Aviva Response to the Competition Commission Investigation into Private Motor Insurance

"Remedies Notice"

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1 Contact Details

This response relates to the Competition Commission's (**Commission**) investigation into private motor insurance (**PMI**) and the Commission's **Remedies Notice** dated 17 December 2013.

If, at any stage, Aviva can assist the Competition Commission further please feel free to contact either:

2 Aviva's Response to the Provisional Remedies

2.1 Executive Summary

Aviva is pleased to respond to the proposal for remedies put forward by the Competition Commission. Aviva broadly agrees with the Competition Commission's findings, and as it has consistently stated, considers that remedies are needed to improve the position for consumers.

Aviva recognises that there are no simple solutions to the adverse effects on competition identified by the CC. The challenge is for the Competition Commission to arrive at a package of remedies that have the right blend to resolve the concerns identified.

Aviva would ask the Competition Commission to note that this document represents Aviva's initial position, prepared in order to meet the deadline for responses. However given the complexity and challenges of the issues involved, Aviva will continue to refine and develop its views over the coming weeks. It welcomes the opportunity of the remedies hearing, and would also stress its willingness to engage in dialogue with the Competition Commission should that be helpful.

Aviva wishes first to address a significant issue that it has identified in considering the provisional remedies. This relates to the scope and application of the remedies to avoid distortion of the commercial (as opposed to private) motor insurance market.

The Competition Commission defines Private Motor Insurance as insurance for "…drivers of privately owned motor cars designed and used for non-business (private) use…". There can however be an impact on some Commercial products e.g.:

- Private cars on agricultural products
- Private use cars on small fleets
- Privately owned vehicles on Motor Trade
- Salary Sacrifice schemes for private car leasing

Aviva suggests that consideration is given by the Competition Commission to the specific scope of the remedies, which might include privately owned cars used for private and business purposes (and probably vans too) which are often insured as private cars. It is important that the application of the remedy is clear and simple to apply in practice. This is an area that requires clarification, especially in terms of modelling the effect.

Below is a summary of Aviva's views on the individual remedies. In each case, these are addressed in more detail in the question responses.

Remedy A

Aviva agrees with the Competition Commission's provisional finding under Theories of Harm 1 and 2 that customers have a poor understanding of their legal rights following an accident. Aviva supports an informational remedy in the form of an enforcement order binding insurers together with all other organisations that may receive first notifications of loss (FNOL).

Aviva believes that enough timely information should be provided to customers to allow them to make an informed choice about their post-insured event options. The content of such information will be to an extent driven by the form and scope of the final remedies. Aviva considers that the information is of most use to customers at the claims stage, and agrees with the Competition Commission that it should be clearly available in policy documentation.

In consumers' interests, Aviva recommends a universal set of words which could be adopted across the market, and this should cover the areas set out in Aviva's response in this document.

Theory of Harm 1

Aviva agrees with the provisional findings of the Competition Commission with regards to separation of liability and cost control, as well as excessive frictional and transactional cost. Aviva considers that the remedies proposed all to a greater or lesser extent would serve to reduce the separation of cost liability and cost control. Its view is that a combination of Remedy 1A (with subrogation rights), 1D/1F and 1G would best work to deal in a proportionate way with the issues described in the provisional findings by the Competition Commission.

Remedies 1A and 1B: Aviva believes Remedy 1A is the best remedy for the reasons outlined in this document.

Aviva suggests that the Competition Commission considers delivering Remedy 1A by way of an enforcement order so that private motor insurers provide a replacement car to their qualifying customers, regardless of fault.

Aviva believes this is possible via an enforcement order if subrogation is part of the solution as no change to the Road Traffic Act is required and the principles of common law still apply.

As set out below, Aviva does not believe that Remedy 1B is easy to make work operationally or likely to have the immediacy customers require.

Remedies 1C to 1G: Broadly Aviva supports these remedies and as noted above, the challenge will be to find a blend of remedies which deals in a proportionate way with the provisional findings. It does not however support Remedy 1E.

Remedy 1H: Aviva agrees with the CC that Remedy 1H(b) should not be pursued. Aviva believes Remedy 1H(a) would ultimately deliver the best outcome for the customer as it brings complete clarity on who will deal with the customer claims for repairs and replacement vehicle. Aviva believes however that our suggested variation of Remedy 1A will essentially achieve what a Remedy 1H would, but without the changes in law and therefore would be a much quicker solution.

Theory of Harm 2

Aviva does not consider that the Competition Commission's finding that insurers and CMCs fail to monitor effectively the quality of repairs applies is conclusive. Aviva currently monitors repair quality however recognises that this practice may vary across the market; therefore we support all customers' having a common quality assurance framework concerning repair quality.

We have taken steps to ensure that our customers' vehicles are properly repaired and those repairs are guaranteed; any additional assurance which can be provided for the customer is welcomed. Aviva suggests that if the Competition Commission wishes to make changes, then those changes should be solved within the vehicle repair market, possibly by way of an accreditation that is supported by a stringent audit process funded by the repairers and ultimately paid for by the procurer of the services.

Theory of Harm 4

Aviva supports the principle of showing add-on prices on PCWs (Remedy 4A), but believes it is impractical to implement for all add-ons. Implementing this remedy for the most popular add-ons could be a workable alternative.

Whilst we recognise that the present market for NCB protection does not meet customer expectations nor provide them with sufficient information, and are supportive of addressing these points, Aviva does not support the remedy for 4B.We believe publishing NCB scales does not address the core issue, and would ultimately be more confusing for customers. We consider the key is to align the product with customer expectation, and we are currently working on proposals, which we are happy to discuss with the Competition Commission. We also support requirements to ensure clarity of wording.

Aviva fully supports Remedy 4C and recognises its consistency with the FCA's direction of focusing on increased transparency and ensuring that add-ons perform in line with customers' expectations.

Theory of Harm 5

Aviva agrees with the Competition Commission's provisional findings that 'most-favoured nation' ("MFNs") clauses in contracts between insurers and PCWs have an adverse effect on competition. We welcome the Competition Commission's proposed remedy of prohibiting wide MFN clauses. However, Aviva believes all MFN clauses are inherently problematic and that 'narrow' clauses also soften competition. Aviva requests that Remedy 5A be extended to cover all MFN clauses for the reasons we outline in this response.

2.2 Remedy A: Measures to improve claimants' understanding of their legal entitlements

Aviva supports the provisional finding that customers may not have a detailed understanding of how their separate rights in contract or tort interact in practice and especially in circumstances where liability may not be clear-cut.

In Aviva's view, it is essential that all parties are expected to both inform and educate their motor insurance customers as to their legal rights and options so that they are able to make an informed choice.

The Competition Commission has correctly identified the present practices that need to be altered by any final remedies so that the focus is on providing the best service to the customer. All of the present incentives to handle a fault or a non-fault claim differently should be removed, irrespective of who takes the initial call.

Aviva considers the information remedy proposed will be at its most effective at the point of claim and with improved policy documents. Aviva would suggest that this remedy should not be restricted to private motor but extend generally to all road users whether a motorcyclist or a commercial fleet. The proposal that the remedy should also apply at point of sale is unlikely to be effective, as customers' interests at that stage are focussed on price and cover, and any approach has to be balanced to the information needs at the time.

As so much business is transacted electronically, and increasingly, digitally, it will be necessary to consider how the same message can be communicated effectively to all customers, regardless of how they buy motor insurance, especially if any existing legal rights are altered.

Aviva suggests it would be in consumers' interests to consider a universal set of words which could be adopted across the market and for all types of road users, rather than leave individual trading entities to script their own wording.

Aviva considers that enhanced information and contract simplification is the starting point for all consumers purchasing private motor insurance. There has to be a mandated consistency of approach by brokers and insurers (or their agents), and we believe that the industry, led by the ABI, should be able to provide the information the Competition Commission believes is required and to work with the Competition Commission to develop this remedy into a final order or a recommendation to the FCA.

(a) What information should be provided to consumers?

Aviva believes that consumers ought to be provided with simple and clear information on both their policy entitlement and their legal rights so that they are in a position to make an informed choice and decision.

The present gap in customer understanding can be closed and a statement of rights could address the distortion identified by the Competition Commission. It would take some time to develop but it is important that it is consistent and delivered to all consumers. In order to do so it requires an enforcement order and / or recommendation to the relevant regulators or government that this becomes a mandatory requirement.

The content of the statement is to an extent driven by the form and scope of the final remedies proposed by the Competition Commission. Aviva would be happy to be involved in drafting an outline of the statement of rights.

As a minimum, all consumers need to be made aware of the following:

- The covers provided by their policy whether fault or non-fault with access to further information as required
- Whether there is cover for a similar size replacement car and establishment of their needs (subject to Remedy 1A)
- An explanation that the policy they purchased is a legally binding contract of indemnity and that the customer has separate rights in tort
- There should be a brief synopsis of what is not covered by the policy, and how they can be helped, either by way of their legal expenses cover, or receive legal advice or services that their insurer is unable to provide
- There should be a brief explanation of the likely journey to be undertaken down either route or what the consequences might be for the customer, including consequences for NCB entitlement. There should be a brief explanation of any other cover purchased e.g. Legal Expenses, replacement car, etc, so that claims can be made and appropriate advice given
- There should be a complaints section that is extended to cover issues regarding repair satisfaction

(b) When is this information best provided to consumers—with annual insurance policies, at the first notification of loss, or at some other point? Should this information be available on insurers' websites?

Aviva believes that a multifaceted approach is required but we would suggest the following as an outline:

- That the right level of information is provided prior to purchase and at inception of the policy, by incorporation into the agreed Statement of Facts and Needs
- This information should then be repeated in more detail in the policy summary and policy documentation
- It is essential that consumers are provided with the relevant information at FNOL. If the widest and fullest remedies to address separation and the removal of incentives to earn a "rent" from non-fault claims has been delivered by Remedy 1G, the conversations at FNOL should become very customer-centric and must ensure that all customers, whether fault or non-fault, are fully appraised of their position in both contract and tort. This will then ensure that they are able to make an informed choice. It is important to ensure that the provision of information at FNOL does not adversely impact call length for customers when they are reporting a claim - often in a distressed state - which is why information ought also to be provided prior to and at purchase

- There ought to be a Claims Page on the websites of insurers, intermediaries (including PCWs) and CMCs as well as the ABI's and BIBA's websites, each carrying the same minimum and universally agreed information. The same or similar information and messaging ought to be mandatory for solicitors (and other organisations) which may be approached by non-fault parties in the event of an accident

(c) Would it be more effective for consumers to be provided with a general statement of consumers' rights prepared and periodically updated by a body such as the Association of British Insurers or are there any examples of existing best practice in relation to information given to consumers by insurers?

Aviva believes this would be cost effective but does not believe it would sufficiently inform or educate customers because experience suggests customers do not read policy wordings and information provided in any great detail nor is such documentation always retained, requiring consumers to search out the information at the appropriate time.

Aviva considers this is something for which the industry and all market participants have to be held responsible and should be addressed for the benefit of consumers, in order to deal with the distortion in the market identified once and for all. It is our view that this is a matter for the FCA or the appropriate regulator to address and ensure that the wording is mandated and can be changed and adapted and is provided to all consumers involved in a motor accident.

Aviva does believe however that the ABI (and other trade body and consumer groups) has a role in agreeing common wordings to ensure consistency of approach, and communications and making sure that all avenues by which a consumer may look to receive information are covered.

(d) Would this remedy give rise to distortions or have any other unintended consequences?

Aviva does not believe so provided there is sufficient consultation with interested parties and the adoption of common wordings which are then mandated and provided by all parties involved in the claims process.

This remedy creates a direct benefit to consumers by ensuring they are better informed but has to be delivered with the other remedies to remove incentives and excess cost. If all market participants have to adopt a common approach it removes the risk of distortion and will enhance consumer knowledge and choice.

Aviva believes this remedy should have wider application and should apply to all road users and not simply private motor as the issues are of equal importance to motorcyclists and commercial vehicles. If it does not apply, there is a risk that it will create an information asymmetry between different groups of road users.

There is clearly opportunity for the remedy to be ineffective if firms and participants in the market are allowed to develop their own wordings, or wrap additional words or sentiment around common wordings during, for example, the FNOL process.

As an example, it is possible to foresee that customers may be more inclined to adopt a contractual or tort remedy if the benefits of one are stressed over the risks of the other, for example, if the diminutions in value claims are excluded in contract but permissible in tort, even after a satisfactory repair.

Aviva considers this remedy should be a mandatory obligation as part of any order or a recommendation to government or regulators.

If the information and statement of rights provision is a regulatory requirement and is embedded as a rule into codes of conduct and practice by the relevant regulators with sanctions for non-compliance, it will have real effect.

Handling times for Sales and FNOL calls might increase, and to maintain current service levels may require additional FTE, but could well be offset by the removal of existing frictional costs caused by the separation of cost liability and costs control.

In respect of unintended consequences, Private Motor insurance is defined by the Competition Commission as insurance for "…drivers of privately owned motor cars designed and used for non business (private) use…" There can however be an impact on some commercial products e.g.

- Private cars on agricultural products
- Private use cars on small fleets
- Privately owned vehicles on Motor Trade
- Salary Sacrifice schemes for private car leasing

Aviva suggests that consideration is given by the Competition Commission to the specific scope of the remedies which might include privately owned cars used for private and business purposes (and probably vans too) which are often insured as private cars. It is important that the application of the remedy is clear and simple to apply in practice; this is an area that requires clarification, especially in terms of modelling the effect.

(e) What circumvention risks would this remedy pose and how could these be addressed?

Aviva believes that a common approach and wordings provided by all market participants will prevent business entities circumventing and looking to evade the intention, and reiterates its comments on this becoming a regulatory requirement and rule with sanctions attached.

(f) How would this remedy best be monitored, particularly in relation to a statement of rights at the first notification of loss?

Aviva does not believe this would easily be achieved, as there is currently no benchmark to measure effectiveness against.

It is obvious that not all motor insurance claims are immediately, or ever, reported to the customer's contractual insurer. This is why Remedy A must apply widely to all firms that receive or provide FNOL services - including brokers and law firms, who are becoming more prevalent in this area.

It may not be possible to measure increases in contractual claims made or a reduction in tort claims and improved customer understanding until both reach a new equilibrium. It is not readily discernible at what point the proportions might be reasonably held to be optimal. It is more likely that a sense of customers' understanding of their position might best be secured through post-claims surveys after the statement of rights remedy has been in place for, say, 12 months.

At that point, questions could be asked about whether customers now have a better understanding of their rights and options before the insured event, or were alerted to them at, for example, the FNOL stage, and whether their awareness levels have increased and decision making altered and through which part of the process.

This may facilitate more targeted communications in the future and lead to a constant enhancement of the statement of rights and information requirement. As the Competition Commission has carried out their own survey of consumers, a further survey to compare the results by the Competition Commission may be appropriate.

(g) How much would it cost to implement this remedy?

Aviva is unsure but the cost is likely to be a mixture of one-off entry costs, e.g. wording changes on documents / IT platforms and ongoing costs e.g. Sales and FNOL expenses. However, we do not see the cost as prohibitive and it will become standard practice and be offset by potential benefits.

(h) Is there any reason why this remedy should not be implemented through an enforcement order?

The most important aspect is to ensure that the remedy applies to all participants in the market and is enforced by way of a recommendation to regulators or government. This will ensure that the correct information is being provided by way of the statement of rights and this can be adapted and developed.

Aviva understands that the Competition Commission can bind regulated and unregulated firms, but the FCA has appropriate regulatory expertise and can reflect in other work and monitor. The issue may be that the FCA may not have the same reach or jurisdiction as the Competition Commission.

Aviva has already raised the issue of scope and whether the information should be provided more widely.

(i) Is this remedy more likely to be effective in combination with other remedies than alone and, if so, which combinations of remedy options would be likely to be effective in addressing the AECs that we have provisionally found?

It is Aviva's view that the remedy will not be effective on its own but only in combination with others.

Aviva considers that a well-informed and educated customer base is likely to increase service delivery and, ultimately, customer satisfaction.

A simpler and standardised product design and information requirement would help because insurers could more readily be held to their promises and focus on service delivery.

If greater customer awareness was aligned initially with Remedy 1A or 1B, bilateral agreements between insurers would be encouraged and facilitated at a lower cost, the non-fault customer experience would be enhanced and costs controlled leading to the possibility of premium reduction.

Introducing a First Party model for repairs and replacement cars with subrogation rights for both has to be the preferred option as that would address non-fault parties' immediate post accident needs. There is a need to ensure that the repair and hire provision are provided or controlled by the insurer to ensure there is effective control.

Aviva suggests that Remedy 1A is adopted either by way of a change in legislation or by way of an enforcement order.

Clearly, making customers more 'au fait' with the claims process as it has emerged and developed, will help mitigate some of the worst excesses, particularly in combination with Remedy 1A and 1B. However, to prevent the market gaining any new system incentives, the ability to earn "rent" (in all its forms) must be removed by way of Remedy 1G, 1C, and 1D. Sanctions are also required which are meaningful and likely to inhibit contrary behaviour.

This may leave open the question of what is a reasonable labour rate or discount that feeds into the subrogation value but other jurisdictions have approached this question rather differently to the UK and found this to be a workable solution.

It also occurs to Aviva that recoverable replacement car costs ought to be linked to the labour hours worked on the repair, time off road, etc, or simply a notional and standard time deemed appropriate to a vehicle treated as a total loss, where the replacement car is provided as part of the Remedy 1A offering.

There are other ways of mitigating replacement car costs where provided as part of a Tort provision (see Remedy 1C).

(j) Would the additional measure set out in paragraph 20 above be likely to be effective in enhancing consumers' understanding of their legal entitlements?

Aviva believes it would. Currently, there is no focus on how civil liability might arise and considers that this is an omission.

It is an area that Aviva would support as part of educating young drivers, and we would be happy to discuss this area further with the Competition Commission or Department of Transport.

2.3 Remedy 1A: First party insurance for replacement cars

Aviva supports Remedy 1A in principle as we believe this remedy can tackle the issues as described by the Competition Commission and will lead to more clarity for customer in the event of a claim.

It is a common law principle that neither the fault party, nor his insurer, can avoid liability on the basis that an indemnity is available under a contract of insurance purchased by the non-fault party. Equally, an innocent party cannot be obliged to trigger his own insurance contract to protect (or mitigate) the fault party from the consequences of his own negligence.

The innocent party has a right to make his claim against the fault party if he chooses to do so in tort and anything which reduces or removes that right might well be open to legal challenge.

Ultimately, if it was recommended by the Competition Commission that non-fault parties ought to be obliged to utilise their own insurance contract first, this would require a change in the law and specific legislation which will take time to consult upon and deliver.

Aviva believes that there is either in the interim or in the alternative, a more immediate opportunity or solution to address substantially the adverse effect on competition by making a replacement car provision up to a capped level a compulsory part of the motor policy across the industry and but without prohibiting the right to subrogate the cost for replacement vehicles and recover that cost from at-fault insurers.

(a) What aspects of the law would need to be changed?

Aviva believes that Remedy 1A can deal with the issue as described by the Competition Commission in paragraph 6 of their provisional findings.

However, Aviva considers there is either in the interim or in the alternative a more immediate solution to substantially address the adverse effect on competition without a need to change the law or a person's legal rights in tort by implementing an alternative first party solution.

The Competition Commission has the power under Schedule 8 (10) of the Enterprise Act 2002 to order that goods or services be supplied to a particular standard or manner or to do anything that the authority considers is appropriate.

It is therefore our view that the Competition Commission could substantially deliver Remedy 1A by way of an obligation as part of an enforcement, order that all private motor insurers should provide an indemnity for an equivalent or similar sized replacement car to all private motor customers regardless of fault and replace any existing courtesy car provision as a standard cover.

This order would have to be clear with regards to its definition and scope. As Aviva has referenced earlier in its response, there are private motor vehicles covered by commercial insurance products, as well as commercial vans that are covered by personal lines products.

We do also suggest the there is likely to be a need for a cap with regards to the class of vehicle provided e.g. a cap at an executive premium vehicle or, for example, a 2000cc sized vehicle.

Other practical issues, such as specifications of the vehicle, need to be clarified to the consumer. For example, a true 'like for like' replacement is very difficult to achieve; however a minimum specification that is included in the policy can be defined more easily.

Under our alternative suggestion the Competition Commission would not remove the ability for a customer to obtain a vehicle on a credit hire basis. That subrogation right will only become relevant where the cover under the customer's policy is limited and does not materially meet their needs and requirements. On that basis if the replacement vehicle is for a maximum of a 2.0 litre car as an example, and the customer drives a larger or more expensive car, then they could choose to use credit hire.

It is our view that this remedy is heavily dependent upon Remedy A and all market participants having to ensure that customers know that the cover exists so that it is widely known and becomes an issue of mitigation.

In our view the common law principle would be altered for replacement cars because we would, as a combination of Remedy A and our suggestion for 1A, have enhanced knowledge of the replacement car cover across the market. Customers would, because of a wider indemnity, only need to use credit hire in cases where the cover is materially less than their loss or needs.

If subrogation rights are unaltered, this remedy will have to be supported by a remedy that controls cost of hire where it is subrogated, for example, by using a portal and capped rates as proposed in Remedy 1C as otherwise insurers could circumvent the remedy by inflating the cost of the hires that are subrogated.

Whilst we acknowledge the Competition Commission's proposal to alter the law of tort and legislation to provide replacement car hire as an optional cover, it is our view that an order making it an obligation for all private motor policies is more appropriate and will avoid customers making the wrong decisions when they take out cover.

It is also our view that this would be a proportionate response and one that we believe will not increase premiums and could lead to a reduction in cost at the same time as an increase in service, as this cover would also apply to fault customers.

Aviva believes that this as a remedy, combined with Remedy A, will result in a substantial removal of the distortion identified by the Competition Commission. However we need to model fully the proposal.

Aviva believes that if our alternative approach is not considered, the 1A remedy as set out by the Competition Commission requires an amendment to the Road Traffic Act to remove the present distortion.

The Road Traffic Act currently obliges those who use the roads to have compulsory cover for their liabilities to a third party, as set out in the Act. Therefore, the liability to claim for, or require payment for, replacement vehicles or equivalent would need to be removed as otherwise a claim could still be made in tort. It would require a clear definition of the reduction in third party rights or alternatively a clear definition of private motor and the scope of application of the changes as mentioned in this response.

As the Competition Commission stated, there are overarching EC Directives which would also need to be considered to ensure that there are no wider implications, all of which would need to flow into the information and statement of rights in Remedy A.

(b) How should policyholders be given a choice as to the extent of replacement car cover?

Aviva has set out above an alternative method of substantially arriving at the benefits of Remedy 1A avoiding the need for consumers to have to decide what level or extent of cover they may require in the future. It would be made clear at the point of sale and the point of claim that the customer has cover and should then decide to use the cover unless the cover is materially less than their needs or legal entitlement.

If the Competition Commission is not minded to proceed with Remedy 1A by way of an enforcement order but by way of a change in the law, Aviva believes that a replacement car add-on should be offered to the customer as part of the policy sale process with a clear explanation that their legal right to claim for a hire car has been altered and will be affected if they do not choose to take out cover.

Aviva would, in commenting upon the proposed Competition Commission Remedy 1A, suggest a model similar to the menu pricing offered when booking a direct vehicle hire for holidays on rental websites or comparison websites i.e. the customer is given a choice of vehicle types at point of policy renewal/sale e.g. based on engine size, seats, doors, standard or prestige with a clear cost for each level of cover.

The more choice that is offered the more complex the process would become, which is why Aviva would suggest a standardisation to a limited amount of vehicle groups (see our response to 1C(d)).

Aviva believes that this is not dissimilar to the way replacement car options are offered now, though there will likely be more choice. Aviva also suggests that customer research should be carried out in the development of the product choices that will be given.

(c) To what extent would the need for consumers to pay a premium for replacement car cover be offset by the effect on premiums of the overall reduction in replacement car costs that would occur as a result of this remedy?

Aviva believes the cost of the insurance base product could be reduced due to the lower third party mobility cost and, based on the Competition Commission findings and Aviva's own view of current as opposed to potential future mobility cost, Aviva believes this will lead to an overall reduction in premiums.

If the Competition Commission is not minded to proceed with Remedy 1A by way of an enforcement order, the impact on the individual customer will vary as they will be able to influence their premium and cover through the choice of replacement car product.

The link between premium reduction and customer choice creates the risk that consumers decide not to purchase cover and then later find that they had not understood the impact on their ability to exercise their legal rights. This is why the standard cover option needs to be considered as it avoids complex sales journeys and negates the risk of customers not understanding the legal implications of not choosing cover at the sales or renewal stage.

(d) How might this remedy affect NCBs and the premiums of non-fault claimants? Would non-fault claimants have to pay an excess when provided with a replacement car under their own policy? If so, would this be treated as an uninsured loss which should be recoverable from the at-fault insurer?

Aviva believes that as long as the whole market works in the same way, or any enforcement order is clearly drawn prohibiting any effect on NCB's, premiums should not be affected in non-fault accidents even if there had been a claim on the replacement car element of the policy. If different methods are adopted by different insurers this could lead to customer confusion and an alternative distortion of the market.

When it comes to the issue of the excess it seems prudent that there is a market rule in place which applies to all. In principle there are several ways of deciding how the excess applies.

- One excess for one claim which would include repair and hire
- An excess on each part of the claim i.e. one for the hire element and one for the repair element
- An excess on the repair element only

Aviva believes that the last option would be easiest from the customer perspective and results in no change from the present position irrespective of any improvements resulting from Remedy 4B and is something that can be addressed in Remedy A.

It should be clear for a customer that the replacement vehicle is a standard cover or a benefit they bought and there is no need for additional uninsured loss recovery otherwise this would which make the process more complex for the customer and add a further layer of uninsured losses which is unnecessary.

It also gives the non-fault customer the closest experience to their current legal entitlement. If an excess was charged and reclaimed as an uninsured loss this would simply be another hurdle to navigate following a claim. If a customer did not take out legal expenses cover on their policy this may well lead to a third party acting on their behalf adding in costs to claim for the excess and creating additional frictional cost.

In a fault situation, this may have an impact in that a customer whose wing mirror has been damaged cannot claim for the damage as it is below excess, but may still be able to claim for the hire car. However as long as the customer is aware that the NCB would not be affected in this case they can still make an informed choice to claim for the hire car and keep them mobile during the repair.

Therefore Aviva strongly believes there should be no excess on the vehicle replacement product whether it is a standard cover or an add-on product.

(e) How would this remedy affect the credit hire and direct hire activities of vehicle hire companies? How might the quality of service in the provision of replacement cars be affected if replacement car provision is contractually specified in motor insurance policies?

Aviva believes that the service to the customer should not be impacted and if the standard cover option is progressed all consumers will be provided with a better service or choose the level of cover they require.

The service levels are driven by customer needs and requirements and ensure that we are driven to deliver the right level of customer satisfaction. As stated previously by Aviva we do not believe that the service provided on direct hire and credit hire differs and this has been supported by the findings of the Competition Commission. It would become our regulatory responsibility to ensure that the right service was provided to deliver the cover provided by the policy cover and this would continue to be delivered to the customer by brokers, insurers and our suppliers and the present inefficient supply chain would be removed.

Aviva would have no issue with the Competition Commission specifying some minimum service levels to the market for insurance replacement vehicle provision in order to protect customers or more preferably in our view cover that provides an equivalent or similar size car based on the customers needs or to a set level.

In terms of the activities of the various providers, it seems likely that there will be decreased credit hire activity and increased direct hire activity as there will be a reduced need for credit hire but an overall increase in the need for replacement cars.

There is a risk that credit hire providers exit the market as CHO's may not wish or be able to compete; however there will be an increase in demand for vehicles and hire providers will react to the changes.

(f) Would it be likely that the non-fault insurer providing the replacement car would also handle the repair of the non-fault claimant's vehicle? What would be the consequences of this? Would complexities and costs arise if the replacement car is provided by the non-fault insurer and the repair is carried out by a different service provider?

Aviva believes that as an insurer that sells both elements of insurance (replacement vehicle cover and repair), the repair, regardless of whether fault or non-fault, should be dealt with alongside the replacement vehicle provision and this has to be encouraged to control the repair times and overall cost.

However, complexity could be created if the provider of the vehicle replacement insurance differs from the provider of the RTA policy and this is why the cover being standard is preferable.

What is clear in Aviva's opinion is that this remedy will only work in conjunction with a cost control mechanism for non-fault repairs such as suggested in Remedy 1D/E/G so that the incentives to earn a referral fee or a "rent" are reduced. It is also the reason why it is important for Remedy A to be controlled by regulation thereby ensuring that any broker, insurer or service provider has to inform customers of the cover incorporated within their policy. .

If there is no cost control for the repair, providers will find ways to inflate the repair cost to recover some of the cost of vehicle replacement from the non-fault insurer.

The customer would, as an example, notify the claim to wherever the policy directs. If the add-on vehicle replacement policy has been sold via a broker then the customer will be directed to the broker's FNOL. This means that the broker will capture the claim and may choose whether or not to deal with the repair, as is the present case, but may choose not to provide the hire and encourage the customer to claim on their policy for this part of their claim.

For fault claims this would mean a separation of repair and vehicle replacement and a continuance of the separation of costs control and liability and a risk of an unintended consequence as the cost of repairs rises. The provider of the repair has no incentive to control the repair duration, which could lead to conflict with the provider of the replacement vehicle.

For non-fault claims the broker will make a commercial decision whether or not to deal with the repair i.e. if the broker is able to at least cover its cost of dealing with the non-fault repair or make a profit from the non-fault repair they would deal with both. Otherwise they will always pass the repair to the appropriate insurer.

All of the above means there may be an uncertain claims journey for fault and non-fault customers. Where the policies are sold by different providers there will be potentially more effort for the provider of the replacement policy in controlling hire duration and more inconvenience for the customer. However, from a subrogation point of view there should not be any increased complexity.

Where repair and hire are managed by different providers there is also a risk that the provider of the repair has no interest in managing the duration of repair creating a potential conflict and additional cost.

Some thought also needs to be given to the changes this vehicle replacement product may bring to fault claims. Where the customer has a fault claims and the damage to the vehicle is below the excess or the customer purchased third party only cover, they in principle should still be able to claim for the replacement vehicle.

As with non-fault claims where the cover is sold by separate providers this will lead to complexity in the customer journey. There would need to be clarity on how the customer could claim, what proof is required that damage occurred and how long the vehicle will be required for.

All of this will need to be considered when developing the products unless a simple standard cover approach is taken that directs both repairs and hire provision should be the responsibility of the insurer.

(g) Would this remedy give rise to distortions or have any other unintended consequences?

Aviva believes there is a risk of the following.

Some customers may be disadvantaged at claims stage as they have not understood the implications of not selecting and therefore purchasing a vehicle replacement add-on product. Any such add-on product needs to be designed in such a way that includes any specialist customer requirements e.g. wheelchair access, hand operated vehicles for disabled drivers etc.

Due to the higher demand of 'like for like' vehicles this remedy may lead to a constriction of supply of the right class of product by vehicle manufacturers, which may lead to increased cost of direct hire or a deterioration of service (e.g. older hire vehicles). Ultimately however, we believe the market would adjust.

The customer journey on fault claims, where the customer has third party only cover or the damage is below excess and he/she has purchased the add-on replacement vehicle cover, may be complex and may mean that this remedy can only apply to comprehensive private motor policies.

Without any cost control mechanism of non-fault repair, cost providers can find ways around non subrogation of the expense of the vehicle replacement by, for example, increasing labour costs on the repair element as mentioned above.

(h) How long would it take to implement this remedy? What administrative changes would need to be made?

Aviva refers to its response in 1(a) above and considers that this remedy could be implemented by the issuing of an order by the Competition Commission to upgrade courtesy car cover by all private motor insurers to an equivalent or similar vehicle with some form of cap in terms of vehicle class.

The product and appropriate pricing model(s) would need to be designed and implemented (appropriate documentation, websites, training of sales staff etc. is required); IT systems and claims processes need updating; and any impact on third party arrangements would need to be reviewed.

In order to carry out all of these tasks in a structured and controlled fashion means we believe it will take not less than 12 months to implement but would be done as any change in the law is progressed, which we consider might take as long as five years, as opposed to the enforcement order which could be delivered considerably quicker and may remove the need for legislative change.

The customers who have already renewed prior to the introduction of the add-on vehicle replacement product would be given the opportunity to purchase at renewal. We anticipate, therefore, that unless there is a mandate for all customers to be given the opportunity to purchase the add-on cover at a certain point in time that there would be a period where the "old" rules apply to customers who have renewed prior to introduction of the add-on product and the "new" rules apply to those customers whose renewal dates align with the introduction of the new product. This would be very complex and it is opined that this may, depending upon the implementation plan, not meet regulatory "Treating Customers Fairly" requirements.

(i) Would this remedy need any supporting measures? If so, what are those measures?

As stated above if the enforcement order route is not followed we believe that the changes would have to be mandated / introduced at a specific point in time to avoid mid term issues and all customers be given the opportunity to purchase the new vehicle replacement add-on product at renewal date. All insurers would have to be required to offer the benefits of the products mid term until the point of insurance renewal. At renewal the new vehicle add-on product would be offered to the customer.

This remedy will only work in conjunction with a cost control mechanism for non-fault repairs / total losses such as suggested in Remedy 1D/E/G and Remedy A. If there is no cost control for non-fault repair/total losses, providers will find ways to inflate the repair or total loss cost to recover some of the expense of providing a vehicle replacement from the non-fault insurer and any incentives have to be removed.

We also believe that there needs to be a mechanism for controlling the time it takes to repair the non-fault customer's vehicle. If there are no guidelines on what is reasonable then there is in theory no incentive for the repair to be carried out in timely fashion. This control is only required where the providers of the repair and the replacement vehicle differ. See remedy suggested in 1C.

We suggest a supporting publicity campaign market to ensure consumers are made aware of the market and regulatory changes and how it will affect them.

2.4 Remedy 1B: At-fault insurers to be given the first option to handle non-fault claims

Aviva's overall view on this remedy is that we welcome the remedy to provide the fault insurer with a greater ability to control cost.

However we believe this remedy has a risk of being detrimental to customer service. The customer is in a distress situation following an incident and especially when their vehicle is un-drivable they need a solution for the fulfilment of their claim. This is different from injury claims where the fault insurer has a little more time for investigation as there is no immediate service need.

Any passing of the customer between insurers in that situation seems to put barriers and delays in the way of good customer service, particularly as there are such varied timescales and attitudes to reporting incidents, which make it difficult for fault insurers even to know about an incident.

Remedies that look at the control of the cost of subrogated claims or remedies that stop subrogation while enabling a service to the first party seem to Aviva to be more in the interest of the customer while achieving the aim of taking cost and complexity out of the market.

(a) Which of the variants in paragraphs 38 and 39 are likely to be most effective:

i. If the non-fault claimant retains the right to choose who handles the claim, what incentive would they have to choose to have claims handled by the at-fault insurer? Would this remedy favour larger insurers with stronger brands?

Aviva feels the three main reasons to deal with the fault insurer directly from a customer's point of view are:

- A sense of justice - the customer may feel that as he / she is not at-fault for the accident there should not be a need to use their own policy to deal

- The knowledge that the NCB will definitely not be affected. When dealing with one's own insurer, there is uncertainty until the non-fault insurer has made a recovery. Dealing direct with the fault insurer removes this risk
- There is no need to pay an excess, which when dealing with the own insurer may have to paid. While it will be recovered at some point this can take time and effort

However as excesses in non-fault claims are commonly waived and NCB disallowance has no immediate affect these incentives may not be very strong and could be addressed by a review of how NCB operates in Remedy 4. They may also be offset by the fact that customers feel they have paid for a product and they want whoever sold the product to deal with the claim and provide the service.

Aviva does feel that stronger brands may be favoured by this approach as a non-fault party may be more likely to agree to being transferred to a known brand rather then a relatively unknown entity. Whilst we have no way of quantifying this effect, it is a factor to be considered.

ii. If the at-fault insurer is able to capture the claim should it wish to do so, what incentive would the at-fault insurer have to provide the standard of service to which the non-fault claimant is entitled? What measures need to be put in place to safeguard against this risk (see, for example, Remedy 2A)?

Aviva believes that the fact that a captured non-fault party is a potential future customer in itself is a strong incentive to provide a good service.

In addition, the at-fault insurer would not like to get a reputation for a bad service as the insurer wants to benefit from handling third party claim direct. However to ensure that the standard of service is safeguarded the remedy could be supported by Remedy 2A which ensures quality of repair and Remedy A which ensures that the customer is aware of their legal rights.

Aviva also applies the ABI third party capture code which acts as a safeguard to a third party.

(b) What are the implications of the non-fault claimant having the right to choose an alternative service provider?

As the Competition Commission pointed out in paragraph 38 the main risk is that this does not achieve the desired outcome as this is similar to the current situation if the service provider the customer chooses is able to inflate the cost of hire or repair in a non-fault case. To make this work other remedies to allow the appropriate control of cost for the fault insurer would need to be implemented. This would be remedies such as described in 1C and 1D/E and 1G.

(c) To what extent might this remedy inconvenience non-fault claimants, for example if they have to wait for the at-fault insurer to make contact? How long should the fault insurer be given to contact the non-fault claimant?

Aviva believes this remedy can add significant inconvenience for the non-fault claimant. The customer is in a distress situation and will contact who they believe is best positioned to deal with their claim. If that provider has to then pass the customer on that will lead to a delay in dealing with the needs of the customer. This is especially significant where the customer's vehicle in un-driveable following the accident and a replacement vehicle is needed. This is different to dealing with injury claims where it is usually required for some time to pass before a settlement is agreed i.e. giving the fault insurer the chance to deal is practical.

With hire and repair there is often an immediate need and any delay caused by the additional notification to, and subsequent investigation by, the at-fault insurer makes the non-fault party's journey longer and potentially more difficult.

Even if the CMC contacts the fault insurer to agree rates, this is still a cumbersome process especially where the fault insurer opts to use their own hire provider. Again it is likely the customer may be adversely affected in this situation.

(d) Should non-fault claimants who make the first notification of loss to their own insurer, broker or CMC have to wait for an offer from the at-fault insurer before deciding who to appoint to handle the claim even if they want their own insurer or CMC to do so?

Aviva does not believe that this is practical from a customer perspective. It is much easier to let the customer's service provider deal, but then ensure the right cost controls are in place as in Remedies 1C/D/E/H.

As we mentioned before, a solution as described as the alternative to Remedy 1A would be more advantageous for the customer, as the insurer who sells the policy will deal with the needs of the customer following an accident. Aviva does not have an issue with the claimant having the right to contact the fault insurer directly to deal.

(e) Are there any advantages or disadvantages to the variant applying this only to replacement cars (see paragraphs 40 and 41) compared with applying this to both replacement cars and repairs? What might be the consequences of a replacement car being provided by the at-fault insurer but the repair being managed by the non-fault insurer?

Aviva believes that this again makes the journey for the customer more complex than required. In addition it can lead to issues of debates on durations.

A non-fault insurer dealing with the non-fault repair has less of an incentive to control the length of the repair. This could lead to conflict between both parties. The customer may have far more dealings as there has to communication with both fault and non-fault insurer. There is also still the issue on how quickly the fault insurer is able to make the decision to provide a replacement vehicle if, for example, their own customer has not yet notified the claim.

Therefore in cases where the fault insurer does not have the opportunity to provide the vehicle there will still be cost control mechanism for the replacement vehicle if it is provided by the non-fault service provider.

As Aviva has set out above, the provision of the repair and replacement car should be provided by the insurer to make sure there is effective cost control.

(f) Would this remedy give rise to distortions or have any other unintended consequences?

Aviva believes that this remedy favours direct insurance providers where the chances of notification of the claim is high. They are more likely to have an early notification of both fault and non-fault claim, which will give them a higher chance to control the cost.

Insurers with mainly broker-sold policies may have to invest into additional staff to ensure more outbound calls to chase their own customer for notifications unless Remedy A is mandatory and the broker has to refer all claims to the insurer to provide the repair and replacement car. In our view this is the product that the customer has purchased and is the responsibility of the insurer to provide.

The most likely unintended consequence is the delay in dealing with non-fault party claims and subsequent inconvenience for the non-fault party.

(g) How might this remedy be circumvented? How could this circumvention be avoided?

Aviva believes that a non-fault provider could withhold data that makes it more difficult for the fault insurer to quickly identify their customer's liability. In addition there could be scripts employed that ensure the non-fault claimant feels uncomfortable or unsure about using the fault insurer, and without any cost controls in place that would be attractive to the non-fault provider as they can retain income from the inflated cost of hire and repair.

It could be avoided by making the information provided strictly controlled and monitored to avoid circumvention.

(h) How should insurers, brokers and CMCs be monitored to ensure that claimants are properly informed of their rights when making the first notification of loss? How should non-fault insurers and CMCs be monitored to ensure that the at-fault insurer is informed of the claim? Who should undertake this monitoring? What additional costs would arise as a result of monitoring?

Aviva suggests that all of the parties that could be involved need to be appropriately regulated or subject to the provisions of an enforcement order with a sanction for non-compliance.

While insurers and Brokers are already regulated that is not necessarily true for CMC's and CHO's. The regulator could then apply its usual regime of ensuring the parties fulfil their obligations with those regulated or the order has an effect or deterrent for those that are not regulated.

(i) How long would it take to implement this remedy? What administrative or legal changes would need to be made?

To understand timescales it would be required to understand more about how this would be implemented, but from an administrative point this would mean changes to internal process and potentially some IT changes and training of staff, which could take 6 to 12 month depending on the extend of the changes.

In terms of legal changes, Aviva believes this will involve changes to the Road Traffic Act and common law and could take a period of five years depending on the government timetable and response to any recommendation.

2.5 Remedy 1C: Measures to control the cost of providing replacement cars to non-fault claimants

(a) What would be the most effective way of implementing this type of remedy? Possible ways could be an enforcement order made by the Competition Commission, an under-taking to replace the GTA, or (in relation to the hire costs of TRVs subject to dispute) a recommendation for judicial guidance on the level of hire costs recoverable from at-fault insurers by non-fault insurers and other providers of replacement cars.

We believe implementation would best be achieved by a combination of the remedies suggested above.

It is also essential that hire costs are reduced to reflect the widening of the prohibition on referral fees proposed in Remedy 1G.

In our opinion replacing the GTA with a new mandatory body is the best mechanism of controlling the cost of providing replacement cars.

This is especially true if the longer term remedy of 1A by way of a legislation change is not delivered quickly or the Competition Commission does not adopt the Aviva suggestion of increasing the standard cover by way of an enforcement order.

Creating a "New GTA" will then need formal judicial guidance and approval if it is to become enforceable across the market.

The present GTA is not a judicially approved agreement – it applies between subscribers pre-litigation. If there is disagreement and a case goes into litigation the court will rule as to the reasonableness of vehicle hire rates and hire periods etc.

It is our view that a replacement GTA agreement should be one which applies in ALL circumstances including litigation. This will require either statutory change of an individual's legal rights or judicial approval and guidance.

If judicial guidance is not given, providers of replacement cars to non-fault claimants will simply by pass the enforcement order or the "new GTA" and litigate claims to receive more advantageous replacement car hire costs frustrating the implementation of this remedy.

(b) Which parties should be covered by this remedy?

We believe that this remedy MUST apply to all:

- Insurers
- Brokers
- Claims Management Companies
- Solicitors
- Vehicle Hire Companies
- Fleet Management Companies

- Any other providers of services to non-fault claimants

It is important that all providers of provision of replacement cars to non-fault claimants should be encompassed to avoid any alternative structures or avoidance mechanisms (see also 1C(i)).

(c) What is the appropriate time period in which repairs should commence once a replacement car has been provided? How should the hire period be monitored and by whom?

Aviva is of the view that repairs should commence as soon as possible and in all instances as soon as or before a replacement car has been provided.

- Where a vehicle is mobile (i.e. can be legally driven) repairs should commence as soon as a replacement car is provided
- If the vehicle is immobile, repairs and a replacement vehicle should be provided as of the date of notification of the claim to the insurer or at-fault insurer

There can sometimes be circumstances when a car may be a "borderline" total loss and a decision on whether or not to repair will need to be made by a qualified motor engineer. These situations will require the involvement of an inspecting motor engineer.

With the capability of most garages and motor engineers to communicate electronically via images / video footage transmitted by e-mail, we think these situations can be tackled quickly and to the consumer's benefit.

We believe that the claiming party (i.e. the non-fault party) continue be tasked with monitoring the hire period.

To bolster this, we suggest that they / their representatives are put under a formal duty to provide information to the at-fault insurer within specific time frames and that a failure to do so would potentially invalidate any recovery.

(d) What is the most appropriate mechanism for setting hire rates for replacement cars? Who should determine the hire rates?

Aviva believes the most appropriate mechanism for setting hire rate caps for replacement cars should be a new independent body which replaces the GTA.

- This should be formed from a combination of representatives from insurers; direct hire providers and other vehicle hire providers (such as credit hirers via the CHO) all of whom have experience of the vehicle hire market
- Membership should be mandatory
- This body should be chaired by a member of the judiciary (or Senior QC)
- The body should have the ultimate power to impose a rate cap on the market based upon the evidence presented

To determine a daily rate for replacement cars we believe that the current GTA provides at least a model for how this new body should work:

1. The various members submit detailed evidence based on their own information over the last 12 month period.

2. There is then a negotiation and (usually) agreement is reached.
3. If agreement cannot be reached, submissions are made to the chair person who reviews these and then recommends a rate which members must either accept or reject.

We believe the appropriate rate should be based upon a basket of direct hire rates for each category of vehicle. We would suggest using the same broad categories as are used in direct hire (e.g. at airports, holiday resorts etc.) and which will be familiar to consumers.

We are of the view that a fixed or small percentage should only be added to cover credit charges where the at-fault insurer does not admit liability within a reasonable period.

If the at-fault insurer admits liability within (say) 24 hours of notification then there should be no allowance for credit charges – these should not apply as recovery is guaranteed so long as the correct process is followed.

(e) What administrative costs should be allowed? At what level should administrative costs be capped?

As was held in the case of Dimond v Lovell [2002] 1 AC administrative costs are not recoverable.

The current GTA agreement however includes an allowance of £37 administrative costs where the non-fault customer retains responsibility for payment of the hire charges. This payment is effectively a reflection of the frictional costs between insurers and credit hirers which are currently involved.

If a portal is introduced (see 1C(f) and a referral fee ban at Remedy 1G is introduced below) then the requirement for administrative costs under the existing GTA will be much reduced as this "friction" will be eliminated.

We are therefore of the view that no administrative costs should be allowed. If a scheme is mandatory, providers of hire vehicles will be assured recovery of certain rates and will be able to find a margin into that assumption – this in our view will cover administration costs.

(f) Is it practicable for the relevant documentation to be exchanged through a web portal rather than in paper form?

We support the introduction of a Portal.

A portal will offer significant advantages to both claimant and fault insurer in facilitating immediate communication in a standardised electronic format.

By making important fields mandatory the portal can ensure the right information is delivered in the right format and within set time frames.

The benefit of a portal is that it allows both parties to operate flexibly but within a defined framework.

The portal could also allow more rapid identification of the at-fault party via the use of the "Ask MID" facility preventing vehicle hire continuing while the correct party is traced.

We envisage the portal will allow secure transfer of documentation supportive of liability (e.g. witness statements or diagrams) and also of need to hire questionnaires, hire charges etc.

The portal could also be used to recover repair costs linked to a cost estimation system and standardised rated and discounts proposed in Remedy 1D.

(g) What costs would the measures in this remedy entail?

The composition of a body to replace the GTA will carry a cost which can be covered by a levy on market participants.

If a web portal (see above 1C(f)) is utilised, there would have to be a cost per use charge to pay for the cost of setting up and maintaining the portal. This charge could also be used to fund the "new GTA" body.

Inevitably the acquisition of market data on hire rates (see above 1C(d)) and its analysis annually will also carry a cost.

The "new GTA" body will require administrative support in the form of a Secretary and some supportive functions including legal advice etc.

Given the importance however and size of the market, we do not anticipate these costs would be disproportionate and there will be wider benefits by the removal of frictional costs elsewhere in the process.

(h) Would this remedy give rise to distortions or have any other unintended consequences?

As long as this remedy is applied across the market to all market participants and with judicial approval of vehicle hire rates, we can see no distortions of unintended consequences.

It will have an effect on CHO business models but would be part of solving the adverse effect on competition that exists.

(i) To what extent is there a risk that this remedy could be circumvented by the evolution of new business models that are not subject to it? How could this risk be avoided?

If this remedy is imposed via a wide and mandatory obligation or prohibition and fines for non-compliance, Aviva cannot see how business model differentiation could circumvent this process. The rates ultimately need to be enforceable before the courts unless the body setting the rate has the required authority.

This is why we stress in our answer at 1C(a) that statutory powers or Judicial input and approval is essential.

2.6 Remedy 1D: Measures to control non-fault repair costs

Aviva supports a remedy that enforces control of the cost of non-fault repairs that are subrogated.

- This remedy needs to enforce rates for repairs via a common estimating system where the cost of repair is subrogated
- There will have to be an independent review process to ensure the capped costs are reasonable

- If no such control is in place it will be easy to circumvent this remedy by providers (insurers, Brokers, CMC) owning body shops or other similar solutions
- While costs for subrogated repairs are controlled, care needs to be taken that such a remedy means subrogation cost reflect prices in the repair market rather then influence prices in the repair market
- There needs to be clarity on scope of type of vehicles included as e.g. commercial vehicles can distort rates
- The remedy should be supported by a portal which is mandated as an industry wide mechanism for the process of subrogation
- When implemented in conjunction with 1A, thought needs to be given to inclusion of courtesy car cost in repair invoices to avoid an increase in overall cost

(a) What would be the most effective way of implementing this remedy?

Aviva believes any such cost control is most effectively implemented through use of a mandated industry portal. In addition there needs to be an independent panel that agrees the reasonable capped rates used for subrogation. The portal should include an estimating system that is used to determine the cost of repair in an auditable fashion and can adjust the cost using the agreed capped rates.

(b) Would either variant of this remedy give rise to distortions or have any other unintended consequences?

Aviva does not foresee distortion or unintended consequence for this remedy provided it is combined with 1G and applies to all subrogated repairs including credit repair.

2.6.1 Remedy 1D(a)

(c) How could repairers be prevented from inflating the wholesale prices they charge to non-fault insurers and passing excess profit to non-fault insurers through referral fees, discounts or other payments?

Aviva's challenge is that is very difficult to determine what the actual wholesale market prices are.

The recent RSA litigation of Coles V Hetherton has not in any way helped to determine what the reasonable cost of a motor repair should be. The case has in reality decided a point of law that when the vehicle is damaged the non-fault party suffers an immediate diminution in value and in law they are entitled to recover a "notional reasonable repair cost" and the amount of any subrogated claim is not limited to the actual cost incurred by the non-fault insurer.

The result of the judgment is that there is a real risk that the wholesale cost of repairs will now increase as any claim is based on what it might reasonably have cost the non-fault party to repair and not their insurer.

A remedy or solution has to be found to create some benchmark or certainty that controls the amount that insurers can subrogate otherwise the courts will become clogged by litigation on the cost of repairs.

Even if referral fees are banned the insurer has the ability to inflate non-fault repair cost and use the excess profit to subsidise the fault repairs depending on how widely worded Remedy 1G is applied.

Aviva believes the only way to make this remedy work is for a clear and enforceable order or method by which a definition of reasonable rates for non-fault repairs that are subrogated or given to the market can be reached e.g. via an independent, technically capable authority.

The fault insurer would also need to have the ability to review the methodologies applied to the non-fault repair for which it is held responsible but the underlying rates are set and transparent.

Both of these control mechanism appear to be implemented in the suggested Remedy 1D(b).

(d) Could this remedy be circumvented by insurers vertically integrating with repairers?

Absolutely, as all the insurer will have to do is inflate non-fault repair rates, withhold discount and retain the profit within the organisation. However, if the control mechanisms described above are implemented then there is no competitive advantage for insurers to do this.

2.6.2 Remedy 1D(b)

(e) Is it practicable to set standardised costs for all aspects of repairs in subrogated claims? If not, what are the potential problems?

Aviva believes for the majority of repair costs it will be possible to set standardised costs and this is a remedy that has to be pursued for the reasons set out above.

In our view, for labour rates, parts and paint discounts this will be relatively simple as there is an abundance of data available to set the standard rates. In respect of other costs, this may be a bit more complex. However through, for example Audatex, a menu pricing for the majority of additional cost can be constructed and there is enough information available in the market to enable setting of standardised costs. There is a risk that exceptional items that cannot be standardised will be used to inflate cost. However, as they should be identified as exception by the estimating system, that should enable the control of these cost via an engineering review.

Storage & recovery costs, charged by repairers to the insurer, also have to be included in the standardised costs menu to avoid any circumvention risk or shift in the present rates.

While these things need to be considered Aviva strongly believes that this remedy can help solve the current distortions in the market as described by the Competition Commission.

(f) What are appropriate benchmarks for inputs into the price control? To what extent are cost estimation systems helpful? What other indices would need to be used?

Aviva believes that the comprehensive data available in current estimating systems is fundamental as a benchmark for rates and discounts. In addition there could still be a role for an independent panel of experts to review the benchmark and review this on an annual basis. There may be a place to take inflationary data e.g. data used to calculate common inflationary indices.

(g) What would be the costs of implementing this arrangement?

It is difficult to determine an actual cost; however we believe the majority of the cost would come from setting up and running a portal and the independent review process. It would be a one-off initial cost and would in reality be self-funding by removing the present frictional cost and process for motor recoveries and RIPE.

The estimating system should not add any additional cost as the majority of repairs already include cost for an estimate. There is a risk that the provider of the estimating tool will take advantage of their position and inflate cost of the provision of the estimating service; however this is a very small element of the cost. This would need to be appropriately controlled via the implementation of the remedy by the Competition Commission.

(h) How would monitoring of this remedy work?

By creating a mandatory subrogation portal this could mean the appropriate rules could be enforced via the system to ensure all parties adhere to the principles agreed.

An independent, technically capable organisation could be appointed to review the standardised rates in a transparent manner or alternatively the industry could accept that the standardised rates increase annually by whatever the RPI index dictates.

(i) What would be the most appropriate organisation to review the inputs into the price control on a regular basis?

An independent technically-capable review organisation could be formed from a number of existing trade associations e.g. Thatcham, ABI, CHO, BIBA etc. to help determine what the appropriate price inputs should be. Alternatively CIPS could assist in this matter as it currently provides data on commodity pricing and is completely independent. Another idea is to utilise an independent auditor such as KPMG or PWC.

(j) What measures would be required to ensure that the price control arrangements would not have adverse consequences for the quality of repairs?

Quality control measures should be aligned to Remedy 2A to ensure there are no adverse impacts on the repair quality.

2.7 Remedy 1E: Measures to control non-fault write-off costs

(a) Would either variant of this remedy give rise to distortions or have any other unintended consequences?

Aviva feels there are risks with both remedies:

- The current practice of low estimated salvage returns will remain with Remedy 1E(a) when the at-fault insurer doesn't take up the option of handling the salvage of non-fault write-offs. That could lead to insurers simply accepting each others' imperfect salvage model particularly if there is a low take-up by the at-fault insurer in selling the non-fault salvage write-offs
- There is a concern with Remedy 1E(b) that it might encourage reduced salvage monies from salvage companies to insurers in exchange for referral fees or simply to build sums into the at-fault insurers costs

2.7.1 Remedy 1E(a)

(b) Would at-fault insurers be likely to take up the option of handling the salvage?

Aviva believes the take up will be low, possibly below 20% of all non-fault salvage write-offs for several reasons:

- There is a claims handling cost in processing salvage and the at-fault insurer would be absorbing this cost into their expenses if they picked up the handling of non-fault write-offs
- For Categories A, B and C, it is not financially beneficial for the at-fault insurer to handle the non-fault write-offs
- Cherished plate, outstanding finance, and gap insurance cases are unlikely to be handled by the at-fault insurer because there will be an increased operational expense in handling these claims

The only non-fault write-offs the at-fault insurer will be interested in are Category D claims as the increased salvage returns in this category will exceed the additional operational costs in disposing of the salvage.

(c) At what point in the claims process should at-fault insurers be given this option?

Aviva's view is that the at-fault insurer should be engaged the moment the non-fault insurer believes their customers vehicle might be a write-off. Our reasons for stating this are:

- It will remove the fear of the non-fault insurer stalling settlement to build up storage & replacement car costs
- The at-fault insurer can consider other cost mitigation measures early on in the claims process such as moving the salvage to a salvage partner who charges reduced storage fees compared to where the vehicle is situated
- The at-fault insurer could consider and offer constructive total loss settlements if the damage to the non-fault vehicle is borderline repair in order to reduce its overall claims cost

2.7.2 Remedy 1E(b)

(d) What impact would this remedy have on salvage companies? To what extent would this proposal reduce the incentives for insurers to get the best salvage value from salvage companies?

Aviva feels this proposal will bring about the following changes:

- It will make referral fees more transparent and uniform across the market
- The transparency / reduction of salvage fees will bring with it the possibility insurers and salvage companies will look elsewhere in their salvage model to account for the shortfall in referral fees
- It will not reduce the number of salvage companies, affect their core operation or adversely affect their profit margins
- The remedy encourages low salvage returns particularly on claims where an estimated value is agreed as an interim settlement simply because the non-fault insurer will on receipt of the actual salvage return be able to recover an additional sum from the at-fault insurer

(e) What administrative costs would the adjustment mechanism have? What evidence would need to be provided to verify the salvage proceeds (and any referral fee)?

Aviva's view is that the following administrative changes will result:

- The salvage companies will have to produce a salvage sale receipt which will need to be provided if the salvage value is challenged by the at-fault insurer
- Salvage companies will have to alter their processes in order to provide the salvage sale receipt and this will incur a cost
- There will be an operational cost for both at-fault and non-fault insurers in the interim settlement model based on an estimated salvage return as both insurers will wait for the actual cost and then reconcile the actual return against the estimated sum and either seek a further sum or draw a cheque as an adjustment

With each remedy presenting problems, Aviva recommends an alternative remedy of standardised salvage returns which is outlined in paragraph 106 where alternative suggestions/remedies are sought.

2.8 Remedy 1F: Improved mitigation in relation to the provision of replacement cars to non-fault claimants

(a) Could this remedy operate on a stand-alone basis?

We believe this remedy could operate on a stand-alone basis. Mitigation of loss is something which must apply to all claims and is a common law principle.

The process for establishing need for a replacement vehicle has become meaningless – asking the company which is providing or has provided the replacement vehicle to ensure the customer actually needed it is an inadequate control mechanism.

Moving responsibility to the defendant to obtain such a statement would not necessarily make any difference as the claimant's representative (or replacement vehicle provider) would simply advise the claimant how to complete any mitigation statement or declaration to satisfy the defendant.

It is our view that this remedy is therefore best targeted at the level of need as opposed to the absolute need and should be predicated upon a minimum need standard.

It is our view that a remedy should make it clear that a "reasonable" or "suitable" replacement does not necessarily have to be broadly equivalent if a lesser vehicle can suit the claimant's need.

This remedy should ensure that the focus is upon the specific need of a claimant. For example the owner of a 2 seat sports car in our view can utilise a small hatch back as a "reasonable" or "suitable" replacement while a claimant with a large family can justify needing to hire a people carrier as a replacement.

This remedy will require some form of judicial intervention or alteration of an individual's legal right in respect of a replacement vehicle. We say this because while the need to hire is for a third party to prove, this has not been one which has been particularly difficult to satisfy before the courts and the level of need is one which (barring a third party hiring vehicles beyond one which is broadly equivalent) is very difficult for the at-fault insurer to overcome and demonstrate is unreasonable.

By focussing on a double test which applies to all:

1. Did the claimant need a replacement car? and,
2. Did the claimant restrict this need to a "suitable" replacement vehicle?

This remedy would then operate so as to bolster mitigation to one which acts on a true level of need basis with an expectation that any replacement vehicle should be adequate and suitable for their actual needs.

In addition if the Aviva proposal in 1A is considered it would become a requirement of this remedy that the individual has checked their policy cover and has to determine why the cover they have is not adequate.

If there is a failure to do so then the claim would be reduced to the cost that their insurer could have provided the replacement car. If the cover is not adequate and is materially less than their needs, then they can obtain credit hire and the court and fault party would have no argument that they had failed to mitigate.

(b) Which other remedies would benefit from this remedy as a supporting measure?

This provision is absolutely vital to all remedies proposed – if mitigation of loss can be improved and clearly stated to all customers, all remedies noted above and below will be more effective.

Aviva would propose that if an enforcement order cannot deliver this remedy it should be taken forward as part of any changes in the law referenced in Remedy 1B.

(c) What questions should the non-fault insurer or CMC ask non-fault claimants in order to assess the need for a replacement car, the appropriate type of replacement car and to demonstrate that the provision of a replacement car had been appropriately mitigated? Should the cover provided by the claimant's own insurance policy be considered in assessing the claimant's need: for example, if the claimant's own policy included provision of a replacement car in the event of an at-fault claim, would that be sufficient evidence of need for a replacement car in the event of a non-fault accident?

Questions would have to focus on:

- Why was any replacement vehicle provided by the third party's own insurer not acceptable together with proof that policy cover has been checked?
- Is there an actual need for a replacement vehicle at all?
- To what uses was the original vehicle put?
- What was the frequency of use of original vehicle?
- Actual need and necessity of type and model of vehicle?

Aviva is firmly of the opinion that if a claimant's own insurance policy provides cover for a replacement vehicle, there should be a (rebuttable) presumption that the claimant has failed to mitigate his loss if he has not taken advantage of this option or even looked to check and establish the car that will be provided.

This represents a substantive change in the law which has always considered a person as not being obliged to use an insurance policy if he/she does not wish to – per Parry v Cleaver [1969] UKHL 2. However, by increasing the cover to first party in 1A and combined with Remedy A this would result in a step change in behaviour and approach resulting in consumers and those acting on their behalf having to fully consider the policy cover and whether not using the cover is reasonable and create a clear position on what is reasonable.

We suggest that the balance to this requirement could be that a person who chooses to insure for a replacement vehicle and takes advantage of this provision following a non-fault accident is "presumed" to have satisfied the need test set out above and mitigated their loss.

Aviva believes that both elements (effectively "carrot and stick") would be preferable in ensuring the remedy of improving mitigation is achieved most effectively.

(d) Would the right of the at-fault insurer to challenge the non-fault insurer or CMC and to see the 'mitigation declaration' and call record be sufficient for this remedy to be self-enforcing without additional monitoring? Would giving the at-fault insurer access to the non-fault insurer's or CMC's call records give rise to any data protection issues?

The "mitigation declaration" and call record should be disclosed to the at-fault insurer as a standard part of the claim presentation process with the final invoice. This declaration should be signed by the at-fault party to confirm they have read and understood the "statement of rights" and information which the Competition Commission is proposing as Remedy A and any policy cover they have in place.

If this is a part of the standard industry claim process and is made clear to the non-fault party from the outset of the claim, then there will be no data protection issues as the non-fault party will understand that conversations and statements will have to be disclosed.

If the at-fault insurer, as an example, can provide the replacement car more cheaply if given the first option (as per Remedy 1B) then the consequence that any amount that is then claimed is going to be capped to the at-fault insurer's rate should be part of the acceptance and declaration they sign.

In this way, a third party will be accepting they have made an informed choice which may limit the extent of their claim against the at-fault party.

(e) How much would it cost to implement this remedy?

Mitigation of loss is low cost – if the rules are made clear and cannot be exploited then cost should be minimal and it will remove frictional cost and waste.

There will be some short term transactional cost to insurers and vehicle hirers in the provision of:

- Mitigation Declarations
- Call data if needed

Aviva anticipates that this will become a slick process and in the medium term will add no additional cost as parties become used to working a more stringent process.

The issue of cost is also dependent upon how this remedy links in with the other final remedies or combination of remedies.

(f) Would this remedy give rise to distortions or have any other unintended consequences?

If need is not self proving then fewer hires are likely to be undertaken. If it is easier to prove that a claimant's need could have been satisfied by a lesser vehicle then the value of hires overall will be less. The value / size of the credit hire market will be reduced.

2.9 Remedy 1G: Prohibition of referral fees

Aviva fully supports the provisional remedy which is looking to further widen the payment of referral fees or commission. The banning of the payment or receipt of referral fees for referring personal injury claims in April 2013 as part of the Legal Aid and Sentencing of Offenders Act has been called for by Aviva for many years.

The Competition Commission has in our view correctly identified that as a result of various practices and behaviours in the market all market participants have to a greater or lesser extent sought to derive revenue from non-fault claims.

Aviva considers that this recommendation can be implemented by way of a statutory instrument as an amendment to the Act as there is a specific clause (para 60 (3)) within the Act that allows a supplementary amendment.

It is our view that it is as with all the proposed remedies essential that it is drafted so as to include all market participants and this is a remedy that underpins all of the provisional remedies. Aviva believes that there is an opportunity to widen the ban to include all elements of a motor claim and this is referenced below in 2.9 (d).

(a) Could this remedy operate on a stand-alone basis?

This remedy could operate on a stand-alone basis but to be truly effective it has to be combined with a reduction in the claims cost either by lower credit hire charges or subrogated repair costs and an increase in the salvage value, so that the referral margin / element that exists is removed.

It will be of high importance to ensure that the definitions' of what is meant by a commission and a referral fee is made absolutely clear to avoid any risk of circumvention as set out in 2.9(d).

Many of the arrangements are in fact complex profit sharing arrangements and to be truly effective the wording should be clear, widely interpreted and result in any incentives being removed from all aspects of a motor claim with the aim of reducing insurance premiums.

(b) Would remedies 1A to 1F benefit from a prohibition of referral fees as a supportive measure? Or would remedies 1A to 1F have the effect of reducing referral fees in any event?

The remedies would undoubtedly benefit from a prohibition on referral fees as this would as per above give some statutory effect and regulatory oversight to the remedies proposed by the Competition Commission.

It was Aviva's position with the Ministry of Justice that when the referral fee ban for personal injury claims was introduced this had to be combined with a reduction and fixing of the legal costs that a claimant could recover. The Ministry of Justice consulted on the reduction of the legal costs and in January 2013 announced a substantial reduction. As a result insurers have been able to pass on those reductions by way of reduced premiums.

(c) What would be the impact on premiums if referral fees were prohibited?

Aviva would refer the Competition Commission to the response given above. It is our view that this would have a positive effect on motor premiums and also allow the overall process for providing replacement vehicles, repairing cars and dealing with total losses to become far simpler.

It will drive the change in the behaviour that is required and benefit consumers by reducing the overall cost of claims if a reduction in cost is also made and frictional costs will be removed.

(d) Would this remedy give rise to distortions or have any other unintended consequences? In particular, would a prohibition on referral fees create a greater incentive for insurers to vertically integrate?

It is our view that the remedy could have the unintended consequence of the cost of other elements of a claim increasing to compensate for any lost revenue e.g. an increase in the use of rehabilitation where there is a personal injury claim or increased repair costs and vertical integration.

In our view a broad ban on any element of a motor claim generating a referral fee would avoid the risk of circumvention.

(e) What circumvention risks would this remedy pose and how could these be mitigated? In particular, how could other monetary transfers (e.g. discounts) having the same effect as referral fees be prevented?

Aviva would refer the Competition Commission to the response given at paragraph 2.9(d).

(f) How could this remedy best be monitored and what costs would be incurred in doing so?

As the same regulators are already responsible for the oversight of the ban on personal injury referral fees, as would be required for a wider ban on all referral fees in private motor, it could be effectively monitored by existing regulators.

It is therefore our view that this remedy would create minimal additional costs and would be combined with the regulators existing powers and sanctions for non-compliance.

2.10 Remedy 1H(a): First party motor insurance

Aviva agrees that the changes required would be complex and would take a very long time and a great deal of time to implement. Aviva believes however that our suggested variation of Remedy 1A or a combination of the other remedies will essentially achieve what a Remedy 1H would, but without the changes in law and therefore a much quicker implementation.

2.11 Remedy 1H(b): Prohibition of credit hire

Aviva agrees with the competition commission view not to pursue this remedy.

2.12 Remedy 2A: Compulsory audits of the quality of vehicle repairs

Aviva supports the idea that the customer needs to be able to have assurance with regards to repair quality.

Any additional transparency for the customer is welcome.

However as stated previously, Aviva does not entirely agree with the Competition Commission findings with regards to this issue and therefore believes there is a risk of any remedy being disproportionate.

It is Aviva's view that if there is an issue it needs to be resolved within the vehicle repair market maybe by way of an accreditation which is supported by a stringent quality audit of the repair process funded by both the insurer and repairer.

The cost, however, of any QA accreditation is passed on to the procurer of the service i.e. in most cases the insurer.

PAS 125 or an equivalent standard could be the mechanism, but this would need to be extended to include actual quality audits. How this works with vehicle manufacturer approvals and Thatcham repair methods would need to be clearly defined, as would rules concerning pre accident damage, customer own choice of repairer etc, but by improving the present audits any additional cost could be controlled.

Aviva believes if such a remedy is implemented there would need to be an independent organisation that carries out quality audits to defined criteria or has oversight of any self-regulated audits.

(a) What costs would be involved in auditing the quality of repairs?

Aviva believes the audits of repairers should be carried out by an independent body. The body would be made up as follows:

- Engineers, and a
- Small administration team

There are 2 options: either the work could be outsourced to an existing Engineering operation; or the Engineers / Administration handlers are recruited purely for this function. Either way, the issue is scalability.

On a worst case scenario, the cost of the independent body could be [✂] per annum based on:

- 3000 recognised repairers across the UK
- Each repairer being audited once per annum
- A minimum of 5 audits per repairer
- One engineer carrying out 5 audits a day
- Each audit costing [✂] to account for travelling/accommodation costs

(b) How frequently should audits of repair quality be undertaken?

Aviva feels the frequency should be dictated by the audit findings. If a repairer has a poor audit, then a repeat visit should be before 12 months has elapsed, (Bodyshop Groups should be audited at a site level, ensuring via audit that quality is consistent across the Group). Conversely, a positive audit wouldn't require a return visit within a year.

Equally, the volume of audits would vary dependent on the audit results; a greater number than 5 for the follow up visit for those repairers who scored poorly and less than 5 per repairer for those repairers who scored highly.

(c) Should audits of repair quality be undertaken by insurers and CMCs or an independent body? Is it necessary for the audits to standardised and be performed by an independent body for the results to be comparable and credible? How would an independent body be funded?

Aviva's views are that audits should be an independent body so that consistency of auditing is achieved. Standardisation would be impossible to achieve across the insurance industry should the audits be undertaken by insurers and CMCs.

Funding of the independent body should be borne by both insurers and repairers. Both have an interest in repair quality. An insurer's obligation is through the fact they will, on most occasions, have directed the customer to the repairer. For the repairer, the better the audit score, the more work they can seek and the higher the costs they can negotiate with the insurer.

(d) If the results of repair quality audits were to be published, who should collate the results? Should be results be categorised by repairer or insurer?

Aviva strongly believes the results should be published, having been collated by the administration team which is part of the independent body.

The results should be categorised by both insurer and repairer. Insurers differ in the quality measures they demand from their repairers and the table will reflect those insurers who pride themselves on quality.

For the repairer, the higher they appear on the table, the more customers they will attract and thereby, the greater volume of work they will receive.

(e) If audits are carried out by insurers, how would consistent standards be achieved?

Aviva feels that standardisation across the insurance industry is an impossibility; there are too many insurers, with differing quality agendas, to achieve consistency.

If insurers are asked to carry out the audits, then a set criterion is needed with some form of independent body checking the efficacy of the insurer audits. For this option to possibly work, the independent body would need some form of sanctions so their recommendations are acted on.

(f) If this remedy were to be implemented through expanding the scope of PAS 125 and the scope of audits undertaken in relation to PAS 125, is it necessary for PAS 125 accreditation to be made mandatory for all repairers undertaking insurance-related work?

Aviva supports the principle that insurers should authorise insurance work only to repairers who are PAS 125 accredited or operate to an equivalent standard. All its repairers are PAS 125 accredited, with the exception of those in very remote areas where volume is limited, such as the Scottish Islands. Aviva has made this a contract condition with its UK mainland repairers. However, Aviva recognises that not all repairers may be able to afford PAS 125 accreditation and that an absolute insistence of PAS 125 accreditation could compromise customer choice.

(g) Would this remedy give rise to distortions or have any other unintended consequences? and the scope of audits undertaken in relation to PAS 125, is it necessary for PAS 125 accreditation to be made mandatory for all repairers undertaking insurance-related work?

Aviva believes there are some consequences:

- Repair lifecycles will increase as repairers recognising the importance of quality take time to carry out the repairs. That would impact on the cost of a replacement vehicle
- Repairers who top the quality table will find more customers want to use them and will be prepared to wait which again would be reflected in the repair lifecycle and replacement car costs
- This could change the face of the UK repair market, limiting insurers to only those repairers who have PAS125 or similar could drive greater volume through a smaller number of repairers who can afford the investment, while others cease to trade. Where this will ultimately improve quality it may over time increase rates of repair as demand outstrips capacity

(h) Whether this remedy is best made by the Competition Commission through an enforcement order or whether the Competition Commission should make recommendations to another party to implement the remedy, and if so who that party should be.

Aviva recommends the route of the enforcement order with the proviso that the said enforcement order is done in conjunction with a respected body in the repair industry such as Thatcham / BSI.

The downside against another party implementing the remedy is that it wouldn't have the necessary legal enforcement that the order brings and therefore the implementation of its recommendations could be mixed meaning customers would be adversely affected.

(i) Whether this remedy is likely to be more effective in combination with other remedies than alone and, if so, what particular combinations of remedy options would be likely to be effective in addressing the AEC we have provisionally found.

Aviva feels this remedy is needed for the successful implementation of various remedies:

- For Remedy 1A, if the insurer bears the cost of the replacement car it is in the insurer's interests to have fewer cases returned to the repairer for rectification work as a replacement vehicle will be needed on such occasions and the insurer would stand the cost. Better quality would reduce the replacement cost
- For Remedy 1B, if an at-fault insurer repairs the non-fault customers car, PAS 125 compliance together with a rigid audit program would give the non-fault customer the assurance the repairs are being carried out to a high standard
- In respect of Remedy 1D(a) and 1D(b), the audit procedure will guard against the perception that insurers repair to cost rather than quality and safeguard quality of repairs

2.13 Remedy 2C: Giving consumers the right to have their repairs assessed by independent experts at no cost if there is a problem with the repair.

Aviva welcomes the decision of the Competition Commission not to implement this remedy. Aviva uses independent engineers at its own cost to resolve customer complaints concerning the poor quality of repairs.

Aviva further believes that as all complaints of this type are reportable to Financial Ombudsman's Service and every customer has the right to appeal any decision to them, that the FOS are best placed to ensure Insurers treat all customers fairly and investigate any and all complaints of this nature.

2.14 Remedy 4A: Provision of all add-on pricing from insurers to PCWs

(a) Should PCWs be required to enable consumers to compare the policies offered by different insurers including all add-ons on their websites or are they sufficiently incentivised to do so without such a requirement?

PCWs are not sufficiently incentivised to make this change. Aviva supports the principle of PCWs showing the price of key add-ons to ultimately allow the customer to compare the final price they will be asked to pay. There are however, practical difficulties involved with comparing a diverse range of add-on products. This would need to be carefully considered as part of the implementation to ensure the objective of the remedy is met.

(b) Should the remedy be extended to brokers?

Brokers should also be subject to these rules.

(c) Should the remedy apply to all add-ons?

Aviva does not believe this to be practical for add-ons relevant to a small subset of customers and it should be restricted to the largest add-ons by take-up rate. For example, these might just include legal expenses, replacement car and PNCB coverage's.

(d) How long would it take for insurers to prepare the pricing information to pass to PCWs and for PCWs to alter the design of their websites to accommodate this change?

It is difficult to quantify this without clarity on the specific requirements but would be expected to incur non-trivial time and cost.

(e) How much would it cost to make these changes?

This would depend on the detailed solution. We would be happy to help the Competition Commission quantify when this is available.

(f) What circumvention risks would this remedy pose and how could these be mitigated?

These will depend on how PCWs are required to show add-on prices. If a list of add-ons where prices had to be shown were created, possible circumvention risks could include:

- Cover could be reduced to show a cheaper price or a lower level of cover provided than is needed
- Different levels of cover could be introduced with only showing the price of the cheapest to improve an insurers' position on the PCW
- Add-ons could be rebranded / combined to get away from showing prices
- Add-ons may not be offered to all customers
- Add-on prices will potentially move away from flat rating making coverage more expensive to certain customers

Any solution needs to improve practically the transparency to consumers of the price they will ultimately pay. The core PMI product as sold by providers on PCWs all have various levels of cover and any change to include add-ons into this comparison needs to consider this point. Mitigating these risks via minimum standards or regulation could in turn create issues around meeting customer needs.

(g) Would this remedy give rise to distortions or have any other unintended consequences?

It is possible that having a restrictive list of add-ons that can be offered and the cover they include could stifle new product innovation and ultimately longer term competition and customer choice.

Prices could be increased for add-ons not on a recommended list. If an insurer does not offer a particular add-on, then depending on how add-on prices are shown:

- The insurer may not appear on the PCWs list of insurers, reducing choice and competition for the customer
- Total prices including add-ons would be inconsistent, reducing transparency

2.15 Remedy 4B: Transparent information concerning no-claims bonus

Aviva's recent customer research confirms the Competition Commission findings that there is a lack of customer understanding of NCB protection, and the consequences on premium when making a claim. Our findings indicated strongly that customers who take the Protected NCB ("PNCB") option expected their premium to be unaffected in the event of a claim. We are therefore supportive of remedies to address this point.

We have concluded that whilst premium increases under PNCB is common practice in the Private Motor market, the cover does not fully meet the expectations of customers, specifically that both non-fault and at-fault claims impact the premium where PNCB is present.

Whilst clearer wordings at point of sale and in policy documentation would help to remedy this, Aviva does not consider that this is a fully effective remedy.

Although we support the spirit of this proposed remedy, we remain unconvinced that it addresses the key customer issue that there is a mismatch between the cover provided by PNCB and the expectations of customers. Aviva has already begun to explore the feasibility of possible cover changes to align our own PNCB product to what our research indicates are customer expectations, and we think this would be a more effective remedy. Once we have completed this feasibility and understood the options, we would be willing to share our thoughts on possible product changes with the Competition Commission.

(a) Is it necessary for consumers to be given the NCB scales both when choosing whether to take out NCB protection and when receiving their policy quotation?

Aviva does not believe that the publication of NCB scales at any stage of customer journey would help customers to better understand their cover.

An example may help to illustrate this point.

- Insurer A may operate a significant NCB scale, offering 75% discount for 5 years NCB. However, if their premium for Nil NCB discount (which applies to only a small proportion of potential customers) is set at a very high level, the premium for a customer with 5 years NCB can still be high e.g. Premium for Nil NCB is £1000, premium for 5 years NCB = £250
- In contrast, Insurer B may operate a more modest NCB scale, offering only 60% discount for 5 years NCB, but if the premium for Nil NCB is lower, their claims-free customers premium may still be lower e.g. Premium for Nil NCB is £500, premium for 5 years NCB is £200

The publication of a scale in these circumstances may mislead customers as to the better value product.

There are also significant practical considerations. Aviva does not operate a single NCB scale [✂]

Broader published scales may make the market less efficient leading to higher average prices.

(b) What wording could best be used to help consumers that NCB protection does not prevent premiums rising following an accident?

We acknowledge the Competition Commission's findings that the level of detail in relation to NCB protection provided by insurers including Aviva could be improved. We are committed to addressing the Competition Commissions concerns.

For at-fault claims, Aviva does currently increase premium if NCB protection is in place, for the first and subsequent claims in a policy period.

Under Aviva's existing PNCB add-on, we presently confirm within the Aviva Direct policy wording that:

'Protected NCB preserves the number of years no claims discount entitlement you have. Your renewal premium may still increase as a result of claims and other factors'

The inclusion of this wording within the key points of the quote process across our Direct and Intermediary channels will provide customers with clarity of our Protected NCB.

We believe this wording clearly articulates the cover PNCB provides and the implications on premium of making an at-fault claim. However, we intend to validate this belief through customer research and insight.

(c) Are there any obstacles to effective implementation of this remedy?

The implementation of providing personal NCB scales for individual customers would be highly complex to implement and would ultimately be confusing for customers.

(d) How long would it take for insurers to prepare the NCB scales?

As previously stated, NCB is calculated on an individual customer basis. To create the ability to publish this would require significant and complex IT change, and we believe would not provide any greater clarity for customers. To calculate a full NCB scale covering every future circumstance would involve multiple premium calculations which is beyond the capability of our current systems.

(e) What circumvention risks would this remedy pose and how could these be mitigated?

We do not currently foresee any circumvention risks that could be posed by this remedy.

(f) Would this remedy give rise to distortions or have any other unintended consequences?

If forced to publish NCD scales, some insurers may construct their scales to attract only those customers with a high number of claim free years. As a result, an unintended consequence of the proposed remedy could be a reduction in capacity for customers with lower claim free years. In addition, some insurers may cease to offer NCD altogether, and move to alternative to rating discounts.

2.16 Remedy 4C: Clearer descriptions of add-ons

(a) What are the key aspects of each add-on product that need to be explained in such descriptions and how should the quality of these descriptions best be established?

Following the FCA thematic review of add-ons in the private motor insurance market, Aviva has undertaken a comprehensive review of the benefits and value of its add-on covers, and the way in which the features and benefits are communicated throughout the customer journey. We therefore fully support the remedy proposed by the Competition Commission. Add-on descriptions should provide an overview of:

- Cover provision - providing a clear description of what cover is provided

- Confirmation of key exclusions or limitations of cover (Aviva would use complaints and repudiation data to establish which elements should be articulated to customers)

There is an ongoing programme to review our add-ons products and descriptions across both online and offline sales channels, measured against these points.

Aviva has already recognised the need for clearer product feature descriptions and has already initiated a complete re-write of all its personal lines policy documentation to achieve greater customer understanding of cover entitlement, exclusions and claims processes in clear and non technical language. This process includes all add-ons as well as our core insurance product.

As part of this process, we are carrying out customer testing of the wordings, measuring their understanding of the product and its entitlements. Once live, we will monitor complaints and repudiation data to establish customer understanding, and to highlight where any wording issues exist. In addition, a full wording review will be integrated into our PDAM (Product Development and Approval Management standard (the FCA approved framework we use for new product development and existing product management and review)) Product Review programme (every 3 years). Aviva considers that similar governance processes should be adopted by all insurers and distributors to ensure the quality of wordings is established and maintained in line with TCF principles.

(b) How should these descriptions be provided to consumers—for example, in the insurance policy documentation, on insurers' websites or on PCWs?

Aviva believes that full and clear descriptions should be available to customers both during the on-line and off line pre- purchase journeys across all distribution channels, and in all post sales policy documentation.

Specifically, we believe that clear add-on descriptions should be included within:

- The web quote and buy journey
- Help & support pages on sales websites
- Inbound and intermediary sales support and training material
- Policy summary document
- Policy Wording document

(c) How would this remedy best be monitored—both for initial approval of descriptions and ongoing approval?

In addition to the internal measures described in answer 4C(a), the FCA could oversee the implementation of the Competition Commission's remedies to ensure market wide adherence on an on-going basis. As the FCA already has a mandate to ensure insurers provide customers with clear and fair information, we feel they would be best placed to ensure the market meets its obligations to the Competition Commission findings.

2.17 Remedy 5A: Prohibition on 'wide' MFN clauses

(a) How would this remedy be best specified? Would the prohibition be best described in relation to all MFN clauses except those in relation to insurers' own websites?

We welcome the Competition Commission's proposed Remedy of prohibiting wide 'most-favoured nation' (MFN) clauses. Further, contrary to the Competition Commission's conclusions in provisional findings, AVIVA believes all MFN clauses are inherently problematic and that 'narrow' clauses also soften competition. AVIVA requests that Remedy 5A be extended to cover all MFN clauses for the reasons we outline here and in our response to 5B.

The best remedy to 5A would be an order prohibiting wide MFN clauses which would also bind all present and future intermediaries or distributors (including current PCWs). Given the harm which is caused by wide MFNs, we would seek for this to have immediate effect. The prohibition of all wide MFN clauses should include add-ons as well as the core premium.

We also request that the order captures the intent of these clauses and not just the technical aspect of such clauses to help mitigate the concerns over circumvention risk (see point (c) below which describes some of the possible circumvention methods which AVIVA considers a PCW could use).

For the same reasons, AVIVA would also welcome the Competition Commission investigating the application of wide MFN clauses by PCWs in other product classes e.g. home.

Should the Competition Commission decide to achieve abolition of wide MFNs through undertakings, we would welcome this as far as it went, although would note that this would not bind future intermediaries/distribution channels operating in the same way as the current PCWs.

(b) Could this remedy take effect immediately (or within a short period to remove the clauses) or would an adjustment period be required?

AVIVA believes that this remedy could take immediate effect. AVIVA has experience of Confused removing its wide MFN clauses in 2012 and this was achieved immediately. From an insurer and consumer perspective there is no need for a period of adjustment.

(c) What circumvention risks would this remedy pose and how could these be mitigated?

AVIVA shares the Competition Commission's concerns that other methods of creating the same outcomes as wide MFN clauses could be achieved by PCWs via other methods e.g. the threat of de-listing. AVIVA believes there are significant other actions a PCW could take which would manifest themselves as less preferential contract terms with those insurers which did not adhere to the spirit of a wide MFN. Examples are:

- Less favourable commission terms
- Less favourable solicitation right for insurers with potential customers introduced from the PCW
- Unreasonable IT change lead times

- Timeliness and quality of MI
- Additional charges

Furthermore, AVIVA believes it would be very difficult to reduce the circumvention risks through open market commercial negotiation given the size of the individual PCWs and the advantage this market power gives them in negotiations with providers.

AVIVA believes that one of the best solutions is for there to be more competition for the four largest PCWs. A possible remedy is for the removal of the narrow as well as wide MFN clauses. If all forms of MFN clauses were removed over the longer term, their removal would help new, lower cost distribution channels to compete and challenge the strength of PCWs.

AVIVA notes that the Competition Commission believes that a removal of wide MFN clauses could reduce 'single-homing' and thus improve competition by customer's shopping around more. AVIVA believes the same principle applies to the removal of narrow MFN clauses.

Given many providers now have multi-brand strategies for different distribution channels the example of providers having a dis-incentive to provide PCWs a cheaper price for cheaper commission rates we believe would have limited market impact. In addition the remedies as described in the Competition Commission Glossary such as 9.77(d) would mitigate providers getting a 'free ride' on PCW leads.

We also challenge the relevancy of the evidence in para 9.74. This example compares a relatively immature PCW market in Italy with a very mature and dominant PCW market in the UK.

[✂]

(d) In addition to threatening to delist an insurer, what other actions could a PCW take that might have the same effect as a 'wide' MFN? How could the risk of a PCW taking these actions be effectively mitigated?

See response to (c) above.

(e) Would this remedy give rise to distortions or have any other unintended consequences?

AVIVA does not believe this would give rise to any distortions or other unintended consequences other than those articulated in (c) and (d).

2.18 Remedy 5B: Prohibits all MFN clauses

(a) The Competition Commission invites views on the possible remedy in paragraph 102 which we are not minded to consider further and on any other possible remedies that we have not included in this Notice which interested parties consider may be effective in addressing the AEC we have provisionally found under ToH 5. Where parties are of the view that these remedies could be effective, they are asked to submit evidence to support their views.

AVIVA believes all MFN clauses are inherently problematic. AVIVA requests that any order (or undertaking) should cover all MFN clauses for the following reasons and would ask the Competition Commission to take these into account. MFNs reduce an insurer's ability to provide cheaper prices in distribution channels that cost the insurer less. At present four PCWs control over 60% of new business PMI sales in the UK which represents significant market power. This market share and power continues to grow. This in itself suppresses competition and innovation and it is a subjective view that says that removal in isolation of wide MFN clauses only will change this position.

Given this concentration of distribution, the continuation of narrow MFN clauses and the problems with defining exactly what constitutes a narrow clause, will inhibit the emergence of distribution channels with lower costs and thus stifle innovation and competition in a similar manner to wide MFN clauses. Providers will always have an incentive to provide the cheapest prices into the lowest channels of distribution. The concept that PCWs cannot survive without narrow clauses does not take account of their considerable market power, preference of consumers to compare prices easily or the remedies to mitigate providers getting a 'free ride' on leads as articulating in the Competition Commission Glossary 9.77(d).

[✂]

AVIVA would also ask the Competition Commission to consider the difficulties of future proofing the definition of narrow v wide MFN clauses in the context of any new forms of distribution that could arise. The circumvention risk to wide MFN clauses of PCWs (or other organisations) describing new distribution channels as 'direct' to insurer routes of distribution is high.

2.19 Proposed Alternative Remedies as per Paragraph 106 of the Remedies Notice

Aviva offers the following alternative to Remedy 1E (Measures to control non-fault write-off costs) for consideration by the Competition Commission.

Aviva proposes the Commission considers a standardised % salvage return for each category. If adopted, it would fit in with Remedy 1D(b) and thereby make claims handling smoother and easier. If an insurer obtained a higher return than the % for that category, they keep the difference. Conversely, if they sell the salvage for a figure below the set %, they stand the difference.

The proposal will solve the three concerns the Commission has:

- The current estimation process which shows low returns
- Insurers not having an incentive to seek high salvage returns, and
- Referral fees

On the latter point, referral fees will almost certainly reduce if not be eliminated as the Salvage companies won't be able to pay a fee and provide a high return.

There are two important aspects which need to be in place. The ABI salvage categorisation must be rigorously followed and the set salvage %'s monitored and adjusted, regularly, to reflect market trends/movements.