

Private Motor Insurance Market Investigation
Response to Provisional Decision on Remedies
Royal & Sun Alliance Insurance Plc

Chapters

- A. Executive Summary
- B. Theories of Harm 1 and 2: Separation of cost liability/control and repair quality
- C. Theories of Harm 4 and 5: Add-ons and MFN clauses

A. Executive Summary

- A.1. Royal & Sun Alliance Insurance Plc ("RSA") broadly welcomes the remedies package proposed by the Competition and Markets Authority ("CMA") in its Provisional Decision on Remedies ("PDR").
- A.2. Throughout the market investigation RSA has sought to ensure that any remedies deliver ultimate customer benefits by:
- (i) Protecting the NAF customer's right to full rectification;
 - (ii) Maintaining and enhancing the customer experience, including with regard to the speed of claim, and reducing the scope for disputes;
 - (iii) Aligning the incentives of the party controlling costs (i.e. the procurer of the services) with the party ultimately responsible for paying those costs (i.e. the AF insurer); and
 - (iv) Reducing overall costs, whilst protecting and strengthening incentives on insurers to operate as efficiently as possible, thereby ensuring that savings can ultimately feed into lower premiums.
- A.3. RSA is pleased to see the CMA's recommendation for a package of remedies aimed at addressing the primary harm identified. We agree with the CMA's continued focus on credit hire, which is clearly the area with the greatest potential for consumer harm.
- A.4. We also welcome and agree with the CMA's proposals with regard to repair and total loss and the recognition that it would be disproportionate to seek to impose remedies given the limited potential for consumer detriment. RSA is also pleased to note the CMA's positive encouragement for the industry to take forward mutually beneficial bilateral agreements in a number of areas, including on repair claims and write-offs. RSA concurs that these agreements provide positive benefits for customers in reducing both frictional costs and net detriment and RSA is already party to a number of them.
- A.5. We also strongly support the CMA's provisional decision finding no AEC in relation to repair quality and hence that remedies are not appropriate on TOH2.
- A.6. Overall, RSA considers that the package of remedies proposed by the CMA in relation to the provision of temporary replacement vehicles ("TRVs"), add-ons and 'most-favoured nation' ("MFN") clauses offers the potential to deliver comprehensive and lasting change to the ultimate benefit of customers.
- A.7. Nevertheless, there are clearly a number of points of detail that will need to be considered by the CMA during the design and consultation phase of implementing the remedies and RSA urges the CMA to consult widely on the drafting of its remedies, and to hold informal consultations with the industry, prior to publishing its draft Enforcement Order for consultation. We look forward to working with the CMA throughout this process.

B. Theory of Harm 1: Separation of cost liability and cost control

Introduction

- B.1. RSA broadly welcomes the CMA's proposed remedies under TOH1¹. Specifically, RSA agrees with the CMA's continued focus on credit hire, which, as we have consistently demonstrated, has the highest detrimental impact on customers and is therefore the primary harm which the CMA must address.
- B.2. In particular, RSA broadly supports the CMA's provisional decision to implement Remedy A (information on consumers' rights following an accident) and Remedies 1C and 1F (measures to address features relating to TRVs).
- B.3. We make a number of further comments below in respect of the package of remedies proposed by the CMA under TOH1.

Remedy A: Information on consumers' rights following an accident

- B.4. RSA broadly supports the CMA's proposed Remedy A. Specifically, we agree with the proposal that both a 'Statement of consumer rights following an accident' and a 'Frequently Asked Questions - motor insurance policy claims' will have to be included with the policy documentation. We also support the CMA's proposals on use of a 'First Notification of Loss ["FNOL"] Statement' and the CMA's conclusion that in order to be effective, the remedy would need to be binding on all PMI providers and all industry participants handling FNOL (including brokers, insurers, claims management companies ("CMCs") and credit hire companies ("CHCs"))².
- B.5. Nonetheless, RSA believes that greater guidance and other improvements are needed from the CMA on the content of each of these documents, the detail of which will need to be worked through with insurers to ensure they are sufficiently clear and succinct for customers to understand. This includes the need to provide certainty in the event of an accident involving a commercial vehicle (which, in some instances, may not be immediately evident), to adopt tighter and more accurate legal and industry terminology (see below), and to comply with existing FCA guidance. In this respect, we note and support the detailed points made by the ABI in its response on this remedy, to which RSA has contributed, and would urge the CMA to continue to liaise closely with the industry during the consultation and design phase following publication of its Final Report.
- B.6. In terms of monitoring and enforcement, RSA considers that the FCA is best placed to ensure compliance. We note that annual compliance statements are not a feature of the general FCA compliance regime, but we agree with the CMA that the next phase should include consultation with the industry, the FCA and the MoJ to deliver an effective mechanism, recognising respective roles and responsibilities.

Remedies 1C and 1F: Measures to address features relating to TRVs

- B.7. RSA also broadly supports the CMA's proposed Remedies 1C and 1F and the proposal that they must apply to all parties that make a claim to recover costs for

¹ PDR, chapter 2.

² PDR, paragraph 2.35.

TRV provision (including insurers, brokers, CHCs, CMCs, repairers and vehicle recovery providers)³.

- B.8. However, we would like to highlight the potential for circumvention and unintended consequences arising from the proposals as currently made.
- B.9. Our main concern is that the remedies must be sufficiently flexible to address any circumvention strategies that might subsequently arise. This could most readily be addressed by bringing forward the first periodic review to one year (rather than two years⁴). This should encompass not only a review of the appropriate rate caps, but will also give an early warning indication of any proposed market changes that may undermine the remedy.
- B.10. We also consider that the design and consultation phase will need to make clear what is covered by the proposed daily rate cap. For example, does it include costs of insurance, excess waivers, automatic vehicles, collection and delivery etc.⁵? In addition, RSA has noticed some references in the CMA's PDR to legal principles such as subrogation that would benefit from the adoption of tighter and more accurate legal and industry terminology to avoid creating a risk of circumvention.
- B.11. By way of reminder, subrogation involves the insurer making a payment typically to the NAF driver. That payment is, as a matter of law, the responsibility of a third party (i.e. the AF driver or usually his insurer). The NAF insurer is then subrogated to the NAF customer's claim and can therefore seek repayment from (usually) the AF insurer. The term subrogation should therefore only be used by the CMA to describe the situation where the NAF insurer (as the indemnifying party) has these subrogated rights.
- B.12. RSA acknowledges the benefits in incentivising early liability decisions as the CMA proposes⁶. However, we consider that 3 days is an unduly tight timeframe in which to reach a decision on liability and that a period of 5 days would be more reasonable. A shorter time period may also serve to increase fraud through rushed investigations and may prejudice the insurer's position on other heads of claim. We acknowledge that the CMA intends the initial liability decision to apply only to credit hire but there is a risk that, in reality, it could affect the final liability outcome for the whole claim. Hence, we consider that the CMA should continue to monitor this risk.
- B.13. It will also be important clearly to define the trigger for liability and we would be supportive of the use of a portal in this respect⁷.
- B.14. Further, the CMA will need to close the potential opportunity for circumvention via the withholding of evidence so as to prevent a rapid liability decision being made with the effect that the higher rate cap might apply (possibly incentivised by referral fees paid by CHCs on higher rate hires).
- B.15. As above, a more comprehensive review within one year of implementation would help to address any issues with the operation of the dual rate cap in practice. After the first review, three yearly reviews may then be appropriate.

³ PDR, paragraphs 2.56-63.

⁴ PDR, paragraph 2.96.

⁵ PDR, paragraphs 2.64-104.

⁶ PDR, paragraph 2.78.

⁷ PDR, paragraphs 2.126-129.

- B.16. RSA suggests that an index other than RPI, such as CPI, should be used as the basis for indexation of the rates going forward⁸ as we do not consider RPI to be the most accurate representative of the hire market.
- B.17. RSA therefore agrees with the CMA's proposal to monitor liability assessments. However, we firmly believe this remedy should apply to all FNOL providers, including brokers, and to all parties presenting claims.
- B.18. Given incentives for circumvention, RSA also urges the CMA to monitor the effects of its remedies on the duration of hires for non-fault and fault claims, type of claim and severity of banding⁹.
- B.19. RSA is broadly supportive of the CMA's proposals on the 'Mitigation declaration statement'¹⁰. However, in line with the comments made by the ABI, to which we contributed, RSA considers that this proposed statement will need to be bolstered in a number of ways.
- B.20. RSA considers that hire duration should cease 7 days after the receipt of funds for total loss payments, rather than on submission of the request for payment¹¹. It can take 3 days to transfer funds across to the customer and it is unfair to stop the hire before funds have been received. We also consider, in line with the current GTA regulations, that all hire should end 24 hours after the end of the repair.
- B.21. RSA agrees with the CMA's provisional conclusions¹² on the following aspects of the GTA: dispute resolution (which we agree should not be adopted), acceptance of customers, monitoring during hire and payment arrangements. RSA also considers that the CMA should replicate the GTA's guidance that CHCs/CMCs must not provide a low value like-for-like TRV under credit hire, where the customer is entitled to a courtesy car from its insurer.
- B.22. As we have previously submitted¹³, and as the CMA recognises¹⁴, there will be an impact on PMI from the CMA's proposal to exclude non-fault commercial customers from benefitting from its remedies. However, we welcome the CMA's recognition that this is something the industry can address via bilateral agreements.
- B.23. RSA welcomes the CMA's proposals to bolster the remedy by effective judicial guidance through an 'explanatory memorandum' to be attached to the Enforcement Order¹⁵.
- B.24. Finally, RSA considers that the package of remedies identified under TOH1 should be implemented at the same time (rather than the proposal to introduce the dual rate cap three months ahead of the other remedies)¹⁶. This will ensure the most orderly implementation of the full package of remedies. The present regulatory review has been thorough and comprehensive, running since the OFT's initial call for evidence in the Autumn of 2011. There seems little to be gained from seeking to rush through the implementation piecemeal.

⁸ PDR, paragraphs 2.95-96

⁹ PDR, paragraphs 2.105-107.

¹⁰ PDR, paragraphs 2.108-113.

¹¹ PDR, paragraph 2.107.

¹² PDR, paragraphs 2.114-129.

¹³ See, for example, RSA's Response to the CC's Notice of Possible Remedies, Chapters A and B.

¹⁴ PDR, paragraphs 2.130-133.

¹⁵ PDR, paragraphs 2.138-140.

¹⁶ PDR, paragraphs 2.151-155.

- B.25. RSA urges the CMA to engage fully with the industry to ensure that these remedies are as comprehensive as possible. Full consultation during the design phase and prior to publication of a draft Enforcement Order will ensure that issues such as those identified above can be addressed.

C. Theories of Harm 4 and 5: Add-ons and MFN clauses

Theory of Harm 4: Add-ons

- C.1. RSA is supportive of the overall intent of the CMA's TOH4 remedy proposals requiring the provision of information to consumers on the costs and benefits of no-claims bonus ("NCB") protection and recommendations to the FCA¹⁷.
- C.2. Our main concern, as noted in further detail by the ABI in its response on this remedy, is to ensure that consideration continues to be given to the customer journey and the need to balance the provision of information to customers with the dangers of an unduly burdensome bureaucratic solution. We are in particular conscious of the need for consistency with the FCA's own general guidance to keep all information provided to customers short and simple.
- C.3. We welcome the CMA's recognition that the appropriate remedy should be delivered by way of recommendations to the FCA¹⁸. As with our comments in respect of the TOH1 remedies above, we note that annual compliance statements are not generally a feature of the FCA compliance regime and we look forward to working with the FCA and the industry to deliver the required changes.

Theory of Harm 5: MFN clauses

- C.4. RSA broadly welcomes the CMA's provisional decision to prohibit all MFN clauses that are not 'narrow MFNs', as well as all 'equivalent behaviours'¹⁹. We note and support the detailed points made by the ABI in its response on this remedy, to which RSA has contributed.
- C.5. It will of course be essential that the remedy provides for an adequate definition of 'narrow MFNs' and is sufficiently flexible to adapt to any future variants of 'equivalent behaviours', particularly in relation to other insurance products sold via PCWs (such as home insurance), and we look forward to engaging with the CMA and the FCA in the forthcoming consultation and design phase.



Neville Howe

General Counsel, UK & Western Europe

¹⁷ PDR, chapter 3.

¹⁸ PDR, paragraph 3.112.

¹⁹ PDR, chapter 4.