

PRIVATE MOTOR INSURANCE MARKET INVESTIGATION

Theory of harm 2: Underprovision of TRVs

Introduction

1. Under theory of harm 2 (ToH 2), we are investigating whether harm arises from the beneficiary of post-accident services being different from and possibly less well informed than the procurer of those services. In this paper, we assess whether there is underprovision of temporary replacement vehicle (TRV) services to non-fault claimants. By ‘underprovision’, we refer to a level of TRV service which is below that to which non-fault claimants are entitled and desire.¹
2. We do not consider the provision of TRV services to fault claimants, as a fault customer’s entitlement to a TRV is based on their insurance policy (in contrast to non-fault customers where the entitlement is based on tort law). A fault customer is usually entitled to a courtesy car or, where the customer has purchased additional cover, a like-for-like TRV. We have no reason to believe that, following an accident, a fault customer experiences any underprovision against their contractual entitlements.
3. The procurer of TRV services for most non-fault claimants is not the party which pays for the service. Rather, a claims management company (CMC)/credit hire company (CHC) or non-fault insurer usually procures the service while the fault insurer pays for it. In these circumstances, it does not appear to us that the procurer has any incentive to underprovide TRV services to the non-fault customer. For this reason, in this paper we focus on whether non-fault claimants whose claims are captured by the fault insurer receive a less good quality service than that to which they are entitled. We consider the responses to our survey and also analyse electronic call records provided by the ten large insurers and nine CMCs/CHCs in our sample (using the

¹ Some non-fault customers might choose to receive a service which is less than their legal entitlement.

provision of TRV services to non-fault claimants by CMCs/CHCs as a comparator).²

We focus primarily on the type of TRV provided to the customer and the length of the hire duration.

4. CMCs/CHCs usually provide TRV services to non-fault customers on credit hire terms, whereby a TRV and related services are supplied to the customer on credit and the cost of these services is recovered subsequently from the fault insurer. Fault insurers provide captured customers with a TRV under direct hire terms, whereby the cost of the provision of TRV services is borne by the fault insurer (or, where there is a bilateral agreement, borne by the non-fault insurer and recovered immediately from the fault insurer).

Summary

5. The results of our survey of non-fault claimants (see the working paper ‘Survey report’) suggest that there is the potential for the underprovision of TRV services to non-fault claimants due to some uncertainty among claimants of their legal entitlements.
6. However, the survey also suggests that the vast majority of non-fault claimants are satisfied that the TRV services they received following an accident met their needs (or exceeded them), both in terms of the quality of the TRV provided and the hire duration, regardless of whether their claim was managed by the non-fault insurer, a CMC/CHC or the fault insurer (as a result of being captured).
7. We note that, although representing a small minority of the relevant customers surveyed, dissatisfaction in relation to the type of car was significantly higher among captured claims than claims handled by the non-fault insurer, which could suggest

² However, we acknowledge that CMCs/CHCs might have an incentive to overprovide TRV services to non-fault customers and therefore we do not presume that providing a lesser service would necessarily represent underprovision.

some underprovision by fault insurers. The results of our initial review of a small sample of insurer and CMC/CHC electronic call records also suggest that there is a greater likelihood of receiving a lower quality TRV if captured by the fault insurer than if the claim is handled by a party other than the fault insurer (ie a non-fault insurer or CMC/CHC). However, we acknowledge that this does not necessarily indicate underprovision, as identifying and meeting a customer's needs may be conducted more effectively by fault insurers than by parties which have no incentive to keep costs down. We intend to extend our analysis of call records further.³

Outline of the paper

8. In this paper, we examine:
 - (a) background to the provision of TRV services to non-fault claimants;
 - (b) non-fault claimants' awareness of their legal entitlements in relation to TRV services;
 - (c) non-fault claimants' views on the type of TRV provided and the hire duration;
 - (d) data on the provision of TRV downgrades (where the customer received a TRV of a lower class than their own vehicle); and
 - (e) evidence from electronic call records provided to us by insurers and CMCs/CHCs.

Background

Legal framework

9. A fault insurer is legally responsible (on behalf of the fault party) for the reasonable costs of restoring the non-fault driver to their pre-accident position. If the non-fault driver's vehicle is temporarily unavailable (generally due to repairs), this involves compensating the non-fault driver for the temporary loss of use of their vehicle. The

³ What is of particular interest to us in listening to these call records is the approach taken by the handler of the call in the assessment of a claimant's needs.

non-fault driver is entitled to recover the reasonable costs of car hire, provided the reasonable need⁴ for an alternative vehicle can be established. In practice, this usually involves the provision of a TRV which is broadly equivalent to the customer's own vehicle (often referred to as a 'like-for-like' TRV) for as long as is reasonably necessary.⁵ This is subject to the non-fault driver's duty to mitigate their loss with consideration to their need.⁶

Provision of TRV services to non-fault claimants

10. Non-fault claimants can either claim under their own private motor insurance (PMI) policy (in which case the non-fault insurer manages the claim), or their claim can be managed by a CMC/CHC (usually following a referral by the non-fault insurer, broker or another party), or the fault insurer may capture their claim. Elements of a non-fault claim (eg repairs and TRV provision) may be handled by different parties.
11. When non-fault claimants make a claim under their own PMI policy, they typically receive a TRV in accordance with the terms of their policy. This may be a courtesy car from the non-fault insurer's repairer (if the non-fault insurer is also managing the customer's repair) or, where the customer has purchased additional cover, a like-for-like TRV from the non-fault insurer's direct hire TRV provider.⁷ On occasion, if the non-fault insurer is satisfied that the customer is not responsible for causing the accident, it might provide a vehicle of a higher class (compared with the customer's contractual entitlement) because it believes the customer is entitled to it under tort law and therefore the cost of this vehicle can be recovered from the fault insurer.

⁴ In the case of a private individual who has lost access to their vehicle following a road accident, the scenarios in which they would clearly not have need for an alternative vehicle are likely to be relatively limited (eg because they have access to another vehicle or because they are on holiday abroad for the period in which their own car is unavailable).

⁵ The hire duration is usually determined by the repair duration.

⁶ A non-fault driver can only claim the costs of credit associated with a credit hire if they can demonstrate that it was reasonable in the circumstances to hire the TRV on credit (ie the customer is impecunious). However, the assessment of what the tort law entitlement requires in a given case will be informed by the specific facts of that case, which, in view of the nature of the 'impecuniosity test', may lead to some practical difficulties for CMCs/CHCS in assessing whether a non-fault customer requires a TRV on credit terms. We do not consider credit further in this paper.

⁷ We discuss how the potential disadvantages for non-fault claimants from claiming under their own PMI policy could lead to consumer harm in the working paper 'ToH 2: Underprovision of repairs'.

12. If the non-fault insurer or broker controls a customer's non-fault claim, they may refer the non-fault customer to a CMC/CHC (in return for a referral fee). Assuming the CMC/CHC also assesses the customer to be non-fault, the CMC/CHC will then provide the customer with a like-for-like TRV, subject to some checks regarding the customer's duty to mitigate their loss, with consideration to their need. The CMC/CHC will recover the cost from the fault insurer.
13. Direct hire applies principally when a fault insurer captures a non-fault claim, or when a non-fault insurer is party to a bilateral agreement with the relevant fault insurer, or when the fault insurer and the non-fault insurer are the same.⁸ Some non-fault claimants whose claims are handled by the fault insurer receive a courtesy car from the fault insurer's repairer handling the repair rather than from the fault insurer's direct hire provider.
14. Table 1 summarizes the different ways in which a non-fault claimant may receive a TRV.

TABLE 1 Typical provision of TRV services to non-fault claimants

<i>Insurer controlling claim</i>	<i>Credit hire</i>	<i>Direct hire</i>
Fault insurer	N/A	Referral of captured non-fault customer to a direct hire provider. On average, 35 per cent (a range of 10 to 81 per cent across nine of the ten largest insurers) of captured non-fault customers receive a direct hire TRV. (The remaining captured non-fault customers receive a courtesy car through an approved repairer or do not require a TRV.)
Non-fault insurer	Referral to a CMC/CHC for credit hire. On average, 38 per cent (a range of 10 to 81 per cent across nine of the top ten insurers) of non-fault customers managed by a non-fault insurer receive a credit hire TRV. (The remaining customers receive a courtesy car, a direct hire TRV under their own PMI policy, a direct hire TRV for the reasons set out in the next box, or do not require a TRV).	Referral to a direct hire provider if fault insurer and non-fault insurer are party to a bilateral agreement or if fault insurer and non-fault insurer are the same.

Source: See Appendix 1.

⁸ Six of the ten CMCs/CHCs in our sample (Accident Exchange, Ai Claims Solutions, Enterprise, Helphire, Kindertons and WNS Assistance) told us that they provided direct hire services to fault customers and captured non-fault customers (following a referral from the fault insurer).

Non-fault claimants' awareness of their legal entitlements

15. We considered the extent of non-fault claimants' awareness of their legal entitlements in relation to the provision of TRV services. We noted that there could be greater potential for the underprovision of TRV services where a non-fault claimant is unaware of their rights.
16. Our survey of non-fault claimants sought to investigate this issue.⁹ Further discussion of this survey evidence can be found in the working paper 'ToH 2: Analysis of the results of the non-fault survey in relation to underprovision', and the underlying results are presented in the working paper 'Survey report'.
17. 33 per cent of respondents to our survey said that they were made aware of all or some of their legal rights at some point during the claims process following an accident. Those whose claim was managed by the non-fault insurer or a CMC/CHC were more likely to say that they were made aware of their legal rights than those whose claim was managed by the fault insurer (35 per cent, 47 per cent and 28 per cent respectively).
18. 76 per cent of respondents to our survey said that, at the time of the accident, they thought that they were legally entitled to a TRV.¹⁰ 92 per cent of these respondents were either offered or asked for a TRV and 79 per cent of these respondents received a TRV. Where a TRV was requested but not received (this only occurred in 22 cases out of the 1,500 in our sample), the primary reason was that the customer was told that they were not entitled to a TRV under their PMI policy.

⁹ In interpreting these results, we recognize that survey responses are subject to error, that the sources for this analysis are respondents' perceptions, which are inherently subjective and not based on an objective assessment of post-accident services, and that there may be other factors influencing these responses.

¹⁰ We note that the responses may have been influenced by the respondents' experiences after the accident rather than reflecting their knowledge at the time of the accident.

19. 64 per cent of the respondents to our survey who thought at the time of the accident that they were legally entitled to a TRV believed that they were legally entitled to a TRV that met their needs but was not better than the vehicle damaged.

Our assessment

20. The results of our survey suggest that there is some potential for the underprovision of TRV services to non-fault claimants due to some claimants being unclear about their legal entitlements in relation to TRV services. This appears to be particularly the case for captured non-fault claimants.

Non-fault claimants' views on the type of TRV and the hire duration

21. Our survey of non-fault claimants also investigated both the type of TRV provided to non-fault claimants and the length of the hire duration.

Type of TRV

22. 85 per cent of respondents to our survey who received a TRV stated that it at least met their needs. However, 14 per cent of respondents said that the TRV fell short of their needs (9 per cent of respondents said that it fell slightly short of their needs and 5 per cent of respondents said that it fell well short of their needs). The main reasons why these respondents felt that the TRV they received fell short of their needs were that it was less spacious or smaller than their own vehicle, it was a worse make/model than their own vehicle and/or it had a less powerful or smaller engine than their own vehicle.
23. Of the respondents who said that the TRV they received fell short of their needs, dissatisfaction was significantly higher among captured claimants (19 per cent) than where the non-fault insurer handled the claim (13 per cent), which could suggest some underprovision by fault insurers.

Hire duration

24. 87 per cent of respondents to our survey who received a TRV felt that they had access to the TRV for the right amount of time for their needs, and three per cent of respondents who received a TRV felt that they had access to it for longer than needed. However, 9 per cent of respondents felt they did not have the vehicle for long enough. The main reasons given by respondents for requiring the TRV for longer than it was provided were that they did not have access to any other vehicle or another suitable vehicle during the repair and they needed time to find a vehicle to purchase (ie in cases of a write-off).
25. Of the respondents who said that the TRV was not provided for long enough, dissatisfaction was slightly higher among captured claims (9 per cent) than where the non-fault insurer handled the claim (8 per cent).

Our assessment

26. It appears that the vast majority of non-fault claimants are satisfied with the TRV services they receive following an accident, both in terms of the quality of the TRV and the hire duration. However, where there is dissatisfaction, this appears to be greater in relation to the type of TRV provided (and marginally greater in relation to the length of the hire duration) among captured non-fault claimants (who are typically provided with TRV services under a direct hire agreement) than among non-fault claimants whose claims are handled by the non-fault insurer (who are typically provided with TRV services under a credit hire agreement).

TRV downgrades

27. The non-fault driver is entitled to recover the reasonable costs of car hire, provided the reasonable need for an alternative vehicle can be established (see paragraph 9). In practice, this usually involves the provision of a 'like-for-like' TRV for as long as is

reasonably necessary, subject to the non-fault driver's duty to mitigate their loss with consideration to their need.

28. However, sometimes non-fault customers receive a TRV of a lower class than their own vehicle (ie a downgrade). This can occur when:
- (a) The age of the customer's vehicle does not justify a like-for-like TRV. Where the customer's vehicle is six years old or older, the General Terms of Agreement (GTA) requires the CMC/CHC to provide a TRV of a lower class than the customer's vehicle (subject to the need for a vehicle at all). For example, [X] told us that, in certain GTA vehicle groups, where the customer's vehicle is over ten years old, the TRV provided was typically two vehicle groups lower than the customer's own vehicle, although the specific circumstances of a customer's need must also be considered.
 - (b) The customer is encouraged to accept a lower class TRV by the claims handler. [X] told us that, when direct hire customers were provided with a downgrade, it was the fault insurer which determined the category of vehicle to be supplied to the customer.
29. Table 2 sets out the proportion of TRV downgrades to non-fault customers for the nine CMCs/CHCs in our sample, in relation to both credit hire and direct hire customers in 2012. We note that the proportion of TRV downgrades to non-fault customers under a direct hire agreement may be inflated by the inclusion of some fault claims, as a fault customer may be entitled to a TRV on a direct hire basis under their policy (subject usually to them purchasing the appropriate additional cover).

TABLE 2 Proportion of TRV downgrades to non-fault customers, 2012

CMC/CHC	per cent	
	Proportion of credit hire customers provided with downgrades	Proportion of direct hire customers provided with downgrades*
Accident Exchange	[X]	[X]
ACM†	[X]	[X]
Ai Claims Solutions	[X]	[X]
ClaimFast‡	[X]	[X]
Crash Services§	[X]	[X]
Enterprise	[X]	[X]
Helphire	[X]	[X]
Kindertons	[X]	[X]
WNS Assistance	[X]	[X]
Unweighted average	15	30

Source: CMCs/CHCs.

*The direct hire data may include fault claims.

†ACM does not provide credit hire or direct hire services.

‡ClaimFast does not provide direct hire services, except as an outsourced function for [X].

§Crash Services does not record the proportion of downgrades to credit hire customers (as they are infrequent) and does not provide direct hire services.

30. Table 2 shows that between [X] and [X] per cent of direct hire customers were downgraded compared with between [X] and [X] per cent of credit hire customers. This suggests that more non-fault customers are encouraged to accept a TRV of a lower class than their own vehicle when captured by the fault insurer than when handled by another party. However, we note that the data set is limited and two of the three CMCs/CHCs which provided data for both direct hire and credit hire actually downgraded a greater proportion of their credit hire customers than their direct hire customers ([X] and [X]).

Review of insurer and CMC/CHC electronic call records

31. We reviewed a small sample of electronic call records provided by the ten largest PMI insurers and nine CMCs/CHCs in order to assess whether there was any evidence of the underprovision of TRV services to non-fault claimants.

Review of insurer electronic call records

32. Table 3 summarizes 11 insurer call records (one non-fault claim and ten captured non-fault claims) in each of which the non-fault customer was provided with a TRV.

TABLE 3 Insurer electronic call records involving the provision of TRV services to the non-fault customer

<i>Insurer</i>	<i>Type of hire</i>	<i>Level of TRV provided</i>
<i>Non-fault claim</i> [X]	Credit hire	Like-for-like
<i>Captured non-fault claims</i> [X]	Direct hire	Like-for-like
[X]	Direct hire	Not disclosed
[X]	Direct hire	Like-for-like
[X]	Direct hire	Lower class
[X]	Direct hire	Lower class
[X]	Direct hire	Lower class
[X]	Direct hire	Like-for-like
[X]	Direct hire	Not disclosed
[X]	Direct hire	Like-for-like
[X]	Direct hire	Like-for-like

Source: Insurers.

33. Table 3 shows that, of the 11 insurer calls resulting in the provision of a TRV to a non-fault customer that we have reviewed so far, only one related to the insurer's non-fault customer (rather than a captured non-fault customer). This customer received a like-for-like vehicle under credit hire.
34. We have so far reviewed ten insurer calls where a captured non-fault customer was provided with a TRV under direct hire:
- (a) In two cases, the type of TRV provided was not discussed between the insurer and the customer.
- (b) In five cases, the captured non-fault customer was provided with a like-for-like TRV. In one of these cases, the customer demonstrated a genuine need for a like-for-like TRV but, in the remaining four cases, the claims handler did not appear to assess whether the customer required a like-for-like TRV or whether a TRV of a lower class would have met their needs.¹¹ We note that, although a fault insurer has the incentive to minimize the cost of TRV services to a captured non-fault customer, if it offers a poor quality of service the customer may go to a

¹¹ We note that such an assessment might have been carried out at a later stage in the process. Also, by focussing only on cases where a TRV was provided, we have not captured those cases where there was an assessment of the customer's need, which resulted in no TRV being provided.

CMC, which is likely to be more expensive for the fault insurer (due to higher daily rates and, possibly, a longer hire duration).

- (c) In three cases, the captured non-fault customer was provided with a TRV of a lower class than their own vehicle. In these cases, the customer was encouraged to accept a lower class of TRV, as this appeared sufficient for their needs.

Review of CMC/CHC electronic call records

35. Table 4 summarizes 11 CMC/CHC call records, in each of which the non-fault customer was provided with a TRV.

TABLE 4 **CMC/CHC electronic call records involving the provision of TRV services to the non-fault customer**

<i>CMC/CHC</i>	<i>Type of hire</i>	<i>Level of TRV provided</i>
[X]	Credit hire	Like-for-like
[X]	Credit hire	Not disclosed
[X]	Credit hire	Lower class
[X]	Credit hire	Like-for-like
[X]	Credit hire	Like-for-like
[X]	Credit hire	Like-for-like
[X]	Credit hire	Like-for-like
[X]	Credit hire	Like-for-like
[X]	Credit hire	Not disclosed
[X]	Credit hire	Like-for-like
[X]	Credit hire	Not disclosed

Source: CMCs/CHCs.

36. We have so far reviewed 11 CMC/CHC calls where a non-fault customer was provided with a TRV under credit hire:

- (a) In three cases, the type of TRV provided was not discussed between the CMC/CHC and the customer.
- (b) In seven cases, the non-fault customer was provided with a like-for-like TRV. In two of these cases, the customer demonstrated a genuine need for a like-for-like TRV. In the remaining five cases, the claims handler did not appear to assess whether the customer required a like-for-like TRV or whether a TRV of a lower class would have met their needs.¹² This may indicate some overprovision of

¹² See footnote to paragraph 34(b).

TRV services as, for some of these customers, a lower class of vehicle might have been sufficient to meet their needs.

- (c) In one case, the non-fault customer was provided with a TRV of a lower class than their own vehicle. In this case, the customer was encouraged to accept a lower class of TRV, as this appeared sufficient for their needs.

Our assessment

37. Given that determining the level of TRV service which will meet a claimant's tort law entitlement involves an assessment of the specific facts of a case,¹³ our particular interest in listening to a sample calls was the approach taken by the claim handler (captured non-fault, non-fault or CMC/CHC) to assess the claimant's needs (ie the kinds of enquiries made). We recognise that claims handlers process a large volume of claims, and seek to do so efficiently, in order to ensure non-fault claimants are not underprovided in their need for a TRV.
38. Overall, we have so far reviewed 12 call records where a non-fault customer was provided with TRV services under a credit hire agreement and ten call records where a captured non-fault customer was provided with TRV services under a direct hire agreement.
39. Where the type of TRV to be provided to the customer was discussed between the call handler and the customer, the majority of customers received a like-for-like TRV, irrespective of whether the TRV was provided under a credit hire or direct hire agreement. However, in the small number of calls which we have reviewed so far, there was a greater likelihood of receiving a lower quality TRV if captured by the fault insurer (3 in 10 compared with 1 in 12). Also, around half of the non-fault claimants

¹³ The non-fault driver is entitled to recover the reasonable costs of car hire provided the reasonable need for an alternative vehicle can be established.

who received a TRV received a like-for-like TRV without having to explain why it was needed (6 in 12 of those handled by a CMC/CHC/non-fault insurer and 4 in 10 of those captured by the fault insurer).

40. Given the small number of calls which we have listened to so far, we treat this evidence with caution. We intend to listen to more such calls.

Routes to the provision of TRV services

TABLE 1 Proportion of non-fault claimants who receive a credit hire TRV

<i>Insurer</i>	<i>Proportion of non-fault claimants who receive a credit hire TRV (%)*</i>
Admiral	[X]
Ageas Insurance	[X]
Aviva	[X]
AXA UK	[X]
AXA Northern Ireland	[X]
CISGIL	[X]
Direct Line	[X]
Esure	[X]
LV=	[X]
RSA	[X]
Zurich	[X]
Unweighted average	38

Source: CC analysis of data from the parties.

*This data is limited to non-fault claims notified to non-fault insurers and cases where the non-fault insurer knows that a credit hire vehicle has been provided.

TABLE 2 Proportion of captured non-fault claimants who receive a direct hire TRV

<i>Insurer</i>	<i>Proportion of captured non-fault claimants who receive a direct hire TRV (%)</i>
Admiral	[X]
Ageas Insurance	[X]
Aviva	[X]
AXA UK	[X]
AXA Northern Ireland	[X]
CISGIL	[X]
Direct Line	[X]
Esure	[X]
LV=	[X]
RSA	[X]
Zurich	[X]
Unweighted average	35

Source: CC analysis of data from the parties.

*[X] figures include the provision of both direct hire TRVs and courtesy cars to non-fault customers.