

Response to the CMA's "Private Motor Insurance Market Investigation" Provisional decision on remedies.

FAO Alasdair Smith
CMA committee

Ladies and Gentlemen,

I am an owner of a credit hire company or AMC and have been in the industry for some 15 years. I was not present at the various hearings that led up to your provisional decision on remedies, but feel confident that the industries representatives presented a well balanced view on our feelings concerning this investigation.

However I would like to respond in person to the contents within your report dated 12th June, as I feel that there has been a fundamental misunderstanding of the services we provide and the environment in which we trade.

Please find following the issues I feel you should be taking into consideration.

Many thanks

Kyle Harris
Managing Director
Auto Logistic Solutions

Response to CMA's provisional decision on remedies

General Overview

I do not wish to debate whether there is an AEC from Credit Hire, or indeed if there is, what this cost would be. I prefer to concentrate on the industry dynamics and the Insurers true intentions as a whole. There is a huge danger that a claimants ability to seek redress following a tortuous act will be severely damaged or indeed completely removed if you impose all of your proposed remedies

I do support your initiatives concerning the client's requirements to mitigate and for stronger tests to confirm a client's need of a replacement vehicle, however the GTA already allows for this. I get the impression, from the emphasis put on these subjects that it is taken that the industry as a whole does not already vet their clients in this manner before committing to providing replacement vehicles. This surprises me, as all the companies that subscribe to the GTA, which is the majority of the industry, are committed to providing written proof of such vetting as part of the initial payment pack. My company does not subscribe to the GTA, yet we still provide a payment pack which contains a mitigation statement and a hire questionnaire that goes into detail about our clients requirements for the replacement vehicle. Anyway your initiatives on these points are welcomed.

My main focus of attention is centred on the rate caps that are proposed, I hope that I will demonstrate that these will be counter productive in their attempts to reduce any AEC, yet will severely damage the claimants tortuous entitlements, something which, from your report, is rightly at the top of your concerns.

Whilst we should always be mindful of any increased costs to consumers, I do believe that too much emphasis has been put on the cost of replacement vehicle provision. Far more damaging to premium costs are fraud, un-insured drivers and the insurer's reluctance to settle genuine claims in an appropriate manner and time frame, which has in so many cases resulted in unnecessary legal costs for both sides of the industry. On the first two areas, everyone has an interest in stamping out fraudulent practices, both hirers and insurers. A more cooperative working environment between insurers and hirers would help to eliminate this practice, and I believe, given time the GTA could provide this solution.

The Adverse Affects of the Rate Caps

1/ No Profit = No Supply

Loss leaders / Cross subsidy = Direct Hire Rate
DHR is not a realistic Spot Hire Rate
Unfair trading terms
The Supermarket effect
Accept Liability – then simply retract it
Payment Obligations

2/ The Insurers Psyche

All profits lead here
Treating Customers fairly

3/ Consequence of the 50% rate cap

A Neo-Monopolistic market

4/ The balance of Entitlements against Costs

Why are there Credit Hire companies in the first place?
ABI GTA

5/ Possible way forward

Cooperation not regulation

1/ No Profit = No Supply

Loss Leaders / Cross subsidy

It is not a new concept where a company will throw out into the market place a sacrificial loss leader, and subsidise this with sales it gains from other parts of its business. This is exactly what we have here when we talk about the “Direct Hire Rate”

You seem to be suggesting that the initial rate cap will be at 50% of ABI which is almost the same as the DHR. By your own findings and admissions you highlight that there is little or no profit in supplying vehicles at the DHR. Your foot note on page 2-27 states **“The low rate cap would be set close to cost, implying that replacement vehicle providers would not gain much from unduly lengthening the hire periods”** I would go further and say that there would be no point in supplying a vehicle at all if there was likely to be no profit in it.

The large international hire companies, who have 30,000 vehicles and 100 depots at their disposal, who offer these unrealistic low rates to insurers have other parts of their business that help them carry these non-profit making deals. They have longer term company leasing deals, cross the counter transactions and holiday hire business that is the mainstay of their businesses. They are also able to up-sell to their clients, upgrades on vehicles, extra insurance products, and add-ons like sat-navs etc. These all help to bolster their daily rate. Credit hire companies or AMC's do not have these extra lines of business to allow them to sell hire effectively at cost, a company has to be able to make profit from its services, that's the mainstay of any capitalist free market economy.

DHR is not a realistic Spot Hire Rate.

For the reasons given above the DHR can not possibly be the rate at which the market rate should be set. To do so would imply that only companies with mass, scale and the accompanying purchasing power can compete, and this must be seen as being anti-competitive, is this not horizontally opposing the ethics of the competition committee or the CMA.

We have had many high profile court cases that have reinforced the issue of what defines a reasonable replacement vehicle cost; the most notable is the comments of **Lord Hoffman in Dimond v Lovell in 2000**. In this case he clearly defined the basis on which a claim can be deemed as being reasonable and this was of course the cost at which the man or woman in the street can acquire a similar vehicle in the open market, the Spot Hire Rate. This rate will vary depending on place, time and type of vehicle required, and these rates will vary depending upon the hirer themselves, age, licence endorsements and driving experience. All of which are real considerations and will in most cases substantially increase the headline rate of hire. This, I suggest, is further reason why your proposed 50% rate cap is unrealistic and unworkable.

Unfair Trading Terms

As already highlighted your rate cap will enforce a completely false trading condition, where only the large companies will survive and the smaller specialised companies will fail. Even a company that only specialises in non-fault vehicle provision yet has 1000 vehicles at its disposal will not be able to compete, as it has no other revenue income to subsidise against the non-profitable DHR.

The large international hire companies also gain in other areas. They have such purchasing powers that they are able to secure discounts levels on vehicles that are simply not available to any one else. It has also been known that a manufacturer will defer payment for these vehicles for such a time and offer buy back guarantees at levels that equate to almost free hire, purely in a bid to secure the manufacture and movement of 5000/6000 vehicles. This is again an example of cross subsidy and loss leaders that can only be offered and enjoyed by those that have the mass and buying power to command it. These trades distort the true market value, yet it would be ludicrous to impose on the vehicle manufacturer that they should offer the same deal on an individual vehicle purchase to an individual purchaser. Yet this is exactly what you will be doing if you impose the initial 50% rate cap on a hire vehicle on a one off hire to an individual hirer.

The Supermarket effect

We have had many examples of supermarkets offering price inducements, 3 for 2, or double size for 2/3rds, Yet some of these offers are not all that they seem, and indeed these practices have become a topic of concern for the government, as these are seen as being anti-competitive at best and possibly miss-leading at worst. It is recognised that the large supermarket chains are using their size and strength to unfairly compete in the open market place. This I would contend is exactly what is happening here in the hire market. The larger international hire companies are imposing their size and strength on this market in a way that is un-fair, creating an artificial and un-realistic DHR.

Accept Liability – then simply retract it

If I have read your recommendations correctly then it would seem that the insurers can have the rate capped at a lower rate simply by accepting liability within 3 days of receiving notification of the claim. Yet they can retract this acceptance at any point during the period of the claim, and only at that point with the higher rate apply. Assuming that the average hire period is 16 days, if an insurer accepts liability on day 1 then retracts it on day 15, then only 1 day will be chargeable at the higher rate and only that one day will attract any profit. All the added administrative work will still be required in recovering the hire monies, yet there will not be any profit on the hire to cover this cost!!! What happens if they retract liability when the hire has finished, is the entire hire period restricted to the lower cap??

How can this model be deemed as workable. If there was to be a two tier hire cap (I don't believe there should be, unless it was something like 80% of ABI, for reasons I will go into later), and that the first tier (lower) cap was reasonable, surely it would be fairer that if liability was accepted then the lower tier applies however if liability is retracted at any stage then the top tier hire rate should apply throughout the entire duration of the claim. If you do not apply such a system then it is clear how the insurers will abuse the system. They will simply accept liability automatically on day one, to lower the rate, and then automatically retract it later, knowing that there is absolutely no consequence for them doing this. I believe the two tier scheme should be shelved for reasons I go into detail later.

Payment obligations

It is disappointing to see that there has been little mention of the obligation on behalf of the insurers to pay genuine and reasonable claims in a timely manner. When considering frictional costs and the AEC I would have thought that this area would be high on the agenda, yet it doesn't even seem to be on the radar.

There is plenty of emphasis on the DHR and the credit hire rate as being the source of the AEC. Here lies a fundamental difference between what the insurers claim as a reasonable replacement hire rate or DHR, as it seems to be lost that insurers pay their working partners for providing vehicles at the DHR in a timely fashion, probably on 30 day terms. I guess also that the hire companies do not have to constantly duplicate information and provide this to insurers who repeatedly lose the information which necessitates the information having to be provided a third time. I also guess that they are not awaiting payment for 5 to 6 months thereon after, all of this applies upward pressure on costs, which will reflect on the price of the hire vehicle.

This said, we all (the hire industry), follow the GTA rates as a guide, if a settlement is offered in a timely fashion then we will settle at the GTA rate, so any added administrative costs are simply absorbed by the hire company.

The issue therefore of payment has to be taken into account before any framework or order should be put in place. I do believe that if a payment or settlement could be guaranteed within 30 days then there would be a healthier appetite to accept a below than GTA rate settlement, yet as stated previously the 50% cap is completely unreasonable,

2/ The Insurers Psyche

All Profits lead here

Insurers already administer and control most aspects of motor claims, estimates vary from 70% to 75% of the total market. This is understandable as most people call their insurer at first instance following an RTA. This places with the insurer a great mass of potential revenue streams, repairs, hires and PI's.

The Insurers use this power of work placement to command all sorts of rebates and discounts. On the repair side they are able to negotiate down the labour rates their repairer network will charge them in return for large volumes of repair work. They are also able to dictate which paint suppliers and even parts suppliers that they network have to use, this brings in more rebate payments from the respective suppliers. Whilst this practice is, on the face of it, perfectly understandable (Market forces and all), it does beg the question as to whether this is in the public's best interest or in the insurers'??

This model is replicated when it comes to hires. The rates are negotiated down on all the hires that the insurer is likely to pay for, whilst allowing the hire company to charge a different rate on any other hires not payable by them. On these hires, where another insurer is paying, the introducing insurer will expect a percentage of hire charged by way of a commission. This is another example of why the DHR is unrealistic, as it is a suppressed rate that accounts for on the one hand a vast volume of business but on the other allows for a higher, more reasonable rate, to be charged against TPI's. I would suggest that the insurers own model proves that the DHR is not a rate that others should be judged against.

Although there is a ban on PI referral payments, PI's can still be used as a currency. This can happen where a law firm that receives vast volumes of PI referrals, will be encouraged to perform other tasks (which would otherwise attract costs) for free or at a reduced cost, which will place the insurer at an unfair advantage when it comes to the costs of pushing cases through the litigation process.

With the above in mind, it is unsurprising that the insurance industry dedicates millions within their marketing budgets on advertising their claims help lines, with top rate celebrities, they know that with every claim secured there is a potential revenue benefit. I know that the insurers will argue that their aim is to remove a claimant from the clutches of a company such as mine, in a bid to reduce potential costs, and of course there is some merit in that suggestion. However the above only highlights the true insurer Psyche, and that is where there is profit elsewhere in the supply chain, there is potential profit for them, better that they enjoy the revenue benefits than anyone else.

It is easy therefore to see why the insurers want 100% control of all aspects of every claim, my fear is, that with the unprofitable rate cap of 50% that is proposed, there will not be AMC's and therefore the insurers will get their wish, and this will not be ultimately good for the consumer, as I will explain later.

Treating customers fairly

This is something which again I know is of great importance to the CMA.

I would suggest that the only true way on ensuring that the claimant is given the full back up of services that fetter his/her rights, is to have these services provided by an independent company that only has their interests/rights as their priority. If the insurers were to have ultimate control over all claims, and I believe that the 50% rate cap will produce this scenario, then we will see a reduction of customers service and an abuse of their rights.

A good example of this is when a car is deemed to be a write off / total loss. When this happens the TPI is required to pay the owner of the damaged vehicle a fair market price for their written off vehicle. What actually happens is the TPI open negotiations with a low valuation, providing internet evidence of similar vehicles at the lower end of the market whilst ignoring higher valued examples. The claimant is then put to test to disprove that this valuation is inappropriate. We as AMC's help our clients to accumulate combative valuations, again sourced in the main from the internet, so as to negotiate a more reasonable pre-accident valuation. In nearly all cases we are able to help our clients realise a far higher valuation than was first offered by the insurers, in one case the difference was from £9000 to £14,000 (£5000) Whilst I understand that anecdotal instances of this type of situation can not be taken with any real merit, as you could be flooded with many other examples. It is however a true instance (File notes can be provided) and highlights just how much the claimants tortuous entitlements will be eroded if there are not companies such as ours there to enforce these rights and entitlements on behalf of our clients.

It is clear therefore that if the insurance industry can treat customers in this way and in these instances, they will, if left unchecked, adopt a similar approach and attitude in all other areas of claims.

3/ Consequence of the 50% Rate Cap

A Neo-Monopolistic Market

As I have expressed already, I do not believe that the 50% of ABI rate or DHR is sustainable from a pure AMC perspective. If this rate cap is imposed then I sincerely feel that a neo-monopolistic market will emerge. By this I mean that there will no longer be any specialist AMC/hire providers (upwards of 200 nationwide), there will only be the largest international hire companies that can afford to continue to cross subsidise the low DHR (probably no more than 3 or 4 companies)

It would be not inconceivable to suggest that under these market conditions normal market forces will not operate, and there would be huge barriers to entry to the market. The resultant lack of competition will reduce customer choice, which will ultimately erode customer service.

It is therefore most likely that one of two things will happen;

A/ The small amount of hire providers left will start to control the market by price fixing, knowing that their customers, the insurers, have little choice.

B/ Insurers will slowly retract or discourage the provision of a like for like vehicle, favouring the courtesy car route which is largely funded by the repairer network and is at no cost to the insurer.

You may feel that the latter consequence is unrealistic, but I would urge the CMA to consider why there is a consideration at all when it comes to replacement vehicles. I would suggest that it is only the advent of AMC's / Credit Hire Companies some 20 years ago that has forced insurers to consider the need for such a provision. The claimants tortuous rights have existed for far longer than 20 years, so why did the insurers not cater for this right back in the 60's or 70's or even the 80's. I believe that without an independent force (this has been the Credit Hire Industry), the insurers will not see the need to provide services and entitlements that will impose administration and costs. Without a driving force the insurers will, in my opinion, simply not provide such services, though this may take some years to materialise.

I can not see how such a risk can fit comfortably with the CMA, as the claimants tortuous rights or entitlements seem to sit close to the core of its objectives, I can see that such rights or entitlements will be in time ignored or abused.

4/ The Balance of Entitlement against Costs

Why are there Credit Hire companies in the first place?

I have already touched on this question in the previous bullet point, but it is worth expanding on this point.

As stated the rights of restitution or damages for a victim of a tort have been enshrined in our laws for many hundreds of years, yet this right has been completely ignored, when it comes to motor claims, by insurers for decades. This I believe highlights the true underlying psyche of the insurance industry, they will only pay if they are forced to pay. You may view this as a rather cynical approach, but I believe that I am merely relying upon my own experiences, which have been outlined already.

It is understandable that insurers resisted this fresh new head of claim, a claim that hitherto had not been brought to them. It is to be acknowledged that there were abuses in the early days from the Credit Hire companies. Hire cars were put out at ridiculous daily rates, there was scant regard as to whether the client needed a car, and there was little attention applied to the repair period. Claims were as a result disproportionate and I personally can understand why insurers vigorously resisted such claims.

However the actions of the credit hire companies and the services they provided forced insurers to accommodate genuine reasonable claims that they would have otherwise ignored or rebutted, this can only be seen as being good for the consumer

ABI GTA

The situation between the insurers and hire companies has changed dramatically over the past 10 years. The GTA has formed a basis on which the valuable service of replacement vehicle provision, can be provided in a format that is acceptable to the paying TPI. There is a structure which puts emphasis on the obligations of the hirers to ensure that the claims submitted are fair and reasonable. There is also a requirement within the GTA for the hirers to provide at first instance relevant information which serves to qualify any valid claim for hire.

As already stated I do not subscribe to the GTA, yet my company follows the procedural guidelines of the GTA. I feel that to not do so would be foolhardy, the TPI will require certain information before they will consider settling any claim, so better to provide this at first instance, this saves undue delays and frictional costs.

There is however one major flaw in the GTA, and that is there is little or no consequence to the insurers for late payments. Although there are penalty charges that should apply, typically insurers will pay late and ignore the penalty charges, knowing that there will be little appetite for AMC's to pursue the balances, either repeatedly through phone correspondence and certainly not through the courts. It is particularly disappointing to see that in none of your recommendations do you approach this abuse of process.

5/ Possible way forward

To truly eliminate frictional costs whilst still upholding the consumers right to redress I believe that the framework of the current GTA should be expanded upon in the following way.

- A/ Establish mandatory licensing for all credit hire companies based upon the GTA
- B/ Implement hard and fast processes within the new licence to cater for the clients needs, advising of their duty to mitigate and advising clearly their rights.
- C/ Encourage more open and transparent dialogue between insurers and AMC`s, this will help combat areas such as fraud
- D/ Challenge insurers through the GTA to act quickly and responsibly to their third party obligations.
- E/ Enforce through arbitration early settlements of disputed cases without the need of litigation.
- F/ Enforce insurers to settle genuine and reasonable claims in a timely fashion.

Most of the above is covered by the GTA, however with little governance the GTA proves ineffective when it comes to enforcing punitive actions against any party that does not perform within the spirit of the agreement. If an enforcement order can be modelled around the GTA then I believe that we be along way down the road to eliminate frictional costs.

I believe that if AMC`s were paid more swiftly on claims where there is little or no dispute then this would encourage shorter not longer hires. Given that hire periods are can only be justified against repair periods, the hire period will be set no matter what the outcome of the claim.

I further believe that Credit Repair should be encouraged by TPI`s, as this helps to reduce hire periods as it facilitates speedy authorisation of repairs, particularly in the cases of un-roadworthy cases.

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