

## Enterprise Rent-A-Car response to the Provisional Decision on Remedies

Enterprise welcomes the CMA's recommendation that the current credit hire practices should be improved to provide better value for consumers of the insurance industry. The CMA has demonstrated an understanding of the issues within the private motor insurance industry for not-at-fault claimants and recognised there is a detriment to the market and consumers that warrant action. However, Enterprise would like to highlight concerns regarding the CMA's current direction.

In December 2013, the CMA released a list of possible remedies. During the following months all parties debated each option. Throughout this time, such a significantly amended version of Remedy 1C was not discussed or debated. With only three months until the final publication is due, Enterprise is surprised the CMA has announced what is effectively a new remedy. Early consultation would have enabled the CMA to see that this new remedy option is unnecessarily complex, has clear unintended consequences and is unlikely to address the Theories of Harm. Indeed, costs will not be eliminated from the process and it will be challenging to implement across the industry. Furthermore, as highlighted within the CMA publication, seven-out-of-ten insurers supported 1A or an amended version of it.

We firmly believe that credit hire and repair does not need to exist within the UK insurance market. Other models and other jurisdictions have proved that drivers not-at-fault in an accident can still receive a suitable replacement vehicle and repair without the need for frictional costs. This provisional remedy fails to remove such friction and fails to remove unnecessary costs from the market.

Below is an outline of some key concerns regarding this new remedy.

### There is incentive for Credit Hire Organisations (CHOs) to create systems to ensure claims fall outside the three-day window to maximise the revenue opportunities

Under the current proposals, Enterprise is concerned that the system may be open to abuse. As drafted, it would incentivise CHOs to make sure claims are not accepted during the three-day window, as they would be able to charge a higher rate. By exceeding the three-day window, CHOs would be able to maintain high referral fees to brokers and dealers thus extracting value from policyholders. This surely goes against everything that the CMA is attempting to avoid and would create a framework that encourages inequitable practices. The MoJ portal provides us with a good comparison. Since the introduction of the LASPO regulations some organisations have found ways to keep claims outside the portal in order to drive up costs and create mechanisms to pay referral fees under a different guise.

### Failure to address the incentive for organisations to earn referral income from claims in credit repair and salvage

We note that the CMA has decided to not alter the current practices for repair and write-offs since the net detriment is currently deemed to be relatively low. We are concerned that this will migrate behaviours from regulated hire claims to unregulated vehicle damage claims. Referral fees are a significant source of income for various organisations such as insurers, brokers, dealers and bodyshops. The CMA is wisely attempting to squeeze the unnecessary costs out of the credit hire sector. However, by excluding credit repair and salvage from the remedy, it's likely that such organisations will seek to recover the lost referral income from these sectors. The easiest method

would be to increase the hourly labour rates to generate additional margin for a referral fee to be paid, but opportunities will also exist in parts, paint, and consumables pricing.

Throughout the investigation, Enterprise has stated that credit hire, credit repair and write-offs should be reviewed as part of a single claim and managed by the policyholder's insurance company to prevent such issues occurring. Not only would this prevent the unintended consequence of referral fees switching to other sectors, but there would be major cost savings within the industry since the entire claims process would be managed by a single party. If the policyholder's insurance provider is subrogating against the at-fault insurer for the repair claim, it seems unnecessary to add additional costs for a separate party to subrogate the costs for the hire portion of the claim.

The proposed model will continue to provide the incentive to retain referral income. This leads to more packaging of credit hire and credit repair resulting in another unintended consequence arising. With control of repairs, comes the ability to influence length of repair and thus length of rental. This provides an incentive for longer repair times to increase the total revenue-per-hire, which is a key component of what referral fee could be sustained.

#### Lower rate caps, but no control over disputes or elimination of frictional costs

We are also concerned that the only prescribed control on credit hire costs will relate to liability. This creates two potential unintended consequences. First, this could incentivise referrers and credit hire companies to make up for the capped daily cost by increasing the number of days supplied. Second, insurers may continue to dispute need and duration of hire after accepting liability and securing the low rate cap. If need and duration disputes occur to any significant degree, then the proposed remedies impact on frictional costs will be limited. And further, the cost of resolving need and duration disputes, after the low rate cap has been secured, may be uneconomic for CHOs at the proposed rates since it will not cover the frictional costs. We understand the CMA's suggestions that daily rates set at an appropriate level may regulate rental length, but remain concerned that actually achieving this balance will be improbable.

Taken together, our concern over disputes highlights the biggest potential long-term threat to proposed reforms. At present there is no mechanism for ensuring that disputes are resolved within the reform framework. If unresolved disputes are required to default back to common law of torts, then daily rates will likely be recoverable based on the principle of basic hire rates; i.e. retail rates. Although it would be hoped that a reasonable compromise could be reached, especially when the lower rate cap is applicable, this peculiar incentive for the rate cap to be bypassed will exist.

#### Inconsistencies within the market between commercial and private motor insurers for the same motor claim

Since the CMA has not addressed commercial insurers, such providers will understandably seek to maximise revenue opportunities for as long as they are available. Therefore, high frictional costs will remain in the market as private motor insurers challenge CHOs for rentals provided to commercial policyholders.

### Additional expense, complexity and processes within the industry

In the current credit hire market, CHOs undertake a simple process of completing the mitigation statement with the renter at the time the rental. Under the new scheme, the FNOL provider (typically the insurer) will need to complete the document with the renter over the phone. They will then need to pass the completed document down to the CHO for the renter to sign. This will require significant IT investment for all insurance companies and CHOs to ensure that the correct rental location receives the completed mitigation declaration.

It should be noted that a key advantage of non-fault direct hires, bilaterals and Enterprise's Subscriber model is that renters are not required to sign a mitigation statement. This eliminates significant costs within the process and enables bulk invoicing (and bulk payments) since payment packs are not required. Indeed, one of the benefits under an amended version of 1A is that subrogation between insurers would also not require a mitigation declaration. Since at-fault insurers have provided evidence that mitigation declarations are not required, we are surprised that the CMA still believes these are necessary. Not only does it increase costs, but it also provides a poor claims experience for the renter.

### Rates fixed by the government rather than remaining fluid within the market

Direct hire is a well-established market that operates within many jurisdictions throughout the world. Rates are determined by the market and therefore costly intervention is not required by government. The CMA has proposed that the UK does require continual intervention to manage rates. As already proven through the direct hire market, to ensure best value is obtained for the insurance industry and ultimately consumers, the market is capable of determining rates. The market requires flexibility to enable prices to fluctuate according to the different service levels required by the insurer. Set industry rates do not provide a platform for innovation and value to consumers. This is evidenced by the existing differences between the direct and credit hire markets.

In light of the above fixed rate concerns, Enterprise would like the CMA to address the following questions:

- Since every CHO and vehicle hire company has a different business model and different structure to provide the vehicle to the renter, how does the CMA propose to set an appropriate cap for the arrangement fees?
- What elements of the service provision will be included and how will the CMA determine the appropriate cost based on all car hire providers' abilities to achieve them?
- How will the CMA ensure the rates are sustainable and accurately reflect market conditions within the car hire industry for the duration of the proposed two-year period?
- With the introduction of the mitigation declaration, how much additional investment does the CMA estimate it will take to upgrade IT infrastructure across the insurance and car hire industries?
- The CMA released timeframes for the enforcement order and implementation of the order. However, when does the CMA intend to publish the arrangement fees and daily rates?
- All Insurers, CHOs, brokers, bodyshops, dealerships etc. will need to renegotiate contracts. Since the CMA has chosen not to ban referral fees, how will it ensure sufficient time for all parties to agree new referral fee contracts?

To conclude, the market has been under review for over three years, by the CMA and OFT. Insurers and vehicle rental companies have agreed with the CMA that changes are required. We therefore feel that this is a missed opportunity to provide a remedy that truly tackles the Theory of Harm and unnecessary frictional costs within the market.

Enterprise is keen to support the CMA, insurers and consumers to reshape the credit hire and repair industry. Although proposed with the best intentions, the current model would inadvertently incentivise unscrupulous behaviour and in reality has many unintended consequences. The industry needs to take this opportunity to deliver a transparent, open and fair model for the consumer.