CISGIL told us that the CMA was best placed to monitor the remedy, as monitoring by the FCA could only extend to companies regulated by it (ie insurers and brokers) and not to other parties involved in a claim (ie CMCs/CHCs, repairers and salvage companies).

278. NFU Mutual told us that the costs of a stand-alone monitoring regime would be prohibitive and resource intensive unless provided by some form of electronic portal with built-in automated monitoring and control measures.

Trade associations

279. The ABI told us that the monitoring of compliance with, and enforcement of, a ban on referral fees could be undertaken by existing regulators as part of their regulatory functions and it was unlikely that there would be significant additional costs in them doing so. The ABI also told us that it would be important for the CMA to consider how non-regulated entities, including replacement vehicle providers, would be monitored.

280. The Vehicle Builders and Repairers Association (VBRA) told us that the prohibition of referral fees should be publicised throughout the industry and compliance should be monitored by tracking complaints.

Information for consumers under Remedy A

PART A: Statement of consumer rights following an accident

1. This statement is to help you understand:

   (a) your responsibilities following an accident;

   (b) your rights following an accident; and

   (c) the different ways in which your motor insurance claim can be handled.

Your responsibilities following an accident

2. Following an accident, you are required by law to report the accident to your insurer.

3. Your insurer and the insurer(s) of the other driver(s) involved in the accident will investigate the accident circumstances and determine who is responsible for the accident.

Your rights following an accident

Your rights if an accident is found to be your fault

4. If an accident is found to be your fault, your entitlements are determined by the terms and conditions of your motor insurance policy. For further information, please refer to your motor insurance policy, the Frequently Asked Questions attached with your policy documentation and/or contact your insurer.

Your rights if an accident is found not to be your fault

5. If an accident is found not to be your fault, you are entitled under law to be put back into the position you would have been in had the accident not occurred. A non-fault claim can be made against the insurer(s) of the other driver(s), who is (are) responsible for paying the costs of this claim, provided that those costs are reasonable.

6. Your rights include compensation for:

   (a) **Repair of your vehicle to its condition before the accident**:

(i) You can choose to have your vehicle repaired by a repairer of your choice or by a repairer appointed by the company handling your claim.

(ii) You can require that replacement parts made by the original manufacturer are used in the repair.

(iii) If your vehicle is deemed to be a write-off or total loss, you will be entitled to the value of your vehicle before the accident. This is the cost of purchasing an equivalent vehicle of a similar age and condition at the time of the accident and is usually based on published price guides.

(b) **A replacement vehicle**:

(i) While you are without your vehicle, you are entitled to a replacement vehicle that is similar to your vehicle (ie similar in size, type, number of doors and engine capacity) if you can demonstrate that you need such a vehicle.

(ii) You may be provided with a replacement vehicle on credit terms (and you might be held liable for the costs of the hire should you ultimately be considered at fault for the accident) or you may be provided with a replacement vehicle by your insurer or by the other driver's insurer.

(c) **Personal injury damages** (eg for pain, suffering and loss of amenity, and the costs of care).

(d) **Other losses** (eg recovery of any excess you have paid, loss of earnings, vehicle recovery and storage and the use of public transport). Depending on the terms of your motor insurance policy, your insurer may or may not assist you with recovering these losses.

Your rights if responsibility for an accident is undetermined or shared between you and the other driver(s)

7. There may be circumstances where responsibility for an accident is not determined for some time (referred to as undetermined liability) or liability is shared between you and the other driver(s) (referred to as split liability).

Undetermined liability

8. For the period in which liability is undetermined, you might need to make a claim under your motor insurance policy. Once liability is determined, your

rights are as set out above depending on whether you are found to be at fault or not at fault.

Split liability

9. Where liability is split, you will be entitled to recover from the insurer(s) of the other driver(s) a proportion of the value of your claim, but you will be required to claim under your motor insurance policy for the remaining proportion of the claim.

Different ways in which your claim can be handled

10. If the accident is found to be your fault, any claim you make against your policy will usually be handled by your own insurer.

11. If the accident is found not to be your fault, you can pursue the claim yourself, but claims are typically handled in one of the following ways:

    (a) **By your own insurer**: your insurer will handle your claim and recover the costs of the claim from the insurer(s) of the other driver(s). Your insurer may choose to refer you to another supplier for the provision of some services.

    (b) **By the insurer(s) of the other driver(s)**: the insurer(s) of the other driver(s) may contact you following an accident and offer to handle your claim, which you can choose to accept if you wish.

    (c) **By a claims management company**: you, your insurer or the insurer(s) of the other driver(s) may choose for your claim to be handled by a claims management company.

12. Your legal entitlements are the same under all of these options.

PART B: Frequently Asked Questions – motor insurance policy claims (to be populated by insurers/brokers)

1. If I am in an accident in which I am found to be not at fault, will this affect my annual motor insurance premium and/or my no claims bonus. If so, how?

2. Under what circumstances will l be required to pay an excess towards the cost of the repair of my vehicle?

3. If I am required to pay an excess and am ultimately found to be not at fault for the accident, will you refund the excess or recover the excess on my behalf from the other driver’s insurer?

4. Can I choose who repairs my vehicle? If so, will I incur additional costs over and above my motor insurance policy excess if I do so?

5. If my vehicle requires replacement parts, will the repairer use replacement parts made by the manufacturer of the original part?

6. Am I entitled to a replacement vehicle during the period in which my vehicle is undergoing repair? What type of vehicle am I entitled to?

7. What are my rights in relation to the recovery of losses other than those incurred in repair and replacement vehicle provision following an accident?

PART C: First Notification of Loss statements

The following statements must be read out to any claimant that is not found to be immediately at fault following an accident:

1. [*To be read out only if FNOL is not performed by the non-fault insurer*] You are required by law to report the accident to your insurer.

   [*The remaining paragraphs to be read out by all FNOL providers*]

2. If an accident is found not to be your fault, you are entitled under law to be put back into the position you would have been in had the accident not occurred.

3. Your rights include compensation for:

   (a) repair of your vehicle to its condition before the accident;

   (b) a replacement vehicle that is similar to your vehicle. You are entitled to this vehicle for the period you are without your vehicle, provided that you need such a vehicle;

   (c) personal injury damages (eg for pain, suffering and loss of amenity, and the costs of care); and

   (d) other losses (eg recovery of any excess you have paid, loss of earnings, vehicle recovery and storage and the use of public transport).

4. A non-fault claim can be made against the insurer(s) of the other driver(s), who is (are) responsible for paying the costs, provided that those costs are reasonable.

5. If the accident is found not to be your fault, you can pursue the claim yourself, but claims are typically handled by (i) your own insurer, (ii) the insurer(s) of the other driver(s), or (iii) a claims management company. We are [your own insurer/the other driver's insurer/a claims management company].

6. Your legal entitlements are the same whoever handles the claim.

7. You were sent a statement of rights with your policy documentation. Would you like to be sent a reminder of this statement by email?

Mitigation declaration statement

Section A to be completed and signed by the non-fault insurer or CMC/CHC and Section B to be countersigned by the non-fault claimant

Section A: to be completed by the non-fault insurer or CMC/CHC when deciding whether to provide a temporary replacement vehicle

1. Prior to the insurer referring the non-fault claimant to a claims management company/ credit hire company (CMC/CHC) for the provision of a temporary replacement vehicle OR prior to the CMC/CHC providing the non-fault claimant with a temporary replacement vehicle, the non-fault claimant was advised that:

   (a) they have a legal entitlement to be compensated for the loss of use of their vehicle and, if their need for it is established, they are entitled to a temporary replacement vehicle that is similar to their own vehicle in size, number of doors and engine capacity; and

   (b) to the extent needed, they are entitled to the temporary replacement vehicle until 24 hours after the repair to their own vehicle is completed or seven days after receipt of a total loss payment; but

   (c) they have a duty to keep their losses arising from the accident to a minimum, and so they must demonstrate that they need a temporary replacement vehicle that is similar to their own vehicle.

2. The non-fault claimant's vehicle that was involved in the accident was a:

   Make..

   Model (including engine size and number of doors) ....

   Vehicle registration ....

3. The non-fault claimant was asked the following questions and provided the following responses to confirm that they intended to keep their loss to a minimum in respect of the provision of a temporary replacement vehicle:

   (a) Do you require a temporary replacement vehicle for the period whilst your vehicle is being repaired or is otherwise unavailable? If yes, why?

   Claimant's response:...

The following questions were asked to substantiate the non-fault claimant's need for a replacement vehicle:

(b) Do you believe or have you been advised that your vehicle is not roadworthy and/or unusable? If yes, why?

Claimant's response:...

(c) Have you received an offer of a temporary replacement vehicle from the other driver's insurer? If yes, why was this offer not accepted?

Claimant's response:...

(d) For the period while your vehicle is unavailable, do you have access to another suitable vehicle? If yes, is there a reason why you could not use this vehicle?

Claimant's response:...

(e) Do you require a temporary replacement vehicle that is similar in size, number of doors and engine capacity to your own vehicle? If yes, why?

Claimant's response:...

(f) Are you classified as a non-standard driver for insurance purposes, because you:

(i) are under 25 or over 70 years old;

(ii) are a professional sportsperson; actor; entertainer; gambler; musician; publican; or journalist;

(iii) have held a full driving licence in the UK for less than 12 months; and/or

(iv) have convictions resulting in an unspent ban or seven or more outstanding points in the last four years?

Claimant's response:...

4. Based on the responses above, the non-fault claimant will receive the following temporary replacement vehicle or equivalent:

....

Signed ....

Name of claims handler ....

Date ....

Name of insurer/CMC/CHC ....

Address ....

Telephone ....

Email ....

Section B: to be completed by the non-fault claimant upon receipt of the temporary replacement vehicle

I have read and understood paragraph 1 above and I confirm that this was explained to me by the claims handler prior to the arrangement of a temporary replacement vehicle. I confirm that I was asked each of questions (a) to (f) in paragraph 3. I confirm that the answers are an accurate reflection of the responses I previously provided and are true to the best of my knowledge.

Signed ....

Name of non-fault claimant ....

Date ....

Address ....

Further supporting evidence of assessment of Remedies 1C and 1F

Introduction

1. This appendix sets out further supporting evidence of our assessment of Remedies 1C and 1F. It covers:

   (a) consideration of the development of an online portal for credit hire claims under Remedy 1C;

   (b) the likely time required to implement Remedy 1F; and

   (c) the work performed by the GTA Technical Committee in monitoring and enforcing the GTA.

Should an online portal for credit hire claims be developed?

2. 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, notably the expected implementation cost and timescale.

Portal for personal injury claims

3. The portal for personal injury claims is run by Claims Portal Limited, which told us that the portal was developed in response to a policy objective identified by the MoJ to deliver a speedier and lower cost procedure for the resolution of lower value personal 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. Claims Portal Limited added that it took the view that a detailed investigation would be required to include a technical, regulatory and cost benefit analysis comparing:

   (a) the option of adapting the portal to deal with other types of claim; and

(b) the option of leaving the portal unchanged and developing another portal to deal with other types of claims.

Proposed credit hire portal

4. The GTA Technical Committee told us that its proposed credit hire portal was intended to reduce or even eliminate frictional costs through the commonality of information shared between subscribing insurers and CHCs.

5. 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, as follows:

   (a) The portal for personal injury claims facilitated claims made under protocols promulgated by the Supreme Court Rules Committee, whereas the proposed credit hire portal was intended to facilitate claims made under the GTA.

   (b) Under the portal for personal injury claims, the claim dropped out of the portal if the terms of the protocols were not complied with and, thereafter, the claim could only proceed by way of litigation or negotiation. Under the proposed credit hire portal, a claim which started in the portal but then failed to comply with the terms of the GTA would nevertheless remain in and be capable of being dealt with within the portal.

   (c) The protocols facilitated by the portal for personal injury had statutory force and provided for the payment of fees, which were set by Government, whereas the proposed credit hire portal was based on a voluntary agreement and provided for payments agreed between subscribers (although the GTA Technical Committee had proposed that all GTA claims should be made using the proposed credit hire portal).

6. In terms of implementation and timescale, the GTA Technical Committee told us that:

   (a) the tender process had been completed, preferred suppliers had been identified and contract negotiations were about to commence with the lead preferred supplier (subject to a cost benefit analysis exercise being carried out currently by individual CHCs and insurers); and

   (b) 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.

7. [✂]

Likely time required to implement Remedy 1F

8. Insurers, brokers and CMCs/CHCs provided us with their estimates of the time needed to make the necessary administrative changes in order to incorporate the mitigation declaration into their existing processes for replacement vehicle provision. Their responses ranged from one to six months, as shown in Table 1.

9. We note that the significant variations in the estimates provided by the insurers, brokers and CMCs/CHCs in our sample suggests that the time required to make the necessary administrative changes is 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).

TABLE 1 **Time required to incorporate mitigation declaration into existing processes for replacement vehicle provision**

Insurer/broker/ CMC/CHC	*Time required (months)*
Insurer	
Admiral	[✂]
Ageas Insurance	[✂]
Aviva	[✂]*
AXA	[✂]
CISGIL†	[✂]
DLG	[✂]
esure	[✂]
LV	[✂]
RSA	[✂]
Zurich	[✂]
Broker	
BGL‡	[✂]
Endsleigh	[✂]
Hastings Direct	[✂]
Swinton§	[✂]
CMC/CHC	
Accident Exchange	[✂]
ClaimFast	[✂]
Crash Services	[✂]
Enterprise	[✂]
Helphire	[✂]
Kindertons	[✂]
Quindell	[✂]
WNS	[✂]

Source: Insurers, brokers and CMCs/CHCs.

*[✂]
†[✂]
‡[✂]
§[✂]
[✂]

Work performed by the GTA Technical Committee in monitoring and enforcing the GTA

10. The GTA Technical Committee is currently responsible for reviewing and setting, on an annual basis, credit hire rates, late payment penalties, administrative fees and other charges.

11. 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 current insurer representatives are Allianz, Aviva, DLG, LV and Zurich. The current credit hire representatives are Accident Exchange, BLD, Helphire, Quindell, Kindertons and United Assistance. In addition, John Hall, Secretary to the Insurer Focus Group, and Martin Andrews, Director General of the CHO, are also invited to attend meetings, but they cannot vote.

12. The GTA Technical Committee told us that the annual rate review was performed as follows:

    (a) 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 forthcoming year. There is no collective data that insurers and CHCs jointly obtain or use as part of this negotiation.

    (b) If agreement is reached, the proposal is referred to the GTA Technical Committee.

    (c) In the absence of agreement and unanimous endorsement of the agreement by the GTA Technical Committee, the Chairman is empowered to make a decision on the new settlement rates. The Chairman does not act as an arbitrator and the provisions of the Arbitration Act 1996 do not apply.

    (d) Any unanimous view reached by the GTA Technical Committee or decision made by the Chairman can be challenged by a minimum of 25% of insurer or CHC subscribers. The matter is then referred to independent arbitration and the decision of the arbitrator is binding.

13. The GTA Technical Committee also oversees a number of procedural matters under the GTA. In Annex A, we summarise these features and state whether it is our proposal to adopt them under Remedy 1C or not.

GTA procedural matters

GTA procedural matter	*Adopt under Remedy 1C?*
Dispute resolution (paragraph 2.7 of the GTA) • Applies where there are issues of principle or interpretation of operation or wording of the GTA. • Managed by GTA Technical Committee within 60 days from the dispute first being raised. • Chairman of GTA Technical Committee makes final decision if Technical Committee is unable to reach a unanimous decision. • Decision subject to challenge by non-binding determination by an independent adjudicator. • Final decision applies only to those subscribers that have referred the dispute and in respect only of that particular dispute as referred. • If the insurer prevails, they do not incur any late payment penalties in respect of the disputed invoice(s). • If the CHC prevails and does not receive all outstanding charges in full (including late payment penalties), they can purse the claim outside the scope of the GTA.	Do not adopt
Acceptance of customers (paragraphs 3.1 to 3.6) • Overriding principle of first to a customer – the first provider to provide the customer with a suitable offer that they can understand should provide the service and all other subscribers should not intervene. • If the claimant has received a suitable offer from the at-fault insurer, the CHC should suggest that the customer contacts the at-fault insurer to take up their offer.	Adopt
Monitoring during hire (paragraphs 4.10 to 4.14) • The CHC monitors the hire period throughout the period of hire as follows: – Check with the repairer that the repair has been authorised within three working days of receipt of the vehicle. – Make a further check with the repairer after the lesser of five working days or three working days before the hire should have ended. – Check with the garage three working days before the hire should have ended. • The CHC should inform the at-fault insurer when there are unreasonable delays (ie delays that are at least two working days longer than expected or over 20% more than the estimated hire period notified to the CHC). If the repair is delayed beyond these periods, the CHC should undertake checks every five working days after the original hire period should have ended. Any further delays should be notified to the at-fault insurer. • When a vehicle is deemed to be a total loss, the CHC should check within ten working days of the hire commencing that the vehicle has been inspected and an offer made to the customer. If not, the CHC should inform the at-fault insurer. This can be extended by up to four working days where the CHC's procedures provide for an offer being agreed with the customer. The CHC should inform the at-fault insurer of any dispute on value so they can consider any appropriate action. The hire may continue until seven calendar days after receipt of the final settlement cheque by the customer or their representative.	Adopt
Payment arrangements (paragraphs 6.1 to 6.15) • The CHC must submit a payment pack to the at-fault insurer, which includes: – covering letter detailing cheque(s) required and documents submitted; – mitigation questionnaire (to be replaced by a mitigation declaration under Remedy 1F); – new claims advice form; and – hire period validation form. • Insurers must settle claims within one calendar month from the date of dispatch of the payment pack. • Failure to settle on time will result in the addition of late payment penalties to the invoice. • Insurers and CHCs must not delay decisions on liability as a mechanism for delaying settlement beyond three months. • Late payment penalties will not be payable in cases where there is a genuine liability dispute that results in a reduced settlement. • If payment has not been received after three months, the CHC can pursue the claim outside the scope of the GTA.	Adopt

Assessment of costs of remedies under theory of harm 1

Introduction

1. This appendix outlines supporting evidence for the costs likely to be incurred in the implementation of the remedies proposed under ToH 1.

Remedy A

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

   (a) preparation and distribution of the statement of consumer rights and motor insurance policy Frequently Asked Questions;

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

   (c) additional training of claims handlers at FNOL to ensure they are able to provide the information to consumers; and

   (d) an increase in the cost of FNOL due to an increase in the length of the FNOL call caused by the claims handler having to read out the mandatory statements.

Preparation and distribution of additional policy documentation

3. Table 1 shows the costs which the insurers and brokers in our sample estimated would be incurred in the preparation and distribution of a statement of consumer rights and motor insurance policy Frequently Asked Questions to accompany policy documentation.

TABLE 1 **Cost of preparation and distribution of new leaflets**

Insurer/broker	*Cost (£)*		
	Preparation	*Distribution*	*Total*
Insurer			
Admiral*	[✂]	[✂]	[✂]
Ageas Insurance	[✂]	[✂]	[✂]
Aviva	[✂]	[✂]	[✂]
AXA	[✂]	[✂]	[✂]
CISGIL	[✂]	[✂]	[✂]
DLG†	[✂]	[✂]	[✂]
esure	[✂]	[✂]	[✂]
LV	[✂]	[✂]	[✂]
RSA	[✂]	[✂]	[✂]‡
Zurich	[✂]	[✂]	[✂]
Broker			
BGL	[✂]	[✂]	[✂]
Endsleigh	[✂]	[✂]	[✂]
Hastings Direct	[✂]	[✂]	[✂]
Swinton	[✂]	[✂]	[✂]

Source: Insurers and brokers.

*[✂]
†[✂]
‡[✂]

4. Estimates of total costs for the preparation and distribution of this statement ranged from £5,000 to £1 million. The significant variation in the cost estimates suggests that the cost of preparing and distributing such information is dependent on a number of variables (eg the length, size and weight of the document, print specification, and print quantity).

5. Several parties told us that the distribution costs likely to be incurred in the implementation of this remedy could be eliminated by providing the new information to consumers with the existing policy documentation at policy inception (for new customers) or policy renewal (for existing customers). We accepted that this approach was likely to be more efficient than sending out the additional documents separately following the implementation of the remedy.

New FNOL process

6. Table 2 shows the costs which the insurers, brokers and CMCs/CHCs in our sample estimated would be incurred in changing their FNOL scripting. These indicative costs include both the costs to make the required changes to the scripts and the training costs to inform claims handlers of the new requirements.

TABLE 2 **Cost of changing FNOL scripting**

Insurer/broker/ CMC/CHC	*Cost (£)*		
	Script change	*Training*	*Total*
Insurer			
Admiral	[✂]	[✂]	[✂]
Ageas Insurance	[✂]	[✂]	[✂]
Aviva*	[✂]	[✂]	[✂]
AXA	[✂]	[✂]	[✂]
CISGIL	[✂]	[✂]†	[✂]
DLG‡	[✂]	[✂]	[✂]
esure	[✂]	[✂]	[✂]
LV	[✂]	[✂]	[✂]
RSA	[✂]	[✂]	[✂]
Zurich	[✂]	[✂]	[✂]
Broker			
BGL	[✂]	[✂]	[✂]
Endsleigh	[✂]	[✂]	[✂]
Hastings Direct	[✂]	[✂]§	[✂]
Swinton¶	[✂]	[✂]	[✂]
CMC/CHC			
Accident Exchange	[✂]	[✂]	[✂]
ClaimFast	[✂]	[✂]	[✂]
Crash Services	[✂]	[✂]	[✂]
Enterprise#	[✂]	[✂]	[✂]
Helphire	[✂]~	[✂]	[✂]
Kindertons	[✂]	[✂]	[✂]
Quindell	[✂]	[✂]	[✂]
WNS	[✂]	[✂]	[✂]

Source: Insurers, brokers and CMCs/CHCs.

*[✂]
†[✂]
‡[✂]
§[✂]
¶[✂]
#[✂]
~[✂]
[✂]

7. Estimates of the combined cost of changing scripts and training staff ranged from £1,000 to £200,000. The significant variation in the cost estimates suggests that the cost of changing scripts and training staff is dependent on a number of variables (eg the extent of the script change, the extent of the IT changes required, the length of training, and whether the training is delivered internally or externally).

8. Table 3 shows the additional cost which the insurers, brokers and CMCs/CHCs in our sample estimated would be incurred by a one-minute or five-minute increase in the length of an FNOL call.

TABLE 3 **Impact of increase in length of FNOL call on cost of administering FNOL**

Insurer/broker/ CMC/CHC	*Cost (£)*	
	1-minute increase	*5-minute increase*
Insurer		
Admiral	[✂]	[✂]
Ageas Insurance	[✂]	[✂]
Aviva	[✂]	[✂]
AXA	[✂]	[✂]
CISGIL	[✂]	[✂]
DLG	[✂]	[✂]
esure	[✂]	[✂]
LV	[✂]	[✂]
RSA	[✂]	[✂]
Zurich	[✂]	[✂]
Broker		
BGL	[✂]	[✂]
Endsleigh	[✂]	[✂]
Hastings Direct	[✂]	[✂]
Swinton*	[✂]	[✂]
CMC/CHC		
Accident Exchange	[✂]	[✂]
ClaimFast	[✂]	[✂]
Crash Services†	[✂]	[✂]
Enterprise	[✂]	[✂]
Helphire	[✂]	[✂]
Kindertons	[✂]	[✂]‡
Quindell	[✂]	[✂]
WNS	[✂]	[✂]

Source: Insurers, brokers and CMCs/CHCs.

*[✂]
†[✂]
‡[✂]
[✂]

9. Estimates of the cost of a one-minute increase in FNOL call ranged from £5,000 to £300,000. The significant variation in the cost estimates suggests that the impact on costs of increasing the length of an FNOL call is dependent on a number of variables (eg the number of claims handled by the provider and the cost of employing claims handlers).

Remedy 1F

10. The costs likely to be incurred in the implementation of Remedy 1F will include:

(a) changes in call centre scripting to incorporate the mitigation declaration into existing replacement vehicle provision processes (see Table 2);

(b) additional training of claims handlers to ensure they are able to complete the mitigation declaration (see Table 2); and

(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 (see Table 3).

Further assessment of write-offs

Introduction

1. This appendix provides some further detail on the salvage process, drawing in particular on the information we have received from insurers, CMCs and the salvage associations since the publication of our provisional findings.

2. This appendix covers:

   (a) the write-off decision and salvage categorisation;

   (b) the salvage process;

   (c) salvage business models;

   (d) the usage of actual and estimated salvage values and the prevalence of profit-share arrangements;

   (e) subrogated claim amounts; and

   (f) the timing of payments to non-fault claimants.

The write-off decision and salvage categorisation

3. In general, a vehicle is deemed to be beyond economic repair (and hence a write-off) when:

   (a) the estimated cost to repair the vehicle exceeds the pre-accident value of the vehicle less any costs which could be recovered from its salvage (the estimated salvage value); or

   (b) where the vehicle is so significantly damaged to render the vehicle unable to be repaired (eg due to flood damage or in some cases where a vehicle has rolled over).[1]

4. When a vehicle is substantially damaged in an accident it may not be driveable. In this case, it is likely to be recovered from the roadside, usually by the police or a recovery agent, and will be stored pending repair or disposal. Storage at recovery agents is expensive so the insurer will be keen to move the vehicle as quickly as possible, either to a bodyshop for repair or to a

[1] Provisional findings, Appendix 6.3, paragraph 6.

salvage yard if the vehicle is likely to be a total loss. In the past, vehicle damage assessments were carried out by trained inspection engineers but, in order to reduce costs, inspections are now generally performed remotely using digital images. Staff at the recovery agent, bodyshop or salvage agent will take digital photos of the vehicle and email them to the insurer's engineer who will then decide on the course of action.

5. In the 1990s the ABI issued a Code of Practice for the handling and disposal of salvage vehicles as part of efforts to reduce vehicle crime. Under the Code of Practice, vehicles which are written-off are categorised by insurers into one of four categories (A to D) and should be registered on the Motor Industry Anti-Fraud and Theft Register (MIAFTR):

- Category A: the vehicle is so damaged that it is valued only as scrap metal and should be crushed.
- Category B: the vehicle cannot be repaired economically; it can be used as a source of parts but the body shell should be crushed.
- Category C: the vehicle is repairable but the repair costs (including VAT) exceed the pre-accident value.
- Category D: the vehicle is repairable and the repair costs (including VAT) do not exceed the pre-accident value (but the insurer decides not to repair the vehicle).

6. The insurance industry has also issued a technical guide to insurance engineers on how to apply the Code of Practice. This guide was written by the Engineers Technical Committee and is now maintained by Thatcham.

7. The Code of Practice is voluntary and there is no legal requirement for damaged vehicles to be notified to the MIAFTR. However, under The Road Vehicles (Registration and Licensing) (Amendment) Regulations 2002, when there is a change in ownership of a substantially damaged[2] vehicle the owner is legally required to destroy V5 registration documents and notify the DVLA. The vehicle is then required to undergo a Vehicle Identity Check before a replacement V5C is issued.

8. Some insurers generally write off vehicles when the cost of repairs exceeds a specified percentage of the pre-accident value (less than 100%). Most of the

[2] Where 'substantially damaged' is defined as where the cost of repair is greater than the pre-accident market value of the vehicle.

ten largest insurers told us that they would also take into account the cost of replacement vehicle provision if the damaged vehicle were to be repaired.[3]

The salvage process

9. When an insurer has made the decision that a vehicle will be written off (in an at-fault or non-fault claim), the vehicle will be collected by the insurer's appointed salvage company which will store the vehicle until it is eventually sold.

10. The MVDA told us that on average 45 days elapse before an insurer is in a position to authorise the salvage company to sell the vehicle. During this period the insurer will settle any outstanding hire purchase, agree the pre-accident value with the claimant and deal with transferring personalised number plates.

11. The MVDA told us that, once the insurer has authorised the sale of the vehicle by the salvage company, the vehicle would generally be sold to a vehicle dismantler by Internet auction within seven days. The vehicle dismantler is responsible for dismantling the vehicle and selling the parts for scrap, etc. We noted that the vehicle dismantler is typically different from the salvage company but there may be some vertically integrated vehicle salvage and dismantling firms. Our focus was on the interaction between the salvage company and the insurer and not on the interaction between the salvage company and the vehicle dismantler.

Salvage business models

12. Insurers generally choose salvage companies on the basis of competitive tendering and will enter into contracts lasting one to five years. There are two main forms of business model for salvage companies:

    (a) the salvage company buys the vehicle from the insurer and takes the commercial risk on the profit it is able to make on the eventual disposal – this is the traditional model; and

    (b) the insurer retains ownership of the vehicle while the salvage company acts as agent and receives a fee for providing a collection, storage and sales service.

[3] Provisional findings, Appendix 6.3, paragraphs 8 & 10.

13. The MVDA estimates that each of these business models currently accounts for approximately 50% of write-offs, but it said that the split could not be ascertained with precision.

Salvage company takes ownership of the vehicle

14. In the traditional model, when the salvage company purchases the vehicle from the insurer, the price paid by the salvage company is typically determined according to a framework agreed at the outset of the contract. In its simplest form this will be a percentage of the pre-accident value according to the category, with Category A vehicles attracting the lowest percentage and Category D vehicles attracting the highest percentage. However, the framework may be more complicated with the percentage also varying within the salvage category depending on the amount of the pre-accident value (typically the percentage increases the greater the pre-accident value).

15. The MVDA told us that a salvage company would be unlikely to dispute the salvage categorisation applied by the insurer for fear of jeopardising the renewal of its contract.

16. In addition, the contract may include a profit-sharing arrangement under which the insurer receives a share of the profit made by the salvage company on its disposal of the vehicle.

17. The contract is also likely to include a separate allowance for the salvage company to recover its costs, typically set at 5% to 10% of the pre-accident value.

18. In this model, the insurer has certainty over the amount of the fixed payment that it will receive from the salvage company once the pre-accident value has been agreed (because it is set out in the contract). The fixed payment is made by the salvage company to the insurer once the insurer has transferred ownership of the vehicle to the salvage company and cleared the vehicle for disposal (which may take around 45 days (see paragraph 10)). Any profit share is paid once the vehicle has been sold by the salvage company (which, if by auction, should be within the following seven days (see paragraph 11)).

Salvage company as agent

19. When the salvage company acts as agent, the insurer retains ownership of the vehicle until its eventual disposal by the salvage company. The salvage company receives a fee from the insurer for the services it provides. Depending on the contract with the insurer, the fee can be a fixed fee or a fee that is calculated as a percentage of the sale price of the vehicle at auction.

20. As in the traditional model, it may take around 45 days before the insurer is in a position to authorise the salvage company to sell the vehicle. The vehicle is then usually sold by auction within seven days.

21. The insurer will receive the salvage proceeds from the salvage company, less the salvage company's fees, once the vehicle has been sold at auction.

22. Copart, which is the largest provider of salvage services in the UK, operates only as an agent. Copart entered the UK market in 2007 and told us that it now dealt with a substantial proportion of the total annual write-offs in the UK.[4] Copart told us that this model increased the proceeds to insurers compared with the traditional model and therefore reduced claims costs. Copart also told us that this model reduced cycle times for claims and reduced the insurers' costs of processing claims.

23. Copart told us that it did not pay referral fees to insurers for salvage vehicles. It told us that referral fees may be paid to third parties such as CMCs and CHCs but this related to no more than approximately 10% of the salvage vehicles it handled.

Usage of actual and estimated salvage values and prevalence of profit-share arrangements

Insurers

24. Five of the ten largest insurers told us that they sold written-off vehicles to a salvage company. These insurers all told us that the proceeds they received from the salvage company for each vehicle were a percentage of the pre-accident value determined according to the salvage category.

    (a) Two of the insurers ([✂] and [✂]) told us that they also received a profit share from the salvage company.

    (b) One insurer ([✂]) told us that it also received volume-related rebates/ commission from the salvage company.

    (c) One insurer ([✂]) told us that it received a commission payment for reaching a contracted volume threshold from the salvage company.

    (d) One insurer ([✂]) told us that it did not receive any profit share or rebates.

[4] MVDA estimated that Copart had over [✂]% of the UK salvage market. However, we note that this is inconsistent with its estimate that 50% of salvage is handled under agency contracts.

25. The profit-share and rebate arrangements of these five insurers are described in Table 1. The arrangements of these five insurers cover around 122,000 vehicles sold to salvage companies in 2013.

TABLE 1 **Insurers' profit-share and volume rebate arrangements with salvage companies**

[✂]	[✂]

Source: Insurers.

[✂]

26. The other five of the ten largest insurers[5] told us that they retained ownership of written-off vehicles and the salvage company acted as agent and received a fee for providing a collection, storage and sales service. The fee is either fixed or calculated as a percentage of the sale price of the vehicle at auction.

27. The number of salvage vehicles sold by these five insurers in 2013 was around 112,000, split as follows: [✂].

28. The insurers all told us that they had the same arrangements for non-fault and at-fault write-offs. We understand that the figures they gave us for their number of written-off vehicles were for non-fault and at-fault write-offs.

CMCs

29. The responses we received from CMCs indicated that CMCs managed fewer claims for write-offs for non-fault claimants than insurers. We were told that in 2013 there were fewer than 10,000 write-off claims managed in aggregate by three of the largest CMCs, split as follows: [✂].

30. CMCs described their role in write-off claims as being to assist non-fault claimants in negotiating with the at-fault insurer to agree the pre-accident value and to chase for settlement. In some cases they also arrange for the salvage of the vehicle.

31. CMCs told us that, when they were involved in managing the salvage process, the salvage value at which the vehicle was sold to a salvage company was determined by an independent engineer as a percentage of its pre-accident value based on the salvage categorisation.

32. CMCs told us they received administration or referral fees as follows:

- [✂] told us it received £[✂] per vehicle (2013: £[✂])

[5] [✂]

- [✂] told us it received £[✂] in 2013
- [✂] told us it received £[✂] per vehicle (2013: £[✂])

33. [✂] told us that it received a profit share on the surplus achieved by the salvage company after taking account of the salvage value paid to the claimant and all the salvage company's costs.

Subrogated claim amounts

Insurers

34. With the exception of one insurer, all of the ten largest insurers told us that they used 'actual salvage proceeds' when subrogating claims for write-offs to at-fault insurers (with the amount being claimed equal to the pre-accident value less the salvage proceeds).

35. Four insurers take 'actual salvage proceeds' to mean the sale proceeds they receive from the salvage company (ie the agreed percentage of pre-accident value set out in the contract), as follows:

- [✂] and [✂] do not take account of any profit-share payments when making the claim to the at-fault insurer.
- [✂] does not take account of the volume commission it receives when making the claim to the at-fault insurer.
- [✂] does not receive any profit share or other commissions.

36. For the five insurers which retain ownership of the vehicle until it is sold at auction, 'actual salvage proceeds' means the auction sale proceeds less the salvage agent's costs.

37. The other top ten insurer, [✂], told us that it received the salvage proceeds from the salvage company as a percentage of the pre-accident value, which it described as the 'estimated salvage value'. The claims subrogated by [✂] reflect the pre-accident value paid out to the claimant less the 'estimated salvage value' and any vehicle recovery and storage costs. [✂] does not adjust the amount of subrogated claims for the reconciliation and profit share payments that it receives or pays (since the total combined value of reconciliation and profit share arrangements may be positive or negative), unless it has an accidental damage bilateral agreement with the at-fault insurer.

38. We found that the different models by which the non-fault insurer/CMC may claim from the at-fault insurer do not appear to result in a difference in the number of claims being challenged by at-fault insurers. Nine of the ten largest insurers told us either that they did not record the number of challenges or that the number of challenges was minimal. [✂]

CMCs

39. CMCs told us that the amount of the claim submitted to the at-fault insurer was the pre-accident value less the salvage value.

40. CMCs told us that some of the write-off claims they managed were challenged by at-fault insurers:

- [✂] estimated that approximately 10% of salvage claims were challenged.
- [✂] estimated that 15% to 20% of claims were challenged.
- [✂] estimated that 3% of claims were challenged.
- [✂] told us that it was very rare for claims to be challenged.

Timing of payment to non-fault claimants

41. All of the ten largest insurers told us that they paid non-fault claimants when the pre-accident value was agreed. Therefore, it does not appear that different contractual arrangements between insurers and salvage companies make a difference to the timing of the payment to non-fault claimants.

Summary of key points

42. In summary, we noted the following key points:

(a) For six of the ten largest insurers, the write-off claims which are subrogated to at-fault insurers correspond to the proceeds received by these insurers.

(b) On the other hand, it appears that for four of the ten largest insurers the write-off claims they subrogate to at-fault insurers are higher than they would be if their profit-share and volume commission arrangements with salvage companies were reflected.

Summary of views on remedies relating to theory of harm 4

Introduction

1. In this appendix, we set out a summary of the views of parties on remedies relating to ToH 4. Please refer to the CMA website for the detailed responses of parties to the Remedies Notice.[1]

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

General comments

2. The majority of respondents supported the provision of add-on pricing information on PCWs.

3. However, Zurich told us that it was not persuaded that the additional information proposed by the CMA 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 a meaningful comparison.

4. Swinton told us that, although it accepted the aims of this remedy, it believed that it was unworkable in practice and recommended that the sale of add-ons be left to the existing sales process and be offered to customers outside of the PCW environment. Swinton also told us that it was concerned that the mandatory listing of add-ons would provide a basis for PCWs to levy CPA charges on add-ons or for PCWs to launch their own add-ons.

5. Similarly, RSA told us that it had some concerns as to whether such a remedy was capable of practical implementation, though it did not explain these concerns in any detail.

Information provided to PCWs

6. Table 1 sets out the add-ons for which PCWs told us they receive pricing information from insurers. It shows that all the PCWs receive pricing information on the five most common add-ons: breakdown cover, courtesy car cover, motor legal expenses insurance, personal accident cover and windscreen cover.

[1] See www.gov.uk/cma-cases/private-motor-insurance-market-investigation#responses-to-provisional-findings-report-and-notice-of-possible-remedies.

TABLE 1 **Add-on pricing received by PCWs**

Confused	*CTM*	*GoCompare*	*MSM*
Breakdown	Breakdown	Breakdown	Breakdown
Courtesy car	Courtesy car	Courtesy car	Courtesy car
Motor legal expenses	Motor legal expenses	Motor legal expenses	Motor legal expenses
Personal accident	Personal accident	Personal accident	Personal accident
Windscreen	Windscreen	Windscreen	Windscreen
Green card	Driving abroad		
	Key loss		
	Personal effects		
	Sound equipment		

Source: Confused, CTM, GoCompare, MSM.

Add-on pricing displayed by PCWs

7. GoCompare told us that the add-on pricing it received varied by insurer. It said that it displayed pricing for the most commonly purchased add-ons (shown in Table 1).

8. MSM told us that it displayed pricing for add-ons as follows:

- When an add-on is included in the policy at no additional cost, the quote screen shows a tick.
- If the add-on can be purchased separately and the cost is fixed, the quote screen shows the price provided to MSM by the insurer.
- If the cost is not fixed and is determined by the type of cover selected (eg breakdown cover), the quote screen shows the price 'from' the base price.
- If an insurer does not offer a particular add-on, the quote screen shows a cross.

9. CTM told us that it displayed pricing for add-ons as follows:

- If the product feature is included as standard, the price forms part of the core premium.
- When the product feature is available for an additional price, a separate price will be provided (or a price 'from' will be displayed if the insurer offers a tiered product (in which case the lowest price tier is displayed) or if the add-on pricing varies according to the customer or quote information).
- If the product feature is not available from an insurer, no reference is made to that feature.

10. All the PCWs told us that they did not receive prices separately for NCB protection.

Incentives for PCWs to provide add-on pricing information

11. We received mixed evidence on whether PCWs are sufficiently incentivised to provide add-on pricing information to consumers. Several parties told us that PCWs currently had no incentive to sell add-on products as their income was generated from selling the primary PMI policy. Some of these parties said that PCWs should be required to enable customers to compare policies including add-ons.

12. CISGIL told us that, if PCWs could choose whether or not to display the information, it was likely that they would not do so, in order to avoid extensive implementation costs.

13. However, AXA told us that it was not necessary to require PCWs to publish add-on pricing information because the PCWs' business model meant that they were already sufficiently incentivised to do so.

14. PCWs told us that they would be incentivised to include add-on pricing information in order to improve consumer transparency and satisfaction. However, PCWs also said that displaying more add-on pricing information might create difficulties, in particular when displaying information on mobile devices.

Scope of remedy

15. We asked parties whether this remedy should also apply to brokers. The majority of respondents agreed and several parties told us that this remedy should apply to all distribution channels.

16. Some insurers told us that there would be difficulties in applying this remedy to brokers. LV told us that differing practices (eg independent sourcing of add-ons [✄]) may apply within the broker channel which may add complexity when applying this remedy to brokers.

17. Zurich told us that, given the differences in sales mechanisms, it was difficult to see how a remedy could effectively place this obligation on brokers and that there was added complexity as a broker may place the main cover with one insurer and the add-on(s) with other(s).

18. However, brokers did not raise any specific concerns about this remedy applying to them.

19. We received mixed evidence on whether the remedy should apply to all add-ons. Several parties told us it should. MASS noted that applying the remedy to

all add-ons would address the circumvention risk that insurers would create new add-on products which would not be covered by the remedy.

20. Other parties told us that the remedy should only apply to the most common add-on products although CISGIL noted that this would require agreement as to what the main add-on products were.

21. GoCompare told us that it was not always clear to consumers what was covered by their core PMI policy and what was covered by an add-on, as policies varied between PMI providers.

Time and cost implications

22. We received mixed evidence on the time and cost implications of this remedy. Some insurers told us that it should be relatively straightforward to provide add-on pricing to PCWs. The ABI told us that it did not anticipate that the cost to insurers of providing pricing information on add-ons to PCWs would be prohibitive. However, other insurers said that the costs would be significant. Brokers told us that they did not expect to encounter insurmountable barriers in providing this information to PCWs.

23. Insurers' estimates of the time that it would take them to adapt their systems to provide pricing on all their add-ons to PCWs ranged considerably, from one week to 18 months, with costs from £300 to £4 million. Most insurers estimated a period of up to 12 months with costs of up to £500,000. Several insurers noted that it was very difficult to estimate accurately how long the changes would take or the likely costs. The responses from insurers are shown in Table 2.

TABLE 2 **Insurers' estimate of time and cost to provide pricing on all add-ons to PCWs**

Insurer	*Time*	*Cost*
Admiral	[✄]	[✄]
Aviva	[✄]	[✄]
Axa	[✄]	[✄]
CISGIL	[✄]	[✄]
DLG	[✄]	[✄]
esure	[✄]	[✄]
LV	[✄]	[✄]
RSA	[✄]	[✄]
Zurich	[✄]	[✄]

Source: Responses from parties.

24. We also asked PCWs to estimate the length of time and cost required for them to redesign their websites to allow consumers to preselect from a choice of *(a)* all add-ons, or *(b)* the five most commonly sold add-ons, and then for the search results to be ranked by total price.

25. Confused told us that it would take 6 to 12 weeks to redesign its website to allow consumers to select from a choice of all add-ons, and 3 to 6 months to rank the search results by price, including a consumer's selection from the five most commonly selected add-ons. Confused said that these changes would not result in any additional costs over its normal development costs.

26. CTM told us that both options would require extensive planning and IT development. It told us that the design of its website reflected considerable research and development to date and that significant consultation and testing would be necessary to ensure that any changes were not detrimental to the consumer experience. CTM also told us that it would not be practical for an unlimited number of add-ons to be displayed on a PCW. CTM added that it would be necessary to consider how renewal quotes from insurers (which at present did not include add-ons) should be presented to ensure consumers were not misled. CTM said that it would take several months to redesign its website to display and rank search results including add-ons.

27. MSM told us that the length of time it would take to enable consumers to select from all add-ons would be mainly dependent on the time that it would take for MSM to be provided the information consistently by all insurers. MSM would require the information to be provided by each insurer, including their calculations of the monthly premium. MSM told us that allowing consumers to select from all potential add-ons would confuse consumers and ultimately lead to less switching and more automatic renewals of policies. MSM told us that ranking search results by price, including the five most commonly selected add-ons, would not be a significant development and the costs would not be prohibitive.

Circumvention risks

28. MASS told us that this remedy could increase the practice of insurers to bundle in add-on products with basic insurance, which would result in a rise in cost, and might leave consumers with products they did not want or need, or even know they had.

29. Aviva told us that, if the remedy did not apply to all add-ons, there was a risk that add-ons could be rebranded to avoid providing pricing information.

30. CISGIL told us that, rather than selling add-ons at the point of sale, insurers might move to a model where they actively sold add-ons once the policy term had commenced (either shortly after the sale of the basic policy or at renewal).

Unintended consequences

31. Several parties told us that this remedy was likely to lead to a standardisation of add-on products, thereby reducing innovation and customer choice. Allianz told us that this remedy might reduce the range of add-ons available on PCWs (even if insurers offered a wider choice on their own sites). Similarly, Aviva told us that add-ons might not be offered to all customers and that add-on prices would potentially move away from flat pricing making them more expensive to certain customers.

32. [✂] told us that there was a risk that insurers would seek to increase direct business, by offering higher pricing on add-ons purchased through PCWs compared with their direct offerings. However, [✂] noted that insurers and PCWs could review their contractual arrangements to mitigate this.

33. Some parties told us that, without some form of standardisation of add-ons, insurers would be able to reduce the cover of add-ons in order to improve their price competitiveness and that this would increase the risk of consumers purchasing unsuitable products. Aviva told us that different levels of cover could be introduced with only the cheapest shown on the PCW in order to improve an insurer's ranking.

34. Several parties told us that implementing this remedy would increase complexity for consumers and lengthen the quote process. An unintended consequence of this could be that consumers were overwhelmed by information and exited the process without purchasing. MSM told us that it used to rank insurers based on total price (ie including the price of five core add-ons) but had to revert to ranking based on core premium price as customer conversion reduced significantly. MSM believed this was because, as a result of including add-ons, the prices they offered were higher than those on other PCWs.

35. CISGIL told us that the development, implementation and management costs incurred by PCWs in implementing this remedy were likely to be passed on to insurers through higher CPA fees, and that insurers would seek to recover these increased commission costs from consumers through higher premiums.

36. Admiral told us [✂] GoCompare said that this remedy would involve a significant change to its business model, and was likely to represent a significant deterrent to new entrants to the PCW market.

37. Hastings Direct told us that there was a risk of 'assumptive selling' where a consumer would indicate a preference for an add-on product on a PCW on the basis of limited information and the insurers and brokers would then

presume the consumer had made that buying decision, making it difficult for the consumer to confirm that choice.

Implementation

38. The majority of parties told us that the FCA would be best placed to implement any remedy. AXA told us that the FCA's powers were sufficient to address our concerns and that to impose enforcement orders would contravene the regulatory principle of adopting the least intrusive approach.

39. However, CISGIL told us that it would expect this remedy to be implemented by way of enforcement order and [✂].

40. Many parties drew our attention to the FCA's market study on general insurance add-ons and its thematic review of PCWs, and highlighted the need for consistency.

Remedy 4B: Transparent information concerning no-claims bonus

Making available to consumers details of the NCB scales both when consumers choose whether to take out NCB protection and when they receive their policy quote

41. Several parties, including Ageas UK, Aviva and Zurich, told us that they did not believe that NCB scales should be published. Admiral told us that it understood why it may be desirable for consumers to understand the future impact of deciding whether or not to protect their NCB, but felt that attempting to achieve this by displaying NCB scales at the point of quotation would be problematic. DLG told us that it did not believe that the publication of NCB scales was a desirable or appropriate means of helping consumers to make an informed buying decision. esure told us that it was not clear what benefit consumers would receive from the publication of NCB scales. LV told us that it did not believe it was necessary to publish NCB scales and was not convinced that consumers would refer to NCB scales at the point of sale. LV also noted that an added complexity was that varying NCB scales across the industry called into question whether consumers could make effective comparisons.

42. Insurers told us that NCB scales were complex. They said that the level of NCB discount was based on a number of rating factors and could vary significantly between insurers and over time. Insurers told us that, as a result, NCB rates could not be presented in a simple table and it would be impractical for insurers to provide the level of NCB discount for all combinations of NCB years.

43. We were also told that publication of the scales could overload customers with information and be confusing and misleading to customers as a higher percentage NCB discount did not necessarily correlate to a lower premium. The ABI told us that publishing NCB scales would not help consumers to understand NCB policies better and as a result consumers would be left more confused about the value of their policy.

44. However, MASS told us that the publication of NCB scales was essential as it was apparent that many consumers did not know what they are buying when they took out NCB protection and that for them to make an informed decision they needed to be given the scales.

Unintended consequences of the publication of NCB scales

45. Aviva and Zurich told us that the requirement might be regarded by some insurers as so onerous that they might cease to offer NCB discounts altogether, and move to alternative rating discounts. DLG told us that we should be mindful of imposing remedies which might result in insurers no longer offering NCB protection due to the risks of consumer misunderstanding as this would cause significant consumer detriment. LV told us that it was possible that the requirement might result in NCBs being diluted or removed altogether in favour of discounts for other risk factors.

46. Allianz told us that there could be an incentive for insurers artificially to inflate the premium and then to show a high NCB discount being available, which might not, in practice, lead to a real saving for the consumer. Similarly, Admiral told us that insurers who did not target low NCB consumers would potentially produce NCB scales displaying large NCB discounts, which could be interpreted by customers as suggesting that there was a lot of value in protecting their NCB, but which might not be the case if the customer did not stay with the same insurer.

47. Admiral told us that there might be an increase in complaints as in some cases the NCB scale which was told to the customer at the point of sale would no longer be valid at the point of renewal.

48. Aviva told us that some insurers might construct their scales to attract only those customers with a high number of claim-free years and an unintended consequence of the proposed remedy could be a reduction in the number of insurers providing PMI to customers with fewer claim-free years. Aviva also told us that broader published scales might make the market less efficient leading to higher average prices.

49. Zurich told us that the publication of NCB scales would introduce extra ongoing costs which would ultimately be reflected in prices.

What would be the practical difficulties and costs for insurers if they were required to quote the gross premium and NCB discount?

50. Ageas Insurance told us that implementing this remedy option would require potentially significant changes to systems and documentation, create increased complexity and increase the length of telephone calls.

51. CISGIL also told us that implementing this proposal would require quotes to be prepared showing the premium with *(a)* nil NCB discount; *(b)* the relevant NCB discount applied; and *(c)* the relevant NCB discount applied and incorporating NCB protection. CISGIL said that extensive changes to its systems would be required. CISGIL noted that call times for its telephone sales would be extended to cater for the explanation of the different premium levels, its website would need to be updated to display the additional information with appropriate explanations, and the PCWs would have to display multiple prices for each insurer.

52. DLG told us that implementing this proposal would take considerable effort and cost. DLG told us that insurers would have to provide two quotes, one with and one without the NCB discount, and that these two premiums would need to be displayed to consumers in every case, whether on the insurer's own website or on PCWs, which would require significant systems development. DLG told us that, although it was not in a position to provide an accurate estimate, it expected that its costs would be in the region of £[✂].

53. esure told us that there would be no significant practical difficulties with the proposal but said that significant time and resource costs would be required for insurers, brokers and PCWs to adapt their systems. esure also said that increased telephone call times would result in higher call-handling costs.

54. LV told us that it provided consumers with the level of discount generated by their NCB in their renewal documents but that to implement this measure for all online quotes would require significant work and a change in practices for its call centre business.

55. RSA told us that it would be costly to implement this proposal as extensive changes to systems would be required both for its online business to enable the gross premium and NCB discount to be displayed on screen, and also for its call centre staff to be provided with the same information.

56. Another party told us that implementing this proposal would cause premiums to have to be calculated three times to produce a quote: *(a)* the premium with

no NCB discount; *(b)* the premium with the relevant NCB discount without NCB protection; and *(c)* the premium with the relevant NCB discount with NCB protection. The party further told us that this would increase the computation time for quotations across the industry and would result in a delay in consumers receiving quotations. It would also require widespread changes to the data exchange protocols between insurers, brokers and PCWs and changes to the quote screens of PCWs. It estimated that its own costs of implementing this measure would be £[✂] to £[✂].

What would be the practical difficulties and costs for insurers if they were required to give examples of what would happen to the gross premium, NCB discount and NCB years if the customer were to make a claim tomorrow (all other things being equal)?

57. Admiral told us that providing this information could be misleading because it would not reflect the actual pricing that the customer could potentially experience at the point of renewal.

58. Ageas Insurance told us that this proposal could potentially require significant changes to systems and documentation, cause increased complexity and lengthen call times. It suggested that the examples would either need to be very specific to the customer's risk profile or be more generic, and in any event they could only be indicative of the pricing that would apply at the time of renewal of the policy.

59. AXA told us that it would be impossible to provide details of exactly what would happen to a customer's gross premium, NCB discount and NCB years because the customer's premium at renewal would be influenced by many other factors. AXA suggested that an illustrative example could be provided which could be standardised across the industry, provided that it was stated clearly to be only indicative and not reflective of the customer's actual pricing at renewal.

60. CISGIL told us that this proposal could be misleading for consumers as the examples given would not reflect the consumers' pricing at renewal as numerous other factors could change. CISGIL also told us that major and costly systems changes would be needed to calculate and display the various examples, and that telephones sales scripts would need to be amended and call-handling times extended to allow sales staff to explain the examples to customers.

61. DLG told us that a requirement to quote both the gross premium and the NCB discount would result in substantial costs to amend its systems. DLG also said that this proposal would risk confusing consumers because of the number of other variables which could influence the renewal premium. DLG noted that it

already provided step-back rules (information on what happens to NCB years in the event of a fault claim) to its own-brand customers and that it could provide generic illustrated examples to convey the average value and limitations of the NCB product by contrasting the average premium at renewal for customers with at least one claim during the previous year, comparing the premium in the scenario with NCB protection with the scenario without NCB protection.

62. esure told us that it would be feasible to implement this proposal for online sales but it would increase the length of telephone sales and the time before a customer could be provided with a quote.

63. LV told us that it would be feasible to implement this proposal for online sales provided that the examples were illustrative and could be incorporated in LV's documentation and website. LV told us that incorporating the examples in call-centre scripts would increase the length of the call and could result in potentially significant costs.

64. RSA told us that this proposal would be costly and complex to implement if it involved changing the functionality of its systems to display a range of prices to customers across all sales channels. RSA told us that a requirement to display hypothetical prices would be confusing to customers and could be misleading as the actual premium at renewal would depend on a large number of various factors and would be likely to be different from that given in the example.

65. Zurich told us that it would be difficult to generalise the impact of a fault claim on premiums and NCB discounts because other factors were taken into account in assessing risk. Zurich said that introducing bespoke examples would be costly and complex.

If insurers/brokers were required to explain to customers what factors might alter a consumer's level of NCB up or down from one year to the next, distinguishing between situations where the customer has and does not have NCB protection, what factors would you consider it appropriate to reveal to consumers in order to assist customers in deciding whether to purchase NCB protection?

66. Admiral told us that consumers could be told that their claims history and NCB protection might alter their level of NCB.

67. Ageas Insurance told us that consumers could be provided with the following information:

- The current scale of NCB years and percentage discounts.

- The consumer's future position on the scale assuming no prejudicial claims.

- The consumer's future position on the scale assuming one prejudicial claim, comparing protected NCB with unprotected NCB.

- Illustrative premiums based on the consumer's current premium.

68. Aviva told us that factors to communicate to consumers would include:

- A clear comparison of the effects on NCB when an at-fault claim occurs between protected and unprotected policies.

- Confirmation that NCB protection may not protect a consumer from premium increases as the direct result of a claim.

- The number of claims in any given period that NCB protection will provide protection against.

- Where policies provide an 'uninsured driver promise', that the NCB will not be reduced when an accident is the fault of an uninsured driver even if the insurer cannot make a recovery.

- Certain types of claim may not impact NCB.

69. AXA told us that it was not practicable to give an explanation to consumers of the range of factors which affected premiums and the level of NCB discount. AXA told us that it should be made clear to consumers that taking out NCB protection might not prevent the overall premium increasing at renewal (in the event of a claim).

70. CISGIL told us that as the NCB calculation had developed, the level of discount applicable to each consumer had become linked to other risk factors and that, as the weighting of these risk factors in relation to each consumer's number of claim-free years varied, it would be difficult to set out for each consumer which factor had the most influence on their own level of NCB. CISGIL said that it would be more appropriate to describe in broader terms the factors which interacted with claim-free years which then determined the overall level of NCB discount.

71. DLG told us that the step-back rules which set out what would happen to consumers' NCB years in the event that they made a fault claim were already provided to its own brand customers. DLG said that it would not be helpful to explain in more detail the range of factors which determined the NCB discount as this would require setting out in detail a number of different variables

(claims experience, margin pricing and brand strategy, marketing messages etc) which all affected the overall pricing.

72. esure told us that there was nothing in principle about its calculation of NCB which could not be disclosed to consumers, but it was concerned that the amount of information provided to consumers should be proportionate, balancing *(a)* providing consumers with sufficient information to allow consumers to understand the operation of NCB and NCB protection and *(b)* not providing an excess of information which would carry the risk that consumers would not read or understand lengthy explanations.

73. LV told us that the step-back rules clarified the impact of claims on the number of years NCB entitlement.

74. We received mixed evidence on whether the wording to explain NCB protection should be consistent across insurers. Allianz and the ABI told us that each insurer should be allowed the flexibility to adopt language which best fitted with their policy wording. DLG told us that it would not be appropriate for a generic description to be mandated across the industry. On the other hand, Ageas UK told us that a consistent form of words across the industry explaining NCB to consumers could help and could be usefully formulated by a body such as the ABI.

Including 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

75. The majority of parties supported the principle of providing an explanation to consumers about the nature of NCB protection. However, some insurers were concerned that these statements did not make it clear that there were many factors which could affect a consumer's NCB discount, and they might cause consumers to undervalue NCB protection.

'Your premium may increase following an accident in which you are not at fault even if you have No Claims Bonus Protection'

76. Ageas Insurance and CISGIL told us that there was no reason why this statement could not be made to consumers. esure, RSA and Zurich told us that they would have no objections to including this statement in their descriptions of NCB protection. esure suggested that an additional statement would add clarity: 'insurers use a large number of factors in calculating motor insurance premiums and any of these may result in an increase or decrease in your premium'.

'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'

77. Aviva told us that this statement could be misleading to consumers as NCB protection could prevent a consumer's NCB years reducing (ie so long as the claim was within the insurer's step-back rules). Similarly, DLG told us that this statement could be misleading as DLG customers were able to protect their NCB years subject to certain limitations on the number of claims made in specific periods. Ageas Insurance told us that this statement could be misleading as a consumer's premium might increase but NCB protection guaranteed that the NCB entitlement would not be reduced as a result of a single prejudicial incident.

Remedy 4C: Clearer description of add-ons

78. In general, parties were supportive of the principle of providing clearer descriptions of add-ons.

79. In our Remedies Notice we asked what should be included in the description of each add-on product. Aviva told us that add-on descriptions should provide an overview of what cover was provided and confirmation of key exclusions or limitations of cover.

80. CISGIL told us that it was important to provide consumers with information that was not unnecessarily complex and that insurers should retain flexibility over the exact content and display of the information. Zurich told us that each insurer would have its own view on what key aspects needed to be communicated to its particular customers and that insurers should therefore retain flexibility over the exact content and display of this information.

81. Several parties suggested that further work was required to establish the key features of each add-on product which customers needed to know before they made a purchasing decision. For example, the ABI suggested undertaking a more thorough consumer research exercise to ensure that the information requirements met customers' needs. Admiral told us that the quality of add-on descriptions could best be established by understanding the products and the needs of consumers in relation to the products, which could be done by monitoring insurers' data on claims repudiations, complaints and customer feedback, and through competitor research and analysis. CISGIL told us that further work should be undertaken with insurers, consumer groups and the FCA to assess what relevant information should be included and the format of any such information.

82. However, LV told us that insurers were already aware of consumers' information requirements. It said that significant research had already been undertaken to optimise the customer experience and to ensure their demands were met. It said that it should, therefore, be relatively straightforward to identify those providers which did it well and to highlight examples against which to benchmark.

83. Most parties told us that descriptions should be provided across all distribution channels including in insurance policy documentation, on insurers' websites and on PCWs. Admiral told us that, in addition, descriptions should be included in sale scripts for purchases via a call centre.

84. Several parties highlighted the risk of overloading customers with information, particularly on purchases through a PCW. DLG told us that too much detail, included with the intention of increasing customer understanding, can lead to worse customer outcomes because the critical points are lost or the information is simply not read.

85. The ABI, CISGIL and Zurich suggested that the risk of information overload could be mitigated by including more detailed product information within the policy documentation and less technical information on websites and PCWs.

86. PCWs told us that it would not be time-consuming or costly to change the descriptions of add-ons on their websites. Confused told us that changes to standard wording were usually completed within six weeks and there would be minimal additional cost beyond its normal development costs. CTM told us that regular changes to the product descriptions on its website were made [✄], usually within [✄] of receipt from the insurer, but wide-scale changes might take longer and incur some cost. GoCompare told us that, although making changes to the descriptions of add-ons was not onerous, if the changes were instigated by GoCompare there might be some resource cost in obtaining the agreement of all the insurers whose policies are listed on its website, and that this might cause some delay. MSM told us that any changes which it was required to make to the description of add-ons could be made with minimal effort.

87. The ABI told us that requiring standardised definitions of add-ons could stifle innovation and similarly Ageas UK told us that requiring standardised information about add-on products to be provided to consumers could stifle innovation, which would represent an unintended consequence of the remedy.

88. AXA told us that it did not support this remedy as the FCA already had sufficient powers to require insurers to provide more information and/or clearer statements at different stages of the process. Allianz told us that the

FCA and consumer bodies should help regulate the quality of descriptions of add-ons and the Advertising Standards Authority should help regulate the accuracy of the descriptions of add-ons provided to consumers in advertising material. esure told us that it considered that the ABI and BIBA would be best placed to monitor insurers' descriptions of add-ons.

89. If the remedy were to be pursued, the majority of parties told us that the FCA should monitor it.

Descriptions of add-on products

1. In this appendix we discuss several add-on products. In Annex A we present descriptions provided by the ten motor insurers in our sample for a selection of add-ons.

2. This evidence was presented in Appendix 8.1 of our provisional findings but is repeated here as we are proposing to make a recommendation to the FCA to work with insurers, brokers and PCWs to improve as necessary the descriptions provided to consumers of PMI-related add-on products.

Personal injury cover

3. Personal injury cover typically provides cover in the event that a customer and/or their partner suffer injury or death as a result of an accident.[1] The cover provides compensation for injury or death and money towards the cost of medical treatment.

4. Five of the ten motor insurers in our sample (Admiral, Aviva, esure, LV and Zurich) offer personal injury cover as an add-on. Four motor insurers in our sample (Ageas, AXA,[2] DLG and RSA) provide this cover in their basic motor insurance policy. One motor insurer in our sample (CISGIL) does not offer personal injury cover as an add-on and does not include it in its basic motor insurance policy.

5. We would expect a description of personal injury cover to detail the parties included under the cover, the key features of the cover and the relevant compensation limits. The descriptions provided by the six motor insurers that offer personal injury cover as an add-on avoid the use of unnecessary complex language or terminology. However, there is considerable variation in the level of detail provided to consumers. For example, the descriptions provided by Admiral, Aviva and esure summarise the key features of the add-on. In contrast, the descriptions provided by LV and Zurich provide a high-level overview of the add-on without reference to its key features.

[1] We note that there is some variation in the coverage of this add-on. Some personal injury cover products also provide cover for named drivers and/or passengers, in addition to cover for the customer and their partner.
[2] AXA previously offered Driver Injury Cover under its AXA Direct policy, but this was recently withdrawn. AXA offers Personal Accident Cover, which is included within the basic comprehensive motor insurance policies. In addition, AXA provides the option of Personal Accident Plus as an add-on. This applies to both Swiftcover and AXA Direct brands.

NCB protection

6. NCB protection ensures that a customer's NCB years remain intact (subject to certain conditions) in the event of an accident where the customer is required to claim under their motor insurance policy. It does not protect a customer's motor insurance premium.

7. Six of the ten motor insurers in our sample (Admiral, Aviva, AXA, LV, RSA and Zurich) offer NCB protection as an add-on. Three motor insurers (Ageas, CISGIL and esure) do not treat NCB protection as a standard add-on, because it can only be purchased if certain criteria are met (ie not all consumers are eligible). For example, [✂]. One motor insurer (DLG) does not treat NCB protection as a standard add-on, but as a variation to the pricing on the basic motor insurance policy.

8. We note that there is considerable variation in the level of detail provided to consumers in relation to NCB protection. For example, the description provided by Admiral explains clearly and concisely the conditions required to be considered eligible for NCB protection and the difference between protecting and guaranteeing an NCB. In contrast, the description provided by [✂] and Zurich is short and provides the consumer with little information about the product. In our view, the level of detail provided by the other motor insurers (Aviva, LV and RSA) is superior to that provided by [✂] and Zurich, but inferior to that provided by Admiral.

9. Further, none of the descriptions present comprehensively the complexities of the cover, notably that a driver's NCB protection is affected if they submit too many claims in a specified period of time (typically more than one claim in a year or more than two claims over three years).

10. Further, it is not made explicit by any of the motor insurers that the add-on protects the driver's NCB years but is not a protection of their current premium (which can be affected by claims independently of a driver's NCB). In our view, this is a significant deficiency in the descriptions of NCB protection provided by the motor insurers in our sample.

Extended foreign use cover

11. Extended foreign use cover extends a customer's comprehensive motor insurance policy to any member country of the EU for up to 90 days per trip.

12. We note that the basic comprehensive motor insurance policies provided by all ten motor insurers in our sample provide the minimum cover required by

law.[3] In addition, four of the ten motor insurers in our sample (Aviva, CISGIL,[4] LV and RSA) offer extended foreign use cover as an add-on. Five of the ten motor insurers in our sample (Admiral, Ageas,[5] AXA, esure and Zurich) do not explicitly offer extended foreign use cover as an add-on, but may provide cover (at a cost) if requested. One motor insurer (DLG) does not offer extended foreign use cover as an add-on.

13. The descriptions provided by Aviva, CISGIL and LV are concise, comprehensible summaries of the key features of the extended foreign use add-on.[6] However, in our view it would be useful if the difference between the cover provided by the add-on and the cover provided by the basic comprehensive motor insurance policy was made explicit in the description, in order for a consumer to assess accurately the suitability of the add-on for their needs.

Key loss cover

14. Key loss cover provides cover for replacement locks and keys in the event that the customer's car keys are lost or stolen.

15. Four of the ten motor insurers in our sample (Admiral, AXA, esure and Zurich) offer key loss cover as an add-on. Five of the ten motor insurers (Ageas, Aviva, CISGIL, LV, and RSA) provide this cover in their basic motor insurance policy. The remaining motor insurer (DLG) does not provide this cover as an add-on and does not provide it in its basic motor insurance policy.

16. The descriptions provided by Admiral, [✂] and Zurich provide a high-level overview of the key features of the add-on in a comprehensible manner. However, the description provided by esure is far more substantial, providing a comprehensive summary of the scenarios under which the add-on can be utilised, thus better allowing the consumer to assess the suitability of the cover for their needs.

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[3] The minimum legal cover (usually the equivalent of UK third-party-only cover) allows the customer to use the car in any member country of the EU and any other country that has agreed to follow Article 7(2) of the EU Directive on Insurance of Civil Liabilities arising from the use of motor vehicles (number 72/166/EEC) for up to 90 days in a year.
[4] CISGIL's extended foreign use is available as an add-on for the Co-operative Car Insurance product only.
[5] Ageas provides free EU cover for 90 days in its basic motor insurance policy. Extension to the 90 days or request for cover outside the EU may or may not be granted but would attract an additional charge if granted.
[6] RSA's Foreign Use Extension add-on can only be purchased on the telephone and therefore there is no description of the add-on the RSA website.

Courtesy car cover

17. Courtesy car cover typically provides the customer with a standard, Class A courtesy car in the event that their car is immobile following an accident, stolen and not recovered or declared a total loss.

18. Four of the ten motor insurers in our sample (Aviva, DLG,[7] LV and RSA[8]) offer courtesy car cover as an add-on. The remaining six motor insurers (Admiral, Ageas, AXA,[9] CISGIL,[10] esure and Zurich) provide this cover in their basic motor insurance policy.

19. We would expect a description of courtesy car cover to include the key features of the cover, such as the conditions under which the car would be provided, the type of car provided, the hire duration and any limitations of the cover. However, only Aviva's description summarises all of these key features, thus allowing the consumer to make an accurate assessment of whether the add-on is suitable for their needs. The descriptions provided by the other three motor insurers, although comprehensible, do not detail the type of car provided under the cover.

20. We note that all four motor insurers do not explain to consumers that this add-on may not be necessary in circumstances where they are not at fault for an accident, because they are usually entitled to a like-for-like replacement car (subject to the driver's duty to mitigate their loss with consideration to their need) paid for by the fault insurer.

Enhanced courtesy car cover

21. Enhanced courtesy car cover provides the customer with a like-for-like replacement car or a replacement car of a superior quality to the standard Class A courtesy car typically provided under courtesy car cover in the event that their car is immobile, stolen and not recovered or declared a total loss.

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[7] DLG offers (since 8 September 2013) courtesy car cover as standard through its Privilege and Churchill brands. Provided the car is being repaired at one of DLG's approved repairers, a small hatchback will be provided for the duration of the repairs. DLG offers Guaranteed Hire Car (GHC) and Guaranteed Hire Car Plus (GHC+) as optional add-ons, which enables customers to purchase hire car provision. DLG considers the GHC and GHC+ add-ons as distinct from the provision of a courtesy car, because customers opting for GHC or GHC+ are entitled to a hire car even if they use a non-DLG-approved repairer, and the length of hire is guaranteed for up to14 consecutive days for GHC and 21 consecutive days for GHC+. Customers with GHC or GCH+ are not entitled to a courtesy car benefit. There are a very small number of DLG legacy policies that provide a courtesy car under the basic motor insurance policy.

[8] RSA includes windscreen cover and courtesy car cover in the basic More Th>n motor insurance policy, but they are sold separately (and required to be purchased as add-ons) from the basic eChoice motor insurance policy.

[9] AXA provides courtesy car cover as standard under its basic motor insurance policy for its AXA Direct brand. Under its Swiftcover brand, courtesy car cover is offered as an add-on.

[10] This add-on is only applicable where the customer's car is repaired by a CISGIL-approved repairer.

22. Seven of the ten motor insurers in our sample (Admiral, Ageas, AXA,[11] esure, LV, RSA and Zurich[12]) told us that they did not offer enhanced courtesy car cover. Of the remaining three motor insurers:

(a) Aviva told us that it offered its Aviva customers an enhanced courtesy car add-on, which entitled them to a replacement car of a superior quality to a standard courtesy car (but not a like-for-like replacement car).

(b) CISGIL told us that it offered its Co-operative Motor Insurance customers an enhanced courtesy car add-on, which entitled them to a replacement car of a similar engine specification (up to a maximum engine size of 1800cc) and size to their vehicle for up to 14 days.

(c) DLG told us that it offered its customers a Guaranteed Hire Class Plus add-on, which entitled them to a replacement car of a similar physical size to their own car (although this is not guaranteed) for up to 21 consecutive days.

23. Table 1 below summarises the proportion of Aviva, CISGIL and DLG customers that typically purchase the enhanced courtesy car add-on.

TABLE 1 **Enhanced courtesy car cover take-up**

Motor insurer	*Proportion of customers who purchased add-on (%)*		
	2010	*2011*	*2012*
Aviva	[✄]	[✄]	[✄]
CISGIL*	[✄]	[✄]	[✄]
DLG†	[✄]	[✄]	[✄]

Source: Aviva, CISGIL and DLG.

*We note that CISGIL provides courtesy car cover as standard under its basic motor insurance policy (where any repair is undertaken by a CISGIL-approved repairer).
†These figures are in relation to the GHC+ add-on offered by DLG, which is its closest equivalent to offering policyholders 'a replacement vehicle similar to their own'.

24. We note that the motor insurers do not explain to consumers that this add-on may not be necessary in circumstances when they are not at fault for an accident (see paragraph 20).

[11] AXA does not offer its customers an enhanced courtesy car add-on that provides a replacement car of a superior quality to a standard courtesy car. However, it does offer an add-on to extend the maximum duration that a courtesy car will be provided.
[12] Zurich told us that its policies included courtesy car as standard, and typically this would be a group A car (eg a small hatchback), usually with a manual gearbox, and only available in the UK. On its high-net-worth product only, as standard, if the courtesy car provided does not meet the customer's requirements, it will provide a hire car of a similar specification to the vehicle which is the subject of the claim.

Descriptions of add-ons provided by motor insurers on their websites

Personal injury cover

Admiral

Personal Injury Cover provides cash when hospitalised after an accident, and up to £50,000 cover for serious injury or accidental death in your car. It also includes all the following benefits:

All named drivers are covered (under the age of 80)

Cover is extended for the policyholder travelling in any other privately insured car in the UK

You’re covered whether the accident is your fault or not, and if you’re hit by an uninsured driver

Please click here for full terms and conditions

Aviva

Regardless of who’s to blame for an accident involving the insured vehicle, if the main driver is seriously injured, this cover helps to provide financial peace of mind.

£40,000 payment following death or permanent loss of a limb, sight or hearing within 3 months of an accident in the UK.

Or if you prefer choose joint cover for the main driver and their partner (£20,000 each).

esure

With our Personal Injury Benefit you get peace of mind in the knowledge from knowing that you’ll get up to £30,000 worth of compensation if you, your partner and any named drivers or passengers suffer an injury in an accident - regardless of who’s to blame. Simply add Personal Injury Benefit to your car insurance policy and you also get the following:

All named drivers and passengers covered

Policyholder covered whilst travelling in any other private car in the UK

The cover applies regardless of whether the accident is your fault or not

Up to £30,000 worth of compensation

Plus these Cash Benefits if medical treatment is required:

£200 per night spent in hospital (10 days maximum)

£1,000 if you need an operation or surgical procedure

£500 if you need cosmetic dental work

£250 if you need physiotherapy

LV

With our standard comprehensive insurance, we'll pay you £10,000 if you or your husband, wife or civil partner is accidentally injured while travelling in, or getting into or out of, any car. For a small additional fee you can increase this cover to £100,000. This is only available with comprehensive cover.

Zurich

This cover provides up to £30,000 for you or your passengers in the event of death, loss of limbs, sight or hearing following an accident in your car or while getting into or out of it. Our Personal Accident Cover is provided by Ultimate Insurance Company Limited.

NCB protection

Admiral

Please select the level of protection you would like for your No Claims Bonus from the available list

If you have 3 or fewer years No Claims Bonus you cannot choose to protect it. Please select the 'None' option

If you have 4 or more years No Claims Bonus, you can choose to protect it (subject to conditions). This means that you can have up to 2 claims in the next 3 years without losing your No Claims Bonus.

If you have 5 or more years No Claims Bonus, you can choose to guarantee it (subject to conditions). This means that you cannot lose your No Claims Bonus, regardless of the number and type of claims you may have.

Aviva

Protected no claim discount (NCD) protects you from up to 2 'at-fault' claims in a 3 year period. If any of your named drivers has had one 'at-fault' claim in the last 2 years you can still protect your NCD, but it will only be protected against 1 at-fault claim in a 3 year period.

AXA

If you have five or more years no claims discount, why not protect it? This will allow you to have one claim in a year or two claims in a three year period without it affecting your no claims discount.

LV

If you protect your no claim discount it won’t be reduced, regardless of the number of claims you make. If you don’t protect your no claim discount, it could be reduced if you make a claim. We can only protect your no claim discount if you have four or more years.

RSA

With this protection if you make a claim on your policy we’ll allow you to keep your No Claim Discount (providing no more than two claims occur within five consecutive years of insurance). If you need to make more than two claims, we’ll only reduce your No Claim Discount in line with the scale described in your policy booklet.

Zurich

For a little extra, you can also:

Protect your no claims discount

Make 2 claims in 5 years without it affecting your overall bonus.

Extended foreign use cover

Aviva

Extended foreign use matches your UK cover and extends it whilst driving abroad in the countries listed below. Cover is valid for up to 90 days for one trip and up to 6 months during the year.

Andorra, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France (inc Monaco), Germany, Gibraltar, Greece, Hungary, Iceland, Republic of Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Vatican City.

If the country you want to travel in is not in the list above, we may still be able to offer cover. Please contact us to complete your quote.

Extended foreign use cover can also be extended to include European breakdown recovery, provided by the RAC.

CISGIL

Are you a frequent visitor to Europe, or do you like to escape to the Mediterranean to avoid the British winter?

With our motor policy you are covered to drive your vehicle abroad for up to 8 days in any policy year. However if you require an extension to this, then you should consider our Extended foreign use cover.

Our Extended foreign use would provide you with:

A similar level of car insurance cover as you have in the UK for 365 days a year, with a single trip limit of 90 days.

Cover whilst driving abroad in any country which is a member of the European Union.

Freedom to go on holiday without having to let us know.

Peace of mind that you have the backing of The Co-operative Insurance and its partners if you are involved in an accident abroad.

Please be aware:

A limit of 90 days per trip applies to this cover.

The £15 charge for this cover is a flat fee. This is irrespective as to when the cover is added to the policy or the number of trips taken.

LV

All of our policies meet the minimum compulsory insurance requirements in the European Union. However, this wouldn't cover damage to your car. For a small additional fee, you can choose to extend this minimum cover to get the full benefits of this insurance when you're travelling in EU countries up to 180 days in a policy year, including when your car is being transported. If your vehicle can't be driven or has been stolen and not recovered in one of the countries covered by the extended foreign use, one of the options available to you is you could hire a vehicle. We will reimburse you on your return to the UK, up to a total of £1,000.

Key loss cover

Admiral

Keycare cover provides the protection of up to £1,500 for the costs of replacement locks and keys, if yours have been lost for 3 days or have been stolen.

Some of the other benefits include:

Cover for any of your keys, not just your car and your home, as long as they are attached to the Keycare fob (and the claim is reported to Keycare within 30 days)

Emergency helpline open 24 hours a day, 365 days a year

Access to a nationwide network of locksmiths

No excess to pay

You can also extend the policy to another set of keys belonging to someone else in your household, so their keys benefit from the same level of cover as well.

Please click here for full terms and conditions.

AXA

Up to £300 if your car key is lost or stolen, or £1,500 to replace the locks of your car.

esure

With our new ‘Key Cover’ we’ll provide protection in the event of loss, damage to or theft of your car key. We will arrange to pay for:

- The cost of retrieving your car key if it is accidentally locked in your car; or

- Transport costs for you to collect a spare key from your home address if you do not have a spare car key with you at the time of the loss or damage or theft, if we consider the cost to be reasonable; or

- The cost of replacing the car key and for resetting or reprogramming your car’s immobiliser and alarm system, up to a maximum of £300;

- The cost of replacing a lock if your car key breaks in the lock and cannot be removed; and

- Transporting you, your car and up to 8 passengers to the nearest suitable garage within the Green Flag network to obtain a replacement key or replace the locks.

- If your car key cannot be replaced, or we are satisfied that the identity or location of your car is known to any person who may have your car key, we will pay up to £1,500 for replacing the locks on your car and for resetting or reprogramming your car's immobiliser and alarm system or replacing the directly associated electronic control units.

Zurich

This cover provides up to £2,500 for replacing locks and keys for your car, home and office, including locksmith charges. You'll also receive three days of emergency car hire or the option to reclaim the cost of onward transport if your car keys are lost or stolen.

Courtesy car cover

Aviva

Relax with peace of mind that we'll keep you on the road if your car is written off or stolen. The package includes the following features:

Guaranteed replacement car* for the duration of repair if you use an approved repairer.

Guaranteed replacement car following a total loss, theft or fire claim for 14 days or on settlement of the claim (whichever is earliest), if you use an approved repairer.

If your vehicle is immobile or is not roadworthy the repairer can collect your vehicle and leave you with a courtesy vehicle.

* standard courtesy car – entitles you to a small three door hatchback vehicle with an engine size of 1 litre.

enhanced courtesy car – five door vehicle with an engine size of 1.6 litres, with room to seat five people.

DLG

For a small extra premium, we'll supply a hire car for up to 14 days if your car is unusable or in for repair following a claim (excluding windscreen damage), this applies even if your car is stolen and not recovered or written off as a total loss. Guaranteed Hire Car can only be added to your policy if you have Comprehensive cover.

LV

For a small additional fee you can be covered for a courtesy car. We'll pay for the courtesy car while your car is being repaired by our selected repairer service, or for up to 14 days if your car is damaged beyond economical repair, can't be driven or has been stolen and not recovered. We'll insure the courtesy car; you'll just have to pay for the fuel.

RSA

We'll supply you with a courtesy car for up to 14 days whilst yours is either: - being repaired at a repairer not recommended by ourselves – has been stolen or – has been declared a total loss. Following an incident which is not covered under your policy. Click for more info.

Enhanced courtesy car cover

Aviva

Relax with peace of mind that we'll keep you on the road if your car is written off or stolen. The package includes the following features:

Guaranteed replacement car* for the duration of repair if you use an approved repairer.

Guaranteed replacement car following a total loss, theft or fire claim for 14 days or on settlement of the claim (whichever is earliest), if you use an approved repairer.

If your vehicle is immobile or is not roadworthy the repairer can collect your vehicle and leave you with a courtesy vehicle.

* standard courtesy car – entitles you to a small three door hatchback vehicle with an engine size of 1 litre.

enhanced courtesy car – five door vehicle with an engine size of 1.6 litre, with room to seat five people.

CISGIL

Could you manage without your car if it was written off or stolen?

Our motor policy will provide you with a standard courtesy car but only whilst yours is being repaired by one of our appointed repairers. However if your car has been written off or stolen and not recovered then you could be left without a car.

Would our standard courtesy car meet your needs?

Our standard courtesy car is generally a small Class A vehicle, for example a Nissan Micra or Ford Ka and only provided whilst your vehicle is being repaired by one of our appointed repairers.

If your answer is ‘No’ to one or both of the questions above, then our Enhanced Courtesy Car Cover may be for you.

Enhanced Courtesy Car cover … would provide you with:

A saloon or hatchback vehicle of similar engine size to your own up to a maximum of 1,800cc (Van drivers can get a van up to a maximum of 3.5tonne GVW).

For 14 consecutive days cover in the event that your vehicle is stolen and not recovered, unfit to drive as a result of a road traffic accident or written off.

You and up to 2 named drivers on your policy can drive the vehicle, provided you all hold full licences.

A vehicle that is fully insured, subject to a policy excess.

Possibility to extend the period beyond the 14 days. Whilst you will be responsible for paying the hire charges for the period in excess of 14 days, preferential rates are available to The Co-operative Insurance customers. (Minimum extension period is 7 days)

Please be aware:

The Enhanced Courtesy Car will be delivered to you with at least £15 worth of fuel, which will be payable by yourself upon return of the vehicle.

If your vehicle is a 4x4, MPV, Electric or a motor caravan, the Enhanced Courtesy Car provided will be a saloon or hatchback motor car of similar engine size to your own vehicle up to a maximum of 1,800cc.

The Enhanced Courtesy Car will not be provided in the event of your vehicle still being roadworthy following a road traffic accident.

If your vehicle has been adapted to accommodate a disabled driver or passenger, we cannot guarantee being able to provide a suitable replacement.

Buying Enhanced Courtesy Car Cover

You can add our Enhanced Courtesy Car optional extra (which is managed on our behalf by Albany Assistance Limited) when taking out your Co-operative car insurance online for £17.50 extra per year. When you have received your online car insurance quote simply select ‘Add’ next to Enhanced Courtesy Car, then click on the recalculate button to view the updated price.

DLG

For a small extra premium, we’ll supply a hire car for up to 21 days if your car is unusable or in for repair following a claim (excluding windscreen damage). This applies even if your car is stolen and not recovered or written off as a total loss. Guaranteed Hire Car Plus can only be added to your policy if you have Comprehensive cover.

Single-homing and the threat of delisting

Introduction

1. In this appendix, we assess how the rate of single-homing can affect PMI providers' incentives when threatened with delisting by a PCW because of the provider's failure to price lowest on that PCW.

2. To do this, we use three different approaches.

   (a) In the first analysis, we ask the question 'how big would a commission sacrifice offer have to be for a PMI provider to accept it in the face of a possible delisting from another PCW?' We use 2012 customer numbers, the single-homing rate and the price elasticity to estimate the commission (CPA) reduction required to make an insurer indifferent between accepting the commission reduction deal and being delisted. Our analysis provides a critical CPA value, below which commission sacrifice deals will be rejected if faced with the threat of delisting.

   (b) In the second analysis, we ask the question 'how low do single-homing rates need to be for a typical commission sacrifice deal to be accepted?' We use assumed levels of CPA reductions[1] and premium levels[2] to estimate the level of single-homing that makes a PMI provider indifferent between accepting the commission reduction deal and being delisted. Our analysis provides a critical single-homing rate, above which commission sacrifice deals will be rejected if faced with the threat of delisting.

   (c) In the third analysis, we ask the question 'would an insurer ever choose to delist itself if a PCW increased its CPA rates?' We assume that one PCW increases the CPA rate and compare the profits from delisting from that PCW with the profits from accepting the CPA increase. By accepting the CPA increase, the PMI provider will either increase prices across the board or accept a margin decrease on sales for the PCW that increased its CPA rate, given the PCW is expecting price parity. The results show how much more profitable it is to accept a CPA increase against delisting.

3. The first two analyses use the following base formula:

   (1) $profits\ lost\ from\ delisting = sh_i . n_i . m_i$

[1] The results in this appendix model a £10 CPA reduction.
[2] The results in this appendix model an average premium of £500.

(2) $profits\ gained\ from\ delisting = \Delta p_j . \mu_j . n_j . m_j$

Where:-
sh_i is the single-homing rate of PCW i[3]
n_i is the number of customers of PCW i
m_i is the profit margin earned on each customer on PCW i
Δp_i is the percentage price change on PCW i
μ_i is the price elasticity of demand on PCW i

(3) $Profits\ lost\ from\ delisting \leq Profits\ gained\ from\ delisting$

(4) $sh_i . n_i . m_i \leq \Delta p_j . \mu_j . n_j . m_j$

4. We can rearrange (4) to create the formulae for approaches 1 and 2

(5) $\Delta p_j \geq \frac{m_i}{m_j} . \frac{n_i}{n_j} . \frac{sh_i}{\mu_j}$

(6) $sh_i \leq \Delta p_j . \mu_j . \frac{n_j}{n_i} . \frac{m_j}{m_i}$

5. We can simplify this further by assuming $m_i = m_j$ so that $\frac{m_i}{m_j} = \frac{m_j}{m_i} = 1$. This simplifying assumption normalises profits and allows us to look at the effects on prices without having to worry about how a firm may react to price decreases, and whether it may choose to increase its margin.

(7) $\Delta p_j \geq \frac{n_i}{n_j} \times \frac{sh_i}{\mu_j}$

(8) $sh_i \leq \Delta p_j . \mu_j . \frac{n_j}{n_i}$

6. Equation (7) gives the condition for our first analysis. This says that the price decrease (in percentage terms) needs to be greater than the ratio of consumers on PCW_i and PCW_j and the ratio of single-homing customers on PCW_i to the price elasticity of demand on PCW_j.

7. We can then convert the price decrease (in % terms) into a monetary CPA decrease if we make an assumption about the (average) premium level.

8. Equation (8) gives us the condition for our second analysis. It says that the single-homing rate for PCW_i must be below the (normalised) profits gained from delisting divided by the number of customers on PCW_i. If the actual single-homing rate is higher, then being delisted is more costly than accepting a commission sacrifice deal from another PCW.

[3] The single-homing rate for PCW i is the proportion of customers that only use PCW i divided by the total number of customers that use PCW i. This rate is specific to each PMI provider.

9. In analysis 3, we take a scenario where one PCW increases its CPA fee and the insurer is left with the choice of whether to delist from that PCW (and lose the single-homing customers), to accept the higher CPA and a margin reduction on that PCW, or to accept the higher CPA and increase prices across all PCWs (with a consequent increased margin).

10. The results are summarised below.

Analysis 1: Critical rates of CPA

11. In this analysis, we sought to find out when an insurer is threatened with delisting from another PCW how big a commission sacrifice offer from one PCW would need to be to make the commission sacrifice offer more attractive than being delisted.

12. The commission sacrifice offers we have observed have typically been between £5 and £10. Given that CPAs are around £50, it seems unlikely that CPA reductions above £10 will be offered in the short term. Table 1 shows the critical CPA rate reduction required, above which commission sacrifice deals would be accepted, even with the threat of delisting.

TABLE 1 **Critical CPA rate reductions**

	CPA reduction required (£)		
	*Minimum**	*Average†*	*Maximum**
Insurer A	15.97	30.59	53.92
Insurer B	42.85	75.29	139.35
Insurer C	12.94	19.65	30.75
Insurer D	15.14	28.14	45.90
Insurer E	16.53	47.10	107.80
Insurer F	22.98	38.88	68.52
Insurer G	66.48	89.84	122.18
Insurer H	14.09	38.10	81.15
Insurer I	5.13	26.74	70.16
Insurer J	17.80	34.42	56.00

Source: CMA analysis.

*From the CMA's model, minimum (maximum) refers to the lowest (highest) offer found that could induce an acceptance of a commission sacrifice offer given a threat of delisting.
†From the CMA's model, average refers to the average offers that need to be made to induce acceptance of a commission sacrifice offers given a threat of delisting.

13. For an average premium of £500, there was only one PMI provider which could be offered a commission sacrifice deal it might accept in the face of delisting from one particular PCW. However, this might not be a particularly representative PMI provider due to its significantly greater sales on one particular PCW and its low number of sales overall. Given that it is the high-sales PCW which is most likely to delist a PMI provider, there seems little possibility of a PMI provider accepting a commission sacrifice deal from one PCW if it were threatened with delisting by a high-sales PCW. Thus it appears

that the threat of delisting would be a real and credible threat to a PMI provider.

Analysis 2: Critical rate of single-homing

14. In the second analysis, we sought to find out how low the rate of single-homing would have to be for a PMI provider to accept a commission sacrifice offer of £10. Table 2 shows the critical rate of single-homing, below which commission sacrifice deals would be accepted, even with the threat of delisting. We also provide the actual single-homing rates experienced by PMI providers across the PCWs on which they operate.

TABLE 2 **Critical level of single-homing**

per cent

	*Critical single-homing rate**		*Actual single-homing rate†*	
	Minimum	*Maximum*	*Minimum*	*Maximum*
Insurer N	9	45	[✂]	[✂]
Insurer O	10	40	[✂]	[✂]
Insurer P	5	15	[✂]	[✂]
Insurer Q	6	11	[✂]	[✂]
Insurer R	10	31	[✂]	[✂]
Insurer S	5	34	[✂]†	[✂]‡
Insurer T	11	32	[✂]	[✂]
Insurer U	7	111	[✂]	[✂]
Insurer V	17	40	[✂]	[✂]
Insurer W	13	38	[✂]	[✂]

Source: CMA analysis.

*Our models produced a range or results but this shows the lowest and highest rates found.
†Refers to single-homing rates on largest four PCWs.
‡[✂]

15. PMI providers' estimates of single-homing rates vary by provider and by PCW on which they operate but they are all in the range of 50% to 80%. However, the critical value for single-homing is almost always lower for any individual commission sacrifice offer.[4] As the critical value is not met, being delisted by a PCW would typically be unprofitable for a PMI provider.[5] Even with a CPA reduction of £40, in very few cases would the largest-selling PCW be discouraged from delisting.

16. The critical level of single-homing is low in most cases and thus, even with lower actual single-homing rates than those shown in Table 2, the threat of delisting would still be a real and credible threat to a PMI provider.

[4] [✂]
[5] Assuming average premiums of £500 and CPA reductions of £10.

Analysis 3: Delisting in the face of CPA increase

17. In the third analysis, we assessed whether a PMI provider would choose to delist in the face of a £10 CPA increase from one of the PCWs, which also insisted on price parity, even in the absence of a wide MFN contractual clause. The analysis here is in essence very similar to the analysis of the effects of wide MFNs, and PMI providers' ability to resist wide MFNs if the alternative option is to not be listed.

18. We assessed the difference between the profits earned by a PMI provider in the scenario where the CPA increase is accepted and the profits earned in the scenario where the provider is delisted. As acceptance of the CPA increase can lead to a margin cut or a price increase, we used a maximum function to display a single result, as shown in Table 3.

TABLE 3 **Additional profit from accepting CPA increase (against delisting)**

[✂]

Source: CMA analysis.

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19. For a CPA increase of £10, with average premiums of £500, the acceptance profits are always greater than the delisting profits. In fact, even if the CPA is increased by £30, half of the PMI providers would still not choose to delist. However, if CPAs were to increase by this much, the option of using the PMI provider's own sales channels may become more attractive.

20. This third analysis again shows that the threat of delisting would be a real and credible threat to a PMI provider.

21. It is not surprising, therefore, that very few PMI providers have voluntarily delisted from a PCW. We have also not seen much evidence of PCWs delisting PMI providers, although we have heard some anecdotal evidence suggesting it has occasionally been threatened. Nevertheless, given the results of our analysis in this appendix and the extent of single-homing currently on PCWs, it appears to us that in the absence of wide MFNs in contracts we would expect actual delisting, and the threat of delisting, to increase.

Extending the remedy to narrow MFNs

Introduction

1. This appendix considers the arguments and counterarguments for extending the remedy to cover narrow MFNs.

Views of the parties on narrow MFNs

2. CISGIL told us that, by permitting narrow MFNs, they would proliferate. CISGIL said that many narrow MFNs had an effect equivalent to wide MFNs.

3. Similarly, DLG told us that the proportion of total online sales where narrow MFNs acted in a similar way to wide MFNs was likely to be much higher than our estimate of [✂]%.[1] DLG submitted a paper by Oxera which showed that under alternative assumptions the proportion was estimated to be around 30%.

4. One of the constraints, under a narrow MFN, is that the direct customer who has no use of PCWs is nevertheless charged at least as much as they would be on a PCW. Acromas, owner of the AA and Saga brands, told us that these retail consumers who did not use PCW services should not have to be constrained by PCW contracts in any way.[2]

5. Acromas estimated that 3.6 million consumers who did not use PCWs could face lower prices without narrow MFNs (but with an alternative arrangement like anti-quote-poaching clauses). Acromas calculated that, if all of the consumers who did not use PCWs were offered policies at a discount equal to the PCW commission rate, the possible saving from prohibiting all MFNs would be £30 million.

6. Acromas also told us that, by permitting narrow MFNs, we would distort future negotiations with PCWs such that narrow MFNs would become impossible to resist. Acromas stated that it had resisted such clauses to date because of the possibility that they would be considered unlawful under competition law. By not prohibiting them, Acromas said that we were undermining the basis on which they had been resisted until now.

[1] See provisional findings, paragraph 9.48.
[2] We note that many of the AA's direct customers purchase by telephone, which is a sales channel which is not typically covered by narrow MFNs.

7. Acromas also said that, if we did not prohibit narrow MFNs, innovation in ways of selling and pricing risk using direct channels would be discouraged. Under a narrow MFN, the direct channel could not attract customers by offering better prices and could not, therefore, be rewarded for innovations which reduced prices by better risk pricing.

The risks from not prohibiting narrow MFNs

8. If narrow MFNs were to proliferate and the effect of this proliferation were equivalent to the use by one or more large PCW of wide MFNs, then our remedy would carry the risk that it would distort competition between PCWs in just the way that wide MFNs currently do. In Section 9 of the provisional findings we state that this argument would only apply in specific circumstances, and that these circumstances are rare in the PMI market.

9. DLG told us that we had likely underestimated the number of policies affected by narrow MFNs. It provided an alternative estimate of 30% of total online PMI sales (see paragraph 3). We reject the DLG calculation for two reasons. First, Oxera used as its threshold for including significant brands those for which direct sales account for at least 25% of the brand's total online sales using our illustrative channel price model. However, the illustrative channel price model is un-calibrated, and the suggested threshold, therefore, has no evidential basis. Second, DLG used data from our consumer survey to assess which brands have direct website sales of more than 25%. However, this is not a suitable source for this purpose as the survey data provides low and unreliable numbers at this level of detail.

10. We based our calculations on what we believed to be a better source of evidence. We looked at providers who had both significant advertising expenditure (ie they were investing in their brand) and a significant proportion of direct online sales. We asked the providers to tell us how they were using brand expenditure and what proportion of online sales came through their own websites. eBenchmarkers data provided us with the proportion of sales and advertising expenditure, which was much more comprehensive than our consumer survey for this purpose.

11. Nevertheless, we did assess how our proportion of PCW sales affected by narrow MFNs changed if we used the 25% of own-website sales as a cut off.[3] This [✄] resulted in an estimate of [✄]% of policies sold through PCWs being affected by narrow MFNs.[4] However, [✄] told us that it used its advertising to drive brand recognition and this caused higher sales on PCWs. We noted that

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[3] [✄]
[4] [✄]

[✂] brand investment was for the purposes of raising its profile in order to increase purchasing on all its sales channels, including PCWs, and for this reason we excluded it.

12. In our view, Acromas's argument that we should include non-PCW sales in the number of policies affected by narrow MFNs (see paragraphs 4 and 5) has some merit. However, it appears to us that the increase this implies is much smaller than suggested by Acromas for three reasons:

(a) First, not all sales generated by PCWs are made online, and narrow MFNs do not cover telephone sales.

(b) Second, some brands are not on PCWs so even their online sales should not be included in the calculation. In addition, some brands sell a different product on their own website (eg multi-car products) which are not available on PCWs.

(c) For a number of brands (see Annex A), PCWs have lowered the costs of acquiring customers and enabled them to enter the market. This means that it would not be in their interests in the long term to price lower on their own websites as they would also have to spend more on advertising which may increase overall costs (although it may be in their short-term interests to do so).

13. Nevertheless, if we were to estimate the number of policies not sold through PCWs affected by narrow MFNs, accounting for points (a) and (b) above, we estimate that 1.2 million customers might be affected (although this is still an overestimate, because of the reasons in point (c)).

14. More importantly, though, the Acromas calculation, and our adjusted calculation, is based on the number of consumers who could receive lower prices, not the number who would be likely to receive lower prices. Evidence from PMI providers suggests that the price elasticity of demand for consumers who do not visit PCWs is much lower than for those who do (see Table 1). Therefore, it is likely that those who do not use PCWs to buy their policies, even if only as a research tool, would be offered higher prices rather than lower prices. Moreover, we find that only two providers, [✂] and [✂], have direct customer acquisition costs which are unambiguously lower than PCW acquisition costs.[5] Therefore, for all providers except [✂] and [✂], in the long run, we would expect higher prices off PCWs than on PCWs, even if the direct channel were permitted to offer lower prices.

[5] See Annex A. [✂]

TABLE 1 **Price elasticity of demand for various sales channels*†**

		Own channels		
	PCW	*Website*	*Phone*	*Renewal*
1st Central	[✂]	[✂]	[✂]	[✂]
AA	[✂]	[✂]	[✂]	[✂]
Saga	[✂]	[✂]	[✂]	[✂]
Admiral	[✂]	[✂]	[✂]	[✂]
Ageas Retail	[✂]‡	[✂]	[✂]	[✂]
Aviva	[✂]	[✂]	[✂]	[✂]
AXA	[✂]	[✂]	[✂]	[✂]
BGL	[✂]	[✂]	[✂]	[✂]
CISGIL	[✂]	[✂]	[✂]	[✂]
DLG	[✂]§	[✂]	[✂]	[✂]¶
Endsleigh	[✂]	[✂]	[✂]	[✂]
esure	[✂]	[✂]	[✂]	[✂]
Hastings	[✂]	[✂]	[✂]	[✂]
LV	[✂]	[✂]		[✂]
RSA	[✂]	[✂]#	[✂]#	[✂]#
Swinton	[✂]	[✂]	[✂]	[✂]

Source: PMI providers.

*All elasticities are expressed in their absolute value – but are all negative as they are own-price elasticity of demand estimates.
†We have not included the responses regarding insurers' sales via the broker channel. For those insurers that provided data, the elasticity was typically closer to those for sales through PCWs than the provider's website.
‡Price elasticity of demand figures for PCWs relate only to RIAS and not Ageas Retail as a whole.
§Combined elasticity [✂]
¶DLG does not have precise estimates for the elasticity in relation to renewals. However, DLG estimates the lowest bound to be [✂] and the upper bound to be closer to [✂].
#In respect of RSA's direct offerings through its More Th>N and eChoice branded products.
N/A = Data not available.

15. Based on our further analysis set out above, we continue to believe that the harm from narrow MFNs is limited and the harm from banning narrow MFNs is greater given the risk to the PCW business model. PCWs have increased inter-brand competition between PMI providers, as shown by the higher price elasticity of demand on PCWs compared with other distribution channels. It seems to us that the proportion of cases in which narrow MFNs might come to act in the same way as wide MFNs is limited: we estimate a range of [✂]%[6] to [✂]%[7] of the policies sold on PCWs, and likely to be on the lower side of this range. We do not believe that, if narrow MFNs do proliferate, they will have an equivalent distortionary effect to wide MFNs.

16. Acromas said that, by not prohibiting narrow MFNs, we were in effect imposing narrow MFNs because they would have been given regulatory acceptance (see paragraph 6). Acromas provided us with several of its correspondences with PCWs to support this point in relation to both narrow and wide MFNs. However, it was difficult to conclude that any narrow MFNs had been resisted up to now on the basis of legal uncertainty in relation to them. In addition, PCWs have told us that there have been no instances in which they decided not to enter into a narrow MFN because they had concerns that narrow MFNs might not be enforceable as a matter of law. In

[6] This includes the brands in the provisional findings, [✂], Appendix 9.3, paragraph 27.
[7] [✂]

contrast, we saw evidence that this has been the case in relation to some wide MFNs. For example, Confused told us that its reason for removing the wide MFN clauses from its contracts was due to their legal uncertainty.

17. We believe that, as a result of this remedy, many wide MFNs will be re-negotiated as narrow MFNs. Compared with the status quo, this will increase price competition by putting pressure on PCWs to compete to offer lower prices to retail consumers for the same products. We believe that this will lead to commission sacrifice deals and downward pressure on commission rates and therefore prices.

18. However, compared with a benchmark where we prohibit all MFNs, Acromas told us that our remedy would distort competition by reducing the ability of the direct website channel to compete on price with the PCW channel (see paragraph 7). Acromas calculated that this distortion could be large if all non-PCW customers were offered lower prices.

19. We do not accept the basis of Acromas's calculation. In particular, we do not believe that retail consumers who do not use PCWs would typically be offered lower prices than on PCWs. Our survey of consumers indicates that those who shop around are the ones likely to be offered discounts at renewal, and those who shop around on PCWs make the greatest savings (see the provisional findings, Appendix 9.3, Annex F). Consumers who do not shop around are likely to face high prices, especially at renewal. We have also been told by CTM that PMI providers are increasingly basing their pricing decisions on detailed willingness-to-pay considerations rather than on broad cost-based methodologies. We have found that price elasticity of demand through the direct channel is much lower than through PCWs (see Table 1). Finally, insurers have to pay marketing costs to acquire consumers, and the use of PCWs relieves them of some of that cost. Therefore, insurers would not sustainably be able to price as low as suggested by the Acromas calculation. [✂] three brands for which we have found that direct customer acquisition costs appear to be lower than average PCW commission rates (see Annex A). For these reasons, we do not believe that Acromas's implicit assumption that all consumers who could be offered lower prices would in fact be offered lower prices is justified.[8] These are the same reasons which lead us to believe that the competitive constraint offered by direct sales channels is weak relative to the competition offered by sales on PCWs.

[8] Although in some cases it may be true.

20. Acromas and Aviva also argued that if we did not prohibit narrow MFNs, we would distort innovation by insurers on their direct channels (see paragraph 7). One example was using social media to filter for risk and to acquire customers. For example, an insurer could reference-sell through social networks and pay individuals for sales made. This might be a much cheaper customer acquisition strategy than the present system based largely on television advertising, much of it by PCWs.[9]

21. While we recognise that new ways of selling may emerge which offer lower customer acquisition costs and accept that such innovation might, in the absence of narrow MFNs be pioneered by a direct seller, it appears to us intrinsic to the nature of innovation that where an innovation originates is fundamentally unpredictable. However, the question in terms of the likely extent of distortion is whether it is likely that any such innovation *by its nature* could not be originated by PCWs. PCWs offer an element in the sales process, ie ranking, which consumers value and which strongly promotes competition. In our view it is unlikely that an innovation is essentially incompatible with this service (see the provisional findings, Appendix 9.3, Annex C). Therefore, we would expect a competitive comparison sector to adopt sales technology innovations. We believe that, by abolishing wide MFNs, there will be strong pressure within the PCW sector to compete on prices, and therefore strong incentives to adopt sales technologies which offer cost advantages. Overall, we do not believe that the distortion risk of discouraging innovation in the direct channel is likely to be significant.

The benefits of narrow MFNs

22. A benefit of narrow MFNs is that they avoid a potential free-riding problem whereby insurers enjoy the advertising that PCWs bring their products while consumers learn that they are better off going directly to the insurer once they have compared on the PCW. The narrow MFN ensures that consumers do not learn to bypass the PCW’s revenue model.

23. In our view it seems likely that there are other business models which could avoid the free-riding problem without recourse to narrow MFNs (see the provisional findings, paragraphs 9.76 to 9.78). For example, PCWs and insurers could agree to base payments on whether a consumer who made a final purchase at the insurer site had also made a PCW search in the lead-up to the decision. However, although this is true, we nevertheless see it as a benefit of narrow MFNs that they solve the free-riding problem.

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[9] [✄]

24. Narrow MFNs also ensure the credibility of PCWs. In our view there is a risk that without narrow MFNs credibility would be undermined (see the provisional findings, paragraphs 9.72 to 9.75). This is a benefit of narrow MFNs which we believe is much harder to replicate with any alternative. If it were generally known that the price on PCWs was often not as low as the price which could be found by searching many websites directly, consumers would come to lose trust in PCWs. This could lead to consumers ceasing to use PCWs to search for PMI and a consequent reduction in the intensity of PMI price competition.

25. In Italy and the USA we have two examples of markets where PCWs have not (yet) become established for the sale of PMI as they have in the UK.[10] We have not conducted a detailed study of why PCWs have not emerged in these markets but the existence of such markets is an indication that PCWs are not an automatic outcome of a market process. In the case of Italy, DLG stated that, from its own experience, brokers dominated the market and direct sales only accounted for 10% of all policies sold.[11] Both DLG and Acromas told us that any comparison of Italy with the UK was inappropriate, because, among other differences, PCWs were a well-established part of the sales process in the UK, whereas they were not in Italy.[12,13] However, it seems to us that, while this is true, if there is a risk that insurers could actively undermine the credibility of PCWs, then it may not always be so. Therefore we do not believe that the current strong use of PCWs (with its consequent positive effect on competition for PMI) should be taken as a guarantee of its strong future use, irrespective of the regulatory environment.

26. BGL provided us with a quote from an insurance industry consultancy which describes the incentive that the insurance industry as a whole might have to undermine the credibility of PCWs:

> Focusing on the period 2002 and subsequent, the conclusion is obvious and rather damning: aggregators have encouraged greater price competition […] Aggregators cost the UK insurance industry £1 billion in unnecessary price competition, last year [...] As Ted Kelly, CEO of Liberty Mutual, recently noted 'we've had no inflation for 10 to 12 years, any idiot can make money in personal motor.' Where this might have been true for the US motor market,

[10] It appears that PCWs in motor insurance have not taken off to an appreciable extent in any country outside of the UK, although we have not done an in-depth comparison of international markets.
[11] DLG also pointed out that, within the direct channel, PCWs were in fact now growing [✂].
[12] Acromas also argued that, while a narrow MFN would prevent the insurance provider from offering the policy more cheaply direct, the Autorità Garante della Concorrenza e del Mercato was mainly interested in ensuring that the insurance provider did not offer the policy at a more expensive premium.
[13] DLG said that direct insurance sales were much lower in Italy than in the UK, and because Italian consumers were far less likely than UK consumers to purchase insurance products online they were less likely to use PCWs.

> where aggregators have been completely unsuccessful (*and it is better for everyone if they stay that way*), it has certainly not been true for the UK motor market. Source: Towers Watson, insurance consultancy: 'Why aren't we making money … ' , December 2010 (italics added).

27. It appears to us that there is a material risk that, if we were to prohibit all narrow MFNs, we would remove a legitimate tool for PCWs to protect their credibility and avoid being marginalised as a distribution channel. We have not assessed the magnitude of that risk and, in particular, we have not assessed whether there are competitive pressures between insurers which might lead them individually to have an incentive to price in a way that maintains PCW credibility, even in the face of a collective incentive to undermine PCW credibility. It appears to us that the existence of a market like that in Italy, where PCWs appear to have had trouble securing the agreement of insurance companies to operate, gives us cause for concern that the risk is real.

Conclusion

28. Overall, we continue to believe that the harm from narrow MFNs in this market is limited whilst the benefit from narrow MFNs is that they can reduce the possibility for insurers to undermine the credibility of PCWs in the eyes of many consumers, leading to a reduction in competition between insurers.

Effectiveness of advertising expenditure on PCWs

1. This annex outlines the cost of customer acquisition off PCWs and on PCWs.

2. We collected data from eBenchmarkers on the sales volumes by channel and the advertising expenditure by brand. We combined this with data provided by PCWs on the level of CPA fees.

3. By combining this data we sought to assess the efficacy of advertising expenditure off PCWs and on PCWs. We estimated the cost of advertising expenditure on PCW sales as the relevant CPA rate for that brand. For non-PCW sales (telephone and online) we divided the total advertising expenditure by the number of sales.

4. Whilst there is a danger that some PCW sales may be due to non-PCW advertising, it is also true that some non-PCW sales may be due to PCW leads. Overall, we believe that our methodology provides a good picture of the relative acquisition costs for PMI providers through different channels.

TABLE 1 **Sales and advertising expenditure by brand for brands that spent more than £1 million on advertising in 2012***

	Sales data ('000s)		*Advertising expenditure (£m)*	*Cost per customer*	
	PCW	*Non-PCW*		*Average CPA fee*	*Non-PCW*
[✂]	[✂]	[✂]	[✂]	[✂]	[✂]

Source: CC analysis, eBenchmarkers data and PCWs' data.

*Data from eBenchmarkers in columns 2, 3, 4 and 6 covers the period November 2011 – October 2012.

5. The [✂] offline advertisers do not appear on PCWs. However, we can see that their per-customer acquisition costs are [✂]. For all of the major brand investors (those who spend more than £1 million on non-PCW advertising), only three brands [✂] have significantly lower acquisition costs for non-PCW customers than for PCW customers.[1]

6. We cannot draw strong conclusions from low-advertising PMI providers as their customer acquisition strategy off PCWs may not be sustainable if they were seeking to attract significant numbers of customers to their own sales channels.

[1] [✂] also has lower non-PCW costs although they are only marginally different.

7. This data appears to show that PCWs are an efficiency-enhancing advertising platform for PMI providers, although there are some PMI providers who appear able to attract customers more cheaply directly than through PCWs.