COMPETITION COMMISSION

PRIVATE MOTOR INSURANCE MARKET INVESTIGATION

Notes of a hearing with Brokers

held at

Victoria House, Bloomsbury Place, London WC1A 2EB

on

Thursday, 27th February 2014

PRESENT:

FOR THE COMPETITION COMMISSION:

Professor Alasdair Smith	Chairman
Mr Roger Finbow	Member
Mr Robin Aaronson	Member
Mr Steve Oram	Member
Mr Anthony Stern	Member
Ms Erika Lewis	Inquiry Director
Mr Peter Baker	Inquiry Co-ordinator
Mr Graeme Reynolds	Director of Remedies and Business Advice
Mr Dipesh Shah	Business Adviser
Mr Philip Dixon	Business Adviser
Mr Katy Cox	Business Adviser
Ms Julie Bon	Economics Director
Mr Peter Wantoch	Economic Adviser
Mr Tony Curzon-Price	Economic Adviser
Mr James Jamieson	Economic Adviser
Mr Enrico Alemani	Economic Adviser
Mr Adriano Basso	Economic Adviser
Mr Simon Jones	Legal Director
Ms Charlotta Blomberg	Legal Adviser
Mr Pietro Menis	Legal Adviser

FOR BGL:

Mr Peter Thompson	Group Director, Intermediated Businesses
Mr Ron Simms	Director Corporate Services
Mr Miles Trower	Partner, TLT

FOR BIBA:

Mr Graeme Trudgill	Executive Director
Mr Carl Shuker	BIBA Motor Committee Member A-Plan
Mr George Nicol	Branch Manager Gallagher Bassett and BIBA Motor Committee Member

FOR HASTINGS DIRECT:

Mr Michael Lee	MD Insurer Services
Mr Jonathan Sutcliffe	Claims Director

Mr Tobias Van Der Meer	Managing Director
Ms Nicola Charles	Marketing Director

FOR SWINTON:

Mr Gerald McLarnon	Marketing Director
Mr Chris Collings	Director of Insurer Development
Mr Christian Plumber	Chief Financial Officer
Mr Mark Hallam	Head of Products

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(At 10.07am)

PROF SMITH: Let me start off by welcoming you all to the Competition Commission. Welcome back. Thank you for coming to see us again to help us with this inquiry. Let me start with introductions. I'm Alasdair Smith. I'm the chair of this inquiry group, and arrayed on this side of the room we've got members of the staff team and members of the inquiry group. I'll now ask them to introduce themselves, starting with Kate.

MS COX: Katy Cox, financial and business adviser.

MR DIXON: Good morning. Philip Dixon, financial and business adviser.

MR SHAH: Dipesh Shah, financial and business adviser.

MR MENIS: Pietro Menis, legal adviser.

MR BASSO: Adriano Basso, economist.

MR FINBOW: Roger Finbow, one of the members.

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

MR ORAM: Steve Oram, panel member.

MR AARONSON: Robin Aaronson, panel member.

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

MR ALEMANI: Enrico Alemani, economist.

MR JAMIESON: James Jamieson, economist.

MR JONES: And I'm Simon Jones. I'm one of the legal advisors.

MR BAKER: I'm Peter Baker, the inquiry coordinator.

PROF SMITH: You may notice that one member of the inquiry group, Anthony Stern is unfortunately absent today for health reasons, but he has promised to read the transcript of the hearing assiduously and with great care, so he will indirectly hear all of the evidence that we're hearing. Can I ask you too to introduce yourselves?

MR VAN DER MEER: Tobias Van Der Meer, managing director at Hastings Direct.

MR SHUKER: I'm Carl Shuker. I'm the chief executive of A-Plan Insurance, but I'm here with BIBA.

MR TRUDGILL: Graeme Trudgill, executive director of the British Insurance Brokers' Association and former insurance broker.

MR THOMPSON: Peter Thompson, BGL Group. I'm a director.

MR SIMMS: Ron Simms, corporate service director, BGL.

MR COLLINGS: Chris Collings, insurer development director at Swinton Insurance.

MR MCLARNON: And I'm Gerald McLarnon, the marketing director at Swinton Insurance.

MR HALLAM: Mark Hallam, head of products at Swinton.

MR PLUMER: Christian Plumer, finance director at Swinton.

MR TROWER: Miles Trower, BGL legal adviser.

MR NICOL: George Nicol, BIBA, Gallagher Bassett branch manager.

MS CHARLES: Nicola Charles, marketing director, Hastings Direct.

PROF SMITH: Thank you all and welcome again. Let me say a few words of introduction. As you're aware, most of today's meeting is structured as a joint hearing, and we've been mindful of this in preparing the questions that we're putting to you, because we don't want to initiate discussions among you which it would be inappropriate for you to have as competitors. But I do want to remind you at the start that it's fundamentally your responsibility to ensure that you don't provide information in the course of this meeting that would be inappropriate for you to provide. If there are issues on which you wish to make confidential submissions after the meeting, we'd, as always, be very happy to receive them and treat them in the way that we normally treat confidential information.

I think you've been told that at the end of the meeting the – we want to have a discussion with BGL not present and – although we want to start, we want to give BGL an opportunity to comment on that issue before we have what we might regard as a separate meeting. Actually, let me say something a bit taking with the transcript and what we're going to do with the transcript, and then say something about what we're going to do with that last part of the meeting.

As you see, we're taking a transcript of this hearing as a record, and we'll send it to you within the next week. And we'd ask you to check it carefully for accuracy, and if there are any errors of transcription or any slips in what has been said by way of evidence please correct that on the transcript. Could you also please check the transcript in case there are substantial issues that you want to enlarge on, which you should do in a separate letter, or if there are inadvertently any confidential issues have been covered which you wish to have redacted from the published version of the transcript, because our intention is, because this is a multi-party hearing, simply to publish the transcript rather than, as we would normally do with a single party hearing, publishing a summary of it. So please check the transcript when you receive it.

Obviously the very last part of the meeting with asking to have a brief discussion with three of you with BGL absent we will treat in the way that we would treat a confidential transcript. And we will give careful consideration to balancing the issues of confidentiality in any confidential materials covered there with our normal duty of disclosure as much as possible. That's what we normally do with confidential information.

I have to remind you that it's a criminal offence under Section 117 of the Enterprise Act 2002 knowingly or recklessly to provide false or misleading information to the Commission any time during and including at this hearing.

So what we're going to do then is I'm going to invite each of the parties initially to make a brief opening presentation, which I'm going to insist you keep to a maximum of five minutes, and then we'll go through a set of issues on which we've prepared questions and on which no doubt we will have follow-up issues to discuss with you. We want to make the best use of the time that we have here and I hope that we're not going to be following a careful script through the morning but that you feel that it's an opportunity to have a free discussion and a free exchange of views, that both the staff and the members will be ready with follow-up questions and wishing to clarify issues.

The one thing I would say is, given that time is always short, is it's best that if we don't spend a lot time agreeing – you spend a lot of time agreeing with each other. So if things have been said that you agree with, you can indicate your agreement as briefly as possible. It's more interesting to hear discussions where there are differences of view or differences of opinion.

And I think the last thing I want to say before we start is just to remind you of where we are in our inquiry. We've published our provisional findings and we've published an initial set of remedy proposals. The focus of this meeting is to have a discussion with you, as we are doing with other parties, about the remedies, the remedy proposals, and the intention is to come back in the early summer with a further paper on remedies to give everyone the opportunity for a further round of discussions before we produce our final report in September. I appreciate that sometimes our timetable seems rather demanding when periods of consultation which look initially generous on the calendar are markedly less generous when one takes account of the natural desire of people to spend Christmas day with their families and so on, but we are operating on a very constrained timetable. But I hope that during the rest of the year, before we come to our final report, there'll be ample opportunities for people to feed it in all kind of ways into our final deliberations.

That's all I want to say by way of introduction. Are there any procedural issues that anyone wishes to raise before we get under way? Okay then, let's get under way. As I said, I want to start with a general question as a way of inviting you to make any general remarks that you want to make. Do you think that our investigation is proceeding on the right lines, are there things that we are in danger of getting wrong, are there things we're in danger of missing out? So general remarks to start off with. Perhaps I can start with Hastings?

MR LEE: Well, first of all –

PROF SMITH: Sorry, I didn't realise you were going to be doing the opening presentation.

MR LEE: That's quite alright.

PROF SMITH: Having just arrived, if you'd rather I can start at the other end of the table to give you –

MR LEE: That's fine.

PROF SMITH: Fine? Okay.

MR LEE: But apologies again.

PROF SMITH: That's alright.

MR LEE: Late train, but… So, yeah, I will keep it brief, but some general comments, I think, on the feelings from Hastings Group. So Hastings supports the Commission's efforts to reduce the motor premiums for UK consumers. On the subject of non-fault replacement vehicle provision, we'd also support the consumer's right to hassle-free service. And whilst credit hire provides a useful means of delivering this, it has been abused, and it seems as though the principle of loss mitigation has been forgotten somewhere in that process. However, we see a significant distinction between the failures within the replacement vehicle market and the insurer on insurer differential pricing of repairs and recovery of subrogated losses. So unlike the replacement vehicle market, we don't really see any benefit from that insurer on insurer differentiation to the consumer or to the market in general.

On the other subjects, we are generally very supportive of price comparison and believe it's a great solution for UK consumers, so therefore we are also in support of any actions that make that market function even better, and we believe that the remedy proposed under theory of harm 5 goes some way towards helping to achieve this. We're also in favour of greater transparency for consumers and therefore some of the principles of the remedies proposed under 4(a),(b) and (c), namely the measures relating to add-ons and no-claims bonus, but we're also mindful of the practical steps that would be required to implement and monitor this, and based on our own research we're also mindful of the need to ensure consumers aren't overloaded with information. I think that gives our general views on the paper.

PROF SMITH: Thanks very much. BIBA?

MR TRUDGILL: We're very supportive of the Competition Commission's work. Brokers are an agent to the client: we want to insure customers have access to suitable insurance at fair and affordable prices and they're looked after during a claim, retain their mobility and enjoy a swift and smooth and fair repair experience.

So in response to some of the remedies, remedy A, measures to improve claimants understanding of the legal entitlements, BIBA agree with the Competition Commission's proposals that provide that basic level of information and explain to clients what their legal entitlements are for repairs and replacement of cars, whether they would have to pay an excess, whether they would lose bonus, when a claimant is entitled to choose their own repairer, their contractual rights to do with unsatisfactory repairs. So we think the information is best provided to consumers within their annual insurance policy. The regulator, the Financial Conduct Authority, already has insurance conduct of business rules on requiring an insurer to give reasonable guidance on how to make a claim, in insurance conduct of business rule 8.1, and these information requirements could be incorporated here. We also point out that ICoB 6 requires appropriate disclosure around products, features and terms.

We are also concerned about information overload for customers. There will be an inevitable need to change the systems and reprint policies, which does bring with it a cost which obviously is ultimately borne by the customer, but the remedy would improve clarity for customers, and we think the FCA is the best one to monitor it. Also to note the insurance mediation directive from Europe is being revised and includes a proposal for a product information document. Just thought you wanted to – needed to know that. So we don’t object to any documents setting out the client’s legal rights in detail, we just have concerns about information overload, and what we suggest is a behavioural economic study by the regulator, the FCA, to ensure that the right balance is achieved for customers.

In regard to remedy 1(a), first party insurance for replacement cars, it’s normal that the first party insurer provides a courtesy car under a comprehensive policy, not a third party one though, although the car is not usually like for like and can often be unsuitable if it's a small Corsa and they've got five kids. It's an individual's right to recover the reasonable cost of a like for like replacement car from the guilty party, and it's for the at-fault insurer to prove if they think it's unreasonable. Such a remedy would mean that a policy holder, at personal expense, would be protecting their at fault driver from the financial consequence of their negligence, and this would be inequitable and something the public would not comprehend or understand why they should pay. The cost would also outweigh the £6 to £8 saving per policy outlined by this investigation. So we're very concerned that the non-fault claimant would receive less than their current entitlement under tort law. The innocent policyholder could be the loser with that. It would also require a change to the Road Traffic Act, the law of negligence, liability and tort, and we think it's unfair to make the innocent policyholder pay a higher premium for a suitable car and deny them the rights that currently exist. We don't see any cost benefits with 1(a). With 1(b), at-fault insurers to be given the first option to handle non-fault claims, we're concerned that there's insufficient incentives for the at-fault insurer regarding standards of service. There's a fundamental conflict of interest: there is no contract in place between the at-fault insurer and the non-fault driver. And the ombudsman complaints process does have quite long lead times, the concern being there could be extensive delay while liability is agreed and the type of vehicle negotiated. Many customers have an immediate need for a suitable car that needs to be addressed. We think this remedy is not in the customer's best interest as the at-fault insurers main aim is to reduce their own costs, so no advantage for customers we could see with this one.

Insurers and brokers are already supervised by the FCA, and we suggest that the claims management companies also fall under the FCA's supervision. We think that's where things are being exaggerated and this would ensure a consistent level of consumer protection.

In regard to 1(c), and I'm not going to be longer than five minutes, in regard to 1(c) measures to control the cost of providing a replacement car to non-fault claimants, we think a GTA style agreement covering the cost is a sensible way forward. We don't believe a timescale can be easily set as parts for some vehicles, American vehicles for example, can take over a month to arrive. The CMCs should justify their hire periods and at-fault insurers need to challenge hire periods if they believe them to be unreasonable. So therefore we do agree with remedy 1(f). BIBA agreed that the mitigation questions with answers set out in a statement could go a long way towards fairer reflection of costs and less exaggeration, and questions should focus on the need for a type and size of car.

Theory of harm 2, quality of vehicle repairs; as agent of the client we would be concerned if the quality of a customer repair was not as required. Our members and their customers have not suggested there are any concerns in this area, so, no, we haven't seen the concerns that you've raised.

Regarding no-claims bonus, remedy 4(b) I note an explanation of no-claims bonus schedules are often provided to customers anyway, but it should be possible to provide a clear statement in every policy. We just think there needs to be a balance by not over complicating that sales process and the information to customers so they don't switch off. So obviously we'll talk about the comparison sites issues at the appropriate time.

PROF SMITH: Thanks. BGL?

MR THOMPSON: Okay. Firstly, thank you for the opportunity to contribute to the investigation. In BGL I've responsibility for a number of well-known brands in the PMI market, both our own insurance brands and that of third parties. We look after 2 million customers in PMI market. Our model means we take responsibility for our customers throughout the journey. We manage their relationships with price comparison websites and take direct responsibility through other channels. Additionally we administer all elements of the customer's policy post inception, including first notification of loss and non-fault claims management, and in that way our business is slightly different to that of many traditional brokers.

As regards the possible remedies, the Competition Commission, I believe, has identified some useful improvements, such as measures which might improve customers' understanding of their legal entitlements. However a number of intrusive proposals will, in our view, give rise to highly detrimental customer consequences harking back to a time when consumers were at the mercy of insurers, the very reason behind the development of the credit hire solution in the first instance.

So to recap, there exists a very real conflict of interest between the PMI underwriters on the one hand and PMI customers on the other. There is also, in principle, a serious imbalance in the ability of such parties to enforce their rights, with consumers being very much the vulnerable party, I think as you've already identified. And that conflict of interest and imbalance are addressed at present through the presence of certain service providers and intermediaries, such as ourselves. First, in relation to claims, our services have been developed to ensure that each customer receives the remedy to which they're entitled. For fault claims we ensure that underwriters process claims promptly and in accordance with the customer's contractual entitlement. For non-fault customers we provide a claims management service to ensure that consumers receive appropriate advice, expert support at each stage of their claim, which facilitates a solution reflecting the customer's legal rights. Key to our approach is sourcing of temporary replacement vehicles and/or vehicle repair on a credit basis. We ensure that our customers are able to access their legal entitlements, irrespective of their own means or expertise, to receive that high quality service. We also provide an efficient source of business to that relevant service provider. Second, we use a number of routes to market, including price comparison websites, which we find an efficient route to market to each customer to have a need at that point in time.

Our pricing models are based on a long term view of each customer, including the channel costs associated and also the income streams that I've just mentioned. Potential changes to the efficiency of both price comparison market and the income streams I've mentioned will impact consumer price and which haven't been reflected in findings so far. I raise these points because it's important that the consumer benefits and do not become subordinated to the apparent imperative to reduce costs for insurer irrespective of the consequences. Aside from the marginal nature of many of these costs and important consumer benefits associated with them, there seems to be little evidence that eliminating these costs will result in reduced premiums for consumers. I consider that consumers will, under certain remedies proposed by the Competition Commission, have to pay a lot more for key services, which in future may be provided as expensive add-ons such as courtesy cars etc, or even not at all. So in our detailed response we've pointed to a number of areas where cost reduction has not been quantified, or the changes needed to achieve the anticipated cost reductions themselves will likely incur significant costs.

We're very concerned about the influence of large insurers using this opportunity to drive further profits, whilst their PMI results may reflect accounting approaches capable of either obscuring excessive costs or diverting related income streams. With these points in mind, although I appreciate the

Competition Commission has not yet adopted any final position, I would urge you to revisit a number of your findings to ensure that firstly the harm they seek to address is real and material; secondly there is a clear link between the market feature in question and that harm; and thirdly the remedy in question will be effective, and most importantly will not do any more harm than good as far as the consumer is concerned.

PROF SMITH: Thank you. Swinton?

MR COLLINGS: Thank you. Swinton have been around for a very long time. Nearly 60 years we've been selling motor insurance and personalised insurance through our high street branches. We're the largest high street broker in the UK and we have over 2 million customers through our branches and through our network. We welcome the opportunity today to contribute towards the hearing, and it's our intention to fully support many of the remedies that have been described in the report dated 17 December 2013.

However, we have some grave concerns specifically relating to remedies 1(a) and 1(b), and I'd like the opportunity throughout this session, not in this opening statement, to discuss those remedies specifically, and we'd like to explain our concerns throughout the session. We believe some of these proposed remedies are a potential infringement of consumer rights and existing laws, and it's extremely important, and we would ask the Commission to consider very carefully, how these principles are affected before putting in place any of these proposed remedies. There is a danger that unintended consequences create more problems than cost than the proposed remedies actually seek to resolve. Thank you.

PROF SMITH: Thank you. If I can make just make one comment on that, since you've said you want to explore the details of 1(a) and 1(b) in the discussion. In view of the range of responses that we've had on remedy 1(b) we felt that we'd already received enough feedback on that and it's not a remedy that we're exploring in any detail in the hearings that we're having this week. Don't take that to mean that we're ignoring the messages that we've received on 1(b), it's simply that we've heard very clear messages about it and we don't feel that further discussion in these hearings is going to add to the information that's already been given.

MR COLLINGS: If we're not going to discuss then, in detail, what are we going to –

PROF SMITH: No, we are going to discuss 1(a) in detail, just 1(b).

[Crosstalk]

MR COLLINGS: – discuss 1(b)?

PROF SMITH: No, we're going to discuss 1(a), not 1(b).

MR COLLINGS: Okay.

MR THOMPSON: On the basis you're discounting 1(b) now?

PROF SMITH: No, I said on the basis that we've had very clear feedback on 1(b) which we don't feel needs to be elaborated on in discussion. We've not made any decisions on anything. So let's move on to remedy A, which is general, and then the rest of theory of harm 1. Roger?

MR FINBOW: Good. Thank you. I think it's pretty well agreed that it would be helpful to have measures that improve claimants' understanding of their legal and contractual entitlements, and we certainly note the need to balance that against the danger of information overload. The question we have, and BIBA have actually anticipated this to some extent, is who, what body is best placed to assist the Commission in developing the right balance between information and no overload, and design what the statement might look like. A number of parties have suggested that the best placed party is the ABI, other parties have stated that because they represent insurers they're not independent, and therefore someone independent of the industry ought to be the party to assist us. What are your views? And perhaps we could start with Swinton.

MR MCLARNON: I guess they're – personally I find it hard to get excited about that question. I think that it's – the statement of rights would be, in my view, a relatively simple statement, it needs to be a very simple statement so as not to create consumer overload. So BIBA could do it, ABI could do it, the Law Society could do it, Consumers' Association could do it or all of them could do it together, so… But I think our view is that to make it simple for consumers we just have to have a very short and simple statement that is used in a very targeted way so as not to create information overload.

MR FINBOW: Yes, okay. I don't anticipate that everyone will need to answer everything if all you're going to do is agree, but, BGL, is that your view too or do you have something different to say?….

MR THOMPSON: I have an issue with it being just the ABI because I do think we'll get a biased position rather than if it were two parties, whether it's BIBA, whether it's ABI, but either way to me the wider market should be represented.

MR FINBOW: Where would that bias actually arise from then?

MR THOMPSON: Where would the bias arise from? Well, the insurers very clearly, as I mentioned in my opening statement, have a conflict of interest here, if you understood that point that I made in the opening statement.

MR FINBOW: Yes, you should bear in mind obviously that it's a case of someone helping us to produce something –

MR THOMPSON: Yeah, we've taken that into account.

MR FINBOW: – so we're clearly not going to allow something that is unbalanced, but I take your point.

MR TRUDGILL: I think BIBA – our difference from the ABI is that BIBA are agents of the customer and the insurer, whereas the ABI are just the insurer. So I think BIBA and the ABI already work together on many similar type things where we agree standards for telematics, RTA codes, all sorts of things. So I think BIBA and the ABI get round the table, perhaps the FCA, the regulator, to send someone to ensure it looks fair, and have that behavioural economics hat on from their department there to make sure – the customers understand it, and between us we could cooperate to do something I think.

MR FINBOW: Right. I think that's very helpful. Anything to add, Hastings Direct?

MR VAN DER MEER: No, we're also very relaxed about this particular point and would share BIBA's suggestion or that of Swinton.

MR FINBOW: Good. Thank you. Well, let's move on into remedy 1(a). One of the arguments that has been put to us is that imposition of this remedy would lead to the end of the credit hire business as we currently understand it and that one of the consequences of that is that non-fault claims would receive a lower quality of service because insurance companies have an incentive to minimise their own costs. Do you consider that's a valid concern? Hastings?

MR VAN DER MEER: I think one of my colleagues down there touched on it, one of our colleagues at BGL I think mentioned this, that my interpretation of this would mean that a customer who currently is involved in a non-fault accident has a right under tort to recover their losses would end up having to pay to replace that. If you follow that through then surely those more cautious customers who cause less fault accidents are going to end up paying to replace an element of entitlement under law with a premium, and that feels wrong.

MR FINBOW: So you're saying there that low risk drivers would subsidise the high risk drivers?

MR VAN DER MEER: That's the way I see it. So you would undoubtedly bring down the cost of motor insurance if you cut out some of the credit element, but you're doing so by removing a legal entitlement that currently exists in common law, and those that benefit the greatest would actually be those that cause the most fault accidents.

MR FINBOW: Well, perhaps before I ask a supplemental to that we could just hear if anyone has any different view from that in relation to that first question.

MR SHUKER: Yeah, if I may, I guess there are some issues from a policyholder perspective whereby they will end up paying more to get better service and there will be a view, I think, the public would take that actually they're paying to protect the at fault party rather than themselves, which really expands upon what Hastings have said. And the current provision of replacement cars, as we've touched upon earlier is very much, if you like, a grade A type car. It's quite hard work then from a practitioner's viewpoint to persuade the insurer if you can to provide an upgraded vehicle, and that can be a cause of some contention with members of the public.

MR FINBOW: I understand. Do either of you have anything further to add to that aspect of the point? I've got various further questions to ask on this.

MR COLLINGS: No, I agree with BIBA.

MR SIMMS: We broadly agree. I think there's a another point, which is, I suppose, the competitive point between underlying underwriting pricing, so the cost of provision is going to need to come to each underwriter. Therefore what you're creating, is in a non-fault scenario you're having to pay for your own customer, and therefore the ability, the capability, funding capability of each insurer to pick that additional cost up becomes a part of their competitive edge. What it does is to polarise, to an extent, the difference between large insurers and small insurers in terms of their ability to absorb a lump of cost. I think that for us this makes the market generally less competitive. We have a range of insurers on our panel; I think some of them have the capability to absorb that cost very, very easily, and others would have a much greater struggle.

PROF SMITH: So just to be clear, your view is that the smaller insurers would find it harder to cope with third party insurance for replacement vehicles.

MR SIMMS: Absolutely.

MR FINBOW: Okay. Well, now just picking up this point then that – made by Hastings and I think agreed to by everyone, that the problem with this remedy would be that low risk drivers would subsidise high risk drivers. Are there any issues that we could – things we could put in place to ameliorate that? Perhaps we could start with BIBA?

MR TRUDGILL: I just think we just disagree, don't we? I mean if you're third party fire and theft you don't have the provision of a courtesy car anyway, so what would you do then? Would you be expecting insurers to – your own insurer to provide you a car that is currently only provided under a comprehensive policy? So we just don't see how that system could work. The innocent policy holder's going to be picking up that additional cost from their own pocket, which they've never had to do before, which is probably going to be more than the £6 to £8 that's been proposed with the savings across the board here, and that cost shouldn't be down to them. It's the guilty driver that should be responsible for it. So just – no, I don't think there's an easy way to do it the way you're suggesting.

MR FINBOW: Right. If notwithstanding that we were to decide that on balance this was the way to go, has anyone got any ideas as to how we might address that point?

Mr LEE : Well, I would add too, although I think overall you would end up slightly penalising the lower frequency accident drivers, clearly motor insurers' pricing would possibly adjust. So that that add-on takes into account the same risk selection that we do for the motor insurance policy pricing. So it might get balanced out a little bit by that, although add-on products tend not to be as sophisticated in their pricing and tend to be a flat fee across, so that would be the difficulty, whether that came through. I'm in favour of the fact that – I think you heard from our opening statement I think credit hire and replacement vehicle is a necessary thing, the issue is the abuse within it, and it is the up-scaling of vehicles that aren't required, the extension of the hire periods that aren't required, and I see that this could address that, but I do feel it would ultimately wind up with some low risk customers subsidising the higher risk customers.

PROF SMITH: Not to disagree with that, but just to pick up one point that you made and go back to the statement which Graeme made that the cost of replacement vehicle provision to first party insurance policy would be more than £6 to £8. I think one has to be careful about making that comparison, because the £6 to £8 calculation in our provisional findings is a net calculation, whereas the – whatever figures have been offered, and something like £20-odd is in my head of a typical cost of what might be replacement vehicle provision; that's a gross figure and one would need to – if one introduced this system one would need to think about what other offsetting factors there would be in other insurance costs to arrive at a net figure and make that judgment.

MR TRUDGILL: I think we thought that if you implemented 1(f) and could have sensible controls over the prices of the exaggeration that Hastings were outlining then you could resolve this problem anyway. You wouldn't need to go as far as 1(a) is suggesting.

PROF SMITH: All I'm saying is just be careful of comparing a gross figure with a net figure, that's all.

MR LEE : The other issue I think, which picks up on the disparity between size of insurers as well is, I would have thought, the way this tends to happen in the market, this replacement vehicle would probably get passed down into the repair network, so the insurer says, 'Right, now instead of providing a courtesy car you have to provide our customers and you have to provide them with a like for like replacement vehicle'. That cost then gets hidden somewhere within an increased labour rate or parts, whatever, as you know occurs now. The market would charge consumers a flat rate for it and it would become profitable for those. It would get hidden and it would go back into the whole problem of differential rates on repairs. So on its own – I think as the point is on its own I don't think it would help.

MR FINBOW: Alright. Robin Aaronson has his own idea as to how one might redress the balance somewhat.

MR AARONSON: Yes, just to get your reactions to this possible way of alleviating the subsidy problem that we've been talking about. Could you envisage some sort of rough and ready adjustment mechanism whereby an insurer for each claim where its policyholder had clearly been at fault and liability had been admitted, made a standard payment, say £1000 or whatever the figure was, and when – for each case where it had been in a non-fault position and the other side had admitted liability it received £1000, let's say, so that on a very rough and ready basis the costs would be put back to the fault insurer, and therefore to the premiums of the high risk drivers and away from the non-fault insurer and the low risk drivers. Can that – something like that work?

MR LEE : So this is insurer to insurer because they've provided the replacement vehicle?

MR AARONSON: Yes, yes. There are different ways of doing it: there could be a central fund and at the end of the year the insurer, each insurer, pays in and takes out from that central fund or it could be done bilaterally.

MR LEE : Possibly, although by standardised I assume you mean it would have to be relative – then you get into it's got to be relative to vehicle types and insurers who do higher net worth versus those at the bottom end of –

MR AARONSON: Well, that's why I said rough and ready, I mean –

MR LEE : Possibly.

MR AARONSON: It would be not aiming to capture the exact costs in each particular case but – which opens up the danger of separation of cost liability and incurring cost, but it would just be an average, maybe the average of last year's total replacement vehicle costs across the industry.

MR THOMPSON: I still think there is a potential there for consumer detriment potentially. And I think that's for me the thread that is not prominent enough throughout the remedies that have been presented is the consumer position, whether it's remedy 1(a) or a number of the others. I am in favour of the likes of 1(c) and 1(f) in terms of the clarity and potentially an enhanced GTA control, some of these aspects, but, yeah, the consumer detriment position could still be a risk in that position –

MR AARONSON: In terms of cost or in terms of quality of service?

MR THOMPSON: In terms of the cost control emphasis on behalf of insurers. So, okay, the at-fault insurer has discharged its responsibilities to the non-fault insurer, but then the potential for the non-fault insurer then to try and manage costs to an excessive position in detriment to the customer. The right of the consumer to have restitution should be absolute in this situation, and when I hear terms such as, you know, 'What is the customer's need', well, the customer has a right to be put into the position he was in prior to the loss. That should be the start point for any of the remedies that we're reviewing here.

MR LEE : But can I just pick up that point that there still is that duty of mitigation, and I do believe that duty of mitigation has been lost to a certain extent here, and that is often where the abuse in this system occurs. And the word 'impecunious' has been rather abused as well. When you see a footballer with five £100,000 vehicles on their drive but they absolutely must have a Lamborghini for three weeks because they can't cope with the other ones, and that's an exaggerated case but there are many all the way up that scale.

So I throw one other potential out there, which I wondered – which doesn't – because I do actually agree with BGL and I don't want a non-fault person to be in any way in any detriment. If I was that individual I don't want to be inconvenienced in any way, so I wondered about a combination of a couple of the things that were suggested here which might be that giving the at-fault insurer the opportunity to provide a replacement vehicle. If the consumer doesn't accept that then they still have the right to go out and hire whatever they like and recover that vehicle, but not the credit element. They can go out and hire and my reason for that logic was that if you're offered a replacement vehicle, and there would have to – again there'd have to be term sheet that said for these vehicles, this vehicle group, you must replace it and offer them this type of vehicle. If you do that you remove the impecunious problem because if someone chooses to turn that down and absolutely must go out and get something else, well, they can do it, fully entitled to recover it, but I don't think they're really impecunious if they can do that. And no one's going to be put in a position where they can't go to work, they can't have a similar replacement vehicle, if we standardise the types and make that clear. And maybe there is a penalty if the insurer can't provide that vehicle, maybe you do allow it to then go to credit hire but a combination perhaps of – I'm trying to bring back the consumer's duty to mitigate without making them impecunious, and the impecuniosity bit I think has been lost and completely abused over the last 10 years.

MR FINBOW: Yes, Mr Collings?

MR COLLINGS: I'd like to bring this back to actually at the point of sale, and when the customer is actually buying his insurance policy. And what we can't do is take away what that customer's right is and one of – this proposed remedy says that customers will be given an option for add-ons, you know, whether he wants a replacement vehicle or he doesn't want a replacement vehicle, or whether he wants it bought like for like or he wants just a standard coupe. That complexity in an add-on product, which already the FCA and the other inquiries are looking at the complexities of add-ons, and what you're creating here is a really complex issue of what the customer's actually entitled to. The customer actually is entitled to, in the event of an accident, to be put back in the same position that he was before the accident. If you choose to – if a broker or an insurer chooses to sell a customer a replacement vehicle which is only a small grade A car you've taken away a legal right. He may pay for that. And it's not treating customers fairly if a customer then actually decides, 'I don't want any of that because I know my legal rights', so a customer who hasn't paid anything can actually recover from a third part insurer a full like for like vehicle, whereas a customer who's paid extra gets less. The whole principle of that takes away that tort law of what you're entitled to if you're taken off the road by somebody else's negligence.

MR FINBOW: Well, let me perhaps move on then to a proposal that has been put forward by a number of parties in response to our remedies proposals, and in case you're not familiar with this let me just give you the headlines of it. The idea is that there would be mandatory first party insurance, regardless of the fault, which would provide the policyholder with an equivalent replacement vehicle, subject to some sort of cap which might be around the 2 litre mark or something like that. If the policy holder had a car that was a big four wheel drive or a Lamborghini or something like that then they would be entitled, as of now, to use credit hire and subrogation rights would then still apply in that case. Alternatively, you could have a situation where subrogation rights were retained generally provided you had some control over cost of hire as per remedy 1(c). And the suggestion made by those who put this forward, or variations of this, is that that would avoid any removal of tortious rights and therefore avoid a change in the law. Now, I've got a couple of specific questions on that, but before we get to that what are your reactions to that? Do you want to start?

MR COLLINGS: My first reaction, yeah, is that already exists in the market. The insurers, generally speaking, will offer a courtesy car for a comprehensive policy, so whatever type of comprehensive policy you've got that option is there. And that option isn't utilised in the main because insurers don't manage it particularly well and because the type of car offered is not sufficient for means. What you're suggesting is that you take that current courtesy car level and raise the barrier to a 2 litre vehicle, which would probably –

MR FINBOW: Equivalent up to a 2 litre, say.

MR COLLINGS: – or equivalent up to, and that just creates – there's a cost element of that. The reasons it's currently at group A, Renault Clio – the fleet of them – is because they're very, very cheap, cheap to run, but there's still a cost to them. To take it into a like for like arrangement there's a cost there, and a cost there which insurers will pass back to the customer.

MR FINBOW: Yes, but it would on the other hand, surely, take away much of the cost that is there at the moment through credit hire?

MR COLLINGS: I've not done the numbers, but –

MR FINBOW: I think that's the theory anyway.

MR COLLINGS: That's the theory.

MR THOMPSON: You still end up with the innocent party having an element of their premium costed in for a risk that they shouldn't be carrying. You've still got the same imbalance as the original 1(c) remedy.

MR FINBOW: The assumption you make in suggesting that is that it wouldn't all work through, at the end of the day, on the swings and roundabouts principle.

MR THOMPSON: That's right. That's absolutely.

MR FINBOW: You say it wouldn't?

MR THOMPSON: No, no, it wouldn't. It wouldn't.

MR COLLINGS: I think you're relying on the insurance industry agreeing to do it for free and that just won't happen.

PROF SMITH: But I thought, Roger, you said subrogation would continue, so the insurer providing the vehicle to the not at fault party would then subrogate the –

MR FINBOW: One of the alternatives would be that subrogation rights would still apply generally, so long as you had some control over the costs of hire, as per 1(c).

MR COLLINGS: So you're suggesting that the insurer, the first party insurer, provides the vehicle, up to a 2 litre, but then can recover that from the fault party.

MR FINBOW: That's right.

MR SIMMS: So all that you're effectively doing is to change the element of competition to insurers then compete to do – is to provide that vehicle, and to make the margin between the cost of provision of that vehicle and the recovery sum that any party can make as wide as possible. That's where you're moving the competition from one place to another is my understanding, and I think the secondary point is if you get 1(c) right there's no need for it.

MR SHUKER: The question that runs through my mind is, you know, we talked about £6 to £8 and I take your point, Mr Smith, that it's very difficult to if you like – or to make sure that we're making the right comparatives, but the question in my mind is of that £6 to £8 what element relates to the excess, the excesses that Hastings referred to earlier. Because, if you like, below whatever that difference is what you're left with is the cost of the provision the policyholder, if you like, currently enjoys.

I think one of the concerns that we have as well is there being practitioners dealing with the public day to day. Accidents are very emotive, they're very stressful, and if they're not my fault I really don't want my insurer involved, because why should I? And if you've got a renewal that's coming up in two or three weeks' time and you're involving your insurers, your no-claims bonus is held in abeyance, your bonus won't be re-allowed until such a time as the insurer's made a recovery and it makes for a really difficult, contentious discussions with clients, whereas the current situation is actually, 'It sits outside of my policy, my own policy's unaffected and that's quite right because I'm not at fault and I understand. So if it's not my fault I understand I can recover against somebody else. Why am I being financially penalised whilst the insurer makes their recovery?', which it would have to, again under this sort of proposal.

MR LEE : I'd say except they do have a duty to inform their insurer even if they are claiming directly from the third party.

MR SHUKER: Well, indeed, yes.

MR LEE : I understand that comment about recoverability.

MR SHUKER: But we would not expect the insurer, as a broker representing the client we would have that discussion with the insurer to allow that incident to impact the no-claims bonus or the renewal premium.

MR FINBOW: Really?

MR SHUKER: Yes. We would say, 'It's non-fault, you're not involved and the no-claims bonus –'

MR LEE : I think that's true if it was a clear cut, which is why the insurer though does need to know.

MR SHUKER: Yeah. And we'll always notify the insurer.

MR LEE : Yeah. If it's a clear cut non-fault then it generally wouldn't affect the no-claims bonus

MR FINBOW: This is slightly off the subject but now that we've got this point perhaps I can just pursue that a little bit further. Our understanding is that in a non-fault situation if the – you don't lose your no-claims bonus, you recover your excess, but the likelihood is that your premium will still go up because statistically you're more likely to have a fault claim in the next 12 months. Is there any truth in that?

MR LEE : There is truth in that, yes.

MR SHUKER[?]: I would say there's an element of truth in that.

MR VAN DER MEER: Not necessarily within 12 months, but there are some statistics that show you are more likely to be involved in a fault accident.

MR FINBOW: But you're saying that if one uses a broker then the broker will argue against that on your behalf?

MR LEE : That's different from saying you lose your no-claims bonus, so insurers will log a non-fault claim if they're made aware of it, which they should be told about by the client or the broker, whichever and that will go into the rating matrix. Whether that insurer chooses to charge for non-faults, because their statistics suggest that it’s relevant, or they don’t, it will occur, but that doesn’t mean you lose your no-claims bonus. That’s different.

MR SHUKER: And the loss of no-claims bonus is very, very visible and becomes very –

MR LEE : Yeah.

MR SHUKER: Yes.

MR TRUDGILL: Could we also just make the point that the Competition Commission could consider the unintended consequences of larger commercial vehicles and self-insure fleets and how would they cope with this situation with their own insurer. What would they be expected to do then? So that’s just something else to put into the mix. It’s not all about small family cars.

MR FINBOW: Yeah. We understand the point about fleets and commercial vehicles and so on. That’s a point we’re going to have to wrap away –

PROF SMITH: And the need [foreign loan?] vehicles.

MR LEE : I would come back to I think the point made by BGL as well there that the sentiment about increasing that provision of courtesy car, I think it would just go back into the repairer’s bill probably, and it – or it’s another opportunity for some of the differentiation and abuse of that system. Without another check and balance on that side it’s just going to go straight back into there and be another opportunity to be inflated and insurers to attack the other insurer.

MR SHUKER: Sorry, if I make one more point in terms of service: we believe in fact that the credit hire industry, if you like, by and large provides a very, very good service from a client perspective. So if somebody has an accident we would expect them to be in their car within one, perhaps two hours, maybe three. If you give it to an insurer, they haven't got the same level of imperative, they've not – we wouldn't see the same – we don't believe we would see the same standard of service that a specialist credit hirer provides to the consumer.

MR FINBOW: But of course that specialist service, the credit hire companies would say, comes at a cost.

MR SHUKER: There is a cost, but I guess the issues that have brought the matter to the fore are the excessive costs, the unmitigated losses and those that aren't justified. You know, the footballer and the Lamborghini who's got five other cars and so on.

MR TRUDGILL: And with 1(c) and 1(f) and greater proper regulation of claims management companies, that would be controlled.

MR LEE : There are some similarities though to the personal injury situation here that if the insurer has enough incentive then they may well get their act together, and they should be penalised if they don't. So you look at the MoJ Portal and there's a certain period to accept liability and get things moving and if you don't then actually now, after the latest reforms, the differential is enormous, so most insurers are working very hard to do that. If you create that differential, so right now, if an insurance company tries to intervene, as they call it, and get hold of the third party, offer them their service, if there is also another provider, a CMC or a credit hire company offering another service it’s very hard for them to win that person over. If you give them a window and there is a huge differential between them capturing it then they will improve that intervention because they’re incentivised to do it financially.

MR FINBOW: Right. Mr Simms, you were just going to…

MR SIMMS: I know that we’re not necessarily looking at findings, we’re looking at remedies, but I think the challenge is what underpins this. Our instinctive position is that probably the most efficient way of providing replacement vehicles to customers is specialist replacement vehicle providers. They invest in large fleets of vehicles, which unless they can get them out efficiently to customers, people use them, insurers, brokers use them etc, etc, and they can recover that cash, then their business will fall over. We think it’s highly unlikely that there’s going to be a more efficient way of providing them via a myriad of insurers each having their own fleet. The consequence of that, or each having their own, as I said, brings a consequence of that is that what you’re likely to find is that the only way in which you will actually effect savings is to reduce the value of what’s being provided. You have to dumb down the consumer experience in some way, older vehicles, less roadworthy vehicles etc, on and on and on we go in order to reduce that gap. I think that’s the fundamental issue, that’s the underpinning this remedy.. The suggestion that there is some great efficiency in first party provision is just not credible.

MR COLLINGS: Yeah. I'd agree with BGL that what insurers do at this moment in time, in providing the courtesy car, is that they pass that piece of work and the cost of that to their repairers. And so repairers have no choice – in order to get the deals for the repair jobs with the insurers they have no choice but to provide some sort of replacement car service, which they don't do particularly well, and they're expected to manage these fleets. If your suggestion is that the whole – that's razed and we remove the specialist areas, the insurers will not be able to do that unless they create a whole expenditure of managing replacement vehicle specialists, you know, pass it back to garages, who may have to create replacement vehicle specialists. It has to be done somewhere.

MR FINBOW: I think the expectation would be that it would be specialist organisations who would actually provide the vehicles. But anyway I think probably we need to move on and I want to move on to 1(c) now, but before I do so just let me check that none of my colleagues want to ask anything more on 1(a). No? No. Okay, 1(c) then. So as you know this is all about introducing measures to control the cost of providing a replacement car. If rates were to be set at direct hire rates, would CHCs still be able to viably provide the necessary replacement cars? You're shaking your head?

MR THOMPSON: No, I don't think they would. There is an element of

risk when a CMC is making a decision on the provision of a replacement vehicle, and that risk carries a cost because the opportunity for recovery isn't necessarily absolute.
MR FINBOW: And that cost would be in excess of what they would receive if direct hire rates were the maximum?
MR THOMPSON: On balance, yes.
MR FINBOW: Does everyone agree with that? I'm seeing either nodding of heads or shaking of heads.
PARTICIPANT: I don't think we've looked at those economics and that specific trade off, so…
MR LEE : There has to be some element for their risk of recovery ability.
MR FINBOW: I guess the question is [inaudible].
MR AARONSON: And there's the same if the non-fault insurer is handling it? The same consideration applies to a CHC?
MR THOMPSON: Yes.
MR FINBOW: Alright. Well, moving on, if we were to impose, or someone were to impose maximum hire rates, should that be a maximum rate applied to all car hire when charged to fault insurers? And the reason I ask that is that we wonder whether if it weren't then there might be ways around it which CHCs or mark 2 CHCs might be able to adopt.
MR THOMPSON: I think if – as long as the principle of restitution is present, so a customer's put back in the position they were in prior to the loss, and regardless of the provider then the costs were adequately covered, then I think that's a possible solution, yes. There are a number of caveats: it would need

to apply to whole of market, absolutely, it would need to – and the provisions of any enhanced GTA would need to be independently managed and potentially regulated. But, yeah, the principle should be that regardless of which provider is trying to arrange this, whether it's an insurer, whether it's a CMC, whether it's a broker, whoever it is, is able to provide that vehicle in an efficient, cost effective manner, and then that should work.

MR FINBOW: Okay.

PROF SMITH: But the individual at fault – not at fault – would still be able to go out into the market and make their own replacement vehicle provision at unregulated rates and have those paid for by the at-fault insurer under the legal rights?

MR TRUDGILL: Unless the claims management organisations were signed up to this as well, like many of them are with the –CHCs sign up to the GTA, don't they, or many of them, so –

MR THOMPSON: It's what I'm saying that –

[Crosstalk]

PROF SMITH: But what I'm suggesting is that someone – and I think that's – Roger talked of a mark 2 CHCs. If you regulate a car hire – you regulate some car hire companies because they're involved in provision of replacement vehicles then another car hire company could come along and say, 'You've had a not-at-fault accident, come along to me, rent your car from me and claim it at credit hire rates'.

MR SIMMS: I think that's back down to the principle –the principle of mitigation, isn't it? So if actually the solution, the capped solution was available across the market, and it’s relatively straightforward to access then you’ve got a solution. Basically you’ve a not at fault customer saying, ‘I have made alternative provision, which is significantly more costly than the provision that was available to me. Dear courts, please allow me to execute that solution and recover my monies’. And it may be that we, you know, you would expect the courts not to suggest that that’s a reasonable – i.e. reasonable efforts have been made to mitigate that loss. So I think it does come back down to that base theory: if you have the rates reasonably set and everyone’s able to access that facility. I think the point about the GTA as it runs at the moment is it is an exclusionary club: it excludes brokers, amongst others, from it. But if you make it the whole of the market, if you make it available to everyone, everyone can feed their solutions in it, you’ll end up with a series of tailored solutions to all falling within the cap.

MR LEE : The only – sorry. The only issue with the GTA is that I don’t know which insurers you’ve spoken to, if you have spoken to them so far, is that there are a number that are either out of it or were in it and have come out or are looking to come out, because obviously they have to sign up to effectively ask less questions if they are party to it, in order to speed things up. And many will see the abuse of the GTA, whilst it might cap the rates, then there are all the other issues that go on about deliberately delaying repairs and the hire periods that go on. And in order to sign up to the GTA you give up some of your questioning rights in payment. So without that – and I think that is also often when the same person is controlling the repair, the same person that either is controlling the hire or benefits from that hire by a referral fee or whatever, then there an incentive to delay that hire through whatever means possible. And that's a problem with the GTA.

MR ORAM: Could I just ask a question? On the maximum hire rate, should they include the cost of the services that credit hires currently give customers like uninsured loss recovery, collection and delivery of the car? Should the maximum rate include that?

MR THOMPSON: I don't see – if a cost is incurred in the collection and delivery of a car I don't see why it shouldn't be recovered.

MR FINBOW: Okay. One final question on 1(c), and I recognise in asking this question that I'm just latching on to a fashionable term, but would an online portal reduce frictional costs arising from the administration and dispute of non-fault claims in this regard?

MR LEE : I think it might, if that portal allowed the at-fault insurer to at least be tracking the repairs and give access to that and give them the access to contact and – which is what many do, the good ones do it, but it may potentially reduce costs.

MR FINBOW: Does anyone have any experience in relation to personal injury with regard to online portals?

MR SIMMS: We have some, and I think the challenge that we've had is that you – it is a significant upfront investment. It's not just the investment in relation to dealing with the portal but the investment for firms in equipping themselves to be able to utilise it properly, valuably, and manage that within their cost base. The use of an online portal should not be underestimated, hence what you've seen in the personal injury space I think is the only one – well, not a huge number of firms are able to manage that structure successfully, because of the requirement in terms of investment.

MR LEE : But you do give them the opportunity to do it, to use it. And while we're on that subject, the portal though I would say is very similar to this, that our experience of looking at costs since the portal was introduced, since the LASPO reform, since the Jackson reforms, is that the ban on referral fees I don't think would have made any difference at all without the combined impact of the Jackson reforms. So I don't think you're seeing the massive reduction in frequency of bodily injury, likewise any sort of ban on referral fees here I don't think would make any difference, because I can see where it would just – where the market would change. Stripping out that cost from Jackson reforms clearly has worked.

MR FINBOW: We'll come on to referral fees shortly. Does anyone have anything further to say? I think you do.

MR MCLARNON: I was only just going to make one point which is to say that in my observation, I'm no expert in regards to how these collections work between the different insurers, but my observation is that the normal direction of travel is away from mandatory price regulation. I think we've got perfect examples over the years where – you know, that mandatory price regulation of agricultural commodities or butter mountains and whatnot, or it could be yellow pages and whatnot, and I think it's generally seen that these things actually, in the long term, act against well-functioning markets. So I think that although it may appear a panacea at this stage, actually – as long as we can tell everyone what the price is for everything that then it – all of a sudden the market works –

MR FINBOW: I suppose it begs the question as whether this is a well-functioning market, doesn't it?

MR MCLARNON: Of course, yes, but it could be the lesser of two evils.

MR FINBOW: Could be.

MR SHUKER: Sorry, I just have one point or one question around a portal. What you see with portals at the moment is an interaction between lawyers and insurers. What we have through a portal, and this is why I'm trying to work out how it might work, is you've got the public and insurers. At what point would you visualise people engaging, because credit hire is accessed through a number of points: it might be through a garage, it might be through a broker, it might be through a big broker or a little broker, or a small insurer, big insurer, coming back to the investment it's – you know, where do you – where is that point of access around the portal and how would that then work, because you have a very diverse range of people who would potentially have to subscribe to it.

MR FINBOW: I agree. It's an issue not without some challenges.

MR SHUKER: Sure.

MR FINBOW: Final –

MR COLLINGS: Final one, yes. I think a portal sounds like a good idea. It's just a means to an end and I think that what it's trying to create is something that a lot of insurers and a lot of credit hire companies try to get to, and that's a protocol, an agreement between each other. One of them, the insurer, wants that credit hire company to keep the costs down and keep the duration of the hire down and to be reasonable. All the credit hire company wants is 'I'll do all that as long as you just pay me on time'. And the portal is really a means to get to that point. And so that really takes us right back to that this market does work well as long as there's agreement between two parties, which is exactly what the GTA is trying to do. And the control of the GTA will never be a whole market solution because there are always some rogue players that you see someone could just set up a business and try to take on the insurers with as much money as they can. Somehow or other the industry wants to get rid of that, and the portal isn't the answer to that, it just –

MR FINBOW: Yes, understood. Right, that's my line of questioning done. I'm going to hand over to the chairman now.

PROF SMITH: Thanks. I want to move on to the control of non-fault repair costs, which is the subject of our proposed remedy 1(d). First of all, I'd like to ask a general question about what your views are on how the insurance industry is likely to respond to the Appeal Court judgment in *Coles v Hetherton*.

Specifically, do you expect more insurers to adopt the RSA's model of marking up their repair costs before passing them on to the at-fault insurer? BIBA?

MR TRUDGILL: It's not really a broker issue I think. It's difficult for us to comment because we don't get involved in that.

PROF SMITH: But you must have a view of how the overall industry that you're engaged in is… You've all been… But if you don't that's fine.

MR SHUKER: I think it's gone on for a very long time. It's not terribly transparent and I guess there's more of it going on than you know. It's cases like that that expose these sorts of things, and you'll have a big insurer with big buying power wanting to leverage that and to, I guess, get some sort of advantage from it. So I don't think the case is going to discourage anybody. If anything it will probably encourage more of the same.

MR THOMPSON: We are involved in repair of non-fault vehicles, in terms of our business model as a broker, and I think there are other broker models that also are similar. We agree generally with the principle of trying to make sure there's some control, particularly where cost is one element of it, but quality is another and unfortunately the investigation so far hasn't distinguished between the fault insurer who's trying to contain cost and potentially compromise quality in the process versus those others that – it's back to the position of conflict that exists, which party is responsible for restitution for the customer. And I think there's a significant issue there that needs to be explored further before we can determine a proper solution here, but generally speaking some sort of proposal that would eradicate the RSA style approach might be helpful.

MR SIMMS: I think probably, just on the more general issue, we would expect insurers – history tells us that - to pursue any revenue line in relation to motor insurance, and any other lines of insurance, which is open to them. So marking up repairs is a revenue line which is open to them, and I think logic suggests you would always pursue it, because if you do not then you're in a market where you're competing with competitors who are pursuing it, and therefore subsidising their propositions by doing so. So I think that would be – it's almost inevitable it seems to me, logically, that all insurers that are able to access that revenue line will access it.

PROF SMITH: Any other comments? Well, can I move on then to the specific options that we put forward which could address the issues that we found about non-fault repair costs. Option A was the suggestion that the bill paid by non-fault insurers – that when a repair's managed by a non-fault insurer then the bill that is passed to them by the repairer is the bill that they should pass on to the fault insurer without a mark-up. They should simply pass on their own bill, un-marked-up. Do you think that that's a feasible remedy, and do you think that it would have the danger of removing incentives for insurers to keep the repair costs down and to get as much efficiency as they could?

MR LEE : I think in principle it would be fine. I don't think it would remove the desire to reduce repair costs, because of course if it’s the same as their fault ones then they’ve still got the desire to reduce their claims cost. I think the issue would be that as many large insurers, and it tends to be the larger ones, then you look to move into the repair network provision and you just end up with the profit coming through a different part of your group. Rather than it being as obvious as an add-on fee or a referral between a repair network and an insurer, you just buy a garage network and you increase the profits that way.

PROF SMITH: Well, that is the second question I was going to ask, about would this kind of proposal be circumvented by the creation of a repair network?

MR LEE : I think it would, and again you get a disparity in the market because the barriers to entry of buying up a repair network will only be available to a certain few insurers. This is the one, as you heard in my opening statement, that I think the focus should be on. I think this is the area, but it’s also much more difficult to sort out and I’m not sure how you stop that vertical integration of the model, which is absolutely fine if it’s not being abused.

PROF SMITH: Any other comments on that? Do you agree that vertical integration is the problem for this?

MR SIMMS: It’s difficult. I think it’s the problem and in some ways the solution. If what you’re trying to do is to drive a reduction, both in frictional cost and in repair cost the best way for an insurer to influence that is to control the solution.

So on the one hand – that’s the dichotomy of the solution which is that on the one hand it drives, should drive, if I was an insurer and I was thinking strategically it would drive me towards vertical integration from both perspectives, both the protection of my current income streams and a control over the costs of repair or replacement vehicles. And I absolutely agree with the point made earlier which is that you would therefore polarise the options available to those who can absolutely attain that or already attain that.

PROF SMITH: But the problem for a repair cost remedy is how do you, for a vertically integrated insurer-repairer, enforce that rule that says, ‘You pass on your repair bills un-marked-up’, because the repair bills are an internal transaction, they’re not an arm’s-length repair bill.

MR SIMMS: I think that if you – it’s probably more likely to be more successful to take an approach that talks about capping costs of certain elements to reduce the overall cost to the industry, rather than seeking to try and work out which parties in the industry are making that money, because that really doesn’t change the overall position. That’s the problem with the focus on vertical integration. The only way you would alter that, even in a vertically integrated model,is if you’re capping the relevant elements of the cost, so… And that is going to require quite a lot of intricate detailed control, but if you were to do that then you could look at, yes, trying to change the overall cost to the industry and make those capped levels, the benefits of those capped levels, equally available to all participants. It’s a more complex but broadly similarly structured solution to the PI claims solution –

PROF SMITH: Well, that sounds to me pretty closely related to the second option that we put forward, which was to use some kind of standardised custom model to produce standardised bills, which would be the bills that the not at-fault insurers would pass on to the fault insurers. And let me emphasise, this is not intended as a proposal to impose price controls on all transactions, simply to limit the bills being passed forward, the subrogated bills being passed forward to the fault insurer. Now, we’ve had an interesting range of responses to that proposal because some of the responses have said, ‘Yes, there are – standardised costing models are widely used to manage motor repairs and could form the basis of a system for capping subrogated repair bills’, and others have said ‘Motor repairs are a fantastically complex business with lots of different models of motor cars and every accident produces different outcomes. It would be impossibly intrusive to have a capping standardised costing system that would cap all repair bills’.

MR COLLINGS: But insurers have that for themselves anyway. So they have agreed charges, they have agreed costs of materials for when they are paying, so this is the only difference when somebody else is paying. So they’re already in place for themselves, so if insurers want to be open and transparent all they have to do is take what current measures they have to ensure they’re not overpaying when it comes to their own customers. What we have here is when somebody has a completely different range of caps for when somebody else is paying, and I think that's –

MR THOMPSON: There are complexities. There are complexities in vehicle types and so on, and I think it would need some more detailed work with a study to determine how practical that solution would be.

MR LEE : And it wouldn't work without the other measures, again because take the scenario where you're involved with that repair network, if you adjust the labour rate then you make it a higher cost, so you pay more on the fault claims as well as the non-fault claims, but if that's coming back in another way, either in any sort of referral or because you own – part of that is within your group, then that won't change anything, not unless you're going to set a fixed labour rate as well for the entire market. I think theoretically it's a good idea but I struggle to see how it will work in practice.

PROF SMITH: I'm not sure I understand what you're saying about the fixed labour rate. Why would that be a problem?

MR LEE : Because if you don't fix certain elements of it then let's say an insurer who wanted to abuse that system then they have a deal where the labour rate is, say, £3 higher than they could have negotiated it down to. They pay that labour rate on fault and non-fault cases, so there's nothing differential in there that shows up, and then if they own that repair network then on the cases which they're at fault and they've inflated it, well, they're just paying themselves, so that doesn't matter, and on the non-fault cases, well, they're recovering it from someone else and they're making more money in their garage network.

PROF SMITH: But I think the idea would be that you put in into a – if a model like this were to be able to work you'd put in a labour rate that was some sort of appropriate average for the particular part of the country that you were in and then insurers who were able to get their jobs done actually more cheaply than that would indeed be – keep the benefit of their cheaper rates, but they would only be able to pass on the bills at whatever was the agreed labour rate.

MR LEE : That sounds very much like the RSA's argument in that case, but just capping the amount that is allowed to occur. Because that's their whole argument, isn't it, that they've negotiated down and they keep some of it, so sounds like that structure.

MR SHUKER: But you might end up just stretching the number of hours that the job takes.

MR LEE : Well, that goes on. There's all sorts of ways to do it, because they are complex.

MR SHUKER: Well, if it's – the labour rate's £24 for 10 hours, £24 for 12 hours or whatever, so…

PROF SMITH: But I thought the costing models put in standardised durations for the jobs as well?

MR LEE : They do but it's very difficult for someone to –sorry, it's not that difficult for someone to delay or show up a delay on parts that will delay the repair, or say, 'Oh, the further part of the vehicle needs stripped down'. There's all sorts of things that can be used to delay repairs if someone wants a go to that length.

PROF SMITH: It comes back to the point that Robin was making in a different context that when you're looking at a system for controlling insurer to insurer payments you can accept a bit of rough and readiness in it because if some jobs are genuinely taking longer than the standard model expects then you're losing a bit of money on it, but you're gaining money on bills that are coming in the other direction, or you're gaining money in jobs that you've managed to do more quickly than the standardised model is saying.

MR LEE : So I see what you're saying, so you're standardising the labour rate and the potential time period for it, and you take the rough with the smooth.

PROF SMITH: That's I think the picture of how a standardised model works. You wouldn't get into – a repairer and an insurer might have an argy bargy about whether the standard hours were enough because of this particular Lamborghini requiring care and attention, but if all you're doing is using a standardised model to define standardised capped bills then you see no argy bargy, we just use the standardised model and you take the rough with the smooth.…..

MR SHUKER: But you build a risk premium into that I guess, because you're not sure then.

PROF SMITH: But the message I'm getting from you is that this would require quite careful thought to make sure that it was feasible, but it's –

MR SIMMS: I think so, and I think probably why we think that it would take such an intensive regulatory regime around it is because of course the biggest temptation if you’re trying to reduce costs is to reduce quality of repairs. That’s the default position to go to, and therefore you would need to ensure that you’ve got this holding down of cost but at the same time you’ve got some sort of assurance across the repair community about quality.

MR VAN DER MEER: Yeah, I want to repeat that point as well, so that it doesn’t get lost in the detail, that we are certainly supportive of the general principles of this particular remedy. We’re just trying to provide input into the practicalities of how it would be implemented to best achieve the results.

PROF SMITH: And do you think if a remedy like this were workable it ought to be applied to credit repair as well as to insurer-to-insurer transactions?

MR SIMMS: I think that if it didn’t [crosstalk]. If it’s not a whole market solution if it can only be accessed by certain limited groups, it won't be as effective.

MR THOMPSON: For the same reason there is a risk element involved in the credit repair aspect as there is in the case of temporary replacement vehicles.

MR MCLARNON: I think when evaluating any of these remedies, when we think about some of the economic incentives in them, for example the economic incentive to manage down quality or manage down provision, I think the test that I would encourage you to make is to check whether or not it deteriorates consumer rights and this principle that we have that, you know, consumer, you’re not left in a worse position than you were before. Because I think many of these things risk, as a consequence, doing that. I think that there were some, many comments made in the opening statements, whether or not the degradation of consumer rights have been adequately considered when considering the economics of these things and the cost-benefit analysis, so I think it's incumbent upon you, if proposing price regulation or other things, just to think through how those consequences will manifest themselves on consumers and to include that calculation in the assessment of the options.

PROF SMITH: One last question on this: it's been put to us that controlling the duration of repairs is an important element in controlling the cost. Do you see that as an issue?

MR TRUDGILL: I think our concern was that quite often it might be an American vehicle with American parts that have to be imported, so it may take more than an agreed timescale, but there's nothing that anyone can do about that, so… We are aware of the concerns about exaggeration from claims management companies and things, but there are circumstances where it is difficult to get parts and so how would you manage those situations?

PROF SMITH: Well, can I move on to remedy 1(e), which is about the control of write off costs. We put forward two options, but in view of the responses we've received I wanted to ask only about option B, which is that insurers should use actual salvage proceeds rather than estimated salvage proceeds in forwarding claims that involve write offs, or if they use an estimated number they should then – there should be a subsequent correction to bring the payment in line with the actual payment.

MR THOMPSON: Again, it’s not really a broker issue, but I think that sounds fair.

MR LEE : The difficulty is that disparity between when the case is settled, potentially, and when the salvage might be sold at a later date, and that often will likely affect the model. I’ve wondered on this whether there would be any disadvantage to anybody if it was just a fixed matrix for the whole market, and then those that then subsequently negotiate any sort of sharing with the salvage companies later, well, so be it, they can negotiate that, but at least they’ll be a set matrix of A, B, C and D percentages for the category write offs. There’s issues with that as well, people categorising vehicles differently and things, but I don’t know if that one had been considered.

PROF SMITH: So it would be a standardised cost model, standardised salvage model, to go alongside the standardised cost model. Any other – does anyone else have views on salvage costs?

MR SIMMS: I think our only point would be it then imposes another step in the process and the question for us is whether the step, the imposition of that extra step in the process outweighs the value to the consumer. I think the difficulty for us here is we’re not sighted on what that differential value is, but we absolutely see that this creates additional work.

PROF SMITH: Okay, thanks. The last thing that I want to ask about is the prohibition of referral fees, which is remedy 1(g).

Michael, you've already said something on this, and if I understood you right you said that insofar as there has – that the prohibition of referral fees seems to have had an effect in relation to personal injury, it's actually the control of costs that has had the effect and that prohibition of referral fees in itself would not have been an effective change in respect of personal injuries.

MR LEE : That is my view, and I do say the same thing would occur without the control on the costs.

PROF SMITH: So you're – so if something like remedy 1(c) controlled replacement vehicle costs, then referral fees – the incentive to have referral fees would be greatly diminished and they might as well be banned.

MR LEE : Well, whether you ban them or not they would reduce because there's less money in the market, which is exactly what happened with the legal reforms.

PROF SMITH: Is that the general view? Does anyone have a different view?

MR SIMMS: I think it's just probably how you articulate that view, so I think the idea is that if you are able to do – 1(c) is effective, then you don't need a ban, but specifically you should not have a ban because if you ban referral fees then you are mandating the only people that are able to participate are those people who are vertically integrated. So at the moment you've got provider A of replacement vehicles, and they pay a referral fee to insurer X. In that scenario, from the scenario where you ban referral fees, if insurer X buys provider

A he retains his income stream. If he doesn't buy provider A he can't access that income stream. Why would you make that differential when you're actually looking at controlling the costs overall? All that you're doing is mandating a certain model over another model. It seems to me that that in itself –

PROF SMITH: But if you've taken away the incentive to pay referral fees by removing the excess cost differential then there are no particular incentives to vertically integrate, to internalise the referral fees that you no longer want to pay anyway.

MR SIMMS: No, it's the opposite [inaudible]. – you've taken away the capability to pay referral fees - you haven't taken away the incentive at all. The incentive to pay referral fees, for that hire company, is in order to attract sufficient flow of business. That imperative has not changed at all by making it impossible to pay them; it's just how they physically move – you know, what you may have done is reduced the value overall – which is the point made before – you haven't changed the incentives, you haven't changed the imperatives within the industry. If you want to share in that value element you then simply have to vertically integrate.

MR LEE : Hence why in the legal reforms frequency hasn't been the saving for insurers, because there are those who are big enough and incentivised enough to move into ABS structures with lawyers. The amount of money has come out, so the amount that's been shared around, might be smaller, and therefore insurers see a reduction in severity, which is then being passed on to the consumer. And it's worked, but it has driven, as BGL say, it has driven exactly that desire for the integration, hence ABS structures.

MR COLLINGS: Getting rid of referral fees, what actually does it get rid of? It gets rid of companies that might offer the services for the customer; it doesn't actually address the root of the problem. It doesn't address the fact the customer still needs a car, he still needs a car for the duration of those repairs. He still needs – he still has the right of that car. Getting rid of the referral fee just makes it harder for him to access those services, because you take away some of the incentives for those companies to exist.

PROF SMITH: I think that I've got to the end of the issues I wanted to raise, and that brings us to the end of the issues we wanted to ask about on theory of harm 1. We've spent more time on theory of harm 1 than we planned to spend on the rest of the agenda, so we're more than – probably more than half way through our agenda. Can I suggest that that's an appropriate time for us to have a five minute comfort break, and then we'll resume on theory of harm 2 after the break.

(The hearing was adjourned from 11.41 a.m. to 11.51 a.m.)

PROF SMITH: Well, if we're ready to resume, welcome back. I want to move on to theory of harm 2 and, Steve, you're going to lead on the question on this.

MR ORAM: Yes. I'll ask a few questions on theory of harm 2 and then move on to theory of harm 4. But in relation to theory of harm 2, that's the compulsory repair audits, you can imagine that we've asked a lot of questions and received a lot of comments from insurers about this, and so in particular with [inaudible] which we're considering, but the questions I'd like to ask yourselves is slightly different. Do clients ever complain to their brokers about the quality of accident repairs, and if so what happens?

MR TRUDGILL: Obviously if there is an incident when a repair wasn't perfect, maybe things like the parking sensors don't work or something like that, maybe something doesn't quite match then of course we would escalate it straight to the insurer. It will go back to the repairer and it'll be corrected straight away. I think we were quite surprised that the Competition Commission had this as such a big issue because if our members, clients, were concerned we'd be concerned and we'd be having a go at the ABI and the insurers about it, but it's just not really been on the radar as an issue. We haven't had that many complaints about it but we would be absolutely following them up, so not that much of a concern.

MR ORAM: So you would refer complaints to the insurer. Does that – is that common for all of yourselves?

[*General agreement*]

MR ORAM: Alright.

MR LEE : Well, just I think there's a couple of us that would probably handle quite a substantial number of the repairs on behalf of the underwriter as we're in a fully delegated situation.

MR ORAM: Oh right. So maybe I can come back to that. So when you refer to insurers, your customers' complaints refer to insurers, do you then drop out of the procedure or do you monitor what's going on or what?

MR TRUDGILL: No, you keep in touch with the customer, because you need to make sure that you've got a happy customer at the end of the day. So we want to look after them throughout that claims process, so at the end of the day you have a happy customer that wants to renew with you. So yes, we would be in touch throughout and make sure the follow up calls took place.

MR ORAM: And what happens if the customer and the insurer can't agree?

MR COLLINGS: Can I just be clear, sorry, if you're talking about a credit repair or an insurer repair.

MR ORAM: Yeah, it's a good point actually. I was thinking about insurer repairs, but maybe we'll deal with the credit repairs as well. So in the case of an insurer repair, so you've referred it to the insurer and let's say the insurer and the customer can't agree, which I'm sure does happen sometimes, what then happens?

MR TRUDGILL: So it gets escalated. There's a complaints process in the back of the policy booklet. You write to the chief exec of the insurer, you complain. If you still can't get satisfaction then you have the Financial Ombudsman Service which is free to customers, and they will come in and they'll look at the complaint and they'll make a ruling so that the – if the insurer should do something further then they have to do that, and then they would do that, but if they say, 'Actually the customer's not right', then that's the end of it. We don't see that many. I don't know how many complaints the ombudsman get about repairs, but it hasn't been raised to us by the ombudsman as a concern.

MR ORAM: And what about if the – if it's a credit repair? So do you refer the customer to the insurer or to the claims management company or what?

MR COLLINGS: In the event of a complaint?

MR ORAM: Yeah.

MR COLLINGS: It's pretty much the same, whether that's the insurer repair or it's been done on his behalf by his claims management company, the same service standards, the same complaints procedure would be in place and the customer has every right then to take that further. As a broker we take seriously the customer's position if he's not happy with the repair. That part of the industry seems to work very well.

MR ORAM: Just to be clear, so if it's a credit repair, would you refer the customer to the claims management company dealing with the credit repairs or would you refer them to the insurer?

MR COLLINGS: If the claims – if it's a credit repair then the insurer's not repaired it, it's the actual claims management, and so therefore it would be the responsibility of the claims management company and the broker to deal with that customer.

MR THOMPSON: Yes. If it was BGL managing that position, if it was an at-fault claim that had been managed by the insurer, we'd work with the insurer to make sure that the customer was happy. If it was a repair that we'd facilitated we would take responsibility for making sure that that repair was of appropriate quality.

MR ORAM: Yes, I accept what you're saying, BIBA, about the number of complaints from customers, but of course that relies on the customer being able to judge that there is something wrong, and of course, leave aside the criticism of the MSXI study, it doesn't always follow that the client can judge whether there's something wrong or not.

MR TRUDGILL: I think the point of having the approved repairers is that the insurers have service agreements and guarantees of three or five years on the repairs to make sure there are high standards. They don't want to be having to deal with customers coming back and dealing with problems, so they do have quite stringent standards on their repairer network, so I think it works quite well.

MR ORAM: Yes, well, as I say, in fact, you can imagine we have actually gone into that with insurers and they're just sent us some information that we requested. But just coming back to Hastings, yes?

MR LEE : Well, I'd also say, just following on from that, many insurers or delegated brokers like ourselves would have penalty clauses in as well as a check and balance. So of course you're trying to drive the cost of the repairs down in that scenario but if there are, and I think a lot of insurers have this now with the repair networks, if there are greater than a certain percentage of complaints then that repair network then has to pay a financial penalty. So there's a check and balance normally within the contracts as well. And I agree with what everyone else has said that this isn't one that I have seen as a huge issue, and that guarantee of three to five years, depending on which insurer it is, I don't see that one as in the same league as some of the other things that are in here.

MR ORAM: Okay, okay. We've been told that the insurance companies put pressure on the repairers to minimise repair costs, which leads to corners being cut in repairs. Have you come across this? Do you have any evidence of this?

MR LEE : That's my point, that there's a check and balance in a lot of contracts with repair networks that if it goes above a very small percentage of complaints, be that for service quality or whatever, then there's a penalty on that repair network, and significant penalties that I've seen in contracts around the market, so I think that's a good check and balance.

MR ORAM: And is that just in relation to Hastings' dealings, or is it typical in the market as a whole?

MR LEE : I'm certainly aware, I mean, I'm not giving away any contractual things, I'm aware of that going on in a number of contracts between insurers and repair networks and I personally see that as a good check and balance.

MR SIMMS: We don't do that in our credit repair contract; we mandate the quality of the repairs, and that's why we stand over them. If our customers were unhappy they would generally complain to us and so we'd know and be able to track those. We manage those suppliers very, very closely. I think we think that's part of our proposition.

MR THOMPSON: There is a distinction that I would like you to understand more around, which is, again, incentives, so the incentive for the broker is very straightforward, which is to have the customer put back in position prior to the loss. As an added incentive for the insurers the incentive for the at-fault insurer here is to minimise cost. That's what I was hoping the report and the investigation would go into depth over the distinction between those forms of different incentives, I guess, different motivations, when approaching a repair, notwithstanding the fact that, yes, I acknowledge there will be contracts that ensure regardless of whether fault or non-fault, that ensure quality standards.

MR SHUKER: And, sorry, if I may just add, I guess that by using – if I could make a distinction between brokers and direct insurers, by using a broker if we've got a 30 million account with Aviva, say, and we've got a problem on the claim then they're pretty incentivised in fact to make sure that our client is, if you like, satisfied. So I don't know the answer to this question but I wonder if there's a different challenge in the direct market where the consumer, and we represent the consumer in the broker market, doesn't have the same leverage over the insurer in terms of quality assurance and so on.

MR LEE : Can I just add-one final point to that, because it's relevant to some of the third party things, that there are –

and it depends how the insurance industry has changed from their old reactive approach to proactive – but there are a great number of insurers and delegated brokers that see the third party as a customer as well, and that service that's provided in that scenario see them as potentially selling their services for the next renewal. So there is a – when we talk about incentives there is an incentive – there are incentives even in your dealings with that third party that you don't have a contract with. I'm sure that's something you've considered.

MR ORAM: Okay. Well, last question on theory of harm 2 from me, and that's for those of you who've submitted comments on remedy 2(a), then it's whether you've got any further comments you want to say. For those of you that haven't submitted a response on 2(a), have you got any further comments you want to make in what you've said today? No, okay.

Let's move onto remedy 4(a), provision of add-on pricing from insurers to PCWs. Can you please clarify for us how add-ons are sold if a consumer clicks through to your site from a PCW. They click through to your site, do you generate the pricing yourselves or does this come from the insurer?

MR VAN DER MEER: We generate the pricing ourselves in most cases. It's a flat rate for most of the add-on products.

MR THOMPSON: Yes, we generate.

MR ORAM: Right. So it's the same sort of thing, yeah. Is that typical in the industry?

MR TRUDGILL: I think the smaller brokers would just take the products from – given to them by the insurers, but obviously the big guys here would perhaps have their own particular products. But the smaller guys, it would be what's available to them that they would then sell.

MR ORAM: I'll just pick up on the comment Hastings made and some of you also made about the fears of overload of information, but, Hastings, you made it in specific relation to add-ons, and I just – I wondered whether that's true, because let's… I'm a consumer, so I go on to a price comparison website and in an ideal world I'd input my details, up comes the basic policy price and there's a list of add-ons, and I don't have to – and in an ideal world I'd get the price of all those add-ons and the information at that point, which of course I don't at the moment, but of course let's assume that I could get all that information. Is there really an information overload, because I'm only going to look at the – firstly at the price at the add-ons of interest, so if there's extra ones I just skip over them: 'Oh right, I'll have that, I'll have that'. And then if I want to look at the details I'll only be looking at the details of the one I'm interested in. So is there an information overload in that ideal world?

MR VAN DER MEER: I think in the scenario that you've just described, no. Our point about information overload was more broader than just this point about add-ons, but even in the case of add-ons I think there is subjectivity about whether the key benefits and limitations are this long or this long or this long, and of course at some point in that subjective chain you do get to a point where consumers are overloaded with information.

MR TRUDGILL: And indeed the regulators just looked at add-ons and I think the issue wasn't about information overload, it was about sufficient information, so some comparison sites might say, 'Motor legal expenses insurance will recover your money uninsured losses in a claim', but it didn't go on to say, 'In a non-fault situation'. But the regulator's completely on top of that, they've put out their guidance, the industry's responded and I think in regard to add-ons they're now very clear, separating the cost, pointing out it's a different insurer, not the main insurer that you're buying the motor policy, it's probably a different insurer there, and explaining the key facts as to the exclusions, but the regulator again do have an investigation on comparison sites at the moment and I'm sure that that's something they'll be picking up as well.

MR MCLARNON: I think the other thing to be wary of is that not every add-on is the same. Even if you think – we're talking about motor insurance now – even if you think about the most common add-on, which would be the breakdown cover, that breakdown cover policy variation, that breakdown cover could be extensive. And even with any given broker or insurer for that matter, they have more than one type of breakdown cover that they sell. So, for example, would you like your car started at your front door if it doesn't work, or is it only when you're out on the road already; does it cover Ireland, and Europe – parts of Europe, can you go to Northern Ireland with it; what happens if they can't repair your car at the side of the road, will they bring you home or only to the nearest garage? So I think there’s quite a variation in policy difference and cover difference, and so any comparison that would be required would need to be able to encompass both the cover and the price. I think that’s for me where some of the difficulty is around that. In principle it would be great but I think in practice it’s difficult to manage that.

MR THOMPSON: I think that’s right, but the same also applies to the core product.

[Crosstalk]

MR THOMPSON: There is the question of how much information can you provide to a customer without them having that overload point and then that could then lead them to go, ‘Oh, sod this’, you know, pardon my language but – you know, inertia will rule, and that won’t be in the interests of the consumer or market competition. So there’s an important balance in terms of that, in terms of information provision.

MR ORAM: I understand what you’re saying, but I think we’ve been told, or it’s certainly a possibility – probably, perhaps – that the consumer goes on to the website, gets a list of prices for the basic policy and probably, not all consumers will then look at all the detail of the basic policy in order to make a judgment. They’ll look at the price and think, ‘Right, I’ll have that. Add-ons, yes, I’d like breakdown cover’, probably the same thing will apply. They’ll think, ‘Oh, I’ll compare that price’ and without actually looking at much detail, which I know is not ideal but probably how most consumers deal with this.

MR MCLARNON: I think some people believe that that already happens in the market right now. So the erosion of policy benefits over years, people think that policy benefits have eroded as people stripped benefits out of cover so that they could reduce the cost of that cover, hence reduce the price of that cover. So I think that that is something that's perceived to have happened in our industry.

MR COLLINGS: A good example would be the travel insurance market, that you can actually go on to a travel insurance – there's different websites – where you can go to Russia for a day for £2.50 but when you actually open that up you find out that they've stripped out much of what you would normally expect in a travel policy. Suddenly it doesn't include your baggage, you go on holiday you want baggage with you, medical cover has dropped down from 10 million to 1 million. That's happened in the travel market by [inaudible].

MR TRUDGILL: And pet insurance and motor insurance. And the regulator, their investigation at the moment says that they'll make certain there is not too much of a focus on headline price, and where the consumers may be misled into purchasing insurance products or add-ons that do not meet their needs. So BIBA fundamentally agrees with that, you know, that the sites need to be absolutely clear. And we do share a concern that the focus is on price, and we call them the skinny policies where the cover really is stripped back and then you have to buy it in at additional cost, which then can add up to quite a bit more. And so they just – I think they really do need to display exactly what they do and don't cover in a very clear way.

MR ORAM: Yeah, I understand that.

MR SIMMS: I think broadly we would be in support of this, but the area that we think is a challenge – it is just the logic behind it. So what should happen? I think, the theory is that you would provide some information, specifically in this case pricing information, on price comparison websites so the selection by customers that happen to be using price comparison websites and happen to use it to go all the way to that page, they will get this extra information. But not the vast majority of customers. Actually if what we're trying to do is to address the issue about consumer understanding at the point of purchase then it really needs to be at point of purchase. That's never on the price comparison websites, that's always on the provider site. And actually what we want to be doing is mandating information at the point of purchase not on the price comparison websites if we're trying to deal with the whole issue rather than just one element. It seems to be that you'll pick up certainly some customers and enhance the information and the knowledge available to a certain group of customers at a certain point.

MR TRUDGILL: Our fundamental concern with the sites is that a customer says, 'I want to have zero excess', that's what they've selected, and the quote might come back with 200 voluntary, 250 compulsory, and they've got 450 excess when they've entered, 'I want nil'. And that's when the sites have to just reflect what the customer's asked for, and that hasn't always been the case, and I think, going forward, that would resolve one of the biggest problems I think that we have seen in the past.

MR ORAM: Okay. As I say, in an ideal world the customer, in order that they can compare easily they get the add-on price and information if they want to read it on the PCW, so they can make rapid comparisons. In that respect, and putting to one side whether or not price comparison websites would be inclined or disinclined to include extra information on their site, but the simple supply of price and detailed information to a price comparison website, would that present any problems to you? Maybe I can fire this one at Hastings first? Just supplying the price and some background information on a particular add-on, would that present problems for you?

MR VAN DER MEER: Just some implementation considerations, but nothing that's not overcomable. I think [the key to the data's in standardised format?], but…

MR ORAM: Yeah. And BGL, would that – do you foresee any problems?

MR THOMPSON: It's just data transfer, isn't it? At the end of the day, we already have data transfers; it's just a process of building the data feeds.

MR ORAM: Anything to add, Swinton?

MR MCLARNON: I was going to say I don't think that an issue is a transfer of what is relatively simple pricing and benefits data between members of a comparison website and getting it to a comparison website. I think comparison websites have a very legitimate question to ask which is how much will it actually cost then to develop their sites so that this information can be sorted and displayed in the way that you suggest. And although it might seem that building websites is something very inexpensive, having about to launch a whole bunch of websites in one day I can say that it's very, very, very difficult to do something of the level of complexity that is required for something like a comparison website.

MR ORAM: Yes. It won't surprise you to know that we'll be asking a lot of questions of price comparison websites tomorrow. Okay. Let's move on to remedy 4(b), which is transparent information –

MR VAN DER MEER: Sorry, could I make one final comment on 4(a)? Is that okay? Apologies. One thing that strikes us if this remedy is taken forward is that there is a risk that – there is then assumptive selling that goes on through the buying chain. And what I mean by that is a consumer indicates a preference for an add-on product on the price comparison site, has made that decision only on the basis of limited information, and the insurers and brokers then presume and pre-tick that the consumer has then made that buying decision and make it difficult then for the consumer to confirm that choice. And the whole debate of pre-ticking or not has been one that the industry's been consumed with for the last year. I think just a note that if this remedy was taken forward then that needs to be given some consideration.

MR ORAM: Sorry, I should have said, are there any other questions from my colleagues on 4(a)? 4(b) then: transparent information concerning no-claims bonus. Are you able to explain your understanding of what the key factors are when an insurance company determines a level of no claims discount the customer's entitled to? What I'm getting at here is that we understand that in calculating a no claims discount it's not just whether or not you've had claims – you've had an accident in the last year or couple of years or whatever, there are other factors, and I just wondered if you were able to help us with examples of the other kind of factors that would input to determine a no claims discount by an insurer. So maybe Swintons, have you got a view on it?

MR COLLINGS: The customers value no-claims bonus; people are very, very proud of what they've achieved, they've actually reached a level, which most people understand is four or five years, which is 60% or 65%, and for most people that's very clear. And it's very valuable to them, so valuable that they're prepared to pay a bit extra to protect it, and that protection is an add-on part of the policy which allows you in the event of an accident that you'll still keep your bonus. Where it gets a bit fuzzy is what happens when I do have an accident? How far back do – how much do I actually lose? Can I shop around with that reduced no-claims bonus? And then some insurers have taken it a bit further and gone from what was traditionally a 60% no-claims bonus to 65, to 70, to 75, which – does that mean that if I take an insurer with 75 I'll only go back to 60? So there is a little bit of lack of clarity caused by the almost sales approach to get people to tie in to bonus. I don’t think bonus should be dispensed with; I think it’s a really, really important piece of value to consumers.

MR TRUDGILL: One – sorry.

MR COLLINGS: That’s alright.

MR TRUDGILL: One solution that’s coming in is there’s going to be a new no-claims bonus database this year, and so it will log the number of years for each individual. And so it doesn’t really matter what percentage, if insurer A’s going to give a larger percentage to seven years than insurer B, you know how many years you’ve got. It’s there, it’s easily accessible, insurers can see it, and then your broker can look around the market and get you the best deal with the insurer that gives you the best discount for that sort of thing. And the new database is going to be a really good solution for customers to make it – to open it up and help them understand what they’ve actually got, what they’ve earned.

MR ORAM: But it’s still, as I understand it, that won’t – that will address no-claims bonus, but it won’t address the no claims discount, which is different. In other words, you’ve got 60% but –

MR VAN DER MEER: I think your question was slightly different, wasn’t it?

MR ORAM: Yes.

MR LEE : The database will help clarify what people have, but the consumer doesn’t understand how that translates into price. And as insurers have got more and more sophisticated they don’t have a single dimension table of this many years no claims equals this discount. They'll be lots of interactions with other tables within their rating matrix, so you can't standardise it.

MR ORAM: Give us some examples, if you can, of the kind of considerations that would be in that matrix.

MR LEE : I'd prefer not to, as it's giving away people's pricing –

MR ORAM: Okay, okay.

MR FINBOW: Can I just come in on the point that Chris made a moment ago? You said that people will pay an add-on for protection of their no-claims bonus almost as a matter of being able to maintain their pride in having six, seven years, without that necessarily having any positive effect on their premium they actually end up paying. Is that right?

MR COLLINGS: Traditionally if you have an accident then your no-claims bonus will be stepped back, so therefore your premium would be dearer when it comes to renewal by paying that extra to protect that bonus. I think your point is that even if you've got a reduced no-claims bonus, and you shop around and with the change in data and the more sophisticated insurers now, is that you still may be a better risk for some insurers with a reduced no-claims bonus, but that's nothing really to do with the bonus itself and the step back in it.

MR FINBOW: No, I understand that. I was actually going one step further than that and wondering whether the fact that you have, you maintain your – the level of your bonus, notwithstanding that you've had an accident, actually necessarily means that your premium isn't going to go up, because the other factors that contribute to what your gross premium is going to be. So you may still get 60% off, but if it's of a higher amount then what were you actually protecting other than your pride? Sorry, I mean, I'm slightly putting words into your mouth, but that was, I think, what I understood you to say: that people think there's an importance.

MR COLLINGS: No, I think there is a pride factor, but that's not what you're paying for. There may be people who decide, 'I want to keep that 60% four years, five years', whatever it is, at any cost, but it is still is a protection [inaudible], so there is a level of clear value in that added product.

[Crosstalk]

MR ORAM: I'm sure there's some value, but it's a value that's very imprecise to the consumer, because they'll say, 'Right, great, I've got 60% no-claims bonus kept because I've had an accident but I've got no-claims bonus protection insurance', but what's it actually protecting, because when you apply these other factors a no claims discount is rather different in impact on the policy.

MR SHUKER: It is protecting the net amount you would then end up paying, because if an insurer loads you for an accident they'll load you whether or not you've got protected no-claims bonus or a reduced no-claims bonus. I'm putting it quite simplistically, because I guess there are other algorithms that sit behind all that, but, if you like, in the good old days, before – you know, when we had rating guides and so on, it would be very, very simple: one fault accident, no load, protect your no-claims bonus and actually you're protecting – you're not protecting your premium, you're actually protecting the discount that will be applied to the gross rate that actually then comes through. And to my mind, and to what we see, if you like, at grass roots level, people – you know, to Chris's point – they value their no-claims bonus and they value then actually protecting it. You then get confusion over some people saying 85% no claims discount, and I think a lot of people see that just as a marketing ploy because 85% off what, so whatever the gross premium is, but there is then this issue around, I suppose, which I accept, 'I've kept my no-claims bonus but I've had a loading applied'. I would see that same loading applied whether or not you've had that no-claims bonus protection or otherwise.

MR ORAM: What I was going to say was given clearly the uncertain impact on the consumer's policy at renewal if they've had an accident and they've got no-claims bonus protection insurance, given that they don't know the financial impact in any precise detail, but they know in precise detail what they have to spend –

MR TRUDGILL: They don't know what the claims loading will be, but they do know that the 60% bonus, if they've had two accidents, will be wiped out, so –

MR ORAM: No, my question was going to be, given they don't know the financial impact, it's uncertain to them, but they know what they're going to spend for no-claims bonus protection insurance, how on earth can they judge the value of it?

MR TRUDGILL: With protected bonus for a known loss your premium protects the unknown loss of the whole claim. So it's just a smaller version of the insurance policy in a way, so it is protecting that – you know, those two reasons that can cause your premium to go up: the claims loading and the loss of your bonus. You can manage that part of it; you're protecting your bonus loss.

MR THOMPSON: I think there is a – the way that you would value it, just to determine, I think, as Carl's already explained, you can only determine the value of it actually when you've had a loss and you can see that the gross rate that you would have paid, had the no claims discount stepped back, would be very different to the rate that you'd be paying with protected no claims discount. Unfortunately, if it was as simple as the only rating variable that changes year on year is the claims loading you would be able to pick that out, but there are very many and numerous rating factors that will change without any transparency to the customer, necessarily so for competitive reasons but also just the sheer complexity of rating –

PROF SMITH: Can I – that's very helpful but I'm afraid this consumer is still a little bit confused. You told us at the beginning that you have the interests of consumers at heart; I want to see if you can clarify my confusion. I understand that – I don't know what the consequences of having an accident are on my rating. My basic premium will go up; I've shown you – I've shown the insurer that I'm a riskier driver; fine. But I'm making a choice between protecting my no claims discount or not protecting it. If I protect my no claims discount, I have an accident, my premium goes up but I still get 60% off it. If I haven't protected my no claims discount my premium goes up and I no longer get the 60%. Now, until a few days ago I fondly imagined that if I chose not to protect my no claims discount then it goes back to zero, whatever, and it'll take me four years to climb back to 60%. So that's what I'm buying, I'm not buying protection against my premium going up, I'm buying protection against four years of having to get back to where I'd be if I'd protected.

MR THOMPSON: The step back process –

PROF SMITH: And I sort of thought I knew what that was worth, but now I find that the stepping back, or my rebuilding my no claims discount doesn't just depend on not having any claims for four years. It might depend on – well, you weren't willing to elaborate, but perhaps it depends on my age, on my gender, on my occupation, whatever. So I then say, 'Oh, as a' –

MR LEE : I can assure you not gender, but there are other factors. What I would say is it is extremely valuable, it is still a huge rating factor in most insurers' rating matrices, but they do all differ and they do have interactions with other factors. So I agree with you that it is a difficult –

PROF SMITH: I don't know what I'm buying, because I don't know how long it's going to take me to get back the discount that I didn't protect.

MR SHUKER: Pre computers, in the old rating guide, we would have been able to sit down with you and say, 'Well, actually this is the premium, everything else remaining constant this is the premium you'd pay today and 10% on top. If you have one claim your bonus rate reduces, say from 60 to 40', get my calculator out, 'that's what you're likely to be paying, broadly'. But I guess because there is so much more now, as Hastings has just mentioned, going into pricing and so many more moving parts it's just that little bit more difficult to articulate. We could still do it today if you came in and you said to me, 'Tell me what is the value of this no-claims bonus protection', we could just run it through one price, another price, perhaps a bit of loading, so broadly that's the benefit you're buying for your expenditure, but it's not a guaranteed or an exact science.

MR LEE : But then your renewal premium never is because the world has moved on, you've changed as an individual, your risk has changed as an individual so there's – nothing will have stood still.

PROF SMITH: If I'm allowed to ask this question, might my renewal premium actually depend on whether I'm buying no claims discount protection? Does that reveal information about me that goes in to the underwriting calculation?

MR LEE : Yes.

PROF SMITH: Okay.

MR ORAM: I've got no further questions.

PARTICIPANT: We'll have a proposal form outside.

[Crosstalk]

MR ORAM: Any other comments that you wanted to make before we move on? Thanks very much.

PROF SMITH: Robin?

MR AARONSON: Okay. I have questions on most favoured nation clauses, which I think is our last topic, and before I get into the specifics of MFNs, can I ask a couple of scene setting questions? Can I be sure that I understand correctly how the prices are set when one buys through a broker? My understanding is that in the case of large brokers at least it's the broker that's setting the price, and then there's a separate arrangement between the broker and the insurance company, rather than the insurer setting the retail price and the broker taking a commission. That's true of the… Is it true of all…?

MR TRUDGILL: So 90% of brokers would have the insurer premiums and that's what they offer, but the bigger 10% would have some influence over those prices and some authority to change those prices.

MR AARONSON: Okay, okay. And the biggest 10%, well, maybe you don't have the figure off the top of your head, but in terms of the percentage of the market that the 10% big brokers –

MR TRUDGILL: I can only come back to you on that.

MR AARONSON: Okay. Don't worry. The other scene setting question is looking at consumers, is there a quite a marked segmentation between the sort of consumer that will use a price comparison site, that will go to a broker, that will go to the insurer direct? Does it tend to segment in that way or are there quite a lot of consumers who might use any of those routes to find out?

MR TRUDGILL: It is a combination, I suppose, with the younger people probably are more likely to use a price comparison site because they've been brought up in internet age, but brokers see people of all types and ages, and of course many of the products on comparison sites are from brokers as well, so…

MR SHUKER: We as a business are not on the price comparison sites and we see people use them really as a research tool to get price proximity of, 'What should I be paying for my insurance'. And then they come in to the branch or they give us a call and then we talk about their needs and so on.

MR AARONSON: So those are people who are – when they go on the PCW they're quite clear that that's not to buy, that's to find out some useful information.

MR SHUKER: Well, we have a branch network so we see, if you like, an attraction to providing local service and advice and everything else, so 70% of the people who come in to us for a quotation have been online to get an indicative rate, and then they'll come in and we will talk to them about their actual requirements and then we'll match them up with a policy. Some will then go on to buy from the price comparison sites and some will then come through, if you like, to us. But we see them seeing it as a very useful tool to – for them to understand broadly what they should be paying.

MR THOMPSON: We see a similar sort of experience with some customers. Customers may use the price comparison websites and then phone through to the provider, some could go into a retail outlet, some will go directly to a retail outlet or directly to the telephone, and there are customers that cross many different channel boundaries regularly in their purchase decisions. So yeah, it's a – there are many channels which combine, they don't necessarily stick to one.

MR AARONSON: Okay. So could a broker site, particularly a broker that does a lot of selling through a website as opposed to over the phone, could a broker site actually be a substitute for a price comparison website?

MR THOMPSON: Well, it's just another route to achieving a price and appropriate cover.

MR ORAM: It's making some comparison but maybe not as broad comparison as on the PCW?

MR THOMPSON: Yes, that would be right, generally speaking, although some brokers offer quite wide panels on their arrangements, so going direct to website you still may get a very representative view of the market, some might be just a single provider, and there are many different sub propositions out there, and I think largely they're clear to the consumer in terms of what they're being offered.

MR TRUDGILL: So the broker market will have lots of products that aren't on comparison sites, from Lloyd's insurers and other markets like that, but basically at the end of the day the broker does their quote, and if you were to turn the screen around it's almost like then the customer using the comparison site. But the brokers– are the agent of the customer; obviously there's no £50 or so fee that a comparison site would earn– which is why we disagree with the MFN clauses as well.

MR SIMMS: I don't think we see that customer segmentation. I don't think you can put customers in certain buckets and determine how one set of customers might behave, whether that's geographically or in age terms, etc, etc. As Peter just said, it is a hotchpotch of accessing different channels

MR SHUKER: And we did a lot of work on our client demographics by age and socio economic types and so on, and there's just a broad spread. So to Graeme's point around it might be an older generation, we don't quite see that. We see people coming into and using branches really from age 30 onwards. Probably the 20 to 30s less so, 17 to 21s more so, so it's very difficult to, if you like, pigeonhole certain types and so on.

MR TRUDGILL: So some brokers specialise in young driver schemes for example, so they might aim particularly at young drivers, and classic cars or just niche products, that's their expertise and understanding. And also with something like, just talking about home insurance for a minute, quite often you might go onto a comparison site, put your postcode in and if you're in a high risk flood area it may not offer any competitive quotations back, and that's when you'd go to a specialist broker who has an understanding of flood insurance and the specialist insurance company markets and can give advice on how to go about insuring your flood risk property. So far more than just price comparisons, lots of expertise and advice can be given as well.

MR AARONSON: Okay. So turning to MFNs, firstly does it ever happen that a broker will try and agree an MFN with the insurers on its panel?

MR TRUDGILL: No. So we've got a statement here which basically says we think that MFN clauses are fundamentally anti-competitive and we think outlawing them is the right way to go. Brokers effectively do price comparison for insurers and they don't insist on MFN clauses with their panel of insurers. And the brokers' existence isn't threatened by the absence of MFN clauses, so we'd be quite happy if they were to go.

MR SHUKER: Perhaps if I can clarify that a little bit. I mean, take for Aviva. Aviva as an insurer, for example, they have different pricing through different distribution channels. We as a broker don't go to Aviva and say, 'We must have the cheapest rate that you're offering through your, if you like, your best channel'. So there is an element of pricing that reflects the value that the broker actually brings to the table, attracting the right sorts of clients and validating no-claims bonus, various other things that you might do to add value to the insurer relationship. So as a broker we don't turn round to those insurers and say, 'Your cheapest rate has got to – whatever you quote cheapest wherever else, you've got to then put those through us'.

MR AARONSON: I see. So you can be quite relaxed about an insurer offering a cheaper rate direct than through you?

MR SHUKER: Not really, no, but we live with it, so…

MR TRUDGILL: We don't have the power to say to insurers, 'You can't offer it cheaper to somewhere else', whereas I think comparison sites are far more powerful.

MR AARONSON: But is that something to do with the point we discussed at the beginning that the broker is actually setting the price, so it’s quite difficult to say to an insurer, ‘You can’t quote a lower price than I do’, when the insurer doesn’t actually know what you’re going to quote. The insurer’s not controlling what you quote.

MR SHUKER: Oh no, the insurer is controlling what we quote. They set the rates. So we have a panel of insurers and they – they’ll say, ‘For this risk I want 290’, another insurer will say, ‘I want £310’ and so on, and we deliver that rate.

MR AARONSON: I thought you said that’s –

MR SIMMS: Yeah, I think that is right. So insurers in our model and all the large broker models would not know the rate, the premium rate the consumer is getting until the consumer’s already got it. It’s that point. Absolutely insurers are setting what we consider to be net rates, they’re saying, ‘This is what we would like you to pay us for placing that risk’. That sometimes is below the premium that we would charge that consumer, and therefore we have made a commission, sometimes it is above the premium and we have discounted that rate and we’ll provide it to the consumer because we think there is a long-term value in that. So MFNs could not operate. We absolutely do negotiate with insurers for the best rates we can find from that insurer for those risks, but we don’t negotiate a premium rate level with insurers, because they simply have no understanding of our premium rate. In fact in most instances they’re in competition directly for the same customers with us and therefore we wouldn’t provide them with that understanding. I think that model which suggests that it doesn’t occur is a model within the brokerage business, but certainly within our brokerage world it doesn’t arise simply because [inaudible].

MR MCLARNON: I think the point on net rates there, I would love to be able to give a guarantee, Aviva’s a good example, a guarantee that Swinton would get the best rate from Aviva for a given risk, which of course while it would be something I would very much like, but it’s something I would not be able to get, even if they guaranteed –

MR AARONSON: Okay. So that’s something that doesn’t happen?

MR MCLARNON: Not that I’m aware of.

MR SIMMS: I wouldn’t say that it doesn’t happen. I’m not sure that it doesn’t happen at all. I’m not sure that can be possibly right. I wouldn’t say that it never happens. I think what people are reflecting on here are different negotiating positions. Being one of a multitude of Aviva’s distribution channels, it’s highly unlikely that you would have the ability to negotiate that. Let’s take an example of an insurer who also has a broker; it might provide its best prices to the broker, as opposed to providing this to other brokers within a distribution channel.

MR SHUKER: But we can’t turn round to that insurer and say, ‘We want the same rate that you’re distributing through your distribution’. We have no power to do that as a broker.

MR SIMMS: That’s a reflection of the power in that particular bilateral relationship, yes.

MR AARONSON: And then what about brokers being on the receiving end of MFNs? So does this sometimes happen that a PCW will agree with a broker that an MFN clause in the same way that it might with an insurer?

MR TRUDGILL: Yes. So our issue is that the broker, that product that they're offering, they're not allowed to offer it cheaper if a customer walks into their branch, when of course they're not having to pay the £50 fee to the comparison site, so our brokers are saying, 'Well, that's artificially keeping the premium £50 higher and we should be able to give that lower price to the customer'. So that's why we disagree with the MFN clauses, and it would be much fairer if they just didn't exist.

MR AARONSON: Okay. So we've floated the remedy that, the possible remedy that the wide MFNs should be prohibited, but the narrow MFNs could continue. If that were implemented, what effect would that have on the relationships between brokers and price comparison sites?

MR TRUDGILL: I think we just thought for a level playing field that they (MFN clauses) should just all go completely would be the fairest thing for all the players in the market.

MR AARONSON: Well, that's jumping ahead a bit.

MR MCLARNON: You having published your provisional finding – remedy, we have since had a number of price comparison websites on the telephone or in person to say, 'So how are we going to do a special deal with you so that you give us a cheaper price'.

That's the types of deals that have previously been done in the market, where a price comparison website will invest some of its CPA in exchange for some pricing investment on the part of the, in this case, broker, and then that deal could then – that deal which had previously been able to be done under the counter, a deal like that might be able to be made more explicit were MFN clauses not in place.

MR AARONSON: So some PCWs are actually taking the initiative, more or less anticipating this remedy?

MR MCLARNON: There have been some discussions, yes, with PCWs to say, 'How is it that we might take advantage of this remedy, were it to be brought into the books'.

MR AARONSON: Okay. Well, maybe we shouldn't in this forum go into it in too much depth, but more generally there is a balance of power issue here between the brokers and the PCWs. If wide MFNs were banned but it was still possible to have a narrow MFN how would that balance the power? Would it alter sufficiently to satisfy – not satisfy –

MR TRUDGILL: We've taken it to the BIBA motor committee and all the brokers on there have said that the best thing for the customer is to just take them – you know, it's an anti-competitive thing in itself and it shouldn't exist, should be taken away.

MR AARONSON: Okay. And what about the other side of the argument that at least a narrow MFN is needed to prevent PCWs simply becoming research tools, unpaid research tools?

MR TRUDGILL: How is it any different from the broker model that's existed for years, but we haven't lost out because of that situation, so we're not concerned about that. We haven't had insurers saying this must be your price with us and we can't offer the price somewhere else at a different rate. And so the broker model has existed absolutely fine over the years without restrictions between us and the insurers, so why should it be any different with the comparison sites?

MR SHUKER: In fact it created competition because if you had broker A next door to broker B somebody could go into broker A and they'd search their panel of insurers, they'd walk into broker B and say, 'Well, give me your rate, well, I've been quoted that by broker A' and then – so that competitive tension would then work its way through and broker B might then do a little bit of a discount to get that business or choose not to.

MR LEE : And not only that, so from those days I might have been an insurer and someone like Carl's brokerage, those brokers that returned the better loss ratios were able to get a lower rate because they'd trained their staff better, or they targeted certain individuals and they might get a better rate, and that would be ultimately better for the consumer because it promoted that training. Now, it might wind up the same with any form of distribution that the quality PCWs – because of the way that they market or the way that they have their sites structured, and the quality that they bring may end up winning out, so might end up better for the consumer.

MR AARONSON: Well, you say winning out, but might it not have the effect that they are very visible as research tools, that's the obvious place to go and do your research, but not necessarily the obvious place to buy the policy.

MR LEE : Potentially, but I suspect that they would wind up with lower admin costs because of their scale currently. I would have thought they'd still be able to compete because they're charging obviously, they're still going to charge a broker or an insurer an amount of money for distributing on their selves, just the same as any broker, someone walking into a shop, a high street shop, will then still need an amount to cover their admin costs. Well, it's a different model, different structure versus telephone, versus internet.

MR AARONSON: Are you arguing that the consumer would find the best price on the PCW anyway, so would buy there?

MR LEE : Potentially, yes. And if they want to get more advice then they talk to a broker over the telephone or walk in to an office and they get to choose.

MR TRUDGILL: I think it's safe to say there'd be plenty of brokers out there that compete with comparison sites and wouldn't be more expensive than the comparison sites, just to strongly make that point. So a customer can walk in to a broker, a broker compares lots of different products and gives them a quote and there's no guarantees that broker down the road won't offer it at a lower rate. So why should the comparison site have a MFN clause that would protect them when the broker doesn't have that protection? It doesn't make sense.

MR AARONSON: Well, let me consider this argument, or ask you to consider this argument. In the case of a broker, particularly a branch network broker, it's quite a big thing for a consumer to go in to one branch and get all the information, speak to a live individual and come away with 'Ah, okay, I'm – insurer X is the one to go for', and then to go out of the shop and go down the high street to another broker [crosstalk], whereas in the case of a PCW it's a few clicks. I'm on the internet, I'm searching on a PCW, I've found what looks like the most promising brand, insurance brand, and then I go to that insurers website.

MR TRUDGILL: I think buying insurance is a complicated process. It's not simply a few clicks, there's lots of things you have to think about: about your excess and what you are covered for and not covered for, and does it have foreign use, and what's the excess for young drivers, and have I got driving other cars extension? And it shouldn't be seen as a simple process. You have to make sure you've got suitable cover and that's what the broker can help you do. And the broker will – they're the expert, they can make the whole experience easy for you and look after you during that. And I think that's something that they do that's very, very important, so… But equally many brokers have websites where you can do quotes on them like comparison sites, and so it's choice, it's service, people can go – phone brokers, walk into brokers' offices, go onto brokers' websites, whatever route they want to take to market. But we don't want unfair restrictions.

MR AARONSON: And what's your view of any – of some alternative to the narrow MFN? No MFNs at all but some alternative to ensure that the PCWs still made a living, if – such as quote poaching clauses. We’ve listed a few possibilities in our provisional findings. Do you have a view on – does anybody have a view on that?

MR TRUDGILL: I think the sites just compare the standard products of the insurers, don’t they, on the whole? That’s the rate from direct insurers or broker products. And then specialist brokers will have particular schemes where the broker’s doing extra fulfilment, checking driving licences, having a particular targeted product which might not be on the comparison site. I mean, when you look at the energy market the comparison sites compare ‘These are the tariffs’, don’t they, the standard tariffs from the insurers around. I don’t think MFN clauses should operate in this market.

MR SIMMS: I think there are a number of points raised there which are about the broker model, about why people should use brokers and not comparison sites. I think that is a whole set of things, and we, in BGL, we have a whole series of propositions which allow customers to come via comparison sites and not via comparison sites. I think where we see the distinction – it is only one of a number of different negotiated terms and each one has an impact on the others. And if the outcome is to dilute the price comparison proposition, and this is taken from a broker perspective at this point, rather than from a price comparison perspective, that favours the really large insurers, which significantly means that it’s less likely to result in lower consumer prices, . Because actually what price comparison sites do for brokers principally, which is why brokers utilise price comparison sites, it’s the same reason that we use price comparison sites, not simply our own, which is access to market. It’s an efficient route to market. If it wasn’t an efficient route to market we would market our own products somewhere else and drive them through that basis.

So when you talk about pricing, when it comes to pricing, it’s relatively straightforward. If you don’t consider that, i.e. if you don’t want to deal with a wide MFN clause, and that doesn’t operate successfully, you simply delist from that price comparison site and operate without that price comparison site, because actually what you want to do is to provide those products at a different price to those customers without that restriction. If the idea is, the value is in providing lower prices, you could for example say, ‘Well, actually I want to differentiate my products or use different brands through different price comparison site and offer cash back from the price comparison site’, none of which are restricted. What this doesn’t allow, what wide MFNs don’t allow and this is at its core, is for you to, actually sell at a higher price to that same consumer. This is the real challenge relating to wide MFN’s for the consumer. Whether I’m on price comparison site A or B or C is slightly irrelevant I am the same consumer. I doubt in many instances, and maybe other people have different experiences, but from our broker experience the cost of doing business on price comparison websites is not hugely difficult, so what would explain the differential in the pricing? If actually there is a significant differential, for example there is one price comparison website prepared to share a significant proportion of its revenue with a broker then that's where you should sell. You shouldn't sell at a higher price to the same consumer on a different site. The only outcome when you take a consumer perspective backwards, the only outcome is that actually what will happen is that brokers will be able to increase margins, retain margins on those price comparison sites that are better at producing less price sensitive customers, provide more opportunity to more providers or a slicker, easier-to-use option.

So I think the wide and narrow MFN clause question, I think without looking at it from the perspective of a price comparison, I think specifically wide and narrow MFNs support the consumer. What is the consumer outcome that we're seeking?If you can only provide consumers a particular price through a certain mechanism then why sell to them on another site at a higher price? But from a pure broker prospective it's about the overall negotiation. There are numerous factors in that negotiation and I'm not sure, once we start down that road, of imposing restrictions on those negotiations this will not show the balance of those negotiations..

PROF SMITH: Is that the end of the questions you want to ask along those lines?

MR AARONSON: Yeah, I think it is unless anybody else has…

MR JAMIESON: Can I just pick up on something about you said, BIBA, that the narrow MFNs. You might expect a PCW to come back and say, 'Look, we need narrow MFNs to know that if an insurer gets a quote through us that actually if they can price cheaper on their own website', and that's what narrow MFNs are, 'if they can price cheaper on their own website it's very for them to basically undermine the principle of the price comparison'. So the price comparison websites, their proposition, I'd imagine, is one in which, say, we're comparing the prices of insurers on their websites. That's how it starts off, isn't it? So if they're no longer doing that, how can consumers trust that they're actually getting comparison?

MR TRUDGILL: I think comparison sites aren't comparing the products across the entire market, and this is what the FCA have said: they shouldn't give the false impression they are comparing the market of all the products out there. They are comparing what they've got on their own site, just as brokers do. We compare our panel, that's what we've got. The sites are comparing the products that have been given to them by insurers and brokers on their site, and insurers will give the sites different products than perhaps what they would sell through a broker or direct, because they're tailored because of the type of customer and they might be stripped down and they're made for selling online, they've got anti-fraud measures in them so it might be a bit different. So I just think you just have to get away from the idea that comparison sites are comparing everything, because they're not. All they're doing is comparing particular products that they've got on their own site.

MR JAMIESON: So what – so following that up, why are you not able to then develop a separate product which is sold on the direct website which is different from what is sold on a PCW?

MR TRUDGILL: I think they can, yes.

MR JAMIESON: So why is it then a problem that a PCW's asking for you to provide, if the customer wants to come to you directly, with the same product that you wouldn't be undercutting that on your own website?

MR TRUDGILL: Because I think the – anything that's fixing the price through different distribution channels – or are you saying just through the insurers' own distribution channels?

MR JAMIESON: I'm just saying through the insurer's own website or the broker's own website when they're selling the same product, I think that's important. If it's the same product why is it that an MFN is preventing the insurer from pricing it different from the PCWs to keep the PCWs in check, but actually providing a genuine comparison to the price comparison website?

MR TRUDGILL: I think we just want the – what the brokers are saying they want to be able to have the ability to give that customer the price that they want to. So if they want to give a discount they should be allowed to do that, and if they're prohibited from doing that then that's their concern.

MR CURZON-PRICE: Could I ask a question which is related to this, but also related to something that, BIBA, you said earlier about in the old days you had two brokers side by side, you'd have customers – you had competition operating by customers going from one to the other. That in a sense is sort of analogous to two PCWs competing and offering different prices, but what if in the old days word had got around that what you do is you go into the broker, the broker gives you a really tailored service, tells you, 'You should really buy this insurance policy from this provider', and the customer then didn't go to the broker next door but went direct to the insurer, phoned the insurer direct, and essentially cut out the broker's margin. Wouldn't that have undermined brokerage as a business model?

MR TRUDGILL: That happens all the time, so direct insurers will have different rates and different levels of cover and so the broker has to add value and prove their benefit and that's the competition outlet that they have to do that.

MR CURZON-PRICE: So in a sense you're relying on the customer not taking the advice for free and then going direct. If the customer systematically did that you wouldn't have a business model?

MR THOMPSON: They don't get the same product though.

MR SHUKER: They would be very similar and – sorry, I didn't mean to cut in there – but they'd be very similar, and the customer can make a choice. He might say, 'Well, I'll go through Aviva direct and I won't do it with you', but hopefully as a broker you're going to be able to demonstrate you're value added and the client will come to you.

MR CURZON-PRICE: So can I just dig down: is it the same product, is it not the same product?

MR THOMPSON: No, it's not the same product.

MR SHUKER: But the consumer – well, you're right, but the consumer wouldn't necessarily understand that. So we would explain any differences in cover and the consumer would say, 'Okay, I'll come to or I'll go direct to whoever it may well be'.

MR CURZON-PRICE: And it would be a different product just because the Aviva insurance sold through you is by definition a different product? The consumer would not be able to get the identical policy –

MR THOMPSON: There may be different questions asked during the process, there may be different forms of checking that are attaching that produce different premium variances, so you wouldn't be able to go to a direct insurer and say, 'I've just had a quote from broker A on the high street, I'd like that price please and that product'. You wouldn't be able to access it.

MR SHUKER: But the differential, I would suggest, wouldn't be that great.

MR THOMPSON: It's depends. That's –

MR SHUKER: Sure.

MR THOMPSON: – not necessarily the case.

MR SHUKER: Sorry?

MR THOMPSON: Not necessarily the case. There could be some similarities, there could be some big differences.

MR CURZON-PRICE: Okay. I think I understand that you're relying on consumers understanding that you're providing a service and that somehow it's up to their goodwill, in a sense, not to go and cut you out.

MR TRUDGILL: I think there's plenty of evidence to show that there's lots of products out there and some insurers that don't go directly, only go through brokers anyway, so in many cases there wouldn't be a direct alternative out there. Brokers also add a lot of value: they do a lot of fulfilment for the insurer, which can bring more competitive rates than perhaps if it went direct. So they're doing a lot of the administration, they're doing claims handling. There's lots of statistics to show that brokers get far better payments on claims than, say, if a customer was to go direct to an insurer, that they haggle, they negotiate, they ensure that the customer gets the absolute best deal possible. They overturn more objections by using their experience with case law and things like that, so they're the agent of the customer. They have the choice. If you go to a direct insurer you've got one product, one option. If you go to a broker then you could have 30 or however many different products out there, and the chances are one of those products is going to be more competitive than that one direct insurer over there. But, yes, the situation could always be that the customer phones the insurer direct and they might have a cheaper premium which might have lower cover, but the broker has many products and I think they have a lot to offer.

MR CURZON-PRICE: Thank you.

PROF SMITH: Okay, thank you. There are a small number of questions that we want to ask about how the relationship, the commercial relationship between PCWs and insurers might change in the event that MFNs were not permitted. Because of the potential commercial sensitivities of that conversation we want to have a short separate meeting in which we can ask the three broker only parties in this meeting about their views on that. Compare The Market and the other PCWs will have an opportunity to have a discussion on that subject tomorrow, but we think it would be – it’s better, because as I said there might be commercial sensitivities involved, if the short meeting that we have on that topic with the other three parties takes place without BGL being present. So let me thank you for your participation in what’s been a very constructive meeting and we look forward to seeing Compare The Market tomorrow.

And as I said at the beginning of the meeting, in producing a record of this additional meeting which is taking place we will follow our standard practice of giving very careful consideration to balancing the commercial confidentiality of any information that is discussed in the meeting with our duty to disclose as fully as possible to all the interested parties the nature of any discussion that’s taking place, so that you have, and the other PCWs equally, have as clear a sense as we can give you of the nature of the discussion and any weight that we are attaching to it.

PROF SMITH: You don’t understand –

MR SIMMS: Sorry, I didn’t understand that last point.

PROF SMITH: Well, the last point is we will – we publish information about all our hearings. This hearing up to this point has been, on all parties – a multi-party hearing in which, as I said at the beginning, we were not expecting information, any confidential commercially information to be discussed, and on the assumption that we've all succeeded in that objective the record of this meeting that is just concluding will take the form of publishing a transcript, hopefully an un-redacted transcript.

In the brief meeting that's now going to take place, we will give – we will apply our normal criteria to considering in what form the record of that meeting ought to be published, and in considering how the record of the meeting is published we will apply our standard balancing between the two objectives that we always have to consider when evidence is given to us which is potentially sensitive commercially. I hope that's clear enough, and I'm looking also behind you to your legal adviser to make sure that what I've said is clear. Thank you.

(Representatives of BGL left the hearing at 1.05 p.m.)

PROF SMITH: Well, welcome to your second meeting. I assure you it won't be as long as the first one. Robin, do you want to resume the discussion on PCWs?

MR AARONSON: Yeah. Perhaps first I should ask is there anything that you would have liked to have said in the discussion just now that you felt constrained by the presence of a PCW? Anything you want to add to? No, okay. Well, the remaining topic really is what we've described in our provisional findings as alternative behaviours. If MFNs were prohibited, would PCWs be likely to try and achieve the same objective by other means, try and maintain price parity between them, their websites, by for example threat of delisting or some other means. Is that a possibility?

MR MCLARNON: Shall I kick off then? A PCW is really important for Swinton, half of our new business, so we spend almost [CONFIDENTIAL] a year with price comparison websites. I describe that doing business with a PCW is a bit like fighting a bear: they're soft and cuddly but they wield enormous strength and can kill you in a second. I think we looked at the contractual relationships that we have and then the conduct of negotiation with PCWs. I think that's quite fraught. I think our contracts for PCWs are at 30 days no fault turning them off, so even if one gets into a dispute around MFN clauses ultimately it doesn't matter because you can agree to disagree and then be taken off at 30 days' notice for no fault. So I think that the management of pricing relationship with the PCWs is more about relationship than it is necessarily about contractual terms. And I think what we're looking for in that relationship is really some kind of view of what the acceptable behaviours are.

So for me the banning of MFN clauses, the wide MFN, the narrow – be grateful if it was narrow as well, I think some of the arguments are harder for narrow – I think banning wide MFN clause just says it's an allowable behaviour in the market to try and do a special price deal with another price comparison website, say, to help them to access another segment of customers where they don't convert very well. And that's the type of commercial innovation that we have previously tried and that have been prevented from doing or continuing, and that's the kind – that's where our interest is, to try and be able to do deals and allow us to reduce the cost per acquisition and then invest that in trying for us to convert more business on those distribution channels.

I think the argument against that, well, 'If you don't like you can get up and go', right, well that is obviously an argument. You can say, 'Look, we can refuse to do business', but I think although at Swinton we have 2 million customers, we're a large and historic brand in the country, they still wield enormous distributional strength. So I think if PCWs had 1% of the market then I don't think this conversation should be happening, but that's not what they have. PCWs have a large proportion of the market, so there's variations on what that number should be, around 60%, say, of new business would be going through the PCW. And so I think because they have such distributional strength I think that changes the balance of the argument as to why they do or don't require price protection. I think in the early days they probably did but now they don't. And so I think all we're looking for is just removing some of that price protection to allow us to start to innovate again in this area.

MR AARONSON: On that 60%, you're only dealing with one PCW at a time in any commercial issue, initiatives, whatever. Does a single PCW have sufficient market power to –

MR MCLARNON: You've separately asked for the single homed data, which I think will be provided to you today. So what proportion of our customers are single homed? We looked at January, two thirds of aggregator customers were single homed. And then a third of customers who came through the aggregator channel were multi homed. So divide the various market shares by four, so what's that? 18% or something, roughly, of customers that are single homed on a PCW. So stopping a commercial relationship with one PCW represents up to 20% of our aggregated business in a month, so that's an important figure for me. I would not like to – I would not want to have to lose that.

MR CURZON-PRICE: Can I ask just for… Do you think that it would be possible that if you did want these commission sacrifice deals, in the absence of a wide MFN, that the consequence of that would you – would be your being delisted from another PCW that didn't want to see that commission sacrifice deal happening, and therefore would nullify any value to you, because anything that you gained in sales on the commission sacrifice deal you'd lose in sales from the single homed customers on the other PCW. Is that a risk?

MR MCLARNON: I think, given the – it would seem strange to me, let's say not plausible to me, that the extra volume I would get on one would warrant the loss of business on another, when you're talking about such high volumes going through each PCW, so I think it might be hard to make up that volume during a delisting period. [CONFIDENTIAL]. I think from the PCW business model if they lose us, well, there'll be someone that will step up and take the volume, so I think that it's – I think it's probably they're much more important to us than we are to them.

And so therefore I think that the threat doesn't mean so much to a PCW to get rid of a brand like Swinton, but it means a lot more to Swinton to be lost on a PCW.

MR TRUDGILL: Just so you've got an example of the delisting situation and how it affected one of our members, so they were on a popular comparison site and they were coming up number one, cheapest, loads of business and they were doing very, very well, but their conversion rate wasn't as good as the number two on the screen, so the outbound calls, 'You've done a quote on a comparison site, can we sign you up now', sort of thing, the conversion rate wasn't as good, wasn't as competitive as the number two that came up on the site. So what the site did is they switched off 60% of the products sold by the number one broker, without telling them, and then it just turned off a tap of business to their company. So their rates weren't as competitive, the business has dried up for them and – I think they switched off all their young driver products as well because the conversion rates weren't so good – and so it is –

MR AARONSON: This was not a retaliation, this was just –

MR TRUDGILL: It's all about conversion rates with comparison sites, so they've got to convert it otherwise a competing comparison site over there will convert it, it's about, turning those leads into money. And if the broker doesn't have as successful a conversion rate, people might be trying the number one on the other site and doing better. So what our broker found was that they didn't even know about it, they'd been relying on this site and the business from this site and it massively affected them, so… And I don't know what you can do about that, I just wanted to illustrate that the sites can delist you, they didn't even tell them, and it had a massive effect on them. But as far as treating customers fairly goes, the cheapest quote for that customer would have been the number one and that was turned off by the site, so we didn't think that was very good at all.

MR AARONSON: Right. Hastings, I think you – did you want to come in?

MR VAN DER MEER: [CONFIDENTIAL].

MR AARONSON: Sorry, why would they have an issue with you quoting lower prices?

MR VAN DER MEER: Well, not through their site. They would be –

[Crosstalk]

MR TRUDGILL: They might want to do it themselves and they can't.

PROF SMITH: So the implication of that is that if wide MFNs were banned the PCWs have the market power effectively to keep an equivalent set of rules in play?

MR TRUDGILL: Yes.

MR VAN DER MEER: Very much so.

MR TRUDGILL: Any words about what was banned perhaps need to be a bit wider than just MFN clauses, in case they just call them something else.

MR MCLARNON: I would just add, I've read – I'm sure all of you have done as well – I read through the big pile of paper that came with all the responses to the findings. I think there was a term, and I can't remember exactly, perhaps an antidiscrimination clause, so I think one needs to think about any retaliatory action that might be taken and the basic point which, you know, providers can be protected regards to this.

MR AARONSON: An anti-retaliation clause?

MR MCLARNON: Did I say discrimination or did I say retaliation?

MR AARONSON: Oh, sorry.

MR MCLARNON: I meant to say discrimination. Retaliation would also be a good word!

MR AARONSON: Right. Well, maybe… I was just thinking discrimination requires you to know what's happening to other people in the market. They might say, 'We're doing this to everybody, so…'

[Crosstalk]

MR MCLARNON: We get a few queries a week from price comparison websites, and say, 'We've seen it for a specific customers that it is cheaper on X compared to us, explain'. And it comes a couple of times, once or twice a week we get that. So there's services out there that will run quotes across the same risk there and same risk there and then see what prices you gave back and compare them and add them to an email or a telephone call which then requires an investigation and a rationale. So I think that there are – there's policing that goes on around this.

MR AARONSON: Any other thoughts on how this problem might be tackled? If we're saying that prohibiting MFNs is not enough, what's the extra that needs to be done?

MR TRUDGILL: The comparison site doesn't have the contract with the customer, ultimately, at the end of the day, do they, so it is difficult one, but any intervention on price I suppose is what we want to stop, If you have a way of doing that. They are the tail that's wagging the dog, very, very powerful.

MR VAN DER MEER: It's almost principles based, isn't it? It's the principle that needs to be protected here and the specifics of MFN, banning the MFN clause is unfortunately in this particular case not going to necessarily help establish the principle clearly. So maybe it is a – something that has to be carried through into a day to day regulatory environment, with that principle being very clear, and then it relies on the regulator to then use judgement to enforce that principle.

MR TRUDGILL[?]: To the FCA.

MR VAN DER MEER: Mm-hmm.

MR SHUKER[?]: I'm not sure, if you took away the MFNs, that it's any – that it's that different to the situation pre price comparison. I was listening to some of the arguments 10, 15 years ago, before price comparison, I was sitting in a relatively small insurance company which you could select what you set the rates at by brokers. Now, clearly you were scared that if you lost the Swintons account because you'd given someone down the road a better rate than Swinton, but the relationship and the market competition meant it drove them to try and improve what they did and improve the loss ratio that they're giving that insurer. But the power balance, because you were worried about losing that relationship, but it played out without the need for that most favoured nation. And it didn't stop the changes in pricing around the market, because the difference is how visible that is now, as opposed to someone would have had to have rung round a few insurers. So I do have some sympathy. I can understand the amount that they invest in marketing, but they would have to fight for that customer, just as in the past the broker has to fight for that customer, and there was no one stopping the insurer giving rates out at a differential level. And it drove good behaviours actually.

MR AARONSON: That's fine.

PROF SMITH: Are there any further questions on this? Well, if not thank you very much. As I said when BGL were in the room, we will give careful consideration to how we disclose this part of the meeting. Obviously we'll consult on what, if any, information needs to be redacted before it's been disclosed, and what the best mode of disclosure is. But thank you very much indeed for participating in this meeting. It's been extremely helpful. We've covered the issues that we wanted to cover and again we've certainly on our side I know gained a great deal from the open and wide ranging discussion we've had. And if I may pick up just one point that more than one of you made at the beginning, you said you're straddling a particular relationship between the consumer and the insurer, well, obviously you're commercial organisations in your own right as well, nevertheless I do – you will understand one of the problems in any kind of investigation is ensuring the voice of the consumer is well represented. There's no difficulty in getting the voice of producers and other commercial interests in, and insofar as you can provide us with at least some of the voice of the consumer it’s been particularly useful and productive, so thank you very much indeed.

(**The hearing concluded at 1.18 p.m.**)