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**Inquiry Manager
Private Motor Insurance market investigation
Competition Commission
Victoria House
Southampton Row
LONDON
WC1B 4AD**

9th January 2013

by e-mail

Dear Sirs

We respond to your statement of issues as below. The numbering reflects the numbering in the statement. Where we have no response as it is not an area we are involved then we have not commented. We are invited to:-

- provide you with our reasoned views on these theories of harm
- to support our views with relevant evidence (including original documentation and analysis)
- to tell you if we believe either that
 - (a) the issues you have identified should not be within the scope of your investigation or are mischaracterized
 - (b) there are further issues not identified or issues which you have indicated you are not minded to pursue which you should consider.If we wish to make such representations, we are asked that we indicate clearly why the issues we identify either should or should not form part of your investigation

1-17 no comment

ToH 1: Harm arising from the separation of cost liability and cost control

18 to 21 This is a clear-sighted summary of the position as it is today but in our view mischaracterised. The reasons are given below:-

The initial concept is mischaracterised and the inquiry is in danger of straying into areas that are not part of the insurance industry which it is investigating. It fails to note that the payer is in law the tortfeasor, not the insurer and that there is every reason why the tortfeasor should not control the costs. It is for the claimant to formulate their loss and to claim for it. Principally the insurer is only involved as the indemnitor of the tortfeasor. Although there have, for many years (but more frequently and commonly in recent years under EU legislation) been occasions when insurers can seek to be joined in or can be made parties in their own right this does not change the basic characteristic of the claim or the criteria the victim has to meet to obtain redress.

Altering this 'separation' would not be a change to the insurance industry but a change to this country's legal system; to the legal rights and remedies of victims. It is an issue about this country's legal system, rather than an issue about the insurance industry.

There is no historical perspective and an overview of how the industry evolved is relevant especially as the ToH in this regard is labelled 'moral hazard'. This would also inform thinking on Relevant Customer Benefits (RCB). An examination of the insurance industry in this context would explore the manner in which they have for many years chosen to intervene in the defence of claims in which they have an interest in a way which has benefited them and amounted to little more than the bullying of ill informed victims (see 29b below) This was particularly the case for victims who had no injury claim and so could not obtain affordable legal advice as to their remedies. Third party insurers were unwilling to provide mobility to innocent victims of non-fault accidents and credit hire companies stepped in to fill the service gap against strong opposition from the insurance industry

The phrase "*To attract business, service providers often pay referral fees to those who put them in touch with parties involved in an accident*" is factually accurate, but this puts the emphasis onto the service provider, when it was the referrers and particularly insurers, that drove the escalation of referral fees to the point that the amounts became material. It would be more accurate to say "*To secure business, service providers....*"

Footnote 9. This is correct to a point, elements of the claim can be pursued separately through commercial negotiation, the RTA portal and the ABI GTA. If any one of the elements has to be litigated then ALL of the claims have to come together. One claim, one case. This puts a premium on understanding and having co-operation between the stakeholders. Historically CHC's did not receive PI referral fees but wanted the PI to be with a solicitor that would deal properly with any subsequent hire claims, the referral of the PI was 'paid' by the solicitor in expertise, in many cases a solicitor would do the assessment of liability. The separation of hire and PI by insurers to maximise revenue adversely affects CHC's because if the hire charges have to be litigated to recover, the claim is with a solicitor with no commercial links with the CHC and little interest in the added complexity of hire recovery.

22. Figure 1 .Does not capture all of the elements. The FNOL provider may not be the entity that receives the referral fee. In many cases FNOL is a service in itself, or is done by the insurer or an agent of the insurer

23. The 'no win no fee' offering does not have to be tied to a CFA or a CCFA. It could be via an ATE, or simply the commercial stance of the solicitor taking on the case. Increasing the third party costs paid through an uplift in solicitor fees from a CCA or the recovery of an ATE premium is far from universal.

26. Misses out some parts of the equation partly as it is only about successful claims

- Adverse and other costs paid out by the ATE insurer to the claimant solicitor and the Third party Insurer.
- There may, or may not be a CMC involved. Often the client's insurer passes the PI claim directly to a PI solicitor and receives the commission
- Claims handling fees and success fees are not universal
- Commission received by a CMC from an ATE insurer is contingent on recovery of the premium

27. This is also a mischaracterisation. The claimant in all this really perceives the services as commissioned by insurance companies and they have no control of the cost of the services, fault or non-fault. A fault accident customer does not (generally) question the cost of the repairs to the vehicle. The provider of the services is cost controlled either by the insurer, the independent engineer, the courts or commercial negotiation. The customer is rarely involved and they do not (generally) commission the services fault or non-fault.

a) Whilst the services themselves may or may not 'cost' more this over-simplifies the issue. If anyone other than the third party insurer (having accepted liability) provides services to a non-fault accident victim other costs must be included *i.e.* the cost of recovering the charge for the services provided; the inherent risk of incorrectly assessing liability; the risk that the third party turns out to be uninsured.

b) What someone may be 'content with' following a non-fault accident turns upon their knowledge of their rights. At one time nobody got a replacement vehicle, because nobody knew it was their right in law, generally they were 'content' with this. Then most who were 'content' with a small car replacement because no-one offered like for like replacements. Now many (not most) are offered a like for like replacement, subject to need. As demonstrated to the inquiry group, CHC's assess need and, if no real need for a matching vehicle is expressed, a lower specification vehicle should be charged to the third party¹.

It is certainly the case that if CHC's had not fought the legal battle to establish the customer's right to an adequate replacement vehicle that insurers would have continued to benefit from the acceptance of a lower specification vehicle in all cases, or no replacement at all. It seems implicit in the description that the 'over-supply' can only be regulated by suppressing the knowledge and the rights of an individual claimant.

28. When comparing credit hire and repair services to other models it should also be considered that if the comprehensive insurer acts on behalf of the non-fault insurer and provides a service (repair and hire) then:

a) The comprehensive insurer has to pay out and recover its outlay, there is a cash, profit and overhead cost to this that will not be recovered. The client's insurer will have to

- arrange for vehicle to be taken to a repairer
- have it inspected
- authorise repairs
- check final invoice against estimate
- pay repairer
- approach third party insurer with liability allegation
- if third party has not reported accident, chase insurer for response
- wait for third party insurer to agree indemnity

¹ In the sample call provided to the inquiry group the driver of a Jeep Grand Cherokee declared himself happy with any four door replacement and the third party was charged for a lower specification vehicle accordingly

- Liaise with customer over circumstances of accident
- Chase third party insurer for payment

b) the comprehensive insurer may not think it economical to dispute liability, leaving the policyholder unrepresented

c) the policyholder will have to pay out any excess and try to recover from the TP unless they have an LEI policy

So there are costs to the comprehensive insurer that have to be considered and RCB (liability support, excess payment and recovery).

29. An interesting use of the concept of competitive advantage. If an insurer reduces its costs generally this must be regarded as good for its stakeholders. This allows it to offer reduced premiums, increase market share or deliver more profit, and it can do this while increasing the level of service to its own policyholders. To match this the competitors must also reduce their cost bases one way or another. This can be characterised as 'the prisoners dilemma', but it is really just competition delivering benefits to the customer.

30. In fact the insurer will be 'at fault' or 'no blame to be placed' on 75% of claims and 'not at fault' with an identified third party to recover from in only about 25%. Thus reducing the 'fault' indemnity spend has been a key focus and the effect of 'non-fault claims' is far less. Many of the measures taken to reduce costs (rebates, paint indexes) have been misconstrued as attempts to prejudice competitors².

There have been a variety of responses to the increase in the cost of non-fault claims as victims became able to exercise their rights in law. Most of which bring which them RCB including swift admission of liability and provision of services by non-fault insurers to innocent victims.

Where the comprehensive insurer does not involve a partner in pursuit of its own non-fault accidents the insurer takes on cost and cash burdens to the detriment of policyholders and shareholders. The current structure puts cost and indemnity where it should be, with the insurer of the negligent party.

31. This is precisely the opposite of what economic theory and common sense would suggest. Competition restricts the degree to which costs can be passed on. The UK insurance market is widely regarded as the most competitive in the world. There are large number of different insurers and many channels of distribution. Competition restricts the ability to pass on cost increases, it does not facilitate it.

Insurers through their distribution strategies have encouraged price comparisons at the expense of quality, service or reliability. In the 70's and 80's the vast majority of insurance was sold through insurance brokers who had a limited range of products and manual 'pricing books'. Third party software providers like Misys, then produced electronic versions of the pricing books giving brokers the ability to rank insurance quotes by price. The advent of

² This has been publicised recently on a Channel 4 programme 7 Jan 2013, typical insurer responses can be found here <http://www.insurancetimes.co.uk/insurers-hit-back-at-channel-4-dispatches-allegations/1400404.article>

Direct Line changed the insurance market permanently and the USP was 'cut out the middle man' and save on price. In more recent times we have PCW's ranking quotations by price.

The effect is stark, put prices up and lose market share, instantly. Offer a lower price and gain market share. This reduces, and in many cases eliminates, the ability of insurers to increase prices when costs increase. Insurer investment income that underpinned historic underwriting losses has sharply reduced, the cost of personal injury claims has increased, yet the rise in premiums that triggered the initial government and OFT investigations has now reversed. As many (including Helphire) predicted. The submission by the CHO to the OFT inquiry showed that the rises in premiums were far lower than the headlines suggested. The Gross written Premium collected by motor insurers was reasonably stable and the number of cars insured rising.

Most price indexes are flawed price indicators as they analyse prices quoted, not paid. The savvy British public shops around and insurers routinely price-match at renewal. A table that compares premiums and vehicle numbers is given in appendix 1, showing a rise of only 4.8% from 2003 to 2010. In that period the RPI went from 189.9 (Dec 2003) to 228.4 (Dec 2010) a 20% increase, so average premiums declined in real terms.

There is no empirical evidence that credit hire has had any influence on premiums (this being the 'harm' proposed in this ToH). During the rapid rise in premiums, the industry contracted (see OFT returns). The industry is estimated at circa £500m per annum. A small part of the PMI premiums at over £10bn. It must be accepted that most of the victims had a right to mobility of some sort so the contribution to insurer costs is:

contribution = cost of credit hire - cost of conventional hire - cost benefit to insurers

The OFT estimated this at £225m but it had:

- a) misunderstood the provision of vehicles by third party insurers so over-valued the credit hire cost
- b) ignored the cost benefits to insurers of not having to administer 25% of claims [HHG initial submission 7c and 7e]

If this were to be properly assessed credit hire could be a net contributor to insurer profits as well as providing RCB.

32. The assertion that referral fees are a cost to be borne by insurers does not bear examination. It can only be transferred to insurers if there is a mechanism to extract more money from them than is justified. The income of CMC's and solicitors is determined by law. Solicitor costs are closely controlled, credit hire rates are set by the GTA and by the courts and so cannot be increased and passed on. The escalation of the referral fees is funded by reducing margins for solicitors and CHC's as the financial results of CHC's clearly demonstrates.

33. There is an assumption within this paragraph that these market characteristics necessarily increase costs for all and so the 'harm' is increased premiums overall. This

cannot be correct because even if costs were increased (this we do not accept as in our view costs are more accurately distributed) they are not increased uniformly.

Insurers with better systems, more close connection with the customer are better able:

- a) to identify and provide services to non-fault customers
- b) identify victims of their policyholder's negligence and intervene to provide services

Insurers with multiple channels of distribution (brokers, affinity groups) and with a presence in the commercial fleet market have a reduced ability to take advantage of the opportunity to service their customers. This differential means that the more efficient insurers offer lower premiums and gain market share. The others have to find ways to compete. As an absolute minimum this must reduce the effect of any theoretical cost base increase.

- a) Bilaterals between insurers can, and do, prejudice the service provided to their policyholder as non-fault victim will be treated differently according to who insures the third party
- b) The GTA covers much more than rate, it is a fully developed protocol that governs the documentation and controls the length of hire and so reduces costs and improves the 'customer journey', analogous to RIPE. Rates are not only governed by the GTA, the claimant can only recover that which is reasonable and the rates are only part of the picture, service; conversion rate; commissions paid are highly competitive.
- c) the race to the non-fault victim brings a number of benefits not least swift admission of liability, provision of a suitable vehicle and often relieving the victim of the need to pay out, and recover their excess

38. We urge the Competition Commission to look widely at insurer costs and not to focus exclusively on the perceived cost differentials and to look empirically at the shifts in premiums and the correlation with the rise of non-fault claim related activities as we are convinced there is none, and will be none in the future.

ToH2: Harm arising from the beneficiary of post-accident services being different from and possibly less well informed than the procurer of those services

39. We fully agree that the non-fault accident victim is surrounded by an array of stakeholders with different and often competing vested interests. It is only relatively recently that the claimant has had the benefit of parties to the process that have interests aligned with theirs, to give them the best possible service and ensure that they receive their entitlements. Historically the power lay entirely with the at-fault insurer and the needs of the victims were ignored. The advent of CHC's dramatically changed the customer experience. The CHC when providing hire and repair services is motivated to give the best service and to ensure that the services provided are proportionate, otherwise they are not recoverable.

40. The CHC has to ensure that the car is repaired to the required standard and promptly, not to do so could leave it exposed to rectification work, complaints and unrecoverable periods of hire. This is not the case with a comprehensive insurer that would simply refer the

customer back to the repairing garage, or in extreme cases get rectification done elsewhere and remove the repairer from its panel, little or no consequential loss.

41. The CHC's are bound to explain carefully to the claimant what the services on offer are and that they are optional. Transparency is crucial not least because a lack of understanding by the customer prejudices recovery.

42. There is a degree of interplay between choice and insurer costs and it is the costs to insurers with its theoretical impact on premiums that underpins this ToH. Directing fault customers to approved bodyshops and non-fault to CHC's reduces insurer costs, the savings may be passed as lower premiums. One option may be to have a lower premium without choice, and a higher premium with choice.

43. This analysis over-simplifies the drivers. Whilst price is a factor CHC's are highly aware of the need to give the service a customer has the right to expect. Complaints are taken very seriously and any supplier causing customers to complain would quickly be replaced.

Summary

1. We have provided reasoned arguments why elements of the ToH have been mischaracterised
2. The wide provision of a replacement vehicle following a non-fault accident is a direct result of the Credit Hire industry. It is a consumer right and important RCB and should be protected
3. We do not believe that there is any evidence that the provision of credit hire vehicles or credit repair services has impacted premiums paid by the consumer
4. There is no harm because the competitive insurance market is functioning as it should, delivering low premiums and service to customers. These ancillary services are part of that competition and delivering both value and important RCB
5. We urge the Competition Commission to look at the cost savings and benefits to the insurance industry available from our industry and to take into account the real cost of insurers reclaiming costs from each other

If you have any questions regarding our response then please contact the undersigned. We have no objection to the publication of our response in full.

Yours sincerely

Alan G Gilbert
Group Technical Manager

Appendix 1 Average premiums calculated from ABI statistics

	Private/Domestic Vehicles				Commercial/Other Vehicles				All Vehicles			
	NWP(£m)	Vehicles	Average	Variance	NWP(£m)	Vehicles	Average	Variance	NWP(£m)	Vehicles	Average	Variance
2003	6,849	21,517	£318.31		2,673	3,247	£823.19		9531	24,765	£384.86	
2004	7,370	22,506	£327.46	2.90%	2,784	3,431	£811.54	-1.40%	10154	25,937	£391.49	1.70%
2005	7,563	24,340	£310.72	-5.10%	2,834	3,613	£784.45	-3.30%	10397	27,953	£371.95	-5.00%
2006	7,491	25,267	£296.47	-4.60%	2,829	4,078	£693.78	-11.60%	10277	29,345	£350.21	-5.80%
2007	7,806	25,259	£309.04	4.20%	2,722	4,398	£618.94	-10.80%	10527	29,657	£354.96	1.40%
2008	8,011	24,636	£325.18	5.20%	2,685	4,382	£612.68	-1.00%	10696	29,018	£368.60	3.80%
2009	7,569	25,073	£301.88	-7.20%	2,342	4,326	£541.42	-11.60%	9910	29,399	£337.09	-8.50%
2010	8,104	24,300	£333.50	10.50%	2,581	4,400	£586.59	8.30%	10684	28,700	£372.26	10.40%

Source Access to Justice Action Group

Methodology to the average price of motor insurance premiums table.

1. All documents used are available from the Association of British Insurers (ABI) or to their members. links below
2. The average premium price has been worked out by taking the Net Written Premium (NWP) for a given year and dividing it by the total number of motor vehicles insured in the same year.
3. The NWP from 2003 – 2007 can be found in Document 2 'Annual General Insurance Overview Statistics' Table 4
4. The NWP from 2007 – 2009 can be found in Document 1 'Annual General Insurance Overview Statistics' Table 4
5. The NWP for 2010 is available in Document 4 'ABI Insurance – Key Facts 2011' pg 5. In Document 1 the table only had Q1-Q3 NWP of 2010, Document 4 provides an overview.
6. The total number of vehicles can be found in Document 3, 'Quarterly Motor Statistics'. Table 1 shows the number of 'exposures' (vehicles with a policy) for each year and by each type of policy: private, motorcycles, other (commercial vehicles)

Links

Document 1 'Annual General Insurance Overview Statistics' Table 4

<http://www.accessstojusticeactiongroup.co.uk/home/wp-content/uploads/2011/10/Document-1-ABI-Annual-General-Insurance-Overview-Statistics.pdf>

on ABI website here: under Data (right hand side) 'Annual General Insurance Overview)

http://www.abi.org.uk/Facts_and_Figures/Facts__Figures.aspx

Document 2 'Annual General Insurance Overview Statistics' Table 4

http://old.abi.org.uk/Display/default.asp?Menu_ID=1116&Menu_All=1068,1116,0

Document 3, 'Quarterly Motor Statistics'. Table 1 (*this document is not freely available and a subscription is required*) a copy can be found here on the AJAG website:

<http://www.accessstojusticeactiongroup.co.uk/home/wp-content/uploads/2011/10/Document-3-ABI-Quarterly-Motor-Statistics-October-2011.pdf>

Document 4 'ABI Insurance – Key Facts 2011' pg 5

http://www.abi.org.uk/Publications/ABI_Publications_UK_Insurance_Key_Facts_2011_2ed.aspx