

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 Simon Douglas	- Acromas
Mr Roger Ramsden	- Acromas
Mr David Slater	- Acromas
Mr Bruce Kilpatrick	- Acromas
Mr Al Mangan	- Acromas
Mr Francois-Xavier Boisseau	- Ageas
Mr Rob Smale	- Ageas
Mr Paul Lynes	- Ageas
Mr Simon Barnes	- Shoosmiths LLP
Mr Tom Woolgrove	- Direct Line Group
Mr Steve Maddock	- Direct Line Group
Ms Emma Hopkinson	- Direct Line Group
Mr Mark Friend	- Allen & Overy (for Direct Line Group)
Mr Peter Harper	- Allen & Overy (for Direct Line Group)
Mr Reinder Van Dijk	- Oxera (for Direct Line Group)
Mr John O'Roarke	- LV
Mr Paul Cassidy	- LV
Mr Martin Milliner	- LV
Mr Hugh Kenyon	- LV
Mr Ian Currie	- RSA
Mr Andy Baughan	- RSA
Mr Paul Bickley	- RSA
Ms Suzy Tiffany	- RSA
Ms Tracey Anderson	- Zurich
Mr Tim Holliday	- Zurich
Mr Karl Helgesen	- Zurich
Mr Martin McElwee	- Zurich
Mr Martin Saunders	- Allianz
Mr Neil Brettell	- Allianz
Mr Tony Newman	- Allianz
Mr Steven Hutchings	- Allianz

Wednesday, 26th February at 2.00pm

PROF SMITH: Okay, if we're ready to begin, welcome to all of you.

Thank you very much for coming back to see us at the

Competition Commission. Let me start with introductions.

I'm Alasdair Smith. I'm the chair of this market

investigation group and a deputy chair of the Competition

Commission, and we will go along the table and have the

members of our staff team and members of the group introduce

themselves and then I will invite you to introduce

yourselves. And I suggest that we do the initial round of

introductions just round the front tables and if, in the

course of discussion, people in the table behind are joining

in, you could introduce yourselves, just to save time. So,

Katie.

MS COX: Katie Cox, Financial and Business Adviser.

MR DIXON: Philip Dixon, Financial and Business Adviser.

MR SHAH: Dispesh Shah, Financial and Business Adviser.

MR MENIS: Pietro Menis, Legal Adviser.

MR FINBOW: Roger Finbow, one of the members.

MS LEWIS: Erika Lewis. I am the Inquiry Director.

MR ORAM: Steve Oram, panel member.

MR AARONSON: Robin Aaronson, panel member.

MR CURZON-PRICE: Tony Curzon-Price, Economist.

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

MR WANTOCH: Peter Wantoch, Economist.

MR JAMIESON: James Jamieson, Economist.

1 MR BRETTELL: Neil Brettell, General Manager at Allianz Retail.
2 MR SAUNDERS: Martin Saunders, Head of Technical, Allianz.
3 MR HELGESEN: Karl Helgesen, Motor and Casualty Claims Director,
4 Zurich.
5 MR HOLLIDAY: Tim Holliday, Managing Director of Personal at
6 Zurich.
7 MR BAUGHAN: Andy Baughan, Product and Pricing Director, RSA.
8 MR CURRIE: Ian Currie, RSA Motor Claims Director.
9 MR O'ROARKE: John O'Roarke. I'm Managing Director of LV General
10 Insurance.
11 MR MILLINER: Martin Milliner, LV GI claims director.
12 MR BOISSEAU: Francois-Xavier Boisseau, CEO of Ageas Insurance,
13 Ltd Ageas.
14 MR SMALE: Rob Smale, Claims Director, Ageas Insurance Ltd.
15 MR SLATER: David Slater, Chief Executive at Acromas Insurance.
16 MR DOUGLAS: Simon Douglas, Director at AA Insurance.
17 MR WOOLGROVE: Tom Woolgrove, Managing Director of Personal Lines
18 for Direct Line Group.
19 MR MADDOCK: Steve Maddock, Managing Director for Claims and
20 Business Services, Direct Line Group.
21 PROF SMITH: Thank you. And Charlotta, you are just in time to
22 introduce yourself.
23 MS BLOMBERG: I am Charlotta Blomberg, Legal Adviser.
24 PROF SMITH: Let me make a few preliminary remarks. As you are
25 all aware, today's meeting is structured as a joint hearing.
26 We have been mindful of that in preparing the questions we
27 are going to ask you, because clearly we don't want a meeting

1 like this to lead to conversations about issues that it would
2 be inappropriate for you to discuss in the presence of your
3 competitors, but I want to remind you at the start that it's
4 primarily your responsibility to ensure that you don't get
5 engaged in any - in the provision of information that would
6 be inappropriate in this forum. If there are confidential
7 issues or views that you wish to express following today's
8 discussion, then we would be very happy to receive a note of
9 them in writing after the meeting.

10 I won't take you through all our rules and proceedings for
11 hearings because you've all been provided with information in
12 writing but, as you can see, we are taking a transcript of
13 this hearing and we will send a copy of the transcript to you
14 in a week or so. I would be grateful, because it is quite a
15 large room, if you would speak as clearly as possible
16 throughout the meeting to aid the taking of the transcript.
17 We don't expect anything in the transcript to be
18 confidential, for the reasons I've already alluded to, but if
19 when you receive the transcript you see that there is
20 something in it which is confidential and needs to be
21 redacted before the transcript is circulated, then please let
22 us know about that, and please also, when you get the
23 transcript, correct any minor errors of transcription or
24 slips that were made in the giving of evidence. If on
25 reviewing the transcript you see that there are any
26 substantial points where you want to change the evidence that
27 was given, then please do that in a separate communication.

1 We normally publish summaries of hearing but because this is
2 a multi-party hearing, as with the previous round of
3 hearings, we have decided that the simplest way to publicise
4 the business of the hearing is simply to publish the
5 transcript, which is why it is important that it be checked
6 for confidentiality.

7 I have to remind you also at the outset that it is a criminal
8 offence under Section 117 of the Enterprise Act 2002 to
9 provide or misleading information to the Commission at any
10 time, including at this hearing. At the previous rounds of
11 hearings when I said that I added to it the intentionally
12 jokey comment that given that all of us have to receive legal
13 warnings whenever we deal with insurance companies I didn't
14 feel I had to apologise for saying it. I forgot that a
15 transcript was being taken and that this joke would therefore
16 be reproduced in the trade press, so I decided I wouldn't
17 make jokes at transcribed hearings anymore.

18 What we are going to do today is after giving you an
19 opportunity to make some introductory remarks, members of the
20 panel will go through the questions we have prepared and
21 other members of the panel and members of the staff team will
22 possibly follow up with questions where issues are raised
23 that we want more elaboration on. We want to give you all an
24 opportunity to speak freely on the full range of issues, but
25 I am very conscious of the fact that with seven parties in
26 the room and only an afternoon to cover a wide range of
27 issues we need all to be disciplined in the use of time, so I

1 would encourage you in general not to spend a lot of time
2 agreeing at length with each other. So if you feel the need
3 to say that you agree with what has just been said, then
4 perhaps you can do that in a small number of words so that we
5 use the time to explore issues where there are divergences of
6 views or where you have something new to say. In particular
7 - I think speaking for the group - we will find this meeting
8 most useful the freer ranging and the less scripted the
9 discussion is.

10 Before we start, I want just to be clear about where we are
11 in our inquiry. As you all know, we have published our
12 provisional findings; we have published our information about
13 our thinking and remedies. We are currently engaged - and
14 this is part of the process - in developing our thinking
15 about remedies and we are aiming to publish our provisional
16 decisions on remedies in the summer. Early in the summer;
17 middle of the summer?

18 MS LEWIS: May/June.

19 PROF SMITH: May/June, to give plenty of time for a further round
20 of discussion before we produce our final report in
21 September. I think that's all I need to say by way of
22 introduction.

23 I am going to start with a general question as a way of
24 inviting each of you to make any general remarks that you
25 want to make at the beginning about such issues as where in
26 general you think we've got things right or where you think
27 we've got things wrong or are there big issues we are missing

1 in our inquiry so far. In order to start off on a well
2 disciplined basis in time, I am going to ask each of you to
3 limit your opening remarks to a maximum of five minutes, and
4 I will enforce the maximum of five minutes, but please don't
5 feel that you need to use up the five minutes. So if others
6 have already said what you have said - I am repeating myself
7 now. If others have already said in their opening remarks
8 what you wanted to say then please don't feel you need to use
9 up your full five minutes.

10 So can I start off, then, with Acromas for any introductory
11 statement you wish to make?

12 MR SLATER: Sure. I will start on Theories of Harm 1 and 2 and
13 then I will pass over to Simon to deal with 4 and 5.

14 The Competition Commission investigation into motor insurance
15 has inevitably involved a number of complex and technical
16 arguments. At both the AA and Saga we always try to put the
17 customer at the centre of what we do and we feel it's
18 important not to forget the customer in the inevitable
19 technical arguments that we have here. We therefore support
20 remedies that increase customer information and choice,
21 control the cost of insurance and ensure claimants benefit
22 from appropriate replacement vehicles. We believe that a
23 package of remedies A, 1C, 1D(b), 1E(b), 1F and 1G would, in
24 combination, be both effective and proportionate. We believe
25 this package best addresses the adverse effect on competition
26 identified in relation to the separation of cost liability
27 and cost control without eliminating the consumer benefits

1 created by the current market and would also control the cost
2 to at-fault insurers of replacement vehicles whilst ensuring
3 that the claimants benefit from a vehicle that meets their
4 needs.

5 In contrast, Acromas has concerns that remedies 1A and 1B
6 risk confusing or harming customers. In particular, we feel
7 that it would not be clear to claimants, particularly
8 immediately after an accident, how the proposals would
9 operate. Under Remedy 1A, we fear that many policyholders
10 will under-purchase the level of replacement vehicle they
11 need at the point of sale and, as a result, be under-provided
12 after an accident. Under Remedy 1B, we fear that there would
13 be significant delays in providing hire cars, which is a form
14 of under-provision. And Remedy 1A will inevitably lead to
15 better drivers paying more for insurance and worse drivers
16 less for insurance, which again could be seen as customer
17 detriment.

18 Moving on to Remedy 1D, we strongly believe that 1D(a) is not
19 capable of effective implementation because of the
20 circumvention risk through vertical integration, and
21 essentially insurers could seek to own garage networks and
22 therefore avoid the remedy. On Remedy 1D(b), we think it's
23 very important if something of this type is going to be
24 introduced that it must apply to credit repair as well as
25 subrogated losses. Again it's a circumvention risk; if that
26 doesn't happen, it will be very easy to get round 1D(b)
27 simply by using the credit repair route.

1 MR DOUGLAS: In the interests of time, I will restrict my comments
2 to Theory of Harm 5. The Acromas Group agrees with the
3 Commission's findings that wide MFN clauses have an adverse
4 effect on competition. It's also our strong view that narrow
5 MFNs have a similar effect. Acromas has largely avoided
6 narrow MFNs in most of its aggregator contracts by arguing
7 the potential anti-competitive effects. Our concern is that
8 should these get the Commission's blessing then these will be
9 difficult to resist and will effectively proliferate in the
10 market. All insurers will have narrow MFN clauses in place
11 with all the major PCWs. A network of narrow MFNs may well
12 act in a very similar way to a wide MFN in any event. The
13 Commission I think has under-estimated the number of direct
14 insurers who are impacted by narrow MFNs because they have
15 looked at the current market where many companies are already
16 constrained by them. But more importantly, using the figures
17 from the Commission's own report, we estimate around
18 3 million people buy insurance not through a PCW and that
19 they are already paying £1.4 billion in premiums which are
20 caught potentially by narrow MFNs acting as a constraint on
21 the premiums that can be offered, and the impact on their
22 costs is greater to them than the entire impact of Theory of
23 Harm 1 would be, so it is very material for this group.
24 Price comparison websites have grown without access to wide
25 MFNs in general and have secured market dominance and
26 naturally they want to protect that market dominance by
27 restraining competition from the direct marketplace, but

1 there are more proportionate and equally easily implemented
2 remedies that deal with the free-riding issue that the
3 Commission has correctly identified that would allow the
4 direct channels to compete with PCWs and keep costs down to
5 consumers.

6 PROF SMITH: Thanks. DLG.

7 MR WOOLGROVE: Thank you very much, and many thanks for the
8 opportunity to speak to this hearing.

9 I would like to summarise our comments as follows. Like
10 Acromas, I think the customer does need to be at the heart of
11 your remedies and there can be no ambiguity in the claims
12 process for customers, particularly at a time of high stress.
13 As we've said before, we believe that the private motor
14 insurance market is highly competitive. There's already
15 strong rivalry between insurers and a very high level of
16 switching compared to other retail markets. We do recognise
17 that there are aspects of the PMI market, particularly
18 relating to replacement vehicles, that do create dysfunction.
19 However, we would note this is a highly complex market. Any
20 remedies that you suggest must be fully considered and
21 proportionate to the detriment that you have identified but
22 also consistent with the legal principles which underpin PMI,
23 and we look forward to working with you to find effective and
24 proportionate solutions to these.

25 Just briefly touching on each remedy you propose. Firstly,
26 in relation to Remedy A, we are very supportive of a remedy
27 which gives claimants greater clarity on their legal rights

1 at each stage in the claims process.

2 In relation to Theory of Harm 1, we do agree that it does
3 give rise to excessive TRV costs for at-fault insurers. The
4 problem as we see it is that credit hire charges are
5 inflated, and that is the area that we think you should focus
6 your attention on rather than repair, where you identified
7 the net customer detriment being much smaller, at just over
8 £1 per policy.

9 In terms of the remedies to address this, we would support
10 something along the lines of option 1C, with an independent
11 body determining acceptable durations and daily hire rates.
12 We believe that this builds on an existing infrastructure in
13 the GTA and we think that it's preferable to your options 1A
14 and 1B, which seem to us to raise highly complex issues. And
15 we do agree with the points made by the OFT in their
16 observations on your remedies notice that the costs and
17 complexity of setting up and monitoring a price control
18 regime which would need to cover a multiplicity of different
19 makes and models of vehicle would need to be factored into
20 any cost/benefit analysis.

21 I should say in passing that we have particular concerns with
22 option 1D, which is essentially a form of price control for
23 repair, and which - we don't believe a remedy along this line
24 could possibly be justified on proportionality grounds.

25 Thirdly, in relation to Theory of Harm 2, we are strongly of
26 the view that there is no evidence to support a finding of an
27 adverse effect on competition based on a balance-of-

probabilities standard. As we have stated, we have serious concerns about the weight you seem to be placing on the MSXI study. Your own provisional findings report concedes that the sample of respondents on which that study is based is very small and not representative. In other words, I think you are effectively acknowledging that the sample is biased. It therefore follows the conclusion of that study cannot safely be relied upon. The study is not statistically robust. But we also have grave misgivings about the methodology that MSXI inspectors used to assess whether vehicles were returned in their pre-accident condition. We are obviously somewhat constrained by the terms of data-room undertakings as to what we can say in this forum, but you will have seen from our detailed observations in our confidential version of our written response that as a general point we consider there are some fundamental flaws in the MXSI study. Some examples are we saw instances of very long time gaps between the date of repair and the date of the inspection. We saw cases where vehicles had clocked up several thousand miles in the intervening periods and vehicles were generally several years old at the time of the inspection, yet the MSXI inspectors seemed to ignore these points. No account seems to be taken of the possibility that vehicles could have suffered damage, or at least wear and tear, in the intervening period which is unrelated to the original accident. The repairs were not judged against any objective industry standard and we found that the MSXI

1 provided very little objective evidence to support their
2 findings and when they did provide this that it was very
3 inconsistent. Therefore, our strong view is that this MSXI
4 study lacks credibility. If the MSXI study is left out of
5 the equation, the only evidence of under-provision in repair
6 rests on anecdotal and uncorroborated comments from three
7 repairers and some generalised but unproved allegations by
8 the National Association of Body Shops and that, in our view,
9 is insufficient to support a finding of an AEC.

10 Fourthly, in relation to Theory of Harm 4, we are very happy
11 to work with the FCA to ensure that customers are given the
12 right information that they need to make informed purchasing
13 decisions, but we strongly believe that this is best handled
14 by the FCA and not the Competition Commission.

15 Fifthly and finally, in relation to MFNs, we, too, are very
16 pleased you have recognised the anti-competitive effects of
17 wide MFNs. Like Acromas, we think that narrow MFNs are also
18 problematic and they should be prohibited. We do believe the
19 four major PCWs have market power and the fact that you found
20 them to be highly profitable is consistent with this
21 conclusion. In these circumstances we do not believe there
22 is any evidence to suggest that PCWs need the protection of
23 narrow MFNs and we are concerned that if PCWs are allowed to
24 continue using narrow MFNs then commission rates will
25 continue to rise, which will ultimately lead to higher
26 insurance. That's all I wish to say at this stage.

27 PROF SMITH: Thank you. Ageas.

1 MR BOISSEAU: Yes, thank you. We welcome the opportunity to
2 attend this hearing, obviously, plus we agree with the
3 Competition Commission that the separation of cost liability
4 and cost control is the main area of concern. The challenge,
5 of course, is to identify an appropriate remedy or - probably
6 more likely - a package of remedies. We think that the
7 remedies notice represents a very good starting point, but
8 clearly for us it is just a starting point. In our view, the
9 Competition Commission would need to fully stress-test any
10 remedies before deciding on them. In this regard, we are
11 mindful that the effectiveness of any remedy could be
12 significantly undermined if it were difficult to police or
13 open to circumvention. The possibility of unintended
14 consequences will need to be considered very carefully. This
15 is a complex industry with a lot of interactions. Any
16 remedies will need to fit with the broader context in which
17 insurers operate. For example, many accidents don't involve
18 only cars but also commercial vehicles and motorcycles, which
19 are outside the scope of this investigation. The
20 administrative costs of any remedy must be considered
21 carefully in advance. There is a real risk that the benefit
22 of certain remedies for the consumer could be lost if the
23 additional burdens on insurers and others meant that premiums
24 had to rise.

25 Regarding Theories of Harm 2 and 4, Ageas puts the customer
26 at the forefront of everything it does, so we are confident
27 in the repairs that we handle. We also make considerable

1 efforts to ensure that customers are able to make an informed
2 decision regarding add-ons that they may wish to buy.
3 Therefore, while we are, of course, supportive of measures to
4 protect the interests of the consumer, we wonder whether the
5 actual detriment to the consumer might be small. With this
6 in mind we caution against any remedies that could prove
7 disproportionately burdensome. The key objective, of course,
8 is to achieve an outcome that benefits consumers. However,
9 the consumer is losing out if the potential benefits of a
10 remedy are outweighed by its cost of implementation.

11 Regarding the quality of repairs, like DLG, we have
12 considerable hesitations regarding the weight the Competition
13 Commission appears to be placing on the MSXI report. I won't
14 go over the same argument; you have heard them, but we
15 totally share them. We are also mindful that the industry is
16 engaging with the FCA regarding add-ons. As a minimum, we
17 would urge the outcomes of the two authorities' reviews to be
18 consistent.

19 Finally, we are pleased that the Competition Commission
20 appears to recognise the industry's concern regarding the
21 most favoured nations clause imposed by price comparison
22 websites. The solution seems relatively straightforward; we
23 would welcome a ban on MFNs. Thank you.

24 PROF SMITH: Thank you. LV.

25 MR O'ROARKE: Well we don't have a speech so I will just say
26 what's on —

27 PROF SMITH: I will just move on then.

1 MR O'ROARKE: No, I will say what's on my mind. We felt that
2 there were two things in terms of outcomes which could be
3 really positive for customers in terms of savings on premiums
4 but also in terms of protecting the reputation of the
5 industry. The first of those is to address the disparity
6 between the cost of credit hire and direct hire, which is
7 part of Theory of Harm 1, obviously, and I will come back to
8 our thoughts on remedies. And the second one is the issue of
9 subrogation between insurers. And there we thought it was
10 anomalous that if a customer was to claim more than the cost
11 of their claim from an insurance company, that would be
12 considered a crime; if an insurance company subrogates
13 against another insurance company for more than the cost that
14 they've indemnified to the customer, some people are arguing
15 that that's defensible. And that seems anomalous and
16 unsustainable to us.

17 In terms of remedies, we are supportive in principle of 1A.
18 We think that is the right approach, to put power into the
19 hands of the first-party insurer, but we have concerns about
20 the legal practicalities of doing that and how much time that
21 might take, and we also have concerns about the
22 incompleteness of it, as Francois has mentioned, in terms of
23 the remit of your review would not include commercial motor
24 insurance. So with that in mind, we are supportive of
25 Remedy 1C being explored possibly as an interim measure prior
26 to the full implementation of 1A in order to get the credit
27 hire cost down to more manageable level - a more acceptable

1 level - and give a premium benefit to customers.
2 I won't touch upon the other theories of harm apart from 5.
3 In terms of most favoured nation clauses, we are supportive
4 of the removal of the wide clause. We are relatively
5 ambivalent on the narrow clauses. We feel in principle that
6 complete freedom of pricing would be a good thing but we
7 accept some of the arguments that have been put forward by
8 the Commission that the price comparison websites serve a
9 very useful purpose in stimulating competition, and that's
10 why we are ambivalent on that particular point. Thank you.

11 PROF SMITH: Thank you. RSA.

12 MR CURRIE: Unlike John, unfortunately I do have a speech, but a
13 lot of it has been covered so far so I will try and blast
14 through this quickly.

15 Firstly, thank you again for your time with us today. Before
16 we look at the individual recommendations, just to echo a
17 couple of points that have been made already around the scope
18 of the investigation. We are, at the moment, tied to
19 personal motor insurance; therefore, if that sticks, there
20 are likely to be some significant and potentially unintended
21 consequences. We have given you more detail of that in our
22 responses so far. There is potential for exploitation of
23 those differences as well if that scope can't be extended to
24 other road users. If you can't extend the scope, we would
25 suggest some kind of risk assessment is undertaken to
26 understand exactly what those risks might be.

27 Turning to the remedies themselves, like others we have

1 reviewed them against our criteria, particularly around
2 protecting the customer: protecting their not-at-fault
3 rights, maintaining their customer experience, but also
4 making sure that whatever remedies come out actually help to
5 reduce costs to the end consumer. We do believe that the
6 remedies that you have produced, when drawn together into a
7 package, can produce some significant benefits for the
8 customer and for costs.

9 We support Remedy A. We agree that policyholders should be
10 made fully aware of their rights and obligations. We think
11 1F is important to help with that.

12 We support the principle of 1A but we do have some
13 reservations around its current form and think there's a
14 couple of amendments that it would benefit from to make it
15 work effectively. So, firstly, I think as a couple of others
16 said, as it stands we are at risk of personal lines customers
17 subsidising commercial lines customers - so commercial
18 customers subsidised by personal ones. Secondly, safer
19 drivers will be subsidising riskier drivers, reducing the
20 incentives for safe driving. That we think on its own is a
21 significant issue with 1A. Thirdly, 1A in its current form
22 is relatively easily to circumvent. And, finally, the
23 separation of costs relating to repair and to hire does
24 create a potential for mischief and again for circumvention,
25 consequences we think best avoided. We think we can get
26 round these with three amendments to resolve these issues.
27 We've set those out in our earlier responses but we will

1 cover them again for now.

2 First of all, we believe that not-at-fault temporary
3 replacement vehicle cover must be mandatory and must provide
4 for full and effective restitution. This maintains the
5 current not-at-fault party's legal rights. It can avoid
6 unnecessary legal costs, as a not-at-fault insurer is
7 obligated to provide a car or to reimburse the cost of that
8 car. That does mean there remains a role for the credit hire
9 companies, probably in a different guise - but there remains
10 a role for them. Secondly, subrogation we believe must
11 be permitted. In itself this removes the asymmetry between
12 personal and commercial customers, as personal lines
13 customers can now recover from commercial lines customers.
14 It ensures riskier drivers are not subsidised by safer
15 drivers, removes the circumvention risk around uninsured
16 losses and removes the potential for mischief by the
17 separation of hire and repair. Finally, there must be
18 controls around the costs that can then subsequently be
19 recovered. This actually might arise automatically from the
20 first two changes; however, we do believe that it should be
21 supported by some judicial guidelines which would ensure
22 consistency in the implementation of those reforms across the
23 county courts. So, in short, we support remedy 1A. It goes
24 a long way to reducing the AEC whilst maintaining the rights
25 of the customer.

26 Remedy 1B. One element of 1B we think is worth looking at,
27 and that is capping the costs recoverable to that which the

1 at-fault insurer would have paid once they've agreed
2 liability. The rest of it we believe gives all kinds of
3 problems in terms of a customer's journey and we could not
4 support that.

5 We do support Remedy 1C, although we think it works better as
6 part of a package with A and 1A. Given the history of the
7 GTA, we need to be careful that it does deliver a lasting and
8 comprehensive remedy. That said, creating a realistic limit
9 could generate a quick and straightforward solution. There
10 will be issues on how to set and maintain those rates. I
11 don't believe they are insurmountable. A similar regime
12 already operates for low-value BI claims.

13 On the repair side, similar to what a couple of others have
14 said, we think setting a wholesale rate is fraught with
15 challenges. Is it one wholesale rate for the whole market?
16 Is it individual wholesale rates for individual insurers?
17 That then needs to be tested to work out what those rates
18 would be. That could generate a number of court cases, maybe
19 similar to the one that RSA themselves have been engaged in
20 for the last couple of years. If a single rate is applied
21 then effectively a wholesale rate becomes a standardised
22 rate. We do support a standardised rate for repairs. We do
23 think there are some difficulties around that but we do think
24 it's a better version than 1D(a).

25 On Remedy 1E, we are quite comfortable with 1E(b). We think
26 1E(a), where you have got cars passing backwards and forwards
27 between insurers, is a poor customer journey.

1 We also support the ban on referral fees, accompanied with
2 everything else. Clearly, a ban on referral fees on its own
3 is no use: all it does is reduce income to the insurance
4 companies.

5 So together, ensuring the customer is aware of his
6 rights and obligations, 1F and A work for us. Mandating not-
7 at-fault like-for-like replacement cars in all policies, 1A,
8 works. Allowing the not-at-fault party to claim back from
9 the at-fault party is good (when limited by judicial
10 guidelines) with repairs limited to a standard rate, salvage
11 being actual proceeds, all supported with a ban on referral
12 fees.

13 Theory of Harm 2 - I think all has been said around repairs,
14 so I won't repeat on that.

15 Theory of Harm 4 and 5 - one last comment. We broadly
16 support your proposed remedies, but do believe that it
17 shouldn't be the focus of your investigation. It duplicates
18 work by the FCA and we think those remedies are best picked
19 up by them. Thank you.

20 PROF SMITH: Thank you. Zurich.

21 MR HOLLIDAY: Thank you. We have welcomed the investigation
22 throughout and continue to believe that consumers will see a
23 real benefit from the removal of the inefficiencies that are
24 reflected in the provisional findings. In particular, we
25 welcome a continued focus on Theory of Harm 1, as we have
26 stated before that we believe that's the fundamental issue,
27 and while remedies 1C to 1G will assist in mitigating the

1 impact, we believe these fundamental issues will only be
2 addressed by a more fundamental change in the approach, as
3 suggested by options 1A and 1B. However, we do recognise
4 there are challenges with each of these, which we have raised
5 in our written response, and therefore we would encourage
6 some or all of the other measures under of Theory of Harm 1
7 to be put in place earlier while more fundamental options are
8 worked on.

9 Finally, we remain of the view that most favoured nation
10 clauses are unnecessary restrictions of competition and we
11 urge the Competition Commission to take action against both
12 wide and narrow formulations of such.

13 PROF SMITH: Thank you. Allianz.

14 MRSAUNDERS: Mr Chairman, thank you very much for the opportunity.

15 A lot of what I have heard and what I have got to say is
16 actually repeated, so, noting your request for brevity, I
17 will try to be brief. So, Allianz holds a strong view that
18 decided remedies should be implemented across the entire
19 motor insurance market, both retail and commercial motor, as
20 differentiation may cause yet added time, complexity and
21 cost.

22 Pausing on the separation of cost control and liability, we
23 believe that the most effective combination or basket of
24 remedies is as follows: 1A, first-party insurance for
25 replacement cars; 1D(a), non-fault insurers being limited to
26 recovering the wholesale price that they paid for repairs;
27 1E(b), write-off costs being based on actual salvage values;

1 and 1G, the prohibition of referral fees and other
2 non-insurance-related income streams such as rebates,
3 profit-share arrangements and so on.

4 First-party insurance for temporary replacement vehicles is
5 possibly the most radical of these remedies and the most
6 difficult to implement, but it is necessary, we believe, for
7 these reasons. One, the provision of temporary replacement
8 vehicles has been identified by the Commission as the single
9 biggest cause of over-costing of claims. Secondly,
10 first-party insurance is the only truly effective remedy to
11 temporary replacement vehicle costs. Unlike other remedies,
12 it cannot be circumvented and removes totally frictional
13 cost. To remain a truly effective remedy, it must be
14 implemented as suggested, removing the right of recovery,
15 which is just a rating factor.

16 I've got two other comments to make around add-ons and MFNs.
17 I don't think these have been covered.

18 Add-ons. We largely agree with the Commission's findings on
19 ToH4 regarding the need for greater clarity and transparency
20 of add-ons. In addressing these issues, however, we need to
21 ensure a joined-up customer journey through the purchase
22 process across all the components of the distribution chain -
23 that is insurers, brokers, PCWs, etc. We also need to ensure
24 that these remedial measures do not have the unintended
25 consequence of stifling innovation so that the customers end
26 up with a choice of standardised products which might not
27 suit their individual needs. On a specific point, we do not

1 feel that the proposed publication of NCB scales is
2 practicable and also feel that even if it was it might serve
3 to confuse customers rather than clarify matters for them.
4 Finally, MFNs. We agree with the Commission's findings on
5 ToH5 regarding the abolition of the wide MFN and we believe
6 that should happen as soon as possible, but it's our view
7 that narrow MFNs are actually in the interest of the customer
8 as they are key in providing the customer confidence in PCWs
9 so that they can compare and contrast insurance products
10 quickly and easily and make decisions that are appropriate to
11 them. Thank you very much.

12 PROF SMITH: Thank you, and thanks to all of you for providing
13 succinct and very clear opening statements which essentially
14 provide us with the agenda for the whole meeting. We are
15 going to come back to most of the issues that you've raised.
16 There was one issue which several of you mentioned which I
17 think we weren't proposing to ask questions about. We have
18 had very clear messages in the statements that you've just
19 made but also in the written submissions that we've had that
20 we need to give careful attention to the difficulties of
21 implementing Theory of Harm 1 remedies on private motor
22 insurance alone because of spill-over effects. I'm not
23 saying we have an answer to the questions that have been
24 raised, but we understand very clearly what the issues are
25 and I don't propose to explore that further today. We have
26 had very clear advice from you on that.
27 So let's move, then, to Theory of Harm 1, and we're going to

1 spend most of our time this afternoon on Theory of Harm 1. I
2 hope you feel that that's appropriate. Roger is going to
3 kick off on that.

4 MR FINBOW: Yes. I mean, first of all one question in relation to
5 Remedy A. I don't think there is any dispute that everyone
6 believes it is important for the Commission to impose
7 measures to improve claimants' understanding of their
8 entitlements. The question is: how do we best develop such
9 proposals? A number of parties have suggested that the ABI
10 is best placed to provide a better understanding of
11 contractual and tortious entitlements, but other parties have
12 stated that it needs to be someone entirely independent to
13 design such a remedy. Who do you - I will ask DLG first.
14 What do you think about that?

15 MR WOOLGROVE: I think there's strong evidence the ABI are very
16 well placed to work with their members. The majority of
17 insurers are members of the ABI. I think there's past
18 evidence that they do that very well, that they represent in
19 an independent way, and they are well placed to do that, so I
20 think ABI are as well placed as any.

21 MR FINBOW: Would they be in a position to advise us on the sort
22 of structures we would need to put in place in relation to
23 contractual entitlements as distinct from legal?

24 MR WOOLGROVE: As good as any, and I suspect they have access to
25 the right support. I think there are plenty of examples over
26 time where the ABI has done very similar consumer guides,
27 genuinely helping consumers understand their rights. So I

1 see no reason why it couldn't be the ABI, but that's not to
2 say there wouldn't be other bodies. But I think we all have
3 very good connections to the ABI, which I think would make it
4 work.

5 MR FINBOW: I mean that may, of course, be part of the problem;
6 that those parties who think another solution would be
7 preferable are having in mind that - I see everyone else is
8 nodding. Does anyone want to add anything by way of addition
9 or contradiction to that?

10 MR SLATER: I think our view was that the GTA technical committee
11 may be a better solution, but I don't think we feel terribly
12 strongly about precisely who drafts this wording.

13 MR SAUNDERS: Apologies. I was just going to add that I concur
14 that I could see a scenario whereby ABI could draft in
15 additional bodies to help them with the independence piece.
16 I think that they would have a central view which would be
17 offered up by members, but if there was any reason why
18 independence was felt to be a situation, you could involve
19 some of the consumer groups in order to contribute to a wider
20 discussion, and certainly we have undertaken some of those
21 tasks in the not-too-distant past.

22 MR FINBOW: All right. Thank you. Let's move on, then, to
23 Remedy 1A. It's been suggested to us that this remedy would
24 lead to an end to the credit hire business and that a
25 consequence of that would be that non-fault claimants would
26 receive less good a service than they currently receive when
27 they use CHCs because CHCs only have their interests at

1 heart, rather than, in the case of the insurance companies,
2 an incentive to minimise their own costs. Do you think that
3 is a valid concern? And maybe I can ask Ageas first.

4 MR BOISSEAU: No, I think it's a preconceived statement. I think
5 what will be critical is how clear the sales process is about
6 what this product would offer to the client, so that there is
7 no ambiguity about the product and at claim stage what would
8 happen. But if we look at the track record of when we are
9 totally - I can speak maybe only for Ageas - in charge of the
10 claims process, we also have the customer interest at heart,
11 so I don't see any reason why we wouldn't be able to provide the
12 same service as credit hire.

13 MR FINBOW: I mean, one point that's been put to us is that before
14 the arrival of CHCs, customers were significantly worse
15 looked after in terms of their legal rights than they are
16 now, which may not be a justification for maintaining the
17 role of CHCs in their current form, but may, nonetheless, add
18 to the argument that they fulfil a role. Is there a point
19 there or is that a non-point?

20 MR O'ROARKE: I would say that that is true but I think it's
21 rationalising the situation with hindsight. I think the
22 whole industry has moved on in terms of the level of service
23 delivery that it provides. I don't see that that represents
24 an ongoing justification for the credit hire firms to argue
25 against first-party provision.

26 MR FINBOW: So there wouldn't be any return to the old days.

27 MR O'ROARKE: No, I think that was then and this is now. I don't

1 think there would be a return, and particularly, as RSA have
2 said, if the requirement was to provide like for like in
3 implementing 1A.

4 MR FINBOW: Does anyone else want to add to this?

5 MR WOOLGROVE: I think it's quite a simplistic view to say an
6 insurer's goal is to minimise their costs. I mean, we all
7 have strong consumer brands. We operate in a very
8 competitive market in which customers know different brands
9 and have the ability to switch and do switch, so this sort of
10 simplistic idea that it's all about cost and it's not about
11 our customers... What we do is balance meeting our customers'
12 needs every day when they have a claim, and we balance that
13 against costs. So it's a very simplistic and sort of, one
14 could say, they-would-say-that-wouldn't-they view of
15 insurers. Our brands would not succeed and not survive and
16 we would not have the high retention rates that many firms
17 would have if we did not meet the needs of our customers.
18 So, to be very clear where our interests lie, I think we have
19 all talked about the importance of our customer and
20 delivering for our customers.

21 MR FINBOW: Okay. Thank you. Would any risks or problems be
22 created for claimants by reason of the fact that this remedy
23 would lead to replacement vehicles and other parts of the
24 claimant's claim being dealt with by separate mechanisms?
25 RSA, do you want to start on that one?

26 MR CURRIE: Yes, I think is the straightforward answer.

27 MR FINBOW: Right. So what's the solution?

1 MR CURRIE: So, for us, the solution would be subrogation. So if
2 your not-at-fault insurer has picked up its customer, it's
3 got a policy there where it's got to provide the cover. It
4 doesn't matter actually who provides the replacement vehicle
5 - it could be an incumbent credit hire company but they
6 would be restricted on the amount they could recover back
7 because they wouldn't be able to charge the credit element,
8 because an obligation would now be with the insurer. But
9 splitting out the repair from the hire leads to, or could
10 lead to, a significant amount of mischief. So your at-fault
11 insurer is responsible for the repair of the car but that may
12 well be done by the not-at-fault insurer, so all the current
13 issues that we've got around the way that's treated would
14 still be there. Costs may well get transferred from the hire
15 side to the repair side because they are recoverable, while
16 the hire side isn't. So for me, putting the cost control in
17 one place helps remove those particular issues.

18 MR FINBOW: Anyone else like to contribute to that?

19 MR MADDOCK: Yeah. I think one of the things we need to be
20 mindful of as we go through this - and I was sort of busy
21 scribbling down how we piece part of one remedy, glue it to
22 another and we make this sort of eminently understandable for
23 a consumer. I think in shorthand what I am saying is, in
24 search of a silver bullet, we need to be careful we don't
25 sort of let off a landmine here. The view is if we boil this
26 down to the fact that it is an issue of cost and we don't
27 want to incur delay through having to have legislative

1 change, incompatibility with EU law, having to price on a
2 totally different basis from the risk of causing an accident
3 to the risk of being involved in an accident, we still have
4 to have a remedy. So if we boil this down to the basics of:
5 you need to control duration and cost, it seems inconceivable
6 that we don't default to 1C, where we leverage existing
7 infrastructure both in terms of a GTA, a mechanism of
8 controlling costs and to make use of existing portals in the
9 market to exchange information - to share information.

10 MR FINBOW: Okay. Thank you for that. Any further points on that
11 question? No? Well let's move on to a point that a number
12 of you raised in your initial statements, which is the
13 concern that one effect of the remedy might be that low-risk
14 drivers subsidise high-risk drivers. How would we deal with
15 such a concern? Perhaps I can start with Zurich on this one.

16 MR HOLLIDAY: It's one of the challenges that we raised in the
17 response and I think it also applies to some of the
18 spill-over effects. I think there's no sort of simple
19 solution for us in terms of how to address that. I think it
20 comes down to maybe one of the previous comments from Direct
21 Line about how do we create a solution which may be the
22 hybrid of the various solutions which overcome some of the
23 challenges of both 1A and 1B. It's not obvious to us how you
24 can avoid the cross-subsidy and, in a world where we have
25 third party fire and theft customers and comprehensive
26 customers, you can manage those sort of selections of the
27 customers in terms of what they wish as well. So I think it

1 may just be a requirement that it's an accepted outcome of
2 option 1A and a necessary price to pay in terms of a
3 solution, or it may be that we need to work up alternative
4 solutions which still address the basic issue about the
5 separation of cost and the claimants' requirements.

6 MR FINBOW: Right. Does anyone have any tailor-made solutions for
7 us on this?

8 MR CURRIE: I think we ran through it in our response.
9 Subrogation. So, by making the boy racer pay for the
10 accidents that he's caused, that's the right thing to do and
11 it transfers the costs to the polluter, for want of a better
12 expression.

13 MR BOISSEAU: I'm not sure I would agree with the subrogation
14 point. Effectively it would have the benefit you highlight,
15 which is probably to help the low-risk driver, but, let's
16 face it, there are plenty of components in this claims
17 process and my fear would be that by re-introducing the
18 fault/non-fault - because that's what subrogation does - you
19 might see that in a few years' time we have differential of
20 cost when it is at fault and when it is not at fault because
21 what happened on the repair could eventually also happen if
22 we were re-introducing subrogation. So I think the problem
23 with that is it could defeat the purpose.

24 MR O'ROARKE: But if that were done in conjunction with a
25 requirement that you can only subrogate for the costs you
26 incur, that risk would go away.

27 MR BOISSEAU: Yes, but as you rightly pointed out in your opening,

1 it's not totally the case today, is it?

2 MR O'ROARKE: No, but we're suggesting that it should be made the
3 case.

4 MR BOISSEAU: So clearly if we go into this area I think what is
5 very important is not to allow costs to be inflated
6 elsewhere, whether it's because there is a subrogation
7 mechanism or because once we have control over vehicle hire
8 cost suddenly the repair cost, which is only £1 per policy at
9 the moment, becomes two or three or four because of other
10 mechanisms.

11 MR WOOLGROVE: I think what this points to is it adds complexity
12 and fundamentally changes the basis upon which we risk-price
13 customers. If you're looking at one peril, which is the
14 peril of being in an accident - if you're assessing that on a
15 different basis to, say, bodily injury, that creates great
16 complexity for us. It eliminates all of our insight
17 previously and we would have a different class of victim,
18 which is, as Steve described, being in an accident rather
19 than causing an accident, and that has a lot of complexity.
20 I am afraid to say there isn't a simple way that I know that
21 my technical people could effectively rate for that or
22 incorporate into our models, so it's a fundamental change to
23 our systems operating effectively.

24 MR AARONSON: Could I throw out a suggestion? And, you know, it
25 is only a very early stage of a thought, but could you have
26 some system - combined with the move to a first-party
27 provision of a replacement vehicle, could you have some sort

1 of adjustment mechanism whereby say at the end of the year
2 for each case where an insurer had a policyholder at fault
3 and liability was admitted, that insurer pays a fixed sum
4 into a central pot - so, you know, £1,500, £2,000; whatever
5 the sum is, it's the same for every accident - and equally,
6 for every case where that insurer insured somebody who is not
7 at fault and there is clear liability established, that
8 insurer takes the £1,500 out. So, in a very rough and ready
9 way - a sort of rough justice way - you do get the costs
10 falling back on the fault insurer and therefore on to the
11 high-risk driver's premium and away from the low-risk
12 driver's premium. Could that work?

13 MR SAUNDERS: If I may, that is asking sort of a lot more
14 questions than I would anticipate. So, how would that fund
15 be managed? What happens if there's too much money, too
16 little money? What happens to business models where somebody
17 actually has a fleet of prestige vehicles that they insure
18 against somebody that actually - and the ensuing cost that
19 actually goes with repairing those prestige vehicles, against
20 actually some very small vehicles that actually might have
21 lower value? So, my gut reaction to that is I think that
22 would be very difficult.

23 MR BAUGHAN: Yeah, I would echo that. I think my immediate
24 reaction is the complexity of administering any solution
25 along those lines.

26 MR AARONSON: Yes. I was kind of suggesting something that would
27 be brutally simple, so you keep it simple to administer that.

1 And I accept that that means it's less precise in the
2 compensation that's achieved, but there might be a trade-off
3 between the complexity and the precision.

4 MR SAUNDERS: Yes. In fact what you might create there is a
5 situation whereby for the high-value prestige customers and
6 the insurers that then wouldn't be getting all of their money
7 back out of this £1,500 - you could actually create
8 artificially a situation whereby they would have to pay
9 additional premiums to cover that shortfall.

10 MR MADDOCK: I think you also have to be able to conjoin that with
11 repair and whether that actually promotes an appropriate type
12 of behaviour. So, you know, if you're going to use an
13 average to denote a right in subrogation, what ensues in
14 terms of proportion of vehicles that are actually repaired
15 for a policyholder's benefit using an appropriate repair
16 method? Do those repairs take longer? Do they have a longer
17 duration? Do you see more total losses coming to the market,
18 you know, which again doesn't benefit a consumer either? I
19 think there are a multiplicity of different considerations to
20 think through. I don't think all of them would necessarily
21 drive I think the right behaviour and, you know, be for the
22 benefit of, ultimately, the consumer.

23 MR FINBOW: Okay. Robin, are you content for the time being?

24 MR AARONSON: Yes, that's very useful feedback.

25 MR FINBOW: Very good. Now, you're probably aware that two or
26 three parties have come forward with a variation on 1A which
27 envisages mandatory first-party insurance, providing the

1 policyholder with a broadly like-for-like car, subject to a
2 cap at, say, two litres or something like that. So the
3 policyholder would still be able to use credit hire if the
4 cover provided by the policy was inadequate for his needs or
5 he felt it was inadequate for his needs, so in other words
6 subrogation rights would still apply then. Alternatively,
7 subrogation rights could be retained generally, provided that
8 the cost of hire were controlled as envisaged in 1C, and the
9 argument put forward in favour of this remedy was that it
10 would avoid a change in the law.

11 So I suppose a couple of questions arise. First of all, do
12 you think this would be a runner? But, secondly, are we
13 right in thinking that the variant would only work if the
14 replacement car cover was mandatory under PMI policies,
15 otherwise a non-fault claimant might still choose to go to a
16 CHC? RSA, you are nodding vigorously. I mean, it's what
17 you've been saying, isn't it?

18 MR CURRIE: I think it's basically our stance so it's difficult
19 not to agree with it, to be fair. We'd probably also say,
20 actually, why not allow the customer to go to a CMC, even if
21 the not-at-fault cover is provided by an insurance company
22 for its own customers? Where you get the temporary
23 replacement vehicle from doesn't have to be your own
24 insurance company. The mitigation arguments that you would
25 have in court would limit the amount that you could recover
26 back to the amount that your own insurance company would pay
27 in the first place.

1 MR FINBOW: So you are saying that actually it would become
2 otiose, really, because you are getting what you want broadly
3 anyway.

4 MR CURRIE: Yeah. And the key thing with it is that it removes
5 the need for credit, so your customer isn't taking a risk
6 when he takes that not-at-fault temporary replacement vehicle
7 from somebody else because he or she's got that guarantee
8 from their insurance company that their insurer is going to
9 pay for it. So the credit element that has been the extra
10 bounce in the returns here disappears or reduces
11 significantly: only being required in those cases where your
12 customers are not able to be adequately provided for.

13 MR FINBOW: Would there any merit in limiting this to non-fault
14 claims or would it actually create further problems with
15 disputed claims, for example?

16 MR CURRIE: There is an issue around disputed claims but what it
17 might do is encourage insurers to get our proverbial act
18 together and agree liability more quickly, because as soon as
19 you agree liability then you've identified who's going to
20 pick up the cost. If it's you, great; you can crack on and
21 keep your costs down. If it's somebody else, then you can
22 make sure your customer is getting the right service. There
23 will be occasions where you do still have disagreements
24 around liability, but they tend to be relatively few in the
25 grand scheme of things, and there may be ones that still fall
26 outside this overall regime or answer, and that's again where
27 the credit hire companies maybe could still step in and

1 provide a service in those circumstances.

2 PROF SMITH: Sorry, can I just pursue the issue that you are
3 saying that this variant of 1A can be done without a change
4 in the law?

5 MR CURRIE: Yes, I think so but I am not a lawyer.

6 we can have a -

7 MR CURRIE: It's cheaper I think as well, sir, isn't it?

8 PROF SMITH: - discussion on an even basis. But my understanding,
9 for example from *Coles v Hetherton* - although that was about
10 repair costs, not replacement vehicle costs - but the general
11 principles were annunciated there that if you've got a
12 tortious claim the fact that you've got insurance cover is
13 irrelevant to the nature of your claim.

14 MR CURRIE: It is.

15 PROF SMITH: So I don't quite understand why, if your own
16 insurance company provides you with a replacement vehicle,
17 that somehow diminishes your right to go to a credit hire
18 company and get a replacement vehicle at credit hire rates,
19 so I'm not clear how we can -

20 MR CURRIE: So *Coles v Hetherton* turned on a few issues. One was
21 the insurance - irrelevant. In other words, it's a claim for
22 damage - physical damage -

23 PROF SMITH: No, but I'm just talking about the insurance being a
24 relevant aspect of it.

25 MR CURRIE: It's mitigation which is key here. So, when you have
26 got a damage claim, once the damage has occurred then you
27 can't mitigate the cost of that damage because it's already

1 happened. When you've got a temporary replacement vehicle
2 then you've got effectively an ongoing consequential loss, so
3 you've then got a duty to mitigate that loss. Now if part of
4 your potential recovery is from an issue that you've got with
5 the insurance company then that could play a part in it.

6 MR FINBOW: I suspect that the Chair and I can debate this
7 afterwards between ourselves, but I think there probably is a
8 distinction to be made between the idea that someone has
9 taken the precaution of being cautious in taking out
10 particular insurance which they didn't have to take out and
11 what is proposed here, which would be that it would be
12 mandatory.

13 MR CURRIE: Yes.

14 MR FINBOW: I think that probably is the distinction, actually.

15 MR WOOLGROVE: But it all hinges again, as you've said, on
16 controlling, or defining, what a reasonable subrogation rate
17 is, and so we go back to the same issue inevitably. The
18 provision is probably the least of the challenges here.

19 MR SAUNDERS: Sorry, if I could add - and thank you - I've got a
20 slightly different view on this than Ian at RSA, in the sense
21 that if you mandate that alternative vehicle provision aspect
22 then actually it also becomes a contractual element with the
23 insurer that you contract with. So you take out a policy of
24 insurance, it covers you for all the things that the RTA says
25 it should cover and then at the moment what we're suggesting
26 is it should cover this alternative vehicle. That becomes a
27 contractual obligation between you and your insurer, so if

1 that claim is then reported to you, it's not just a question
2 of sorting out liability and all the time the clock is
3 ticking; you actually need to service that customer and that
4 customer will come back to you because you're paying for that
5 vehicle - you're paying for it all the time the vehicle
6 that's actually being repaired is being repaired - so at that
7 point you're putting the customer at the heart of things,
8 because actually, by putting the customer at the heart of
9 things and getting things done quickly and efficiently, it
10 actually benefits us as an insurer too, because it will close
11 down the amount of time that that vehicle is off the road.
12 So I would argue that, yes, mandatory, which is what we
13 should have. The subrogation issue we're actually quite
14 relaxed about and we don't think it should be pursued,
15 because we think that you will still get into this wholesale
16 and retail argument that we've debated long and hard under
17 Coles, but we believe that the mandating and actually putting
18 that customer in our control is what is required on this one.

19 MR FINBOW: So if cover were mandatory, would you expect premiums
20 to go up or down or stay the same?

21 MR SAUNDERS: I'm not an underwriter, but I know what we pay on
22 credit hire; I know the frequency that we see on credit hire;
23 and I then see what I can actually contract in order to
24 actually produce a scenario whereby I can provide vehicles
25 for people that are off the road. I think it's fairly common
26 between us because we've had these discussions, but it's
27 probably, you know, a third, 25% cheaper to actually contract

1 yourself than actually look at a credit hire claim as an
2 adversarial scenario.

3 MR HOLLIDAY: But I think it would vary between customer groups,
4 so that would be an overall market piece, and then we get
5 back to the cross-subsidy issue that there would be some
6 winners and losers within that unless there was some
7 mechanism of control.

8 MR BOISSEAU: And I think we have to be honest: if it's a
9 first-party mandatory cover, yes, we will see a premium drop,
10 but not in year one, because it's unknown territory and it is
11 very rare that you are to see too much benefit on day one
12 before you start to have some experience. So I think it's
13 very difficult today to say that in year one the customer
14 will see an overall premium decrease.

15 MR FINBOW: We are not holding you to it right now.

16 MR BOISSEAU: I think it's an important point, though.

17 MR FINBOW: Yes, thank you for making that point. I have no
18 further questions on 1A, unless any of my colleagues do.
19 Peter, you want to.

20 MR WANTOCH: I just wanted to check on that last point, because
21 wouldn't you have - if like-for-like replacement car cover is
22 mandatory, we've got, surely, a whole load of additional
23 costs in providing like-for-like replacement vehicles to
24 customers who are in a fault position or their liability
25 hasn't been determined, so it's a bit difficult to see
26 premiums actually dropping very much, is it not?

27 MR SAUNDERS: I think you have a whole set of debates around what

1 like-for-like actually means, and you've only got to look at
2 the courts to actually see how that's been interpreted, but
3 assuming that you can group types of cars either by their
4 performance, their prestige, their size and so on - and you
5 are right that there will be a cost in relation to that
6 original purchase, but I would have thought that there would
7 be a significant offset in terms of the indemnity spend,
8 which would then reduce. Now, as I said, I am not an
9 underwriter and you would need to talk to a set of actuaries
10 in order to understand which way that would go, but I would
11 be pretty confident, speaking from a claims perspective, as
12 to which way - you know, that would be of benefit to the
13 consumer.

14 MR SMALE: I think there are some other costs that 1A would take
15 out of the process. Most insurers have teams that are busy
16 chasing after non-faults to try and get them into their own
17 regimes, so you wouldn't need that any more from the point of
18 view of credit hire. Currently, on the fault side, it's
19 usually the responsibility of a garage to provide a courtesy
20 car. That's probably quite an inefficient way of providing
21 cars to the at-fault customers. So actually, using proper
22 fleet managers such as the existing CMCs or the other fleet
23 providers in the business I'm fairly sure would provide
24 efficiency gains on that side as well.

25 MR WANTOCH: But the chasing by fault insurers of no-fault
26 claimants is largely driven, or wholly driven, by the wish to
27 reduce the cost of credit hire, is it? I mean, it's not

1 really the repair side that drives it.

2 MR SMALE: It's a big component of current practice, yes.

3 MR WOOLGROVE: It's also bodily injury capture, which is out of
4 scope of this inquiry.

5 MR WANTOCH: Yes.

6 PROF SMITH: But in this model of compulsory replacement vehicles,
7 you'd be providing replacement vehicles to some people who
8 currently don't claim one because they don't need to, no?
9 The question of mitigation no longer arises.

10 MR SMALE: I don't think you can force a customer to take a
11 service. Some might still opt out.

12 PROF SMITH: No, but the customer doesn't need to be asked, 'Do
13 you need this vehicle'?

14 MR SMALE: I still say there are other savings across the whole
15 system that could compensate for that.

16 MR FINBOW: Okay, let's move on, then, to Remedy 1C. We've got no
17 questions to pursue on 1B. So, measures to control the cost
18 of providing a replacement car. If rates were to be set at
19 direct hire rights, would it remain economically viable for a
20 credit hire company to provide the necessary replacement car?
21 Perhaps I can ask LV first.

22 MR MILLINER: From our perspective I think it would depend on the
23 size and scale of the operation. For, in a sense, a credit
24 hire organisation to translate itself into something akin to
25 Enterprise, where they provide a direct hire to the industry,
26 would mean a change in operating model. However, a lot of
27 the cost that sits in a credit hire company's invoice is

1 essentially a referral fee, an income that is paid to the
2 recipient of the work provision. So, in the sense of
3 reducing the cost of the daily rate, a lot of that would be
4 wiped away by a ban on referral fees and would immediately
5 slice probably £400 off the average hire bill that the credit
6 hire company would provide. In that sense, that sort of
7 equilibrium could easily be restored, albeit, as I say, for
8 some credit hire organisations that don't have the scale or
9 the efficiencies of a larger provider, it may be more tricky
10 for them to leverage the same commercial outcome.

11 MR ORAM: What about the CMCs' argument that referral fees is a
12 marketing expenditure; take that away and you would still
13 have spend on marketing? What's your answer to that?

14 MR MILLINER: I don't agree. I mean, you can make the same exact
15 argument as was done in the legal market around the change in
16 the court fees provided to solicitors under the MoJ reforms,
17 and that has not resulted in that outcome and I don't believe
18 it would provide a similar outcome for the credit hire
19 organisations either.

20 MR FINBOW: Does anyone else want to add to that response? I
21 mean, that would seem to be fairly conclusive.

22 MR AARONSON: Could I just ask a follow-up?

23 MR FINBOW: Yes, of course.

24 MR AARONSON: Thinking not of the credit hire companies now but of
25 the non-fault insurer. If a non-fault insurer knew that the
26 only cost he could recover was the direct hire rate, would it
27 still be worth his while to provide a replacement vehicle to

1 his policyholder?

2 MR O'ROARKE: Why do you say that? Because you think there would
3 be an attritional cost of administration or something which
4 couldn't be recovered?

5 MR AARONSON: Yes, because, I mean, assuming the direct hire rate
6 is what it costs that insurer actually to get hold of the
7 car, then there's the cost of administering the claim,
8 pursuing the fault insurer for subrogating the cost, and
9 possible, in some cases, litigation.

10 MR O'ROARKE: Well, one solution we were discussing is whether or
11 not the large providers of hire cars could effectively act as
12 a clearing house for that to make the administration cheap
13 and cost effective. So, in other words, there wouldn't be a
14 lot of paper involved; there would simply be an
15 acknowledgement that we've provided a car to our customer as
16 a result of an accident caused by an RSA customer and there
17 would be a netting off at the end of the month in terms of
18 who owes who.

19 MR MILLINER: There are some arrangements that work like that
20 already.

21 MR FINBOW: Okay. Now, if we were to go along these lines then
22 would we need to come up with a solution where we made sure
23 that those maximum hire rates were applied to all care hire
24 charged to fault insurers? What I have in mind there is:
25 would there otherwise be ways in which CHCs could circumvent
26 the remedy by going direct to, well, the victims themselves
27 possibly or to vehicle recovery providers and so on? Zurich,

1 do you want to start on that one?

2 MR HELGESEN: Yes. I guess really the question would then be one
3 of mitigation. So if it's accepted that there are industry
4 rates and therefore, you know, there is also that implicit
5 requirement to improve customer education, then you do get to
6 a position where actually to look for alternative mechanisms
7 which potentially are more costly results in risk for that
8 consumer when going outside of the normal processes.

9 MR FINBOW: The consumer, of course, is in a bit of an exposed
10 position, isn't he?

11 MR HELGESEN: Yes.

12 MR FINBOW: He just takes the first call that comes.

13 MR HELGESEN: Yes, but then it comes back to understanding
14 obligations - which is one of the other remedies that we
15 talked about - about improving education and understanding
16 during the claims process. So, at point of claim
17 notification but also in terms of policy renewal
18 documentation or new business documentation, we make it very
19 clear on the rights and the avenues that are available for
20 you for things like replacement car provision,
21 responsibilities around mitigation and the risks that attach
22 from going outside of those.

23 MR SAUNDERS: If I can add, if I understood you correctly you are
24 suggesting there should still be a choice as part of this
25 remedy, and one of the scenarios that we have been trying to
26 work towards is actually - it's not just removing the choice
27 but actually getting to a scenario whereby there is a

1 solution rather than necessarily choice which drives poor
2 behaviours and can lead into the same scenarios that we're in
3 at this point in time. Behaviours being behaviours, you
4 could well see organisations either seeking to maximize their
5 advantage or taking advantage in some other ways - you know,
6 that law of unintended consequences. So we would still say
7 1A and, if that's correct, 1C would then be obviated.

8 MR FINBOW: Okay. You look as though you might be about to say
9 something.

10 MR WOOLGROVE: Yeah. I think your question [inaudible], because
11 the GTA was the industry's best attempt to set a lower rate,
12 but it was voluntary and so inevitably it hasn't succeeded
13 because people are able to go outside of it. So, something
14 that builds on an existing infrastructure feels to us to be
15 proportionate, but there does need to be a level of
16 compulsion that everybody plays by that, and I think that
17 then has the mechanism that you are seeking to do.

18 PROF SMITH: But who is everybody who is compelled? Who comes
19 into the net of compulsion that goes round this this 1C
20 remedy?

21 MR WOOLGROVE: So, contractually, if somebody is providing a
22 vehicle which for they recover - to us, how that is defined -
23 well it's your Theory of Harm 1 is about separation between
24 those two things, so anybody seeking to recover costs should
25 be covered. Now, there are practical challenges with that
26 because I'm sure there are very entrepreneurial companies
27 that will look for loopholes, and so I think that presents

1 our collective challenge to make that comprehensive.

2 PROF SMITH: But isn't the loophole quite a wide one in that the
3 not-at-fault driver as an individual still has the right to
4 get a replacement vehicle through some route? You're not
5 proposing - or... Well, if you are proposing to apply
6 compulsion to the not-at-fault driver then you are changing
7 the law.

8 MR WOOLGROVE: Indeed.

9 PROF SMITH: If you are not bringing the not-at-fault driver
10 within the ring of compulsion then what's to stop
11 entrepreneurial people providing services to not-at-fault
12 drivers, calling themselves, I don't know, something
13 innovative like 'credit hire companies' and off we go again?

14 MR WOOLGROVE: And while case law exists as it does and while the
15 GTA remains voluntary, then they are absolutely at right to
16 do that. So I think that talks to some of the practical
17 challenges of 1C.

18 MR FINBOW: Yeah. I mean, I think the point is that the big
19 practical challenge is in coming up with a solution that is
20 so satisfactory to a consumer who now understands his rights
21 that there is actually no need to go anywhere else or to
22 listen to anybody else and I think that's what you were
23 saying, isn't it?

24 MR WOOLGROVE: Indeed.

25 MR FINBOW: Okay. One final question. We have talked in terms of
26 the possibility of this being operated through some online
27 portal. Do you think - and if so, how - an online portal

1 would reduce frictional costs arising from the administration
2 and dispute of non-fault claims? I don't know would like to
3 start with that. LV.

4 MR MILLINER: It depends on how it's constructed. In our opinion,
5 yes, if constructed in the right way. However, we have some
6 misgivings around the quality of the information and the
7 game-playing that could be adopted within that process, and
8 we would also question: would it just be in effect a
9 glorified email, which, you know, we would pay an awful lot
10 of money for but would actually deliver little by way of
11 value and create an additional administrative burden? And
12 lastly, having experienced, obviously, a similar portal for
13 the personal injury side of things, one of the pitfalls of
14 that is a lack of quality of MI and data that you can
15 actually use to run your business effectively. So there
16 would be some questions around that portal and its
17 effectiveness, in my opinion.

18 MR FINBOW: Would we get some benefit from the personal injury
19 experience in designing this one?

20 MR MILLINER: Definitely. I mean, there's lessons to be learned
21 from that, without doubt, but it is a different type of
22 transaction in terms of both volume and complexity in the
23 injury process.

24 MR MADDOCK: There is a commercial portal already in existence,
25 which is voluntary - has voluntary use and various insurers
26 and various credit hire operators subscribe to it, so
27 arguably there could be some learnings from that. We

1 certainly use that; we see a lot of operational efficiency
2 within that in terms of information being presented in a sort
3 of a consistent and transparent way, but, nonetheless, it
4 still doesn't negate the need to make appropriate inquiry to
5 make sure that the claim presented sort of matches the
6 service that was provided. But there are examples out there.

7 MR FINBOW: Was this the one that was developed as an adjunct to
8 GTA?

9 MR MADDOCK: Yeah. There's a package, and it's a provider called
10 Sherwood. The package is called CHOX, which is certainly
11 something that would be worth looking at. I think - and
12 again you're around 1C - two parts of existing infrastructure
13 arguably could be leveraged here and leveraged quite quickly.

14 MR FINBOW: All right. That's helpful. Yes.

15 MR SAUNDERS: Yes. I was involved in a number of the portal
16 discussions and arrangements from the motor personal injury
17 then extending it through to EL and PL and also in relation
18 to mesothelioma and certainly portal seems to be the new sexy
19 and sort of a bit of a panacea for everything. I personally
20 differentiate the motor scenario in portal sense, for this
21 reason. Just reflect on your own considerations around motor
22 insurance and people that have had an accident and the
23 rose-tinted view that 'it's never my fault'. People do not
24 like to admit that motor accidents are their fault, that they
25 have some way been culpable, and we do see a huge amount of
26 scenarios portrayed where 'it wasn't my fault' and it later
27 turns out to be so. So portal is about mechanisation, it's

1 about streamlining and taking out some of the frictional
2 costs, but I think that by its very nature this portal would
3 have huge amounts of friction pushed in because of that very
4 human nature that people would not want to believe that they
5 were at fault for an accident.

6 MR FINBOW: I can't remember the percentages but I think it's the
7 case, isn't it, that something like 80% of claims are very
8 quickly decided upon in terms of whose fault it was?

9 MR SAUNDERS: We say probably a third, a third and a third. You
10 know, a third of people will say 'it's our fault', a third of
11 people will identify that it's somebody else's fault and then
12 the other third you have a little bit of debate about,
13 whether it's changing lanes or on a roundabout or so on.
14 It's those sort of percentages.

15 MR FINBOW: Yeah, I mean I was just really wondering how big a
16 problem the problem you've just identified is in practice.

17 MR SAUNDERS: Well we all have considerable operations that sort
18 of work out subrogation between each other and on a
19 day-to-day basis have that frictional overhead experience and
20 cost in our business. I would say that's quite substantial.

21 MR MADDOCK: I think I would probably concur. What you described
22 there is ultimately how liability at the end of the day
23 apportions: a third for the fault, a third split fault, a
24 third non-fault. I think the question is the bit that gets
25 delayed, arguably, is the split-fault. The two-thirds where
26 it's very clear cut I think are, you know, assessed extremely
27 quickly. The friction is around, you know, the third. The

1 question is around the third where you've got a split
2 liability decision, you know, you're into a process of
3 gathering witness statements and is a process of evidence
4 gathering; that goes on in the background. Meanwhile, the
5 repair, you know, is effected, otherwise our brands with our
6 own customers become damaged.

7 MR FINBOW: Okay. Good. If none of my colleagues want to add
8 anything more I am finished on 1C and I will hand over to
9 Alasdair.

10 PROF SMITH: Thank you. Thanks, Roger. I want to move on to
11 non-fault repair costs. We suggested two remedies under 1D
12 which I want to ask some questions about. But before I get
13 on to them I want to ask a more general question about your
14 views on how industry practice in relation to the handling of
15 repair costs is likely - whether it will change in light of
16 the *Coles v Hetherton* judgment. Now note, just to reflect
17 back to something I said at the beginning, I am not asking
18 you for any kind of statement about your own plans in that
19 regard; I am asking for whether you have views about what
20 might happen in relation to industry practice in general.
21 Perhaps I will look up to this end of the room to start.
22 DLG.

23 MR MADDOCK: I think my overarching sense is that, you know, the
24 judgment merely confirms existing case practice. Whatever
25 you think about a recoverable rate, the recoverable rates for
26 repair costs are in the market today. Whether *Coles v*
27 *Hetherton* - the issue hinges on an effective - you know, what

1 is an appropriate repair cost or an appropriate labour rate.
2 Those are referenceable; they have been capable of being
3 challenged for years. You know, ABP guidelines are a very
4 effective source. So I think *Coles v Hetherton* in part
5 merely confirms the applicability of existing practice.

6 PROF SMITH: So you wouldn't anticipate substantial changes in
7 practice.

8 MR MADDOCK: I can't see a substantial change.

9 PROF SMITH: Anyone got a different view on that?

10 MR O'ROARKE: I sense that while that case was being decided
11 people were going back and looking at their business models
12 for that and thinking, actually, because of all the press
13 scrutiny it's going to become unacceptable to charge a
14 differential rate for a non-fault repair than you would for a
15 fault repair, and I think people have been retreating from
16 that type of differential pricing, or dual pricing. I
17 suspect, in the light of the decision and pending the outcome
18 of this review, people might be thinking there's an
19 opportunity to go back to that, which I think would be a
20 retrograde step, because I think it's damaging to the
21 reputation of the industry.

22 MR SMALE: I think currently there are some insurers who take the
23 action that you say and there are some by definition that
24 don't. The ones that don't, will, and therefore there must
25 be an added cost to the consumer, otherwise you can't
26 compete.

27 MR SAUNDERS: And that's a view that we've offered to the

1 Commission previously and as you know and as Ian at the RSA
2 knows, you know, we are polarised on our views around this,
3 but if the Commission doesn't tackle this and if ultimately
4 we lose Coles and that goes through - obviously it's only a
5 preliminary point at this point; I think there's probably
6 another two or three years potentially in that - then, as Rob
7 says, you know, I think we will all join in on it. I am at a
8 competitive disadvantage if I don't.

9 MR O'ROURKE: Any comment from RSA?

10 MR CURRIE: Sorry, Martin; it's not at preliminary stage. It's
11 gone to the Court of Appeal; it's well past preliminary. We
12 think the market will probably move much more towards an
13 RSA-type model unless a change comes through from this.
14 RSA's position has always been that the law is the law; we
15 are at a competitive disadvantage if we don't do something,
16 because others clearly do. Hopefully, the recommendation you
17 come up with will create a nice level playing field that we
18 all understand the rules and regulations and we can do the
19 best for our customers based on those.

20 PROF SMITH: Okay. Can I ask questions about the two options that
21 we put forward in our paper? The first option, option (a),
22 was - and I am going to avoid using the word 'wholesale' I
23 think. Option (a) was that the bill paid by the non-fault
24 insurer to the repairer should be subrogated to the at-fault
25 insurer at the rate at which it was paid to the repairer
26 rather an inflated bill. Now, one concern that was raised
27 about this was that it would remove the incentive for

1 insurers to negotiate - for large-scale insurers to negotiate
2 discounts and take advantage of their scale and take
3 advantage of other efficiencies. Does anyone think that this
4 would be the case if we pursued 1D(a)?

5 MR SMALE: On that discount point?

6 PROF SMITH: Yes.

7 MR SMALE: Certainly the point of view that we take in Ageas is
8 that non-fault repairs going through our own repairers -
9 through our network of repairers - enable us to leverage a
10 price that improves our at-fault repairs, so why would I
11 separate the two?

12 PROF SMITH: So you're happy to pass the benefit through to the
13 at-fault insurer.

14 MR SMALE: Yes, but we maintain, because we have got that extra
15 volume going through our repairers, that it has a benefit on
16 those where we are the at-fault repairer, and our business
17 model is predicated on that.

18 MR MADDOCK: I've a slightly different view. I can't think of
19 another industry where an investment is made in
20 infrastructure where the benefit generated isn't enjoyed for
21 the benefit of shareholders and customers alike.

22 PROF SMITH: And you think that that would be a disincentive to
23 seek efficiencies if you're forced to -

24 MR MADDOCK: I think it's - you know, it's arguable that it could
25 lead to a [inaudible].

26 MR SMALE: We'll agree to disagree on that. I do disagree on
27 that.

1 PROF SMITH: The other point that has been made is that this
2 remedy would be difficult to apply to insurers who are
3 vertically integrated with the repairers where the bills are
4 not arm's-length bills. Anyone got comments on that? RSA.

5 MR CURRIE: Yes, it is. You would have to - how would you work
6 out exactly what it was that was the cost to you as the
7 insurance company from your individual and your integrated
8 repairer? It'd be very difficult.

9 MR O'ROARKE: Alternatively, you could argue that the notion of
10 integrated repairers only arose because of the commercial
11 opportunity to charge more than the costs you incur and
12 therefore going forwards there would be a disincentive, or
13 there would be a lack of incentive, to integrate repairs for
14 that to achieve that profit objective.

15 MR MADDOCK: I would disagree with that. I think the - you know,
16 if you - we are one of those vertically integrated insurers.
17 The motivation is to be able to provide consistent levels of
18 service to our customers to be able give them a quality of
19 repair. One of the things that we track extremely closely is
20 not just the repair costs but our total AD spend, and I think
21 we've got to look at the actual cost. What am I saying here?
22 We can invest; we can innovate; we've been at quite the
23 leading edge of alternative repairs that make sure a
24 customer's vehicle that would otherwise have been a total
25 loss at a more expensive cost is put back safely on to the
26 road; which has huge utility for them as a consumer of our
27 product and, I would say arguably, if you looked at the total

1 cost of repair and total loss combined, achieves actually a
2 lower average claim cost in the market.

3 MR SMALE: I think some of those benefits that Steve mentions can
4 be achieved without vertical integration. You can achieve
5 innovation; you can achieve lower repair costs with a third-
6 party with a contractual relationship - with a repairer.

7 MR MADDOCK: Or, indeed, a mixed economy where you enjoy both
8 vertical integration and the benefits of an external network.

9 MR SMALE: But I would add those insurers who do have a vertical
10 integration - and you are probably guessing from my comments
11 that we don't - I am pretty sure that their accountancy
12 departments are very well aware of the costs and benefits of
13 those particular outfits within their overall organisations
14 and, given the importance of knowing where your capital is
15 invested and other things for insurers, I'm pretty sure that
16 the bill could be separated and provided to the at-fault
17 payer without having to go through some of the song and
18 dances that we currently go through.

19 MR O'ROARKE: I think the point at issue is not whether or not
20 vertical integration of repairs is a good thing or a bad
21 thing. I think that's slightly outwith the remit of this
22 discussion. But I think it is more a question of to what
23 extent are costs inflated when they are recovered from a
24 third party.

25 PROF SMITH: Well my question more precisely was: in the case of a
26 vertically-integrated insurer/repairer, is it possible to
27 define the bill being paid to the repairer for an at-fault -

1 MR SMALE: Going back on my comment, I am sure it is, and I am
2 sure within the insurers involved they are well aware of what
3 the costs of those repairers are and can separate them from
4 the rest of their organisation. I'm pretty sure that's the
5 case.

6 MR SAUNDERS: I agree with that, and certainly in our dispute with
7 the RSA we have seen some of those original bills, so they
8 are available.

9 MR WOOLGROVE: But I think there is a question of what volume and
10 benefits of scale and benefits in infrastructure and skill
11 about being equal and the tools that we have to deploy which
12 I think are very legitimate benefits to flow through to - out
13 to our shareholders for having invested there. So it isn't
14 as simple as saying it causes inflation. How do you define
15 what is a genuine benefit of investment which we think we
16 should enjoy and is ultimately passed back to our customers
17 versus a different basis of recovery? So I think it isn't as
18 simple as some of my colleagues who don't have vertically-
19 integrated repairers are describing, but clearly it is a
20 choice of business model.

21 MR MADDOCK: And I think also added to that: and to customers, for
22 the reasons that I have stated, and therefore I would
23 actively encourage an analysis of the total cost of repair,
24 including repair and total loss rates.

25 MR BOISSEAU: And, Mr Chairman, just to re-emphasise, I think I
26 have no doubt that there will be a lot of alignment to what
27 is the most profitable model if there is no correction to the

1 current situation. So I think there will be an inflation.

2 MR O'ROARKE: I don't disagree with Direct Line's point about
3 efficiency. I think if the cost of providing this through an
4 independent repairer is, let's say, £30 an hour and through
5 investing in large-scale repair facilities you can drive that
6 down to 25, I think it would be entirely reasonable for an
7 integrated repairer and insurer to charge 30, because that is
8 the market norm, and for that insurer to receive the
9 difference. I don't think it's right for an insurer - and I
10 am not saying Direct Line Group does this; just by way of
11 example - to then charge £38 or £40 simply because of the
12 ability to exploit the tort law.

13 PROF SMITH: Well that takes us on to option (b), which was a
14 suggestion that the costs recoverable through subrogation
15 should be limited to some kind of standardised costs. We had
16 a very interesting range of responses to that suggestion,
17 because some of the responses suggested that this would be an
18 impossibly complex system to operate because every car repair
19 is different and there are endless numbers of variables that
20 go into every repair and defining a standardised repair cost
21 would be very intrusive and very difficult indeed; and at the
22 other extreme we had some responses that said, 'Yes, we have
23 got standard costing models being used to handle most repairs
24 and using some version of these models to calculate some kind
25 of standardised costs for each job that applied to the
26 subrogated bill would be a pretty simple matter'; and some
27 responses in between the two. Does anyone here subscribe to

1 the view that it would be relatively easy to produce a
2 standardised model for subrogated repair costs?

3 MR CURRIE: Not a comprehensive one, no. You could probably cover
4 off a substantial proportion of the market, but it wouldn't
5 be 100%. But something that used, I don't know, the Thatcham
6 escribe methods to say, 'This is how you do the repair; you
7 record it on Audatex, use a standard hourly rate, standard
8 manufacturer parts and paint levels' could give you an
9 indication of what those costs are, but, as you've said,
10 every repair is different.

11 PROF SMITH: So when you said 'not 100%', how much would not be
12 fairly captured by this?

13 MR CURRIE: I think I would be guessing now. I think it's
14 probably over half but less than 75%.

15 MR MILLINER: I'm not sure it is over half. If you look at
16 escribe and look at the - just take one model of car, escribe
17 will provide a set of methods for one of the models in, say,
18 the VW Golf range, but it will say - it will hold caveats and
19 say that it only covers that one model. And something like
20 the Ford Focus these days I think has got about 30 different
21 models.

22 MR SLATER: There are

23 MR WOOLGROVE: There's also significant geographic differences in
24 labour rates and supply, so you can see very quickly by
25 model, by make, by repair, by geography just how complicated
26 this approach is and I think we would say relative to the
27 detriment you have identified, it strikes us as being a very

1 complicated and complex and burdensome system to maintain for
2 a very relatively small detriment that you have identified.

3 PROF SMITH: Does anyone want to argue the contrary view? Okay,
4 thank you.

5 We have talked here about insurer-to-insurer repairs. Would
6 either of those remedies be - insofar as they applicable,
7 would either of them be applicable to credit repairs as well
8 as to insurer-managed repairs?

9 MR MILLINER: I think they would. I think in the first place,
10 similar to credit hire, we would have to revisit what is the
11 need for a comprehensively insured person to avail themselves
12 of credit repair services in the first place, or what is the
13 compulsion on a insurer to put that repair into that process,
14 or a broker or an intermediary to place a repair into the
15 credit repair process in the first place. And if you peel
16 the onion back enough and attack those issues, I think you
17 would be halfway there to a solution. But simply, yes, the
18 solution should apply equally to credit repair in the same
19 fashion as we approached credit hire and the same way we are
20 talking about subrogation. It should be at a rate which is,
21 in a sense, a direct repair rate, as a direct hire rate would
22 be for a credit hire situation.

23 PROF SMITH: Let me move on to write-off costs.

24 MR ORAM: Actually, can I just ask a question before you move away
25 from Remedy 1D?

26 PROF SMITH: Yes.

27 MR ORAM: I was thinking, going back to our option A, the actual

1 cost - and it crossed my mind - I suppose it's hypothetical
2 question, but there's a possibility that a vertically-
3 integrated insurer/repairer may have an atypical policy of
4 applying - apportioning an allocation of costs and I thought,
5 'Well, is that a problem?' But then I thought, 'Well it
6 probably isn't, because if it were and you felt you got an
7 inflated bill because of that atypical allocation costs, you
8 would contest it'. So it's not an issue. Or is it?

9 MR MILLINER: Well I think that probably goes back to the *Coles v*
10 *Hetherton* case. That's exactly what's happening within that.
11 Various parties are thinking that there is an atypical cost
12 and it is being challenged through the courts now.

13 MR ORAM: I wasn't thinking so much of the - I was thinking of... I
14 wasn't thinking so much of *Coles v Hetherton*; I was thinking
15 of the insurer's policy of allocating and apportioning fixed
16 costs, and I thought, 'Well that wouldn't be an issue because
17 you'd contest that'. But I suppose - is your answer, 'Well,
18 you could contest but you'd lose because of *Coles v*
19 *Hetherton*'?

20 MR MILLINER: If it stays as it is, potentially yes.

21 MR ORAM: Okay.

22 PROF SMITH: Let me move on, then, briefly to write-off costs. In
23 view of the responses we received, I'm going to focus only on
24 option (b), which was the proposal that insurers should use
25 the actual salvage value proceeds or subsequently adjust the
26 estimated salvage value to the actual proceeds. We
27 understand that most of the major insurers already

1 effectively do this and use the actual salvage value in
2 calculating the amount of a subrogated claim involving
3 write-off costs, so in those cases there would be no need for
4 any kind of adjustment mechanism. So the question is: if it
5 is straightforward to use the actual salvage value, if that's
6 what most insurers are doing, would there be any problem
7 about simply requiring that this be the standard practice?
8 Perhaps - Acromas, do you have any views on that?

9 MR SLATER: No, I don't think there would be any problem there.

10 PROF SMITH: You don't. Well that's a view. You don't think
11 there would be any problem.

12 MR SLATER: No I don't. Given that's what we already do, so no.

13 PROF SMITH: But it's not - it's evidently, we have been told, not
14 what everyone does.

15 MR SLATER: No.

16 MR O'ROARKE: Isn't it the case that insurers stopped doing it
17 because of the time lag involved in determining the actual
18 salvage value so that a recovery could be made earlier if it
19 was based on a matrix or an estimate? But I think we've all
20 moved away now - or most of us have moved to charging actual,
21 so there seems to be no practical obstacle to that becoming
22 the norm.

23 MR CURRIE: The only point from us would be you just need to make
24 sure that actual is actual. So like we talked about
25 wholesale costs before, if there are any rebates, profit
26 shares, whatever, in the background, they would need to be
27 taken into account to calculate the actual cost.

1 PROF SMITH: Okay. It sounds as if we have something close to
2 unanimity there. Let's move on before it cracks.

3 I don't want to ask anything about remedy 1F, which was
4 mitigation in the provision replacement vehicles, but I do
5 want to ask a couple of things about remedy 1G, which was the
6 prohibition of referral fees. It has been put to us by some
7 respondents that the prohibition of referral fees in the case
8 of personal injury hasn't been wholly successful - that it's
9 being circumvented. Can I ask for your views on that?
10 Allianz, do you want to...?

11 MR SAUNDERS: Yeah. Certainly in the personal injury space we
12 have seen some holes and some different models emerge that
13 are actually sort of going around the side of it, and so we
14 are still seeing scenarios involving the exchange of cash
15 around this. I think there was actually quite a good article
16 on last week's *Post* magazine where Jonathan Evans was
17 debating this with Jack Straw, which might be a useful
18 reference point to the Committee without going into the
19 details now. We have always argued that referral fees are
20 bad, that they promote poor practices, that they put cash at
21 the heart of things and they ignore service and customer and
22 all things like that, and we would happily regard the
23 situation whereby referral fees are a thing of the past, but
24 noting that loopholes and innovation in this area is
25 something that is rife because of the profits that it
26 derives.

27 PROF SMITH: Any other comments?

1 MR WOOLGROVE: The obvious build from there is, I think as you
2 yourselves have identified, referral fees are a symptom of
3 inflated profitability, and ultimately it does get recycled
4 back into our profitability and therefore benefits our
5 customers. So, simply banning them without actually causing
6 the - or reducing the excess profit that allows them to be
7 paid - will simply mean that excess profitability leaks out
8 of the insurer system and is retained by whoever is paying
9 them. So I think they are a symptom of excess profitability.
10 Simply banning them without reducing the cause of that excess
11 profitability, which is typically excessive credit hire rates
12 and duration, would not solve it. In fact, it potentially
13 has a detriment of saying that income which can be used to
14 offset premiums would be lost, and therefore I think it's
15 much more about attacking the source of excess profitability
16 that allows them to be paid. And I think that's what in
17 bodily injury was the very positive thing that the Government
18 achieved, where it reduced the fixed legal costs, which
19 reduced the ability of solicitors to pay referral fees. The
20 two are very important, and that has led to genuine premium
21 reduction as we see severity and frequency reduced.

22 MR MADDOCK: And I think that, conjoining with the reduction in
23 recoverable rate arguably is the issue here. I think, you
24 know, added to it, if we look at the - is it beginning to
25 take effect as a combined integrated set of measures, the
26 latest portal data was published yesterday and I think we
27 have seen from a market perspective over a 10% - 10-point

1 reduction in frequency. So arguably, when you conjoin a
2 banning of the referral fee with a suppression of the
3 recoverable rate, it leads to ultimately the right behaviour,
4 in quite a simple way.

5 PROF SMITH: So would it be fair to interpret what you are saying
6 that if we are looking to prevent - if you want to stop
7 referral fees being paid you're worried about circumvention
8 then getting rid of the cause of them is more important.

9 MR MADDOCK: You have to take the oxygen out of the system.

10 PROF SMITH: Okay. I am looking at my colleagues to see if there
11 are any further questions in this area. If not, then we are
12 done on Theory of Harm 1, unless there are any further
13 comments on your side of the table, and I suggest that we
14 take a five-minute comfort break before getting on to the
15 rest of our agenda.

16

17 **(Adjourned from 3.48pm to 3.54pm)**

18

19 PROF SMITH: Shall we restart? We want to move on to Theory of
20 Harm 2 and repair audits. Steve.

21 MR ORAM: Yes, I would just like to ask a few questions on Theory
22 of Harm 2A, the compulsory repair audits. You will know that
23 we recognised in our provisional findings that MSXI used a
24 small sample. Can you give us any independent evidence that
25 there are no issues with the quality of repairs? So,
26 independent evidence. At this stage I would prefer you not
27 to say what insurer checks do, which I will come on to within

1 a separate question. But, in terms of independent evidence
2 that there are no problems with the quality of repairs, and
3 beyond BSI's role in PAS, do you know of any independent
4 evidence that you could point us to? Maybe I will kick off
5 with Allianz.

6 MR SAUNDERS: I personally don't know of any independent studies,
7 but the organisation that that question may be most
8 appropriately pitched at, though, could be somebody like
9 Thatcham, for instance, in the sense that they would have
10 access to quite wide-ranging MI and reports going back some
11 years across certain types of vehicles, or alternatively they
12 may well be an operation capable of aggregating all of the
13 data that we have. In-house, obviously, we have our own
14 criteria and so on -

15 MR ORAM: We will come on to that.

16 MR SAUNDERS: But externally there is no one report that I can
17 point at.

18 MR ORAM: So do Thatcham do inspection checks on a regular basis?

19 MR SAUNDERS: Not to my knowledge, but I think that they could do.

20 MR ORAM: Okay. Let's -

21 PROF SMITH: Steve, we've got an offer from down here.

22 MR MADDOCK: Maybe BSI - the PAS 125 [cross-talk].

23 MR ORAM: I was going to say, beyond BSI and PAS. The reason I
24 said that is because I will come on to PAS with another
25 question, but thanks for that.

26 In that case, let's move on to - and again, I am not asking
27 you for what you individually do, but what do insurance

1 companies typically do in terms of quality of repair and
2 checking? I am hoping I don't get seven different answers.
3 Is there a kind of relative commonality to the approach that
4 inspectors use when they check repair quality? Maybe I can
5 aim this at Zurich.

6 MR HELGESEN: Sure. Well, obviously I couldn't talk effectively
7 for other insurers, but in terms of Zurich, we have our own
8 field engineers and desk-based engineers. The field
9 engineers specifically are employed and a large part of their
10 role is to undertake audits on the quality of repairs from
11 both our approved repairers and non-approved repairers to
12 satisfy ourselves with regard to the quality of the repairs
13 that are undertaken for third parties and our own customers,
14 and they are all qualified engineers and trained by Thatcham
15 as well.

16 MR ORAM: Right. I am slightly uncomfortable. I mean, am I
17 allowed to pursue questions in relation to Zurich? Is that...?
18 Because what I would like to know is a little bit more about
19 the nature of the inspection. So stop if I start asking you
20 questions you would rather not answer.

21 MR HELGESEN: Sure.

22 MR ORAM: But I am thinking particularly that - when your
23 inspector goes to a body shop, is it an announced visit or an
24 unannounced visit?

25 MR HELGESEN: It is an unannounced visit.

26 MR ORAM: Right.

27 MR HELGESEN: It is spot checks.

1 MR ORAM: Right, okay. And would your inspector just check at
2 that body shop your insured cars, or would there be a wider
3 check of other cars in the body shop in order to get a view
4 of the body shop as a whole?

5 MR HELGESEN: No, they would purely focus on our own insured cars.

6 MR ORAM: Right, okay. And presumably your inspector would check
7 the - presumably there is some kind of form that the body
8 shop has that it ticks off, you know, it has carried out the
9 PAS 125 process, so he would obviously check that, but would
10 he also actually visibly check the repair itself?

11 MR HELGESEN: Yes. So the cars that are still, obviously, in the
12 workshop would be reviewed at the point of that inspection as
13 well for the quality of repairs.

14 MR ORAM: Right. And presumably that would normally cover both
15 cars with repairs ongoing and also some cars that have been
16 completed.

17 MR HELGESEN: Yes. Depending on the state of the repairs,
18 obviously, and the access that they have got to the repairs
19 that have been made, yes.

20 MR ORAM: Right. Thanks for that. So, does that kind of describe
21 a typical inspector approach to insurers' repair quality
22 checks?

23 MR MADDOCK: I'd say we take the repair process, and particularly
24 the safety of our customers, extremely seriously. I think
25 there's a part at which you - a process - a whole process
26 that I think arguably many of us share around how we on-board
27 repairers to check the suitability in the first place. So,

1 for example, in Direct Line, we insist on the PAS 125
2 accreditation as part of that onboarding consideration.
3 Additionally, we inspect every vehicle, either remotely via
4 RVI or in the field with field-based engineers. For every
5 high-risk repair - so anything to do with braking,
6 suspension, so and so forth - we have a second pair of eyes
7 to make sure that, you know, it is not only the technician
8 that is checking that that vehicle is safe to go out of the
9 body shop, but it is double checked. And then I think the
10 final bit is that every vehicle that leaves the body shop is
11 checked out, we've recently strengthened that to include
12 checking out simultaneously to the handover with the
13 customer.

14 I think the - you know, I would point at the evidence. I
15 think the complaint rates right across the industry are
16 extremely low in terms of the quality of repair. I think
17 what few complaints the industry does receive are probably
18 more to do with expectation setting, which is always very
19 difficult at the start of a repair job, because you're having
20 to sort of, in effect, forward predict when parts will arrive
21 and so on and so forth. But I think there is a lot we do, I
22 think individually as a company, but, equally, across the
23 industry, to ensure safety. The other thing as well is we
24 are big brands. We cannot afford, you know, vehicles to
25 leave any body shop that haven't got an acceptable and an
26 appropriate level of repair. Many of us are retail brands;
27 it's extremely damaging. And I think for that reason - one

1 of many - we take these things very seriously.

2 MR ORAM: Yes. I suppose the only point I'd make is that
3 customers will complain when their perception is that the
4 repair hasn't been done properly, and in our provisional
5 findings you will know that we raised a question mark over
6 the ability of consumers to make that judgment. But I won't
7 pursue that because you have - all of you - made vigorous
8 points in your submissions to me on that, so we will move on
9 to a question I have got on PAS.

10 We have received conflicting responses regarding PAS 125. On
11 the one hand we are told PAS 125 accreditation is adequate
12 insurance the repairs will be carried out to a satisfactory
13 standard, but on the other hand we have had a comment that
14 actually PAS 125 only measures processes and not the outcome.
15 So what are your views on whether and how PAS 125 ensures
16 that repairs are completed to a satisfactory standard? Maybe
17 I can fire this one at RSA.

18 MR CURRIE: We would argue that PAS 125 sets out a process and, if
19 the process is followed, the ultimate result should be a
20 properly repaired car. What PAS 125 doesn't do, though, is
21 the final check that Steve was just talking about from DLG,
22 which is the handover right at the time the customer picks
23 the car up. That's probably something that PAS 125 would
24 benefit from being extended to include. If that becomes part
25 of the process, that then covers off that potential gap in
26 the overall PAS 125. But generally we think it works well.

27 MR ORAM: Yes. I suppose, as you say, PAS 125 - if the processes

1 are followed - if - then quality standards should be there,
2 but are not necessarily guaranteed to be there.

3 MR MADDOCK: I think there is an [inaudible] point to PAS 125.
4 It's not only the methodology but it also imposes minimum
5 standards on personnel that can be employed within a body
6 shop. So there's, in effect, a fit-and-proper test.

7 MR ORAM: A skilled person, yeah.

8 MR HELGESEN: Yeah. And I guess in addition to the audits, in
9 many instances - in most instances that is a contractual
10 requirement, so effectively, if body shops are operating
11 outside of the system then they are in breach of contract,
12 and clearly the implications that follow.

13 MR ORAM: Right. Which you would argue, presumably - if they
14 hadn't been following PAS 125, you would pick that up in your
15 unannounced checks.

16 MR HELGESEN: Yes.

17 MR ORAM: Right, okay. I have got nothing else on 2A, unless you
18 want to make any comments on that. As I say, you have made
19 your comments on MSXI, which we are well aware of and we are
20 considering, but any other points that you wanted to raise?
21 No? Any of my colleagues?

22 Okay, let's move on to Theory of Harm 4 and add-ons. My
23 first question is in relation to the provision of all add-on
24 pricing from insurers to PCWs. That's remedy 4A. It is a
25 simple question. Am I right in assuming that insurers could
26 provide pricing information on all the add-on products they
27 offer to PCWs? I mean presumably that is just - it could be

1 just a straightforward administration task. I am leaving
2 aside for the minute whether PCWs are inclined or disinclined
3 to use it, but the actual provision of pricing information by
4 yourselves to a PCW - presumably that wouldn't present any
5 problems.

6 MR WOOLGROVE: Direct Line Group believe we provide a significant
7 amount of information already, but clearly there is a
8 difference between a risk-based add-on and a flat-rated
9 add-on that does require some information exchange. We
10 believe the challenge is with the PCWs about how they
11 ultimately display that information, but our belief is we do
12 provide a significant amount already. I think, you know,
13 again it is probably in the FCA's remit to oversee how that
14 information is displayed in a clear and fair and not
15 misleading basis. I think that's probably one of the areas
16 in their PCW thematic review that they might practically pick
17 up, so to us it would seem the FCA is well placed to support
18 you in this inquiry.

19 MR ORAM: Does anybody else want to add to that?

20 MR BOISSEAU: The only thing I would add is that brokers are also
21 providing add-ons, so, particularly if we promote this remedy
22 forward, it would have to include not only insurers but
23 brokers as well.

24 MR BAUGHAN: I would echo what DLG have said. I think some of
25 them would be fairly straightforward to provide a price; some
26 of them may take a bit more implementation. So we'd need to
27 think that one through carefully.

1 MR ORAM: Would there be - obviously not precision, but would
2 there be significant time and cost involved, or would it be
3 relatively straightforward?

4 MR BAUGHAN: I think that's one we need to discuss with the PCWs
5 and work it through.

6 MR ORAM: Okay.

7 MR BRETTELL: I think one of the things that you'd need to watch
8 is that the PCWs don't focus on potentially just three or
9 four or five core add-ons but actually the customer may well
10 be interested in a much wider range. So if the PCWs are
11 forced to do just four or five, the customer could end up
12 with actually least choice as a result. But I agree with
13 [inaudible] that the FCA is a good place to start on that.

14 MR ORAM: But presumably that would be part of your negotiations
15 with the PCW and your contract with them, wouldn't it?

16 MR BRETTELL: It would do, but they might only be interested to
17 start off with doing it with a relatively narrow range of
18 add-ons and then expand out from there. The net result is
19 the customer sees less choice in terms of the range of
20 add-ons that is available. So certainly we should work hard
21 to give the customer as much choice as they want in a simple,
22 clear and effective way so that they can buy nice and simply
23 through a PCW.

24 MR ORAM: Clearly we will be exploring that with the PCWs, so -
25 okay, so I will move on. What are the - again, I am not
26 asking for your individual conditions - or considerations -
27 but what are typically the key factors in determining the

1 level of no-claims discount that a customer is entitled to?
2 Because we have been told that it goes beyond simply whether
3 or not they have had an accident in the last year or
4 whatever. Maybe I can fire this one at LV.

5 MR O'ROARKE: I think at this stage I might introduce my
6 underwriting colleague. This is Hugh Kenyon, despite the
7 nameplate. He is our underwriting director.

8 MR KENYON: I think there may be organisations that would want to
9 - the benefit of not having made a claim may vary - the risk
10 benefit of not having made a claim may vary by customer
11 segment. So it may vary particularly for younger drivers
12 versus older drivers. So you could see scenarios where
13 insurers would have different levels of no-claims discount
14 depending upon the age of the policyholder or drivers on the
15 policy.

16 MR ORAM: Can you think of a -

17 MR O'ROARKE: So those are effectively introductory discounts
18 which haven't been earned by claim-free years.

19 MR ORAM: Yeah. Can you think of any other considerations that
20 might be at play?

21 MR KENYON: I think it may vary. Other insurers may be
22 considering other factors. I think you also - as you say,
23 you may want to look at drivers who have not - who are older
24 but have not gained no-claims discount may warrant some form
25 of introductory discount.

26 MR ORAM: Okay. Has anybody got anything to add to that? No?
27 Okay, let's move on.

1 Given that no-claims discounts take into account things other
2 than whether or not you have had an accident, how can the
3 consumer judge whether the no-claims bonus protection is of
4 value or not? Because they will know whether they have had
5 an accident or not but they won't be aware, perhaps, of the
6 other considerations.

7 MR O'ROARKE: I think the other considerations only apply where
8 the no-claims bonus hasn't reached its maximum. I think the
9 difficulty for customers in assessing what the value of a
10 no-claims discount is that - is kind of self-evident, but it
11 is a percentage of something else, and, you know, we all sort
12 of compete with each other to say 75% or 80% or even higher,
13 but of course it is of what amount as a base premium. I
14 think that's the biggest issue and I am not sure that there
15 is any obvious remedy to that.

16 MR ORAM: Yes. Does anybody want to add to that?

17 MR BRETTELL: I think if it's clear to the customer what they
18 would pay without any no-claims bonus years, then they can
19 identify the difference between the two and evaluate
20 themselves whether it is worth taking out the protection.

21 MR ORAM: Yes, but they can only do that if they... Let's say I am
22 a new customer to Allianz and I take out no-claims bonus
23 protection and I have got a premium to pay. I won't know the
24 value of that no-claims bonus protection until my renewal
25 comes through, so a year later, and even then I won't know
26 precisely what it has done because other considerations are
27 at working, including if I have an accident - even a

1 non-fault accident - it's quite likely that my premium will
2 be increased because of the risk profile. So, how on earth
3 does the consumer know the value of that no-claims bonus
4 protection that he is paying for?

5 MR BRETTELL: I think we have to work harder at giving the
6 customer the information about what that price would have
7 been had they not - what price - if you'd have come to
8 Allianz without any no-claims bonus at all, what price you
9 would have paid. You can only look at it what it would have
10 been. It is very difficult for the customer, and indeed for
11 anybody, to look forward and say, if you have an accident,
12 what might it have been, because it depends what that
13 accident - what you have the accident for.

14 MR ORAM: It seems to me it is very difficult to understand what
15 exactly the no-claims bonus protection is protecting, because
16 the premium, as we have been told, can go up if I have a
17 non-fault accident. What is it protecting? I think it's a
18 difficult question to answer.

19 MR WOOLGROVE: At Direct Line Group, we have shared data with you.
20 We won't say it here, but the different premiums that a
21 customer who had an accident but had a protected NCB and had
22 an accident and didn't - there is a material difference. And
23 we shared those numbers with you; we won't say them in this
24 forum. So there is a tangible benefit the customer gets from
25 protecting their no-claims discount. I think your question
26 about, 'How do I evaluate?' - well, that's very hard. How do
27 I evaluate whether Direct Line Group is offering me good

1 value? What I probably do is I shop around in the market,
2 taking my no-claims discount, which is portable and has value
3 and utility, and I compare it to some other competitors.
4 That is no different from an annual renewal process as it is
5 with NCB, so inevitably, because we risk-base our prices and
6 we all have different views of risk, it is inevitable that
7 it's a subjective judgment on the customer's behalf of, 'For
8 paying a premium, I enjoy some benefit'. But it is no
9 different to their core premium, essentially.

10 MR ORAM: Anybody want to add to that?

11 MR BAUGHAN: I echo what Tom says. I don't think there is an easy
12 solution. As you have said, it is a very complex thing and
13 there are lots of other things at play here that impact a
14 customer's premiums. So I don't think there is an easy
15 solution, but I think as an industry we need to figure out,
16 'There are definitely tangible benefits; how can we
17 demonstrate those in a much better way to the customer?'.
18 That's the challenge.

19 MR HOLLIDAY: I think the other piece to balance on the value is
20 it is not just about the benefit if you have an accident; one
21 also needs to factor in the probability because we are
22 talking about prospective valuation of that insurance
23 product, which makes it even more complex. So I'm not
24 convinced even just explaining, 'This is the benefit if you
25 have an accident' allows people to assess the valuation,
26 because people are not particularly capable of assessing the
27 risk of having an accident; no one thinks they are going to

1 have an accident.

2 PARTICIPANT: [Cross-talk] favourably that they won't have an
3 accident.

4 MR HOLLIDAY: They look at it too favourably, yeah.

5 MR ORAM: Okay. Any other comments from yourselves? Any
6 questions from my colleagues? That's the conclusion of my
7 questions. Thanks very much.

8 PROF SMITH: Robin, onto MFNs.

9 MR AARONSON: MFNs, yes. We had a few comments about MFNs in your
10 opening remarks, so I hope we can build on that. Can I start
11 with a kind of scene-setting question, and perhaps put this
12 to Ageas? To what extent do the same customers use PCWs as a
13 way of finding their insurance product and also go to an
14 insurer's direct website? Do the same people do both, or is
15 there some segmentation between the two groups?

16 MR BOISSEAU: It is difficult to quote statistics on that, but
17 yes, first, I think - I would reckon that probably 90% of
18 people check their price on a price comparison site but only
19 60% buy through the comparison site. Now, the validity of
20 the statistic might be challenged, but that gives you a
21 flavour of consumer behaviour. So I think there is
22 definitely a very broad range of usage by the consumer of the
23 price comparison site. But it doesn't mean systematically
24 that they will purchase through the price comparison site.

25 MR AARONSON: Okay. And could it be a substitute for a consumer
26 to go to, say, five or six insurers and websites and look at
27 the prices there? Could that be a substitute for using a PCW

1 at all?

2 MR BOISSEAU: What we have clearly seen - yes, it could be, but in
3 terms of practicalities you wouldn't want to go through five
4 sites separately on your own. The fact that price comparison
5 sites have really offered something valuable to the customer
6 is just - the rise of the price comparison sites in terms of
7 new business penetration has been staggering over the last
8 five to eight years and if 60% of transactions go through
9 price comparison sites, it does show that the consumer values
10 this as a comparison tool. So I can understand if you want
11 from a pragmatic point of view - personally, we would be for
12 a total ban on MFNs, but I can understand from the price
13 comparison site that if a consumer sees through the price
14 comparison site that effectively he can buy cheaper directly
15 through the insurer's site, it can start to destabilise the
16 economics of the model. And as it is clear that they provide
17 a good benefit to the consumer, I can understand the fact
18 that narrow might be acceptable, even if in an ideal world we
19 would want to have a total ban.

20 MR AARONSON: Okay. Well let's consider, then, the remedy that we
21 have floated, which is the ban on the wide MFNs but allowing
22 the narrow to continue. I mean, would that provide
23 constraints on PCWs' commercial behaviour in terms of the
24 fees they asked in terms of - and would it provide a
25 sufficient spur to innovation, and so on? I don't know who
26 wants to pick this up because I think there are probably some
27 strong views on this.

1 MR DOUGLAS: Can I talk about it?

2 MR AARONSON: Yes, please.

3 MR DOUGLAS: I fundamentally disagree that narrow MFN clauses are
4 desirable or necessary. If you look at the numbers of people
5 who - I don't think it is quite as many as 90% who shop
6 through price comparison sites; I think what you will find is
7 that that percentage will vary across the audience here
8 depending upon the profile of customer they write. Our
9 experience is less than that. But if you assume that 20% or
10 30% of people don't even want to buy through a price
11 comparison site, we come back to the numbers we mentioned
12 earlier; there are 3 million people every year buying
13 insurance who do not want to buy through a price comparison
14 site. The consequence of a narrow MFN clause is that the
15 price that they have to be offered has to be - and bear in
16 mind let's look at a situation where we will have these in
17 place with every PCW - the price has to be the highest price
18 that we disclose on any of those price comparison sites,
19 because we are constrained by the narrow MFN with each of
20 those - say the main four price comparison sites. And what
21 if I have a customer who I am talking to about their
22 breakdown product, or home insurance, and while they are on
23 the phone I can capture them in that moment and say, 'Look,
24 we can offer you a great deal on motor insurance'? I've got
25 no acquisition cost; the customer is on the phone. I've
26 probably got their details, maybe from a previous quote. I
27 can give them that figure. Why should I load in all the cost

1 of dealing with the price comparison site into that premium
2 at that point in time when I could very profitably sell to
3 the customer at a much lower price? These clauses capture
4 people who have no interest in price comparison sites at all,
5 and that's 3 million customers who buy insurance every year.

6 MR AARONSON: But you were talking there of someone on the phone,
7 not of somebody going to your site.

8 MR DOUGLAS: Why do you believe that price comparison sites would
9 want any of the companies that they work with to ever quote a
10 price less than they would see through the site? What would
11 constrain them? What would stop them, for example,
12 contracting DLG on the basis that all their brands are caught
13 by a narrow MFN clause? In other words, 'We don't want you
14 as a group to ever offer a lower price to a consumer than
15 they would see on our price comparison site'. The danger
16 you've got is you've not defined what a narrow MFN is. My
17 contention is that it is perfectly acceptable for a price
18 comparison site to have spent money creating demand to
19 present the price to the customer and not to want the insurer
20 to then present a lower price subsequently to that customer
21 than it has just presented through their site. I can
22 understand that. You do not need narrow MFN clauses to
23 achieve that. That is disproportionate. It is quite easy
24 for us to recognise that we have already displayed a quote to
25 that customer through a price comparison site and thereby
26 make sure that for that customer we don't then undercut it
27 later. But why should that - why should we be required to

1 constrain the competitive prices we can offer to customers
2 who have no interest in using PCWs?

3 MR AARONSON: Is this just a question of definition - I mean, a
4 question of defining precisely what we mean by a narrow MFN -
5 so that it would be all right for clauses that say that on
6 your website you can't quote a price lower than you quote on
7 a PCW?

8 MR DOUGLAS: Have previously quoted.

9 MR AARONSON: Have previously quoted.

10 MR DOUGLAS: Yes. So if I generate - if I have a customer on the
11 phone and I can offer them a price direct -

12 MR AARONSON: Yeah, but I'm not talking about the phone; I'm
13 talking about your website.

14 MR DOUGLAS: Okay. Suppose the customer comes to our website and
15 generates a quote. Let's suppose they then say, 'That looks
16 a good price but I will just check it on a price comparison
17 site to see whether or not I can get it cheaper'. Why should
18 I have to show the same or a lower price on that price
19 comparison site just because the customer has gone to check
20 there when it has been my marketing and my demand generation
21 activity that has attracted the customer - or my brand - that
22 has attracted the customer to my business in the first place?

23 MR AARONSON: I don't quite follow, because surely your price
24 would have been on the PCW anyway. Assuming you're
25 distributing through that price comparison website, you would
26 have had a - you would have given that -

27 MR DOUGLAS: I am talking about the scenario where - we have a lot

1 of brand loyal customers we want to present prices to. You
2 talk about offline as if it isn't captured; we have to bear
3 in mind there is no reason, and nothing to stop the PCW from
4 capturing offline as well as online promotions to customers
5 if they chose to. It's just how they currently define it.

6 MR AARONSON: Okay, but that seems to me to be a question of
7 defining the remedy properly.

8 MR DOUGLAS: But if we suppose a customer comes - let's suppose
9 that we have generated demand of a customer to the AA and we
10 had given a price to the customer back that reflects the
11 economics of that channel effectively. At the moment, as
12 narrow MFN clauses are defined in the market and I think
13 everybody is interpreting the Commission's findings to date,
14 that price is being caught by narrow MFN clauses. I have to
15 recognise that if they then went to a price comparison site,
16 they don't get a more expensive price when they do that, but
17 why should that be?

18 MR WOOLGROVE: I have to say I thoroughly agree with Simon. We
19 are surprised you see the benefit or the need for narrow
20 MFNs. In most other markets you don't like them. We don't
21 think that the PCWs need them. They are well established
22 now. If you look at their profitability that you presented
23 in your provisional findings, they are very highly
24 profitable. We've shared evidence of what our experience of
25 commission rates are and we have stated we would be concerned
26 about their ability to raise those significantly higher, and
27 we have shared empirical data that says actually, when you

1 look at the advertising of PCWs, it is not about whether you
2 can get a cheaper quote on a competitor's website; it is
3 about the renewal rate that you can generate. So, they are
4 not even using that in their marketing. So, for all of those
5 examples, we are struggling to know why using narrow MFNS are
6 a benefit.

7 MR ORAM: Well, Gocompare do put on their website -

8 MR WOOLGROVE: So there's one. One out of the four major players.

9 MR ORAM: What about the argument that, all right, they are well
10 established now, but consumers - the savvy consumers will
11 fairly quickly get to know without narrow MFNs that actually
12 they can go on to the direct site and get a cheaper price
13 than the PCW, so why bother wasting time?

14 MR WOOLGROVE: Well isn't that a great consumer outcome? They've
15 got a lower premium. We should have the incentive to
16 innovate and offer customers lower premiums. That's a great
17 benefit.

18 MR ORAM: Well, hang on. If that then means the demise of PCWs,
19 then there is a consumer dis-benefit there in terms of
20 convenience of quote comparisons.

21 MR WOOLGROVE: We could probably disagree about the likelihood of
22 PCWs disappearing, which are 65%-plus of the market, are well
23 established, are businesses - you know, I think the genie is
24 well out of the bottle. Consumers see a huge amount of
25 benefit in terms of reduced search. This theoretical idea
26 that they will disappear because narrow MFNs disappear - we
27 disagree that that is a risk.

1 MR AARONSON: I guess the other issue is quote-poaching: that
2 without any form of MFN, the consumer goes on the PCW, does
3 his research, says, 'Ah, okay, DLG are the one for me' and
4 then goes to your website and gets a better price through
5 you; the PCW gets no revenue.

6 MR WOOLGROVE: And there are very clear contractual obligations
7 that exist already without narrow MFNs to prevent that
8 behaviour.

9 MR AARONSON: So even in the case where that consumer doesn't
10 click through to your website but makes a separate -
11 disconnects from the PCW and separately goes on to your
12 website, you would still pay some - pay a fee?

13 MR WOOLGROVE: Well no, because we wouldn't know where they had
14 come from, but they are enjoying a lower premium, so -

15 MR AARONSON: But surely that is an issue. If PCWs are providing
16 a useful service of price comparison, if consumers realised
17 that they could obtain that service for free - because they
18 don't get charged anything for going on a PCW website - and
19 then buy direct at a better price, then the PCWs would go out
20 of business, would they not?

21 MR FINBOW: I think what Simon was saying, though, was that where
22 someone goes on to a PCW and then decides to come on to your
23 website separately, you would be able to identify that you
24 had already given a quote -

25 MR DOUGLAS: Yes, we could.

26 MR FINBOW: - and would be able to say, 'That's fair enough;
27 that's for the PCW'.

1 MR DOUGLAS: Whether they click through - I mean contractually, if
2 they click through, we have a contractual obligation, even if
3 they then come to us direct afterwards. But even if they
4 don't click through, we could identify that they had
5 generated a quote and you might reasonably establish that the
6 reason they had then come to you direct was because they had
7 been to a price comparison site and seen the price that they
8 got. And if that is a concern to the Commission, then I
9 would have no problem recognising that the PCW in that
10 instance has generated demand for me and would be happy to
11 make some form of payment. But I would also contend that if
12 you look at other markets - the hotel industry, for example -
13 it is quite easy to go on to those site and to generate
14 quotes and find prices and then go direct and actually secure
15 cheaper deals direct. That's very common. Hotels do
16 advertise that very fact. And the reason why those sites
17 still exist is because they offer a valuable service to
18 consumers. And I think it is incumbent on the PCWs to create
19 a customer proposition that is compelling, and what they are
20 trying to do - what they would like to see happen - is to
21 implement clauses in contracts with insurers that actually
22 takes that pressure away from them and, worse than that,
23 removes pretty much the entire direct market, and not just
24 the direct market today but what that might look like in five
25 years and 10 years - and I would challenge any of you to say
26 what new forms of innovative distribution might be available
27 to us in the future that would offer better value to

1 consumers. They want to remove any of that from taking place
2 and protect their market dominance, and I believe there are
3 ways of protecting them, if we feel that's necessary, that do
4 not involve narrow MFN clauses.

5 MR WOOLGROVE: Can I, with your permission, just have a comment
6 from our economic adviser?

7 PROF SMITH: Yes, sure.

8 MR VAN DIJK: Yeah, just two additional comments. One is that, of
9 course, this is a hypothetical situation, but we are sort of
10 envisaging that basically all the insurance companies will
11 all of a sudden basically reduce their premiums, and as a
12 result of that that would make life difficult for the price
13 comparison websites. What we are basically talking about is
14 at least giving the insurance companies the possibility to do
15 that, and that in itself will impose further competitive
16 pressure on the price comparison websites. That's one
17 comment.

18 The other comment is that actually, in your provisional
19 findings, you have accepted the sort of network effects -
20 that potentially the narrow MFNs can have a detrimental
21 effect on competition. You have accepted that. The only
22 question is: how significant is that? And you have observed
23 - you did some calculations based on marketing cost - that it
24 would probably only affect a small number of insurance
25 companies. We have looked at that in detail and our view is
26 actually, based on that analysis, that actually it could
27 affect a very significant proportion of the market - around

1 30% of the sales. And evidence is actually based on a very
2 reliable source - i.e. your own consumer survey. So clearly
3 it can have a very significant effect on those insurance
4 companies and therefore also, indirectly, on competition in
5 the market.

6 MR AARONSON: Okay. I want to bring Allianz into this because at
7 the outset you expressed a contrary view, and I wonder if you
8 would like to -

9 MR BRETTELL: Yeah. I mean, I think that was on the basis of, you
10 know, what needs to be in place to give the customer the
11 confidence that it is simple and easy for them to get a
12 comparison of quotes and then go and purchase in confidence
13 from there. So we just came at it from a consumer
14 perspective. And if narrow MFNs or something else needs to
15 be in place to do that, if that secures PCWs - which I think
16 have been positive for the customer - then that's the answer,
17 I think. What PCWs have also allowed is many new entrants to
18 come into the insurance market and distribute through those
19 PCWs without large barriers of entry around very large
20 marketing funds, and that I think has increased choice for
21 the customer and improved innovation as well.

22 MR AARONSON: So, do you think the banning of wide MFNs while
23 leaving narrow MFNs in place would do enough, as it were, to
24 restore the balance of power?

25 MR BRETTELL: I think whether it is defined as a narrow MFN, it is
26 about what needs to be in place to give the customer the
27 confidence that they are shopping on a PCW. I absolutely

1 agree that whatever the solution is needs to ensure that the
2 PCWs themselves cannot drive high increases in CPAs back into
3 anybody that is dealing with them so that they then have a -
4 you know, they can increase those prices, because you are
5 then so reliant upon them. So that needs to be considered as
6 well.

7 MR CURZON-PRICE: I suppose I had one question, which was - to
8 Acromas - which is: you talk about the benefit in terms of
9 the lower price that could be offered to direct customers,
10 but our understanding is that the customers who really save
11 are the customers who shop through PCWs, so in other words
12 not those who get lower prices on a specific brand but who
13 achieve competition across the brands. And from our survey,
14 these are the ones who are really saving money and are
15 benefitting from PCWs. So, would you accept that the PCWs
16 are allowing customers to find cheaper policies in that way?

17 MR DOUGLAS: I wouldn't like the Commission to think that we don't
18 consider PCWs to perform an extraordinarily valuable consumer
19 service. At no point have I suggested that I didn't think
20 they delivered good, compelling customer benefits. My
21 concern is simply that 30-40% of people do not want to use
22 them and yet the PCWs would have a constraint applying to the
23 pricing that we can offer. And bear in mind that if these
24 are blessed by the Commission, these narrow MFN causes will
25 proliferate, and we'll have them with - all the insurers will
26 have them with all the major PCWs. And that means that you
27 get a situation which becomes even more difficult for us,

1 where we could not offer - we can't even offer a price as low
2 as the lowest PCW; it has to be the highest price that we
3 offer on any PCW. And that makes our direct offer even less
4 compelling than it is today. It means we have to put costs
5 into our pricing that may not be reflective of the way in
6 which that customer wants to deal with us. That's 3 million
7 people. That's a very significant potential harm and more
8 than outweighs anything we have talked about for the first
9 couple of hours of this hearing.

10 MR WOOLGROVE: As we have expressed in our responses, we would be
11 very concerned if you kept narrow MFNs that there was some
12 sort of intervention to limit those commission rate
13 increases, because again, like Acromas, we'd fear that those
14 PCWs, as we have shown, have a lot of power to increase
15 commissions, and that passes immediately through into our
16 website and our direct prices. That's the consequence.
17 That's the network effect.

18 MR VAN DIJK: Just one additional comment. I think I have heard
19 two questions here, right? One is: how do we basically get
20 effective competition, or maintain effective competition, in
21 relation to motor insurance premiums? And that market is
22 working very well, and I think everyone would agree that
23 price comparison websites have facilitated competition, may
24 have facilitated entry by insurance companies, etc., and we
25 would like to maintain that benefit. There was another
26 question as well, and that is about the cost of distribution
27 and how do you make sure you have sufficient competition at

1 that level. We are talking about a market with a relatively
2 limited number of players; we have looked at your evidence in
3 terms of profitability, and we may agree or disagree about
4 whether they have market power, but I think it is very clear
5 to everyone that it is a market with a relatively limited
6 number of players. To maintain effective competition in
7 these kinds of markets - and I think you can look at your own
8 investigations in other markets - what is very crucial is to
9 have a maverick; basically a player with a different cost
10 base, with a different business model. And that is basically
11 what the direct sales channel provides here. That means you
12 get direct competition with the price comparison websites.

13 PARTICIPANT: Can I just slightly challenge that? So the narrow
14 MFNs would allow you to price differently on different PCWs,
15 and that would allow potentially for maverick entrants to
16 come in, offer lower commission rates, offer better
17 innovation, potentially offer you better service in terms of
18 understanding risk profiles, and potentially offer better
19 prices than the other PCWs, and could advertise those facts.
20 So, why is that not a good enough constraint on the PCWs, and
21 why would an existing PCW not want to follow that strategy if
22 they were able to price cheaper than other PCWs?

23 MR DOUGLAS: It would be possible for a maverick PCW potentially
24 to enter the market, but I think we should be very careful to
25 sit here effectively and cause the disappearance of the
26 direct channel, which would be, I believe, a much more likely
27 and more significant constraint on the ever-increasing costs

1 of dealing with PCWs. And it is fine to sit here and talk
2 about the cost of acquisition; PCWs are increasingly asking
3 us to take on other risks in dealing with them as well. So,
4 for example, if they make a mistake in collecting the risk
5 details and passing them on to us, they are increasingly
6 asking us to meet the costs of that. As a broker, that could
7 be a £1 million claim because they failed to tell us about
8 flood risk, and we have placed the risk with one of our panel
9 of insurers without knowing that, and they are saying that is
10 our responsibility, not theirs, even if the mistake is on
11 their side. These are all costs that we have to bear when we
12 price our products. We've already talked about the retention
13 risk; the PCWs want - maybe this is right, but they want to
14 re-solicit those customers every year and get them to always
15 shop for the best price. If we're paying £50 every year for
16 a policy, that's £50 a year just in acquisition costs on an
17 annual basis. If that was where the model ended up, that
18 would be an extraordinarily high cost for consumers to pay
19 for arranging their insurance; it would actually push up
20 prices. Whereas we could build a relationship with a
21 consumer and potentially offer a better deal, on the grounds
22 that we aren't going to be constantly paying £50 a year for
23 costs. I think - if we believe that the only sensible way to
24 buy insurance is through a PCW, then fine, but 30-40% of
25 consumers currently disagree. And I have to just say, by the
26 way, I am someone who does not use them. I have no interest
27 in what 130 insurers might charge me for my premium; I am

1 interested in five or six brands that I trust, where I
2 believe there is quality provision on offer, and I am quite
3 happy to go to them directly to shop for my insurance, and I
4 am not alone in that fact.

5 PROF SMITH: Can I go back to something you said earlier about how
6 unfettered competition from the direct channel could co-exist
7 with - well, to put it the other way round, how the PCWs
8 could survive if the direct channel were allowed to compete
9 freely. And there was a question about what happens if
10 someone clicks through, then you have a contractual
11 obligation to pay a commission, and that is easy to
12 understand on a click through; I assume both parties - the
13 PCW and the insurer - automatically know about the click
14 through. And you said but if you had got a customer who had
15 researched on the PCW but didn't click through and came to
16 you, then you would know that they had come to you from the
17 PCW and you would recognise that you owed the PCW a
18 commission on it. But if I were the PCW, I don't know - I
19 have no information that someone has done research on my
20 website and then gone to you direct. And somehow - maybe I
21 am being excessively distrustful, but on the whole my feeling
22 is that contractual payments get made when both parties to
23 the contract are aware of the contractual obligation and if
24 there is a sort of quasi-obligation but one of the parties
25 who is owed the money doesn't know about it then they might
26 suspect they are not going to get paid.

27 MR DOUGLAS: The PCWs have this problem already, because they may

1 know that someone has clicked to the site, but they don't
2 know whether they have bought. They are blind to that. So
3 there is already a perfectly satisfactory process of audit in
4 place where the PCWs can check that sales made effectively
5 through click-throughs have been paid to them in terms
6 acquisition costs, and it wouldn't be difficult for them to
7 extend that audit to other sales that the insurer has made.

8 PROF SMITH: So they could audit non-click-through sales.

9 MR DOUGLAS: They have to audit anyway in the current environment,
10 so it makes no difference to them.

11 MR AARONSON: Sorry, this is a sort of quasi-technical question.
12 How would you audit that?

13 MR DOUGLAS: Well, they would - they have rights to access and
14 look at our policy records. We don't give them carte blanche
15 but we can give them, basically, information about policies
16 that we have sold and they can see whether or not the details
17 match with the quote that they have generated. At the moment
18 they check that against quotes that are clicked through, but
19 they could easily check that against the quotes that they
20 have delivered.

21 MR AARONSON: LV, you said you were ambivalent about narrow MFNs.
22 Do you want to expand on that at all?

23 MR O'ROARKE: I started by being ambivalent, but now I'm just
24 undecided. No, actually, I am very much swayed by what Simon
25 has said, actually, because I think we can be relatively
26 passive about the situation at the moment where the level of
27 fees charged by the price comparison sites is as it currently

1 stands - £50 or thereabouts - but it would be fairly simple
2 to hypothesise a scenario where, if they were given cast-iron
3 protection through kind of rigid narrow MFNs, rates could
4 inflate and you could find yourself in a situation where
5 there is considerable anti-competitive outcomes for
6 customers. So I think the essence of it is really kind of
7 what you were saying about definition and perhaps not
8 defining an MFN clause but defining a process by which price
9 comparison sites can be fairly compensated for situations
10 where they have introduced the customer to us, either because
11 they have clicked through or because they have come round a
12 different route, but nevertheless they triggered the sale,
13 and make that distinct from the scenarios where they have not
14 been anywhere near it and therefore we as insurers should be
15 able to offer a cheaper price because we have had the
16 opportunity to have a direct dialogue with the customer. So,
17 I am pretty much supporting everything that Simon has said.

18 MR AARONSON: Okay. I just had a couple of questions about what
19 we have called alternative behaviours. I mean, given your
20 views of PCWs - some of the views being expressed - if we
21 were to ban MFNs, however defined, is there a danger that
22 PCWs would use other techniques to, in effect, maintain the
23 price parity that they have got at the moment? I mean,
24 threats of de-listing would be one, or possibly other
25 mechanisms. Is that a real danger?

26 MR BAUGHAN: Yeah, we think it is, and I think we support the
27 proposal that you guys have made as well that we should not

1 allow PCWs to use alternative mechanisms or strategies to
2 achieve the same aim, such as de-listing. So we think it is
3 a threat and it should be part of the remedies going forward.

4 MR AARONSON: So even one PCW on it is own you say would have
5 enough market power to -

6 MR BAUGHAN: I think in terms of - I mean, our position in terms
7 of - so we are fairly relaxed on narrows, actually, but in
8 terms of wide, we absolutely support the remedy, and what we
9 don't want is PCWs achieving exactly the same aim in a
10 different way.

11 MR AARONSON: You don't think FCA regulations would inhibit them
12 from this sort of behaviour? The requirement to treat
13 customers fairly, for example.

14 MR BAUGHAN: Yes, I think this plays into the TCF remit. I mean,
15 our view is that this should be progressed through the FCA to
16 make sure it is buttoned down.

17 MR AARONSON: The whole issue of MFNs and -

18 MR BAUGHAN: Yeah, I think, one, generally but, two, because - and
19 it has not come out yet, is - I mean, our view is that the
20 issues that we are finding on MFNs in PMI are also going to
21 apply to other classes of insurance, and we are not convinced
22 that there is merit in treating PMI differently. So
23 actually, our view is the FCA are better positioned to take a
24 holistic view for all classes of insurance, and that would be
25 our suggested route.

26 MR AARONSON: Is that a general view? Okay, well we will
27 obviously have to look at our powers and their powers and

1 consider what is the best way of dealing with it. I think
2 that's probably all I have on MFNs.

3 PROF SMITH: Any other questions on this that anyone wants to
4 raise? We have come to the end of our agenda. If there are
5 any things that we have covered along the way that you missed
6 the chance to make a stinging response to and just missed the
7 opportunity and now want to get it in, now is your last
8 chance. Or are there any other high-priority issues that we
9 negligently failed to raise this afternoon? No?

10 MR WOOLGROVE: If I may, just on 1A, it seems to me we spent quite
11 a lot of time discussing it - my sense is we glossed over
12 some of the very practical issues around the complexity of
13 implementing it and also that the legal basis isn't
14 straightforward. I think I did hear you say that you
15 recognised the challenge of that. I am also concerned that
16 you keep in focus the proportionate nature to the actual
17 detriment. I mean, it is with significant expense and a
18 fundamental change to how insurance is provided today and,
19 you know, there are undoubtedly going to be unintended
20 consequences, and that might be, say, for safer drivers
21 having higher premiums, or people under- or over-purchasing
22 additional TRV cover. So, I think we would just ask that,
23 you know, you continue to work with us around the practical
24 implications that - as I said at the beginning, motor
25 insurance is a very highly complex system, and therefore that
26 your remedies are proportionate - and we are certainly very
27 keen to work with you so that, you know, of all the different

1 permutations - and we heard some new ones today that weren't
2 in your remedies notice - that we get something that is
3 practical but that keeps the customer at the heart of what we
4 do. Because we shouldn't forget at a moment of accident,
5 these claims are not theoretical incidents; they are
6 impacting individuals who are highly emotional and we need to
7 provide reassurance, and anything that is detracting from
8 that will cause real harm. And we just need to keep that in
9 mind. I think that where many started is the customer - we
10 deliver a good service for our customers and they benefit
11 from a very competitive market, and we shouldn't lose that.

12 PROF SMITH: Well, specifically on remedy 1A, we do recognise that
13 there are important issues about scope and overlap to
14 consider. We do recognise that implementing remedy 1A would
15 be a very fundamental legal change, which might have
16 consequences for EU legal requirements as well as national
17 legal requirements, and also that any fundamental change
18 changes people's behaviour in an area where behaviour is
19 complex and that... All of the things you have summarised
20 there I think have been carefully noted; they are very well
21 put there. So, that's a good note on which to end.

22 So, let me wind up first of all by saying something I should
23 have said at the beginning when I was doing introductions.
24 You may have noticed that one member of the inquiry group,
25 Anthony Stern, is not here today, unfortunately, for medical
26 reasons, so he sends his apologies but promised that he would
27 read the transcript with great care and great interest, which

1 is one reason why I have made sure I have remembered to note
2 his apologies. But let me also say thank you very much for
3 this afternoon's discussion. It has been very wide-ranging.
4 We have managed nevertheless to keep to timetable. I am sure
5 I speak for all my colleagues when I say we found it very
6 useful. We recognise that there are different views among
7 you and that has made the discussion more helpful, and I am
8 grateful to you for being open about the differences in
9 views, or the differences in emphasis, that you have on the
10 different aspects of these complex issues. I should also
11 take the opportunity in thanking you for coming here today
12 also to thank you for all of the assistance that you have
13 given us in a whole variety of ways throughout the course of
14 our inquiry so far, and to express the hope that you will
15 continue to assist us as we proceed.

16 We are now in the process of giving careful consideration to
17 remedies, of which this round of meetings is part. We hope
18 to produce proposals on remedies early in the summer, giving
19 a further opportunity for responses and discussions before we
20 produce our final report in September. I recognise that at
21 times our timetable has been demanding on you and - sometimes
22 timetables that look generous aren't quite so generous when
23 you factor in people's natural desire to spend Christmas Day
24 with their families rather than in their offices, but you
25 will appreciate that we are operating to a legally
26 constrained timetable requiring cycles of consultation and so
27 on. But we do recognise that at places the timetable pinches

rather hard on you, and we are grateful to you for coping with that. I hope that the timetable for the rest of our investigation won't involve any further undue pinch points, but that's a hope rather than a promise, and I have to say, you know, sometimes people - why the Competition Commission investigations take a long time to tackle issues and people who are impatient to see progress feel, 'Why do these processes take so long?' But when remarks are made about issues going to the Court of Appeal after two years and this is only the start of a process that may go on for several more years, I think that - well, maybe the Competition Commission process is not quite as bad as some of the alternatives.

So, once again, thank you all for your help and we look forward to further contacts with you.

(Hearing concluded at 4.55pm)