Competition Commission
Private Motor Insurance Market Investigation

LV= Response to Proposed Remedies

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About LV=

LV= is the UK's largest friendly society and a leading financial mutual. We employ 5,800 people and serve over 5.5 million customers with a range of financial products. Our most significant business line remains car insurance and we are the third largest private motor insurer in the UK with around 13% market share, based on the number of vehicles insured.

Overview

LV = welcomes the package of measures being proposed by the CMA to deal with the current high costs of non-fault mobility claims. However, we remain concerned the proposed package of measures does carry with it significant risks of distortion and unintended consequences.

Our main concern remains with the decision not to implement any remedies associated with subrogated repair and total loss claims. While the CMA have argued that current consumer detriment is not sufficient to warrant remedies, the decision not to act in this area will mean the detriment will increase as many businesses focussed on generating claims income will focus on subrogated repair away from credit hire which has been partly curtailed by the CMA.

In summary, the LV= view on the proposed remedies and remedies not being adopted is as follows:

Scope of the investigation and the remedies: While we appreciate that the CMA are operating within the confines of the Terms of Reference set by the Office of Fair Trading, we would encourage the CMA to ensure that remedies are drawn as widely as possible to encompass as many vehicles and insurance policies as this terms of reference allows. **We urge the CMA to explain clearly what policies and vehicle types are intended to be within the scope of the proposed remedies to avoid any accidental or deliberate mis-interpretation.**

Remedies 1D and 1E - Measures to control the costs of subrogated repair and total loss claims. We are very disappointed that the CMA have elected not to introduce remedies in the area of subrogated repair claims or subrogated total loss claims. Insurers, brokers and others will seek to increase income in this area to its maximum possible extent. Many market participants whose business models are predicated on 'claims income' will now shift their attention from credit hire, which is being curtailed, to repair which is not. **With no CMA remedy for subrogated repair claims and total loss, we expect claims costs to increase.**

Remedy A: Measures to improve claimants' understanding of their legal entitlements - We agree consumers should be provided with clear and concise information about their legal entitlements following an accident. However it is important consumers also understand their responsibilities and obligations when making a claim. It is also important that statements are accurate and do not mis-state entitlements or obligations or indeed extend these beyond the status quo. **The current drafts in our view do not meet key requirements and we have provided suggestions how they could be improved.**

Remedies 1C and 1F: Measures to address features relating to replacement vehicles - We welcome the proposed introduction of the dual cap system. However, **there are a number of issues in the current drafting and proposals which need to be addressed if the remedies are to be effective and not simply create new areas of indemnity and frictional cost.** In particular we do not agree with the proposed approach of selectively cutting and pasting elements of the existing GTA agreement. We would strongly emphasise that the CMA should revisit this approach.

- There are elements of the GTA which are not being included which are key to controlling hire periods.
- There are elements of the existing GTA which are being adopted but which are out of date and should be updated before being mandated as part of a remedy.
- There are elements of the GTA which are ineffective (e.g. hire monitoring requirements) and which again should be revisited not simply adopted.

Finally we would emphasise the absolute need for the CMA to mandate the use of an electronic portal for notification of claims and acceptances of liability. The CMA's reasons for not mandating such a portal do not take into account the changed incentives that this package of remedies will drive. If an electronic portal is not made a requirement, these remedies will be largely ineffective as the vast majority of claims will continue to be paid at the higher cap.

Remedy 1G - Referral fee ban – Without a referral fee ban, there will be a clear incentive for CHOs to submit more disputed or split liability credit hire claims than they do currently and organisations who currently refer to credit hire organisations have an incentive to maximise the referral income that they can obtain. This will drive some to encourage the CHOs with whom they have a relationship to make more split and disputed liability claims as they will generate a higher return and thus enable higher referral fees to be paid. **We call on the CMA to revisit this decision and to enforce a referral fee ban in relation to the provision of hire vehicles under credit agreements**.

Scope of the investigation and the remedies

We are of course aware that the CMA are constrained by the Terms of Reference (TOR) they received from the Office of Fair Trading. However, this limits the effectiveness of the remedies and will undoubtedly create confusion and lack of clarity for consumers.

We note that the TOR defines private motor insurance as "insurance cover …..that is supplied to or acquired by drivers of privately owned motor cars designed and used for non-business (private) use."

We encourage the CMA to ensure that remedies are drawn as widely as possible to encompass as many vehicles and insurance policies as this terms of reference allows. Construed to its narrowest extent, the TOR could exclude for example privately owned and insured vehicles but where the cover includes business use or commercial travelling (or similar) in addition to 'social and domestic and pleasure' use. It undoubtedly has never been the intention to exclude such policies, claims and vehicles from the scope of this investigation – and doubtless all of the information supplied by all market participants included information relating to such policies.

Nevertheless, to avoid circumvention risks, the CMA must be clear precisely what policies, vehicle types and usages are intended to be within the scope of the proposed remedies to avoid any accidental or deliberate mis-interpretation.

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

Overview

We agree consumers should be provided with clear and concise information about their legal entitlements following an accident – however it is equally important that they understand their responsibilities and obligations when making a claim. It is also important that any information provided makes clear the different entitlements and responsibilities that arise under their insurance contract and those that arise under tort. It is also important that the statements are accurate and do not mis-state entitlements or obligations or indeed extend these beyond the status quo.

The current drafts do not in our view meet these requirements and we provide further views below regarding how the current proposed drafts could be improved.

Statement of consumer rights

Who should provide this information?

As the remedy states, this information should be provided by both insurers and brokers. It is vital that this requirement does continue to apply to brokers particularly those who control the policy wording as many of the large brokers do.

Additionally the CMA should consider extending the scope of this remedy to other organisations who provide accident management services. For example many vehicle manufacturers or retailers will provide vehicle purchasers with information packs including an offering of an accident management service. We believe it is appropriate that any organisation that is making such an offering as part of the provision of another product or service should also be required to provide a similar statement regarding consumer rights.

What information should be provided?

The draft statement needs to be much clearer as to what rights arise under an insurance contract – including what will be different if the consumer has chosen a non-comprehensive policy – and what rights arise under tort. In terms of the non-comprehensive issue, it would undoubtedly help the clarity of the document if there were different documents provided to non-comprehensive policyholders and comprehensive policyholders although that might add to the complexity of the introduction of the remedy.

We would certainly recommend a new paragraph 2 stating something along the lines of the following:

> *"The rights and responsibilities you have under your motor insurance policy in respect of a claim against your own insurer will be defined in the policy wording and are only summarised here. The rights you have to claim against your own insurer and your own insurance policy will be the same whoever was at fault for the accident or whether there is any dispute over who was at fault. If you have chosen to buy comprehensive insurance cover, then your policy will provide cover to*

repair your car following an accident. If you have chosen to buy third party or third party fire and theft cover, then it won't.

The rights and responsibilities you have if you want to pursue a claim against another party involved in an accident depend on you being able to prove that this other party was at fault for the accident. Whilst your legal rights are unaffected, how the claim gets dealt with might depend on whether that can be agreed quickly or whether the other party in fact thinks you are at fault."

We also believe that additional information should be provided about what consumer rights a customer has if they choose to pursue a claim under their insurance policy compared to what rights they have if they pursue their claim directly against a third party or supported by a credit repair or credit hire. In any dealings they have with their own insurer, they will have the background rights associated with the Financial Ombudsman Service to whom they can escalate any complaints that are not resolved to their satisfaction. If they are dealing through a credit repair organisation or a credit hire organisation, then they will not have that protection and any complaints or dissatisfaction will have to be dealt with through the legal process.

In terms of clarity, we would strongly suggest that the CMA engage clear English experts who can work on providing a document which is much clearer and free of jargon than the current draft. The CMA should endeavour to obtain a Crystal Mark from the Campaign for Plain English of any written statement which it proposes to mandate.

We are particularly concerned about point 6 (a)(i) in the current proposed draft where the document states *"you can require that replacement parts made by the original manufacturer are used in the repair."* Our first comment is that it is not clear whether the CMA is indicating that this right arises under either a consumer's insurance contract or whether this is one of the rights which is said to arise in tort. In our contention, neither is the case.

Many insurers policy wordings specifically state that repair may be carried out using non-original equipment parts. We are not aware of any findings by the CMA which indicate that there is anything inappropriate in such policy wordings and as such we assume that the CMA is not proposing that consumers have a right to insist on something which contradicts their policy wording.

In terms of tort, the claimant's right is essentially to be put back into a position which is the same as the position they were in before the accident. In respect of the damaged car, before the accident the car may or may not have been fitted with parts made by the original manufacturer – and certainly that part will not have been new. So in that respect, what the consumer can 'require' is for a part of matching quality and age to that which was in place prior to the accident to be used in the repair. To state that the consumer has a right to a replacement part made by the original manufacturer is inaccurate and is an extension of existing entitlements.

Such a statement may also have the unintended effect of disrupting the well-established markets for non-original equipment parts and for green (or used) parts, neither of which have been the subject of this investigation. We also remind the CMA that under European Law (the Block Exemption Regulations) vehicle manufacturers are not entitled to invalidate a vehicle warranty even if a vehicle has been repaired using non-OE parts as long as those parts are of matching quality and have been fitted according to manufacturer requirements. As such, we do not believe there is a case for including this 'right' in this proposed statement of consumer rights.

Frequently Asked Questions

As has been highlighted by the CMA, the answers to these questions will vary slightly between PMI providers, hence they cannot be entirely standardised. Whilst we agree with this, there is clear benefit in ensuring that the answers do provide accurate information to a minimum standard. We suggest that the CMA should draw up guidelines outlining the information to be provided in response to each of these questions or potentially create a process which provided approval of proposed wordings.

The CMA has stated that these will need to be provided by both insurers and brokers. Whilst this is undoubtedly correct, it is important that it is clear in what circumstances the FAQs should be provided by the insurer and when by the broker. In our contention the position should be that where a broker or other intermediary is mandating the policy wording (generally referred to as a common policy wording) and the FNOL process to be followed, then that information should be provided by the Broker, not the insurer.

The CMA also need to consider that insurance brokers will often sell their policyholder a 'Before the Event' legal expenses insurance policy in addition to the private motor insurance policy and these policies may well describe different FNOL processes. The CMA need to consider how to avoid confusion in such a situation.

FNOL Statement

As with the Statement of Consumer Rights, we would re-emphasise the need here for drafting of this document to be undertaken by those with expertise in plain jargon-free English. Particularly in respect of a statement intended to be delivered verbally we would highlight that the use of lettered and numbered paragraphs and sub-paragraphs is unlikely to deliver clarity.

Who should provide this information?

We agree with the CMA that this statement should be provided in standard form at FNOL by whichever organisation is taking that report.

How should the information be provided?

The proposal is that this information should be provided verbally by the claims handler taking the FNOL call, whatever organisation they work for. This gives rise to a number of questions.

Firstly, how does this apply to claims which are not reported by telephone? Whilst the majority are, there are still a number of claims reported on a claim form or by letter. Whilst most insurers will subsequently endeavour to speak to the customer, this is not always possible – thus there will be occasions when it is not possible to provide the information verbally.

Looking forward, we will expect to see more and more claims being reported electronically, sometimes entirely without interaction with an FNOL handler or sometimes supported by a form of web live-chat. Again, a verbal conversation might simply not take place.

Neither of these points are 'objections' – just a flag that the wording of the remedy needs to be broad enough to cater for those current and future situations where a conversation with the customer will not happen at FNOL.

Lastly it should be made clear whether the statement can be provided as a part of an automated IVR call handling system. Private car policyholders who are ringing a non-fault accident management service or have made an IVR selection that they do not believe they are wholly at fault for an accident could be provided with the FNOL Statement through a recorded message before being connected with the FNOL handler who could then ask at the beginning of the conversation whether there is any further clarity required. This would have significant benefits:

- A guarantee that the information is provided to all appropriate consumers.
- A guarantee that the information is provided consistently.
- A reduction in the impact on industry participants in terms of handling time.
- An easy method of spot-checking whether the information is being provided to consumers.

What information should be provided?

Again we would say that the statement as drafted struggles with the difference between legal entitlements under the insurance contract and legal entitlements in tort. For the non-fault insurer to read out statements telling their customer that they have a legal entitlement to make a personal injury claim without defining that this is a claim they have to make against the other party's insurer is more likely to cause confusion than to improve understanding.

In respect of paragraph 1 of the proposed statement, we are not aware that there is a legal requirement to report a claim to the insurer. We would suggest this is re-stated to the effect that the customer's insurance policy wording will contain a requirement to report all incidents to the insurer and that a failure to do so might invalidate cover.

In respect of 3 (a) this is not the legal right. Leaving aside the technical argument that the compensation the claimant is entitled to is that representing the diminution in value of the vehicle caused by the accident (as recently restated by the decision in Coles –v- Hetherton), the more practical point is that if the vehicle is beyond economic repair then the consumer does not have a right to compensation to have the vehicle repaired.

Remedies 1C and 1F: Measures to address features relating to replacement vehicles

In principle we welcome the proposed introduction of the dual cap system. On the face of it, this proposal has the potential to dramatically reduce the costs facing insurers arising from the separation of cost liability from cost control in this area. However there are a number of issues in the current drafting and proposals which need to be addressed if the remedies are to be effective and not simply create new areas of indemnity and frictional cost.

Subrogated claims

A key point which must be addressed is that the remedy as currently described (for example in paragraph 2.50 of the PDR document) targets subrogated claims. The majority of credit hire claims as currently pursued are technically not subrogated claims but rather are claims made by the non-fault claimant.

To avoid circumvention it is therefore essential that the wording of the final remedy is more carefully drafted to encompass the way that claims are or could be made and that its effect covers all relevant market participants.

Time to admit

The proposed time limit of 3 days to deliver an admission of liability will be extremely challenging for most insurers. Whilst we appreciate the need for balance in this remedy, we believe that if the period remains at 3 days then the remedy will be largely ineffective because only a minority of credit hire claims will be subject to the lower cap. As such, unless this point is addressed, this proposed remedy will not substantially address the adverse effect on competition that the CMA has identified.

The time period for admission within the MoJ personal injury portal is 15 days. Under the current GTA arrangements, insurers have 5 days to acknowledge notification of a claim. We would accept that 15 days is too long for a credit hire claim however we would suggest that a period of say 7 working days is a reasonable compromise and would allow insurers a reasonable prospect of gaining a report from their policyholder and completing basic enquiries to validate the accident circumstances.

When does notification happen?

Clarity is also required as from when the 3 days (or 7 days as we propose) is intended to run – at what point will the CHO be required to notify the insurer of the claim. We propose that to optimise the effectiveness of the remedy, the CHO should be required to firstly notify the insurer of the claim at the point at which they 'accept services' – i.e. when they agree that they will provide a vehicle to the consumer. If the customer's vehicle is undriveable and they are providing a vehicle immediately then this would serve to start the 'liability period'. However if their vehicle is driveable and the credit hire vehicle is not being immediately provided, the CHO would need to provide a further notification at the point that hire is starting and only at that point does the 'liability period' start.

This has a number of advantages. Firstly once the CHO has notified the insurer of their capture this is notification that they are 'first to the customer' and the insurer would be required to stop all intervention activity thus reducing multiple contacts with the customer and improving their journey and reducing the effort the CHO has to expend in retaining the customer. Secondly it would vastly increase the effectiveness of the remedy as the insurer would have more time to resolve liability. Finally it would increase cash-flow certainty for the CHO who in a number of undriveable cases would actually know before they put the customer in a vehicle whether liability is going to be admitted or disputed. In reality many CHOs already make double contact with an insurer before putting a customer into credit hire to ensure that liability is not in dispute and as such this is actually largely a reflection of current practice.

Method of reporting – the *requirement* for a portal

A key concern to achieve acceptance of liability within whatever timeframe is mandated will be consistent and effective reporting by CHOs in such a way as insurers have the maximum opportunity to achieve an admission. Even in the current environment insurers face game-playing by some CHOs who will send notification to old or incorrect addresses, out of date fax numbers etc. despite the correct

information being supplied on the GTA website. The dual cap system will introduce huge incentives for CHOs to optimise the proportion of claims which are subject to the higher cap – and thus for some CHOs will increase the incentive to play these games.

To address this it is absolutely vital that the remedy mandates the development and use of an electronic portal at least for notification, acknowledgement and admissions to be communicated. This will remove any dispute about when or whether notification was made and whether any admission was communicated within the mandated period. The remedy will also need to provide for minimum levels of information necessary to make a notification effective again to ensure that insurers are not deliberately provided with insufficient information to allow effective investigation.

The current reasoning behind not mandating such a portal is dangerously flawed. As stated, this remedy introduces a huge incentive for CHOs not to want insurers to be promptly notified of an incident in a format which enables early investigation and admissions to be made. Whilst progress may well have been made to date in developing such a portal, even those CHOs who have been a part of that process will now be re-assessing the business case to continue with that. Additionally there are the 20% plus of credit hire cases which are currently not presented by CHOs who are signatories to the GTA who are even less likely in the new environment to want to take part.

If the CMA do not mandate an electronic portal for notification of credit hire claims in the future, this remedy will be almost entirely ineffective.

Extent and effect of the admission

The remedy currently describes the required admission as an admission of liability. We contend that this needs to be more limited. There is a clear incentive here for insurers to admit liability when a credit hire claim is submitted to control costs. However, if the admission that is made has the effect of binding the insurer in relation to all other heads of claim that may be submitted (e.g. the repair claim, loss of income, personal injury etc.) then the insurer will be much less willing to provide that admission thus limiting the effectiveness of the remedy.

We propose that the admission being provided in relation to the credit hire claim is described as an admission of contractual liability to pay the credit hire claim at the lower cap rate. It should be clear that this admission only relates to that liability and does not prejudice either the insurer or their customer in terms of any other claims or heads of claim which are submitted – or any counterclaims that the insurer or the customer would want to make against the other party or their insurer.

This will still provide the Credit Hire Organisation with the certainty they need in relation to the claim they will be submitting and removes the element of risk from their claim. It therefore delivers on the requirement of this remedy and will significantly increase the proportion of claims that insurers will accept thus increasing the effectiveness of the remedy.

Finally we believe there should be an exception for fraud. Whilst the admission of contractual liability for the credit hire cost should be binding in all other circumstances, if subsequent to that admission further information comes to light which establishes that the credit hire claim arises from a wholly fraudulent event (for example a staged or contrived accident) then the insurer should be entitled to

retract that admission with no liability for costs. The majority of credit hire organisations are currently very supportive of such an approach and generally want no involvement in claims which are established to be fraudulent. Many will even repay claims already paid if fraud is subsequently established. As such we believe there would be general cross-industry support for such a limited exception to the general rule.

Setting of the cap and review

We agree that the rate caps should be set and periodically reviewed by an independent CMA committee which in our view provides the most cost-effective solution. We agree that current direct hire rates should be the starting point for the rate caps. We also agree that there should not be a need for a full annual review, the cost of which would outweigh the benefit but that instead there should an annual increase/decrease linked to an index.

However a cursory review of the elements of the CPI and RPI make it clear that these indices would not be appropriate including as they do various irrelevant elements such as food, tobacco, alcohol, clothing etc. Even drilling down to the 'transport' section of the CPI is insufficient including as it does fuel costs plus the costs of irrelevant forms of transport such as aviation and trains. We therefore recommend that the CMA source an index based on those elements of the CPI which are relevant to the business of supplying temporary replacement vehicles. In our contention these would include the prices of new and second hand vehicles, vehicle servicing and repair costs and vehicle licencing costs.

The recent history of price rises within the GTA have been below the level of the CPI indicating that both sides of the debate accept that inflation in this area has been lower than this standard index. Indeed Basic Hire Rates (the current measure of commercial credit hire rates) actually only increased by less than 0.1% in the 6 months to January 2014. As such, adopting an unrepresentative index such as the CPI would be a retrograde step, would build in more inflation than currently exists and would thus undermine the effectiveness of the remedy.

Administration and other fees

We agree with the proposed administration fee at £37 plus VAT as within the GTA. We believe that this is already accepted as representing a fair amount for the tasks required by a CHO to administer a credit hire claim. The adoption of an electronic portal with the associated ability to improve efficiency should mean that this £37 remains a reasonable figure. We do not believe that this figure should be subject to annual indexing but instead should be subject to periodic review every 2 or 3 years along with the review of the dual caps.

In terms of other costs, we do not believe there should be differences depending on whether the CHO owns their own fleet or rents vehicles in. Taking differential pricing to its logical extent, CHOs who have elected to have maybe just 2 depots covering the whole country could then argue for a higher collection and delivery charge than a CHO with locations nationwide. Currently different CHOs operate in the way that they do as they are able to effectively generate a profit through the business model they have adopted within the current costs. There is no reason why multiple types of business model will not continue to flourish in the new environment and all should be rewarded in the same way without the additional complication of different rates for different business models.

We strongly believe that the dual caps should expressly be inclusive of all extras – be that collection and delivery, valeting, automatic, estates, tow bars, child seats etc. A significant proportion of the frictional costs currently experienced relate to validating the need and cost of these extras. If these cost caps were all stated to be included in the standard rates then the validation of need subject to the new mitigation declaration would only need to relate to the core vehicle provided, reducing disputes and unnecessary cost.

If the CMA allows additional fees for such items as preparation, delivery etc, this will increase the profitability of lower duration hires and invite a higher proportion of such cases.

Finally there will need to be a process for validating and classifying new models of vehicles. Currently under the GTA this is dealt with by a Vehicle Grouping Committee who also resolve disputes about claims for vehicles which have not previously been classified.

Penalty fees

We note it is proposed to include the current GTA penalty rules within the remedy. We challenge the necessity of this. The GTA currently carries no legal standing and as such there is no entitlement to interest on the agreed rates other than through penalty payments. Once the credit hire rates are defined by the remedy and have legal standing, entitlement to interest for late payment will arise in the normal way and can be obtained through normal legal channels. Adding artificial penalties to this is therefore unnecessary. Additionally at the higher cap, the rate already includes an element for 'credit risk' – including the risk of late payment – so penalty payments are essentially a double reward.

That said, we appreciate that the CMA would not want to promote litigation merely to obtain interest on late payments. As such we suggest that penalty payments at some level continue to be payable on lower cap claims. These are claims where there is an admission of liability to pay these costs and any delay can only be down to inefficiency at an insurer so a penalty payment would be a reasonable consequence and a useful incentive.

However for claims where the higher cap applies, these are cases where there is the potential for genuine disputes, the higher rate already includes an element for credit risk and interest would be payable in addition where litigation is necessary. For these cases there is no reasonable argument for additional penalty payments.

Risk of increased volume of disputed and split liability claims

Currently credit hire organisations are generally risk averse and do not pursue a high proportion of cases where liability is disputed or unclear. What this proposed remedy does, however, is introduce an increased incentive to pursue such claims. It is arithmetically obvious that a CHO will generate more income (and have a substantially higher profit margin) on a claim where they obtain a 75% recovery of the higher cap compared to a 100% recovery on a low cap claim. Conversely insurers of course will have the incentive to accept liability (or in our contention to accept contractual liability to pay the credit hire claim) on cases which previously they would have disputed.

This remedy therefore has the potential to increase the volume of credit hire claims being submitted and in effect to over-compensate consumers who should only be able to recover (say) 75% of the cost of their replacement vehicle needs.

Duration

We believe that the CMA have underestimated the risks associated with hire duration. The marginal additional profitability that CHOs will obtain for additional days hire will continue to be a significant incentive to maximise periods.

As currently drafted, the recommendations have the following short-comings:

- It appears to be assumed that the credit hire journey only commences at point of repair authorisation and that there are no issues before that point, e.g. inspection periods being elongated or vehicles being taken into the repairer which are roadworthy and could have had a mobile estimate but instead are stripped and made unroadworthy.
- There appears to be an assumption that all repairs and total losses are handled by the hirer's insurer. In fact around 47% of repairs related to credit hire claims are credit repairs. Additionally 10% of credit hire claims are total losses where the claim is being handled by the CHO but directed to the at-fault insurer to deal with the total loss payment. Whilst it is appreciated that the CMA have elected not to address the issues of credit repair or credit total loss, it is vital to appreciate that the timescales for credit repair management are integral to the issue of credit hire duration.
- There is a further assumption that CHOs will collect the loss of use dates, in particular the repair start and end dates. In fact CHOs will often claim that garages do not provide these due to data protection concerns unless the CHO also instructed the repair.
- The periods being adopted from the GTA are anachronistic and were set at a time when current technological solutions were not in place. For example, the 7 day period for total loss off-hiring pre-dated insurers have electronic funds transfer technology available which makes the funds available to the customer much quicker. Engineer reporting time periods were set before mobile technology reduced the necessary time between inspection and reporting to sub 1 hour.

Overall we believe that rather than adopting piecemeal elements from the GTA, the CMA should introduce an effective and up-to-date package which comprises a clear service level agreement and code of conduct rather than singling out specific hire monitoring requirements. A key element of this code of conduct should be a change in emphasis from 'hire monitoring' to 'hire management'. All this would actually do would be to formalise what is required of a CHO or their customer to meet their legal duty to mitigate their loss.

The skeleton of that code of conduct and service level agreement would be as follows:

- New claims to be reported within 24 hours of accepting services or within 6 hours of on-hire, whichever is the sooner.
- Insurer has 7 working days from notification of on-hire to agree contractual liability.
- CHOs to undertake a risk assessment on liability and provide aggregate reporting of the outcome of those risk assessments to the CMA panel.

- Vehicle mobility assessment is undertaken and vehicles are discouraged from going into a repairer until ready. Aggregate reporting to be provided to the CMA panel to ensure roadworthy / unroadworthy proportions are not manipulated.
- Clear timescales for hire management linked to how the repair/damage claims is being managed.
- Service levels for insurers to pay hire claims following submission of settlement packs, supported by payment penalties for lower cap claims.

Additionally the CMA should specify specific 'loss of use' information that CHOs should provide as part of their settlement pack information with the remedy making clear to all market participants that arguments about 'data protection' in this context are entirely spurious. By signing a credit hire agreement, the consumer is giving the CHO permission to obtain such information to assist with mitigating their loss. We propose the following loss of use information represent minimum requirements:

Repair (report driveable/undriveable status)

- Date of notification
- Date of inspection
- Date of authorisation or recording it was self-authorised under delegated authority.
- Reason for delay if authorisation was not undertaken on time.
- Repair start date.
- Estimated Completion Date.
- Labour Hours.
- Date of on hire
- Dates of hire management touches and reports to TPI
- Repair completion date.
- Date of off hire
- Date of collection
- Temporary repair information

Total Loss/Cash in lieu

- Declare why hire given if driveable case (e.g. comp insurer withdraws insurance once written off)
- Date of notification
- Date of inspection
- Date established total loss
- Date of offer
- Date of acceptance
- Reason for delay in offer acceptance
- Hire monitoring dates during these times
- Date payment released
- Date payment received
- Date of off hire

Dispute resolution

The CMA does not intend to adopt the existing GTA dispute resolution procedures on the basis that a breach of the remedy will be capable of being resolved in the courts. We would encourage the CMA to reconsider this approach as inevitably there will continue to be numerous disputes – in fact we would anticipate that in the short-term there will be even more disputes than currently as market participants explore the boundaries of the new environment. This will inevitably lead to increased cost and delay if the only way of resolving disputes is through the courts which will undermine the effectiveness of the proposed remedies.

We strongly recommend that the CMA incorporate a less formal and costly dispute resolution or requirement for mediation in their final package of remedies.

Delivery of entitlements

The CMA have identified what they believe to be a risk associated with under provision of entitlements to some non-fault claimants by some insurers – set out at paragraphs 2.101 to 2.103 of the Provisional Decision on Remedies. We do not recognise the issue that the CMA attempt to describe here and do not understand what incentives insurers currently have to operate in the way the CMA outline. We are concerned that the conclusion the CMA have reached has led to the proposal of a control which will be complicated and expensive to implement and monitor and which is in fact unnecessary.

As such we would urge the CMA to clarify with those insurers it has identified as operating in this way to ensure that their understanding is correct. For example, in the footnote to page 2-29, it is stated that "*Admiral and Zurich told us that, when managing non-fault claims for claimants without legal expenses cover, they sought to recover from the at-fault insurer only the repair cost less the non-fault claimant's excess."* We cannot understand how this is in any way relevant to the question of whether their customers without legal expenses cover receive under-provision in relation to a replacement vehicle. We are very sure that both of these organisations will refer non-fault claimants for a credit hire vehicle, irrespective of whether the customer has purchased legal expenses insurance.

That same footnote also refers to CISGIL only providing customers without legal expenses cover with a replacement vehicle pursuant to their policy rights. This is more relevant to the conclusion the CMA have reached. However, the introduction of the standard FNOL Statement is already sufficient to deal with this issue as it will inform a customer what their legal rights are. The implication of the CMA's concern is that an insurer's obligations go beyond informing a customer what their legal rights are and that additionally they must be organised to assist the customer in obtaining their legal entitlements against the at-fault party.

As the CMA will be aware, most insurers do already refer non-fault customers to credit hire organisations. They have an incentive to do so which is a referral fee – and the CMA are not proposing to take that incentive away albeit it may be reduced. Insurers have no incentive that we understand to influence a policyholder only to take their policy entitlement rather than generating an income from doing the opposite.

We re-iterate that we believe the CMA have misunderstood this aspect of the way the market operates and are proposing a remedy which is entirely unnecessary.

Mitigation declaration

We did not support the introduction of the mitigation declaration on the basis that it will in fact add very little to the process and potentially will simply create a new set of rules which will need its own legal tests – and therefore become a point around which a new set of credit hire litigation revolves. We remain of this view and are concerned that despite the best intentions of the CMA, this will essentially become another tick-box exercise that credit hire organisations complete which adds little value in terms of cost control.

We emphasise what we said in our previous response that if this is to be introduced then the mitigation statement should be obtained by the credit hire organisation. Employees of CHOs are likely to be much better informed than the employees of insurers, brokers or others regarding different types of vehicles and their variations. They are also likely to be more specialist than insurance FNOL staff in the legal position around need and mitigation. CHOs also obviously have to physically meet with the customer to hand over the keys to the vehicle and thus are much better placed to actually have the statement signed.

In terms of the signing of the document, we are concerned that this will continue to simply be a document which the CHO employee puts in front of the customer asking for a signature without fully explaining what they are signing. To attempt to address this, we suggest that the mitigation declaration includes a clear statement at the point of signature of what the declaration is about and the consequences of having provided incorrect information. This could be worded such that it is an effective Statement of Truth and emphasise that the document will have the same legal standing as a witness statement. Additionally it could include a reminder that the provision of inaccurate information in the mitigation declaration could make recovery from the third party insurer impossible in whole or in part and that if that happens, the consumer remains liable for the hire costs.

Remedy 1G – Referral fee ban

Whilst we recognise the practical difficulties in the implementation of a referral fee ban, we feel that in not attempting to address these difficulties, the CMA are leaving a substantial gap in their package of remedies. As we have highlighted earlier, there is a clear incentive for CHOs to submit more disputed or split liability credit hire claims than they do currently.

Aligned to this, insurers, brokers and any others who currently refer to credit hire organisations have an incentive to maximise the referral income that they can obtain. This will drive some to encourage the CHOs with whom they have a relationship to make more of such claims as they will generate a higher return and thus enable higher referral fees to be paid.

The CMA have indicated that referral fees in themselves are not an issue if the revenue from those fees is recycled into the insurance industry and subsequently applied to defray costs and thus reduce premiums. However, if those referral fees encourage the referral of claims which otherwise would not have been referred, the additional cost relating to the provision of that hire vehicle and the profit

generated by the credit hire organisation is an additional cost which could and should be avoided. Additionally we would emphasise that not all referral fees stay within the private motor insurance industry with a substantial proportion passing to vehicle repairers, salvage companies, vehicle recovery companies, solicitors and even police forces to name but a few.

We call on the CMA to revisit this decision and to enforce a referral fee ban in relation to the provision of hire vehicles under credit agreements. We are using the term 'referral fees' as a catch-all and as the CMA have identified, a remedy in this area would need to be drawn widely enough that all forms of generating revenue, profit share or consideration in any form is captured and banned.

Other remedies not being adopted – 1D and 1E

We are very disappointed that the CMA have elected not to introduce remedies in the area of subrogated repair claims or subrogated total loss claims. By not acting in this arena, the CMA has given the green light to insurers, brokers and others to optimise income in this area to its maximum possible extent. The CMA must appreciate that whilst they might currently calculate the consumer detriment to be insufficient to justify the introduction of a remedy, in not doing so they have essentially guaranteed that this detriment will increase. Many market participants whose business models are predicated on 'claims income' will now shift their attention from hire which is being curtailed to repair which is not.

The CMA acknowledges in paragraph 2.217 of the PDR that insurers who do not currently generate income generating models will be competitively disadvantaged against those that do. They are however incorrect to state that the remedy to this asymmetry is in their own hands through reaching bilateral agreements with those that do. As noted in the footnote to that paragraph, it may be necessary for insurers to threaten to adopt such an income generating system in order to encourage others to enter into a bilateral agreement with them.

However this option is simply not open to (or will not be effective for) broker based insurers who have limited control over non-fault claims. Such insurers will not be able to create a model which generates sufficient income from an at-fault insurer such that that at-fault insurer has an incentive to give up their own income. The result will be that the broker based insurer simply has to introduce whatever model they can to mitigate the loss that they will otherwise suffer. The effect will be more inflation of subrogation cost, not less.

The market has to date been restrained in its response to the Court of Appeal judgement in Coles –v- Hetherton as the industry awaited the outcome of the CMA decision. However in the absence of any remedy being introduced by the CMA, we expect the shackles to come off and for claims costs to increase across the board as a result.

Competition & Markets Authority

Private Motor Insurance Market Investigation

LV= Response to Proposed Remedies

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General Comments

This document supplements our submission, dated 4 July 2014.

Having engaged with the Association of British Insurers (ABI), we broadly support the ABI response to the CMA. We have therefore, limited this submission to focus on Remedy 4B and to highlight our specific concerns.

To ensure a consistent approach and avoid potential conflict with current FCA thinking, we are of the view that the CMA should position Remedy 4B on the basis of a recommendation to the FCA (in line with Remedies 4A & 4C).

Remedy 4B Transparent information concerning NCB

Response

LV= welcomes initiatives to further aid consumer understanding, but we have a number of reservations regarding the **proposal to disclose average NCB discount according to the number of years NCB.**

Whilst we understand the rationale behind the CMA's proposal, we do not agree with the conclusion that this will achieve a better outcome for consumers. In our view, the disclosure of average (mean) NCB discounts is likely to cause confusion and create false expectations, leading to consumer misunderstanding / detriment.

Publishing average (mean) NCB discounts based on business in the previous calendar year would not reflect changes in mix and the proposed table would not, in our view, provide a meaningful representation to consumers.

Despite our concerns, publishing 'typical' NCB discounts would be more representative than 'mean', but consumers would still face interpretation issues and the prospect that this information could lead to incorrect decisions when considering whether to purchase PNCB.

Consequently, we strongly urge the CMA to review the proposed remedy as it stands and to take account of our additional concerns / comments below:

1. The CMA is pursuing an untested remedy, which will be subject to significant development and ongoing administration costs, and inevitably impact premiums.

2. The qualitative consumer research undertaken by GfK on behalf of the CMA found that there was a positive response to the proposed percentage NCB table. However, it was also acknowledged that there was some confusion over use of the term 'typical discount', which has led the CMA to refer to it as an 'average discount' in the proposed remedy. The term 'average discount' was not specifically covered by GfK; it is our opinion that the change in reference does not effectively resolve the issues raised during the GfK research and leads us to question why the CMA considers it appropriate to pursue the proposed remedy as prescribed.

3. From the GfK report findings it is apparent that participants took the table, displaying 'typical discount' information, at face value - it appears that it was only when prompted that they started to question what it actually meant to them on an individual level and then sought further clarification. This is in line with the 'information overload', which the FCA wants to see improved and brings into question whether the table adds real value for the consumer, or if it will simply be a 'nice to have' and will be glossed over / disregarded.

4. Given the responses from the research participants and the need for them to seek further clarification, we consider it appropriate for the CMA to qualify why it believes the table will receive a more favourable outcome once in the public domain.

5. The CMA should walk through the various customer journey channels to fully understand the potential impact, eg call handling could become unnecessarily protracted in the event that consumers question what is meant by 'average', or 'typical', and how this compares with the actual percentage discount applied.

6. We challenge the requirement to review and publish the average discount by calendar year. Again, this would be costly to implement / administer and could create confusion. It is therefore, imperative that the practicalities are worked through. For example, if it is necessary to forward an updated NCB table with renewal documentation we expect that any changes will need to be highlighted to the consumer. However, whilst the average discount may have changed, it may still be the same for a sizeable proportion of policyholders at individual level. The impact on the Broker channel must also be taken into account, eg document release lead times and associated development costs.

7. Potential issues arise from the application of introductory NCB, eg an insurer may agree to apply a 50% introductory NCB at new business, which would increase to 60% (but only equivalent to 1 year actual entitlement) at renewal if the policyholder remained claim free. The proportion of policies subject to introductory NCB discounts would lead to a distortion in the average published NCB discount.

8. The CMA is in danger of over engineering a solution, which in our view could be addressed by some basic examples to give consumers an indication of the potential premium impact (at the first and subsequent renewal) following the loss of NCB. We are happy to work with the CMA to support the development of alternative solutions.

9. It is key that the CMA works with the FCA to establish how this proposal fits with current thinking around disclosure.