

FOR THE COMPETITION COMMISSION:

COMPETITION COMMISSION

PRIVATE MOTOR INSURANCE MARKET INVESTIGATION

Notes of a multilateral hearing with insurers

on

Wednesday, 26th February 2014

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PRESENT:

FOR THE COMPETITION COMMISSION:

Professor Alasdair Smith	- Chair
Mr Roger Finbow	- Member
Mr Steve Oram	- Member
Mr Robin Aaronson	- Member
Ms Erika Lewis	- Inquiry Director
Mr Graeme Reynolds	- Director of Remedies & Business Analysis
Ms Katie Cox	- Financial Business Adviser
Mr Philip Dixon	- Financial Business Adviser
Mr Dispesh Shah	- Financial Business Adviser
Mr Tony Curzon-Price	- Economist
Mr Peter Wantoch	- Economist
Mr James Jamieson	- Economist
Mr Pietro Menis	- Legal Adviser
Ms Charlotta Blomberg	- Legal Adviser

FOR THE INSURERS:

Mr Rob Cummings	- ABI
Mr James Dalton	- ABI
Mr James King	- ABI
Ms Philippa Handyside	- ABI
Ms Lesley Upham	- ABI
Mr David Stevens	- Admiral
Ms Lorna Connelly	- Admiral
Mr Matthew Paterson	- Admiral
Ms Claire Beer	- Admiral
Mr Steve Treloar	- Aviva
Mr Rob Townend	- Aviva
Mr Alex Caldwell	- Aviva
Ms Wendy Seago	- Aviva
Mr Gareth Howell	- AXA
Mr Ian Sinho	- AXA
Ms Claire Fletcher	- AXA
Mr Mark Gardner	- AXA
Mr Alastair Mordaunt	- AXA
Mr James Hillon	- CISGIL
Mr Paul Thompson	- CISGIL
Mr Philip Hardman	- CISGIL
Mr Matthew O'Regan	- CISGIL
Mr Gordon Hannah	- esure
Mr Christopher Graf	- Slaughter and May
Mr Graham Roberts	- esure
Ms Bojana Ignjatovic	- RBB Economics
Mr Matthew Scott	- NFU Mutual
Ms Rosemary Choueka	- NFU Mutual
Mr Jim Creechan	- NFU Mutual

1 **Wednesday, 26th February at 9.58am**

2 PROF SMITH: Welcome, or, for most of you, welcome back to the
3 Competition Commission. Thank you very much indeed for coming
4 to see us again today. Let's start with introductions. I am
5 Alasdair Smith. I am a deputy chair of the Competition
6 Commission and I am chair of this inquiry group. Let me get
7 the CC team to introduce themselves, starting with Katie down
8 at the end.

9 MS COX: I am Katie Cox, Financial and Business Adviser.

10 MR DIXON: Philip Dixon, Financial and Business Advisor.

11 MR SHAH: Dipesh Shah, Financial and Business Adviser.

12 MR MENIS: Pietro Menis, Legal Adviser.

13 MS BLOMBERG: Charlotta Blomberg, Legal Adviser.

14 MR FINBOW: Roger Finbow. I'm one of the members.

15 MS LEWIS: Erika Lewis. I'm the Inquiry Director.

16 MR ORAM: Steve Oram, panel member.

17 MR AARONSON: Robin Aaronson, panel member.

18 MR CURZON-PRICE: Tony Curzon-Price, Economic Adviser.

19 MR REYNOLDS: Graeme Reynolds, Director of Remedies and Business
20 Analysis.

21 MR WANTOCH: Peter Wantoch, Economist.

22 MR JAMIESON: James Jamieson, Economist.

23 PROF SMITH: We will only do introductions on the front table. If
24 anyone on the back rows joins in the discussion, if you could
25 please introduce yourselves at that point. So shall we do the
26 front row introductions?

27 MR CUMMINGS: I'm Rob Cummings, Manager for Civil Justice and Data

1 Strategy at the ABI.

2 MR DALTON: James Dalton. I am the Head of Motor Insurance at the
3 ABI.

4 MR STEVENS: David Stevens, Chief Operating Officer at Admiral.

5 MS CONNELLY: Lorna Connelly, Head of Claims, Admiral.

6 MR HILLON: James Hillon, Director of General Insurance at CISGIL.

7 MR THOMPSON: Paul Thompson, Claims Technical Manager at CISGIL.

8 MR SCOTT: Matthew Scott, Chief Claims Manager at NFU Mutual.

9 MS CHOUKEA: Rosemary Choueka, partner at Bristows, acting for the
10 Mutual.

11 MR HANNAH: Gordon Hannah, Chief Operating Officer, esure.

12 MR GRAF: Christopher Graf, Slaughter and May, for esure.

13 MR HOWELL: Gareth Howell, Commercial Director at AXA.

14 MR SINHO: Ian Sinho, Technical Claims Director at AXA.

15 MR TRELOAR: Steve Treloar, at Aviva.

16 MR TOWNEND: Rob Townend, Deputy Claims Director at Aviva.

17 PROF SMITH: Thank you and once again welcome.

18 Let me say a few words of introduction before we get down to
19 business. As you are aware and as you can see, today is
20 structured as a joint hearing and we have been mindful in
21 preparing the questions that we are going to cover that it is
22 a joint hearing and there are a range of things that we wouldn't
23 wish you to discuss in front of your competitors. We have had
24 that in mind in planning the questions, but I do have to remind
25 you that it's primarily your responsibility to ensure that you
26 don't raise issues that it wouldn't be appropriate to raise in
27 a hearing like this. Obviously if there are confidential

1 matters that you want to raise on the topics that we're
2 discussing today, then as always we're very eager to hear your
3 views.

4 I'm not going to take you through our rules and procedures for
5 these hearings as we have written to you already setting these
6 out, but let me just draw your attention to the fact that we
7 are taking a transcript of this meeting. And so first of all
8 let me say, as you'll have noticed, this is a large room, only
9 slightly smaller than a football stadium, and in order to obtain
10 an accurate transcript and in order for us to hear each other
11 properly I do appeal to everybody to talk as clearly and loudly
12 as possible.

13 We will circulate a transcript of the hearing as soon as
14 possible - I hope within a week - and we would ask you to check
15 the transcript and make sure that it is accurate and if there
16 are any errors or any slips in what you said, please indicate
17 any such corrections. If, on reflection, there is anything of
18 substance that you want to change in what was said today, please
19 do that by a separate communication.

20 We usually produce summaries of our hearings for publication,
21 but because this is a multi-party hearing, as with the previous
22 round of hearings, we have decided that the most efficient way
23 of publicising what goes on at this meeting is simply to publish
24 the transcript. Now, as I have already indicated, we are not
25 expecting anything confidential to be said in the course of
26 this meeting but if, on reflection when you receive the
27 transcript, there is anything in it which is confidential and

1 which shouldn't be published, please let us know so that that
2 can be redacted from the published version of the transcript.
3 I have to remind you that it is a criminal offence under Section
4 117 of the Enterprise Act to knowingly or recklessly to provide
5 false or misleading information to the Commission at any time
6 during this hearing.

7 At the previous round of hearings after I read that out that
8 warning I made a jokey reference to the fact that insurance
9 companies are always making warnings to us, forgetting that a
10 transcript was going to be taken and that my joke was going to
11 be reported in the trade press, so I've learned not to make
12 jokes in hearings anymore and I won't make one today, but let
13 me just remind you that I've drawn your attention to the
14 provisions of the Enterprise Act.

15 The way we are going to conduct the hearing today is that we
16 have got a number of issues that we want to cover, the
17 questioning will be led by members of the panel but other
18 members and members of the staff team will come in with follow-
19 up questions - supplementary questions - as is appropriate.
20 We're not looking to have a carefully scripted discussion; we
21 want to have as productive and as free-flowing a discussion as
22 possible.

23 There are - what is it - seven parties in the room, and I'm
24 very conscious of the fact that if everybody gives a full answer
25 to every question then we are going to use up a lot of time
26 and a lot of it is going to be used up unproductively with you
27 vigorously agreeing with each other. So again, without having

1 a formal rota, we are going to try and direct each question
2 first of all to one of the parties and I would suggest that
3 other parties should come in if they have things to add to the
4 answer that has already been given and, in particular, if there
5 are things in the answer that has been given that you disagree
6 with, but please don't chew up a lot of time agreeing at length
7 with each other because that's not going to be a very productive
8 use of our time. As I said, the more free-flowing the
9 discussion and the more informal the exchanges we have, the
10 more productive it is going to be for all of us.

11 Finally, let me just say where we are with our inquiry. We
12 have, as you all know, published our provisional findings and
13 we are now at the stage of developing our thinking further in
14 relation to remedies and, as you know, the purpose of this
15 hearing today is to focus primarily on the issue of remedies.
16 What we are aiming to do is to publish our provisional decision
17 on remedies in the summer to give an opportunity for a further
18 round of feedback with a view to - well not with a view to;
19 because we have to produce our final report by September.

20 I want to start with a general question by way of inviting each
21 of you, if you wish, to make any general remarks that you wish
22 to make by way of introduction about the overall shape of our
23 proposals, important areas where you think we may have got
24 things wrong or otherwise, or if there are important issues
25 that you think that we have been missing in our investigation
26 so far.

27 I will start with CISGIL and I will then go round the table

1 giving you all an opportunity to make introductory remarks, but
2 let me just again remind you on time. I am going to ask you
3 to keep your opening remarks to a maximum of five minutes and
4 I am going to enforce the maximum. But even five minutes times
5 seven is - you can work it out - a high proportion of the time
6 that we have got, so if any of you are disciplined enough to
7 keep your opening remarks very brief indeed, that will be
8 welcomed by everyone else.

9 So can I open up with you?

10 MR HILLON: Yes, thank you. Thank you for inviting CISGIL to the
11 hearing.

12 As the UK's largest mutual business, the Co-Operative Group is
13 committed to protecting the interests of our members, our
14 customers and consumers generally. We have welcomed the
15 investigation and have approached it from the consumer's
16 perspective to identify how competition can be improved to
17 reduce costs and therefore premiums. We are committed to
18 ensuring that motorists receive appropriate information on the
19 products they buy and on their legal and contractual
20 entitlements and we therefore fully support Remedy A. We also
21 support the principle that, following an accident, motorists,
22 whether or not our customers and regardless of fault, receive
23 their legal entitlements and a high degree of service. We
24 therefore broadly welcome the Competition Commission's remedy
25 proposals.

26 On Theory of Harm 1, we agree with the Commission that
27 separation of cost liability and cost control causes an AEC.

1 We think that the detriment has been under-estimated in your
2 provisional findings. Some insurers engage more than others
3 in anti-competitive practices that both generate excessive
4 revenues and harm rivals and we are concerned that you have
5 not taken account of how this distorts competition between
6 insurers. We support intervention to eliminate unnecessary and
7 excessive costs. This includes significantly reducing credit
8 hire and credit repair costs. We support Remedy 1A, which
9 would introduce first-party insurance for replacement cars;
10 however, a better outcome for motorists, we believe, would be
11 if insurers are required to provide their customers with a
12 basic replacement car in all circumstances. This would avoid
13 non-fault claimants being immobile because they elected not to
14 buy replacement car cover. We also support Remedy 1G to
15 prohibit referral fees.

16 Any remedies must also address the excessive costs for repairs
17 and write-offs. We support Remedy 1D(a) for repairs, albeit
18 with significant modification , as well as Remedy 1E(b) for
19 write-offs. These remedies must be designed so they cannot be
20 circumvented, including by vertically integrated groups of
21 insurers and repairers.

22 On Theory of Harm 2 we, of course, support high-quality repairs
23 but remain concerned that the provisional findings are not
24 supported by sufficient and robust evidence and we are
25 concerned that the consumer detriment has not been quantified
26 and doubt that it could be quantified. If an AEC were to be
27 found we would support Remedy 2A, provided that it could be

1 implemented without excessive cost.

2 On add-ons, Theory of Harm 4, we agree that consumers should
3 receive clear information and be able to easily compare
4 products of different providers; however, we are concerned
5 about inefficient duplication with the FCA's review of add-ons
6 and suggest that the work be undertaken by the FCA. Although
7 loss ratios for certain add-on products appear low, we don't
8 believe this is indicative of either a lack of competition or
9 of excessive pricing.

10 We support Remedy 4A, as there could be some under-provision
11 of information when consumers use price comparison websites;
12 however, we are concerned that the costs for insurers and PCWs
13 to implement the system changes could increase premiums for all
14 customers. We also support Remedy 4C to improve the description
15 of add-ons.

16 We also recognise more could be done to explain to consumers
17 how no-claims bonuses work and no-claims bonus protection
18 products protect the discount but not the underlying premium.
19 However, we do not support the mandatory publication of no-
20 claims bonus scales, so only support Remedy 4B in part.

21 On Theory of Harm 5, most favoured nation clauses, we agree
22 that wide MFNs lead to an AEC and welcome the proposal to
23 prohibit them, which should be extended to include narrow MFNs,
24 which also limit competition and innovation. Narrow MFNs are
25 not essential for PCWs to survive and do not promote price
26 competition and transparency. If narrow MFNs are allowed to
27 continue, PCWs will use this to circumvent the prohibition of

1 wide MFNs and insurers will, in practice, still be required to
2 offer the same price across all PCWs. Thank you.

3 PROF SMITH: Thank you. Aviva, please.

4 MR TRELOAR: Thank you very much. Like I am sure other insurers,
5 we welcome the opportunity to talk to you today. I will keep
6 my comments short and focussed really on three particular
7 areas.

8 We believe that the over-arching proposals around improving
9 customer understanding, Remedy A, are essential to ensure a
10 sound understanding by consumers of their rights and to ensure
11 that those customers are able to ensure that they get what
12 they've paid for. We believe the best way to achieve the right
13 level of customer understanding must be at the forefront of
14 our minds at all times and that doesn't necessarily mean at
15 point of sale.

16 The Competition Commission will have noted we have also
17 suggested an alternative to Remedy 1A which is focussed on
18 customer service and does not require a change in the law. In
19 brief, we propose an enforcement order that would require
20 insurers to provide a like-for-like replacement car regardless
21 of fault. We are happy to discuss those proposals today.

22 Turning to price comparison websites and most favoured nation
23 clauses, similar to the view from CISGIL, we also agree that
24 prohibition of MFN clauses is desirable, but equally so is the
25 removal the narrow MFN clause. Thank you.

26 PROF SMITH: Thanks. AXA.

27 MR HOWELL: Like Aviva, I will keep my opening remarks brief. We

1 welcome the opportunity to engage further in the discussion
2 around the remedy proposals that have been issued. I think
3 one overarching thing that we do wish to stress, and came
4 through in our written response to the remedies, was around
5 our support for remedies but based strictly on the basis that
6 the remedy must be applied across the entire motor insurance
7 sector and not, as has been the focus of the Competition
8 Commission investigation into private motor insurance, and we
9 would welcome discussion to elaborate on the reasons for that
10 as we go through.

11 Reiterating both the view of Aviva and CISGIL on MFNs where we
12 welcome and support the prohibition on wide MFNs but strongly
13 believe that narrow MFNs also act as a barrier to competition
14 and innovation in the marketplace and so we'd welcome further
15 discussion on that.

16 PROF SMITH: Thanks. And if I can just be clear, your remark about
17 remedy needing to apply across the whole motor insurance
18 sector, that's a reference to Remedy 1A.

19 MR HOWELL: Specifically remedies 1.

20 PROF SMITH: Yes.

21 MR HOWELL: Not just 1A; remedies 1.

22 PROF SMITH: Not just 1. Okay, thanks. esure.

23 MR HANNAH: Thank you. In considering remedies, the starting point
24 should focus upon the source and the extent of any consumer
25 detriment. The evidence gathered by the CC now suggests that
26 the overall detriment is within a range of £120 to 155 million
27 or about £5 to £6 per PMI policy or, put another way, just over

1 1% of average PMI premium. The CC has identified consumer
2 detriment arising from the separation of cost control and
3 liability - that is Theory of Harm 1 - at about 120 million.
4 In the light of this, it is esure's view that Theory of Harm 1
5 should remain the key focus for the CC both in respect of
6 today's discussion and throughout the remaining period of the
7 investigation. esure is keen to discuss these issues with the
8 CC as its thinking evolves. Indeed, it was good to see from
9 the agenda for this session that the CC appear to have
10 recognised that Remedy 1B might not be an appropriate remedy.
11 In relation to Theory of Harm 1, it is important to recognise
12 that the CC identifies that the total consumer detriment from
13 credit hire is about three times greater than that arising from
14 credit repair, which is about £35 million. So to keep a sense
15 of perspective, the latter is, on the CC's conclusion, causing
16 about £1 of per-policy detriment.

17 I don't make these comments to suggest there is no problem in
18 the PMI market to address. Far from it. As reflected in
19 esure's various responses, the CC has rightly identified the
20 way in which credit hire in particular, but also credit repair,
21 operate in the market adds unnecessary and excessive costs to
22 claims which, in turn, impacts on customers' premiums. Rather
23 I seek to bring sharply into focus the precise sources of over-
24 costing to ensure that any remedies are both targeted and
25 proportionate.

26 So, judged against those criteria, Remedy 1A, in esure's view,
27 is very intrusive and disproportionate to the harm identified.

1 Legislating away policyholders' tortious entitlements must
2 surely only be a remedy of last resort. On closer scrutiny of
3 Remedy 1A, it risks introducing additional cost to
4 policyholders for replacement vehicles, which could outweigh
5 the harm it was designed to remedy. It also risks penalising
6 safer drivers to the benefit of the less safe, i.e. the risky,
7 drivers. It risks removing choice and legal entitlement for
8 PMI customers compared to commercial motor fleet drivers who
9 might not be subject to the legislative change. It also risks
10 new sources of frictional costs which will arise as a result
11 of substantial changes to the claims handling and to customer
12 education. On top of very real prospects of inferior customer
13 offering and the risk of actually increasing overall costs,
14 Remedy 1A, we believe, will require primary legislation. This
15 introduces uncertainty as to outcome and means there will be
16 considerable delay before the remedy is implemented.

17 So in terms of solution, it is esure's thinking that in no way
18 should the difference between an average cost of a credit hire
19 and a direct hire be in the region of £555, even allowing for
20 the cost of credit or any ancillary services provided by the
21 credit hirer. Bearing in mind the vast majority of consumer
22 detriment the CC is looking to remedy comes from credit hire,
23 Remedy 1C, which is measures to control the costs of non-fault
24 replacement cars, in conjunction with 1G, the ban on referral
25 fees, represents to us a much more proportionate response.

26 To be clear, esure does not see Remedy 1C as just a rehash of
27 the existing GTA, which esure accepts has proved to be an

1 imperfect solution. Rather Remedy 1C offers the opportunity
2 to design and implement a binding cross-industry mechanism to
3 provide objective and transparent cost caps on replacement
4 vehicles. Duration issues can also be addressed through this
5 model. This sort of remedy, supported by effective judicial
6 guidance, is targeted and proportionate and is a way of dealing
7 with the costs arising from non-fault replacement vehicles.
8 Combining Remedy 1C with 1G would allow the CC's remedy to also
9 address the over-costing arising out of credit repair at the
10 same time. By this I mean extending a referral fee ban to
11 credit repair as well as credit hire.

12 So, in summary, as far as Theory of Harm 1 is concerned, it is
13 esure's view that a combination of Remedies 1C and G provide a
14 more focussed, more proportionate and less intrusive option
15 than either Remedy 1A or, indeed, the other suggested remedies.

16 Thank you.

17 PROF SMITH: Thank you. NFU Mutual.

18 MR SCOTT: Good morning. NFU Mutual's views on the Commission's
19 provisional findings and suggested possible remedies broadly
20 align with those set out in the response of the Association of
21 British Insurers. We agree with the Commission's provisional
22 findings in relation to Theory of Harm 1 and Theory of Harm 4.
23 We do not distribute by price comparison websites and therefore
24 have not comment to make on Theory of Harm 5. We do not agree
25 with the findings in relation to Theory of Harm 2 and
26 consequently feel that the relevant proposed remedies are
27 disproportionate or unnecessary. However, we remain committed

1 to operating a suitable and proportionate repair quality audit
2 regime for the benefit of consumers.

3 NFU Mutual supports the broad direction of Remedy A and the
4 proposed remedies to the issues identified under Theory of Harm
5 1. We look forward to discussing the detail of these during
6 the hearing; however, we would like to make some preliminary
7 points we believe are important to the ultimate shaping of
8 final remedies.

9 Firstly, the Commission has rightly highlighted that many
10 market participants - and I quote - 'are competing to find ways
11 of earning rent from their control of non-fault claims'. NFU
12 Mutual does not engage in such practices and, in our view, this
13 market behaviour is driven by two interlinked factors: firstly,
14 the underlying tort law rights of the non-fault motorist; and,
15 secondly, the legal entitlement of market participants to
16 subrogate those rights. The current nature and basis of tort
17 law rights of non-fault motorists are clearly set out in the
18 recent Court of Appeal judgment in *Coles v Hetherton* and in
19 the earlier case of *Bee v Jenson*. Both these cases illustrate
20 that tort law has developed in part to prevent the perceived
21 injustice of the proceeds of a non-fault party's insurance
22 arrangements operating to the benefit of the at-fault party.
23 Unfortunately, this principle is now being exploited by many
24 market participants to create an alternative and potentially
25 greater injustice; namely that the financial liability of the
26 at-fault party is artificially inflated to generate additional
27 income for participants. It is no longer a simple question of

1 market participants being able to retain the benefit of
2 wholesale reductions against independently determined open
3 market rates for vehicle hire and repair. Instead, costs are
4 being inflated beyond those that might otherwise pertain and
5 then presented as if they were the product of a wholly
6 independent market process. NFU Mutual firmly believes that
7 any remedies to deal with Theory of Harm 1 must fully address
8 this issue. It may be that a correction of adverse effects
9 can only be achieved by altering the underlying tort rights of
10 motorists; however, as a mutual insurer, we do have some
11 concerns about the impact of such a change on our members.
12 Nevertheless, we are strongly supportive of the direction taken
13 by the proposed Remedy 1A. We believe that further exploration
14 of the options is necessary to establish whether the required
15 outcomes can be achieved by changes to the law of subrogation
16 alone rather than by changing fundamental tort rights or by
17 enforcing specific mandatory behaviours upon market
18 participants. However, effective change must happen. If it
19 does not, then the strong likelihood is that the current adverse
20 features of the market will only get worse. The reaction of
21 some participants to the recent Court of Appeal judgment in
22 *Coles v Hetherton* is illustrative in this regard.

23 Secondly, we recognise that the constraints upon the Commission
24 mean that it is currently only able to make findings and suggest
25 remedies for the private motor market. NFU Mutual strongly
26 believes that remedies under Theory of Harm 1 must apply to
27 the whole motor market and not just the PMI sector. If this

1 is not achieved there is a significant potential for the aims
2 of the Commission to be undermined in the ways more fully
3 explained by the ABI in its submission.

4 Finally, it is inevitable that the Commission will receive many
5 opposing views about the need for and the nature of remedies.
6 NFU Mutual remains committed to working with the Commission to
7 find remedies that will produce simpler and clearer high
8 quality outcomes for consumers, remove unnecessary gaming costs
9 from the market and minimise the potential for subsequent
10 avoidance activity. We believe an interlocking package of
11 remedies is the only viable way to sustain these outcomes. It
12 is inevitable, and indeed perhaps necessary, that the final
13 remedies will be detrimental to some market participants'
14 current business models. We urge the Commission to work closely
15 with the FCA and other relevant regulators to ensure that the
16 development of the detailed remedies is fully coordinated.

17 Thank you.

18 PROF SMITH: Thank you. Admiral.

19 MR STEVENS: I will keep it brief. The main point I think we would
20 seek to make is that we very much agree with the Commission
21 that there is a material issue around replacement cars and that
22 there is a series of solutions, or potential solutions, and
23 that it's important for us to arrive at the right one, but we
24 would go on to say that a number of the other theories of harm
25 relate to economic outcomes that are relatively small and where
26 there is a significant risk that the solution is only partially
27 effective and comes with incremental costs. So we would urge

1 the Commission, when considering some of the other theories of
2 harm, to be sensitive to the possibility that the solution is
3 worse than the problem, or at least no better than the problem.
4 That clearly isn't the case for replacement cars. Our view is
5 very much that 1C, controlling the cost of replacement cars,
6 is a viable and effective and easier to implement solution than
7 first-party. There are various permutations of first-party -
8 and we will talk more about them later - all of which have
9 their down sides, some more than others, but with the option
10 of 1C being there, we think that's the effective one to pursue
11 at this point.

12 PROF SMITH: Thanks. Finally the ABI.

13 MR DALTON: Thank you, and we'd just reiterate the comments of others
14 that we welcome the opportunity to participate in today's
15 hearing and indeed the Commission's investigation. There are
16 a number of remedies that the Commission has proposed and, like
17 others, we will come to some more detailed comments in relation
18 to the detail of those later in today's discussion and indeed
19 would welcome the opportunity to continue the constructive
20 engagement we have had with the Commission to date.

21 The ABI believes the Commission has rightly identified the
22 issues that lead to an AEC in relation to Theory of Harm 1,
23 separation of cost control and liability, and credit hire adds
24 substantial additional and unnecessary costs to car insurers
25 that leads to excessive costs in the system and consequently
26 higher car insurance premiums for consumers than are necessary.
27 Put simply, daily hire settlement rates are too high and hire

1 durations are often excessive.

2 We have got some significant concerns, as you will have seen
3 from our written evidence, in relation to the Commission's work
4 on Theory of Harm 2. The report that the Commission had
5 prepared in our view has some serious deficiencies both in
6 relation to the sample size of the vehicles examined and in
7 terms of the research methodology. As such, in our view this
8 leaves serious doubts as to the appropriateness or
9 proportionality of the potential remedy that the Commission has
10 consulted on.

11 In relation to the scope of the Commission's inquiry, like AXA
12 and NFU, we have some serious concerns about how the
13 Commission's investigation is limited to PMI and the potential
14 impact of any remedies that are proposed. A failure to
15 effectively apply remedies across the motor insurance market
16 as a whole has the potential to undermine the remedies that
17 the Commission has proposed. Around one in seven vehicles on
18 UK roads is a commercial vehicle and, as such, there are
19 significant risks that if the remedies only apply to PMI, this
20 would generate confusion amongst consumers about their
21 entitlements and obligations in the event of an accident and
22 that, in our view, doesn't sit well with the Commission's
23 objectives in terms of improving consumer outcomes. For
24 example, it's not clear how the potential remedies would work
25 if a party to the accident is insured under a commercial
26 insurance policy and has an accident with a PMI customer, and
27 indeed there is the potential risk of unintended consequences.

1 For example, if credit hire firms are limited in their ability
2 to charge excessive hire rates in PMI, they will look to improve
3 their losses by increasing credit hire rates on commercial
4 vehicles.

5 Looking forward in terms of the implementation of remedies,
6 there are potential issues in terms of implementing remedies
7 at different times and we think it's going to be important for
8 the Commission to carefully consider making sure that the
9 package of remedies is implemented simultaneously so that you
10 don't drive perverse incentives in the market leading to sub-
11 optimal behavioural outcomes from some market participants.

12 You won't be surprised to hear me repeat the comment that I
13 made at the first hearing. The industry does continue to have
14 some significant concerns around the Commission's timetable and
15 the pressure that puts on continuing to effectively engage and
16 analyse the options that are being put forward by the
17 Commission. As an industry we remain committed to providing
18 high quality and considered input and urge the Commission to
19 set appropriate and reasonable timeframes for participants to
20 provide effective input to your inquiry.

21 PROF SMITH: Well thank you all very much for a very helpful set of
22 introductory remarks and ones which were economical in the use
23 of time. I want now to start exploring specific issues about
24 the remedies. We expect to spend most of the time, you won't
25 be surprised to hear, on remedies related to Theory of Harm 1.
26 If I can make just one remark on the introductory statements.
27 Several of you referred to the issues that might arise with

1 remedies on Theory of Harm 1 that would apply only to private
2 motor insurance. If we don't come back to that issue in the
3 course of the discussion it's because we understand very
4 clearly what's been said both today and in written evidence on
5 that issue, so we have a very clear understanding of why that's
6 a very important set of questions that needs to be addressed
7 in the design of remedies.

8 So, on to Theory of Harm 1. Roger.

9 MR FINBOW: Well we would like first of all to ask one question in
10 relation to Remedy A - that's the information remedy - and
11 perhaps, for reasons which will become obvious, I will direct
12 it first to the ABI. And that is: there are a number of ways
13 in which we might structure such a remedy, but if we were to
14 conclude that the most effective course would be for there to
15 be a general statement of consumer rights, and potentially
16 added to that a list of the sort of things that would need to
17 be addressed under contractual provisions, then a number of
18 parties have said the ABI would be the best party to help us.
19 Others have said that anyone leading or helping us on the design
20 of this remedy would need to be wholly independent of the
21 insurance companies, and I wonder what the views of the parties
22 here are, starting with the ABI who I think yourselves have
23 some doubts as to the spread of your ability to help us.

24 MR DALTON: I think certainly the ABI is more than willing to help
25 develop whatever the Commission thinks is appropriate for us
26 to do. I suppose I would add a couple of points. One is that
27 the ABI doesn't represent 100% of PMI insurers, - we represent

1 a vast majority of them but we don't represent 100%. So that
2 would be my first comment.

3 The second is that if we are talking about the information that
4 consumers get at FNOL, it's not just insurers that deal with
5 FNOL and so it would be possible for the ABI to develop an
6 appropriate set of wording but it would need, in my view, to
7 have a mandate from the Commission to direct other market
8 participants to participate in that process. So you could say
9 to me 'develop the wording' but there are going to be other
10 people who are not going to be happy about that and you are
11 going to need to encourage them in the strongest possible terms
12 to participate in any process that you think it's appropriate
13 for us to lead.

14 MR FINBOW: How would you deal with the aspect that whilst tortious
15 rights are going to be common to everybody, contractual rights
16 are going to depend on the precise detail of the insurance
17 policy? Would you nonetheless be in a position to help us on
18 that?

19 MR DALTON: If the Commission's view is that contractual wording of
20 insurance contracts needs to change then we could certainly
21 lead a process to investigate what appropriate wording could
22 be developed in consultation with legal teams from across the
23 industry and hopefully with your own legal team.

24 MR FINBOW: Okay, thank you. Admiral.

25 MR STEVENS: We don't really have a strong view as to who would write
26 the wording. We'd be very happy with the ABI to do so.

27 MR FINBOW: Does anyone else have any comment to make in relation

1 to that?

2 MR HANNAH: I don't think this is a controversial issue. I don't
3 think many entities are going to argue that customers shouldn't
4 have wider and more understanding of their legal entitlements.
5 We have suggested that the ABI in conjunction with BIBA, the
6 broker entity, would cover most of the market, and corralling
7 other players that get involved in FNOL I don't think should
8 be a controversial issue. So I think this is certainly a remedy
9 that is implementable, and as long as it's implemented
10 consistently across the piece then I think it could be achieved
11 in a short timescale too.

12 MR FINBOW: Okay. Anyone else have any thoughts on that?

13 MR SINHO: Just one point. AXA's view was - and looking particularly
14 at the third-party claimant situation - is that the advice must
15 be about the rights and obligations of third-party claimants
16 and it's essential that the advice is consistent and is not
17 open to being varied by the party giving it to the third-party
18 claimant, and it must essentially be a statement of legal rights
19 and legal obligations. We felt that with that end in mind the
20 Ministry of Justice would be the appropriate body impartially
21 to work with stakeholders to develop that statement, and it to
22 be a consistent statement which could be given to people to
23 advise them of their rights.

24 In terms of customers, looking through the Commission's
25 reports, the needs for additional information for customers
26 seem to be largely around choice of repairer and who to complain
27 to. We don't believe the point about the customers not being

1 able to assess a quality repair could be remedied by guidance.
2 We don't see how guidance can be developed to enable customers
3 to have that capability. So we took the view that the focus
4 here must be on third-party claimants' rights and obligations
5 and it was essential that there was an impartial body, that
6 the statement was largely about legal rights and obligations,
7 and the Ministry of Justice was the right organisation to do
8 that.

9 MR FINBOW: Thank you. Aviva, you wanted to...

10 MR TRELOAR: No, it's all right.

11 MR FINBOW: Right, thank you. All right, turning to Remedy 1A -
12 that's to say first-party insurance for replacement cars - it
13 has been argued by some parties that this would lead to the
14 end of the credit hire business as we know it and that one of
15 the consequences of that would be that non-fault claimants
16 would not receive as good a service from their insurance
17 companies because insurers have an incentive to minimise their
18 own costs. Do you think that's a valid concern? Admiral.

19 MS CONNELLY: I think if we could take the remedy as we've outlined
20 it with regard to being an add-on and being sold [at different
21 levels], I think there is certainly a high risk of that
22 happening [sic]. It's hard to understand how a claimant who
23 has maybe had a non-fault claim before in which he's had a
24 like-for-like car for the duration of repair then understands
25 how he has to buy an add-on and could end up in a position
26 where he has a further non-fault claim and ends with no
27 replacement car at all. So there's a detriment that can happen

1 here. I think the non-fault services are so highly embedded
2 in our society that there is a very high educational aspect of
3 this.

4 MR FINBOW: And how would we address that concern?

5 MS CONNELLY: I think there's high frictional costs that would be
6 involved in re-educating customers, in educating them about the
7 add-ons that they need to buy, talking to them at claim stage
8 at length about what the options are, what they have bought,
9 why they can't claim against the other party. I think it just
10 is going to take a lot of scripting and a lot of work and a
11 lot of training for insurance companies.

12 MR FINBOW: And is there an additional issue in relation to the sort
13 of hand-holding that credit hire companies and claims
14 management companies would at least suggest they give?

15 MS CONNELLY: I don't think so. I just - I see further unintended
16 consequences really of how an insurer would look at a claim.
17 So, for instance, now we might have a claim and look at the
18 repair and whether or not it's economical to repair a car or
19 to write it off. I think once you bring in some first-party
20 insurance elements for hire, the whole market could change
21 quite a lot and we could start to look at other aspects rather
22 than just repairing or total losing as we would consider, 'This
23 is what it would cost to hire a car' also and make decisions
24 based on that, which could have an effect on the motor market
25 generally. You could have much more written off cars as opposed
26 to cars that are repaired. You know, there are lots of things
27 that we need to understand further to understand the

1 consequences of it.

2 MR FINBOW: So there may be some considerable unintended
3 consequences.

4 MS CONNELLY: Yes.

5 MR FINBOW: CISGIL, do you have any different views from that?

6 MR THOMPSON: We think one of the strengths of 1A is that it would
7 serve to strengthen the relationship between the not-at-fault
8 insurer and the customer. What greater incentive would the
9 insurer have than to delight the customer by looking after
10 their needs? So we think that's one of the attractive things
11 about 1A. I do think there would need to be - we would need
12 to think very seriously about how we would convey that to
13 consumers, because that choice that they make at point of sale
14 is crucial, and that's one of the reasons why we have proposed
15 a minimum level of mandatory mobility cover as being standard,
16 because we can foresee a situation where people might make bad
17 decisions for the best of reasons at point of sale and buy
18 purely on price and then at the point of claim find that they
19 have no mobility provision.

20 MR FINBOW: Okay, thank you.

21 MR SCOTT: Yes, certainly a slightly different view to Admiral. I
22 think on the two questions - does it spell the end of the credit
23 hire market in its present form? Yes. But I think there's a
24 clear distinction to be drawn between a market for the provision
25 of mobility vehicles, which it wouldn't bring an end to - there
26 would be the same, if not greater, need to supply mobility
27 vehicles to consumers, so it certainly wouldn't bring an end

1 to that market. What it would bring an end to is the ability
2 to charge significantly differential rates for providing that
3 service. And as far as insurers of non-fault customers having
4 no incentive to keep them happy and delight them, I think quite
5 the opposite would be the case. Indeed many insurers, including
6 ourselves, are daily providing a very high quality service to
7 non-fault customers without the need for the involvement of
8 credit hire. So I don't accept the contention that only the
9 credit hire industry can provide a high quality service to non-
10 fault customers.

11 MR FINBOW: Okay, thank you.

12 PROF SMITH: But the credit hire industry say to us that it's only
13 because the credit hire industry exists that insurers, when
14 they are dealing directly with your own customers, provide them
15 with a good service and that before credit hire came on to the
16 scene the picture was one where insurers simply didn't provide
17 a good mobility deal to their own customers.

18 MR SCOTT: It is certainly true that the genesis of the credit hire
19 industry was that insurers, in the main, tended to provide a
20 non-like-for-like mobility provision, if any at all, but whilst
21 that's an interesting note from history it doesn't reflect the
22 likely commercial position for individual insurers from this
23 point forward. We know what our customers require now and we
24 would have mechanisms to provide that service to them.

25 PROF SMITH: Good. Thank you. Yes.

26 MR HANNAH: I think the world has moved on and if you look at the
27 incentives for insurers with their at-fault customers to

1 provide a good service it's there in terms of their requirement
2 to keep their retention levels up, and in terms of there's an
3 incentive for insurers to provide as good, if not better,
4 service than credit hire if they are capturing third-party
5 vehicles - essentially to keep their own costs down, but also
6 to provide a good service so the third party doesn't go back
7 into credit hire. There is also the impetus of providing a good
8 service, as an insurer, to a third-party driver for the
9 recruitment of that customer at renewal. So I don't think
10 there are any incentives, whether an insurer is fault or not
11 fault, not to provide a good service.

12 Going back to 1A - I agree that there are issues about
13 unforeseen consequences. You are changing the law, changing a
14 lot of behaviours for customers to have to get used to the
15 concept of purchasing an add-on effectively before the event.
16 Some insurers have that ability at the moment to do that, but
17 the take-up of buying an add-on for a like-for-like car is
18 extremely low at the moment and therefore you are left with
19 the issue that if they don't buy, upfront, an add-on for a
20 replacement car then those customers at the point of claim are
21 potentially left with no rights, and significantly different
22 rights than other motorists that might not be bound by the
23 legislation, which seems unfair as well. So in terms of
24 proportionality, where we are actually looking is the issue of
25 excessive credit hires costs, and it seems that 1A, with the
26 legislation, is a bit of a sledgehammer to crack a nut. I
27 think that there are other remedies that we can look at that

1 are much more proportionate and much more focussed.

2 MR FINBOW: Thank you. Do AXA or Aviva have anything different to
3 add to that?

4 MR TOWNEND: We've got a slightly different view. We've proposed
5 an alternative remedy to 1A.

6 MR FINBOW: And we will come on to that one shortly.

7 MR TOWNEND: But it's relevant in terms of the impact on credit hire
8 organisations. I don't know if you want me to cover it now in
9 terms of your question.

10 MR FINBOW: I think probably we've got a question more or less
11 directly on that.

12 MR TOWNEND: Okay.

13 MR FINBOW: So if that doesn't get picked up, we can pick it up then.

14 MR SINHO: Well I think all I'll say at the moment - because I think
15 there's a lot to be said about one 1A, which I'm sure we'll
16 get through - so in terms of service, I actually think the
17 first-party option will give the opportunity to enhance
18 service. I think it will be better service and I think
19 consumers will feel a lot better being a first-party claimant
20 in respect of hire than being a third-party claimant, where
21 they are currently in that credit hire dispute territory, where
22 they are under a notional liability to the hirer, and where
23 they have to submit mitigation statements. So I think the
24 position for a consumer as a first-party claimant is a lot
25 better to being a third-party claimant as they frequently are
26 now. So service will be enhanced and I also think that if you
27 are trying to explain to a consumer their rights and obligations

1 it is a lot easier to do that when they are a first-party
2 claimant than when they are a third-party claimant with all
3 the issues that arise in that context. So I think there's a
4 lot of positive benefits to the first-party option.

5 MR FINBOW: All right. Thank you for that. Let's move on then a
6 little bit. Does the fact that this Remedy 1A would lead to
7 replacement vehicles and other parts of the claim being dealt
8 with through separate mechanisms lead to any risks or problems
9 for the claimant? And perhaps we could ask CISGIL first.

10 MR THOMPSON: I think there certainly are some risks around that
11 because if you're not controlling both the repair and the hire
12 then, you know, you haven't got that control over the repair
13 period, so there would have to be some sort of controls in
14 place about that. I think that's the biggest single risk, and
15 particularly with claimants where the vehicle is a write-off
16 because that's one where claims can become protracted and the
17 period is extended and if you're not in control of both then
18 that's a risk. However, I think that if 1A is implemented then
19 insurers would tend to have more control because they would
20 probably be dealing with more repairs and more non-fault first-
21 party claims than they are now and therefore, more often than
22 not, I think they would deal with the two together.

23 MR FINBOW: Yeah. So actually you are saying bit by bit the two
24 would coalesce in any event.

25 MR THOMPSON: Exactly. Yes.

26 MR FINBOW: Okay. NFU.

27 MR SCOTT: I would agree with that view. I accept the existence of

1 the potential risk but I think the reality would be that under
2 this model non-fault insurers would end up dealing with the
3 repair more often than they do now if they don't have lots of
4 control over that at the moment.

5 PROF SMITH: So at-fault insurers would capture less repair work
6 than they do now?

7 MR SCOTT: I think - well, I think that's likely to be the outcome.

8 MR HANNAH: I would probably disagree with that. I think at-fault
9 insurers will continue to try and capture the repair and it
10 goes to, you know, the efficiencies or perceived efficiencies
11 that that insurer might have against another insurer dealing
12 with the cost of repair, so I think that would still continue.

13 MR SCOTT: Sorry, if I may. I think it's likely to happen if we get
14 an effective remedy in relation to the subrogation of repair
15 costs. If that remedy is not dealt with then I think the
16 situation Gordon describes might very well arise.

17 MR FINBOW: AXA or Aviva, any further comments on that?

18 MR SINHO: Well I agree with the view that I think the two will
19 coalesce and I think capture activity will reduce because I
20 think the main target is hire, but there are risks and I agree
21 with the point about repair costs being controlled is a part
22 of the factor as well.

23 MR FINBOW: Right.

24 MR TRELOAR: Nothing more to add.

25 MS CONNELLY: I agree with the comment.

26 MR FINBOW: You agree with that. ABI, I missed you out actually on
27 the first question, but do you have any further points to make

1 in relation to this one?

2 MR CUMMINGS: No, I have nothing to add to that.

3 MR FINBOW: Fine, okay, good. And I think esure has already mentioned
4 this in the opening remarks, but how would you address the
5 concern that one effect of this remedy would be that low-risk
6 drivers would subsidise high-risk drivers. esure, do you want
7 to start on that one?

8 MR HANNAH: Yes. If you assume a 1A that doesn't entail subrogation
9 it means that the total costs of the hire will be borne by the
10 insurer which, in effect, would mean, without the ability to
11 subrogate, that the premiums of the low-risk drivers will end
12 up being subsidized by the high-risk drivers and that is not a
13 good outcome from a competition perspective.

14 PROF SMITH: Right. So you mean premiums will move - the other way
15 round.

16 MR HANNAH: I mean the other way round, yes.

17 PROF SMITH: The low-risk drivers subsidise the high-risk drivers.

18 MR HANNAH: Yes. And as a result it would probably lift overall
19 insurance premiums up.

20 MR FINBOW: Right. Is that the view of everybody here? Anyone not
21 think that that's a consequence?

22 MR SCOTT: Not entirely.

23 Mr Stevens: I think we accept the cross-subsidisation. I'm not
24 quite clear why that leads to an increase overall.

25 Mr Howell: No, likewise.

26 MR FINBOW: Do you want to expand on that?

27 PARTICIPANT: Essentially more of the claim costs will be borne by

1 people who were involved in non-fault accidents which are low
2 risk drivers. They will pay more. People who are involved in
3 fault accidents will be paying less of the costs arising - they
4 will pay less. But why isn't that a zero-sum game?

5 Mr Howell: Yes, absolutely.

6 Mr Stevens: I think there's a materiality issue there, of course,
7 as well in terms of the amounts of money.

8 MR GRAF: I think there's perhaps a point, just to add to Gordon's
9 point, that by moving away from risk-reflective pricing you
10 perhaps - you incentivise less safe driving, which will cause
11 the overall cost of the riskier drivers to actually increase
12 because the incentives for safe driving have diminished.

13 MR FINBOW: And is there any way of adjusting for that over the
14 course of time that anyone has thought of?

15 MR HILLON: We potentially see that the premium for - well, one, the
16 mandatory nature of our proposal may mitigate the risk to a
17 degree. The second is that the additional premium may not be
18 a flat premium for each customer. There is the opportunity to
19 bring some degree of risk pricing into how it's taken into
20 account, the challenge being that you are pricing the risk of
21 the non-fault - the non-fault risk, but we think there's a
22 correlation between the propensity for non-fault and at-fault
23 claims that means it would reduce the potential for cross-
24 subsidy.

25 MR HOWELL: Because there are risk factors obviously relating to the
26 individual driving the car and then there are risk factors
27 relating to the environment and the situation and the time of

1 day within which an individual will be driving, therefore
2 subject to non-fault experiences or not which could be - as
3 CISGIL point out, that could be reflected in risk pricing for
4 this element.

5 MR FINBOW: Right, okay. Anyone got anything further to add in
6 relation to that? Otherwise I think, Robin, you've got a...

7 MR AARONSON: Yeah. Could I get your views on a possible mechanism
8 to deal with this cross-subsidy problem, or this undesired
9 subsidy from one group to another? Suppose you had a first-
10 party system for credit hire - for replacement vehicles, but
11 you had some sort of rough and ready adjustment mechanism
12 whereby an insurer who was in the fault position and had
13 admitted liability made a payment into a - perhaps into a
14 central fund of a fixed amount, so say £2,000 a claim goes into
15 the pot, and where an insurer is clearly in a non-fault position
16 takes £2,000 out of the pot for each case, so that you wouldn't
17 have the sort of complexities and frictions of subrogation; you
18 wouldn't be arguing about what was the actual cost in that
19 particular case, but you would, in a sort of very rough and
20 ready way, put the costs back to the fault insurer and therefore
21 the fault premium - the high-risk driver's premium and away
22 from the low-risk driver's premium. Could that work?

23 MR HANNAH: I think it could work and I understand exactly where you
24 are coming from from that. I go back to the point that it
25 could end up being an expensive way of resolving a problem,
26 which is that the cost of credit hire is too high and that
27 there are more proportionate ways of actually dealing with it

1 than legislating a first-party model and then a kind of
2 balancing mechanism on the subrogation side. So there's two
3 elements that I think you are raising when you mention that
4 point. One is how proportionate it is to change the law and
5 change people's tortious rights, and then once you've done that
6 the mechanism to balance the cross-subsidy issue. It seems
7 very, very complex to solve and perhaps there are other remedies
8 that are more proportionate and direct to solve that sort of
9 problem.

10 MR AARONSON: Okay. Well I was seeking to avoid too much complexity
11 by just saying that you perhaps look at the average replacement
12 vehicle cost from the previous year and if it was £2,000 or
13 £2,500 that was the fixed figure.

14 MR HANNAH: I agree. That bit isn't, but the complexity actually
15 is bolted on to the complexity of the start point of 1A.

16 MR AARONSON: I see what you are saying, yes.

17 MS IGNJATOVIC: Bojana Ignjatovic from RBB and esure. I was just
18 going to say I guess the question is once you start coming up
19 with an arbitrary figure for what that amount that transfers
20 over is, what consequences does that have on the level of
21 provision that ends up then being offered at the non-fault
22 insurer's side? And those are things that you'd need to take
23 into account.

24 MR STEVENS: If I may, I think there is a more fundamental point
25 here is, which is: I completely understand that if you focus
26 just one side of the scales in this equation that customers
27 paying an additional premium to get the first-party mobility

1 solution and non-fault customers within that group when they
2 discover that that is what they ultimately are, or indeed
3 customers who don't have an accident at all, will incur that
4 cost. If you just look at that side of the scale then there
5 is an increase in the premium that they might have to pay. The
6 question is: is there actually absolutely no current cross-
7 subsidy the other way at the moment in terms of the savings
8 that will be generated from the fault side of insurers' books?
9 I think our view would be that there would be and it would be
10 likely to be at least as equivalent to the increase. So whether
11 it would actually be necessary for overall premiums to rise
12 for low-risk motorists I think is something that needs to be
13 investigated further. I think it's far too simplistic to
14 suggest that it definitely means they would have to go up.

15 MR FINBOW: All right, let's then move on - I would like to address
16 this next question first to Aviva - to the variation to the
17 remedy that was put forward by Aviva and in various forms by
18 one or two other parties. Just to remind you, the idea would
19 be that there would be mandatory first-party insurance which
20 would provide the policyholder, regardless of fault and without
21 any subrogation, with an equivalent vehicle, subject to a cap,
22 which might be around two litres or something like that. The
23 policyholder would still be able to use their tortious rights
24 if they felt that the vehicle they had been provided was
25 inadequate for their needs, but obviously a court would take
26 into account any offer already received from the first-party
27 insurer. And then, as an alternative, subrogation rights could

1 be retained generally, provided that 1C also applied,
2 controlling the overall cost of hire. And one of the advantages
3 put forward for this remedy is that that would avoid a change
4 in the law.

5 Now, a couple of questions really on this. First of all, are
6 we right in thinking that this variant would only work if
7 replacement car cover was mandatory under policies? And the
8 thinking there is otherwise a non-fault claimant might still
9 choose to go to a credit hire company. And if it was mandatory,
10 then would you expect premiums to go up or down?

11 MR TOWNEND: So, yes, we would expect it to be mandatory for both
12 at-fault and non-fault. So we are dealing with the Theory of
13 Harm as per your remedy but we are also making sure there's no
14 under-provision for customers going forward. In terms of the
15 cost modelling, it's quite complex. The modelling we have done
16 for Aviva would say it would be at least [neutral or likely
17 better than the current position but there would be obviously
18 cross-funding from non-fault credit hire at the moment into at-
19 fault potential provision depending on the choice of the
20 customer. Obviously it also retains the rights of the customer
21 to choose whether they come to their insurer. In combination
22 with 1C they can go to other sources but the costs will be
23 capped. So what we are saying is the fundamental provision in
24 the product will be the same for an at-fault and not-fault
25 customer and then it's their choice if they take that up, but
26 we can mitigate costs but we are also providing a service.
27 In terms of costs, we can provide our economic modelling to

1 your team. They are only for Aviva. There are some
2 sensitivities, as you would expect, around what the consumer
3 would actually do in situations of - whether they'd take a
4 like-for-like car, whether they are at fault or non-fault, and
5 it depends on their own individual circumstances. But the
6 modelling we've done [inaudible] it would work out favourable.
7 We would have to do that for the industry, because different
8 insurers have different models.

9 MR FINBOW: And would there be any merit in limiting this to non-fault
10 claims or would that just create further problems?

11 MR TOWNEND: You could potentially do that. We were trying to avoid
12 different provision for different customer groups, and one of
13 the areas we all have difficulty with is disputed liability.
14 So where we have got disputed liability it would be very clear
15 they get a like for like - a very similar car to what
16 they purchased. So I think we could do it; I think we would
17 just have to work through the details.

18 MR FINBOW: Right. Before I ask the views of others, are there any
19 other points you want to add in relation to your proposal?

20 MR TOWNEND: No.

21 MR FINBOW: No.

22 MR TRELOAR: I will just add a couple of others. Obviously from a
23 consumer perspective it removes the credit exposure that they
24 have today - signing a credit agreement - and also, from a
25 regulatory standpoint, I think there are a number of advantages
26 to this approach. In particular, if it's part of the product
27 combination, it comes under the remit of the FCA, which provides

1 obviously an ability to manage the service provision and the
2 way in which it is sold and serviced, and you have an in-built
3 mechanism for complaints through the reference through to the
4 Financial Ombudsman Service as well. So essentially you've got
5 an in-built model for the management of the service and the
6 complaints thereof, which is currently lacking in today's
7 provision.

8 MR FINBOW: All right. Thank you for that. Now I don't know which
9 others of you have considered this as a variant, either
10 independently or having read Aviva's proposals. AXA, any
11 thoughts from you?

12 MR SINHO: Well it's a very interesting proposal and I think it's
13 certainly worth consideration. I think my initial view was
14 that there were some concerns on my part. I support the
15 mandatory level of provision. I think we've made that clear.
16 But inasmuch as this approach may seem to be a quicker solution
17 because it may be capable of implementation with an enforcement
18 order, I just harp back to the scope issue, that if this were
19 to go across the whole motor market I'm not sure an enforcement
20 order could have that scope. I will just leave that one for
21 time being.

22 If we come back to just looking at the remedy itself - or the
23 proposal itself, to me it does amend tortious rights and
24 therefore has the same issue as 1A as it's currently stated,
25 that it will need legislation. I think it potentially requires
26 legislation in two respects. It does amend tort rights because
27 there isn't the current clear ability of a third party or a

1 not-at-fault claimant to make a claim as they wish. There will
2 be certain things which they have to go to their first-party
3 cover for and after a certain limit they will use that cover
4 and beyond that they can go out and be a third-party claimant,
5 if I understand the proposition correctly.

6 MR FINBOW: Well, the way I've understood it is that you wouldn't
7 be taking away their rights at all but you would make them
8 otiose, if you like, because there would be no need. Isn't
9 that the point?

10 MR TRELOAR: That's absolutely right.

11 MR SINHO: But if I can come to my second point, you would be taking
12 away their right because I think you would be saying, 'You need
13 to go to your own insurance policy for your car, though you
14 may be able to go elsewhere and get a car if certain conditions
15 are met'. Now at some stage in the future the question of
16 whether it was right to go to a credit hirer as opposed to go
17 under your own cover will introduce the issue of what cover do
18 you have available to you. Now at the moment damages law says
19 you are not entitled to bring that into account; that's not an
20 issue which is relevant to a not-at-fault party's claim against
21 the at-fault motorist. So you would need to amend damages law.
22 And if the proposal is that you don't have carte blanche to go
23 and get your replacement car where you wish - you must go to
24 your first-party cover first - I believe that potentially
25 amends tortious law.

26 So I have some concern that there are some aspects of this
27 proposal, which - I am just highlighting those points as they

1 occur to me, but I do think it is one worth consideration which
2 could actually not make it the quick enforcement order remedy
3 it might at first seem.

4 I do have concerns too that because there seems to be a residual
5 right to go to, for example, credit hire, it isn't the effective
6 complete answer to the separation of cost control and cost
7 liability because there will be that residual right and
8 therefore there will be a remaining credit hire market who will
9 be eager to service the needs of the not-at-fault customer and
10 we will enter into disputes over whether it was right to go to
11 first party or third party and therefore some of these problems
12 will still continue, which I think won't be there if you go
13 for the full 1A as it is currently drafted. I may have
14 misunderstood the proposal, but that was my first impression.

15 MR TOWNEND: We didn't see it as forcing the customer to use the
16 insurance product. We are giving the customer the option. In
17 combination with 1C, the customer can still choose the credit
18 hire organisation - I use that as an example - but they will
19 have capped costs through that route. They have got a choice
20 of provision, making that their own choice, but they are going
21 to be very aware of their rights through Remedy A plus 1A
22 supports that. So it wasn't forcing them to use the product.
23 So I am not sure I agree on changes to the damages act.

24 MR AARONSON: Can I just follow on up on that? In that situation,
25 why would the insurer who has provided the cover have any
26 interest in paying for the car? Because he can say to his
27 policy holder, 'Well, all right, you know, you can - if you

1 insist, you can claim on your - but equally, you can go to this
2 nice credit hire company here and they will look after you and
3 send the bill the other insurer'. How would the first-party
4 insurer have any incentive to provide the cover?

5 MR TOWNEND: There's a choice there for the customer around whether
6 they use their insurance policy and combine it with the repair
7 services and everything else on offer or they do their own
8 thing, which happens to at-fault customers at the moment. They
9 make a choice around whether they use our repairers or our
10 mobility solutions, or they get their own.

11 MR ORAM: I was going to say the thing is, if they claim off their
12 own policy as opposed to going through a credit hire company,
13 there's the disincentive that they will lose their no-claims
14 bonus and they will have to pay an excess. So it's a kind of
15 a no-brainer.

16 MR TOWNEND: Our solution wouldn't penalise non-fault customers.
17 Part of the remedy that we are recommending is recognising the
18 non-fault customer with zero liability, which is a bit of a
19 mistake of ours in the past, that is - don't reflect the claim
20 as part of the premium renewal but recognise it as a non-fault
21 claim as per the current situation, if a customer doesn't come
22 to us. We then live or die by the service we provide to our
23 at-fault and non-fault customers.

24 PROF SMITH: Okay. esure, I know you want to say something.

25 MR HANNAH: Two points we would want to make. One, it would seem
26 that with this type of remedy, it is underpinning it and doing
27 all the work. Secondly is in terms of cost, if we, as insurers,

1 were to provide like-for-like cars for not-at-fault and for at-
2 fault customers - in fact, every single claim - then, whilst
3 the work has to be done in terms of a cost and impact on
4 premiums, and given that I'm not sure that there's any evidence
5 that all customers in effect want or need a like-for-like car
6 in all circumstances, then initially my thoughts would be that
7 overall premiums are going to certainly increase by
8 significantly more than the detriment that we have earmarked
9 for this. So again it comes down to proportionality.

10 MR FINBOW: Right. Any of you have anything further to add in
11 relation to that?

12 MR SCOTT: Yes, if I could just make a couple of observations. I
13 think the proposal from Aviva is worthy of some further
14 investigation. To the extent that we have had an opportunity
15 to explore it, the first reflection I would make is that in
16 some respects it is not that dissimilar to the way NFU Mutual
17 non-fault customers access vehicle mobility at the moment
18 except that they access it in this way through legal expenses
19 insurance cover. It's provided on an insured basis, not a
20 credit hire basis, and is then recovered from the fault party
21 under the terms of the GTA but without all the additional
22 penalty clauses that the GTA technically allows the legal
23 expenses insurer to pursue. So there is some indication in
24 that same way that it does work and most of our customers would
25 elect to use that route rather than to explore an alternative
26 credit hire solution.

27 Having said that, I think my concern with the proposal is that

1 because of the way it's framed the rights of the consumer to
2 still access mobility through an alternative route - credit
3 hire or whatever - still remain and I'm not entirely clear on
4 what basis the subrogation approach of the party that then
5 provides it in the non-first-party insured way are constrained
6 without a change in the fundamental law. So to me it is still
7 - it is constrained to a degree by a hopefully successful
8 approach of 1C remedy applying in parallel, but if that were
9 not to be sufficient then it is not yet fully constrained and
10 therefore we think that there might still be a need to change
11 subrogation law in some way to prevent credit hire
12 organisations from maximising an encouragement to customers who
13 have acquired this cover to nevertheless use a credit hire
14 route.

15 MR FINBOW: Okay. I want to move on but I think because this is
16 something that everyone is saying we ought to investigate
17 further, we ought to have a complete picture as to people's
18 views. CISGIL, do you anything to add?

19 MR HILLON: We agree it's worth investigating further and that if
20 subrogation means there is no requirement to change the law
21 then it's certainly worthy of investigation. Our own modelling
22 suggests that it would be at worst cost neutral, similar to
23 Aviva's conclusions, but we recognise there are a range of
24 uncertainties around that, in particular whether mandatory
25 provision would increase the number of replacement vehicles.
26 So whilst the average cost per claim would be materially reduced
27 by the elimination of credit hire where we recognise there's

1 excessive hire costs, whether the additional number of claims
2 would counter that is materially uncertain. Ultimately,
3 though, we think it potentially supports the industry providing
4 a better service model, as we indicated earlier, where if
5 insurers are providing their own customers with replacement
6 vehicles that's an opportunity to strengthen the relationship
7 with their customer.

8 PROF SMITH: Can I just press you on the legal issue that has been
9 raised? Because I'm sure we have all read the *Coles v Hetherton*
10 judgment very carefully and I appreciate that was about repair
11 costs, but the judges there seemed to be saying that it's a
12 very general principle that people's rights under their own
13 insurance policy do not affect their tortious rights. Why
14 would that not apply to this remedy that you have got - under
15 your own insurance policy you've got compulsory replacement car
16 provision but you go to court and say, 'That's what my insurance
17 policy has paid for and it doesn't infringe my rights as a
18 tortious party to have a credit hire bill paid'? That's the
19 legal question I have about this proposal, which I confess I
20 don't know what the answer to is.

21 MR SINHO: I may not have said it very well, but I think that was
22 the point I was trying to get at, that from the at-fault
23 insurer's point of view the issue may be whether it was
24 appropriate for a not-at-fault claimant to go to credit hire
25 when they have a first-party policy which would have given them
26 a vehicle. Now even if there's a first-party policy, the
27 question is: what would not-at-fault insurer subrogate at? So

1 the issue of subrogation, even with that solution, has to be
2 considered, I think. But at the moment the at-fault insurer
3 with a claim against them is not entitled to say, 'You should
4 have gone and used your insurance policy'. So if that is issue
5 is going to arise in cases, that will need a change to damages
6 law.

7 PROF SMITH: Okay. Admiral.

8 MR STEVENS: I think our view is that the fundamental issue about
9 this suggestion is it's conditional on successful
10 implementation of 1C, and if you have successful implementation
11 of 1C such that the recoverable amount is close to the true
12 cost, why would you then go on to a first-party complex option?

13 MR FINBOW: So you're saying you don't need it.

14 MR STEVENS: Yeah. And if you don't have successful implementation
15 of 1C, you just turn the insurance industry into the credit
16 hire industry and have a very deleterious outcome. So it's
17 all about 1C.

18 MR FINBOW: Okay. Thank you. ABI, do you have anything to add?

19 MR CUMMINGS: No. I think - I mean, we've put in our response as
20 to address potential concerns around subrogation and the
21 legislative changes that would be required with 1A. Our
22 position's been that this should be explored further, which
23 obviously you are doing today, and also going forward.

24 MR FINBOW: Okay. Thank you. Well that takes us on to 1B - or, in
25 fact, 1C because we don't have any questions on 1B. So let's
26 turn to 1C, which we have been talking about fairly regularly
27 already. If rates were to be set at direct hire rates, would

1 it be economically viable for a credit hire company, or indeed
2 any other party, to provide the necessary replacement car
3 services to non-fault claimants? Maybe I can start with the
4 ABI.

5 MR CUMMINGS: The simple answer is yes. I mean, what we're talking
6 about here is not getting rid of the credit hire industry in
7 terms of replacement vehicles or about getting rid of the credit
8 hire aspect altogether. By reducing the rates to direct rates
9 you are essentially incentivising the replacement vehicle
10 providers to be more competitive and to drive costs down. So
11 I think that obviously there's an aspect where we can ensure
12 that vehicles are provided at rates which are effectively what
13 insurers can achieve when they have control over the claim
14 rather than when they don't.

15 MR FINBOW: Is there any party who doesn't agree with that? I
16 suspect you probably all do, in which case we can move on.
17 Yeah? Okay.

18 So, should maximum hire rates be applied to all car hire charged
19 to fault insurers or, if not, could CHCs circumvent the remedy
20 by acquiring referrals from non-insurers, you know, such as
21 vehicle recovery service providers? Admiral.

22 MS CONNELLY: Sorry, could you repeat the question? Sorry.

23 MR FINBOW: Yes. What we are wondering is whether maximum hire rates
24 should applied to all car hire when charged to fault insurers,
25 because otherwise CHCs might be able to circumvent the remedy
26 by acquiring business from people such as vehicle recovery
27 services - other referrers.

1 MS CONNELLY: Yeah, I think it's a fundamental part of it that we
2 need to make sure all parties are signed up to [cross-talk].

3 MR FINBOW: So everyone would need to be caught in this way.

4 MS CONNELLY: Yeah.

5 PROF SMITH: And how do you make sure that everybody... You mean all
6 the credit hire companies would have to be caught in it?

7 MS CONNELLY: Yeah, [inaudible] licence to do accident management
8 work [inaudible] licence with the MoJ, I would say, [inaudible]
9 brokers [inaudible].

10 MR SINHO: Just on that point, my response to that is - I think it's
11 an important point - how do you make sure any remedy under 1C
12 applies to all the parties who may be involved in this industry?
13 My view about 1C is it doesn't work, but we can come back to
14 that. But it does seem to me that whereas under 1A a lot was
15 said about it needing legislation, bear in mind that 1C has an
16 element of compulsion and also - as far as I can see, it also
17 affects claimants' rights again, I can't see how 1C can come
18 about without legislation also. So I think you would have to
19 legislate both for - both to make it compulsory but also to
20 deal with the claimant's, or the customer's, individual
21 personal rights which you are trying to cap off in some way,
22 or moderate.

23 MR FINBOW: You've just said there that you don't think 1C works.
24 Is that because of the reason you have just said that you would
25 need legislation for it?

26 MR SINHO: I think for me there's a number of things about 1C which
27 are problematical, to which I believe the answer is 1A. But I

1 think there's a feeling that we've been going down this route
2 before. I think there's the issue about compulsion, about
3 amending rights, which needs a legislative solution. I think
4 even if you can deal with rates, the issues around period are
5 impossible to get in a controlled way. So my fear is that we
6 will end up with a number of stated principles about duration,
7 which we have at the moment and still produce many arguments
8 and disputes and frictional and litigation costs. So when I
9 stand back and look at what is proposed, which is something
10 which puts guidance around rates, around period - and there
11 are many other aspects which are disputed in these cases which
12 are not referred to - my current feeling is that it is not
13 going to produce the solution which I think some of my
14 colleagues in the industry think it will.

15 MR FINBOW: Would anyone like to add to that? Otherwise we can go
16 on to a question which I think picks up one of the points you
17 have just made. But before we move on to that, any other
18 points?

19 MR HANNAH: Yeah. I think duration is not an insurmountable issue
20 to deal with. The main detriment is, in fact, on the daily
21 rate rather than duration, but I think duration can be dealt
22 with. I think we all understand the shortcomings of the GTA.
23 It was voluntary, whereas I think, speaking maybe on behalf of
24 most of us here, that this new body would be an independent
25 body and all parties would have to sign up to it, and once that
26 was established there would be a review mechanism to ensure
27 that the daily rates are capped, in conjunction with a mechanism

1 - maybe a portal - whereby duration can be flagged as an issue
2 and earmarked for special scrutiny. So I think it can work.
3 The main issue I think which I've not got my head around at
4 the moment is which independent body could effectively
5 implement this regime.

6 MR FINBOW: Yes. Admiral, you wanted to say something.

7 MS CONNELLY: I agree with Gordon's comment about the portal. I
8 think that the at-fault insurer has to take more responsibility
9 for the duration and that it's visible to be able to look at
10 and to be able to take some control over. So, for example,
11 you know, parts delays, that kind of thing, to be able to look
12 into the case and help the case to settle quicker.

13 MR THOMPSON: That's no different to now really. I think our concern
14 about this is that to be truly effective it would have to
15 involve everybody. Everybody would have to sign up for it, so
16 it would have to be compulsory and we're not sure that's
17 achievable.

18 PROF SMITH: And compulsory on whom?

19 MR THOMPSON: On the providers of car hire and the insurers to agree
20 that subrogation would be at those rates and guidance on
21 duration.

22 PROF SMITH: So it would have to cover all suppliers of car hire?

23 MR THOMPSON: In accident claims.

24 MR SCOTT: If I... To the question of we're envisaging the existence
25 of an effective independent body that provides a control over
26 recoverable costs of vehicle provision, that would have to
27 apply to everybody and the 'everybody', however unlikely it

1 might be to envisage this in the current market, would probably
2 also have to include the non-fault motorist who funded their
3 own hire. So how do you make that happen without a change in
4 the law? And if you don't make that happen, might you not just
5 generate a situation where some kind of fronting of an apparency
6 of paying for your own hire with someone else actually funding
7 it in the background might still materialise and therefore the
8 gaming continue? So our view is that 1C is absolutely worthy
9 of further consideration and investigation. It has huge
10 problems, but in terms of to whom it must apply it would have
11 to be everybody in the fullest sense of that phrase.

12 MR FINBOW: Yeah.

13 MR STEVENS: This is a very complicated area and it's not necessarily
14 the case that ultimately the solution won't have to involve a
15 change in the law, so I think my belief is that 1C is the right
16 ultimate underlying answer and that that has to be delivered,
17 if that's the case, through a change in law to achieve
18 compulsion and to make those levels be the only levels that
19 are recoverable in the court. Then, should we be shying away
20 from that as a solution? Because we're not going to do this
21 again for 10 years, I hope.

22 PROF SMITH: But then one has to think of surely 1A and 1C under the
23 same umbrella of that, because some of you have expressed
24 misgivings about 1A because it requires a change in the law,
25 but if 1C requires a change in the law then 1A and 1C are on
26 the same footing and they both have the same disadvantage.

27 MR SINHO: And I think you probably have to look at 1A as being the

1 only remedy which directly impacts this issue of separation of
2 cost control and cost liability. 1C maintains it and tries to
3 moderate behaviours. And my big concern is that even if you
4 do get restraint around rates, if there's any woolliness around
5 duration, the restraint on rates is made up in the period of
6 hire and the two go together. Now, I do think it's very
7 important to see that this does require a legislative solution,
8 as does 1A. It isn't as effective in dealing with the AEC,
9 because it looks at a situation where we will continue having
10 the separation of cost control and cost liability.

11 MR HANNAH: I think we have reasonable consensus, apart from the
12 Aviva model, about 1A requiring legislative change to enact.
13 I think there's some shooting from the hip to jump to the
14 conclusion that 1C will also necessarily require a change to
15 the law. It need not. It needs to be looked into. And if it
16 doesn't, it's more direct and it's a more proportionate remedy
17 to follow.

18 MR SCOTT: I mean I highlighted the risk of it not applying to the
19 self-funding non-fault motorist. It may be that that risk is
20 worth running to implement a version of 1C without a change in
21 the law.

22 MR HANNAH: How many self-funded individuals do you know claim
23 against you?

24 MR SCOTT: But in the current model; that's the issue.

25 MR FINBOW: Yes. I mean your concern is you might have some sort
26 of [front?].

27 MR SCOTT: All I'm highlighting is to make sure that there are no

1 unintended consequences, hence my remarks at the beginning
2 about needing to find remedies that prevent avoidance
3 activities in the future. But the shape of 1C as a first,
4 probably non-legislative, step is definitely worth further
5 investigation, subject to the question of what power does the
6 independent body have to impose its requirements on everybody.
7 Where does it draw those powers from?

8 MR FINBOW: Okay. I think we've had a good range of views in relation
9 to that. Plenty to think about. Just one final question,
10 then, on that, and that is this independent body not yet
11 identified. Do you all envisage that that would involve the
12 use of an on-line portal to reduce frictional costs? Lots of
13 nodding. Okay, good. Thank you.

14 That concludes 1C, unless any of my colleagues have got
15 anything they want to follow up on.

16 MR AARONSON: Can I just come back to this question of direct hire
17 rates - the adequacy of direct hire rates? We dealt with it
18 very briefly and nobody disagreed that anything was needed
19 above the direct hire rate. I am just thinking there is a
20 certain amount of administration and argument and occasionally
21 litigation involved in providing a temporary replacement
22 vehicle and subrogating the costs to the fault party. Doesn't
23 there need to be some allowance for that?

24 MR HANNAH: I think you need look into the detail of that. There
25 is - if credit hire continues in that form, to take into account
26 the cost of managing the claim and the cost of credit itself.
27 I think the main point to make is whichever way you look at

1 it, that differential is not equivalent to £555, which it
2 currently is.

3 MR AARONSON: No, I accept that, but that wasn't the question. The
4 question was: is the bare direct hire rate by itself enough,
5 or does something need to be added to it?

6 MR HANNAH: Well that's something you'd have to look into,
7 understanding the margins of the direct hire rate and whether
8 there is margin in there.

9 MR AARONSON: I see.

10 MR FINBOW: All right. I think I can hand back to you, Alasdair.

11 PROF SMITH: Okay. Thanks. I would like to turn to Remedy 1D on
12 non-fault repair costs. First I would like to ask a general
13 question about how you think the insurance industry is going
14 to respond to the *Coles v Hetherton* judgment - whether you
15 think that's going to lead to insurers changing their business
16 models. And note, harping back to something I said at the very
17 beginning, I am not asking you to make statements about what
18 your own plans are post *Coles v Hetherton*; I am asking for your
19 views about how you see industry practice developing. Perhaps
20 we can start with Aviva.

21 MR TOWNEND: I think it creates a huge amount of uncertainty around
22 what's reasonable cost. So we are in a vacuum and in danger
23 of all making of our own judgments of what reasonable costs
24 are that we can subrogate. I think that can lead to various
25 scenarios depending on the strategy of the individual insurer,
26 but as long as the question remains open (and if we look at
27 this in light of potential remedies around 1A and 1C), if we

1 don't do something to make sure repair costs really are
2 reasonable there will be a problem. I think the challenge is
3 to define reasonableness as we know in a very, very costed
4 environment certain parties will take advantage MR SINHO: I
5 agree entirely.

6 PROF SMITH: esure, have you any comments?

7 MR HANNAH: In terms of that particular case, it's not what we are
8 going to do in the future; we have already come to that. There
9 are ways and means of coming to arrangements, whether they are
10 bilateral arrangements or other arrangements. It is a big,
11 big issue, this, you know, what is reasonable, and it's the
12 same issue I have with what is "wholesale" as a potential
13 remedy. And again I raise the issue of proportionality, looking
14 at what is the actual detriment from - for a moment excluding
15 credit hire subrogation, but insurer-to-insurer subrogation.
16 The actual detriment to the customer is actually quite small
17 but the remedies are potentially quite complex and intrusive.
18 So, for example, if you take the concept of "wholesale", what
19 do you mean by that? And I will give you two examples. If an
20 insurer is vertically integrated, what is the actual wholesale
21 cost? It could be anything. Second example: some insurers
22 have a fixed cost relationship with their repairers, and again
23 take the question: what is the wholesale price when you are
24 dealing with fixed costs? So it is a very, very complex subject
25 to get into in terms of - and it's not straightforward.
26 The other issue, of course, is there may be an assumption that
27 subrogating at "wholesale", whatever that means, effectively

1 means that if an insurer is doing it at wholesale that actual
2 cost is lower, and that need not be the case either.

3 PROF SMITH: You clearly are a person of great foresight because
4 you've got into answering my next question before I asked it.
5 Any other comments on the aftermath of *Coles v Hetherton*?

6 MR SCOTT: I think my first observation is the decision from the
7 Court of Appeal has remitted the question of what is reasonable
8 back to the court, so I would hope that the reaction of the
9 insurance industry would be to wait and see what happens in
10 those judicial decisions around the basis of reasonableness.
11 I don't hold a huge amount of hope out that that will prove to
12 be the case, but at the moment I think it's too early to say
13 how the industry will react, for all the reasons that have
14 already been discussed.

15 MR THOMPSON: While *Coles v Hetherton* is out there, there is always
16 going to be an opportunity for insurers to change their model
17 to take advantage. I think what insurers decide to do
18 ultimately may well be influenced by the outcome of your
19 investigation.

20 MS CONNELLY: I will just add that [inaudible] and the RSA have been
21 [trying to do lots of deals with different peoples throughout
22 the court case?] and [inaudible]. They wouldn't do that unless
23 they expected the market to react to the outcome of it.

24 MR SCOTT: And without providing the details, it is fair to say we
25 have already received intimations from the participants in the
26 market of an intention to increase their recoverable labour
27 rates.

1 MS CONNELLY: I would bring Gordon's point back in about
2 proportionality as well.

3 PROF SMITH: Do the ABI want to make any comments?

4 MR DALTON: Those remarks that have already been given provide you
5 sufficient information as to what the future of the market
6 might look like.

7 PROF SMITH: Gordon has already made some comments on our remedy
8 1D(a), which was requiring bills to be subrogated at something
9 like the wholesale cost, and I wanted to raise two specific
10 concerns. One of them was, I think, already touched on. How
11 would this remedy apply to insurers who are vertically
12 integrated with repairers? How would 1D(a) work in that?
13 Secondly, would this affect the incentives for insurers to keep
14 repair costs down if part of their success in keeping costs
15 down then has to be passed on to at-fault repairers?

16 MR HANNAH: Clearly there is an unforeseen consequence, or a
17 possibility, that if the remedy was introduced on a wholesale
18 basis that would act as a disincentive for insurers to invest
19 in their network and ensure efficiencies, because effectively
20 those efficiencies would only then apply to a proportion of
21 their claims and not the not-at-fault claims.

22 MR THOMPSON: We don't see that as a disincentive, because it is
23 only proportional. You are still getting the benefit of that
24 from your fault claims and your split liability claims, so in
25 itself that's no disincentive.

26 MR HANNAH: Well, 50%, as I've said.

27 MR TOWNEND: As one of the insurers who have got their own body shop

1 network, I think we would welcome clarity around reasonableness
2 on what we can charge. We have got our network really to
3 provide capacity and service to customers in areas that we
4 can't obtain it easily and we do have uncertainties around what
5 we can reasonably charge and I think one of my colleagues said
6 earlier that we would like clarity around what we can and can't
7 do around reasonable costs, and it's a very complex market, as
8 we have said. If that ultimately led us to review our strategy,
9 we would do that.

10 PROF SMITH: I was going to just press you on that, because Remedy
11 1D(a) is saying - the remedy would require you to - in passing
12 on bills to pass them on on the basis that you pay your
13 repairers, but if your repairers are part of your own business,
14 then how do you specify such a remedy?

15 MR TOWNEND: Our personal solution is that we need to have - or our
16 solution would need to revolve around set labour rates, set
17 parts rates, and something around an estimating system that
18 sets some sort of methodology, but it's not easy.

19 PROF SMITH: Sorry, Gordon, did you want to come in?

20 MR HANNAH: I was just going to say there's a danger of getting into
21 kind of very intrusive territory and I was going to make the
22 point that there are existing ways already which insurers look
23 to manage the size of subrogated costs against them. Insurers
24 should have the management information to see differential
25 costings by insurer and have the ability to talk to those
26 insurers if they feel those costs are out of line and put into
27 hand, you know, other arrangements. We, as insurers - I'm not

1 sure we need the mollycoddling. We are big boys in the market
2 and have the ability to manage that, or should have the ability
3 to manage those types of issues without intrusive... What's the
4 word I'm looking for?

5 MR GRAF: I suppose basically restricting the ability to achieve
6 commercial relationships and to structure your business in the
7 most efficient way you see possible, the remedy is quite
8 intrusive in that respect, potentially.

9 PROF SMITH: The other option that we raised was for costs
10 recoverable through subrogation to be limited to some sort of
11 standardised costs. I think it's fair to say we've had a wide
12 range of responses to that suggestion, ranging from respondents
13 who said, 'Oh, that's terribly complex. Every repair job is
14 different. Establishing standardised costs would be impossibly
15 complicated and intrusive' to others who have said more or
16 less, 'Oh, no, we have standard cost estimating systems. You
17 just turn a handle and out pops the answer for almost all repair
18 jobs.' So, some responses say this is just completely
19 impossible and other says, yes, it is an entirely simple thing
20 to do. What are your views?

21 MR SCOTT: I think it's certainly possible. I think there's a wider
22 question here in terms of desirability. I don't entirely accept
23 the argument that, because of disproportionality, nothing
24 should be done in this space, because I think, to the question
25 that was raised earlier about future responses to the current
26 tort law, how do we know what the extent of disproportionality
27 will be once everybody has changed their position on the back

1 of *Coles v Hetherton* when the High Court has considered what
2 reasonable is? We don't know that yet. But the other end of
3 the spectrum is that we move to a situation where in effect
4 standardisation for recoverability of repair costs and for
5 credit hire in effect starts to take all competitive margins
6 out of the industry and so you're effectively engaging in an
7 outcome which is overall price setting, which may have the
8 effect of taking out reasonable competition between
9 participants in the market. The issue here for me is the
10 distinction between - it's: what the remit of the independent
11 body under 1C? Is it to set a position where every participant
12 gets the benefit of the most economic way of carrying out
13 repairs, or is it to arrive at a position which removes the
14 excess and nothing more, and still leaves parties within the
15 market to be able to operate at lower costs than that and yet
16 subrogate at a reasonable level? It's back to the point that
17 Aviva have made about what is reasonable. I think it's still
18 worthy of further exploration but I'm not convinced that
19 standardisation is the right answer, for that reason.

20 MR THOMPSON: Can I go back to 1D(a) momentarily, please? Because
21 I agree with what Gordon said at the outset in that it's the
22 definition of wholesale that's really important here. I think
23 you yourself a few moments ago said that the basis for that
24 would be subrogating at the invoice price of what you have
25 actually paid the repairer, but we don't think that goes far
26 enough, because it's relatively simple to have an arrangement
27 where you have a discriminatory model between fault and non-

1 fault claims, so on the face of it what you're paying, or the
2 invoice price, is the same but there's a subsequent rebate some
3 time down the line. So, because of that, the definition of
4 'wholesale' becomes crucial and has to play into this.

5 MR CALDWELL: Alex Caldwell, Supply Chain Director for Aviva. We
6 would support some form of standardisation. I don't think it's
7 necessarily easy to achieve, but we would absolutely support
8 it, for the very reasons that Rob touched on earlier, and that
9 is that we have an integrated body shop and we need to
10 understand what the rules are around how we charge. It's not
11 too difficult. It's a complex issue but a repair is a repair,
12 so there's parts, there's paint, there's labour, and you have
13 an element of overhead, a margin for the repairer or whoever
14 is carrying out the repair. At the end of the day there are
15 estimating systems that do that for you and if you had something
16 that ran along the lines of a reasonable - and I know that's
17 the whole issue of the case we've just been discussing, but if
18 you had something that said what's reasonable, then there's no
19 reason - with a decent estimating system and a portal to manage
20 subrogation, there's no reason why we couldn't address that, I
21 don't think. We're fixing cars.

22 MR ROBERTS: Can I just add - it's Graham Roberts, esure. The
23 difficulty is not the estimating system; it's what goes into
24 it. So ultimately you can have a standardised estimating
25 system, turn a handle and out comes a cost, but it's actually
26 what goes into the front end of that estimating system which
27 is the challenge. Yes, you could put manufacturer parts prices,

1 paint, labour and so on into that system, but it's actually
2 the behaviour of the inputs that drives the actual repair method
3 that churns out the end game, not what the estimating system
4 says.

5 PROF SMITH: Sorry, could you expand on that?

6 MR ROBERTS: So ultimately, you will have different models across
7 all of the repair networks. Again, everybody in this room will
8 operate different models, but ultimately it is down to the
9 estimator at the repairer to choose the right method that goes
10 into that system. Ultimately you will have different repair
11 methods that drives the output, so you might have
12 manufacturer's parts fitted, you might have non-manufacturer's
13 parts fitted, but your estimating system will give you that
14 level of standardisation. But what it won't do is tell what
15 has actually gone into it at the front end, and that's where
16 some of the challenges are being faced. And to get to that
17 wholesale price or that of a standardised cost would mean the
18 complexity of actually trying to standardise each element
19 within that repair cost, which would be extremely difficult to
20 do.

21 MS CONNELLY: I think there are quality aspects to standardisation
22 as well. There are risks the industry will be pushed into
23 always beating the standardised costs that are there and
24 therefore there will be quality risks with regard to the
25 standard of repair.

26 MR ROBERTS: And that takes away some of the flexibility within that
27 to attain the best quality possible if you are trying to

1 standardise that element of cost.

2 PROF SMITH: It is important to say, however, that the intention
3 behind this remedy is not that it would control all repair
4 prices. It's not a price control mechanism; it's purely a
5 method - it is intended to be a method of determining the prices
6 at which subrogated repair bills get passed on. The deal that
7 the insurer does with the repairer is still entirely up to them
8 to negotiate.

9 MR ROBERTS: But that does drive the output.

10 PROF SMITH: Sorry, it does?

11 MR ROBERTS: That does drive the output.

12 PROF SMITH: In what way?

13 MR ROBERTS: Well, it drives the output of the costs, so whatever
14 you're subrogating, if you're basing it around an estimating
15 system that's supposedly a standard system, you're still
16 driving that end cost that has been subrogated, and I think
17 yes, it does make a difference as to what happens at the front
18 end with the repairer that ultimately drives that cost at the
19 back end. That's where the complexity is, not in the fact that
20 you've got a standard estimating system that drives the cost.

21 MR CALDWELL: I do understand the issues around the methodologies
22 that apply in repair, but, again, there are manufacturer's
23 methodologies, there are Thatcham-approved times for jobs. I
24 also get the manufacturer parts, own parts, OES parts but all
25 of that said, we are still at the end of the day dealing with
26 fixing cars. There are only so many ways to physically fix a
27 car, and it just comes back to what's the overall position of

1 reasonableness in that subrogation issue. I do take the point.

2 I absolutely take your point, but...

3 MS IGNJATOVIC: I think what we're trying to say is that if you end
4 up with something that ends up specifying that you're going to
5 subrogate at the cost of always using manufacturer own parts,
6 you might actually end up with a higher cost to the at-fault
7 insurer than you get now, where effectively everyone finds the
8 most efficient way of doing the repair and then that is passed
9 on at a reasonable cost.

10 PROF SMITH: Okay.

11 MR ROBERTS: And that feeds into policy terms as well.

12 MR TOWNEND: The other piece we shouldn't miss in this whole debate
13 is the frictional cost that we all put into managing each other.
14 So the opportunity of removing and having a standard cost isn't
15 just about repair cost; it's about the frictional costs that
16 sit within all our organisations around that, and I think you
17 should bear that in mind in whatever remedy the Competition
18 Commission proposes, because it's not just about the repair
19 costs per se.

20 PROF SMITH: Insofar as these remedies are appropriate, could they
21 be applied to credit repair as well as to insurer-managed
22 repairs? Any views on that?

23 MR THOMPSON: We think it would have to apply to all repairs for
24 consistency, otherwise you'd get too much differential.

25 PROF SMITH: Any other comments? That's generally agreed.

26 MR HANNAH: Just, I suppose, in final summary, I think on
27 standardised costs, we've seen, when we look at replacement car

1 hire, the moving parts there are relatively more simple because
2 you've basically got the type of car and the duration. The
3 issue I think with repair is you've got a lot more moving parts
4 that - if you were going to go down a standardised route you
5 would have to determine, you know, labour parts, paint and all
6 the ingredients that go into repair, so that makes it
7 significantly more complex, I think, than the equivalent on the
8 replacement car side of things.

9 PROF SMITH: And is the duration of repairs one of the factors which
10 would have to be controlled here too?

11 MR HANNAH: It is if it's linked to the car hire, yes. But the
12 duration is not a difficult output because the estimating
13 systems would generally - once you've fed in the labour costs
14 and the other variables, the duration will come out of that
15 and, you know, if that duration is within a range, then that
16 would seem all right; if it's not within a range then that's
17 the point at which that is looked at differently and
18 scrutinised.

19 MR THOMPSON: Is it not the case that if all subrogation was at
20 standardised costs the overall cost to the industry would still
21 be higher than if subrogation was all at wholesale cost and
22 therefore the cost to the consumer will be lower in premiums
23 if everybody subrogates at wholesale costs?

24 MS IGNJATOVIC: Except for the efficiencies. You don't know how
25 much having that ability to benefit from the efficiencies
26 generated actually means that you end up lowering, effectively,
27 the wholesale costs.

1 PROF SMITH: Having a scheme for subrogating costs is just a scheme
2 for passing bills along; it's only if it changes people's
3 behaviour that it will raise aggregate costs to the industry -
4 or lower them.

5 I would like to move on. We are almost at the end of the
6 Remedy 1 questions, but I want to ask about Remedy 1E,
7 controlling write-off costs. In the light of the responses we
8 received I am going to focus only on option (b), which was the
9 option for insurers to use the actual salvage value proceeds
10 or to subsequently adjust the estimated salvage value. From
11 your responses we understand that most of the major insurers
12 do use actual salvage value in calculating the amounts of
13 subrogated claims and therefore in most cases there wouldn't
14 be any need for an adjustment mechanism. If it is
15 straightforward to use actual salvage values, why is that not
16 already the completely standard practice? CISGIL.

17 MR THOMPSON: Well as you say, for the majority of the insurers it
18 is. I think when you get into claims management companies and
19 credit hire companies who are managing repair and hire or total
20 loss and hire then you will often find that that's where
21 estimated salvage values come into play. Some insurers
22 subrogate on that basis. You would have to ask them why they
23 do that.

24 PROF SMITH: Is there anyone who wants to defend the use of estimated
25 salvage values?

26 MR HANNAH: Yeah, because my understanding is that not just credit
27 hire but a lot of insurers have, for a long period of time,

1 used estimated salvage values. The benefit of it, in terms of
2 recovery of the outlay, the total costs less the salvage happens
3 a lot more quickly, and that if you were wait, which would be
4 many months before you get an actual salvage value, you are
5 prolonging the life of the claim, you are prolonging the time
6 where the customer's NCD is perhaps held in abeyance, and I'm
7 not sure that if it was mandated that on every occasion you
8 had to wait until the real salvage value was actually obtained
9 - whether the benefits of that would be proportionate to the
10 other issues of customer service.

11 MR ROBERTS: I think it's worth adding that fundamentally there are
12 three or four salvage models in operation, including those that
13 are purchase rate models at the front end, going back to the
14 point that you know how much you are going to get for that
15 salvage; you have sales-based profit-sharing models that sit
16 at the back end, which is what Gordon is talking about, and
17 then ultimately a combination of the two. But if you're getting
18 to the point of saying that everybody runs the same model,
19 that's not quite the case. So actually bringing that forward
20 and saying everybody must use an associated purchase rate to
21 determine that's what we're going to pass on as actual salvage
22 could cause those delays or could actually cause some reduction
23 in the amount of salvage that gets passed on through the model.

24 MS CONNELLY: I think there's a risk that it pushes back into just
25 a percentage deal and therefore the whole industry loses out
26 on what the actual incomes could be from it because the
27 logistics, as Gordon explains, I think are particular for a

1 customer. They constantly chase us to know what's happening
2 with a claim, whether it's settled, and some salvage to get
3 the best price could be three or four months down the line,
4 could be longer. So I think the frictional handling costs are
5 quite high in that respect.

6 MR THOMPSON: I don't think in practice there is a significant delay.

7 But, in any event, I think if estimated salvage values was the
8 correct methodology, that would be okay, provided they were
9 realistically estimated salvage values and not artificially low
10 salvage values, which is sometimes the case.

11 PROF SMITH: Any other comments on this? Well, can I finish off by
12 asking about Remedy 1G? I'm not going to go talk about 1F,
13 mitigation of provision of replacement vehicles, but Remedy 1G
14 is about the prohibition of referral fees. It has been put to
15 us by some respondents that the prohibition of referral fees
16 in relation to personal injury has not been completely
17 effective or successful to date because of circumvention. Is
18 that the case? ABI, do you have a view on how the prohibition
19 of referral fees in injury has gone?

20 MR DALTON: I think it's probably a little too early to tell. I
21 think there's lots of anecdotal evidence and stories in the
22 market about changing business structures and models in order
23 to get around the ban on referral fees in personal injury.
24 Ultimately, referral fees are something of an underlying
25 problem, so a ban on referral fees in and of itself will achieve
26 very little. The underlying problem that the Commission has
27 identified and is looking to address is the higher cost of

1 credit hire vehicles. Referral fees are just a symptom of that
2 overall market.

3 MR CUMMINGS: Sorry, can I just add to that? The big difference
4 between PI referral fees and referral fees for credit hire -
5 one of the big reasons the ban on referral fees was so important
6 for PI was that they led to an increased number of fraudulent
7 and frivolous personal injury claims, particularly for
8 whiplash, and I don't think that's the case with credit hire.
9 These are for - genuine claims; there has been a genuine
10 accident, and I think that's a big difference. So I think it's
11 quite hard to put a number in terms of the impact of the ban
12 on PI claims because so many of them were frivolous and
13 fraudulent to start with, so the ban on referral fees for credit
14 hire you probably wouldn't be expecting to see a big reduction
15 in the requirement for vehicle replacement overall.

16 PROF SMITH: Any other views on that?

17 MR HANNAH: I would see the ban on referral fees as being a kind of
18 underpinning support mechanism and I think the ABI are right
19 that if you go to the root cause of the problem - the excessive
20 daily hire rates within credit hire - if that is effectively
21 dealt with then the need for prohibition of referral fees to
22 some extent goes away. But in terms of ensuring that we get
23 the right balance, then I think if they're implemented in
24 conjunction with each other, that would kind of be a belt and
25 braces approach.

26 MR SCOTT: Yes, we would agree with that. I think that - your
27 question was about the effectiveness of the ban in personal

1 injury. I think it's fairly clear that participants in that
2 market have found different ways to distribute the margin that
3 can be earned from progressing a personal injury claim, but
4 the referral fee ban, working in conjunction with the removal
5 of the excess margin by fixed costs, was the thing that really
6 made the difference. It's the two operating together which is
7 the most important outcome here and the same would be true as
8 far as credit hire is concerned.

9 PROF SMITH: Okay. Before we leave Theory of Harm 1 - I'm just -
10 in case you're apprehensive, I'm going to propose when we finish
11 Theory of Harm 1 that we have a five-minute comfort break rather
12 than pressing on through the other areas. But before I finish,
13 can I just check whether anyone has any further questions?
14 Okay, then we are done on Theory of Harm 1 and I hope that
15 we'll - well I think we - someone said at the beginning that
16 you wanted to spend - you expected to spend more time on Theory
17 of Harm 1 than on the rest, and that was certainly our
18 intention, so we are comfortably more than halfway through at
19 the moment, I trust. But let's have a five-minute break and
20 resume quickly as possible after five minutes.

21
22 **(Adjourned from 12.02pm to 12.08pm)**
23

24 PROF SMITH: Okay, if we're ready to resume, welcome back. I want
25 to move on to Theory of Harm 2, and Steve is going to lead the
26 questions.

27 MR ORAM: Yeah, I've got a few questions on Theory of Harm 2. Perhaps

1 I can direct the one at Admiral. And you will know that we
2 recognised in our provisional findings that the MSXI survey was
3 only a small sample. Can you give us any independent evidence
4 that there are no issues with the quality of repairs? And when
5 I say 'independent evidence' I am not thinking so much of BSI's
6 role with PAS 125; I will come on to that, but is there any
7 other independent evidence that you can point us to?

8 MS CONNELLY: I'll make a number of points. One, I would make the
9 point about us being regulated by the FCA in that, you know, I
10 am sure we all spend time talking the FCA about our complaints
11 and the level of our complaints and what our complaints are
12 about, and one of the things that we talk quite heavily on is
13 standard of repair, so we look at the complaints we get from
14 our garages and we break that down into: what does that
15 complaint mean about a garage? Is it about the attitude? Is
16 it about the courtesy car? Or was it actually about the quality
17 of the repair to the car? We monitor that very closely with
18 our garages. We do audits ourselves, which are [quality
19 audits?] [inaudible]. We have in the past used independent
20 companies to do some of the elements of that.

21 MR ORAM: Could you tell me a bit more, then, about the independent
22 companies? I mean, I was going to ask another question about
23 what does the industry typically do, so perhaps some of what
24 you've said -

25 MS CONNELLY: But it depends what you want to call independent.

26 MR ORAM: Well, a non-insurer.

27 MS CONNELLY: You know, we pay a fee for them to go and - yeah, but

1 it is an independent engineer that would go out and see the
2 car.

3 MR ORAM: So they actually go and see - they don't rely on customer
4 response.

5 MS CONNELLY: No, we pick random cases and we instruct engineers to
6 go out. We have not done this for over a year. We did it for
7 about five years, and basically spent a considerable amount of
8 money on it and did not really get any great feedback from it.
9 We take the view that we manage our own network, so we want to
10 go to the network randomly, look at the estimating, look at
11 the quality of repair, see the car afterwards at the
12 policyholder's address, work, whatever, and that works far
13 better for us because we use it as an educational tool as well,
14 not just [inaudible]. We'll talk to the garage at the time
15 and we will go back and we will go back and we'll look at, you
16 know, invoices -

17 MR ORAM: Perhaps if I could be rude and just stop you there, because
18 I think - I didn't particularly want to ask individual insurers
19 what they do; I was really looking... Is there any independent
20 evidence that perhaps you don't commission that is out there
21 that you could point us to? Probably not.

22 MS CONNELLY: Not that we do at the moment, no.

23 MR ORAM: No.

24 MR STEVENS: I think also you should look at - an important thing
25 to bear in mind is our economic interest and to have customers
26 have to have their cars reworked is a significant customer
27 service issue, but it is also an expense issue, and so, you

1 know, it is our economic interest to make sure that we get it
2 right first time as often as possible. I think also I would
3 go on to say that - to provide some degree of caution on
4 accreditation, because we have a garage network which has
5 various levels of accreditation on various different standards,
6 and there isn't necessarily a clear correlation between the
7 outcomes in terms of we work, based on accreditation. So if
8 the thrust of the recommendation is to enforce certain
9 accreditations, the Commission should be very, very confident
10 that those accreditations correspond with actual consumer
11 outcomes, and that the cost of those accreditations and the
12 impact especially on smaller repairers is borne in mind.

13 MR ORAM: Okay. Well, as I said, I didn't particularly want to ask
14 individual insurance companies how they do the checks, but
15 taking the industry as a whole, typically, how does an insurer
16 undertake the checks on the quality of repairs? And I hope I
17 don't get seven different replies. Is there a kind of a
18 relatively common approach to checks of quality by insurers or
19 does it differ wildly?

20 MR HANNAH: I wouldn't know, but if I can go back to your first point
21 and probably state that there is no overall independent checks,
22 as we have said, but it is probably useful to understand that
23 the main body shops that insurers use will not be - unless they
24 are wholly-owned - not be allocated just to one insurer. So,
25 you know, typically a body shop might be doing work for five,
26 six, seven or eight insurers and each of those insurers will
27 have their own audit process. It might well be different and

1 I wouldn't know what individual audit processes were, but that
2 body shop is actually getting looked at from a quality and cost
3 basis from a number of different perspectives.

4 MR ORAM: Yeah, in fact, I was going to ask - maybe I can move on
5 to CISGIL. Could you take me through a typical kind of check?
6 What actually happens in the industry when an insurer goes to
7 check - they get their inspectors to go to check a body shop?
8 I mean, for example, does the inspector go and only inspect
9 his insured cars at the body shop or does he - in order to rate
10 the body shop as a whole, or does he look at all cars in the
11 body shop?

12 MR THOMPSON: He would typically look at his own company's vehicles.

13 MR ORAM: Only his own.

14 MR THOMPSON: Yes. And they would be assessing against, you know,
15 a number of requirements, some of them contractual, some of
16 them around accreditation, so that repairs were done in
17 accordance with PAS 125, for example, that the estimate was
18 produced on that basis, the repair methodology was done on that
19 basis, as per laid-down guidelines, and, you know, a number of
20 other things, as I say, that are contractual. What typically
21 would happen would be a sort of end-to-end audit at the point
22 of visit.

23 MR ORAM: So he would physically inspect the repair as well as
24 checking the PAS process.

25 MR THOMPSON: And paperwork associated with repair.

26 MR ORAM: And normally would that mean he would inspect ongoing work
27 in the body shop as well as some finished cars or a finished

1 car?

2 MR THOMPSON: Yes, right throughout. So it wouldn't necessarily be
3 the same vehicle, but on that visit he would look at some that
4 were just coming in for repair, some that were part-way through
5 and some that were finished.

6 MS CONNELLY: If you go back to the beginning of the process, before
7 a garage even comes on your network, then there would be a high
8 level of quality check that we do before you even put any work
9 there. So when you ask about looking at other insurers' cars,
10 I mean, that kind of thing would happen at the very beginning
11 of the strict process before somebody joins your network.

12 MR ORAM: Presumably, in terms of, you know, when you first look at
13 a network and when inspectors go to do their visit - the check
14 - presumably they complete a report.

15 MS CONNELLY: Yes.

16 MR ORAM: And presumably that report would refer not just to the PAS
17 process but it would refer to the physical inspection of the
18 car, yeah?

19 MR THOMPSON: Yes, that is correct.

20 MR ORAM: And do we have any copies of those? I just wondered.

21 PARTICIPANT: We have from one insurer, at least.

22 MR ORAM: It might be helpful for us to kind of have a look at some
23 of your typical reports, both when you first choose a repairer,
24 so we can get a feel for what quality checks you are doing
25 there beyond just PAS, and the individual inspector's report.
26 So if you were able to do that, that would be very helpful.
27 Okay, let's move on. In relation to PAS 125, we have had

1 conflicting responses. On the one hand we are told PAS 125
2 accreditation is adequate insurance that repairs will be
3 carried out to a satisfactory standard, and on the other hand
4 we have been told, 'Well, it only relates to a repair process
5 and not the actual outcome'. So what are your views on whether
6 and how PAS 125 ensures that repairs are completed to a
7 satisfactory standard? Maybe I can direct it at NFU Mutual,
8 working round the table.

9 MR SCOTT: Yeah, sure. I think our view is that PAS 125 is an
10 excellent starting point in terms of defining the standards
11 that a garage will apply when it is conducting a repair. It
12 is independent, it is a British standard and therefore it is a
13 starting point. Our view is we don't simply leave it to that,
14 not because we see any deficiency in it per se, but because we
15 want to ensure ourselves that the overall quality experience -
16 and other people have already mentioned not just the physical
17 repair but the whole experience of utilising that garage - is
18 as we intend it to be for our members, so therefore we conduct
19 additional review of quality on top of that. But we see PAS
20 125 as a very good starting point.

21 MR ORAM: Any further views? ABI, I just wondered, what was your
22 steer on this?

23 [MS UPHAM]: I think I would agree that PAS 125 is a good starting
24 point. It does look at the various aspects of the repair
25 process. So, for instance, you've heard mentioned already are
26 the correct methods being used to understand the repair to the
27 vehicle, are they being undertaken by competent technicians and

1 people with the correct equipment, and also the correct parts
2 and consumables during the repair process? So it is very much
3 a base which ensures compliance and that can be added to vehicle
4 manufacturer's standards as well. It can be added to. It is
5 a very good base.

6 MR ORAM: Right. I haven't got any other questions on Remedy 2A,
7 unless any of my colleagues want to ask anything. No? Okay.
8 Moving on to Theory of Harm 4 - just a few questions on Theory
9 of Harm 4, and the first one is in relation to Remedy 4A, the
10 provision of all add-on pricing from insurers to PCWs.
11 Directing this at esure, do insurers provide pricing
12 information on all the add-ons that they offer PCWs? And if
13 not, would there be any difficulty in doing so? Putting to
14 one side, you know, PCWs' inclination or disinclination to use
15 it, just, you know, would there be difficulty in providing it?

16 MR HANNAH: It is probably a question you would need to ask PCWs
17 themselves, because routinely they may only show headline
18 prices for some of the add-ons that insurers sell. I think
19 the issue is - one is the logistics of as well as producing
20 prices for the core product, then to produce pricing for each
21 and all the add-ons that are routinely sold by insurers so that
22 they can make an informed decision. I think it is a great idea
23 for customers to be able to kind of make that decision before
24 they actually go on to the insurer's website. However, what I
25 would caution against is possibly, firstly, too much
26 information at that time and remembering that they are there
27 for the core premium and the add-on products are, in relative

1 terms, a small additional premium to the core policy; and
2 secondly, there is the issue that not all add-ons have the same
3 specification, so it is not a straightforward commodity -
4 price-based commodity. Each add-on that is offered within the
5 market by a number of insurers will have very different levels
6 of cover, terms and conditions, and so forth. And so it would
7 be possible that, you know, if the customer was going to digest
8 all that information upfront, then there could be a kind of
9 information overload. So the status quo at the moment is that
10 some of the prices are given and it is when the customer lands
11 on the insurer landing page, that the add-ons are presented on
12 an optional and opt-in basis, and then there is the ability to
13 search into that specific product and see whether the actual
14 terms and coverage are sufficient for the customer's needs.

15 MR ORAM: We will certainly be exploring that with the PCWs. But
16 in relation to your providing pricing information to PCWs on
17 all your add-ons, that doesn't present - that is just an
18 administration task; that doesn't present problems.

19 MR HANNAH: I don't believe that presents a problem.

20 MR ORAM: Right, okay. Let's move on. On Remedy 4B, the transparency
21 of information concerning no-claims bonuses, what are the key
22 factors in determining the level of no-claims bonus that a
23 customer is entitled to? What factors come into your
24 consideration? Let's ask AXA on that.

25 MR HOWELL: Well typically the no-claims bonus is a declared amount
26 from the customer during the point of quotation and purchase,
27 so, yeah, it is physically declared by the customer, which then

1 - providers in the insurance industry then have different
2 mechanisms for validating that declaration either at the point
3 of sale or post-sale.

4 MR ORAM: Can you give us a flavour for some of those considerations?

5 MR HOWELL: Considerations on the validation, sorry?

6 MR ORAM: Considerations on the level of no-claims bonus.

7 MR HOWELL: Well, as I said, the level of no-claims bonus is typically
8 quoted and is provided for by the customer in terms of the
9 number of years. In terms of the discount -

10 MR ORAM: But I think what I am getting at is when you decide the
11 level of no-claims bonus that this particular customer will
12 have, as I understand it, you go beyond whether they have had
13 any claims in the past, and it relates to other factors as well
14 as that, and I just wondered what were the other factors that
15 an insurer typically takes into account in determining a level
16 of no-claims bonus.

17 MR HOWELL: I may have misunderstood the question. At the point of
18 quotation within the journey, the no-claims bonus is a - well,
19 the no-claims number of years is an amount which is declared
20 by the customer. So, at that point, it is not - well, certainly
21 not AXA's position that we are inferring or making any other
22 judgment other than the amount which is declared by the customer
23 during the quotation journey. We then have, as I said, some
24 validation processes post-sale to validate that the declaration
25 that the customer has made is as stated.

26 MR ORAM: Right. So, in the industry typically, the level of
27 no-claims bonus will be the same - the level of no-claims bonus

1 that is mentioned at the taking-out of the policy will be the
2 same for - the same consideration for all -

3 MR HOWELL: Because the customer declares the years. How that
4 translates into a bonus or a pricing factor is obviously within
5 the decision of each individual insurer providing the
6 quotation.

7 MR ORAM: Right.

8 PROF SMITH: Sorry, I am not getting a very clear message. The
9 customer declares the number of years they have got of no
10 claims, and you say that's a factor going into determining the
11 price they get quoted, so there isn't a no-claims bonus number
12 that is simply related to the number of years of no claims.

13 MR HOWELL: For certain insurance companies I am sure there will be;
14 I can't speak for those. For us there is not an individual
15 scale that would be quoted five years, six years, seven years.

16 PROF SMITH: So Steve's question, then, if I can rephrase it, is:
17 if it isn't just the number of years that goes into the
18 calculation, what are the other things that go into that
19 calculation?

20 MR HOWELL: In terms of the actual price? There are clearly many,
21 many other factors that go into the actual price.

22 PROF SMITH: No, we are talking about three different things; the
23 number of years of no claims; the insurance premium, which we
24 recognise depends on all kinds of things -

25 MR HOWELL: Multivariate things, yeah.

26 PROF SMITH: And the no-claims discount. What goes into the
27 calculation of no-claims discount, other than the number of

1 years of no claims?

2 MR HOWELL: Okay, sorry; I am clear. I misunderstood. From our
3 perspective, it is just the number of no claims years stated.

4 MS SEAGO: Could I chip in? Wendy Seago, Pricing Director at Aviva.

5 So, in the same way as my colleague here, we would use the
6 actual number of years claims free as declared by the customer,
7 but that then goes into a pricing model and there is a
8 statistical analysis done based on the number of years declared
9 to determine the level of bonus, and that interacts with lots
10 of other pricing factors. So, to give an example to try and
11 illustrate the point, age would probably be in interaction with
12 it. So if you have got a 22-year-old who has not had an
13 accident in the last five years, that is very good experience
14 for a young driver, but for a 50-year-old who has not had an
15 accident in the previous five years, that's more as expected
16 for an experienced driver. We would give more credit to a 22-
17 year-old with five years claims free. We also have the bonus -
18 the discount given would vary within Aviva - and I can't speak
19 for other companies - by each of the different elements of the
20 pricing, whether it is accidental damage, bodily injury,
21 windscreen cover, which basically means that you've got an
22 individual scale for that customer based on the balance of the
23 different risks they present to us - the balance of accidental
24 damage, third-party-property damage, bodily injury, glass,
25 theft - all that would come into it. So it's an individual
26 [cross-talk].

27 MR ORAM: Right, so that's quite different than what I understood

1 AXA... Yeah, okay.

2 MRS HANDYSIDE I'm sorry, isn't this - there's a danger that people
3 talk about their individual [pricing] -

4 MR ORAM: Yes, no, I understand that.

5 MRS HANDYSIDE : And I think it needs to be explored individually
6 with insurers.

7 MR ORAM: Okay, yes. And is it typically the case that no-claims
8 bonuses are mentioned at the point of taking out of a policy?
9 Is that kind of common practice across the industry?

10 MR STEVENS: I would say no if you mean at the point of sale.

11 MR ORAM: No, it's when - I'm taking out an insurance policy with
12 Admiral and I'm a new customer. Is it typically the case in
13 the industry that I would be told a no-claims bonus as part of
14 that policy - what my no-claims bonus would be?

15 MR STEVENS: No, typically, you have gone to a site or you've had a
16 phone conversation; you've said, 'I've got four years no-claims
17 bonus', you've said 20 other things; then at the end of it we
18 say, 'That is £488'. And we don't say, 'That is £488. By the
19 way, that is because you have got four years no-claims bonus.'
20 We don't refer at that point to no-claims bonus; it's just one
21 of the elements.

22 MR ORAM: No, I understand. Just moving on, given that in some cases
23 there is an individual no-claims bonus, what exactly is a no-
24 claims bonus protection protecting if the bonus itself is based
25 on a range of factors beyond simply whether or not the customer
26 has had an accident? What is it actually protecting? Perhaps
27 I can direct this back to Admiral.

1 MR STEVENS: To an extent, protection is a legacy of a simpler time,
2 when there were fixed structures, and the world has moved into
3 a more complicated place. Typically what you would find is
4 that protection does not give you protection against a price
5 increase or a price change resulting from a claim. So, at one
6 level you could say that what it gives you is the ability on
7 the renewal notice to have a number which is a lower number
8 written against no-claims bonus than it would have been if you
9 didn't have protection, and the ability therefore when you are
10 shopping next time to quote that lower number. I would say
11 probably in most instances - most competitors - it doesn't give
12 anything much beyond that. There is a challenge that the
13 customer - there's a challenge of education for the customer,
14 which - I think your comments about information around
15 protection bonus are helpful in that context. But to a degree
16 there's a legacy being used to taking [inaudible] to a past
17 time.

18 MR ORAM: Any other comments on that?

19 PARTICIPANT: Just picking up on - one of the things you said was
20 you get the number - the £488. If you don't know what the
21 no-claims bonus component of it is, how do you know you're your
22 NCB protection is actually protecting in terms of a value?
23 You're taking out a protection against a discount that you've
24 got no idea how big it is.

25 MR STEVENS: Well, I what I said is what it provides you is the
26 ability to quote a lower number on your renewal notice. I
27 didn't actually say it provides you with any certainty on

1 premium, and nor could it, because in fact you don't know what
2 your premium is going to be in 12 months' time. You can't
3 possibly say to a customer - it's is not much use to say to a
4 customer, 'This will give you 13% discount in a year's time'.
5 13% percent on what? We don't know what the number's going to
6 be in a year's time anyway, and it's - you know, it is a tricky
7 area.

8 MR ORAM: And it seems to me from what you've just said that it's
9 impossible, therefore, given the unknown impact on the cost of
10 their policy renewal, how on earth the individual can judge
11 the value against the price of the no-claims bonus protection.
12 Is that a fair comment. CISGIL?

13 MR HILLON: CISGIL continues to operate in simpler times, so we do
14 publish a scale and that allows us to disclose to a customer
15 what their NCB entitlement is and therefore allows them to form
16 a value judgment of the additional premium versus the potential
17 increase in premium where they did have a claim that affected
18 their no-claims bonus. We recognise that much of the industry
19 has moved away from that [...] [CONFIDENTIAL]. But I think the
20 point of how does a customer make a value trade-off is a very
21 fair question to ask.

22 MR ORAM: Anybody got any other comments on that particular point?

23 MR HANNAH: I think there is an issue of customer understanding what
24 the benefit of NCD protection is and there is some confusion,
25 I am sure, about whether it is protecting a premium or in effect
26 it's protecting not getting a loading as a result of that
27 specific claim. I think it is a historical issue, because it

1 goes back to the days when insurers probably only had four
2 rating factors and one of them would have been NCD, and that
3 was transparent to the customer. Our rating algorithms are so
4 much more complex now that almost - the NCD element is almost
5 a bit of an anachronism that is still there but it is something
6 that customers like to hang on to, as it were. But I take your
7 point that there is still a communication issue between what
8 that means to a customer and how we actually manage that, both
9 at inception and through into renewal when they have had a
10 claim.

11 MR ORAM: Any other comments? No? Any questions from my colleagues?

12 MR AARONSON: Just one more quick question on this vexed issue. So
13 if I have purchased NCD protection and I have a claim and I
14 come to renewal, how do I know that I have got - I've received
15 what I've paid for? Because I had a number last year - a net
16 premium last year, a net premium on renewal that is different
17 - it has probably gone up because I've had an accident. How
18 do I know I have got what I have paid for?

19 MR HANNAH: Well, assuming there is no increase in general rates,
20 then what you are doing - you are protecting getting a loading
21 from that, so, all other things being equal - but they never
22 are, because rates are moving around all the time - both new
23 and renewal rates - it is difficult to know what the benefit
24 of it is until you don't purchase it, and then you will see
25 what the disbenefit of it is.

26 MR HOWELL: But the value - the utility you would have received is
27 if - so your level of no-claims years would not have been

1 reduced, would not have been stepped back to zero in the context
2 of you purchasing no-claims discount protection, and so that
3 would be demonstrated to you as part of - your level of no-
4 claims years would be demonstrated on the policy schedules, or
5 whatever [inaudible], and at that point, to just reinforce what
6 David said earlier, you then - as a customer then have proof
7 of a level of no-claims discount years which you can take to
8 market to shop around.

9 PROF SMITH: But nevertheless, speaking for a moment as a customer
10 - but not a typical customer, because a typical customer hasn't
11 spent a lot of the last 15 months finding out [inaudible] - I
12 learned something today. I learned that the no-claims discount
13 is not of - should not be of great value to me, because I am
14 in an age group who is expected to drive safely and therefore
15 that goes into my algorithm in a - my no-claims go into my
16 algorithm with a different factor than into my daughter's
17 algorithm. I didn't know that until today. That affects
18 whether NCD protection is a good buy for me. That's just making
19 a remark to illustrate that, given the complexity of this, how
20 on earth do you expect consumers to know what they're buying
21 when they're buying NCD protection?

22 MR HOWELL: I think you'll have seen that there's an agreement that
23 there is probably a misalignment between the customer
24 perception of what that protection is affording and what
25 actually is - the fact there is value and utility in it and..
26 But yeah, there is that misalignment, which is a function, I
27 think, as David said, of the legacy of what it was before.

1 PROF SMITH: Robin, let's move on to Theory of Harm 5, then.

2 MR AARONSON: Okay. So, MFN clauses. Can I start with a kind of
3 background question to set the scene? Perhaps I'll put it to
4 Aviva. To what extent do the same customers shop on PCW sites
5 and on an insurer's own website? Are we looking at the same
6 people who go sometimes use one, sometimes use the other, or
7 is there some segmentation between those two groups?

8 MR TRELOAR: So, probably the best way for me to answer that without
9 being company-specific would really be to point to broader
10 market analysis and surveys that we can see. And the ones that
11 spring to mind for me would point to customers shopping at
12 renewal - between 75% and 80% of those customers would actually
13 look across the market for different prices in addition to the
14 one that they've received from their existing insurer. And
15 then what we know of that distribution - the majority of those
16 customers will initially go to a price comparison website, and
17 then a number of them - and I don't know the details off the
18 top of my head - then start to drop into, 'I will go to two
19 price comparison websites; I will go to three price comparison
20 websites; and then I might also go to an insurer who is not
21 represented on those price comparison websites'. That sort of
22 shopping process is something that you will find is recommended
23 by Martin Lewis, on his Money Saving Expert website, where he
24 will point to that as the ideal process through which you will
25 find the best price for your car insurance.

26 MR AARONSON: And if I heard you right, the last bit, where that
27 consumer goes to an insurer's website, that's to look at brands

1 that would not be found on a PCW.

2 MR TRELOAR: Yeah. So, if you look at his advice, it is not that
3 you can get a different price, it is that you should check
4 those insurers that are not actually participating on price
5 comparison websites.

6 MR AARONSON: But do you think that some consumers would actually
7 look at the same brand on both the PCW - and I don't just mean
8 clicking through, but a separate search for a particular brand
9 - or for the best deal, if you like, on a PCW and, let's say,
10 half a dozen insurer direct sites?

11 MR TRELOAR: No, I don't think they are doing that. But, you know,
12 you'd need to check with other insurers as well. But what
13 they're doing is they're coming through, they're doing a price
14 on the price comparison website and clicking through.

15 MR AARONSON: Yeah. They click through, obviously, if they're going
16 to make the purchase.

17 MR TRELOAR: If they are going to make a purchase, yes.

18 MR AARONSON: Anybody got a -

19 MR STEVENS: I would say historically, in the early days of price
20 comparison, there was a fair amount of people who would get
21 the top price and then go to the person's website, but over
22 time they've tended to learn that actually that's a waste of
23 time. You know, they go there in the hope that possibly they
24 will do even better there, but that's not a very current
25 practice. It might become more current, of course, if there
26 was more price variation.

27 MR AARONSON: Okay, fair enough. Well, looking at the remedy that

1 we have proposed, which is to prohibit what we call broad -
2 wide MFNs, would the ability to price differently on different
3 PCWs constrain their commercial behaviour and encourage
4 innovation? And if not, why not? Can I ask AXA, perhaps?

5 MR HOWELL: Let me be clear. So, would their ability or our ability
6 to price -

7 MR AARONSON: I mean, in your relations with PCWs, would you find
8 then that their commercial behaviour was constrained, that
9 their ability to raise CPAs was constrained, and therefore that
10 innovation was encouraged? In other words, would there be
11 benefits?

12 MR HOWELL: I don't think the removal of the broad MFN would lessen
13 the negotiating power, or the position, of individual price
14 comparison sites because of the share of the distribution
15 market [inaudible] and the share of the primary [inaudible]
16 customers which they control. I think it would promote
17 innovation and differentiation between them should it be
18 possible to operate within the context of narrow MFNs on what
19 would be a multi-party basis, if you see what I mean. So the
20 existence of a narrow MFN on an individual
21 insurer-to-price-comparison-website basis, and the current
22 commonality of that interface and that link could - makes it
23 difficult to actually differentiate a price across a set of
24 price comparison providers because the narrow MFN still
25 prevails.

26 MR AARONSON: Can you help me a bit more? I am struggling to see
27 how the continuation of the narrow MFN leads to the continuation

1 of price parity between the PCWs.

2 MR HILLON: Well, if I have four separate agreements with each of
3 the major price comparison websites that include a narrow MFN,
4 that my own (direct) price won't be lower than the price they
5 offer on their specific PCW, then because I'm only able to
6 offer one price directly on my own website, by definition I
7 end up having to offer the same price through each of the four
8 PCWs, which has the same effect as a broad MFN.

9 MR AARONSON: Surely not necessarily. I mean, you could offer a
10 price that was equal to one of the PCWs but higher than two
11 others and - well, higher than the rest.

12 MR HILLON: But then I would breach narrow MFNs with those other two
13 PCWs.

14 MR AARONSON: Not if your own price was the highest price.

15 MR HILLON: So my price would have to be the highest of the four,
16 which would then - but I'd still be in the circumstance then
17 where I would say, 'I would be better off offering that same
18 higher price through all four PCWs'. Because I personally
19 don't want to be in a position where my own price is higher
20 than that I am offering through PCWs.

21 MR O'REGAN: It destroys your own value proposition if you're quoting
22 different prices on your own site and the same product somewhere
23 else.

24 MR AARONSON: But in the discussion we had just now, you said that
25 it wasn't very common for people to shop around between the
26 PCW and the direct site for the same product - the same brand
27 - so why is it a concern that the insurers -

1 MR HILLON: Because certain insurers still have a direct presence
2 under their own brand and wish to promote that. So I see -
3 whilst PCWs are a major part of the distribution landscape,
4 Co-operative Insurance chooses to also act in the direct market
5 under its own brand and attract customers directly. And indeed
6 as a member-owned organisation, I want to be in a position
7 where I am able to offer my members best pricing in the market.

8 MR HOWELL: But there is an obstacle in place that makes it harder
9 for direct competition outside of the price comparison sites
10 at the moment, with the wide MFNs, and then we move to the
11 logic that we just kind of walked through, where individual
12 narrow MFNs - but actually if you were to then price
13 differentially across those individual narrow MFNs; to effect
14 compliance with all of those narrow MFNs, you would have to
15 reflect this in the price on your own site it removes the
16 incentive for us to compete for acquisition outside of price
17 comparison sites. Do you see what I mean?

18 MR AARONSON: Well, I see what you are saying but I am wondering
19 whether it is likely that you worry about the competitiveness
20 of your own site as against the PCW sites, because if not many
21 people are floating between one and the other...

22 MR HOWELL: You are citing evidence as a reason. The evidence could
23 just be the symptom rather than - you know, the fact that that
24 evidence exists that people aren't doing it is because there
25 isn't sufficient direct competition to be able to - or
26 sufficient advertising or innovation to be able to foster that
27 environment of actually you go to a price comparison site and

1 you should go to direct. I don't think the argument - using
2 that evidence just because people aren't doing it doesn't mean
3 that actually it might be in better consumer interest if they
4 were - if we could promote that activity. Do you see what I
5 mean?

6 MR AARONSON: Yes.

7 MR KING: Could I just come in from ABI? I think the Competition
8 Commission analysis here was a bit chicken and egg, in the
9 sense that it seemed to say, 'Well, because there aren't many
10 insurers at the moment that have a direct model and a website
11 model, therefore the narrow MFN issue isn't significant', but
12 then it could be that the existence of the MFNs at the moment
13 is restricting the ability of more insurers to run that kind
14 of mixed model.

15 MR AARONSON: Okay, but again - slightly being devil's advocate, but
16 if an insurer decided that really the route to go down was
17 direct distribution through his own website, couldn't he kind
18 of call the PCWs' bluff and say, 'Well, I don't care about
19 losing - I don't care if you de-list me; I'm going for a...'?

20 MR KING: But isn't that a very polarised choice? It's kind of
21 forcing either a direct model or a website model, and that may
22 work for some insurers, but then arguably the existence of the
23 MFNs is restricting the idea of more of a balanced
24 multi-distribution-channel model.

25 MR AARONSON: Okay. So I am hearing a lot of oppositions to narrow
26 MFNs. Is there anyone who would be content simply to ban wide
27 MFNs but could live with the narrow ones?

1 MR ORAM: Deafening silence.

2 MR AARONSON: Okay. I mean, suppose that narrow MFNs were banned.

3 You then run into the difficulty of - well, people might use -
4 consumers might use PCWs as a source of information to find
5 what looked like the best offer and then go to the direct site
6 to buy cheaply and cut out the PCW from the process, so the
7 PCWs would be providing a service but for no reward. Are there
8 viable alternatives that would preserve the existence and the
9 role of the PCWs? We floated some alternatives in our
10 provisional findings, but I wonder if anyone has a comment on
11 -

12 MR KING: I just think the proposition that the removal of the MFNs
13 would lead to the disappearance of the price comparison website
14 model seems to be quite a questionable proposition given that
15 millions of consumers are used to using it in search and
16 insurers are used to using price comparison websites as a way
17 to distribute insurance products. So, I think arguably too
18 much weight has been put on the risk of that competitive option
19 being undermined by the removal of the MFN.

20 MR HILLON: And if the outcome was a shift in behaviour to using the
21 PCW as a research tool and then go directly to the insurer's
22 own website, then I would expect PCWs to adapt their commercial
23 models to reflect that, so you can envisage different charging
24 scenarios than just simply paying for a sale. So, you know, a
25 charge to list on PCWs, for example; a flat annual fee; or
26 things like that, which - because I think, as the ABI commented,
27 they are an established part of the distribution landscape;

1 they provide a really great service to consumers, and why would
2 we not expect that to continue?

3 MR CURZON-PRICE: So, if consumers regularly searched on PCWs, got
4 the ranking from the PCW, and then went to the own website and
5 found that that wasn't the price that they got on the PCW,
6 wouldn't that generally undermine the credibility of the PCW
7 as a research tool? So you say that they are established, but
8 isn't there a real risk - in other words, if you started saying
9 - if you started being told, 'This is the price you will get'
10 and you discovered this is not the price you get, then surely
11 you don't believe the tool that is telling you that that is
12 the price you will get.

13 MR HILLON: But it would encourage innovation amongst PCWs to allow
14 them to - for example, invest in fraud controls or data
15 enrichment such that I was more able to offer them lower pricing
16 so that they can be more successful. I don't think it
17 undermines the model in the sense of, I think, that consumers
18 will largely continue to use the PCW, see the price of the
19 brand that they wish to choose, and click through to them.

20 MR TRELOAR: I would just like to add there as well: we may be
21 getting into a little bit of confusion here. The narrow MFNs
22 prevent insurers from pricing relative to the cost of the
23 distribution channel through which they are distributing. If
24 a customer is going to come to us through a price comparison
25 website, be that now or in the future, you would want to price
26 according to the costs of that channel. But the narrow MFNs
27 prevent real innovation around distribution. They are actually

1 acting to prevent new distribution channels coming into play.
2 And where I think we are potentially confusing things is to
3 think that the consumer will be worse off as a result of a
4 conversation with an insurer once they have checked through
5 from a price comparison website. It doesn't really make an
6 awful lot of economic sense for insurers to push a price up
7 once a customer has a quote from a price comparison website..
8 We actually want to convert those customers at that pointThere
9 are some market participants who will happily offer a lower
10 price when they talk to the customer following going through a
11 price comparison website process. So this is about relative
12 distribution costs by channel and how we might use those to
13 drive innovation, use new technologies and reflect the
14 differences in distribution costs for benefit of consumers who
15 use those new technologies.

16 MR ORAM: Could I ask a question? Perhaps I could direct this at
17 the ABI, because it's probably most appropriate. Is it
18 typically the case that MFNs are not applied to non-private
19 motor insurance products, or do we find that MFNs apply to
20 pretty well all?

21 MR KING: You raise an interesting question there, because obviously
22 your remit's restricted to the private motor insurance market,
23 but website distribution is quite common for some other general
24 insurance products - obviously home insurance, for example.
25 And I think our submission said that the issues that have been
26 raised here in relation to the use of MFNs ought to be looked
27 at by the FCA in terms of their study of price comparison

1 websites that they're conducting at the moment, given that
2 they've now got a remit to promote competition.

3 MR ORAM: So MFNs typically do apply to non-private motor insurance.

4 MR KING: Probably you do need to direct that question to insurers,
5 but I understand there is some usage.

6 MR ORAM: Yeah. I didn't want to, for obvious reasons; that's why
7 I directed it at yourselves. Maybe this is something we can
8 pick up directly in writing.

9 MR AARONSON: Okay, just one final topic is what we have in our
10 report I think described as 'alternative behaviours'. So if
11 MFNs were outlawed, might PCWs find some other way of pulling
12 you into line, as it were - of ensuring that prices still
13 remained constant across all the PCWs? So the threat of
14 delisting or similar tactics. Do you believe that is likely?

15 MR GRAF: I mean, I think it raises an interesting issue as to how
16 you would deal with that legally, because there is a question
17 mark - would you be able to bring an abuse of dominance
18 complaint for such things? But it might ultimately be best
19 left as a matter for commercial negotiation, because there is
20 a risk I think that you interfere with those commercial
21 negotiations - and while I think the CC is right to consider
22 the issue - it is quite difficult to know how you potentially
23 involve yourself in what are commercial negotiations between
24 two parties without unduly interfering in the contractual
25 relationships between them.

26 MR AARONSON: Okay, but there is a kind of prior question: is this
27 behaviour likely in the first place? Is it likely that they

1 will look for these alternative ways of getting what they want?

2 MR GRAF: I think that's quite a difficult question to answer.

3 MR AARONSON: Does anybody else have a view?

4 MR KING: I think it is just again worth remembering that the
5 Financial Conduct Authority are supervisors of both price
6 comparison websites and insurers, and they now have a remit to
7 promote competition. So, in considering whether or not there
8 is any theoretical risk of circumvention, then you do have a
9 potential mechanism to deal with any circumvention.

10 MR AARONSON: Am I right in thinking that they have an obligation
11 to treat customers fairly - FCA-imposed?

12 MR KING: Yeah, that's a core obligation imposed by the FCA.

13 MR AARONSON: So is it your view that that would be sufficient to
14 allay these concerns?

15 MR KING: Well, I guess I wouldn't have said that when we had the
16 Financial Services Authority that didn't have a remit to
17 promote competition, but we have the Financial Conduct
18 Authority that does have a statutory obligation to promote
19 competition. So, not so much the treating customers fairly
20 obligation, but that comes with the potential mechanisms to
21 ensure ongoing supervision of all financial regulated firms in
22 relation to competition issues.

23 MR TRELOAR: Can I put a counter to you? We would be concerned that
24 to allow it to ride with commercial conversations between the
25 parties is actually to increase the circumvention risk here.
26 Our observation, as we reported, is that there are multiple
27 different methods through which PCWs can choose to treat

1 insurers differently. We gave a number of examples. Less
2 favourable commission terms would be the obvious one, but PCWs
3 can also influence a number of other areas. An example would
4 be less favourable solicitation rights for insurers. PCWs
5 will normally provide for re-solicitation rights for insurers
6 placed within the thefirst two on their list. It could be that
7 they choose to unfavourably treat certain insurers. Other ways
8 PCWs might circumvent the spirit of these changes include: an
9 insurer might get unreasonable IT change lead times, , orpoorer
10 timeliness and quality of MI; or, indeed, just any other
11 charges. So, we feel that those are very real circumvention
12 risks here, and in a scenario where there are in excess of 100
13 brands quoted on each PCW, we feel that the balance of buyer
14 power versus supplier power is sufficiently skewed in terms of
15 the PCW as to make these a real threat.

16 MR AARONSON: And do you have any views as to what should be done
17 about that?

18 MR TRELOAR: My view is that you can't work with either the wide
19 or narrow MFNs because they both have essentially the same
20 effect (to limit competition), and therefore you need to remove
21 both.

22 MR AARONSON: But suppose that was done. The sort of behaviour you
23 are explaining, is that not still a problem?

24 MR TRELOAR: I think some of those issues are still the subject of
25 commercial conversations, but they become a more balanced
26 conversation where you have more innovation and you have
27 different opportunities to distribute as an insurer. At the

1 moment, the choices of distribution are limited by the very
2 effects of the narrow and the wide MFNs.

3 MR AARONSON: I see. So it would alter the balance of power between
4 -

5 MR TRELOAR: So, where over 60% of PMI sales are currently made
6 through PCWs, you would have a balance - a shift in balance
7 which we think would probably act to improve competition, drive
8 up innovation and also bring down costs for consumers.

9 PROF SMITH: Are there any other questions on MFNs? Well, if not,
10 we have got to the end of our list, but before I wrap up I just
11 want to make sure there isn't - I don't want to open up another
12 big conversation on anything, but I just want to be sure there
13 isn't someone in the room who was desperately keen to chip in
14 with some point and then the conversation moved on before you
15 got a chance to make it. So this is your last opportunity to
16 make that point, if there were any that we missed.

17 Okay, well, if not, let me close. We seem to have done very
18 well on time, so thank you all very much for that. I should
19 say one thing that I meant to say at the beginning, which is -
20 in introducing the members of the inquiry group, I should have
21 noted - and you may have noted - that one member of the inquiry
22 group, Anthony Stern, is absent today for medical reasons, so
23 he asked me to pass on his regrets, but he wanted me to assure
24 you that he will be reading the transcript assiduously, which
25 is why I particularly wanted to be sure that I didn't forget
26 to convey his apologies, because he would have noticed the
27 omission. But he was very sorry not to be here today.

1 Having said that, let me thank you all again very much for
2 coming here today, for participating in the discussion, which,
3 I know from the conversations that some of us had during the
4 break, we have found very clear and very helpful. It has been
5 an open discussion in which you have not shied away, where
6 appropriate, in expressing different views among yourselves,
7 and that's particularly helpful because we do want to know what
8 are the issues that you all agree on and what are the areas in
9 which there is disagreement and legitimate grounds for
10 disagreement. So, that aspect of it has been particularly
11 helpful to us. I would also like to take the opportunity to
12 thank you all for the assistance that you have given to us with
13 this inquiry throughout its life so far and express the hope
14 that you will be able to continue to give us the same degree
15 of assistance.

16 I appreciate that at times our timetable has been problematic,
17 and in particular the time that you had for responding to the
18 provisional findings and the notice of remedies. It looked
19 adequate unless you wished to spend Christmas Day with your
20 families or anything unreasonable like that. Our timetable is
21 necessarily constrained by the legal timetable, the
22 requirements for consultation and so on, but do I hope - we
23 are still open to hear views on all the issues. There will be
24 a further round of formal consultation on remedies, and I do
25 hope that between now and September you will feel that there
26 is ample opportunity and plenty of time to input further views
27 into the inquiry.

1 And that's all that I have to say today, so thank you again
2 very much for your participation.

3

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(Hearing concluded at 1.07pm)

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