

THE OFFICE OF FAIR TRADING'S COMMENTS ON THE COMPETITION COMMISSION'S NOTICE OF POSSIBLE REMEDIES ON THE PRIVATE MOTOR INSURANCE MARKET INVESTIGATION

Introduction

- 1 We suggest that, in designing the suite of remedies for this case, the CC/CMA should seek to avoid the risk of insurance companies changing the way in which they assess insurance risks causing concerns to be raised about the possibility of bad drivers being cross-subsidised by good ones.

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

Need for the remedy

- 2 We consider that having this remedy in place would be essential to ensure the proper working of the rest of the proposed suite of remedies. It would not be a sufficient remedy on its own. If consumers are to be encouraged to use different channels to secure the services they require after having an accident, they need to be in a position to understand and compare the options available to them effectively to be able to make choices which they consider are right for them.

Content of the legal message

- 3 We agree that the information set out in paragraph 18 of the Notice of Possible Remedies is important information for consumers. We also agree that the statements need to be simple enough to be understandable, and contain the necessary information (or a means to access it), although there is a presentational challenge given this may represent a complex set of messages. In our view, there is a risk that, unless carefully presented, complex notices risk obfuscating the key messages.
- 4 It may not be desirable to present the information in exactly the same form at all times when consumers may seek to access it. It may also be beneficial to undertake some consumer testing as to the optimum presentational format of this information.
- 5 We suggest the legal messages are also provided on the web sites of insurers (so the information is readily accessible to most policy holders at whatever point they wish to access it). This would be in addition to the two points mentioned, namely that it is provided to drivers at the time they renew their

insurance policies and when they have accidents. It is particularly important that the information is highlighted in information provided to guide policy holders in the event of an accident, and that consumers are reminded of the information promptly when reporting an accident to their insurer, since this will be the time at which consumers are willing to, and need to, engage with the detail.

- 6 You may wish to consider the level of standardisation required across the industry. In PPI, store cards and home credit remedies, there was a requirement for 'legal messages' to contain the same wording: it seems this has been quite successful, subject to some queries in PPI relating to the alleged rigidity of the requirements. The CMA might want to consider whether a similar approach is justified here or whether requirements could be less prescriptive. Having information in a standard form would be helpful to facilitate comparison by consumers between insurers, and may also facilitate monitoring.
- 7 In terms of the cost and timing of implementation, in our view, it might be administratively easier for insurers (and us) to require that the legal messages were included only in new policy documents from date x and to give insurers (and their brokers) time to gear up for compliance. This would recognise the fact that insurers would need some time to prepare for these new requirements, as was the case for example in PPI and home credit. There would be a one-off cost for insurers and brokers in putting this remedy in place although we do not envisage that there should be a significant delay nor that costs would be overly onerous (particularly if there were some form of standardisation). Costs thereafter might be minimal.
- 8 Subject to the views of Department of Transport, our initial view is that we are not convinced that there is significant value in recommending that the driving test theory should contain questions about the legal rights and obligations of drivers when they have accidents. In our view, the driving test would appear to be focused on driving competence and safety such that including questions on insurance might go beyond this remit. Our principal concern however is that, if a driver has an accident, it may be several years after the driving test. In our view, it would be necessary to balance the benefit against the additional cost involved. It is not currently obvious to us that there is a clear net benefit to this proposal.
- 9 In addition to the four points listed in the Remedies Notice, we wondered whether it might also be beneficial for the notice state whether or not the insurance on any replacement car provided is equivalent to that on the driver's own insured vehicle as this may not always be the case.

- 10 This remedy could be implemented by means of an enforcement Order.

Monitoring and enforcement of the remedy

- 11 If compliance reporting were to form part of this remedy, the CMA would need to show that the potential costs in time and resources for the parties and the CMA (given the large number of parties) were justified. It may be easier to monitor compliance if an enforcement order were prescriptive as to the use of industry-wide standard wording. However, the CMA will first need to consider who is best placed to ensure that the proposed legal messages are disseminated: we are unclear about the role of the Financial Conduct Authority (FCA) in this regard. It may be that the same effect could be achieved through a change in the existing regulatory regime.
- 12 In addition, it might be worth considering whether the effectiveness of the remedy could be enhanced by ensuring that there was a publicity campaign aimed at motoring organisations to ensure that their members and the public at large were made aware of consumers' legal rights when involved in a car accident.

Remedy 1A – First party insurance for replacement cars

- 13 We can see how the remedy might serve to help drive down the overall cost of motor insurance premiums but have a couple of concerns that we think should be considered further. Firstly, there is an equity concern that safer drivers might be penalised by, to some extent, having to fund the cost of accidents caused by less safe ones. Secondly, while it may be attractive to some policyholders to be able to trade some of their current legal entitlements under tort law for a reduction in their premium, it is possible that a focus on price competition might lead to a general move away from providing this level of cover, with the like-for-like replacement vehicle cover becoming an add-on (as has been seen with some other aspects of cover that used to be standard on fully comprehensive policies), raising in turn potential concerns as our CFI suggested may have been the case for sales of other add-ons.

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

- 14 We agree that competition as between the at-fault and not-at-fault insurer at the early stage of handling the insurance claim might help to drive down costs of dealing with the claim. We agree also with your assessment of the benefits and difficulties of this remedy and, in particular:

- a. that it may be difficult to incentivise not-at-fault drivers to make decisions to drive down costs without removing their entitlement to choose service provider;
 - b. that it seems more appropriate to apply this remedy only in relation to replacement cars and not repairs.
- 15 It is difficult to see how non-fault drivers may be incentivised to allow the at-fault insurance company to capture a claim for vehicle repairs in a way that drives down cost for the reason you set out at the end of paragraph 38 of the Remedies Notice. This said, drivers might be more willing (or less unwilling) to allow the at fault insurer to provide the replacement car, on the assumption that it will (hopefully) have been clearly set out in their insurance policy what sort of car they are entitled to. We consider that they may be less willing to allow the at fault insurer to capture the claim for vehicle repairs, given the perceived incentive for the at fault insurer to cut the cost of repairs as far as possible which may result in potential under-provision, and given that the not at fault driver (or his insurer) would expect to choose the repairer.
- 16 Notwithstanding this, we agree that the cost-cutting incentive is useful to have in the market to drive down the overall costs of repairs and replacement cars and thence insurance premiums. To that extent, we can see the clear attractions of a remedy which takes away the choice of repairer or replacement car from the not-at-fault claimant. We agree that there are considerable difficulties in relation to removing this choice in relation to repairs given the risks of under-provision and, particularly from a monitoring perspective, the difficulties of putting in place a mechanism to monitor that repairs have in fact been carried out to the requisite standard.
- 17 We have less concern regarding the provision of replacement vehicles in accordance with the procedure described in paragraphs 40 and 41 because the service standard (the provision of a replacement car) is easier to specify. Subject to further consideration of the detail, it may be possible that the remedy could be monitored by recording data on the frequency with which claims are captured by non-fault and at-fault insurers in relation to replacement cars. We are not in a position at this stage to give a view on how easy this would be to do.

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

- 18 We consider that there could be practical difficulties with capping hire rates in the way envisaged and that further thought needs to be given to this. The remedy could be resource-intensive to set up and monitor and costly for companies to adhere to, given the close monitoring they would have to carry out to ensure compliance. We would find it hard to check systematically that a price-capping remedy was being adhered to. We also have concerns about the price-setting mechanism. This is stated to be set annually by an independent body but it is not clear how this body would be set up, paid for, and the mechanism by which prices would be set.
- 19 We know from experience with the classified directory advertising Yell undertakings that price-capping remedies can be time-consuming to monitor and enforce. There were considerable doubts about their effectiveness in that case which led to eventual review and removal.
- 20 We note that the ABI's General Terms of Agreement (GTA) have not been successful at capping rates. Furthermore, the GTA seems to have in place a complex set of arrangements for oversight of the price caps (e.g. including a technical committee to resolve disputes etc). Furthermore, according to Table 6 on page A6(1)-13 of the CC's appendices to the Provisional Findings report, there are 49 categories of car each with different ABI daily settlement rates. These categories, as well as the models in each category, will change over time and it might be hard to future-proof any remedy against this. In particular, there could be debates over which cars belong to what categories.
- 21 It is not clear to us who the independent body might be who could oversee price caps but such a body would need funds to monitor prices, which in turn would require the larger companies subject to the Order to pay levies to fund the body.
- 22 An on-line portal to facilitate the exchange of documents may be worth exploring further and may reduce or eliminate the risk of resource-intensive 'email ping pong' in the course of disputes about the money to be spent on replacement cars.
- 23 The CMA would also need to ensure that the operation of such a scheme did not operate anti-competitively or lead to any form of anti-competitive price-fixing or information exchange.

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

- 24 This remedy could form part of an enforcement Order.

- 25 We agree with the CC that the remedy might encourage non-fault insurers to obtain inflated bills from repairers. This may (as suggested) be mitigated by the prohibition of referral fees, but this in turn could (as highlighted) be circumvented by vertical integration.
- 26 We would welcome further clarification on the feasibility of Remedy 1D(b) given the potential complexity involved due to the range of makes and models of cars and number of car parts and ancillaries involved. Unless the categories were carefully limited and managed, we would have concerns that there would need to be a considerable amount of adjustment due to inflation and new models replacing older models etc. If this were the case, the cost of maintaining a list of standardised costs might therefore outweigh any benefit.

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

- 27 Remedy 1E(a) seems more likely to be effective than 1E(b) in that it gives control to the at-fault insurer and removes the prospect of the non-fault insurer disclosing a lower than actual salvage fee to the at-fault insurer and pocketing the difference. In addition, since the car has been written off and will not be returned to the driver, there should be little or no concern for the non-fault policyholder in having the at-fault insurer handling the disposal of the vehicle.
- 28 In contrast, Remedy 1E(b) still gives incentives for non-fault insurers to use a salvage company which is beneficial for them rather than the one that pays the most for the vehicle. Also, there may be concerns similar to the ones noted for remedy 1D(b) about determining an appropriate level for the 'estimated salvage value'.

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

- 29 This remedy would add another stage to the processing of claims which might either add to the time that policyholders require a replacement car for and thereby push up costs all round, or perhaps more likely add a delay before a non-fault driver gets a replacement vehicle.

Remedy 1G – Prohibition of referral fees

- 30 To monitor this prohibition (if it is put in place) we could, theoretically, ask large insurers to report to the CMA on a breakdown of revenue including any fees and require a report of no referrals. However, we think it would be preferable to ensure that the prohibition be implemented and publicised throughout the

industry that it is against the law to have referral fees and we rely on complaints. The definition of referral fees would need to be watertight to ensure that insurers did not get around the prohibition, for example by giving such fees a different name.

Remedies the CC is minded not to pursue in relation to TOH 1

- 31 We agree that none of the remedies the CC has listed in this category should be pursued for the reasons the CC sets out.

Remedy 2A – Compulsory audits of the quality of vehicle repairs

- 32 We agree that this remedy is worth considering but we believe there is potential for it to be expensive for the repair industry to put in place. Because of the potentially large number of parties involved, even an annual audit might be burdensome, especially for smaller repairers, and especially given the difficulties that there might be in assessing the quality of repairs without a thorough inspection. These costs can be expected to feed through into higher premiums for motorists.
- 33 We consider that it would be necessary to publish the results of audits so that consumers become aware of the quality of repair work undertaken and that the results are presented so that they facilitate easy comparison. The experience of regulators in publishing complaints data might be worth considering for insights into how this information might best be presented.
- 34 The remedy could be put in place by enforcement Order applying to insurers. We do not think that this remedy alone would be effective. It needs to be part of a wider package covering other aspects of the market (such as replacement cars).

Remedies the CC is minded not to pursue in relation to TOH 2

- 35 We agree that this remedy should not be pursued for the reasons the CC sets out.

Remedy 4A – Provision of all add-on pricing from insurers to PCWs

- 36 We agree that this remedy needs to form part of a package of remedies. It does not appear to be sustainable without Remedy 4C because to facilitate comparison, there would have to be clear descriptions of add-ons. One issue that would need to be considered is whether price comparison web sites (PCWs) would be willing to include add-ons on their web sites if this would

require investment by them in changes, and the adding of more complexity, to web site design. Our experience with the extended warranty and home credit price comparison web sites suggest that web site design alteration involves a lot of costly and time-consuming work.

- 37 More information such as the full range of add-ons (and the total price of the policies offered) provided to customers to make choices should be a good thing. Informational remedies tend to work well to help customers shop around and compare prices and products/ services. Such a remedy would be likely to reduce the point of sale advantage of the add-ons but unlikely to remove it completely. The add-ons could be required to be sold separately from the policies but this might go further than would be necessary to address the adverse effects on competition. One thing we found of relevance during our call for information was whether add-ons were sold as an opt-in or opt-out. We had greater concerns where consumers had to opt-out (as was generally the case for motor legal protection) than where they chose to opt in).
- 38 The remedy would probably be relatively easy to monitor as there are only a few PCWs and checking their web sites would not take much time. We do not think there would be any significant circumvention risks, provided the definition of add-ons was future-proofed in some way to allow for the creation of new types of add-on insurance in the future.

Remedy 4B – Transparent information concerning no-claims bonuses (NCB)

- 39 We agree with the proposed requirements. NCB structures need to be understandable to facilitate easier comparison between insurers. Insurers might also be required to state what happens to a policy-holder's NCB in the event of an accident which is their fault, or other claim on their policy, including a statement as to whether a claim against any add-on part of the insurance will affect the NCB.
- 40 Key messages should increase consumer awareness and knowledge. Overall, consumers need to know what to expect from the industry when purchasing motor insurance.

Remedy 4C – Clearer descriptions of add-ons

- 41 Although a 'plain English' requirement sounds straight forward in principle, we are aware from previous experience (✂) that there may be some implementation issues in practice. Some questions that would need to be considered include who would certify any plain English standards and whether

this would be resource-intensive to deal with, given the potentially large number of parties, and how would compliance reporting work.

- 42 Given these issues, it may be worth considering whether a high level pro-forma (not necessarily at the same level of detail as found in the PPI Order, for example) might be easier to put in place and cheaper and easier to deal with than imposing a separate plain English requirement, depending on how bespoke insurance add-ons are in practice. It may also be worth considering whether the FCA imposes any regulation around the description of add-ons already.

Remedy 5A – Prohibition of ‘wide’ MFN clauses

- 43 On the MFN clauses issue, we support measures which encourage competition between motor insurers and between platforms. However, without further analysis, we have not formed a view at this stage on the prohibition or otherwise of narrow or wide MFNs.
- 44 The MFN issue might have wider policy implications that should be considered and the interaction with the Competition Act should also be considered.

Remedies the CC is minded not to pursue in relation to TOH 5

- 45 We agree that none of the remedies the CC has listed in this category should be pursued.

OFT

January 2014