February 2014

Private Motor Insurance Market Investigation

Quindell's response to Competition Commission's provisional findings

Contents

Part 1: Executive Summary

Quindell are disappointed with the Competition Commission's (CC) Provision Findings (PF) in that they have failed to appreciate the difference between what credit hire operators provide in terms of service and what insurers provide through direct hire arrangements. Many of the points raised by Quindell and other contributors to the investigation have either been ignored or the CC has failed to understand how the market for post-accident service works.

We are further disappointed that the CC appears to default to an assumption that at-fault insurers can be trusted to provide service to the millions of motorists who need mobility and appear to seek to monopolize the market for insurers against credit hire operators – This is even more troubling to us as an established CHC, when set against the CC's conclusion that credit hire companies (CHCs) do nothing wrong and their role actually incentivises insurers to provide an acceptable service to non-fault claimants that they capture.

It is Quindell's position that the CC has overlooked crucial information in their adverse effect on competition calculation (AEC1), with some so elementary it leaves us concerned that the whole investigation, which is into Private Motor Insurance and not credit hire, is biased and unfair from the way we read the CC's drafted text in Section 6 and the supporting Appendix 6.1. This leads the CC to remedies which will harm consumer rights on a large scale, restrict service and supply to consumers, and generates unintended negative consequences for all consumers, notably those involved in non-fault accidents in the future.

Such people amounting to more than say 500,000 a year may not be able to recover their losses, in the way they can do at present, at no cost. We ask whether the CC has thought this through when it drafted its proposed remedies to AEC1. We believe remedies 1A and 1B, in particular, can cause the problems we have noted above.

Quindell respectfully suggests that the CC needs to revisit many areas of the investigation and through this reply to the PF; Quindell will seek to bring the CC's attention to those areas.

<u>**Quindell's own calculates that the AEC for credit hire amounts to circa £7m a year*, and that this cost is less than 30 pence per private motorist.**</u>

* We have set out within this document how we arrive at this figure.

Part 2: Key points of disagreement with CC's work and thinking

Quindell would ask the CC to read these key points in conjunction with previous submissions by Quindell (previously Ai Claims Solutions) and in particular the reply to remedies on the 17th January 2014.

In this section Quindell wishes to list the areas of concern in bullet form, going through the draft PFs document and will seek to expand on the points through the document.

CC overlooking relevant information

2.1 CC has over-looked many points made previously by Quindell and other contributors to the investigation. This has either occurred due to the CC, without any foundation, preferring other evidence (mainly it seems from insurers) or failing to properly understand the points raised. This is particularly surprising when it comes to understanding the data provided by us throughout the enquiry. Many of the CHCs are public companies, with audited accounts. The revenues and costs are audited and drive at the heart of the performance of those business – on the contrary, whilst many insurers are also large public companies, the actual cost of credit hire and claims handling specific to credit hire is lost in the numbers – credit hire costs and direct hire costs to an insurer are a fraction of the claims spend. This is obvious when you review the fact that only **three** of the ten insurers were able to provide details of their direct hire rates (something which is at the heart of the CC's AEC calculations). How therefore does the CC show the data it received is reliable and can be trusted?

CC using the wrong comparator to set against Credit Hire cost

2.2 Using Direct Hire rates as counter factual is incorrect. Whilst Quindell notes that the CC's [brief and unsatisfactory] attempt to explain why they have used direct hire as the counter factual, the CC has failed to address the very many points made by Quindell highlighting the real differences between the two services, and that any comparison must be done with extreme caution. In other words the services are very different and so direct hire costing need adjustments up to be made equivalent to credit hire. In the opposite direction, credit hire needs to cease doing what happens now (i.e. abandon its services to its existing non-fault customer base, comprising hundreds of thousands of people. This is therefore a totally artificial exercise and these problems have not been tackled by the CC decision-makers in their work. We object to this failure to do what we view as necessary work.

The CC has apparently and with no explanation ignored much of its own investigation evidence (including customer surveys) and used wafer thin direct hire data provided by just a few insurers, which Quindell contends is not representative of the cost borne by insurers generally. We have expanded this point in great detail later in our Response below in the hope that the CC recognizes the differences between (a) credit hire, (b)

GTA, (c) basic hire and (d) direct hire rates – they are all different and all service the consumer in different ways and with different charging tariffs. It is crucial for the CC to understand this point. Indeed the CC ought to demonstrate this by writing about these differences, clearly in Section 6 or App 6.1. These points of principle are missing, and there is clearly a hole in the PFs leading to wrong conclusions.

Quindell would ask the CC why ALL 'direct hire' or 'retail' hire companies do not provide credit hire services? The credit hire market itself has developed to provide a service to consumers who are not at fault and have a loss of use claims (which is the legal premise for recovery).

There are clear distinctions between credit hire and direct hire. A further objection with direct hire is that it only applies to people captured by the Insurers i.e. people who insurers have accepted have non-fault claims and the CC's data in section 6 footnotes 3 and 4 say this is only circa 25% of all claimants. It is to this remaining proportion of say 75% of claimants, amounting to perhaps 225,000 people a year that the Credit Hire service addresses their need for financial redress at no charge.

Below, we note the CH benefits to these people. And we say the insurer's direct hire model does not touch this massive group of people. How is the CC's alternative model ever going to ensure this group is in a better position, if the CC seeks to adopt eg Remedies 1A and 1B? We believe that will suffer severe consumer detriment and loss of existing benefits. Equally bad, these types of remedies put the Credit Hire business model into jeopardy. What does the CC say about any of this – we simply don't know whether it has been considered? Perhaps at the next round-table hearing we will get answers?

Biased text in the provisional findings, and absence of proper analysis

2.3 The investigation has, in our view, been biased towards insurers and against CHC. We say this from reading text in the PF that seems to unnecessarily criticize CHCs and paint the insurers conduct unfairly in a good light. Quindell remains concerned that the CC has <u>failed</u> to grasp the relationship between the various parties

- insurers,
- policyholders,
-- non-fault consumers,
- credit hire companies and
- direct hire providers).

The CC also appears to trust that insurers will step up to provide the service to the non-fault consumer in their hour of need. Specifically is this the 75% **not** picked up currently as captured – we think not! – yet there has been no modelling of what the market looked like prior to the growth in credit hire since the mid/late 1980s, nor has there been any modelling of what the market <u>will look like</u> if changes are made, for example, changing the legal entitlement of consumers to redress for their losses. Quindell has raised time and again the fact that there is a direct conflict between the needs of a non-fault consumer and that of an at-fault insurer. The CC has failed to address these points adequately throughout the investigation.

Below are some examples of bias;

Appendix 6.1 paragraph 27 – average ‘credit’ hire durations.

2.4 In this paragraph the CC seeks to understand the reason for credit hire durations being (allegedly) longer that direct hire durations. It highlights 3 possible hypothesis: (a) the mix of claims being more complex; (b) the under provision of direct hire in relation to duration and (c) unnecessarily lengthening credit hire durations (e.g. by disproportionately booking in cars for repair on Friday or returning them on Mondays, or extending repair durations.

The reason Quindell flags this as evidence of bias is twofold. Firstly the CC discounts (b) without any reasoning, simply saying ‘we found no evidence’. Yet, (c) has no comment although within the same appendix, the CC provide evidence that only **15%** if vehicles are booked in on a Friday for credit hire and 23% on a Monday (EXACTLY the same profile you see for direct hire – reference paragraph 91 and Table 16). Why would the CC leave the reader believing at paragraph 27 that CHC extend hire durations when it found <u>no evidence</u> to support the view.

This is plainly a false assertion, so it should never have been made in the way it is drafted. Further, on the basis it was insurers who raised the challenge do the CC accept other points made by insurers without evidence? Clearly that assumption now needs to be tested – please can the CC answer this concern over bias creeping into the decision process.

Alternative models overlooked others – Appendix 6.1 paragraph 18

2.5 Again it is concerning to Quindell that the CC has only highlighted <u>one alternative</u> model, i.e. that provided by Enterprise. Quindell has shared information with the CC on many occasions about its Collaboration Protocol, which serves to reduce the cost to the at fault insurer and has gained widespread market engagement and acceptance by at fault insurers – the Protocols have been evolving over the past 2/3 years and Quindell has previously invited the CC to engage to better understand this model. Quindell is also commercially aware that other large CHCs have similar initiatives, yet the CC appears to prefer the Enterprise model – why is that?

Related to this point, Quindell are concerned that the CC fails to understand properly the business model of Enterprise, and specifically their subscriber scheme. We must [formally] request that more information on the CC’s review of the Enterprise alternative (apparently supported by 3 unnamed insurers) is now put to public and transparent scrutiny and review, Something as important as this cannot get approval behind closed doors, especially because its endorsement by the CC (a) could be a mistake, and (b) equally bad, the CC can rely on such errors to decide on remedies that damage or harm the CHC sector which the CC acknowledges does a good job for hundreds of thousands of people each year, at no charge.

Direct Hire rates (VAT, insurance, charges to consumers)

2.6 Quindell are frustrated that whilst huge effort has been put into previous replies highlighting the difference between direct hire and credit hire, the CC has either ignored or failed to understand the points made.

Throughout the investigation the CC appears to have wanted to prove the a direct hire model would be cheaper than credit hire and in some way promoting direct hire against credit hire would be beneficial to the consumer, yet the CC have not shown anything on this in their report? Why?

Specifically, Quindell wishes to challenge the basis of the calculation the CC has arrived at for the AEC. It is Quindell's contention that direct hire rates are not the appropriate counter factual to credit hire as previously stated and even if they were, the CC has to carefully ensure that they are actually capturing ALL costs associated with direct hire when comparing with credit hire i.e. bringing the 2 services onto an equal basis for the comparison – we say this has not been done.

In particular Quindell contends that the calculation that credit hire is alleged to be 2.5 times the cost of direct hire is incorrect in that the direct hire rates do not include VAT, do not include insurance (& if they do , they carry a high excess which requires Collision Damage Waiver, a recoverable head of damage) for damage to the vehicle, theft cover, unlimited mileage, cover for non-standard risks (drivers below the age of 25, over the age of 65 or carrying points on their license for example) or allowance for 'additional drivers'. The direct hire rates don't also cover your marketing costs to get clients – in other words your freestanding business interfacing with the public needs to find clients and carry such costs, but a direct hire business simply gets work passed to it as agent for the insurer, like self-supply. This is like putting a handicap of the free-standing CHC sector, and saying to survive, it must be tied to the insurers as a sub-contractor. None of these ideas seem to follow recognized sound competition principles.

Quindell will expand on these points in the section where we review the AEC calculations.

CCs apparent acceptance of information from insurers - without testing

2.7 Throughout the investigation the CC appear to be accepting what insurers says without any validation. It has been the CHCs who have been able to provide audited data throughout the investigation, and we note in contrast that nothing is shown regarding Enterprise or its business model. Why has it been apparently granted such freedoms from public scrutiny in the CC's PF? Or has the CC failed to look at Enterprise in a critical and professional manner, which we would expect from a regulator like the CC? We believe all Enterprise and supporting insurer's representations on the new model need to be published for external scrutiny in a very transparent manner, including forecasts and impacts on the CHC sector. If the CC has not even looked at this, we need a public statement on why this has not happened to date!

Given that the CC noted the insurers have struggled to provide the same level of detail, or not provided any information– can the CC explain why?

2.8 Clearly, if the data is limited from insurers, it prefers, it follows that their submissions must lack credibility when their data is used for comparative purposes.
Insurers complain durations are too long, or CHC behave in a poor manner, yet both audits conducted through the GTA Technical Committee and the CC own thorough investigation doe s not support these contentions. We must ask for urgent and immediate access to the CC data room to review these statistical anomalies.

CC potentially destroying a viable service to consumers

2.9 Quindell is concerned that the CC is running rough shot over consumer rights. The law of tort has been developed over more than a century of case law. Consumer rights and the principle to protect them should be at the heart of what the CC does – indeed it needs to look at detrimental effects on consumers to make an AEC stick – so how has the CC looked at the detrimental effect on consumers from its ideas, which might destroy the CHC sector, effecting adversely maybe half a million people a year i.e. those who may not recover their losses from non-fault accidents? It seems many of the assumptions made and remedies proposed ignore some very basic rights consumers have today. Some of the remedies proposed by the CC seek to create a **monopoly for insurers**, who in the absence of credit hire, would never have offered mobility to consumers after accidents, and will work with tied sub-contractors. Does the CC propose a regulator or Adjudicator (at additional costs) for this new market opportunity it is creating, which we think is misguided, given the alleged detriment in terms of excess insurance premiums is under £8 a year, a derisory sum for regulatory action.

Moreover, the harm to CHCs who generate revenues of some £700 million a year from serving the consumer cannot be trampled upon without consequences. We do not believe the AEC1 alleged detriment even crosses this threshold for remedies that can justifiably destroy our sector, or our ability to serve our customers.

Conflicts between non-fault claimants rights and at-fault insurer

2.10 The CC wrongly assumes the relationship between the not at fault accident victim and the at fault insurer is a normal business relationship. There actually is no relationship – The insurer represents the interests of the motorist causing the damage. There is a direct conflict of interest between the non-fault victim and the at fault insurer. The only reason the at fault insurer has a desire to provide any service to the consumer is as an ALTERNATIVE to credit hire. In the absence of credit hire at fault insurers will not step up to provide that service, leaving the consumer to 'get the bus'.

2.11 The CC also seeks to compare the contractual relationship between a CHC and its customer with that of the Claimant/Defendant relationship above. CHCs <u>are not agents</u> of the consumer, nor are they agents of the non-fault insurer. Non fault insurers who refer their customers to CHCs are doing so as an UNINSURED loss – there is no contractual entitlement. The post-accident relationship is forged between the victim of a crash and the CHC, in contract.

2.12 Failure to recognize CHC proper value to consumers (i.e. non fault claimants)
The CC appears to down play the value the CHC companies offer to consumers generally – why is this? We have developed over the past 20 years, through sophisticated systems and processes to provide the very best service (and most efficient) to consumers who have a mobility need after an accident. We offer IMMEDIATE comfort to our customer that they can avoid any serious disruption to their lives, and we resolve liability, provide advice on other aspects of the claim and generally seek to protect the consumer's rights at their hour of need. Consumers on average find themselves involved in an accident less than once every 10 years – they need proper, **INDEPENDENT representation** to protect them from being 'managed' by the conflict fuelled at fault insurer.

2.13 The CC has incorrectly concluded that consumers, left in the hands of insurers would receive the same level of service they receive today. At fault insurers only provide a direct hire solution as an alternative to credit hire. They only do so when they know they are liable. In a market where there is no counter balance not only would the insurer have no incentive to provide a service, they additionally would have no incentive to resolve liability. This could lead to both consumers losing their No Claims Discount, not recovering their excess and of course being left to get the bus. How has the CC taken account of this potential harm from its work to date?

CC underestimating value of CHCs

2.14 The CC appears to accept that the **involvement of CHCs representing** consumers leads to quicker liability resolution. Whilst noting this it appears that the CC is underestimating the value CHC bring in ensuring liability is resolved efficiently or at all.

Quality of service

2.15 While the CC accepts CHCs encourage at fault insurers to ensure they provide a high level of service to the not at fault customer – reference is made to little difference between quality of service associated with separation. Without separation there is no counter balance. Para 6.39 needs re writing.

Challenge to CC's analysis:

2.16 Quindell challenges much of the analytical approach adopted by the CC. Quindell has not received any valid explanation of the CC failing to apply 'weighted' averages, downplayed data which lacks validation (insurer data) and over plays data extrapolation from very small samples. Quindell has found the CC's calculations into hire cost and AEC very difficult to understand and calculate. The CC's data is strewn across a number of documents and pages and is not clearly set out. **Quindell asks**

that the CC's provides a clear single document that provides the calculation that arrives at the £100 million cost the CC says credit hire costs the consumer.

Issues of market definition/boundaries and overlaps

2.17 CC has failed to correctly define the market or segments within a larger market, and suppliers to the market dealing with CHCs v Direct Hire rental suppliers. See Quindell's section below clearly explaining the differences between the various hire rates. In effect, CHCs serving their segment cannot operate on the price structure of rental companies acting as direct hire agents for insurers. The whole service issue to the customer is eliminated in the DH model, but the extra costs to match CHCs are buried in the insurer's business operations – so disguised subsidy?

2.18 As the market is currently structured, those causing accidents and loss of use are paying for it in higher premiums. Alternative models seek to charge everyone for the damage caused by the careless drivers. Why would the CC wish to promote remedies which means ALL consumers pay more for their insurance rather than those who are more risky drivers paying more. As the motor insurance market evolves, more telematics solutions will be in place, moving the market towards better pricing models for those who drive safely. The CHC market represents the interests of those very care drivers – why should careful drivers be penalized to the benefit of those who cause accidents?

2.19 The CC underestimate the cost (to consumers) in dealing directly with at fault insurers – many of those insurers use premier rate lines, with long waits for third parties, whereas they have free phone numbers for selling policies and/or for their policyholder making claims. What is the average cost of dealing with an insurer directly? Those costs are borne by CHCs on behalf of consumers today – Why has the CC not sought to understand these costs?

2.20 The CC has failed to understand the costs incurred by CHCs in managing the loss of use claims/mobility needs of the consumer. The CC has ignored that where the insurer deals directly with the consumer, through a direct hire arrangement, the at fault insurer will incur those costs. The CC concluded that the at fault insurer incurs costs when dealing with credit hire claims. Specifically Quindell wish to raise objection to the PF paragraphs 6.17 and 6.18. The CC is wrong to conclude that where a CHC raises a delay with an at fault insurer they in some way intervene to assist with that delay – Although Quindell provides this information to insurers on a daily basis, we have no evidence the insurer does anything with is – If the CC makes this conclusion, can they share their logic and evidence?

2.21 The CC also contends that insurers monitor repairs – where is the evidence supporting this? Has the CC just taken insurers on their word?

2.22 Whilst the CC accept that the role CHC play in the market is crucial (para 6.36 PF) both in terms of the incentive it provides to at fault insurers to manage claims against them in a reasonable manner and also protecting consumers where the at fault insurer is unable to offer assistance, there is nothing in this investigation and provisional findings seeking to protect that interest.

Part 3: Defining the different types of mobility service provided

We are concerned that the CC have failed to fully understand the variations between the different types of mobility currently provided in the motor market to not at fault individuals. This is particularly important as the calculations used by the CC for alleged separation are based on average costs and rates provided. The information and response below is in reply to Appendix A6(1) of the CC provisional findings.

We have set out below a table that provides a summary of the four main types of mobility and their key differences. This is to help the CC to understand why direct hire cannot be compared to GTA or credit hire.

We have also provided a glossary in table format to explain the areas of distinction.

In addition we have provided our comments surrounding "alternative models" as referred to within Appendix 6.1 paragraph 18 and expanded upon our own "Collaboration" model.

Why Direct Hire does not satisfy consumer demand

	Direct Hire	GTA Hire	Credit Hire	Basic Hire Rates
Available without liability acceptance	✘	✓	✓	✓
Liability / Claims advice	✘	✓	✓	✘
Like for Like car	✓	✓	✓	✓
Open ended hire	✓	✓	✓	✘
D & C	✘	✓	✓	✘
Insurance	✘	✓	✓	✘
Credit / no payment	✓	✓	✓	✘
Recovery Required	✘	✓	✓	✓

Available without liability acceptance	This indicates that mobility can be provided before the at-fault insurer has admitted liability, or without any admission.
Liability / claims advice	This indicates that the service includes investigations on the customer's behalf into liability, allows for advice to be given, an explanation of their rights and entitlement and fraud checking.
Like for like car	This indicates that a like for like car (subject to mitigation) will normally be provided.
Open ended hire	The hire will automatically continue for as long as the hirer is entitled to have it – without needing to re-book hire.
Delivery & Collection	The rate per day includes delivery and collection
Insurance	The rate per day includes insurance matched to the

	customers own excess.
Credit / no payment	This indicates that the customer will not have to immediately fund the mobility and recover their own outlay.
Recovery required	The claim needs to be recovered as a special damages head of claim

3.1 We will now provide a more detailed explanation of each type of mobility service and differences between them. We ask the CC to specifically note the variations between each, as the CC, in its workings has not apparently compared these services on a like for like basis. It is our submission that this is a significant failure in the exercise, and produced worthless/irrelevant/useless results. We say the CC can not rely on this work – in principle, without adjusting for the differences, the 2 comparators are not directly comparable.

Indeed, the figures in table 6 might mean the direct hire numbers are understated for comparing to credit hire, and equally bad, the average daily credit hire figures are overstated with irrelevant or tainted data, mixed in. For example, how has VAT been treated? What adjustments to data were done in Annex A – we note the early paragraphs indicate the data processing was almost impossible.

Part 4: Direct Hire

4.1 Direct hire is the provision of mobility by the third party insurer when they capture the non fault claimant. Such provision is only offered when the third party insurer is in a position to admit liability and as a result becomes pro-active in seeking to avoid the first party motorist from incurring hire changes from a credit hire company that may be higher that the rates it can procure mobility for via the direct hire service. Almost all major motor insurers use Enterprise rent a car as their primary supplier. The rate the insurer procures from Enterprise depends on a number of factors;

- Volume
- Overall relationship
- Structure of pricing and where the rental company can generate extra income

Car available before liability is admitted?

4.2 Direct hire is provided once the third party insurer admits liability, or become aware that they are going to be liable for the accident. At that stage either internally or by using external companies they move to contact the first party individual and offer them a replacement car.

If the first party accepts, their appointed rental provider will contact them to arrange for the vehicle provision.

As third party insurers are only willing to incur the cost of direct hire when they know that they are liable for the accident, direct hire is only provided once such an admission is made. By their nature accidents that are easier to determine liability are usually ones which involve fewer vehicles and lower impact speeds. However, contentious, multiple vehicle accidents or severe instances take much longer to investigate and as a result direct hire provision in those cases is unusual. It is credit and GTA hire companies that service these types of claims.

We repudiate the accuracy and percentage of claims insurers make quick liability decisions on. If insurers were so successful in making accurate decisions and quickly, only a small number would support the GTA, and would instead seek to offer direct hire solutions. Insurers are not good at making accurate and timely admissions of liability, which is one of the reasons the majority of insurers support the GTA – as they accept that they would not be able to control service. The CC implies that insurers would be able to service mobility needs of the claimant by a direct hire model. We do not believe that they could.

The CC says it been advised by insurers that they make quick decisions on the majority of cases. How has the CC tested this information? We strongly dispute the following;

- Insurers are quick to make liability decisions

- The accuracy of making correct decisions
- What the CC has done to prove the insurers suggestions

Liability / claims advice

4.3 Direct hire rates do not include any cost for any liability investigations, or general advice. The rate is simply a rate to hire a vehicle per day. As a result, no general claims advice, or awareness of rights is given to consumers who take direct hire.

Who is going to give those claimants advice?

Open ended hire durations

4.4 Direct hire is provided on an open ended basis, so long as the first party mitigates. Friction occurs when first parties disagree with total loss valuations the third party insurer makes. In these instances the first party insurer can use the leverage of taking the direct hire away unless the offer is accepted. This is not in the interests of the consumer. Direct hire does not provide the right level of consumer protection.

Like for like

4.5 Direct hire can be provided on a like for like basis, but as the third party insurer is seeking to reduce cost, they operate triage systems where the first party is "persuaded" to take as lower group vehicle as they are entitled too. We submit that the CC can check this by investigating the average group provided by insurers under direct hire versus other mobility types.

Delivery & collection

4.6 The direct hire rate usually does not include this service. Most insurer's rental supply chains offer a "we will pick you up" service. This is offered to ensure that the rental company avoids Distance Selling Regulations by selling extra products to the first party motorist at their branch or regional office.

Includes insurance?

4.7 The rate submitted by the CC as the average direct hire rate does not include full insurance from our own analysis. The third party insurers procurement department secures direct hire rates "stripped down" just like airline companies offering cheap seats but with add on's.

Insurance is a necessity and vehicle provision is usually offered to the first party motorist with a very high level of excess on the vehicle. The rental company then seeks to up-sell improved insurance cover (CDW / Excess waiver / Excess reduction). The cost of the improved insurance cover (to one that the first party would have on their own insurance) is a cost born by the not at fault first party motorist and is generally not recovered.

The profit margin and mark up that the rental companies make from up-selling insurance and CDW allows them to reduce their direct hire rates to uneconomically low levels to insurer's procurement teams.

Has the CC asked whether the rates offered by insurers as direct hire rates are supported by additional consumer charging mechanisms?

The cost of insurance per day can be over £15 – all charged to the innocent not at fault consumer.

Credit / no payment

4.8 Direct hire rates for the vehicle are paid by the third party insurer to the rental provider through their supplier contract. The first party consumer pays for the additional products that are sold – insurance, waiver products, key and tyre cover, fuel etc.

Recovery required

4.9 As the direct hire core rental cost is paid for by the third party insurer there isn't a prima fascia cost to be recovered. However insurance costs that are incurred by up-selling to the not at fault consumer could be recoverable as special damages.

4.10 Unfortunately due to the consumer being serviced by the at fault third party insurer, they are invariably not made aware of this right, and due to the claim value size, little interest from accident management companies will occur to offer to recover the charges on the consumers behalf.

Part 5: **GTA Hire**

GTA is the industry solution so that Credit Hire Companies charge insurers at an acceptable level where they recover costs plus a reasonable profit. The rates are set by the GTA technical committee consisting of insurance representatives and CH operators.

The logic behind signing up to the GTA

5.1 The historic market challenge for insurers is that they didn't like payment the credit hire rates they were being charged. Credit hire companies didn't like the time it was taking them to get paid, so a compromise was reached being the GTA. Credit hire companies agreed to reduce their rates to those agreed within the GTA, in return for specified payment times by insurers, and agreed penalties to be levied in the event those payment times were not adhered too.

Another major benefit was certainty for both sides. Certainly of claim cost for insurers and certainly of payment for credit hire companies.

GTA been in existence since 1999 and has evolved martially. Firstly to recognise the maturing of the mobility market, and secondly to keep pace with the changing legal landscape.

When the GTA was first launched in 1999, it was only set up to allow two rental companies (Enterprise and National) – and the scheme simply offered two tiers of rates. One where liability was admitted and one without admission. Insurers sought to persuade CHO's to use this supply chain – which they naturally objected too.

In June 2000 the GTA was opened up to all CHO's to subscribe and a fixed set of rates were defined for the first time.

In 2005 full review of the GTA which built which gave the framework of the current documentation including FAQ's – and took many months and meeting to reach compromise.

Rates are reviewed on an annual basis, and since 2007 became a much more structured review process. The current process is to look at BHR / retail rates (spot rates) and also reflect on the DHR that insurers could acquire too, as well as what CHR rates would be recoverable in law. It has never been an exacting science and compromise was always needed to reach agreement.

The GTA provides a clear framework within which CHO's have certain obligations – particularly around hire duration control. <u>We are pleased that within the CC's findings at Appendix 6.1 (Table 18) that it is accepted that the service provision of credit hire / GTA hire is the same as Direct Hire.</u>

The GTA provides for an additional administration fee (£37 for hire).

Car available before liability is admitted?

5.2 It is the GTA credit hire company that takes the decision based on the facts they have whether to provide hire. They will often provide hire without an admission of liability from the third party insurer, and in many instances will also provide hire before being able to determine who insured the third party motorist.

This is particularly important to consumers who have sufficient evidence to support the accident wasn't their fault, but the third party insurer will not review the case or make any decisions until they have received a report of the accident from their own policyholder.

In GTA claims a notification of intention to hire is given to the third party insurer and service provision then commences. As a result, the types of claims that GTA hire occurs on is a spectrum of minor and major accidents – unlike direct hire which concentrates on lower impact and less contentious accidents.

Liability / claims advice

5.3 GTA companies are obliged to provide their customers (the first party motorist) with specific information relating to their need to mitigate. The claims process will also involve the credit hire company investigating the accident circumstances, updating the customer, instructing investigation companies, requesting police reports, updates during the claim etc. This is a valuable service provided.

Like for like car

5.4 GTA hire companies have specifically agreed mitigation wording that they have to discuss with their customer. The customer then signs a mitigation statement which the hire company has to submit to the third party insurer as part of their payment pack. Generally a like for like car is provided.

Open ended hire

5.5 As GTA hire companies represent the interests of the innocent party in the accident, they will provide hire for as long as they deem that the customer is mitigating, and that the hire period is recoverable.

There are many instances of GTA companies providing hire for longer than they had been able to recover – at the benefit of the consumer but to their own profit detriment in write off's.

Total loss claims are more vigorously contested to ensure that the claimant and hire gets the right amount in valuation.

Delivery and collection

5.6 It is a requirement of the GTA that the daily rate charged includes free delivery and collection.

Insurance

5.7 It is a requirement under the terms of the GTA that fully comprehensive insurance is provided within the daily rate.

Credit / no payment

5.8 GTA hire changes are incurred under credit, provided under the terms of an unregulated agreement within the Consumer Credit Act 1974 and subsequent amendments. Credit is provided for a period usually not exceeding 51 week's, however in practice post that period, forbearance to sue is applied. As a result, it is highly unusual for GTA hire companies to return to their hirers for payment or any shortfalls.

Recovery

5.9 GTA invoices require recovery – which is usually undertaken by the GTA hire company themselves. The cost of recovery depends on how much dispute occurs in the GTA company's valuation of the hire and the insurer. Whilst the daily rate is agreed, challenge over need to hire and period occurs.

Part 6: Credit Hire

Credit hire companies who do not subscribe to the GTA, or face insurers who do not subscribe to the GTA charge an alternative (usually higher) rate than the GTA. These rates are the rate legally recoverable depending on the BHR that can be evidenced as recoverable. Credit Hire rates are allowed to include a cost of the credit that is being provided when the claimant (the hirer) is impecunious.

Credit hire rates do not include an administration fee (this is not recoverable in law), and there is no defined and agreed framework in which to work with insurers surrounding mitigation or hire duration control.

General mitigation and common law recoverability is applied.

Car available before liability is admitted?

6.1 Generally most credit hire companies will apply the same operational design to non GTA claims as they would to GTA claims. As a result the same provision of vehicles would be offered regardless of whether the third party insurer was a GTA subscriber – or indeed whether the credit hire company was a subscriber. Repair provision can be varied for non GTA claims due to the fact that engineering fees are not recoverable in law.

Liability / claims advice

6.2 Credit hire companies will generally offer the same level of mobility service as GTA. They are not obligated to ensure that mitigation statements are completed.

Like for like car

6.3 Generally a like for like car is provided, subject to the credit hire company being satisfied that the entitlement to hire like for like has been proved (from what the hirer has explained to the CHC).

Open ended hire

6.4 As credit hire companies represent the interests of the innocent party in the accident, they will provide hire for as long as they deem that the customer is mitigating, and that the hire period is recoverable.

There are many instances of credit hire companies providing hire for longer than they had been able to recover – at the benefit of the consumer but to their own profit detriment in write off's.

Total loss claims are more vigorously contested to ensure that the claimant and hire gets the right amount in valuation.

Delivery and collection

6.5 It is industry norm that delivery and collection is included within the CHC's rates.

Insurance

6.6 It is industry norm that insurance is included within the CHC's rate.

Credit / no payment

6.7 Credit hire changes are incurred under credit, provided under the terms of an unregulated agreement within the Consumer Credit Act 1974 and subsequent amendments. Credit is provided for a period usually not exceeding 51 week's, however in practice post that period, forbearance to sue is applied. As a result, it is highly unusual for credit hire companies to return to their hirers for payment or any shortfalls.

Recovery

6.8 Credit hire invoices require recovery – which is usually undertaken by the credit hire company themselves, or an appointed firm of solicitors. The cost of recovery depends on how much dispute occurs in the credit hire company's valuation of the hire and the insurer. Insurer challenge over need to hire, period and rate occurs.

Part 7: Basic Hire Rate (BHR)

The BHR is the rate that would be available to a consumer to rent a car. This is usually described as the retail or "spot" rate. The rate advertised for an individual hirer to directly hire a vehicle – for which they would pay for it. The BHR is important within the credit hire market, as the test applied by the courts as to what is recoverable in credit hire cases, is whether the credit hire rate claimed is reasonable when compared to BHR. By using actual evidence of the available rate from BHR renters within claimants geographical area the court would have to decide whether the rate claimed was indeed reasonable. Even if the rate charged was within the range of disclosed BHR rates, and even if it was at the top end of the range – the charges would be recoverable as it would not be proven that the Claimant had hired at an unreasonable rate.

Car available before liability is admitted?

7.1 The BHR is a standard rental rate. The hire company providing the vehicle has no interest in the accidents circumstances – they simply offer a vehicle for hire upon payment to hire. It is the hirers' decision whether to hire and incur the charges.

Liability / claims advice

7.2 No advice or investigations into liability are provided – they rest with the hirer.

Like for like car

7.3 The decision of what type of vehicle to hire rests solely with the hirer. They can hire whatever vehicle they choose to hire, but will only be able to recover the vehicle they are deemed to be entitled to recover (up to like for like).

Open ended hire

7.4 The rate that is obtained when hiring a BHR is often dependent on how long the vehicle is going to be hired for. Most BHR companies have sliding scale tariffs which reduce the longer as vehicle is hired for. At the point of booking, it is standard for the renter to be asked how long they want to hire the vehicle. This is often a challenge as to take advantage of lower hire rates for longer hires, vehicles need to be booked for a minimum number of days / weeks. Unfortunately for most hirers of BHR post accident, they are not subject matter experts on how long they anticipate being without a vehicle. As a result, consumers of BHR tend to book for short bursts of hire and then need to keep re extending hire.

Delivery and collection

7.5 It is unusual for delivery and collection to be included or offered. It is standard practice for BHR to require that the hirer collects the hire vehicle from the BHR location and returns it at the end of hire.

Insurance

7.6 It is industry norm that insurance is included within the CHC's rate.

Credit / no payment

7.7 BHR is a payment for service. The hirer would be required to pay for either part of the hire, or all of the hire before hire commenced. Any additional charges incurred (such as extended hire) would be immediately payable. No credit is provided within BHR.

Recovery

7.8 BHR rates incurred by the hirer would form part of any special damage claim that they would have against the third party insurer. The paid invoices for hire that the hirer has incurred would need to be either recovered directly by the hirer, or the claim referred to an uninsured loss company (or law firm) to recover.

We calculate that the average cost that a consumer would be asked to pay in fees to a company to recover incurred special damages would be between £200 and £250. This cost would NOT be recoverable under small claims track.

Part 8: Summary of Concerns

We strongly ask that the CC considers the following key summary points from our summary of the definitions of mobility (direct hire, GTA, credit and BHR);

8.1 Direct hire is a significantly different type of service than GTA / credit hire. The rates disclosed by the CC and used in calculations to determine the level of separation (which we do not accept) are rates for a fundamentally different consumer service.

8.2 Why were only three insurers able to provide DHR to the CC?

8.3 DHR do not include the same levels of insurance as GTA / credit hire rates. What would the average DHR be with these costs included?

8.4 GTA / credit hire claims are provided on a different type of claims than DHR – more complex, heavier impact and multiple vehicle claims.

8.5 DHR affect the consumer by allowing rental companies to up-sell insurance additional insurance and provide little support in assisting the recovery of these additional costs.

8.6 Have the CC asked the DHR company/s that provides the rental how much on average per DHR they generate from additional up selling of insurance?

8.7 This additional consumer cost needs to be added to the cost of DHR to give a true comparison to GTA / credit hire.

Part 9: Alternative Models

At paragraph 18 of Appendix 6.1, we note that the CC has made reference to an “Alternative model”. Furthermore we note that specific reference to the Enterprise subscriber model is made.

We are concerned that despite making the CC aware of our own “Collaboration” model on no less than three separate occasions including asking for a bilateral hearing, and inviting the CC to understand our model more that only the Enterprise model has been referenced.

Can the CC explain why only the Enterprise model has been incorporated into its Appendix as a preferred choice? Why does the CC have a preference to this model? Has the CC been persuaded by insurers to review this model and comment upon it and no others - how is this justified and how was it checked as being realistic? Has the CC done an IRR or NPV test? Has it checked there are no hidden payments between insurer/supplier or vice versa, or subsidies and cross –referrals of work?

Is the CC aware that Enterprise also provides GTA credit hire claims as well as their subscriber model? Why would the CC not ask for information or provide equal feedback on other CHC’s alternative models.

We submit that the CC has failed to offer fair and [reasonable consideration] of alternative models, and that bias is being shown to one supplier. We find this unacceptable that the supplier we infer bias is being shown towards is the key DHR supplier insurer’s use.

Many of the leading CHC’s have alternative models in place which seek to reduce cost – either hire and/or operational cost – and we do not feel the CC has completed sufficient analysis unless other CHC’s models have been assessed and commented upon.

Part 10: Collaboration model

Our collaboration model is provided to a significant section of insurers, and has the proven ability to drive costs down further than the average DHR rates as quoted by the CC of £445.

We charge insurers a fixed cost for the administration of the claim. This cost has been agreed with every insurer, and has been calculated with a leading motor insurer by completing a time and motion study on an improved process.

The cost agreed as reasonable by that insurer was £97 per claim. This agreed cost looked at the true cost of providing liability investigations, claim updates and off hire process as well as simple bordereau billing.

It is our submission that for the CC to move the average DHR rate of £445 (which we do not agree), to one where the service provided under DHR is in line with the service provided under GTA / credit hire, than a fee of £97 per hire would need to be added.

We also have an agreed profit margin per claim of between £50 and £60 which again every insurer that has signed up to our collaboration protocol has agreed.

Our average cost of hire per day is around £23, and our average hire duration is 14 days. We can evidence a scheme where the cost of providing mobility with operational costs covered and an appropriate level of margin achieved can be provided at a level, on average around £430 plus VAT per case.

Our collaboration model aligns the CHC and the insurer in both wanting to reduce durations to as lower level as possible. We achieve this by setting a target as the average duration the scheme should achieve. For every average day under this target, both the CHC and the insurer share the benefit of the average one day reduction in hire. For every day over the target both the CHC and the insurer share the pain of the increased cost.

This incentivises the CHC to seek to process engineer hire claims for the shortest duration possible. The lower the overall average of their hire claims against the collaboration insurer, the more margin the CHC makes, and the lower the indemnity spend of the insurer.

Part 11: Statistical Analysis / Concerns

In this section Quindell will seek to highlight concerns with the statistical approach adopted by the CC. Additionally, we will look at the AEC calculations and attempt to understand the approach adopted and whether it is correct. The CC will appreciate that this is a difficult task when so much data is removed from the PF and the appendices.

Highlighted areas of particular concern

11.1 The CC fails to use weighted averages, why is this? Especially where the data is key to the AEC calculations.

11.2 Throughout the PFs the CC uses data from insurers in an inconsistent way. Although ten insurers were engaged with by the CC, there is limited data provided by many of those insurers – why is this?

11.3 In using data from only three insurers in terms of their direct hire rates is not reflective of the market as a whole. Due to low concentration levels, the data is unlikely to represent more than 30 – 50% of the market (dependent upon the size of the insurers) and if from the larger players is likely to overstate the difference between direct and credit hire rates (due to larger insurers gaining better direct hire rates due to buying power).

11.4 The direct hire rates are not loaded with the same costs the credit hire rates contain – For example, it appears that the CC has erred in that it has compared direct hire rates which are exclusive of VAT with the credit hire costs which include VAT. The direct hire rates do not include insurance. If they do include insurance, they do not cover the consumer in the same way the credit hire arrangement work (in that they have a high excess or the consumer is charged for discharging the excess). Direct hire charges do not provide unlimited mileage. Direct hire rates do not include delivery and collection (specially contained within GTA rates). Direct hire rates often charge additionally for more than one user of the vehicle.

11.5 In the comparison between credit hire revenues and direct hire costs – the CC in choosing to apply the 2.5 times argument may have captured costs not charged to insurers and therefore overestimated the AEC (if there is any). The correct comparison (using the CC logic, which the reader will appreciate we do not accept) would be the GTA rates and the direct hire rates – therefore applying 2.1 times.

11.6 In calculating the AEC the CC has incorrectly applied the total cost against only private motorists and not the whole market – private motorists who have an accident could do so against any motorist, including fleets operators or other commercial vehicles. Those claims cost would not have any impact on consumers.

Assumptions made by the CC

11.7 Average credit hire cost £1,100 (inclusive of VAT, insurance, collection and delivery and claims administration – need assessment, monitoring etc)

11.8 Credit hire is 2.5 times more expensive (at a rate level) than direct hire rates

11.9 Thus the direct hire equivalent is £640 cheaper than credit hire

11.10 Average commission (back to the insurer/broker) is c. £340

11.11 Thus £300 is higher costs and profits to the CHCs

11.12 CC estimated that there were c. 300k credit hire claims

11.13 Thus estimated total difference between credit hire and direct hire is £193m (300k * £640)

11.14 Whilst Quindell has not considered in any detail the extra cost caused by separation in repair and salvage, the estimated difference by the CC is £23m for insurer managed repairs, £28m for credit repair and 6.1m for write offs (salvage)

11.15 Total difference caused by separation according to CC is £249m (Appedix 6.6 para 17 Table 5)

11.16 The counter balance is the referral fees generated by insurers and brokers which the CC estimates as £98m for credit hire, £6m for credit repair, £23m for insurer managed repairs and £3m for write offs.

11.17 In summary, the net (after allowing for commission) cost difference for credit hire and direct hire is £193m - £98m = £95m.

11.18 The net cost of credit repair is £28m - £6m = £20m; net cost of insurer managed repairs is neutral and write offs £6.1m - £3m = £3.1m

11.19 To aid understanding of the numbers above we have documented in the table below for mobility alone;

Costs/income	**Notes**	**Competition Commission**	**Quindell**
credit hire cost		£1,100	£1,085
net of VAT	Note 1		904
GTA v direct	Note 2	2.5	2.1
direct hire cost		£440	£430
other' costs direct hire (est)	Note 3	£0	£100
total direct hire cost		£440	£530
Diff credit v direct		£660	£374
commission	Note 4	£340	£340
net cost (per claim)		£320	£34
market cost (301k claims)		£96,320,000	£10,090,667
impact on ALL motor policies	Note 5	£2.75	£0.29
impact on consumer	Note 6	£68,800,000	**£7,207,619**

Notes

1. Quindell has assumed the CC has made an error in using gross (of VAT) credit hire costs compared to net (of VAT direct hire costs

2. Quindell has used the 2.1 times comparison due to what appears to be errors with the credit hire calcualtion App 6.1 Table 6)

3. Quindell has estimated that £100 would be incurred by insurers (or the consumer) using direct hire for insurance, CDW and claims handling

4. Quindell has used the commission estimate the CC provided even though Quinell believ the figures to be higher

5. Quindell has used the entire market at 35m vehicles and not 25m as used by the CC to illustrate the average charge by policy

6. Quindell has then factored our fleets and commercial vehicles as these cannot be 'consumer' detriment