

## **Remedy A: measures to improve claimants' understanding of their legal requirements**

### **Response:**

The Government is broadly in favour of the proposed remedies in relation to regulation of insurer behaviour and believes that they help to move the industry forward in way that will ultimately lead to better functioning in the market and a better deal for consumers who seek private motor insurance.

The Ministry of Justice (MoJ) is content that the references to tort law refer to how insurance cover is provided and specifics around how replacement cars are made available. As such there is nothing which affects the core principles governing the award of compensation (and issues around personal injury are specifically excluded).

In respect of paragraph 20, concerning a possible recommendation to add questions to the driving theory test, the Department for Transport (DfT) would require additional time to explore whether doing so would be possible under the EU law and to canvass other key stakeholders on their views on whether it is appropriate / desirable to do so. Furthermore, DfT need to know whether your possible recommendation for additional questions is intended to be on a pass / fail basis.

DfT's initial thoughts on this possible recommendation are that questions on how to behave in the event of an accident: emergency action, first aid etc are in line with EU law and are appropriate for the driving theory test (and are already part of the test). However, testing knowledge of legal entitlements when making an insurance claim is several steps removed from this and therefore not directly relevant to a driving test. Furthermore, such questions are likely to be outside the scope of EU Directives on driving tests, which would be extremely difficult to change.

With regard to the CC's overarching recommendation to take measures to improve claimant's understanding of their legal requirements (remedy A), HM Treasury (HMT) would emphasise the continued need to ensure that this recommendation is discussed with the Financial Conduct Authority (FCA) who are responsible for setting the regulations on disclosure to consumers. HMT would also encourage engagement with the Money Advice Service; set up by the Government to promote understanding of the financial system and raise levels of financial capability across the UK.

## **Theory of Harm 1: separation of cost liability and cost control**

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

#### **Response:**

DfT have the following questions in relation to this proposal:

- Are you suggesting that under this proposal the only way that a non-fault driver can obtain a replacement vehicle whilst he / she is without their own vehicle would be through an add-on to their own motor insurance policy? Or is this another option for policyholders to make provision for a replacement vehicle in the event of an accident?
- If the proposal is agreed, what would happen in the event of policyholders declining to take out any sort of replacement vehicle cover under their policy? As now, will they be able to recover hire costs as an uninsured loss from the at fault insurer? Or does a decision to take out no cover for a replacement vehicle on their own policy mean they have no access to a replacement car at all in the event of an accident?

- Either way, what is the incentive for the policyholder to pay an additional premium for a replacement vehicle? DfT understand your reasoning that in the longer term 1st party insurance provision of replacement cars could bring to insurers more control of the repair period and replacement vehicle costs, which could reduce frictional costs between insurers. This, in turn, may reduce the cost of insurance. However, in the short to medium term any policyholders who decided to take this option would be likely to face an increase in insurance premium for the additional service, which is what we are trying to avoid.
- What will happen to policyholders' no claims discounts if insurers pay for a replacement vehicle, but are unable to subrogate the claim and recover from the fault insurers?

We would be grateful for answers to these questions. Once received, before going any further with this proposal, we require **additional time** to explore the legal impact and whether the proposal would be complimentary to EU Directives on Motor Insurance, as we are unable to change EU Directives and existing international commitments unilaterally.

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

#### **Response:**

In theory, the aim of giving at-fault insurers the opportunity to take control of a claim could minimise the period the non-fault driver's vehicle is off the road and could also give the at-fault insurer the opportunity to provide an appropriate replacement vehicle at a more competitive cost. All of these factors could contribute towards reducing the costs of uninsured loss claims, which in turn could reduce the cost of insurance premiums.

However, the practicalities of how this proposal would work are not clear to us, which raises questions:

- What period of time would non-fault insurers / others be given to notify the at-fault insurer of the accident and how would they be required to do it? What information would be mandatory?
- How would this be monitored?

Whilst the overall aim of 1B is desirable, the practicalities and possible legal implications need to be fleshed out much more clearly (as with 1A), which will take time.

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

#### **Response:**

These proposals appear straightforward. We await with interest what comments key stakeholders such as insurers and CMCs make. The MoJ Claims Management Regulator has considered these points and has no comments to make at this stage.

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

**Response:**

It is the view of DfT that introducing a system of standardised repair costs may be at odds with the aim of Remedy 2A, in as much as it may create an incentive to complete repairs below the estimated repair costs. The DfT acknowledge that in some cases this may be possible with economies of scale / other efficiencies, but it is, nevertheless, a point to consider.

In terms of questions to be considered by the commission:

- Who would set and monitor the rates?
- What compliance / auditing would take place and by whom?
- How much would this process cost and who pays for it?

**Remedy 1E: measures to control non-fault write-off costs****Response:**

Following the principle of indemnity, it follows that the non-fault insurer should only be able to subrogate a claim for their actual loss. On this basis the DfT believes that your proposal appears the fairest way to deal with subrogated write-off claims, taking into consideration the actual cost of salvage. However, there may be other aspects to consider, which could affect the cost of insurance, including:

- Are all / most insurers working on the basis of estimated salvage costs? Presumably, handling write-off claims in this way cuts down on time, bureaucracy and process costs.
- How significant a problem is this? Does evidence exist to show that salvage values are consistently undervalued and that operating on the basis of actual costs would not push up operating costs elsewhere in the claims handling process?
- One could also argue that using actual salvage costs, as opposed to estimated costs is at odds with the principle put forward in remedy 1D(b), where there is a recommendation to use estimated costs and an acceptance that sometimes actual costs will turn out to be higher or lower than the estimate.
- Finally, when assessing the subrogated claim, if the at-fault insurer felt that the salvage had been undervalued and they had been overcharged, could they not just insist reimbursing the non-fault insurer using the actual costs recovered from the salvage?

**Remedy 1G: prohibition of referral fees****Response:**

At first sight this proposal sounds straightforward and could reduce costs which may then lead to lower insurance premiums. However, there are issues with this proposal which will need to be resolved if action is to be taken in this area.

The implementation of Part 2 of the Legal Aid, Sentencing and Punishment of Offenders act 2012 on 1 April 2013 banned the payment and receipt of referral fees in personal injury cases. There are provisions in the Act to extend this ban to other areas if the case is made

for doing so. However, it is important to note that this is a regulatory ban and as such there needs to be an effective regulator in place to enforce it.

In terms of the credit hire and vehicle repair sectors it is not clear who could effectively regulate these types of business. Existing regulators in the PI sector could enforce a partial ban, but the lack of a clear regulator for the repair/hire sector would inhibit the effectiveness of this action.

## **Theory of harm 2: possible under-provision of service to those involved in accidents**

### **Remedy 2A: compulsory audits of the quality of vehicle repairs**

#### **Response:**

What evidence exists of this problem? The DfT would appreciate sight of evidence in support of this issue. The initial concern would be that an additional administrative burden could eventually have a knock-on effect on the cost of premiums.

## **Theory of harm 4: add-ons & Theory of harm 5: most favoured nation (MFN) clauses in PCW and insurer contracts**

Add-ons have been a concern across the insurance industry and the FCA is conducting a market study into this sector. HMT is supportive of remedies 4A and 4C for add-ons and would encourage the Commission to continue to engage with the FCA on this matter. HMT also welcomes the remedy on further disclosure of NCBs.

Details of these remedies would need to be worked out fully with the FCA and may also be influenced by IMD 2 which is currently progressing through Europe. HMT is supportive of the FCA's views and hopes that the Commission and the FCA will continue to work together constructively.