January 2014

Private Motor Insurance Market Investigation

Quindell comments on the CC's Remedies Notice

1. Introduction

1.1 Comments on Competition Commission's Provisional Findings and Adverse Effect on Competition conclusion

At this stage, we need to mention a number of high level concerns regarding the nature of the CC's investigation process to date. We will then deal with the remedies as published by the CC. We note that these concerns remain unresolved and have a direct impact on remedies that the CC may be minded to implement. We hope in the period ahead that the CC will resolve them with us, to our satisfaction. Otherwise, we expect to see our arguments and objections appearing somewhere in the CC's final report with good reasoning on how the matters were resolved in its decision-making process. We will be happy to meet with the CC and its staff to discuss any of these concerns on a face-to-face basis.

We note that Quindell will be commenting separately in detail on the Provisional Findings (PF) and the basis for the Competition Commission's conclusion that there are various adverse effects on competition (AECs) and those comments are not included here.

We have concentrated on meeting the CC's requirement to respond to its remedies notice by the 17th February 2014 deadline, and we do so in this document.

1.2 Areas of fundamental disagreement with the CC's thinking

We note that we previously made important representations about the CC's work, but were surprised to see they were either (a) overlooked in the Provisional Findings, or (b) received so little attention that the explanations thereon were meaningless narrative. We cannot accept this approach as fair, or treating our position fairly.

Our challenges were so material both (a) in terms of assessing whether there really was a consumer detriment (from our activities as a Credit Hire business (CHC), and (b) the quality/reasonableness of the economic and statistical analysis that we believed was needed for robust and sensible conclusions. We therefore raise these issues again for the record, and hope they will now receive the proper attention and care, we believe is needed. We hope the CC will appreciate us raising these objections in this document, so they have as much time as possible to address them, and still meet their timetable deadlines.

2. Credit Hire compared to Direct Hire rates

We note that the conclusion that there is an AEC is borne out of a difference between credit hire and direct hire rates. The conclusion reached in the provisional findings is that there is a 2.1 times greater charge for credit hire than direct hire rates. It firstly has to be noted that credit hire and direct hire are two different products, serving consumers under different conditions. In other words, the people acquiring the services do so in different ways – and the rates serve different customer situations and circumstances. Whether those rates are higher or lower therefore cannot be the basis to conclude there is over-costing (or as the CC incorrectly concludes, over-charging insurers for credit hire services). This is a fundamental error of thinking which is not explained in the CC's provisional findings.

It is Quindell's position that credit hire rates should be compared to 'basic hire rates' ("BHR" - previously known as spot rates) and this is the basis for consideration by the courts. By definition, BHRs are those rates which are available to the general public when sourcing a replacement vehicle – why should the cost of that replacement car be discounted or considered unreasonable just because the consumer has suffered a road traffic accident. Those rates are from an established market – the daily rental market.

When the courts compare credit hire rates to BHRs, they will ensure that they are comparing accurately and consistently the service provided, e.g. do the BHRs as a comparison include insurance (i.e. third party cover, collision damage waiver [CDW], theft cover, etc.), available to all consumers (not restricted for age, driving experience, or licence endorsements) and are the vehicles actually available to hire?

The reasonableness test for recovery of credit hire rates is a detailed review of all these factors. On the other hand, the CC need to ask "what are direct hire rates?". Is there actually a market for direct hire rates?

- It is Quindell's position, and we have already made this point in previous submissions and at the multilateral hearing in the summer, that direct hire rates are **artificially low for a number of reasons** including (a) the insurer's ability to bulk buy, not including insurance, (b) no delivery of collection service for the consumer and (c) the approach by those providing direct hire services to consumer via insurer contracts to be allowed to charge directly the consumer for certain charges (e.g. upgrade at consumer expense, CDW and other 'excess waiver' products). This is fundamentally different to the credit hire proposition.

- Everyone has seen the marketing of the fly drive holiday with FREE car hire (it is only when you either read the small print or see the bill you appreciate that the daily rental of the car may well be free, but you will be faced with a huge cost per day for all the add on services, which you have to take to drive the vehicle (i.e. insurance, CDW etc).

- Or why doesn't the CC think about budget airlines versus major scheduled airlines? Does the CC expect the scheduled airlines to work to the lower budget airline costs? In both cases, the planes are flying passengers (but they are not doing the same thing). By the CC's reasoning in dealing with our sector, we would expect it to suggest that scheduled airlines should charge lower budget airline rates because they exist. The thinking is absurd, but this is the logic used against our sector. If we are wrong, then we await more information on how the CC made its decisions, which we see were at our expense, in favour of insurers.

Another factor, which appears to have been overlooked, is that those direct hire rates are discounted rates where the provider may have **a broader relationship** with those sourcing the service (which may be credit hire for non fault customers). This is certainly the approach of Quindell in pricing, and we are aware that some of the large rental providers will offer **discounted** direct hire rates at no better than breakeven, or even a loss leader – if those other services were no longer in the package, the direct hire rates would be unsustainable. The CC's analysis in its provisional findings totally misses this point. We request that this gets proper consideration, and hope this will happen immediately after the CC receives this document. We are ready to talk to the CC and its staff.

We also remind the CC that our credit hire rates are determined annually by the technical committee of the GTA. So these rates are not arbitrary, or inflated as the CC mistakenly has assumed (or might not have known). We say this because this does not get any discussion in the relevant sections of the Provisional Findings. What are we therefore expected to conclude from such fundamental omissions of key pieces of factual evidence. Worse, the GTA has six representatives from the Credit Hire businesses, and six from the insurers. So we say it is an expert body, and does represent the insurers' interests. How has any of this got into the thinking of the CC – we just do not know?

3. The CC's statistical analysis

The CC have also over-looked another factual point with regards to the statistical analysis used to form CC conclusions in the provisional findings. When a private motorist has an accident, the third party may be another private motorist, but it could also be a fleet operator or commercial vehicle. The rates insurers appear to have disclosed, (which appear limited i.e. not much data for the CC to reliably use), are not the same rates available to all insurers - due to concerns throughout the enquiry with the use of averaging,

Quindell very much doubts that those rates, which are the basis for the alleged over charging are indeed representative of the **average cost for insurers** for providing vehicles. Without access to the data behind the averaging, Quindell is unable to directly challenge this point and as such, would respectfully suggest that full disclosure of those rates and the assumptions made be available publically, especially when it is clear that this is the foundation to the alleged AEC. How has the CC satisfied itself on this point of basic fairness?

Before we leave this subject, Quindell also wishes to point out that the direct hire rates (as used by the CC) are undefined in terms of the product and service – if, as understood by us, those rates do not provide any other service than a vehicle for X days, then we can immediately say the CC is not comparing like with like. Specifically, if a comparison is being made to credit hire, where are the additional costs in the comparison covering (a) the assessment of liability; (b) work on the need/use for the vehicle; and/or (c) monitoring to decide how long the vehicle should be hired for? Those costs are contained within the credit hire rates, but not the direct hire rates. Indeed the GTA rates recognise an admin charge. We assume the CC notes carefully that it is the Credit Hire charge that enables CHCs to provide their service to non-fault claimants, free at the point of need when they approach us. If our revenue to reflect our service is artificially reduced to a basic car hire, bulk buy arbitrary rate, our business model will not be sustainable. This basic thinking of economics is totally ignored in the CC's drafted text in the Provisional Findings. We don't know why?

Quindell respectfully suggest that the Competition Commission CC have misled themselves about the value of direct hire as a comparator against credit hire services. The CC's decisions have taken a far too simplistic view of the product to aid the findings that there is an AEC – indeed with the correct comparator i.e. GTA rates, there would not even be an AEC. The CC will note therefore that there is a fundamental disagreement with us on a serious point of principle, underpinning its conclusions. It needs to engage with us to resolve this, without delay. We believe our thinking is correct, and it is a pity that we were not allowed to meet the CC before the Provisional Findings to resolve this open issue. Moreover, if the comparison was based on credit hire against BHRs as done so through the courts, a very different conclusion would be reached because the BHR rates are higher than credit hire. In other words, credit hire is provided at a discounted rate to insurers, and this is because they are involved in setting these rates and don't pay rates that consumers would have to pay. There is nothing in the Provisional Findings that explain in detail why direct hire rates rather than BHRs were employed in the comparison. We hope to see the reasoning in the next draft of this very important document and relevant Appendix.

4. Indemnity and Liability Assessment / Delays

We read the PF in detail, especially on the definition of the market, and had great difficulty following the logic of the statistical/economic review by the enquiry.

Quindell wish to challenge the basis of the findings due to the CC failing to appreciate how the market operates. As mentioned above, when a private motorist suffers an accident, that collision could be with any vehicle on the UK roads, including fleet or commercial vehicles or even foreign drivers. We have made this point already but it does not appear to have been addressed by the CC.

We do not understand why the CC apparently ignored the fact that when a consumer has a collision with a fleet or commercial vehicle, very often the claim is not reported to the insurers **for days or even weeks** (a lorry damaging a bumper on a mini is unlikely to carry very much damage itself – thus there is no urgency in getting the claim submitted and often insurers will require the claim form in writing before they start managing the claim).

Those insurers are unlikely to be in a position to review indemnity, let alone liability within a few days after the accident – less so will they be proactively offering to provide mobility to the consumer who has suffered the loss. But credit hire operators, because of the nature of the work we do, and having economies of scale, take on this risk, where we accept that the claimant is non-fault. This thinking is omitted from the CC text, analysis and thinking, and this sort of error, in our view, led to remedies being proposed, which we believe could damage or destroy credit hire as a viable no-cost service at point of need to perhaps up to 1 million drivers involved in accidents over a year. It is a fundamental omission to recognise the value of what we do.

Why the CC Provisional Findings have ignored these facts, which, plainly, are very material indeed is something we want to understand.

Quindell has previously disclosed that our costs against those insurers are far higher than against private motor insurers due to **delays** in acceptance of liability and settlement. The data on this has previously been disclosed to the CC, but it appears to have been overlooked. The implication is, if we did not provide this needed service, then who would do this for free, if credit hire businesses are not able to continue operating in the public interest, going forward, based on the CC's proposed remedies? That is a challenging debate, and we would like some guidance on what the CC expects to see in the future.

5. The Entire market / AEC

Another error in the PF is linked to the previous point. Although Quindell does not accept that there is over costing, nor if there is any over costing, we see that the CC has put this so-called detriment at £6 – 8 per policyholder per year. If we accept the CC's figure for the sake of argument, we still say the basis of the economic calculation is wrong and £6 is too high.

Whilst the enquiry has only been looking at the PMI market, as pointed out already, private motorists who suffer an accident may do so with another private motorist or a fleet or commercial vehicle. Whilst the fleet and commercial market make very little use of credit hire, they do bare their share of the cost – So even if the CC's erroneous view on 'over costing' is accepted for our discussion, that figure needs to be amortised across **ALL** motorists on the streets of the UK, not just private motorists – That leads to an even smaller alleged impact on the buyers of motor insurance at between £4.40 – 5.90 per policy (£150/200m divided by 34m motorists).

With results like this, we believe it is quite wrong to make the assumption that any over costing is only applied to 'consumers'. Additionally on this point, and as previously pointed out, the average cost of credit hire claims against fleet and commercial insurers is materially higher. The difference between the average cost of Quindell claims against one personal lines insurer and one commercial insurer is 46% higher. Applying all this logic materially reduces the gross AEC in terms of financial consumer detriment to less than £100m across private motor insurance (even without any of the other points made). Quindell respectfully suggest that £4 per private motorist as a 'potential' saving is disproportionate in terms of the risk of impact to consumers if there were changes brought about by remedies which lead to the destruction of the Credit Hire businesses that serve potentially 2 million people involved in accidents, of which up to 1 million may be non-fault claimants who get our professional service for free.

Whilst making this point, we note that the CC has nothing we can find on the evolution of credit hire over the past 20 years, and why it arose to the point where the CC noted the Credit Hire Operators achieved collective revenues in 2011 of around £660m. Moreover, if the CC wants to make comparisons with Direct Hire, it should be including the evolution of this service, and who are the direct hire customers. It will be clear from this that direct hire operators don't serve the same market as Credit Hire operators. Direct Hire businesses may provide a car to someone, and we too provide a car to someone, but how we both get that customer to serve is totally different. This is the point the CC has missed. It is like saying 2 people on a plane, because they are people should both pay the same price, irrespective of what service they purchased. And then saying the person who paid more has been overcharged.

The market can become more efficient (going forward) and has done so through the GTA protocol over the past 10 years and with the adoption of the GTA portal in 2014/15, further efficiencies will be found reducing still further the average cost of credit hire.

6. Unintended Consequences

We are concerned about the risk that remedies proposed could have unintended consequences on consumers because the CC's investigation (as evidenced by what we read in the Provisional Findings) has (a) failed to understand the market which is under review and (b) how our Credit Hire services are provided and the costs/benefits that flow through to consumers from our current business model. We have stated many times throughout the enquiry (and our view is supported by the courts) that credit hire operators provide a valuable service to consumers. In other words, without the evolution of our service providing free non-fault vehicle claims recovery service, which has occurred over the past 25 years, consumers would still be left by insurers after accidents without mobility. Any remedy which weakens the business models of the credit hire sector, or at worst destroys the commercial viability of this model, risks upsetting the fine balance that exists today.

Whilst we will comment in more detail when looking at the remedies, the CC must review how the market would operate post any change envisaged by the CC – i.e. what would the effect be to consumer if there were no credit hire operators because the remedies prevent our business from surviving?

6.1 Harm to Credit Hire Operators

We believe that at no stage in this enquiry has the Competition Commission criticised the business practises of the credit hire operators. Indeed on many occasions, as with the courts, we interpret the CC has seen the value for consumers by the existence of the market.

We note the CC has stated that the credit hire operators do not make abnormal profits, and do add value to the sector. How, therefore, is it fair that those operators, employing thousands of people across the UK, and having £millions committed to the sector via shareholder funds, are the clear target for the CC's remedies? We do not accept there is any factual basis for some of the CC remedy proposals, as it will note in our response below. We note that some remedies are likely to prevent our business from surviving under the new regime for reasons such as the remedy prevents us from earning any revenue. This is an astonishing threat to our business, and the people who depend on our service – a very large proportion of the UK population, many of whom have little or no ability to recover losses from a non-fault accident without our free assistance on their behalf.

Whilst the CC have said they considered and decided against banning credit hire, we believe the CC should revisit the reasoning behind its Remedies 1A and 1B, because the unintended consequences of many of the proposed remedies will destroy our credit hire sector and make our business model unviable commercially.

6.2 Broader Economic Points

Quindell are confused by the approach of the enquiry in that if the focus was simply to reduce premiums for consumers, there are far worse inefficiencies within the motor insurance market than the separation of cost liability and cost control in servicing consumers' mobility needs.

For example, consumers who pay premiums on instalments are often charged 15% – 20% interest for the luxury of this option. When we note the average price of a motor policy according to the CC is £440 a year, then this instalment plan costs motorists, say £40 a year. This is many times the alleged detriment of up to £8 under AEC1. Why this special treatment against our sector, and no evaluation of the benefits we provide, to potentially millions of UK motorists and their families.

Interestingly, although many insurers are owned by banks, they outsource the funding and no doubt receive a kick back/commission/rent from the service. The bill for the consumer per annum is far higher than the consumer detriment brought about by providing mobility after an accident.

We note that simply telephoning an insurer will cost the consumer money – many operate 0844 or other premium numbers, create IVR calls systems where especially third parties are left queuing for many minutes at a time. It does not take long to accrue £4 worth of call charges.

The point of our comments above is it is strange that the CC has embarked on a major investigation where all it has found is a so-called £8 detriment under AEC1, which we believe does not exist, and with proper and better evaluation, the CC's work would show a result much smaller, close to zero. If follows that any CC remedies cannot exceed this cost, for any motorists. Otherwise, the remedy must be disproportionate to the problem the CC has identified.

We believe our Credit Hire sector really is doing a very good job for millions of people across the UK. We provide our service free to these customers, when needed. Our practices have developed with the insurers' co-operation. All of this is not properly recognised in the CC's analysis leading up to the remedies notice.

Quindell will only comment on the remedies where it is materially involved in the market. As such these replies are limited to the first two theories of harm contained within the Notice of Possible Remedies – Theory of Harm 1: Separation of cost liability and cost control and Theory of Harm 2: Possible under provision of service to those involved in accidents. Additionally, we will be commenting upon Remedy A: Measures to improve claimants' understanding of their legal entitlements.

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

We have provisionally found under theories of harm 1 and 2 that consumers have a poor understanding of their legal entitlements following an accident. This affects how they are able to enforce their legal entitlements under both tort law and their own insurance policy.

The aim of this informational remedy would be to give claimants a better understanding of their entitlements under their own insurance policy and their entitlements that arise through tort law. This remedy would support the measures we have proposed under theories of harm 1 and 2—it would ensure that claimants take into account what entitlements they have when making claims under tort law (theory of harm 1) and would enable at-fault and non-fault claimants to recognize better when they are provided with a level of service that does not meet their entitlements (theory of harm 2).

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:

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);

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;
when a claimant is entitled to choose their own repairer and whether this affects their liability to pay an excess; and
what a claimant's contractual rights are if the claimant is unsatisfied with the repairs carried out.
We would expect to implement this remedy through an enforcement order directed at motor insurers and other parties who may receive the first notification of loss following an accident (for example, CMCs and brokers).
We are also considering making a recommendation that a small number of questions on the legal entitlements of at-fault and non-fault claimants in relation to insurance claims following an accident should be included in the driving theory test.

Quindell broadly welcomes this remedy. The CC is right to conclude that consumer making motor insurance claims only once every seven years are not aware of their rights both under the terms of the motor insurance policy or in common law. This is precisely why the credit hire market has evolved over the past 25 years to provide that very assistance and to stand up for the consumer to ensure they get treated fairly in their hour of need. In acknowledging that consumers have little knowledge of their entitlements it is surprising that many of the remedies found in this notice seeks to dismantle the very structure that has evolved to protect consumer rights. The fact remains that law evolves over time and any notices provided to consumers may soon be out of date, not understood masked by creative marketing to steer the consumer away from those rights – There is only one way to protect consumer rights in the aftermath of an accident, and that is with strong, expert representation, which is already provided by the credit hire market.

If this remedy is to work, careful consideration of how to ensure the consumer has read, or listened to the message, understood the same (remember after an accident the consumer is already stressed and inconvenienced) and is able to make the right decision. Just having a message on a website or a script read out by a call centre operative if unlikely to ensure the consumer is protected sufficiently so as not to require someone representing their interest.

If the remedy is to be created to reflect consumer's current rights, it MUST be written and periodically reviewed by an independent body, which has sufficient grasp of the law as it stands today and no vested interest in the decision the consumer makes. In that regard, Quindell would recommend that the Law Society would be the most appropriate body to take accountability for this remedy.

The CC need to be reminded that insurers and the ABI have a direct conflict of interest with post-accident consumer rights. Whilst it is acknowledged that insurers and the ABI represent 'consumers' in their protection of society, the individual consumer rights are not their focus. Leaving the consumer to deal directly with the insurer is a David v Goliath battle. If insurers had or do represent the interests of motorist after accidents, there would never have been the necessity of the market development to protect consumer detriment.

What information should be provided to consumers?

We would suggest that the following is provided;

- Explanation of rights following an accident;
- Entitlement to choose to use policy of insurance or not;
- Entitlement not to have to be forced to use your insurers own repair network;
- Disclosure as to whether OE/non-OE parts will be used in the repair of the vehicle;
- Disclosure of whether repair or replace repair strategy employed;
- Rights to be placed back in the same position as prior to accident in terms of loss of use (mobility);
- Rights to an equivalent vehicle as his own;
- Rights to have the vehicle delivered to home or work;
- Right to have the vehicle for the duration of repairs, even where there are parts delays and/or poor repairs requiring rework;
- Rights to rehabilitation (for driver and passengers), other medical treatment and compensation for losses, pain, suffering and loss of amenity;
- Publication and Disclosure of complaints ratio allowing the consumer to make informed decision as to whether he can trust his needs to the hands of the

provider;

- Information regarding any commissions being payable to whom, by whom for any work.

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?

So severe would be the consumer detriment if some of the remedies proposed are executed that providing absolute transparency of consumer rights and tracking the behaviours of insurers is critical. As stated earlier, even with such transparency, there is no guarantee the consumer will not be exploited, whereby their legal rights and/or interests are not delivered.

For these reasons, the communication needs to be thorough and regular so as to ensure all consumers have heard and understood the message. Remember, if you are only, on average, having a claim every seven years, any message provided at the time of buying a policy for the first time will be lost long before you are faced with the challenges following an accident.

As pointed out above, Quindell recommends these notices are written and monitored by an independent body who has no conflict of interest – The Law Society. A television and national newspaper campaign, a notice to be placed on insurer and broker websites, scripts written for use at both the sale of insurance products and FNOL.

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?

It should be drafted by an organisation that looks after the rights of the consumer. We would suggest the ABI is not impartial or objective, and should not draft the proposed documentation/statement. We would propose that the Law Society generates the documentation.

To have the effect the CC desires, the notices have to be thorough and regularly updated as stated above, both at the time the policy is sold and in the event of a claim. The compliance with this approach to ensure the consumer is being given the choice he is entitled to is also critical.

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

Consumer rights after accidents are not very well understood, especially in the case of a claim where the customer is at fault. This is due to that customer receiving very little representation. It may highlight to consumers that they do not have to have their car repaired at their own insurer's chosen garage, or not have non-OE parts or repaired parts fitted to their car, which could increase repair costs. This change could lead to serious disruption of the existing processes driving consumers to manage their own claims, materially adding to insurers costs, which will likely lead to an increase in insurance premiums.

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

The law around both contracts of insurance and common law tort are extremely complex, having evolved over many years. Whilst through the Financial Services Ombudsman, insurers have been forced over the past decade or so to ensure consumers understand their rights, just look at recent challenges surrounding add-on insurance products such as PPI to understand how consumers can be exploited, even where there are apparent high levels of regulation. Where insurers are responsible for providing information, the CC needs to query whether they could use it to increase the chance of capture and then under-provide service to the policyholders. Who would audit and ensure compliance with the remedy?

How would this remedy best be monitored, particularly in relation to a statement of rights at the first notification of loss?

If insurers were treating their customers fairly, the claimant market would never have

developed in the way it has – weakening that market would expose consumers. As such an independent body to audit compliance, with no conflicting interests. In other words, the ABI cannot be the body responsible for compliance. Either the Law Society of the FCA should have this role.

How much would it cost to implement this remedy?

The challenge for such a remedy is ensuring it is still updated and relevant as well as ensuring that it does what was intended, and companies are compliant. Quindell does not know what this would cost.

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

Without seeing the scope of the enforcement order, it is difficult to comment but we can see no reason for it not to be sufficient.

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?

Notwithstanding the fact that Quindell believe the CC's investigation (so far) has arrived at the wrong conclusion in terms of AEC, and even if there was an AEC it is so immaterial no remedies should be necessary and even so, those remedies are likely to have unintended consequences and damage consumer benefits which exist today, introducing this remedy on its own, if properly enforced, complied with and monitored is likely to drive up consumer use of the supply chain outside the control of insurers – thus the overall claims cost in the market will increase. However, introducing this remedy should be a must for the enquiry – consumers should be aware of their legal rights after accidents. It just conflicts with the CC's desire to reduce insurance premiums for consumers.

Would the additional measure set out in paragraph 20 ["recommendation that a small number of questions on the legal entitlements of at-fault and non-fault claimants in relation to insurance claims following an accident should be included in the driving

theory test"] be likely to be effective in enhancing consumers' understanding of their legal entitlements?

We do not believe so. This type of information is rarely remembered in the immediate event of a traumatic road traffic accident.

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

We set out in paragraphs 24 to 64 those remedies which we believe most likely to be effective and which we are therefore minded to consider further (either on their own or in combination with other remedies).

We then set out in paragraphs 66 to 71 those remedies which we believe are not likely to be effective and which, therefore, we are not minded to consider further.

8. Remedy 1A: First party insurance for replacement cars

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 policyholder's own insurer in the event of an accident, whether the policyholder is at fault or not.

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.

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.

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.

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.

Firstly, Quindell wish to raise concerns over the principles of law whereby a party damaged by the negligence of others is in their right to be put back in the position they were in, prior to the incident. Of course changing law and removing consumer rights would undoubtedly remove cost.

The principle of this remedy is passing the cost to those who think they will need the service before the event, rather than incurring the cost after the event. It is probably true, in theory that if someone takes out insurance prior to an event and shares that cost and risk with other policyholders, who are similar both in terms of needs and risk, the overall cost burden shared between those parties should be lower. The concern here is that consumers who do not tend to have accidents, who are then exposed to another driver's negligent/poor driving, could be left with severe hardship in terms of day to day living (taking children to school, travelling to and from work etc) through no fault of their own save for the fact that they choose not to take before the event cover out. The decision at the time of taking out motor insurance is based on price, not cover or service.

As the intention of any remedy is to put right the AEC, the cost of the alternative needs to be considered very carefully and also whether both economically and logistically the remedy is viable.

From research that Quindell has conducted the cost of replacement vehicle cover, not even on a like for like basis, is today priced at c. £30 per policy. As the AEC established by the enquiry is only £6 – 8 per policyholder (& significantly lower at c. £4 per policy when looking at consumer detriment as stated earlier in this document), we struggle to see how this solution is (1) in the interests of consumers and (2) a cost effective and proportionate remedy.

Notwithstanding this economic challenge, if cover was taken up by all policyholders and a claim made whether the customer was fault or not at fault, Quindell very much doubt the rental market would have sufficient capacity to manage the demand. Vehicle manufacturers do not release sufficient volume of new vehicles to the rental market to protect the used car prices, which would be driven down by a growing number of 6 – 12 month old ex-rental vehicles flooding the market – the consequences of the same would be to make the selling of new cars reduce as nearly new cars became much cheaper. Additionally, another consequence would be to drive down the cost of nearly new cars owned by the general public.

Finally, we are incredulous that in one breath the enquiry is critical of add on policy sales, and for good reason, yet in the same breath, as a suggested remedy, more add on products would be offered to consumers in lieu of their legal entitlement.

We also find it remarkable that, whilst everyone knows the real cost drivers in insurance is mainly personal injury claims, which of course has been tackled through LASPO, and that the enquiry has discounted the introduction of a first party system in the UK that consideration is being given to a first party model just for mobility – is it that the CC fail to understand the very real impacts to consumers, who no fault of their own would be left without mobility and the impact that would have on their daily lives? Connected to this point is the CC's conclusion as to why the introduction of first party insurance system offers concerns.

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.

How can the CC consider a first party model for mobility alone if the broader remedy is not seen as 'practicable' as it would not be consistent with the RTA 1988 and EU Directive? We also note the language used by the CC about the rights of consumers being enshrined!

What aspects of the law would need to be changed?

Whilst Quindell agrees with the CC that a change in law would be necessary, it is not able to fully articulate what those changes would be due to the complexity of the Road Traffic Act, 1988, EU Directive relating to insurance against civil liability in respect of the use of motor vehicles and the development of common law associated with Tort law; Quindell question the proportionality and the risk of unintended consequences with this remedy. The phrase 'sledgehammer to crack a nut' comes to

our mind.

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

At point of insurance renewal, we would foresee customers being made aware that they have no right to a replacement vehicle (in the event of an accident). The choice would be given at that point. It may be that other companies set up to offer "add on" products of courtesy or like for like hire, and that the option to sell is not only provided to the underwriting insurer for the main motor indemnity policy.

We are unsure how the consumer is protected from making the wrong decision at the time of renewing insurance, leaving them, in the future after an accident, without their needs being addressed. If that happens on a large scale, the CC will see this remedy lead to hardship cases, and complaints to the Ombudsman. The CC should try to estimate these potentially serious detrimental effects from this remedy, if it is minded to take it further.

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 calculate that the costs of the policies will be **more expensive** than the calculated detriment from the credit hire regime of up to £8 a policy (which we do not agree has been calculated correctly, and may not even exist for reasons given above).

Currently these policies are sold for between £20 and £40, but the true underwriting cost is masked. This is because the frequency of customers who have bought the policy and then claim on it is reduced as insurers, in the event of a non fault claim being reported, provide the mobility for free through a credit hire company. We will respond below to each suggested policy.

No car cover

This is simple to calculate. No cover has no supplier cost and no indemnity cost to whichever company is insuring. As a result the consumer would not pay any cost. Of course the consequences of this are that the consumers who make this choice are left without mobility (i.e. replacement car in their hour of need), even through no fault of their own. That is quite a negative impact from the CC's remedy, which many consumers might never realise until they are in this non-insured victim category. Their only alternative would be to source and incur the cost of the vehicle themselves at 'Basic Hire Rates', the consumer not being availed of the opportunity to secure direct hire rates themselves.

Courtesy car cover

Assuming an average duration, or capped duration of 14 days, and using the direct hire rates quoted by the enquiry, the supplier cost is simple to calculate. However the rates quoted as direct hire rates do not include insurance, or delivery and collection (as the credit hire and GTA rates quoted do). We have, therefore, added insurance at a cost of just under £4 per day.

We would expect the underwriting cost to depend on the frequency that insurers or brokers have to pay for a courtesy car. Currently insurers offset the cost by forcing garages to provide courtesy cars, which they use to satisfy any claims on a courtesy car policy that has been sold.

The cost of these vehicles is being incurred somewhere – garages will recoup the cost in labour rates, which in turn increases repair costs.

However, even if insurers are able to force garages to provide 60% of the cars required for "free", we still calculate the underwriting policy cost would be over £13 a policy. This too outweighs the CC's alleged detriment under AEC1.

Like for Like cover

We calculate that the costs of such policies would start at over £50. The table below

provides our method for calculating the underwriting costs associated with the courtesy cover and the like for like cover.

Insurance policy for replacement cars

Courtesy Car daily cost	£13.80
Like for like daily cost	£25.00
Daily insurance cost	£3.88
Mark up	10%
Hire durations (days)	18

Options	RTA Frequency	Claim Frequency	Supplier cost	Cost to consumer
No Policy	12%	0%	£0.00	£0.00
Courtesy Car	12%	40%	£273.24	£13.12
Like for like	12%	99%	£571.82	£67.93

In summary, we are against this remedy due to both the erosion of consumer rights and also to the economic model not appearing to work.

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?

They would be subject to the same policy limits of their own cover. However, insurance excess may still be deemed as recoverable by ULR. This may lead to people taking higher and higher excess levels out. Would 'loss of use' still be recoverable? If it is, the CC would need to seek ways of avoiding this head of loss being used as an alternative way to recover mobility claims.

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?

This remedy is likely to remove any scope for provision of replacement cars on a credit hire basis. Competition for the supply of TRVs would likely be much weaker with a consequential reduction in the quality of service. Credit hire would not be recoverable and would therefore stop being provided.

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?

This would depend on how long the car was underwritten to be provided for. If the policy only provided say 14 days cover, and the at-fault insurer was repairing the car, we can foresee pressure and customer challenge if repairs take longer than the 14 days. Increased communication to the hirer would add cost to the insurer and the third party insurer in having to provide updates that are currently provided by the credit hire companies. Insurers would incur significant cost assessing the customer need for the vehicle, monitoring repairs and making decisions as to how long the customer is entitled to the replacement car for – All these activities are currently managed and embedded in processes and software solutions at credit hire operators.

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

The remedy is likely to change the current market functioning significantly and as such, would probably lead to unintended (and not yet understood) consequences. We would expect take up of the type of policies to migrate to courtesy car cover, which may lead to an **insufficient volume of group A** cars to be available in the UK to service demand.

How would insurers deal with consumers confused **who didn't buy a policy** and have a non fault claim and demand mobility? What about disabled individuals? This may give rise to an increased amount of loss of earning claims as mobility is not provided, leaving the consumer unable to attend work or take children to school. This could be a concern specifically in the self employed, commercial market.

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

As we understand it, primary legislative change would be necessary if consumers' rights through tort law were to be removed. Careful planning would be necessary to ensure that any change did not disrupt other areas of law, which have evolved over time to protect consumer rights.

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

As we understand it, not only primary legislative change to reduce consumers' rights but also a mechanism put in place to make it mandatory for insurers to offer cover. The risk would be that insurers, if no longer faced with the risk of picking up the hire bill, would simply choose not to offer any cover or service for mobility, or price it in a way which makes it uneconomical to take such cover. How does the CC expect to protect the consumer from that outcome?

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

This remedy would give at-fault insurers first option to handle either the whole of a non-fault claim or only the replacement car part of a non-fault claim.

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).

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.

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.

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 underprovision to the non-fault claimant, as the at-fault insurer is incentivized to minimize the cost of the claim.

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.

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.

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.

Quindell's position is that this remedy is complex and the devil is in the detail of how it would work in practice. The fundamental risk of this remedy is exposing the Claimant, who has just been involved in an accident to potential ping pong between the chosen provider of service and another party (a party he has no relationship with) – offers of service may not be consistent.

How long would the Claimant need wait before electing to use his own rental provider?

How would the Claimant be protected from under provision both before taking the replacement vehicle and during the use of the vehicle? Once the insurer has control of the mobility, what would stop them off hiring earlier than the consumer's needs have been fulfilled?

What if the Claimant or his representatives are unable to locate the details for the other party's insurers? The delay factors can be serious for the affected party.

What if, when trying to contact the other party's insurers there is a lengthy, both time consuming and costly, call queue? These calls will increase the claimant's costs.

Would the at fault insurer be expected to confirm their offer in writing?

What if the offer was unclear, or other expenses were to be incurred which the Claimant was not previously exposed to?

Who would be able to advise the Claimant in terms of the offers received?

Would the Claimant be able to claim for loss of use in lieu of taking a mobility solution?

In the absence of credit hire as an option, (i.e. a free charge one-stop shop for non-fault claimants to recover their losses and get mobility), what stops insurers no

longer offering to provide replacement vehicles – over time, the market for credit hire would erode and insurers would lose the incentive to provide the replacement vehicles – through their own omission and as found by the CC, the only reason mobility is offered is to stop the cost of someone else providing the vehicle. Weaken the market that provides the service to consumers, to protect consumers' rights and you will change the balance – The CC need to careful think about what the market will look like post this remedy and how consumers would continue to receive a service for mobility.

a. Which of the variants in paragraphs 38 [the non-fault claimant can choose between offers ("Variant 2")] and 39 [the non-fault claimant is obliged to accept the at-fault insurer's offer ("Variant 1")] 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?

When asked which of the variants are likely to most effective – At reducing cost or removing consumer rights?

Our understanding is that the variant described in paragraph 38 would be implemented together with the measures described in paragraph 41, i.e. with the at-fault insurer setting what level of costs the claimant could recover. As explained above, the combination of the two could easily lead to an outcome where non-fault drivers always choose the at-fault insurer's offer. That reality leaves no opportunity for credit hire operators to benefit a wide consumer base, that gets their service, in the event of non-fault accidents for free. As said before, the CC seems to have missed this clear and valuable benefit from its understanding of what our sector does, and why it became necessary over the past 20 years

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)?

See above – the at-fault insurer would have incentives to provide **as low quality as possible** and, in the long run, not to provide replacement cars at all. Remedy 2A refers to repairs only; therefore it would not ensure quality of the replacement car. It is bizarre that the CC is considering replacing competition with a regulated monopoly.

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

They would have no such right under Variant 1. They may not be offered credit hire under Variant 2 if credit hire economics are undermined. We are concerned that from our own data, we do not see insurers generally making quick decisions into admitting liability. What would happen to the motorist whose car is un-driveable, and needs mobility but has to wait for the third party insurer to make an offer?

The CC needs to estimate the numbers of people harmed by its remedy option, as for example noted above. We don't think they will thank the CC for putting them to serious loss in the event of non-fault accidents, and finding there is no free or low cost solution. Indeed, if they find their at-fault insurer refuses their claim, they have nowhere to go – this can happen to people with 3rd party cover. For those with comprehensive cover, they might find the at-fault insurer disputes the claim?

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?*

It is likely to be very inconvenient. Speed of provision of the TRV is very important for victims. A hassle free process is also important. On un-driveable cases we would suggest that an offer needs to be made immediately by the third party insurer, and on driveable claims, within three working days.

We believe the CC needs to estimate the cost of these delays on customers for several years, assuming it follows through with this remedy idea.

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 highlights a problem with the remedy which is that it risks **impeding** a consumer receiving the service he/she wants from a willing provider. Why should the consumer who has done nothing wrong wait for the wrongdoer's insurer to consider whether to assist him? We think it grossly unfair to make the not at fault consumer do all the work to put himself back in to the position he was prior to the accident. CMCs provide exceptionally good FNOL solutions to insurers and brokers currently. The margin from providing various services, like mobility assists in the costing of the service, keeping costs for the insurer or broker down. It remains to be seen whether CMC's would take FNOL if these remedies were introduced.

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?*

Would the underwriting insurer be concerned that by having to offer their policyholder to the at fault insurer for mobility that they lose control of repairs, and in turn their customers claims experience? Many insurers focus heavily on the customer experience as a selling point of ensuring they renew with them not just on price. It also seems crass that a consumer who has made a choice about who to take insurance cover from (perhaps avoiding certain brands due to a previous poor experience) is faced with having being forced down a route to use another brand. In addition, if the repair was conducted by one party and the mobility by another, the risks are that, where delays incur, the party providing

mobility may immediate cease the supply leaving the customer without any service. The two parties supply parties would undoubtedly have frictional disputes as to who should carry the costs in such circumstances.

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

Yes, see above. Who would police to ensure the same standard of vehicle was being provided. What would stop the at fault insurer providing the car for a few days and recalling it? What would happen if the not at fault customer disputed the repair quality or total loss valuation and wanted to remain in the hire car – who would make that decision and how would the Claimant gain redress?

The CC should not forget that the at fault insurer has no contractual or any other relationship with the third party. Their only desire is to settle the damages claim at the lowest cost. Providing the at fault insurers with a monopoly on the supply of services to accident victims is draconian. At fault insurer intervention has been criticised by both the courts (COA – Copley v Lawn) and law society. A consumer's freedom of choice is something which must be preserved. The protection for the at fault insurer is already enshrined in common law – The Claimant must act reasonably and mitigate his loss.

If not said clearly already, this remedy would lead to the destruction of the Credit Hire sector, which accounts for some £700 million turnover. This would be a permanent loss, which will not easily be resurrected once this remedy has been implemented.

Consumers with the least ability to fight insurers, or have say 3rd party cover, could find the at-fault insurer rejecting their claims, or leaving them in deadlock. No-one in these situations will assist, and hiring an alternative car would be prohibitive.

What would happen to uninsured losses being recoverable, once credit Hire businesses are destroyed, because of this remedy?

All these detriments require close attention by the CC's decision makers, and we need to be fully engaged in this very important analysis. The CC cannot do this job behind closed doors, and needs to be absolutely fair because, as we note, the future of a sector with some £700 m turnover is under threat. And all this is because of an alleged detriment under AEC1 of up to £8 a policy. We would argue that the value of the service we provide to around half a million claimants each year, massively outweighs this potential costs

Perhaps the CC can see our cost up to £8 a policy as very good value for money to the 24 million drivers, who have a viable means of recovering their losses, as no cost, in the event of a non-fault accident. In other words, our sector exists in the public interest, and the CC's measures need to protect our future, Already we note the CC has accepted that we do not make excess profits. We also serve all the insurers and brokers – this can only be because what we do is done well.

Perhaps the CC might like to visit our offices in this next stage of the investigation to properly understand what we do, and our value to the public across the UK.

g. *How might this remedy be circumvented? How could this circumvention be avoided?*

We foresee serious challenges implementing this remedy. Not least how do the CC see monitoring the effectiveness of the remedy and the compliance with the enforcement orders? Once rules are built in to the remedy (e.g. how long should the consumer and/or their representatives hold on a telephone before giving up reporting the claim to the at fault insurer? Or How long should the consumer wait for the at fault insurer to make a decision?), policing adherence to the rules will be onerous on all parties and we foresee, if these remedies were introduced, satellite litigation on whether either party complied. As such, we see circumvention as something which is rife due to the difficulties flagged above.

h. *How should insurers, brokers and CMCs be monitored to ensure that claimants 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 highlights the problems with the remedy. Currently, there is a race for the consumer, which benefits the consumer. This is a competitive process that keeps all players on their toes – that optimum situation will disappear with the landscape tilted in favour of the insurer, and against the consumer. That does not make sense to us. The CC instead proposes to put in place a process that would need to be regulated/monitored. The CC is creating frictional costs in its own remedy, for no apparent betterment of the current status quo?

We note the CC does not mention CHCs in this comment – so we assume it anticipates this remedy will lead to our destruction. If this is so, we wish it made this apparent in the text of its provisional findings. Clearly it is a matter of concern.

What would stop an at fault insurer under stating their direct hire rates to disrupt the service offering to the consumer, only to provide a sub standard service?

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

If this remedy was to be considered further, very carefully planning would be necessary for the CC to understand the impact both economically and through the service provision so as to avoid any unintended consequences. It is our view that it would require primary legislative change due to the disruption of consumer's right to choose and the necessary framework to monitor adherence.

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

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. 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) 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;

(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

(c) an allowance for administrative costs.

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 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.

b. 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 undertaking 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.

We would suggest making the GTA mandatory, or setting up a GTA2 scheme. We would remind the CC that our observations of the direct hire rates quoted in table 6 of the provisional findings are that they do not include insurance or delivery and collection.

Furthermore the rates offered by insurers tend to be provided by one main rental company. That company has a history of offering **low/break even direct hire rates** to build a supplier relationship with insurers to allow it a better position to pitch for non fault work.

In addition, many of the rates are offered, with the insurer's agreement that the rental company is allowed to up sell additional insurance waivers and products.

The rates would have to be on a like for like basis to the core product credit hire provides – unlimited duration (subject to need ongoing and no failure to mitigate), insurance as comprehensive with a £50 excess and delivery and collection included.

Effectively, therefore, the CC is allowing such strategic tactics (e.g. low-balling quotes) to go into its thinking to decide on remedies that damage our business sector directly. There seems fault in this process, as we have tried to note again, at the beginning of this document.

c. *Which parties should be covered by this remedy?*

All providers of mobility / credit hire.

d. *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 current GTA framework has clear guidance on the requirements to instruct engineers and for repair control over durations. There has been no insurer challenge over the principles of the GTA on durational framework since 2005 – so we would suggest that the competition commission uses this as the framework.

Indeed the commission has stated that no durational differences occur (or have been taken into account between direct hire and credit hire) – as such the GTA framework should be acceptable and the market is operating correctly.

The CC is reminded that on the GTA Technical Committee there are 6 representatives of insurers and 6 representatives of CHCs. There is also an independent Chairman and Secretary.

In setting rates, or making changes, or settling disputes the committee discuss and resolve, or seek intervention from the independent chairman. The committee therefore works well, in the same way the MOJ Portal Board works,

ensuring their due balance, proportionately and fairness in decisions made, such as rate setting.

It should be noted that since the creation of the GTA Technical Committee, each year a rate review occurs. Evidence on rates is produced and papers submitted to the independent chair. Negotiations take place, balancing the position of insurers and CHCs and if not agreement reached, the rates are set by the independent Chairman.

We would also again remind the CC that audits were considered by the Technical Committee in 2011. Anonymous pilot audits were conducted by an independent firm on 6 CHCs to establish the degree of compliance with the GTA. All the CHCs who were audited were confirmed as generally complying, or making reasonable efforts to comply. It was decided by insurers not to pursue audits further.

e. *What is the most appropriate mechanism for setting hire rates for replacement cars? Who should determine the hire rates?*

We believe the current arrangements contained within the GTA today, as stated above, where evidence based negotiations take place are already sufficient in setting reasonable rates.

f. *What administrative costs should be allowed? At what level should administrative costs be capped?*

It is not clear whether “administrative costs” refers to “credit charges”. If so, it mischaracterises the additional costs of credit hire companies. The CHO has previously pointed out that the direct hire and credit hire business models are different, e.g. CHCs assess liability while direct hire providers do not. As such, if the cap is determined with reference to direct hire rates, an additional percentage to cover credit charges is insufficient; allowance for the other value-added elements should be made.

The GTA as structured today allows an administration charge of £36 per hire.

This is insufficient to cover all the costs associated with providing the service (which includes making decisions when to hire after consideration of liability, what vehicle to hire to ensure need and mitigation has been assessed and monitoring to ensure vehicle is only provided for the duration necessary.

g. *Is it practicable for the relevant documentation to be exchanged through a web portal rather than in paper form?*

Yes we believe that it is and it was Quindell who suggested the idea of creating a GTA portal. The rationale for doing so was that the friction that occurs is generally due to either liability disputes and/or disagreements over documentation and data. Having a portal will ensure all documentation and data is in one place and both parties will have access to the same claims data.

h. *What costs would the measures in this remedy entail?*

The GTA as it stands today requires funding (for the independent Chairman and Secretary and for the ABI for their offices for meetings and their services in collecting and banking fees. Unless any new mechanism was more onerous, we would have thought the current fee structure could remain.

i. *Would this remedy give rise to distortions or have any other unintended consequences?*

See above – if the daily hire rates are set too low not taking into account the cost of value-added services CHCs provide, it may make providing replacement cars on a credit hire basis non-viable.

We understand that direct hire rates fluctuate over time with the economic cycle as excess car stock may be put into use as direct hire. The volatility of direct hire rates would make it very hard to design this regulation or for credit hire companies to carry on their business.

If credit hire companies have the option of going to Court they may do so more often, increasing frictional costs.

How do you draw consumer comparisons between direct hire rates and the rates they would pay to hire a vehicle from a rental company?

j. 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?

Unless in some way the consumer was debarred from pursuing a claim for loss of use and/or taking receipt of a mobility solution we struggle to see how this remedy will avoid circumvention.

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

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)

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.

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)

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.

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.

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.

a. *What would be the most effective way of implementing this remedy?*

We are unsure whether it is possible this remedy is able to be implemented effectively. As observed by the CC 1D (a) and due to vertical integration, repairers could easily charge the insurer more and the insurer take the income elsewhere. Alternatively, as the remedy would only apply to subrogated claims, insurers could outsource their non fault repair claims to avoid the controls. Remedy 1D (b) seeks to overcome these potential challenges, although it does not avoid them. Insurers could still outsource, consumers will still have the choice to use their own repairer etc.

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

As mentioned above, variant (a) would be easy to circumvent. Variant (b) would remove competition between CMC's and insurers. It would also create a two tiered class system in terms of value from managing customer claims. If the rates were set too low it may make some smaller insurer models unviable due to them not being able to bargain with their supply chain at the level that they are able to recover.

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?*

No comment.

d. *Could this remedy be circumvented by insurers vertically integrating with repairers?*

Yes

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?*

It would be very difficult due to the sheer volume of different vehicle marques and models on the UK roads today. Each vehicle is different and whilst guides can assist, through Thatchams and Audatex, the unintended consequence is that those brands become monopolistic in their role in the repair process

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?*

No comments.

g. *What would be the costs of implementing this arrangement?*

No comments

h. *How would monitoring of this remedy work?*

No comments

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

No comments

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

No comments

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

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.

a. Would either variant of this remedy give rise to distortions or have any other unintended consequences?

Variant (a) would expose the consumer to again having to work through two organisations to have his claim settled. He does not have a contractual or any other relationship with the at fault insurer who would be under no duty of care to assist him or provide service as acceptable levels. Another risk would be that salvage does not get handled correctly – if the at fault insurer is expected to manage the process and delays, the consumer may be left to find his own solution. The risk being that the vehicle, which may be unsafe, being back on the UK roads.

Regarding Remedy 1E(a)

b. Would at-fault insurers be likely to take up the option of handling the salvage?

We suspect the at fault insurer would cherry pick the cases where they would gain the most benefit. The vehicle most seriously damaged, the ones which should never find themselves back on the UK roads would be most at risk at being left.

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

We do not believe the at fault insurer should be given this opportunity at all. If they are, the timing is crucial. The vehicle may be drivable and usable and indeed still in use. If too early, mobility needs will be created. If too late, a damaged vehicle will be left with the consumer causing inconvenience (i.e. parked on drive).

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?

It may have a material effect in reducing those incentives.

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)?

No comments to make.

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

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.

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.

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).

a. Could this remedy operate on a stand-alone basis?

Yes it could. We do however find it curious that the CC recognise the consumer generally has the right to a similar vehicle to his own and although the CC found

no evidence of oversupply and that mitigation statement already exist, why such a remedy is necessary and what the CC is seeking by its introduction? Very few disputes, leading to frictional cost occur in the market today over the type of vehicle supplied.

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

No comment.

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?*

The GTA provides for strict adherence to the current completion of a mitigation statement or questionnaire. Independent GTA audits of CHO's confirmed that they were being completed correctly and submitted. We would suggest that the current GTA mitigation statement is used as a good benchmark for success.

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 insurers or CMC's call records give rise to any data protection issues?*

Yes. Insurers have the right to refuse any claim and use a defence of failure to mitigate – either under the GTA or in common law. As such we do not see how this remedy is different from how the market operates today. We would be concerned that the at fault insurer, who has no contractual or other relationship with the Claimant, would be entitled to the call records, which could contain other information which could prejudice other elements of the claim, such as

personal injury.

e. *How much would it cost to implement this remedy*?

No comment other than to restate what was said above, that this already exists.

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

We would see more friction being created as another line of attached is opened up and encouraged, where at present there is very little friction. The consumer could also be interrogated about his vehicle use and need. If someone owns and uses a particular type of vehicle, that is his choice. If that vehicle is a sports, prestige or 4x4 type of vehicle it may be hard to justify 'need' per se. But the law is currently clear on this subject. If someone chooses to run a more expensive vehicle and that vehicle is damaged, he should reasonably be able to replace it with a similar vehicle. 'Need' in these circumstances could be challenging to define.

14. Remedy 1G: Prohibition of referral fees

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.
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.

a. Could this remedy operate on a stand-alone basis?

We do not believe that this remedy would be effective as a standalone measure. The Competition commission have already correctly accepted and identified that referral fees that go back to insurers and that this helps offset additional costs

that they incur.

By stopping these referrals being made it may be counter-productive to the consumer and reduce competition.

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?*

As per our response at 8a above, we do not see referral fees as a cause of any problems within the market. Referral fees, are a means for the supplier sharing the value created by providing the service or companies offering referral fees as an alternative to direct consumer advertising (TV, radio etc). In many sectors including the sale of insurance products, referral fees/commission is common practice. If there is logic in the CC considering prohibiting referral fees in the claims process, should they also consider whether those very same fees be prohibited in the sales process? Referral fee per se are not causing any harm, they simply redistribute value.

c. *What would be the impact on premiums if referral fees were prohibited?*

To the extent that insurers pass cost changes onto policyholders, we would expect the ban on referral fees to increase premiums (at least regarding the referral fees CHCs pay for referrals). The referral fee is a **marketing expenditure** for CHCs and is a source of revenue for insurers. If the referral fee is prohibited, CHCs will need to divert this cost to other marketing means (e.g. TV or online advertising) which are not sources of revenue on the insurers' accounts.

We also think the CC should recognise that referral fees help us get to customers, and they help the flow of regular work by building relationships with intermediaries. Referral fees, or commissions or customer acquisition costs occur in all well functioning markets to link suppliers to customers, using the services and skills of the intermediaries. If the CC has a better way for our Credit Hire sector to find our customers/clients in a more cost effective manner,

we would like to hear the alternative. But to prevent us from doing what happens in all sectors makes no sense, unless the CC is thinking of remedies to destroy our sector.

If our businesses lose large volumes of predictable business, we cannot enjoy economies of scale and may not be able to function efficiently. We hope our value is acknowledged in the next stage of this investigation so that measures are not enacted to cause our destruction. That will have an immediate consequence on millions of consumers around the UK. In those events, many consumers will be under the control of whatever rules are set by the insurers in dealing with them. I said above it will then be a David versus Goliath situation. If millions of consumers suffer over time the only option of the course will be to the ombudsman. That will impose further regulatory cost.

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?*

The remedy could reduce the provision of TRVs and / or increase premiums. It may force insurers to vertically integrate.

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?*

No comments

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

No information or comments to offer.