Irwin Mitchell LLP

Competition Commission: Private Motor Insurance Market Investigation

Comments on the Commissions Notice of Possible Remedies
Published on 17th December 2013.

17th January 2014

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Executive Summary

Whilst we note that the Competition Commission has specifically indicated that it is not considering personal injury claims as part of their investigations, Irwin Mitchell has a longstanding reputation for providing a whole range of services to the insurance sector and in particular in connection with private motor insurance matters. Also, it is not always appropriate to consider repair or hire costs in isolation as where litigation is necessary, they are often recovered alongside the Claimant's personal losses or injury.

We are grateful for this opportunity to respond to the Competition Commission's Notice of Possible Remedies, some of which is more applicable to our position within the market than others. We will therefore comment primarily on the general informational remedy proposed at the outset of the provisional report and those that relate to the first two theories of harm identified.

This paper does not offer comment in respect of the theories of harm identified around either 'Add-Ons' or Price Comparison Websites.

In summary, we believe that clearer guidance for consumers can only be desirable and seeking to ensure that claimants have a better understanding of both insurance and legal processes is a good thing.

It is also our view that consumers should retain their right to chose their insurance provider and then use that provider (for whom they have paid) should they be unfortunate enough to be involved in an accident.

Finally, extreme care should be taken not to extend the remit of third party capture. To do so would be to risk significant disadvantage for claimants not only in respect of personal injury matters, as currently occurs, but also in relation to the repair of their vehicles.

Contact Details

Date: 17th January 2014

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Remedy A: Measures to improve Claimants' understanding of their legal entitlements.

We agree that consumers generally have a poor understanding of their legal entitlements following an accident, both in relation to tort law and their own insurance policy. As is the nature of insurance and/or legal advice, consumers hope that they never find themselves in a position of needing to use either. When they do therefore, many may be left feeling confused and bewildered by the choices they suddenly face and the information being presented to them.

We believe that the remedy proposed could be an effective and proportionate step that would assist consumers in understanding their position after an accident has occurred. Firstly, consumers would need to know what their own insurance policy covered them for (or not) including their liability to pay any excess or how their no-claims discount might be affected. It would make sense to cover the 'insured losses' first as the immediacy of needing to deal with repairs and replacement vehicle is typically at the forefront of the consumer's mind. It would also be appropriate to give a brief outline of the types of 'uninsured losses' the consumer may have incurred, what would be necessary to evidence these losses and the steps they should take to do so.

The challenge would be striking the balance between meaningful advice and keeping it sufficiently simple. If such a requirement was introduced by way of an enforcement order, we feel that it would be imperative that the provision of information of this nature should be prescribed as far as possible, both to ensure consistency but also to stop any marketing material being disguised as helpful advice.

We believe that the advice envisaged should be part of the policy documentation and given real prominence within it. Providing the same information at the point of First Notification of Loss (FNOL) would be more challenging and potentially more costly to those giving the notification. We do not believe that a written copy of the guidance should need to be provided before a claim can be progressed, although it might follow shortly thereafter. We certainly do not believe that if the envisaged guidance was just to be found on the website of, for example the ABI or the AA, that this would be read by many customers at all and its potential impact would be substantially reduced.

In terms of any unintended consequences, we do not foresee any, as long as the guidance could be communicated in such as way so as to avoid any delay and that its content was fixed so as not to misguide. We believe it would be for the appropriate regulatory body to ensure that the guidance was given and in the format intended.

Greater transparency around the pricing of insurance may also be very useful to consumers. Some insurers have recently been increasing renewal premiums because of non-fault accidents which may not always be clear to customer.

Theory of Harm 1: Separation of cost liability and cost control

Regarding the combination of possible remedies identified and the implementation method (that is by enforcement order or recommendation to the Government), we do believe it is important to bear in mind the cost of change. This cost (which itself would likely be passed onto consumers) must be weighed against the 'size of the prize', which is currently identified by the Commission as between £6 - £8 per policy. Very significant law reform has been introduced over the last 12 months, which it would appear has begun to provide savings for consumers. These reductions in insurance policies should only continue as more and more of the claims insurers are responsible to meet fall under the new rules around fixed costs and recoverability of after the event insurance premiums and success fees (amongst other reforms which will reduce insurers claims spend).

We are concerned that by seeking to address the separation of cost liability and cost control in the ways outlined would have the effect of reducing individual choice in the market place. As we consider in more detail below, consumers do not only choose insurance based on price but many other factors come into play around service, quality, brand and peace of mind to name but a few.

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

This option is already available to consumers, however we expect that most chose not to take it as it is not compulsory and would in its self drive up the price of policies. There are very good and proper reasons why third party motor cover is compulsory in the UK but we cannot see the sense for forcing

cover for replacement vehicles into the same space. Circumstances can easily change between a policy being purchased and a claim arising which would make it difficult for consumers to know whether or not they would even need a replacement vehicle at some future time when they may or may not be involved in an accident. Many would therefore end up paying for cover they might not ultimately need and vice versa.

This option would almost certainly increase administrative costs at policy inception, which for the vast majority who don't have any cause to make a claim against that policy would be an unnecessary burden. Similarly, to offset the cost of the extra cover, additional excess payments might be required which we do not believe is desirable, especially as average policy excesses have increased significantly over recent years.

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

Our objection to this potential remedy is a simple one: the at-fault insurer will be primarily motivated by keeping their costs to a minimum. The quality of the service provided therefore may be substandard.

We have evidenced to both the Ministry of Justice and the more recently the Transport Select Committee that when we are involved in representing injured claimants[1], we recover on average 218% more than is initially offered by the at-fault insurer. The FSA's (now the FCA) research in this area suggested that this figure might be even higher at 275%.

In much the same way that the 2012 YouGov report on Personal Injury identified that there is a general belief that consumers would not know how to assess the level of compensation they would

[1] Review of 500 matters where Client's injuries were worth less than £5000.

be entitled to in the event of an injury[2], the Commission has identified that consumers are ill equipped to assess the quality of the repairs carried out to their vehicle.

We believe that to provide at-fault insurers with the first opportunity of dealing with repairs would lead to increased uncertainty, justified or perceived, on the part of the claimant about how and why their vehicle was repaired in the manner that it was. In addition they would have less recourse (as they would not be a paying customer of the insurer in question) to have such concerns fully addressed.

For many consumers price is going to be the most important factor when considering which motor insurance policy to purchase, it is however, by no means the only consideration. Consumers may choose on the basis of any combination of the following:

- Their past experiences with different insurance companies, good or bad
- Reputation
- Brand
- Reduced prices due to related products (e.g. home insurance from the same provider)
- Specialist products (e.g. specialist cover for a classic car).
- The type of cover; third party only, third party fire & theft, comprehensive, motor trade, etc.
- What is included, i.e. replacement vehicle, legal cover, breakdown policy, protected no claims, high or low excesses etc.

The idea therefore that an individual might carefully select (and pay for) the insurance cover they specifically require – only for them to be at the mercy of whatever insurance company the at-fault third party chose cannot be right.

[2] YouGov – Personal Injury Report, May 2012 page 17

It may also be the case that the at-fault insurer isn't readily identifiable. The Motor Insurer Database is better today than ever before, but it is still so often out of date because changes of provider do not filter through as quickly as they should.

For all of the reasons given above, we do not believe it is right to give an at-fault insurer first option to handle non-fault claims. This is certainly true in relation to repair claims but even in respect of hire vehicles it would come with difficulties.

- Is a consumer that is involved in a non-fault accident expected to wait until such time that the at-fault insurer is identified and responds about providing a vehicle?
- Is a consumer to be placed in one car by their own insurer only for the at-fault insurer to then replace that vehicle later on?
- Is the consumer to accept a lower standard of service from the at-fault insurer, for example a vehicle may not be so readily available or may need to be collected from many miles away, when their own insurer would deliver one to their door the same day?
- How long should a consumer have to wait while liability is considered between the parties?

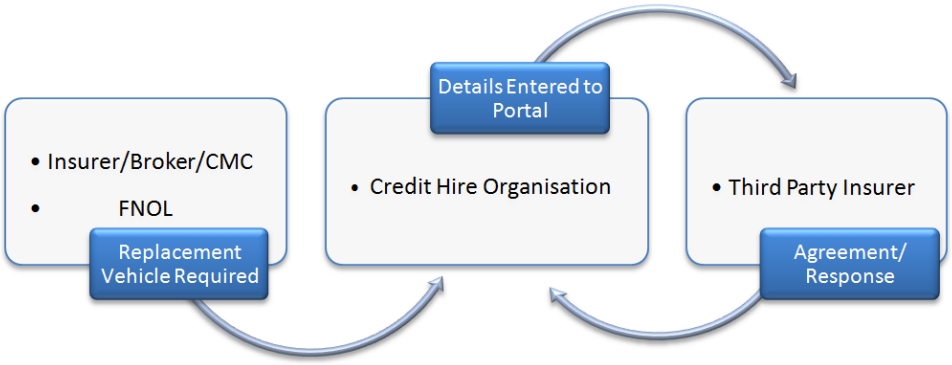
What insurers tend to provide very well indeed, is repair and hire for their customers. Most will have a slick process for dealing with their customers' needs following what is often a traumatic event. Asking Claimants to deal with one aspect via their insurers and another via the at-fault insurers will surely result in a more unhappy customer journey.

It is our firm view that Third Party Capture very often leaves consumers exposed to a conflicted at-fault insurer which will inevitably want to minimise their claims spend as far as is possible.

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

The Commission is aware that the ABI's GTA Sub-Committee has been working on a credit hire portal to assist with the swift exchange of details and payment of claims for some time and as reported in December 2013, the project may be delivered as early as quarter three 2014[3]. The portal aims to allow credit hire organisations (CHOs) and insurers to exchange information more easily and therefore facilitate a reduction in the time to make payments.

In line with the Commissions considerations (and it should be noted that this proposal would require significant additional work), in theory the portal could be used to exchange information at an earlier stage, as follows:



In this model, it would be for the CHO to input details to the portal. The TPI would either agree the hire (rates and vehicle type) or offer lower rates for the same/similar vehicle. If such an offer was made the CHO would de-hire and the lower rates would apply from the point in time that the TPI delivered new vehicle.

There would need to be sanctions for the TPI that failed to provide the hire offered or that failed to pay agreed rates within say 14 day of hire being concluded. Also, the CHO who failed to use the portal would also bear an evidential burden to explain why before being able to recover the cost of hire they had arranged.

[3] The Post Online: Credit hire portal set for 2014 launch as backer put faith in motor inquiry. Dated 11th December 2013 by Carolina Parra-Serrano.

We believe that such a model might drive prices to a much lower sustainable level as the CHO would only recover the cost of hire which was reasonable in the site of the third party insurer. This process could also be dealt with after the hire had been arranged reducing delay to the non-fault claimant, although they might have the inconvenience of one car being replaced with another.

It would be necessary to carefully consider those situations where the same CHO is being utilised on both sides as there would be potential for fixing/agreeing inflated costs.

Finally in this regard, we do believe that rates should only be guidelines. There are always going to be specialist vehicles or requirements which justify rates outside of the guidelines, but it would be for the Claimant to justify these before the courts if necessary.

Remedy 1D&1E: Measures to control non-fault repair costs & write off costs

We do not propose to comment in detail on these issues, as apart from the quality of the repair carried out (which we have addressed separately within this paper) and the small impact on policy premium costs, how repair/write off costs are dealt with between insurers does not directly impact on the individual Clients we seek to assist. That said, and despite recent judicial rulings surely it can only be in the interests of consumers that there is transparency around what repairs/write offs actually cost.

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

It is important to note that Claimants always have a duty to mitigate their losses and that this is as relevant to a replacement vehicle as any other head of loss. The Claimant would have to justify to a court why they needed a replacement vehicle at all and also why they needed the particular size/type of vehicle hired.

For these reasons, we do not believe that any change to well established law is required. It is open to Defendants to test the claims they are presented with and if necessary, to do so through the courts.

Remedy 1G: Prohibition of referral fees

The Commission will be aware that referral fees relating to personal injury claims have in the last 12 months been banned, however they are still payable in other areas of the motor supply chain. If referrals fees were to be banned elsewhere with an equivalent reduction in claims cost to insurers the two could cancel each other out and result in no fall in the cost of insurance to consumers.

However, if referral fees remain payable and are constantly increased, then a question mark should be placed against the resulting effect on quality. For example, such a situation might have an adverse effect on repair quality which in turn might present an additional risk for the individual who has an accident in a previously repaired vehicle.

Theory of Harm 2: Possible underprovision of service to those involved in accidents

Regarding the quality of repairs generally, it could of course be dangerous for a claimant to be involved in an accident in a vehicle which had previously not been fully and properly repaired. Under Remedy 1B above, we outline why we believe this is more likely if the at-fault insurer is given the first opportunity to deal with repairs.

To avoid this situation, we would agree with the principal of an audit process, although this would likely be challenging from a cost perspective, and certainly wouldn't be necessary in all cases.

Theory of Harm 3, 4 & 5:

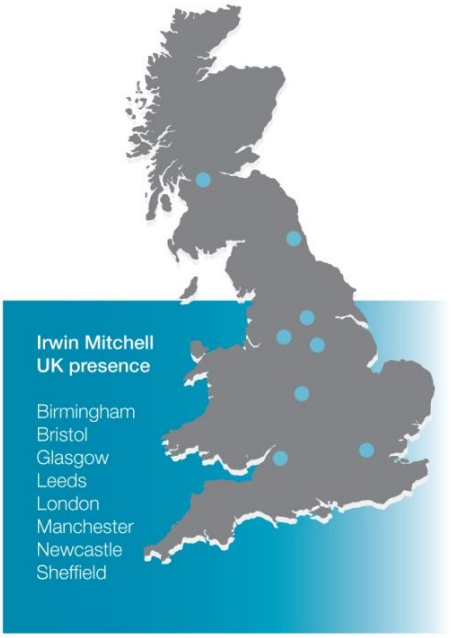
We do not offer any comment on these three remaining Theory's of Harm, as they raise issues fundamental to insurers rather than ourselves as a solicitors.

About Irwin Mitchell

Irwin Mitchell is the largest full service law firm in England and Wales offering legal services to both consumers and business. Yearly, this service offering includes advising in excess of 20,000 claimants in respect of RTA matters. We obtain these instructions from a whole variety of sources and have a reputation across the industry for providing a quality service.

We have 8 offices across the UK and employ in excess of 2300 people the majority of which are involved either directly or indirectly in the representation and support of those unfortunate enough to be injured as a result of another's negligence.

Irwin Mitchell has a long history of campaigning for and implementing reforms to modernise and improve the experience of injured victims who require legal redress.



Having celebrated out centenary year in 2012, we have a wealth of experience of striving to do the very best for all of our Clients.

At Irwin Mitchell we take Personal Injury very seriously. We fight hard for our Clients and strive to exceed their expectations by providing the best quality advice and service. In addition to the recovering over £1bn in the last two years, we recognise the dramatic and sometimes life changing impact for the person suffering injury or illness and those who are close to them and therefore we seek to help them access the best possible medical care, rehabilitation and support.