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Private Motor Insurance market investigation
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**Response to the Provisional Decision on Remedies relating to the CMA Private Motor Insurance
Market Investigation**

Submitted by



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NAB Response to CMA's Provisional Decision on Remedies

The National Association of Bodyshops (NAB) is the leading not-for-profit trade association representing the UK body repair sector.

NAB submits the following responses to the CMA's Provisional Decision on Remedies:

1. Overview

Based on its experience it is NAB's opinion that the CMA Provisional Remedies:

2. Fail to address bodyshop sustainability issues
3. Provide only piecemeal remedy solutions and not required motor insurance reform
4. Fail to satisfactorily clarify consumer entitlement at point of purchase and at point of claim
5. Introduce increased bodyshop costs through the provision of replacement cars for non-fault cases
6. Avoid NAB's proposed measures to prevent consumer detriment arising from:
 - Differential experiences between first party and third-party claims
 - Write-off vehicles
 - Prohibition of referral fees
 - Adoption of widespread, unrestrained circumvention measures by the sector
 - Insurer practices that create potential for future repair quality issues

7. Scope of NAB's response

2. Failure to address bodyshop sustainability:

2.1 The CMA's Provisional Decision on Remedies under the Private Motor Insurance investigation do not materially change NAB's view that the tripartite relationship between consumers, insurers and repairers is unbalanced and that consumer detriment will continue unabated as a result of the dysfunctional nature of the motor insurance claims process.

2.2 These Remedies fail to enhance the sustainability of repairers and do little to support long term consumer satisfaction.

3. Piecemeal Remedy solutions:

3.1 NAB is deeply disappointed that it has taken almost three years and considerable expense to arrive at what NAB believe to be a series of narrow, piecemeal Remedies that appear to have focussed on nothing more than a series of "quick wins", apparent from the outset, rather than providing the required comprehensive reform of protocols for both first and third party motor insurance claims.

3.2 It has not gone unnoticed by NAB that private motor insurance costs have moderated during the term of this investigation.

NAB therefore questions whether the prolonged nature of the investigation and the attendant threat of reform will ultimately prove to have been more effective in curbing car insurance premium prices than will the implementation of these Remedies.

NAB suggests the Remedies do not future-proof **all** lower motor insurance premiums once the investigation has been concluded.

3.3 There is little in these Remedies that will prevent future circumvention or distortion measures being introduced by stakeholders.

NAB's submissions to the PMI investigation have consistently called for the appointment of a pan-industry adjudicator to uphold legal, ethical and moral behaviour in the sector. NAB has amplified its vision through proposals submitted for the establishment of "The Motor Insurance Conduct Adjudicator (MICA)" (See Addendum1).

NAB asserts that MICA is an essential component to ensure CMA Remedies are fully accomplished while providing a credible, independent platform to mitigate current and future market dysfunction caused by the creative and opportunistic behaviour of a majority of motor insurers and intermediaries involved in the motor insurance claims chain.

4. Information on consumers' rights following an accident (Remedy A):

4.1 NAB welcomes suggested measures aimed at providing consumers with better information about their rights following an accident. Remedy A, however, is heavily biased towards non-fault claims and does little to prevent consumer detriment arising from unclear policy terms and conditions provided to all policyholders at point of sale and to at fault policyholders at FNOL.

Throughout the investigation, CMA has concluded and asserted that there are no apparent differences in the treatment of first and third party repairs as part of PMI claims. However, Appendix 2.2(4), (5) and (6) emphasise clear divergences arising from PMI policy contractual rights compared to the legal entitlement provided to non-fault cases eg repairer of choice, application of excesses, courtesy car provision, use of alternative repair methods and materials, repair guarantees.

NAB takes this opportunity to restate its concerns about current information being provided to consumers to influence their behaviour and circumvent outcomes which should be noted when considering Appendix 2.2(4), (5) and (6).

- i) Policy wording that requires consumers to use only an approved repairer
- ii) Unclear information concerning requirements to have non-genuine and/or recycled parts used in repairs
- iii) Use of various incentives (or disincentives) to steer policyholders at FNOL including:
 - a) application of differential policy excesses as an incentive to use an approved repairer
 - b) restrictive policy conditions relating to transfer of insurance cover for replacement cars

- c) delayed authorisation of repairs in non-approved repairers
- d) inconsistency in the requirement to use PAS125 repairers
- e) consumers being asked to pay the difference between approved and non-approved terms when choosing a non-approved repairer
- f) misleading consumers with regards to the quality of repairs undertaken in non-approved repairers
- g) promise of opaque repair guarantees
- h) failure to make for provision of temporary replacement vehicles, should a consumer wish to nominate a repairer of their own choice

The differences highlighted at Appendix 2.2(4), (5) and (6) for first and third party claims provision serve only to highlight the capacity for insurers to confuse consumers through the use of selective exclusions and/or workarounds either within PMI policies or at FNOL which increases frictional subrogated claims costs.

4.2 Remedy A also fails to take account of the shortfall in policyholder protection (policyholder protection legislation) when consumers are introduced to CMCs / accident management companies by insurers.

4.3 In addition, Remedy A also fails to:

- i) establish a clear definition of the term 'roadworthiness' from which benchmark all parties involved in an insurance claim can begin to communicate
- ii) enlighten consumers on their rights relating to diminution in vehicle value following repairs
- iii) establish rules of consumer governance and calibrate consumers' expectations and limitations in respect of motor insurance claims
- iv) require the provision of a comprehensive guarantee for insurance body repair work that fully indemnifies consumers

4.4 NAB notes and welcomes the measures outlined at 2.43(21) of the CMA's Provisional Decision on Remedies that suggests *"the CMA may decide, from time to time, to give directions as to compliance with the order, ie to take certain actions or to refrain from taking certain actions for the purpose of carrying out, or ensuring compliance with, the order. In the event that any interested party believed that a party were in breach of the order, it could seek to enforce the order by civil proceedings and obtain compensation for the losses it had suffered as a consequence of the alleged breach. Similarly, pursuant to section 167 of the Act, the CMA may seek to enforce the order by civil proceedings within the context of its duty to monitor orders. The relevant court for enforcing orders would be the High Court"*.

5. Measures to address features relating to replacement vehicles (Remedies 1C & 1F):

5.1 While acknowledging that the scope of the CMA investigation has been restricted to the private car insurance market, NAB does not support the CMA's contention at 2.131 that Remedies 1C and 1F would *"reduce both private and commercial motor insurance premiums"*. Circumvention measures arising from market imbalances relating to these Remedies will, in

NAB's view, create upward pressure on vehicle insurance premiums outside the scope of these Remedies.

5.2 NAB notes that Remedies 1C and 1F require the formal validation of the current non-binding General Terms of Agreement (GTA).

5.3 At 2.106 it is further noted that the current non-binding GTA requires:

- (i) check with the repairer that the repair has been authorised within three working days of the vehicle being accepted by the repairer;
- (ii) make further checks with the repairer after five working days and/or three working days before the hire should have ended; and
- (iii) end the hire duration 24 hours after completion of repairs.

The present non-binding GTA protocol already places a considerable administrative burden on repairers. Further cost liabilities can arise where a non-drivable vehicle awaits repair as a result of:

- (i) Delays in repair authorisation
- (ii) Delays in establishing fault
- (iii) Delays in dealing with total loss cases

Administrative costs arising from this non-binding protocol is currently borne within repairers' wholesale labour rates.

Once the GTA is formalised under CMA governance and is binding on all private motor insurance non-fault claims, an enhancement in repairers' wholesale labour rates will be necessary to offset increased administration overhead costs. Alternatively a supplementary third party administration charge within repairers' wholesale contract terms will be required.

5.4 The end of hire duration, 24 hours after completion of repairs, at 2.107 puts repairers at serious financial risk, particularly in relation to rental charges for high value replacement vehicles.

As noted at 2.106(c), repair duration is *"influenced by a number of uncontrollable variables (eg make and model of the vehicle, extent of the damage to the vehicle, availability of replacement parts, etc)"*.

Repair duration can also be adversely affected by repair demand arising from seasonal demand and unforeseen weather-related incidents. Some of these variables may not be apparent at the time of agreeing repair duration parameters, but may then result in an extended period of hire. The cost burden for this is likely to fall directly upon the repairer.

Moreover, it is likely that those insurers operating vertically integrated arrangements will opt to target certain types of repair jobs that can be more readily accommodated within agreed repair duration parameters, towards integrated facilities to circumvent financial risk. More complex or problematic jobs will be routed to the open repair market as a result.

Further, there are unforeseen delays that can arise from consumers failing to return hire cars within an agreed end of hire period.

5.5 NAB will seek legal advice on this aspect of Remedies 1C and 1F in order to provide guidance on repairers' terms and conditions of trade and also on any restrictive covenants that may be imposed by private motor insurers and CMCs through approved repairer agreements.

5.6 NAB has major concerns that this element of the Remedies could lead to repairers sacrificing safety and quality in order to provide repairs in ways that do not exceed the tariff price unless the Remedies include specific guidance to accommodate exceptional circumstances.

6. Remedy measures not included in CMA proposed package of remedies:

6.1 Retail Charging (Repair costs Remedy 1D: Measures to control non-fault repair costs.)

6.1.1 In light of the decision by CMA to exclude this Remedy measure from its proposed package of remedies, NAB undertakes to engage with the Auto Body Professionals Club, ABI and others to explore ways in which the "*UK Body Repair Industry Guide to Retail Charges*", featured in NAB's Response to the Annotated Issues Statement of the 5th of July & Working Papers (Page 13) and the multilateral hearing with insurers on Wednesday, 26th February 2014 (Page 51.3) can be effectively implemented by the industry for all non-fault claims.

6.2 Measures to control non-fault write-off costs (Remedy 1E)

6.2.1 CMA's failure to provide remedies to regulate the control of write-off vehicles on what appear to be purely commercial rather than consumer detrimental grounds is hugely disappointing. NAB continues to believe that consumer detriment arising from the current non-binding Code of Practice for the Disposal of Motor Vehicle Salvage will persist following this inertia.

6.2.2 NAB will now seek to engage with the Department for Transport, ABI and others to try to bring about much needed reform arising from the disposal and sale of write-off vehicles.

6.3. Prohibition of referral fees (Remedy 1G)

6.3.1 CMA's provisional decision not to pursue this remedy on the grounds of high circumvention risk is regrettable. NAB has highlighted throughout this investigation, the creative and opportunistic behaviour by the majority of those involved in the motor insurance claims chain. Circumvention is at the heart of market dysfunction in the sector which is why NAB has suggested the appointment of a pan-industry adjudicator to uphold legal, ethical and moral behaviour. (See Addendum1)

6.4 Working Paper: Revised evaluation of the possible underprovision of post-accident repair services (theory of harm 2)

6.4.1 NAB notes that arrangements to monitor repair quality will remain a focus but that CMA does not currently require a full remedy.

6.4.2 NAB wishes to respond to the comments made DLG and recorded at 16: "*DLG expressed concern about the emphasis we had placed on the uncorroborated comments of a small minority of repairers (three) and the National Association of Bodyshops (NAB), suggesting that the points raised had not been tested. DLG also said that this evidence was not independent,*

clearly not sufficient to support a finding of an AEC, and was mostly in the form of unsubstantiated anecdotal comments by the repairers and NAB, which in DLG's view could not be said to be representative of the wider repair industry, nor completely unbiased".

By way of clarification, NAB's comments made in its "Response to the Annotated Issues Statement of the 5th of July & Working Papers" related to the potential for **future** consumer detriment to arise from some insurer cost control measures and should **not** therefore be considered as supporting the anecdotal views of "a small minority of repairers" which specifically related to alleged consumer detriment arising from repairs being currently carried out.

To quote specifically from NAB's Response to Annotated Issues Statement (RAIS):

"We suggest that the high repair satisfaction levels, identified in your research, are only achieved as a result of the ethical, moral and professional position taken by bodyshops, and not as a result of current commercial relationships that exist between bodyshops and insurers. This is not a sustainable position for our sector, or for long term consumer satisfaction."

*"Insurer's cost control measures can drive incorrect behaviour in the repair process, with certain business models currently being operated by some insurers, having a capacity to drive entirely the wrong technical behaviour within the repair process and will result in **future consumer detriment**. With the current advances in vehicle technology, excessive, uninformed cost cutting decisions by some insurer staff are likely to have considerable safety implications for trusting, but unsuspecting consumers."*

NAB stands by these statements and reiterates its RAIS warning that: **"There is significant risk to consumers if the repair sector does not have sufficient revenue to reinvest in training, skills and equipment, to meet the advancing needs of modern vehicle repair, it is a point of indemnity that, once repaired, the vehicle should perform in any subsequent impact, the way the manufacturer intended."**

6.4.3 NAB is encouraged by the following comments by CMA at 42: *"We hope that by shining a light on industry practices and by making these observations we may encourage insurers and others involved in managing repairs to improve the ways in which they ensure that consumers receive the repairs to which they are entitled."*

6.4.4 NAB will therefore now seek to engage with ABI and others with a view to establishing a robust protocol to:

- i) establish a clear definition of the term "roadworthiness"
- ii) determine an agreed body repair industry standard for all private motor insurance repairs
- iii) consider post repair sample audit criteria for private motor insurance repairs
- iv) develop a Motor Insurance Consumers' Code of Practice to underpin sector best practice and provide consumer complaints, conciliation and arbitration procedures
- v) review monopoly supplier value propositions operating in the sector

7. NAB responses

7.1 These responses have been restricted to only those aspects of Remedies and discounted remedy measures where NAB has felt able to provide informed clarity / comment.

ADDENDUM 1

Rebuilding Consumer Confidence in the Motor Insurance Market by Defining Fair Rules for All

Proposals for the establishment of The Motor Insurance Conduct Adjudicator

(MICA)

in relation to the Private Motor Insurance Market Investigation

MICA

Blueprint for an Independent Lead Body submitted by The National Association of Bodyshops (NAB), The Retail Motor Industry Federation (RMI) and The Vehicle Builders and Repairers Association (VBRA) for consideration by the UK Competition Commission.

Background

NAB, RMI and VBRA submit that the behaviour of motor insurers leading up to (and continuing throughout) the investigation of the Private Motor Insurance market by the Competition Commission has breached governance standards required by the Financial Conduct Authority (FCA) by:

- failing to treat consumers fairly
- behaving in ways that have risked the integrity of the market

We believe FCA and its predecessors have fallen short of protecting consumers by failing to:

- carry out assessments of motor insurers that would have identified misconduct
- monitor products and other issues to ensure motor insurers and others involved in the motor insurance claims process play fair and don't compromise consumer interests
- respond quickly and decisively to events or problems that have threatened the integrity of the industry

We suggest FCA and its predecessors have allowed providers of statutory motor insurance, through the process of subrogation, to conduct opaque relationships with each other through their:

- manipulating consumer rights at a time of extreme distress
- profiting from rebates, referral fees and discounts
- unrestrained use of intermediaries and suppliers (either offset or wholly owned)
- operating unfair tax avoidance measures

For more than two decades, NAB, RMI, VBRA and others have recorded concerns about the dysfunctional nature of the motor insurance market with various government departments, The FCA (and its predecessor) and The Office of Fair Trading.

Until the Competition Commission (CC) Private Motor Insurance (PMI) investigation, these concerns have gone largely unnoticed.

NAB's submissions to the PMI investigation have consistently promoted a vision of a pan-industry adjudicator - an Independent Lead Body - to uphold legal, ethical and moral behaviour in the sector. We are delighted to have been given the opportunity by CC to amplify this vision through the proposed establishment of "The Motor Insurance Conduct Adjudicator (MICA)".

These proposals enjoy the unequivocal support of the NAB, RMI and VBRA.

We suggest that MICA is an essential component to ensure CC remedies (aimed at rebuilding consumer confidence in the motor insurance sector by defining fair rules for all) are fully accomplished while providing a credible, independent platform to mitigate current and future market dysfunction.

In addition, given the continued capacity for creative and opportunistic behaviour by the majority of motor insurers and various other intermediaries*, the requirement for an independent Adjudicator to define and enforce market rules, thus bringing about a more appropriate behaviour, has never been more apparent.

We believe our submission can provide a catalyst for key industry stakeholders to collaborate and further define and refine this proposed Independent Lead Body.

**The following represent recent examples of current workarounds operating in the car insurance and motor claims sectors while the CC's PMI investigation is being conducted. They are in addition to those already highlighted in previous NAB submissions. These ongoing actions demonstrate elements of the insurance industry's desire to drive at fault insurers' costs ever higher and illustrate that many insurers are the major contributors to escalating claims costs.*

Some NAB members are voicing concerns about an intermediary who is acting on instructions of one of the largest insurers to require repairers to obtain policyholders' signatures to a legally binding contract tying policyholders into a credit repair agreement. NAB is currently seeking advice from its lawyers into the legal implications of such requests - NAB is of the opinion that repairers are not legally empowered to offer or facilitate this service on behalf of the insurer. NAB members who are affected are unable to refuse to accommodate such requests for fear of the insurer removing their principal contract.

Another large insurer has recently launched a pricing model for non-fault claims that requires the repairer to apply an inflated labour rate for estimates that are subsequently approved by the insurer's client. The repairer is then required to issue a credit note back to the insurer which is presumably is masked from the at-fault insurer who will be subsequently be meeting the cost of repair.

Other examples of PMI ongoing market manipulation identified by NAB, but not reported previously, include:

- *"Free" insurance cover provided by motor manufacturers as part of new vehicle sales incentives*
- *Opaque behaviour surrounding the insurance group rating system (how does it work?)*
- *Cost shifting of third party courtesy car insurance cover from insurer to bodyshops*

NAB, RMI and VBRA urge the Competition Commission to bring about long overdue and much needed governance reforms within the PMI market.

Contents:

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- 2) MICA's Mission
- 3) Role of MICA
- 4) MICA's Framework
- 5) The Motor Insurance Code of Conduct
- 6) The Motor Insurance Consumer Code of Practice
- 7) Annual Report
- 8) MICA's funding

1) Proposals for the establishment of MICA

Our vision is that MICA will:

- i) Appoint an Adjudicator* to enforce high standards of discipline and conduct within the UK Motor Insurance Market together with the support of a representative Consultative Board comprising key stakeholders (designated participants)
- ii) Define the scope of designated participants
- iii) Accredit designated participants against well-developed standards that meet their ongoing needs and those of their consumers, customers and other stakeholders
- iv) Define and enforce market rules of interaction between designated participants and between designated participants and consumers and other stakeholders.
- v) Have a responsibility to investigate any issues that restrict the ability of designated participants to execute duties or perform services on behalf of consumers, customers and other stakeholders
- vi) Maintain a high public profile to gain consumer awareness and confidence
- vii) Review, when required all components of motor insurance and to investigate, when required, parts that give rise to concern over consumer detriment.

**Comparable to the role of Adjudicator appointed under the Groceries Code whose status is outlined at:*

<http://www.legislation.gov.uk/ukpga/2013/19/schedule/1/enacted>

2) **MICA's Mission**

"MICA seeks to ensure consumers pay the lowest price for motor insurance commensurate with safeguarding policyholder indemnity"

3) **MICA's Role**

It is anticipated that the scope of MICA will be to:

- i) Provide guidance to designated participants and consumers relating to the provision of motor insurance and associated claims
- ii) Enforce the implementation of the CC PMI investigation remedies and outcomes
- iii) Ensure lawful governance is observed by designated participants and by designated participants and consumers at all times
- iv) Work with UK and EC authorities on competition, compliance and regulatory matters relating to the supply of motor insurance and associated claims services
- v) Establish standards of governance for motor insurers and associated claims services through the introduction of a Motor Insurance Code of Conduct
- vi) Consult, promote and enforce Code compliance with designated participants
- vii) Implement and enforce agreements between designated participants
- viii) Arbitrate where required in disputes between designated participants
- ix) Investigate breaches of governance and behaviour of designated participants**
- x) Impose sanctions and penalties for breaches of governance and behaviour of designated participants
- xi) Publicise outcomes of investigations
- xii) Promote a Motor Insurance Consumer Code of Practice covering motor insurance marketing, pricing, policy scope and coverage and motor insurance claims processes

***Using powers comparable to those outlined within the Groceries Code at:*

<http://www.legislation.gov.uk/ukpga/2013/19/schedule/2/enacted>

4) **MICA's Framework**

Designated participants to include:

- i) Motor insurers
- ii) Motor Insurance Brokers
- iii) PCWs
- iv) CMCs including Accident Management Companies, Fleet Management Companies
- v) Solicitors handling motor insurance claims
- vi) Car Hire Companies
- vii) Vehicle Body Repairers
- viii) Salvage Operators
- ix) Recovery Operators
- x) Windscreen Repairers

5) The Motor Insurance Code of Conduct

MICA will consult with designated participants to publish and enforce a Motor Insurance Code of Conduct aimed at addressing governance in the sector. It will cover relationships between designated participants that include:

- i) Insurer - Insurer
- ii) Insurer - Broker
- iii) Insurer - PCW
- iv) Insurer - CMC
- v) Insurer - Repairer
- vi) Insurer - Solicitors
- vii) Insurer - Salvage Operators
- viii) Insurer - Car Hire Companies
- ix) Insurer – Other designated participants
- x) CMC - Repairer
- xi) Designated Participants - Consumers

The Code seeks to:

- i) Affirm the powers of MICA
- ii) Reinforce the principles under which motor insurance is provided and associated claims are transacted
- iii) Define the framework, standards and responsibilities of designated participants
- iv) Define and interpret terminology used within the sector
- v) Reinforce remedies and outcomes arising from the CC PMI Investigation
- vi) Establish rules for fair and lawful dealing between designated participants (including agreements made between designated participants and the enforced use of data, materials and services that form part of any agreements).
- vii) Set out operational and training compliance standards required of designated participants
- viii) Outline dispute resolution procedures
- ix) Define best practice requirements to safeguard consumers: The Motor Insurance Consumers' Code of Practice

6) The Motor Insurance Consumers' Code of Practice

The Motor Insurance Code of Conduct requires that MICA's Adjudicator will publish and oversee the operation of a Motor Insurance Consumers' Code of Practice that will:

- i) Explain motor insurance policy wording and terminology in plain English
- ii) Clarify consumers' rights when purchasing motor insurance
- iii) Clarify consumers' rights when making a motor insurance claim
- iv) Establish rules of consumer governance and calibrate consumers' expectations and limitations in respect of motor insurance claims
- v) Provide a comprehensive guarantee for insurance body repair work that fully indemnifies consumers and which embraces random post repair inspection audits
- vi) Provide a complaints procedure including a conciliation and arbitration service
- vii) Publish results of post repair audits and analysis of consumer complaints data for insurance body repair work

7) **Annual Report**

MICA will publish an Annual Report that will provide:

- i) A record of MICA's work within the period under consideration
- ii) Summaries of disputes and investigations that have been referred to the Adjudicator by designated participants and an outline of any recommendations or remedies made by the Adjudicator
- iii) A review of post repair audits
- iv) Summaries of consumer complaints referred to the Adjudicator by consumers and an outline of any recommendations or remedies made by the Adjudicator

8) **MICA's Funding**

It is anticipated that MICA's funding should be met by a levy on the motor insurance industry given their scale and market influence. Costs to insurers may be mitigated through savings through the imposition of Consumer Rules of Governance (identified at 6 iv) which could, for example, seek to limit whiplash claims by introducing defined parameters before any claim for whiplash can be considered.

While NAB does not have access to the actual costs of low impact speed personal injury (PI) claims to insurers, the phenomenon is now widely being reported as "the fraud of choice".

<http://www.telegraph.co.uk/finance/personalfinance/insurance/motorinsurance/10724486/Whiplash-becoming-the-fraud-of-choice.html>

Insurers have been major contributors towards the financial burden of such claims by referring their own policyholders to solicitors and actively encouraging them to pursue PI claims in return for referral commissions.

The time has now come to introduce a common sense set of rules for insurers and other stakeholders that will reform this behaviour. We suggest this will require Government intervention.

A funding model supporting the role of Adjudicator appointed under the Groceries Code can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263723/Levy_request_to_retailers_13-14_and_14-15.pdf

We believe this provides a starting point for an appropriate framework for MICA

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