Redde plc (formerly Helphire Group Plc)

Private Motor Insurance (PMI) – Market Investigation

Response to the CMA's Provisional Decision on Remedies (PDR) and the associated working papers

PART 1 - Overview

Redde plc will only concern itself in this response with the CMA's proposed remedies which have a direct effect on its business, namely those relating to ToH1; this response does not comment on (but nor does it by omission endorse) the CMA's proposed remedies concerning ToH 4 or 5.

1. Executive summary

The main remedy said to address ToH1(1C) – rests, in Redde plc's view, on an exaggerated AEC and a misunderstanding of how the provision of credit hire services works.

The courts have through a number of binding precedents ruled that a customer is entitled to a like-for-like TRV and that the recoverable rate of hire is BHR. Remedy 1(C) will, by the CMA's own admission, reduce the right of the customer in respect of the claim for loss of use without primary legislation.

Further, this draconian and highly prescriptive remedy, as proposed, would normally only ever be contemplated in markets where the businesses concerned are clearly dominant (utilities etc). None of the parties affected by this remedy, namely CHOs, even begin to approach this threshold; on the contrary, with limited exceptions, most are SMEs. It is perverse that the impact of this remedy could, quite feasibly, enable much more powerful businesses (insurers) to undermine the consumer benefits offered by CHOs.

The 'Dual Cap' remedy is, therefore, not justified and is a disproportionate response to an AEC that, even on the CMA's own calculation, costs each policyholder less than a pint of beer a year.

Redde plc remains deeply concerned that the AEC in respect of ToH1 is inflated and this should be addressed without further delay. The inclusion of costs borne by commercial insurers in a market analysis of PMI is a case in point. While the CMA may be able to take into account (under section 134 of the Enterprise Act 2002) the effects of a feature of the PMI market on the supply of wider products and services, this discretion does not permit the CMA simply to add potential costs associated with other markets to its PMI AEC for the purposes of justifying remedies in that market.

The remedy as currently drawn also risks harming non-fault victims as it does not take sufficient account of the incentives and ability of PMI providers to delay and avoid their legal obligations and compromise the currently effective consumer protections represented by credit hire.

Redde plc would therefore urge the CMA to abandon this remedy and instead use the ABI GTA framework that has operated successfully for many years and to use a rate - consistent with the common law rights of the innocent party - based on basic hire rates with discounts that reflect reductions in frictional costs to regulate this industry

The other remedies proposed in respect of ToH 1(Remedies A and 1F) have some positive aspects and, with consultation and modification, could help to improve the lot of the consumer and reduce frictional costs.

2. The AEC for ToH1

Redde plc does not accept that the AEC - as stated in the relevant working paper - is valid. It follows that any remedy implemented on the basis of the AEC cannot be justified.

In Redde plc's view, the AEC - as calculated by the CMA - is significantly higher than it should be for the following reasons:

- The issue of claims against Commercial Insurers has been ignored. The reduction of 25% should be applied to the detriment to the PMI market.
- The Credit Hire rate used in the calculation is too high
- The Direct hire rate used in the calculation is too low

Further, while Redde plc acknowledges the CMA's desire to reduce costs in the provision of PMI, it is concerned that the CMA continues to approach the investigation on an incorrect premise. The price for TRVs paid by third parties is not simply a question of supply; it represents a valuation of a loss of use claim made by a consumer determined by common law. In Redde plc's view, the CMA's proposed remedies will curtail the accident victim's access to redress in line with their rights under common law, with no guarantee that any cost savings, which are at best uncertain, will be passed on to consumers in the form of reduced premiums.

3. Remedies not taken forward

Redde plc is satisfied that certain remedies contemplated by the CMA in respect of ToH 1 (such as Remedy 1A – first party insurance for TRVs) have been discounted. Although Redde plc does not entirely share the CMA’s rationale, it fully supports the CMA in not pursuing these remedies further.

To ensure a focused response to the PDR, Redde plc does not intend to comment further on these discontinued remedies at this stage; however, the right to comment on these remedies in future is reserved should representations from others lead the CMA to reinstate one or other of these remedies.

4. Provisional remedies - summary

4.1 Remedy A

Redde plc is broadly supportive of **Remedy A**; however Redde plc would make the following headline observations with regard to the implementation of the remedy:

- The language used in the disclosures and the mechanisms must be closely monitored by the appropriate regulator, as well as the MoJ and FCA.

- The draft notice has incorrectly singled out credit hire and revised wording (as proposed by Redde plc in this response) should be used to address this issue.

- Consumers should also be advised of their right to dispute their liability for the accident and the circumstances under which insurers can admit liability despite their views.

4.2 Remedy 1C

The CMA has, from the outset, treated the provision of TRVs purely as a matter of the supply of services to the insurance industry. In fact, it is the valuation of a customer's claim for loss of use. This claim is an asset of the customer, like a car or a house, and the rate cap proposals devalue that asset. The highest courts have decided repeatedly how a customer's claim should be valued; it is the reasonable cost of hiring a replacement in the open market.

The Courts have also decided that the provision of an equivalent vehicle should take into account the 'prestige' value of the damaged vehicle. The customer should not, as the CMA has suggested in the PDR, be obliged to 'make do' with a lesser vehicle, simply because it its a TRV. The CMA seeks through remedy 1(C) to circumvent the rule of law without legislation.

Remedy 1C has, on its face, certain merits as the dual rate cap provides an incentive for insurers to admit liability; however, the proposed remedy is deficient in a number of critical areas, for example:

- There is no practical incentive on insurers to pay claims (notwithstanding the insurer having accepted liability and secured the lower credit hire rate at an early stage) as there is no further sanction in circumstances where delay on the part of the insurer results in the case going beyond 60 days.One possible improvement to remedy would be that after 90 days the claim should revert to common law and precedent.
- For a number of reasons explored in this response, calculating the capped credit hire rates by reference to direct hire rates is not appropriate.
- If the rates charged to the consumer (as opposed to appearing in the payment pack) had additional charges, agreements could no longer be exempt as the CCA states that any such charges are not allowed in exempt agreements and they automatically become regulated.

4.3 Remedy 1F

Remedy 1F is superficially attractive; however, it is unlikely to improve consumers' position materially. In Redde plc's view:

- A consumer should not be forced to sign a mitigation statement in support of the claim.
- This statement is no different in construction than existing statements and insurers still dispute need.
- The CMA should avoid mandating a physical signature as part of the remedy. Most insurance contracts and some CHO agreements are ratified electronically and is supported in law.

If the CMA adopted a strengthened GTA the need statement would be incorporated. If, as proposed below, a challenge on 'need' meant that the claim could be dropped from the process and move forward at BHR, this would reduce frictional costs. The courts could, if need were not proven, either dismiss the claim or apply the rates as per the enforcement order.

PART 2 – Detailed comments

PDR - Separation of cost liability and cost control (ToH 1)

5. Information on consumer's rights (Remedy A)

5.1 Redde plc is broadly supportive of Remedy A. It welcomes that, for the first time, insurers and their outsourced suppliers will be compelled to inform consumers of their legal rights.

5.2 This remedy is needed to address unfair behaviours on the part of certain insurers to discourage consumers from pursuing appropriate redress. Redde plc has seen many examples of correspondence from certain insurers that, based on any reasonable interpretation, attempt to bully consumers into relinquishing their legal entitlements using aggressive and intimidatory language that has been criticised by the Courts (Copley-v-Madden)[1]. It follows that the implementation of and language used in the disclosures and the mechanisms should be closely monitored by regulators, the MoJ and FCA.

5.3 Further, in taking this remedy forward, Redde plc would draw the CMA's attention to the fact that the language used in the draft notice has erroneously singled out credit hire (see text below).

> *"You may be provided with a replacement vehicle on credit terms (and you might be held liable for the costs of the hire should you ultimately be considered at fault for the accident) or you may be provided with a replacement vehicle by your insurer or by the other driver's insurer"*

In Redde plc's view, it is entirely possible that an at-fault insurer could seek redress in certain circumstances, especially fraud, so the statement should not be limited to credit hire. CHOs, like insurers, do not generally pursue customers unless they have been deliberately misled. A claimant found to be fraudulent might face a claim for the recovery of a courtesy car or other replacement vehicle costs from an insurer. So, to

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[1] An excerpt from the judgement in Copley, this wording was described by the judge as having an 'unpleasant and threatening tone'. The insurer was told in no uncertain terms to stop sending letters in this vein.

"Should you elect not to accept the offer of our services, but instead utilise credit repair or credit hire facilities from another source, then we will refuse payment of any such claim made on your behalf.

You will appreciate that if we do refuse payment of the claim for credit hire and/or credit repair, then you may be found liable for any payment that the credit hirer/repairer does not recover from us. No doubt, this will be explained to you when you sign the proposed agreement. We urge you to read the terms of the agreement very carefully.

The reason for this is that you have a common-law duty to minimise your loss when making a claim and by choosing to ignore our offer and continuing with repairs and/or hire on a credit basis, you would clearly be failing to satisfy that duty.

We reserve the right to bring this letter to the attention of the Court in any subsequent legal action brought against our Policyholder or us."

ensure that the statement is properly representative of all potentially applicable scenarios, it should read:

> "*You may be provided with a replacement vehicle on credit terms or you may be provided with a replacement vehicle by your insurer or by the other driver's insurer. You might, under certain circumstances., be liable for the cost of any vehicle provided should you be ultimately be considered to be at fault for the accident."*

5.4 Finally, in Redde plc's experience, consumers do not necessarily understand their rights in respect of the admission of liability. In some situations, insurers can choose to admit liability despite the views of the policyholder. As part of the notice, and the FAQs, the consumer's rights (and responsibilities) should be laid out more clearly. This will aid insurers and reduce the AEC because it will include the need for At-Fault drivers to report accidents and to respond to their insurer's enquiries., currently a real issue for the insurance industry.

6. Measures to address features relating to replacement vehicles (Remedy 1C)

6.1 Subject to the points made in this response regarding the size of the AEC which is driving this remedy, as well as some concerns as to the potential for its abuse by insurers, Remedy 1C has, on its face, certain merits.

Potential for abuse by insurers

6.2 Redde plc supports the fact that the CMA has acknowledged the benefits of the GTA by adopting many of its tenets in its proposed remedy. Further, Redde plc acknowledges that a dual rate cap provides an incentive for insurers to admit liability where appropriate to do so. At the same time, Redde plc has a number of serious reservations with regard to the implementation of such a remedy. These concerns are as follows:

6.3 Once a case has gone beyond 60 days and the LPP has been applied, no further sanction is available.

6.4 In such circumstances, as the remedy is currently described, the third party insurer (**TPI**) can sit on its hands and wait for the credit hire operator (**CHO**) to litigate, safe in the knowledge that: a) the rate it pays will not change; b) statutory (or any other) interest cannot apply; and c) a spot (basic hire) rate cannot apply.

6.5 In order to address this potential for abuse and to prevent insurers simply trying to 'starve out' CHOs (or CMCs) we strongly recommend that should this remedy be adopted, if payment goes beyond 90 days then the CMA's rate capping ceases to apply.

6.6 Should a CHO seek to circumvent this in some way by deliberately making it difficult for the TPI to pay on a timely basis, the courts are well-equipped to consider this and to award the CMA rate instead; also to punish the CHO by awarding costs to the TPI if the CHO is being obdurate without good reason. This means that the rate cap should apply to the payment pack, not the consumer agreement. No note to the judiciary is required, any defendant TPI would adduce the CMA's rates as evidence before the court if the CHO flagrantly prevented settlement without good reason.

6.7 Much of the frictional cost in this sector is generated by insurers submitting technical defences to avoid the consequences of their policyholder's negligence. Insurers are also

prone to dispute need, especially in the case of 'prestige' vehicles. The RTA protocol for personal injury has addressed this by allowing cases to fall out of the portal if liability is disputed, or a technical defence raised. Redde plc suggests that the order should follow this principle. So a claim should leave the CMA enforced protocol if:

a) It is not paid in 90 days (timed out)

b) Liability is not admitted after 28 days

c) Need is disputed where a mitigation statement is provided

d) A technical defence (enforceability or similar) is made

In all these circumstances, the claim should be allowed to proceed according to common law and precedent.

Risk that capped rates will be set at artificially low levels

6.8 Basing capped rates on direct hire rates is not appropriate. Redde plc has previously made extensive reasoned submissions on why direct hire rates are artificially low and should not be used by the CMA as a benchmark and would urge the CMA to revisit its analysis.

6.9 Widespread redactions to the material relied by the CMA to draw its conclusions in respect of any comparison of credit hire and direct hire rates renders any third party empirical analysis impossible. As the source of these rates cannot be determined, this precludes objective and open assessment to the point where it is impossible even to estimate that the rates are truly representative.

6.10 Contrary to the CMA's explanation in the relevant working paper (concerning the estimation of the detriment from the separation of cost liability and cost control), Redde plc considers that it has presented very clear evidence to the CMA to explain why direct hire rates have been recorded at artificially low levels.

6.11 In this regard, Redde plc has previously demonstrated in its submissions that the leading direct hire provider does not make a profit at an operational level from the relevant activity. In such circumstances, the CMA's failure to explore this market distortion in more detail and to canvass more suppliers for comparator rates appears unreasonable, given the likely impact of this feature on the remedy in question.

6.12 If the rate caps and LPPs were to apply to the contract with the consumer, this might place entirely unreasonable contractual requirements on providers in the market. Under UK consumer law an exempt agreement cannot charge arrangement fees or interest or any additional charges. The dual rate cap, the fixed fee element and the LPPs all offend these regulations. Suppliers would have to issue regulated agreements with significantly more stringent requirements, the need to apply for a CCA licence and submit to yet another regulatory regime. Defendant solicitors would seize on the opportunity for satellite litigation and the next chapter in the long history of credit hire litigation would commence. The CMA's desire to reduce frictional costs would be negated.

6.13 Finally, other aspects of the CMA's AEC calculation are illogical and inconsistent with the focus of the investigation. An important example is the CMA's refusal to discount that part of the purported AEC attributable to commercial insurance (which has no bearing on PMI). The CMA argues that it is entitled to adopt this approach because section 134(1) (and 134(5)) of the Enterprise Act 2002 entitles the CMA to:

"…decide whether any feature, or combination of features, of each relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services…".

6.14 However, in Redde plc's view, the CMA is misdirecting itself in this regard. First, the CMA is emphatic that the AEC (in which the CMA has, so far, included significant costs attributable to commercial insurance policies) concerns a *"…net detriment to consumers"* only.[2] This is quite clearly not the case if the CMA adds to the relevant AEC the potential impact of separation on commercial insurance. Second, while section 134 might permit the CMA to consider the impact of any feature of one market under review (PMI) on another market, it does not permit the CMA to inflate artificially the size of the AEC in PMI to support a remedy in that market.

6.15 This interpretation of the Enterprise Act is too crude, particularly as the CMA has undertaken no analysis whatsoever of the provision of commercial insurance as part of this investigation. The CMA is supposed to be undertaking an empirical analysis of the effects of separation on PMI; the discretion conferred by section 134 does not entitle the CMA to include potential commercial insurance costs in an AEC in the PMI market, particularly where the size of the AEC has an obvious bearing on any remedy (such as a price cap) involving some level of price regulation. While the CMA might, in time, investigate the commercial insurance market, the CMA has erred in including commercial data in its assessment of any perceived AEC in the PMI market and should revisit its calculation of the AEC accordingly.

Should the CMA insist on the inclusion of a potential cost impact on commercial insurance then the presentation of the AEC – given that it is clearly expressed to relate to PMI - must change. For the CMA to insist that the detriment to the consumer through higher premiums is £113m when it has tacitly recognised the commercial insurance issue is not correct. The CMA **must** say only that the effect on PMI is £65m for Credit Hire and £20m for Credit Repair and write-offs.

This means that the AEC for Credit Hire in PMI is £2.67 per PMI policy per annum. This is *de minimis.* For the service that the consumer gets, and would not have without the existence of the credit hire industry, this is astonishingly good value. We repeat our offer made at the bilateral meeting to conduct a consumer survey with objective wording to ask consumers whether £2.67 is a fair price to pay to get ready access to a TRV following a non-fault accident.

Scope of Remedy 1C

6.16 When a CMC or CHO is forced to recover hire charges through litigation, for whatever reason the charges are not (routinely) subrogated and the solicitor is instructed by the claimant. This is actually how Credit Hire started, and this has been explained to the CMA and the OFT repeatedly. It is his claim that is pursued, and not the compromise of the ABI GTA. The courts recognise the ABI GTA for what it is, a compromise between CHOs and insurers to resolve claims through an agreed protocol. These rates have no place in litigation. It follows that if solicitors are not included in this enforcement order then circumvention is certain by this route. If solicitors are included then the order should provide (see above) that if the claim leaves the CMA enforced protocol it can be

[2] See para. 2 of WP 'Estimation of the detriment from the separation of cost liability and cost control (theory of harm 1)'

taken forward according to existing law, but a court can consider the party's adherence to the protocol in awarding rate, and costs.

How should the rate cap be set

6.17 As previously indicated by Redde plc, the use of direct hire rates in setting rate caps for credit hire is entirely inappropriate. Redde plc would support a rate based on daily average retail rates with a standard scale of reduction for hires of (say) 1-7, 7-28 and 28+ days. That this was not the 'Top spot rate' would not concern us greatly as this (and the full credit hire rate for the impecunious client) would still be available should the insurer not settle the claim promptly. We would suggest one single rating structure for the majority of the country (geographically) with three 'escalators'. Inside the M25, major conurbations and remote areas. The latter could be defined by the same method commonly used in determining postage. This would approximate to the current consumer entitlement and be a significant contribution to reducing the cost of TRVs by preventing unregulated organisations charging high rates and reducing frictional costs. The small 'rogue' CHO element would be caught by the order.

6.18 The market would see a rapid growth in protocols between medium and large CHOs and insurers, reducing TRV costs even further without, in any way, affecting consumer rights and the undoubted benefits of credit hire.

6.19 To take this further, the CMA is aware of the protocol currently in discussion between CHOs and insurers. It would be a simple matter to have a further discount to the rate (justified by reduction in CHO administration costs) for cases notified, and settled within, a credit hire portal.

6.20 Redde plc's suggestion provides for a discount to the Basic Hire Rate (BHR) through the portal. A BHR based on rates of hire available to the public - being average as opposed to 'top spot' rates with escalators that are easily set and calculated. If the case does not settle then the existing common law applies save that claimants, defendants and the courts can examine at behaviour under the CMA Protocol and apply rates (and award costs) taking that into account.

6.21 The logical body to oversee this process is the ABI GTA Technical Committee. This could be funded by a levy on each hire charge, collected by insurers (perhaps) and paid equally by CHOs and insurers. Replacing the GTA 'fees' currently split between the participating parties in the ABI GTA. The levy could cover the running of the ABI GTA and the development, and running costs of the portal. This could be set by the CMA at the outset base on representations made by the Technical Committee and reviewed each year, along with the rates themselves. It would be possible for the Committee to eject or suspend CHOs or insurers who failed to adhere to the CMA Protocol as laid down. The entire market would be subject to dispute resolution, audit etc. thereby creating a regulated environment for the provision of TRVs and associated services.

7. Measures to address features relating to replacement vehicles (Remedy 1F)pp

7.1. Although the principle behind Remedy 1F is commendable, it is not clear what additional benefit this remedy will deliver in practice.

7.2. For example, the mitigation statement is not significantly different to that currently employed by the ABI GTA. If this is not binding upon the TPI as part of the enforcement notice there is no reason why it should reduce frictional cost.

7.3. Further, it seems disproportionate that an innocent consumer should be forced, by order, to make a statement of why he needs to temporarily replace an asset that he has been deprived of through no fault of his own. There is a risk that this remedy will provoke significant objections from consumer groups.

PART 3 – Further observations

Estimation of the detriment from the separation of cost liability and cost control (theory of harm 1)

1. In the introduction[3], and elsewhere[4] the CMA continues to assert the simplistic view that as the revenues earned by insurers are less than the total increase in costs, there must be an AEC. This might be true if all insurers had equal revenue earned and costs incurred; however, some insurers (the so-called 'Direct' insurers) have greater customer intimacy. This means they are: a) better able to identify non-fault accidents and to offer services and b) better able to intervene in another insurer's non-fault opportunities. This is competition[5]. As a result, the more efficient insurers can offer lower premiums; less efficient insurers must, in turn, reduce their premiums or lose market share. To maintain profitability they will have to find savings in other areas. It follows that the full effect of the cost differential will not flow to the consumer through the mechanism of increased premiums. The CMA has had this factor pointed out previously[6].

It also appears that the CMA has failed to consider other academic research that shows - through profit persistency and indices of competition - that the PMI market is not as competitive as it should be. Add to this empirical evidence that premiums rose at a time that the level of credit hire and repair has been falling and have recently rapidly declined (as predicted by many in submissions) when non-fault activities have been largely static, Redde plc does not accept that a case has been properly established by the CMA for an AEC (at least one attributable to the separation of cost liability and cost control) at all.

2. The CMA has now estimated the difference between Credit Hire and Direct Hire at £566. There are a number of factors not taken into account in this estimate despite the attention of the CMA being drawn to these errors on numerous occasions.

2.1. The average credit hire rate includes bills sent to Non-GTA insurers, and non-insurers. These 'Non-GTA rates' are significantly higher than GTA rates, though (in the main) a negotiation ensues and the 'rack rate' is not often paid by the third party.

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[3] Page 1 paragraph 2

[4] page 2 para 10

[5] This is recognised in the Estimation of the detriment paper page 8 footnote 7.

[6] e.g. HHG Response to Findings para 4.20

Non-GTA parties do pay more than GTA - and suffer higher frictional costs - otherwise insurers would not sign up to the protocol.. These rates should not be part of the AEC calculation.

2.2. Direct hire rates are artificially low. We have shown the CMA that CHOs make losses on direct hires and use them as a 'loss leader' to protect relationships with insurers. Further, the largest provider of direct hire vehicles loses money at an operational level and, according to Redde plc's analysis, only returns a profit owing to its global scale of car purchasing[7]. The superficial analysis in paragraphs 73 to 80 suggests that the CMA has failed to weigh properly the fundamental aspects of this model.

2.3. The mechanism of the AEC proposed by the CMA is that the purported cost differential causes higher premiums to be charged to PMI customers. The size of the AEC was calculated by taking the non-fault accident referrals of certain **Private Motor Insurers** scaled up to cover the whole of the Private Motor Market. It has pointed out on a number of occasions that 25% of all claims generated by the PMI insurers has a **commercial entity** as the third party. The CMA has incorrectly attributed the reason for this point being raised as the fact that this is an investigation of the PMI market alone[8]. That is simply not the case. If the claim is against a commercial entity then the purported over-costing cannot under any circumstances contribute to the PMI AEC as laid out by the CMA. It is possible, of course, to theorise that the reverse transaction, commercial insurers referring claims for non-fault "over-costed" services is not taken into account in the market size calculation and these claims are largely against PMI insurers, however, his is not the case because commercial entities do not (as a rule) use CMCs and CHOs. The reasons are complex (e.g. difficulties of proving need in a fleet situation Beechwood-v-Hoyer, Aviva-v-West Midlands transport) and not for this paper. The CMA has provided no valid reason why the AEC should not be discounted by a further 25% to take this factor into account. Should the CMA wish to continue with its assertion then, in order to be accurate in its description of the AEC, the effect on the PMI Market is £65m for Credit Hire and £20m for Credit Repair and Salvage. Portraying the detriment in the PMI Market (the subject of the inquiry) at £113m is not correct.

2.4. Redde plc is aware that others have tabled similar issues regarding the quantification of the AEC. It is our contention that if these issues were properly investigated and accounted for, the AEC would be significantly smaller, thus calling into question the proportionality of the remedies proposed by the CMA.

3. Redde plc considers that the CMA's comments at paragraph 52 (page 15) of the PDR suggest a worrying disregard for the common law standard that lies behind the credit hire model. The observation:

" *What may not always be matched precisely is the 'prestige' of a car. Although this may be an important characteristic for some claimants, its relevance appears to be*

[7] See Helphire submission following the bilateral meeting.

[8] Para 36 page 10

lower than other features and there is room for doubt about how important more precise matching is for the relatively short period of a typical replacement car hire"

implies that the CMA places no value against decades of common law precedent in its drive to reduce costs for insurers. The period of the loss of use is irrelevant when considering the **rights** of the innocent party. A consumer that owns, or uses a prestige car suffers the depreciation, increased insurance, and often increased road fund licence, in driving a prestige car. The courts have, again and again, supported the view that a claimant is legally entitled to an equivalent replacement. It is unacceptable that the CMA should dismiss or undervalue this principle. It is one thing to look at controlling the costs of a **supplier** (i.e. the 'price' that might be recovered) to an innocent motorist but it is fundamentally wrong to penalise that innocent motorist by restricting **their** rights as enshrined in common law.

4. Delivery and collection (paragraphs 55 to 58)

The processes of Enterprise are well-documented in their advertising and elsewhere. They do not deliver and collect vehicles in the normal course of business. Instead they pick the customer up, and take them to their place of business, the car is returned to the depot and the customer conveyed back to an agreed point. There is simply no comparison between that service which is inconvenient, involves delays and time-consuming waits for the customer and that provided by CHOs, which, in the main, deliver and collect from a point convenient to the *customer* – whether work, home or the repairing garage.

5. The impact of CHOs on the resolution of liability

Redde plc is deeply concerned at the lack of value attributed by the CMA to the current credit hire model. The only reason that intervention and bilaterals exists is because of the credit hire industry. So why would there be any difference between liability resolution in the two circumstances? The internal mechanisms used to make the referral are unchanged as at FNOL the TPI is not known until the claim is evaluated.

The CMA would have to seek out interactions between two insurers, neither of which refer claims to non-fault companies in order to make any valid comparison at all. Or between insurers and commercial entities that are not conventionally insured.

A quantitative view of the CHOs impact on liability assessment can be gained from the CMA's consumer survey. Where CHOs are involved, the non-fault claimant recovers their excess on every occasion. This positive feature, and others, continue to be ignored by the CMA.

6. The impact of bilateral agreements on the quality of service

The CMA states at paragraph 107:

We do not have evidence that the vehicles provided under bilaterals are of a lower category than that to which non-fault claimants are legally entitled, nor that the service they receive is generally worse than their entitlement.

The largest organisation involved in bilaterals is Enterprise, on page 15 (paragraph 51), the CMA concludes that a quality difference could appear in 20% of cases and that prestige car owners are most likely to suffer the consequences. It is not credible for the CMA to categorise a figure of 20% as insignificant.

Appendix B - sources of friction

7. The CMA notes in paragraph 1 that*:*

In this regard, CHCs said that an important source of friction was the insurers' inefficiency in settling subrogated bills.

However, in fact, the vast majority of credit hire bills are not subrogated[9]. The client's claim exists and, through the mechanism of the GTA, an offer is made to the third party to compromise that claim for a lesser amount. If the third party pays, this releases the customer from the contractual liability to pay all of the hire charges to the hire company..

A qualitative investigation by the CMA may have been more illuminating. Challenges by the insurers fall into a few easily identified categories. Liability, need, period, rate (if outside the GTA) enforceability and fraud. Enforceability is, in itself, instructive. An insurer may not dispute liability, or the client's entitlement to hire. It may know that the claimant has suffered a loss of use, but it seeks to avoid the consequences of its insured's negligence through attacks on the enforceability of the agreement. This is common practice amongst some insurers and a significant addition to frictional cost. The moral position of an industry supposed to be committed to the prompt payment of legitimate claims in these circumstances is, at best, ambiguous.

Fraud is another area of some difficulty. CHOs are subject to daily fraudulent attacks. Increased security in vehicles has made stealing them hard without the keys. Creating a fictitious claim is one way to get into a vehicle. Insurers have ways of detecting fraud and will dispute a hire that is (in their view) tainted by fraud. It is clear that in, many cases the potential for fraud is **on receipt of the claim notification**. Yet no insurer shares that intelligence with the CHO to allow the supplier to take precautions.

Liability, need and period are almost always capable of objective determination and agreement. Any client that hires a vehicle equivalent to his own is rarely criticised in court. The vast majority of frictional costs are caused by insurers being unable (or unwilling) to agree liability and through (mainly) spurious challenges on technicalities. Through protocols Redde plc has been able to solve these issues and create a process by which claims are settled with a minimum of effort. Insurers are, in the vast majority of cases, the architects of frictional costs, it is an attitude of mind.

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[9] Subrogation requires a payment by an insurer that allows the insurer to adopt the claim and step into the claimant's shoes. There are some technical circumstances in connection with enforceability whereby a policy that underwrites the recovery of the hire charges might be activated and the customer's hire claim subrogated, but this is not the norm.