



17 January 2014

Inquiry Manager
Private Motor Insurance Market Investigation
Competition Commission
Victoria House
Southampton Row
LONDON
WC1B 4AD

Dear Sirs

BIBA response to Competition Commission's Private Motor Insurance market investigation interim report – Provisional findings report and Notice of possible remedies

The British Insurance Brokers' Association (BIBA) is the UK 's leading general insurance intermediary organisation representing the interests of insurance brokers, intermediaries and their customers.

General insurance brokers contribute 1% of GDP to the UK economy and BIBA brokers employ more than 100,000 staff.

BIBA helps more than 400,000 people a year to access insurance protection through its *Find a Broker* service, both online and via the telephone.

Brokers provide professional advice to businesses and individuals, playing a key role in the identification, measurement, management, control and transfer of risk. They negotiate appropriate insurance protection tailored to individual needs.

Brokers are agents of the customer, as well as the insurer (paragraph 30b of the Competition Commissions Provisional Findings Report incorrectly states they are the agents of the insurer). This distinction is important as a broker has a primary duty to the individual client in the arrangement of a policy and the handling of a claim.

BIBA is committed to working with the Government to achieve the right outcomes for motor insurance customers and we have already had positive results with premium reductions of 11% this year.

Price Comparison websites

BIBA welcomes the Competition Commission's move to act on most-favoured nation (MFN) clauses. The Competition Commission has recognised the point that BIBA made at the hearing on 15 July 2013.

MFN clauses have an adverse effect on competition as they restrict a broker or insurer from offering the same product at a lower price elsewhere. BIBA believes MFN clauses are anti-competitive.

If a customer walks into a broker's office, we believe they should be able to offer the premium at a cheaper price. Comparison websites typically charge around £40 to £50 per lead and this saving could be passed onto customers if the use of MFNs are restricted.

BIBA will also be contributing to the Financial Conduct Authority's (FCA) review of comparison websites announced last November.

Claims

Customer service has improved dramatically during the last 25 years. The advent of replacement vehicles means that customers can continue to drive to work and take the kids to school, along with the introduction of approved repairers taking away the stress of arranging estimates for repairs.

However, BIBA believes that claims management costs are too high. We were pleased with the Ministry of Justice's Claims Management Regulation Unit announcement last week - that they will have tougher regulations for Claims Management Companies and new powers to fine them.

We acknowledge the issues raised in point 41 of the Competition Commission's report regarding the insurer of the at-fault driver having no direct control over the non-fault driver's costs. However, we are concerned that if the Competition Commission want the fault insurer to repair the vehicle, then this is outside of the customer's insurance contract and the fault insurer would have to balance a conflict of interest between their own costs and those of the third party seeking recompense. This needs careful consideration. Insurers should challenge any unreasonable costs made by a claimant or claims management company.

BIBA members would be concerned to ensure any remedy that gives the at-fault drivers direct control addresses any delays in reporting the accident by the fault driver (not at all uncommon) or subsequently discovered liability issues (with the unexpected potential for recourse back to the non fault driver, where such circumstances are currently catered for either through a legal expense policy or through the pragmatism of a broker approved CMC).

Further, there are strong concerns amongst members that unless there are strictly enforced service level agreements imposed on the at fault insurer, given there would be no contractual relationship between the non-fault claimant and the at fault insurer, there is a real risk that non-fault drivers would be considered less of a priority than at fault policyholders (who insurers argued, in the past, had paid them from a service).

We also need to highlight that the fault driver may not disclose their claim to their own

insurer for some time meaning that there could be a delay for the non-fault customer in achieving a means of alternative transport.

Whilst not perfect, the £6-£8 frictional cost is the cost of a market driven solution to the problem that, prior to credit hire and repair, non-fault drivers were treated very poorly by most insurers. Any other solution would require regulation and enforcement and undoubtedly add cost which would erode any saving.

We believe that tighter regulation of the CMC, to help eliminate extreme practices (so targeting where the real problems lie) would be a better solution.

Add Ons

The FCA's work on motor legal expenses insurance demonstrates that the product has utility, we also believe that protected no claims bonus and other add ons are important considerations for customers.

BIBA support the clear description add ons and clear pricing to enable customers to make informed decisions.

We share the Competition Commission's concern in point 63 regarding generic descriptions and limited comparisons about add ons from price comparison websites and would encourage action to improve this area so that customers have a clearer understanding of their options. Insurance is a complex contract and insurance brokers can offer a helpful explanation to customers in this area.

Quality of repairs

Insurance brokers place around a third of private motor insurance products, and acting as agent of the client, would raise any repair quality concerns with insurers. We have not received details of any issues from members and would make the point that approved repairers have guarantees over repair quality and any complaints should be made to rectify any issues.

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

Section 18

BIBA agree with these proposals that would provide a basic level of information explaining to clients:

- (a) what happens when a claimant is at fault or not at fault and what the basic legal entitlements are in each case (in relation to both repairs and replacement cars);
- (b) whether a claimant claiming under their own insurance policy would have to pay an excess and/or would lose any NCB and how these can be recovered;
- (c) when a claimant is entitled to choose their own repairer and whether this affects their liability to pay an excess; and
- (d) what a claimant's contractual rights are if the claimant is unsatisfied with the repairs carried out.

Section 21

a) What information should be provided to consumers?

The information in 18 (a),(b),(c),(d)

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?

Within the annual policy.

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?

The regulator the FCA already has insurance conduct of business rules on disclosure and information and for pre-contract information on general insurance contract (ICOB 6.0)

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

We are concerned about 'information overload' for customers so we would suggest that any changes focus on the 4 key points (a), (b), (c), (d). These will also be an inevitable need to change systems/policy reprints etc which brings with it a cost, which is ultimately born by the customer.

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

The FCA

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

We have not conducted a cost benefit analysis but these will be inevitable cost across the market.

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

The FCA could cater for this.

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?

They would help clarify the situation

Remedy 1A: First party insurance for replacement cars

Section 29

It is normal that the first party insurers provide a courtesy car under a comprehensive policy, although the car is not usually 'like for like' and can often be unsuitable.

Section 30

We strongly disagree with the points raised in point 30. It is an individual right (and their issue) to recover the reasonable cost of their replacement car from the guilty party it is for the at fault insurer to prove that it is unreasonable.

Such a remedy would mean that a policyholder, at personal expense, would be

protecting the at-fault driver from the financial consequences of his/her negligence. This would be inequitable and something the public would not comprehend or understand why they should pay. The cost would also outweigh the £6-£8 saving per policy. We are very concerned that the non-fault claimant would receive less than their current entitlement under tort law. The innocent policyholder would be the loser. It would require a change to the Road Traffic Act.

Section 34

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

The law of negligence, liability and tort. Furthermore there would need to be a considerable public education exercise. Motor accidents, and particularly liability and cost recoverability are highly emotive to most members of the general public.

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

Policyholders should be entitled to pursue the third party for an equivalent replacement vehicle.

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?

It is unfair to make the innocent policyholder pay a higher premium for a suitable car and deny them the rights that currently exist. Policyholders buy insurance to protect themselves, not an at-fault third party. We do not see any cost benefits. Remember section 51 of the provisional findings report suggested only a £6 - £8 saving per policy.

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?

This question highlights the problems with this suggestion.

The principal is that no claims bonus remains in abeyance until a non-fault insurer makes a full cost recovery, resulting in extra cost to the policyholder. Insurers can take too long to make a recovery, and when this happens it is often an understandable cause of considerable tension with policyholders.

(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?

The policyholder would be deprived of choice should the requirement be that the non fault insurer (ie his or her insurer) repair the vehicle. In addition, the non fault claimant would have to fund an excess (albeit potentially recoverable), and the no claims bonus would be at risk or held in abeyance.

Having two different providers potentially adds a layer of complexity around communication (and hire car cost mitigation) that doesn't currently exist.

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

Yes, as above

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

43 (a) (i) The non-fault claimant should have the right to choose. Whilst there is a service v cost consideration, it does not obviate the legal principle that exists today that costs need to be mitigated. Better, effective CMC regulation would help with this. We do not feel it favours any type of insurer over another.

(ii) We are concerned that there are insufficient incentives for the at-fault insurer regarding standard of service.

No contract is in place between the non-fault driver and the FOS complaints process had long lead times. This idea is of concerns to our members. However, the current 'system' provides some incentive to intervene as the alternative, CMC intervention, is more expensive. Efficient insurers are alive to this and actively intervene, but they would be less inclined to do so if there wasn't the 'threat' of CMCs.

c) There could be extensive delay while liability is agreed and type of vehicle. This remedy is not in the customers best interests as the at fault insurers main aim is to reduce their own costs. Many customers will have an immediate need that needs to be addressed. A time limit for response would not remedy any immediate needs.

d) Absolutely not as delays over liability could create all sorts of problems for the innocent motorist, which again, on an individual basis they will not understand and put them at a disadvantage.

e) There would be no advantages that we can see – only the potential for disadvantage as it creates the real potential for communication complexity when there is more than one interested party involved with the non-fault motorist.

h) Insurers and brokers are already supervised by the FCA. We suggest that CMC's also fall under the FCA's supervision.

Remedy 1C – Measures to control the cost of providing a replacement car to non-fault claimants

Section 48

a) We believe GTA style agreement covering the costs is a sensible way forward. The agreements are between the insurers and the TRV operators.

c) We do not believe a timescale can be easily set as for example some part from vehicles built in the US can take over a month to arrive. CMCs need to justify hire periods, and at fault insurers need to challenge hire periods if they believe them to be unreasonable, as they currently do.

d) Insurers and hire firms should mutually agree.

Remedy 1G: Prohibition of referral fees

64(b and c)

Prohibiting referral fees in this situation is not likely to have any significant impact on reducing premiums, the claims will still occur. It may have the unintended consequence of putting premiums up as the referral fee subsidy will disappear. It may result in fewer options being offered to clients. Greater regulation of CMC's is the key to reducing these costs.

Remedy 2A: Compulsory audits of the quality of vehicles repairs

As agents of the client we would be concerned if the quality of a customer repair was not as required. Members and their customers have not suggested there are any concerns in this area.

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

89 (a) Yes, PCW's should be required to enable consumers to compare the policies offered by different insurers including all add-ons on their websites.

(b) The FCA are already working with brokers in this areas and we would direct the Competition Commission to the MLEI guidance issued by the FCA in 2013.

Remedy 4B: Transparent information concerning no-claims bonus

Section 92

(a-c) NCB scales and explanation are often provided to customers anyway. This should be possible to provide a clear statement in very policy.

There needs to be a balance by not over complicating the sales process (which is complicated enough for businesses and the consumer). The risk is that the consumer 'switches off'.

We will discuss a form of words with our members.

Remedy 4C: Clearer descriptions of add-ons

Section 95

A clear explanation of the purpose, significant fact and key exclusions of each add-on product would be sensible, as well as clear pricing and conscious 'opt in' by consumers (as opposed to 'opt out'). The FCA regulate the industry and are best placed to monitor this.

Remedy 5A: Prohibition on 'wide' MFN clauses

Section 101

a) The remedy to prevent price-fixing with MFN clauses must apply equally across the board, however the insurance is sold via insurers, brokers or others, whoever is partnering with the site.

b) MFN clauses and other anti-competitive price fixing clauses must be banned immediately.

c) PCW's could call the clauses something else.

ToH 5: Remedies that we are minded to consider further.

Section 103

We disagree, MFN clauses are fundamentally anti-competitive and outlawing them in full would in no way threaten the existence of PCW's. Brokers (who effectively do 'price comparison' for insurers have never insisted on MFNs with their panel insurers, and their existence is far from threatened by their absence.

In fact their absence creates healthy competition between brokers. Why should PCWs feel threatened by their banning?

BIBA welcome the Competition Commission efforts to reduce premiums and would urge the right balance is achieved to avoid some of the potential negative outcomes we have highlighted in this document.

Yours faithfully

Graeme Trudgill FCII
Executive Director