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# SUBMISSION RESPONSE:

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## PRIVATE MOTOR INSURANCE: RESPONSE TO NOTICE OF POSSIBLE REMEDIES

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### **Background:**

This response reflects the collective representations of two companies:

- Direct Accident Management, a reputable Claims Management Company (CMC) and credit hire company representing 15-20% of the credit vehicle hire UK market and c.50% of the impecunious UK vehicle hire market.
- Exchange Insurance Services, a reputable Commercial Insurance Brokering company who having operated in the sector for over 20 years, have vigorously campaigned for tighter regulation and recognition of CMCs that help serve ill equipped customers in liaising with large insurance companies.

Additionally, in preparation to this response, the companies have solicited extensively the views of 21 geographically dispersed reputable claims management companies, law practices, car hire firms and Insurance Brokers, collectively employing c.4115 people in England and Wales

### **Introduction:**

Whilst the group largely concurs with the Competition Commission's provisional findings published on 17 December 2013, which had provisionally found an adverse effect on competition (AEC) within the private motor insurance industry it does not agree with all of the proposed remedies. We will confine our comments relating to the provisional findings to our response on 7th February.

In relation to the proposed remedies we feel that fundamentally:

- The proposed remedies especially with respect to equipping consumers with more information as to their entitlements and add-ons, the prohibition of referral fees and MFN wide clauses are welcome and should be implemented on a stand-alone basis given the beneficial impact they will have on motor insurance costs and the augmented benefits to the consumer.
- However, the Competition Commission do not appear to have proposed remedies that address matters relating to the cost of repairs and/or car hire (resulting in increased premiums to the consumer of £100-£150 million per year) that are undoubtedly caused by the incompetence and inefficiencies of large insurance companies whom themselves structurally buffer excessive frictional and transaction costs. Namely, through the time taken by them to pay action and settle cases. For instance, the average debtor days are one year for companies such as Direct Accident who work solely on behalf of non-fault victims. Postal response delays of up to nine months have been often experienced with at fault insurers. Delay in virtually every case results in significant costs to the insurer both in terms of repairs, car hire and a lack of client retention. Excessive costs can significantly be cut by measures that facilitate the insurance industry to deal with matters competently and efficiently.

- Furthermore, we feel that the Competition Commission fail to comprehend the current appalling experience most consumers suffer at the hands of insurers following a road traffic accident even when they are represented by highly competent and qualified lawyers and CMCs. In our collective empirical experience of 35 years of operating in this sector, payment of repairs by insurance companies in admitted claims takes an average of ten months and for hire charges over twelve months.
- We thus feel the proposed remedies relating to enabling at fault insurers being able to handle non fault claims will only amplify these excessive frictional costs and further severely disadvantage claimants who are ill equipped (by virtues of language, money or circumstance) to deal with large insurance companies.
- We would also question the effectiveness of those remedies which relate to those claims where liability is established from inception given that this relates to a small minority of instances. In the collective 35 year's empirical experience of operating in this sector, these remedies at best relate to 10% of all claims. In the vast majority (90%) of incidents of when a motor accident arises there is little clarity in terms of which party is liable in the first instance and at fault insurers are reluctant to concede liability.<sup>1</sup> We therefore urge the Commission to seek remedies to mitigate the ultimate detrimental impact on consumer premiums by encouraging insurance companies to increase their responsiveness and improve their efficiencies.

#### **Summary:**

The Group emphatically:

- Endorse and are willing to work with the Commission on the proposed remedies relating to the prohibition of referral fees, MFN Clauses, and better equipping the consumer with information relating to their entitlements, add-ons and their rights. We feel these measures can be implemented on a stand-alone basis.
- However, we strongly oppose the remedies relating to enabling at fault insurers to deal with non-fault claims as we feel that this will only magnify frictional and transactional costs and further disadvantage claimants who already hugely struggle with insurers with respect to handling and the payment of claims.
- The fundamental issue arises in the inefficiencies and ineffectiveness within large insurance companies to manage claims which manifest themselves in greater costs suffered by all parties. This is empirically validated by debtor days, response times and widely cited in Court cases and by CMCs, brokers smaller insurances and vehicle hire companies

<sup>1</sup> There are three fundamental reasons on why liability is not established in the vast majority of cases: following an accident most people are traumatised and suffer emotional displacement to varying degrees; conceding liability on car repairs also implies conceding liability for personal injuries and there are very subjective authentic but differing accounts of the rationale of an accident

## 1A. EQUIP CLAIMANTS WITH A BETTER UNDERSTANDING OF THEIR ENTITLEMENTS UNDER THEIR OWN INSURANCE POLICY

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We would encourage all remedies designed to equip claimants with a better understanding of their entitlements under their own insurance policy.

Specifically:

- We endorse the implementation of this remedy through an enforcement order directed at motor insurers and other parties who may receive the first notification of loss following an accident (for example, CMCs and brokers).
- We would like to highlight that this remedy is already implemented on a voluntary basis by reputable brokers such as Exchange Insurance Services who given that some of their clients are from disadvantaged or poorly educated communities do ensure that they are equipped at time of notification following an accident are aware of their contractual rights.
- This information should be provided to consumers with annual insurance policies, and at the first notification of loss. Furthermore, we feel this information should be available on insurers' websites.

## 1B: AT-FAULT INSURERS TO BE GIVEN THE FIRST OPTION TO HANDLE NON-FAULT CLAIMS

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We believe that the implementation of this remedy will only compound frictional and transactional costs given that currently, even in admitted cases, claimants who are represented by competent lawyers and CMCs, experience significant delay in response times and in settling their cases. For example, in several cases in the Liverpool County Court, Direct Line have admitted to postal delays of up to 9 months whereby post is ignored. Inevitably, this had led to a huge number of case proceedings against insurers who themselves fail to attend Court, and only take action when bailiffs are sent to enforce debt.

- It is the collective experience of this group that the at-fault insurer regularly disputes liability and/or disputes quantum of cases unjustifiably and claimants even when represented by competent lawyers and CMCs struggle to get payment out of the large insurers. Given these current difficulties, we assert that consumers who will have to deal with the at-fault insurer in person under this remedy will be hugely disadvantaged as this proposed remedy will only compound liability disputes or quantum unjustifiably should the at-fault insurer be given the opportunity to provide repairs and/or hire thereby reducing their liability to pay for such items and rendering the claimant helpless
- Furthermore, we contend that the proposed reforms will materially affect impecunious claimants and or those whom are not equipped (by virtue of language or learning difficulties, understanding of procedure) to make representations. In some areas for instance 90% of claimants are from ethnic groups who do not have English as their first language. To assist, many law firms handle small claims. Given their language barrier they will be significantly disadvantaged in their ability to proceed with a claim as they will require translation and other ancillary services.
- We thus feel this remedy would unjustly deny bona fide victims fair compensation: in the circumstance of where the third party insurer is disputing liability and/or quantum unjustifiably, would the insurer still be obligated to provide repairs and/hire?
- Equally, we feel there will be significant adverse cost impact. If the large insurers purchase car hire companies and/or CMCs to effectively bring the claims management process in-house this is inevitably going to result in increased premiums or certainly not a reduction in premiums because of increased overheads such as staff costs, vehicle hire, etc.
- We would also like to draw the Commission's reference to the criticism made by the Transport Committee when undertaking a review of whiplash claims last year in relation to third party intervention by insurers as being detrimental and a factor in encouraging fraud and/or exaggerated claims.
- The Competition Commission also do not appear to be aware that there is no obligation in law currently to use a claimant's own insurers or the third party's insurer for vehicle repairs and/or hire. This would require a statutory change in the law. Given the potential adverse consequences we do not see the merit of such an action.
- A potential remedy in facilitating faster settlement of claims may lie in using a portal akin to the one currently used by the MOJ to deal with low value personal injury claims in road traffic accidents. Essentially, it is a structured online forum for presentation and negotiation for personal injury claims and associated losses. At stage 1, the Claimant presents their claim and evidence via a claims notification form ("CNF") and the Defendant thereafter has a specified time to admit or deny liability for the accident. The CNF form includes details of the Claimant's losses to include any damage to the vehicle and associated losses e.g. hire charges. The forum within the portal provides the opportunity for the Defendant to make a timely admission or denial of liability in the claim and at all stages the Defendant has the opportunity to write to the Claimant and/or their nominated solicitors to make any offer – monetary or otherwise. This currently available to insurers but not used to anything like its full potential.

In response to the specific questions in the remedy notice:

- (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?** As stated above, implementation of this remedy will just magnify the current issues of undue responsiveness and payment delays by insurance companies. In the majority of cases when liability is not established, insurance companies challenge the claims made through the lawyers four of five times over a period of months. Even when liability is established, the actual amount is disputed. Some insurers are more sympathetic than others to non-fault claimants but the average motorist has no way of knowing who they are until it's too late. Often big brand names are more aggressive with claimants than small ones.
- (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?** In cases where there is an unambiguous liability, insurance companies should have to enter into a legal binding agreement to provide an alternative transport vehicle of an equivalent nature within 24 hours and clear penalties imposed of failure to do so. This in itself will yield further costs as another step is being introduced in the claims process which may necessitate contact between insurers and brokers/CMCs/insurers.
- **What are the implications of the non-fault claimant having the right to choose an alternative service provider?** We feel that the consumer should have the freedom of choice.
- (a) 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?** The "Not at fault" claimant should not have to wait more than 24 hours for a replacement vehicle. Currently the waiting time is extensive as stated above and we thus strongly oppose and question the effectiveness of the implementation of such a remedy.
- (b) 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?** Claimants should not have to wait as we question the speed of response from the at fault insurer and strongly oppose this remedy irrespective. Insurers will not speak to third parties unless they have had details from their own insured and often this can take a considerable period of time. At fault drivers are rarely keen to notify their insurers or give full details of what happened. The Competition Commission should also examine the response time of insurers to third party enquiries as it is our experience that telephone answering can take up to an hour before even speaking to anyone. Even then they have little interest until they have heard from their own client.
- (c) Are there any advantages or disadvantages to the variant applying this only to replacement cars 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?** Additional complexity
- (d) Would this remedy give rise to distortions or have any other unintended consequences?** Lack of representation for impecunious or otherwise disadvantaged consumers who are ill equipped to deal with insurers.
- (e) 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?** Brokers are already monitored by the FCA in this respect in relation to their own customers as are Insurance Companies. This however does not apply to non-customers. If they are required to provide this service to non-customers then this will add cost to claims handling and consequently premiums.

Reputable long standing CMCs currently follow this practice given there is a commercial imperative to do so. All delays increase the working capital requirements of CMCs. For less reputable CMCS, we urge as we did in the MOJ whiplash consultation last year greater governance over CMCs. At Fault insurers if dealing with a non-fault Third Party who does not have the benefit of a CMC or Solicitor should be required to set out in writing the entitlements of third parties.

- (f) How long would it take to implement this remedy? What administrative or legal changes would need to be made?** We believe this remedy should not be implemented as this remedy just magnifies the excessive frictional and transactional costs in the current system.

## 1C: MEASURES TO CONTROL THE COST OF PROVIDING REPLACEMENT CARS TO NON-FAULT CLAIMANTS

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Car Hire rates are only higher than they should be if Insurance Companies fail to settle claims in good time and as such are outside the control of CMCs and the solution lies in greater efficiency by Insurance Companies. Insurers have claimed that car higher rates are in some instances too high and point to the ABI scale rates. However this Group would like to highlight the common issue experienced by claimants who are unable to be charged ABI rates from approved garages. Indeed, in the Court of Appeal case (Clarke v Ardlington) the court ruled against RSA on the grounds that ABI rates are not available to the man in the street but rather reflect a commercial arrangement between Insurance companies and their preferred suppliers.

- We maintain that the most effective remedy to control the cost of providing replacement cars lies in removing the inflated costs within the supply chain, attributable to the lengthy delays in response and payment times of insurance companies. It is somewhat ironic that firms such as Armstrongs and Direct Accident employ in excess of fifty people to chase outstanding repair invoices. This is in addition to the normal fee earners who chase the outstanding repair invoices on a regular basis. The fact is that that insurers take on average ten months to pay repair invoices where liability is not in dispute.
- It is the experience of this group that in 85% of cases, court proceedings are issued to enforce payment by insurance companies who sometimes can take up to 9 months in terms of backlog in even opening the post. To enforce debt, bailiffs have to be instructed as insurance companies fail to appear in court.

## 1D: MEASURES TO CONTROL NON-FAULT REPAIR COSTS

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Any measures to discourage insurers being tied up to approved repairers are supported. By way of illustration of the malpractice we would like to highlight cases such as the Royal Sun Alliance who were found guilty by the Court of Appeal 6-9 months ago to be inflating the cost of repairs in order to recover higher fees from other insurers.



## 1E: MEASURES TO CONTROL NON-FAULT WRITE-OFF COSTS

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The cost of car insurance is increased by the insurer's inability to pay write-offs of a non-fault victim's vehicle quickly. In our collective experience, the average write-off takes approximately sixty to seventy days to be paid by the insurers. This inevitably results in a significant increase in the length of car hire. However, if insurers pay the pre-accident value quickly upon receipt of a reputable engineer's report, the cost of car hire would fall significantly both in terms of rate and period.

We thus support this remedy with respect to salvage values but given the inefficiencies already of insurance companies do not support any implementation which will result in greater reliance on insurance companies processing claims.

1F: IMPROVED MITIGATION IN RELATION TO THE PROVISION OF REPLACEMENT  
CARS TO NON-FAULT CLAIMANTS;

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- We support this remedy and its implementation on a stand-alone basis.

## 1G: PROHIBITION OF REFERRAL FEES

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- This finding by the Competition Commission is not out of line with the findings of the Office of Fair Trading in May, 2012.
- Referral fees are paid on a regular basis when they have been abolished for personal injury claims. Such fees are unnecessary and should be abolished on a stand-alone basis. We further note that the increased estimated cost per car hire almost equates exactly to the referral fee paid.
- Reputable CMCs should be regulated akin to any other financial service company.

- In relation to car repairs the Competition Commission have only provided a very minor survey in the monitoring of repairs. However in our experience, the quality of repairs provided by the insurer is often poor. This is largely attributable to the fact that the insurance company employs an in-house assessor to visit the repairers. Given cost considerations, a poor hourly rate is imposed upon the repairer with an insufficient number of work hours to complete the repair being also imposed on the repairers. This inevitably leads to the repairer having to cut corners resulting in repairs that are less than satisfactory. This is validated by evidence from repairers who carry out large volume insurance contracts who consistently report minimal profits with massive overheads and/or losses being incurred.
- We agree with the Competition Commission require that a client/consumer has a right to be serviced with proper repairs to a decent standard. This will inevitably result in increased hourly rates (to ensure that high quality staff are attracted and retained) and increased repair periods.
- We contend that the insurance industry constantly worries about a lack of customer retention and incurs significant costs in re-attracting consumers who change insurer. The implementation of this remedy will ultimately tackle this issue and yield significant savings resulting in ultimately beneficial reductions in premiums to consumers.

## ADD-ONS

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- The remedies with respect to add-ons we fully support as this does benefit the consumer as currently we feel add-ons provide a cynical way of inflating costs of motor insurance premiums
- We particularly, draw the Commission's attention to the Financial Conduct Authority's Thematic Review on Motor Legal Expenses Insurance of June 2013 which highlights the ways in which some firms have "automatically bundled to the core motor policy, increasing the total premium by, say £50 to £60." Page 17, section 3.23
- We feel the remedy should be applied to brokers and to all add-ons.
- This group are willing to assist however they can to improve the information consumers receive. It is essential that customers have all the information they need to make an informed choice about the total cost of the policy they are buying and the cost and purpose of all of its individual parts.

### 3B: TRANSPARENT INFORMATION CONCERNING NCB

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We support this remedy as it is beneficial to the consumer.

We support this remedy as it is beneficial to the consumer.

- These clauses prevent insurers from offering a cheaper price to consumers through another website as well as preventing insurers from rewarding safer and honest customers. However if the reason for offering a lower price through one PCW over another is to help push the other PCW out of business this would be anti-competitive and in the end would result in only a couple of sites and the resulting less pressure on pricing.
- However, in terms of the remedy we would like to highlight the fact that this issue does not only relate to a comparison on price but also on clauses within the product. For example, Aviva and Direct Line are not on PCW as they argue that on a strictly price basis their products will come out very unfairly but their products in terms of add-ons and customer service are far superior.
- PCW sites are paid commission by insurance companies and with the larger insurance companies these commissions may influence matters adding significantly to premiums. Standardising commissions with no hidden over-riders paid by insurers may offer a level playing field with consequent greater competition and a beneficial effect to customers.
- There is therefore a scope for smaller insurance companies to level the playing field.
- The Commission should also look into the wide range of commissions paid by Insurance Companies to different distribution channels the same policy from the same insurer can vary in commission paid from 5% to 30% or more if overrides are included. This is clearly anti-competitive.



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## SUBMISSION GROUP

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| Company                         | Location  | FTE |
|---------------------------------|-----------|-----|
| Direct Accident Management Ltd  | Ormskirk  | 350 |
| Exchange Insurance Services Ltd | Liverpool | 25  |

We would request a receipt acknowledgement of this submission.

Please send this to:

**Peter Gradwell**  
**Director**  
**Exchange Information Services**  
**5th Floor Wellington Buildings**  
**The Strand**  
**Liverpool L2 OPP**