

WNS's Comments on the Notice of Possible Remedies issued by the CC on 17 December 2013

Introduction

1. WNS is involved in all aspects of Claims Management. As such, a number of the proposed remedies are not directly relevant to WNS and its activities. The comments below relate to those remedies which appear to relate to the activities of Claims Management Companies.
2. The first provisional finding, set out in paragraph 6 of the Notice of Possible Remedies, refers to "various practices and conduct of other parties managing such claims which...give rise to an inefficient supply chain involving excessive frictional and transactional costs".
3. In the Appendices to the Provisional Findings Report (page A6(1) – 29, paragraph 77), the CC states that "Despite the significant frictional costs incurred by at-fault insurers, it appears that, overall, they achieve significant costs savings from challenging credit hire bills." The CC then goes on to say that the average costs saving on a GTA claim is 12% whilst the average costs saving on a non-GTA claim is 39% (see paragraph 79 on page A6(1) – 30 of the Appendices to the Provisional Findings Report).
4. Annex C to the Appendices to the Provisional Findings Report shows that frictional costs incurred by insurers accounted for 10% of the average credit hire bill in 2012. This percentage is less than the average percentage costs savings made by insurers from challenging credit hire bills (see paragraph 3 above). The CC states that the costs savings are partially offset by late payment penalties under the GTA, but the CC only quotes evidence from one insurer in relation to this matter (see paragraph 80 on page A6(1) – 30 of the Appendices to the Provisional Finding Report). There is nothing in Appendix 6.2 to suggest that insurers incurred significant frictional costs in dealing with credit repair bills. Accordingly, the CC needs either to modify its first provisional finding by removing references to excessive frictional costs or demonstrate, by reference to credible evidence, that excessive frictional costs do, in fact, contribute to the AEC.

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

1. WNS is supportive of the principle of this remedy, namely to increase claimants' awareness and understanding of their legal entitlements.
2. A road traffic accident is often a traumatic experience for a claimant. The reporting of an accident to insurers or CMCs is often carried out from the roadside, with the claimant trying to advise his/her insurer or a CMC of some basic facts about the accident whilst also dealing with third parties present at the accident scene such as the other driver, the police, ambulance staff and recovery trucks. WNS is not convinced that a claimant, when he/she makes the first notification of loss following

an accident, will necessarily be receptive to a good deal of information about his/her legal entitlements. The claimant is more interested in having his/her car recovered, repaired and being made mobile as soon as possible. If the insurer or CMC reads out a long script setting out the claimant's legal entitlements at the first notification of loss, how much of that script is likely to be remembered and/or understood by the claimant at that point, and is it appropriate to require the claimant to listen to such a notice at a time of trauma?

3. If insurers and CMCs were required to give out information about legal entitlements at the first notification of loss, this would have an impact on the cost of handling the claim. This cost needs to be quantified before the CC can determine whether this element of the proposed remedy is both reasonable and proportionate. There would also be a cost associated with any monitoring designed to ensure that all CMCs and all insurers abide by their obligations to give out the required information to claimants.
4. WNS agrees with the CC's suggestion that the policyholder's legal entitlements in the event of an accident should be set out with appropriate prominence in the annual insurance policy documentation. One format could be to put this information into a separate leaflet included with the annual insurance policy documentation. Such a leaflet could then readily be amended in the event any changes in the law occurred which affected a policyholder's legal entitlements.
5. WNS also agrees that the information to be provided to policyholders should include information on the policyholder's rights in the event a vehicle is not repaired correctly by the initial repairer. It may make sense to include this information in a separate leaflet provided with the annual policy documentation – such a format would make it easier for policyholder's to identify where to look for this information.
6. WNS believes that the wording to be used to explain a policyholder's legal entitlements in the event of an accident and in the event a vehicle is not repaired correctly by the initial repairer, should be standardised wording agreed with the ABI and the CHO.

Remedy 1A: First party insurance for replacement cars

1. WNS remains to be convinced that this proposed remedy would have a positive impact for policyholders, in practice. Policyholders would be required to give up their current entitlement under tort law and pay an additional cost to bring their entitlement back up to their current entitlement under tort law.
2. There is a risk that many policyholders, given the choice, will decline to take out additional cover to provide for a replacement car in the event of an accident, leading to an underprovision of insurance cover.
3. From a proportionality perspective, the CC surely needs to be convinced that this remedy would not lead to increased premiums. No evidence has been produced by the CC to demonstrate what effect this remedy would have on insurance premiums and whether any reduction in premium brought about by this remedy would be

greater than the cost of purchasing the proposed add-on cover – both for policyholders who choose a lower level of cover and for policyholders who choose a level of cover commensurate with their current entitlement under tort law.

4. In paragraphs 69 & 70 of the Notice of Possible Remedies, the CC makes clear that it does not intend to prohibit credit hire as this would not address the AEC the CC has provisionally found. However, in paragraph 31 of the Notice, the CC states that if this remedy were to be implemented, 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. The CC itself, in paragraph 69 of the Notice, makes clear that the costs of credit per se are not the main factor behind the higher costs identified in ToH 1. Consequently, this cost reduction would not have a material impact on premiums for policyholders. But, the move away from credit hire would (in the CC's own words) leave impecunious non-fault claimants in a position where they might not be able to access a replacement car – which would be a negative outcome.
5. For all of the above reasons, WNS does not believe this proposed remedy option should be implemented. It is not remotely in the best interests of policyholders.

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

1. This remedy runs the risk of introducing a potentially significant delay at a time when the non-fault claimant simply wishes to have his/her vehicle repaired and to get mobile as quickly as possible.
2. If the non-fault claimant needs to be mobile and his/her vehicle is undriveable following the accident, the CC needs to consider how this will be achieved practically, in the context of this proposed remedy, in a way which is acceptable to all the parties concerned. For example, how does the CC propose the parties deal with the situation where the at-fault driver does not have his/her insurance details and the non-fault driver needs a replacement vehicle immediately?
3. It is not clear how this remedy, in practice, addresses the issue of the separation of cost liability and cost control, particularly when the at-fault insurer is not obliged to make an offer, the at-fault insurer has the option to only handle the replacement car part of a non-fault claim and the non-fault claimant is not obliged to accept any offer that may be made by the at-fault insurer.
4. The variant of the proposed remedy which obliges the non-fault claimant to accept the at-fault insurer managing the claim, clearly takes away the element of choice which the non-fault claimant currently enjoys. Query whether the CC considers such a remedy to be reasonable and proportionate, which it does need to be.
5. The CC also raises a number of issues for comment, several of which demonstrate that this proposed remedy would not be easy to implement, in practice, in a way which does not adversely affect the non-fault claimant.
6. Finally, there is no attempt by the CC to quantify the cost of implementing and monitoring this remedy and how such costs might affect insurance premiums.

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

1. The CC envisages that the measures proposed under this remedy would replace the GTA. However, it is not clear to WNS whether, in practice this proposed remedy will be materially different from the GTA. For example, this remedy proposes guidance on the duration of hire periods, which the GTA currently has. The GTA also has suggested daily hire rates, which, in practice, are akin to capped daily hire rates.
2. It is proposed by the CC that the cap on daily hire rates is reviewed and re-set annually by an independent body. Currently, the rates under the GTA are set by the Technical Committee composed of representatives of insurers and CMCs. Is the CC suggesting that the rates set under the GTA are unrealistic and, if so, how does the CC anticipate the independent body will set more realistic caps on daily hire rates?
3. This proposed remedy envisages an allowance for administrative costs. Once these are added to the capped daily hire rates, will this result in a materially different cost of providing a replacement car to non-fault claimants than is currently the case under the GTA?

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

1. For proposed Remedy 1D(a), the CC has already identified concerns relating to possible means of circumventing it. If monitoring arrangements need to be put in place to seek to ensure the remedy is not circumvented, these will have a cost attached to them, which could impact negatively on insurance premiums.
2. If proposed Remedy 1D(b) were to be implemented, the standardised costs would need to be applied to all categories of repairer and repair (i.e. network repairers, non-network repairers and fault repairs) in order for the remedy to be fair and not lead to anomalies.
3. It is not clear to WNS how the standardised costs could be set appropriately and, at the same time, cover all the main variables. An appropriate methodology for setting the standardised costs would need to be devised which properly reflects the cost of various categories of repair. It is not clear, to WNS, who would be best placed to devise such a methodology: cost estimation systems are helpful but they are far from perfect. Also, the CC needs to bear in mind that whenever one sets standardised costs, inevitably there will be some costs that will increase as a result.
4. If the standardised costs for non-fault repairs are set at too low a level, this could have an adverse impact on fault repair costs. Repairers need to make an acceptable margin in order to continue in business. Consequently, if the rates they earn from dealing with non-fault repairs give them too low a profit margin, repairers will have to make up the shortfall in profit on other repair work that they undertake. The net impact of proposed Remedy 1D(b) may therefore be negligible on insurance premium levels.

5. In the worst case scenario, proposed Remedy 1D(b) could have a negative impact on insurance premium levels, particularly when one takes into account the costs of implementing and monitoring this remedy – including any measures put in place to ensure that this remedy does not result in poorer quality repairs.

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

1. WNS wonders to what extent this proposed remedy would actually make a material difference, in practice. WNS already asks questions of non-fault claimants to establish their need for a replacement car.
2. As the CC notes in Appendix 6.1 to the Provisional Findings Report, insurers already successfully challenge credit hire bills and achieve sizeable reductions when such challenges are made (see comments above in paragraph 3 of the Introduction). Does the CC anticipate that this proposed remedy will achieve even greater reductions than those already achieved? If so, where is the CC's evidence to support such a contention?
3. If additional questions to those which WNS/non-fault insurers currently ask are added, this will result in cost increases in the handling of the claim, as will the provision of a mitigation declaration to the at-fault insurer. Any such cost increases would need to be offset by reductions in replacement car costs, to avoid a negative impact on insurance premiums.

Remedy 1G: Prohibition of referral fees

1. WNS is not entirely clear of the purpose of banning referral fees. Such fees are used by companies to attract a supply of work. A ban on referral fees would seem to suggest either that too much work is currently being generated by the use of such fees or that the presence of referral fees is driving the wrong type of behaviour from participants in the relevant market. The CC needs to better explain what it expects to happen if it bans referral fees and how this will produce the required benefits.
2. WNS has reservations as to how effectively a ban on referral fees could be enforced. WNS suggests that the CC looks at what measures have been put in place to ensure that referral fees are not paid in respect of personal injury claims and examines how successful such measures have been, paying particular attention to the mechanisms that have been set up by participants in that market to ensure that revenue continues to be generated. This should give the CC a good indication as to whether a ban on referral fees could be made to work, in practice, and at what cost.
3. It should be evident to the CC that a ban on referral fees alone will not be effective if the money that is currently paid out in referral fees remains "in the system". Any ban on referral fees could only, therefore, realistically be introduced as part of a package of measures designed to achieve a particular beneficial outcome.

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

1. The comments in relation to this proposed remedy do not take into account the findings made by WNS when it visited the MSXI Report Data Room on Thursday 16th January 2014. WNS will present its findings in relation to the MSXI Report when it comments on the CC's Provisional Findings Report.
2. WNS does not accept the CC's findings that insurers and CMC's do not monitor effectively the quality of repairs and there are significant limitations to claimants' ability to assess the quality of repairs.
3. The CC's working paper on the underprovision of repairs states that "it appears to us unlikely that customers are systematically put at a disadvantage by insurers or CMCs procuring repair services on their behalf". Survey evidence showed that customers were generally satisfied with the quality of vehicle repairs and customer complaints about the quality of repairs were low. This very much equates with WNS's experience of its own network of repairers, which it audits regularly, and the feedback WNS receives from its customer surveys. The CC's own survey of non-fault claimants found that 84% of respondents were at least "fairly confident" that they could spot if their vehicle was returned to its pre-accident condition. The CC therefore concluded, in its working paper, that "we have to date found no evidence of systematic underprovision of repairs".
4. The CC then went on to commission MSXI to perform audits of vehicles that had been repaired after an accident. The sample of vehicles inspected by MSXI was small (101) and the CC itself acknowledges that the sample is unlikely to be representative of the general population of non-fault claims (see paragraph 7.40 of the Provisional Findings Report). The CC rightly states, "The results need to be interpreted with care..." (paragraph 7.40 of the Provisional Findings Report).
5. In paragraph 7.46 of the Provisional Findings Report, the CC states "MSXI findings did not provide us with direct evidence about the differences and similarities between repairs managed by CMCs and those managed by insurers". Yet the CC's provisional finding is that CMC's do not monitor effectively the quality of repairs. Where is the evidence to support this contention? The unsubstantiated evidence of one repairer, referred to in paragraph 7.24(b) of the Provisional Findings Report, is not a valid basis on which to accuse all CMCs of failing to monitor effectively the quality of repairs – this evidence does not even identify which CMCs the repairer is referring to and it relates to the use of non-OEM parts as opposed to actual defects in the repair requiring rectification.
6. As to the CC's contention that there are significant limitations to claimants' ability to assess the quality of repairs, the CC acknowledges (in its working paper on the underprovision of repairs) that the confidence of non-fault claimants who said that they could spot if their vehicle had been returned to its pre-accident condition (see paragraph 2 above), would relate mainly to assessing cosmetic aspects of repairs and not aspects relating to parts of the vehicle which are technical or not easily visible. In paragraph 7.35 of the Provisional Findings Report, the CC states "The

most common reasons [found by MSXI] why the vehicle was not returned in pre-accident condition were related to paint finish, panel misalignment and repair being clearly visible". These are exactly the types of defects the CC says the respondents to its non-fault survey (which were far greater in number than the 101 vehicles inspected by MSXI) could confidently spot. None of the defects found by MSXI could be seen as dangerous (see paragraph 7.35 of the Provisional Findings Report). Therefore, where is the credible evidence to support the CC's contention that there are significant limitations to claimants' ability to assess the quality of repairs – the small, unrepresentative sample examined by MSXI does not constitute credible evidence.

7. Other defects with the MSXI Report include the inability to establish whether the poor quality repairs were largely attributable to particular networks of repairers/particular repairers; whether the poor quality repairs were largely confined to a particular brand of vehicle; and whether there are regional variations in repair quality.
8. The above tends to suggest that the CC has not proved, to the required legal standard, that there is an AEC in relation to the quality of repairs and consequently, there is no legal basis for this proposed remedy.
9. Without prejudice to WNS's contention in paragraph 8 above, WNS now comments on specific issues relating to the proposed remedy.
10. If the CC were to mandate, as part of any proposed remedy, that audits should be undertaken by independent engineers, this would benefit organisations such as MSXI and, from a public perception perspective, would not look very good. It could be perceived as very coincidental, that the type of organisation that undertook the inspection of repairs now benefits from its findings by being asked by the CC to undertake regular inspections of repairs on an ongoing basis.
11. There would be a cost associated with a third party undertaking regular audits of the quality of vehicle repairs. If the audits were to be carried out by independent engineers, WNS estimates that the cost could be in the region of [] per inspection. There may also be additional replacement car hire costs, depending on the timing of the audit inspection. These additional costs would inevitably have a negative impact on insurance premiums, which the CC would need to quantify before determining whether the proposed remedy was reasonable and proportionate.
12. The CC is considering whether to publish the audit results. The risk with publication is that if a repairer is shown to have had a bad audit which it subsequently successfully challenges as being incorrect, it could lose out on repair contracts which are awarded shortly after the audit results are published. This could have a serious impact on repairers who rely on one or two major contracts for their business to survive.
13. The CC asks whether PAS 125 accreditation should be made mandatory for all repairers undertaking insurance-related work. There is a significant one-off cost

associated with obtaining such accreditation, which WNS estimates to be somewhere in the region of []. This cost would inevitably get passed on to insurers []. The impact on insurance premiums would need to be quantified by the CC before it could conclude whether the proposed remedy was reasonable and proportionate.

14. WNS has analysed over [],000 repairs managed by it over the last 12 months to determine whether repairers with PAS 125 accreditation had a lower incidence of complaints than non-PAS 125 accredited repairers. It found that complaint levels were broadly similar for each category of repairer with non-PAS accredited repairers having a complaints incidence of 0.[] and PAS accredited repairers having a complaints incidence of 0.[]. Accordingly, whilst WNS supports the principles behind PAS 125, it does not believe that making PAS 125 accreditation mandatory will have a material impact on the quality of repairs. WNS submits that a professionally managed and well run network of repairers [] using the principles of PAS 125 together with [] other supply chain controls and customer-centric metrics, achieves the aim of ensuring repairs are of the appropriate quality without the substantial cost of formal PAS 125 accreditation.

17th January 2014