

## **Enterprise Rent-A-Car response to the Notice of Possible Remedies under Rule 11 of the Competition Commission Rules of Procedure**

Enterprise welcomes the opportunity to provide an initial response to the various remedy options. Our aim is to ensure that any change to the current position provides a balanced outcome to reduce the frictional costs for the benefit of all parties, whilst providing a fair provision to consumers who are an innocent party as a result of an accident. It is essential for a new model to remove all unnecessary frictional costs from the industry. Whilst Enterprise is a replacement vehicle provider, we also insure a large fleet of vehicles within the UK. Therefore, we too seek to find a remedy to reduce our indemnity spend for claims where a driver of our vehicle is the at fault party in an accident.

### **Comment A**

Since many of the proposed remedies could result in a fundamental change in the rights, obligations and options available to consumers, Enterprise is in agreement that it is essential for them to be fully informed. This information should clearly outline the appropriate provisions for when they are at-fault and not at-fault as a result of an accident. It should be provided at two points.

1. At the time of purchasing an annual insurance policy. Consumers should be informed of their rights and options should they report a claim during the policy term. This is essential if remedy 1A is implemented since consumers must be fully aware of the implication should they not purchase replacement vehicle cover.
2. Consumers should also be reminded of their options at the first notification of loss (FNOL) stage.

### **Remedy 1A**

Enterprise believes that 1A with some key amendments could be a highly effective basis to provide the best opportunity for the industry to enhance the service offering to consumers without impacting their rights, whilst improving costs.

Due to the complexities highlighted by the Competition Commission under clause 33 of the Notice of Remedies, that such a remedy would require a significant change of law, we believe that remedy 1A addresses the Theories of Harm, but require the following few key amendments for not-at-fault customers:

- I. Insurance providers should be required to include a direct indemnity provision for repair and like for like replacement vehicle when their policyholder is not at fault.
- II. Insurers should provide a like for like replacement vehicle to all non-fault policyholders
- III. Insurers should be able to subrogate the replacement vehicle costs against the at-fault insurer
- IV. Controls will need to be implemented, regulated and further supported with an enforcement order to manage the subrogation amounts.

This remedy with the above amendments will ensure there is no additional cost to consumers to maintain their current entitlement. Furthermore, it will remove the need to implement legal changes to tort law. Instead, it would only require an enforcement order and/or regulation. To help explain each of these amendments, here are some further details:

#### Point I

Clause 28 of the Notice of Remedies stated that this remedy would be for replacement vehicles, but not repairs. Our view is that repairs and replacement vehicles should be handled together by the policyholder's insurance provider. Under the current system, insurers typically repair their own policyholder's vehicles. This remedy would allow them to simply include the replacement vehicle on the same subrogation file.

#### Point II

Clause 31 of the Notice of Remedies indicated that this remedy might mean that non-fault claimants would receive less than the current legal entitlements under tort law. Therefore, to ensure that legal entitlements remain consistent and to save any changes to tort law, Enterprise suggests that if a claimant is not at fault in an accident, their insurance provider will offer a like for like replacement vehicle that meets the needs of the claimant. The right to sue could remain, but with the consumers need fulfilled via their policy, there would be no need to exercise the right.

#### Point III

There has been a long held position in law that insurers can subrogate against the at-fault party. This appropriately transfers the cost from the premiums of non-fault consumers. In order to maintain this position and save a lengthy and expensive change to the legal position, Enterprise recommends that insurers continue to subrogate against the at-fault insurer. Since this is currently in place for repairs, it will add no additional cost or resources to insurers to include replacement vehicle invoices.

#### Point IV

Theory of Harm 1 highlights the concern over the cost separation and the need to minimize the cost to the responsible party. To achieve this, insurers could follow the example of the French (IRSA convention), and Spanish (CIDE Agreement) models, where subrogation is at a fixed cost per claim. This would both minimise frictional cost and eliminate the potential for a party not responsible for the costs from unnecessarily inflating the costs.

#### **Remedy 1B**

Enterprise believes that this remedy will not be an effective measure to improve the current market position. Policyholders would typically expect their own insurance provider to manage a claim. This remedy would create a confusing customer journey, especially when there is difficulty determining the true at-fault insurer. Furthermore, many claimants would be left without a provision until the at-fault insurer has the opportunity to confirm liability. This is particularly a problem when the at-fault party is a commercial driver where it can take several days to assess liability.

Due to the delays and limited scope with this remedy, the service requirements for many claimants would not be met. This would create a need for services similar to the current model and all frictional costs will remain within the industry.

#### **Remedy 1C**

This remedy does not address the Theory of Harm regarding cost separation. Furthermore, it will provide little, if any, saving to the insurance industry. If credit hire rates are reduced, referral fees will also be reduced (or eliminated if this remedy is applied in conjunction with 1G). Therefore, whilst insurance companies will benefit from lower cost of vehicle hire, they will also lose their existing referral fees. Thus the net effect is the same cost across the industry as a whole.

A key cost to the industry is the frictional costs associated with credit hire and repair. This remedy does not address or remove this cost.

### **Remedy 1D**

The best solution is for insurers to take care of their own policyholders and for subrogation to be controlled, this should be consistent for both replacement vehicles and repairs. There will be a number of complexities to consider if Remedy 1D(b) is implemented. Such issues would include the ability to standardize costs for all vehicle types, the additional audits that would be required to monitor the use of approved parts etc. Therefore, we support Remedy 1D(a) to be implemented with the inclusion of a ban in referral fees (Remedy 1G).

### **Remedy 1E**

Again, the best solution is for insurers to take care of their own policyholders and for subrogation to be controlled, as per our comments in Remedy 1A. Therefore, salvage should follow the same path and Remedy 1E(b) should be implemented with a ban on referral fees to help reduce the costs.

### **Remedy 1F**

This remedy will have a very limited effect on the current market. Claimants are already asked to sign a mitigation statement to outline their need for a vehicle. Furthermore, these are currently supplied to the at-fault insurer as part of a payment pack. It is difficult to see how this remedy would remove the frictional costs and address the issues highlighted within the Theories of Harm.

### **Remedy 1G**

As a standalone measure, this will not improve the current market. The ban on referral fees for personal injury has been ineffective as legal methods to circumvent the ban have developed. This remedy must be used in conjunction with other remedies. By combining with Remedy 1A, the need for referral fees would not exist due to the requirement for the insurance companies to manage their policyholders' claims and subrogate.

In Summary, Enterprise supports an amended version of Remedy 1A and feels this represents the best opportunity for the industry to eliminate frictional costs whilst still meeting the needs of consumers who are not at fault as a result of an accident.