

## CMA MARKET INVESTIGATION INTO PRIVATE MOTOR INSURANCE

### AGEAS UK'S SUBMISSION IN RESPONSE TO THE PROVISIONAL DECISION ON REMEDIES

Ageas UK<sup>1</sup> has reviewed with interest the CMA's Provisional Decision on Remedies (PDR), published on 12 June 2014.

This note sets out Ageas UK's views on the remedies that the CMA has provisionally decided to implement to address the concerns that it has identified regarding aspects of the private motor insurance sector.

#### 1 EXECUTIVE SUMMARY

1.1 Ageas UK's comments on the PDR can be summarised as follows:

- 1.1.1 Ageas UK is supportive of the CMA's efforts to reduce costs in the claims process and to ensure better information for consumers. Subject to the comments below, the proposed remedies will help tackle the main areas of consumer detriment that the CMA has identified.
- 1.1.2 Ensuring that consumers understand their rights in the event of an accident is important and Ageas UK welcomes proportionate and effective measures to achieve this. However, it has hesitations regarding the length and content of the statements that the CMA has proposed should be provided with policy documentation and at FNOL (Remedy A). These concerns are specified more fully below. Ageas UK would be keen to work with the CMA to formulate measures that will be of greatest value to consumers.
- 1.1.3 Ageas UK welcomes measures to control the cost of temporary replacement vehicles and is broadly supportive of the remedies that the CMA has proposed in this regard (Remedies 1C and 1F). It looks forward to understanding better the detail of the proposed new arrangements, including the precise level at which the new rates will be set and what safeguards will be introduced to guard against vehicle providers seeking to increase revenue by trying to delay the admission of liability.
- 1.1.4 It would be unfortunate if the CMA's final findings in this investigation were to have the effect of increasing costs elsewhere in the claims process. Ageas UK feels that this is an area that would merit further consideration by the CMA. It foresees two potential adverse outcomes, namely that:
  - a) Where a vehicle provider is also in control of the repair process, it might seek to off-set the new lower daily hire rates under Remedy 1C by prolonging the duration of the hire (and thereby extending the duration for which vehicle hire is payable). The CMA's proposed remedies do not appear to contain any safeguards against this.
  - b) More generally, the proposed remedies do not seek to tackle issues relating to inflated repair costs. Repair cost inflation is likely to increase if the CMA adopts the approach set out in the PDR. Such an approach would have the effect of legitimising the practices of certain players in the industry, which

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<sup>1</sup> In this submission, references to "Ageas UK" mean Ageas (UK) Limited and, where applicable, its subsidiaries, excluding Tesco Underwriting Limited. Tesco Underwriting Limited is a joint arrangement with Tesco Bank and its views do not form part of this response.

could lead to those practices becoming more widespread as other parties sought to avoid competitive disadvantage. Further, the reduction in vehicle hire rates is likely to lead to greater incentives to inflate the cost of repairs.

Ageas UK has considerable concerns about these potential unintended consequences and would strongly encourage the CMA to consider them further.

1.1.5 Ageas UK is keen that consumers should properly understand the value of NCB protection and is supportive of measures to achieve this. It feels that some further work is required to identify how best the relevant information can be provided to consumers. This may be an area where FCA intervention would be appropriate.

1.1.6 Whilst Ageas UK values the role that PCWs play in the distribution of motor (and other) insurance products, it has expressed concerns throughout this investigation regarding PCWs' use of MFNs and it welcomes the CMA's proposal to ban certain forms of MFN clause.

## **2 INFORMATION ON CONSUMERS' RIGHTS (REMEDY A)**

2.1 As it has commented previously in this investigation, Ageas UK is fully supportive of measures which improve claimants' understanding of their legal entitlements. It recognises the importance of consumers being provided with the information that they need to be able to make informed decisions.

2.2 Ageas UK already makes considerable efforts to provide clear and comprehensive information to its customers about their entitlement in the event of a claim. Nevertheless, it is supportive of efforts to improve the position for consumers across the industry.

2.3 In the PDR, the CMA has proposed that consumers should be provided with details of their legal rights in the event of a non-fault accident:

2.3.1 in their policy documentation (and on insurers'/brokers' websites), by means of a standardised statement and policy-specific FAQs; and

2.3.2 at FNOL, by means of an oral statement that can be read to them over the telephone.

### **The information to be provided in policy documentation and at FNOL**

2.4 A balance clearly needs to be struck between, on the one hand, giving consumers sufficient information to make an informed decision and, on the other hand, not overloading consumers with too much information.

2.5 Given the relative complexity of motor insurance products, seeking to achieve this balance is a perennial challenge for insurers and others in the industry. For its part, the FCA actively encourages insurers to limit the length of policy documentation.

2.6 With regard to the proposed statement to be read at FNOL:

2.6.1 Ageas UK considers that highlighting appropriate information to consumers at FNOL may well be the best way of ensuring that they are informed of their rights at the time that they most need the information in question (i.e. shortly after they have had an accident).

2.6.2 Ageas UK therefore supports the proposal for communication with consumers at FNOL about their rights. However, it has some hesitations as to whether the CMA's

proposed text would give consumers the right information without making the call at FNOL overly long. In particular:

- a) The proposed text outlines consumers' rights in high level terms but, in doing so, it fails to provide consumers with various pieces of important information. For example, it fails to mention the complexities and possible risks for consumers should they choose not to pursue their claim through their own insurer or broker (such as that a consumer who chooses to use a credit hire vehicle faces the risk having to pay for it itself if for some reason the cost cannot be reclaimed from the at-fault insurer). Nor does the proposed statement remind consumers of the need to mitigate their losses. This could risk leading to consumers making an insufficiently informed decision about how to pursue their claim. Whilst Ageas UK is fully supportive of better informing consumers of their rights, it considers that the text as currently proposed by the CMA risks not providing the consumer with all relevant information.
- b) Notwithstanding the gaps referred to above, Ageas UK anticipates that the CMA's proposed text would add about one minute to the time of the call at FNOL (plus any extra time that might be required to answer follow-up questions from the consumer). In context, that would be a significant increase – about 10% (although this may be an underestimate) - in the amount of time that the consumer would need to be on the call. This may not be welcomed by consumers and could undermine the effectiveness of the statement, for example if consumers “tune out” of all or part of the call. It could also create costs for FNOL providers (for example, in terms of requiring extra staff), leading to possible incentives to minimise the cost of providing the statement.
- c) The CMA should set out rules regarding how the proposed oral statement should be presented to consumers. This would ensure consistency of approach, help ensure that consumers properly understand the statement being read to them and ensure that consumers are given sufficient opportunity to ask for further explanations and/or clarifications. Any inconsistency in approach would have a direct impact on consumers and could lead to a cost disparity between FNOL providers and reduce the effectiveness of the measures being put in place by the CMA. Absent clear rules (or possibly even with such rules), there is a danger that the very nature of an oral statement will create scope for certain industry participants to deliver it in a subjective manner that suits their own objectives.
- d) On balance, Ageas UK wonders whether consumers might benefit most from only a very brief statement at FNOL, alerting them to their right to be put back into the position they were pre-accident and directing them where they can find further information on their legal rights (i.e. the written information to be provided with the policy documentation).

2.7 With regard to the proposed written statement (and accompanying FAQs) to be provided with policy documentation, Ageas UK's views can be summarised as follows:

- 2.7.1 In principle, providing written material to consumers with their policy documentation could meet the CMA's objective of providing an overview of the consumer's key entitlements in the event of a non-fault accident.
- 2.7.2 Ageas UK notes GfK's findings that providing information in policy documentation may have limited impact for many consumers because it may go unread. Indeed, this

reflects Ageas UK's own experience. That said, Ageas UK supports the CMA's view that providing information with policy documentation is nevertheless important. Some consumers will read the information upon receipt, whilst others may not read it initially but may read it in the event of an accident in order to establish what their rights are.

- 2.7.3 Ageas UK has some hesitations regarding the length and content of the wording that the CMA has proposed. Whilst the CMA's proposed text is relatively straightforward, it is nevertheless fairly substantial in length and will further add to the volume of information that consumers need to be given when they buy an insurance product. There are also aspects of the wording that consumers could find difficult to follow from a "plain English" perspective. Ageas UK would strongly encourage the CMA to liaise with the FCA and FOS regarding the appropriate length and content of the wording. Getting it right is crucial since overly long and/or complex wording could materially undermine the intended benefits of this remedy (and, indeed, could have the effect of resulting in fewer consumers reading other parts of their policy documentation).
- 2.7.4 Ageas UK wonders whether it would be better for the standardised statement to be contained on a central website (perhaps administered by the ABI), such that insurers/brokers could simply include a link to it from their own websites. Consumers could also be referred to that wording at FNOL, following an accident.
- 2.8 Ageas UK understands that the ABI is suggesting that the CMA should convene a working group to discuss the messages that should be provided to consumers with their policy documentation and at FNOL. Ageas UK would be supportive of that approach.
- 2.9 As a point of detail, Ageas UK notes that the proposed text for the oral and written statements states that consumers are "required by law" to report the accident to their insurer. Ageas UK's understanding of the position is that whether a consumer is required to report the accident to their insurer is determined by the terms of their insurance contract, rather than by operation of the law as such.

#### **Enforcing the remedy**

- 2.10 Ageas UK agrees that the obligation to provide information at FNOL should be binding on all parties who may receive FNOL, including not only insurers and brokers, but also CMCs/CHOs, repairers etc.
- 2.11 The CMA will need to take care to ensure that the remedy is binding on all relevant players and that it is appropriately enforced. It is not immediately obvious to Ageas UK that the obligation to submit annual compliance statements will guarantee compliance with this remedy, given the number and range of parties who handle FNOL. Indeed, simply identifying which businesses should submit a compliance statement will, in the absence of any register of FNOL providers, prove challenging.
- 2.12 Ageas UK encourages the CMA to consider further how compliance can be enforced, to ensure that all consumers are provided with the information that they need, regardless of whom they should decide to contact at FNOL.

#### **Implementation considerations**

- 2.13 Ageas UK does not anticipate any particular challenges with implementing this remedy, although the costs of doing so could be significant. The costs will include the cost of software changes, fulfilment costs (such as the cost of printing new policy documentation) and the likelihood of having to recruit additional staff.

2.14 The PDR envisages this remedy coming into force three months from the date on which the CMA makes the relevant enforcement order.

2.15 Ageas UK considers that the industry will need more than three months to implement this remedy. However, provided that there is sufficient notice as to when the order will be made (and, accordingly, of when it will come into force), the CMA's proposed timetable should be achievable.

### **3 MEASURES TO ADDRESS FEATURES RELATING TO REPLACEMENT VEHICLES (REMEDIES 1C AND 1F)**

3.1 Ageas UK notes that the intention of this remedy is to reduce the cost of replacement vehicle provision to non-fault claimants without compromising claimants' tortious entitlements. Consistent with its previous submissions to the CC/CMA, Ageas UK is fully supportive of that objective.

3.2 Ageas UK's main hesitation regarding this aspect of the remedies is that reducing claims costs for replacement vehicles could create incentives for certain parties to recover lost revenues from other aspects of the claims process. In particular:

3.2.1 The PDR does not contain any measures to control repair (and, thereby, hire) durations. Ageas UK notes and supports the proposal that cost recovery for vehicles should end 24 hours after the repair is complete. However, if the provider of the vehicle is also in control of the repair, the introduction of a capped daily rate (and the consequent loss of revenue for vehicle providers) might in fact create incentives to extend repair durations. It is important that the remedies do not risk increasing incentives to extend repair durations, since this could enable vehicle providers to recoup costs through the back door (and, of course, would also have an adverse effect on non-fault consumers, in the form of longer repairs). Ageas UK considers that this issue merits further consideration by the CMA.

3.2.2 The PDR does not seek to tackle inflated repair costs. As explained in Section 4 below, a consequence of the CMA's market investigation (including an unintended consequence arising from Remedies 1C and 1F) could be to lead to even greater repair cost inflation in the future. Again, Ageas UK considers that this merits further consideration by the CMA.

#### **Low rate cap and high rate cap**

3.3 Ageas UK is supportive of efforts to speed up the determination of liability and, in principle, it is supportive of the concept of a "low rate cap" and a "high rate cap" to encourage this.

3.4 It will be important that the existence of the high rate cap does not create incentives for vehicle providers (and others) to seek to delay the determination of liability in the hope of receiving a higher daily rate for the vehicle. As proposed in the PDR, a vehicle provider could double the daily rate that it receives for its vehicles if it can delay the admission of liability beyond three days. With this in mind:

3.4.1 Ageas UK considers that whether an insurer accepts liability within three days is, in principle, an appropriate cut-off for determining whether the low or high rate is payable. It is however possible that having a relatively short period (such as three days) could in some circumstances put pressure on insurers to accept liability before they have been able to establish with their customer whether they are in fact liable, to the possible detriment of both the customer and the insurer. The longer the deadline the less likely it is that this issue would arise.

- 3.4.2 There will need to be clear rules to determine when the three day period starts, otherwise there will be a risk of multiple litigation on this point. The PDR says that the low rate cap would apply if the at-fault insurer admits liability within “a period of three days from being informed that a replacement vehicle is being provided to the non-fault claimant”. Simply being informed that a replacement vehicle has been provided should not of itself start the three day period running. As a matter of principle, the three day period should start only once the non-fault party has provided the at-fault insurer with sufficient information to enable the latter to determine whether or not it is liable for the claim. In practical terms, that implies the non-fault party providing information equivalent to that contained in the New Claim Advice Form under the current GTA. In particular, the at-fault insurer will need to be given details of the accident and notified of the identity of its customer, such that it can then contact the customer to establish whether they are indeed at fault.
- 3.4.3 The creation of an online portal would be helpful in enhancing the speed with which liability could be determined. The creation and use of the portal should be mandatory. If use of the portal is voluntary, there is a risk that certain players in the market will decline to use it, to try to delay the admission of liability in the hope of securing payments at the high rate cap.
- 3.5 It needs to be recognised that, for an insurer, the consequences of admitting liability go far beyond liability for temporary replacement vehicles and repairs. In particular, there may be potential exposure to personal injury claims. Ageas UK would encourage the CMA to consider a remedy that allows an insurer to admit liability for the purposes of the provision of temporary replacement vehicles and repairs, but to reserve its position regarding personal injury. Otherwise, the personal injury component of the insurer’s potential liability could in some cases discourage it from admitting liability for temporary replacement vehicles and repairs.
- 3.6 It remains unclear precisely how and at what level the CMA will set the capped rates. Ageas UK would welcome greater clarity (and further consultation) on this. In this regard:
- 3.6.1 Ageas UK is supportive of the principle of having a one-off administration fee and a capped daily rate based on direct hire rates. This appropriately reflects the nature of the costs incurred by vehicle providers.
- 3.6.2 The PDR refers to the capped daily rate being calculated using direct hire rates as a “benchmark”. The PDR provides no real indication of how close to actual direct hire costs the daily rate will be set (and, indeed, there appear to be ambiguities in the PDR in this regard).
- 3.6.3 Ageas UK notes that the CMA is proposing to err on the side of allowing higher daily rates and lower one-off administration fees, so as not to encourage undue very short (and very costly) hires. However, Ageas UK would encourage the CMA to consider this further and, in particular, to explore whether higher daily rates could create incentives to prolong hires (which is a factor that the CMA briefly acknowledges in the PDR).
- 3.7 Ageas UK agrees that the rates should be index-linked. It considers that the CPI would be the appropriate benchmark. Ageas UK also agrees in principle that there should be periodic (2-3 year) reviews of the rates, as suggested in the PDR. The periodic reviews should include an assessment of the direct hire rates as they stand at that time, to consider whether they remain the appropriate benchmark for setting the rate caps (for example, to guard against the rates being manipulated over time so as to lead to an upward pressure on the rate caps).

- 3.8 Ageas UK would welcome confirmation from the CMA that the proposed rate caps (and, in particular, the high rate cap) will not be payable (and, if appropriate, will be recoverable by the at-fault insurer) in the event that the claim proves to be fraudulent.

#### **Mitigation statements**

- 3.9 Ageas UK is supportive of the CMA's proposals to introduce mitigation statements, to be provided prior to a replacement vehicle being provided.

#### **Enforcement and possible circumvention risks**

- 3.10 Ageas UK notes the CMA's comments regarding the potential for circumvention of the remedy, such that rates above the capped rates could be claimed.
- 3.11 Ageas UK understands that the ABI has identified a potential loophole in the proposed remedy that, if left open, could allow claims submitted through CHOs to remain at inflated rates. This concern arises from the fact that CHOs might supply vehicles to non-fault drivers on credit hire terms and then seek to recover the costs on behalf of the consumer, such that the claim is formally made by the consumer rather than by the CHO through subrogation. If this were to remain a possibility following implementation of the remedy then, clearly, it could significantly undermine the remedy's effectiveness. Ageas UK strongly encourages the CMA to consider this issue further and to ensure that the remedy that is adopted is not capable of circumvention. The ABI's suggestion that the rates chargeable by CHOs should be capped is worth considering further.
- 3.12 Ageas UK has considered whether there may be a risk of circumvention of this remedy through insurers re-designating vehicles as "commercial" rather than "private". There is no fixed definition of "commercial" (or of any other categorisation of vehicle) for insurance purposes. Rather, it is a matter for individual insurers, whose definitions may vary. Ageas UK assumes that the final remedy will include a clear definition of what types of vehicles the rate caps will apply to, which should be sufficient to avoid circumvention.
- 3.13 It is possible that the proposed rate caps will lead certain vehicle providers to seek to recover revenue by inflating the cost of "extras" that they provide with vehicles (such as roof racks, children's car seats etc).
- 3.14 As indicated above, Ageas UK has considerable concerns that parties might seek to compensate for lower daily hire rates through extending repair/hire durations and further inflating repair costs.

#### **Implementation considerations**

- 3.15 Ageas UK does not anticipate any particular challenges with implementing this remedy.
- 3.16 The PDR envisages this remedy coming into force three months from the date on which the CMA makes the relevant enforcement order. Provided that the industry is given sufficient notice of when the enforcement order will be made (and, accordingly, of when the remedy will come into effect), Ageas UK does not anticipate any particular challenges with implementing this remedy within the timeframe that the CMA has outlined.
- 3.17 To ensure certainty and to avoid undue complexity, the remedy should only come into force for hire arrangements entered into on or after the implementation date, not those which have commenced prior to that date.

#### **4 CONTROLLING NON-FAULT REPAIR COSTS**

- 4.1 Ageas UK is disappointed that the CMA is not proposing any remedies to address inflated non-fault repair costs.
- 4.2 Whilst the net detriment associated with repair may currently be considerably smaller than that associated with credit hire, the detriment is nevertheless significant and is likely to grow.
- 4.3 The CMA has identified various strategies engaged in by certain non-fault insurers and CMCs to inflate repair costs. It appears that the CMA is intending to, in effect, give a green light to such conduct, removing any lingering uncertainty within the industry as to whether such conduct should be permitted. Parties who currently inflate repair costs will continue to do so, whilst others who do not yet inflate repair costs will feel greater competitive pressure to start doing so.
- 4.4 Further, reduced margins for non-fault claims handlers from replacement vehicles risks exacerbating incentives to inflate repair costs. Parties who both provide replacement vehicles and handle repairs may seek to recoup the profits they will lose in the former (as a result of remedies 1C and 1F) by adapting their business models to further inflate their costs in the latter.
- 4.5 As Ageas UK has made clear throughout this investigation, it is supportive of an industry in which competition takes place on merit, with participants competing to offer the lowest price and best quality of claims handling and other services to consumers. The CMA's failure to take action to address repair cost inflation would be a missed opportunity in this regard. Ageas UK fears that this could lead to a net detriment with regard to non-fault repairs (and write-offs) of considerably more than the £26 million that the CMA has identified as existing today. That £26 million figure is likely to rise as a result of parties who currently do not inflate costs deciding that they should do so (because, as explained above, the CMA's decision would in effect legitimise the conduct in question and parties would otherwise suffer competitive disadvantage) and as a result of parties seeking to recover lost revenue from replacement vehicles by inflating their revenue from repairs.

#### **5 THE SALE OF ADD-ON PRODUCTS (THEORY OF HARM 4)**

- 5.1 Ageas UK fully agrees that consumers should understand the products that they buy. It is supportive of consumers being able to make informed decisions at the point of purchase.
- 5.2 However, Ageas UK has some initial doubts whether the CMA's proposals to require publication of information regarding NCB discounts and NCB protection will provide genuinely useful information to consumers. Indeed, it wonders whether many consumers might find the information contained in Figures 1 and 2 of the PDR confusing. For insurers and brokers, generating and displaying the information in question could involve significant extra cost. It is important that this remedy is effective and proportionate.
- 5.3 More specifically, Ageas UK considers that:
- 5.3.1 Requiring insurers to disclose "typical" (i.e. average) NCB discounts, as envisaged in Figure 1 in the PDR, will risk misleading consumers and could lead them to have false expectations as to their individual premiums. The vast majority of consumers will not be "typical" according to this measure and, accordingly, the information that is provided to them will be of minimal value. Meanwhile, even for a consumer who is "typical", temporal variations in the factors that determine NCB discount calculations mean that the discounts that are disclosed to the consumer at the point of sale may subsequently change. This renders questionable the overall value of the information

to consumers and it risks leading to consumer confusion, false expectations and complaints.

- 5.3.2 Whilst Ageas UK supports the underlying objective behind Figure 2 in the PDR, which seeks to demonstrate step-back procedures with and without NCB protection (i.e. to show what happens to the policyholder's NCB years in the event of one or more accidents if they have NCB protection and if they do not have NCB protection), the CMA's proposed approach is potentially confusing for consumers.
- 5.4 Ageas UK agrees that consumers need to understand the overall value of NCB protection. However, it has concerns that the proposals outlined in the PDR will not achieve that objective. Ageas UK considers that a better approach may be simply to explain to consumers, at the time of sale:
- 5.4.1 what the consumer's current NCB is and how much it has reduced their premium (versus not having any NCB);
- 5.4.2 how much the consumer is paying for NCB protection.
- 5.5 This could be achieved through a statement along the following lines:
- Your premium is [£1,000]. This reflects your current NCB of [3] years. If you had no NCB, your premium would have been [£1,200].*
- You have opted to include NCB protection. This has increased your premium by [£20], which is included in the premium shown above. NCB protection means that, as long as you have no more than [2] accidents over a [3] year period, you will retain your current NCB.*
- 5.6 The inclusion of such a statement would of course have an impact on call durations with customers and on the amount of written information provided to them (although it would be considerably less than that contemplated by the CMA in the PDR).
- 5.7 An alternative would be for the CMA not to implement any remedy itself but, rather, to recommend that the FCA considers these issues further. This would have the following advantages:
- 5.7.1 The FCA would be well placed to work with the insurance industry to ensure that consumers understand the value of NCB protection.
- 5.7.2 Reviewing these issues would be consistent with the FCA's broader workload (and would sit conveniently with the other issues relating to add-ons that the CMA is recommending that the FCA reviews). It would also avoid possible inconsistency between the outcomes of this market investigation and the FCA's approach.
- 5.7.3 The FCA would also be well placed to address any unintended consequences (such as customer confusion, false expectations and the possibility of increased levels of complaints) arising from any remedy. Whereas a CMA remedy would largely be a one-shot effort to address the matter, allowing the FCA to lead any intervention in this area would also ensure that any changes could be kept under regular review and amended/improved from time to time if required.
- 5.8 Ageas UK supports the CMA's proposal to refer other aspects of add-ons to the FCA. It is keen to work with the FCA on these issues.

## **Implementation considerations**

- 5.9 The CMA is proposing that the remedy relating to the provision of information relating to NCB and NCB protection should be implemented within six months of it making its enforcement order.
- 5.10 Ageas UK considers that this remedy would be likely to take around [ ] to implement and it would strongly encourage the CMA to ensure that parties are given at least that much notice of the implementation date of the remedy. The process and software changes required to generate and provide the information envisaged by the CMA are considerable. By way of indication, Ageas UK anticipates that it would need to work with around [ ] software houses to make the required changes. To a large extent, the time that it would take for the required software changes to be made would be out of Ageas UK's control. This is typical across the intermediated market.

## **6 PRICE COMPARISON WEBSITES AND MFN CLAUSES (THEORY OF HARM 5)**

- 6.1 Ageas UK is supportive of the CMA's proposal to ban wide MFNs. As it has commented previously, Ageas UK values the existence of PCWs, which provide consumers with ready access to a wide variety of insurance providers and the ability to compare prices and products. However, it shares other insurers' concerns that MFN clauses potentially affect competition adversely.
- 6.2 The CMA's proposal to structure the remedy as a ban on all MFN clauses except narrow MFN clauses is to be welcomed. Ageas UK agrees with the CMA that, whilst this theoretically creates a risk of over-prohibition, that approach is preferable to the risk of under-prohibition. Ageas UK shares the CMA's concerns that defining the remedy merely as a ban on wide MFNs would require an anticipation of all of the ways in which a wide MFN could be constructed, to avoid circumvention.
- 6.3 Notwithstanding the previous comment, Ageas UK notes that various parties involved in this investigation advocate a ban on narrow MFNs as well as a ban on wide MFNs. Ageas UK would not object to a ban on narrow MFNs and, indeed, it considers that a ban on all MFNs would avoid any possible ambiguity as to the scope of the remedy and would enhance competition in the market.
- 6.4 Ageas UK understands that the remedy would apply not only to agreements between insurers and PCWs, but also to agreements between brokers and PCWs, since brokers are essentially in the same position as insurers with regard to the anti-competitive impact of MFNs. It is important that brokers are included in the remedy and that the wording of the enforcement order makes this clear.
- 6.5 The CMA's proposed formulation of this remedy would permit PCWs to restrict insurers/brokers from offering better terms on "possible aggregator platforms like Facebook". The CMA will need to explain further what it means by this wording but, in principle, it would appear to stifle the use by insurers/brokers of potentially important sales channels. Ageas UK suggests the deletion of the words "(but excluding possible aggregator platforms like Facebook)".

## **Enforcement and possible circumvention risks**

- 6.6 Potentially the biggest challenge with defining this remedy is the anti-circumvention mechanism that will catch MFN-equivalent behaviours.

- 6.7 Including a catch-all provision is crucial since, as the CMA recognises, there are numerous behaviours that could have the same effect as an MFN (such as a PCW offering less favourable terms, threatening de-listing etc). The practical challenge is how best to define the provision.
- 6.8 The CMA's proposal is that the ban should apply to "behaviours which have as their effect the elimination or reduction of competition between PCWs in a similar way to the harm identified by wide MFNs (namely, restricting entry to the PCW market, reducing innovation by PCWs and increasing premiums for motor insurance to the retail customer)". This will apply only to PCWs that generate more than 300,000 sales per year.
- 6.9 Ageas UK agrees that this provision is seeking to achieve the right objective. However, without clear guidance (with examples), there is a real danger that it might prove very difficult for insurers and brokers to enforce against PCWs. Ageas UK therefore welcomes the CMA's proposals to issue appropriate directions in due course, the content of which will be critical to determining whether the "equivalent behaviours" aspect of this remedy (and, therefore, the remedy overall) is effective.
- 6.10 The PDR envisages this remedy taking effect immediately following the making of the relevant enforcement order. Provided that there is sufficient notice as to when the remedy will be made, this timescale should be achievable.

## **7 REVISED FINDING ON THEORY OF HARM 2**

- 7.1 Ageas UK welcomes the CMA's revised view that there is no adverse effect on competition with regard to the quality of repairs.
- 7.2 Ageas UK fully supports the proposition that consumers should be entitled to high levels of service in the event of an accident. It places considerable importance on providing repairs that are of a high quality and are guaranteed.
- 7.3 Like many others in the industry, Ageas UK was concerned about the weight that the CC appeared to be placing on the MSXI Vehicle Inspection Report. It is very pleased that the CMA has now revised its view and that it is not proposing remedies in this area.
- 7.4 The CMA has observed that the arrangements of many insurers for monitoring repair quality appear to rely too much upon consumers identifying repair deficiencies. Ageas UK is pleased that there appears to be no suggestion that it is one of the insurers about which the CMA has concerns on this point.