Inquiry Manager
Competition & Markets Authority
Victoria House
Southampton Row
LONDON
WC1B 4AD

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Dear Sirs

Competition & Markets Authority – Private Motor Insurance Inquiry

NFU Mutual Insurance Society Ltd Response to Provisional Decision on Remedies

About NFU Mutual Insurance Society Ltd

The National Farmers Union Mutual Insurance Society Limited (NFU Mutual) is a composite insurer providing insurance, pension and investment products. We are a member of the Association of British Insurers (ABI).

We have a gross premium income for General Insurance in excess of £1.2billion. We have an award winning range of products and services.

NFU Mutual is a mutual company, founded in 1910. We do not have any shareholders and we do not therefore pay dividends. Our policyholders are members of the company. Members, as policyholders, are able to participate in the profitability of NFU Mutual through the 'Mutual Bonus'. This involves providing premium reduction discounts to loyal members at annual renewal of their policies.

It is very important to us that our members' rights are protected. We have therefore sought to respond to the Competition & Markets Authority (CMA) Provisional Decision on Remedies in a manner that balances the need to keep insurance premiums at acceptable levels with the individual rights of our members should they be involved in an accident.

Executive Summary

We are pleased to see the CMA's proposals to address the level of consumer information under remedy A, the cost of mobility under remedy 1C together with the associated measures in relation to mitigation under remedy 1F. We believe that this framework is

capable of delivering an effective response to the mobility element of Theory of Harm (ToH) 1. The final detailed remedies will need to incorporate appropriate elements of the current ABI GTA arrangements and provide greater clarity both for the consumer and the industry.

Whilst understanding the CMA's financially based reasons for abandoning the other proposed remedies, we are nevertheless disappointed to see no measures to deal with the market behaviours for motor repair (especially credit repair), total loss, salvage and referral fees where it will still be open to participants to 'earn a rent': this cannot be in the wider consumer interest. We find this rather at odds with your response to the mobility cost consumer detriment and believe that the consumer will be disappointed to see that you have continued to allow certain participants in the insurance market to continue to 'earn a rent' which ultimately costs the wider consumer in the level of their motor insurance premiums. Your justification that 'the revenues that insurers receive when managing non-fault claims are likely to be passed through more evenly to their customer base' is not likely to find widespread consumer support but will be welcome to those organisations which currently earn a rent. We see this as an opportunity missed and reiterate our support for a set of Fundamental Principles and Approach as set out in our response of 17th January 2014 to the Proposed Remedies.

The provisional remedies must apply in the jurisdictions of England and Wales, Northern Ireland and Scotland.

The broad principles behind the remedies should apply to the entire motor claims market and not be restricted to the private car market. It would not serve the consumer or insurance industry well for the intention of the remedies not to apply where a consumer's vehicle is damaged under other covers such as public liability for example.

In addition we believe that insurers should resolve disputes with other insurers by dialogue, with litigation only used as a last resort. Where litigation is the only route for a consumer to resolve a dispute over uninsured losses, insurers should ensure that their losses are not included in the litigation and agree that they will follow any decisions reached in the uninsured loss claim.

We also strongly advocate the development of an electronic portal for all communications/liability/quantum resolution within the insurance claims industry.

Comment on the Provisional Remedies to be adopted

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

1. We believe that it is important that the Statement of Consumer Rights (CSR) and the Frequently Asked Questions (FAQs) should be provided together to the consumer, wherever possible, at the point of First Notification of Loss (FNOL) by all industry participants who provide FNOL services whether they are an insurer, broker, mobility provider, vehicle manufacturer or solicitor etc.

2. We believe that whilst the emphasis is clearly focused on rights there is an opportunity to set out claimant responsibilities and duties such as mitigation of their loss by considering all the options available to them.

3. Whilst we understand your focus on the Private Motor Insurance sector, there is no provision in your remedies for FAQs to deal with consumer concerns over credit agreements attached to the provision of mobility for example. Other sets of FAQs may be desirable.

4. The list of 'mandatory' FAQs is short and clarity is required over whether the PMI provider is at liberty to add to the list: we believe that they must be permitted to do so to reflect the concerns of their particular customers. Any list of 'mandatory' FAQs will need to be consumer tested to ensure that it is addressing their concerns.

5. The SCR appears to confuse the policy remedies with the tortious remedies which need to be more clearly articulated for the benefit of the consumer. They need to clearly understand their position and the current draft document needs amendment to achieve that

    a. Paragraph 2 – there is no legal duty to report an incident to your insurer but there may be a contractual liability

    b. Paragraph 5 – if the accident is not your fault then it needs to be clear that the policy entitlements set out at 4 are also available and may provide the consumer with services that meet their needs. The wording assumes and could be said to invite the consumer to claim against the fault motorist as the default position rather than set out all their options before they then make an informed choice. This sits uncomfortably with the desire of the majority of insurance providers to deliver their own particular service offerings to their customers rather than encourage them into the hands of other insurance providers and their 'rent earning' business models.

    c. Paragraph 6 – there is a general need to distinguish between the policy remedies and tortious remedies available to a claimant under (a) (i) and (ii). Some will be dependant on the cover on their vehicle for example and then subject to terms and conditions such as an excess for example. At (c) we believe that the inclusion of the specific words 'costs of care' is unnecessary and may encourage unmeritorious claims. At (d) the wording refers to a number of elements that are clearly uninsured losses but includes vehicle recovery and storage that may well be insured losses which will be met by the insurer under the terms of the cover. It is this sort of confusion that needs to be removed from the SCR in its entirety.

    d. Paragraph 11 –The self administration option needs to be added into the list of options and not glossed over in the introduction to this paragraph.

6. The FNOL statement will need to be amended to reflect the amendments suggested to the SCR.

7. The FNOL statement is clearly designed to be used in a telephone notification environment and will add to the length of the FNOL call and process. Some

notifications take place electronically and consideration needs to be given to delivery of the information (on screen or within an IVR message script for example) to allow for other methods of notification to ensure that the FNOL statement is conveyed to the consumer in all cases.

8. At the point of FNOL we do not believe that the consumer will be interested in the information and will immediately seek guidance that reflects their individual circumstances. Whilst the information may be useful to a limited extent, their immediate response is almost certain to take the form of "But what does that mean for me?" Whilst you have referred to guidance it seems likely that those elements of the market that 'earn a rent' will see this as an open door to circumvent the intention of the remedy and steer the consumer into a revenue generating service provision. Examples would be the mobility provider recommending a credit repair, credit towing and/or storage of a total loss, CMC, or uninsured loss recovery service where a referral fee would be paid.

9. We believe that the measure is unlikely to be effective but agree that a greater level of consumer understanding of their rights under their policy and in law must be provided by the industry.

10. To make the proposed remedy more effective all consumers need to be taken carefully through their options in any given situation at the point of FNOL and be clear of the costs consequences for them both as an individual and as part of the wider group of all consumers of insurance products.

11. The timescales for implementation should be broadly achievable.

12. At FNOL there is a very fine line between informing and advising which presents a clear, if not certain risk of circumvention. Many consumers will actively seek specific advice relating to their particular situation and not wish to be distracted by the high level generic information.

13. Whilst you have chosen not to include discussion with the consumer of the risks and benefits of any particular course of action, we believe consumers will seek to understand them and, as they become ever more conscious of the costs, seek the lowest cost option that meets their particular individual needs whilst at the same time helping to manage costs for all consumers. There is nothing in your remedy that will prevent insurers from raising this with the consumer but not including it as a feature effectively condones the continued 'earning of a rent' from the consumer.

1C & 1F Measures to address features relating to replacement vehicles

1. At paragraph 2.51you refer to the reducing costs of replacement vehicles having the effect of reducing the differential effects between higher and lower risk drivers. It is not clear whether this is a corollary of the measures or a specific objective to

be achieved by the design of the measure. In our view 'the differential effects between higher-risk and lower-risk drivers' is beyond the CMA's remit for this investigation and should not influence the remedies in any way.

2. We do not believe that there is any need for the alternative proposal outlined at paragraph 2.62 to limit the amount a vehicle provider can charge their customer.

3. At paragraph 2.64 these claims are described as subrogated which is potentially misleading as they are only subrogated where there is an underlying indemnity in place by way of an insurance cover often After the Event (ATE). The vast majority of claims are not subrogated but brought by the claimant for the benefit and with the assistance of the mobility provider. It opens up the possibility that some elements of the market may choose to make these claims not subrogated and use that argument to exempt them from the provisions of this remedy. The caps and entirety of your remedy needs to apply to all incurred mobility charges whether claimed directly or by way of subrogation.

4. Our own model involves the use of Before the Event (BTE) insurance cover to provide insured mobility which is then subrogated as part of an uninsured loss service to recover such items as excesses and damages for injury for example. This feature is a standard feature not only of our PMI cover but also our other motor, personal and commercial insurances.

5. At paragraph 2.67 you assert that 'The precise method of provision will be determined by competition.' Since the choice of provision must be for the non fault consumer to make, we believe that they will need to understand the costs of provision which you have deliberately dismissed under the information asymmetry remedy. If the consumer is to make an informed choice between alternatives, all of which meet his needs, they will need to know the costs.

6. The cap needs to be very carefully and clearly defined to remove the possibility that elements of the market will seek other ways of continuing to 'earn a rent' from such items as provision of automatic as opposed to manual vehicles, sat nav, tow bars, child seats, insurance etc. The cap needs to apply to all such additional cost items as well as the basic underlying cost of hire.

7. The Administration fee which you propose to adopt is clearly based on the current level of admin fee that is permitted under the ABI GTA. If you are to adopt the direct hire rates for your initial assessment of the rate caps then they do not attract an additional admin fee and neither do insurers' intervention rates where the direct hire organisations provide their services to insurers. We do not believe that there should be any additional admin fee in your calculation of the appropriate levels of charges. If you choose to include them then it is also clear that, with a

much more effective process, the admin fees should be lower than the current level you are proposing.

8. To provide the consumer with the best outcome from a cost control point of view and address ToH 1 the initial rate caps and subsequent reviews and assessments of them should be based on insurer intervention rates (and not typical High Street rates) which do not typically include any charges for administration.

9. The differential between the two rate cap levels is significant and tends towards a presumption of an early concession of agreement to meet the mobility costs. The time available in which to make that concession is in our view too short at 3 days and should be increased to be in line with the MoJ portal time frames (15 days) to bring consistency with the injury claims arena. If that were felt to be too long then the current GTA allows 5 days for certain elements and we see this as a minimum length of time that should be allowed. Whilst mobility providers might argue that many hires are shorter than 15 days the length of hire is in our view irrelevant when determining liability to pay and hence the appropriate rate cap to be applied. Too short a time for determining liability runs the risk that decisions may be rushed and made before adequate evidence has been obtained to enable the right decision to be made. It is in the interests of consumers that the right decision is made and that sufficient time is allowed to make the right decision in the overwhelming majority of cases. It is also a question of balancing the rights of the both the fault and non fault consumer where the potential for detriment in the form of loss of NCD would be a significant factor to the consumer

10. There will need to be some very detailed definition of the time frame so it is clear when time starts and runs from. We would strongly advocate standard working week days only. It needs to be clear when effective notification of the mobility provision is deemed to have been made to the insurer of the at fault motorist. We would advocate that the mobility provider should be required to notify the insurer before they intend to put a claimant in a vehicle or at the very latest on the day that the vehicle is provided (as per current ABI GTA) and provide the mitigation statement set out under 1F. We are conscious of the risk that some mobility providers (especially the less scrupulous) may choose to notify far flung outposts of our organisation by second class post so that the three days are effectively lost in transit. This simple requirement demonstrates the critical importance of a comprehensive portal arrangement for the notification and management of these claims to ensure that the mobility market operates in a way that makes it far less likely, and preferably impossible, for any participant to circumvent your proposed remedies.

11. The short time frame for liability means that insurers will choose to make concessions to agree to pay the claimant's mobility costs whilst leaving liability open to allow for the possibility of subsequent injury claims where a concession of liability could be very damaging to the insurer. We do not see this approach as detrimental to the consumer and do not think that your remedy needs to contain an admission of liability in order to be effective if the 'admission of liability' was replaced by a 'commitment to pay' the mobility costs . It could remove a potential

conflict with the FCA's Treating Customers Fairly requirement to keep customers informed and involved in decisions on material issues.

12. Mobility providers will have every incentive to make the initial decision on meeting the mobility cost as challenging as they possibly can to ensure that they benefit from the higher rate cap.

13. There is a clear risk of fraudulent claims or claims with fraudulent elements being accepted unwittingly under the proposed regime. We urge you to exclude any mobility claim where there is any element of fraud on the part of the claimant from the terms of the regime to be introduced. There is a need for the proposed remedies to adopt and follow the current thinking in the Ministry of Justice looking at giving the courts the right to dismiss all heads of claim where there is significant fraud in one element only.

14. We see no need for a dual rate cap approach given our views as expressed in our Fundamental Principles and elsewhere in our response to the Notice of possible remedies. There should only be one rate and that is the lowest rate commensurate with providing for the claimant's needs which is your lower rate cap based on insurer intervention rates with no admin fee and control of additional costs. The higher rate cap by definition increases costs that will inevitably be passed on to the consumer. That mechanism – the higher rate cap - is effectively a penalty on the consumer and is there as a concession to the mobility providers. If the consumer information, mobility and mitigation remedies work as you intend then there should be little if any need for the 'penalty' higher rate.

15. We are concerned to know how the initial rates will be set by the CMA panel and the make up of the panel so that all market participants can have confidence in the process and outcome. We are also concerned to understand the review mechanism in more detail as annual reviews may not be necessary or appropriate. The indexation approach to be adopted must be subject to further research to make sure that the most appropriate index is identified. The application of an index across the entire range of vehicles may not be appropriate as some types of vehicle may be subject to differential pricing factors from one year to the next.

16. The measures that will require insurers to provide data on liability assessments is in our view unnecessary and should be abandoned as we believe that there is very little likelihood that the risks you are seeking to mitigate will occur and the response is neither proportionate nor practical. Where insurers seek to accept the costs of mobility within the 3 days without a formal admission of liability for the entire claim then there will be no liability decision data to report.

17. The mitigation statement as designed should work with the SCR and FAQs to be a more effective assessment of claimant need. The document should be provided to the insurer by the mobility provider at the point of first notification to the insurer. Whilst it is a standard set of questions to which claimants would have to respond it could be very simply rendered ineffective by mobility providers providing pre-determined standard answers which consumers then sign without reading and understanding the consequences. It will require very careful monitoring to ensure that the mitigation remedy achieves your objective.

18. The mitigation document needs to

a. Take a more robust form in the sense of being subject to a statement of truth by the claimant

b. Should refer to the SCR and any relevant FAQs

c. Clearly identify the claimant's liabilities under the consumer credit legislation.

d. Refer to the claimant's needs rather than requirements in paragraph 3(a)

19. The Provisional remedies refer to a number of elements of the current ABI GTA at Appendix A2(4). We believe that the following elements of the ABI GTA arrangements should be formalised and apply to the entirety of the mobility market and insurers under the proposed CMA regime. They will require formal monitoring to ensure compliance and proper cost control as insurers have little confidence in the current regime around monitoring for example. Similarly there is an implicit assumption by mobility providers that the 24 hours after repair completion and seven days from total loss settlement are chargeable by right regardless of when the vehicle was actually returned by the hirer. These off hire times should be expressed as being the maximum period that can be recovered.

a. Nominated contact points to avoid ineffective notification (in the absence of a portal which we have said elsewhere we see as essential).

b. Dispute resolution facility with a wider remit than the current GTA dispute process and include all areas of dispute. If there is to be no dispute facility as part of the CMA regime then there will be significant levels of satellite litigation to resolve disputes which will add cost that will inevitably be passed on to the consumer. The current proposed remedies appear to suggest that some of the current GTA dispute controls will be mandated by the enforcement order with other disputes needing to be referred to the courts for determination. This will be confusing for market participants and

our strong preference would be for a strong cross industry body to resolve disputes in favour of the wider consumer interest. Many forms of Alternative Dispute Resolution are available and could provide the necessary service short of court proceedings.

c. Abandonment of the First to Customer rule as it is not always likely to produce the lowest cost outcome for the consumer commensurate with their needs. Consumers are entitled to cancel credit hire contracts and may be encouraged to do so if they receive an offer of a suitable vehicle or alternative arrangement that meets their need but at a lower overall cost to the wider consumer.

d. All elements of the Information Requirements for New Business and Monitoring arrangements section of the GTA. Ideally supported by a portal to embrace all areas and enforce the regime in the best interests of the consumer.

e. The majority of elements of the Payment arrangements apart from the penalty payments section as the penalties as currently formulated are disproportionate (far in excess of interest rates awarded by the courts) and one sided in the sense that they only apply to insurers. There are no corresponding penalties on mobility providers who, for example,

i. Provide incomplete payment packs
ii. Do not monitor repair/hire effectively or at all
iii. Do not provide mitigation and hire contracts
iv. Commence hire on roadworthy vehicles
v. Render vehicles un-roadworthy by stripping down
vi. Start hires on roadworthy vehicles before the repairer has ordered parts or on Fridays

If you are determined to include penalties then they should be even handed and apply to both mobility providers and insurers in a measured fashion. Any dispute resolution mechanism needs to be able to apply sanctions to all participants in the market. In the absence of a dispute resolution mechanism other than the courts the only winners will be the legal profession at the expense of all other parties including the consumer.

Yours faithfully

Richard Birch FCII, Chartered Insurer

www.nfumutual.co.uk

Technical Claims Manager