Response of Liverpool Law Society to the Competition and Markets Authority Private Motor Insurance Market Investigation Provisional Decision on Remedies Dated 12th June 2014

1. Liverpool Law Society

Liverpool Law Society (LLS) represents over 2500 members of the legal profession in the Merseyside area. Members are solicitors, barristers and academics. This response has been produced by canvassing the views of the members. Most of the information provided is based upon the opinions and experiences of solicitors predominantly engaged in the work of personal injury and credit hire litigation. Contributors include solicitors acting for both Insurers and Claimants. At all times LLS has sought to express an impartial view without preference. The views expressed are not necessarily those of the author.

2. Response

LLS has previously made the point that it is a neutral body and reiterate that as a Society it does not have within its knowledge detail relating to the mechanics of the private motor insurance industry and in particular the information or empirical data that has formed the basis of the calculations undertaken within Working Paper 23 (and which has accompanied the Provisional Decision on Remedies). LLS seeks to represent the interests of its' members and clients (actual or potential) at all times and will therefore consider the effect of the remedies in terms of any potential impact upon access to justice and the legal framework in which they must operate should they be deemed to be an appropriate method by which to address the perceived adverse effect on competition.

In the Provisional Findings Report dated 17th December 2013 the Competition Commission (as it was then) identified that a theory of harm (TOH1) existed within the private motor insurance market due to a separation of cost liability and cost control. Having considered the responses made to that report the Competition and Markets Authority (CMA) concluded within the Provisional Decisions Report that TOH1 remains and that pursuant to section 134(1) of the Enterprise Act 2002 there is an adverse effect on competition due to *"any feature, or combination of features [that] prevents, restricts or distorts competition in connection with the supply or acquisition of goods or services."* The CMA particularly refers

to the separation of control caused by the fact that the insurer who is liable for paying the non-fault driver's claim is not the party in control of costs and conduct by the parties in control that gives rise to excessive frictional and transactional costs that are reflected within the pricing of the premium.

The CMA has reviewed the original remedies and whilst a number have been rejected as largely disproportionate or requiring a change to the law the CMA has determined that Remedy A, 1C and 1F in combination will remove the AEC. These would involve the development of a statement of legal entitlement, the capping of credit hire rates and use of a generic mitigation declaration.

3. Calculation of Premium Increase

LLS notes that the calculation of the net consumer detriment caused by the provision of a temporary replacement vehicle (TRV) contained within WP23 is that there is an additional annual insurance cost of £87 million and that on the basis of there being some 25 million policies underwritten this amounts to a cost to the individual of £3.48 per annum. It is further the understanding of LLS that the calculations undertaken remain open to criticism and review there already having been an erratum published in respect of the calculation of VAT.

Whilst unable to add to the debate as to the actual calculation, LLS members have expressed some significant concern that the remedies do not seek to address the separation of control and are based solely in reduction of frictional and transactional cost. As such the figures put forward should be referenced to that point only and also take into consideration the fact that whilst the Remedy may be based upon an idealised frictionless market place there are certain unavoidable frictional costs (para 2.83). The CMA additionally refers to there being a number of aspects of replacement vehicle provision that give rise to dispute including liability, rate, duration and need (para 2.48) but propose a Remedy that deals with rate only and does not confirm to what extent the frictional cost identified within WP23 relates to that issue. In short LLS would question the appropriateness of a Remedy that seeks to reduce only one element of the AEC when it is based upon a calculation that includes more than that element. Further, there is no apparent evidence that the Remedy will as a corollary reduce dispute and therefore the costs of credit hire generally (which point will be discussed in more detail below within the context of liability).

4. The Enterprise Act 2002 and Proportionality

The issue of proportionality is fundamental to a consideration of the effectiveness of any Remedy. Indeed the CMA confirms that it has used the detriment analysis comprised within WP23 in its assessment of whether the remedies achieve their aim, are no more onerous than is necessary or produce any adverse and disproportionate effect (para 1.12).

Section 134(5) determines that a detrimental effect on customers or future customers will exist in the form of:

> *"(a) Higher prices, lower quality or less choices of goods or services in any market and;*
>
> *(b) Less innovation in relation to such goods or services."*

In the consideration of how to overcome such a detriment in accordance with section 134(6) the CMA should:

> *"…have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition and any detrimental effects on customers so far as result from the adverse effect on competition."*

Section 138 confirms that position and states that there shall be:

> *"…no action taken to remedy, mitigate or prevent any detrimental effect on customers so far as it may expected to result from the adverse effect on competition concerned if-*
>
> *(a) no detrimental effect on customers has resulted from the adverse effect on competition; and*
>
> *(b) the adverse effect is not being remedied, mitigated or prevented."*

LLS members have compared the relevant customer detriment (the £3.48 premium loading) against the above legislative framework and in view of the opinions expressed below have serious concerns that even if it is accepted that there is an adverse effect on competition the Remedies - and more particularly Remedy 1C - will not serve to reduce that AEC and will instead produce a detriment that is disproportionately greater than any which currently exists.

5. Remedy A

LLS is pleased to note that within footnote 7 to para 2.13 the CMA records the right in tort to restitution stating that "*A person who suffers loss as a result of another person's negligence is entitled to be compensated by being put into as good a position as he or she would have*

been if no wrong had occurred". This refers in part to the judgement in *Livingstone -v- Rawyards Coal Co. (1880) 5 App Cas 25*, *39* which in fact stated that the entitlement is to be restored in so far as it can be by the payment of money. The law of tort had been established even before that case and is enshrined in both statute and case precedent. In apparently recognising this right the CMA commissioned research by GfK NOP Social Research and have determined quite correctly in the view of LLS that consumers generally lack knowledge of and/or misunderstand their legal entitlement. It is proposed that a statement be drafted of no more than two A4 pages in length that explains those rights and a draft is included at Appendix 2.2. In order to overcome manipulation of the information it is intended that the statement will be *"standardised across the insurance industry in so far as is practicable".* However it is also recognised that each insurer will have to produce a response to FAQ specific to the product that they offer to the individual. It is anticipated that a detailed document will be provided at policy inception with an oral script being delivered at the point of FNOL with the possibility of a copy being sent out again by email. The CMA further proposes that the document be accessible on insurer websites.

Attached to this response is a document that LLS were asked by the CMA to produce by way of assistance in drafting a statement of legal entitlement. In the response to the Possible Remedies LLS put forward a proposal that any such document should be drafted by a body without a vested interest in its content and with appropriate and qualified legal knowledge and stated that this was a matter that they were happy to provide assistance with. It was additionally suggested that the document would have further weight and provide greater reassurance to the customer if it were made available through the Law Society web site. Various recommendations were made as to the mediums by which it could be provided to maximise its impact.

Consequently whilst LLS remains entirely supportive of the statement in principle, it is with some considerable concern that it is noted that the draft at Appendix 2.2 does not make any reference to the non-fault driver being entitled to seek legal advice and how they may do that. An insurer, CMC or CHC is not best placed to offer that advice or act in the best interests of the individual - unlike a legal representative who at all times is bound by their fiduciary duty to their clients and must act in accordance with strict rules of conduct. LLS would hope that this is a mere oversight and that the draft will be amended accordingly. It remains the case that a working party is established and that further assistance is available to the CMA in respect of this document. In particular LLS would recommend that there be some effort put towards a change in language, lay out and presentation such that it is more easily understood by the individual particularly when it is more likely than not to be read at a time when they are suffering additional stress as a consequence of their having been involved in an accident.

6. Remedy 1C

Whilst the CMA intends to put in place a Remedy that seeks to confirm the legal entitlement of non-fault drivers, LLS members have queried as to whether the CMA has a full understanding of how credit hire currently works in practice and in particular the legal framework within which it operates.

The premise of Remedy 1C is that there is to be a dual rate cap applied to all credit hire, the calculation of which is not yet clear but which it seems will have as a start point daily hire rates set at approximately half of current industry agreed GTA rates.

6.1 Subrogation

Point 7(b) of the Summary refers to the:

> *"Application of the rate cap to all replacement vehicle providers at the point of subrogation of the claim to the at fault insurer"*

Subrogation of the claim for credit hire charges is thereafter referred to throughout the report.

Whilst the members of LLS do not profess to have knowledge of every rental agreement used, it is their general view that at no time would subrogation apply with regard to the recovery of credit hire charges. As a doctrine, subrogation is based partially on equitable principles and partly upon both express and implied terms contained within a contract of insurance. It has as an aim the protection of the rights of insurers, and allows the insurer who has provided an indemnity to bring proceedings against any wrong doer in the name of the insured. As such the right of subrogation is available only where the insured has received an indemnity from the insurer which fact is summarised in Halsbury's Laws of England (5th Edition) 2011.

Under the terms of a credit hire rental agreement the customer will remain liable for the costs of the hire at all times. The agreement is in their name and the responsibility to make payment for the charges remains with the customer such that there is neither subrogation nor assignment of the debt. This responsibility has been confirmed by the Courts in a number of cases which have examined the enforceability of rental agreements and the extent to which they may be considered a pretence not least in *Giles -v- Thompson (1994)1 AC 142 (HL)* when it was held that the Claimant had incurred a loss namely his liability to the

hire company for which he could claim compensation from the at fault Defendant. Lord Mustill made the point clear stating:

> *"As in the case of Devlin an essential preliminary is to ascertain the rights and obligations created by the hire agreement. First, one must see whether the companies obtain any direct rights over the fruits of the claim for the element of damages representing the hire charges. Here, the answer is just as clear as it was before. The companies have no interest, whether by charge or assignment, which give them any claim to the proceeds which they can enforce against the defendant. Nor is any part of the recovery shared with the motorist, in the sense (for example) that they have a preferential claim to it against the other creditors of the motorist. The position is simply that the success of this part of the claim will equip the motorist with extra money, from which the hire charges can be satisfied."*

Paragraph 2.59 of the Report states that the Remedy will not be extended to cover replacement vehicle claims charged to at fault insurers directly by non-fault Claimants who have organised the hire of a replacement vehicle directly themselves without the assistance of an insurer, broker, CMC or CHC. There is no clarification provided as to exactly how this will operate in practice and LLS expresses concern that the CMA may not have an adequate understanding of the legal position. If it is the case that there is no subrogation, does it then follow that whilst the non-fault Claimant may have used the services of a CHC or their insurer (since they remain liable for the cost of the hire), the claim is presented as their own? Furthermore, if the Claimant uses the services of a solicitor in respect of the accident possibly including other heads of claim, this should also be considered their own case and not that of the solicitor. It is clear that there is a potential that the Remedy may alter legal entitlement.

6.2 Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

LLS would remind the CMA that credit hire is subject to the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. Compliance with these regulations is mandatory and subject to criminal prosecution. Rental agreements must be drafted to ensure the provision of information to the client in accordance with the relevant Schedule to the Regulations to include *"the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot be reasonably calculated in advance the manner in which the price is to be calculated"*. Members are particularly concerned as to how the agreement may be drafted in a compliant way to include not only the commercial rate but the two rates of the dual capped rate. The Regulations additionally require the provision of a 14 day cancellation period during which the non-fault driver must accept a responsibility to make payments should the service have been provided before the expiry of the period. In those circumstances it is difficult to see which rate would be payable by the non-fault driver.

In their current and compliant format, the rental agreements make reference to a daily charge at commercial rates such that in theory whilst the insurer may only be required to pay the capped rate the non-fault driver will retain a responsibility to pay the full amount. That in itself will create a significant consumer detriment in that the customer will have a residual legal liability to pay the outstanding balance.

Paragraph 2.62 makes reference to the possibility of capping the amount that a CHC may charge the non-fault driver under the terms of the agreement. However this seems equally unworkable in terms of the wording of the agreement. At the time of contract there may be a lack of knowledge relating to liability, the identity of the at-fault driver or even fraud such that a need to insert the correct rate would mean that at the least the CHC may be forced to delay the hire commencement until the three day liability acceptance period had passed. This would cause an immediate and clear prejudice to the non-fault driver.

It should also be pointed out that the CMA has itself provided guidance relating to the provision of material information and stated that this should include the price. Given the obligations imposed by the Unfair Trading Regulations 2008 and prohibition in respect of misleading acts or omissions LLS considers that there would be difficulties in drafting a compliant rental agreement.

6.3 Liability

The CMA has indicated that the Remedy will be dual capped and based upon a high rate that would apply only in circumstances where liability was not accepted within 3 days of FNOL. *"The aim of the high rate would be to facilitate early determination of liability as it will be significantly more costly for an at fault insurer to pay for a TRV"*

LLS members are particularly concerned by the view that has been apparently adopted that liability admissions should be expedited through financial incentive. It is their opinion that this fails to give consideration to the legal entitlements of all parties involved and will cause direct prejudice to both the non-fault and at fault driver. The adoption of this part of the Remedy will cause difficulties that its overly simplistic terms have failed to address and which show a naivety on the part of the CMA. In particular:

- The determination of liability is not simply a matter for the respective insurers both of whom have a vested interest in the outcome. The insured driver must be consulted and the driver considered at fault must have the ability to contribute to the discussion. A liability admission has the potential to impact upon an individual's excess, no claims discount, premium and future premiums.

- The Remedy refers to an admission only and not any without prejudice agreement. Consequently in making that admission the insurer may estop their insured from making some future claim or counter claim.

- The insured may be pursuing a claim for other heads of damage with independent advice and in particular may have appointed a solicitor to make a claim for personal injury compensation. There should not therefore be any admission made without consultation with that solicitor who must be able to advise his client as to the implications of any action the insurer may wish to take. Should an admission be made in the absence of those instructions the recoverability of those additional heads will be prejudiced.

- Article 6.1 Paragraph 45 of the ECHR provides that *"In the determination of his civil rights and obligations...everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law"* It is difficult to see how an admission incentivised by a low rate cap would comply with that right.

- The report is unclear as to how a contributory negligence position would be addressed and if this would result in a further reduction to the rate. This may ultimately increase frictional costs by encouraging parties to litigate who previously may have been more willing to make a concession.

- Contributory negligence is often applied when there is the same insurer for both parties since it is commercially convenient. However such arrangements cause direct prejudice to the non-fault Claimant and a reduction to the recovery of charges that has not been referred to within the Remedy.

- It seems that there is an assumption that accidents only ever involve two parties. In fact multi vehicle accidents are common place and often involve difficulties in terms of liability in that there is either dispute between the possible Defendants or the civil case must follow the police prosecution. The Remedy fails to address how and by whom payment would be made in the event that more than one Defendant was considered to be at fault.

- Members expressed a particular concern that the liability admission may be used by a Defendant insurer to secure a lower rate but that once hire were concluded it be asserted that new information through the submission of a claim for personal injury or ULR had resulted in there being a decision to withdraw that admission. It will be noted that the response period within the Low Value Claims Portal is 15 days this being an average length of hire. Non-fault drivers may have taken action in good faith as a result of that admission including making payment for new vehicles, repair charges or rehabilitation and would be prejudiced by the delay that would then result in reimbursement to them of the expense that they had incurred.

- The converse to this is that the admission may actually increase the number of claims for alternate heads of damage in that the party who may not

previously have submitted a claim will do so satisfied of recovery due to the early admission which would give rise to associated frictional costs.

- An early admission may be made but following indemnity enquiries the insurer may withdraw that admission with a request that the claim be redirected. In the event of no insurance this will involve the Motor Insurers Bureau and it is unclear how that body will fit within the regime envisaged. In any event the Claimant is in the position that in good faith they may have taken actions and incurred expenses that they will have to carry indefinitely.
- An admission may become blurred by a causation or fraud allegation either within the credit hire claim or as part of another head of damage such that whilst the insurer will have had the benefit of the lower rate, the Claimant and CHC will be subject to delayed payments and possibly a need to pursue litigation.

It is the opinion of LLS that unless the CMA is able to deal with all of the above scenarios satisfactorily, the resulting consumer detriment will be in direct contravention of sections 134 and 138 of the Enterprise Act. There is in addition confusion surrounding the Remedy and commercial insurance. Whilst the CMA indicates that commercially insured vehicles do not fall within the remit of section 131, reference is made to them in that there is an indication of possible future investigation in the event that the market does not self-regulate. They also suggest that since the commercially insured Defendant will benefit from the lower capped rates this will result in a saving to them that should reduce commercial premiums (footnote 47 to para 2.131). There is however a failure to address the anomalies that arise with regard to commercial insurance including:

1. Private hire and in particular the use of the vehicle partly for business and partly for SDP purposes - see *Zakar -v- Ali (2014)*;
2. Leased vehicles and in particular the provision of a vehicle for business use with permitted SDP use;
3. Self- insured entities eg bus companies, utility companies, large fleets;
4. Foreign vehicles.

Footnote 39 to paragraph 2.91 states *"We are proposing that the variable element of the low rate cap would be set close to cost, implying that replacement vehicle providers would not gain much from unduly lengthening hire periods or by providing a more expensive car than the non-fault Claimant needs".* The prevailing ideology is that since rate is reduced the parties will not engage in any dispute as to other issues including period and need. LLS members found this concept fantastical and both Claimant and Defendant solicitors were of the view that these arguments would persist since it is always in the interests of either party

to maximise or minimise the amount payable. The Defendant in particular would have less to lose financially by defending the claim and therefore less incentive to capitulate to arguments over need and duration.

6.4 Comparison with Direct Hire

LLS is not in a position to make comment as to the amount at which daily rate will be set other than to express some degree of puzzlement that direct hire might be considered an appropriate comparison. Indeed the CMA itself is contradictory in the comments it makes about direct hire, in that at para 2.70 reference is made to there being several providers of direct hire such that the market is reasonably competitive but then within WP23 confirmation is provided that Enterprise dominates the market. Members familiar with the arguments surrounding direct hire refer to the inherent problems that do not make it an adequate substitute, namely that as a loss leading product designed purely to combat credit hire it fails to provide the same level of service or even like for like. It can involve considerable up selling of products that are inclusive to credit hire and provided as part of the overall rate. Equally direct hire does not reflect seasonal or geographical variations. At paragraph 2.66 the CMA recognises the risks associated with the determination of rate and concludes that a rate *"slightly above the level of cost efficiently incurred in providing a replacement vehicle is likely to provide the best balance of incentives"* and states that it is not favouring one business model but merely seeking to ensure tortious rights. This seems erroneous if the rate upon which the capped rate is to be based is that of a business that does not deliver the same product.

6.5 Judicial Guidance

LLS fails to see how the CMA might continue to implement a Remedy on the basis of a suggestion that the Court should be guided by an explanatory memorandum when making decisions in respect of the correct rate to apply. The Courts are bound by case precedent and in particular the rules provided within *Dimond -v- Lovell (2002) 1 AC 384* and more recently expounded in the decision of *Bent -v- Highways and Utilities Construction and Allianz (2011) EWCA Civ 1384*. At paragraph 73 Lord Justice Aikens refers to the test applicable to the calculation of basic hire rate:

> "*(i) did the Claimant need to hire a replacement vehicle at all; if so*
>
> *(ii) was it reasonable in all the circumstances to hire the particular type of car actually hired at the rate agreed; if it was*
>
> *(iii) was the Claimant impecunious; if not*
>
> *(iv) has the Defendant proved a difference between the credit hire rate actually paid for the car hired and what in the same broad geographical area would have been the BHR for the model of car actually hired and if so what is it: if so*

(v) what is the difference between the credit hire and the BHR?"

The way in which impecuniosity applies is dealt with at para 36 when it is confirmed that in the event that the Claimant could not afford to hire a replacement vehicle by paying in advance they will be entitled to recover the credit hire rate in full provided it was otherwise a reasonable rate.

Importantly Lord Justice Aikens also refers to the case of *Burdis -v- Livesey (2003) QB 36* and para 139 which states that the test is to look at *"...actual locally available figures"* and at a para 146 adds *"...a person who needs to hire a car because of the negligence of another must subject to mitigating his loss be entitled to recover the actual cost of the hire not the average cost..."*

The test in respect of BHR is well established but the report would appear to suggest that the Court should disregard precedent in favour of an explanatory memorandum. If so the CMA must explain why and upon what basis since it is the view of LLS that a more significant measure than an enforcement order would be required to implement such a Remedy including a change to the law.

7. Remedy 1F

The CMA has identified that need is an issue that is often disputed and proposes that this might be overcome by the use of a mandatory Mitigation Declaration that would be signed by the CHC and counter signed by the non-fault driver before the keys to the vehicle were handed over. A draft of that document is included at Appendix 2.3 to the Report.

LLS agrees that taking more detailed information at the point hire commences will improve transparency and enable better judgement as to the type of vehicle that should be provided. However the practicability of the process would not appear to have been considered particularly in circumstances where the initial call might be with the non-fault driver but the vehicle be signed for by an authorised signatory.

It is assumed that the draft document does not include any question as to the impecuniosity of the Claimant on the basis that a capped rate would mean such consideration is no longer relevant. In fact the case of *Umerji -v- Zurich Insurance (2014)* has made it clear that impecuniosity will go to both period and need and Courts make regular orders that the apparently pecunious client must still provide disclosure of financial documentation in order that such issues might be examined more closely.

It is therefore the view of LLS that whilst a generic and detailed declaration will improve process it will not serve to reduce the arguments raised in respect of need in this regard.

8. Distortion and Unintended Consequences

Paragraph 2.98 refers to the fact that the CMA would not expect a CHC to be in a position to make payment for significant referral fees at the rates proposed and at paragraph 2.99 the CMA specifically states;

> *"...we are not concerned with the specific type of contractual arrangements which might arise under our proposed remedy. Rather, we are focused on delivering a consumer's entitlements while addressing the AEC and detriment we have identified."*

Paragraph 2.104 adds that;

> *"In general, imposing a cap on prices is regarded as an onerous remedy because it directly overrides market signals (including incentives to innovate) and suppresses price competition"*

It is suggested however that current competition is not one that relates to rate because this is set by the GTA but rather one which relates to the payment of referral fees. The CMA does not therefore consider that the Remedy will reduce competition between CHC.

In terms of direct hire the CMA believes that there is competition between providers which would not be affected unless there was *"a tacit coordination on price"* which would be difficult due to the tendering process. Some members expressed scepticism as to how difficult such collusion would be given the existence of bilateral agreements already and the possibilities of MOU type payments.

It is not the place of LLS to support the CHC industry, however the above opinions do cause some concern to our members. For reasons indicated above direct hire cannot be considered an adequate substitute for credit hire and indeed the CMA previously identified within the Notice of Possible Remedies that direct hire has developed in response to credit hire. It is often a loss leading product and it must therefore be questioned whether Insurers will remain incentivised to provide that service were CHCs to exit the market. Given that the

rate intended is one only *"slightly above the level of cost"* LLS does consider that there is a genuine risk that the number of operators in the market will be reduced and the non-fault driver placed in the position that he is no longer able to secure his legal entitlement or indeed the representation that enabled him to recover other heads of damage alongside the credit hire charges.

The CMA would seem to acknowledge that there is not an excessive profit within the credit hire market and there is no criticism of the current rates applied either by way of the GTA agreed rate or basic hire rate. Consequently the imposition of price capping is an ineffective attempt at indirect control of the frictional cost. Competition is not failing within the credit hire market and there is no monopoly in respect of the provision of TRV and therefore Remedy 1C must be considered too onerous in that the unintended consequence of exit from the market of CHCs would result in a customer detriment pursuant to section 134(5) Enterprise Act 2002 namely that there would be lower quality, less choice and less innovation. In short insurers would control the market for post-accident mobility with the attendant risk of collusion supported by an "industry standard" information sheet prepared pursuant to Remedy A.

WP23 refers to the pass through of benefit to the consumer by way of lower premiums in the absence of frictional and transactional costs. However recent experience within the personal injury sector following the implementation of a referral fee ban and fixed recoverable costs is that there has been no such reduction. The CMA may wish to seek further detail.

9. GTA and the costs of implementation

The CMA has stated on numerous occasions that it considers that the GTA has significant benefit and at paragraph 2.114 indicates a belief that;

> *"...the GTA has many positive elements which encourage the efficient resolution of claims and help to reduce frictional and transactional costs between CHCs/CMCs and at fault insurers."*

It would seem however that one of their main concerns with regard to the efficacy of the GTA is that some 23% of all claims do not come within its remit (para 2.56). LLS members do however point out that this might be overcome very simply by making membership of the GTA mandatory. Views have been expressed that the costs of implementation and the establishment of monitoring systems far outweigh the current cost to the non-fault driver of £3.48 per annum. The GTA has been in existence in excess of ten years and many of the measures proposed by the CMA serve only to mirror those already in place and agreed between the CHO and ABI. Further LLS notes that the GTA seeks to innovate within the

market and is currently engaged in the development of a portal which it has been proven through the personal injury market would have significant impact upon transactional costs.

10. Conclusion

It is clear that Remedy A and 1F in principle have a direct and relevant consumer benefit and as such LLS are able to support the same subject to the issues raised in this document. LLS offers its assistance should it be so required in drafting the same.

LLS does not however agree that Remedy 1C might be considered a reasonable, practicable or proportionate method that pursuant to section 138(2) would remedy, mitigate or prevent the AEC and any detrimental effect upon the customer. It must be kept in mind that WP23 refers to a detriment that results in a de minimis increase to the individual's private motor insurance premium. The significance of that increase is that if enquiry was made of an individual as to whether they would wish to continue the status quo in respect of TRV provision (as distinct from the provision to them of information relating to entitlement), it would seem unlikely that they would make any objection on the basis of the current cost. This is particularly the case if there was no guarantee that a change to the system would result in a reduction to premiums in any event.

Kirsty McKno

Chair, Civil Litigation Committee

Liverpool Law Society

8th July 2014

- **What are your basic legal rights?**

This would include a description of the rights available contractually through the provision of insurance and in tort as far as being put back into the position they would have been but for the accident.

- **What should you do next?**

The consumer must be advised with regard to the need to report an accident, provide their details and ensure that they do not prejudice their insurer's position.

- **Is the accident your fault?**

Information would be included for both fault and non-fault drivers and in particular consumers would be directed to collection of information and cooperation with their insurers to avoid the difficulties that arise when liability is not clear cut.

- **Am I entitled to a replacement vehicle?**

Advice here would be detailed and link to PAV and repairable aspects of accident management, like for like and credit hire issues including need and impecuniosity.

- **What do I do about repairs?**

This should explain the process of vehicle recovery, engineer inspection, repair authorisation and the repair work itself with advice relating to choice of repairer, quality of repair and storage during repairs. The need to consider temporary repair should be mentioned. This should possibly refer to diminution.

- **What do I do whilst my car is being repaired?**

The responsibility to mitigate must be explained to the consumer including the ways in which mitigation might be effected such as use of a CMC or CHC who would be able to monitor the process in entirety. Information about period must be included and the need for example to return a vehicle if it cannot be driven due to injury or time away for example.

- **What will happen to my insurance?**

As indicated above it would not be possible to predetermine this point and advice must therefore be linked to the questions the consumer can ask of their insurer in respect of fault, excesses and their recoverability and NCB protected or otherwise. Reference might be made to the fact that initially the responsibility is to report only and not make a claim on their policy if they are not at or there are queries as to fault.

- **Where do I get advice?**

The consumer must be provided with advice about the types of bodies that would or could be involved and directed to independent legal advice as appropriate with reassurances about the costs involved in making a claim.