LLOYD'S MARKET ASSOCIATION

LMA Response to *Competition & Markets Authority's Private Motor Insurance Market Investigation: Provisional Decision on Remedies (6th June 2014)*

About the LMA: The Lloyd's insurance market underwrites insurance business from over 200 countries and territories worldwide. In 2013, premium capacity was in excess of £24 billion.

The Lloyd's Market Association (LMA) represents the 57 Managing Agents at Lloyd's which manage the 90+ syndicates underwriting in the market, and also the 3 members' agents which act for third party capital. Managing agents will be "dual regulated" firms by the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) and members' agents will be regulated by the FCA.

Whilst this response is distilled from the views of our members, especially the 8 Lloyd's syndicates currently writing UK motor insurance, the views of individual members may differ.

Summary (please see detailed comments on proposed remedies in the table below)

Theory of Harm 1

- The reforms proposed are workable in principle, but in our view represent relatively minor changes to the dysfunctional system of providing replacement vehicles/managing vehicle repairs currently in place.

- It is disappointing that the fundamental problem outlined in ToH 1 has not been addressed; the separation of cost liability from cost control. We appreciate that there are significant problems with both of the two main remedies that would have addressed this issue (1A and 1B). However, the existing dysfunctional market dynamic will now largely persist, including the poor behaviours and resultant harm to consumers that are driven by the desire of some stakeholders to maintain control over income earned by managing non-fault claims.

- We support imposing an improved degree of control over hire costs – this is clearly helpful. However, given these proposals retain a primary role for credit hire firms in the provision of replacement vehicles, who operate business models that fundamentally conflict with those of at-fault insurers, it is our view that the proposed reforms are not likely to create significant savings for customers. The extent of any savings will now be heavily dependent on the level of recoverable rates for replacement vehicles – these should be set as low as possible, with reference to the actual cost that would be incurred by at-fault insurers.

- The proposed remedies under ToH 1 are likely to fuel the search for alternative sources of revenue on the part of credit hire/accident management firms. For example, using 'credit repair' as a method of stringing out hire periods.

- The proposals have failed to eliminate referral fees, which seem clearly against the public interest. Retaining referral fees means retaining the incentive for claims management firms and non-fault insurers to derive income from non-fault claims, ultimately inflating costs for customers. We do not agree that the cost of RFs will be 'competed away', as the value is often retained by brokers (for example).

- The proposals are especially disappointing for the minority of insurers who do not abuse their position by passing on inflated repair costs to at-fault insurers, insurers that do not

accept referral fees from CHOs, or maintain any interest in managing non-fault claims for their own economic benefit. These reforms reinforce the position that adopting the moral high-ground (as a non-fault insurer) only perpetuates an unfair economic disadvantage which, for commercial reasons, may not be sustainable indefinitely.

- We strongly urge the CMA to consult upon, and subsequently publish, detailed success criteria that can be applied to the proposed remedies in connection with ToH 1, and that this criteria is reviewed in detail in two years time. More stringent measures should be reconsidered if the currently proposed remedies fail to address the underlying problems.

- The proposed reforms will significantly complicate insurers' operations if not simultaneously applied to commercial motor insurance.

- The CMA needs to draft the necessary enforcement orders extremely carefully, and ensure that strong pressure is applied to try and mitigate against the extensive risks of abuse that will be retained.

ToH 2 and 3

- No comments

ToH 4 – Sale of add-ons

- We agree that it is sometimes difficult for customers to understand how no claims bonus works, and to assess the value of purchasing protected no claims bonus.

- Our members see no obvious difficulty in providing the required information to customers, but we would question the value of stating the average value of NCB year by year, as this will be different for each customer in many cases, and so could be misleading, or could create false expectations.

- We support the decision to refer the sale of add-ons to the FCA, who are already addressing this issue.

ToH 5 – MFN Clauses

- We strongly support the prohibition on wide MFNs and 'equivalent behaviours'.

- We disagree with the proposal to retain 'narrow' MFN clauses. The decision should be amended to reflect that narrow MFN clauses create an issue with multi-channel insurers, in that direct pricing will always have to match the most expensive aggregator, rather than the cheapest. In effect, narrow MFNs force insurers to price up, rather than down, preventing insurers from competing freely and offering the lowest prices to customers.

- The LMA would support a ruling that preserves narrow MFNs, but not where the contracting PCW can be undercut by another offering the same product. Otherwise the PCW's 'promise' that they are offering the cheapest quote is only guaranteed by obliging competitors (and the insurer direct) to price upwards to match. This remedy could be implemented by an enforcement order, and a mandatory contractual term for use in all narrow MFNs.

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Detailed Comments re Proposed Remedies **Theory of Harm 1 – Replacement Vehicles**	
CMA Proposal – Remedy 1C	**LMA view**
Information for customers – mandatory statements to be provided: 1. Part A: Statement of rights following an accident 2. Part B: FAQs (questions provided) 3. Part C: FNOL statements 4. Mitigation statement (insurer & claimant sections)	We support this remedy, but are a bit concerned that policyholders will not pay it much attention.? We generally agree with the ABI's recommended changes, and the suggestion that a group of experts is needed to re-draft all of the 'mandatory' documents. The text should clarify that insureds <u>are bound</u> by insurer's decision over liability where reservation of rights is covered in the contract. Should also be noted that 1st party recovery is limited to that provided under the policy. Existing mitigation statement in GTA has not been effective – why will this version work?
Dual-rate price cap on credit hire claims	We agree with the ABI that the enforcement order will need careful drafting as many CH claims are not subrogated. Remedy may help control hire costs, but strong risk that a large increase in credit repair will follow, to enable CHOs to control (i.e. extend) hires. Also big issue over when/how hire gets notified to the at-fault insurer.
Setting the rate cap: admin cost, and variable daily rate to be set at slightly above 'the efficient rate'	We are broadly supportive of this proposals, but careful consideration of what is a reasonable fee is needed; it shouldn't be higher than the direct cost. Direct hire cost should be the benchmark for daily rates, not the retail rate, which includes marketing costs etc.
Different rate depending on admitting liability in 3 days, to incentivise prompt admissions/CHOs to enter the market tempted by the higher rates	We agree with ABI that 3 days is too short, for the reasons stated in the ABI's response. Further, why should the hire rate be dependent on admitting liability? Hire rate should be driven by the cheapest method of supplying the vehicle. Insurers are already incentivised to admit quickly! We query if admitting liability for a replacement vehicle will then prejudice the insurer's position re other heads of damage? It could be hard for a defendant to argue on injury causation if already admitted re hire?
Rates linked to an index and changed annually, plus periodic review	This issue will be a considerable battleground, and the success of these reforms is almost entirely predicated on the level of the rates set. If the rates exceed that achievable by insurers, then this will undermine the point of the reform.

CMA Proposal – Remedy 1C (cont)	LMA view
As per GTA, no recovery of hire costs 24 hours after the completion of the repair or seven days after the submission of the total loss payment	Agree, and it must be made clear to CHO that this is the maximum possible hire term in all circumstances.
No new dispute resolution method	An ADR scheme could help reduce costs for all litigants.
CHO to monitor the duration of the hire, to limit any undue extensions	Meaningless without strict enforcement. But how can CHOs be made to stick to shortest hire periods, when this is fundamentally against their own interests?
CMA not implementing a Portal	We would support a mandatory Portal – an enforcement order would be needed to make CHOs use it, given the necessary protocols would restrict CHOs earning potential.
CMA Proposal – Remedy 1F (Mitigation)	**LMA View**
CHOs to complete a mitigation declaration prior to providing a replacement vehicle to the non-fault claimant	This is necessary, but there is an inherent risk of abuse. Will people actually read/understand it? There is already a mitigation statement required by the GTA which has proved largely useless in curbing credit hire excesses.
No Ban on Referral Fees – they will help 'compete away' any excess in the hire rates	Disagree. Set the rate at the right level, and RFs will be unnecessary as well as unsavoury. We support the ABI position on this issue.
Theory of Harm 4 – Add-ons	
CMA Proposal – 4B	**LMA View**
NCB – mandatory disclosure of an 'average' NCB discount/value,	Problematic as could create false expectations, and won't be relevant to many proposers. Difficult to present to telesales customers?
Disclosure of bonus step-back procedure alongside above	Could be helpful. The order should not be too prescriptive.
Disclosure of the actual or implied price of NCB protection	No problem.
Mandatory statement (PCW and direct versions) on what NCB protects: *No Claims Bonus protection allows you to make one or more claims before your number of No Claims Bonus years falls (please see our step-back procedures for details [with a link to these step-back procedures]*	'One or more' is not very clear – what if only one claim is permitted before a step-back?'
Mandatory statement (PCW and direct versions) on what NCB protection does not protect against: *No Claims Bonus Protection does not protect the*	Agree with the ABI's suggestion: *No Claims Bonus Protection does not protect the overall price if your insurance policy. The price of your insurance policy could still increase in the event of a claim*

overall price of your insurance policy. The price of your insurance policy may increase following an accident even if you were not at fault	
Referral to FCA to consider provision of information on add-ons	Agree
ToH 5 – MFN Clauses	
CMA Proposal	**LMA Views**
Prohibition on wide MFNs and 'equivalent behaviours	Agree. The ban should also extend to other relevant products.
Retain use of 'narrow' MFNs	The decision should be amended to reflect that narrow MFN clauses create an issue with multi-channel insurers, in that direct pricing will always have to match the most expensive aggregator, rather than the cheapest. In effect, narrow MFNs force insurers to price up, rather than down, preventing insurers from competing freely and offering the lowest prices to customers. The LMA would support a ruling that preserves narrow MFNs, but not where the contracting PCW can be undercut by another offering the same product. Otherwise the PCW's 'promise' that they are offering the cheapest quote is only guaranteed by obliging competitors (and the insurer direct) to price upwards to match. This remedy could be implemented by an enforcement order, and a mandatory contractual term for use in all narrow MFNs.