Vehicle Builders and Repairers Association Response to the Competition Commission's

'Notice of Possible Remedies'

with regard to their investigation of the

Private Motor Insurance Market

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1. The Vehicle Builders and Repairers Association (VBRA) is a long established Trade Association representing the views of Members engaged, *inter alia*, in Vehicle Crash Repair. VBRA has been pleased to submit evidence to the enquiry.

2. In this response we relate only to material damage issues and not those of personal injury. **We also reiterate our original contention that consumer detriment should not be measured only in terms of money – service and choice are equally important.**

3. Para 17. VBRA agrees there is a lack of understanding on the part of the policyholder in terms of his rights in the event he suffers a motor accident. Whilst in the final analysis it must be for the customer to learn and understand his rights **all contact points in the claims process who have a more detailed knowledge should bear the responsibility of making clear** what options, obstacles and opportunities he faces in the unfamiliar circumstances of having to claim either under his own or against third party's insurance

4. **It is our view that customer ignorance has been exploited over time**, particularly since the introduction of insurer 'approved repairer' schemes. Insurers have been able to exploit customer ignorance to their own ends by modifying tort law within policy cover by substituting contractual terms in place of tort law expectation – especially by directing a customer vehicle to the insurer's preferred repair centre.

5. We would point out at this juncture that current practice is for many insurers to use repair workshops quite remote from the customer. In the event of a problem with completed repairs it is likely the customer will need to expend much time (often having to take leave from work) and mileage to visit the repair site of his own volition 'after the event'. In line with our earlier contention this inconvenience is as much to the consumer's detriment as perceived monetary issues.

6. In recent years some insurers have made it a contractual requirement that damaged vehicles for their own policyholders be repaired at the facility of their own choosing rather than allowing the customer freedom of choice.

7. **In our view tort law should be the default position**.

8. We agree the customer deserves clear and unambiguous information about his rights and there should be emphatic warning if his tort law rights are compromised. **This information should be given at point of sale, in his policy and during any contact, written, verbal or electronic, with an insurer or CMC.**

9. We do not see insurers as being the ideal authority to devise such warnings/information but realistically they are the contact point at policy inception and claim with the greatest chance of imparting the message.

10. **We suggest that a standard wording, externally imposed**, should be utilised so that insurers cannot put their own 'marketing spin' on the message. Our simplistic view is that Tort Law should be the default and a brief explanation given followed by clear and unembellished statement by the insurer either that their policy wording:

a. Accepts the default position or
b. Replaces the default with a contractually different arrangement which removes, reduces or otherwise compromises customer choice or rights

11. It is our view that, in so far as it is practicable so to do, **the customer should actively signify he understands the choice he is making** if he accepts a policy that does compromise methodology or legal standing at the point of making a claim.

12. There is a risk that any such educational wording could become too long and too complex to be understood by the reader and therefore needs careful consideration.

13. Para 18. **We are firmly of the view that if an at fault insurer controls a third party claim against their policyholder they MUST NOT be allowed to impose on the not at fault motorist any restrictions** (e.g. on choice of repairer, types of or origin of parts to be used, restrictions on labour rates paid) **that they would impose upon their own customer**. This premise should hold true even where the at fault and the not at fault insurer are one and the same – there are a great many 'white labelled' policies in existence where the base underwriter is the same but the products are defined or identified by differing distribution channels.

14. We agree that at FNOL the customer should be reminded of his rights. FNOL will usually be via one of 3 routes:

- To the policyholders own insurer – this is where customer own damage is probably '*more specifically insured*'.
    - In this case the customer can be reminded they actively agreed (via the methodology proposed by us above) at inception or renewal to any modification of their tort law rights – which will manage expectations

- To a body repairer directly
    - The repairer can give general guidance on policyholder's rights but has no prior knowledge of the policy cover and in any event must be careful not to breach and FSA or MoJ regulations
    - If a repairer is approached with FNOL the insurer or other agency eventually dealing with the claim should not be allowed to over-ride the tacit choice of workshop the motorist has made. The policyholder's choice of repairer should be the default position.

- To an at fault insurer which may have the benefit to the motorist of avoiding the need to pay an excess
    - Great care has to be taken here that the at fault insurer does not take 'advantage' of the derived control and therefore we would suggest an 'agreed' mini script advising the customer of his rights

15. **Note:** whilst a policyholder must contractually inform his own insurer of an incident he can choose to pursue the at fault party directly without further interaction with or interference from his own insurer.

16. Para 21.

A Information should be available prominently at point of sale which the customer must, in our view, '*actively accept*' before proceeding further in the process (i.e. not a default that carrying on through the quotation process is a tacit acceptance).

B A number of routes here

i. Online: there would be an information screen to be actively accepted before going further in the process
ii. By telephone: a statement would need to be read by the call centre and the customer ask specifically if they understand (i.e. a specific question not just included in the preamble and the answer recorded)
iii. Broker or Agent's office: they do it on line anyway in most cases and the same question as in (ii) above should be asked and the answer recorded in the statement of facts as a reminder

C **The ABI** is an august professional body but **should not be allowed sole control of the wording**. There should be an external mechanism through a consumer body but we can see that this has the potential to increase cost not decrease it

D No comment

E An imposed wording should prevent circumvention

F No comment

G No comment

H No

I Yes – especially if adopting the expedient of customers having to actively 'accept' they understand any change to their tort law rights

17. Para 29 and 30. These appear to make an assumption that all policyholders are insured comprehensively. Third party policy covers would not provide indemnity for a policyholder's own damage and therefore we can see such insurers would be loath to supply greater cover to a temporary replacement vehicle than to the one originally insured – especially if such a restriction in cover has been made due to adverse underwriting criteria.

18. Introducing ***insured*** provision of replacement vehicles might, over time, have the effect of reducing the number of courtesy cars retained by repairers at insurers' insistence thereby reducing a significant overhead imposed upon many workshops potentially reflecting in lower charge out rates.

19. Para 35. Given that discerning motorists possibly choose an insurer on the basis of perceived service and price; adopting a position where such a motorist might be forced to put themselves in the hands of an insurer they would otherwise choose NOT to be associated with would be counterintuitive.

20. Pars 37 and 38. These would appear to introduce an additional layer of interaction and complication.

21. Para 39. VBRA is not in favour of the removal or restriction of choice for the non-fault claimant

22. Para 43d. The non-fault motorist has already been inconvenienced and should be able to choose who he wishes to deal with – which is likely to be a combination of his own insurer and his own choice of repairer. VBRA sees no need to introduce an additional level of complication into the process. In TOH1 the expectation is to reduce confusion and this would appear to introduce even more. In general the motorist who has caused the damage becomes an 'adversary' and by

association so does his insurer. We feel most motorists would probably not wish to deal with the adversary directly.

23. Para 45a. Where vehicles are 'safe' drivable as determined by a repairer it is reasonable they should remain in use pending workshop and parts availability. This is subject to **emergency repairs being freely allowed to take place as provided for in most motor policies** already (a rarely used provision and one which should not be subjected to huge oversight and control from insurers as full repairs are). **This could reduce replacement car duration and cost**.

24. Paras 52 and 53. This is not tenable. **We would anticipate that Retail Price Maintenance would be frowned upon by the CC**. This would seem to be precisely that process!

25. It would be difficult anyway to determine a 'standard price'. Every business is different with differing overheads which can reflect into their labour rate as might an additional and comforting level of Quality Control which it may impose on itself thereby marginally increasing their costs **but *to the customer's benefit***. A policyholder may make a choice of repairer on exactly these criteria – why should they compromise their good sense by the imposition of an artificial ceiling?

26. Reference to estimating systems is disingenuous in this circumstance. Whilst they can be a *guide* to repair times they **should not be setting rates, discounts on parts, paint index or the like**. The suggestion also **makes no allowance for *opinion time*** where, frequently, standard times are adjusted for individual circumstance *(i.e. there is no standard repair)*

27. Situations can also arise where a repair is completed through a motorist's own policy where there is a third party involved but where liability has yet to be established – how would this be catered for? The repair bill here will already have been settled creating the potential of an inability to recover it all?

28. Para 54. We reiterate that setting standard discounts and the paint index are an irrelevance – they are an artificial control method imposed by work providers to reduce costs and are themselves suspect – in many cases discounts are demanded where a discount has not been received from the parts supplier.

29. VBRA co-presented a separate detailed report on issues in the paint supply chain which, except in passing, has not been referred to in the CC interim report.

30. Sometimes it may be expedient to use non OEM parts (as detailed in some policies and therefore also modifying tort law?) but often these require additional work to make them fit and therefore time allowance should be higher, not 'equivalent'.

31. Para 55e – in our opinion NO

32. Para 55f. Price control is anti-competitive

33. Para 56. From the point of view of VBRA members it is the removal (promptly) from their premises that matters – repairers do not generally enter into the transaction on salvage disposal

34. Quality Issues

35. Paragraphs 72 to 79. These paragraphs relate to quality of repair and we comment as follows:

36. There is reference earlier to the use of estimating systems. Generally insurers, through mandating the use of such systems, limit the amount of time available (or for which they are prepared to pay). Typically 3 work units (18 minutes) are allowed for safety checks and Road Test. Depending upon the locations of workshops and the time of day it may not be possible to do more than a couple of miles in that designated time, nor to reach the required speeds sufficient to check properly. Sufficient (realistic) time should be allowed by insurers and paid for. Modern vehicles have complex electronics and require diagnostic checks before work starts and after it is completed. It is frequently difficult to obtain insurer agreement to carry these out; time and payment for these actions to be carried out are essential to the safety systems on the vehicle.

37. Yet again it is undue time pressure brought about by he who pays the bill which may contribute to perceived problems

38. Mention is made in the possible remedies of enforcing the use by workshops of PAS 125. As an example PAS requires the obtaining of a work method for each safety related repair. There is often no time allowance for sourcing the method and no [paid for] time allowed to read and interpret it. Sufficient time allowance , and payment, should be made for this element

39. PAS is specifically referred to in paragraph 78f. VBRA does not consider, and never has, that using PAS125 will produce a better, cheaper, faster or safer repair. PAS is an administrative 'paper-trail' system. What PAS did achieve was encouraging updating of equipment and formal training and assessment of technicians to ensure competence in all disciplines.
    a. The regime imposed by many insurers for PAS125 is that the BSI Kitemark audited version must be adopted – with consequent still higher audit costs for which no extra allowance is made in labour rates
    b. **We do not agree with any imposition of PAS 125**. Some VBRA members report to us that 'they make a reasonable living from putting right [some] repairs undertaken by PAS bodyshops'. This inevitably is 'hearsay' evidence, not empirically derived.
    c. PAS only dictates process it does not measure outcome and would therefore be flawed if viewed in current form as a quality process.
        i. Comment from Member on reading the draft of this response: *I just quickly opened the draft to take a peek, I intend to read more thoroughly later at home. Line 39 PAS: you refer to as 'hearsay'. I can produce two cases of extremely bad workmanship carried out by a PAS body shop in Xxxxxx if it helps. One was a Renault that had a front roof section fitted, the complaint was water ingress through the seams and glass. When investigated the bow panel that the outer roof skin was welded to was still bent to the extent that the screen would not sit flush in the aperture. A gap of 15mm was evident practically the full length of the upper screen. The PAS shop tried to fill the gap, the bonding sealant in places 15 – 18 mm thick. We had to remove the roof panel and start again. The second job was also very poor, the paint finish in the "B" post was full of dry spray and filler marks. Not to mention overspray on rubbers and trims. This was a two year old car. Incidentally I think from memory both vehicle were repaired at the same garage. I have images and estimates for the necessary rectification work required*
    d. We feel that a better use of resource would be the correct training of Vehicle Damage Assessors (estimators), including their use of the relevant estimating systems as appropriate to their business. We suggest that pencil and paper is a perfectly adequate estimating methodology so long as the underpinning knowledge is in place.

40. **VBRA carries out some random, *in repair*, checks** on customer vehicles during membership standards audits and auditors do not report any specific or consistent 'issues' arising. These checks could pick up on potential problems as these vehicles are at various, random, stages in

the repair process and could identify such things as correct identification of materials, usage of correct repair equipment, especially types of bonding used. In parallel with this the VBRA conciliation service deals with very few complaints on quality of repair – a situation which has been the case over the last 15+ years.

41. Regarding paragraph 78c we feel that if **Insurers or CMC's wish to**, themselves or through others, **audit for repair quality they must fund it themselves** which may reflect in higher premiums and should not become an additional unreimbursed cost imposed on repairers

42. Paragraph 76 relates to costs of additional audits. We suggest that an independent engineer's inspection, based on fees we incur through our conciliation service, can cost between £100 and £300 depending upon its purpose. Introducing compulsory safety inspections might also have the problem identifying 'hidden' repair activity that is not accessible due to cosmetic finishes being in place which would need to be damaged to gain access to the significant repair site. The corollary is that unless the finish is obviously slapdash there may be no reason for an engineer to imagine invisible damage; if this becomes so then great care and attention might be given to 'finish' and less attention paid to what cannot be easily viewed. VBRA are well placed to develop still further the carrying out of random audits of vehicles during repair and see this methodology as the only way to encourage constant ongoing quality control of work; it is too late once the work is completed.

43. Paragraph 77 relates to the publishing of 'league tables'. Whilst this could potentially work for insurance derived repairs it would not impinge on work undertaken by repairers working outside the insurer or CMC directed work arena – of whom there are many (for example an at fault insurer taking control of a claim and the customer using his own chosen repairer) - and if freedom of choice for the policyholder is to be upheld (and the inspection report undertaken by MSX seems to indicate that customer instructed repairs show a greater level of satisfaction with the repair). We can envisage in such a case that insurers might try to 'bend a claimants' will to using their own 'league tabled' workshop creating (as an unintended consequence) unfair trading between businesses
    a. An unintended consequence of using such league tables on PCWs could be that those quoting the cheapest premiums would be even more draconian in their approach to repair costs as there is an extra cost to absorb to retain their hierarchical position in the premium tables. Those regularly appearing as cheap are often those who pay the lowest repair labour rates and the knock on effect could exacerbate what the report perceives already to be a problem.
    b. It is important that matters of quality be viewed in context of the perceived and real problem – if that can be measured. In some other EC countries it is recognised that after an accident repair the vehicle can never be exactly the same as it was before (mass manufacturing processes cannot be replicated in the aftermarket workshop) by way of a 'diminution in value' payment recognising that resale values may be lower as a result. This has never been a factor in UK claims settlements and would undoubtedly, if introduced as a concept, increase premiums payable.

44. VBRA may wish to comment on other aspects of the interim report and remedies notice and if so will do so in due course.

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Director General