Private Motor Insurance Investigation

Response to Remedies Notice

Kindertons Accident Management

17 January 2014

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Introduction

We thank the Competition Commission (CC) for giving us the opportunity to respond to the Notice of Remedies by 17 January 2014. We have endeavoured to meet the CC's deadline for this response, but as the CC develops its thinking we reserve our position to make additional points, representations and submissions.

The CC will note that some points noted in this response are very serious, and we do have significant concerns over some remedies, as noted in the Notice. We have given reasons for our views, and we believe the evolving CC report ought to note our concerns, and how the CC has dealt with the issues identified.

We also believe that we need to have a formal meeting with the CC Panel as soon as possible to discuss this response, as well as our serious concerns on aspects of the Provisional Findings to which we will be separately sending a Response. In summary, we believe the Provisional Findings are defective in a number of areas, which we will identify, and do not support some of the remedies suggested in the Remedies Notice.

[REDACTED].

We now turn to the substance of the CC's Remedies Notice. Where necessary, we re-produce the CC's text and then make our comments. We hope this approach assists the CC's decision-makers (its Panel) and staff to properly understand the points we make in this document. If there are any queries, we will be happy to clarify any questions or provide further supporting evidence.

We only ask that the CC gives us proper warning of when it needs to work with us, or look more carefully at matters in this submission. We will be happy to speak with the relevant staff, or attend meetings as needed. We also invite the CC to attend our offices to see what we do, as a large Credit Hire Company (CHC).

Response to the paragraphs in Remedies Notice

Below, we show the CC's relevant text in blue, and then show our comments thereon. In some parts of this response, we make additional points to assist the CC's decision-makers to understand our representations and views.

Paras 1 to 4 – noted

Provisional finding on the AEC and resulting detrimental effects

The CC has written the following:

> *5. We have provisionally found an AEC in relation to four theories of harm.*
>
> *6. Our first provisional finding is that there are two features of the supply of motor insurance and related services which have, in combination, an AEC:*
>
> *(a)* Separation of cost liability and cost control—the insurer liable for the claim as insurer to the at-fault driver is often not the party managing the costs; and
>
> *(b)* Various practices and conduct of other parties managing such claims which *(if)* are focused on earning a rent from control of claims; and *(ii)* give rise to an inefficient supply chain involving excessive frictional and transactional costs.
>
> *We provisionally concluded that these features distort competition in the motor insurance market and result in higher motor insurance premiums. We estimated the overall detriment to consumers to be £150–£200 million per year.*

The Commission will note from our response to the provisional findings, that we object to the above conclusions with detailed comments, and evidence. However, for the purpose of this response, we note the CC's alleged calculation of the consumer detriment at up to £200 million. However, the CC has omitted to show this in its proper context, and we must object, as we explain below.

The CC provisional findings (see para 50) actually note this by the following text:

> *We provisionally conclude that these features distort competition in the motor insurance market. We estimate a net adverse effect on consumers of between **£150 million and £200 million per year**. Since the estimated GWP across the industry is around £11 billion, this net effect corresponds to 1.3 to 1.8 per cent of the average premium, or about **£6 to £8 per motor insurance policy**.*

Accordingly we believe the omission of the full context of this alleged detriment is significant. Specifically the text in the remedies notice does not say that this detriment (which we refute) only amounts to **£6 to £8 per motor insurance policy**. We would be grateful to see this disclosed in any updated Remedies Notice. It is highly relevant information when it comes to looking at the proportionality test for remedies being necessary.

In our view, reasons for the omission of such vital information is either (a) because it was overlooked [✂] or (b) because it shows the real value of any alleged detriment from the existing structure is **negligible**, across the insurance industry. We comment further on this below, when needed.

- Indeed, we believe the benefits of credit hire (to potentially millions of non-fault drivers) and our Credit Hire sector's role (to many other businesses), vastly exceeds this allegation that our services inflate motor policy premiums by up to £8. This must be apparent from our representations in this document.

The real value of CHCs is something significant, which we believe has been completely **missed and not acknowledged** in the CC's analysis to date. It is vital that this is understood, so that the benefits are properly evaluated and noted in the CC's working papers, etc. Otherwise, we can not see how the CC can reasonably justify what remedies might be necessary.

As you will see from what we say in this document, we believe many remedies as set out in the CC's Notice will lead, one way or another, to the rapid or slow destruction of the Credit Hire Sector. Based on the CC's analysis in Section 6 of the provisional findings, the CC knows that our sector accounts for some £661 million revenue, based on 2011 data.[1] That outcome would be a disaster for CHCs employees around the UK, businesses that depend on them, and millions of non-fault victims of motor accidents who use our services at no charge, as a **one-stop shop** for no-fault claims recovery of losses. Our sector developed over the past 20 years because the insurance companies failed to honour their responsibilities to non-fault claimants.

[1] See para 6.83. Here the CC writes, inter alia:
" … Given our approach to transactional, frictional and management costs (see paragraph 6.70*(d)*) and **estimated credit hire revenue in 2011 of £663 million**, this implies consumer detriment from credit hire of £140–£180 million. …"

We also point out that the CC thinks we are a mixed business, comprising Direct Hire and Credit Hire as some composite business. That is a major error of principle, and probably happened because the CC never properly engaged with us, either by meeting with us at a private hearing, and also never taking the opportunity to visit our head office. We are not a Direct Hire sector, and such a label is misleading[2]. We do offer a Direct Hire solution to some Insurers as part of a wider Credit Hire commercial arrangement; however to illustrate the scale of this within the last six months [low %] have been provided on a direct basis. This does not make us a Direct Hire operator.

- We presume this mislabelling also applies to other CHCs in our sector. The reason this distinction is so important is because direct hire has crept into the CC's workings as a factor leading to its calculation of a detriment, which as said, we say is wrong.

We also believe the CC to date has not realised the valuable role that our Credit Hire sector provides to millions of non-fault drivers (and insurers). This error was reflected in section 6 of the Provisional Findings, where this reality was not stated anywhere. The CC therefore [✂] with a false view in para 6.90 of the provisional findings that credit hire is bad to insurers (i.e. causing excess costs on insurers) and we therefore deserved to be criticised and punished with remedies. These errors clearly led to the CC's [✂] to impose remedies on the Credit Hire sector and will need correction. For the record, Para 6.90, to which we object, says:

> *We considered the implications of separation for services. We did identify some service differences but found them to be small, and not such as to materially qualify our findings. We considered that it may be appropriate to take into account some of* ***the service differences as part of our consideration of remedies****. CHCs/CMCs said that an at-fault insurer's incentive was to minimize its costs—an at-fault insurer did not have any incentive to provide non-fault claimants with a quality replacement car or indeed with a replacement car at all. They suggested therefore that, in the absence of credit hire, non-fault claimants would receive a lower quality of replacement car than they did now, for example a basic courtesy car or no replacement car at all.* ***Our concern is not with the existence of credit hire or credit repair as such*** *but with the inefficient supply chain, involving excessive frictional and transactional costs, and other effects associated with separation. It is these effects that represent a departure from a well-functioning market.* ***We recognize that the current existence of alternative providers as a result of***

[2] In para 11, of Appendix A(6)1, we are grouped with what the CC calls Direct Hire businesses. Perhaps these other businesses too have been mislabeled?

> ***separation is likely to provide at-fault insurers with an incentive to provide a good quality of service and consider that this can be appropriately taken into account in our assessment of remedies.***

We believe the CC must now engage in the vital work of understanding what Credit Hire does, and appreciating that Direct Hire is an inferior service, and not part of our business model. It is a pity that this important work was omitted, in getting to the Provisional Findings stage. That omission [✂] needs to be corrected. Clearly we will be interested in engaging with the CC on this vital subject. We have no doubt that the Credit Hire sector does not require any of the remedies noted under headings 1(A), and 1(B) as will be apparent from our representations below. Other remedies could also produce serious harm if [REDACTED]. There may be some merit in taking forward views in remedy 1(C) as you will note from reading our response below.

One further concern that seems apparent from the CC's drafting of the remedies Notice is a view [✂] Credit Hire *ceasing* as an industry practice, to be replaced by Direct Hire services, or in-house supply of claims services (to non-fault drivers) by insurers. In our view, that sort of decision is [✂] wrong. The remedies, as proposed all <u>fail</u> the proportionality test, as noted in para 10. We believe that when the CC considers this further, it will have to reach this conclusion i.e. that the remedies are not needed, and would do much more harm than good. In other words, the current structure of the motor insurance supply chain is *effective*, and if change is needed, that needs to be **<u>subtly done, with care</u>**, and not by thoughtlessly destroying or damaging the existing Credit Hire sector.

Para 7 says:

> *Our second provisional finding is that there are two features of the supply of motor insurance and related services which have, in combination, an AEC:*
>
> *(a) insurers and claims management companies (CMCs) do not monitor effectively the quality of repairs; and*
>
> *(b) There are significant limitations to claimants' ability to assess the quality of repairs.*
>
> *We provisionally concluded that these features distort competition between repairers to obtain business from insurers and other managers of drivers' claims and result in detrimental effects on consumers because they can lead to consumers' cars not being repaired to their pre-accident condition.*

At this stage we do not wish to comment on this remedy due to the time constraints within

the CC's timetable for a Remedies response. We will however include our views within our response to the Provisional Findings, as needed.

Para 8 - 9 - these relate to AECs not directly related to our business

When we looked at the CC's narrative under the 2nd to 4th AEC's (as shown in paras 7 to 9), we notice that the CC has not quantified the detriment from these AECs. We therefore don't know how significant these AECs are, in relation to the first AEC. Does this omission mean the 2nd to 4th AECs are not significant for the CC to need to attempt quantification? We would appreciate seeing something to clarify this.

Criteria for consideration of remedies

We note from para 11, the criteria for the CC deciding whether a remedy is proportionate, as follows:

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

(b) It is no more onerous than needed to achieve its aim;

(c) It is the least onerous if there is a choice between several effective measures; and

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

For clarity, we believe remedies 1(A) to 1(B) as currently drafted fail these criteria. Remedy 1G would also seriously damage CMCs and **the eco-system of businesses** serving and supporting them. We write about problems from other remedies below, and in some cases raise questions to help the CC understand the issues from our point of view as experts in claims management and no-fault claims recovery services to large numbers of drivers.

Para 11 – no comment

Structure of this notice

Paras 12 to 15 - we note the contents and have no comments.

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

We note the CC's remedy options in paras 16 to 21. We are not reproducing all this text to keep this response short.

We have no comment on paras 16 to 17.

Para 18 – this says

This remedy would work by providing better information at two important points. First, we would require motor insurers to set out the policyholder's legal entitlements in the event of an accident with appropriate prominence in the annual insurance policy documentation. Second, in order to ensure that claimants have information on their entitlements at the point when they have an accident, we would require insurers, CMCs and any other party to which a claimant makes the first notification of loss following an accident to inform the claimant more clearly of their legal entitlements. The statements would need to be simple enough to be understandable but detailed enough to give the necessary information. We would expect this information to include:

(a) What happens when a claimant is at fault or not at fault and what the basic legal entitlements are in each case (in relation to both repairs and replacement cars);

(b) Whether a claimant claiming under their own insurance policy would have to pay an excess and/or would lose any NCB and how these can be recovered;

(c) When a claimant is entitled to choose their own repairer and whether this affects their liability to pay an excess; and

(d) What a claimant's contractual rights are if the claimant is unsatisfied with the repairs carried out.

Our response: In our view, most people don't read these notices but we support the CC's aims with this remedy. Our practices already cover these ideas.
Regarding 18(a), we and Credit Hire organisations already provide the information, as noted. Similarly we also provide the information as noted in para 18(b).
Regarding 18(c), we give the choice to our clients (once obtained) to choose their repairer at no cost or penalty. As we understand at present, some insurers will waive 'excess' payments in certain cases but only if repairs are carried out within their own network.

How this would work in a situation where a client chose their own repairer, we are unable to comment.

Under para 18(d) we believe the next recourse for claimants is the Insurance Ombudsman.

We have no comments on paras 19 and 20.

Issues for comment A

21. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:

(a) What information should be provided to consumers?

We believe the CC already has a good grasp of what should be provided but further advice and guidance from for example the Law Society should be taken.

(b) When is this information best provided to consumers—with annual insurance policies, at the first notification of loss, or at some other point? Should this information be available on insurers' websites?

We believe information given at this stage is rarely read and digested; therefore it is more effective for the information to be given at FNOL stage.

(c) Would it be more effective for consumers to be provided with a general statement of consumers' rights prepared and periodically updated by a body such as the Association of British Insurers or are there any examples of existing best practice in relation to information given to consumers by insurers?

The ABI is not the appropriate body to do this. We think the Law Society or the Consumer Association "Which" could do the periodic updating.

(d) Would this remedy give rise to distortions or have any other unintended consequences?

We would not expect any significant cost.

(e) What circumvention risks would this remedy pose and how could these be addressed?

None.

(f) How would this remedy best be monitored, particularly in relation to a statement

of rights at the first notification of loss?

There is need for audit to check it is being implemented. The CC may want to work with other regulators to ensure compliance and best practice.

(g) How much would it cost to implement this remedy?

It is not expected to be of any significant cost to implement this remedy.

(h) Is there any reason why this remedy should not be implemented through an enforcement order?

No.

(i) Is this remedy more likely to be effective in combination with other remedies than alone and, if so, which combinations of remedy options would be likely to be effective in addressing the AECs that we have provisionally found?

In the interests of the consumer this remedy should be implemented in any event regardless of any other findings.

(j) Would the additional measure set out in paragraph 20 be likely to be effective in enhancing consumers' understanding of their legal entitlements?

We would support this suggestion.

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

ToH 1: Remedies that we are minded to consider further

Para 24. In this section, we consider seven remedies:

• 1A: first party insurance for replacement cars;

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

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

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

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

• 1F: improved mitigation in relation to the provision of replacement cars to non-fault claimants; and

• 1G: prohibition of referral fees.

25. Remedies 1A and 1B are aimed at addressing directly the separation of cost liability and cost control and 1C, 1D and 1E are aimed at reducing the costs arising from the separation of cost liability and cost control. Remedies 1F and 1G are primarily supporting measures which may enhance the effectiveness of other ToH

1 remedies if adopted in combination with them.

26. As part of our assessment, we will consider whether we should implement a single remedy or a package of remedies under ToH 1. At present we consider that 1A and 1B are alternative remedies. Remedies 1C to 1F could work in combination with one another and with 1A or 1B as appropriate.

27. Our current view is that Remedy 1A and the options under Remedy 1B set out in paragraphs 39 and 40 would require a change in law and therefore the CC would have to make a recommendation to the Government to implement these remedies. We consider that the options under Remedy 1B set out in paragraphs 38 and 41 and Remedies 1C to 1G could be implemented by the CC through an enforcement order.

Issues for comment 1

28. Views are invited as to:

(a) Whether the possible remedies under ToH 1 are likely to be more effective in combination with other remedies than alone and, if so, what particular combinations of remedy options would be likely to be effective in addressing the AEC we have provisionally found.

(b) Whether the possible remedies under ToH 1 should be implemented by the CC through an enforcement order or whether the CC should make recommendations to the Government (for example, the Ministry of Justice), regulators or other public bodies to implement the remedies.

We interpret the consequences of the way the CC has drafted its remedies to ToH 1 (aided by our reading of the Provisional Findings) as a back-door prohibition of Credit Hire, a business sector which has served the motorist for over 25 years, and benefitted millions of non-fault drivers (at no cost to them at their point of need).

[REDACTED]. If remedies that have not properly been evaluated are introduced to damage/destroy the continued existence of our Sector, we believe that decision will not be in the public interest, and not benefit competition. In this connection, we remind the CC decision-makers that they noted already that our sector does not generate excess profits. This is an important admission of fact that our business operates in a pro-competitive way. Moreover, although the text noted above from para 6.90 says the CC is not set against the Credit Hire business model, our reading of the drafted remedies show the effect of these remedies can do great harm to CHCs, or effectively will undermine our sector's continued existence.

We note that although the CC has spent more than 15 months since this investigation was referred, we as a significant Credit Hire provider [REDACTED], and the value of what we do, which collectively with our peers benefit up to **300,000 non-fault claimants** over a year (out of a larger pool of non-fault claimants). At this stage, [REDACTED] we note that there is nothing in the CC's provisional findings that praises or acknowledges the value and usefulness of our service to the public and insurance companies. All we can find are a few but significant guarded, sceptical or vague comments, as follows:

Para 6.36 – marked as evidence from CHCs/CMCs

> *CHCs/CMCs **told us that they provided better or additional services compared with insurers** (both at-fault insurers and non-fault insurers) at no cost to the driver. The services concerned were extra insurance on replacement cars (collision damage waiver), uninsured loss recovery and after-the-event insurance. We consider these services in Appendix 6.5. We found that one out of nine CMCs/CHCs in our sample provided extra insurance on credit hire but not direct hire replacement cars, while six out of nine provided uninsured loss-recovery services. We noted that **these services were not provided by at-fault insurers**. We considered that after-the-event insurance was not relevant to the assessment of separation as it was not needed when claims were managed by the at-fault insurer*.

The services noted are very valuable – [REDACTED], and our worth in keeping down the costs of the insurance claims supply chain. We provide a valuable service to insurers, brokers, and the driving public (and their families). Given that the CC noted there are some 2 million claims in a year, we handle many of the difficult claims by non-fault drivers. We do this job well as a **one-stop shop** for the claimants and we resolve these cases efficiently.

- We have a huge numbers of cases, which the CC could have reviewed to confirm our value and cost-effective prices. If we could not do this, then the insurers would have attempted to take this work in-house. The fact that they chose not to get involved is possibly testament to how well we managed this process. If our costs and service did not exist, the insurance companies and brokers would find their costs increasing. [REDACTED] It is also absent from the thinking in the remedies Notice. With the [✂] investigation process we would be surprised if even remedies 1(A) and 1(B) would have been put forward.

Our concerns become more clear when we read the Provisional Findings in conjunction with Remedies Notice, and note that the CC insists on comparing Direct Hire to Credit

Hire without any appreciation of the dynamics of either (i.e. ignoring the fact they are different). The error is compounded when we see the CC expecting Direct Hire to replace Credit Hire, for non-fault claims, aided by enhanced in-house claims handling by insurers. We believe this will be disastrous for insurance policy-holders, irrespective of the adverse effects on our own business, and CHCs generally. [REDACTED]

It is apparent [✂] on what part of our services are covered by Direct Hire, and how we are remunerated for what we do. As previously stated we are mislabelled as a Direct Hire provider with no explanation in the Provisional Findings about this. In fact, Direct Hire makes up a mere [✂] of our revenues. It would be interesting to identify **similar percentages** within the CC's text shown in para 11 of Appendix A6(1)-4 for **all** the so-called direct hire businesses shown. This says:

> *Under a direct hire agreement, the insurer managing the claim arranges and pays for a replacement car through its contracted direct hire provider at **pre-agreed** rates. **Six of the nine CMCs/ CHCs in our sample** (Accident Exchange, Ai Claims Solutions, Enterprise, Helphire, **Kindertons** and WNS Assistance) told us that, as well as providing credit hire services, **they also provide direct hire services** to at-fault customers and captured non-fault customers (following a referral from the at-fault insurer).*

Direct Hire rates are not comparable to Credit Hire rates – they are effectively in separate markets, meeting different customer needs, and paid for in different ways. Major logical errors have crept into the CC's thinking [✂] until seeing the published provisional findings in December 2013.

- Table 6 in Appendix 6 records conclusions which we think are [✂] defective. First we note the CC does not use spot-rates as the comparator to our credit hire charges, and we object to this failure to recognise that the real price of car hire to the public exceeds our charges.

- Second, the spot rates are used as a guide for loss recovery in the Court system when claims are litigated not the lower direct hire rates. And our GTA credit hire rates are lower than these rates, as approved by the Courts.

- Third, direct hire rates, even if superficially lower than a rate for a similar car under credit hire are not based on the same service needs, and assumptions. So the direct hire comparator is artificial for use as a benchmark to compare our credit hire charges.

- Fourth, the Credit Hire rate we recover under the GTA has been designed in co-operation **with the insurance industry** to ensure the agreed rate covers us for our services to non-fault claimants, which we provide at no charge. The proof that the rate is set correctly is the CC's admission that our sector does not make excess profits. Direct hire rates do not recognise the cost of services we provide to non-fault claimants – it is totally irrelevant and [REDACTED].

The fact that Direct Hire rates are not comparable to Credit Hire rates, was in our view succinctly explained in a public submission on the CC's website. It was made by Quindell (noted above as A1 Claims solutions)[3]. They wrote, inter alia:

> "The first area we wish to raise is with regards to the principle that flows through a number of documents where a **comparison is made between credit hire and direct hire costs**. Direct hire costs are actually not the actual cost of providing the service to the customer, but an **artificially low cost borne out of a supply arrangement between the insurer and the supplier**. Of course, via **bulk buying** an insurer is able to *bargain* for a cheaper service, and the supplier able to provide that **discount due to the volume** that is received through one source and efficiencies it is able to gain. The rental provider may also price on such a low margin for such service due to a broader commercial relationship with the insurer. When a consumer who is not at fault is left without the use of their vehicle, prima facie they can hire a replacement vehicle and recover the costs of the same from the at fault party. The consumer is not able to bargain with the rental provider for a discount and will hire that vehicle ***on a daily rate***. It would be **more appropriate comparing credit hire charges and whether there is an over costing with the 'basic hire rate' available to the consumer**, which has been the approach adopted in the courts, including the Court of Appeal. To arrive at a conclusion that through credit hire there is over costing is **quite wrong** in our opinion – Whilst we accept an insurer representing the tortfeasor would be able to procure the services more cheaply that is **only possible due to their bulk buying opportunity**. …."

[3] This document can clearly be seen on the CC's website at: http://www.competition-commission.org.uk/our-work/directory-of-all-inquiries/private-motor-insurance-market-investigation/evidence/responses-to-annotated-issues-statement-and-working-papers
It was put on the website in September 2013, i.e. more than 3 months before the provisional findings were published.

So what clearer notice did the CC need in order to recognize that direct hire prices are artificially low. [REDACTED] Even worse, the Provisional Findings and the Remedies Notice show nothing to reveal [REDACTED], or how this challenge was set aside? They stand unanswered in the entire report to date. At least the above text should have been included in the relevant section of the Provisional Findings, which need **updating** to take account of these material facts. Clearly in our view, [REDACTED] **flowed through to the remedies Notice**, and choice of remedies worthy of further consideration.

We do not agree with the CC's thinking that the costs of our services are higher than in a well functioning market. To do this, we note the CC artificially substituted arbitrary prices for the charges we need to make to survive as a business. The proof that our charges are at economically acceptable levels is the statement in the CC's Provisional Findings, at para 6.17, where the CC wrote:

> "… We note that we have not seen evidence that CHCs **earn more than normal profits**. Indeed, as we found that barriers to entry were low and CHCs **compete** to obtain referrals by offering **high referral fees**, we consider it **unlikely** that CHCs earn more than normal profits."

Collectively the CC noted that Credit Hire companies earned revenue of some £663 million in 2012 (see para 6.36 of the provisional findings). So we ask whether [REDACTED] valuable and important sector of the insurance claims supply chain [REDACTED].

- And, we ask, what happens to the costs that we necessarily have to incur in meeting the market needs to help non-fault claimants. Does the CC think the insurers can do our job without incurring huge extra costs, technology and infrastructure. [REDACTED] Section 6 and Appendix 6 is devoid of any information to answer this basic question. [REDACTED] so far to credibly put forward its 1(A) and 1 (B) remedy proposals? [REDACTED]

We also need to note that the UK law may restrain the CC from implementing remedies that allow others to "freeload" on our success to date, or arbitrarily force the destruction and damage of our business model by ill-conceived remedies. Doubtless we will see a section in any revised remedies Notice on [REDACTED] are addressing this fundamental hurdle of natural justice and fairness. The CC will note that its remedies bring worries to

employees and all businesses connected with CHCs. It needs to put their fears to rest as soon as possible.

We note the CC uses pejorative language throughout, such as 'referral fees', when in fact these should be seen as commissions or customer acquisition costs, which arise in any business sector across the UK, from financial services, to selling physical goods. Indeed the CC is happy with PCWs charging commission for their services – otherwise how do they survive? Paying commission (or referral fees) is a legitimate 'route to market' cost, and benefits all the receivers of these commissions, as well as the policy holders able to benefit from our services.

- Referral fees enable businesses to enjoy potentially a **continuous flow** of work, and should not be condemned as bad. The CC will appreciate that if our type of business (or any other) can enjoy a continuous flow of predictable work, then we in turn can enjoy economies of scale, which flow into our GTA rates. [REDACTED]

The intermediaries are **incentivised** to pass work to the supplier with relevant skills, as otherwise they cannot efficiently make contact with customers directly, or by other advertising and internet methods. There is nothing sinister about referral fees (as suggested by the CC).

We also note that footnote 11 on page 6.6 of the provisional findings is highly significant. We cannot understand why the text is not actually in the document, with clear comment on what this means. The footnote says:

> Of the **ten largest insurers**, only CISGIL does not refer claims to CHCs. All the others, and **all major brokers**, refer to a CHC unless there is a relevant bilateral agreement with the at-fault insurer.

This text should demonstrate what a worthy and cost effective job is done by CHC's. Effectively we work for almost the whole insurance market, and do this well. The CC's provisional findings also fail to say why and how we came into existence. The answer is because the insurance groups were treating customers badly i.e. refusing claims, and non-fault drivers needed organisations that could take a risk assessment to help them recover their reasonable losses. That is why we exist and are needed, going forward.

- The CC has in our view, [✂] **our role and value to millions of insurance policy holders**. Anyone in the UK could be victim to a car accident, and need their car

repaired efficiently, and be given a suitable replacement car. We CHCs are geared to handling these claims efficiently with our technologies and infrastructure across the UK. In comparison, DH companies do not have this in-depth capability.

- The fact that we provide a one-stop shop for aggrieved innocent motor claimants (*perhaps around 300,000 people and their families annually at no charge*) across the UK shows the value and importance of what we do. As accepted by the CC, we do not make excessive returns. Again there is nothing in the provisional findings to reveal the CC decision-makers knew [✂]. The [REDACTED] into this investigation process. [REDACTED]

We fully appreciate that this was a complex investigation, where the motor insurance industry earn around £**11bn revenues a year**[4], across 25 million policies. Given that the so-called alleged detriment, as not noted in the remedies is only **£8 a policy (as a maximum)** and that the CC's evidence from para 6.84 of its provisional findings shows the average premium paid by insured people is £440 a year, we do not understand how anyone will ever see a benefit of £8 a policy (on average) from implementing such drastic remedies as 1(A) and 1(B). Even if a remedy is needed for such a low detriment, it needs to be unobtrusive, and pro-competitive, and not favour any groups of suppliers to increase their grip on customers. Unfortunately the remedy proposals fail to meet this criteria.

- We believe the value of the CHC business model is much more than £8 a person, especially when they are the victim of a non-fault claim. We provide (a) a transparent one-stop-shop to process their claim, and (b) give them a replacement car (within 4 hours of acceptance), (c) we handle the claim negotiations, and repair issues, and (d) recovery of uninsured claims. All this is at no charge to the client. These are real benefits which we believe people would pay for, given the risk of suffering a no-fault accident. If we did not exist, and insurers made a charge for the services we provide, premiums for this cover would, based on our experience, be many times the alleged maximum £8 detriment. In reality insurers/brokers do charge for elements of this service in the form of Motor LEI but any income raised is not passed on to the CHCs.

[4] We note the CC does note show the retained profit on this revenue. But it must be significant. For example, para 15 of the provisional findings notes there were 2.9 million claims, which incurred costs of £8.6 billion. Allowing for costs of say £1 billion leaves retained profits of say £1 billion for insurance providers. Whatever is the actual figure, they may well absorb any alleged savings that the CC thinks they will pass through to customers.

In summary the following are our thoughts on the key remedies proposed within TOH 1:

1. We reject the analysis comparing direct costs to credit hire costs, as shown in section 6 of the Provisional Findings, and the relevant appendix 6. Assuming that our rejected analysis is accepted, it follows that these remedy proposals are inappropriate.

2. The CC's ideas for a change of law seem completely disproportionate to the alleged detriment, which goes to the extreme of removing the law of tort to address this perceived problem. This would simply cause chaos, let alone stripping a victim of their right for redress. The cost and time to implement such a change in itself becomes questionable.

3. These remedies would lead to the demise of the Credit Hire sector, accordingly the businesses that depend on us buying services from them across the UK, will be similarly threatened with damage by the CC remedies, [REDACTED] the impact of this additional eco-system of supporting businesses?

4. [REDACTED] with the remedies, we believe (i) they will not be effective, (ii) they will have unintended cost effects on consumers; (iii) they will cause massive delays in non-fault innocent claimants getting a replacement car when needed, or a suitable car, with the disruption to lives, and (iv) the disappointment from false expectations on what to expect from their policies. The inconvenience from the new proposals, effecting around half a million drivers a year, **and their families** is something that the CC should never ignore as a side-effect from insisting on their remedy proposals.

5. In years to come, service standards will fall as the insurers will be free to do as they please with innocent drivers affected by motor accidents. We are sure the industry will be subject to adverse criticism and the CC's ideas blamed for the needless trouble. Has the CC tested whether its ideas are workable in other countries? We have noted nothing on this.

6. [REDACTED] For example, the CC does not recognise the importance and value of what CHCs do for millions of policy holders, over several years, and across the UK. Our infrastructure enables claims to be settled on a large scale, at low costs which keep premiums down, contrary to what the CC alleges on a foundation of inconsistent data (e.g. the false comparison of CH rates to DH rates and the wrong belief that they

are for the same service). The error is as wrong as trying to compare budget airline charges to premium airline charges – they serve different sectors of a bigger market.

7. [REDACTED] the implications of its ideas for these remedies, in any meaningful cost/benefit exercise. In our view, its work in section 6 (and Appendix 6) is superficial about the contribution and value of Credit Hire, and a lot of text is **generalised**, and lacks any underpinning to actual reality. As said, we are disappointed that the CC has [REDACTED] skirted around the necessary dialogue by a simple short round-table meeting on **17 July 2013** i.e. 6 months before the provisional findings were finished. There were 7 CHCs present.[5] On reflection, we ask whether the CC now thinks this was adequate [✂], given that we are the direct target of its remedies, and not the insurance companies (whose business was presumably the focus of such an investigation). It's an extraordinary turnaround, given that the insurance industry has GWPs of around £11 to £12 billion a year.

8. Imagine under the CC's new remedies regime that many non-fault drivers are told to go away, or their claims are rejected on the grounds that they don't have the cover they thought they had, or exclusions are claimed to refuse them replacement cars. Worse, if the CC has the law changed to remove tort liability, these aggrieved victims will be denied legal redress from recovering the costs of the replacement car that they incurred as a direct cost. All this is disastrous [✂]. If it happens on a scale, it could rival the recent and unresolved PPI scandal, where compensation of £billions has been paid to victims.

   - If it can happen, the CC should reasonably *expect* this as an outcome from its remedies. Insurance companies have an incentive not to pay out on claims they can reject. [REDACTED]. It should also ask, for example in the house-holders industry why loss adjusters, and loss assessors exist, if the insurers pay-out easily? Moreover, the Insurance Ombudsman could be swamped in time with

[5] That round table meeting's notes can be seen on the CC website at: http://www.competition-commission.org.uk/assets/competitioncommission/docs/2012/private-motor-insurance-market-investigation/non_confidential_multilateral_cmcs_transcript.pdf
We note this was attended by 4 members of the CC Panel, plus the Inquiry Director (Mr Wright) and the CC's Director of Remedies and business analysis (Mr Reynolds), plus lawyers, business advisers, and an economist.

deadlock and dispute cases, which will be blamed on the CC's decisions in 2014.

9. If insurers refuse to give a car to claimants making a legitimate claim, who pays for the delay if this problem is extended across thousands of claimants around the UK? Who will assist the claimant in these circumstances if CHC's do not exist? As said, will the Ombudsman's office be able to cope, or will additional costs spill over to regulators, and other agencies? All this is left unanswered in the CC's narrative when proposing such radical changes.

- Moreover, imagine a Mother with a family who is the innocent victim in an RTA and as a result her car is un-roadworthy. What happens when she is prevented from taking the children on the School run if refused an immediate replacement car? A whole host of reasons could exist for this scenario, a dispute in liability, an unnecessary delay in processing due to new administrative duties or the situation where the at-fault party is a Company and the fleet driver just hasn't completed his claim form thus leaving the at-fault insurer in a position where they are not even aware of a claim! We deal with these types of delays on a daily basis, but still handle the credit hire claim at our risk. The insurers will send the victims away until a decision if any can be made on the basis of whether any entitlement is evident. Where has the CC taken account of these real-life scenarios?

- We can give many examples of these types of cases we deal with daily. We handle in excess of [✂] claims a year, and without us, who is going to do our job better? As said, [✂] the CC became fixated with 'costs' and failed to see the wider picture of service and customer benefits. This in our view happened because [REDACTED]. So it may be of no surprise to find the provisional findings have nothing on the value of what we do, compared with direct hire businesses.

- Even more notable, on reflection, we do not think the CC visited any Credit Hire companies during its investigation, and if so, what did it learn? We were not invited to speak to the CC? And the CC knows our turnover is significant, [REDACTED] The CC's decisions have widespread and far reaching consequences and it remains a [REDACTED].

We hope the CC will give greater weight to the beneficial reality that flows from the existence and value of CHC and their eco-system of supporting businesses,

when it considers 1A and 1B, to which we comment directly below.

Remedy 1A: First party insurance for replacement cars

> *29. This remedy is to require replacement cars, but not repairs, to be insured on a first party basis such that a policyholder is provided with a replacement car by the policy-holder's own insurer in the event of an accident, whether the policyholder is at fault or not.*
>
> *30. Under this remedy, non-fault claimants (and hence non-fault insurers via the principle of subrogation) would not be allowed to recover the costs of a replacement car from the at-fault insurer. Instead, insurers would be responsible for bearing the cost of providing a replacement car to their own policyholders in the event of a non-fault claim. We envisage that insurers would offer policyholders the option to choose the level of cover they would require in the event of an accident (i.e. no replacement car, a courtesy car or a like-for-like replacement car) for different premium levels. As a consequence, individuals would have the option to purchase a level of cover equivalent to their current entitlement under tort law or to trade off their legal entitlement with a lower premium*

We believe the proposals noted in paras 29 and 30 would result in the demise of the Credit Hire sector, and the destruction of CHCs.

The CC has already identified potential problems with the sale of add-on products in TOH 4 (*i.e. pricing, too complicated and not transparent*). We therefore don't understand why the CC thinks it is a good idea to add a <u>further layer of complicated add-on</u> products, which the policy-holder would need to purchase. If they get this essential purchase **wrong**, they can be left in a situation with <u>no cover</u> at the time of need, if involved in a non-fault accident.

Regardless of the above, this solution could only even be entertained **if** the expected cost of such a policy was **<u>less</u>** than the alleged maximum detriment cost of £8 the CC has identified. Has the CC carried out any research to assess the current and projected price of these premiums?

- We have identified a selection of Insurers who currently offer a range of polices which provide mobility in the event of an accident, these range from a courtesy car (**class A**) to a larger 1.6 engine 5-door option. In **Appendix 1** we show the current pricing of these policies. The CC will note that there is no option for a like-for-like vehicle i.e. something better than the basic offering as noted above.

- This clearly shows that even for a class A policy the current pricing ranges from ***£23 to £31*** (for the **worst** replacement car option).

- You will also note that there can be limitations on these policies as follows:

    - Period of hire is restricted. From these examples you will note there are 14 or 21 day options.
    - Cover can be restricted to a certain claim type, for example the [✂] policies only provide a replacement vehicle when the claimants vehicle is a total loss. Our data shows that on average **[✂]** of vehicles are total losses which leaves a further **[✂]** of claims where theses policies would *not* provide mobility.
    - There can be limitations on the number of times you are able to claim on the policy in each 12 month period, you will see from Appendix 1 some policies only allow for one claim, any subsequent claim the consumer would be left without mobility.
    - Some policies are only available to policyholders who opt for fully comprehensive cover. Hence, if they are insured on a third party fire and theft basis then they are not left with opportunity to buy this type of cover.

- In order therefore to provide a comparative like for like policy which does not have the limitations mentioned above the expected premium would be significantly higher than the £23 to £31 range.

- The CC needs to note that this pricing for this extra cover, (in itself buying a far more inferior product than is provided under our present non-fault credit hire system), **dwarfs the alleged £8 detriment to consumers by a factor of 3.** This conclusion should mean that the remedy is disproportionate.

Furthermore if the CC contemplates the new landscape (under this remedy), the policy premiums should be expected to increase significantly above the £30 noted above. In contrast, under our current methods, any non-fault claims on existing polices will be referred for credit hire and treated as a subrogated claim (i.e. paid for by the at-fault insurer), so that underwriting costs are kept to a minimum. If every accident regardless of fault were to be claimed from the policy the underwriting and hence premium cost would increase significantly.

31. This remedy would address the provisional AEC by removing the separation of

> *cost liability and cost control in relation to the provision of replacement cars to non-fault claimants. As the non-fault insurer would bear the cost of providing the replacement car to its policyholder, the non-fault insurer would be incentivized to procure the replacement car for the lowest cost. In addition, it would reduce the overall cost of providing replacement cars to non-fault claimants compared with the current entitlements under tort law because replacement cars would be provided according to the level of cover chosen by the policyholder and would no longer be provided to policy-holders who had not taken cover to be provided with a replacement car. In some circumstances, and depending on the choices made by the policyholder, this might mean that non-fault claimants would receive less than their current legal entitlements under tort law.*

The CC's assumptions are correct but at what cost to the consumer? We have already identified the economical argument in respect of premiums for such policies to be significantly higher than any detriment the CC has suggested. It then raises a number of practical problems as follows:

- Clearly, the remedy could lead to a situation where the consumer is in a much worse position than at present, if they do not purchase a policy at inception then they have literally lost all rights to mobility in the event of an accident.
- Even if a policy is purchased it would be for a limited period, for example if it was for 14 days. If however, repairs were delayed to the claimant's vehicle, how do they secure mobility for the full duration? They would not be able to hire a car themselves and attempt to recover the charges back as this entitlement will be removed due to the change in legislation. Has the CC considered these scenarios?
- Interestingly, the remedy ignores recovery of other uninsured losses which are currently normally done on behalf of claimants by CHCs. Who would process and submit these claims in the future in a landscape without the CHCs?
- Has the CC considered the impact on motorists who are insured on a third party, fire and theft basis? These claims are usually managed by CHCs as the claimant has no entitlement for repair or total loss settlement with their own insurer. With the absence of CHC's who will manage the process of recovering the cost of repair or the value of the damaged vehicle from the at-fault insurer? The CC suggests that these heads will still be recoverable as a subrogated claim but who will represent the claimant? They would have to do it themselves, so this would require them to prove liability (of the other party), arrange an engineer to assess repairs or total loss value, submit the report and request for payment to the at-fault insurer

and then wait for the cheque to arrive, and **if** they have taken out a 14 day hire policy, then on day 15 (after the accident) they are left without mobility. These scenarios are endless and it seems have not been considered to date as practical problems arising from this remedy.

- With the passage of time, this remedy could be viewed as grossly unfair, but once implemented; the detriments flowing can not be redeemed easily or timely. Complaints to the Ombudsman may be fruitless, and millions of people would be subject to worse claims recovery rights, and restitution than exists now.

> *32. We envisage that frictional costs would be reduced because there would be no reason for disputes to arise between at-fault insurers, non-fault insurers and CMCs over the cost of replacement car provision. The form of vehicle provision would be* ***likely to move away from*** *credit hire towards direct hire which should lead to some reduction in costs.*

It is concerning that the CC uses the word "likely" in its context to describe a move away from Credit Hire. This seems to suggest that the CC is aiming remedies to cause the Credit Hire sector to cease. In contrast to these views, the CC is minded not to consider Prohibition of Credit Hire in para 69 because of the adverse impact on impecunious drivers (a large proportion of drivers on the road). We hope the CC notes this conundrum?

- Is it therefore the CC's [✂] to wipe out a £700 million sector which currently serves the 35 million UK motorists on the road? The benefits and services this sector provide are set against a perceived £8 per policy detriment per year, or put another way 22 pence per day. The cost of 22 pence per day to receive this vital help and assistance when a driver need it most after being involved in an accident that was not their fault, must seem a very low cost for a very large gain. It is also said that being involved in a road traffic accident can be one of the most stressful experiences in a person's life and we believe the CC has failed to recognise and value the service we provide at their hour of need, at no cost to the claimant.

If this remedy moves forward what is the guarantee in any event that the alleged £8 saving will find its way into the private motorist's pocket, in an industry where rates are fluctuating all the time, and the average insurance premium (as noted by the CC) is around £440 a policy. How will the CC know that their solution has achieved its objective?

The CC's alleged detriment, which we reject, at up to £200 million in a year, is a tiny

proportion of total premiums in 2012 of around £11 billion. It is clear to us that the CC's remedy is disproportionate to the alleged detriment it has claimed. If the insurers make, say [✂] billion profit a year, their business model will only be augmented by the CC's favourable treatment to give them more power over consumers and non-fault claimants by the proposed remedies. We object to all this.

Possibly there might be winners who gamble on *not* taking the proposed cover envisaged by the CC, and don't have accidents! If however, they find themselves in a non-fault accident, they will be without mobility, and more importantly no-one will be available to do the service we currently provide.

To conclude, we hope the CC will note that this remedy, based on our experience could cost the average driver a minimum of £30, going up to an estimated £100 for a true "like for like" policy without restrictive limitations of claim.

> *33. Our current view is that this remedy could not be implemented without a change of law, given that it would affect the rights that non-fault claimants currently have under tort law. It would therefore require a recommendation to be made to Government. In considering the scope and practicability of such a recommendation, we would need to take into account the Road Traffic Act 1988 and the EU Directive relating to insurance against civil liability in respect of the use of motor vehicles.*

For reasons given above, the change of law proposed seems arbitrary and senseless. It seems the UK will be the only country in the world to consider such radical proposals. Consultation will take years, even if there is a Parliamentary desire to go down this path. Effectively, people suffering car losses will be denied remedies and choice on how they recover their loss from the CC's ideas.

As support for UK change requires MP approvals, has the CC requested views of MPs on how they feel, as legislators about this proposal, or how their constituents might react? As this change will hit 25 million people, of which 2 million are involved in accidents each year (big or small), it needs to be carefully thought through with wide support. We will be interested to know who supports this change? If it is thought necessary for so-called cost-savings, it has not been balanced against benefits that are not quantified but exist under the current claim recovery regime. We for example, have spoken [REDACTED] have thought this proposal makes any sense. We noted their concern.

Issues for comment 1A

34. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:

(a) What aspects of the law would need to be changed?

As noted above, the proposal is senseless. The UK will be the only developed country to contemplate such change.

(b) How should policyholders be given a choice as to the extent of replacement car cover?

As we have shown in Appendix 1 we would expect a range of polices to be available similar to current offerings at the time of people taking out their motor insurance - it is merely another decision the motorist has to make at the time of buying their insurance. If cost is an issue, add-on products are usually the first to be ignored and so this will be at the loss of their legal rights (because they did not take this option for the necessary cover).

We question whether car owners will be able to make an informed choice in selecting this extra cover under this new regime (which we see as costing more than £30 a policy), and not later regret their mistakes from insurers or brokers mis-selling the right policy and cover[6]. Equally bad, people may be confused about this imposed extra, from what they see on PCWs and buy the wrong cover for the real risks they face – they will then find they are under-insured or not insured in their time of need.

*(c)To what extent would the need for consumers to pay a **premium** for replacement car cover be offset by the effect on premiums of the overall reduction in replacement car costs that would occur as a result of this remedy?*

We assume the CC is expecting its £8 saving to be reflected in lower insurance premiums, offset by the cost of the new cover option under this remedy. However we believe the objective from this question is *impossible to achieve* (based on our views of policy costs under this remedy, as noted above). The CC should note that any extra premiums for 'replacement car cover' will be many times £8 (see **Appendix 1**). In other words, this remedy does not produce savings for motorists and fails the proportionality test. The CC needs to get a better understanding on this critical *missing* data from its analysis to date. What quotations has it got from the top 15 insurance groups, or brokers

[6] This happened before with PPI, so why should it not continue again?

offering insurance? We would like to see this data published as soon as possible.

(d) How might this remedy affect NCBs and the premiums of non-fault claimants? Would non-fault claimants have to pay an excess when provided with a replacement car under their own policy? If so, would this be treated as an uninsured loss which should be recoverable from the at-fault insurer?

As this remedy relates to hire alone we do not see any impact on NCB or excess payments, apart from of course as explained in detail earlier CHC's currently undertake the recovery of excess payments as part of their uninsured loss recovery service. This would cease to exist, so claimants would have to attempt to recover their losses from the at-fault insurer, a daunting prospect.

(e) How would this remedy affect the credit hire and direct hire activities of vehicle hire companies? How might the quality of service in the provision of replacement cars be affected if replacement car provision is contractually specified in motor insurance policies?

Regarding the first sentence, as said many times in this response, we do not believe the Credit Hire business model will survive for reasons given above. [✂] this failure to recognise the direct impact of these remedies (as shown in the CC's narrative on our Credit Hire sector), must represent [REDACTED].

In respect of quality of service we would expect it to decline, with no alternative to choose then the claimant has no other option than to accept what is provided.

*(f) Would it be likely that the **non-fault insurer** providing the replacement car would also handle the repair of the non-fault claimant's vehicle? What would be the consequences of this? Would complexities and costs arise if the replacement car is provided by the non-fault insurer and the repair is carried out by a different service provider?*

No comment at this stage – it is a complex question.

(g) Would this remedy give rise to distortions or have any other unintended consequences?

From what we have written above, the answer is yes, without any doubt.

(h) How long would it take to implement this remedy? What administrative changes would need to be made?

From the above, it is unworkable on any time scale, and it increases driver's premiums

(above current levels). The remedy also favours insurers, in the hope they will pass on alleged cost savings of questionable value. The remedy does not care about any adverse impact on potentially millions of drivers who will be forced to take whatever is on offer, or suffer delay and get nothing. Worst of all, they will find their claims as non-fault drivers disputed with no recourse on what to do.

Those that don't take out this cover, may have failed to do so, and regret this when the accident happens – they may become a large group of people over time complaining of mis-selling cover because of accidents in the future without this cover. Clearly these are big problems [REDACTED].

(i) Would this remedy need any supporting measures? If so, what are those measures?

Not relevant – the remedy is disproportionate to the current system which works effectively in the interest of millions of drivers.

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

35. This remedy would give at-fault insurers first option to handle either the whole of a non-fault claim (paragraphs 37 to 39) or only the replacement car part of a non-fault claim (paragraphs 40 and 41).

36. The aim of this remedy would be to make it easier for at-fault insurers to capture non-fault claims, thus removing the separation of cost liability and cost control of the non-fault claim. By introducing competition from at-fault insurers at the first notification of loss, a greater constraint would be placed on the behaviour of non-fault insurers and other parties (such as CMCs).

*37. The remedy would require that when a non-fault claimant makes the **first notification of loss** to their own insurer or CMC (or to a broker who refers the claim to the insurer or a CMC), the insurer or CMC should inform the at-fault insurer of the claim. The at-fault insurer would have a **limited period of time** to contact the non-fault claimant to offer to provide a replacement car and manage the repairs. The at-fault insurer would not be obliged to make an offer to the non-fault claimant. In addition, this remedy would not apply in cases where liability is **undecided or split** such that the distinction between the at-fault insurer and non-fault insurer cannot be made.*

38. The non-fault claimant would then be able to elect to have their own insurer, broker or a CMC handle the claim instead of the at-fault insurer. The main risk with this approach is that, given the separation of cost liability and cost control, the non-fault claimant will only be assessing the different offers on the basis of service and not on the basis of cost, so it risks being ineffective.

Whether intended or not, this remedy will lead to the collapse of the credit hire sector over time. [REDACTED]. At present within the workings of the GTA the agreement provides clear guidance on who is able to deal with a claim, whoever offers their services first to the claimant in a manner which can clearly be understood is entitled to then manage that claim. This produces a straightforward claims process where the claimant is fully aware of who is dealing with the claim and how it will be dealt with.

The CC suggests then to add an extra level of administration to the process. From the claimant being in a position that he understands how his claim will be dealt with they are then faced with a delay and possibly being then told that the claim is now to be dealt with by someone else, this does not make sense and adds unnecessary confusion and delay.

Currently when we CHCs process claims, the client contacts us, where appropriate, and if we accept that they qualify as a non-fault claimant, we immediately provide a replacement

car (if needed on the day of notification of the claim). **We charge nothing to the claimant, and take on the risks that our assessment may be wrong.** Our claims team will investigate facts to establish liability. We contact the at-fault insurers, and use our skills to manage the claim in an efficient manner. The benefit is we provide a **one-stop shop** for non-fault claimants anywhere across the UK. This gives us a seamless interface between clients and the services which are needed to resolve their car repair, or other consequences of the accident.

- In contrast, under the CC's ideas for remedies, we see **avoidable delay** being built into the claims recovery system, with many chances for innocent claimants to be left in limbo waiting for offers of assistance by the at-fault insurer.

- We note that the CC says 25% of claims are disputed regarding fault. We believe the proportion is higher, and as experts in this business, we believe our statistic is better than any lower proportion used by the CC's findings. We have submitted our data several times, [REDACTED]. We repeat our data submission once more – [✂] per cent of claims are not admitted within 48 hours, and over a half [✂] not admitted within 7 days. These claimants will be left in the system and with the demise of CHCs they will have no one to assist them.

Even worse for CHCs, if we are expected to notify the at-fault insurer, and they have the option to take the claim from us, then **how will CHCs get rewarded/recompensed for their abortive work?** Nothing in the remedies proposals discusses this obvious effect where we are expected to work for nothing.

We believe this remedy will clearly favour Insurers, in effect insurers will be able to "cherry pick" claims which have been presented to them by CHCs, and as a result, the CHCs will be left with a significant drop in volume thus not being able to support their business costs. They either contract, or withdraw from this sector. As this cycle continues the Insurers will have less and less incentive to provide a good service to any claimant, a point identified by the CC on many occasions within the provisional findings, for example in para 48

> *"We noted that the existence of alternative providers, such as CHC's/CMCs, is likely to act as a deterrent to at-fault insurers providing a poor quality replacement car service".*

Para 6.38 on page 6-20 also refers to this point:

> *"We **accepted** that the existence of CMCs and CHCs (which only occurred when there was separation) was likely to give insurers the incentive to provide a high quality of service to non-fault claimants, including, for instance, a like for like replacement car in many case".*

And again in para 6.90 the CC writes:

> *"We recognize that the current existence of alternative providers as a result of separation is likely to provide at-fault insurers with an incentive to provide a good quality of service and consider that this can be appropriately taken into account in our assessment of remedies."*

This point has also recently been acknowledged by the Transport Select Committee who criticised insurers and their current third party capture models, any move to provide insurers with more power to control the claim from the outset would clearly raise concerns even more.

The end result would be catastrophic for the consumer and we are not certain that the CC has anticipated these consequences. We have already provided great detail earlier in our submission about the benefits that CHC's provide to the 35 million motorists in the UK and we hope that the CC recognises that in considering this remedy, this invaluable service function to the everyday motorist will be put into jeopardy. The consumer will be left without mobility and will be left to argue their case with the at-fault insurer on their own. We would expect a significant increase in claims being referred to the FCA or Insurance Ombudsman office for review.

We refer you once again to para 69 of the Remedies Notice that the CC has decided not to prohibit credit hire, for the clear reason that this would *"leave impecunious non fault claimants in a position where they might not be able to access the replacement car (e.g. where fault is undetermined)"*. Clearly this is something that is recognised but not fully understood in terms of the implications from the proposed remedies becoming a reality.

- Specifically, even without a ban on credit hire, if our sector is starved of the ability to find our clients (non-fault claimants) then the remedies achieve the same negative result as a Credit Hire prohibition. It is apparent that some logic has gone wrong [REDACTED]. We hope we can assist the CC reconcile its thinking, with our comments in this document. We also assume the CC will publish such *updated thinking* as quickly as possible.

In summary the impact of this remedy would have the following key affects:

a) The demise of CHCs over time.

b) Detriments for claimants who will be left without mobility and who won't be able to recover uninsured losses (e.g. excesses, loss of earnings, taxi expenses etc.) because there is no-one else to assist them to reclaim these losses, when potentially refused by the at-fault insurers. Cumulatively over time, with up to 300,000 potential non-fault claims a year, this detriment can affect millions of people over future years. Evaluating this lost customer benefit will be in the £millions, depending on the number of people involved.

c) [REDACTED]

d) In effect Insurers will have the monopoly on the provision of mobility to non-fault claimants, [REDACTED] this can not be healthy for competition in the industry and the everyday motorist.

e) There will be categories of drivers who will be deemed high risk for Direct Hire, so the insurers will refuse to give them a replacement car. How will their interests get protected or [REDACTED]. How many good drivers will be mislabelled as high risk? How will they dispute this? Even if 10 per cent of the 300,000 million drivers involved in non-fault accidents each year get this label, it affects say 30,000 people. CHCs, at least protect this one class of potential victims from this remedy.

f) The remedy creates <u>in-built delay and obstruction</u> before non-fault drivers get a replacement car, or settlement of their claim. How does the CC evaluate this lost opportunity cost of time to the numerous claimants, in millions affected by this change of practice?

In our view, the consumer's position (i.e. non-fault victim) needs to be taken more seriously, and given greater priority in the order of factors to justify remedies. So far we think the claimants position (300,000 people and their families a year) is totally ignored. We cannot understand why? This investigation is more than being a costing analysis, or supply chain discussion. Specifically, the competition rules demand that relevant customer benefits are taken into account, even if the CC deems particular practices have an adverse effect on competition. In our case, we firmly believe that CHCs pass this test. [REDACTED]

The CC's proposed remedy has missed all these real practical problems which we handle on a daily basis. We urge the CC to conduct a site visit to our offices to see what we do, and perhaps to offices of other CHCs/CMCs. [REDACTED] but given that the CC may ask for remedies that destroy our ability to do our business, it at least needs to know what it is doing. We would be happy to welcome the CC's panel to our head-office (and 13 other locations), whenever convenient.

> *39. In order to address the risk identified in paragraph 38, a variant of this remedy would be for the choice between service provider to be taken away from the non-fault claimant. In this variant, if the at-fault insurer wanted to capture the claim having seen the circumstances of the case, the claimant would be obliged to accept the at-fault insurer managing the claim and arranging provision of services such as a replacement car and repairs. We are mindful that this variant would remove the legal entitlement that the non-fault claimant currently has to choose the service provider. A further downside is that it risks under-provision to the non-fault claimant, as the at-fault insurer is incentivized to minimize the cost of the claim.*

This variation of remedy would merely accelerate the issues mentioned above as the claimant would be left without choice and be forced to accept the at-fault insurer's offer.

We note that the CC recognises that the at-fault insurer is incentivised to minimise the cost of a claim (by this remedy), because they have control. So even if they have accepted fault and liability, their service to compensate the victim could be much worse than under the current situation where CHCs are used across the industry. It is a detriment that the CC remedy **is creating** as a permanent feature, and once a large number of non-fault victims are treated badly, it may become a matter for the FCA. Specifically:

- How will the CC protect against this harm occurring on a large scale?
- Will victims to bad practice by the at-fault insurers have the skill and willingness to make complaints e.g. to the Insurance Ombudsman?

It seems this remedy can easily produce losses to many accident victims, and the CC needs to estimate this cumulative potential loss over say 5 years, assuming this remedy is initiated. That estimated loss then needs to get into the balance in favour of allowing CHCs to continue doing their job well, as acknowledged by the CC and the insurance sector.

> *40. Given that the concerns set out in paragraph 39 may be higher in relation to*

> *repairs because consumers may wish to choose the repairer, it may be more appropriate **to apply this remedy only to the provision of replacement cars**. In this case, the at-fault insurer would have the option to provide a replacement car to the non-fault claimant and would thereby avoid the separation of cost liability and cost control in relation to the replacement car only. One way in which this remedy might work is as follows:*
>
> *(a) When a non-fault claimant makes the first notification of loss to their own insurer or CMC (or to a broker who refers the claim to the insurer or a CMC), the non-fault insurer or CMC would agree with the claimant the **type of replacement car** to be provided having worked through the legal entitlements of the claimant (see Remedy 1F (improved mitigation in relation to the provision of replacement cars to non-fault claimants).*
>
> *(b) The non-fault insurer or CMC would then advise the at-fault insurer of its daily hire rate for the vehicle.*
>
> *(c) The at-fault insurer **would have the option** to provide an equivalent replacement car itself. We envisage that the at-fault insurer would choose this option if it could provide the replacement car **more cheaply** than the non-fault insurer or CMC.*
>
> *(d) If the at-fault insurer elected to provide the replacement car, the claimant would **be obliged to accept** the provision of a replacement car by the at-fault insurer. The identity of the vehicle provider should not be a material concern to the claimant if the vehicle type is agreed at the outset.*

We add that the points in 40(a) and 40 (b) are ways in which we operate now.

Paragraph 40(d) seems to create a form of coercion on the non-fault drivers. The CC expects the non-fault driver to accept <u>whatever is offered or imposed on them</u> (irrespective of need or circumstance). If an unsuitable replacement vehicle is given, the recipient has little ability to challenge the process and must make do with the imposed situation. In a world where these remedies are permitted, [REDACTED }

Would aggrieved non-fault drivers have any right to complain of bad service and bad treatment to the Ombudsman – and if they win, would they really recover their losses in terms of time, distress and aggravation?

All the above needs careful consideration, when changes will affect millions of people over many years. Adverse effects need to be properly understood now, before the remedies are implemented.

> *41. Another way this remedy might work is that steps (a), (b) and (c) above would occur and instead of step (d):*
>
> *(a) If the at-fault insurer elected to offer a replacement car to the non-fault claimant, it would make clear that the at-fault insurer was going to pay **a lower hire rate for the vehicle** than the non-fault insurer or the CMC was intending to pay.*
>
> *(b) The non-fault claimant would decide whether or not to accept the offer of the at-fault insurer. If the non-fault claimant **chose not to accept this offer**, and provided that the cost of hire from the at-fault insurer was made clear in its offer, the non-fault claimant (or the non-fault insurer or CMC managing the claim) would only be able to recover an amount **equal to the at-fault insurer's costs** for supplying the replacement car.*

Taking 41(a) and (b) together, there is nothing in this remedy to stop insurers [REDACTED] unrealistic offers, so they can demand to take the claim over, or force the credit operator to work at a reduced charge. The CC fails to realise that the Credit Hire charges, as prescribed by the GTA were set by a technical committee of both CHCs **and insurance representatives**. Their charges are therefore set by experts, and are meant to ensure the CHCs could recover their costs and make a normal return for their efforts.

- CHCs don't get any other payment from the insurers, or from the customer, other than the GTA hire charge. **Direct hire charges are totally irrelevant**. So if CHCs are starved of revenue from their main activity, they can not perform their important function on behalf of non-fault drivers. An analogy is to think that legal aid lawyers will not be paid enough to do their work – they will go out of business over time.

- We believe it is in the **public interest (i.e. a relevant customer benefit)** that CHCs are able to operate in a way that helps a vast number of people across the UK to get treated fairly by insurers (and their agents). The interests of drivers (and their families) needing to make claims, and those of insurers, when it comes to non-fault claims are not aligned, and CHCs/CMCs remove the tensions and costs of litigation, or sustained personal loss by our role which is only remunerated by the credit hire charges. This is something the CC's provisional findings totally misses, or ignores in its narrative in Section 6 or Appendix 6. [REDACTED]

When the replacement car is the only non-fault claim, the insured party might accept the at-fault insurer's offer. However in numerous cases that we handle, where the claim is both for a car plus other uninsured losses, this remedy will never work in favour of the

claimant. The reason is that the CHCs will not be able to fund work for the other uninsured losses because this is not-paid for work. So these losses become irrecoverable unless the claimant deals with the matter themselves which will involve significant time and expense.

> *42. Our current view is that the remedy options set out in paragraphs 39 and 40 could not be implemented without a change in law given that the non-fault claimant's right to choose the service provided* ***would be constrained****. However, we consider that the remedy options in paragraphs 38 and 41 could be implemented through an enforcement order.*

In our view this remedy clearly fails the proportionality test, and we believe that the CC should be protecting the Credit Hire sector with combined revenues up to say £700 million a year, rather than enact remedies to destroy the sector, and the **eco-system of businesses** (brokers and small businesses) that work to deliver a good service to drivers, effected by non-fault accidents.

> ***Issues for comment 1B***
>
> *43. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:*
>
> *(a) Which of the variants in paragraphs 38 and 39 are likely to be most effective:*
>
> > *(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?*

These are irrelevant questions as they miss the fundamental negative impact from the remedy on CHCs (as noted above).

> > *(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 (see, for example, Remedy 2A)?*

There is no incentive for the at-fault insurer, and as noted above, with the demise of CHCs by this remedy, [REDACTED] They [non fault claimants] will be on their own (inequality of arms) and will only have the Ombudsman to help them.

- Impecunious drivers effected by non-fault accidents will be losers from these

remedies (collateral damage), and can amount to millions of people across the UK, when they suffer an accident. Imagine being told your car, which is damaged is not going to be repaired, or you receive no compensation because your claim as a non fault driver is disputed. To replace the car requires capital, and payday lenders are no solution to enable replacement at an economic price.
[REDACTED] to such claimants who will not have CHCs to approach?

We are pleased that, at least the CC has asked a question where this risk may now become apparent. We also note that the CC seems to realise there is a problem by its comments under para 69 where it has decided not to prohibit credit hire. But as we have said, in many places here, many of the remedies in the notice will produce the effect of destroying the Credit Hire sector, one way or another, quickly or over several years because without adequate credit hire income, the businesses are starved to death – **nothing can be simpler to understand**.

Over the longer term, with the demise of CHCs/CMCs on any scale, [REDACTED] analogous to the PPI scandal, where the CC will recognise that compensation of £billions has been paid out by banks (and others), which sold worthless insurance policies.

b) What are the implications of the non-fault claimant having the right to choose an alternative service provider?

The problem is this remedy does not allow this option over the medium to long-term. In other words, the gradual death of CHCs will happen, which as noted above is a **systemic failure** from the remedies options under consideration. If that happens, millions of drivers will be affected, directly or indirectly in years to come. The remedy creates an unequal playing field in favour of the insurers at the expense of policyholders generally.

c) 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?

Delay is a big problem which needs to go into the balance weighing-up loss of customer benefits from the demise of CHCs. Delays in paying or settling legitimate claims, or providing replacement cars affect families, livelihoods, commitments to travel, shopping, holidays, etc. These delays, if evaluated can be substantial numbers of hours by millions of people over time. These detriments are **permanent losses and lost opportunity costs**.

In our experience, 1 day's delay may be inconvenient, but beyond 2 days, there will be hardship for many, with no easy low-cost ways to get round the problem of not having mobility. In contrast, we can resolve this issue **within 4 hours on day 1**, once we make an assessment (at our own risk) that the claim is legitimate and non-fault. Cars are only given if there is a genuine need, taking account of the rule for mitigation of loss. Because we have economies of scale, we often carry out service for some claimants where we do not make a profit. We are wondering whether the CC has recognised these detrimental impacts on CHCs from its work already, [REDACTED]

d) *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?*

The question shows the time lag between FNOL and getting a replacement car is a real issue that the CC needs to properly understand. We believe any delay more than 1 day is not acceptable, given that our service standards require a car to customer within 4 hours of the claim. You will recall our statistics show that in over 70% of claims liability is not conceded within 48 hours which in itself proves the **subsequent delay will occur**. Accordingly the remedy should be seen as unworkable and against customers' interests (in the wider context of insurance settling legitimate claims).

Moreover, when this customer benefit is balanced against the **alleged detriment of £6 to £8** a policy (as defined by the CC and which we reject as being too high), then it is clear that the benefits outweigh any alleged costs. Indeed the alleged detriment of £8 is considerably less than the average hourly rate for working people (source: Office of National Statistics). So we can not see how this remedy passes the proportionality test, as noted by the CC in para 10 of the remedies notice.

e) *Are there any advantages or disadvantages to the variant applying this only to replacement cars (see paragraphs 40 and 41) 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?*

If the remedy only applies to replacement cars, then as discussed above, it is clear that CHCs will be starved of revenue, and their sector will die. CHCs can not sustain a credible and viable model on any scale, **by relying on credit repairs alone**. As said, this is something serious that has been overlooked in the papers issued by the CC, and the remedies notice. We hope this omission will soon be noted.

f) Would this remedy give rise to distortions or have any other unintended consequences?

With the demise of CHCs from this remedy, the eco-system of businesses working with them can also be threatened – this can include brokers, repairers and other connected businesses across the UK. Given that CHCs generate revenues of say £700 million (and don't make excess profits), their revenues go back into the UK economy in terms of employment and payment for goods and services. The collateral damage is also something omitted from the CC's work to date.

Loss of employment in local areas affects the communities dependent on people having a livelihood. The secondary effect for the CC to consider is the welfare bill that the Government could pay from lost employment opportunities in this sector that collectively must support thousands of paid employment jobs. All these losses add to £millions.

The destruction of CHCs infrastructure is also something that can not be replicated easily across the UK. The CC will note that CHCs are located in head offices across the UK. They provide a valuable service to millions of people. We hope all these detriments will be noted in the next document to emerge from the CC on the remedies subject.

In terms of claimants, another consequence is that without CHCs to manage their claims (at no cost), non-fault claimants will potentially have three choices:

- *Attempt to manage the claim process themselves and interact with the at-fault insurer, or*
- *Not bother to claim as it will be too daunting and take up too much time, or*
- *We may see smaller claims companies appear who will operate on a Damages Based Agreement (**DBA**). In effect, the claimant agrees to lose a percentage of their settlement (representing their claim losses) which are re-claimed. This approach therefore pays for a service which currently is provided by CHCs for no cost.*

We are certain that the CC would see this as a significant negative impact of its remedy, no doubt under DBA's there will then be further disputes and complaints which would ultimately end up at the Insurance Ombudsman's door.

A further possible consequence of this remedy 1B is for an ***increase in fraudulent claim activity***. In this scenario of insurers trying to capture claims ahead of CHCs, the insurers can be motivated to accept claims faster and as a result without time to screen claims

correctly, hence a bigger proportion could slip through the system. Fraud as we know is a key problem within the industry and interestingly contributes significantly more to the average cost of insurance premium than the alleged detriment under AEC1.

- The ABI's own fraud estimate ranged from £45-£50 per premium, ***a factor of 6.25*** compared to the alleged £6-£8 which has been attributed to AEC1. The insurers will therefore have a difficult choice to make to combat this threat.

- They can either accept that this may happen and as a result the cost per policy will increase as fraud increases, or make the decision-making process more robust (i.e. combative, questioning and rigorous) when considering third party claims. This in turn will add time and administration, having the effect of increasing insurers' cost and causing even more delay.

This is a realistic issue which the CC needs to consider further.

g) How might this remedy be circumvented? How could this circumvention be avoided?

This is irrelevant as the remedy is (inadvertently) proposed in a way to destroy the CHC sector. There is no need to circumvent this remedy, as there will be **no survivors**. Effectively, the insurers will be permitted to take all claims in-house depending on whatever terms they want (or the conduct of their agents). If there is worry of circumvention, it is what the insurers might do, by introducing even worse practises, at the expense of innocent non-fault drivers. This consumer detriment, as we noted is something which we regard as lost customer benefits arising directly from this remedy. It is a serious issue that the CC can not ignore in the period ahead.

[REDACTED]

h) How should insurers, brokers and CMCs be monitored to ensure that claim-ants 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?

The question is good but irrelevant because of the damage that this remedy will do across the UK, and to potentially millions of car drivers, affected by non-fault claims (and their families) over the next 5 years. In that time, insurance companies may receive an estimated £60 billion in insurance premiums and make perhaps [✂] billion profits; whilst the public will suffer personal losses, with no easy way to get redress, unless they go to

heavy expense and risk their time in challenging the insurers at the Ombudsman. **All this needs evaluating**.

We foresee numerous disputes between the insurers and non-fault claimants, and a higher workload for the Ombudsman's office. All the wasted hours need to be recognised, and the losses left on non-fault drivers from their legitimate claims being rejected.

(i) How long would it take to implement this remedy? What administrative or legal changes would need to be made?

This issue is irrelevant. It is the damage that the remedy does, which counts. That damage, when set against the so-called detriment identified by AEC1 at £6 to £8 per policy makes rejection of this remedy, blindingly obvious to us. We are sure that if consumers were also asked to evaluate the gain from having us work to settle their non-fault claims without any cost to them, **and at our risk**, for a cost of £8 or less per annum, they would be delighted, almost at the 100% threshold. Does the CC want to test this hypothesis?

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

> *44. The aim of this remedy would be to control the cost to at-fault insurers of subrogated claims for the provision of replacement cars to non-fault claimants. This remedy would also aim to reduce the frictional costs arising in relation to the provision of replacement cars directly (through making the administration of claims more efficient) and indirectly (lower claims should result in fewer disputed claims). This remedy would most likely be implemented through an enforcement order that would apply to all insurers, CMCs, vehicle hire companies and any other providers of replacement cars (or finance used to cover replacement cars) to non-fault claimants.*

We agree that measures to reduce frictional costs across the industry could lead to price reductions over time. The GTA already promotes this philosophy with its framework of working practices. We have endorsed and recommended an extension to the GTA from our very first submission which would look further at the streamlining of processes which would ultimately reduce cost (first sent to the CC in January 2013).

We believe this remedy solution is therefore already in place and ready to be developed. The one area of reform needed though is to make the membership mandatory for all credit hire claims. Insurers have confirmed that those claims not currently submitted through the GTA by subscribing CHCs cause the biggest friction, they are based on higher daily rates of hire and in the most part a desire to unnecessarily litigate to enforce payment, these issues and costs will be removed through mandating.

The main issue around this remedy is what reductions can be made through a robust and streamlined claims process?

> *45. There are several possible measures which could be included in this remedy which would reduce the hire costs for replacement cars. We envisage that these measures would replace the General Terms of Agreement (GTA) 8 and would contain:*
>
> *(a) guidance on the duration of hire periods for replacement cars, in particular in cases when the claimant's vehicle is still driveable following the accident, to reduce the period between the start of the hire period and the commencement of repairs to the claimant's own vehicle;*

This guidance already exists within the GTA, and any improvement of the GTA should ensure that the correct tolerances are present to account for those claims which do not run smoothly.

(b) a cap on daily hire rates for each category of replacement car. Two possible approaches to determining the daily hire rate cap, which would be reviewed and re-set annually by an independent body, are as follows:

(i) an average of a basket of retail hire rates for each category of vehicle less a percentage based on the difference between the average retail rates and the average direct hire rates; or

(ii) An average of a basket of direct hire rates for each category of vehicle plus a small percentage to cover credit charges.

The average retail rates or average direct hire rates would be based on the relevant rates submitted by selected vehicle hire companies to the independent body on a periodic basis; and

Currently, GTA rates have been set using the benchmark of spot (i.e. retail) prices. Any benchmark which radically reduced GTA rates will harm the economic viability of CHCs because they **will/could be starved of revenues to cover their costs**. The damage depends on the level of cap imposed on charges. As we have noted before, the CC's reliance on Direct Hire's artificial charges as a valid source for benchmarking of our necessary charges, will if implemented destroy our sector. We have noted the detriments already in our response above.

This too produces a result that is impossible to sustain over the long term. It fails to recognize the value and importance of credit hire operations to the multitude of non-fault claimants, that needs a mechanism (at no cost) to get redress from the insurers. This is exactly what CHCs provide.

(c) An allowance for administrative costs.

This is currently included within the GTA.

46. To allow effective exchange of information between insurers, CMCs and other parties, and to reduce the frictional costs arising from the administration of claims, this remedy could also require use of an online portal for the exchange of documentation. In our provisional findings we noted that the GTA Technical Committee is evaluating the technical feasibility of a credit hire portal (see Appendix 6.1, paragraph 9). This aspect of the remedy could build on that work.

We think this is a constructive proposal, and can produce benefits, we have outlined the benefits of this in our previous submissions.

We would further re-iterate that use of the portal should be mandatory to ensure that any cost saving is reflected across the entire credit hire sector. In order to evidence the success of such a portal the CC needs to look no further than the MOJ portal for personal injury claims.

47. We are mindful that the OFT provisionally found that a number of provisions of the GTA may have had the effect of preventing, restricting or distorting competition but the case was closed in 2007 as it was not considered an administrative priority. Our current view is that the measures set out in paragraph 45(b) would not cause competition concerns because they propose that daily hire rates would be set by an independent body, rather than though collective agreement between motor insurance providers and credit hire organizations as under the GTA.

No further comment

Issues for comment 1C

48. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:

(a) What would be the most effective way of implementing this type of remedy? Possible ways could be an enforcement order made by the CC, an under-taking to replace the GTA, or (in relation to the hire costs of TRVs subject to dispute) a recommendation for judicial guidance on the level of hire costs recoverable from at-fault insurers by non-fault insurers and other providers of replacement cars.

Subject to our objections, whatever final decision is made will require an independent body to carry out the scrutiny.

(a) Which parties should be covered by this remedy?

Clearly any entity involved in the sector of credit hire.

(b) What is the appropriate time period in which repairs should commence

once a replacement car has been provided? How should the hire period be monitored and by whom?

The framework for this is already covered by the GTA. We believe any subsequent portal should use these guidelines and ensure acceptable tolerances are built into the system.

(c) What is the most appropriate mechanism for setting hire rates for replacement cars? Who should determine the hire rates?

Currently, Credit Hire rates are set by the GTA's technical committee annually, made up of 6 members from the Credit Hire sector, and 6 representatives of the insurers. It clearly has a value representing the interests of both sides, and having the skill and knowledge to make sensible fair decisions.

If an independent body was appointed to carry-out this process it must follow the same guidelines. We have explained in great detail the risk of benchmarking rates to direct hire models, which simply is not a fair reflection of Credit Hire costings/overheads.

- As noted above credit hire represents a service which is free to claimants, and the credit hire charge must be sufficient to make this business model work – it is analogous to legal aid enabling lawyers to serve their clients for free. If the legal aid rates fall (and the CC will be aware of barristers going on strike) then the service will fail, or lawyers will stop providing this service, which costs the Government around £2 billion a year. We hope the analogy makes sense.

Given our comments above, we think the Provisional Findings, around page 2 of Appendix A(6)1 is rather weak on noting the importance of the GTA technical committee, in setting fair (cost reflective) credit hire rates across the sector, covering the UK. **We hope our comments will get included the right places in the CC's final report for this issue to be properly understood, and the implications appreciated**.

If the CC wishes to know more, we will be happy to assist.

(d) What administrative costs should be allowed? At what level should administrative costs be capped?

The current GTA allows for an administration fee, clearly depending on the level of rate will determine a fair capping if applicable on the admin fee.

(e) Is it practicable for the relevant documentation to be exchanged through a web portal rather than in paper form?

Yes, a portal will enable efficient transmission of data and documents.
Our business has already developed electronic links with major insurers to make the smooth communication of data possible – would the CC like to visit us to see this?

(f) What costs would the measures in this remedy entail?

We understand that work has already commenced on a claims portal which would manage the majority of this remedy, it would be expected that there would be a cost per claim model which would mean costs would be spread across its users, therefore the cost of implementation should not be significant.

(g) Would this remedy give rise to distortions or have any other unintended consequences?

If imposed rates are too low, and do not recognise the benefits of Credit Hire, which needs to be funded by viable charge levels, then our sector will be severely affected by the CC's power to impose remedies. We hope we have enlightened the CC on what we do (amongst the other providers).

(h) To what extent is there a risk that this remedy could be circumvented by the evolution of new business models that are not subject to it? How could this risk be avoided?

As noted above, if rates are too low, and insurers effectively are able to refuse to pay for our services to non-fault claimants, perhaps amounting to 300,000 claimants a year (and their families, etc.), then there is nothing to circumvent. Our sector will be starved of income and would be in decline. The impacts will be severe detriments as we noted in this document.

Remedy 1D: Measures to control non-fault repair costs

49. The aim of this remedy would be to prevent subrogated claims for repair costs being marked up. This remedy would also aim to reduce the frictional costs associated with repair claims as lower claims should result in fewer disputed claims. We have considered two possible ways in which these aims could be achieved through an enforcement order:
Remedy 1D(a)

50. Non-fault insurers would be required to pass on to at-fault insurers the wholesale price they pay to repairers, plus an allowance for an administration charge.

51. However, there is a concern that this remedy might encourage inflated bills from repairers to insurers in exchange for referral fees. This remedy might therefore also need to be considered in conjunction with a remedy to prohibit referral fees (see Remedy 1G).

Remedy 1D(b)

52. The repair costs recoverable through subrogated claims would be limited to standardized costs. If the actual repair cost were higher than the standardized cost, then the non-fault insurer would not be able to recover that cost and would incur the costs. Conversely, if the actual repair cost were lower than the standardized cost, the benefit could be retained by the non-fault insurer. It is not proposed that the standardized costs would be used for any purpose other than in relation to subrogated claims.

53. The standardized costs could be developed with the help of cost estimation systems (e.g. Audatex or Glassmatix) used by repairers. Cost estimation systems use data from manufacturers' manuals and Thatcham repair standards to determine the parts required, the paint quantity and the labour time for different jobs. The cost estimation systems allow non-OEM parts to be specified instead of OEM parts. The systems use this information together with parts and paint prices and labour rates to calculate the estimated cost of a repair. The systems would therefore provide a number of aspects that would feed into the price control.

54. In order to develop standardized costs to provide a form of price control, it would be necessary to set standard discounts to the list price for parts and the paint index and to specify labour rates (with regional variation and provision for different types of labour). It would also be necessary to set out the circumstances in which non-OEM parts could be used.

Issues for comment 1D

55. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:

(a) What would be the most effective way of implementing this remedy?

(b) Would either variant of this remedy give rise to distortions or have any other unintended consequences?

Regarding Remedy 1D(a)

(c) How could repairers be prevented from inflating the wholesale prices they charge to non-fault insurers and passing excess profit to non-fault insurers through referral fees, discounts or other payments?

(d) Could this remedy be circumvented by insurers vertically integrating with repairers?

Regarding Remedy 1D(b)

(e) Is it practicable to set standardized costs for all aspects of repairs in subrogated claims? If not, what are the potential problems?

(f) What are appropriate benchmarks for inputs into the price control? To what extent are cost estimation systems helpful? What other indices would need to be used?

(g) What would be the costs of implementing this arrangement?

(h) How would monitoring of this remedy work?

(i) What would be the most appropriate organization to review the inputs into the price control on a regular basis?

(j) What measures would be required to ensure that the price control arrangements would not have adverse consequences for the quality of repairs?

At this stage we do not wish to comment on this remedy due to the time constraints within the CC's timetable for a Remedies response. We will however include our views within our response to the Provisional Findings, as needed.

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

56. We have provisionally found that when the non-fault claimant's vehicle is written off, and the claim subrogated to the at-fault insurer is calculated using an estimated salvage value for the vehicle from the salvage company acting for the non-fault insurer, the estimated salvage value is sometimes set too low, which results in a higher claim on the at-fault insurer (as the claim is the difference between the pre-accident value and the estimated salvage value). The aim of this remedy would be to ensure that claims costs reflect actual salvage proceeds. We have considered two possible ways in which this could be achieved through an enforcement order:

(a) Remedy 1E(a). Require that at-fault insurers are given the option to handle the salvage of non-fault vehicle write-offs in non-captured claims (but only once the pre-accident value of the vehicle has been agreed with the claimant by the non-fault insurer or CMC). The amount of the subrogated claim on the at-fault insurer would therefore be the pre-accident value of the vehicle; the at-fault insurer would receive the vehicle in return and would recover the salvage value.

(b) Remedy 1E(b). Require that all insurers use actual salvage proceeds (including any referral fee paid by the salvage company to the insurer) or that the amount of the subrogated claim on the at-fault insurer based on the estimated salvage value is adjusted (up or down) once the actual salvage proceeds (and any referral fee) have been received from the salvage company.

Issues for comment 1E
57. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following: (a) Would either variant of this remedy give rise to distortions or have any other unintended consequences?

Regarding Remedy 1E(a)
(b) Would at-fault insurers be likely to take up the option of handling the salvage?

(c) At what point in the claims process should at-fault insurers be given this option?

Regarding Remedy 1E(b)
(d) What impact would this remedy have on salvage companies? To what extent would this proposal reduce the incentives for insurers to get the best salvage value from salvage companies?

(e) What administrative costs would the adjustment mechanism have? What evidence would need to be provided to verify the salvage proceeds (and any referral fee)?

As stated in our response to remedy 1D we may wish to respond in greater detail in due course. However in brief, we think there are practical problems that may prevent these

remedies from working in the manner expected.

For example, we have identified the following concerns:

- This remedy could introduce new delays in the management of a claim in respect of deciding who will retain the salvage and at what ultimate cost?

- We see only further arguments over values of both the pre-accident value of the written-off vehicle but also now the salvage proceeds, these could run on for weeks.

  This could perversely lead to an increase in hire costs. Disputes over salvage values and who reimburses the claimant could leave them in a position where they **can not purchase a new vehicle as they have not received full settlement for their damaged one**.

- We see additional administration in this process which in turn can drive costs upwards.

We would be interested if the CC has also considered these consequences?

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

58. A non-fault claimant is entitled to a broadly equivalent replacement car while their own vehicle is unavailable subject to a duty to mitigate their loss with consideration to their need. We found that often non-fault insurers and CMCs do not enquire in detail about a non-fault claimant's need for a broadly equivalent replacement car. Mitigation statements are presently only signed by claimants upon receiving a replacement car.

We disagree with the narrative. Under the GTA we assess need and mitigation at the FNOL stage of the claim. Clearly if the claimant has no genuine need for a vehicle then we would not progress the claim to the stage where we are delivering the vehicle and have incurred internal cost. The assumption, or 'finding' expressed in the question does not coincide with our experience of what happens. We draw the CC's attention to our previous data submissions. There, we were asked to identify what percentage of claims were successfully disputed by the at-fault insurer based on the claimant's need not being agreed, only **[✂]** of all claims fell into this bracket which supports our robust FNOL scripts

and processes.

In our view, less than [✂] of problems seems like a successful outcome on this issue.

It could be the case though that claims which are not processed through the GTA may follow different processes, hence **we refer to our responses to remedy 1C, where we supported mandating a GTA type arrangement applying to all providers of Credit Hire businesses (serving the private motor market)**.

> *59. This remedy would require that non-fault insurers and CMCs ask non-fault claimants standard questions about their need for a replacement car. The type of vehicle provided and hire duration should take account of the responses. Non-fault insurers and CMCs would be required to provide the at-fault insurer with adequate documentation showing that the appropriate vehicle had been provided by completing a 'mitigation declaration' setting out details of the claimant's responses and written confirmation that the cost of the replacement car had been appropriately mitigated. The at-fault insurer would be entitled to be sent the mitigation declaration and to review the non-fault insurer's or CMC's call record in the event of a dispute.*

We again refer to the current process which is a requirement of the GTA. We already submit signed mitigation statements to the at-fault insurer as part of the final payment request pack.

Once again those CHCs who do not subscribe to the GTA have no such obligation.

> *60. This remedy would aim to reduce the amount of subrogated claims by ensuring that replacement cars are provided to non-fault claimants only in accordance with their needs. The remedy would also aim to reduce the frictional costs incurred by insurers and CMCs that arise when there is a dispute over the replacement car provided to a non-fault claimant because the at-fault insurer alleges that the replacement car exceeds the non-fault claimant's needs. It would also assist with the effectiveness of some of the remedies above (for example, Remedy 1B or 1C).*

We do not cause the problem noted and our comments above show there is a simple solution which the CC could bring-in to deal with this issue.

> ***Issues for comment 1F***
>
> *61. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:*
>
> *(a) Could this remedy operate on a stand-alone basis?*

Yes - we do this already.

> *b Which other remedies would benefit from this remedy as a supporting measure?*

Not relevant – this is a free-standing remedy, if the CC thinks it is needed.

(c) What questions should the non-fault insurer or CMC ask non-fault claimants in order to assess the need for a replacement car, the appropriate type of replacement car and to demonstrate that the provision of a replacement car had been appropriately mitigated? Should the cover provided by the claimant's own insurance policy be considered in assessing the claimant's need: for example, if the claimant's own policy included provision of a replacement car in the event of an at-fault claim, would that be sufficient evidence of need for a replacement car in the event of a non-fault accident?

We do not see any logical reason why the CC does not take note of the GTA's mitigation section, as it is fit for purpose and has been accepted by both insurers and CHCs for over 13 years. There is a ready-made document in use which achieves the objective of this remedy.

(d) Would the right of the at-fault insurer to challenge the non-fault insurer or CMC and to see the 'mitigation declaration' and call record be sufficient for this remedy to be self-enforcing without additional monitoring? Would giving the at-fault insurer access to the non-fault insurer's or CMC's call records give rise to any data protection issues?

We accept that transparency between insurers and CHCs is a sensible objective. It is in our interest to do this and we have good and effective relationships with all insurers (large and small).

(e) How much would it cost to implement this remedy?

It is part of our normal procedures. This could be achieved in conjunction with an extended mandatory GTA portal solution, at little extra costs.

(f) Would this remedy give rise to distortions or have any other unintended consequences?

None, and easy to implement.

Remedy 1G: Prohibition of referral fees

62. A prohibition of referral fees would aim to support measures set out above (for example, Remedy 1D(a)) where usage of referral fees may otherwise undermine the effectiveness of the remedy.

63. This remedy would prohibit:

(a) referral fees or commission paid by CMCs/CHCs/repairers/others to non-fault insurers/non-fault brokers/others for referring non-fault claimants in relation to the provision of replacement cars, repairs and paint; and

(b) Referral fees or commission paid by salvage companies to non-fault insurers.

We believe referral fees have crept into the CC's thinking as a *negative concept*, imposed on the insurance industry as some [kind] of penalty. Another way is to see such fees as commission, or as a customer acquisition cost, or in lieu of marketing, which is pro-competitive to enable the sector to do its job sufficiently, bearing in mind that there are several CHCs competing for business. In effect, as said, it is a form of marketing cost to enable customers and suppliers to find each other. The intermediaries receiving the commissions, albeit insurance companies or brokers, or CMC's and others will use these revenues, to offset their costs, which lead to lower prices, assuming their market is competitive.

- The referrers/intermediaries are **incentivised** by these payments to provide a continuous flow of work to CHCs.
- In other words, the commission levels are set by each party bidding for customers depending on supply/demand situations at the time, and their relationships to these intermediaries. We would state that commissions apply in all industries and businesses, as a route-to-market and to gain *access to customers* needing the services/products on offer.
- Without the mechanism of being able to reward by referral fees/commission, the CHCs would have to commit **similar if not more expense into marketing and brand awareness in order to generate new business**.

The CC is aware that for example, PCWs earn their revenues from commissions on referrals/leads. That is their business model, and the CC has not objected about this. It does not seem fair that our sector is therefore singled out for a prohibition. Until the CC identifies the criteria to assess the issue, it is hard for us to comment further.

We caution that a prohibition would be dramatic and damaging if it reduces client referrals

for our services. To be an efficient business, we need to plan for **predictable workloads**, and therefore optimise our resources.

Some businesses might cope better with prohibitions against referrals depending on how easily they find their clients/customers but others as stated above would have to commit to marketing and advertising budgets. We think this remedy would harm our sector and lead to *inefficiencies* which is one thing that the CC has set its mind against.

To conclude, we think that referral fees (however described) are good for our sector and for the customer. Assuming that the CC recognises the value of CHCs in the bigger picture of the insurance industry, then the CC should recognise that this is not a feature that causes any trouble or harm to policyholders of the insurance companies.

The motor policy holders, in turn can benefit from the services of CHCs at any point in time if unfortunately they or family members are involved in non-fault accidents and they need our services to help them recover their losses without any cost. That is a major benefit which depending on the size of the claim, could be worth from £hundreds to £thousands. For the effected people, it far outweighs the so-called cost of up to £8 (i.e. the AEC1 detriment) and therefore no remedies should be imposed which upset the delicate balance to ensure CHCs continue to do their service, and benefit the UK motoring public.

At its worst extreme, prohibition will prevent CHCs from finding suitable introducers who have access to customers needing our service. These intermediaries are not likely to do this on a continuous basis, without some form of remuneration, and referral fees is the answer.

- Financial service intermediaries also get commissions, and no one objects. We hope now that the CC will understand what we do, from the information in this response (and those of others in our sector) and that we should not be singled out for measures that threaten our future. We would say that it is disproportionate to the identified detriment{s). We point out that from a drivers' population of 25 million, there are some **2 million accidents in a year** – we need to find the people who need our services without having to incur **high marketing costs**. The referral fee is a success fee when these leads turn into customers. That is totally benign, in our view.

We confirm we will be happy to engage with the CC on a mechanism that it thinks is *better* and more effective than our current model for client referrals.

Issues for comment 1G

64. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:

(a) Could this remedy operate on a stand-alone basis?

As stated above, this remedy could be damaging to CHCs earning revenue from their services and reduce consumer awareness.

(b) Would remedies 1A to 1F benefit from a prohibition of referral fees as a supportive measure? Or would remedies 1A to 1F have the effect of reducing referral fees in any event?

Once again it is a concern that the CC does not recognise within its drafting that CHCs would no longer exist within remedy 1A, so the effect of a prohibition of referral fees is completely irrelevant. With regard to other remedies it would clearly depend on whether there is any change in rate.

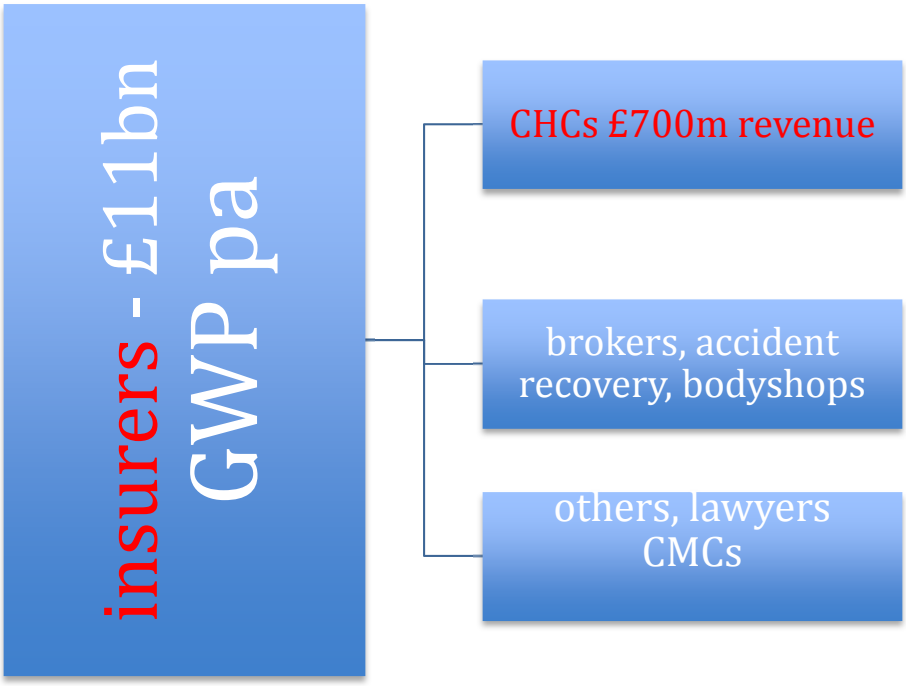
(c) What would be the impact on premiums if referral fees were prohibited?

As identified within the CC's findings referral fees generated by insurers help to offset costs so premiums may go up as a result of a prohibition.

d) Would this remedy give rise to distortions or have any other unintended consequences? In particular, would a prohibition on referral fees create a greater incentive for insurers to vertically integrate?

At its worst, the prohibition will have severe impacts on the eco-system that we serve. The CC notes that insurers pass-back their referral fees in lower premiums. The other businesses in the diagram below, clearly will support their overheads and employment costs by these types of fees. We think all this is in the public interest.

The Motor insurance claims' landscape



Note: around 24m drivers, of which 2m accidents, and 300,000 non-fault claims including credit hire

We note the relationships in the diagram above. Imagine that the FCA decided that the financial services industry would stop commissions for their services. The lubricant of the system working efficiently would soon contract as incentives to move viable business leads would shut-down. Businesses dependent on such income, would suffer.

We say the same effects would happen from the remedy shown in the Notice. It is a bad idea, doing more harm than good. The side effect, damaging the income of other businesses supporting our sector, is not something to ignore.

We do not know what impact this will have on insurers.

One final area of comfort for the CC is the knowledge that if businesses could get leads without needing to pay for referrals, or commission, they would do so. So these costs must be seen as necessary. We also note that the CC recognises our market is not concentrated, with CHCs fighting for clients. All this demonstrates a well functioning market.

(e) What circumvention risks would this remedy pose and how could these be mitigated? In particular, how could other monetary transfers (e.g. discounts)

having the same effect as referral fees be prevented?

The remedy may not be 100% effective as other ways of remunerating work providers would no doubt be developed over time. The CC may wish to refer to the recent removal of referral fees from the PI [Personal Injury] sector where new models intended to circumvent the ban are now being investigated. This creates a burden and cost upon the regulatory body and this could be repeated within the credit hire sector.

(f) How could this remedy best be monitored and what costs would be incurred in doing so?

We don't think the remedy is needed and neither will it be practicable to implement for reasons given above.

First party motor insurance

66. Under a first party insurance system, a policyholder's own insurer would meet the cost of any claims. There would be no subrogation of non-fault claims to the at-fault insurer. Such a system would address issues arising from the separation of cost liability and cost control.

67. We believe that this remedy would have implications beyond the scope of our investigation as it would affect other claims, for example for personal injury. We also have significant concerns that this remedy would not be practicable as it would not be consistent with the Road Traffic Accident 1988 and the EU Directive relating to insurance against civil liability which requires member states to ensure that civil liability in respect of the use of vehicles is covered compulsorily for both damage to property and personal injuries. This enshrines the right of a non-fault party to recover damages from the at-fault insurer.

68. We are therefore not minded to consider this remedy further.

We note this decision.

Prohibition of credit hire

69. It was put to us that credit hire should be prohibited. A prohibition of credit hire may be effective in controlling some of the costs incurred in the provision of replacement cars to non-fault claimants. However, it would not address the separation of cost liability and cost control and would leave impecunious non-fault claimants in a position where they might not be able to access a replacement car (e.g. where fault is undetermined). The costs of credit per se are not the main factor behind the higher costs we have identified in ToH 1 and hence our current view is that this remedy would not be effective in addressing the AEC we have provisionally found.

70. We are therefore not minded to consider this remedy further.

Issues for comment 1H

71. The CC invites views on these two possible remedies which we are not minded to consider further and on any other possible remedies that we have not included in this Notice which interested parties consider may be effective in addressing the AEC we have provisionally found in relation to ToH 1. Where parties are of the view that these remedies could be effective, they are asked to submit evidence to support their views.

We note this decision. We are pleased to see the CC has acknowledged a severe problem which would affect the impecunious demographic, which account for a significant percentage of the 25m drivers in the UK. With limited resources these claimants would find it difficult to recover losses from non-fault accidents, if credit hire is abolished.

We note the CC has not quantified this group, but we think it amounts to over 50% of the motoring public, some 12 million people (plus families/partners).

It is first important to understand the definition of impecuniosity, currently 'claimant and defendant parties' follow the explanation in the case of *Lagden v O'Connor (2004) [HoL] para 9:*

> 'There remains the difficult point of what is meant by 'impecunious' in the context of the present type of case. Lack of financial means is, almost always, a question of priorities. In the present context what it signifies is the inability to pay car hire charges without **making sacrifices the plaintiff could not reasonably be expected to make**. I am fully conscious of the open-natured nature of this test.'

Defendants will usually present an argument that if the claimant has access to disposable income which is of similar value to the total credit hire charges claimed, then they cannot

be impecunious as per the *Lagden* definition. However, this often overlooks the second part of the definition of being impecunious, as if those funds were actually being saved for another purpose then expecting the claimant to dispense those funds on a replacement vehicle would constitute an 'unreasonable sacrifice', and so the claimant would actually be considered impecunious.

When you consider this explanation you begin to appreciate the number of people in the UK that this relates to. We think this is an important consideration that the CC decision-makers need to keep in mind when considering remedies 1A and 1B and other remedies discussed above. Any decision which effectively prevents CHCs from earning enough revenue to cover cost is a harmful remedy to our sector. As we don't make abnormal profits, it should be clear that enforced reductions in our revenues from regulation, will put severe constraints on our ability to do our job effectively. The impact of this will show in terms of severe loss of customer benefits. We address that point further in the section dealing with relevant customer benefits which will be lost if the CC's initial remedies are adopted.

Theory of harm 2: Possible under-provision of service to those involved in accidents

We have no comment on paragraphs 72 to 80.

Theory of harm 3: Market concentration or horizontal effects

We have no comment on paragraph 81.

Theory of harm 4: Add-ons

82. In this section, we consider remedies to address the AEC we have provisionally found in relation to add-ons. The provisional AEC finding arises from information asymmetries between motor insurers and consumers in relation to the sale of add-ons and the point-of-sale advantage held by motor insurers when selling add-ons.

We note that the CC is minded to introduce new cover options under 1A, but here notes problems with add-ons.

This adds to our concern that leaving motorists to **guess their needs in dealing with the risk of a non-fault accident is asking**. As shown in para 30 of the remedies Notice, motorist are expected to select a policy in case they have a no-fault claim. We would expect many people (perhaps millions out of 24 million drivers), to get this **assessment wrong**.

Theory of harm 5: Most favoured nation clauses in PCW and insurer contracts

We have no comment on paragraphs 96 to 103

Relevant customer benefits

104. The CC may also have regard to the effects of any remedial action on any relevant customer benefits within the meaning of section 134(8) of the Act arising from a feature or features of the market giving rise to the AEC. Relevant customer benefits must comprise one or more of: lower prices, higher quality or greater choice of goods or services or greater innovation in relation to such goods or services. Relevant customer benefits must also clearly result from one or more features and be unlikely to have come about absent the feature or features concerned.

Firstly we intend to make this section short and concise, as we are conscious that we have already provided great detail within our submission. Hopefully the CC will appreciate that we have grave concerns with regard to the direction the CC is heading. Kindertons are an established and key player within the sector with over 20 years experience, and we have excellent relationships with the Insurers (in our motor industry) and have spent considerable time and resource at developing and improving processes between us. Our group now employs over **500 people from 14 national sites** and so the outcome of this investigation will have a far-reaching affect.

It is important to state again that we do not accept that there is an adverse effect on competition within the meaning of section 134 (4) of the Enterprise Act in respect of the separation of cost liability and cost control. This has been detailed in the provisional findings to be between £6 to £8 per motor policy under AEC1[7] (but not actually stated in the remedies notice). We have covered this point at the beginning of our response, but its recognition **here sets the benchmark to understand whether remedies are needed**. As stated above, we believe most of the remedies relating to this issue will fail the proportionality test. However, if the CC does decide on some remedies, we have noted above what their negative impact could be, notably in some cases, the demise of the Credit Hire Sector.

To reiterate we believe remedies 1A and 1B will make the credit hire model unworkable and transfer the control of mobility fully to insurers. Under section 134 of the Act the CC must therefore consider how its remedies will affect existing relevant customer benefits, the text in para 11 is clear on this:

[7] We also note that we disagree with this assessment of alleged detriment, say between £150 to £200 million a year. We do not believe there is any detriment, and if this issue is really considered, the CC's work, as shown in Section 6 of the Provisional Findings, leading to this conclusion are wrong and lead to a wrong conclusion. We are however using the CC's figures for the sake of engaging in the argument over this subject.

> *"where the cost of each practicable remedy option is disproportionate compared with the extent that the remedy resolves the AEC,* ***or where relevant consumer benefits, as defined in section 134 of the Act, accruing from the market features are both large in relation to the AEC and would be lost as a consequence of any practicable remedy"***

So there are two important questions which must be considered;

- ***Firstly, can the relevant consumer benefits be classed as "large" in relation to the AEC?***
- ***Secondly, would these relevant benefits be lost as a result of the remedies?***

We hope that our submission has gone a long way to prove that indeed there is a "large" consumer benefit provided by CHCs and it should be clear without doubt that these benefits would be lost if certain proposed remedies were chosen by the CC to be implemented.

We obviously have had to fully review issues raised by the CC. [REDACTED]

The following outlines the "relevant consumer benefits" of CHCs in contrast to a 1st party insurance model (remedy 1A) or direct hire provision (remedy 1B).

	CHCs	**DH/1st Party Insurer**
Full Claims management	☑	☒
Customer Service orientated	☑	☒
Protect consumer's rights	☑	☒
Specialist vehicle provision	☑	☒
Non-standard risk drivers	☑	☒
Roadside recovery	☑	☒
Repair management	☑	☒
Total loss management	☑	☒
Uninsured loss recovery	☑	☒

The message from the above **list** for the CC to note, are the ticks for all boxes of benefits under CHC i.e. these are significant benefits to our non-fault claimants who get this service at no charge. However, Direct Hire or 1st Party Cover (remedy 1A) have crosses for all these benefits – i.e. no comparison, and clearly a detriment as an inferior service.

In the following table (table 1) we have attempted to illustrate the impact on the consumer in a world without CHCs. Based on our claims statistics [REDACTED][8] in respect of hours required in order to conclude their claims. We have assumed that our approach is more efficient than lay people doing the job themselves, so we have applied [REDACTED].

Table 1 – This shows our estimates of time to manage claims for 300,000 people

	Length of time to settle claims				
	30 days	**60 days**	**120 days**	**120 days+**	Totals
% of Claims settled by days	[✂]	[✂]	[✂]	[✂]	100%
No of claimants effected (000's)	[✂]	[✂]	[✂]	[✂]	300
[REDACTED]	***hours***	***hours***	***hours***	***hours***	
[REDACTED]	[✂]	[✂]	[✂]	[✂]	
[REDACTED]	***hours K***	***hours K***	***hours K***	***hours K***	*hours K*
Phone calls, letters, reviews	[✂]	[✂]	[✂]	[✂]	[✂]

[REDACTED].

This equates to an estimated [✂] million hours across the year to settle 300,000 claims. It would then be interesting to put a cost to that, if indeed the onus fell on the claimant to pursue their claim themselves i.e. the "opportunity cost"[9] of operating this scenario, without CHCs doing this job. In other words, we are saying the benefit of claimants having our kind of services (at no cost) gives them the opportunity to do other things, more useful to their lives (and families/partners), as well as saving them huge amounts of additional distress and trouble (which we have not tried to quantify).

We have tried to use an average persons wage, say £25K a year, to get a value for 1 hour, say £13 an hour. Applying this to some [✂] m hours equates to a time value of around £110 million. To this we need to add cost of calls to Insurers, postage and ad-hoc travel related to the claims. This in our view counterbalances any alleged assertion of an AEC, as noted in paragraph 6 of the Remedies Notice.

[8] Based on CC estimates – para 6.72 and Table 6.3

[9] Opportunity costs are benefits foregone.

The above also does not take account of the social or work-related impacts on people's families and friends from a non-fault accident (remaining unsettled). That too would also need to be included as second order effects. At this stage, we can not estimate the uplift but believe it could be substantial.

- [REDACTED].

Other negative impacts from the remedies

We also think there might be other issues to take account of, if the CC's remedies lead to an insurance landscape without CHOs:-

- We foresee a large population of people, who currently do recover their non-fault claims via CHCs, not achieving this positive outcome, under the new CC imposed environment. In other words, they will have their claims rejected, and if no-one steps in to help, their losses will crystallise.

- We noted above that under Remedy 1B, there is the possibility of more fraud claims being accepted by insurers, in their haste to capture business from CHCs, as the CC envisages by giving insurers the chance to undercut our GTA set credit hire rates.

- We noted above under Remedy 1A that a large number of people, out of say 2m accident victims a year, may discover they don't have the right add-on cover, as envisaged by the CC in this remedy. Imagine this loss being costed for hundreds of thousands of people over several years? The estimate of loss is too big to contemplate. The actual impact may however not show, unless these people collectively start complaining to regulators about the new regime.

- We don't know what to estimate for non-fault claimants, who have to recover their losses by use of their comprehensive policy, and thereby lose no-claims discount, and pay higher premiums in later years, much more than the £6-£8 the CC is trying to get to individual insurance policy holders.

[REDACTED].

Finally, as CHCs represent a sector of some £700 million revenue a year, with thousands

of employees, and lots of capital employed already, their destruction because of the remedies is something that needs careful evaluation in the CC's final report, and whether it wants its remedies to achieve this objective?

a. As we noted above, there is a paradox in the CC published thinking which we can not reconcile. The CC, on the one-hand decided already not to ban credit hire charges (see para 69/70 of the Remedies Notice).
b. On the other hand, Remedies 1A and 1B could achieve the same result, quickly or by slow death.

c. So we hope the CC decision-makers will forgive us in saying we are confused [REDACTED]

d. We also naturally need to suggest the CC needs to think about the impact on the UK economy from destruction of our business model, unless the CC can articulate what will come in its place. The government welfare costs of the decision are not factored into our comments, but we assume the CC will ask the relevant Government department for their views on a decision that can destroy an industry with thousands of employees, which currently serves an Insurance industry with some £11 billion revenues a year.

To conclude on this, we hope the CC [REDACTED].

As we are now 1 month more advanced in time, from the Remedies Notice, it would be helpful to know what has happened since? We urge the CC to produce an updated Notice of its thinking as soon as possible. [REDACTED]

Overview of our position on each Remedy proposal

To assist the CC and as an aide memoire on the key points we have made about the proposed Remedies, we summarise our position on the key remedies in this Response as follows:

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

We agree that this remedy should be implemented to ensure the consumer is aware of their legal entitlement when involved in a road traffic accident.

Remedy 1A: ***First party insurance for replacement cars***

We believe this is unworkable for the following reasons:

- It would in effect lead to a ***prohibition of credit hire***
- Consumers would ***lose their legal rights for redress***
- Consumers would actually pay a ***higher premium*** for their insurance due to being forced to purchase a new "add-on mobility" policy (with who knows what terms and conditions for it being of any real use at time of need).
  In contrast to the alleged ***£6-£8*** detriment to the consumer, the price of a product (taking account of this remedy) will range from ***£30-£100***.
- Consumers will be left confused as to what type of policy they need anyway and many will be ***left without the correct*** mobility solution, especially when they need it after a non-fault accident. Out of 2m claims a year, how many are going to go wrong in terms of loss recovery and disputes, once this remedy becomes the law.
- The CC needs to change enshrined UK/European law on tort and recovery of damages – that seems a formidable barrier to this remedy going forward. If the points in our Response are also factored into this debate, we can not see how Government can be asked to change this enshrined law.
- Claimants would have to manage the process of recovering other un-insured loss claims ***themselves***
- *Will the Ombudsman or other Regulators be able to handle the volume of aggrieved policyholders, or the press that may pick up hard-luck stories?*

- This remedy ***clearly fails*** the proportionality test.

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

We believe this is unworkable for the following reasons:

- This would lead ultimately to the ***demise of the credit hire sector***
- Insurers will have a ***monopoly on the provision of mobility*** to non-fault accident victims – effectively the CC as a major regulator will be expanding the insurers' power over policy holders, and CHCs who hitherto supported a vast pool of people at no charge to them, are being driven-out of business by this remedy.
- The GTA becomes redundant with the death of CHCs (i.e. effectively a workable industry solution that hitherto balanced CHCs and Insurers interests dies)
- [REDACTED].
- Claimants will be left ***without choice*** and without access to CHCs to protect their rights and interests – disputes and complaints may arise in large numbers
- Consumer dissatisfaction with the way insurers handled the non-fault claims
- Creates ***avoidable delay*** to the process - that harms the consumer interests
- Likely introduction of new breed of claims companies ***who will charge*** claimants through DBA's for their services
- ***Increase*** in fraudulent activity (when insurers accept claims more quickly to stop them being handled by CHCs) which will lead, over time to higher premiums. Once CHCs are gone, potentially more non-fault claimants will be turned away, or their claims disputed without a GTA to arbitrate and reduce frictional costs.
- *Will the Ombudsman or other Regulators be able to handle the volume of aggrieved policyholders, or the press that may pick up "hard-luck stories"?*
- This remedy again ***clearly fails*** the proportionality test

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

We believe the framework already exists within the GTA but would note:

- We have previously ***supported*** an improved version of the GTA
- We already work with many Insurers to identify ways of ***removing frictional cost***
- Any version of the GTA should be ***mandatory*** for all CHCs and entities that submit credit hire claims (to private motorists)
- We strongly agree with the ***introduction of a claims portal*** - again this should be ***mandatory*** when a credit hire claim is submitted
- We urge caution when looking to set rates within this remedy. In other words, a reliance on the ***validity of direct hire rates as a benchmark*** is wrong. Direct hire and credit hire are ***completely different products.***
- ***We urge the CC to protect the GTA in setting these rates*** *(by agreement between the insurers and the CHCs) – i.e. the balance of a competitive market place is preserved, for the good of millions of insurance policy holders, who might one day be a non-fault accident victim.*
- If rates are set at ***un-realistic levels*** it will severely affect the ability for CHCs to exist within the sector – if they are destroyed, many detriments will follow. There will be severe loss of consumer benefits, outweighing any potential AEC.

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

- As with suggested remedy 1C we believe that the framework for this already exists within the GTA. We also note the following additional points:
    - CHC's within the GTA ***already*** provide this information
    - To be effective ***all CHC's*** should have to provide this information
    - This can easily be achieved through ***mandating*** the existing GTA (applies to everyone involved in private motor credit hire)

Remedy 1G: ***Prohibition of referral fees***

We believe this is unworkable for the following reasons:

- Referral fees can also be classified as "***acquisition costs***" or ***"marketing costs***" required to compete for business, which is ***pro-competitive***
- Without referral fees CHCs would have to commit similar costs if not more to advertise our services and promote our brand in order to ensure a ***continuous flow of work***
- Similar fees, however described, ***exist in all*** industries and business sectors to allow customers and suppliers to find each other
- A prohibition would see a ***significant impact*** on the eco-system of all the business connected to our sector, insurance brokers, bodyshops, other claims management companies etc.
- Consumers are likely ***not to have*** a better more efficient access to credit hire services (than current arrangement where these are accepted)
- There is a real risk that similar remuneration schemes will go "***underground"*** which would need to be regulated and policed at considerable expense.

When the CC considers that (what we view as some) very drastic remedies are being considered, based on what we consider are small alleged detriments (or non-existent AECs), we believe the CC needs to re-assess its thinking as soon as possible, and ensure that its decisions are not based solely on the information shown in the Provisional Findings, which we found hard to accept. [REDACTED]

We thank the CC for reading this document. [REDACTED].

--- end ---

NB – redacted text is covered in red

Appendix 1

Current Replacement Car Policies as at 15.1.14

Insurer	Claim Type	Type	Days	No Of Claims	Premium	Source
[redacted]	Repair/Total Loss	Class A	14	1	£23.32	[redacted]
	Total Loss Only	Class A	21	1	£24.96	
	Repair/Total Loss	Class A	14	1	£24.96	
	Total Loss Only	Class A	21	1	£24.96	
	Repair/Total Loss	Class A	14	Unlimited	£25.00	
	Total Loss Only	Class A	21	1	£29.95	
	Total Loss Only	Class A	14	1	£29.95	
	Total Loss Only	Class A	21	2	£30.99	
	Repair/Total Loss	1.6, 5 Door	14	Unlimited	£32.00	
	Repair/Total Loss	Similar Physical Size	21	1	£33.92	