COMPETITION COMMISSION

PRIVATE MOTOR INSURANCE MARKET INVESTIGATION

held at

Victoria House, Southampton Row, London WC1B 4AD

on

Friday, 28th February 2014

PRESENT:

FOR THE COMPETITION COMMISSION:

Alasdair Smith	- Chairman
Steve Oram	- Member
Robin Aaronson	- Member
Anthony Stern	- Member

Erika Lewis	- Inquiry Director
Peter Baker	- Inquiry Co-ordinator
Graeme Reynolds	- Director of Finance and Business Advice
Dipesh Shah	- Finance and Business Advisor
Phillip Dixon	- Finance and Business Advisor
Katy Cox	- Finance and Business Advisor
Julie Bon	- Economic Director
Peter Wantoch	- Economist
Tony Curzon-Price	- Economist
James Jamieson	- Economist
Enrico Alemani	- Economist
Adriano Basso	- Economist
Simon Jones	- Legal Director
Charlotta Blomberg	- Legal Advisor
Pietro Menis	- Legal Advisor

FOR ACCIDENT EXCHANGE:

Stephen Jones	- Group Counsel and Company Secretary, Accident Exchange
Steve Evans	- Chief Executive
Kate Vernon	
Keshav Parthasarathy	

FOR AI CLAIM SOLUTIONS:

David Sandhu	- Group Chief Operating Officer
Peter Harrison	- Group Chief Finance Officer
Chris Shaw	- Chief Innovation Officer
Paul McCarthy	- QBPS Finance Director

FOR CHO:

Martin Andrews	- Director General

FOR CLAIM **FAST:**

Steve Hazzard	- Group Technical Director
Shahid Mahmood	- Finance Director – CHMC Ltd
Bruce Fitzpatrick	- Partner, Addleshaw Goddard LLP
Al Mangan	- Partner, Addleshaw Goddard LLP

FOR CRASH SERVICES:

Jonathon McKeown

FOR ENTERPRISE:

Ben Lawson	- Assistant Vice-President – Rental Europe
Nigel Goodall	- Liability claims & risk Manager
Joe Bowen-Thomas	- Financial Controller – UK & Ireland National Sales
James Ashe-Taylor	- Legal Advisor

FOR HELPHIRE:

Martin Ward	- CEO
Alan Gilbert	- Technical Director
Nick Tilley	- Company Secretary
Miles Trower	- Legal Adviser

FOR KINDERTONS:

Shaun Ellison	- Managing Director
Christophe Leemanyan	- Group Logistics Director
Brendan Ellison	- Group Sales Director
Sassoon Saleh	- Advisor

FOR WNS:

Mark Grayson	- Operations Director
Andrij Jurkiw	- Partner, Mishcon de Reya

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Friday, 28th February at 2.03pm

PROF ALASDAIR SMITH: Thank you very much for coming here this afternoon. Welcome – in most of your cases – back to the Competition Commission. We're very grateful to you for taking the time to talk to us today. I'm going to start with introductions, and when we go round the room with introductions I suggest that we just do introductions around the front table.

If people on both sides sitting on the back rows want to come in on the discussion at any point, which of course you're more than welcome to do as appropriate, if you'd please introduce yourself at that point. That's a more efficient use of time. With the number of parties here, I'm going to be quite focused on making sure we make the best use of the time available to us.

I'm Alasdair Smith. I'm a Deputy Chair of the Competition Commission and I'm Chair of the inquiry group of private motor insurance. So, first of all, let's have introductions from the Competition Commission side, both our staff team and the members.

MR PHILLIP DIXON: Afternoon. Phillip Dixon; financial and business advisor.

MR DIPESH SHAH: Dipesh Shah; financial and business advisor.

MS CHARLOTTA BLOMBERG: Charlotta Blomberg; legal advisor.

MR GRAEME REYNOLDS: Graeme Reynolds, director of remedies and business analyst.

MR ANTHONY STERN: Anthony Stern; panel member.

MS ERIKA LEWIS: Erika Lewis. I'm the inquiry director.

MR STEVE ORAM: Steve Oram; panel member.
MR ROBIN AARONSON: Robin Aaronson; panel member.
MR PETER WANTOCH: Peter Wantoch; economist.
MR ADRIANO BASSO: Adriana Basso; economist.
MR PIETRO MENIS: Peter Menis; legal adviser.
PROF ALASDAIR SMITH: Well, the one other panel member – Roger Finbow, who unfortunately is not able to be here this afternoon because of a clashing commitment, but he will be reading the transcript with great interest and care. Yes; on your side?
MR MARTIN ANDREWS: Martin Andrews; director general of CHO, faithfully representing the interests of credit hire companies, most of which are in the room but not all are members.
MR JONATHAN MCKEOWN: Jonathan McKeown. I'm a solicitor and I'm here representing Crash Services today.
MR STEPHEN JONES: Stephen Jones; group counsel at Accident Exchange.
MR STEVE EVANS: Steve Evans; chief exec at Accident Exchange.
MR PETER HARRISON: Peter Harrison; CFO of Quindell.
MR DAVID SANDHU: David Sundhu; COO, Quindell.
MR SHAHID MAHMOOD: Shahid Mahmood; finance director at Claim Fast.
MR STEVE HAZZARD: Steve Hazzard; technical director at Claim Fast.
MR NIGEL GOODALL: Nigel Goodall; liability claims and risk manager at Enterprise.
MR BEN LAWSON: Ben Lawson; Assistant Vice President, Daily Rental from Enterprise.
MR ALAN GILBERT: Alan Gilbert; technical director from Helphire.

MR MARTIN WARD: Martin Ward; chief executive, Helphire.

MR SHAUN ELLISON: Shaun Ellison; managing director, Kindertons.

MR BRENDAN ELLISON: Brendan Ellison; group sales director, Kindertons.

MR ANDRIJ JURKIW: Andrij Jurkiw. I'm legal advisor to WNS.

MR MARK GRAYSON: Mark Grayson; operations director at WNS.

PROF ALASDAIR SMITH: Thank you. Let me start with a few preliminary remarks before we get down to the main business. As you're aware, today's meeting is structured as a joint hearing. We've been mindful in planning our lines of questioning that a range of issues that it wouldn't be appropriate for you to get into discussions about in front of your competitors, and while that has shaped our planned questioning, the primary responsibility has got to be yours, to make sure that you don't start discussing sensitive and inappropriate issues. If there are issues which arise on which you want to provide us with confidential information, then please do that in a separate communication.

I won't go through the rules and procedures for hearings, because you've all been sent information on that. But let me draw your attention to the fact that we are, as usual, taking a transcript of this hearing. We'll send a record of it to you within the next week and we would ask you to check the transcript and correct any errors of transcription, or any minor slips that you may have made in giving evidence. If on reviewing the transcript you see that there are issues of substance on which you want to alter or add to what was said, then please do that in a separate communication.

We normally publish summaries of our hearing. Because this is a multi-party hearing and we're taking a transcript, we've decided that the most efficient way to publicise the proceedings of the hearing is simply to publish the transcript.

As I said before, we hope that nothing confidential or commercially sensitive will be said in the course of the hearing, but if on review of the transcript you find that inadvertently, there is some confidential information in the transcript, then please let us know so that we can redact it before the transcript is published on our website.

And talking of the transcript, this is quite a big room with quite a large number of parties. In the hearings earlier this week, we haven't had any problems with audibility for the transcript, but for all of our sakes, as you're talking it would be helpful if you would make sure to speak – I was going to say as clearly and as loudly as possible – as clearly as possible and as loudly as is appropriate, would perhaps be a better thing to say.

I have to remind you, formally, that it's a criminal offence, under s117 of the Enterprise Act 2002, knowingly or recklessly to provide false or misleading information to the Competition Commission at any time including in this hearing.

What we're going to do in this hearing is that different members of the panel will lead different areas of questioning. As it happens, the way we've divvied up the whole business of this week, the area that we've planned to focus on today is mostly going to fall to me to lead the questioning on. So, I'm afraid that I'm going to be leading most of the time. As we go through the questions, other members of the group and other members of Competition Commission staff will likely be following up with supplementary questions at various points.

We don't want the afternoon to proceed along too rigidly – determined and scripted lines – so the more we can open the discussion to being as free flowing a discussion as is possible, the more useful it will be for us and, I hope, for you. Given the number of parties represented, we all have to be economical with the use of our time. And I particularly appeal to you not to use up a lot of time agreeing, at length, with each other. If you agree, it's possible to agree quite briefly and leave plenty of time for exploring where there are differences of view and differences of emphasis, rather than agreement.

Perhaps before we start, it is worth my underlining where we are in the progress of our investigation. In December, we published our provisional findings and a notice of possible remedies. And the discussion today is going to focus primarily on the issues raised in the remedies notice. We're now at the stage of giving further consideration to remedies, as well, of course, as the issues in the provisional findings, and the hearings we're having this week and next week are a very important part of that further consideration. We expect to produce provisional proposals on remedies early in the summer, perhaps late May/early June or thereabouts, so that we can produce our final report in September as statutorily, we have to do.

I'm conscious of the fact that, at times, the timetable of an inquiry like this is a bit demanding on other parties, particularly if you have unreasonable wishes like spending Christmas day with your family, rather than in the office. And I'm sorry if at times our timetable has been quite demanding. We're very grateful to you for cooperating as much as you've been able to cooperate with producing responses on time. I hope that through the rest of this year's process, leading up to September, there will ample opportunities for you to feed further information and views into us, on the development of our thinking.

I think that that's all that I need to say, by way of introduction. I'd like to get under way by asking each of you if you wish to make a brief, opening statement, focusing on what you see as the key issues for you in our provisional findings and in our proposed remedies. Can I please appeal to you – I think it's been indicated that I'm going to impose an absolute limit of five minutes on each of these opening statements and I will have to be ruthless on that. If some of you, at least, are able to keep well below the five minute mark that would be most gratefully received. However – you can do the maths yourselves. Nine times fives minutes is – well, you know what it is. I don't want to expose myself by making incautious statements at this point. Nine times eight minutes is a much larger number, so, please, let's be disciplined. Shall we start with CHO?

MR MARTIN ANFREWS: I've scripted it; read it. It's less than five minutes. So, thank you for the opportunity to speak. I think the timeline went something like this: post credit crunch, from a cash flow and profit perspective, insurers struggled – remember that DLG was and is still part of RBS – struggled for reasons, I would pertain, you have still not investigated; loss of investment returns most obviously, for me.

Given motor insurance is something that all consumers have to buy – have to buy – but which insurers don't have to sell, it's not surprising that in that environment, premiums rose. Insurers were telling anyone who would listen that premiums were rising because of cost increases. PI and then Credit Hire were high on the list people had to listen to when insurer CEOs had their opportunity to moan. An OFT referral, unsurprisingly, given the complexity – and I remind myself that that's not dysfunctionality – results in a CC inquiry. That's fine, we thought; a process of academic endeavour will surely follow where all of the relevant aspects of insurer profitability and the linkage to consumer premiums and consumer welfare will be diligently and independently explored, analysed and reviewed before recommendations for change, if any, be made. That is not what has happened, though.

Before continuing, it is not lost on me that when we last sent in front of you, before the PF working paper publications, that very morning it had been announced that there had been another quarterly and annual drop in motor premiums - before the effects of LASPO had kicked in. Those quarterly premium reductions have continued. It's also not lost on me that earlier this week, DLG announced results that show a release of £292 million of reserves in motor reserves, with a little note saying that they expect that number to be £400 million next year. These are supposed costs that have been accrued in previous years; costs that were blamed as being the reason premiums had to rise. Today we find those cost accruals were not in fact needed. And guess what? They've been released to profit and dividend; not applied to premium reductions. That's 0.7 billion. This reinforces the fact, for me, that no one in this room has shown a connection between costs, premiums and consumer welfare. Yet an AEC has been identified.

So, big picture aside, it should be apparent that most of the written submissions provided by CHC's that we are not impressed by the academic rigour that has been applied to the quantitative analysis contained in your PF working papers. Those written submissions list approximately 20 economically valid reasons why your economic analysis and quantification of TOH1, regarding TRVs, is flawed, and that it misses or mistreats aspects that must be included in a revised quantification. But I will not use my five minutes to list all of them.

However, the notice of erratum re VAT addresses merely one of those flaws. But the fact that the VAT error existed and has still been treated incorrectly, even in the erratum, is more than embarrassing for the CC. More fundamentally, it arguably opens the CC to accusations of bias in your work and demonstrates a lack of understanding of what direct hire rates represent commercially, at the simplest of levels, leaving a more comprehensive understanding of those direct hire rates as an important outstanding work item for the CC. Lack of access to the data room and what’s in it has also made it impossible to conclude that those direct hire rates represent anything other than a very small, biased sample of rates that very few number of insurers attain from a very narrow band of suppliers. willing to quote those rates.

Moving on, too often in your written papers you repeat things that insurers have told you; repeated those things, it seems to me, as fact. An example would be that insurers find it hard to assess the extent to which costs incurred are reasonable and that they appear to exercise only limited control over those services. I would suggest you’ve done no work to support that statement, let alone repeat and support it. It is our contention that should you do the work, in relation to the 20 or so items that we’ve identified in writing for you, you will find that, as regards TRVs, the quantification of the supposed costs is, if not already, de minimis, and that once the different classes of consumer – fault versus non-fault – are explored, could even be of benefit to the consumer.

I am not therefore in a place that agrees TOH1 is an AEC. Debating remedies is therefore a bit of a conundrum for me. Nevertheless, I am minded to quote DLG’s written PR submission, para. 3.14 PR submission. They're an insurer. They say: ‘At fault insurers have absolutely no incentive to worry about the quality of service provided to someone who is not one of their own customers.' The CC acknowledges that deep within the report. You also acknowledge that credit hire is the reason insurers do direct hire. You attribute no value to that, nor to the costs we incur on behalf of the consumer; costs that do not disappear in a world absent of credit hire. Yet the majority of the PRs you propose would end credit hire, would result in an increase in costs to consumers and leave absent their current legal protections. It's also noteworthy that the CC has not issued a working paper on the legal position, and that where it does summarise the law in its papers, it gets it wrong. This is concerning when certain remedies involve a change to the law.

In summary, then, it seems to me that the CC has a material amount of work to do in a very short timescale, before you must surely conclude that the effect of TOH1, re TRVs, is in fact at worse de minimis and I should appreciate some confirmation in the course of this afternoon that that work has already in fact started and will be undertaken diligently, comprehensively and in a way for the economic consequences for consumers to be academically and commercially justified.

PROF ALASDAIR SMITH: Thank you; Crash Services?

MR JONATHAN MCKEOWN: Martin made many of the points that I was intending to raise, but I'll try to shorten mine down. On 17 December, like most people in the room, I was up early waiting on the publications from the Competition Commission. I read the provisional findings and whilst I could see that they weren't all accurate or written in ways which was not terribly – it doesn't portray our industry in a good light, I did think to myself, 'Well, it was actually quite good that the quantification was only 2p per day'. You know, so, 2p to illustrate to everybody what 2p looks like. 2p per day was identified as being the inefficiency, if you like, of a system that didn't exist 20 years ago. If you tried to create the system and you said you'd be inefficient by 2p, I think that's a pretty good objective to get to, a small margin of error.

I really like that you picked up on the repairs and realised that you couldn't trust insurance companies to fix people's cars. Six months ago when I was here, I highlighted that your belief that an industry which could control 75% plus of a market was a good thing and you wanted to make that even greater was wrong. I really liked that you seemed to pick on that and realise that you couldn't trust insurance companies in that regard. But then I read the proposed remedies and I could not see the link between what you say goes on and what you were proposing. I did not believe that they were appropriate or workable things to do.

There's a very innocuous phrase: 'cost control' and it sounds, you know – maybe it's an economic term, but whilst insurance companies don't physically harm people, exactly like Darth Vadar with his death grip, they squeeze the life out of people. That's what goes on with cost control. It is an innocuous phrase which belies what really goes on. And, to quote another Star Wars analogy, like Obi Wan Kenobi, the insurers have managed to make you think 'We are not the AEC you are looking for.' As Martin says, DLG increased their profits by 175 million, last year. That's the same sum you're talking about in the apparent over provision in the credit hire industry. One insurance company, if they were held to account to not increase their profits, would have done the same as what you're trying to do with a series of unworkable remedies.

PROF ALASDAIR SMITH: Thank you; Accident Exchange?

MR STEVE EVANS: *Which? Magazine* recently ran a campaign to persuade insurers to notify policy holders, at renewal, the price of last year's premium, in order to allow comparison against the renewal premium. Huw Evans, no relation, from the ABI, made a statement on this, in which he said: 'Renewals should never be just about price. Getting the right cover for the client is vital'- really important words and very recent. Taking just the VAT error that you have conceded, you have identified the annual cost to consumers of obtaining their legal entitlement through credit hire over direct hire is just £2.69 a year. That's less than 0.5% - for those of you without the calculators, 0.406% - of the annual average cost of insurance, according to confused.com.

It seems wholly disproportionate to propose untested, un-costed and ill-conceived remedies which may save consumers £2.69 per year, by denying the common law rights to restitution and with the risk that the potential costs of your idealised, alternative world will be far higher than £2.69 a policy. To quote the ABI again, 'it's not just about price' and it shouldn't just be about a cost of £2.69, either. Ensuring consumers can continue to enforce their legal entitlement at no greater cost than they currently face is the economic challenge that you should be addressing.

We are critical of your approach to the provisional conclusions reached. We've serious concerns with your quantification and analysis of the net consumer detriment, which suggests to us that the PFs are not the trigger for the drastic and far-reaching possible remedies suggested. More importantly, your team has a lot more work to do in order to do this investigation justice. The following key errors remain to be addressed, from our perspective.

Your assumption that absent separation, there would be direct hire instead of credit hire ignores your own findings that without credit hire, there would be no incentive on insurers to provide direct hire, or the incentive would be so weak as to mean that non-fault drivers would be under-provided. How do you propose to validate and give effect to this corrective value of credit hire, rather than relying on something told to you by insurers? You assume an idealised, frictionless world, in which consumers will still obtain their full legal entitlement by direct hire, yet you fail to consider than consumers only achieve that because of separation. As a result, your conceptual benchmark for assessing the AEC flowing from separation is flawed and appears designed to achieve a bias in favour of direct hire, to the detriment of consumers.

You fail to provide any substantive analysis of the legal framework in which consumers currently access remedies. We don't think you properly understand the complexity of and the protection provided to consumers and insurers in the current legal environment. Please prove us wrong. You've not offered any analysis of the legislative obstacles that need to be surmounted in delivering any remedies and other likely costs to consumers. The legal rights of consumers are founded on 400 years of common law and 40 years of European Directives. To advocate extinguishing those rights, with a simultaneous transfer of monopoly power to insurers, is frankly outrageous. You do need to provide a paper, setting out your legal analysis, so that we can comment properly and correct any misapprehension.

That aside, your analysis of cost of separation fails to recognise, let alone quantify, the frictional costs that will be transferred to non-fault drivers in a world absent separation, as well as the other costs non-fault drivers will incur in recovering the shortfall in the quality of service provision. You do need to identify and then value those benefits, and outline how they will be funded in your benchmark, idealised world. The AEC identified also has distributional implications for consumers. Do you not recognise that non-fault drivers will be worse off, since they will suffer the quality and service shortfall in the absence of separation, as well as facing the cost of providing against the loss of mobility? You need to address that distributional shift.

You've also made other fundamental errors in the calculation of costs, which gives us little confidence that your findings can be regarded as robust or reliable. You erred in your treatment of VAT, but your published correction is still flawed and results in the difference between direct hire and credit hire still being overstated. Your estimate of direct hire cost used to underpin the AEC comes from just three insurers, representing less than 10% of the market. This sample is hopeless. It's also inconsistent with the extensive direct hire data obtained by us without having the force of your regulatory and investigative powers. How you have allowed that wholly inadequate sample, and a lack of transparency from insurers to underpin your entire conclusions on the AEC, is beyond me.

You've now conceded that your investigation has not quantified the full cost of direct hire. You've accepted that you've excluded the cost of add-on services. You should make clear, as soon as possible, the inadequacies in your existing direct hire case, in order to avoid the people on this side of the table wasting significant further time and expense in attempting to rebut a flawed economic argument. As a result of the errors of approach and the material omissions in your analysis, your conclusions as to the net cost arising out of separation can't be relied on. They lead to a premature and false view of possible remedies, many of which will inflict greater consumer detriment by diminishing, or removing entirely, innocent motorists' legal rights to restitution, or the degree to which they realise their existing legal rights.

Our concerns have only increased in light of the limited and frankly insufficient underlying data provided to our advisors, on a flawed and overly restrictive approach to the data room. More significantly, we consider the majority of the remedies to be unnecessary and biased in favour of insurers' commercial interest, with a disproportionate risk of the elimination of the credit hire industry. As an industry, we've fought to protect and deliver consumer rights to lawful and proportionate restitution, in accordance with the law of the land for over 30 years, now. Eliminating those services will result in increased costs, a loss of quality of services and potentially the complete disenfranchisement of consumers.

The implicit value of services and benefits in credit hire must be quantified by you – you haven't done it – before any provisional remedies can be considered, and we fail to understand why this has not been done. Fundamentally, any remedy that just seeks to remove separation would not satisfy your idealised benchmark, of a world in which consumers still achieve their full, legal entitlement. And so, such a remedy would not be effective in remedying the AEC.

With regard to possible remedies, I would like to make the following very brief points. We do not support remedy 1A. I know it in passing that neither does the OFT –

PROF ALASDAIR SMITH: I'm sorry to stop you, but you've gone well over five minutes already and we're going to be devoting the meeting to discussion in detail, of remedies, so –

MR STEVE EVANS: Okay. There's two more paragraphs, but that's fine. That’s fine.

MR DAVID SANDHU: Thank you. The CC will be aware that we disagree with its thinking, on many issues set out in the provisional findings and the response to the remedies notice. We have to thank the Competition Commission for the opportunity to raise some eye-level points. We’re relying on the Competition Commission’s assurance that it has read what we have written so far, and so as requested we are not going to repeat that in this opening address.

The credit hire market here today has been serving the needs of non-fault claimants’ mobility for 30 years. Over the years, millions have victims of accidents have been entrusted by their insurance companies and brokers to receive service from us, not directly by themselves. Why is that? The service we provide cannot be replicated by insurers, and the service we provide is valuable to consumers. Yet, it’s the service that insurers have attempted to convince you is too expensive, is frictional and held unethical practices.

We are most concerned how the investigation’s progressing, as it appears that the Competition Commission simply accepted the insurers on their word, and have now sought to prove the point with economic analysis, which allows you then to push remedies which we are here today to discuss. Yet I hope, after today and in the following week bilateral hearings, that the Competition Commission will start to question the accuracy and validity of the insurer arguments. Without exception, insurers told the CC that credit hire companies manipulated hire bookings to allow more starts on a Friday.

Appendix 6.1, page 35, table 18 of your own economic analysis proves this is wrong. Your own data illustrates once and for all that the allegations are simply not true, yet the paragraphs within your provisional findings still state those positions taken by insurers.. … Why is that?

The same insurers told the Competition Commission that they incur frictional costs, costs, and I quote, 'Monitor in the high period and duration of prepare' – Appendix 6.1, page 34, paragraph 92. Again, the CC appears to have accepted that as truth. There is no bar of proof on the insurers and there is no evidence backing the statements up. Had the CC accepted our invitation to visit our operational centres and listen to calls between us and insurers, you would have found that no such monitoring by insurers exists where we provide a service. Insurers said that they could and would provide the same level of service as we do. Again, the CC appears to have accepted them, as evidenced by footnote 15 on section 6.8 of provisional findings.

The Commission accepts that direct hire is the same as credit hire, and as a result is a basis of any counter-factual calculation. Direct hire: a service that doesn't provide the same level of insurance cover; a service that doesn't provide free delivery and collection; a service that is priced to allow rental companies to up-sell their products directly to consumers which we lost in your economical analysis; a service that didn't include VAT; a service that doesn't offer the same service to the same demographic of consumers. By their very nature, direct hire is offered on cases where liability is accepted and the claim reported quickly. They are not provided to the whole market – a service that only three out of the top 10 insurers could provide you any rates for. Why is that? Didn't the other seven have rates, if the whole market provides the service?

Insurers gave data to the Competition Commission, data which I know the CC now cannot fully reconcile the source of – data not from the market experts like the companies you see before you today, but from insurers, who accept themselves the challenges faced in collating that data for you, Appendix 6.6, page 1, paragraph 2 – data which has been used to make your calculations into harm and separation, calculations which the Competition Commission have been made aware contain fundamental statistical and calculation errors. The Commission accepts that credit hire companies exist as a deterrent for insurers providing poor service – PF, page 12, paragraph 47 – yet there is no evidence within your calculation as to what the value is in terms of that encouragement of insurers providing the service to consumers directly.

It is our case that separation is a force for good for consumers. Separation protects consumers' rights. At-fault insurers, who have no contractual nor commercial relationship with the not-at-fault party, have a direct conflict of interest. The credit hire market's existence incentivises fault insurers to provide high levels of service. Those consumers involved in accidents where liability is not easily resolved, or impecunious claimants, are only protected by our market. Who will fight for the rights of consumers if you eradicate credit hire? All consumers, whether fault or not at fault, following an accident, are protected by hundreds of years of tort law.

And finally, turning to your proposed remedies – which are particularly difficult to consider given that we do not accept that separation causes any consumer detriment – remedies that need to be proportionate, fair and unbiased, remedies that need to have no unintended consequences and could disrupt consumer rights, remedies that could eliminate a market that has served consumers' rights for 30 years.

PROF ALASDAIR SMITH: Thank you. Claim Fast?

SHAHD MAHMOOD: First of all, thank you for your invite to the second hearing. Claim Fast is a credit hire and repair division of the Acromas Group. Our statement focuses of theories of harm 1 and 2, and sets out, in summary, the views of Claim Fast and Acromas Group. Acromas brands focus on attracting lifetime customers. Customer welfare is paramount. Acromas therefore supports those remedies that increase customer information and choice, control the cost passed to our default insurers and ensure claimants benefit from appropriate TRVs.

However, any such remedies must be effective and proportionate in addressing any customer detriment that has been identified. There should be clear evidence that premiums will reduce as a result of implementing those remedies. We believe that neither 1A nor 1B would be effective, in terms of implementation, monitoring or enforcement, for a number of reasons, just a few of which I'll outline at this moment. In our view, an order would not be sufficient to implement most variants of 1A and 1B. Legislative change will be required. Cross-subsidy will occur under the current proposal of 1A. Better drivers will tend to pay more and there will be a shift from commercial to private motor insurance customers.

Under 1A, obliging policy holders at point of sale to choose the level of cover they might require in the event of an accident in the future is a retrograde step for consumer choice and could end up – sorry. From the package of remedies, we consider remedies A, 1C, 1Db, 1Eb, 1F and 1G, in combination, would be less onerous to the consumer. This package should therefore be progressed for further consideration in preference to 1A and 1B, by the CC, on grounds of proportionality.

Finally, on remedy 2, Acromas' main concern is continues to be the interest of its lifetime customers. It does not accept that the MS6I report provides a fair or accurate indication of the quality of repairs conducted by Acromas will most large insurers. None of the repair is surveyed by MS6I was instructed by Acromas, and Acromas' own engineering inspections deliver an extremely low rate of rectification.

That, Mr Chairman, concludes our opening statement – hopefully brings down your average on the opening statements.

PROF ALASDAIR SMITH: Thank you. Enterprise?

NIGEL GOODALL: Thank you. Enterprise Rent-A-Car is a global rent-a-car brand, known for our exceptional customer service and value. We operate in many different business sectors, but for over 55 years globally and 20 years in the UK, we specialised in the temporary replacement vehicle market. Our experience covers an extensive range of different markets and legal jurisdictions. It includes being a key supplier of direct hire rentals to insurance companies in Canada, France, Germany, Ireland, Spain, the UK and the US. It includes being a significant provider of credit hire and repair in the UK market. It includes acting a self-insured, dealing with motor liability claims made against us by third parties, and includes being a sizeable vehicle repairer and subrogater of claims following damage to our own vehicles.

We share many of the views of our competitors here today. Credit hire ensures the fundamental right of the innocent victim to be put back in the same position they were pre-accident, and was necessary due to the failure of insurers to provide the required mobility voluntarily. The outcome of the investigation should not be a reduction in consumer rights or create opportunities for insurers to avoid necessary obligations.

Nonetheless, our view of the insurance market is aligned with the Commission. We believe the combination of the separation of cost liability and cost control, combined with the conduct and practices of those controlling claims, results in the supply of TRV being unnecessarily expensive, and the claims transaction being unnecessarily frictional. This is simply reflected in the significant differential in the credit hire versus direct hire costs we have to charge in order to retain a similar margin for the same customer outcome.

Throughout the FOT and Competition Commission investigations, Enterprise has used our broad experience to identify the most fair and sustainable market for temporary replacement vehicles, with a view to ensuring its long-term health and competitiveness within the insurance market. We believe the optimal solution needs to make the supply of TRV about service, price and value, while removing unnecessary or inefficient frictional costs from the claims process. And, while we feel we can successfully compete in whatever future model emerges, we feel that only remedy 1A provides a foundation to fundamentally reform current practices along these lines.

However, we have concerns that the remedy as proposed has three significant challenges. First, it will be detrimental to the rights of consumers in removing the ability to recover tort damages. Second, it will require significant change in UK that will potentially suffer from lack of government support or a significant delay in actual implementation. And finally, the financial benefits may be lost for the prudent consumers who choose to buy equivalent TRV cover. This is why we have urged, in our formal response, crucial amendments to remedy 1A, which replaces legislative change with robust, regulatory controls, using existing structures as seen in other jurisdictions, that ensures no consumer detriment by maintaining their current entitlements in law without additional cost to them - replaces an effective ban on credit hire, with a solution that fully satisfies the repair and TRV needs of the non-fault consumer through their own chosen insurer; introduces essential controls on subrogation, to appropriately transfer the net cost back to the at-fault party and eliminate the separation of cost liability and control – that maintains a seamless customers journey through the claims process, including the alignment of their repair and replacement vehicle provision, and increases market competition by removing barriers to entry for conventional rental car providers.

We feel our ability to see TRV issue from three sides of the debate – rental company, credit hire provider and self-insured – and our experience of jurisdictions without the AECs found by the Commission, has allowed us to identify a fair solution. That is one which protects the rights of the innocent accident victims and compels insurers to provide appropriate TRVs while removing unnecessary costs that are inevitably born by all consumers of motor insurance. Thank you.

PROF ALASDAIR SMITH: Thank you; Helphire?

MARTIN WARD: Thank you. However we look upon this inquiry, we have been brought to account under false pretences. The provenance of the inquiry was based on the Government believing that insurance premiums had increased by 40%. That was wrong. The OFT made a referral to the CC, on the basis that we account for £10 per policy. That was wrong. And, in the CC's initial findings, that was £6 to £8 per policy. That's been wrong. What concerns me is that the direction on the map has been biased on political will and not economic argument. At the outset, when the Transport Select Committee examined the reasons for insurance premiums and why they were increasing, evidence was submitted by the insurers. There was plenty of noise around the compensation culture and whiplash claims that inflicted a burden on their costs. The Panel should be intrigued as to why many of the largest insurers never even mentioned credit hire in their evidence submission, whilst a few others only gave a glancing comment to it. . Did they see it as being a benefit to the consumer and serving its own interests? Therefore, the ABI may purport that it remains concerned on the cost of replacement vehicles, but its own members seem to disagree. Insurers may argue there needs to be some change but also believe that change in aspects to the credit-hire model would be neutral to them. They would neither gain nor lose in the equation; put another way, they would not be changing their insurance pricing. Add in the additional capital, operational and friction cost of their argument, and it is not inconceivable that views may change more favourably towards to the current service provision.

The fundamental principles at stake here are the rights of the consumer, who, at their most vulnerable moment, require support and services. To contemplate that a producer such as a third-party insurer, whose sole interest is to minimise cost, would promote that consumer goes against logical economic argument. In the words of a famous A Smith – another one – 'The real and effectual discipline which is exercised over a workman is that of his customers. It is the fear of losing their employment which restrains his frauds and corrects his negligence.' A third-party insurer is a reluctant producer who is being asked to promote a consumer who is not his customer. This is a toxic proposed remedy and should be removed.

Uniquely, we have two consumers: both the insurance market and the consumer. The majority, but not all, in this room have to serve both, but the one thing we do best is put the consumer at the heart of our service. The populist opinion created by the headlines is that credit hire is bad for the consumer, yet we have constant feedback from consumers who have been through the process stating that they were not sure what they would have done without us. Consumers readily spend up to £30 a year buying legal-expense protection. Why? Because they want to make sure they are protected against legal costs in the event they have to pursue a claim. Here is a service provided to them without the burden of that direct cost. It has taken centuries to form and protect the right of an innocent party under tort law. Any sensible conclusion from the evidence to date would suggest that consumers are receiving good value for money, with someone protecting their legal interests against the might of the insurers.

As to moral hazard, it exists for a reason but, over time, the headline price differential created by cost separation has closed and continues to close to a point where it is de minimis. The market finds its own equilibrium, and influences from a regulator sometimes help, but they should not harm it.

So far, we have only heard about this legitimate and worthy service and how it can be controlled, yet there is no conclusive evidence that it is a problem. As a consumer, I would be very worried about the direction well-intended but ill-conceived actions can have. What we are in danger of seeing is a process built on an agreed destination that is political and undemocratic. Everybody expects rigour in the process and it should be open to challenge. That is why works are published. If they are found to be deficient, it should be in everyone's interest to promote what is right.

I do think it is wrong to plough on with seeking remedies whilst the fundamentals are not established. I completely understand there will be differences of opinion but there should not be differences of fact. There are far greater pressures on motor premiums than the issues being discussed. The comparison sites tell us that a consumer can save up to £300, and here we are all talking about £5. Our sector has moved on from the past in many respects, and is still transforming. We stand by the consumer, and politicians and this inquiry should not be swayed by sentiment but by the fact.

A well-known economist once said, 'Consumption is the sole end and purpose of all production, and the interests of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer.' We are good producers, and potentially hamstringing our services is likely to have a detrimental effect on the consumer. Thank you.

PROF ALASDAIR SMITH: Thank you. Kindertons.

MR SHAUN ELLISON: Although others have raised a number of points that I wish to mention, I feel it important that I detail my current stance for the purposes of the transcript. Firstly, we need to state we do not accept there is an adverse effect on competition in respect of separation of cost liability and cost control. The alleged detriment has been revised to a figure of £5-6 per policy, following an admission of a mistake in the CC's data handling. The CC's most severe list of remedies to address this alleged detriment we believe will fail both the proportionality test and the relevant customer-benefits test.

We know from paragraph 10 of the remedies document that the criteria for the CC in deciding whether a remedy is proportionate is as follows: 'It is effective in achieving its legitimate aim, it is no more onerous than needed to achieve its aim, it is the least onerous if there is a choice between several effective measures, and does not produce disadvantages which are disproportionate to the aim.' For clarity, we believe remedies 1(a) and 1(b), as currently drafted, clearly fail these criteria. Remedy 1(g) would also seriously damage CHCs and CMCs and the ecosystem of businesses serving and supporting them.

Under Section 134 of the Act, the CC must therefore consider how its remedies will affect existing relevant customer benefits. We believe the test for this is the following two important questions, which must be considered: firstly, can the relevant customer benefits be classed as large in relation to the AEC? Secondly, would these relevant benefits be lost as a result of the remedies? We believe relevant customer benefits are very large regarding our sector, and we attempted to quantify this in our response to the CC's remedy notice (see p62-66 in the private document). Our submissions and, we believe, those from others have gone a long way to prove that, indeed, there is a large customer benefit provided by CHCs and it should be clear, without a doubt, that these benefits would be lost if the severest proposed remedies were chosen by the CC for implementation.

It is important to note that the CC dismisses the theory of prohibition of credit hire within paragraph 69 of its remedies notice, and yet certain remedies proposed will have the exact same effect. If this is the CC's intention, then there is confusion in its reasoning. Impecunious claimants would be very adversely affected by these remedies on the table. Throughout the CC's work, there seems to be a concerted preoccupation with a comparison of credit hire to direct hire, without looking at the bigger picture in terms of what these types of services actually do, understanding their differences and enquiring on how they serve different consumer needs and/or demands. We are concerned as to how this has happened.

As said in our submissions, they are two completely different models of serving consumers, and we have gone into great detail within our responses on why this is the case. There are a whole host of benefits attached to credit hire, and direct-hire operators simply act as a mere agent to the insurer to supply vehicles, with no risk, and no specialist skill-set required.

From reading the CC's work to date, it has almost given a clean bill of health to the insurance industry. CHCs, on the other hand, are seen as the root cause of the alleged separation detriment. Again, we have detailed in our own responses that insurer practice should be investigated, and any avoidable or wasted cost should be attributed to insurers and not CHCs.

The quality of the CC's data and workings has been of great concern to date within this inquiry. We originally had the average-of-averages issue, and now we have recently been informed of a miscalculation of VAT within Table 6, which is an astonishing, fundamental error to have been made. This leads to further question marks about data which the CC is relying upon. Within our submissions, we have clearly outlined the obvious flaws we believe there are in connection with Table 6, which attempts to benchmark credit hire with direct hire, and on which we do not agree, for reasons already mentioned. The CC needs to remember this unreliable, flawed data is the basis of the CC's calculation of AEC1, which could lead to decisions that destroy an entire sector with some £700 million turnover, serving hundreds of thousands of consumers each year.

The CC's invitation to grant advisers access to a data room to review the redacted information is of little use. The fact that the true experts – i.e. the management of CHCs –

cannot actually review and attempt to understand its conclusions misses the point of our clear request for this access. We may all have advisers but we know our business best, and for us not to be allowed to view the very data the CC seeks to rely on seems unjust, given that the data and work can severely affect our businesses.

When we come full circle and review the current adjusted alleged detriment for credit hire, it amounts to just £2.68 – sorry, Steve, I'm a penny out from yours – on an average motor policy of around £440 per year, or less than 1p a day. We still maintain that the VAT correction has not been treated correctly and, within our additional adjustments, this could go down to zero. To me, this should not be considered to be of detriment to the consumer.

To conclude, remedies 1(a), 1(b) and 1(g) at least should be dropped. We believe that, if any informed motorist was asked to say whether paying, say, £4 a year, using the CC's number, to get a free service that CHCs currently provide is acceptable, we believe they would say it was a bargain. They might go further and say it is irrational to try to stop this. It leaves them in a worse-off position, and any driver could become a non-fault claimant at any time through any number of uncontrollable events. 500,000 a year out of 25 million suffer this year, and we provide a very cost-effective and workable solution with the support of the motor-insurance industry. Without us, a large percentage of these people may not recover their losses and be sent away to go and buy at-fault insurers. We refer the CC to our remedies response, where, on pages 67 to 70, we summarise our views on CC remedies and why most do not work. Thank you.

PROF ALASDAIR SMITH: Thank you. Finally, WNS.

MR MARK GRAYSON: Thank you, and thank you for the opportunity to make an opening statement. WNS Assistance provides motor-claims-management solutions to the UK insurance, fleet and intermediary markets. We manage over 180,000 repairs a year. In 2013, WNS recorded issues with 0.6% of vehicle repairs. We are experts in controlling the cost of claims and we use our purchasing power and expertise to buy well, ensuring that our supply chain buys into our highest-service-level, low-cost ethos.

WNS is concerned to ensure that any remedies the CC looks to impose do not adversely impact on consumers, whether that be by reducing their existing rights or by increasing insurance-policy premiums. Our thoughts on the remedies can best be summarised as follows: firstly, we do not believe that the Competition Commission has established a case to show that claims-management companies and insurers do not effectively manage the quality of repairs. In particular, we believe there are significant flaws in the methodology used to produce the MSXI report.

Secondly, we do not believe that the Competition Commission has established a case to show that consumers are unable to spot a defective repair. Indeed, we believe that the report from MSXI actually disproves this finding, as 80% of the consumers who took part in the survey had, prior to MSXI's involvement, identified an issue with the quality of their repair.

Our third point is that the Competition Commission estimates the current process of handling non-fault claims results in an increase on private-motor-insurance premiums of between £5-6 per policy. The Competition Commission has not provided any analysis to show what it believes would be the impact of any its proposed remedies on motor-insurance premiums, so we cannot be certain, sitting here today, that the consumer is going to be financially any better-off as a result of the proposed remedies. WNS believes that a number of the proposed remedies will make the consumer worse-off than they currently are, which would obviously be a disastrous outcome.

Fourthly, certain of the remedies proposed by the Competition Commission – for example, 1(a) and 1(b) – will require consumers to give up existing legal rights. We remain to be convinced that this is the outcome the consumer is looking for.

Finally, the Competition Commission's figures show that the impact of credit repairs is to add between 92p and £1.40 to the premium for a motor-insurance policy. We have not seen any analysis by the Competition Commission to show how it believes the proposed remedy of setting standardised non-fault repair costs would eliminate this minor impact on motor-insurance premiums. In addition, there would be some practical issues with identifying and setting the levels in such a way that they do not impact on the cost of at-fault repairs.

In summary, WNS is extremely concerned that many of the current remedies proposed by the CC will leave the consumer significantly worse-off than they are under the current system. WNS recognises that the CC has a difficult task to perform but this makes it all the more important that the CC only imposes remedies which are necessary and which contribute to further reductions in motor-insurance premiums, without reducing the level of cover motorists currently enjoy. Thank you.

PROF ALASDAIR SMITH: Thank you, and thank you all very much for your opening statements. I hope that, in the discussion which is now going to follow, we manage to address most of the issues that you've raised. But I assure you that, even if there are some issues which have been raised that don't get addressed in the discussion this afternoon, all of the points you've made in these opening marks, and the points that you've raised in the evidence, will be given very careful consideration.

I want to start by focusing primarily on the remedies arising from theory of harm 1, of which the first is a rather general remedy – remedy (a): Measures to improve claimants' understanding of their legal entitlements. A number of parties have suggested that the ABI was the body which was best placed to provide consumers with a better understanding of their entitlements under their policy and their entitlements that arise under tort law. However, other parties have stated that the organisation tasked with leading the design of this remedy – the remedy for improving claimants' understanding – must be independent of parties involved in the claims-management process. Given these concerns, who do you think is best placed to work with the Commission on developing measures to improve claimants' understanding? Perhaps I can ask CHO to respond first on that one.

MR MARTIN ANDREWS: I heard your question: who do I think is best positioned. I haven't got a clue. I would say to you that we have pointed out to you in the past that insurers have got bilateral agreements in place where they agreed among themselves not to explain rights to consumers, so not them. I doubt the ABI want me to do it, and I'm not qualified to do it, and that's your problem. The ABI aren't qualified to do it either. Given that their members have bilaterals to deliberately mislead consumers, I wouldn't suggest that's the place to go, fairly predictably.

The concerns you're going to have to address with information – and there's nothing wrong with giving consumers information, and I think we do – there's issues about when they're given it, what it contains, whether it's legally correct and updated regularly, and who you're going to have sitting behind it to underwrite the quality of the advice. It's a problem. But the notion of consumers having independent advice, we agree with.

PROF ALASDAIR SMITH: I'm not going to go round the room and ask for everybody to contribute their answers to every question. Does anyone have anything to add to what's just been said?

MR DAVID SANDHU: I'd add a point. I said previously, when I was at these hearings, that I spent my half my career within an insurance company. And whilst I would say it would be wrong for the advice to be set out by the ABI or insurers, the feel I have is, as you advise consumers of their rights – whether it's fault or not-fault – we may see more leakage from insurers' own supply chains in terms of where they control cost. So, the consumer has a right to have their car repaired where they want, but, of course, insurers procure – some through vertical integration and some through just their own supply chain – those costs and contain them within their own organisation at a level that's lower than the market rate for a labour rate for repair. So, you walk into a risk, I think, in bringing consumers' attention to the fact that they have rights that they're not, today, exploiting.

MS ANTHONY STERN: So, you're not saying that we shouldn't tell consumers what their rights are.

MR DAVID SANDHU: I'm pro it. I'm just flagging that, if the inquiry outcome is expecting consumers to pay less in premiums, the risk you potential have is that, if consumers vote with their feet and exercise their rights in fault claims and choose their own repairer more often than they do today, that insurer cost will go up and, linked to that, it's likely that premiums will increase as a result. But I'm pro giving consumers their knowledge and their rights.

MR STEVE EVANS: I think most consumers are involved in an accident no more than once every nine years, so they're not very experienced in terms of how to deal with these issues. Most people who are at risk from a financial perspective as a consequence of the negligence of someone else would think they'd probably go and get impartial, independent legal advice, because everybody's circumstances will be different, both in terms of the nature of the accident, the cover they have, the losses that they might sustain, the geographical territory in which they're in – Scotland being different from the rest of the UK, Europe being completely different as well. So, it's hard, I think, for the Commission to propose that anyone can give a Wikipedia-type approach to give the consumer the absolute best advice that he can get.

In the current environment that we live in, we know that we're regulated by the FCA and, in certain entities, regulated by the MOJ, and the advice that we have to give complies with our obligation to treat the customer fairly and give him outcome-based views on what his options are. We're interested in doing that, simply because he's a customer. It was interesting in the survey that you published at the start of this process, where a very high percentage of consumers were asked were they explained by insurers what their legal rights were and they answered in the negative. I think going to the ABI to get them to provide the information is probably not the best place to start.

MS ANTHONY STERN: Again, if I may, just to pursue you, you talked to us about the difficulties of finding an independent party to give legal advice, but it's reasonable to give it. Do you, yourself, have any idea of a reasonable source to go to?

MR STEVE EVANS: They usually call solicitors. If you were at risk of a loss associated with your car, where you had damage, diminution, personal injury, you'd probably think the logical place to go would be to go to a solicitor.

MS ANTHONY STERN: So we could go to the Law Society.

MR STEVE EVANS: Absolutely. And to the extent the Law Society felt capable of providing that generic advice, which would vary in individual circumstances, in the discussion that you had with them… But it needs to be, I think, independent and impartial.

PROF ALASDAIR SMITH: Can I move onto remedy 1A, the shifting of insurance for replacement cars onto a first-party basis, which several of you have commented on? There are a number of issues I would like to ask you about in relation to that. One of the points made by CMCs in your responses to this possible remedy is that it's disproportionate because the differential cost between direct hire and credit hire is a justified cost. And I'd like to hear an elaboration of that. In particular I wonder if you can break down how you see the difference between the cost of direct hire and the cost of credit hire being justified by the differences in the nature of the two services. Perhaps I can start with you.

MR STEVE EVANS: We don't know the difference, because we don't know what's comprised in your assessment of direct hire costs. So, although, on the basis that we've taken your economic hypothesis and corrected it for VAT and have come out to indicate there's a £2.69-a-year policy cost that divides back up into what the actual cost is different to hire, we don't know whether the direct hire rates that you have taken do include delivery, collection and all the other elements associated with it. So it's impossible for me to try to attempt to give you a rationalised explanation of a difference when one doesn’t exist.

PROF ALASDAIR SMITH: Leave aside fitting it into a particular estimate of the financial cost. What are the significant elements of credit hire that aren’t included in direct hire that you think, if there is a cost differential, might account for the cost differential of the two services?

MR STEVE EVANS: Okay. Well, we suspect that your direct hire rates do not –

PROF ALASDAIR SMITH: Sorry, I’m not talking about our direct hire rates; I’m asking you to think of the two services, which you’re telling us are different, and just elaborate on what the differences are and what are the significant elements of the differences.

MR STEVE EVANS: In a value sense, you mean, rather than a financial sense?

PROF ALASDAIR SMITH: Yes.

MR STEVE EVANS: In a customer-benefit sense.

PROF ALASDAIR SMITH: Just in the nature of the service. You mentioned delivery of the vehicle as one. Those sorts of things.

MR STEVE EVANS: Okay. Right. I’m still not absolutely clear, just in the way in which you’ve ended that question – to ask me about delivery, when you don’t want me to talk about the financial costs that we don’t know about. So let me just come at it from a different end. Direct hire is typically an insurer being able to use his commercial buying power and his commercial approach, or strategic approach, to be able to limit the cost of the service he provides, to get the cheapest car, and potentially even a car that isn’t a comparable car to satisfy the needs of the consumer. The service may well also miss an element of advice that is provided to the customer in relation to the issue that we've just been talking about as to what his opportunity is, or options are, in respect of handling that claim. In addition to that, it will clearly miss an explanation as to whether or not he’s entitled to something beyond the provision of direct hire, and it will definitely probably miss the assessment of liability and the effort necessary to be able to demonstrate liability and/or to handle a claim for a non-standard driver and/or to handle a claim for an impecunious driver, in such a way that the insurer and their dedicated hire company would not ordinarily provide those services.

So there’s two thrusts to this. The first one is the pure financial, accounting, ‘Get your calculator out. Credit hire includes this – it’s zero excess; it’s delivery and collection; it’s the credit - or whatever goes on. Direct hire we think doesn’t, but we’re waiting for you to tell us whether it does or it doesn’t, and you haven’t. And then the second element is whether or not it’s no more than execution from a telephone call, in the direct hire sense, as opposed to protecting and procuring someone’s access to justice and restitution following the losses they’ve sustained as a consequence of an accident, no matter whether it’s a complex claim or a trivial, easy, non-fault claim. They’re, I guess, the fundamental differences.

MR MARTIN WARD: Can I add to that? I think there's two aspects to it, really. I think the first one is the direct hires that we talk about here is mainly where the insurer's provided some form of intervention to their third party and offer these services directly. So first of all, in terms of looking at it from a value perspective, the cost of that may already be suppressed, because we just talked about transparency – about what the consumer is told in terms of what their rights are. If you can convince a consumer, rightly or wrongly – this is the insurer – that they should mitigate, they should do *x*, they should do *y*, then the consumer may be intimidated into taking a service that is less than they are legally entitled to. Put another way, if they have a requirement for a certain car, the insurer may persuade them that they could do with something less. Therefore, there's a direct correlation of the cost of that direct hire to maybe a credit hire.

In value terms, not economic terms, the differences are as well that, when you're providing a credit hire, you have no certainty of payment; you have frictional costs; you have efficiency costs; you have losses, where you completely lose the case. All those add up into something that – you know, when you look at the rates on credit hire, that is a cost that this industry bears. If you're doing a direct hire – or an insurer's doing that – they'll have to take that into account. So, it's not just the difference of what's the rate of a vehicle; it's all the factors that go into make up that element of cost. If you start adding in transparency, where consumers are very aware of what their legal rights are, you may find that direct costs rise. We can’t live in a perfect world where this calculation has been conducted without adding in all the other costs that would come if you remove a different type of service, like credit hire. The direct costs of direct hires would increase; they are artificial at the moment, for a number of reasons.

MS ANTHONY STERN: Could you just remind us, as a background figure – I should know this – approximately what proportion of your business involves, if you like, potentially disputed claims, and what portion is what you might call reasonably straightforward?

MR MARTIN WARD: It’s moved, to be fair, and it’s moved quite considerably. I think in the past, there was a high proportion of disputed claims – probably as high as 40%. It’s moving to a place where it’s probably less than 10%. And the reason for that, as I said in my opening statement, is that our industry has transitioned, and it is still transitioning. The majority of our work with insurers – bearing in mind they are our customers as well – not for everybody – we have protocol arrangements with those insurers. They’re bilateral agreements; they’re negotiated on a proper basis; and we satisfy each other with the rate. So, consequently, you’re removing those frictional costs; you’re removing the inefficiencies; you’re removing the uncertainty of payment. And we reflect that accordingly in the costs of the vehicles that we provide.

MS ANTHONY STERN: Just as a general question, is that figure –

does anybody dispute it?

MR DAVID SANDHU: I'd add to the point that Martin's said, because I think the context of time is important in understanding your question. So if you asked me the question, 'What percentage of your claims are accepted when you put the person in the car?' I'd say it's a low percentage – maybe 20% or 30%. By the time I bill the claim – and the average hire period may be 15 days; it may take me four, five, six, seven days to bill it – by that time, I would probably be with Martin that it's maybe 10-20% that are formally disputed on liability or indemnity. But at the time the consumer comes to us and we offer a service, if we phoned the insurer and said, 'Do you accept liability? Will you pay our claim?' we would probably only get 'Yes' to the tune of about 30%. So the important thing is about the convenience at the time we offer the service.

And if I may just add to the points that were made in terms of your first question, I've always argued that the counterfactual to credit hire is retail hire rates, and the basic hire rates, and that's obviously what the legal system have done as a comparison for years. And in reality, we can only recover what the retail rate is; we cannot recover the credit hire rate, save for where the consumer is impecunious. Direct hire rates – I think as others have said, they're artificially low. They are when you already know the facts of the case, you know you're going to get paid, and the issues such as risk, convenience, mitigation and liability are all removed. And it's those factors that are the key difference between credit hire, because at the moment you offer the service, you carry a risk in providing that service.

MR ALAN GILBERT: If I could just take you back to your actual question, which was how many of our claims are potentially liability disputes: every single one. At the point we get it, the only view we've got is the customer's view. We haven't got anybody else's view; just the customer's view. So every single claim we've got we have to pay exactly the same attention to, because we have no idea, at that point in time, whether it's going to be disputed. As time goes on, it becomes clearer, but every single one there's a potential liability dispute.

PROF ALASDAIR SMITH: Can I ask Enterprise to comment on – what's your perspective on the differences between direct hire and credit hire that could account for differences in the cost of providing the two services?

MR NIGEL GOODALL: I think when we see both sides, we would probably put the complete difference down to what we would term 'frictional costs'. We have to maintain teams of people to be involved in the initial gathering of facts from the renter – the first notice of loss part of the claim. We then have to determine liability and decide if we're going to take the risk. We've got the credit risk, which was mentioned. We've even got the referral fee that we may need to pay to secure the referral for the business. So, when you add those on – a lot of them being people cost, to dispute the claim afterwards, to get paid, to collect; I'm sure some of the people around the room have a litigation expense – you know, insurers don't pay voluntarily 100% of the time, so there'll be times when lawyers need to be involved in disputing the claim, although that's not a significant thing for Enterprise. So, that would probably be the summary of the difference between the two costs, is us accounting for those expenses within our business.

PROF ALASDAIR SMITH: In relation to the actual service being delivered to the customer, what are the cost differences between the two services? Because in the end, the customer isn't – interest in the supplier has got to incur litigation costs.

MR NIGEL GOODALL: The customer experience should be the same. We use the same people; we use our same branch network to contact customers, to arrange when they're going to receive the vehicle, to arrange getting the customer into the vehicle. The customer outcome of receiving a car and the level of service that they receive from us and the type of car that they receive and the length of period – those would all be equal under both forms of supply.

MS ANTHONY STERN: Can I just clarify one thing? It was stated earlier on that with credit hire the vehicle gets delivered, and with direct hire it doesn't. Is that correct?

MR MARTIN WARD: No.

MS ANTHONY STERN: No. Okay.

MR STEVE EVANS: I don't think that was the statement. I think the statement was that direct hire's rates don't include the delivery and collection charge. That was the point that was made, rather than that they don’t get delivered. There’ll be collection and delivery – or delivery and collection.

MS ANTHONY STERN: I see. Is that –

MR BEN LAWSON: We can only account for what happens when we provide that service – the direct hire service – but no, we would provide that service included in the rate that the insurers get.

MS ANTHONY STERN: Okay, fine. I don’t want to spend any more time on that. Thank you.

MR SHAUN ELLISON: Could I just come in on both those points? I think the original question was comparing direct hire benefits and credit hire benefits – or the two services. In our opinion, they’re poles apart. A credit hire service incorporates full claims-management. So, with regard to direct hire, as some of my colleagues have said, it’s just a case of an agency agreement where the insurer identifies the need of the car. They’ll ring the direct hire provider and simply the direct hire provider will actually deliver the car, and that’s their involvement. With credit hire, we hold the client’s hand from day one. So that’s the FNOL service, assessing liability. That could then mean contacting witnesses, arranging an inspection of the vehicle, contacting the police for a police statement – all those things are involved in credit hire. We believe that credit hire also looks after non-standard-risk drivers. So,– for instance, we are an overflow for some direct hire business, and the reason we are an overflow is because we’re happy to deal with the under-21 drivers, or maybe the drivers who have gone over six or nine points, that traditionally direct hire providers won't touch at all. In terms of the additional services, uninsured loss recovery – so if the client's got any additional losses, such as excess, the loss of earnings or loss of property, all that is ignored under a direct hire model. That's what credit hire companies do. And back to the percentages of difference of who admits liability in the certain timeframes, I'm with David from Quindell; probably within the first two or three days, less than 30% are quite clearly liability's admitted, and it's probably seven days we get 40-45% of claims where you've got an admission of liability. So, without credit hire, those consumers would have no access to mobility at all.

PROF ALASDAIR SMITH: Okay. I'd like to move on just a little bit. Another concern that's been raised with us about remedy 1A is the concern that non-fault claimants wouldn't receive as good a service as they do at present. Now, remedy 1A would mean that replacement vehicles were provided to non-fault claimants by their own insurance company. What I'd like to ask is: why would you think that insurance companies would not wish to provide a good service to their own policyholders when they're doing the replacement vehicle service?

MR JONATHAN MCKEOWN: Back to my analogy earlier, it's because they would want to squeeze and squeeze what the person is paid. They cannot do anything but that. That is in their mind. If you've got a first-party insurance system, that's where the person's rights are contractual rather than tort, as has been referred to – several hundred years of tort law giving the people their full entitlement. Whenever you have a contract, those rights are restricted. Insurance companies will do anything they can to make you take less, and that is – fundamentally, that's what's misunderstood by everybody here, is that - exactly as you're saying, why would you want to provide a bad experience at claim? That's the only time people know if they've got a good insurance product or not. But the reality is – someone mentioned *Which?* magazine earlier. If you look at their surveys, you have one of the market-leading companies with a 52% satisfaction rating in claims. They don't care about claimants. Because, as someone else referred to, people only have a claim every between six and nine years, by the time you find out that your insurance company isn't very good at dealing with claims, you've paid all that money for years, and you just lump it, because it'll be another 10 years before you find out that the company you moved to are equally as bad.

PROF ALASDAIR SMITH: Can I just press you on that, and then others will have an opportunity to come in? Is there something special about insurance companies? Because what you're saying here is, if I can put it in slightly different words, insurance companies are profit-making companies, so in delivering the service that they've contracted to with their customers, they wish to deliver that service as cheaply as possible because it's profitable for them to deliver that service as cheaply as possible. I could make all of these statements about credit hire companies; you also are profit-making enterprises who want to deliver services to your customers as efficiently as possible, because that's in your interests to do. Is there something particular about insurance companies that means that they're strongly motivated to give their own customers a bad deal?

MR STEPHEN JONES: In relation to claims, clearly the motivation is to reduce the level of a claim, and that could be done through efficiencies; it could be done through providing less than maybe the customer would expect. But, of course, under remedy 1A, the key issue is that there is no alternative, so there would be nothing to prevent insurance companies offering any level of service, provided a vehicle was provided and provided it was strictly in accordance with the terms of the policy that they had acquired, but there would be no alternative for the consumer under 1A; they get what they get.

MR ROBIN AARONSON: Would there not be an alternative to move to another insurer the next year?

MR MARTIN WARD: Sorry, I think the point's been missed. You asked the question, 'Wouldn't insurers provide a good service to their own customers?' The answer's yes – and they do. They provide it to us. They ask us to provide those services. They outsource them. So they are effectively providing those services through that agreement. The reason they don't put it on their own balance sheet is because it has costs, costs which we are incurring in that process; costs which, if we weren't here, they would incur. It's back to the basics of why – if you've got something in your business, do you do it in-house or do you outsource it? And you make that economic argument based on the facts, and insurers decide to outsource that service to us. So if we weren't providing it, they would have those costs themselves. So I think that's the answer.

MR DAVID SANDHU: I think there's another element of it. The insurance market is in the market of risk, not in service provision. So, when you're asking the question, 'Wouldn't an organisation – wouldn't a company – focus on providing a service?' their core is risk-carriers. And as a risk-carrier, you take income in through premiums at the time that someone buys your product; you hope they don't use it. If they do use it, as Stephen said, you will squeeze the cost as hard as you can to make the best use of your return on capital and the capital that you got when you sold the premium in the first place. The difference with our sector is the vast majority of our referrals come B to B, so if I don't provide a good service to my referral source – the insurer or the broker – I lose the contract. And I appreciate what you say that maybe the consumer chooses a different insurer next year, but it's less than 10% of their business that's put at risk.

MR MARTIN WARD: The second part of the question would be, if you said, 'Right, okay. You can't outsource this; you do it yourself', what would the cost be to them? Let's say for a moment, living in a theoretical world, that that's £5 a policy; I would imagine an insurer would have to put something more on that to protect it from that sort of an underwriting risk, so the cost to the consumer would likely go up. The insurer would have to stand the losses that we stand. The insurer would have to provide the services and provide the people, the cash flow, the capital, and the subrogation to do all of those things themselves. So, I think there's a real danger that that cost could actually be higher.

MR JONATHAN MCKEOWN: There was a point made at the last hearing about your survey, where 28% of the people who were not at fault but who dealt with the insurer did not recover their policy excess. That should tell you about the ethics of the insurance industry when it comes to dealing with people fairly. They don't care. They hope that people don't know and don't pursue, and many people are not going to pursue a claim for £100 or £200 for an excess; they've got busy lives to get on with. And that's what happens. There's a cynical attitude with insurers that if they can shave £100 or £200 off every claim, that adds up in their balance book at the end of the year. We see examples of it – of people who have at-fault claims where they're claiming for the value of their own vehicles, and insurance companies squeezing them and telling their own engineers, 'Don't put a fixed valuation on the report'; they would put a range of values, so that the claims handler tries to negotiate with their customer to pay them out the least, not the maximum value. And that's the difference. We're trying to get people exactly what they're entitled to. Another difference between our industry and theirs is we are so regulated, not just, as mentioned earlier, by the FCA and others – but also the courts. Every time that we have a disputed case, there's a judge who looks at it and decides what's fair and what's not. That does not happen with the insurance industry. They get to put the spotlight on us every single time; that does not happen when it's their issues.

MR SHAUN ELLISON: Isn't the key to this, on remedy 1A, that the insurers don't have to give mobility; it's up to the consumer to buy a policy – either a courtesy car policy or a like-for-like policy – or not buy a policy? The risk is here, if they don't buy a policy, then the consumer has no rights; they can't have access to mobility.

PROF ALASDAIR SMITH: Yes, but the consumer having bought a policy, then the question is: what quality of service do they get from their insurer with whom they bought the policy?

MR SHAUN ELLISON: Yes, and we've done a lot of research in terms of what policies are available at the moment in terms of protecting yourself for mobility. The majority out there provided by insurers are only for a courtesy car – so a class A - so they're not comparable to credit hire in any way, shape or form. There's limitations on those policies, such as limits of durations of hire – 14 days. You're limited to the number of claims you can actually claim on it. Some are limited to either comprehensive cover or TPF&T cover. But the key is the price of those policies are in excess of £25 at the moment.

PROF ALASDAIR SMITH: I don't want to get into a backwards and forwards argument on that, because I'm not here to defend remedy 1A but to hear your views on it, but I think one has to be very careful in speculating what TRV-replacement policies under a first-party insurance system would look like on the basis of what TRV policies currently exist in a completely different market situation. I'm not sure that that's a terribly helpful comparison.

I want to move on, because I want to pursue something that Martin raised a few minutes ago, when he talked about insurance companies outsourcing the replacement-vehicle provision, and, on the back of that, to remind you that many of you in your responses have said that remedy 1A would lead to the disappearance of credit hire companies, so effectively most of the businesses represented in this room, by implication, would disappear. And what I want to suggest is that might not be the case. Credit hire is not a business; it's a business model. The business that you're in, I could argue, is the business of car hire, and credit hire is the model in which you're currently doing business. If we had remedy 1A, then the insurance companies who are providing the replacement-vehicle cover would then have a need to make provision for replacement vehicles for all the not-at-fault drivers on their policies as well as the at-fault drivers. And would they not then choose, as they currently do in managing not-at-fault claims, to outsource that business rather than to deliver it themselves? In other words, you would find yourselves, in a first-party insurance world, with a different kind of demand for your product, which you'd have to respond to with a different business model, but the people who need the replacement vehicles are still there, because, unfortunately, remedy 1A won't stop people having accidents and needing replacement vehicles.

MR STEVE EVANS: I think the answer is we don't know, and nor do you. And the problem is that with these untested views and theories around the whole thing, we're sitting looking at a £2.69-per-policyholder cost where an entire industry is at risk, and we don't know.

MR PETER HARRISON: I think the competency of the businesses around this table as well isn't just providing a hire car. The Quindell business model – we outsource the provision of the car; we don't own the fleet or the depots. Other businesses do do that. The competency of the business is acting for the customer, providing the service – the full claims service, from inception of the claim through to the recovery, and successful recovery of claim, and whether that's making sure excesses are recovered as well. So it's not – you know, it isn't that we just provide a functional purpose.

There's one other thing, when we were just talking about remedy 1A before, in terms of a potentially unintended consequence of having the first-party insurance model, is one of the services we do when we get the claim is to try and establish liability and making sure we've got the best view possible – it's tested on two sides of the fence, with the insurers and ourselves – around who is at fault. And we've heard initially it is a low proportion gets accepted; ultimately, we think it might be 10%. Where along the line, if you’ve got a fist-party model, do you give up the chase around determining who is at fault? Is it when you’re at the 50% of cases, or is it the 90% of cases? Because the impact of that is around your no-claims bonus when you come to renew your policy next year, and unless this market is entirely efficient, then I can’t see that there’s going to be anything other than price drift, with more fault people coming forward in the next year, because you’ve not got that counterbalance of the guys on this side of the table arguing and making that assessment against an insurer. You're removing it from your insured to the perceived at-fault insurer – that equation. So, you know, that is a consequence that I think you need to be aware of.

MR DAVID SANDHU: And the logic behind that is that each time an insurer is not at fault, there’s a quid pro quo the other way where they will be at fault against the same insurer, and it’ll be very easy for insurers to say, ‘Let’s not argue too much about resolving liability on these cases’, and obviously it financially benefits them in not resolving liability, because they can remove no-claims discounts.

MR MARTIN WARD: And it’s also coming back to the – what are insurers about? I mean, they are selecting risk. So, do you penalise insurers that are trying to select safe drivers over those that deliberately target riskier drivers for higher premiums? So, that’s what insurance is about, is pooling that risk, and they will select, so therefore you penalise everybody if you’re asking them to buy a policy or to provide that service, so the ones with the riskier experience would be winners.

MR ALAN GILBERT: Can I take you back to something that you said a few minutes ago, which was: why would an insurer in a first-party situation be motivated to not supply a good TRV? Within your own survey that you've published, you show that the customer, who has paid his insurance policy to have his car repaired – his car is repaired to a substandard standard. You've shown that in your own survey, haven't you? And yet you ask the question: why would an insurer be motivated not to supply the correct TRV? For exactly the same reason: they want to cut their costs. As David pointed out earlier, one of the ways that the insurers cut their costs is by not telling the consumer that he can have his car repaired where he wants. They keep that a secret, so that they can go back to their own approved repairers and get the results that you've demonstrated. So, don't be surprised, if you go down the fist-party route, that the customers again don't get what they've paid for.

PROF ALASDAIR SMITH: Can I ask about another aspect of remedy 1A? With TRV insurance being provided by the first-party insurer, would that create a risk that the provision of the TRV and the provision of the repair job might be in different hands, with one insurance company doing one and one doing the other? Would that give rise to problems?

MR DAVID SANDHU: I think it was DLG that commented on that in their response. To be fair, it was something we hadn't thought of, but the reality is the at-fault insurer could intervene on the repair or the total loss, leaving the mobility with the first-party insurer, and you’ve created exactly the same fear of harm that you’ve talked about in separation in the market today. The reality is the – if there are practices and behaviours in insurers and supply chains to elongate and add cost to competitors, that solution immediately gives them the incentive to intervene more aggressively on repair and not to be efficient about the repair some of the time.

Can I add one other point about 1A, please? I’ve been thinking what other compulsory insurances exist in society today for people – personal lines customers, and the only one I can think of is third-party insurance when you drive a car. And that’s in place to protect society from the serious damage you can do to someone’s property or lives as a result of an accident. It just seems very draconian to force – if you need mobility after a car accident, when the average cost is £1,000, to have to make that decision before the event to protect yourself from someone else’s wrongdoing. I can’t think of any other insurance that I’m forced to take – that I have to take to protect me from someone else’s wrong. And I ask the Competition Commission: why would you be thinking to impose that on society?

PROF ALASDAIR SMITH: Well it’s not imposing it; it’s simply saying if the consumer wants that protection they have to choose to buy it.

MR DAVID SANDHU: Well that’s right, but if you don’t take it, and say you live in a rural area and your kids live 10-20 miles from where you live, you're going to be exposed to a significant cost to yourself at your moment of need, when it wasn't your fault.

PROF ALASDAIR SMITH: Yes, but people make all kinds of decisions that, after the event, they wish they'd done differently. That's what making decisions is about, isn't it?

MR STEVE EVANS: If you go to the primary issue, though, of how people buy insurance, people buy insurance, generally, on the lowest possible cost. So remedy 1A almost implies that you want society to focus on lowest possible cost, which from remedy 1A says that no courtesy car provision at all is the option they'll take because they think they've got a good track record. So, the reality behind that is then that you eradicate – remove completely – their entitlement to restitution enshrined in 400 years of tort law and 40 years of EU directives. I buy insurance because I've got to buy insurance; that's the point David's making. I buy it to protect my own stupidity and my liability to somebody else for my own stupidity.

PROF ALASDAIR SMITH: So you would be afraid that consumers keen to save money would effectively take the risk that –

MR STEVE EVANS: Of course they would.

MR STEPHEN JONES: Well, I think Admiral said that they think it's highly unlikely that many people would take it up, because they'd be focused on the price, and then regret the consequences later. I think Aviva said exactly the same. So, the big insurers are not anticipating that people will take these policies up. And the ABI themselves – I think they say that the first-party system will reduce the number of TRVs that are provided – they said that – because people won’t take these policies up, because they’ll be looking at the price and making their decision.

PROF ALASDAIR SMITH: So, would you respond to that by saying that if you wanted to have some version of – sorry, I know you don’t want any version of remedy 1A, but if you’re looking at a version of remedy 1A that didn’t have this problem, maybe it should be compulsive TRV insurance, so it would be part of the standard insurance policy that there’s TRV insurance?

MR STEVE EVANS: Well you’re then back to your AEC and whether it is £2.69 and what the costs of that will be to the premium if it’s compulsory, and I guess whether or not, from that perspective, you’ve actually provided a proportionate remedy to a harm that’s almost *de minimis*.

MR STEPHEN JONES: And again, it depends whether the compulsory is a like-for-like vehicle, a standard courtesy car. To replicate the current entitlement if you’re non-fault, we don’t know what the cost would be.

PROF ALASDAIR SMITH: Enterprise, I was going to pick up the remarks that you made in your opening statement about an alternative version of 1A. Was that what you wanted to –

MR NIGEL GOODALL: Yes.

PROF ALASDAIR SMITH: Okay, good. Then we’re on the same page. A number of parties responding on remedy 1A have suggested a variant on it, and perhaps you want to elaborate on what your variant is and what you see the advantages as being.

MR NIGEL GOODALL: Absolutely. Well, to start with, I think everyone’s identified some of the risks with 1A as proposed, and I think we'd agree with all of those. I think we'd bring it back round and say the version that we've proposed, everyone should be covered in a non-fault situation for no additional premium for a like-for-like vehicle. I think that's fundamental to protecting the rights. What's required is good, robust regulation through existing structures to ensure customers get the deal that they're entitled to under that model. We also think you need subrogation to equalise that risk between fault and non-fault insurers and further incentivise the first-party insurer – the insurer of the non-fault party – to take care of them, knowing that they'll recover their cost in a fair and proportionate way from the fault insurer. And you need to align repair and replacement under that model, so you go to your first-party insurer for both. That should include you not having to pay your excess; you having no risk to your no-claims bonus if you're not at fault; and making sure that the net cost goes back to the fault insurer. So, we think we've proposed a model, fully realising the risks that have been addressed in the last conversation, that actually addresses them.

PROF ALASDAIR SMITH: I hope that at least some of you have seen some version of this in other parties' responses as well, but if it's new to you, then do feel free to come back to us at a later date with your responses to it. I would like to ask a couple of questions about that, but, Alan, you said you wanted to ask something about it.

MR ALAN GILBERT: Yes, and I think that's a nice utopian vision, but it's going to be a lot more than £2.69 per policy. The net premiums will go up massively. It could not be underwritten for those prices. The deal that the customer gets now is a lot cheaper than that proposition.

MR STEPHEN JONES: I wasn't quite clear – I think, from what was said, it was covering customers - compulsory cover for non-fault customers only, so not fault customers. So you do introduce, then, a dynamic between a customer who is making a claim and his own insurance company who's looking at the policy terms and saying, 'Are you fault or non-fault?' and you do introduce then potentially frictional cost as between the policyholder and his insurer, because the insurer's incentive is to say, 'We don't think you're non-fault'.

MR NIGEL GOODALL: Well, I think if you look at other jurisdictions, they've come across that same issue with how insurers determine fault and how insurers subrogate it amongst themselves. So you've got models in continental Europe; you've got models in Canada involving agreed ways to determine fault based on, in effect, circumstances. So, there are solutions to that problem which you've addressed.

PROF ALASDAIR SMITH: Can I ask you two questions about it? One, it's universal provision of like-for-like replacement vehicles in the event of a non-fault accident, so there's no mitigation. So if someone like me, for whom ownership of a car is a bit of a luxury, because I now don't have children who need to be driven to school and so on – if I have a non-fault accident at the moment and someone calls me up and makes a proper mitigation statement to me, I would have to admit that I can live perfectly well without a replacement vehicle, but I would get one under your scheme.

MR NIGEL GOODALL: You'd be entitled to one. Whether you get one or not would be a personal choice. We do a lot of direct hires; we take a lot of reservations where the insurance companies have agreed to pay, and for some reason – potentially similar to yours; people who are on holiday during the period; people who have two cars in the family – they frequently turn them down. There's no need to go to the trouble of getting a replacement car. And I think under any insurance programme, entitlement to a benefit doesn't necessarily mean that you'll take advantage of the benefit; that's a personal choice.

PROF ALASDAIR SMITH: But there are potential costs to having no requirement for mitigation.

MR NIGEL GOODALL: Yes.

PROF ALASDAIR SMITH: The other question I have is about whether it would work without a change in the law. And sorry to be legal about it from the perspective of a non-lawyer – I hope I'm asking the right kind of question – but people's rights under tort law are still in place. I have a non-fault accident; I have a right under my own insurance policy to have a like-for-like replacement vehicle; but some nice person calls me up on the phone and says, 'Well I know your own insurance company's going to give you a replacement vehicle – I gather you've had an accident – but they're not very good; these insurance companies have got a terrible reputation for cutting costs and all these sorts of things. We can provide you with a replacement vehicle on credit hire terms, and your rights under law for us to claim that are uninfringed, so we will happily claim that against the at-fault insurer.' Does your model stop the credit hire model running alongside it?

MR NIGEL GOODALL: Not at all. Our model reflects two things. One: no removal of the rights in law. It's just a satisfaction of those rights via a different method. It also reflects commercial reality. The fact is that most people, when they're involved in an accident, go directly to their own insurance company. The biggest referrer of claims to credit hire companies and claims management companies are insurers, so, if you go to your insurer – a properly regulated insurer, who's obliged to tell you what your rights are under the policy – and they say, 'You can have a replacement car from us; you won't have to pay your excess if you're not at fault; it won't affect your no-claims discount if you're assessed not at fault', they have no reason to be tempted anywhere else. If somebody was to get on the phone to them and say, 'You've received the offer from your insurer; you can also have exactly the same from us. We'll fight for you, versus the insurer, who's trying to do you harm or squeeze you as much as it can', the consumer would still have that choice. What we would think is each one of those insurers – and I would imagine the majority would be perfectly satisfied with the correct offer from their insurance company - reduces the cost in the marketplace by providing the provision at a lower cost. The fact that credit hire is there as a counterweight to insurers doing the right thing I think is a good thing, and I think the comments around the table probably have supported that.

MR STEVE EVANS: Mr Chairman, you've referred to this as a model about four times now, and I have read the submissions and the responses to the PFs and the remedies but I've not seen any economic analysis of what this model is. Could you just outline to us what you think the costs would be annually to the motor insurance industry?

MR NIGEL GOODALL: I'm sorry, is that directed at me?

MR STEVE EVANS: Well, it's your model.

MR NIGEL GOODALL: Yes, sure. Absolutely.

PROF ALASDAIR SMITH: Well, unless you have a set of numbers –

MR NIGEL GOODALL: I don't have a set of numbers.

PROF ALASDAIR SMITH: I think we'll take that as a suggestion that this model –

MR STEVE EVANS: So it's not a model, then; it's an idea.

PROF ALASDAIR SMITH: No, I think it's not costed. I think take that as a suggestion that if this model were to be taken seriously, it would need to be costed.

MR JONATHAN MCKEOWN: The reality is that these remedies, which I say are pointless,is that this is already happening. You don't need first-party insurance for people – because of the credit hire industry being there; we created the situation that meant that insurers were more incentivised to provide this service. You're talking about creating an extra layer for what already happens. If you take providing a car, 75% of insurers are already doing this. Why do you need to change the law, or change anything, when they're already incentivised to provide it?

PROF ALASDAIR SMITH: Well, it would be a matter of whether an alternative way of doing it would provide consumers with a cheaper service, or a better service – a more economical service.

MR STEVE ORAM: Could I just ask Enterprise: the model that you've described – if tort law rights were still established, wouldn't your – I won't use the word 'model' - alternative be very much undermined, because the credit hire company, in grabbing hold of the not-at-fault driver, would be incentivised to offer some financial inducement? It would make economic sense to do that, and therefore, if all credit hire companies – I have a not-at-fault accident; they ring me up and say, 'Steve, we'll give you some money if you'll go with us', then it's a no-brainer.

MR NIGEL GOODALL: Well, I think my answer to that would be if you take experience of other jurisdictions where credit hire doesn't exist – and I use the simplest example: the USA. Tort-based law system; people known as being litigious; people known for being entrepreneurial, so almost the ideal breeding ground for credit hire. Credit hire doesn't exist in the USA. There may be some margins, but it doesn't exist in the market, is a fairly safe statement to make. The reason is because people are satisfied via another means, and as long as people's needs are satisfied via another means, then you remove the need for the more expensive service. Given that it's arisen in the UK, whether there may be people out there willing to buy customers, to provide a hire service, yes, it could possibly happen. I think we've seen with third-party legal services there has been some advertising from some solicitors' firms on the claimant side – the free iPad; the money up front to try and incentivise people to make claims through them rather than potentially not making a claim, or making a claim via some other service. So you couldn't rule it out. We just think that satisfying the need is the key.

MR STEPHEN JONES: Can I just say on the incentives to customers: just to be clear, I'm not sure any credit hire companies around the room pay incentives to their customers in the way that you've described.

MR STEVE ORAM: Don't get me wrong; I wasn't suggesting that happens now, but I was suggesting, if that alternative was introduced, that that may be a characteristic that develops.

MR STEVE EVANS: Yeah. I think a lot of us are FCA-regulated, and that wouldn't arise.

MR STEVE ORAM: The FCA would stop that?

MR STEVE EVANS: I think the FCA would stop that – making incentives to enter into transactions - yes. So I don't see that as a reality.

MR DIPESH SHAH: I have one last question about Nigel's model. Why do you think that frictional costs, that you explained are the major source of the cost differential at the moment, would be reduced under your system? So, basically, you're saying that the service that is now provided by CHCs would be provided by the no-fault insurers, but still you'd have subrogation, still you would have problems in establishing liability.

MR NIGEL GOODALL: I think the – we may as well stick with it – model that we’ve proposed had two key elements to it to address that – and again, it’s kind of picking the best things from other jurisdictions that we have familiarity with. The first one is you have an industry-wide recognised way for establishing fault. That immediately reduces the friction, because you know how to treat a customer from the moment they’ve made the first notification of loss. It’s not that different from what happens today, where insurers are using liability matrix to decide which customers to refer to credit hire and which ones not. So it’s very similar; it adds no additional cost into the claims process.

And then the second one is you find non-frictional ways to subrogate. And there are different models for doing that as well. It’s done via conventions in France and Spain, where essentially they have a clearing-house model, and when the rules determine I’m at fault I pass the money to you; when the rules determine you’re at fault, we’ll pass the money the other way. Then there are mechanisms in – probably cherry-picking from the best of other jurisdictions – where you control what the actual cost of subrogation is. And the simple example of that model I give is France, because they - essentially, when you're at fault, I pay you what the average cost of repair is, and when you’re at fault, you pay me what the average cost of repair is, and assuming our market share is stationary throughout the year, eventually we end up close enough to break even without having to worry about fighting over each individual one, which is just adding frictional costs into the model. So, we do feel that it’s necessary to introduce other ways in terms of liability determination and subrogation to fully remove those frictional costs.

MR MARTIN WARD: You’re talking about a UK insurance market 20 years ago. That’s what you’re talking about there. I think the second point is I think it’s a false economy, because when Enterprise provided services into the credit hire space to obtain what they needed to out of the market, their receivables went up quite demonstrably, and therefore you’re sheltering – the costs are being sheltered somewhere else. So you’re not removing the costs; somebody has to absorb them. So, if insurers are providing more services - we’ve just talked about perfect-world scenarios and liability, where one party’s at fault and the other isn’t. What about all the disputed cases? What happens when nobody wants to pay the bill? Where does it go? Whose excess does it go against? Whose premium goes up next year? What service did they get? What about the ones where you’re self-insured and they’re not party to this? The UK insurance market has evolved for a reason, and I think where we find ourselves today on subrogation, on tort, I think it’s because it’s an efficient market, and we've reached that position through quite a lot of this type of debate 20 years ago.

MR STEVE EVANS: It’s an interesting point, isn’t it, the other thing in your model, where you held up the United States as an example that works, which is why credit hire’s not been introduced? The UK insurance marketplace does work. It costs £2.69 a year per policyholder to provide him access to his legal entitlement, which is an important element of this, and mobility. There are always going to be frictional costs associated with 25% or 30% of claims where I think it was you, because I'm British, and you think it was me, because you're British too. And that's the way we are, and that's how these arguments arise, and they've got to be dealt with. And it'd be wonderful to put them into a computer and just say, 'Computer says no', but, unfortunately, if my premium is going to rise next year exponentially because a computer says no, that really does me a disservice in terms of the economic argument in all of this.

MR PETER HARRISON: I think that efficiency point that Martin talked about, you know, we've evolved to over several hundred years. I speak as working on the other side of the fence in senior finance positions with the insurance market. We competed the hell out of each other. We were not friendly competitors. We wanted every source of differentiation that we could do, because of the obvious consequences: we could satisfy our shareholders and we'd have an angle on our pricing. When we look at it in the claims context, that's around being as agile as possible, around defending your claims costs, and being better than other people at that. There's some other things as well around what I think someone termed the 'rent' that insurers can earn because of referral fees that come back. Now, that rent is a reward for their distribution model. So if they've got a direct model in particular, they can get their customer, rather than having an intermediary picking that customer up, and that is a material value stream to that insurance company. So, over the 200 years, you've evolved a fine-tuning of the market where you've got two very different but competitive factors. If you remove that and we say, 'Okay, we're going to level the playing field. We're just going to have a first-party model', what's the incentive for the insurers then to compete, where they're going to say, 'Well, we accept that there's 12% of our customers are going to have an accident each year. Whether they're fault or non-fault doesn't really matter; we're going to take that on the chin'? Their competitiveness is actually around managing the average costs down for those 12% of customers who've come in, whether they're fault or non-fault. So I think there is an unintended consequence, potentially, of your 1A model, at market level, that you change the distribution and the business models that have evolved over this period of time. And we're talking of a market that – we have referral fees and it looks odd that you've got these things going round different directions, but at market level we're talking materially of a nil-sum game here. So, you've got some extra costs in the market mitigated by benefits that are arising. And at market level, even under your own calculations, compared to the level of premiums and claim costs that are going around the UK market, whether it's 200, 100 million or nothing, it's immaterial at market level. So, I think that loss of that efficiency and edge in the business models of insurers could disincentivise, and actually you'd have increased premiums going forward, for those who are losing, and not as great a service for the person who's not been at fault in an accident going forward, because he's going to get his costs chipped down.

PROF ALASDAIR SMITH: Okay. I want to move on. I'm conscious of the fact we've only addressed remedy 1A so far and we're a considerable way through the afternoon, but actually, we assure you, on my planned time schedule we're more or less on time. There are some questions we wanted to ask about remedy – we have no questions to ask about remedy 1B. There are some questions I want to ask about remedy 1C, which is also about replacement vehicles. And I'm in your hands. I'm happy to have a break now for five minutes and then get on to that, or we could deal with the rest of the replacement vehicles issues now and then have a break before getting on to other issues. Shall we do it that way? Shall we carry on for another, perhaps, 10, 15 minutes?

MR ROBIN AARONSON: I just wanted to say, particularly for the benefit of the transcript, that in some of the earlier hearings we've had this week, we have discussed a floated variant to remedy 1A involving a kind of fixed subrogation model which was quite close to what was mentioned just now. So I don't propose to say that again now – take up more time – because it seems to me the discussion we've had on 1A has already covered all that ground, but just to let you know in case, when you see the records of the other meetings, you wonder why you weren't asked about that option. It's because we've already, to my mind, fully discussed it.

PROF ALASDAIR SMITH: It's effectively, Robin, if I understand you right – it's a version of the – if we can still call it - model that Enterprise put forward, but with a subrogation at average costs rather than at job-by-job cost.

Okay. Well, if I can move on to 1C, measures to control the cost of providing replacement vehicles. I think we've probably already answered this question in a – you've probably already answered this question in a different way, but let me just be sure. Suppose we had a price control mechanism – a kind of modified GTA - in which the provision of replacement vehicles was controlled at current direct hire rates. Would CHCs be able to provide replacement vehicles at that rate, if you're recompensed at direct hire rates?

MR JONATHAN MCKEOWN: No. I think the comparison - what you're talking about is this legalised price fixing, which doesn't to me sound the appropriate thing. We would say, from our perspective, the only reference that's required is that which already exists. It's the mainstream hire market; it's not the direct hire market, and as we're already unable to recover anything in excess of the mainstream car hire market, that price control already exists. What you're suggesting is that people who want to be independent of insurance companies and want to help the victims of accidents should take less than someone who isn't doing that, which, to me, seems like a big disincentive to want to independently help victims of accidents.

MR MARTIN WARD: Price is a function of risk. So, you know, 1C, measures to control the costs of replacement cars – we're already doing that. We have agreements with insurers on a bilateral basis as to what the costs will be. Each party has got their own bargaining power and leverage. The cost to that is where does the risk lie. If we have to take the risk of recovery, if we have to take the risk of non-payment, if we have to take the risk of loss – and so on and so on – the price is *x*; if we don't have to take those risks, the price is *y*.

PROF ALASDAIR SMITH: But the insurers say to us the GTA is a voluntary agreement, and therefore people come into the GTA only – everybody comes into it only if it's in their interest to do so, and therefore the GTA has – because the credit hire market has the option of staying outside the GTA and fighting your cases through the courts, the GTA has to offer what the insurers would see as relatively generous rates to get you in, whereas what's proposed in remedy 1C is effectively a compulsory GTA, in which the rates would possibly be lower than they are at the moment. And my question was: if a compulsory GTA lowered credit hire rates to something like direct hire levels, would you be able to provide a service economically?

MR MARTIN WARD: It depends what the number is, because it comes to: where is the risk placed? And what I was talking about on protocols is actually - it's not the GTA in terms of the protocol; it's a bilateral protocol where the rates are agreed, and those rates may be different to the GTA.

PROF ALASDAIR SMITH: But the general issue applies. It's still a voluntary agreement in which – what happens to you if you don’t sign the bilateral agreement is what determines what the bilateral agreement is.

MR MARTIN WARD: Yes, but what it does is it removes the frictional costs, because you’re agreeing with the counterparty what actions each party does. And that’s surely based – I mean, if you're trying to drive to an elegant solution that says you have a perfect world where the parties have symmetry of information, equal bargaining power and come up with a negotiated position, that’s exactly what a bilateral is. Those rates are better than the GTA rates, but you remove the inefficiency; you remove the frictional costs; you can make that process cheaper. And that’s the analysis that I would drive to, and that has been transforming - the inquiry started, I think, in 2012; I think the information update on that will demonstrate that the costs of the services under credit hire, in certain instances, are much lower.

MS ANTHONY STERN: Some people wanted to scrap the GTA. Is that what you’re proposing?

MR MARTIN WARD: Some people want to scrap the GTA because - insurers would argue – I’m not part of the committee; there’s people round the table that are – but the insurers would argue that they go that meeting and, you know, evidence is put before that committee by both the ABI and by the CHO; that evidence is looked at; there is an independence to that evidence; and the arguments are had. So, are we saying that the ABI hasn’t got competent, capable bargaining powers to come to the table to negotiate a higher rate versus the credit hire industry? I think not. The fact that they may think it's got out of kilter compared to maybe deploying a direct cost for a vehicle doesn't show both sides of the argument in terms of the risks. The bilaterals just move that on. Insurers can enter bilateral agreements with any of the parties round here that wish to enter into them, and if you don't want to enter into them, I would say insurers have more leverage over this industry than we have over them.

MR STEVE EVANS: And the important part as well is that the GTA came into existence on the back of 20 years of contested litigation in the high courts, and the rates that were arrived at were recognised as being – by both the ABI and the CHO – an economic way of the block-settlement of a volume numbers of claims with the minimum amount of friction. It was never meant to represent something to be a proxy for a daily rate for a particular car. It absorbed all of the administration and incremental responsibility and work that we took on, in terms of managing down the duration, ensuring that liability was dealt with, and aligning with the insurers' capability and capacity to manage these claims, in exchange for relatively prompt payment. The issue around whether or not the GTA is fit for purpose is probably best served out by the fact that it's been in existence for 12 years now, and the number of insurers who still sit at the table and still want to settle claims that way do so because it satisfies their own economic test as to whether it's a valid way to do it. Where we are today is the insurers have had a good wind. They won on LASPO; they won on the personal injury/whiplash issues; they won on civil procedure rules and the costs issues; and they see the Government has given them an easy in into this following on the back of the OFT referral, so why would they not say anything other than that rates are far too high in the current marketplace?

Direct hire rates – you've already asked the question as to whether or not there's a reason for the difference between direct hire and credit hire. To pose the question as to whether or not credit hirers would want to supply a credit hire service at a direct hire rate implies that you don't accept those relevant benefits actually exist within the service.

PROF ALASDAIR SMITH: No, I said I was asking the same question a different way and giving you the opportunity to say, 'No, that wouldn't be possible'. Is that what you're saying?

MR STEVE EVANS: I'll go for no.

MR STEPHEN JONES: And it's because the friction is still there. Direct hire, you're paid within a few days after the end of the rental and there's no need for any discussion or negotiation.

MR STEVE EVANS: The overarching point in all of this – and we said this in the initial hearing that we had and in our initial submissions – is that insurers could have resolved this 30 years ago by operating a 1A version of this model, and what they've done is gravitated towards not having to change the legal environment, but intervening. But they only intervene and provide direct hire where there is no liability dispute – where they know they're bang to rights and they're going to have to pay the claim. And what's left from all of this is the friction. The friction comes from the unavoidability of the fact that, 'It was your fault, not my fault'.

PROF ALASDAIR SMITH: I want to ask just one more question about remedy 1C, which, as I said, you could characterise as being a mandatory GTA. Suppose there were such a system with controlled prices for car hire applied to, say, all motor insurers and all current credit hire companies, and if you wished to do that business you were inside it. Would there be the possibility of circumvention by other car hire companies sitting outside this system and acquiring business – clearly they couldn't acquire business from non-fault insurers, who would be covered by the order, but acquiring business through repairers, through the emergency services, and operating a credit hire model outside the GTA?

MR STEVE EVANS: I think there's sufficient entrepreneurial initiative in the United Kingdom for any kind of regulatory challenge to be looked at to determine whether or not there's a more effective way of dealing with the challenge. I'm not suggesting for one second, coming from Liverpool, that I'd be in any way involved in that. One of the questions you have to ask yourself is that you put in place that process whereby a claim has to be settled at that level because it's in the GTA; what happens when he has an accident and it wasn't his fault, and he decides to go to Hertz and they rent him a car for £45, which is £20 above what you cap the rate at, and it's a legitimate claim, and he goes to a solicitor and wants to send it in? Because, for him, or indeed every commercial motorist who's involved in this process who's going to want to put a claim in place which is not caught by your recommendation. So the issues around the price fixing issue go way beyond whether or not people are intellectually savvy enough to find an alternate way to do it, but, more seriously, go around the fact as to whether or not it actually deals with the problem that exists in such scale here. The GTA is the right solution. We all think that, but we would do, wouldn't we, because we believe in it passionately? Collaboration and compromise is the right solution; we believe that too. But we don't think – and you've heard this from me several times - £2.69 per year should put us into a French model or a United States model or a German model, with all the cost and uncertainty that would deliver.

MR STEPHEN JONES: And we do really think that a 1C model, where you potentially cap rates, will have very minimal impact economically when you work through what would happen and – what would happen to referral fees, which are seen as netting off the cost –

MR STEVE EVANS: And we've got a paper we'll share with you at a later time.

MR STEPHEN JONES: We have a paper on that, because –

PROF ALASDAIR SMITH: Can I just make one comment on something else that you said? I completely agree with you that – and, indeed, things that other people have said – that when you're exploring making changes, you've got to look at them very carefully for unintended consequences, because that's where good intentions go wrong. It's not playing intellectual games to ask, 'Is there a money-making opportunity here for someone else to jump in and make some money on it?' The reason we're doing that is stress-testing our proposals and saying, 'Does this work, or is it vulnerable to somebody coming in and circumventing it and taking the market off in some completely undesirable direction?' So we're well aware of that, and these sometimes rather prolonged discussions are precisely because one wants to be extraordinarily careful before making any changes.

MR STEPHEN JONES: I think the biggest vulnerability with a mandatory GTA is that currently the GTA works precisely because it is consensual. If it was mandatory and claims had to settle within the GTA and you couldn't litigate them outside, there would be no incentive on insurers to settle cases, because whatever happens, we can deny liability. If you can't go anywhere else other than the GTA, then claims would just get stuck.

MR MARTIN WARD: Not everybody might have a car. I just want to expand the thinking slightly and briefly. Think of this as somebody drove their car into your house – not your fault. Yes?

PROF ALASDAIR SMITH: Nor my house's fault.

MR MARTIN WARD: Exactly. Would you like the insurer to turn up and say, 'You've got to use this builder. It's this price. It's these materials. Off you go'? The answer would be: probably not. You would be sceptical. You'd probably want to have a selection in who repairs your house. And the concept is the same here. You'd be sceptical about controlled price delivery which may favour certain types of builders.

PROF ALASDAIR SMITH: You will note I've not asked any questions about remedy 1B, which I think is where that issue is most striking, but the point you've made has been – we felt we understood that general point well enough.

MR MARTIN WARD: Yes. I was trying to link 1C with that as well, by saying if you're controlling the price – so the point was about price - therefore the quality of the service may be questionable as well.

PROF ALASDAIR SMITH: But 1C is not about limiting – forcing you onto an insurer rather than your own insurer.

MR ALAN GILBERT: If I can talk briefly about the question you were actually asking will somebody else come in. If I can take you back 30 years, that's how credit hire started. It started with solicitors who had customers without a car. A gap in the market was there, and that's how we all came about. If you do the same thing and allow other people to be in it, they'll do the same thing; they'll exploit the gap. It'll just change it.

PROF ALASDAIR SMITH: Well, that's an answer to the question I was asking; thank you very much.

Can I suggest we take a five-minute – it's usually a generous five-minute break, and restart as soon after five minutes as possible? After the break, I want to talk about non-fault repair costs, write-off costs, referral fees and repair audits, but we're well over halfway through my agenda – and I trust yours, because I suspect you wished to spend most of the time on the replacement-vehicle issues. So, those of you who are despairing at how much of your weekend is disappearing away, don't lose hope yet.

(Adjourned from 4.10pm to 4.21pm)

PROF ALASDAIR SMITH: Okay. We're almost all back, so let's restart. One thing about the layout of the room I'm particularly conscious of is that those of you in my immediate field of vision are – you're more likely to catch my eye than those on the periphery. So I particularly encourage you that, you know, if you do want to join in, you probably have to make a little bit more effort than the people I can see more easily.

MR ANDREWS: Don't worry about that.

PROF ALASDAIR SMITH: Don't worry about that, alright. I was just afraid you were shrinking over in the corner over there. Okay.

I want to move onto measures to control non-fault repair costs, and I'd like to kick off by asking whether you have views about how the insurance industry is likely to respond to the judgment in *Coles v Hetherton*, which has essentially validated a particular repair cost model that has been pursued by RSA, and whether you think that that's likely to lead to other insurers following the RSA model. Perhaps - WNS, having said something about the people on the periphery, perhaps you might want to kick off on that if you have any views on it.

MR MARK GRAYSON: You're probably not asking the right people, to be honest. I think that's a really difficult question. I mean, insurers are commercial beasts, and I'm sure that some insurers are looking at that judgment at the minute and thinking, 'If it goes unchallenged and sticks, then why wouldn't I do the same?' And there are insurers out there who have own networks that they own, so why wouldn't they make some benefit – advantage of that?

PROF ALASDAIR SMITH: Okay. Anyone else got any views on it? I mean, if it's not something that you folks feel that you've got any particular insight into, then let's move on.

MR JONATHAN MCKEOWN: Well I think it's worth making the point that when you take your survey that said there were excessive cost pressures on repairers, then no insurance company should be making any margin or pecuniary advantage at the cost of their insured or the repair industry. That's the only comment I'd make in relation to that. Between insurers, they have the ability to waive that margin, and I'd say if they're doing it, which is putting an adverse impact on the quality of repairs, then that obviously isn't a good thing for consumers.

PROF ALASDAIR SMITH: Okay. In considering ways of trying to control non-fault repair costs, we put forward under remedy E two possible options. One of them was that the bill paid by non-fault insurers to repairers – the actual bill which they paid – should be passed on to the fault insurer without any mark-up – so, at the actual cost paid for the repair. A couple of concerns have been expressed to us about that. One is that it would remove the incentive for the insurer to keep the repair costs down. Any views on that? [Pause]

MR STEVE EVANS: We care a lot about insurers and repairs.

PROF ALASDAIR SMITH: Yes. Okay. The other concern that was expressed was that it would very hard to implement that kind of rule with those insurers who've got integrated repair networks, because the bills that they receive from the repairers are internal transactions and therefore requiring them to bill the fault insurers at the actual cost that has been billed by the repairer is not a -

MR STEVE EVANS: You asked about circumventing. You don't need to be from Liverpool to work out you just go and buy some body shops, and your cost is your cost. Whether your cost is bigger than somebody else's costs in place is your issue. And most of the large insurers have done that over time; just RSA seem not to have done it in the same way.

PROF ALASDAIR SMITH: So, attempting to control in that way, the passing forward of non-fault repair costs would be circumvented, in your view.

MR STEVE EVANS: To the extent it isn't already. I mean, we're – certainly from AEx's point of view, we're relatively agnostic on this. We take the view of *Coles v Hetherton*. It was a good judgment. It set out the law on tort that goes back several hundred years, and we should all reflect on it. That's the best I can do, I'm afraid. The Supreme Court may well consider it or may not.

PROF ALASDAIR SMITH: In due course, when people get frustrated at the length of time it takes to do CC market investigations, I've now learned to say, 'Oh, well, would you prefer we operated at the rate of the High Court, the Appeal Court and the Supreme Court in arriving at decisions?'

MR PETER HARRISON: The insurers have to agree to pay each other, though, don't they, as well? So there's got to be some moderation, otherwise they're going to stack all the repair invoices and be suing each other. So I think as a population, they're capable of resolving their own differences in that way.

PROF ALASDAIR SMITH: The other remedy that we put forward under the heading of 1D was the idea that when an at-fault insurer passes forward a subrogated bill to the fault insurer, that that bill should be calculated in some kind of standardised way, perhaps using one of the industry-standard cost-estimating models, so that you take the description of the repair and you price it up in a standard way and that that's what gets subrogated. It's not quite as crude as what you, Nigel, described is done in France, where there's the same fixed price for every job, but it would be the price calculated on a standardised basis. Do any of you have views on that counter-system?

MR MARK GRAYSON: To a certain extent that already exists, because Audatex currently – or GlassMatix; whichever system is used – places the standard parts price that's to be charged, tells you how much labour is to be charged to fit that particular part to a vehicle. The variables are how much per hour the repairer might charge for the labour that they're doing. The paint that they use is relatively fixed. So, to a certain extent, that sort of standardisation currently exists. I mean, to go to the whole hog of can you try more or less to come to some sort of average repair cost, I think it would be incredibly problematic.

PROF ALASDAIR SMITH: Well, it wouldn't be an average repair cost; it would be working out the repair cost for each job but on a standardised basis rather than on - whatever bill the insurer agreed with the repairer would not be what got passed on, but rather a bill that was calculated off a standardised audatex type of system but with agreed prices fed in.

MR MARK GRAYSON: Sure. But what you have at the minute essentially is – throughout the market there's an end output, which is an average repair cost coming out, and to impose something on a market that probably, if you went, couldn't tell you what its average repair cost is across that market – to then impose something on them that may change that average - you wouldn't know whether it would change it up or down – presents you with a risk that what you've come up with is a costlier solution than what you have currently. Repairers will look at this in the round. They'll look at the basket of work that they've got coming in, and if you've just imposed it on non-fault car repairs, which is a small subsection of what they do, if they lose out on the non-fault costs, then they will look to try and pass that cost back through the at-fault repairs that they carry out instead.

PROF ALASDAIR SMITH: So even though the proposal is not a proposal to control the actual repair cost, just the subrogated bill, you're thinking that would affect the negotiations with the repairer?

MR MARK GRAYSON: Yes.

PROF ALASDAIR SMITH: Yeah. Okay.

MR ALAN GILBERT: At the moment, the credit repairs that come from CHCs are agreed by an independent insurance engineer. The Audatex list that is produced by the systems are discussed; those are checked by an independent insurance engineer to make sure that they're okay – somebody that's not behoven to either ourselves or the insurers – and that cost is passed on to the insurer. It's exactly what happens right now.

MR MARTIN WARD: I think the question's for a different audience. I think this audience will probably struggle, because the bills that are produced by repairers are passed on to insurers as they are. I think it's really the subrogated model with insurers I think that you probably need to address that with.

PROF ALASDAIR SMITH: Let me move on, then, to remedy 1E, which proposed measures to control write-off costs for salvaged vehicles. Has anyone got any views on that that they wish to share? I thought if you weren't hugely excited by repair cost issues, then the chances of you being agitated about salvage cost was probably even less.

MR ALAN GILBERT: I think there is a good opportunity of, again, some unintended consequences. At least the insurers are motivated at the moment to try and come to a settlement with the client. They can make a little bit of money, perhaps, on the salvage. But, as Martin said earlier, the PAV – the pre-accident value of a vehicle - isn't set in stone. You can't go to the library and look it up; it's a range of values. There's a bit of negotiation that goes on. I think that if this ability was taken away, you'd end up with lower-than-average PAVs given to the consumer and the consumer would just suffer.

PROF ALASDAIR SMITH: There's nothing I want to ask about remedy 1F, which was improved mitigation about the provision of TRVs, so let me move on to the issue of referral fees, where in remedy 1G we asked the question whether referral fees should be banned. It's been put to us that the referral fees which are paid by CMCs and CHCs are a legitimate marketing expense. So, the question that arises from that about the possibility of banning referral fees is: if referral fees were banned, what forms of marketing would you feel you had to do to replace the referral fee route?

MR STEVE EVANS: Just because you've built a bit of time in the process now, having gone through the other two quite quickly, could I ask the panel which AEC this one is meant to address? I'm just keen to understand. This ban on referral fees; what's this meant to reduce?

PROF ALASDAIR SMITH: I'm hesitating between two answers. One of them is to say: we're here to ask the questions and to hear your answers, not the other way round.

MR STEVE EVANS: So you don't know, then.

PROF ALASDAIR SMITH: No, no. But since it's late on a Friday afternoon, let me be more generous, and say: I think the picture that we have on proposals to ban referral fees is that, on its own, a ban on referral fees would achieve nothing, because referral fees are a consequence of the way that the market is organised rather than a primary cause of issues. But there might be other remedies where a ban on referral fees might help support them. For example, we talked earlier about how you might operate an enhanced GTA on a legal basis that controlled TRV costs and whether there were circumvention risks. Well, the opportunities for people to devise successful circumvention models might depend on whether it was easy to charge referral fees or difficult to charge referral fees. That's how we see it. So, we see it as likely to be primarily in support of other remedies rather than in itself a remedy to one of the AECs. So I hope that that's a clear answer to your question.

So, can I repeat my question? If referral fees were banned… And I have to reciprocate by asking you if you wish to volunteer to answer this question. If referral fees were banned and if referral fees are primarily a legitimate business-acquisition expense, how would you go about acquiring business in a world without referral fees?

MR STEVE EVANS: I'd probably go back to the first question, about the AEC, because I think the Commission has recognised that – is it £98 million by your calculation - passes through – or an element of that – passes through to the consumer's benefit. So, my difficulty is understanding how it works with one or other of the alternatives. If we talk about price capping, then the £1,100, or £1,085, or whatever the credit hire figure that we talk about, comes down and our ability therefore to pay commissions comes down as well. So, working with another remedy does not actually give us the capacity to pay more commission; it actually reduces our ability to pay commission and therefore impacts upon the whole justification around the AEC as well.

If you want the question in isolation – if you capped referral fees, what would we do instead? I don't know.

PROF ALASDAIR SMITH: Okay.

MR STEVE EVANS: In truth, I don't know. We'd probably be –

PROF ALASDAIR SMITH: Well, does anyone else have any thoughts on that?

MR DAVID SANDHU: One solution you could have with regards to capturing customers – and obviously referral fees at the moment are paid to those that have those customers – would be with the development of fitting boxes on cars to track the car and therefore be aware when a car crash has occurred and proactively speak to the customer. There's obviously a cost of attaching that box to the consumer's car, but you could fund that out of not paying referral fees.

PROF ALASDAIR SMITH: So who would attach the box?

MR DAVID SANDHU: Telematics boxes.

PROF ALASDAIR SMITH: Yeah, but –

MR DAVID SANDHU: Vehicle manufacturers; dealer groups; the people that sell the car; the telephone companies that, when you put your phone in the car, track where you are with GPS. If you weren't paying a referral fee, you could use the funding to fund that initiative to ensure that you connected with the customer in the car.

PROF ALASDAIR SMITH: Oh Lord. So I'd have a box in my car that every so often rang and offered me a PPI claim or a new boiler or something, as well as… Right.

MR DAVID SANDHU: Of course there may well be cross-selling opportunities once you have that access.

MR ALAN GILBERT: I think the Commission has got to look back to actually what's out in the marketplace. If you look what happened when PI referral fees were banned, LJ Jackson regarded it as abhorrent that insurance companies could extract value by passing customers along. Do you think their ability to extract value has diminished?

PROF ALASDAIR SMITH: Well actually, you've nicely brought me on to my next question, and, having answered one question already, I really am going to push that one back to you and say: do you think that the banning of referral fees for personal injury has been successful?

MR ALAN GILBERT: No, not at all. Not in the slightest. The only thing that was successful was reducing the amount of money that the solicitors could take out of it. Banning referral fees per se was never the response, and the people that pass on claims have continued to derive value.

PROF ALASDAIR SMITH: Well, I think, if I may, that was my reluctant answer – not reluctant because I – eventually, that was my answer to Steve: that banning referral fees in itself doesn't do anything but it may be part of a different remedy. Anthony, you wanted to ask something.

MS ANTHONY STERN: I was only going to make the observation that

Lord Justice Jackson partly put it the way you describe it, and partly said the problem with referral fees is that it's a perverse incentive; you choose your supplier because of the amount of money they pay you, not because of the quality of the work you do. Do you think that's a fair comment?

MR ALAN GILBERT: No. Not in the slightest. I think consumers follow the line of least resistance very often and they go very often where they're directed, often by the people they trust, which happens to be their insurance company. So, I don't think there's any more consumer choice in the personal injury field than there ever was. But for them to be 'abhorrent', which he did describe them as, is woolly thinking. It's completely woolly thinking and without any support or justification.

MR DAVID SANDHU: Can we also be clear that referral fees per se are not banned? It's the passing of customer data linked to the payment of referral fees that was banned through LASPO.

MR STEPHEN JONES: And I think we've seen what's happened in terms of is it effective. Well, vertical integration of insurance companies establishing their own law firms – they responded to that challenge admirably.

MR STEVE EVANS: And they weren't from Liverpool either, were they?

PARTICIPANT: Not all of them, Steve.

PROF ALASDAIR SMITH: Okay. I have got to the end of the questions that I wanted to ask on theory of harm 1, but I'm looking around my colleagues in case there are issues we still want to raise. Well, if not, we can move on to theory of harm 2, compulsory repair audits. Steve, you’re in the limelight at last.

MR STEVE ORAM: You’ll be glad to know that I’ve only got two questions on theory of harm 2. One’s a specific question and the other’s a more general one. The specific one isn’t to do with MSXI. You and others put vigorous responses regarding your views on MSXI, so we’re considering those. The question I’d like to ask, which is quite an important one, is to do with monitoring of the quality of credit repairs. And so I’d like to ask: what mechanisms do claims management companies typically have in place in relation to monitoring the quality of credit repairs? I say ‘typically’ because I’d prefer you not to tell me the detail of your own specific ones, unless you happen to do so. So maybe I can kick off with WNS.

MR MARK GRAYSON: Sure. I think the majority is essentially the market works on the basis that a sample of repairs are checked by somebody employed by that CHC going on site as part of a general audit, but also while they’re there doing spot-check audits on vehicles that are on site. Do CHCs formally sign off repairs at the end with some form of quality check? No. Is that plausible? I’m not convinced it is, because I think it would just add cost in terms of elongated hire periods at the end of the process.

MR STEVE ORAM: So, again, typically, how frequently would a CMC carry out an inspection?

MR MARK GRAYSON: It’s very difficult to talk about other CHCs and talk in the round about that. I mean, for us, for example, we do [CONFIDENTIAL].

MR STEVE ORAM: And if I've heard you correctly, that inspection doesn't include looking actually at the car that's being repaired.

MR MARK GRAYSON: No, that's not correct. The [CONFIDENTIAL] will involve a review of vehicles that are on site at that particular point in time, [CONFIDENTIAL].

MR STEVE ORAM: Right. And just pursuing that a bit further, so, when an audit is conducted – and you seem prepared to talk about your own, so if that's so, then fine. When that audit is conducted, do you just look at the cars that you're involved in, or do you take a wider view and look at all cars, including the ones you're not doing, in order to get a view of the competence of the body shop?

MR MARK GRAYSON: No, we wouldn't look at other people's work while it's in the body shop. No.

MR STEVE ORAM: No; you'd just look at your own.

MR MARK GRAYSON: Yes.

MR STEVE ORAM: Right, fine. Okay. And does that sound to the rest of you typically the way that things would be done?

MR PETER HARRISON: You'd have preventative controls as well, so who actually qualifies to be a repairer and what screening you do and what standards you want them to work to – and accreditations - before they actually get let loose on a vehicle. You've also got complaints monitoring as well. I know in the report you say it's not necessarily the same as the technical analysis of a repair, because a customer may not be expert, but it's an indicator.

MR STEVE EVANS: Ours is probably slightly different, in that our clients generally will select their own repairer because of the way in which our business is built, and those repairers are predominantly franchised motor dealers, where the manufacturer has got the extensive both control systems and other measures, and where at the end of the repair the manufacturer/dealer will provide the warranty in relation to the car. Because the consumer's selected it, he tends to be more diligent in connection with the repair quality of it; because it's a manufacturer-based system, we rely upon their capacity to ensure that their franchised dealers are doing the job correctly.

MR STEVE ORAM: Right, okay.

MR MARTIN WARD: I was going to say from a quality perspective it starts at the front, not at the back. So, in selecting the repairers that you work with to put your work, you check your quality beforehand. You do your due diligence. Once you accept them onto your panel in order to do your work, you've satisfied yourself that they are the expert to do the repairs. Your monitoring then of complaints and any rectification work is taken into account, and if somebody's above sort of the norm or the deviation, you would pay them a visit and see what's going on. If they don't meet the quality criteria to be on the panel, then they would be removed. But the quality is upfront.

MR STEVE ORAM: Just give me a flavour, briefly, of what would be involved at that first examination before you actually used that body shop.

MR MARTIN WARD: Inspection of the premises; their accreditation to PAS 125, for example, or their ability to work towards that; their complaints register; a number of things about their ability to work to an SLA condition; their ability to use parts or supplies that are accredited, so they're not using substandard components. So, a list of things that we would do in due diligence around those qualities that would suggest that they are a repairer that you would entrust with the work.

MR STEVE ORAM: And it’s something we've asked others to supply - presumably, when there’s an investigation or an examination – a monitoring check - including the initial examination, reports are done for you. And I just wondered, if that’s the case, would it be possible if we wrote to you to see some copies of those sort of reports – of the initial one and then of some ongoing monitoring? Would that present any problems?

MR ALAN GILBERT: I think in our case it would be rectification reports. We’re usually involved in a situation where the customer’s said, ‘This isn’t right’ and we’ll go in and have the fault rectified. Now, of course, the effect on us is much, much bigger than it is for an insurer, because a lot of cars where customers have got some rectification, we’ve still got a car on hire.

MR STEVE ORAM: I understand that.

MR ALAN GILBERT: So that means that our quality – the quality of repair for us is really important, because if it goes wrong, we bear the costs. That’s a completely different end of the telescope to an insurer, who’s simply seeking – the at-fault insurer is simply seeking to get that repair done for the minimum cost.

MR STEVE ORAM: No, I understand what you're saying, but my question was: would supplying us – if we write to you, would supplying us with some example reports of the quality checks that you've done - would that present any problems?

MR ALAN GILBERT: I don't think so.

MR STEVE ORAM: I mean, we can write to you and get it privately and confidentially.

MR ALAN GILBERT: There'll be some redactions in it, because we wouldn't want to identify the repairer - that sort of thing.

MR STEVE ORAM: Okay. No, that would be helpful.

MR ANDRIJ JURKIW: Could I ask a question? Is that before you decide whether, in fact, the extensive comments you've had which suggest that you've not established an AEC here is decided?

MR STEVE ORAM: No, we're not at the stage of having taken a decision, but there is a mountain of evidence presented to us about the MSXI study, so, as I say, that's something we will be considering.

MR ANDRIJ JURKIW: Yes, but I'm thinking in terms of the timing – your timing – you're asking for, obviously, additional data on an issue when you've not yet decided and you've got a stack of evidence that's suggesting to you, exceptionally loudly, that actually the basis on which you reached the decision of an AEC on ToH2 is fundamentally flawed. So therefore, do you need additional evidence yet?

MR STEVE ORAM: We'd like to see… There's been criticism of the MSXI saying that it doesn't demonstrate that there's an AEC.

What I'm asking is: since you're saying that you do the checks – quality checks - could I see some reports? And that's all. And we'll be writing to you fairly promptly.

MR ANDRIJ JURKIW: Yes, that's absolutely fine.

MR BRENDAN ELLISON: I would almost say that every credit repair is an audit, because an engineer will pre-inspect that vehicle to establish what damage there is, and before that vehicle goes back to the customer, the customer will sign a satisfaction certificate, and also the repairer will provide a list of all the parts, paint, materials that have gone into that repair, which acts as an audit to make sure the repair's been done properly.

MR STEVE ORAM: It's certainly an audit prompted by customer perception, and it's an audit of the body shop supplying process data, but it's not an audit of the actual quality of the repair. I mean, those may result in a good quality repair, but it's not necessarily a guarantee.

MR MARTIN WARD: And can we make clear that we're talking about a credit repair as opposed to a non-fault repair? Because there is a difference. If you're talking about an insurer intervening on a case and providing services and directing a repair to be conducted as a non-fault first-party insurer – are we talking about that, or are we talking about a credit repair? Because there is that distinction.

MR STEVE ORAM: Yes.

MR MARTIN WARD: Because I –

MR STEVE ORAM: No, it's a fair question.

MR MARTIN WARD: I took the read to be that you have to read the language very carefully to be where that has been provided under some form of intervention. So it's been provided by the insurer under the banner of non-fault but not necessarily on a credit repair, which we can't account for.

MR STEVE ORAM: It seems to me that what we're asking for is reports of any repairs that a claims management company's handled.

MR CURZON-PRICE: Yeah. I mean, if you're doing credit repairs, I think that's what we'd be interested in.

MR MARTIN WARD: Sure. Yes. No, I was conflating two things. I was saying in the report there are comments around 'non-fault repair', which is not necessarily credit repair, and it was easy to confuse the two - as a reader of the report, not necessarily from a trade perspective, it was easy to confuse the elements where that service was provided, so I didn't want that to be a broad-brush approach to those two elements.

PROF ALASDAIR SMITH: I think it's best to say we've had a – as Steve said, we've had a large volume of comments on the MSXI report, which we're considering very carefully. If, in the process of that consideration, we wish to seek further information from you, then we will make sure that any information requests are very carefully specified, and the question you've asked is a very helpful one in that regard.

MR STEVE ORAM: Yes. I've got nothing else on that particular issue. I'd like to ask the general question now, and that's: for those of you who submitted responses to the remedies notice, do you have any further comments on remedy 2A, relating to theory of harm 2? And for those of you who didn't submit a response, do you have any comments to make beyond what we've covered today? So this is a general one, open to all of you.

PROF ALASDAIR SMITH: And just to remind you, remedy 2A is the proposal of compulsory audits of repair.

MR JONATHAN MCKEOWN: We would be quite happy to do post-repair inspections on every repair, but the problem that you're going to have is that there's a cost, which no one's going to want to bear. So, we would be delighted if there was a mechanism that meant that the costs were recoverable. That would be ideal.

MR STEVE ORAM: Yes. In our remedies notice we made clear that wasn't what we were looking at.

MR JONATHAN MCKEOWN: I know.

MR DAVID SANDHU: It's also fair to recognise that in law as it stands today, engineering costs in inspecting vehicles, either pre event or post-event, are not recoverable in law. That was by – I think it was *Clark V Ardington* in the Court of Appeal.

MR ALAN GILBERT: I think the comment I'd make is that you can't engineer quality in – you can't audit quality in. Any process engineer will tell you that you can't audit it in; it's got to come from the outset. And it's the difference in attitude between the claims that we handle and the claims that an at-fault insurer handles that produces the difference in quality, because we are not concerned, necessarily, with cutting costs. The costs have got to be reasonable; they've got to be right, but we're not out there persuading an engineer or a repairer that he's got to spend two hours on that part, not four hours. That's why I am confident – absolutely confident – that our repairs are a much higher quality than was revealed in that survey. Absolutely certain.

MS ANTHONY STERN: The difficulty is: how can you demonstrate that? Because in a sense, that's what the MSXI analysis was trying to do, was to look at quality. How can you help us by demonstrating that your quality is actually better than that of insurance companies?

MR ALAN GILBERT: By showing that our complaints ratio is point-zero-something of a percent.

MR PETER HARRISON: Couldn't you extend your survey to the kind of repairs we handle, rather than just insurers?

MR ALAN GILBERT: Sorry, why would you grimace at that?

MS ANTHONY STERN: I'm sorry; the reason I was grimacing was because two of you were speaking at the same time and I couldn't hear what the other gentleman was saying.

MR ALAN GILBERT: Okay. I've answered your question, which is: I think we can do it by looking at our complaints ratio. Assuming that our customers are just as ignorant as everybody else's customers, if our complaint ratio is lower, then our quality of repairs has to be higher, because the audience is exactly the same. And our complaint ratio is very, very low.

MR MARK GRAYSON: But I think that's – you've got the data in terms of what the insurers' complaint ratio is. I doubt very much that the insurers are running at the complaint ratios the MSXI report talked about. If they were, they would need complaints departments that were as big as the claims department to manage those. So, I think I would differ slightly there, in that I think most organisations are managing repairs to the same level of quality, be they fault or non-fault.

MR PETER HARRISON: My comment was: why don't we test that in the way you've done for the insured work? You know, you test repairs and inspect them, or whatever you did on the work that led you to your conclusion in regard to insurer-based repair work.

MR ANDRIJ JURKIW: You're surely not suggesting a test on the basis of the experience of MSXI, are you?

MR PETER HARRISON: Well –

MR ANDRIJ JURKIW: In all seriousness.

MR PETER HARRISON: Well, it's evidence-gathering, isn't it? So, if the hypothesis is that when a claims management company manages a repair it's as equally bad as when an insurer does it, then you can use the same mechanism to test that, surely.

MR STEVE ORAM: All I'd say is that I'm sure we will have a lengthy discussion about the responses to the MSXI study and the implications of that, and I'd leave it at that. But is there anything that anybody else wants to say on 2A?

MS ANTHONY STERN: May I just ask one more question?

MR STEVE ORAM: Please.

MS ANTHONY STERN: This is a general question. You mentioned PAS 125 in passing. Does PAS 125 give you comfort that repairs are being done properly? Sorry, is anybody nodding?

MR MARTIN WARD: I think the answer has to be yes. I mean, there's accredited recognition for quality. I'm not holding ourselves out to be expert in terms of being able to provide that accreditation, so therefore you look to the industry to provide that accreditation. That is the benchmark.

MS ANTHONY STERN: That is true. Can I ask the people who were shaking their heads what their view is?

MR STEVE EVANS: I think it's a standard, and it's predominantly an administrative standard the body shop industry bought into and probably regret having bought into, because I don't think it's actually improved their efficiencies dramatically. But it does allow them to follow a process, and, to the extent that following a process gives you a better quality of repair, then it probably works. I think the reality behind it is it's still the quality of the individual workman; it's probably the parts that he's using; it's definitely the kit that he's got and his ability to blend paint that is the thing that's likely to cause most reaction from consumers when the car comes back in two colours. PAS 125 won't really fix that.

MS ANTHONY STERN: Anybody else got any other comments on that?

MR MARK GRAYSON: From a technical perspective, I think PAS 125 is a good thing in terms of consistency; I think it's deficient slightly in terms of the more customer service metrics, if you like, around it. It doesn't propose anything around what the body shop consists of for the customer to visit on a day-to-day basis. So imposing it I don't think is – so mandating PAS 125 I don't necessarily think is the way to go, because the sheer cost of it for smaller body shops is, I think, too much to bear, and ultimately gets passed back through premium [inaudible].

MS ANTHONY STERN: Thank you very much.

PROF ALASDAIR SMITH: Are there any comments on any other aspects of the remedies paper that we haven't covered that are of burning concern to any of you and that you wish to raise today, or have we covered the issues in the remedies paper that you hoped to cover?

MR MARTIN WARD: I think there are. To address your opening comment, I think some of those should be done in private.

PROF ALASDAIR SMITH: Okay. Well, we have opportunities for bilateral hearings with some of you next week and we're looking forward to that.

If not, then we're almost done for today. It remains for me to thank you again very much for coming along. But I'd also like to say something about what's happened in today's meeting and what we're going to be doing as we go forward from it. I'm very conscious that, for most of you, the structure of today's meeting had a slightly unsatisfactory – perhaps more than slightly unsatisfactory form, in that you had an opportunity at the beginning to tell us, often in quite vigorous terms, why you didn't believe the arguments in our provisional findings, and we heard that and then proceeded to a discussion about the remedies for failings which you don't accept exist. For us, this meeting was indeed to explore the potential, including the potential weaknesses in the remedies that we've put forward, and it's been very helpful for us to get the responses to them. But I do want to assure you that the fact that we were here today to discuss remedies with you does not mean that our minds our closed on the AEC issues. Our provisional findings are what they said - provisional findings – and in discussing remedies, we're not prejudicing further consideration of these findings. I'm very conscious of the fact that in your written responses to the provisional findings and then in the introductory remarks today, you have vigorously disputed both some of the statistical work underlying the provisional findings and some of the conceptual work, or the modelling, underlying them as well, and I just want to reassure you that the arguments that you've made in all of those areas will be very carefully considered and, indeed, specifically on the statistical front, as you know, we are doing further work and the results of that work will be shared with you when the appropriate time comes. So, this is just to say you may not today have had any feedback or, indeed, much discussion of most of the things that you said in your initial statements, but they have not been forgotten and they will not be forgotten; they will be taken very seriously indeed.

And I think that's probably all that I need to say for today. Thank you very much. We look forward to working further with you as our investigation proceeds.

MR STEVE EVANS: Could I just ask one administrative question?

PROF ALASDAIR SMITH: Yes.

MR STEVE EVANS: We've had I think one or two requests for some further data, and we're in the midst of audit at the moment, which is an awfully difficult time to get hold of financial resource and prioritise them on that. I was just keen to understand whether there's likely to be more requests for qualitative data coming out, and if there is, can we avoid the, 'It's Christmas Eve; can we have the answer by New Year's Day, please?' type approach, just because of the fact that we are under pressure, as a large company, to deal with certain other issues over the course of the next month or so.

MS ERIKA LEWIS: So yes, if I take the answer to that question, we will be asking for more data, for exactly the reasons that you pointed out at the beginning, which is that we recognise that we need to do more work, so that's what we will be doing. And if you can give us information about, you know, what you can manage, and we'll try and manage that with you. You'll see all the way through, as Alasdair pointed out at the beginning, there's an intense kind of tension between what you want, which is quick answers from us, and what we want, which is quick data from you, and we're just going to have to work through that together, I think. So yes, I hear you. We will want more data; I think you'll want us to have more data. So, we just need to work through that together. Sorry; it's part of the process.

PROF ALASDAIR SMITH: But I can guarantee that there will be no more requests over the Christmas period. Okay, well thank you all very much, and have a good weekend, all of you.

(**Hearing concluded at 5.05 p.m.**)