Please find below the response of Helphire Group plc (HHG) to the Notice of Remedies published on 17th December 2013.

Formal complaint regarding process

1. HHG believes that its legitimate interests have been damaged owing to the compressed timescales that have been applied by the Commission. HHG (and other participants) have responded in a timely manner to the Commission's requests for information despite these requests being onerous and often with short deadlines. Working papers have not been published in the anticipated timescales and not in a timely manner and this has caused the timetable to be compressed to the detriment of HHG. Given that this notice was published just before the Christmas holidays and many of the resources (including the author away for 2 weeks) were not available we have been given very little time to consider the provisional findings and notice of remedies.

2. Responding to the Remedies notice in advance of responding to the provisional findings is in the wrong order. HHG has significant issues with the provisional findings including the extent of the purported AEC. It is flawed to assess the merits of any remedies without accounting for problems with the findings. If, for example, the purported AEC is far lower than stated then the proportionality of any remedy is called into question.

HHG reserves all its rights in respect of the above.

Reason for the inquiry and developments that have occurred during the process

The CC inquiry was brought about by the mistaken belief that consumer insurance premiums in the Private Insurance Market were inflated because of increased cost of claims driven by the use by insurers of CHO's . We contend that this headline was politically convenient but on close examination does not stand up to scrutiny. The significant players in the credit hire industry are responsible and conscientious suppliers and over the last few years have undergone radical change in order to drive down the cost of its own services. The industry survives on providing a quality and unbiased service to innocent victims and ensures consumers understand their rights and make choices on the services they wish to receive. This is all done on perilously thin margins which some may describe as being disproportionate to the risks the industry takes on recovery.

The main benefactors, besides the consumer, are the insurers themselves as they take the profit from the claim. This gives them the opportunity to recycle the referral fee or use the capital in other ways. Helphire Group is a pioneer in establishing agreed protocol rates with insurers. A two way negotiated agreement on rates also removes inefficiency and frictional cost from the process through simple rules on the acceptance of liability and control of period. Insurers that participate in the protocol arrangements have no quarrel with the rates, service or transparency in which the services are conducted. Consumers get exactly the same entitlement, their rights are protected and costs are kept to a minimum.

We contend that the further roll out of these protocols, (and we anticipate will account for 60-70% of our third party claims at the end of 2014) provide the benefits of lower rates and an uncompromised service to consumers. This development has not been factored into the

CC's thinking. Taken across the credit hire industry, we believe these protocols now represent a new order for conducting business in the market and if the CC were to statistically analyse these on a current and forward basis then the figures would demonstrate a much improved cost picture. As the cost of the service declines, the remedies listed below are even less justifiable.

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

1. In principle we support this remedy with one proviso. The insurance industry is entirely unsuited to draft the statement. The evidence collated by the Commission shows conclusively that insurers do not wish to inform customers of their rights and if they do so, it is done in a partisan manner to suit their own ends. CMC's, on the other hand generally provide balanced advice; they have to otherwise recovery of the hire charges could be prejudiced. We recommend standard form disclosures drafted by the Law Society or some other clearly independent body.

<u>TOH:1 Remedies</u>

<u>1A: first party insurance for replacement cars</u>

2. This remedy proposes that consumers give up their restitutionary right to a replacement vehicle suitable for their needs for the entire period that they have been denied use of their 'chattel' and instead insurers are mandated to offer an 'add on' policy (terms not defined) that the customer must pay for. This remedy does not even on the scantest consideration meet ANY of the requirements of an effective and proportionate remedy.

(a) **is effective in achieving its legitimate aim**;

- There is no firm evidence that reducing the insurer costs will in point of fact reduce premiums.
- The current cost to an individual customer of a replacement vehicle policy that HHG is involved in providing to insurers is [✂] at the moment. This provides a 'Class A' or 'Class B' vehicle for 7, 14 or 21 days. The Commission cannot control the pricing of the policy, that is set by the market. So if the current cost to the consumer is (and we do not accept this figure) £8 (taking the higher figure of the range quoted P13 para 51 of summary for simplicity) should more than [✂] take up the additional policy then those consumers will have paid out more than the harm identified.
- The victim will not get a like for like vehicle unless it elects to take the proposed higher level of cover and it will only be supplied for a limited time period.
- It should also be noted that the premium quoted above is subsidised by the non-fault claims which at the present time are not paid out.
- Even if the insurance industry did provide a policy at less that £6 to £8 per customer there would always be pressure to increase the premium, make more profit, because there is no alternative for the consumer, its this or walk.
- If the cost of the premium to the consumer were to be only £6 to £8 then this is more (in our view) than the notional cost to the consumer though the practices identified by the CC. So the consumer will have been forced (without option) to sell a universal right under law to an equivalent vehicle for as long as required and have to 'opt in' and pay a

real premium for a far more restricted service. We cannot see how this is in the interest of consumers at all.

- If the benefit were at no cost to the customer, and universal the cost to the industry would far exceed the net cost of credit hire, applying (in the CC's estimation) upward pressure on premiums.

(b) **is no more onerous than needed to achieve its aim**; Under this proposed remedy consumers are swapping their legal right to restitution for a mandated policy that they can choose to purchase, or not. This also removes from them the choice whether to claim on the policy at all. The ability to offer a 'no car' option will inevitably leave some victims (wrongly) without a replacement vehicle. Any disclosures to potential policyholders about a 'no car' option will need to be in the clearest terms. In general (given PPI mis-selling and similar) this represents a real risk that deserving, non-fault victims will be left without a remedy. There is a long established common law principle that a consumer does not have to use an insured benefit to mitigate the effect of another's negligence. This remedy flies in the face of this principle and forces the consumer to make a claim. This is too onerous an obligation.

(d) **does not produce disadvantages which are disproportionate to the aim**.

- An effect of this remedy would be to reduce the number of occasions that a CMC represented the victim's interests. This will increase the number of times an innocent victim of a non-fault accident is compelled by the insurer to accept liability in whole or part and increase the already high number of times an innocent victim does not recover their excess. These effects would significantly reduce the net benefit to the consumer.
- The disadvantages listed above shows that this remedy is ineffective and disproportionate producing economic disbenefits that outweigh any savings

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

(a) **is effective in achieving its legitimate aim**:

- This remedy only applies to cases where liability has been determined. So at least 25% of non-fault accidents (we would say far higher) would be unaffected. The CC has ignored another category of claims 'Liability not admitted'.
- On many occasions the negligent party does not report the accident to their insurer. The insurer (generally) will not deal with the claim until the insured's version of events has been received. So this remedy will not apply as the third party insurer will not deal with the claim.
- 15% of vehicles on the road are not conventionally insured, they are 'self insured' - sometimes (but not always) with third party claims handlers. Large companies, local authorities, government, emergency services, Royal Mail are examples. Many will not have the ability to react to the enquiry.
- An increasing problem is that of foreign insured drivers on UK roads. Getting information as to the UK based claims representative is not easy and getting a response of any sort is time-consuming.
- Adding these together as many as 40% of non-fault accidents will not be catered for.

- At present a consumer can have a replacement vehicle within about 2 hrs of making contact with his insurer. We find that one third of all referrals are for vehicles rendered unroadworthy by the collision. Unless the negligent party's insurer can react within hours to the enquiry then this class of customer is going to be massively inconvenienced as compared to today's service. The experience of the RTA portal is that given **2 weeks** to respond on liability many insurers just don't get around to it, so on top of the excluded segments of the driving population listed above, this will exclude a further proportion.
- What happens where the third party cannot, or does not wish to provide a vehicle? The victim still requires transport. If a CMC is to provide a replacement and recover 'credit hire' costs then the price of these hire must rise compared to the current GTA rates as all of the simple liability calls have been dealt with by the TPI and the population of hires remaining is more contentious. As has been repeatedly pointed out, the cost of recovery is a key part of the CMC's costs and has to be borne whoever provides a replacement unless any victim where the third party has not immediately admitted liability is to be precluded from having a replacement vehicle. Were that to be the case all insurers will stress that liability should never be admitted (as they do now) in order to avoid the head of claim.
- Will the client's insurer seek ways to prevent the TP insurer making the liability call in order that it can continue to 'earn a rent' from the claim.
- This (whatever variant is used) also reduces the victim's rights at law. Fault insurers can already offer replacement vehicles and if they do it in accordance with the courts' guidance the offer can limit what the victim can claim. Making this a 'right' for fault insurers will remove the checks and balances that currently operate and will permit (and possibly encourage) under-supply.
- This is not an effective remedy.

(d) **does not produce disadvantages which are disproportionate to the aim.**

- Under this remedy the consumer is effectively precluded from mitigating the effects of third party negligence by law. The victim has to put the liability assessment in the hands of the third party within hours of the accident. The victim will, at that time, have had no legal advice. Admissions damaging to their case may be made and transmitted that the TPI can later rely upon possibly destroying a claim that the victim should, in all conscience, have won.
- Also the victim is forced to make a claim on their insurance policy creating a claim history that is entirely not of their making and will affect future insurance premiums, potentially affect no-claim bonus discount and protected no-claims bonus (which is not limitless) because many insurers do take even non-fault accidents into account when considering risk.
- The consumer has real choice in who handles his non-fault claim. The victim does not have to use his own insurer at all if he chooses not to. This is likely to spawn a whole industry akin to the personal injury advertising that will aim to convince the victim not to use their won insurer. If that route is closed off by a change in the law hat reduces consumer choice and abrogates their rights. This cannot be in their interest.

• *1C: measures to control the cost of providing replacement cars to non-fault claimants;*

(a) **is effective in achieving its legitimate aim**

- Daily rental rates are probably the most dynamic of all rates consumers pay for any product or service. They are affected by supply and demand as well as macro-economic factors and there changes can be very significant and very fast. Alamo, the major rental company makes over one million price adjustments each day in its worldwide fleet. To use a parallel from another industry, passenger air fares' how much is a seat for a flight to Barcelona? £10 from a budget airline or £800 from a scheduled carrier? What day of the week is it, where are you in the holiday season cycle and how long before departure are you booking?
- Rates also depend upon local trading conditions. If supplier A has run out of a particular vehicle group then supplier B can get a higher rate despite have surplus vehicles, unless another supplier locally has availability.
- A statistical principle is that the higher the variability in a population the larger the sample has to be in order to calculate a mean figure.
- In statistics a mean should be accompanied by a 'standard deviation from the mean'. The figures that show the variation in the population so that any particular value can be stated to be in, or out of a population with 90% or 95% confidence. How will the rate setting body deal with very large standard deviations? Particularly in the higher, more expensive models of car where the number of daily rental transactions, and rates is very, very small. How many Range Rovers are on hire from a daily rental company in the UK right now?
- To be at all statistically valid any rate would have to be accompanied by a volume of transactions, how many vehicles were rented at that rate, how will this work practically when the daily rental companies have no involvement and no interest in this market save for those few that participate in credit hire? Then why would other operators trust the returns from those already participating?
- What rate is to be used? The bare 'daily hire rate'. 7 days, 14 days?
- The courts have wrestled with this particular problem at some length. In the test cases where the lead was Clark-v-Ardington industry experts presented carefully collated evidence of hire rates. The court correctly concluded that any sort of average was simply not appropriate because of the variability in rates and geographical factors.
- Renting a BMW in London is fairly easy, how many available in Grimsby or Inverness? There are thousands upon thousands of brands/models of car on the road. On what principle will the independent body assess the equivalent hire rates?
- The ABI GTA achieves this after a fashion because it is (largely) a freely negotiated voluntary agreement with a process to set prices absent agreement. The participants accept the 'rough with the smooth'. This latitude will not be available to the independent body because it is imposed by law. The satellite litigation on rates will be enormous and as significant amounts of money will be involved it is safe to predict that a number of stakeholders will litigate pushing up frictional costs.
- The sheer impracticality of the remedy means it is not effective.

• 1D: measures to control non-fault repair costs;

(a) **is effective in achieving its legitimate aim:**

- If insurers were to be required to pass on discounts the CC has identified insurers will find other ways to extract value.
- Volume rebates are common, and hard to criticise as the insurers are simply using their scale to reduce cost of claims. A company, that gains competitive advantage by bulk buying should not be forced to pass that saving on to a competitor as this, in itself, is anti-competitive and reduces the incentive on insurers to become efficient.
- Most repairs are passed through an electronic estimating system and repair methodologies are largely standardised. That leaves labour rates, parts costs, consumables and 'other charges' as variables. Labour rates are variable by geography, by marque (labour rates for 'prestige cars' are generally higher and certain specialist areas, aluminium, low temperature welding carry a premium). Standardising rates across the millions of repairs is impractical.
- The more the wholesale rate is pushed down the more repairers will have to increase their retail rate for the customers who have no buying power to fall back on. What body will monitor and fix prices for them?
- The price for labour rates (and other items above) is set by negotiation between the largest users of repair services, insurers, and repairers. If this is removed through a centralised price-fixing system contained within Audatex (the pre-eminent estimating system) what then happens to rates? Price-fixing seems inherently anti-competitive. Rates will need constant monitoring and change to follow the market and macro costs factors.
- The remedies as set out cannot be effective.

(d) **does not produce disadvantages which are disproportionate to the aim**

- Labour rates etc. in the bodyshop market for insurance claims are set in a dynamic way through competition for insurer business.
- Insurers have been effective (many would say too effective given the results of the survey of repair quality) in driving down repair costs and cycle times. This will be replaced by a centralised pricing matrix set by an independent body and using Audatex as the conduit. Over time the rates must move away from the value that would be set by competition.
- There will be no financial driver for efficiency only upward pressure by repairers as new repair approaches and technical changes in manufacturing are brought in.
- Over time this will increase repair costs across all repairs, not just non-fault. The antithesis of the intent.

• 1E: measures to control non-fault write-off costs;

(a) **is effective in achieving its legitimate aim**

- Remedy 1E(b) is capable of being sidestepped by insurers through vertical integration. As has largely happened in the attempted ban of PI referral fees that has spawned a number of insurer-participated PI Law firms effectively reducing victim choice rather than expanding it.
- It would not be an effective remedy

(d) **does not produce disadvantages which are disproportionate to the aim**

- If at-fault insurers are given the option to handle the salvage (Remedy 1E(a)) then there will be little incentive for the client's insurer to set a realistic PAV taking into account the client's circumstances. This will leave victim entirely at the mercy of the TPI who will set a lower value PAV, and be intransigent with the client. There is a certain degree of competition between the victim's insurer and the TPI for the salvage rights and this benefits the client through the PAV.
- Another detrimental side-effect may be a greater willingness of insurers to write vehicles off with the concomitant ecological downsides, more waste less recycling, and the detriment to the customer who can rarely buy a vehicle equivalent to that damaged for the PAV ascribed.
- The financial loss to the victim through this practice is nil, in fact it encourages more generous PAV's. This will add another step to the PAV process and, if a replacement vehicle is on-hire, this could wipe out any gain in salvage value to the TPI though higher hire costs.
- The Commission may not be aware that under the terms of the GTA if a vehicle is declared by the independent engineer to be 'beyond economic repair' the report has to be passed to the TPI within 24hrs. The TPI could simply offer a higher PAV (benefitting the victim) on condition it has the salvage. Insurers do not generally take this option.
- There are now a number of 'Total loss avoidance programmes' whereby manufacturers subsidise repairs to prevent write offs. If these remedies were to be implemented the numbers of write-offs would rise (TPI's would take hire charges into account and write more cars off) and these programmes bypassed to the detriment of the victim and the environment.
- These disadvantages outweigh the purported benefits.

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

- We cannot detect any difference between what the CC suggests and what happens now. The ABI GTA requires that CMCs must ask the claimant about the need for a vehicle and the responses are captured in a 'statement of truth'. This is (in Helphire's case) ratified online before the vehicle is delivered.
- All CMCs will have had the discussion with the client regarding their need for a vehicle and have asked for instance is another car available, could the victim make do with public transport.
- The Commission has, Helphire believe, entirely misunderstood the legal 'duty of mitigation' (which as the courts frequently are at pains to spell out is not really a ‘duty’ at all) as set out in precedent. The victim has to bear in mind the interests of the negligent party when taking steps to mitigate the effects of the tortious act. The victim needs to behave reasonably in all the circumstances but the test of 'reasonableness' is not high.

(McGregor on damages). And to paraphrase their Lordships in ***Banco de Portugal-v-Waterlow***. "It is easy after the event to criticise steps taken in an emergency, but that criticism comes ill from the party that occasioned the emergency in the first place".

- The Commission has entirely lost sight of the reality that in these situations there is a victim and a wrongdoer. The commission is seeking to deny the rights of the victim, and by so doing reduce the effect of their insured's negligence on their insurer. The net effect would be to reduce the premiums of bad drivers, and increase the premiums of safe drivers.

1G:Prohibition of referral fees

- This proposed remedy suffers from the same misconception that dogged the personal injury debate. The idea that referral fees increase the cost of claims for third party insurers.
- In our estimation in this industry referral fees demonstrably do not increase claims costs. As acknowledged by the commission the costs of hire and repair are set either by negotiation or the courts. Referral fees come out of the margin of CMCs and are (largely) recycled within the insurance industry.
- Unlike a whiplash claim there is a entirely objective test of whether a claim exists or not; “bent metal”. Either a car is damaged or not. It needs repairing, or not. The victim needs a car, or not. Referral fees cannot (as alleged for PI referral fees) increase the incidence of hire claims unless the legitimate rights of claimants are abrogated.
- Banning referral fees is meant to act in concert with one or another of the other remedies. The effect is presumably intended to be that if the insurance industry cannot get referral fees it will not use CMCs. The commission has already heard that before referral fees were thought of, garages and indeed insurers used the services to provide their clients with assistance following an accident and to remove from them the burden of dealing with the claim.
- Add to this the prospect of insurers (and others) forming entirely legal joint ventures without the scrutiny of a body as well established as the SRA (that polices ABS's formed in response to LASPO) to extract value from the claims it should be apparent that this measure would have little or no effect. As it has proved in the PI arena.

TOH:2

Remedy 2A Compulsory audits of the quality of vehicle repairs

- This remedy is entirely at odds with ToH 1. Forcing the insurers to provide higher quality repairs is going to raise the cost of claims and put upward pressure on premiums and the price of putting the quality issue right will (in our view) entirely negate any effect of the remedies under ToH 1.
- The net effect of the final recommendations unless radically altered will probably be a net increase in motor insurance premiums.
- We note that the Commission has made no recommendation that will address the harm perpetrated by the insurance industry that does not return the excess to the non-fault accident victims as revealed in the CC consumer survey.

ToH 3 and 4 - no comment to make