Association of British Insurers

Competition Markets Authority's Private Motor Insurance Market Investigation Provisional Decision on Remedies

Response of the Association of British Insurers

The ABI

The ABI is the voice of insurance, representing the general insurance, protection, investment and long-term savings industry. It was formed in 1985 to represent the whole of the industry and today has almost 300 members, accounting for some 90% of premiums in the UK.

The ABI's role is to:

- be the voice of the UK insurance industry, leading debate and speaking up for insurers.
- represent the UK insurance industry to government, regulators and policy makers in the UK, EU and internationally, driving effective public policy and regulation.
- advocate high standards of customer service within the industry and provide useful information to the public about insurance.
- promote the benefits of insurance to the government, regulators, policy makers and the public.

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1. Executive Summary

1.1 The ABI believes that the Competition and Markets Authority (CMA) has, in general terms, developed a proportionate and workable package of proposed remedies to address the adverse effects on competition (AEC) the private motor insurance (PMI) investigation has identified.

1.2 In relation to Remedy A under Theory of Harm (TOH) 1, the insurance industry has long recognised the importance of striking the right balance between providing consumers sufficient information with which to make informed purchasing decisions but not so much information that consumers fail to absorb it. We welcome the CMA's work to provide useful and standardised information to consumers, both at policy inception and at First Notification of Loss (FNOL), about their rights and entitlements, both under an insurance policy and in the event of making a claim. We do, however, have a number of concerns with the documents prepared by the CMA and suggest that a working group of experts is convened in order to assist the CMA to make the much needed refinements.

1.3 In broad terms, the insurance industry supports the CMA's provisional decision on remedies in order to better control the costs of providing a temporary replacement vehicle (TRV) to non-fault claimants. We consider that there are significant circumvention risks if the scope of the proposed remedies 1C and 1F are not carefully considered and the appropriate terminology used in any enforcement order. We also consider that the proposed rate caps should be set at a level that the at-fault insurer would achieve if they had control over the claim themselves. Again definitional issues will be important, especially in relation to the reasonableness of administration fees. The rate caps should be reviewed periodically and the rates should be index linked but RPI is not the appropriate index for these purposes. The ABI recognises the importance of making faster determinations on liability but we take the view that a period of three days is not appropriate and suggest that the current five day period provided for in the General Terms of Agreement (GTA) is more appropriate.

1.4 The ABI does not believe that insurers treating non-fault claimants with comprehensive cover as if they were claiming under their own policy is a significant problem and the CMA's proposals to address this perceived problem have potentially negative unintended consequences. We consider that there are important lessons to learn from the GTA, particularly in relation to dispute resolution and careful monitoring of hire durations. Indeed, on the latter point, and in the context of daily hire rates reducing with consequent incentives on Credit Hire Organisations (CHOs) to increase hire durations, effective monitoring and enforcement will be essential. Furthermore, given that CHOs will have an incentive to frustrate an insurer's ability to make a decision on liability within the proposed three day period, we are strongly of the view that a mandatory credit hire portal for CHOs and insurers is an essential component of any CMA enforcement order. The ABI also supports the CMA's proposed mitigation statement, subject to some proposed amendments, and there are differing views amongst the industry in relation to whether referral fees should be banned.

1.5 Given our view that the CMA's provisional findings were based on a fundamentally flawed report, the insurance industry welcomes the revised findings that there is no AEC in relation to the under-provision of vehicle repair. The insurance industry is committed to ensuring the highest quality of repair for our customers and will continue to work with Thatcham, the motor insurers' research body, to identify any current practices that should be strengthened.

1.6 We support the CMA's proposed remedy requiring disclosure of the implied price of no claims bonus (NCB) protection and step back procedures in order to address the issues identified under TOH 4 in relation to add-ons. We have some significant concerns about insurers being required to disclose a "typical" NCB discount. In broad terms we are supportive of the use of statements to assist consumer understanding in terms of what is and is not protected by an NCB protection product, although we suggest this should be shortened and made more compatible with emerging sales technologies. We continue to take the view, as expressed in our response to the then Competition Commission's Notice of Possible Remedies, that the Financial Conduct Authority (FCA) should develop and monitor the implementation of all of the CMA's proposed remedies in relation to add-ons, although two years is, in our view, too long between reviews.

1.7 We remain of the view that the CMA should ban "narrow" Most Favoured Nation (MFN) clauses in contracts between insurers and price comparison websites (PCWs). The PCW distribution channel is well established and does not require the protection that anti-competitive MFN clauses provide. Furthermore, the partial ban on MFNs that the CMA has proposed increases the risks that the remedy will be circumvented. The insurance industry continues to take the view that the CMA should ask the FCA to include the issue of MFNs in their review to be undertaken in two years' time.

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

Overview

2.1 The insurance industry has long recognised the importance of providing consumers with clear and concise information about the products they purchase. We welcome the CMA's work to develop a *Statement of Consumer Rights*, *Responses to FAQs* and *FNOL Statement* to provide useful and standardised information to consumers about their rights and entitlements, both under an insurance policy and in the event of making a claim. However, the insurance industry has a number of concerns in relation to the *Statement of Consumer Rights* that the CMA has developed, including that the draft does not include information for consumers in relation to their responsibilities and obligations in the event of making a claim. We also consider it important not to overburden consumers with too much information given that this has the potential to undermine the desired outcome of this Remedy overall.

2.2 We have set out below some feedback on the *Statement of Consumer Rights*, *Responses to FAQs* and *FNOL Statement* and note that the CMA's consumer research undertaken by GfK indicated that consumers found some of the information in these documents long-winded and difficult to understand. As such, we have sought to make the documents easier to understand from a customer's perspective. We consider our suggested alternatives are a starting point in that, in the time available to respond to the CMA's consultation on the PDR, we have sought to improve the documents as best as possible, although we recognise that further work is required. Attached as Annexes to this response are some suggested alterations to each of these documents.

2.3 In our submission, it would be useful for the CMA to convene a working group of interested stakeholders to discuss and agree the text of the proposed documents. The insurance industry also suggests that the CMA seek advice from experts familiar with the legalities of insurance law to ensure that terminology is correctly applied and that tortious and contractual rights are correctly explained. We also consider that it would be useful for the CMA to commission expert drafters to obtain their assistance in making the documents as easy to read as possible, ensure that they are in plain-English and are jargon-free. Only then should further qualitative consumer research be undertaken. This will be essential in ensuring that the outcomes of this work are, in fact, understood by consumers. Given that the CMA has proposed that an enforcement order is used to compel PMI providers (and, in our submission, intermediaries) to provide these documents to consumers, it is essential that further time and work is committed to ensuring the highest quality documents are prepared.

When information should be provided to consumers

2.4 In our response to the then Competition Commission's Notice of Possible Remedies, the ABI highlighted our concern about the extent to which the information provided to policyholders is, in fact, read by them. We cautioned against the provision of *more* information, arguing that the focus should be on *clearer* information. The ABI notes also that the research commissioned by the CMA, undertaken by GfK, found that consumers had concerns about the clarity of some of the information the CMA is proposing to standardise and enforce PMI and FNOL providers to provide to customers and claimants. Despite these concerns, research findings and the recognition by the CMA itself that policy documentation may not be read by all policyholders, the CMA has provisionally decided that more information

should be provided to consumers at policy inception on the basis that this would encourage wider readership and act as a point of reference for the duration of the policy. The ABI notes that this approach is in direct contrast to the approach adopted by the Financial Conduct Authority (FCA) in terms of simplifying products in order to make them better understood by consumers.

2.5 If further information is to be provided to consumers at the policy inception stage, it will be important to ensure that all providers of PMI provide the standardised information. When providing information to consumers on the most frequently asked questions, the specifics of each policy will need to be communicated but this should be done in a way that enables consumers to more easily compare one policy with another.

2.6 The insurance industry notes that the CMA has proposed that the *Statement of Consumer Rights* should be provided by PMI providers and replicated on their websites. We agree that this should be the case (subject to the drafting amendments discussed below). A link to this information should be prominently displayed on websites under a heading of "Car insurance: Statement of Consumer Rights Following an Accident". The ABI would also be willing to provide this information prominently on our website. Key consumer organisations should also be strongly encouraged to do so. It will also be important, however, for intermediaries selling insurance, notably PCWs and insurance brokers, to provide this information to their customers. Indeed, it is especially important that insurance brokers provide this information given that in a number of instances they have overall control over what the final insurance policy purchased by the consumer covers and, therefore, are best placed to provide information on that policy to the consumer.

2.7 The insurance industry agrees that targeted, short form information should be provided orally to non-fault claimants at FNOL following an accident (subject to the drafting amendments discussed below and noting the need for brevity). We also agree that claimants should have the option of receiving this information via electronic means as a way to reinforce in writing what was provided orally to the claimant, who is likely to be in a state of distress, at the time of FNOL. The ABI repeats the comment that we made in our response to the then Competition Commission's provisional findings, that it will be essential for all FNOL providers to provide this wording to consumers. In our submission, the CMA should consider including, as part of the enforcement order to implement this remedy, rules in relation to *how* the *FNOL Statement* should be provided to consumers. In the absence of any rules, the insurance industry foresees risks that certain FNOL providers could present the information in a tone or manner that suits their own financial objectives.

2.8 In addition to insurers, insurance brokers, solicitors, TRV providers, vehicle repair providers and claims management companies (CMCs), vehicle manufacturers themselves may be FNOL providers. A number of vehicle manufacturers offer accident services to their customers as part of the sale of a vehicle or a vehicle's on-board telematics capability may indicate that a driver has been involved in an accident. In either scenario, the vehicle manufacturer could be the FNOL provider and, as such, should also be required to provide the *FNOL Statement* when providing FNOL services.

<u>What information should be provided</u>

2.9 The CMA has proposed that consumers should be provided with information about their key entitlements under both tort law and the contract of insurance into which

they have entered. This information is set out in a proposed *Statement of Consumer Rights*, *Responses to FAQs* and *FNOL Statement*. It would have been useful for the CMA to test these documents with industry practitioners to ensure their accuracy before distributing them as part of the PDR given that they contain a number of inaccuracies and should be significantly improved if they are to achieve the objective of providing accurate, plain English information to customers and claimants. In our submission, the *Statement of Consumer Rights* in particular requires substantial amendment.

2.10 As noted by the CMA, there are differences in the legal frameworks within the jurisdictions of the UK. Although the insurance industry supports the CMA's proposal for standardised information to be provided to all consumers across the UK, it might be useful for consumers in Scotland and Northern Ireland to be advised that the information has been prepared based on the legal framework in England and Wales. A footnote to each of the documents should be sufficient to provide this clarity. Consumer organisations in Scotland and Northern Ireland, who should be encouraged to provide this information on their websites, should also make it clear that the standardised information relates to England and Wales.

2.11 The insurance industry agrees that the information provided to consumers at policy inception and set out in the *Statement of Consumer Rights*, *Responses to FAQs* and *FNOL Statement* should be standardised as much as possible.

2.12 We have set out below some feedback on and attach as Annexes to this response some suggested alterations to, each of these documents. Our suggested alternatives are a **starting point** given that, in the time available to respond to the PDR consultation, we have sought to improve the documents to the best of our ability. We readily acknowledge that further work is required. In our submission, the CMA should convene a working group of interested stakeholders and legal experts to discuss and agree the text of the proposed documents, commission expert, plain-English drafters to get their feedback and then undertake further qualitative consumer testing to make any further necessary refinements. In our view, given the CMA's proposed enforcement order to compel the provision of standardised information to consumers, it is essential that further work is undertaken to ensure that the documents are the best that they can be.

Statement of Consumer Rights

2.13 The insurance industry takes the view that if the CMA were to take more time to improve the *Statement of Consumer Rights* it would be possible to get the document to fit on two pages, potentially even one, further increasing the potential that consumers will read it. This could be facilitated if the document were prepared in a more innovative way, for example, by using flow-charts, diagrams and graphics in an effort to address the concerns identified in the GfK research that consumers found the current drafts difficult to engage with.

2.14 The most significant concerns that insurers have with the *Statement of Consumer Rights* are:

- the requirement to provide this to consumers should apply to intermediaries, notably insurance brokers and PCWs, given that, especially in the case of the former; they will prepare the policy wording;
- it appears only to consider the consumer's entitlements under tort law without considering the consumer's entitlements under the contract of insurance into which they have entered. Indeed, the *Statement of Consumer Rights* (and the

Responses to FAQs document) confuse a consumer's contractual and tortious rights, for example, in relation to the use of original manufacturer parts in a vehicle repair, an issue on which some insurance policies contain specific provisions[1];

- it fails to provide the non-fault claimant with any information about the risks to their personal finances they may be taking by entering into a credit hire or repair agreement;
- it assumes that the consumer has purchased comprehensive insurance whereas some consumers, albeit a small number, choose to purchase third party fire and theft cover only;
- that the statement that a consumer is "required by law" to report an accident to their insurers is not correct – whether a consumer is required to report an accident to their insurer is determined by the terms and conditions of their insurance contract;
- that the statement about consumers only being able to recover a proportion of their losses in cases of "split liability" is not correct – where there is a dispute about liability, the at-fault and non-fault insurers are likely to make a determination but the customer will still have the rights and entitlements provided for in their comprehensive motor insurance policy;
- that it does not address situations where the consumer has purchased legal expenses insurance;
- that it assumes consumers will accept and understand insurers' decisions on liability, i.e. a driver may not accept that they are liable for an accident when the available evidence indicates otherwise.
- that it only contains information about the consumer's entitlements. It would also be useful to include some information about the consumer's obligations, most notably the duty to mitigate their loss (cross-referencing the CMA's proposed mitigation declaration statement under proposed Remedy 1F) and the contractual obligation to assist their insurer in the event of a claim.

2.15 It might also be useful for the *Statement of Consumer Rights* to include a reference to a consumer's right to complain to the Financial Ombudsman Service in the event that the customer is dissatisfied with the service they receive from their insurer[2]. In addition, information on what a consumer should do if they are involved in an accident with a driver who either does not have insurance or whose insurance is provided by an insurer from another country may be useful.

Responses to FAQs

2.16 Leaving aside the question of whether the *Response to FAQs* document is necessary at all if the content of the *Statement of Consumer Rights* provides useful and accurate key information, it is important to recognise that, by definition, the FAQs could not be standardised across the industry given that the questions will

[1] The CMA should be cautious about reading into all insurance contracts a requirement on insurers to use OEM parts in undertaking vehicle repair and no such right exists in tort. Any restriction on insurers' ability to use non-OEM parts has the potential to increase repair costs overall. Insurers use non-OEM parts because, in some cases, the quality of non-OEM parts can be higher than OEM parts, the availability of parts is greater given the wider range of suppliers and, as a result of that competitive market, the cost of non-OEM parts is usually lower. Insurers use of non-OEM parts reduces overall repair costs and results in lower premiums for consumers.

[2] The ABI recommends that the CMA liaise with the Financial Ombudsman Service (FOS) to ensure that their adjudicators are informed of that the CMA will potentially require insurers to provide consumers. It would not be appropriate for the CMA to issue an enforcement order with which insurers are required to comply only for the FOS to determine that the consumer had not been suitably informed. In this context it will also be important to define for the purposes of the FOS what is meant by a "consumer" given that the FOS considers micro-businesses should have access to the same information as individual consumers.

need to respond to the specific characteristics of each PMI policy. As with the *Statement of Consumer Rights*, the requirement to provide the *Responses to FAQs* document to consumers should apply to intermediaries, notably insurance brokers, given that they can often prepare the policy wording.

2.17 The *Responses to FAQs* document appears to contain very limited information, for example, it may also be useful to include an FAQ that relates specifically to the situation where a consumer's vehicle has been declared a total loss.

2.18 It would also be useful for the CMA:

- to consider developing a mandatory *de minimis* set of questions that insurers (and in our submission, intermediaries) should provide to consumers. The information provided in response to those questions would, of course, vary between insurers and intermediaries given the specific contract of insurance into which the consumer has elected to enter;
- to be clear about the minimum level of detail it expects to be provided in the answers to FAQs;
- to be clear that providers are free to add additional information to further aid consumer understanding;
- to provide clarity that if a provider elects to develop answers to additional questions whether the critical *de minimis* information is to be provided at the beginning of the document and for any additional FAQs that are thought necessary to be provided later;
- to provide a processes whereby specific proposed wording developed by an insurer or intermediary could be approved for use, e.g. by the CMA or FCA. We acknowledge that regulators tend not to want to provide a definitive view on whether something proposed by an insurer will be compliant with an enforcement order but if this does not happen, the likelihood that there will uncertainty, inconsistency and varying standards of quality in the *Responses to FAQs* prepared.

2.19 Clarity on all of these issues should be provided in the final enforcement order issued by the CMA.

<u>FNOL Statement</u>

2.20 It will be important for the *FNOL Statement* to reflect the final *Statement of Consumer Rights* and *Responses to FAQs* documents and the amendments discussed above. In particular, the *FNOL Statement* should indicate that the consumer has a legal responsibility to mitigate their losses.

2.21 As noted in paragraph 2.8 above, vehicle manufacturers themselves may be FNOL providers. As such, the requirement to provide the *FNOL Statement* should apply to those manufacturers. It would also be useful for the *FNOL Statement* to include information on the nature of the firms providing FNOL and their relationship to the claimant. For example, we are aware of situations in which CMCs have passed themselves off as being, or representing, a PMI provider when providing replacement vehicles to consumers.

2.22 The *FNOL Statement* that the CMA has consulted on was subject to consumer testing and the ABI notes that the GfK research indicated that consumer feedback was not particularly positive. Again, we recommend that the CMA should convene a working group of interested stakeholders to agree the text and length of the *FNOL Statement*, how to prioritise the various pieces of information included within it,

revisions to refine it to ensure that it is as jargon-free as possible and then undertake further consumer testing.

2.23 The length of the text is a cause of significant concern and the GfK research indicated that in consumer testing consumers "switched off" when being read the information in the *FNOL Statement*. Insurers strongly recommend that it be shortened and tailored for use in a call script given the intention that this information is provided to consumers orally and would repeat the comments made at paragraph 2.4 above about the dangers of providing consumers with too much information. We also question why the consumer cannot then be referred to the *Statement of Consumer Rights* provided at the policy's inception if the FNOL provider is an insurer or broker given that this will be standardised information.

2.24 Insurers also question whether it is necessary for this information to be read to a consumer by an individual or whether the process could be automated with consumers being required to indicate, for example by pressing a phone key at the end of the message, that they have understood the information provided (it should not be possible to press a key to end the message quickly). Providing this information in an automated way is likely to reduce the on-going costs of implementing this Remedy.

Costs, timing and implementation

2.25 The insurance industry agrees that an enforcement order is the most effective mechanism to deliver the objectives proposed as part of this informational remedy, especially to ensure that a consistent approach is adopted across the market. In order for the enforcement order to be effective, it is essential that it encompasses the wide range of industry participants. We broadly agree that a timeframe of nine months from the date of the final remedies notice (three months after the enforcement order) is reasonable for the remedies to be implemented, although this will be subject to software houses being able to implement the required remedies in the context of intermediated distribution models. It is important for the CMA to recognise, however, that insurers (and in all likelihood other parties affected by any enforcement order) are unlikely to make the costly changes to their administration and IT systems or to make the investment in revised staff training until such time as there is a definitive position on the CMA's remedies and the exact wording of any enforcement order implementing them.

2.26 The CMA has estimated that there will be "small" one-off costs associated with implementing this remedy, including the preparation of documentation, staff training, etc. The ABI notes that these costs are, by their very nature, firm-specific but our assessment is that there are likely to be some significant one-off costs. We agree that the on-going costs associated with implementing this remedy are likely to be around £1-2 million per annum.

2.27 It would be useful to have some additional clarity from the CMA in relation to how the CMA, Ministry of Justice (MOJ) and FCA will work together to implement and monitor this remedy. We note the CMA's intention to "discuss how best to do this" but our recent experience on inter-agency cooperation to deliver policy objectives could be more positive. Therefore, we suggest that a Memorandum of Understanding or exchange of letters between the three agencies be put in place which sets out the specific deliverables and timeframes for delivery for each agency. This document should then be sent to stakeholders and added to the websites of each organisation.

2.28 The insurance industry is already heavily regulated by the FCA and this Remedy could form part of the overall regulatory framework applied to insurers and intermediaries. The ABI questions the additional value that the CMA, MoJ or FCA will derive from an insurer producing an annual compliance statement.

2.29 It would be useful for the CMA to provide some additional clarity on how compliance will be ensured and monitored for non-regulated entities, including providers of TRVs as providers of FNOL. Although insurers appreciate that the CMA's intention is to require that nominated compliance officers would be required to submit annual compliance statements, this would only pick up non-compliance when a firm had failed to be compliant for a 12 month period. It is also not clear who will monitor that the annual compliance statement is in fact accurate.

3. Theory of Harm 1: Separation of cost liability and cost control

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

3.1 The CMA proposes that the combination of Remedy 1C and 1F would provide an effective and proportionate package of remedies to address the detriment identified in relation to the provision of temporary replacement vehicles (TRVs).

3.2 The CMA is proposing to introduce a cap on the cost of non-fault replacement vehicles and to improve efficiencies in the hire claims process. It aims to achieve this by:

- the introduction of a 'dual rate price cap', with a low rate cap based on average direct hire rates plus fixed replacement vehicle arrangements costs, and a high rate cap calculated as a multiple of the low rate cap. The rate cap would be indexed to a publicly available index;
- a prohibition on financial inducements from replacement vehicle providers, where those inducements encourage claimants to take a hire vehicle at rates above the rate cap;
- insurers admitting liability within three days;
- hire duration to end 24 hours after the completion of the repair or seven days after the submission of the total loss payment; and
- the completion of mitigation declaration statements by FNOL providers and countersigned by non-fault claimants upon receipt of a replacement vehicle.

Scope

3.3 In their proposals, the CMA referenced a dual rate price cap for subrogated hire claims. The CMA must urgently and very carefully consider the terminology that is used in the summary and in the more detailed discussion of Remedy 1C at paragraph 2.50 in the PDR paper, in order to avoid unintended consequences and a high risk of circumvention.

3.4 Under the current terminology, Credit Hire Operators (CHOs) are likely to contend that credit hire claims are not subrogated claims but rather are claims made by the non-fault claimant. Whilst some CHOs currently provide hirers with an After the Event Insurance policy that indemnifies the hirer against any unrecovered hire charges, many credit hire claims are not currently subrogated claims because CHOs are, unlike an insurer, not providing any indemnity or payment but are providing a hire vehicle on credit terms. The CMA describes a CHO/CMC as "standing in the shoes of the non-fault claimant"[3]. CHOs are unlikely to agree and would see themselves as "holding the hand" of the non-fault claimant in making their claim.

3.5 The contractual terms of a typical credit hire agreement between the customer and the CHO are constructed in the following ways:

- a potential customer is offered a TRV on deferred payment (i.e. credit) terms;
- a vehicle is hired from the CHO;

[3] Paragraph 2.63, Competition and Markets Authority, Private motor insurance market investigation, Provisional Decision on Remedies

- the cost of the hire is financed for up to one year while the CHO pursues the at fault insurer for the cost of the claim in the name of the customer on the basis that they have hired a vehicle;
- the claim is pursued and negotiated by the CHO on behalf of the customer;
- the customer has contractually agreed as part of the hire that any damages/hire cost recovered is then to be used by them to repay the amount financed by the CHO; and
- the amount recovered is invariably less that the contracted price but the hirer is not asked to pay any unrecovered amount except in very unusual circumstances (e.g. fraud).

3.6 It is therefore essential that the CMA clarifies this remedy in terms of its scope and application and does not limit the wording of any enforcement order to claims that are referenced as 'subrogated', as this will result in CHOs arguing that they are not covered by the enforcement order given that it is only applicable to subrogated claims. The ABI agrees with the proposed remedy but it must apply to all replacement vehicle provision whether subrogated by the company (not just the provider) that bills the at fault insurer or financed by a credit hire arrangement.

Potential solution

3.7 The CMA has proposed that any remedy will not apply to a non-fault claimant who organises their own replacement car directly as it would require a change in the law to reduce an individual's right to recover retail rates[4]. As such, and to address the problem outlined above, the wording of the enforcement order should limit the amount that any replacement vehicle provider who is offering credit or making a subrogated claim can charge a non-fault claimant or the at-fault party. It is also essential to ensure that TRVs do not become re-categorised (e.g. claims for loss of use of a vehicle with cars being provided for free).

3.8 The management of the claim should be completed directly by the Claimant and not by an insurer (PMI or otherwise), solicitor or CMC etc, as set out at paragraph 2.59. The CMA must be clear in terms of the application of any enforcement order and ensure that all relevant players are covered.

The setting of the cap rate

3.9 When addressing how to set the proposed cap, the CMA concluded that a cap set slightly above the level of cost efficiently incurred in providing a replacement vehicle is likely to provide the best balance of incentives. The proposed cap would have two features:

- replacement vehicle arrangement costs – costs incurred in providing each replacement vehicle, irrespective of its type or the length of the hire; and
- a variable daily cost element.

3.10 The ABI is broadly supportive of the CMA's proposals to cap rates. As the CMA rightly identifies, credit hire leads to an additional cost to insurers of £87 million per annum, a cost which is passed on to consumers through higher insurance premiums. The identified theory of harm in relation to the separation of cost control and cost liability can be addressed by ensuring that the rates are set at a level that the at-fault insurer would achieve if they had control over the claim. However, it

[4] Paragraph 2.59, Competition and Markets Authority, Private motor insurance market investigation, Provisional Decision on Remedies.

must be recognised that up until now, split liability claims have often not been an attractive proposition for CHOs. With a higher rate and potentially longer period, however, these claims may increase under the proposed model, increasing credit hire frequency and costs.

3.11 A cap which includes replacement vehicle arrangement costs and a variable daily rate would be appropriate. However, the CMA needs to clearly define what would be captured by the replacement vehicle arrangement costs. We note that the CMA identifies the current General Terms of Agreement (GTA) administration fees of £37 as potentially reasonable. The CMA is right to recognise that the fixed administration fee for credit hire should not be higher than an administration fee for direct hire as many costs incurred by a CHO or CMC are acknowledged to be legally irrecoverable except in very limited circumstances. Careful consideration must be given to what constitutes a reasonable administration fee. It would be natural for CHOs to look to maximise profits and therefore to drive this fee up as much as possible. Furthermore, in our submission that the CMA should carefully consider making a credit hire Portal mandatory as part of an enforcement order to help facilitate the settlement of credit hire claims and help reduce frictional and administration costs. The administration fee that is permitted under the GTA would need to be reduced even further were a Portal introduced given the lower administration costs an IT based solution would introduce.

3.12 When looking to calculate the variable daily element of the rate cap, direct hire rates, rather than average retail rates, are the appropriate benchmark. By using direct hire rates as a benchmark, the cap should be more reflective of the rates that an insurer would pay if they had control over the claim, thus addressing the theory of harm the CMA has identified. Using any other benchmark, would be a move away from this and would mean that the theory of harm that has been identified by the CMA, will not be addressed. However, it is important to note that direct hire rates already include a level of administrative fee/arrangement cost and as such, double charging must be avoided.

3.13 Retail rates would not be an appropriate benchmark. They include marketing and other overhead costs which are not attributable to a negligent party. If these costs are considered, the insurance industry would, in effect, be subsiding CHOs own private commercial models and, as such, claims costs will increase.

Speeding up liability determination

3.14 The CMA addresses the need for insurers to make a speedy decision on liability to help reduce frictional costs. In order to achieve this, a dual cap rate has been suggested which has two features:

- If the at-fault insurer accepts liability within a short period (a period of three days from being informed that a replacement vehicle is being provided to the non-fault claimant is proposed) a low rate cap will apply. In this scenario, the at-fault insurer is committed to paying for the replacement vehicle regardless of any subsequent change to liability (e.g. with relevance to a repair claim or a personal injury claim); and
- If the at-fault insurer does not accept liability within the short period, a high rate cap will apply (even if the at-fault insurer accepts liability on day 4). This cut-off point is required, in the CMA's view, to provide incentives for insurers to accept liability swiftly and to give replacement vehicle providers a sufficient incentive to provide a replacement vehicle when liability is not admitted within the time period.

3.15 The ABI recognises the benefits of speeding up liability decisions and thereby reducing frictional costs. However, there are a number of reasons why a three day period to admit liability is not appropriate:

- The current liability period under the GTA is five days which has been acceptable to both insurers and CHOs. We are not aware of any evidence which suggests that the current five day liability period under the GTA is too long or leads to difficulties for consumers. The period for admitting liability under the Claims Portal in personal injury cases is 15 days. Whilst the ABI recognises that 15 days would not be suitable, the current five "working" day period under the GTA to respond to the notification would strike the appropriate balance between ensuring sufficient time to make a decision on liability and having a period short enough to incentivise a speedy decision on liability;
- Under the Financial Conduct Authority's *Treating Customers Fairly*, insurers are required to keep their customers informed and involve them in decisions on material issues. Admissions of liability would fall within this definition. As such, the rights of the party against which liability is being alleged need to be balanced against those of the party making the allegations. There will be a number of instances where both sides hold the other responsible and intend on pursuing a claim. A requirement to admit liability within three days does not strike the appropriate balance between the rights of the parties or align with the principles of *Treating Customers Fairly*;
- Imposing such a short timeframe is likely to make it even harder for insurers to detect and combat fraud. Fraudulent claims will often include hire invoices. The pressure that insurers will be under to make a liability decision within three days may result in a greater number of fraudulent claims slipping through the system. This is likely to be compounded by a requirement on insurers to demonstrate to the Financial Ombudsman Service that an insurer has undertaken a robust investigation prior to the settlement of a third party claim.

3.16 It is not clear in the proposals how it is intended that the at-fault insurer should be informed of the provision of a TRV e.g. letter, phone, Portal. Furthermore, it is unclear when the three day period commences. For example, is it the date a communication is sent or the date it is received? CHOs will have a significant financial incentive to make it as challenging as possible for the at fault insurer to reach a decision on liability within three days. To help clarify this, the Remedy should make it clear that the CHO needs to notify the at-fault insurer as soon as they are aware of the claim and that the relevant time period relates "working" days. A Portal solution would assist in providing timely notification that a vehicle has been hired.

3.17 It is important to ensure that the notification provides sufficient information to allow the insurer a) to contact the client with accident details b) decide whether the need for hire and the car to be hired seems reasonable and to ask questions if appropriate. One possible solution would be using the current GTA first notification form together with a copy of the mitigation form prepared by the CHO ready for signature by the hirer when the vehicle is delivered.

3.18 The CMA's PDR states that it is expected that the low cap will apply in a high proportion of situations. However, as the current proposals stand, this is unlikely to be the case as a number of insurers will struggle to make a liability decision within three days and, as such, the higher rates are likely to apply on a significant number of cases, thereby undermining the CMA's reforms.

3.19 Clear rules on how the provision of a TRV will be communicated and when time commences need to be set out and framed in a way that seeks to avoid potential ambiguity and disputes. There needs to be clear guidance on what information should be provided and the penalty (i.e. extension of the liability window) in the event that the notification is incomplete/not sufficient. The ability to date stamp and audit these factors will be vital to the Remedy's success.

3.20 It must also be absolutely clear in the enforcement order that any admission of liability within the proposed low cap duration period will not prejudice a decision on liability on other heads of claim i.e. personal injury or subrogated repair. Insurers have no incentive to swiftly accept liability in respect of the TRV aspect of a claim where this may prejudice their position on liability for an associated personal injury or subrogated repair claim. The personal injury element of a PMI claim is, in certain cases, the largest cost component of the overall claim.

Setting the rates in the future

3.21 In the future, the CMA proposes an annual indexation of the rate caps with reviews held on a periodic basis to check that the rate is appropriately set rather than an annual reappraisal of the rate cap.

3.22 Due to the cost involved, the ABI does not believe that annual indexation is required (although it might be useful to do so in the early years of the new scheme). Although we support a periodic review which would be index linked, we do not consider the Retail Price Index (RPI) to be appropriate. RPI includes a number of costs, such as mortgage payments, rents etc. which are not relevant to the cost of a replacement vehicle. As such, the CMA should consider exploring another index, which is more relevant to the service being provided by the TRV provider.

Measures to avoid distortion risks

3.23 The CMA raises concerns over the belief that some insurers treat non-fault claimants with comprehensive cover as if they were claiming under their own policy and that this might have the effect of restricting access to claimants' entitlements. As such, the CMA has proposed that:

(a) Each insurer would be required to inform the claimant before the start of the repair of their vehicle whether it is of the view that the claimant is not at fault and that, as a result, the claim will be against the other party's insurer; and

(b) Each insurer's aggregate data on liability assessments would be monitored. Insurers would be required to report on the overall proportion of assessments of fault/non-fault/undetermined/split (i) at FNOL, (ii) at the time the above information is provided, and (iii) the final liability decision is agreed. Insurers would also be required to report the percentage of cases in which they have changed their liability assessment.

3.24 The ABI does not believe that insurers treating non-fault claimants with comprehensive cover as if they were claiming under their own policy is a significant problem (and we are not aware of any evidence indicating that it is) nor is there a significant incentive for insurers to undertake this practice. It is in the insurer's own interest to ensure that the needs of a comprehensive policyholder are understood and any arrangements should fulfil these needs. In a non-fault situation,

subrogation still exists, so there is no motivation or cost consequence to providing a claimant with sufficient services right up to their level of legal entitlement.

3.25 In relation to the CMA's proposal (a), an insurer's ability to repair their customer's vehicle in a timely manner is a key competitive advantage. As such, it is unlikely that the insurer will have a more definitive view on liability than they had at FNOL. Insurers, at times, will have different evidence from one another on which they base their liability decisions or fresh evidence may emerge as a result of reassessment. There is a real risk that a customer could hire a TRV assuming they are able to recover the cost, based upon what they are told by their insurer, which transpires to have been an incorrect initial view. As such, the industry does not believe that this proposal is practical and will have unintended consequences, including that consumers may enter credit hire agreements where the costs are ultimately not recoverable from the at fault insurer.

3.26 In relation to the CMA's proposal (b), it is not clear what the CMA hope to determine from the data and the purpose for which it would be used, especially given the resource demands and increased costs for insurers in providing this information. In practice, insurers do change their assessment on liability in some cases which will be driven by a number of factors, for example, decisions may be based on false or misleading information, new evidence could come to light or the circumstances could require further clarification. As such, there should not be an assumption that an insurer making a change in a liability assessment is a bad thing. It is vital that insurers are fully confident in the merits of the claim that they are being asked to indemnify, have investigated it thoroughly and analysed all the facts to ensure that the correct liability decision is reached.

3.27 The ABI believes that the current proposal by the CMA could lead to the unintended consequence of insurers taking a more rigid approach on liability, which could lead to an increase in disputes and therefore greater litigation, increased costs and customer dissatisfaction where they believe their case has not received the appropriate level of investigation.

Measures to cap hire duration

3.28 The CMA take the view that the current GTA framework for tying the duration of replacement vehicle hire to the duration of repair provides the right additional measures for limiting hire duration. As such, the CMA propose to allow no recovery of hire costs 24 hours after the completion of the repair or seven days after the submission of the total loss payment in order to encourage the swift return of repaired vehicles and the processing of total loss payments to customers. This is in line with existing GTA requirements and the CMA considers that this provides CHOs with sufficient time to complete the necessary processes and to terminate the hire.

3.29 The ABI is supportive of the principle of this approach. However, it should be made clear that this is the absolute maximum time that a CHO is permitted. There should be an expectation that the hire of a TRV will end if the TRV is returned within 24 hours of the repair being completed or if the customer secures a new vehicle within seven days of the submission of the total loss payment. If this is not achieved, the at-fault insurer will be paying for a service that is not required, increasing overall costs unnecessarily. Fraud checks are often triggered by overlapping hire periods for a specified vehicle hence the need to avoid the delay and cost of these wasted enquiries, together with the double recovery it would afford the CHO. The only

effective way in which to control hire duration is through the establishment of a credit hire portal (see further comments at paragraphs 3.37 – 3.38 below).

Other aspects of the GTA to be adopted or developed

Dispute resolution

3.30 The CMA does not propose taking forward any dispute resolution mechanism, as it is argued, that a failure to meet the requirements of the Remedy would amount to a breach of the enforcement order.

3.31 In addition to the above and in recognition of the potential circumvention risks outlined in this response, particularly in relation to the three day period to admit liability and the requirement for CHOs to monitor hire periods and measures to cap hire duration, we consider that there is merit in establishing a mediation/dispute resolution process where case specific disputes might be settled outside of the courts. Without such a process, where there are disputes caused by CHOs attempting to circumvent the new rules, the first port of call will be the courts which would add significant delay and cost to the settlement of a claim.

Acceptance of customers

3.32 The CMA argues that under the GTA, the overriding principle of 'first to a customer' has customer benefits in that it prevents delay in replacement vehicle provision. The ABI does not understand the rationale for this statement or the suggestion that it avoids claimants being contacted by many replacement vehicle providers once an acceptable replacement vehicle has been provided. Other TRV providers are unlikely to be aware the service has already been provided without speaking to the hirer.

3.33 The ABI believes that if the CMA's proposed remedies are to work as intended i.e. rates are capped at near direct rates and repair and hire periods are properly monitored, then the incentive for the at-fault insurer to intervene in the claim will be significantly reduced. However, given the way the proposed remedies are currently constructed, there is likely to be a greater incentive for CHOs to undertake the repair process themselves, thereby by driving up costs and incentivising the at-fault insurer to intervene in this aspect of the claim. The CMA will also be aware that at-fault insurers may wish to offer accident victims assistance in the event of them being injured. If the CMA believes there should be some control in this area it needs to be carefully worded to recognise that pro-active management can reduce both frictional and indemnity costs notwithstanding that the claimant may be using their preferred supplier.

Monitoring during hire

3.34 The CMA proposes adopting the GTA requirement that the CHO must perform a number of monitoring checks during the duration of the hire, with the effect of limiting a CHO's ability to unduly extend hire duration.

3.35 It is not clear from the proposals how this will be monitored or enforced, both of which will be critical if this is to be effective in ensuring that repair or total loss process is carried out in a prompt and efficient manner. Given that the CMA's package of proposed remedies will potentially lead to reduced credit hire rates, there will be a significant incentive for CHOs to extend hire periods where possible to make up for lost revenue. As such, there remains an open question as to how

effective this proposal will be without strong monitoring and enforcement in place. Historically this has been an area of significant manipulation and the notion that this will be reduced as a result of a low rate structure does not hold true in an environment where price will remain the competitive driver through referral fees.

3.36 The ABI notes that the CMA propose to implement the current requirements of the GTA in relation to the monitoring of repair but would suggest the CMA consider including the terms specified in the Credit Repair appendix to the GTA, in particular in relation to the role of Independent Engineers in approving the repair cost. The specified timescales are critical to ensure the repair, and thus potential hire period, are minimised. The CMA will note that the GTA requires that the at-fault insurer pays an additional administration fee where a claim involves both hire and repair. They also pay £50 towards the cost of an Independent Engineer's inspection. Although the latter cost is not recoverable in law, insurers acknowledge that it avoided them in direct cost and provided an acceptable validation of the repair cost provided the engineer complied with the specified GTA terms. If the CMA is minded to retain this facility they may wish to note that many repairers and engineers use on-line video links to check repair costs and such services generally cost far less than £50 per claim.

Online portal for credit hire claims

3.37 The CMA argues that, given the work performed to date by the GTA Technical Committee in assessing the feasibility of a credit hire portal, they would expect that, once their remedies package has been implemented, the industry would be able to work together to implement such a portal. For this reason, the CMA does not propose that a portal is implemented as part of the package of proposed remedies.

3.38 Given that the CHOs will only be able to achieve the higher rate cap if a decision on liability is not made within three days; there will be significant financial incentives on CHOs to make it more challenging for the at-fault insurer to make a decision on liability in this timeframe. It is likely, therefore, that this will impact on CHOs support for a Portal, particularly if a Portal were to make an insurer's liability decision easier and/or quicker. As such, the CMA should carefully consider whether a mandatory Portal should be used by all TRV providers and insurers and whether this should form part of any enforcement order. A number of the remedies, particularly the three day liability admission period, are dependent on a Portal being in place. Without a Portal, the effectiveness of the remedies is likely to be greatly diminished. The CMA itself has indicated that a Portal would result in consumer benefits in that it would allow for the quick and efficient settling of hire claims. At a bare minimum, there should be a requirement to be notified by email to a centralised email address per insurer, to provide full transparency and fairness for both parties.

Remedy 1F – Mitigation statement

3.39 The CMA proposes that a replacement vehicle provider should complete a mitigation declaration prior to providing a replacement vehicle to the non-fault claimant. This proposal is in contrast to the current process under the GTA where the mitigation questionnaire is signed by the claimant upon the receipt of the vehicle**.**

3.40 The CMA argues that requiring the replacement vehicle provider to fully assess the claimant's needs, to state that they have done so, and asking a claimant to confirm the answers they have provided when the car is provided to them, will result in a more effective fulfilment of the legal duty of mitigation.

3.41 The ABI supported the principle of this proposal in responding to the then Competition Commission's notice of possible remedies. Ensuring that mitigation statements are complete and understood can play a role in helping to reduce the levels of unnecessary credit hire. However, there are some concerns that will be important for the CMA to consider when finalising this Remedy.

3.42 Firstly, there is a real possibility that a standard set of questions will result in the development of a set of standard answers unscrupulous CHOs or consumers could use as proof of mitigation, thereby severely impacting on the potential benefits of the Remedy. This will need to be monitored carefully. A more robust 'Statement of Truth' together with confirmation that the document will be disclosed in support of the hirers' claim may help emphasise the importance of the answers provided. The statement should also include confirmation that the hirer understands their personal responsibility to pay the hire charge.

3.43 Secondly, the proposals call for the countersigning of the declaration by the non-fault driver, with the assumption that this will perform a checking and validation function of the declaration. However, as is the current practice of a number of CHOs, the non-fault claimant will, in all likelihood, be asked to sign a number of papers which they will do without properly reading the documents or considering their content or implications, thereby nullifying their role as a validation function. It will also be important for the CMA to clarify as part of the finalisation of this remedy that electronic signatures may be used given that this will result in a more streamlined process with lower overall administration costs (a Portal will further assist in this regard) and that a copy of the mitigation statement should be left with the hirer.

3.44 Some detailed comments on the proposed wording of the mitigation statement can be found at Annex D.

Ban on referral fees

3.45 The CMA has made the decision not to take forward their proposals to ban referral fees for credit hire and credit repair. The CMA argues that since the rate cap would be set at, or close to, the efficient level of providing replacement vehicles, it is not necessary to prohibit referral fees. It is argued that allowing referral fees to continue would mean that, in the event that the rate cap is set too high, referral fees will ensure any replacement vehicle providers' excess profits are competed away and fed back to insurers, resulting in lower PMI premiums for consumers. There are a range of views across the insurance industry in relation to this issue.

3.46 The majority of ABI members take the view that a ban on referral fees is essential in order to underpin the measures set out in the potential remedies the CMA has proposed. If referral fees are not banned, these firms argue:

- The overall effectiveness of the CMA's other proposed remedies is likely to be compromised. With a three day period in which to admit liability, a significant number of claims are likely to fall under the higher cap (it should be noted that this rate may yet be set at a rate that enables CHOs to continue to make excess profits) and therefore there will still be significant profit available with which CHOs could pay referral fees; and
- the assumption by the CMA that, in the event that the rate cap is set too high referral fees will ensure any replacement vehicle providers' excess profits are competed away and fed back to insurers, neglects to consider that a significant amount of referral fees income is received by brokers, claimant lawyers, salvage

companies, etc. Given that this referral fee income is not being received by motor insurers, it will not be possible for that income to be used to reduce PMI premiums for consumers.

3.47 Other ABI member firms take the view that if the hire rates are set too high, any difference between the fire rates and what these firms could negotiate down from that rate would be available to pay referral fees (which would be substantially lower than those that exist currently). This would mean that any replacement vehicle providers' excess profits will be competed away and fed back to insurers whereas if the hire rates are set too low, referral fees will be unaffordable and/or the supply of TRVs will reduce, which would lead to the rates being increased. Over time, it is argued, the appropriate level of hire fees should be the ultimate goal and if referral fees exist when the optimum rate has been set, this is likely to be the result of insurers using their economies of scale negotiation which is in the best interests of consumers. In relation to credit repair referral fees, these firms take the view that a ban cannot be supported given that the CMA is unlikely to be able to do so effectively through an enforcement order, an AEC has not been demonstrated and, even if it had been, a ban would not be a proportionate intervention relative to the detriment identified.

4. Theory of Harm 2: Possible under provision of service to those involved in accidents

4.1 The insurance industry welcomes the revised findings of the CMA in relation to the under provision of repair, to find no adverse effect on competition (AEC). The initial findings of the CMA were based on a report that was fundamentally flawed and which did not reflect industry practice. It is to the CMA's credit that they have recognised this and revised their findings.

4.2 It is important to note that, when insurers have control over the repair process, they will always look to ensure the highest quality of repair. Thatcham, the motor insurers' research body, has been working with both insurers and repairers to drive up repair standards and quality. It is important to note however, that there are a number of repair bodies which do not operate as an insurer approved repair centre and as such, it can be more challenging for insurers to ensure the highest quality of repair when a customer decides not to use the insurer's approved repairer.

4.3 We note that in their findings, the CMA does express concern over the monitoring practices of some involved in the repair process. The insurance industry is committed to ensuring the highest quality of repair for our customers. While we welcome the revised findings of the CMA, the insurance industry is happy to continue to work with Thatcham to review current practices and to look to identify any current practices that can be strengthened. We will make announcements in due course.

5. Theory of Harm 4: Add-ons

Overview

5.1 The ABI urges the CMA to consider the combination of these remedies and the fit with the ethos of Financial Conduct Authority (FCA) regulation. Since its creation the FCA has moved away from a prescriptive approach to regulation and their own work in areas such as behavioural economics shows that consumers look for smarter and streamlined information disclosure. The recently announced Project Innovate confirms the FCA is encouraging firms to engage with consumers in innovative ways and to create different models of customer service to take into account emerging new technologies. Indeed, the FCA has granted waivers to product disclosures that do not follow FCA guidance to the letter if firms can prove that this leads to better consumer outcomes. The FCA has also made it clear that more disclosure does not necessarily lead to better outcomes. Outcomes, rather than prescriptive compliance and sole reliance on disclosure, must be the priority and ultimate objective in the present and future financial regulatory environment.

NCB Information

Implied price of NCB protection and step-back procedures

5.2 The ABI supports this remedy as disclosing the implied price of NCB protection and step-back procedures helps customers to clarify what happens in the event of a claim to the number of NCB years with/out NCB protection. This in turn enhances consumers' understanding of NCB protection, making the value of NCB protection clearer, and providing consumers with further information on how much their NCB protection contributes to their overall PMI premium. It also provides an understanding as to what the key benefits and limitations are for consumers protecting their NCB before they decide to purchase it.

5.3 However we find the example provided (paragraph 3.37 of the PDR, Fig.2) on NCB disclosure of step-back procedures complex and confusing and welcome that the CMA has not prescribed a compulsory template to disclose this information. A flexible and simple approach is needed to allow insurers to provide this information in the format they believe works best, making it easier for consumers to understand rather than burdening them with too much information. The FCA already has existing rules in place within the Insurance Conduct of Business Source Book (ICOBS) requiring customers to be provided with clear information to help them make informed decisions and, in line with this rule, the format on how to display step back procedures should be left to insurers. We also note that in many instances the provision of this information to the consumer will best be undertaken by the PCW or insurance broker.

Average/typical NCB discount according to the number of NCB years

5.4 The ABI welcomes the CMA's recognition that a requirement forcing insurers to publish NCB scales would not be practicable and would only add complexity and confusion to consumers. The conclusion that insurers use a number of different rating factors to determine policyholder discounts, use those factors in varying permutations as between insurers, and therefore individual discounts will inevitably vary from one customer to another, is a sensible one.

5.5 However we have significant concerns about the alternative remedy, disclosing an average/typical NCB discount, and whether that is a better option which would result in better outcomes for consumers. The key aim of this remedy is to help consumers to understand the benefits and limitations of NCB discounts but we do not believe disclosing typical NCB discounts achieves this aim and the prescriptiveness and rigidity could have the opposite effect and result in consumer detriment.

5.6 Typical/average NCB discounts can easily mislead consumers into thinking that they will receive a discount that is the same or similar to the one provided in the example. While this might be true in some cases, it will not apply to every situation given that NCBs can vary by product, contract duration and geographical location. Furthermore, for the same reason NCB scales have been rejected, typical/average NCB discounts do not provide meaningful information as NCB discount calculations are affected by many factors which constantly vary and may be applied in different ways by different insurers. Typical NCB discounts at the point of sale would create false expectations and could result in more complaints reaching the Financial Ombudsman Service as a result of consumer confusion and misunderstanding.

5.7 Consumer research commissioned by the CMA highlights that consumers have an overall 'desire for simple and clear language and information' and policy/insurance language should avoid terms such as 'typical', 'may', 'reasonable' to be as transparent as possible. We agree that consumers need meaningful and easy to understand information. It is therefore surprising that the CMA has chosen typical NCB discounts to enhance the transparency of the product.

5.8 Furthermore, the GfK consumer research acknowledges that there were concerns about the word "typical", with some consumers wondering whether they themselves would qualify as "typical" or if their NCB would be typical and whether "typical" referred to an average percentage value, to an average within a specific insurer or an average across the market.

5.9 We are also concerned with the prescription of "last calendar year's average" discounts. Insurers require freedom to amend what they disclose in these circumstances, especially if the previous year's discount significantly differs from the discount being offered in a future year, given that this has the potential for customers to be misled in their purchasing decisions.

5.10 An alternative may be to publish these discounts on generic website pages rather than to include them at the point of sale. Many customers will research products and providers outside of the actual quote / sale journey and this information may be more relevant at the point of research.

Mandatory statements about what NCB protects and does not protect

5.11 The ABI supports the use of statements to assist a customer in understanding what NCB products do/not protect. However, in line with our comments above, we support a flexible and simple approach to allow insurers to provide this information in the format they believe works best, and in line with current ICOBS rules, making it easier for consumers to understand rather than burdening them with too much information.

5.12 In terms of the statements suggested, the ABI does not have any major objections to the wording of the first mandatory statement suggested but, in our submission, the second statement needs to be changed. An alternative wording would be "No

Claims Bonus Protection does not protect the overall price if your insurance policy. The price of your insurance policy could still increase in the event of a claim". This removes the information about non-fault. If this wording is not removed, the 'non-fault' wording in the second statement is likely to cause confusion for customers given that it is addressing a different issue.

5.13 We are also concerned that the CMA has not fully considered the impact of this requirement on telephone sales and emerging technologies (i.e. sales via mobile phones). Insurers are working on ways to shorten and simplify rather than increase policy wordings in accordance with FCA rules guidance. The two mandatory statements proposed by the CMA would result in already lengthy phone calls becoming even longer. Additionally, the two statements as proposed could limit sales via mobile phones (which are becoming increasingly common). It is not just the two mandatory statements that could pose difficulties with emerging technologies. For example, including the step back tables on the sales journey for smartphones / tablets will not provide a good user experience. We urge the CMA to take a forward looking approach and think about future proofing this Remedy.

5.14 There are also uncertainties regarding the expected implementation times. We believe that the six month lead-time significantly underestimates the time needed by insurers, software houses and the intermediary market to update their systems. Time will be needed to ensure the required information is provided to customers on all distributor sites (including insurers' direct sales).

5.15 The CMA will assume responsibility for monitoring compliance with this remedy. Insurers and brokers will be required to submit an annual compliance statement setting out the information on average NCB discounts for the forthcoming year.

5.16 As stated in the ABI response to the then Competition Commission's Notice of Possible Remedies, we believe that the FCA should develop and monitor the implementation of all the CMA add-ons remedies as it already has a supervisory role over affected firms. Furthermore under current FCA regulation, there are specific ICOBS rules that require firms to provide customers with clear, fair and non-misleading information to help them make an informed decision about their product. Having to separately report to the CMA would add an extra, unnecessary layer of regulatory scrutiny that would add time and operating costs. There needs to be a sensible approach taken to achieve proportionate and reasonable reporting.

5.17 Should the CMA's remedy not deliver the right outcomes for consumers, this will place insurers in a situation where they would simply have to be non-compliant with the remedy, or elements of it, or face intervention and potential enforcement action from the FCA. This supports our view that the FCA is best placed to consider and address the NCB remedy, in the same way as it does for other add-ons, which the CMA have themselves said the FCA is best placed to implement and monitor (paragraph 3.81 of the PDR). It is not apparent why the CMA is taking a different stance on NCB protection.

The FCA will review this remedy every two years to assess how the remedy is working and to ensure consistency with its wider regime

5.18 The ABI wholly support the decision that will allow the FCA to review this remedy, especially if any unintended consequences of these approaches become clear. However, this is a long time period and insurers are likely to have a view on the effectiveness of these remedies much sooner but would be unable to act should they need to in order to ensure the best outcomes are delivered to consumers. We

would welcome an earlier review as insurers will be able to have a clear understanding of the consequences of the remedy and its consistency with its wider regime earlier than proposed by the CMA.

6. Theory of Harm 5: Most favoured nation clauses in PCW and insurer contracts

6.1 The CMA has missed the opportunity to ban 'narrow' Most Favoured Nation (MFN) clauses which prevent insurers from pricing optimally and discourage innovation and competition in direct business models. As we explained in our response to the then Competition Commission's Notice of Possible Remedies, a partial ban on MFN clauses allows more room for circumvention and also prevents insurers from innovating on their direct website offering.

6.2 The PCW distribution channel is well established and is an important outlet for sales of insurance policies. As a result, we still question why it should require extra protection through the continued use of anti-competitive MFNs. A full ban on MFNs would make circumvention more difficult and would increase competitive constraints on commission levels, to the benefit of consumers.

6.3 We are still concerned about the practical difficulties of implementing a partial ban on MFNs. The CMA has yet to provide a clear and precise definition of 'narrow' MFNs. We urge the CMA to specify as narrow a definition as possible for the remaining 'narrow' MFNs. A ban that is restricted to 'wide' MFN clauses still allows a PCW to use circumvention measures such as restrictions on pricing through other non-PCW distribution channels.

6.4 We welcome the inclusion of 'equivalent behaviours' in the ban, and the fact that the CMA proposes to provide guidance which would set out examples of the sorts of behaviours and effects which would be considered to be in breach of the proposed remedy. The guidance will need to ensure it is not overly prescriptive to allow for a wide range of situations to be covered.

6.5 Effective enforcement and monitoring may be difficult to achieve, particularly the prohibition of equivalent behaviours. It is not completely clear how the process will work, whether insurers will have access to PCWs compliance statements, the right to challenge them if necessary and what the process would be in this case. Although we note the CMA believes that compliance statements, CMA directions and recourse to civil proceedings would provide an effective enforcement mechanism, it is unrealistic to believe that civil proceedings by one insurer would be effective or would provide an effective enforcement mechanism. Legal action against an aggregator would only be foreseeable in very limited and clear-cut cases (i.e. delisting).

6.6 We urge the CMA to ask the FCA to include the issue of MFNs in their review to be undertaken in two years' time to assess how well the NCB remedy is working. The review should also include an assessment of competition between PCWs commission levels and whether they are negatively affecting consumer outcomes. This will allow a holistic and comprehensive review.

6.7 Finally, as stated in paragraph 6.1 above, we note that the conclusions reached on the use of MFNs should be extended to other general insurance products to achieve consistency across the market.

ANNEX A

Statement of consumer rights following an accident if you have comprehensive insurance

1. This statement is to help you understand:
(a) your responsibilities following an accident;
(b) your rights following an accident; and
(c) the different ways in which your motor insurance claim can be handled.

Your responsibilities following an accident

2. ~~Following an accident, you are required by law~~ Your insurance policy requires you to report the accident to your insurer who should then notify the other driver's insurer.
3. Your insurer and the insurer(s) of the other driver~~(s)~~ ~~involved in the accident~~ will investigate the accident ~~circumstances~~ and ~~determine~~ decide who is responsible.
4. Where the other driver was at fault, even partially, you have a legal responsibility to keep your losses to a minimum and the other driver's insurer will expect you to have done so.
5. Your insurance policy will require you to help your insurer to deal with your claim or any claim by the other driver.
6. A decision on whether you or the other driver was at fault may take some time. Until a decision is made, you may need to make a claim under your own insurance policy.
7. Regardless of whether you or the other driver are found to be at fault, your insurance policy is likely to provide cover for some things, e.g. getting your vehicle repaired.

Your rights following an accident

Your rights if an accident is found to be ***your fault***

8~~4~~. If an accident is found to be your fault (or is likely to be), your rights and entitlements depend on ~~are determined~~ the terms and conditions of your motor insurance policy. For further information, please contact your insurer, refer to your motor insurance policy or the Frequently Asked Questions attached to your policy.

Your rights if an accident is found to be ***the other driver's fault (even partially)*** ~~***not to be your fault***~~

9. If an accident is found ~~not~~ to be ~~your~~ the other driver's fault, even partially, it is the responsibility of the other driver's insurer to pay any claim that you (or your insurer on your behalf) make, such as repairs to your vehicle, injuries or other losses not covered by your insurance policy.

10~~6~~. Losses you have suffered – your rights:

(a) The damage to your vehicle:

(i) You can choose to have your vehicle repaired by a repairer of your choice, by a repairer appointed by your insurer or the company handling your claim. The repairer will return your vehicle to its condition before the accident. The repair may be undertaken on credit (and you might be responsible for the costs of the repair if they can't be recovered from the at-fault driver).
~~You can require that replacement parts made by the original manufacturer are used in the repair~~.

(ii) If your vehicle is not economic to repair and is ~~deemed to be~~ a write-off ~~or total loss~~, you will be entitled to the market value of your vehicle before the accident.

This is the cost of ~~purchasing~~ an equivalent vehicle of a similar age and condition at the time of the accident and is usually based on published or market price guides.

(b) **A replacement vehicle**:

(i) If you need a replacement vehicle ~~W~~while you are without your vehicle, you are entitled to ~~a replacement vehicle~~one that is similar to your vehicle (~~ie~~ e.g. similar in size, type, number of doors and engine capacity) for the period that you need it (e.g. you need a vehicle to get to work and you do not have access to another, you need a particular type or size of vehicle)~~if you can demonstrate that you need such a vehicle~~.

(ii) You may be provided with a replacement vehicle by your insurer as part of your insurance policy or by the other driver's insurer if your insurer has an arrangement with them. If this is not available or if the vehicle offered is not adequate, you can obtain a replacement vehicle on credit ~~terms~~ (and you might be ~~held liable~~ responsible for the costs ~~of the hire should you ultimately be considered at fault for the accident~~if it can't be recovered from the at fault driver).

~~(ii)~~(iii) If you choose to arrange a suitable replacement vehicle yourself, you are entitled to the reasonable cost of hiring that vehicle for the period that you need it.

~~*(c)* **Personal injury damages** (eg for pain, suffering and loss of amenity, and the costs of care).~~

(c~~d~~) **Other losses** (eg legal costs, recovery of any excess you have paid under your insurance policy, loss of earnings, vehicle recovery and storage and the use of public transport). If you have been injured, you may also be able to make a claim. Depending on the terms of your motor insurance policy, your insurer may or may not assist you with recovering these losses.

Your rights if ~~responsibility for~~ an accident is both your and the other driver's fault or is not agreed ~~undetermined or shared between you and the other driver(s)~~

11. If there is a dispute about who was at fault in the accident, your insurer and the insurer of the other driver will decide this or it may have to be decided in court. It may be that both of you have some fault. If so, you will only recover from the other driver some of what you have lost but you still have the rights and entitlements set out in your comprehensive motor insurance policy. ~~There may be circumstances where responsibility for an accident is not determined for some time (referred to as undetermined liability) or liability is shared between you and the other driver(s) (referred to as split liability).~~

~~*Undetermined liability*~~

~~8. For the period in which liability is undetermined, you might need to make a claim under your motor insurance policy. Once liability is determined, your rights are as set out above depending on whether you are found to be at fault or not at fault.~~

~~*Split liability*~~

~~9. Where liability is split, you will be entitled to recover from the insurer(s) of the other driver(s) a proportion of the value of your claim, but you will be required to claim under your motor insurance policy for the remaining proportion of the claim.~~

Different ways in which your claim can be handled

120. If the accident is found to be your fault, even partially, any claim you make against your policy will usually be handled by your own insurer and will affect your no claims discount. Your policy will cover you for your losses and the losses of the other driver.

131. If the accident is found to be the other driver's fault~~not to be your fault~~, you can pursue the claim yourself, but claims are typically handled in one of the following ways:

(a) **By your own insurer**: your insurer will handle your claim and recover the costs of the claim from the insurer(s) of the other driver(s). Your insurer may choose to refer you to another supplier for the provision of some services.

(b) **By the insurer(s) of the other driver(s)**: the insurer(s) of the other driver(s) may contact you following an accident and offer to handle your claim, which you can choose to accept if you wish.

(c) **By a claims management company**: you, your insurer or the insurer(s) of the other driver(s) may choose for your claim to be handled by a claims management company.

~~13. Your legal entitlements are the same under all of these options.~~

ANNEX B

Frequently Asked Questions – motor insurance policy claims (to be populated by insurers/brokers)

1. If I am in an accident in which I am found to be not at fault, will this affect my annual motor insurance premium and/or my no claims bonus. If so, how?

2. Under what circumstances will I be required to pay an excess towards the cost of the repair of my vehicle?

3. If I am required to pay an excess and am ultimately found to be not at fault for the accident, will you refund the excess or recover the excess on my behalf from the other driver's insurer?

4. Can I choose who repairs my vehicle? If so, will I incur additional costs over and above my motor insurance policy excess if I do so? What happens if my vehicle is a write-off?

5. If my vehicle requires replacement parts, will the repairer use replacement parts made by the manufacturer of the original part?

6. Am I entitled to a replacement vehicle during the period in which my vehicle is undergoing repair? What type of vehicle am I entitled to?

7. What are my rights in relation to the recovery of losses other than those incurred in repair and replacement vehicle provision following an accident?

8. What are my responsibilities when I am found to be not at fault?

9. What happens if I believe I am not at fault for the accident but the other driver says that I am?

ANNEX C

The following statements must be read out to any claimant that is not found to be immediately at fault following an accident:

1. [*To be read out only if FNOL is not performed by the non-fault insurer*] You are required by ~~law~~ the terms and conditions of your insurance policy to report the accident to your insurer.

[*The remaining paragraphs to be read out by all FNOL providers*]
2. If an accident is found not to be your fault, you are entitled under law to be put back into the position you would have been in had the accident not occurred.

3. Your rights include compensation for:
(a) repair of your vehicle to its condition before the accident;

(b) a replacement vehicle that is similar to your vehicle. You are entitled to this vehicle for the period you are without your vehicle, provided that you need such a vehicle;

(c) personal injury damages (eg for pain, suffering and loss of amenity, and the costs of care); and

(d) other losses (eg recovery of any excess you have paid, loss of earnings, vehicle recovery and storage and the use of public transport).
4. A non-fault claim can be made against the insurer(s) of the other driver(s), who is (are) responsible for paying the costs, provided that those costs are reasonable.

5. The insurer decides who is liable for the accident based on the evidence available. If the accident is found not to be your fault, you can pursue the claim yourself, but claims are typically handled by (i) your own insurer, (ii) the insurer(s) of the other driver(s), or (iii) a claims management company. We are [your own insurer/the other driver's insurer/a claims management company].

6. Where the other driver was at fault, you have a legal responsibility to keep your losses to a minimum and the other driver's insurer will consider if you have done so.

6. Your legal entitlements are the same whoever handles the claim.

7. You were sent a statement of rights with your policy documentation. Would you like to be sent a reminder of this statement by email?

ANNEX D

Mitigation declaration statement

Section A to be completed and signed by the ~~non-fault insurer or CMC/CHC~~vehicle provider and Section B to be countersigned by the non-fault claimant

Section A: to be completed by the ~~non-fault insurer or CMC/CHC~~vehicle provider when deciding whether to provide a temporary replacement vehicle

1. ~~Prior to the insurer referring the non-fault claimant to a claims management company/ credit hire company (CMC/CHC) for the provision of a temporary replacement vehicle OR P~~prior to the CMC/CHC providing the non-fault claimant with a temporary replacement vehicle, the non-fault claimant was advised that:

(a) they have a legal entitlement to be compensated for the loss of use of their vehicle ~~and,~~or if their need for it is established, they are entitled to a temporary replacement vehicle that does not exceed the specification of ~~is similar to~~ their own vehicle (e.g. in size, number of doors and engine capacity; and

(b) to the extent needed and subject to the cost and period being reasonable~~,~~ they are entitled to the temporary replacement vehicle until the repair to their own vehicle is completed or seven days after receipt of a total loss payment; but

(c) they have a duty to keep their losses arising from the accident to a minimum, and so they must demonstrate that they need the ~~a~~ temporary replacement vehicle ~~that is similar to their own vehicle~~. Should this not be evidenced sufficiently, the hirer / claimant may be out at risk for some / all the hire charges.

(d) where the temporary replacement vehicle is provided on credit terms the hirer is personally liable for payment of the hire charges at the end of the credit period

2. The non-fault claimant's vehicle that was involved in the accident was a:

Make .....
Model (including engine size and number of doors) .....
Vehicle registration .....

3. The non-fault claimant was asked the following questions and provided the following responses to confirm that they intended to keep their loss to a minimum in respect of the provision of a temporary replacement vehicle:

(a) Do you require a temporary replacement vehicle for the period whilst your vehicle is being repaired or is otherwise unavailable? If yes, why?

Claimant's response: ..... A2(3)-2

The following questions were asked to substantiate the non-fault claimant's need for a replacement vehicle:

(b) *(i)* Do you believe or have you been advised that your vehicle is not roadworthy and/or unusable? If yes, why?

(ii) Have temporary repairs been considered to make the vehicle roadworthy? If not, why not?

Claimant's response: .....

(c) Have you received an offer of a temporary replacement vehicle from the other driver's insurer? If yes, why was this offer not accepted?

Claimant's response: .....

(d) For the period while your vehicle is unavailable, do you have access to another ~~suitable~~ vehicle? If yes, is there a reason why this is not suitable or you could not use this vehicle?

Claimant's response: .....

(e) Do you require a temporary replacement vehicle that is similar in size, number of doors and engine capacity to your own vehicle? If yes, is there a specific reason why? Could you make do with a smaller vehicle for the short period of repairs / unavailability? ~~If yes, why?~~

(This question is leading and is likely to only get one response. Could the question be completely re-written putting the suggestion of making do with a smaller vehicle as the main emphasis?

Claimant's response: .....

For insurance purposes please answer yes or no to the following questions:

(f) ~~Are you classified as a non-standard driver for insurance purposes, because you~~:

(i) Are you~~are~~ under 25 or over 70 years old;

(ii) Are you ~~are~~ a professional sportsperson; actor; entertainer; gambler; musician; publican; or journalist;

(iii) have you held a full UK driving licence ~~in the UK~~ for less than 12 months; and/or

(iv) have you ~~–~~convictions, or court cases pending, which has or could result~~ing~~ in an unspent ban or seven or more outstanding points in the last four years?

Claimant's response: .....

4. Based on the responses above, the non-fault claimant will receive the following temporary replacement vehicle or equivalent:

..... A2(3)-3

Signed .....
Name of ~~claims handler~~vehicle provider agent
.....
Date .....
Name of insurer/CMC/CHC .....
Address .....
Telephone .....
Email .....

Section B: to be completed by the non-fault claimant upon receipt of the temporary replacement vehicle

Statement of truth

I have read and understood paragraph 1 above and I confirm that this was explained to me by the ~~claims handler~~vehicle provider agent prior to the arrangement of a temporary replacement vehicle. I confirm that I was asked each of questions (a) to (f) in paragraph 3. I confirm that the answers are an accurate reflection of the responses I previously provided and are true to the best of my knowledge.

I understand that the answers I have given may be critical in establishing the validity of my claims and agree that this form may be disclosed in support of my claim.

Signed .....
Name of non-fault claimant .....
Date .....
Address .....