



Competition Commission's Private Motor insurance market investigation – annotated issues statement and working papers

Response of the Association of British Insurers

The ABI

The ABI is the voice of insurance, representing the general insurance, investment and long-term savings industry. It was formed in 1985 to represent the whole of the industry and today has over 300 members, accounting for some 90% of premiums in the UK.

Executive Summary

The ABI welcomes the opportunity to respond to the Competition Commission's (CC) annotated issues statement and working papers on its private motor insurance (PMI) market investigation. In our response, we make the following key points:

- The insurance industry welcomes the work of the CC to date and strongly supported the Office of Fair Trading (OFT) referring the market to the CC for investigation. What we want to see emerge from the CC's work is a market that functions efficiently and effectively for consumers, in particular through:
 - A reduction in the inflationary pressure put on the price paid by consumers for car insurance;
 - An increase in the control an at-fault insurer has over the claims they are paying;
 - Increased certainty for consumers on the handling of their claims;
 - An improvement in the levels of quality and service insurers are able to offer their customers; and
 - Continued incentives for insurers to invest in product differentiation and improving customer service.
- The ABI is in broad agreement with the key issues set out under each of the theories of harm (TOHs) in the annotated issues statement; the specific areas of those TOHs upon which there is continued focus; and those on which the CC has concluded there is limited risk of consumer detriment.
- The ABI agrees that the key focus of the investigation should remain on ToH1 in relation to the repair and replacement of vehicles and not on bodily injury. Of the five TOHs, we believe this is where potential for customer detriment is highest and where we believe the CC has the potential to deliver change to improve consumer outcomes.
- When the CC makes a decision on what it will focus on and potential remedies, reducing volatility and increasing certainty should be a key aim, particularly in relation to ToH1.
- As the FCA has recently announced a market study of general insurance add-on products, it would be more efficient for the CC to contribute to that work, rather than running a separate investigation on this aspect of PMI. This is consistent with the CC's previous recognition that transparency and complexity was within the remit of the FCA. Having two reviews/investigations by two regulators puts strain on the ability of the industry to engage with both effectively. It could also result in conflicting analysis and conclusions which could harm the industry and prevent attention being focussed on making coordinated changes that will benefit consumers.



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

1. The insurance industry is in agreement that ToH1 is the most significant issue identified by the CC and should be the principal focus of its investigation.
2. The insurance industry supports the focus on repair of vehicles and the provision of replacement vehicles. There are a number of issues in the PMI market that need to be addressed – not least that the at-fault insurer has little ability to control the costs it is liable for – given the number and range of organisations and sectors in the claims supply chain (credit hire organisations (CHOs), garages etc.) that have the ability to add unnecessary additional frictional costs to a claim. However, the CC should be mindful that overcosting itself will not give rise to upwards pressure on PMI premiums. Only where any profit arising from such overcosting leaks outside the insurance industry is there ultimately a negative impact. This is because increased costs lost through leakage will ultimately be passed on to premium paying consumers by way of higher car insurance premiums.
3. When the CC turns its focus to any remedies for ToH1, any solution will need to embrace all participants in the relevant supply chain and be proportionate to the extent of any harm identified upon full analysis.
4. Any remedies should have at their heart the following principles:
 - A recognition of the customer's legal right to rectification and indemnity;
 - Maintaining a good customer experience through any claim;
 - Adequate control by the paying party over costs of repair and/or replacement; and
 - A reduction in frictional costs of claims.

Temporary replacement vehicles (TRVs)

5. Credit hire adds substantial additional unnecessary costs for motor insurers, leading to excessive costs in the PMI market and consequently higher motor insurance premiums. That is why we welcome the findings of the CC in their annotated issues statement which found that:
 - The cost of TRV services for a non-fault claimant is significantly higher when these services are provided under a credit hire agreement than when they are provided under a direct hire agreement;
 - On average, insurers pay around twice as much for a credit hire vehicle than for a direct hire vehicle;
 - The cause of this higher cost appears to be both a higher daily hire rate (possibly due to overcosting) and longer hire duration (possibly due to overprovision); and
 - Credit hire durations are on average 3.7 days longer than direct hire durations.
6. The working paper "ToH 1: Overcosting and overprovision of TRVs" found that the average credit hire daily rate is between 50 and 120 per cent higher than the average direct hire rate. This cost only serves to add unnecessary additional cost to insurers' overall claims expenditure which, in turn, creates inflationary pressure on motor insurance premiums.
7. The industry has made various attempts to mitigate the unnecessary costs it faces in relation to the provision of replacement vehicles on a credit hire basis, including the



General Terms of Agreement (GTA), bilateral agreements and third party assistance, which have had varying but limited degrees of success:

- The GTA is a negotiated outcome between insurers and CHOs which sets rates for the settlement of claims for hire of replacement vehicles but at a rate far above what can be achieved between insurers bilaterally. Although this helped bring a degree of certainty to the market, daily settlement rates have continued to increase at unsustainable rates.
 - Bilateral agreements between insurers are limited because insurers often do not have complete control of the end-to-end claims process. Also a very large number of such agreements would need to be in place to cover the whole industry.
8. These initiatives are limited in their ability to help reduce unnecessary costs in the market because they can only go so far to address the 'leakage' of money to non-insurers. This is particularly the case for the GTA. While the working paper "ToH 1: Overcosting and overprovision of TRVs" recognises that the GTA allows for recovery of fees at a rate less than those that CHOs would be able to recover through the courts, it is at a rate far above that which can be achieved between insurers engaged in bilateral agreements, where the potential for cost control is substantially greater.

Potential CC solutions

9. As identified by the OFT in their preliminary work, there are a number of potential interventions the CC could make which have the potential to effectively address the unnecessary costs associated with the provision of TRVs. The industry does not believe that retaining the GTA, of itself, would be an effective solution in managing these unnecessary costs. Furthermore, any solution/remedy should seek to remove the element of referral fees included in the current GTA rates given that referral fees only result in increased cost (as the Government has recognised in relation to referral fees in personal injury claims).
10. Due to the number and variety of players in the market which are all subject to differing degrees of regulation (insurers, accident management companies, insurance brokers and CHOs), CC intervention, as opposed to a voluntary insurer-led approach, is the only way to deliver the comprehensive and future-proofed reform of the market that is required to remove the unnecessary costs in the market and improve outcomes for consumers by way of lower motor insurance premiums.

TOH 2 - Beneficiary of post-accident services differs from the procurer

Repair of vehicles

11. The industry welcomes the CC's preliminary view that there is no evidence of under-provision of repair services and that the focus should be on the cost of provision (i.e. ToH1). The insurance industry has been responsible for driving up standards and driving down the costs of repair to the advantage of customers. Any suggestion that insurers provide a different quality of repair if the vehicle is repaired by the at-fault, as opposed to non-fault insurer, is rejected by the industry.
12. The ABI recognises and endorses the findings of the IFF Survey Report that 88% of respondents considered their vehicles were in the same or better condition after accident repairs were carried out by their insurer.



13. The industry invests heavily through Thatcham, the motor insurers' automotive research centre, in helping to improve overall car design and reducing the cost of repairs. Thatcham was established in 1969 and has the aim of containing or reducing the cost of motor insurance claims whilst maintaining safety standards. Thatcham's technical repair experts produce a wealth of vehicle repair data, ranging from light structural research, to full body methods.
14. In 2007, members of the ABI were instrumental in establishing a BSI Kitemark standard for vehicle body repair. Independently audited and Kitemarked bodyshops are required to demonstrate compliance to rigorous standards, which include: the use of repair instructions; minimum equipment levels; employment of industry accredited staff; and use of appropriate parts and materials. The presence of Kitemarked shops within their repair networks gives insurers confidence in the repair process for the benefit and safety of their customers.
15. Motor insurers have also supported Thatcham's Parts Accreditation programme which operates to independently verify the exacting standard and quality of cosmetic, aftermarket parts, thus providing an alternative and reliable source of parts for UK repairers.

Approved repair networks

16. The IFF survey report suggests that a third of claimants surveyed did not feel that they had the right to instruct a repairer of choice; equally a third of non-fault claimants knew that they were legally entitled to choose a garage to undertake repairs.
17. There is more the industry can do to ensure that consumers understand their rights. It is important that consumers retain a freedom of choice in who repairs their vehicle. But it is also important that consumers recognise the benefits they receive from using an insurer's approved repair network. Motor insurers need to ensure that their customers get the best possible repair to their vehicles following a collision, at a price that is competitive and allows insurers to continue to offer PMI at a reasonable price. To do this, insurers negotiate contracts with approved repairers who guarantee a high quality repair for the consumer, at the right price for the insurer given the volume of work they provide. It is not unreasonable for insurers to manage their costs in this way and it is in consumers' financial interest that they do so. Policyholders are free to use whichever repairer they want, but in many circumstances this may result in a higher cost which might be reflected in the excess the consumer pays.
18. The ability to manage costs, supervise quality, control service and deal with complaints is generally better achieved through a carefully selected and efficiently monitored repair network, and such an arrangement is likely to contribute towards a better quality and lower cost service. The consequence of insurers not managing their costs in this way would be to put even more upward pressure on premiums, which would be to the detriment of all consumers.
19. Members of the ABI would welcome an end to differential pricing for labour costs between at-fault and not-at-fault repair services, to the extent that such a distinction is made. The vehicle repair outcome is the same regardless of which insurer is at fault but the costs of that repair can differ significantly in certain cases.



ToH 3 – Harm due to horizontal effects (market concentration)

High concentration of PMI providers in Northern Ireland

20. Although the market for PMI in Northern Ireland (NI) is undergoing change (new providers have entered the market recently, a Northern Ireland-specific PCW has launched, there have been changes to the civil litigation system and a form of graduated driving licence is in the process of being introduced) the ABI agrees that the supply of PMI differs in NI from the rest of the UK. We agree with the analysis in “ToH 3: Horizontal concentration in PMI providers on Northern Ireland” setting out some of the challenges that insurers face in supplying PMI in NI, specifically:

- The market for PMI in NI is a small one: There are significantly fewer vehicles to insure in NI compared with Great Britain making it more difficult for any insurer – whether an incumbent or potential new entrant – to achieve economies of scale, either from an underwriting or a claims perspective;
- Sales of PMI in NI are predominantly intermediated which has the potential to add frictional costs into the system due to the way claims are notified. On the other hand, sales of PMI in Great Britain are predominantly made through PCWs or by insurers directly and as such insurers have greater control over their at-fault claims than they do in NI;
- Lack of underwriting experience: Although the size of the market for PMI is smaller, NI has a number of distinguishing features from Great Britain including socio-demographic factors, geographical factors and a different civil litigation system (see below). As such, insurers with little experience of the NI market could find it more challenging to accurately underwrite risk in the short-term;
- The civil litigation system in NI differs in a number of important respects from the system in Great Britain. Personal injury compensation awards are significantly higher in NI when compared with Great Britain. There are also significant differences in relation to the repair of vehicles. For example, motor property damage claims are always dealt with in the County Court in Northern Ireland and therefore attract costs awards irrespective of the amount claimed.

21. The ABI has been actively engaging with Ministers, officials, consumer groups and the legal community over the last 18 months on the issues which affect the cost of motor insurance in NI. While progress is being made to address some of these issues, particularly in relation to young drivers with the introduction of Graduated Driving Licensing, little has been done to address the high cost of civil litigation, where compensation awards and legal costs are higher than the rest of the UK. This has by far the biggest impact on the higher cost of motor insurance in NI and impacts on the attractiveness of Northern Ireland as a place for insurers to write business.

22. It is difficult to comment on the lower loss ratios said to exist in NI. We would expect loss ratios in NI to be similar to loss ratios in the broker-distributed PMI market in Great Britain. Accordingly, lower loss ratios in NI may well be a function of the predominance of intermediated distribution rather than as a result of any other specific feature of the NI market.



ToH 4 – Harm arising from providers' strategies to soften competition

Transparency and complexity of add-on products

23. The CC raised questions about the amount of information supplied by insurers in relation to add-on products sold in conjunction with PMI policies. There is a need to strike the right balance between providing information to consumers in order to assist them to make an informed purchasing decision and not overloading consumers with so much information that even fewer consumers read the key facts material provided than read it currently. As indicated by the IFF research (para 2.29), most consumers preferred commonly purchased policy features to be offered separately so that they can be added or removed based on the specific needs of the purchasing customer.
24. The Financial Conduct Authority (FCA) announced on 9th July its own investigation into the add-ons to general insurance products. The industry would welcome clarity on how the CC proposes to ensure that there is no overlap and/or duplication between its own investigation and that of the FCA, especially given the FCA's new mandate to promote effective competition in the interests of consumers. The industry is concerned about the burden of engaging effectively with two separate enquiries running in parallel as well as the possibility of inconsistent outcomes as a result of having two regulators investigating the same topic.
25. Given the FCA's recent examination of the motor legal expenses insurance market, the ABI would support the FCA taking responsibility for investigating the issue of add-on products further, enabling the CC to focus on the other areas of its inquiry, principally ToH1.

ToH 5 – Harm arising from vertical relationships

Most favoured nation (MFN) clauses

26. The insurance industry welcomes the CC's examination of the operation of MFN clauses. MFN clauses can prevent insurers rewarding other distributors and their customers for their lower risk profile, their efforts to help the insurer detect fraud and more accurately price for the insurance risk.
27. We welcome the CC's initial view that wide MFNs are potentially problematic. However, many in the industry do not agree that there is a material difference in practice between narrow (or "own-website") MFNs and wider ones, particularly for insurers who are seeking to distribute both directly and through Price Comparison Websites (PCWs). This is because own-website MFNs effectively enable PCWs to raise commissions with immunity from the competitive effect of that decision as the MFN clause constrains an insurer's ability to pass on these higher costs through increased premiums. Raising premiums on one PCW (to reflect its higher costs) would force the insurer to raise its own direct prices in parallel, which could be both uneconomic (rendering marketing spend inefficient) and detrimental to consumers (as it would likely lead to higher premiums).
28. As increasing direct premiums significantly might be economically unviable, this would leave an insurer with two options: to spread the cost across all channels, or to delist. Delisting is a highly unattractive option for an insurer. Given that the four main PCWs have 65-70% market share, we are of the view that the CC significantly underestimates



the cost to an insurer of delisting. As the CC has acknowledged, a PCW is considerably less affected by the delisting of one of many insurers on its panel than an insurer is by delisting from one of the main PCWs. This gives PCWs market power.

29. Insurers are of the view that this market power has started to be reflected in increasing commissions and the industry does not recognise the CC's view of current commission inflation rates. Given that the inflationary pressure on commissions is only likely to increase (supported by the artificial mechanism of MFNs), PCWs may entrench their current market power over time.

Association of British Insurers
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