Aviva Response to the Competition & Markets Authority Investigation into Private Motor Insurance

"Provisional Decision on Remedies (PDR)"

Issue date: 4th July 2014

Contents

1. Contact Details

This response relates to the Competition and Market Authority's (CMA) investigation into private motor insurance (PMI) and the **Provisional Decision on Remedies (PDR)** issued on 12th June 2014.

If, at any stage, Aviva can assist the CMA further please feel free to contact either:

[✂]

2 Executive Summary

2.1 Theory of Harm 1 – Separation of Cost Liability & Cost Control

Aviva is concerned that there is a lack of clarity and detail in the provisional decision on remedies with regard to the dual rate cap on hire claims. We have outlined some of the issues that are either unclear or need to be addressed by the CMA before the final decision. In particular, we draw the CMA's attention to the risk of describing credit hire claims as "subrogated" and the circumvention risk this would create.

Whilst the move to reduce hire rates to a level close to direct hire rates is the correct approach there are clear risks of circumvention and/or unintended consequences. The most obvious of these (and one that must be addressed in the final remedies) is the absence of fixed repair costs and/or a ban on referral fees which will otherwise result in an increase in credit repair and increased referral fees for repair claims to off-set the loss or reduction in referral fees on credit hire.

Aviva also considers it is essential that adequate time is given to consider liability and a minimum of 5 working days combined with a credit hire portal is essential to manage the process of notification. It is our view that a formal admission of liability is not required and should in fact be an agreement to pay for any period until notice to withdraw the agreement is provided.

Aviva is very concerned that the CMA does not want to take forward remedy 1D(b) to control repair cost and 1G a ban on referral fees. In our view this could lead to almost all of the AEC identified in TOH 1 moving directly into repairs. Aviva does not agree that Remedy 1D(b) is complex or costly to implement and monitor.

The CMA must in any final decision ensure that it will not have created an unintended consequence and as a minimum, a prohibition on referral fees has to be included within the final remedies proposed by the CMA.

2.2 Theory of Harm 4 – The Sale of Add-on Products

Given the FCA's role in regulating the sales of general insurance add-on products, we support the CMA's decision to recommend to the FCA that it takes appropriate action in respect of the CMA's provisional remedies 4A and 4C.

In respect of provisional remedy 4B, we have no significant objections to the proposed introduction at point of sale of:

- the implied price of NCD protection; or
- information regarding the step-back procedures.

However we are concerned that the customer may find the overall level of detail confusing.

In respect of the proposal to display average/typical NCB discounts, we believe that although we could implement this, displaying average NCD discounts could be materially misleading for customers, rather than aiding the decision making process as, for example, i)the range around the average percentage figure is large for any given customer; and ii) claims without PNCD will affect premiums for up to 5 years, not just in the following year. We therefore recommend not proceeding with this element of the remedy as it stands.

The remedy should in our view be a clear and better explanation of the cover and this should be led by the FCA.

In response to the proposal to introduce the mandatory statements at Point Of Sale, we consider that any proposed wording should form part of the FCA guidance and not be mandatory. In addition, we cannot subscribe to the second of the CMA's proposed mandatory messages as in certain circumstances this would not reflect the cover provided by us.

In relation to monitoring of Remedy 4B, whilst we can provide prior year average NCB discounts, we would not be able to provide prospective figures for average NCD scales for the forthcoming year; [✂]

In addition, we are concerned about the cost to the industry and therefore consumers of dual regulator monitoring and enforcement being potentially onerous, adding cost and confusing, and would advocate that insurers are required to deal with one regulator only (i.e. the FCA given its responsibility for add-ons) for all aspects of monitoring and enforcement.

2.3 Theory of Harm 5 – Price Comparison Websites & MFN Clauses

AVIVA welcomes the CMA's findings that "wide" MFN clauses restrict price competition between PCWs, and the proposed prohibition of such clauses. There are four areas AVIVA would like to draw the CMA's attention to in producing the final remedy and relevant orders and full details are given in the relevant section of Aviva's response.

i. Absolute clarity on the definition of "narrow" MFN clauses and the definition of "aggregator platforms"

ii. Further guidance on what comprises "equivalent behaviours" so that there is greater certainty, and minimal risk of circumvention by PCWs.

iii. To avoid contract renegotiation, AVIVA would prefer the order to state that all MFN clauses (with the exception of those that are definitely "narrow") are void and unenforceable from the date of the order and insurers should be under no obligation (whether binding or otherwise) to renegotiate a new MFN clause.

iv. Monitoring of "equivalent behaviour" to cover a wider range of behaviours.

3 Theory of Harm 1 – Separation of Cost Liability & Cost Control

3.1 Remedy A: Information on Customers' rights

Aviva is supportive of a remedy that leads to better information being provided to consumers on their legal rights following an accident with the annual policy documentation and at the point of an accident, when making contact with an insurer, broker or using the services of a CMC or CHO.

3.1.1 Scope

It is absolutely essential that this remedy applies to all PMI market participants and those that handle FNOL calls. There are a very wide range of FNOL providers including lawyers, brokers, insurers and claims management companies. If this information remedy is to be effective then the enforcement order must be clear and specify that it is applicable to all who receive accident notifications or act as their agent.

In addition to ensuring that the order is wide ranging Aviva has some concerns set out below that the draft statement of rights and its overall application has not been thoroughly articulated and creates a risk of customer confusion and circumvention.

Whilst the legal rights following an accident are a mix of both tortious and contractual ones all parties need to ensure information on those rights is provided consistently and accurately so that both fault and non-fault customers are able to understand their options and make a personal choice and informed decisions.

Whilst it is correct that a non-fault party does not have to make a claim on their policy it may well be in their best interests to do so as they have paid for the service and expertise of their chosen insurer and is how they wish to proceed with their claim. Aviva believes that it is the best option for them in almost all claims.

It is also important that any information is standardised and balanced with the correct mix of tort and policy cover being explained to the customer without any imbalance between them.

Aviva considers that there are a number of areas that require careful consideration and improvement if this information remedy is to be successful and these are set out in detail below and we have also attached as Annex A an amended version of the CMA statement of rights showing how a better balance could be achieved.

3.1.2 Design Issues

When should the information be provided to consumers?

The research from GfK NOP is in line with our views and expectations. The important aspect is that the content is both clear and brief and allows customers to make an informed decision.

In view of the research it is therefore questionable whether adding to the length of policy documentation is helpful and a standard statement of rights where the customer is non-fault may only be helpful in a limited number of cases.

The Aviva position is that the most effective point to provide the statement of rights is following an accident so that the options can be applied to an actual event. On that basis we agree with 2.24 although there is no clarity on how insurers are expected to deal with cases which are undecided or clearly a split liability claim when the initial call is made.

It will not be clear in all claims when the initial call is taken how liability may be settled or agreed. Ultimately the other party may deny liability it is not the decision of the non-fault insurer but a matter for agreement or judgment. In a number of claims liability is still decided by the Court.

The CMA should also appreciate that not every call notifying an accident is made by the driver or person who is not at fault. Insurers will receive calls from the main policyholder and not the driver and often claims are notified by the brokers. It is therefore not going to be as simple as reading a script or talking through a statement of rights.

What information should be provided to consumers?

Whilst it is clearly necessary to have an outline script or list of issues that need to be communicated and that cannot simply deal with tort law rights but must also reflect the customer's duty to mitigate, or other tort law obligations.

It is a regulatory requirement for any insurer, broker or FNOL provider to explain the policy cover and entitlements as part of the initial call as this would otherwise create conflict with or be a breach of FCA principles and claims handling guidelines. The expectation of the FCA is that policy documents and information to customers must be clear and simple.

The statement of rights must if it is to be effective in terms of its scope be applicable to any company or firm who receives the first call following an accident to avoid circumvention.

It is our view and concern that the CMA drafts in the appendix are focussing too much on the tortious position and have to recognise that tortious and contractual rights co-exist far more if the standardised statement of consumer rights is to achieve its intended aim.

As an example despite the CMA intended position at 2.29 (a), 2.34 and 2.44 (b) there is again mention that the document should focus mainly on the position in tort, which we believe for the reasons set out above is the wrong approach and does not balance with the service and cover that they purchased and can choose to use .

It is Aviva's view that a CMA led cross industry working group is needed followed by consumer research to make sure that the right balance is being achieved and have highlighted some of the amendments that we consider are required to both the statement of rights s at Appendix 2.2 as follows and have looked to incorporate these in our proposed version attached at Annex A.

Statement of Rights

- It must be provided by all PMI market participants and FNOL providers and not just insurers.
- It should be stated as your rights and options following a non-fault accident.
- There is no legal requirement in law to report an accident to your insurer.
- Aviva would therefore recommend in the alternative an enforcement order requiring all PMI providers and market participants to notify the at-fault insurer on behalf of the non-fault driver that an accident has occurred within 3 days and that their customer may be at fault and be faced with a claim. In our view this is a positive step that helps to address theory of harm 1 and will lead to earlier admissions of liability and claims handling, which is the key to many of the remedies.
- At the start of the document there should be a section on how insurers will decide on cases where liability is unclear or not decided and the speed of decision making will be improved if there is a positive reporting obligation by way of an order as recommended above.
- In terms of section 6 this is a key example of where the tortious and contractual information become blurred and could be misleading. It is not as an example always the best option for either a fault or a non-fault customer to use a repairer of their own choice and it is not the case that original parts are always appropriate or of course available. In our view many insurers give a lifetime guarantee on the parts used and the customers own repairer may not do so which is a key customer benefit. It is also the case that many non original parts are self certified in accordance with EU rules on type approval and built to original specification and are perfectly acceptable to be used. This is directly referred to and referenced in PAS125 to ensure that there is no preference for original parts over non-original that are self certified. If the reference to original parts remains it may be challenged by the non-original parts market and this should be removed.

- It may also be the case that the insurer can arrange the collection and inspection of the car more quickly especially where it may not be driveable or a total loss. The CMA has already seen the evidence that insurers can repair the car more quickly or settle the claim more quickly with our customers as evidenced by the shorter hire periods when insurers control the repair duration.
- In Section 6 (a) (iii), we would like to see mention that the value will be based on pre accident market value utilising trade publications as well as published price guides.
- There is no overall messaging in terms of the common law duty to mitigate and the document takes no account of this and, whilst not wanting to see any customer under-compensated, it fails to reflect that each claim has to be considered on its own merits and facts and the measure of damages is to a level that is reasonable and is not absolute. It is not a question of just charging the maximum cost to the fault Insurer and his customer.
- There is not enough emphasis on the policy cover and options around a replacement hire car and that customers should be in a position to make an informed choice on whether to use their policy cover or use credit hire. It should also at this stage clearly link to remedy 1F and the mitigation declaration statement will be required, with the question of need being clear and prominent in the statement of rights.
- In terms of personal injury we do not see the need for the mention of the costs of care and this should be more of a question around if they are injured that they should seek legal advice.
- Section 6 (d) relates to Uninsured Losses and there in, there is no need to include Recovery and Storage costs as these items are included in the core cover of nearly all Comprehensive Insurance policies and should be removed as it will confuse consumers when we explain its covered in the FNOL call
- Aviva do not consider that any insurer should from a regulatory perspective encourage a customer to pursue a claim themselves as stated in section 11 and this should be explained at the start of the call/statement.
- A customer should know who they are dealing with as many FNOL are now handled by a CMC and there is a real risk of bias and or encouragement in terms of the choices and options and conflicts of interest. It is in our view an example of why the monitoring remedy below either has to be wider and apply to brokers and CMC's or should not be pursued at all. Aviva does not, as set out in detail below, accept the CMA view that insurers are encouraging claims incorrectly and this suggestion should be explained.
- Whilst the CMA has said in paragraph 2.33 (b) that it has deliberately not included additional cover, we do feel, in relation to Section 6 (c), (d) and Section 11, that it would be a regulatory breach to not mention any legal expenses insurance cover the consumer may have purchased, as this would as a minimum be breaching the Treating Customers Fairly principles laid down by the FCA.

- Where a customer has purchased legal expenses insurance as part of their policy cover we therefore have a clear regulatory and contractual obligation to provide the legal advice and assistance they require for any uninsured losses such as personal injury and this must be reflected in the statement of rights. It is our experience that telling customers they have legal expenses cover as part of the FNOL call brings tremendous relief to consumers, knowing they have legal representation acting for them in terms of their legal rights and losses.
- We believe that the statement of consumer rights and scripts requires further detailed work to refine into a final version and would support any CMA led working group.
- The draft does not highlight that by entering into a credit hire or repair agreement as opposed to using their policy cover they are entering into a debt and creating a personal liability.

FAQ's

- The first issue is that these same FAQ'S or a similar set must also be provided by a CHO or CMC. You cannot have the statement of rights being provided by all and then only insurers and brokers providing FAQ's.
- The questions are focussed on repair only and also need to include total losses.
- One of the most common FAQ by consumers, when told their car might be a Total Loss, is what happens to my policy? Most do not know it is the case with many insurers that you can substitute the car you subsequently purchase onto your policy without the policy lapsing. This needs to be mentioned.
- These also flow from the statement of rights and will need to be improved in line with the comments made above. It is also necessary to understand the purpose of the FAQ's and whether these should be limited to solely dealing with the statement of rights as opposed to policy cover.

3.1.3 Monitoring and Reporting

Aviva is very concerned by para 2.33 (c) and 2.102 and the suggestion that insurers who have sold a policy are in some way wrongly encouraging a customer to claim on their policy where there is a non-fault claim and leaving liability deliberately undecided leading to the requirement for monitoring and reporting on the liability assessments made by insurers.

There is no evidence provided by the CMA to support this remedy and Aviva considers this remedy is disproportionate and not required unless evidence is provided. If there are particular insurers who are doing so then they should be reported to the FCA from a conduct perspective.

There are inevitably many factors which can lead to an initial determination of liability changing and to suggest that brokers and CMC's do not have the same incentive (none being admitted) at 2.103 is clearly incorrect.

Aviva has previously raised the concern that in many claims, especially where a broker is involved, there is often no notification of a non-fault claim as the brokers are advising the claim is non-fault and referring either hire or repair claims to their own suppliers or business partners to derive revenue. In these claims customers are not informed of their policy cover which should be of equal if not greater concern as they have purchased cover and are then not being advised of the product cover and options.

3.1.4 Implementation Issues

Aviva agrees that except for the monitoring and reporting the remedy must apply to all market participants and be made by way of an enforcement order with compliance statements being an option.

Timeliness

Aviva considers that the timetable for introduction set out at 2.39 is achievable

3.1.5 Aspects Aviva would like the CMA to consider/advise upon

- The CMA says the FNOL script should be read out but it is not clear what is proposed for online or email reported claims, especially where they are reported by the broker or by a person other than the driver.
- It is not clear if the CMA would expect the FNOL script to be read out on undecided liability cases and for the reasons set out above we consider that this will be required as it is just as likely to be decided or settled on a split liability basis or compromised basis. Clarity here would help provide consistency across the industry in our view and make sure the right information is being provided consistently.
- Would the CMA require all participants to read a similar but reduced statement to a consumer who has TPO or TPF&T cover and does not have the same level of cover as a comprehensive policyholder?
- Does the CMA expect Insurers to read out the FNOL script when the non-fault claimant has notified the claim in person themselves or has been contacted by the fault insurer and is happy to deal directly with the fault insurer?

3.2 Remedy 1C : Measures to Control non-fault Replacement Vehicle Costs

Aviva is generally supportive of the proposed remedy 1C. We believe that a dual rate cap on the hire rates applicable to the whole of the Private Motor Insurance sector together with the provision of guidance for hire durations should, in theory, reduce non fault vehicle hire costs. Although we remain concerned that without a referral fee ban and a cap on repair rates the solution will not be fully effective in reducing the customer detriment identified by the CMA.

We agree that frictional costs in relation to the current "disputes" around hire rates charged to the at fault insurer should reduce but only if the entire process is properly applied and the mitigation declarations are amended and completed as described in remedy 1F.

Naturally frictional costs will still remain in respect of liability decisions, and hire durations but we need to ensure that any new process is robust and the notification of claims via a portal is essential.

Whilst we are generally supportive, we do have a number of concerns relating to the terminology used and the practical application of the proposed remedy: particularly the workarounds or loopholes that could be used by some ingenious organisations to circumvent the remedy. We are not clear on what consequences or sanctions would apply in such circumstances in the absence of any dispute resolution or GTA behavioural committee.

It is Aviva's opinion that the CMA must urgently consider the terminology that is used in 7(a) and 7 (b) and in the more detailed discussion of Remedy 1C at 2.50 very carefully to avoid unintended consequences and a high risk of circumvention.

Aviva would like to strongly emphasise to the CMA that the CHO's will argue that the claims that they make for hire charges **are not** subrogated claims which are only possible under a insurance contract providing an indemnity but uninsured loss claims made by the non-fault claimant. It is equally our view that the majority of credit hire claims are not a subrogated claim because CHOs are (unlike an insurer) not providing any indemnity or payment but providing a hire car on credit terms. At 2.63 the CMA describes a CHC/CMC as "standing in the shoes of the non-fault claimant". It is our view that the CHC/CMC would not agree and would see themselves as "holding the hand" of the non-fault claimant in making their claim.

If the CMA looks at a typical credit hire agreement they have constructed their contractual terms with their customers in the following way:

- A car is hired from the CHO.
- The customer is liable for the cost of the hire.
- The cost of the hire is financed for 51 weeks while the CHO pursues the fault insurer for the cost in the name of the customer on the basis they have hired a car.

- 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 the CHO to repay the amount financed.

It is therefore essential that the CMA urgently clarifies this remedy in terms of its scope and application and does not limit the wording of any order to claims that are referenced as "subrogated" as this will result in CHO's arguing that they are not covered by the order as it is only applicable to subrogated claims. Aviva agrees that as per para 2.56 it must apply to all replacement vehicle provision whether subrogated or financed by a credit hire arrangement.

Aviva, having identified this significant issue and potential unintended consequence, has put its mind to a solution. The CMA has at 2.59 commented 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.

Aviva would therefore propose that the wording of the order has to limit the amount that any replacement vehicle provider who is offering credit or making a subrogated or uninsured loss claim following an accident can charge a non-fault claimant or the at-fault party. It is also essential to ensure that claims do not move into claims for loss of use of a vehicle with cars being provided for free.

The management of the claim directly by the Claimant and not by an insurer or CMC etc as set out at 2.59 has to be wide and clear in terms of its application. As an example it must include solicitors as the risk of circumvention at 2.60 is considerable as the market has already shown that it can be inventive in terms of solutions.

Aviva is not clear on the intention and application of 2.61. If a replacement vehicle provider cannot encourage customers to accept a vehicle above the cap (Aviva has concerns on the dual rate cap- see below) then this is contrary to 2.59. In order for this to be avoided any replacement vehicle provider who is providing a vehicle on credit terms and or is being subrogated to an at fault insurer following a road traffic accident cannot claim more than the capped rate.

3.2.1 Dual Rate Cap

It is our view (as above) stating that if the CMA intends to create a rate cap for subrogated claims creates a risk of circumvention and is not the correct terminology to apply. Aviva would therefore propose that the wording of the order has to 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 for the hire of the vehicle.

Aviva is concerned that the CMA are calculating caps from the bottom up as opposed to the top down and it is our view that the correct approach should be to use the current GTA rates as the starting rate or the higher rate and then these rates should be discounted down to the lower rate where an admission of liability is made by the insurer within **5 working days from receipt of notification/acknowledgement of same.**

Aviva considers that this will also be simpler for a CHO to explain by having a higher rate that they charge to the customer but will reduce if the fault insurer admits liability for any periods of the hire.

The approach proposed by the CMA in setting the lower rate in 2.65 to 2.68 is the correct approach and it is essential that this is combined with Remedy A. Aviva has separately set out suggested amendments to the statement of rights linking more closely the replacement hire provision and explanation of both tortious and contractual rights.

Aviva whilst recognising the intention to have a daily rate for hire and fixed elements for a hire wish to see a clear intention from the CMA to include, as a minimum, the current monitoring guidelines from the GTA as the duration of a hire is a key element of the overall cost.

Aviva agrees and supports the administration costs at 2.68 (a) (ii) of £37 + VAT as it is a reasonable and accepted estimate of the fixed admin cost of credit hire. It is arguable that with the move to earlier payment and acceptance of payment that the administration cost should be reduced but will support the CMA approach.

Aviva does not have any concerns with the approach and methodology outlined by the CMA in relation to the setting of the lower capped rate between 2.70 and 2.75. Aviva agrees with the CMA that Direct Hire rates are the best measure and all the competitors in the market have the ability to control cost to direct hires rates as shown. However, there is a notional risk that Direct Hire rates could move closer to retail rates over time as demand could become greater than the supply.

Retail rates are not practical as a comparator as they change constantly, even on a regional basis. Prices are driven by retail factors and therefore very much driven by demand leading to huge variations. The replacement vehicle market is completely different in that it is driven by a fairly predictable demand and accident patterns do not change greatly. The flat cost of daily rates is therefore more appropriate.

3.2.2 Frictional Cost and Liability Admissions

Aviva is concerned by the approach and conclusions made by the CMA in terms of its comments on liability assessment and determination.

The issue that the CMA does not appear to have grasped is that many of the cars provided on credit hire are provided by the CHO based on their assessment of liability and their own commercial judgement and risk appetite. It is simply not based upon the initial view or decision of the at-fault insurer at the point of the hire being provided.

It is a key concern to Aviva that 15% of all claims notified to Aviva do not result in a claim being made or paid as we are either not the correct insurer or the CHO realises the claim is fraudulent or does not have merits on liability. It is often the case due to the speed with which referrals are made to a CHO that the very first notification of a claim can be when the hire claim is notified. It is for this reason that Aviva has suggested in our comments on the statement of consumer rights that an order requiring notification to the at-fault insurer via a portal is essential and a period of 5 working days is required.

Whilst Aviva understands and welcomes the proposed approach; believing that this would lead to a reduction in the hire to the lower capped hire rate on acceptance of liability for the hire charges, there are a number of factors that must be clearly set out in any order to avoid circumvention and unintended consequences or behaviours by the CMA in any enforcement order or guidance.

There is, for example, no clarity as to whether the intention is that an admission of liability has to be a 100% admission of liability or whether a partial admission e.g. 75/25 or 50/50 in 2.87 would result in the lower rate being applied. Is it the intention that a partial (50%) admission of liability leads to half the cost at the low rate and half at the higher rate? It is simply not clear and we believe that there is a high risk that a CHO will change its model to take on riskier cases on liability and use the higher rate to off-set the lower rate cases. Aviva could not see that the CMA had considered this risk.

It is also essential that any enforcement order is specific and clear that the admission of liability made by the at-fault insurer is **entirely without prejudice** to all other aspects of the non-fault claim and solely relates to the provision and cost of the replacement hire car. It would in our view be far better to be framed or stated to be no more than an agreement to pay the charges which can be freely withdrawn in the event of fraud or a change in the initial liability assessment.

In our view this reinforces our position that the remedy should also in terms of its effect be a discount from a higher rate to a lower rate where the at fault insurer agrees in principle to pay the hire within 5 working days of being notified with any payment being deferred until the claim is then presented and a final payment made.

If the insurer either withdraws the agreement or does not pay within the relevant/agreed period at the end of the hire and the claim being presented it reverts to the higher rate and penalties then accrue on top if incurred.

It is also very unclear on exactly how the CMA proposes that the at-fault insurer will be "informed" and this could of course be after the hire has concluded based on the wording of the remedy, which is not acceptable. It is in our view critical that a portal to notify any claims is part of the final decision.

There is also critically no clarity of whether the CMA is referencing days as working days and this has to be very clear and prescriptive which is why Aviva considers that the remedy has to be linked with a hire portal so that there is a clear database of when claims are notified, accepted and paid.

Aviva is also concerned that CHO's may make less initial checks and make more claims by broadening their acceptance criteria and placing the risk and onus more onto the at-fault insurer and see the 3 day period as a marketing or capture route and withdraw the car if the insurer does not admit or accept liability to pay resulting in drivers being provided with cars that they would not otherwise have been provided with and some customers being "evicted" from vehicles!

Aviva does not wish to see the higher rate cap set or operate as a penalty or weapon to be used against the at-fault insurer and by setting it at three days and combining it with a liability to pay the remedy is not proportionate and is placing too much onus on the party with ultimate liability to pay. The CMA is seeking to address the separation of costs liability and costs control and in any remedy has to ensure that a better balance is achieved. In our view as drafted that balance has not been achieved and would propose that the alternative approach we have outlined in terms of time and payment.

In relation to the approach of the CMA at 2.80 that you do not expect any undue frictional costs above those that exist in direct hire rates at present, this is only correct if everyone follows the rules appropriately. The reason bilateral hires do not cost as much to manage is because both parties have a vested interest in reducing duration and also the recovery is carried out as part of the overall recovery for the repair i.e. there is no additional activity and the hire is merely an extension and additional aspect of the recovery.

While we agree that the lower cost and earlier acceptance of agreeing to pay means there should be less reason for friction, if the duration is not controlled there will need to be a level of scrutiny e.g. loss of uses dates etc. Clearly where providers stick to the rules friction will be lower but what is not clear is how any behaviours and adherence will be monitored by the CMA or adverse behaviours addressed.

Aviva does not agree with the CMA's suggestion (as stated by us above) that the present friction is driven by the time taken by the at-fault insurer to admit liability. The friction is in fact as a result of a number of factors including poor fault party identification by the CHO, overly optimistic liability assessments by the CHO, rate and the duration. Whilst liability is ultimately not a major factor it is not always capable of being agreed and established within 3 days.

If the CMA implements the remedy as proposed in the belief that this is creating the incentive to insurers to admit earlier and remove friction, it is in reality removing risk from the CHO in terms of payment and creating a pressure point or point of failure on the at-fault insurer with a high risk that too many hires will be at the higher rate and the remedy will fail to address the AEC.

It should be the case that even if the insurer does not admit liability until after 3 days there is no real justification for the higher cost applying. If the hire was notified and the insurer admitted or agreed to pay before the hire ended why should the lower rate or discount to the lower rate not be applied at that stage?

3.2.3 Initial and subsequent determinations of a rate cap

Aviva would wish to reserve its position on the initial rates set by the CMA until such time as these are published and would recommend that these are published as soon as possible as a working paper with an opportunity for all participants to respond in advance of the final remedies being published.

We agree that there needs to be a review on an annual basis but our concern is an annual rise linked to an index such as RPI as this does not reflect the cost drivers in direct hire rates and may simply result in costs naturally increasing rather than decreasing if the market forces and economic supply and demand factors determines so.

3.2.4 Distortion Risks

It is a significant concern to Aviva and the overall structure of the 1C remedy, irrespective of our observations above, that the CMA has concluded at 2.98 that remedy 1G is not required to underpin the remedy and address the market incentives.

In our view there is a considerable risk of circumvention and invention which unless supported by a prohibition on referral fees will lead to adverse behaviours and unintended consequences.

The removal of referral fees should not have any affect on a non-fault claimant's ability to obtain a replacement hire vehicle and a better approach is for there to be no referral element allowed at all. If remedy A is intended to be across all market participants then the non-fault party will be provided with a summary of their rights and how to address their losses in essence this becomes the marketing platform for all hire provision.

The real risk is that in view of the significant incentives upon a CHO to double the cost of the hire charges the CMA is setting when combined with an ability to pay a referral fee, a significant part of the AEC that exists is still without a remedy and leads to the very unintended consequence that is referenced by the CMA at 2.100.

3.2.5 Delivery of entitlements

Aviva considers that the comments made in relation to insurers underproviding a replacement vehicle or encouraging a non-fault customer to use their own policy is mis-informed and is a failure by the CMA to understand that insurers must, due to FCA rules, ensure that a customer is aware of the cover that their policy provides.

If the industry follows the position proposed by the CMA in 2.101 then there will be an increase in the average costs of hire as customers would be pushed to their maximum tortious entitlement and issues of mitigation and need will be ignored.

The CMA has previously in its findings identified that a conversation on need and risk of over provision exists and it should not in our view automatically be the case that a like for like vehicle is provided as opposed to matching this entitlement to those where the need exists.

Aviva is unable to identify where the CMA has drawn its findings at 2.101 to 2.103 and considers quite simply that the proposal for insurers to have to report on our aggregate data assessment on liability is both disproportionate and without basis. There could be a myriad of reasons why liability is not determined on the first call and is then altered. The monitoring remedy is built on the finding that insurers (again not all are seen as behaving this way) are in some way deliberately creating a customer detriment by forcing them to make claims on their policies. Aviva reiterates that the evidence of this must be disclosed and there is no basis for the creation of this additional cost and administrative burden and indicates a fundamental lack of understanding of how the industry operates.

There is no explanation as to why it is not of equal application to brokers or CMC's who will in all intermediated PMI policies be the first point of contact with the non-fault party and will either recommend that a claim is made on the policy or will encourage them not to claim on the policy.

3.2.6 What other measures should be put in place to assist with the effectiveness of Remedy 1C?

Aviva is of the strong view that the former Remedy 1G must be implemented and this is discussed more fully within section 3.5 of this document. In addition Aviva also believes that Remedy 1D (b) is required to fully prevent any customer detriment caused by TOH1

3.2.7 Should measures be put in place to cap hire duration?

We agree that having fixed durations or differential rates depending on durations are not suitable as they either are too risky in terms of the customer or too complex to administer. Aviva wishes to see all control and monitoring aspects of the GTA implemented in full with the end of hire being determined 24h after repair and 7 days from payment of total loss settlement. However, the rules at the front end must also be clear – e.g. how many days to authorise, immobile same day and mobile when repairs start as these are not specifically mentioned in 2.107. As long as it is clear all of these are included then duration can be managed without much friction as long as rules are followed.

3.2.8 How should measures to address need be designed (Remedy 1F)?

Aviva is supportive of Remedy 1F and the proposal at 2.108 to 2.110 to require the vehicle hire provider to jointly complete the mitigation declaration and the overall structure and content of the declaration form.

However, Aviva does not accept or agree with the comments in 2.111 for the similar reasons referenced in the delivery of entitlements section above. It is in our view a dangerous precedent to state that in any given accident claim the immediate issue is solely one of the customer's tortious rights and the contractual policy that they have purchased can or should be ignored. As an example if the customer has legal expenses cover on the policy which ensures they receive 100% of their damages as opposed to 75% if they sign a no win no fee agreement.

It is a matter for the non-fault claimant, with all of the relevant information to hand to make an informed choice not to be steered into a replacement hire car or away from the policy cover that they have purchased. Aviva therefore considers it must be a requirement for the issue of policy cover to be part of the mitigation declaration. The CMA have at 2.99 highlighted that other policy covers or hire provision may emerge and therefore it is essential that this is part of the process and is directly linked to the duty to mitigate and also links to the issue of the car being repaired by the insurer and not on a credit repair basis due to the lack of any cost control remedy by the CMA.

3.2.9 What other aspects of the GTA should be adopted or developed?

Guiding Principles

Aviva believes that the claims management procedures and control mechanisms currently adopted where bi/multi lateral agreements exist should be the guiding principles utilised by the GTA or the CMA in the future.

- **Dispute Resolution**

It is our view that it is likely with any new system that disputes will arise and the lack of a dispute resolution process will lead to increased litigation and frictional costs. It may well be necessary to have a dispute resolution process initially perhaps overseen by the GTA behavioural committee or the CMA as a default position of litigation and decisions by the court will lead to litigation and frictional costs.

- **Acceptance of Customers**

Aviva does not agree that the "first to the customer" principle should continue and the CMA should explain its position. The CMA has identified that there is a separation of costs liability and control and if the fault party wishes to intervene and offer to provide the car and or repair the car and control the repair duration this should be permitted. If the CMA were to implement this as part of an enforcement order it would in effect be a limitation of the at fault drivers legal rights and would in our view require a change in legislation. There is also a risk that the race to capture "non fault" customers still prevails under the remedy provisions suggested by CMA at 2.59, whereby the customer has the right to organise their own hire vehicle and recovery of costs thereof. There is a high risk that circumvention of the provisions could occur. For example, uninsured loss claims could increase with customers possibly being incentivised to purchase "add on" ULR policies so loss of use claims could be presented. How will this type of activity be prohibited without the application of adverse sanctions?

- **Monitoring during hire**

Aviva agree that it is essential that this aspect of the GTA is adopted in full and would suggest that if the hire durations are not set then an indicative or expected average duration should be specified and that this should be closer to the average achieved by insurers direct hire data.

In addition, there is no specific mention of how credit repair which is monitored under the GTA will be monitored in future and as this links with the hire and is often provided by the same CHO we need clarity that this is included in the CMA proposals.

- **Payment arrangements**

Aviva is concerned that there is no clarity in the provisional findings as to how the CMA propose that any new claims will be notified and this clearly links to whether or not a portal is required. It is unfortunately the case that unless there is absolute clarity on when and how to notify it will result in delays and extra frictional costs, which must clearly be avoided. Therefore the interaction of the GTA and CMA remedy needs to be carefully considered and implemented.

3.2.10 Should an online portal for credit hire claims be developed?

Aviva disagrees with this assessment. There is significant attraction and reduction of friction potentially available through the use of a standard portal. A portal would additionally provide standardised performance data enabling ongoing monitoring of detriment and participant behaviour. Based on this remedy there is in our view a clear risk that the GTA will disband as the largest proportion of claims will no longer be processed under the GTA.

While the main participants may still want to agree on a portal – there have been years of indecision and different views and there is no reason why this should now accelerate – just who pays what for the running of the portal could be a huge issue as well as how it interacts with the CMA remedy.

In addition while large players may want it, smaller players may not as it may enable them to stretch the rules – e.g. submitting the claims to the wrong address by post thereby making the 3 day rule hard to adhere to by insurers.

There is as a result a high risk of friction in terms of the rules e.g. when will the three day notification period start? If the portal was part of the remedy it would counter that risk, enable the rules to be easily followed by all parties and make the remedy much more effective. In our view a portal is essential.

3.2.11 Risk of Circumvention and/or distortion

Aviva agrees with the response concerning circumvention and distortion.

3.2.12 How the remedy would be implemented and what role there would be for the GTA

Aviva agrees that the remedy must be implemented by way of an enforcement order to ensure that it is effective and widely applied and an explanatory memorandum.

However, we can only reiterate the point that we have made under dispute resolution above.

3.2.13 Monitoring and enforcement

Aviva agrees that the CMA panel acting to determine the rate cap is the most appropriate way forward although Aviva reiterates that it is quite possible that the GTA may fall away losing their skills and expertise. A clear and timetabled review process is required and Aviva questions how any appeals and collection of data is intended to operate.

3.2.14 Timeliness

In order to fully comment upon the setting of rates Aviva considers that the initial rate cap needs to be published and consulted upon before the commencement of the order and before the final decision is made to ensure that all market participants can provide their views on the initial setting of the rates.

3.2.15 Laws and regulations

In order to ensure that there is no restriction on the ability of a non-fault driver to hire a vehicle or claim damages it is essential for the reasons that we have set out to make sure that the remedy caps the charges that a vehicle hire provider can charge and is not solely applicable to subrogated claims.

It is our view, by stating that the CMA intends to create a rate cap for subrogated claims, it is, due to the terminology, creating a risk of circumvention. Aviva would therefore propose the wording of the order must 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 for the hire of the vehicle.

3.2.16 Summary

Aviva generally supports the proposed remedy subject to the comments made in relation to:

- Clarity on terminology, notification and admission of liability,
- Application and setting of rates and future review,
- Unintended consequences linked with circumvention of customers choosing to organise hire for themselves
- Implementation of a credit hire IT portal.

3.3 Remedy 1D - Measures to Control non-fault Repair Costs

In our view this could lead to almost all of the AEC identified in TOH 1 moving directly into repairs as the separation of costs liability and costs control in repair has not been addressed. The CMA must in any final decision ensure that it will not have created an unintended consequence and as a minimum a prohibition on referral fees has to be included within the final remedies proposed by the CMA.

Whilst the detriment associated with credit repair may currently be considerably smaller than that associated with credit hire it is an almost certain outcome this will not be the case in the future if it is not controlled or incorporated as part of the overall remedies enforced by the CMA.

In summary we believe the £15m detriment quoted by the CMA will rise significantly as the volume of credit repairs is, currently, relatively, low. Using the CMA's published numbers on the detriment of credit repairs and assuming that repairs will move from insurer repairs into credit repairs the detriment could increase to a total of £49m. This is at the lower end of the potential risk, as there are still opportunities to increase labour rates for non fault repairs. We believe the risk of this detriment materialising is high from past experience.

For example, when hire durations reduced due to market conditions in 2010/11 reducing margins, credit repair average cost increased well above inflation as CHO sought alternative ways to boost their profits. These are the expected behaviours in any competitive market; however as the CMA has concluded and Aviva agrees, in the case of credit hire and repair this will be to the detriment of the customer.

We believe therefore that there is merit to agree capped labour rates which will provide clarity on future subrogated/recovered rates both for insurer owned repairers and non vertically aligned repairers. It is important that any cap needs to apply to all types of repair including credit repair and insurer repairs.

The industry accepts the practice of discounting parts and paint based upon RRP so there is no reason this cannot continue in the future or be set at a standard discount. A technology portal similar to that proposed for replacement hire vehicles could be utilised to minimise frictional costs providing that the rules are clear at the outset.

Whilst Aviva accepts and acknowledges that it is difficult to determine what a reasonable, wholesale or standardised repair cost should be, it does challenge that credit repair will become the focus for the CMCs if not addressed and included within the remedies proposed by the CMA.

The detriment associated with credit repair may, currently, be, considerably smaller, than that associated with credit hire, but it is anticipated this will not be the case in the future if it is not incorporated as part of the overall remedies enforced by the CMA. It is anticipated that CMCs will shift attention to this new area of opportunity which will become ripe for exploitation. This will mean that a new "credit hire" market will open up and unintended consequences will arise, not limited to, an increase of frictional costs!

3.3.1 Remedy 1D(b)

Aviva does not agree with the CMA assessment that there is too much complexity to design and regulate non fault repairs including credit and insurer repairs in the manner proposed in the remedy for replacement vehicles, (subject to comments already provided).

Not addressing the repair issue could in our view lead to almost all of the AEC identified in TOH 1 moving directly into repairs as the separation of costs liability and costs control in repair has not been addressed. The CMA must in any final decision ensure that it will not have created an unintended consequence and as a minimum a prohibition on referral fees has to be included within the final remedies proposed by the CMA.

Whilst the detriment associated with credit repair may currently be considerably smaller than that associated with credit hire it is an almost certain outcome this will not be the case in the future if it is not controlled or incorporated as part of the overall remedies enforced by the CMA.

- **Price Monitoring & Control**

Aviva does not accept that capped credit repair labour rates could not be capped to provide clarity on future subrogated/recovered rates both for insurer owned repairers and non vertically aligned repairers. While for example labour rates have regional differences and there can be different rates per vehicle marque the structure is no more complex than that found in hire rates. It is now common practice to have a rate for inside the M25 and outside the M25 and have a 'Prestige' labour rate and a 'standard' labour rate. Parts discounts and paint discounts can be set at an aggregate level rather then at Manufacturer level. Setting labour rates and discounts is no more complex than setting hire rates. Parts and paint prices do not need to be monitored at individual levels as these can be determined by the RRP's provided by Vehicle Manufacturers or alternative parts providers.

The review of rates could be done using the same process suggested by the CMA for hire rates using the richness of data available in the market to determine cost developments.

As with the hire rates the capped rate for repair have to be set at a level that does not disadvantage any market players.

As the capped rates are only applied for recovery of cost from the at fault insurer, the risk of them affecting rates paid to repairers is low.

Repair or Replace methods are determined from Vehicle Manufacturer data or Thatcham and the data is available via estimating systems or could be fed into a portal. Therefore, there should be minimal friction from disputes about methods as is the case now.

The initial setting of the rate should also not be very complex. Audatex has a published market index of average labour rates and discounts. Other estimating system like Glassmatix and Interest will be able to provide similar information. There is an Retail index compiled by the ABP. It seems entirely possible that the CMA can include setting of capped repair rates into the initial exercise required to set the hire rates

The risk to quality of repairs is no greater than in the current situation and it remains in the interest of every market participant to provide the right quality repairs in order to be competitive in the market.

The current norm for the industry is to discount parts and paint based upon VM RRP, and Aviva does not see why this could not continue in the future or for set discounts to be applied. A technology portal similar to that proposed for replacement vehicles would be required to minimise frictional costs. The rules can be monitored using the mechanism proposed by the CMA for remedy 1C as long as there is an appropriate escalation and dispute resolution route and providing that the rules set, are clear at the outset.

- **Risk of Circumvention/Distortion**

Aviva does not accept that the remedy would only address the net detriment found in relation to the CMC managed repairs. Unfortunately some insurers could increase their current volume of credit repairs.

In summary we believe the £15m detriment quoted by the CMA will rise significantly as the volume of credit repairs is currently, relatively, low. We believe that there is merit to agree capped labour rates which will provide clarity on future subrogated rates both for insurer owned repairers and non vertically aligned repairers. The industry accepts the practice of discounting parts and paint based upon RRP so there is no reason this cannot continue in the future or be set at a standard discount.

A technology portal similar to that proposed for replacement hire vehicles could be utilised to minimise frictional costs providing that the rules are clear at the outset. If this is supported by a ban on referral fees as in 1G the remedies 1C and 1D will be most effective in addressing the cost detriment to customers.

Aviva disagrees that remedy 1D (b) is a disproportionate remedy or impractical to achieve.

3.3.2 Remedy 1D(a)

It is noted in the CMA's findings that in respect of those that supported the remedy the preferred option was remedy 1D (a) i.e, the wholesale approach. Aviva did not support the wholesale point for the very reason identified that a definition of wholesale costs would be hard to accurately define and may see wholesale costs increase citing the case of Coles v Hetherton. The reasonable cost of a repair is an area with no real judicial guidance other than a court determining what is fair and reasonable in any given claim.

Whilst Aviva accepts and acknowledges that it is difficult to determine what a reasonable, wholesale or standardised repair cost should be, it could be put in place, and whilst there would be an initial cost to set up it should then become self-regulating as originally proposed in remedy 1D(b)

In terms of remedy 1D(a) at 2.210 we note the concern that the wholesale remedy would lead to increased frictional cost as the at-fault insurer disputing the claim is reflective of the wholesale cost. In many respects this is exactly the same result produced by the CMA not acting in this area and will see a reduction in insurer managed repairs as the referral income from a repair increases.

3.4 Remedy 1F : Enhanced Mitigation Statement

Aviva is supportive of remedy 1F and the requirement for a mitigation declaration signed by both the replacement car hire provider and the person hiring the car. The remedy should apply to the person providing the replacement car and not necessarily the FNOL provider.

Our comments on the declaration are as follows;

- Aviva do not see the need to start point 1 with the reference to insurers as there are multiple referral routes e.g. repairers or brokers are not referenced. The referral source is not relevant as this should in the main be handled by the statement of rights and the onus here should be on the replacement hire car provider only so the first part before OR can be removed.
- The mitigation declaration statement must cross reference to the statement of rights and vice versa.
- There is no mention of the dual capped rates in 3 at all and no section where their liability for the capped charges is explained to them and they have positively accepted the rates they are being charged.
- There is no claimant response section that they have then accepted the rates which is in our view a critical omission that has to be rectified.
- The document should be concluded with a statement of truth that the above has been completed with their full knowledge and belief.
- The ABI have with members input including Aviva drafted an alternative Mitigation Declaration Statement which incorporates many of the above suggestions. We support the ABI's alternative draft and would recommend that it is adopted and it is attached to our response as Annex B.

Timeliness

The proposed timescale is agreed.

3.5 Remedy 1G : Prohibition of Referral Fees

Aviva considers that this remedy must be considered further and should form part of the final remedies package to avoid the risk of circumvention or unintended consequences especially in view of the CMA not pursuing 1D and 1E.

It is clearly incorrect at 2.237 for the CMA to conclude that the prohibition would only effect remedy 1C as the prohibition clearly supports theory of harm 1 and the separation of costs liability and costs control and the various practices or conduct of parties focussed on earning a rent from the process in repair and salvage.

It is therefore, irrespective of the CMA now deciding not to pursue theory of harm 2, still relevant to theory of harm 1 as both repairs and salvage will without a prohibition result in the CMA not addressing the inefficiencies arising from separation in the AEC fully and not having put in place an adequate and effective remedy.

If the CMA leaves this clear gap unaddressed it will without doubt result in a serious unintended consequence and result in the referral fee for a credit repair increasing and the number of credit repairs escalating substantially to compensate.

Whilst the CMA may be looking to set a rate cap if there is still a clear incentive to pay a referral fee then other ways of circumvention and invention to generate a rent will emerge. Aviva has already outlined that in terms of 1C it is quite possible that a vehicle hire provider will take on riskier cases on liability as recovering [✂] is clearly commercially an advantageous model.

It is not the case and Aviva has repeatedly reiterated that all of the referral fee income in the market is passed back to insurers as that is simply not how the market operates especially where there is a broker or scheme arrangement or referrals made by repairers and recovery operators.

The major concern is that the CMA in terms of repairs considers that the referral fee is small and in deciding that you are not pursuing theory of harm 2 do not have to address the prohibition.

It is Aviva's position that the CMA must pursue a prohibition and ban on referral fees widely to obviate the risk and to drive out the very incentives and bad practices that you have identified during your investigation. A ban is a practical and proportionate remedy contrary to the CMA's views in 2.250 (a) and will unless addressed by the CMA lead to detriment as the average cost of a repair will increase and this will lead to increased premiums and the AEC moving from hire to repair.

Aviva does not agree that there is a high risk of circumvention if the ban is widely drawn and is given statutory effect in the same way as the personal injury referral fee ban. The Justice Minister Chris Grayling recently announced the government's intention to ban the payment of inducements by lawyers to clients and is indicative of the action that needs to be taken.

4 Theory of Harm 4 – Sale of Add-on Products

4.1 Remedy 4A : Provision of all add-on pricing from PMI providers to PCWs

Given the FCA's role in regulating the sales of general insurance add-on products, we support the CMA's decision to recommend to the FCA that it takes appropriate action in respect of the CMA's provisional remedy 4A.

In respect of this remedy we have the following key views that we would ask that CMA recommend to the FCA:

- We believe that the remedy should be restricted to the largest add-ons by take-up rate, for example including motor legal expenses and replacement car. Covering all add-ons (some of which may not be commonly available across the market, may be individually risk rated, or may provide multiple cover options) may not be practical especially as the suggestion has been to increase the quotation question set to include add-ons so that customers can indicate whether they want this cover ahead of obtaining any headline premium information.

- Any solution needs to improve transparency to consumers of the price they will ultimately pay and the cover they should expect to receive so that they make an informed decision of the value of the cover before purchase. The core PMI product sold by providers on PCWs has various levels of cover and any change to include add-ons into this comparison needs to consider this point. Mitigating these risks via minimum standards or regulation could in turn create issues around meeting customer needs and product development.

- It is possible that having a restrictive list of add-ons that can be offered, and the cover they must include, could stifle new product innovation and ultimately longer term competition and customer choice.

4.2 Remedy 4B : Transparent Information Concerning NCB

4.2.1 In response to the provisional decision to introduce the following information to be provided by brokers and partners at point of sale of NCB protection (paragraph 3.111), we have the following comments:

a) the implied price of NCD protection and
b) the step-back procedures, ie what happens to the number of NCB years with and without NCB protection in the event of one or more claims

We support better information to customers. In principle we agree with the proposal to provide the customer with better information but whilst we could implement this, we have concerns that customers may find the overall level of detail confusing.

c) the average/typical NCB discount according to the number of NCB years

Aviva could produce average NCD discounts based on a set period of prior history. However Aviva considers that this information will not enable customers to calculate the cost and benefit of PNCD for 2 key reasons:

i. The range around the average percentage figure is large for any given customer. As we have said previously, calculation of the actual level of the discount available for a certain NCD entitlement is completed on an individual basis. When a premium is calculated, many factors are taken into consideration. [✂]

ii. A claim without PNCD will affect premiums for up to 5 years, not just in the following year. The multi-year amounts will depend on a number of factors including future claims experience. This makes the product more valuable than a one year average may suggest.

These two factors mean any scales could be materially misleading for many customers, rather than aiding the decision making process and will not address the AEC and address the information issue or in our view lead to a reduction in the price of the cover. We therefore recommend not proceeding with this element of the remedy as it stands. The remedy should be a clear and better explanation of the cover and this should be led by the FCA.

4.2.2 In response to summarised proposal to introduce the following two statements at point of sale (paragraph 3.56):

We support the principle of providing clearer messaging for customers. However, we cannot use the second of the CMAs mandatory messages as in certain circumstances this would not reflect the cover provided by Aviva, and would be misleading to customers.

There is also a risk that the adoption of these mandatory messages may restrict the development of future customer propositions. [✂]

We therefore consider that any proposed wording should be a guideline and not mandatory, and we would request that the CMA take a pragmatic view and allow insurers to use their own wordings which could be subject to CMA approval.

Responding specifically to the messages individually:

- ***'No Claims Bonus Protection does not protect the overall price of your Insurance policy'.***

  We have no objections to the principle of providing this statement

- ***'The price of your Insurance policy may increase following an accident even if you were not at fault.'***

  We would be unable to use this blanket statement in our existing PNCD sales process for the following reasons:

  i. We do at present offer a Guaranteed No Claims Discount optional cover on our Aviva Direct Motor policy (alongside our existing PNCD option). Under this option we guarantee that the customer's premium will not increase as a direct result of a claim (fault or non fault). As the proposed blanket statement would not accurately reflect the cover and would be misleading for customers, we cannot use the wording proposed. [✂]

  ii. [✂]

4.2.3 In response to the proposal that Insurers and brokers will be required to submit an annual compliance statement setting out the information on average NCB discounts for the forthcoming year (paragraphs 3.61 & 3.62)

We would not be able to provide prospective figures for average NCD scale (but would able to provide prior year figures). [✂] We actively oppose this approach.

Finally, we are concerned about dual regulator monitoring and enforcement as potentially onerous and confusing, and would advocate that insurers are required to deal with one regulator only (possibly the FCA given its responsibility for add-ons) for all aspects of monitoring and enforcement regulator monitoring and enforcement.

4.3 Remedy 4C : Clearer Description of Add-Ons

Given the FCA's role in regulating the sales of general insurance add-on products, we support the CMA's decision to recommend to the FCA that it takes appropriate action in respect of the CMA's provisional remedy 4C.

In support of this remedy we re-iterate the key points indicating our progress in thinking in this area:

We believe that add-on descriptions should provide an overview of:

- **Cover provision** – providing a clear description of what cover is provided
- **Confirmation of key exclusions or limitations of cover** – complaints and repudiation MI/insight help to establish any key elements which should be articulated

5 Theory of Harm 5 – Price Comparison Websites & MFN clauses

AVIVA welcomes the CMA's findings that "wide" MFN clauses restrict price competition between PCWs, and the proposed prohibition of such clauses. However, AVIVA has concerns on the practicality of the proposed remedy. In addition it seeks clarity from the CMA over certain terminology used in the provisional remedies.

As a general point, AVIVA had previously made a case to the CMA that it would be difficult to define and enforce remedies that prohibit 'wide' MFN-equivalent behaviour. We still believe this to be the case and therefore the drafting of the enforcement order should be clearly drawn. We hope the below will assist the CMA in producing the final remedy and order.

5.1 Remedy prohibiting all MFNs except "narrow" MFNs (Paragraph 4.112 (a))

We believe that the definition of 'narrow' MFN, as stated in 4.112 (a)of the provisional decisions document ("…. where "narrow" MFNs are defined as covering the insurance provider website, but excluding possible aggregator platforms") requires further clarification to ensure that it will not be interpreted in many ways by different parties. Any ambiguity could lead to circumvention risks and disputes causing frictional costs. AVIVA seeks clarity from the CMA on the following and asks that, should it allow "narrow" MFN clauses, it covers these points definitively in the final decision and order:

i. AVIVA interprets the CMA's definition of a "narrow" MFN to apply only to leads that are generated directly from the insurance provider's branded website, and does not apply to leads generated by any other distribution channels whatsoever (for example, leads generated from cashback sites or offers that send individuals to the insurance provider's branded website). This interpretation should be confirmed by the CMA and incorporated into a revised order so that any narrow MFN is as narrow as possible.

ii. Linked to the above, further clarification is needed on what the CMA means by "other aggregator platforms" in its definition. Reference is made to Facebook as a possible aggregator platform, but nothing else. This is an area where, without a very clear definition of what is meant by "possible aggregator platforms", PCWs could challenge innovative arrangements insurers may reach with third parties as not falling under the "possible aggregator platform" exclusion.

iii. Narrow MFNs should only apply to the core motor insurance premium, and should exclude any other purchases a customer may make from the insurer at the same time, such as add-ons and instalment charges. This should be confirmed by the CMA.

iv. Narrow MFNs should not apply to other brands underwritten by the same insurance provider, nor to leads generated by such brands. This should be confirmed by the CMA.

5.2 Remedy prohibiting "equivalent behaviours" (Paragraph 4.112 (b))

In the absence of a remedy abolishing all MFNs, AVIVA welcomes the proposed remedy to prohibit "equivalent behaviours". However whilst acknowledging that some degree of flexibility is needed to cover future, as yet unknown developments in the way motor insurance is sold, it is concerned that:

i. The proposed remedy leaves too much uncertainty over the interpretation of how "equivalent behaviours" may be defined (the only definitive example the CMA provides is de-listing);

ii. Such uncertainty is likely to lead to differing interpretations by PCWs and insurers that would be time-consuming and challenging to resolve;

iii. Such lack of clarity is not to the benefit of customers as this could limit the appetite of insurers to invest time and money in innovative arrangements which could be challenged by PCWs and will stifle innovation;

Whilst the CMA's proposal to issue guidance (paragraph 4.50) is welcome, AVIVA is concerned that, given the fast-moving pace of the market, this could quickly become outdated and may not cover all future distribution scenarios; and could not be updated sufficiently quickly (if updating is envisaged).

AVIVA believes that the ability of PCWs to "request a review of the definition of the channel to which an MFN can legitimately relate" (paragraph 4.32,) could lead to a high degree of circumvention risk by PCWs and to continual contractual negotiations between PCWs and providers of the definition.

AVIVA considers that the CMA's recognition that disagreements could arise between insurers and PCWs, and that the CMA is proposing this remedy but also acknowledging that "disputes may arise" is significant. AVIVA would be extremely averse to having the permanent threat of civil proceedings over it, especially as it is risk averse and opposed to spending time and money on avoidable disputes. In addition to the order, clear guidance is required to support the intention of the prohibition and limit the circumvention risk. Certainty is preferable.

Further, it is concerned that in such scenarios, insurers are at a disadvantage in terms of negotiating power. They wish to distribute their products through PCWs but should a PCW not agree with an insurer initiative, they can use tools other than the blunt instrument of de-listing to penalise insurers (as referenced by the CMA at paragraph 4.45). Another example is pressure from PCWs on insurance providers to agree exclusive arrangements (eg a six month commission sacrifice deal) that would leave the insurance provider unable to offer a lower price on other PCWs. AVIVA considers that the CMA must as stated above give further guidance on these types of behaviour.

Finally, the CMA has decided that this remedy applies to PCWs which generate more than 300,000 PMI sales per year. AVIVA seeks clarity from the CMA on its definition of a PCW. For example, how many panel providers does a website have to have before it is considered a PCW? In addition there is a risk that PCWs could create subsidiary companies to avoid the ban, and the remedy needs to ensure this cannot be done.

5.3 PMIs and PCWs to comply with the CMA's order "with immediate effect" (Paragraph 4.112 (c))

AVIVA agrees that the CMA's order could be implemented immediately and welcomes the CMA's proposal in this respect.

[✂]

To avoid any such problems (which could hinder the speedy impact of the order) AVIVA would prefer the remedy to state that all MFN clauses (with the exception of those that are definitely "narrow") should be void and unenforceable from the date of the order and insurers should be under no obligation (whether binding or otherwise) to renegotiate a new MFN clause or an alternative which has similar effect of any type whatsoever notwithstanding the specific terms of any severance clause in the contracts in place at the time of the order.

5.4 Monitoring of "equivalent behaviours" (Paragraph 4.112 (d))

AVIVA believes that monitoring should be more wide-ranging than de-listing, and should cover all equivalent behaviours such as those outlined by the CMA (paragraph 4.45). One possibility might be a right of audit over the relevant PCWs by the CMA.

AVIVA would welcome clarity from the CMA on how it may give directions to PCWs (as described in 4.62), and how this links to its proposal to provide guidance (paragraph 4.50).

In addition we are keen to understand how this remedy interacts with the use of the general judicial procedures as an effective method of enforcement. As noted above, large insurance companies are relatively risk averse and would not want to undertake court proceedings on something which by its very nature could be subjective. The cost associated with legal action would also be considerable.

Annex A – Aviva alternative statement of consumer rights (ref : Appendix 2.2 from PDR)

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

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

Your responsibilities following an accident and policy cover

2. Your insurance policy requires you to report the accident to your insurer who should then notify the other party's insurer.
3. Your insurer and the insurer(s) of the other driver will investigate the accident and advise you of the likely decision as to who is responsible for the accident. You will not be bound by the decision unless you agree with the view on liability.
4. Where the other driver was at fault either fully or in part, you have a legal responsibility to keep your losses to a minimum and the other driver's insurer will expect you to do 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. The policy you have will regardless of liability cover you for …….. key items listed repair, total loss, legal costs, storage and recovery etc.

Your rights and options following an accident

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

8. If an accident is likely to be or found to be your fault, your rights and entitlements depend on 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 with your policy documentation.

Your rights if an accident is found to be ***the other driver's fault either in full or in part***

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

10. Your rights in respect of any losses for:

(a) **The Damage to your vehicle:**

(i) You can choose to have your vehicle repaired by a repairer of your choice or by a repairer appointed by your insurer or the company handling your claim who will return it to its pre-accident condition.

(ii) If your vehicle is not economic to repair and is a write-off, you will be entitled to the market value of your vehicle before the accident. This is the cost of an equivalent vehicle of a similar age and condition at the time of the accident and is usually based on published trade or market price guides.

(b) **A replacement vehicle**:

(i) If you need a replacement vehicle while you are without your vehicle, you are entitled to one that is similar to your vehicle (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).

(ii) You may be provided with a replacement vehicle by your insurer as part of the policy cover or if they have an arrangement with the fault insurer. Alternatively, if this is not available or the vehicle offered is not adequate you can obtain a replacement vehicle on credit (and you might be responsible for the costs if it can't be recovered from the at fault driver). You will be required to sign and complete a mitigation declaration should you choose to have a vehicle on credit hire with rates set by the Competition and Markets Authority.

(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) **Other losses** (e.g. legal costs, recovery of any policy excess you have paid under your insurance policy, loss of earnings, 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 an accident is both your and the other driver's fault or is not agreed

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 the matter may have to be decided in court. It may be that both of you have some fault. If so, you will only recover some of what you have lost from the other driver but you still

have the rights and entitlements set out in your motor insurance policy in full for any losses covered irrespective of liability as this is the benefit provided by your comprehensive policy.

Different ways in which your claim can be handled

12. If the accident is found to be your fault either in part or in full, any claim you make against your policy will usually be handled by your own insurer and will affect your no claims discount and result in a claim on your policy. The policy will provide cover for any losses and an indemnity for the other drivers claim.

13. If the accident is found to be the other driver's fault, you can pursue the claim yourself, but claims are typically handled in one of the following ways:

(a) **By your own insurer and or legal expenses 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.

Annex B – ABI alternative mitigation declaration statement

Mitigation declaration statement

Section A to be completed and signed by the vehicle provider and Section B to be countersigned by the non-fault claimant

Section A: to be completed by the vehicle provider when deciding whether to provide a temporary replacement vehicle

1. 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 or if their need for it is established, they are entitled to a temporary replacement vehicle that does not exceed the specification of 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 temporary replacement 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: .....

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) (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 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 small vehicle for the short period of repairs / unavailability?

(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):

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

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

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

(iv) have you convictions resulting 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:

.....

Signed .....
Name of 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 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 .....