

## Competition Commission Private Motor Insurance Market Investigation

### Response to Notice of Proposed Remedies



DAC Beachcroft Claims Ltd provides general insurance claims litigation and claims handling services to global and local insurers in England, Wales, Scotland and Ireland. A subsidiary of DAC Beachcroft LLP, we have more than 500 insurance professionals and act for nine of the top ten UK general insurers and have expertise and experience across the entire sector. Our long history of commitment to, and investment in, the insurance sector means that we have an unrivalled depth of experience and breadth of insight. Our claims business reacts quickly to the dynamic claims industry and the changing needs of our clients whilst providing a local service with the support of a global network.

Our motor team has a deserved market-leading reputation for providing innovative and pragmatic solutions to liability claims disputes of all types and insurance issues generally. We pride ourselves on delivering commercial, value-driven legal services. With specialist expertise covering catastrophic injury, claims validation, costs, credit hire, and Motor Prosecution law, the team covers the full range of motor work. Our strategic litigation unit offers a unique service for insurers dealing with emerging and important market issues.

## 1. General observations

1

DAC Beachcroft Claims Limited welcomes the Competition Commission's investigation into the Private Motor Insurance Market, and endorses the need for changes to be made, with a view to bringing down the rising cost of motor insurance for the consumer.

In general terms, there is a very clear and definite need to give the at-fault insurer an opportunity to control, and therefore mitigate the cost of the third party claim, insofar as the costs associated with vehicle repairs, storage and replacement vehicle hire are concerned.

Whilst not necessarily a primary focus of this investigation, implementation of the remedies set out in this document will also have the effect of removing opportunities for fraudsters to exploit the system. For further information, please see DAC Beachcroft Claims Limited's Credit Hire Fraud Report 2013: *'Combating Credit Hire Fraud in a changeable climate'* (<http://www.dacbeachcroft.com/publications/publications/credit-hire-fraud-report-2013>)

We have considered the Notice of proposed remedies released on 17<sup>th</sup> December 2013. Notwithstanding the relatively short timescale to respond, we set out at section 2 below our thoughts on Remedy A and the remedies in relation to Theory of Harm 1 (where we are able to respond). We are not in a position to respond to the remaining Theories of Harm.



**Remedy A:****Measures to improve claimants' understanding of their legal entitlements****General comments**

DAC Beachcroft Claims Limited welcomes this proposed remedy. A greater understanding of legal rights and entitlements will not only enable non fault parties to make more informed decisions when involved in claims, but will assist with improving the reputation of the market and public confidence in the same. However, the effectiveness of this remedy will very much depend on the information disclosed, as well as the timing. Further, the method and governance of the information will all be instrumental in assuring this remedy is effective.

**Answer to specific questions****(a) What information should be provided to consumers?**

This will be very much dependant on the subsequent remedies that are adopted by the Competition Commission. This is particularly relevant when looking at the proposed remedies around replacement car provision and repair management, as these rights will be of vital importance to claimant's and policy holders. DAC Beachcroft Claims Limited is happy to advise further on this point once other proposed remedies have been decided upon.

**(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?**

DAC Beachcroft Claims Limited recommend the information is provided at inception of policy stage, and then reiterated (in greater detail) at first notification of loss stage. This will ensure (as far as is possible) that the information has been reiterated to the claimant's at the time it is needed most (following an accident).

The information should be readily available on insurer's websites so it can be obtained by a policy holder at any given time. However, consideration needs to be given to policies taken out via brokers. For the remedy to be truly effective, the information needs to be available to all policy holders, regardless of who the policy was purchased from. Management of this may therefore prove difficult, as the rules implemented to bring about this remedy will need to be adopted by brokers.

Information and testing in relation to legal entitlements should also take place at driving test stage. This is discussed further below (j)

**(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?**

A general statement of consumer's rights should be encouraged, as would ensure uniformity in the information being provided to policy holders. The ABI being involved the production of this is advisable, subject to agreement of its contents by its members.

Consideration should also be given to the views of the Lloyds market and Gibraltar based entities, who may wish to input to the content of the statement.

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

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

There is a risk that consumer take up/awareness may become side-lined by the later involvement of a Credit Hire Organisation/Accident Management Company. There is often an acceptance by claimant's that when contact is made with such organisation, that they are handing their claim over to an "expert". As such, DAC Beachcroft Claims Limited recommends that there is governance as to the information and advice in relation to claimant's rights that can be given by Accident Management Companies and Credit Hire Organisations.

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

Once rules have been set as to the method, content and delivery of the information, governance of Insurers could fall into scope of Financial Conduct Authority. As with the ban of referral fees, failure to comply could be met with sanction/fine/intervention etc.

However, as above, for this remedy to be truly effective, governance of other organisations will be required, such as brokers, Credit Hire Organisation's, Accident Management Companies, Claims handling solicitors. These are all subject to different regulatory environments (eg. Solicitors Regulation Authority /MOJ). Monitoring and enforcement will need to be agreed with all regulatory bodies to ensure consistency.

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

DAC Beachcroft Claims Ltd do not have the necessary data to answer this question. However, DAC Beachcroft Claims Limited do not anticipate that the costs will be high on the basis information is already supplied to policy holders. The information will just need to be added to and uniformed.

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

No. DAC Beachcroft Claims Limited agree this could be implemented with an enforcement order, although training for all interested parties would also assist.

**(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?**

DAC Beachcroft Claims Limited agrees that a combination of remedies is certainly needed to maximise effectiveness. The scope of this proposed remedy will depend on how/which subsequent remedies are adopted/recommended. However, it appears that this remedy will work in conjunction with all/ any of the further proposals.

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

Yes. It is agreed that by giving the information at driving test stage, understanding of entitlements will be increased and improved. By testing them on the information, it should be read, revised and understood by the individuals. Also, giving consumers the information

before they have been introduced to the motor insurance industry is enabling them to have the facts at the earliest of opportunities. However, this should still be supplemented with providing the information at inception and first notification of loss stages to ensure it is not forgotten.

## **Theory of harm 1: Separation of cost liability and cost control**

### **General comments**

DAC Beachcroft Claims Limited believes that the Competition Commission have correctly identified the issues that have led to Adverse Effect on Competition in relation to Theory of Harm 1.

DAC Beachcroft Claims Limited believes that all proposed 7 remedies would work to combat the Adverse Effect on Competition identified. However, as discussed below, many will prove to be of little effect if implemented on a stand-alone basis. DAC Beachcroft Claims Limited suggest the proposed remedies should be implemented as an interlocking package, which can be used in conjunction with each other to combat the Adverse Effect on Competition.

### **Answer to specific questions**

#### ***ToH 1: Remedies minded to consider further***

##### *Issues for comment 1*

#### **28. Views are invited as to:**

- (a) Whether the possible remedies under ToH 1 are 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.**
- (b) Whether the possible remedies under ToH 1 should be implemented by the CC through an enforcement order or whether the CC should make recommendations to the Government (for example, the Ministry of Justice), regulators or other public bodies to implement the remedies.**

As above, DAC Beachcroft Claims Ltd suggests an interlocking package of remedies would be the most effective option. The proposed remedies requiring primary legislation (for example 1A) could be arrived at by combination or sequential introduction of 1B and 1C over a period of time. This is discussed further below.

Some of the proposed remedies would require primary legislation, particularly 1A as this affects the rights of the consumer. The Road Traffic Act 1988, would need amending due to the potential removal of subrogation.

## ***Remedy 1A: First party insurance for replacement cars***

### **General comments**

DAC Beachcroft Claims Ltd suggests this proposal would be the most effective of all suggested remedies.

However, there are several relevant considerations, especially as there would be a direct change to the right of subrogation

There is potential that the proposal will result in heightened premiums, and that young/ high risk drivers may be unable to obtain affordable insurance.

In addition, if the 'replacement car' on policy is an option, would the claimant be entitled to credit hire if they had not opted for the add on and are involved in a non-fault accident? Further, if the claimant had only opted for a like basis replacement provision, would they be permitted to seek credit hire to obtain a 'like for like vehicle'? If so, the effect on the credit hire market may be minimal.

### **Answer to specific questions**

#### *Issues for comment 1A*

**34. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) **What aspects of the law would need to be changed?** This remedy is likely to require primary legislation to bring into effect, namely the Road Traffic Act 1988.

(b) **How should policyholders be given a choice as to the extent of replacement car cover?** DAC Beachcroft Claims Ltd suggests this option be given to the policy holders at the point of sale. This already exists as an option at point of sale for many direct insurers, and with policies purchased online.

For policies not purchased directly or online, rules and governance will be required to ensure the option is given to all policy holders, regardless of the method or provider of sale.

(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?**

DAC Beachcroft Claims Ltd do not have the necessary data to fully respond to this question.

However, DAC Beachcroft Claims Ltd anticipate that the benefit derived from savings in existing third party and credit hire spend should offset the additional costs caused by non-fault insurers meeting their policy holders claims.

However, if it does not, there is of course a risk that premiums will be increased, and young/ high risk drivers may therefore be unable to obtain affordable insurance.

(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?**

As above, if the claims cost savings are outweighed by the additional costs of providing replacement cars/ repairs to non-fault policy holders, premiums will rise.

If excesses were payable for replacement vehicles, a right of recovery should exist to ensure non fault parties are put in the place they were 'but for' the accident (a right that exists at

common law). In addition, if non fault parties could not afford the excess, would they be entitled to credit hire/ credit repair? If not, claimant's will be unduly inconvenience, and again, would not be put back in the position they were 'but for' the accident.

**(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?**

This remedy could potentially obviate the need for "credit" hire and strip out costs associated for claims handling and extension of credit (Clark V Ardington, Dimmond V Lovell)

If this remedy is effectively implemented, DAC Beachcroft Claims Ltd suggests that adverse behaviours associated with credit hire will be removed as there will be no incentive to prolong periods or over supply vehicles (at a higher cost).

However, as discussed above, the effect on behaviours this will depend on the rights of a claimant failing to take the option of replacement cars at inception of their policy. If they can still enter into credit hire, existing behaviours would still remain (unless other remedies adopted in addition such as 1C).

Quality of service should remain, as insurers will want to provide a good service to their policy holders. This remedy could in fact improve competition between providers and supply chains who will be seeking to work with insurers.

**(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?**

DAC Beachcroft Claims Ltd recommends that the same insurer should manage repair and replacement vehicle to limit costs. However, consideration needs to be given as to the extent of the cover and a non-fault insured's and preference for use of own repairer.

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

As above, it is expected that there could be an additional beneficial consequence of this remedy due to improved competition between providers/supply chain.

However, consideration also needs to be given to commercial insurers to ensure they are not penalised. If their policies have replacement vehicle extensions under different terms, they will not derive the benefit of this remedy and there could be some distortion in the market.

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

DAC Beachcroft Claims Ltd suggests that the implementation of 1A will be the longest of all remedies to implement. Due to the radical changes proposed, primary legislation will be needed.

In addition insurers will need sufficient time to prepare themselves for the changes, as there will be a need to change supply contracts, tender processes, distribution and point of sale systems, processes and policy documents. If 1A is to be pursued further, this should be a 'long term' solution, with some interim remedies adopted whilst the primary legislation is implemented (such as 1C)



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

As above, If 1A is to be pursued further, this should be a 'long term' solution, with supporting measures such as 1C, 1D and 1E.

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

### **General comments**

DAC Beachcroft Claims Limited highly endorses this proposed remedy. However, its effectiveness will depend on whether the claimant still has the right to choose their own insurer or another provider (ie a credit hire company). If this right is removed, it is likely primary legislation will be needed.

Many other issues need clarifying before the effectiveness of this proposal can be fully estimated. For example, what would the response time need to be for the at-fault insurer before the claimant can go elsewhere? Depending on the response time specified, operational changes may be required of some insurers to ensure they are ready for the implementation of the remedy.

Will the claimant still be entitled to credit hire if they are not happy with the service provided by the at-fault insurer?

This remedy will effectively reverse the GTA "first to the customer" principle. This should remove the uncertainty and unpredictability of "Copley" strategies. In addition, there will be a consumer advantage of having no obligations/ credit contracts with hire companies.

It is unlikely that 1B will be as effective in combatting the Adverse effect on Competition as 1A, but it could possibly form part of "package" or as stepping stone along to Remedy 1A.

### **Answer to specific questions**

**(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?**

If the claimant still has the right to choose, very little impact will be made on the Adverse Effect on Competition. DAC Beachcroft Claims Ltd anticipates that the majority of claimant's will want to use their own insurer. This is a brand they will recognise and with whom they a contractual relationship. If they have the right to use their own insurer, will they also have the right to still use credit hire organisations or claims management companies? If so, DAC Beachcroft Claims Limited do not anticipate the remedy will have any (or at best very little) effect on the current market.

**(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)?**

Insurers have incentives to offer and deliver the highest levels of customer care, regardless of fault. Insurers have a brand to protect, and any dissatisfied claimant could affect this. Insurers strive to deliver a high standard of customer service, not only to protect this brand, but also to ensure they keep the claimant in their repair and hire network; ultimately minimising their cost exposure.

Claimants have the protection of the law and the courts should the expected standard not be delivered.

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

As above, this choice exists now. Therefore, if the non-fault Claimant retained the right to decide which provider to use, this proposed remedy would be ineffective.

**(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?**

As above, time parameters decided upon when implementing this remedy will be of vital importance to assess its effectiveness of combatting the adverse effect on competition.

A delay of more than 24 hours may inconvenience many non-fault claimants (for example whose vehicle is deemed unroadworthy due to the accident, but has no other vehicles available to them and uses a vehicle on a daily basis). However, for some claimant's, a replacement vehicle may not be needed and they may not be inconvenienced by a delay of say 7 days (if the vehicle involved in the accident is roadworthy).

Therefore, the inconvenience caused to a claimant by any given delay will vary on a case by case basis.

In addition, consideration needs to be given to reporting times, as well as the involvement of brokers and other non-insurers within the first notification of loss process. Insurers must be given the opportunity to discuss the matter with their policy holder before a decision in liability can be made (so they know whether an offer of repairs and hire is needed to the third party).

24 hours appears to be a reasonable period of time for the at fault insurer to make contact with the third party. However, this will only be possible if accidents are reported when they occur, and that contact can be made with the policy holder to establish liability.

**(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?**

If contact has already been made with a service provider that the claimant is happy with, it may not be practical to expect them to wait for a further offer from the at fault insurer (who may not be known to the claimant).

DAC Beachcroft Claims Ltd suggest that if contact has not been made by the at fault insurer within a reasonable period of time, it would be more practical to allow the claimant to use a provider of their choice, as long as appropriate cost controls are in place (1C).

**(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?**

If these two services are separated, there would need to be co-ordination between the two providers. Ultimately, costs and time could be increased.

If the same party is managing both hire and repairs, they have an incentive to manage repairs effectively to ensure hire periods are limited.

DAC Beachcroft Claims Limited can see no benefit in splitting the management of the two services.

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

DAC Beachcroft Claims Ltd do not believe there will be any distortions or unintended consequences, as long as the rights of the claimant are clearly explained to them (as per 1A).

There may be some distortion in that insurers who work with direct policy holders will have an advantage in making contact with claimants within prompter timescales. Brokers etc will need to be involved in this process to ensure reporting times are minimised.

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

As above, if claimant's still have the right to choose their provider (ie own insurer/ Credit hire organisation/ Accident Management Company) this remedy will be circumvented.

**(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?**

All first notification of loss providers would need to be appropriately regulated and audited to ensure they are complying with the rules set in relation to provision of information. However, it is noted that some providers of first notification of loss are non-regulated entities. Consideration therefore needs to be given as to how they will be monitored and audited.

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

As above, if the rights of the claimant are altered, primary legislation will be required, necessitating amendments to the Road Traffic Act.

However, if the claimant still has the right to choose their provider of services, primary legislation will not be required.

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

#### **General comments**

DAC Beachcroft Claims Ltd highly recommends this remedy is adopted. However, to ensure maximum effectiveness this should be considered with 1A or 1B as a more long term solution

It is envisaged that implementation of this remedy could be rolled out in short period of time, with minimal legislative change.

Consideration does however need to be given to the development of the infrastructure needed to successfully roll out the changes, such as the portal.

#### **48. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

- (a) **What would be the most effective way of implementing this type of remedy? Possible ways could be an enforcement order made by the CC, 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.**

If the GTA is replaced, for this remedy to be effective, the Direct GTA replacement must be mandatory. If not, competition would be distorted as there would be different rules governing different companies. An enforcement order would make this possible.

Consideration should be given as a new Pre-Action protocol for road traffic accident, which refers specially to rules and governance of provision of replacement cars/ the credit portal etc. This would ensure consistency and clarification.

Setting levels of the hire costs recoverable is advisable and will circumvent many of the 'arguments' currently pursued when negotiating on hire claims. However, close consideration will need to be given as to who sets these rates, and on what basis. DAC Beachcroft Claims Limited recommend this be set by an independent body who make the decision based on hearing representations from all interested parties. The rates would need to be reviewed annually.

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

To avoid any perceived or actual competitive advantage, this remedy would have to apply to all industry participants.

- (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?**

This will depend on a number of factors such as availability of parts, and the garage used by the insurer.

If 1A is adopted, monitoring will be carried out by the first party insurer. However, if 1A is not taken further, monitoring should be carried out by the party providing the service to the non-fault claimant. Paying parties will of course have an interest in this, and should be entitled to carry out their own monitoring should they wish.

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

As above, this should be by an independent body, based on evidence provided by all interested parties.

The body setting the rates will need to consider whether discounts for prompt payment should still apply. However, this will of course depend on the difference between the rates set and the actual direct rates parties are paying for the provision of replacement vehicles (ie is there room for a discount)?

Various categories of vehicles will need to be considered, as well as availability on the open market.

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

There should not be any administrative costs, as this should form part of the daily rate. The rate is not recoverable at common law in any event at present.

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

DAC Beachcroft Claims Limited highly endorses the development of a uniformed portal. Indeed, portal type technology is already used successfully by several insurers (with agreed credit hire organisations). The portal removes any delay in delivery of documents between parties, or documents going missing.

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

There would be a cost in development of the portal. The costs incurred in development of the MOJ portal for personal injury may be a benchmark for the potential exposure if remedy C is adopted.

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

As above, as long as the measures are mandatory for all claims management companies and credit hire organisation, there should be no distortion created.

**(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?**

Even with guidance on hire periods, there may still be examples of delayed repairs and total loss payments which may result in increased claim values. Further, debates will still take place in relation to equivalency of vehicle, need etc which increase costs and friction.

As above, DAC Beachcroft Claims Limited recommend 1C is adopted as part of an interlocking proposal to avoid loophole production and exploitation.

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

### **General Comments**

Any remedy that achieves the dual aim of preventing subrogated claims for repair costs being marked up and reducing frictional costs is to be welcomed by DAC Beachcroft Claims Ltd. The insurance industry has made failed attempts to put such arrangements in place previously through the Reduction in Paper Exchange process. Unfortunately that agreement is non-binding and is not adopted by all insurers.

The Court of Appeal in *Coles v Hetherington* have recently confirmed that the law as it currently stands cannot be applied in order to achieve these aims as the insurance arrangements cannot be taken into account so that reasonable rather than actual costs represent the recoverable amount; leaving the doors open for profit to be made out of subrogated claims.

We note that there are 2 proposals for this remedy. We have taken "wholesale" cost to be the actual cost charged for the repairs net of any mark-up however achieved. In terms of the standardised costs whilst we see that there are potential benefits to what is proposed, we would need to better understand the process prior to giving a full response on the issue.

### **Answers to specific questions**

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

As we have noted above, the common law as interpreted by the Court of Appeal, does not allow that it is appropriate for the recovery to be limited to "wholesale recovery" as the claim is the claimant's not the insurers. Insurers have however, tried to reach various voluntary agreements between them but these have not achieved the desired outcome.

In order to implement 1D(a) it would be necessary for this remedy to be part of a package of measures that prohibits referral fees, and also any other form of arrangement that may be in place that achieves the same ends.

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

1D(a) could lead to distortions and unintended consequences if it were to be introduced in isolation and not part of a complete package that prohibits referral fees or variations on referral fees.

1D(b) we need further detail as to how this process would work in practice before consideration can be given to whether there are unintended consequences, specifically in situations where full recovery cannot be made.

#### **(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?**

As stated above 1D(a) needs to be part of a package of measures that either directly prohibits such arrangements or factors them in to the calculation of "wholesale cost". There will need to be a process of checks and balances in place and it may well be that at fault insurers are best placed to consider whether the sums claimed appear to be at

wholesale cost or otherwise. However, if questions arise as to whether costs claimed are truly wholesale, there would need to be an effective remedy in place, whereby the sums claimed can be queried. This may best be done by way of prohibition and consideration by a Regulator.



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

### **General Comments**

DAC Beachcroft Claims Limited fully supports this proposal. However, this must go further than the current mitigation statement contained within GTA payment packs. Credit hire organisations and accident management companies do not always make full enquiries and do not have incentive to avoid interrogations on need to secure group improvement.

This remedy will immediately assist in combatting poor behaviours and the associated cost impact.

A standard and mandatory question set should be produced which all hirers must read and complete.

### **Answers to specific questions**

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

DAC Beachcroft Claims Ltd do not believe this will be effective as a stand-alone remedy. The current behaviours identified in Theory of Harm 1 go beyond issues surrounding need of a replacement vehicle. The remedy would work alongside 1B and C

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

As above, this proposal would aid/supplement 1B and 1C. The

#### **(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?**

The questions to be asked are of vital importance to assess the effectiveness of this remedy. Establishment of need is essential and is often a contentious issue disputed into litigation. The questions asked at the outset should be sufficient to establish whether a need to hire exists.

These should include;

- Is there a certified need (ie no access to other vehicles)
- Do they have provision for a replacement vehicle through their own insurer? If so, why was it not accepted?
- Did they check their policy of insurance to enquire as to whether they had provision for a replacement car
- Did the at fault insurer offer them a replacement car? Did they enquire with them as to whether they would provide one? If not, why not? Why was any offer not accepted?
- What uses the original vehicle was put to and how often was it used?
- Certified need and necessity of type and model of vehicle?

The above questions should be answered by the claimant, and followed with a signed statement of truth.

- (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 insurers or CMC's call records give rise to any data protection issues?**

If the mitigation declaration is followed with a statement of truth, this should be sufficient to satisfy the paying insurer. However, the paying insurer should have the option to request call recordings if they have any concerns. There should be no Data Protection issues if the claimant has been advised on the call that the call is recorded and may be used.

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

DAC Beachcroft Claims Ltd anticipate Costs of this remedy should be minimal

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

DAC Beachcroft Claims Limited do not anticipate any distortions or unintended consequences.

## **Remedy 1G: Prohibition of referral fees**

### **General Comments**

This proposed remedy is positively endorsed by DAC Beachcroft Claims Limited

Given the prohibition on the payment and receipt of referral fees in personal injury claims in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the extension of the ban appears logical and timely.

DAC Beachcroft Claims Limited believe that any income lost to parties currently receiving referral fees will be outweighed by savings achieved in claims spend through implementation of any of the previous proposed remedies.

### **Answers to specific questions**

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

This remedy could operate on a stand-alone basis. However, combatting the fundamental issues identified will be ensured through a combination of the proposed remedies or a 'package' as identified above.

#### **(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?**

As above, the ban on referral fees should benefit all other proposed remedies, and 1G could work in conjunction with them.

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

As above, if insurers see a reduction in revenue due to referral fee ban, this is likely to be off-set by a consequent reduction in costs brought by the other remedies. Therefore, there should be no increase in premiums.

#### **(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?**

If 1G is adopted with other proposed remedies (which result in reductions of claim spend) DAC Beachcroft Claims Limited do not foresee any distortion or unintended consequences.

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

As with the ban on referral fees in personal injury claims, strict governance and enforcement will be needed to ensure this remedy is effective. There are a multitude of potential workarounds here. As well as discounted rates, profit sharing arrangements and

rebates, if outside the scope of any referral fee ban will simply appear as charges elsewhere which ultimately fall on the at-fault party.

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

First and foremost, it is imperative that the scope and definition of any referral fee ban includes the various alternative financial inducements (as detailed in section (e) above. Thereafter, it is a matter for the regulators, who are best placed to monitor compliance and take decisive action (including sanctions) where necessary. The pre-requisite here is for all entities operating in the industry to be regulated.

### 3. Conclusions

As set out in section 2 above, DAC Beachcroft Claims Limited endorses the need for changes to be made to the operation of the Private Motor Insurance Market, with a view to bringing down the rising cost of motor insurance for the consumer.

In order to combat Theory of Harm 1, it is essential that the proposed remedies are introduced together as an interlocking package, rather than in a piecemeal / individual basis.

Realistically, Remedy 1A must be viewed as a long-term goal, but Remedies 1B – G, if implemented as an interlocking package, should provide an effective and more immediate solution to the adverse effects on competition identified.

Ultimately, in order for any proposed remedies to be of maximum benefit, it is essential that they are not limited to the Private Motor Insurance Market, but instead are applied to all commercial motor claims in addition. Limiting remedies to the Private Motor Insurance Market will inevitably lead to divergent practices, which is not only confusing for the end consumer, but is likely to augment the existing shortcomings within the commercial motor claims arena.

