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Dear Sirs

### **The Supply of Private Motor Insurance and Ancillary Goods and Services (the “Market”)**

I am writing following receipt of your “First Day Letter” requesting any further submissions by 15 October. I am the Director General of the trade body representing the interests of credit hire operators in the UK, The Credit Hire Organisation Limited (CHO). As acknowledged by the OFT we fill a gap in the market by providing replacement vehicles to the innocent parties to road traffic accidents. Insurers could already take more steps to provide these replacement vehicles themselves, but for a variety of reasons - which I should be happy to explain to you in greater detail as your inquiry progresses - the gap exists.

My concern is that any regulatory changes to the Market – to the extent they confer greater control on insurers at the expense of accident victims - will increase this gap. More importantly, such developments may make it impossible or unreasonably difficult for any third party to plug the gap competitively.

I also presume that you have both of my previous two submissions to the OFT.

Before proceeding, I should also like to thank your team for the opportunity to have met with them on 10 October. The brief content of this document (and more) was narrated to them that day.

#### **1. First Impressions are hard to change**

I expressed my concern on 10 October that the substantive lobbying power of the ABI (backed by their substantial financial resource) had created a set of impressions about the private motor insurance market that were extremely biased towards protecting the interests of insurers. Please bear in mind that the ABI is the trade body funded to protect the interests of insurers – they present their data in ways to do this and do not converse in a balanced way about how the changes they are calling for will impact the consumer (for example banning referral fees –



income that insurers receive and which if banned would have to be compensated for in other ways to prevent premiums having to rise).

Please note that the OFT deleted use of the words “dysfunctional” and “inflated” in their final report. They used the words “inflated” in their original report when describing credit hire costs. It was completely erroneous of them to use this emotive word and it resulted in significant misreporting of the role and costs of credit hire in the media – all aided and abetted by the ABI’s lobbying and media power.

## **2. The consumer and protection of their rights**

Irrespective of whether one accepts that credit hire and associated services are responsible for any rise in premiums (which is an assumption that should, in any event, be investigated carefully and independently before any credence is given to it), it is also vital that anyone considering the market should recognise that consumer welfare and competition do not begin and end with the up-front cost of motor premiums. Costs can be stripped out of virtually any product or service; however – in the context of any investigation or subsequent recommendations - proper consideration should be given to the proportionality of any measure where, in return for unproven, questionable or small cost savings (at least insofar as those being passed on to consumers), far more serious consumer detriment would result in terms of significantly reduced access to adequate mobility solutions.

Beyond high motor premiums being bad for the consumer, to date it seems there is no one out there considering the potentially serious and adverse impact on the consumer of any changes to the current Market. I trust that you, as part of your in-depth review, will take this responsibility to heart.

As you will no doubt be aware, the consumer has rights under tort law – the aim of which, among other things, is to put the consumer, if caused by another party, back into the position he or she was in had the tort not occurred. This fundamental principle has to be recognised when considering any remedies, if any, to the Market. In my view – and as demonstrated by the market situation which led to the development of credit hire businesses in the 1980s - insurers would rather that consumers’ awareness and access to these rights is diluted, as it would allow them to reduce their cost base to their shareholders’ benefit.

I have concerns over the OFT’s suggested remedy that insurers be given more rights over controlling the costs of a claim. When it comes to replacement vehicles insurers would rather consumers were unaware of their rights – particularly where the consumer is the innocent party to the accident. Credit hire only exists because, competitively, insurers chose to not offer replacement vehicles where they can avoid it. If they were to provide a replacement vehicle to all non fault consumers, for the length and quality of vehicle that the consumer is entitled to, the costs of so doing would be huge and premiums would have to rise to cover those costs. It follows that credit hire companies perform a dual role – offering vital mobility solutions on the



one hand and, on the other, acting as an incentive to insurers to be more pro-active in looking after consumers (in terms of alternative propositions to credit hire).

Insurers, and the ABI lobbying for them, want to be given greater rights to control these costs. If they were to be given these rights they would be able to adopt a variety of techniques to deny consumer access to a replacement vehicle. Put simply, the incentive presented by credit hire operators would, in many respects, be removed.

Imagine a changed Market where the non fault party to an accident calls the insurer to be told the other party to the accident has not yet completed a claim form, or where the claim form is completed but that the other party denies liability for the accident. Under these scenarios the insurer would not provide the replacement vehicle. It is credit hire that fills this gap, the credit hire operator (after its own diligence into the circumstances of the accident) takes the liability fight to the insurer on behalf of the consumer. If insurers were given increased rights, credit hire operators will struggle to survive, removing an essential component of competitiveness, and possible redress for consumers, that exists in the current Market.

### **3. The costs of credit hire**

They are not “inflated”. The costs of credit hire have to be reasonable in order to have any chance of being recoverable in law. Where the non-fault party is prepared to mitigate his loss, by choosing a lower specification replacement car for example, costs can be reduced (ie be lower than they otherwise need to be – this I think being the OFT’s revised phrase).

Insurers can also reduce these costs by not fully explaining the legal rights to the consumer. If an insurer offers a lower specification vehicle for shorter periods (this being the way insurers will offset the loss of referral fee income if it is banned) and if the consumer is content with the offer, then all may be fine, provided the consumer is prepared – on a fully informed basis - to accept this lower level of service. Insurers can do this today if they invest in the teams of people required to be able to do it. However, a problem arises where the insurer makes the offer to an uninformed consumer; in this instance, the insurer is benefitting from his position of power, a position that most consumers would not know how to counter.

It is the CHO's belief that insurers already use bi-lateral agreements with their competitors to mutually agree not to explain the legal position to their customers, a practice that avoids cost, but to consumer detriment.

### **4. The ABI GTA**

I have explained this “protocol” in previous submissions. Most credit hire claims are submitted via the GTA and material discounts are available to the insurer where they settle the claim promptly. The GTA is a unique protocol, to which most insurers subscribe. The ABI are not calling for the GTA to be the “solution” because they sense a greater victory – ie their members



being given more power of control over the claims so they can avoid providing a mobility solution at all.

The GTA works well and has a high degree of co-operation between its insurer and credit hire members. An electronic portal is currently being developed which will enable further cost reductions from increased efficiency.

## **5. Data**

As with the OFT I sense a demand for data. I can only repeat my strong advice that data cannot – without careful and balanced explanation - be used to understand this Market. In other words, I would counsel great caution before accepting any data that purports to highlight higher costs associated with credit hire etc.

As an example, even if you could find two identical accidents, one where the non fault party was given a credit hire replacement vehicle (like for like) for the length of time the vehicle was being repaired and one where the insurer gave an intervention solution for a shorter period and for a lower specification vehicle. The costs of the credit hire solution would clearly be greater. This does not make them wrong (tort law ensures they are reasonable and the GTA probably governed its claim process).

Take the example to a further extreme. Assume in the non-credit hire solution that the consumer was offered no solution at all. So, there was no replacement vehicle and the costs were nil. So, there is no data. Yet the consumer may have been entitled to a vehicle, but his case will not appear in your data at all.

I cannot stress enough that compiling data will not allow you to make any conclusions of any merit whatsoever as regards recommending a “solution” to the current Market. Of course, I trust that in involving us in your inquiry and inviting us to test assumptions will help you place certain evidence in its proper context.

## **6. Understand the market drivers and objectives**

The objectives of insurers are clear and singular – minimise costs post accident. The Market gives consumers rights under law. The law protects the scale of those costs. The GTA gives opportunity for greater cost minimisation. It already works. The ABI sense this greater victory and hence shy away from supporting the GTA, even though most of its members subscribe to it.

I believe that real insurer motivations (and their desire to pursue remedies which fundamentally alter current tort law) will become further apparent during the course of your inquiry. Understanding these motivations and the current legal framework is vital in order to understand why the Market has developed over many decades to its current state. It will also guard against recommendations that will not improve anything other than the ability of insurers to make more profit, or worse - significantly undermine current consumer rights.



Data alone will not allow you gain this understanding, although I appreciate your commitment to undertake a thorough review to place everything in its proper context.

As far as further evidence is concerned, ask to see the bi-lateral agreements that insurers have had in place. Ask to see the call centre scripts that insurers have used when speaking to their customers who claim to be the non fault party to an accident. Compare those scripts where a bi-lateral agreement is in place and where it isn't. Insurers are there to maximise profits for shareholders – they (nor the ABI) are not the guardian or protector of the consumer.

#### **7. The real reason premiums rose, and then fell.....**

Credit hire is not the reason premiums rose. The cyclical nature of insurer profits and competitiveness (growing market share or contracting), fraud, whiplash claims and investment income losses dwarf the costs of credit hire.

Moneysupermarket.com estimate premiums have lowered by over 10% over the last 12 months to June (reversing the rise over the 12 month period before that).

The ABI estimate fraud adds £50 to an average motor policy. This dwarfs the estimate of £10 per policy in the OFT report – the basis of calculation for which has not been disclosed.

#### **8. Maintain competitiveness and protect the consumer**

The CHO urges you to resist giving more power to the insurer. The Consumer will lose out if you do and competitiveness will reduce.

The GTA protocol already provides a low cost solution whilst protecting consumer access to a replacement vehicle. Insurers believed the discounted rates embodied in the GTA were not as discounted as intended because of the actions of Autofocus where fraud on a massive scale was perpetuated in courts throughout the UK. I recommend you become familiar with the actions of Autofocus and the court proceedings being made in relation to it. The actions of Autofocus are at the heart of why the GTA is not being seen as the pragmatic solution that it in fact is and underpin why people (including the OFT initially) use phrases such as “inflated” when describing the costs of credit hire. Aside from the direct financial gain that insurers benefitted from as a result of what Autofocus did, it is the damage to the perception of the GTA that is the real issue.



## **9. Summary**

I look forward to assisting you in any way as you navigate your way through the dynamics of the Market and particularly as it relates to the provision of replacement vehicles.

The current state of the Market has developed as it has for good reason, balancing decades of case law regarding consumer access to legal rights together with cost control via the courts and, more often than not, discounts through the GTA. It is a complex market but it is not, as the OFT now agree, “dysfunctional”.

Yours faithfully,

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