Kindertons accident management

Private Motor Insurance Investigation

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Note to the Reader - this pdf document contains non-confidential versions of the following separate submissions to the CMA – you will see the contents of each submission in their respective sections below:

- Response to the PDR – 28 pages
- Response to WP23 – 82 pages,
- plus 5 Annexes marked A to E (to accompany WP23 response)

Private Motor Insurance Investigation

Response to Provisional Decision on Remedies (PDR)

Kindertons Accident Management

9 July 2014

Introduction

1. The purpose of this submission is to summarise Kindertons' views on the CMA's Provisional Decision on Remedies ("PDR") in respect of its Private Motor Insurance Market Investigation. Kindertons welcomes the opportunity to comment.

2. Kindertons' comments on the PDR should be read alongside its view on the calculation of the detriment arising from Theory of Harm 1 ("TOH1") contained in CMA Working Paper 23 ("WP23"), which is set out in a separate submission.

3. We focus in this submission on the effectiveness, practicality and proportionality of the remedies proposed in the PDR.

Summary of Kindertons' position on PDR

4. Kindertons notes the CMA's provisional conclusion that no AEC exists in relation to the possible under-provision of post-accident repair services (Theory of Harm 2) and its provisional decision not to progress **Remedy 1D** and **Remedy 1E**. It is not our intention to respond to WP22 and, accordingly, we do not propose to comment on the CMA's provisional decision on Remedy 1D or Remedy 1E.

5. As the CMA's theories of harm 4 and 5 have no bearing on Kindertons' business, we do not propose to comment on the remedies proposed by the CMA in so far as they are intended to address these issues.

6. In relation to the remedies proposed by the CMA to address TOH1 generally:

- The evidence submitted to the CMA to date does not support the conclusion that an AEC arises from separation of cost control and cost liability. The CMA is referred to Kindertons' earlier submissions in response to the Provisional Findings.

- Even if there were sufficient evidence to support the conclusion that an AEC arises from TOH1 (which is not accepted), the CMA's calculation of the detriment arising from separation is fundamentally flawed. We address these issues in our separate submission on WP23.

- It follows that the CMA's estimate of a net detriment of around £87 million is grossly overstated. In our view, there is no detriment arising from separation.

- Given the true value of the detriment, Kindertons submits that any remedies to address TOH 1 would be unnecessary and/or disproportionate.

7. Nevertheless, to assist the CMA, and without prejudice to Kindertons' position on the existence of an AEC, we have set out our comments on remedies proposed by the CMA to address TOH1. In summary:

- Kindertons welcomes the CMA's provisional decision not to progress a solution based on **Remedy 1A** and/or any of the variants proposed by insurers and/or Enterprise. We note the CMA has acknowledged that, as we pointed out in earlier submissions, Remedy 1A would have required a change in the law.

- More significantly, Remedy 1A would have been bad for consumers. Accordingly, we welcome the CMA's conclusion that the remedy would have enabled insurers to deprive non-fault drivers of their rights to full compensation under tort law and would have been too fundamental a change in tortuous rights given the size and nature of the detriment found.[1]

[1] Paragraph 2.168 (a), PDR.

- We submit that, on this basis, there should be no question of resurrecting Remedy 1A, irrespective of the effectiveness or proportionality of the CMA's proposed remedies package.

- Kindertons also welcomes the CMA's decision not to progress **Remedy 1B**, which would have:

    - given at-fault insurers the ability (as well as the incentive) to deprive non-fault drivers of their full entitlement to a replacement vehicle;

    - limited choice of service provider;

    - led to delays in replacement vehicle provision; and

    - added cost and complexity to the claim process.[2]

- In principle, we welcome the CMA's provisional decision not to prohibit referral fees (**Remedy 1G**). Kindertons believes referral fees are the most efficient way of CHCs marketing their services and are the primary mechanism by which CHCs are able to pass efficiencies in the management of claims back into the PMI distribution chain and ultimately to consumers. Accordingly, prohibition of referral fees could only be expected to ***reduce*** competition for the provision of replacement vehicles and to increase insurers' costs.

- However, Kindertons is very concerned that, were the CMA to implement Remedy 1C as currently proposed, this will operate as a de facto ban on referral fees. This is of great concern to Kindertons, because the CHC business model depends on the ability to generate enough referrals to enable efficient operation. Without the ability to offer referral fees, CHCs will be unable to generate sufficient business to be viable and an important competitive constraint on direct hire companies will be lost.

- In relation to **Remedy 1C**, Kindertons believes that the imposition of a price cap on the basis proposed by the CMA is ***unnecessary*** to address any AEC; is likely to be ***ineffective***; is ***not capable of effective implementation*** without a change to the law of tort; is **disproportionate**, will result in ***distortions***, including the demise of CHCs; ***will reduce competition***; and ***will remove significant relevant customer benefits***. In addition, the CMA's proposed implementation regime will be costly, unwieldy, unnecessarily duplicative and unduly onerous. The detail of Kindertons' arguments on Remedy 1C are provided in paragraphs 14 to 86 of this submission.

- To the extent that TOH1 requires a remedy, o**ur view is that the provision of information on consumers' statutory rights at FNOL (Remedy A) and the requirement for the vehicle provider and the consumer to provide a mitigation declaration (Remedy 1F), in combination with a requirement on all replacement vehicle providers to abide by the terms of the GTA, would be *effective* in addressing any alleged AEC, would be *capable of implementation*, would be *proportionate* to the alleged AEC, would not remove any relevant**

[2] Paragraphs 2.188 to 2.192

customer benefits associated with the provision of credit hire and would not require ongoing monitoring by the CMA.

- The CMA and insurers have acknowledged in the PFs that frictional costs associated with separation of cost control and cost liability which could be said to be avoidable (i.e. costs incurred over and above those caused where there is a genuine dispute about liability as opposed to the level of compensation) are increased when claims are made outside the GTA.[3] Insurers stated that without the structure of the GTA there was no clear control or regulation of the claim process.

- Were the CMA to require all claims management companies to abide by the terms of the GTA, this would therefore remove a significant proportion of avoidable frictional costs. The requirement to inform drivers of their legal rights and obligations at FNOL and the requirement to complete a mitigation statement at the point of hire (with the threat of a claim for fraud if the statement is untrue) would deter less scrupulous claims firms from over-claiming and therefore causing additional frictional costs. In addition, the implementation of a claims portal could also have a significant effect in reducing the costs of settling claims.

- **Kindertons believes that this package of remedies (Remedy A and 1F plus mandatory adherence to the requirements of the GTA and the implementation of the GTA proposed claims portal) if correctly implemented would be effective in addressing the AEC, could be easily implemented, would require minimal monitoring by the CMA or other regulators and would be more proportionate to the alleged AEC.**

8. The remainder of this submission sets out more detailed comments on the remedies package the CMA has provisionally proposed in the PDR.

[3] See paragraphs 75-76, Appendix 6 (1) on page 28

Detailed comments on package of remedies to address TOH 1

9. In this section, we deal first with Remedy 1C and then address Remedy A and Remedy 1F. In summary, we submit that Remedy 1C:

- will not be effective and/or is incapable of implementation;
- as currently proposed, will unfairly discriminate against CHCs;
- would be likely to reduce competition between replacement vehicle providers and increase costs to insurers;
- is disproportionate; and
- will lead to a loss of relevant customer benefits, due to the inevitable exit of credit hirers.

10. In this regard, Kindertons is very concerned that at this late stage in its investigation, the CMA is still labouring under a fundamental misunderstanding about the contractual and legal relationship between non-fault drivers, CHCs and the at-fault insurer. Specifically, the CMA has misunderstood the nature of subrogation, namely that the claimant makes the claim against the at-fault insurer, and not the CHC. This seems to be a major area of misunderstanding by the CMA decision-makers.

11. Kindertons is also concerned about the use of pejorative terms to which we objected at the PF stage, appearing again in the PDR and WP23, without any context or explanation, or referral to the evidence. Such narrative indicates that the Panel has formed a view that CHCs have somehow been exploiting separation, notwithstanding that the empirical evidence demonstrates that CHCs are not earning super-normal profits[4]. Accordingly, before any remedy is considered, it is imperative the CMA ensures it has not prejudged the Inquiry in a way which harms the interests of CHCs and consumers.

12. Terms used in the PFs such as "earning rents" are repeated in the PDRs. This, together with the CMA's assertion that direct hire is "the market determined measure of daily cost" (despite Kindertons' and others' repeated submissions explaining the difference in the services provided by each and the fundamental flaws in the CMA's AEC calculation) raise fundamental concerns that the Panel may have prejudged the outcome of the CMA's investigation. Clearly the effect of all this will be to misdirect the CMA in terms of the decisions it has powers to make in the final report. As an example, if Remedy 1C requires a prior change in the law of Tort, then the CMA has no power to enact an Order, or to carry out its proposals as noted in, for example, paragraphs 2.259 (timescale), or 2.281 (benefits of remedy 1C), or 2.287 (costs of Remedy 1C), or 2.55 to 2.107 (design and features of remedy 1C and its dual cap proposals).

[4] As was noted in para 6.17 of the Provisional Findings, and that CHCs operate competitively between each other.

13. In relation to Remedy A and Remedy 1F, although Kindertons maintains there is no AEC, we add the following:

- It is clear from the evidence relied on by the CMA that any inefficiencies can only arise as a result of unnecessary disputes about the extent to which non-fault drivers have mitigated their loss (i.e. from friction), rather than any other inefficiencies in the supply chain as the CMA has not specifically identified any other sources of inefficiency.

- In this regard we note the CC's previous statements that the CHC sector appears to be competitive and there is no evidence of super-normal profits.

- As noted in our response to WP23, frictions caused by genuine disputes around liability are an inevitable consequence of the law of tort and necessary if consumers are not to be deprived of their right to be fully compensated for their loss. We submit that such costs should not form part of the CMA's AEC calculation (although we note that they do). No remedy is required to, or would be effective in, addressing friction of this type. However, we accept there is scope to address other sources of friction: in particular in relation to disputes around mitigation – i.e. the need for a TRV, duration of hire and the failure on the part of insurers to settle claims promptly.

- On this basis, Kindertons submits that Remedy A and Remedy 1F, in combination with mandatory GTA compliance (including working within the GTA agreed rates per car) would make a significant contribution to removing the remaining types of (unnecessary) friction and are the only provisional remedies which are capable of implementation and being effective and/or not disproportionate.

Remedy 1C : Dual Price Cap

14. In this section we set out Kindertons' detailed comments on (1) the principle of a rate cap and (2) the dual price cap remedy as envisaged by the CMA. Our comments are without prejudice to Kindertons' view that no AEC arises and that there is no requirement for any form of price cap.

15. Our comments are structured as follows:

- First, we identify fundamental omissions in the CMA's reasoning that Remedy 1C would be effective and explain why ***Remedy 1C is incapable of being implemented in such a way as to be effective***.

- Second, we set out why the CMA's analysis on the likely impact of Remedy 1C on the market for provision of replacement vehicles is inadequate and explain why ***Remedy 1C will reduce competition*** and have other ***distortive effects***.

- Third, we explain why, even if it could be implemented so as to be effective, ***Remedy 1C is disproportionate;*** and

- Finally we explain why ***Remedy 1C will remove relevant customer benefits***.

16. On the basis that a price cap is unlikely to be effective and is incapable of implementation, we do not believe there is a need to address the CMA's question of how Remedy 1C might be implemented. Nevertheless, we set out some key issues in paragraphs 69 to 86 of the PDR to demonstrate what we mean.

Remedy 1C is incapable of implementation so as to be effective

17. **In paragraph 2.157 of the PDR, the CMA provisionally concluded that Remedy 1C (in conjunction with Remedy 1F) would be effective in addressing the AEC and detriment arising from TOH1. However, the PDRs do not adequately address the issue of whether, in the light of the legal and commercial context of the PMI market, a price cap is in principle capable of addressing any alleged detriment.**

18. **Crucially, the CMA has failed to take proper account of the legal and contractual context under which CHCs in particular provide their services to claimants and/or has failed to properly consider (or misdirected itself as to) the likely impact of provisional Remedy 1C.**

19. **The PDR states that Remedy 1C is intended to reduce the cost of replacement vehicle provision to non-fault drivers without compromising claimants entitlements by limiting the cost of non-fault replacement vehicle claims subrogated to at-fault insurers.** [5]

[5] In paragraph 2.50 of the PDR.

20. **This CMA's reasoning is fundamentally flawed in this regard. It relies on an assumption that, by capping the sums a CHC or non-fault insurer can recover from the at-fault insurer, this will succeed in limiting the total sum the claimant will be capable of recovering against the at-fault insurer for provision of a replacement vehicle.**

21. **However, it is not possible for the CMA to limit the total sum claimed for provision of replacement vehicles by claimants without a change in the law of tort to cap what a claimant can recover by way of compensation (which would have profound public policy implications and would be undesirable). As a result, Remedy 1C will not have the effect that the PDRs indicates will arise because:**

- **although when acting on behalf of a claimant, a CHC ultimately recovers vehicle hire charges (or a proportion of them) from the at-fault insurer under a credit hire agreement, the claimant is ultimately responsible for the payment of the CHCs hire charges** – we think the CMA has missed this legal point completely from its thinking, as demonstrated by its comments in paragraph 2.60 of the PDR, which displays a fundamental lack of knowledge of CHCs contracts with drivers**;**

- **therefore, to the extent that a CHC is unable to recover the full costs of the hire from the at-fault insurer, it currently has the contractual right to charge the claimant for the shortfall between the retail rate and any capped payment from the at-fault insurer;**

- **alternatively, rather than seeking to recover from the at-fault insurer, a CHC could simply present an invoice for the hire to the claimant for the claimant to pursue his or her claim directly against the at-fault insurer;**

- **without a change in tort law, any Order imposed by the CMA could not prevent the claimant pursuing the at-fault insurer for the charges made to it** – and the claimant would succeed in having their claim enforced by the Courts, as the CMA could not override common law**;**

- **this would either not lead to a reduction in vehicle hire claims (and increase friction** as a result of additional litigation involving litigants in person or those represented by law firms**) or will leave claimants in a worse position than currently.**

22. **T**he proposal to cap the costs CHCs are able to charge at-fault motorists' insurers raises many practical difficulties in relation to the CHCs relationship with its customer and the customer's claim against the at-fault motorist, including the possibility that additional frictional costs may be incurred by at-fault insurers dealing

with direct claims from non-fault drivers as well as that of the hirer. All of this is ignored in the PDR.[6]

23. **The CMA has failed to properly assess the likely impact of Remedy 1C in this regard and underestimated the risk of circumvention of Remedy 1C. Kindertons' expectation is that, following implementation of Remedy 1C, a substantial number of car hire providers and non-fault insurers would simply revert to the provision of vehicles to individual claimants at retail rates (which are higher than GTA rates and by definition the CMA's proposed caps), and leave it to claimants to progress their claim against the at-fault insurer. Claimants who could not finance the cost of vehicle hire would be forced to forego their entitlements leading to a massive consumer detriment.** There would of course be a contraction on a large scale from provision of cars under the CHC model and we doubt direct hire (for reasons given in our response to WP23) would provide comparable like-for-like TRVs as offered by CHCs. In other words, consumers would suffer a loss of choice and range of replacement vehicles, or be forced to pay more to meet their needs. The foreseeable harm to consumers and our sector would be substantial. In the remaining period of this investigation, we hope the CMA will address these important points so that the final report is complete factually and shows a proper understanding of the issues raised under TOH1.

24. **We believe the CMA's reasoning (in paragraphs 2.60 to 2.61 of the PDR) as to why the risk of circumvention would be low is inadequate. For example, the fact that self provision does not currently occur on a significant scale[7] is no indicator of the likely situation following implementation of an Order. In Kindertons' view, circumvention is very likely to happen and to result in hire costs and friction increasing, even above current levels.** In this connection, the CMA has noted the contradiction with its proposals, in paragraph 2.59 of the PDR where it enables individual claimants (not using CHCs) to recover car hire charges from at-fault insurers at levels above the imposed caps. The reason is because the CMA knows it can not change their rights under tort law. This recognition could create scope for a total change in the way the sector operates. Whether businesses will be credit hire companies in the future, is an unknown consideration. Because the CMA has not modelled its ideas, we have no idea how its proposals could impact non-fault claimants.

25. **The only way this could be avoided would be if the remedy operated so as to force consumers down a direct hire pathway,** which is controlled by the at-fault insurers (i.e. the defendant in a court case, rather than the plaintiff). We say this choice of who controls the settlement is at odds with the interests of justice**. If the CMA believes this would be the likely outcome, then as well as removing**

[6] In this connection, the CMA note that we offered to engage with the CMA on developing its remedy ideas, after our hearing in March 2014, but were rebuffed. As the CMA will note, we were told to wait until the PDR emerged, so our vital input to this process was ignored.

[7] Paragraph 2.60(a), PDR.

choice and placing consumers in the hands of insurers whose incentives are to provide the bare minimum in service, or none at all, the CMA would thereby be depriving consumers of their statutory rights. We think, therefore, that the CMA decision-makers have to date been misguided and/or disingenuous in stating that the CMA does not favour one business model or another and/or that credit hire firms would not inevitably exit. We hope our comments above are helpful in correcting these errors of judgement.

26. **As mentioned above, the CMA does not propose to extend Remedy 1C to cover replacement vehicle claims charged to at-fault insurers directly by non-fault claimants who have organised the hire of a replacement vehicle directly themselves without the assistance of an insurer, broker, CMC or CHC. As noted by the CMA, to do so would require a change in the law to prohibit the recovery of costs incurred by claimants in the provision of replacement vehicles at basic or retail hire rates.**[8]

27. If the rates recoverable by the CHC customer (as opposed to simply the CHC) from the at-fault motorist were to be capped, that would clearly be a change to the CHCs customer's legal rights against the at-fault motorist. Effectively, the CMA would be substituting its own discretion as to what is a reasonable rate for that of the courts. Kindertons does not believe the CMA would have the power to do this.

28. **Nor does Kindertons believe it would be desirable for the CMA to seek a change to the law in order to cap the amount consumers could claim for car hire and/or the amount a hirer could charge to a non-fault driver.**[9]

29. **This** would involve either depriving consumers of their current entitlements under tort and/or capping the rates charged by all car hire firms to non-fault drivers. As well as the practical difficulties in designing such a remedy, it would involve (a) primary legislation and (b) imposing a remedy on individuals and/or companies who are not parties to the Market Investigation.

30. Even were it the case that a rate cap could, in principle, be effective in addressing the alleged detriment arising from separation (which we do not accept), the cap as currently envisaged (and specifically the basis of calculation of the lower cap) is deeply problematic for a number of reasons.

31. The CMA has failed to provide adequate reasoning to support its assertion that the dual rate cap currently proposed is likely to be effective in addressing the detriment resulting from TOH1, other than its assertion that, as there was not a large amount of disagreement about liability, the CMA would expect the high rate cap to occur rarely and that the dual rate cap would discourage some of the disagreement about liability which currently exists.[10]

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8 Paragraph 2.59, PDR.

9 As contemplated in paragraph 2.62 of the PDR.

10 Paragraph 2.90, PDR.

32. The CMA's conclusion is based on (a) an illusion that direct hire rates (upon which the lower cap is proposed to be based and which the CMA refer to as "the market determined measure of daily cost"[11]) are directly comparable to, and lower than, credit hire rates and that the additional costs currently borne by CHCs in managing claims will somehow evaporate after implementation of Remedy 1C; and (b) an assumption that insurers will be capable of determining liability within a short period of time after FNOL and that therefore the higher cap will only apply in a limited number of cases.

33. The CMA has failed to adequately support either of these propositions. Our separate submission on WP23 deals with the question of the real costs of provision of hire and management of a claim.

34. In addition, the CMA has failed to provide adequate support for its assertion that a dual rate cap scheme would provide sufficient incentive to provide replacement vehicles to potential non-fault claimants. For example, the CMA has not provided any evidence to show that the level of return available at the rates proposed would be sufficient to discourage exit by CHCs and/or other hire companies, given the returns on capital which would be available elsewhere. Kindertons' view is that on the basis of the CMA's current proposal for the lower cap, the provision of vehicles to potential at-fault claimants together with claims management would be unprofitable.

35. Our expectation is that, on the basis of a cap anchored to (artificially low) direct hire rates and without adequate allowance for the recovery of costs required to deal with management and recovery of a claim, the remedy will either result in circumvention (as described above) or non-fault drivers will be forced down a direct hire pathway because the credit hire model will not be viable. This will harm the interests of consumers because the interests of the non-fault driver and either insurer (first party or at-fault insurer) are clearly not aligned. At the very least this would deny choice to the non-fault driver and will, in our view, inevitably lead to under-provision of non-fault drivers' entitlements.

36. Given CHCs would no longer be capable of competing, any constraint on quality of direct hire will be lost and quality of provision can only be expected to deteriorate from current levels. Given the risks of arranging hire for oneself, the CMA will effectively have placed all non-fault drivers in the hands of at-fault insurers (i.e. defendants to claims on behalf of the tortfeasor) and therefore deprived them of their legal rights. In doing so, we believe the CMA will have acted ultra vires (as discussed above and explained to the CMA months ago in April 2014).

37. Paragraph 2.80 of the PDR states that the CMA would not expect undue frictional costs under the lower rate cap. However, nothing in Remedy 1C actually directly removes friction. We assume the CMA's thinking is that by having a claim admitted early, this means the insurer will pay it. The CMA's assumptions have no basis in reality. Based on Kindertons' experience, insurers regularly argue over mitigation

[11] See, for example, paragraph 2.70 of the PDR.

and duration. The CMA's own findings indicate disputes are in the most part about non-price factors, such as period of hire, or vehicle (and not rates). Therefore, Remedy 1C is very unlikely to reduce friction – how therefore does the CMA conclude that Remedy 1C will remove friction? Insurers are also not likely to pay claims quicker, as there is no deterrent to prolong a settlement, once they have secured a huge discount on the hire rate for admitting liability early.

38. Para 2.81 says frictional costs are high under the GTA. We strongly disagree on this point. The CMA has failed to show this is the case and we challenge the CMA to show where this allegation is sustained. Our detailed response to WP23 shows the CMA's work on alleged frictional costs and insurers' cost allocations is flawed.

Remedy 1C will reduce/distort competition

39. In paragraph 2.64 of the PDR, the CMA proposes to limit subrogation to the cost incurred in the provision of replacement vehicles to non-fault claimants, but at a level which continues to incentivise replacement vehicle providers to provide non fault claimants with their tortious rights to mobility. The CMA acknowledges that if the cap is too low, replacement vehicle provision will be unviable (and that if the cap is too high, this will do little to reduce the incentive for parties to dispute costs of replacement vehicles). The CMA explains its ideas on these caps in Para 2.88, in a way that we think are shocking. The CMA expects the lower rate cap to be **half** the current GTA level[12]. Para 2.90(a) adds that the CMA expects a high proportion of claims to be settled at this fixed low rate cap, meaning that settlement at GTA rates would be exceptional. How does the CMA expect CHCs to remain viable on earnings that are half the current levels, set under the GTA when CHCs do not currently make excessive profits? We also think the CMA's global calculation in footnote 33 is woeful,[13] when its work should have been based on a properly calibrated financial model, discussed with all interested parties. All this work is rejected as badly done and meaningless. As we discuss in our detailed response to WP23, we are not satisfied that all the benchmark data on direct hire is hidden from review by any interested party.

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12 Para 2.88 says inter alia:

… As a **high rate cap of double the low rate cap is approximately similar to the current GTA** level, we considered it would imply a broadly similar incentive to at present for a replacement vehicle provider to provide a replacement vehicle to a claimant, who was probably but not certainly non-fault.

13 Footnote 33 says:

33 This assumes the at-fault insurer reaches its decision independently of the replacement vehicle provider and does not take into account any additional frictional costs the at-fault insurer expects to incur as a result of not accepting liability. If we allow for the at-fault insurer incurring some additional frictional costs, the *critical probability* with a high rate **double the low rate cap** would be slightly less than 50% since P=(L-f)/U where P is critical probability, L is the low rate cap, f is additional frictional cost and U is the high rate cap.

40. Kindertons is very concerned that the CMA's current proposal will render replacement vehicle provision under the CHC model unviable. Given the relative return on capital available, it is expected that hirers or potential hirers would employ their assets elsewhere, discouraging entry into the segment and accelerating the exit of a number of CHCs - thus reducing competition, choice, innovation and a valuable constraint on at-fault insurers/direct hire.

41. Notwithstanding the CMA's statements that it does not wish to favour one business model over another,[14] Remedy 1C clearly discriminates against CHCs and will place them at a significant disadvantage as against direct hirers/insurers.

42. As noted above, Paragraph 2.90 of the PDR states that the CMA expect the high rate cap to occur rarely. As the rates proposed will not allow credit hirers to recover their costs of managing claims, there can be no doubt that CHCs will exit. This in turn will reduce competition on direct hirers. The CMA's proposal to cap the cost that may be charged for provision of replacement vehicles by third parties to the cost of hire, without making adequate allowance for the costs of managing a claim or the risk of taking on a claim where liability is yet to be established, patently favours a direct hire model with the **at-fault** insurers (i.e. potential defendants in court proceedings) managing the conduct of the claim on behalf of non-fault drivers.

43. The CMA's proposed Remedy 1C does not allow for the recovery of costs of claim management by CHCs. While the CMA's proposals prevent CHCs from recovering these costs in their charges, Remedy 1C does not apply to cap insurers' claims management costs. This enables insurers to pass these costs onto their customers in the form of higher premiums. However, CHCs cannot pass these costs on. Therefore the CMA's current proposal to base the lower cap around direct hire costs, plus an arrangement fee (of only £37 a claim) unfairly discriminates against the CHC model and will leave consumers solely in the hands of insurers when seeking mobility following an accident.

44. It is of great concern to Kindertons that the CMA has failed to give adequate consideration to the extent to which Remedy 1C will distort competition by discriminating between direct and credit hire models. The CMA will recall that its PFs identified that CHCs currently provide a constraint on the direct hire model. This is a constraint that will be lost under Remedy 1C, as those CHCs who survive will effectively be forced to adopt a direct hire model. It is incumbent on the CMA to adequately assess the likely impact of any provisional remedies on the relevant market before its report is finalised and not afterwards.

45. The CMA's predecessor's own guidance states that to avoid imposing unnecessary burdens on business, it will seek to ensure that its remedies are no more onerous than is necessary to remedy the AEC it has identified. It also states that, in selecting and designing remedies, the CC will also have regard to the potential for more competitive markets to create profitable opportunities for new and innovative competitors as well as the cost of remedial measures on established businesses.

[14] For example, paragraph 2.67 PDR.

To date, the CMA has singularly failed to demonstrate that it has properly considered the impact on businesses and/or the prospect of future entry under Remedy 1C.

46. The CMA has also failed to consider the likely impact of Remedy 1C on parameters of competition other than price. Kindertons' expectation is that the cap will not enable competition on the basis of quality of service or on referral fees. The cap is also likely to reduce innovation.

47. The CMA's statement that direct hire rates represent "the market determined measure of daily cost" also indicates the CMA has prejudged the issue of the appropriate level of the lower cap. We object to this procedural unfairness.

Additional Distortions

48. As well as distortion of competition between CHCs and direct hire providers, Kindertons has grave concerns that:

- Consumers will not see delivery of their entitlements – not just because they may be put in the position of claiming against their own policy, but because fundamentally if liability is yet to be decided at the point of need, the insurers' and driver's interests are clearly not aligned: whereas the consumers interest is to ensure he or she gets their legal entitlements, the first party and at-fault insurer's incentives will be to minimise cost by refusing, or minimising the costs of dealing with the claim. This leads to a fundamental and irreconcilable conflict of interest. We are not convinced that an obligation to inform the driver of the insurer's current assessment of liability is likely to address this issue and the CMA's reasoning is inadequate.

- We are very concerned that a price cap at the level proposed by the CMA will not allow for new or innovative business models to emerge as profits will be too low to attract such businesses. In addition, no competition is likely to take place on quality. The very fact that the leading direct hirer, for example, does not offer all classes of car allowed for under the GTA is an indication that the service offered under direct hire is inferior. Remedy 1C is only likely to exacerbate this kind of problem.

- Another key point is that, as Remedy 1C is currently proposed, if the claim drops out of the GTA after 90 days, hire providers will still be limited to the higher cap whereas at the moment they may pursue a higher commercial rate. This provides a degree of incentive to the insurer to settle a claim. However, under Remedy 1C, this incentive would be lost as the insurer's maximum exposure would be the higher cap. Without governance under the GTA (or an Order) there would be no deterrent to insurers doing this on every case, starving CHCs of cash flow and forcing them out of business, as well as creating even greater friction. This too is not addressed by the CMA.

- The CMA has failed to recognise the complex nature of the claims management process and how many significant variants can affect the final outcome. Below we

detail examples of operational issues which will arise if Remedy 1C is adopted as drafted.

- The incentive to establish liability within three days will drive adverse behaviours which will ultimately increase friction. From an Insurer's point of view the attraction of agreeing liability quickly will result in a significantly lower credit hire claim, in doing this though it has the potential to prejudice their own policyholder's position. Decisions may be driven based on reducing costs rather than what is in the best interests of the policyholder. It would follow that policyholders will be under increased pressure by their insurer to accept blame for an accident where in fact it could be the case that they do not believe that they are at-fault. This will be even more prevalent when an insurer insures both parties in an accident. There is a real danger of a conflict of interest here based on the potential savings to be made dependant on what type of vehicle each party owns.

- Additional questions must be asked as to what happens when a policyholder cannot be contacted within the first three days, potentially due to holiday or working shift patterns. The insurer's incentive to admit within three days may not be aligned with their policyholder and therefore a decision may be made without proper consultation. At this point how will disputes based on incorrect liability decisions be dealt with? Lack of thorough investigation whether through collation of statements or engineering evidence would lead to a consumer detriment. Would the Ombudsman want to become involved in such disputes or would a new independent body need to be formed?

- Historically, a liability decision is formed on fact and in the vast majority of occasions forms a conclusion for the outcome of the claim. The CMA in its implementation of Remedy 1C allows this now to be a changeable stance based on what suits the insurer best. This will increase friction. There will be nothing to prevent an insurer accepting liability early only to then rescind at a later date. This will obviously impact CHCs significantly based on having to adhere to the lower cap, but it also could impact on the claimant if they have authorised repairs or disposed of their salvage as a result of the initial decision.

- The remedy will also naturally impact on CHCs behaviour. At present great efforts are made by CHCs to establish liability as quickly as possible as this should then connect to quicker payment of their invoice. From our perspective we have a whole host of key performance indicators based around obtaining an admission of liability early. Our handlers will collate a statement from the client, witness evidence where available and even images from Google maps all to then be presented to the at-fault insurer to enable a prompt decision. Where will the incentive be for us and other CHCs to do this valuable time consuming work in the future if in effect it significantly reduces the recoverable daily rate?

- There are other fundamental problems with the remedy which do not seem to have been considered, for example:

    - How will a commercial client be identified?

- What will the impact of having different claim processes for Motorbikes, Vans and Taxis?
- What happens with policyholders that have dual use on their policy?
- What happens with MIB claims where the at-fault driver is not insured?
- What happens with foreign drivers who are insured by insurers overseas?
- What happens with self-insured fleet?

- All these anomalies will cause confusion and no doubt additional friction within the claims process and it is clear that the CMA have not considered such issues.

Remedy 1C is disproportionate

49. According the CC's Guidelines for market investigations (paragraph 344), in making an assessment of proportionality, the CC is guided by the following principles. A proportionate remedy is one that:

- is effective in achieving its legitimate aim;
- is no more onerous than needed to achieve its aim;
- is the least onerous if there is a choice between several effective measures; and
- does not produce disadvantages which are disproportionate to the aim.

50. In Kindertons' view the CMA has failed to set out any reasoning to demonstrate why Remedy 1C is no more onerous than needed to achieve its aim. Kindertons believes that the provision of information on consumer statutory rights at FNOL (Remedy A) and the requirement for a vehicle provider and the consumer to provide a mitigation declaration (Remedy 1F) would be sufficient to address the detriment.

51. The CMA recognises that payment times under the GTA have improved in 2013 which in turn should have reduced friction. This should be attributable to the improved efficiency of the GTA and the introduction of streamlined bi-lateral agreements between insurers and CHCs. It would therefore follow that the CMA's detriment amount is already out of date and that Remedy 1C is not required to address any alleged AEC.

52. Kindertons does not accept that there is excessive frictional cost in the GTA. Kindertons' view is that a large amount of unnecessary frictional costs are generated from claims made outside the GTA and that, were the CMA to mandate that all motor claims on at-fault insurers must abide by the GTA framework, this would significantly reduce the costs associated with separation and focus the remedy to the problem at source.

53. Kindertons believes that this solution together with Remedy A and Remedy 1F would be effective as a package in addressing the AEC. Therefore, Remedy 1C is more onerous than is needed to achieve the aim. However, the CMA has failed to provide any explanation as to why Remedy A and Remedy 1F would not be effective in addressing the AEC.

54. As discussed above, Kindertons also believes that Remedy 1C will not be effective in achieving its aim and will produce disadvantages which are disproportionate to it.

Remedy 1C will remove relevant customer benefits

55. On relevant consumer benefits, the CMA has failed to properly assess the likely impact on non-fault drivers' entitlements following implementation of Remedy 1C.

56. The CMA acknowledges that different models may emerge following implementation. In Kindertons' view, the only feasible model would be one under which the insurers manage the non-fault driver's claim.

57. As management of a claim is a pure cost which cannot be recovered from the at-fault insurer and given the desire for insurers to minimise costs, Kindertons' view is that, as well as the practices referred to in paragraph 2.101 (whereby insurers treat non-fault divers as if they were claiming under their own policy) this may encourage other practices which will deprive non-fault drivers of their legal entitlement – particularly where liability is not clear from the outset.

58. For example, because under most PMI policies an at-fault driver is not entitled to a replacement vehicle a non-fault driver may be discouraged from claiming for a like-for-like vehicle (or indeed any vehicle) if there is a risk that he or she may not be able to claim the cost back or that he or she will have to claim on their own policy.

59. However, the CMA has failed to properly assess the likely impact on non-fault drivers' entitlements following implementation of Remedy 1C.

60. Our concern is that the lower price cap under Remedy 1C may jeopardise the viability of the independent credit hire path. That reality and detrimental impact on consumers is not recognised in both the PDR narrative, nor in the narrative in WP23 where the CMA attempted to put a value on the cost of separation which we dispute as wrong and exaggerated.

61. This aspect of ignoring the ***value of choice***, for example, appeared when the CMA understated the value of CHCs providing ULR services for free. It noted this yielded for consumers some £0.5m so was of little importance for its considerations. We said this was flawed thinking because 300,000 claimants a year can benefit from this free service. If it yields in a year up to £1m for a group of these claimants, who used the free service of CHCs, this is a direct and valuable service to these people. For the people involved, the recovered sums might be up to £1,000, so it is valuable on an individual basis, especially for people who did not pay for MLEI cover. Under the direct hire path, this option would be lost (without the claimants even knowing this).

62. In relation to RCBs more generally, the CMA has failed to properly assess the value of the RCBs which would be lost as a result of Remedy 1C as currently proposed.

63. In relation to the CMA's conclusion, in paragraph 2.246 of the PDR, it is incumbent on the CMA to demonstrate that its proposed package of remedies will not result in a material loss of RCBs. It is insufficient for the CMA simply to assert that it has seen no evidence to that effect.

64. In particular, the CMA has failed to demonstrate that Remedy 1C would not do so. For the reasons set out elsewhere in this submission, the CHC model is not capable of surviving where CHCs are unable to recover their costs of managing claims. The CMA proposed to cap the daily rate to the costs of the hire alone and the administration charge to the costs of arranging the hire. Therefore, Remedy 1C will effectively eliminate the credit hire model, which offers very significant benefits for non-fault drivers.

65. Therefore, it is incorrect for the CMA to conclude that any RCBs delivered by CHCs would not be materially reduced by its current remedy package (and by Remedy 1C in particular). Therefore, RCBs are relevant. Indeed, the question to consider is loss of RCBs on the assumption that Remedy 1C will destroy substantially the CHC sector,. This scenario creates irreconcilable conflicts of interest between insurers and non-fault claimants. This is logic and we will be happy to discuss this with the CMA.

66. In relation to the RCBs listed by the CMA in paragraph 2.241, we submit that:

- The CMA has omitted to quantify the relevant customer benefits associated with interactions with CHCs (as opposed to direct hire companies) being subject to FCA rules requiring firms to treat customers fairly (these are mentioned in paragraph 2.242 of the PDR, but no analysis is provided). We submit that this is a significant omission. The proposed Remedy 1C would almost inevitably lead to the credit hire model being extinguished (and any constraint applied to direct hirers disappearing). This benefit will be lost and there will be little redress available to consumers who are not treated fairly by the at-fault insurer. The CMA has failed to incorporate this into its assessment of the remedies, whether as an RCB or when comparing direct hire and credit hire charges. It must do so. For the avoidance of doubt, non-fault claimants have **no** contractual relationship with at-fault insurers – their power to obtain redress is only because of the law of tort and their financial means to secure settlement via the Courts. It is to address this inherent inequality in access to justice, especially for hundreds of thousands of impecunious claimants a year, that the independent CHC sector developed, with the insurer-supported GTA framework. This is what can be lost by a misguided desire to implement Remedy 1C, contrary to need or evidence.

- The CMA has understated the value of MLEI to consumers, by focussing on the costs of provision, as opposed to the value of this relevant customer benefit.[15]

[15] See paragraph 2.245, PDR.

- The CMA has failed to make allowance for the benefit CHCs offer non-fault drivers by insulating them from the risk that insurers will not accept liability. This is particularly important for more vulnerable, impecunious consumers. In a direct hire scenario in which liability is not clear from the outset, the direct hire model (which would logically be the only model capable of existing under the CMA's proposed Remedy 1C) would not be capable of taking on these risks. And logically, because CHCs do a risk assessment on claimants, CHCs can provide a TRV from day 1, whereas the at-fault direct hire model may take several days before claimants get this benefit. This too requires recognition in RCB analysis.

- Separation (and specifically the existence of CHCs) enables consumers to be adequately compensated without the risk of being required to pay an excess by their own insurer in circumstances where liability is not clear at the outset. In addition, CHCs enable consumers to protect their no-claims bonus where, if the claim was made initially through the non-fault driver's own insurer, the non-fault driver would lose his or her NCB, and potentially suffer increased premiums in the future. Neither of these RCBs are factored into the CMA's assessment. The CMA will also note, when reading our response to WP23, that we note a number of externality benefits from the role of CHCs, which also need evaluation in this exercise.

67. In addition, we note the CMA's comment (at paragraph 2.243 of the PDR) that it should adopt a benchmark in the AEC assessment where the quality of service received by non-fault claimants is kept at the level of their tortious entitlement. For the reasons stated in the preceding sections of this submission we do not believe the CMA has established that this would be the case.

68. We also do not agree that because the remedies package proposed by the CMA does not remove separation of cost liability and cost control, benefits of speedier resolution and better quality service, would not be lost. As we identified above we believe service will be affected because the CHC model will not be viable under the proposed Remedy 1C. The CMA has failed to properly assess the likely impact of this remedy. It is clear to us that, even though non-fault drivers' tortuous entitlements are technically unaffected, the perceived risks to a non-fault driver of arranging hire and then seeking to recover the costs where liability is not clear, at least initially, are likely to be a disincentive to them doing so. This means that, the benefits referred to in paragraphs 2.241 (a) and (b) **would** be relevant, even where separation of cost control and cost liability had not technically been removed.

Specific issues on implementation

To whom and to what should Remedy 1C apply?

69. It is clear that, in order to be effective the cap would need to apply to all replacement car providers to limit what car hire providers could charge to non-fault claimants. As well as the practical difficulties with this, Kindertons does not believe that the CMA could implement Remedy 1C in this way, given its statutory duty to consult with relevant parties on its proposed decisions on the AEC test and the

remedy questions when it considers a decision likely to have a substantial impact on any parties' interests.

How should the rate cap be set?

70. In relation to frictional costs, the CMA believes that the hire rate cap will incentivise parties to provide a replacement vehicle to non-fault drivers where liability is not immediately clear. The CMA has not verified how it will allow for frictional costs in such a way as to enable CHCs to remain viable (as CHCs will bear these costs). The CMA will be well aware that under the CHC model the costs of managing claims is borne by CHCs, whereas direct hirers do not provide this service.

71. In relation to the CMA's proposal for a dual cap, we understand that the CMA is proposing this as a way of speeding up the resolution of liability and to reduce frictional costs in cases where an early assessment of liability is needed but is not always possible. The CMA's solution to apply a low rate to claims settled within three days with the higher cap to apply to claims settled after three days is in Kindertons' view:

- **unnecessarily complex;**
- **unlikely to be effective in removing frictional costs; and**
- **open to abuse by insurers.**

72. In relation to abuse by insurers, we note that paragraph 2.78 of the PDR enables an insurer to admit liability, secure the low rate and then change its mind later and only then start paying the higher rate thereafter. This is utterly one-sided and is, in our view, indicative of bias towards insurers and direct hire on the part of the CMA. Kindertons is particularly concerned by the fact that the lower rate would apply up to the date after the insurer's view on liability changed. This would therefore create no incentive for insurers to settle claims early. The CMA has itself identified that disputes over liability are rarely the cause of friction. However, delay in settlement and arguments over duration and mitigation are - and Remedy 1C, as currently proposed, will do nothing to address this.

73. Kindertons does not accept that frictional costs are high under the GTA. Kindertons believes that the bulk of frictional costs are from cases outside the GTA.

74. In Kindertons' view there will be no incentive to provide vehicles in cases where liability can be agreed initially and then withdrawn – in other words, the CMA is loading risks on CHCs which may never be recoverable.

75. The CMA proposes to set a dual rate cap based on a fixed replacement vehicle arrangement cost and a flat average daily rate differing according to the vehicle provided. Kindertons' key concern is that the arrangement fee should leave room for establishment of liability in complicated cases in particular.

76. In addition, the level of the lower cap should allow for the costs of claims management services to be recovered and provide sufficient returns on investment to attract entry and deter exit from the market. The proposals fail this test.

77. For the reasons set out in our response to WP23 we do not believe current direct hire rates are the market determined measure of cost. Fundamentally, the CMA has erred in its assessment of the appropriate benchmark for daily rates (paragraphs 2.70 – 2.75 of the PDR). It has failed to properly recognise the additional costs not incurred by direct hirers (but incurred by insurers), which are necessary for the management and resolution of claims. The CMA must revisit this and the benchmark for the lower cap. Our suggestion is that retail hire rates are the only appropriate genuinely market determined measure of cost and are the logical starting point for either cap.

78. Paragraph 2.68 of the PDR deals with administration costs. £37 is NOT a reasonable estimate of the fixed administration costs under credit hire. At present under direct hire, providers such as Enterprise have no up front cost. They do not carry our FNOL obligations to assess the claim, screen it for fraud etc. As a CHC, Kindertons does this on all claims. Either the administration fee needs to be increased significantly to account for this additional work or the daily rate needs to be increased to cover it.

79. Paragraphs 2.117-2.118 indicate the CMA's view that the new mechanism will not need to adopt the GTA's current dispute resolution process, instead relying on the force of the remedies and the courts to resolve. However, this will create a number of serious practical issues, which the adoption of the GTA dispute resolution mechanism would otherwise have addressed. For example, who will address any behavioural issues by insurers? If, for example, an insurer continually admits liability and then retracts at a later date there is no recompense or penalty. What if an insurer continually tries to intervene after a CHC is involved? Again, without governance, how are these actions prevented?

What other measures should be put in place to assist with the effectiveness of Remedy 1C?

80. As noted above, in Kindertons' view Remedy 1C could not be implemented in a way which is likely to be effective.

Is there a role for judicial guidance to assist with Remedy 1C?

81. In the absence of a change of law any guidance given to courts would not be likely to have any effect and is unnecessary.

Monitoring and enforcement

82. Paragraphs 2.144 to 2.147 of the PDR deals with the question of who should set the rate cap. In our view, there is no justification, and it would not be desirable, for the CMA to undertake this. Despite its claims, we do not believe the CMA (or its Standing Committee) has the expertise to do this and we cannot understand why

the CMA has concluded that it would be better placed than, for example, the GTA Technical Committee. The latter is clearly better qualified than the CMA to decide on the level of the cap because:

- Contrary to the CMA's rather odd statement in paragraph 2.143, the GTA Technical Committee would not lack independence – indeed it has 6 representatives from insurers and 6 representatives from CHCs. While CHCs are represented, so are insurers and both sides are required to reach agreement on rates currently under formal procedures with rules on deadlock, etc; and

- The GTA Technical Committee has expertise and experience in these matters and will be better able to properly estimate the costs of hire and management of claims (something the CMA and its predecessor has demonstrated itself unable to do to date).

83. To the extent that the current voting structure of the GTA Technical Committee creates concerns about its independence, we believe these could easily be addressed - an independent body made up of representatives from both sides would be the answer.

84. Such a body would also be funded by the parties, rather than by the taxpayer.

85. Paragraph 2.147 of the PDR picks up on governance and monitoring. This is patently one sided, as all it mentions is that any breaches on rate caps will be easily identified by insurers. What provision is made to protect CHCs from breaches or bad behaviour from insurers? These causes of friction are not addressed, giving rise to concerns from CHCs about bias on the CMA's part.

Laws and Regulations

86. As noted above, Kindertons believes that Remedy 1C could not be implemented (or at least not implemented in the form the CMA proposes) without a change in the law to cap the amount a non-fault driver can claim for replacement vehicles. We think this would be undesirable, not least because it will deprive consumers of their legal rights and limit choice of vehicle provider.

Remedy A

87. **It would be *unreasonable* to conclude that separation leads to an inefficient supply chain (other than as a result of some frictional costs which may arise as a result of the relationship between CHCs and at-fault insurers and/or CHC failing to abide by the GTA) where the CMA has not adduced evidence that indicates the CHC sector is characterised by an absence of competition and/or excessive profits. It follows that the only group "earning rents" are insurers and brokers who benefit from the referral fee income stream. Even this would be a non-controversial conclusion for the CMA to draw, given insurers are passing through this income in the form of lower premiums.**

88. To the extent that an AEC were found to arise from TOH1, Kindertons believes the CMA's proposals to require insurers and claims management companies to provide more and clearer information on consumers' rights (a) would be effective in reducing frictional costs and (b) the costs of implementation would be proportionate to the alleged AEC. Kindertons believes the emphasis should be on the provision of information at FNOL stage and that information must be presented in a clear, concise way at the time relevant choices are made by consumers.

89. This would include the options for replacement vehicle provision and status of providers.

Will it address the AEC?

90. Kindertons believes that Remedy A (and in particular remedy A in combination with Remedy 1F, requiring insurers and all CHCs to ask customers about their needs and to certify mitigation, will be effective in addressing the AEC. **In fact, Remedy A and Remedy 1F would obviate the need for a cap.**

91. **In Kindertons' view the only real cause of frictional costs (beyond friction which is required to ensure the efficient provision to consumers of their legal rights) is where consumers and/or unscrupulous claims management companies have inflated claims and failed to mitigate, or where insurance companies have routinely challenged legitimate claims in the knowledge that CHCs will discount given the nature of their relationship with insurers.**

92. **Remedy A will also help mitigate (although not entirely remove) the risk that at-fault insurers would seek to provide replacement car cover which was less than the consumer's legal requirement.**

When should information be provided?

93. Kindertons' view is that, although the information ought to be provided at policy inception / renewal, the critical point at which the information should be provided is at FNOL.

What information should be provided?

94. In Kindertons' view the form of the information to be provided, particularly at FNOL, is critical. We note that the CMA's current thinking is that the FNOL statement should be oral. In addition, the information that should be given should be in as concise a form as possible, be clear and drafted in a way in which consumers are most likely to understand.

95. We have reviewed the CMA's suggested wording for the *Statement of consumer rights following an accident* (Appendix 2(2) Part A, PDR) and the *First Notification of Loss statements* (Appendix 2(2) Part C, PDR). The statements appear to be comprehensive and largely uncontroversial. However, we note the following as an important point to consider:

- Both statements state that the consumer has a right to a vehicle that is ***similar*** to their own vehicle (see paragraph 6(b)(i) of Part A and paragraph 3(b) of Part C). This wording is vague and potentially misleading. In fact the entitlement is to a replacement vehicle which is ***equivalent*** to the non-fault driver's own vehicle.

-

Which parties should comply?

96. Kindertons' view is that all PMI providers and any participants handling FNOL (including insurers, brokers and CHCs) should be required to provide the FNOL statements.

Implementation issues

Cost and timeliness

97. We refer the CMA to Kindertons' response to the CMA's FP1 data request.

Monitoring and enforcement

98. In Kindertons' view this remedy will need stronger enforcement than the CMA is currently proposing. The requirement to give a statement at FNOL in particular should be implemented by Order.

Remedy 1F

Will it be effective and capable of implementation?

99. According to paragraph 2.46 of the PDR, under Remedy 1F the CMA proposes a remedy which would require all replacement vehicle providers to ask non-fault claimants standard questions about their need for a replacement car. Replacement vehicle providers would also be required to complete a mitigation statement, which would be countersigned by the claimant. Replacement vehicle providers would, in turn, be required to provide a mitigation statement to the at-fault insurer in order to claim for hire charges.

100. In addition, the CMA considered whether, if an at-fault insurer could have access to the call records of the replacement car provider in the event of a dispute, this would increase the effectiveness of the remedy.

101. As noted above, Kindertons' view (in the light of the other evidence provided to the CMA and its conclusions in the PFs) is that the only possible source of inefficiency in the supply chain is friction resulting from disputes between at-fault insurers and CHCs.

102. Under paragraph 2.48, the CMA found that disputes between at-fault insurers and CHCs/CMCs typically relate to one or more of the following aspects:

- liability;
- hire rate;
- hire duration;
- need.

103. To an extent, a degree of friction is an unavoidable consequence of the law of tort (i.e. there will always be cases in which there is a genuine question about liability and/or quantum of a claim). In this regard, the CMA will note our view that, to the extent genuine disputes about liability are unavoidable, the costs of dealing with these disputes should not be incorporated into the CMA's calculation of the detriment associated with TOH1 – these are the costs of resolution of disputes and are necessary in order for consumer interests to be protected.

104. However, to the extent friction is avoidable (for example where there is a lack of clarity about what can be recovered or a lack of evidence as to mitigation), then Kindertons believes this could be effectively addressed by a combination of Remedy 1F, together with the adoption, or better enforcement of the GTA rules.

105. Kindertons believes that Remedy 1F (together with the ability to access call records) would be effective in reducing friction caused by disputes about need and to some extent, hire rate and hire duration as the CMA acknowledged in paragraph 2.53 of the PDR. The repercussions of fraudulent completion of the

mitigations statement would be sufficient to create a disincentive to those vehicle providers and/or customers who might otherwise seek to inflate claims on the basis of need and/or duration and would provide evidence to help discourage vexatious claims by the at-fault insurer that loss had not been mitigated.

106. To the extent that Remedy 1F did not directly address friction caused by disputes in relation to hire rate and hire duration, disputes in relation to these issues could be significantly reduced were GTA compliance to be a prerequisite of settlement of a claim. The GTA sets out clear guidelines as to the rates recoverable and represents the consensus of insurers as well as CHCs/CMCs. The CMA acknowledges (at paragraph 2.107 of the PDR) that the GTA framework which ties hire duration to the duration of repair provides the right additional measure for limiting hire duration. Kindertons believes that the mitigation statement (Remedy 1F) could be extended beyond need requiring customers and claim firms to certify that the duration was no longer than required. The effectiveness of this remedy could be augmented by Remedy A setting out the obligations of the customer to mitigate its loss at FNOL.

107. In addition, Kindertons has no objection in principle to the adoption of the GTA features identified in paragraph 2.114 of the PDR, which would assist in the reduction of unnecessary frictional costs. We note that currently the CMA proposes to adopt monitoring and payment arrangements of the GTA but not those rules relating to acceptance of customers and or dispute resolution. Kindertons believes that the monitoring of payment provisions of the GTA could contribute to reduction of friction arising from disputes as to duration and the level of hire charges.

108. Kindertons believes that the adoption of the GTA customer acceptance and dispute resolution arrangements could help to further reduce friction.

109. In addition, Kindertons' view is that the implementation of a claims portal could significantly reduce the costs of dealing with disputes and could be added to a package of measures built around Remedy A and Remedy 1F to address frictional costs.

Is Remedy 1F proportionate?

110. In Kindertons' view, the mitigation statement proposed by the CMA reflects best industry practice and is therefore clearly proportionate to the AEC alleged by the CMA. We are not concerned that Remedy 1F together with the adoption of certain features of the GTA would adversely effect credit hire business, provided that the questions are not overly demanding.

Implementation issues

111. Kindertons agrees with the CMA's suggestion (in paragraph 2.148 of the PDR) that Remedy 1F could be enforced and monitored without the need for external intervention. The repercussions of fraudulent completion of the mitigation statement would be sufficient to create a disincentive to those vehicle providers and/or drivers who might otherwise seek to inflate claims on the basis of need and/or duration.

112. We note the CMA concluded that it is unnecessary to give access to call records for these purposes.

113. We have reviewed the CMA's suggested wording for the *Mitigation Declaration Statement* (Appendix 2(3), PDR). The statement appears to be comprehensive and largely uncontroversial. However, we have two specific concerns with the current wording, as follows:

- Firstly, as currently worded, the Mitigation Statement refers to the right to a vehicle that is ***similar*** to the non-fault driver's own vehicle (see paragraph 1(a) and 3(e)). This wording is vague and potentially misleading. In fact the entitlement is to a replacement vehicle which is ***equivalent*** to the non-fault driver's own vehicle.

- Secondly, in section 3 of the Mitigation Statement, it is incorrect to say that the non-fault claimant must *keep their loss to a minimum*: non-fault drivers have a duty to ***mitigate***, rather than minimise, their loss.

Costs and timeliness

114. To the extent that Remedy 1F and the additional measures to support it reflect best practice by CHCs in any event, the cost of implementation of Remedy A and Remedy 1F, together with any additional adoption of GTA features, would not be unduly onerous and the costs of system changes training and ongoing compliance are expected to be relatively modest.

115. Kindertons agrees with the CMA's assessment (in paragraph 2.153 of the PDR) that Remedy 1F could be implemented quickly.

116. In addition, as far as Kindertons is aware, Remedy A and 1F and the accompanying adoption of the GTA features mentioned, would not require changes to existing laws and/or deprive consumers of their statutory requirements (unlike Remedies 1A and 1C).

Kindertons Limited

9 July 2014

Private Motor Insurance Investigation

Response to

WP23 - Estimation of the detriment from the separation of cost liability and cost control (theory of harm 1)

Kindertons Accident Management

8 July 2014

Note [✂] or [Redacted] means text removed on confidentiality grounds

Note – This document must be read in conjunction with:

(a) our response to Section 6 and Appendix A6(1) of the Provisional findings dealing with the cost of replacement cars,

(b) our response to the CC's Remedies Notice, and

(c) our hand-out and representations at the private hearing on 4 March 2014, and

(d) [✂]

We are assuming all this information has been understood, but note a concern that some of our objections and evidence is not mentioned in either the PDR or WP23. Where this is identified, we note this.

Table of Contents

Annexes

Introduction

We thank the Competition & Markets Authority (CMA) for giving us the opportunity to respond to WP23 by 4 July 2014.

In the following, we cross-refer to the CMA's text or tables from WP23, and reproduce such text where we believe showing that information will enable the Panel and staff to better understand our comments and representations. However, we think it is important that the readers cross-refer to the CMA's text as needed, to fully understand our points, which we make in the order of presentation of information in WP23.

The CMA will note we disagree with information in this paper, and note where more/better work was expected. If there are any queries, we will be happy to clarify any questions or provide further supporting evidence.

This document is confidential for the CMA's attention, but we will produce a version for the public domain, to be placed on the CMA's website. Where we feel, as the remedies process develops, that we should put more information from our submission into the public domain, we will provide the CMA with additional information. That will enable other parties, also interested in the outcomes of this investigation to properly consider the points we have made.

At the highest level, dealing with the substance of the CMA's work to date in the matters covered by this response, we still believe it will have significant impact on our business. We are concerned that although the CMA has provisionally set aside, for example Remedies 1A and 1G, its proposals under Remedy 1C has problems. For example, the lower rate cap proposals could threaten the viability of some or all CHCs, currently operating in a competitive environment, and who the CC/CMA noted do not make excess profits. Our comments are meant to assist the CMA decision-makers realise that any cap proposals at variance with the GTA rates would be disproportionate. We don't believe the adverse impact of these proposals is properly assessed in the PDR or WP23.

We note that WP23 consist of 37 pages of text, plus 6 Appendices comprising around 35 additional pages. As we understand the CMA is provisionally not taking forward remedies to deal with **credit repairs**, or **credit write-offs**, we therefore do not propose to respond to text and tables on these subjects,. However, where we make comments on the CMA's work

relating to Credit Hire (CH), we will assume that this will be carried forward, as necessary to the CMA's equivalent work on credit repair and write-offs, without need for this comment.

We assume that WP23 will appear, in some form in the CMA's final report. Hence where we suggest the text needs amending or updating, we are requesting that this is done so that our concerns are treated fairly. We note our aim is for this investigation to lead to conclusions that are both pro-competition and consumer, and we believe already this is the case in terms of services provided by CHCs.

In this document, we refer to the CMA, but previously, it was known as the Competition Commission (CC), so this designation may be used regarding past communications with the CMA.

Response to the paragraphs in WP23 –

Separation of cost liability and cost control

Paragraph 1 response

We note the CMA is referring to its provisional findings in the para. The language used is selectively prejudicial, and we objected to this at the Provisional Findings stage. Specifically:

(a) it is not clear who the CMA is alleging is making or earning 'rents', and we noted that this may apply to insurers as they have a point of need advantage at FNOL stage, but does not apply to CHCs like Kindertons. We too don't have opportunities to make mark-ups applied to subrogated claims. So please can the CMA ensure the parties/organisations accused of these practices are identified in the narrative.

(b) We challenged the view that CHCs in their interaction with at-fault insurers create excessive frictional and transactional costs. We identified the concept of avoidable costs by insurers, and we think this issue is exaggerated in the CMA's reporting and analysis. We believe our comments need to go into this text.

Paragraph 2 response

We broadly agree that referral fees received by insurers is a benign feature. It is recycled, but the pro-consumer effect of referral fees paid to intermediaries is not apparent from the text. Our concern is any attempt to prevent referral fees going to introducers could separate consumers from CHCs who can better serve their needs when in a non-fault accident.

There is no certainty that at-fault insurers can be trusted to accept this responsibility to non-fault claimants. Hence referral fees enable the market to operate in a pro-consumer manner, and recycles the money back to consumers in lower premiums.

We note that even on the current alleged detriment of £87m, which we dispute, this sum apportioned over 25 million policies a year, is only around £3 a year in allegedly inflated premiums, at around £440 a year. When this £3 is set against the value of the benefit to claimants, it is a great cost benefit feature of the current market structure. That fact needs to be noted clearly.

We also noted that if this detriment is applied over both private motor, and commercial drivers, then the alleged detriment when spread over say, 35 million drivers, equates to less than £2 a year, compared with average premiums of £440.

- We believe that great care is needed to ensure the implication of these trivial sums don't result in remedies that are disproportionate to the gain, or cause more harm to consumers than good. For example, if a remedy harms CHCs from providing their existing services to consumers, at no charge; that will clearly be harmful to huge numbers of impecunious non-fault claimants, who otherwise could find their claims dismissed by insurers at FNOL. Some of this is noted in this response.

We note that the CMA has also omitted any reference to the opportunity costs derived by consumers (non fault claimants and their extended families) from the free service of CHCs at their point of need. Our one-stop shop service as mediators/facilitators for fair settlement, enables them to spend time and money elsewhere, but this is ignored in the CMA's analysis without any explanation. It is touched on regarding ULRs, but the CMA declines from estimating this benefit. We object to this failure to do what is needed, before remedy proposals are finalised.

- Taking account of these consumer benefits to the 300,000 consumers a year who currently obtain the free CHC service at point of need, would imply no detriment to motorists who pay annual premiums of around £440 a year.

We believe the above needs to go into the relevant text, around paragraph 2, so it is fair, balanced and reasonable.

Paragraph 3 response

The narrative with Table 1 is not helpful. The language is also selective by omitting all the counter arguments and views, specifically that there was no alleged detriment. That remains our position, and the drafting omits this.

The layout of table 1 is also poor. For example, line 2 is a set-off of additional revenues, but appears as if the numbers are being added together. There is no narrative, and the reader is assumed to understand what is shown. We dispute anyone would know what messages this table conveys, other than being forced to accept a view that there is a £120m detriment at some unknown date. We object to this one-sided presentation that for example is at odds to our workings on the detriment shown at the private hearing in March 2014. The reader needs to know that CHC parties (that are experts in the sector) do not accept the CMA's analysis.

Paragraph 4 response

We note the CMA says its general approach was to *'assess effects on competition against a benchmark 'well-functioning market', i.e. a market which delivered consumers' legal entitlements in an efficient way*.'

- When we read the CMA's thinking on this, including its narrative in Appendix A, we think the CMA has erred in its analysis. Fundamental flaws in the CMA's approach to calculating the "detriment" arising from separation, has led it to propose provisional remedies which will inevitably lead to the demise of the CHCs model. The benchmark used (i.e. direct hire) is an artificial construct that does not reflect the real costs of delivering the legal entitlements of consumers. By not allowing properly for these costs[16]. The CMA has singularly failed to find a comparator that is suitable. As a result the CMA's proposed remedy 1C will fundamentally deprive consumers of their legal rights, which would be an unacceptable outcome for a market investigation.

Moreover, if remedies lead to the loss of CHCs, that is a loss of choice for consumers who will cease to get this service for free, from such providers. Loss of choice is completely

[16] The proof that this so-called direct hire **benchmark** is totally contrived and artificial is in Table 10 of WP23. Here, all the direct hire comparator number are hidden. That is enough to show the CMA cannot rely upon this data. Any benchmark from a well-functioning comparator needs to be based on transparent and verifiable data,. We say more about this in this response.

missed out, from the CMAs thinking, when it suggests that an insurer sponsored direct hire path is the ideal solution for non-fault claimants. The errors here are huge, as we noted in our earlier private submissions. We will comment further, when needed in this response.

We attach **Annex A** to show that the CMA's thinking is wrong, and leads to inconsistencies with its own Guidelines, where non-price factors such as choice, innovation and quality of service are all as important as issued of price. We think the CMA's work in the non-price areas of competition is not satisfactory.

Paragraph 5 response

We note the CMA has updated its work; however we believe the methodology adopted remains fundamentally flawed and prejudicial to our interests. Similarly, the sensitivity analysis is superficial and poor. It informs us that the CMA's estimates of an alleged detriment are based on weak analysis and assumptions.

- For example, the CMA notes its range for alleged detriment is between £70m and £180 million a year, with a baseline detriment of £83 million. The top range of **£180m is nearly 3 times the lower estimate of £70 million**. So this wide variation must be seen as statistically unsound. We object to this selective misrepresentation of data.

Paragraph 6 response - Summary of our approach and revised estimates

We think the para is founded on unsupported and unfair assumptions that even in the absence of CHCs, non-fault claimants would be provided with their legal entitlements by at-fault insurers (e.g. mobility). We have noted that this can not be expected in an environment where CHCs are not able to operate in the manner and scale as now. Currently, only around 30% of claims are handled/captured by insurers, and this key statistic is not noted, nor explained in the narrative.

The assumption is misleading. The loss of consumer choice from preventing CHCs from competing for non-fault claimants on the basis of their current model on an equal basis with insurers, would be a massive detriment to consumers, including their opportunity costs foregone and financial losses from consumers finding their legitimate claims are rejected (i.e. they don't get their legal entitlement). The CMA's predecessor acknowledged in its provisional findings that CHCs played an important role in constraining direct hire providers in terms of quality and service. All this is omitted or ignored in the PDR and WP23.

Equally troubling, we note the updated detriment does not adjust the alleged detriment downwards, e.g. for **upselling revenues** that direct hire companies can make from claimants once referred by at-fault insurers. This revenue, in our view is worth £millions to them, and is not something done by CHCs who provide their service to claimants for free, and charge insurers only at rates up to the GTA ceiling, or within the penalty regime.

Moreover, we have not seen where the CMA has dealt with the following (noted in para 6) in its consideration of remedies:

> ' … As a consequence, our estimated net detriment **may include** some costs which are unavoidably associated with the separation of cost liability and cost control, as well as potentially **avoidable transactional and frictional costs**.'

If as we assume, this means double-counting costs against CHCs, then this needs to be quantified clearly. We believe there are limited frictional costs from involvement of CHCs operating under the GTA framework, save for unavoidable transactional/frictional costs arising from tort law. We (and other large CHCs) efficiently do the work that would otherwise be done more expensively by insurers (and with less recognition of claimants rights). Our work and role, also eliminates numerous potentially fraudulent claimants (who therefore don't bother the insurers) – this too is omitted in the CMA's analysis.

- To the extent that legitimate frictional costs are being captured in the CMA's calculation (which we believe to be the case), this is improper. In the absence of a change in the law to deprive claimants of their rights, we do not believe it is appropriate to identify unavoidable frictional costs included in CHC's hire rates as arising from and AEC. The CMA's attempts to identify insurers costs of claims management are inadequate. As a result the CMA is in danger of misdirecting itself as the extent of any AEC.

Our settlement packs are comprehensive bundles of evidence to ensure settlement is quick at the end of the process, where the intention of the GTA's framework is that it becomes a "box ticking" process for the at-fault insurer to enable subsequent prompt payment.

We add further that insurers poorly provided the CMA's evidence on alleged frictional costs. Para 4 from Appendix G clearly says this as follows:

> One insurer gave us very low estimates of the frictional costs it incurs when at fault and relatively high estimates of the cost of managing captured claims. This results in a **low net detriment**, both on credit hire and overall. On the other hand, another insurer provided very high figures for frictional costs and low estimates of management costs. These figures result in a very high detriment.

The CMA can not pick its evidence selectively. But this narrative informs us that our view is correct that any alleged frictional costs with insurers is low, in the case of large and efficient CHCs, like Kindertons. This evidence needs noting.

Given the above, we think the facts in favour of CHCs are ignored (contrary to what is promised) from our reading of, for example, para 2.88 of the PDR. Here, the CMA writes about a high rate cap at GTA rates:

> …. As a high **rate cap of double the low rate cap is approximately similar to the current GTA level,** we considered it would imply a broadly similar incentive to at present for a replacement vehicle provider to provide a replacement vehicle to a claimant, who was *probably* but not certainly non-fault

But the CMA then quickly says it wants almost all claims to be settled under the lower cap, which would make it impossible for CHCs to survive independently as a competitive force. Para 2.90 says:

> *(a)* the low rate cap will apply in **a high proportion of situations**, in particular those where initial information suggests claimants are non-fault; and
>
> *(b)* excess frictional costs will be low (since they only occur under the high rate cap which applies in a **low proportion of cases**).

Accordingly, we think there are numerous logic and factual errors in the CMA's thinking leading to the conclusions we object about in the above paras from the PDR. If the CMA implements remedies in the way noted above, the lower rate cap could seriously harm the viability of an independent CHC sector.

Paragraph 9 response

We note judgement was applied to allocate costs data from insurers, e.g. into credit repairs, write off, and credit hire. Accordingly, we question the quality of these decisions, given the wide disparity of primary data, as noted in para 4 of Appendix G. This work must be done correctly. We also note that the CMA has not shared any of this data with CHCs so we could assess the quality of work ourselves.

The conclusions of this work appear, we think on Table 1 in Appendix E of WP23. We dispute this data, and would suggest the results e.g. £78 for hire claims handled by CHCs is overstated. For the avoidance of doubt, we think the results in the table as reproduced below should be disregarded as unreliable and untested.

TABLE 1 **Information on at-fault insurers' costs** [from Appendix E]

£

	Subrogated claims		
	Captured claims	*Claims managed by non-fault insurers with the hire component referred for credit hire*	*Claims managed by CMCs*
Repair/write-off	53	32	45
Replacement vehicle Other	27	78	78
Other	57		

Source: Insurers.

Note: The 'other' category includes the costs of capturing a claim that cannot be easily allocated to either the repair or the replacement vehicle components.
Different insurers adopted different approaches with respect to these costs.
Some allocated all or most of them, others reported high figures under this category.

The above shows a large sum allocated to 'other' at £57. This should clearly be allocated correctly either to repair/write off or replacement vehicle provision otherwise the CMA will be open to challenge. The nature of these 'other' costs needs to be narrated better than as shown in the above table – why therefore they appear in the analysis is not clear and must indicate insurers had problems providing reliable data to the CMA on costs questions.

Only £27 is shown under captured claims for replacement vehicles. It implies insurers are spending **3 times** the £27 allocated to captured claims on their dealings with CHCs. There is no logical reason why this would be the case. Given that CHCs manage non-captured claims (and there is no evidence that insurers duplicate costs of (e.g.) capture teams, Kindertons would expect the reverse to be the case. In these cases, we do all the work once we capture a client, so insurers should not be having frictional disputes with CHCs operating under the GTA – and this can be proved by the level of disputes. This disparity should again inform the CMA that the data provided on this by insurers is at best highly unreliable. Here, the CMA has been silent.

- Friction may arise with CHCs operating outside the GTA, around 23%. If this is the source of alleged friction, then the CMA's analysis as noted above, needs to be more refined, and targeted to its source/cause.

In our view, the CMA is double-counting this subject of insurers costs by allocating them against CHCs, and not against DH operators, whose costs are actually subsidised by insurers (doing work that CHCs do for claimants). Accordingly, these costs, once correctly calculated, need to be allocated to the direct hire pathway because such costs relate to the insurer's in-house direct hire service. So far, we believe the costs are excluded from the direct hire prices in Table 10, and the detriment calculation. Hence our complaint about double counting against CHCs.

By the nature of direct hire providers being **agents** for insurers, there may not be dispute costs, but nevertheless insurers/direct hire providers still require costs to manage them, give them instructions, keep in touch over timetables for action and review, authorise and make payments, etc. Significantly where is the breakdown of the costs of the insurer's capture team who have to identify the third party, contact the policyholder, establish liability, carry out fraud checks, all before the claim is even passed to the direct hire provider? As a CHC, we know how much that costs and for there only to be an allocation of £27 to do all this, and then to monitor and manage the claim thereafter seems unrealistic. All these costs are omitted and misleadingly presented in WP23, and the detriment calculation. The CMA must answer these concerns which effect both fairness, and quality of the investigation process

We have tried to sense-test these results. As the CMA knows, the at-fault insurers do work to find claimants, so Direct Hire charges are set without needing to recover these [significant] costs, consisting of labour, office accommodation, and computer systems, etc. So we think captured costs figure at £27 is too low, and artificially inflates the detriment? We note that para 4 in Appendix G says:

> One insurer gave us **very low estimates of the frictional costs** it incurs when at fault and relatively high estimates of the **cost of managing captured claims**. This results in a **low net detriment**, **both** on credit hire and overall. On the other hand, another insurer provided **very high figures for frictional costs and low estimates of management costs**. These figures result in a very high detriment.

Accordingly, please can the CMA inform us of the **high estimate** for captured claims, as noted in this para, and substitute this figure into the detriment calculation. Similarly, the alleged frictional costs should be reduced to the lowest estimate shown in the above paragraph (which we note is not disclosed, but should be provided to compare with the CMA's number of £78 which we dispute).

In contrast to DH [benchmark] costs being subsidised by at-fault insurers (for the purpose of this separation calculation), CHCs have (a) to manage their full relationship with clients, (b)

win the claimant once the referral is made, (c) check the facts on the accident using experts, (d) arrange repairs management, and also (e) screen out all claimants whose claims are not satisfactory (i.e. potentially fraudulent), and (f) assist with uninsured loss recovery, or other potential claims, and (g) take client's queries as they arise. This is all work that the non-fault insurer would have to do and therefore the additional costs incurred through credit hire **cannot be put down to inefficiency**.

- **These costs need to be recovered in CH charges (under the GTA framework)**, but are not included in the Direct Hire charges shown in Table 10 of WP23 (i.e. excluded from their charges negotiated with insurers). Hence we believe the CMA's scaling factor of 2.1 is artificially high (from Table 10 in WP23) because it does not include all these extra CH costs (costs which must be borne by the insurers where they are not borne by the CHC's) in its benchmark comparator for direct hire charges/costs.

By excluding the legitimate CH costs from the comparison, the CMA thereby increases the detriment it reports between DH and CH costs (see Table 10 in WP23). We note that we brought these points to the CMA's attention at our private hearing on 4 March 2014, and specifically in our Hand-out at the meeting. The results of this discussion have not been taken forward in WP23, nor the PDR, and we object to this omission. Our arguments and analysis needs to go into this part of the report, so that the CMA's analysis is not misread as correct. It is disputed and readers need to know the areas of dispute, and reasons why the issues are set aside.

To assist the CMA, we refer it to the following pages in our hand-out:

- Pages 15 to 22 comparing the potential costs to the hirer incurred in the credit hire pathway, with the potential costs incurred in the direct hire pathway.
- Page 9 showing our revised version of the CC/CMA's AEC calculation
- Page 3 discussing the differences between these 2 types of services, and their respective focus i.e. CHCs serve consumers, whereas DH providers serve the insurers who have contracted to buy their basic car hire service (and nothing more).

The implications and costs of this are *omitted or misrepresented* in the CMA's analysis. We expect our comments to be properly taken into account in the final report.

- We also believe the costs that insurers incur (on behalf of direct hire contractors) should be added to their charges shown in Table 10. These costs as we

conservatively suggested in our bi-lateral should be in the region of £50 a claim The CMA must reconsider this. We expect this to be dealt with in full, in the final report.

Paragraphs 11 to 13 response – *credit hire*

Given our comments under para 9 above, we believe the £78 mentioned in para 11 is misleading and wrong. It arises from faulty allocation of insurers costs. We believe that if insurers incur any costs in dealing with CHCs, for which recovery from CHCs might be appropriate, that should be no more than say, £20 to £30 for an efficient insurer dealing with a large CHC under the GTA framework. Our work is independent of insurers and under the GTA and alternative bi-lateral agreements should be seen as a clear benefit. Based on the CMA' use of the £78 cost per claim and when offset against £27 per claim to be the notional saving, over the 301,000 claims this amounts to circa £15 million which represents nearly 20% of the alleged total detriment, we do not accept that this is a true reflection of such costs

- If however, the insurers' audit costs in dealing with the settlement leads to recoveries, then first, the insurers gain from the lower settlement; and second, they can identify the CHC responsible for the so-called inflated claims. In this way, the CMA will have obtained credible evidence to support its allegation of frictional and transaction costs being above a normal or acceptable level. The CMA has not done any of this, or the insurers did not provide such evidence proving this is a false argument. We expect our comments to be fully reflected in the final report.

We add that if insurers identified CHCs who were overcharging, that fact would jeopardise a continuing relationship, so it is not a problem that the CMA should expect between insurers and established CHCs, with whom they have a long-term regular relationship. It is a false narrative.

- Accordingly putting these attributed £78 costs into the detriment calculation, on the side of CHCs, simply **double-counts** costs against CHCs, whilst making the insurer's direct hire path look better. It is a false and misleading presentation of reality.

Indeed as noted above, we believe most of the costs incurred by insurers should be allocated to captured claims costs, or to the direct hire path, or perhaps (and we have no information on this) **to their 'at-fault claims' category**. If this was done more rigorously, we think the results shown in Table 1 above would be very different, and the £78 shown against

CHCs would be reduced to near £20/£30. We can not prove this, but the CMA has the data to look further into this, and confirm our argument as correct

As will also be apparent from this response, we dispute the **£566 difference** per CH claim shown in para 11. The net addition of £78 less £27 for alleged frictional costs, is also disputed for reasons given above, and at worst should be a neutral offset. Against this, the savings to insurers from CHCs is significant, including the reduction in fraudulent claims that CHCs screen-out by our presence in the sector. This externality benefit is not included in the detriment calculation, but needs to go in, to reduce the alleged detriment.

Several other adjustments are needed, as we discussed with the CMA at our private hearing in March 2014. They too are not mentioned, and if done, we believe **there is no material alleged detriment**. For example:-

- [REDACTED].

- The insurers do all the work of claims management and claims capture on behalf of direct hirer. This massively subsidises its costs of simple direct hire. Also, the direct hirer as agent for the insurer has no responsibility to claimants, contrary to CHCs who **contract with the claimants directly, and act on behalf of claimants (ie subrogation)**. Accordingly CHCs interact with insurers as third parties (with expertise), **on behalf of claimants**. So, the CMA's work on the detriment manipulates facts and data in favour of the direct hire path, contrary to the evidence we brought to the CC/CMA's attention since January 2014. Indeed we think other parties have said similar things, to reinforce our evidence. Why all this is ignored with no explanation is something we object about.

- Furthermore if CHCs are to remain an independent competitive force under the GTA, then it is essential that the detriment calculation takes account of an adequate allowance for marketing and advertising cost. If the CMA is against referral fees, then how could this pathway remain viable and competitive, and pro-consumer without allowance for this factor? This issue has nothing to do with efficiency between insurers and CHCs, but with a feature that is expected in all dynamic and competitive markets. Surely the CMA expects an independent pro-consumer and pro-competition market to have adequate advertising and marketing? But this is ignored in the detriment, and thus can not be right.

  In contrast, direct hire is a basic **self-supply car hire operation** with no service

> obligations to claimants, It also represents a non-contractual situation between insurers and claimants, who therefore may not be treated fairly, and can not therefore demand what the insurers refuse to accept. Accordingly, the majority of non-fault claimants require the constraint of a viable and independent Credit Hire sector, to whom consumers have access. This reality is not stated clearly in either the PDR or WP23. So the analysis of the detriment is false and misleading.

Given our comments above, we dispute the £186 million alleged overall cost increase from separation (before referral fees are offset). In our situation, we believe that net situation arising from CHCs is positive, i.e. there is no material detriment. We attach our updated work on this alleged detriment, as **Annex B**.

We add also, that the CMA work on separation does not take account of the **opportunity costs of consumers** from having the services that CHCs provide for free. The CMA acknowledged these opportunity costs (without quantifying them) for ULR (uninsured loss recovery), and we don't understand why this work has not been extended to quantify this issue, as an offset against the alleged detriment from separation. Ultimately, it is consumer benefits that drive sensible competition decisions.

- We noted in our response to the provisional remedies (see pages 62 to 65) that the benefits to consumers could be more than £100m.[17] Unfortunately the PDR is silent on what has happened regarding the above. We believe it needs to go into any considerations regarding the need for Remedy 1C, and especially the lower cap provisions (as noted for example in para 2.90 of the PDR).

- It follows that we believe the CMA's assertion of a new detriment of £87 million is wrong and inappropriate. We hope the CMA will reconsider this subject, and engage with us, as further discussion will be needed.

Paras 14 – 16 – credit repairs – for reasons given in the introduction, we have no comment.

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[17] We wrote:

> We have tried to use an average persons wage, say £25K a year, to get a value for 1 hour, say £13 an hour. Applying this to some 8.2m hours equates to a time value of around **£110 million**. To this we need to add cost of calls to Insurers, postage and ad-hoc travel related to the claims. This in our view counter balances any alleged assertion of an AEC, as noted in paragraph 6 of the Remedies Notice.

Paras 17 – 20 – insurer-managed repair and write-off – for reasons given in the introduction, we have no comment.

Paras 21 – 22 – sensitivity analysis

We agree with the CMAs observation on the uncertainties around its data. Moreover, we have serious problems with its assumptions as noted in our submissions to date.

Regarding credit hire, we note the net detriment at some £70m to £180m. As discussed above, the high alleged detriment at some **3 times the lower estimate** informs us that the quality of data used is very unreliable; hence changing the assumptions produces widely varying results. In our view this indicates fundamental flaws in the CMA's methodology and over-reliance on unsupported assumptions.

Even without our objections, this wide variation in the CMA's estimated detriment, tells us it needs to apply caution in favour of CHCs. As we noted, the £70m low estimate is wrong, and we believe separation is something good for consumers. The operations of CHCs under the GTA are also efficient, and pro-competition, contrary to the CMA's thinking.

Given our comments above, the overall range for the CH detriment is unreliable and misleading.

Paras 24 – General criticism on the approach to estimation

We broadly agree with these comments. But we suspect much more can be noted under this section. We spent months in challenging the CMA's approach and that too is evident from responses shown on the CMA's site by CHCs and other parties that questioned its methodology as wrong, exaggerated and selective in favour of insurers and direct hire providers. Why all our objections were ignored is not explained.

Paras 25 to 26 – *Benchmark considerations*

We read Appendix A with interest. We note the CMA calls its 'benchmark' a tool for its analysis of the situation without the feature i.e. the counterfactual. The CMA seeks to look at effects, and consumer benefits. Unfortunately, the CMA's analysis does not properly deal with this subject, and our comments below need to go into its considerations.

First, we note that the CMA recognizes the value of CHCs, specifically:

> we recognise the point made in responses, that in the absence of separation (ie if at-fault insurers handled all claims from non-fault parties) insurers would have an incentive to **under-provide on service** as well as to control costs.

We say that under-provision is not in terms of quality but absolute refusal to accept legitimate claims, or make excuses that leave a large proportion of legitimate non-fault claimants (i.e. consumers) with costs/losses, or partial admission of fault. This is a significant issue when considering the counterfactual. The CMA's work so far, has not quantified this damage to consumers, under this counter-factual scenario. The CMA also needs to understand that without CHCs, there will be inequality of arms, especially for impecunious claimants who will be denied mobility. Or worse, even if their claim is accepted, very few might get a replacement direct hire car, within a few hours of FNOL, but in reality after days of dispute with the insurer. Where is any of this taken into account in the CMA's counter-factual thinking.

- Indeed the externality benefits from the existence of CHCs to benefit insurers, e.g. by reduction in fraud claims and such administration, is also ignored in the CMA's thinking. All this prejudices the interests of CHCs.

The CMA's analysis uses data based on the current status quo to suggest that the quality and service between direct hire and Credit Hire is not far apart. But what it has failed to do is take account of what the so-called direct hire, or insurer sponsored direct hire path would be without CHCs. That is missing from the PDR and not reflected in the alleged detriment thinking. It is obvious that the situation for consumers would be much worse without CHCs.

As an example, the CMA makes it appear that Enterprise's broad categories of cars is a good thing, but we say this is bad because it prevents consumers from getting a like-for-like replacement as is available under the GTA. [See our comments on paras 48 to 54 below]

Another way of recognizing how the value of CHCs is down-played, is the following text from WP23 para 72:

> We noted that the most important ULR service provided by CHCs tended to be helping clients recover their excess. We noted too that the need for this service often arose because **some non-fault insurers were failing to provide customers with their entitlements under tort law**, for example by deducting the excess when subrogating repair bills to the at-fault insurer. **We found it difficult to understand why** insurers adopted this practice which appeared to **disadvantage their own customers**.

The CMA themselves have identified that insurers incentives are not aligned to the interests of their policyholders, They have market power over non-fault claimants [consumers] when it comes to claims, and insurers are not under sufficient competitive pressure to consider the interests of their customers, **let alone third parties**. So this result is of no surprise **until** the intervention of CHCs is taken into account, on the side of consumers. This finding should enable the CMA to make an expectation that insurers can not be trusted to act in a pro-consumer manner under their in-house direct hire model. But the CMA fails to do so, and we object.

So we submit that in the absence of CHCs, non-fault claimants would be in a qualitatively and quantitatively worse situation when seeking TRVs. This would show in terms of losses [financially and in terms of time], as well as loss of mobility, and their need to fund disputes with insurers directly, or walk away with their losses. The savings from such practices would not go back to motorists in lower premiums, and as we noted in recent submissions, insurance premiums have fallen in 2013 without any remedies. All this is omitted from the CMA's analysis – why?

We note that even the ULR benefit to consumers is not properly taken into account in the CMA's detriment analysis. Specifically, the savings to consumers is one benefit, but the no-cost service to hundreds of thousands of potential claimants a year is a valuable service that also needs to be taken into account, and would be worth £millions – it is a form of externality which needs to offset the alleged detriment.

As mentioned earlier, we attach **Annex A** which gives further views on why the CMA's fixation on alleged pricing issues, is at the expense of ignoring loss of choice, quality and innovation. These other beneficial aspects of competition are ignored.

- Moreover, we see that the PDR does not take forward our challenge that any alleged detriment should be seen as a consequence of the law of tort, and not a competition detriment at all. That too needs discussion in this section on the benchmark.

[Alleged] inefficient supply chain

The CMA suggests in para 25 that the under-provision situation is superseded by its concern that there is an ***inefficient supply chain*** because CHCs serve consumers (rather than insurers). We fundamentally disagree with this thinking – CHCs must serve consumers if subrogation is to work i.e. stand in the shoes of the claimant to ensure they get the service they are entitled to receive, and recover in the name of the claimant, their reasonable costs

in the same way as a Court would impose on the party at fault. This has nothing to do with competition. As we noted in the hand-out at our private hearing, our processes (and we assume those of other large CHCs) are efficient, and need to be in order to serve tens of thousands of consumers at any point in time, across the UK.

- Our services to insurers are priced in accordance with GTA rules approved by insurers so that their interests are fairly taken into account. When the CMA attempts to value this alleged *inefficient* supply chain, we note it is selective in its analysis. Specifically Enterprises' direct hire prices exclude all the insurers in-house service costs (which subsidises the pure car hire activity). It is not a version of reality comparable to CHCs services to claimants, and we don't believe the benchmark prices are credible to compare with CHC costs.

- The fact that the direct hire data in Table 10 in WP23 is excised to an extent that prices, volumes of business, period of agreement, or any rebates, are not transparent shows this work is **suspect, and flawed**. It is not a credible counter-factual or benchmark. We accordingly disagree with the CMA analysis, which we note is an updated version of **Table 6** that we disputed in detail, at the PF stage.[18] We have concerns over the contents of Table 10, as strong as we had over Table 6 before. We also don't know what happened to our objections about Table 6, which remain unanswered.

We also do not accept that the existence of CHCs create excessive frictional or transactional costs, and the CMAs work in WP23 does not demonstrate this. As we noted above, if this issue is considered, it should be no more than say £25 a claim for interactions between the efficient CHCs and efficient insurers. If the CMA says it is more, then this needs to be stratified to identify the parties and causes of the so-called friction, for example insurers, or small CHCs not signing up to the GTA. If the root cause is identified, which is absent so far, we can comment further. But in the absence of this, the argument over alleged frictional and transactional costs should be dismissed.

So far, as we noted above, the PDR does not properly recognize the value of CHCs. If so, there would be no need to suggest Remedy 1C is needed. Specifically, we believe the low cap, regarding remedy 1C is drafted in such an extreme way (as noted above) that the

[18] Our detailed criticisms of Table6 and the information therein was given in our response to the Appendix6.1, and we see none of this is reproduced in the PDR or WP23. We object to the omissions.

viability of CHCs is threatened by the CMA's expectation in para 2.90 that CHCs could charge for most claims at half the GTA rate levels. Accordingly, the loss of choice to use CHCs is a very serious detrimental effect on consumers from Remedy 1C which will negate any information advantage about them from Remedy A.[19]

- We don't think the CMA understood this conundrum in its drafting of the PDR. We also reviewed the CMA's Guidance on Market Investigations, and noted the significance of 'choice to consumers' as a detriment that needs to be protected from features. In our case, the service we provide is an alternative choice for consumers, which the CMA's remedies could make impossible to provide as a free service at point of need, and drive all claimants to insurers using the direct supply service. The CMA has not explained why this loss of choice is good competition policy. Our analysis showing the importance of choice from the CMA's guide is shown in Annex A.

We note the bullet points under para 26. We note that the way the CMA has taken the issues forward favours a pre-judgement that there is a detriment. We note quality differences arise in favour of CHCs. And the CMA has not established that insurers overpay CHCs because of poor conduct, or other negative reasons. Insurers get discounts to make their actual payments below GTA levels, and that is a good thing from a balanced relationship. The CMA is reminded that it found the allegations that CHCs take cars into garages over weekends to inflate car hire claims was not true.

To conclude on the benchmark question, we think the CMA has been 'selective' in its work to achieve pre-conceived conclusions that the existence of CHCs is an unnecessary, anti-competitive and more expensive path than if the work of non-fault claims settlement is done in-house by insurers. We object to this, and WP23 has not resolved this issue.

- For the avoidance of doubt, we dispute there is any direct hire market, but there is a car rental market which is competitive and available to consumers who wish to rent a like-for-like car, paid from their pocket. And as we noted at the provisional findings stage, this consumer rental market is more expensive (around 20%) than the GTA rates agreed with insurers. So this is the economic benchmark which the CMA should be using (as does the Courts). Why this public benchmark of spot rates is therefore ignored is because the CMA is being selective with evidence, at the

[19] **Equally bad, if any CHC exits the market, it will cause loss of assets, equity, and jobs, which will be entirely due to the CMA's remedy 1C.**

expense of CHCs

- [REDACTED]
- [REDACTED].

[REDACTED].

74. We focused on Enterprise, which currently **has a large share of direct hire**. We noted that Enterprise faces competition from other large car hire companies (eg Avis, Hertz and Europcar) and that, **despite its large share of direct hire**, insurers did not consider there was a lack of competition in direct hire.

75. It was **unclear to us why Enterprise**, which has **a large share of direct hire** and a smaller share of credit hire, should wish to price direct hire low and credit hire high. Enterprise's incentive would rather seem to be to keep its credit hire rates low in order to build its share in credit hire. However, we considered the available evidence on Enterprise's pricing.

While we agree that cross subsidisation from Enterprises credit hire business to its direct hire business seems unlikely (given the relative size of the two), the CMA appears to have ignored the fact Enterprise has a very significant position in the **regular retail hire business**, from which is can divert resources.

Nor do we believe that a market which is characterised by a sustained near-monopoly could be said to be competitive. That insurers are unconcerned reflects their desire to save costs in the short term and the CMA should not give this evidence significant weight. Rather, it is incumbent on the CMA to explore the extent to which direct hire rates may be artificially low. To date the CMA has failed [✂].

- As there is a relatively small number of large insurers, it should have been easy to follow-up this concern by examining tenders and contracts and talking to the parties who offered direct hire services. And the evaluation process and length of these contracts could have been noted to ensure all was fair and independent. But none of this critical work seems to have been done and reported in WP23, or the PDR.

[REDACTED].

[REDACTED].

- [REDACTED].
- [REDACTED].

Paras 27 – *Reasons for frictional costs*

As we noted above under para 9 (see pages 10 to 11 above), we object in principle to this frictional costs allegation i.e. that the nature of CHCs involvement with at-fault insurers creates frictional costs. As we noted in submissions after our private hearing, [see letter of 25 April 2014] that if there are costs differences between an individual reclaiming their losses via a CHC, or personally, and the costs of insurers dealing with a captured claim, this is a feature of the law of Tort, and not competition. The CMA has failed to allow for this in its analysis.

Moreover, before the CMA uses disparaging language like frictional costs, or even transactional costs (which its own evidence from insurers shows is not clear and consistent), we believe the CMA should address the issue of **unnecessary or avoidable costs, which we raised in our** response to the Provisional Findings. This too is not answered in either WP23, or the PDR and should get proper consideration. In our view, eliminating waste between insurers would yield significant premium savings to consumers.

Further we note that para 27 alleges increased prices to consumers, but does not indicate the very tiny nature of these alleged price increases, compared with the average premiums, noted by the CMA. We think this presentation is therefore misleading and distorts the truth.

- Specifically, the overall impact of the CMA's alleged detriment, at £87m equates only to £2.50 to £3.50 (when spread over 25m to 35m policies a year), compared with an average premium of £440 a year (as noted at the provisional findings stage). These very low alleged detriments per policy holder, are not noted anywhere in the PDR, or WP23 to which we object. They should be recognised before any suggestion for structural remedies like price-capping is considered.

- As we said at our hearings, the benefit to motor policy holders of paying say £2.50 extra a year for a free service from CHCs at point of need, that will yield significant

> benefits and massive opportunity costs savings, makes the current structure perfect for the consumer and competition. Why is this obvious cost/benefit trade-off ignored?

It is fundamentally unreasonable and prejudicial to the CHC model to identify unavoidable frictional costs as resulting from the AEC, **when in fact they arise from the operation of public policy** (i.e. tort law).

Paras 28 to 39 – *Pass-through [of referral fees to consumers]*

We note this narrative. The pass-through of referral fees in lower premiums to consumers demonstrates the system is inherently stable and virtuous, in the consumer's interest.

Para 31 – *residual approach*

We note the CMA's sensitivity work in Appendix F. We believe our substitute data [for the detriment calculation] should be used, and noted in the final report. This would indicate that we do not believe there is even an alleged AEC from separation, contrary to what is shown in Appendix F. Based on our submissions we don't believe it would be reasonable for the CMA to conclude there was an AEC at all, let alone of the magnitude suggested in WP23.

Para 32 – *on the estimation of average credit higher rates*

We note the first bullet point says:

> • Several parties observed that the rates we used [for direct hire] did not include the additional charges levied in the case of direct hires for services whose cost was, on [✂].

[REDACTED]

- [REDACTED]

[REDACTED].

Para 34 to 38 – *other suggested adjustments to the estimation model*

We don't think the CMA has properly answered the second bullet point as follows, under para 34 [re: need for adjustments to detriment]:

• to exclude from the detriment calculations claims against commercial insurers (given that our terms of reference were limited to PMI)

We believe the AEC methodology arises over some 35 million drivers, of which say around 25.7 million are private motor insurance drivers. Accordingly, a large **proportion** of the detriment needs to be allocated to the *non-reference activity* i.e. (35-25.7)/25.7 or some 25 per cent. It follows that only some 75% relates to the reference activity, and the proportion attributed elsewhere is irrelevant. This argument is omitted in the comments shown in para 36.

- We do not think the CMA has powers to carry-forward its remedies to non-reference activities, or use its detriment from this methodology to make assumptions about non-reference services. However, it is clear that the number of drivers effected by the CMA's methodology means it needs to scale down its detriment figure to 75%. That argument is a point of fundamental disagreement.

The CMA also knows that CHCs provide their services at no charge to consumers, and consumers also get uninsured loss recovery as a further valuable free benefit. For people who have not purchased MLEI, this is something for nothing, and is not properly evaluated in WP23. We discuss this further in the relevant section dealing with paras 65 to 72, and the adjustment can be significant in favour of CHCs.

Similarly the benefit to consumers from getting their excess recovered (when they use CHCs), or that the consumers (and their extended families) gain opportunity costs from CHCs doing their claims work, and providing TRVs immediately is not recognised.

- Also the value to insurers from CHCs filtering-out fraudulent claims, are all externality benefits, which are not properly recognised in either WP23 or the PDR. For example, as we noted, Kindertons manages 3,500 referrals a month, of which we believe around 2,100 are suitable for claim against the at-fault insurer. The screening work we do, which saves insurers from potential fraudulent claims or disputes with claimants, is something that the CMA has not evaluated, and helps to offset the alleged detriment. But the PDR and WP23 are silent on this.

Regarding Accident Exchange's point about CHCs providing services for insurers, that needs more explanation, and would also need to be offset against the CMA's detriment.

Paras 39 to 41 – *remarks on the quality of data*

No additional comments – but the objections noted are significant. It should be clear that the concerns over data are not properly resolved, as will be evident from our comments in this response. We intend to use the confidentiality ring process which may assist us resolve outstanding issues.

Paras 42 – *comments on offsetting benefits of the separation*

We note that the offsetting benefits of separation are significant. For example, consumers using CHCs to recover their uninsured losses pay nothing but can recover from insurers, say between £100 to £1,000 or more. This is a valuable service, available to hundreds of thousands of consumers a year, at no charge. It needs to go into the detriment evaluation as an offset. And if the remedies imposed harm CHCs, then consumers will undoubtedly lose this free benefit, which needs to go into the loss of RCB evaluation on proportionality of remedy 1C.

Similarly, consumers can recover loss of earnings, or loss of property, when they use CHCs to manage their claim. We do this, efficiently on their behalf as mediators and facilitators to resolve the claim fairly.

We also noted that insurers can not be trusted to treat consumers fairly, if for example, CHCs did not exist as a result of the remedies harming our independent viability. This too is not properly evaluated in WP23 or the PDR. The CMA suggests in para 43 (3rd bullet point) that if CHCs did not exist, that the *'insurer will remain liable for the damage suffered by the claimant as a result of the accident and of the provision of an inadequate service'*. But who would fund this, and what do consumers who are impecunious do, when they have no one prepared to fight an insurer, on their behalf at no charge?

- All this is omitted from the CMA's reasoning, and would affect hundreds of thousands of people a year. As we stated before, we don't expect insurers to treat non-fault claimants properly, in the absence of our involvement. This detriment would show in claims being disputed, split liability decisions becoming more common, and consumers being refused a TRV for numerous reasons, or only being given a car under onerous conditions, or being told they don't need a car (i.e. imposed mitigation). We object to the misleading presentation, in response to our argument.

- And we doubt the Ombudsman could do anything in the situations noted above,

especially because no contract exists between the non-fault claimant and the at-fault insurer. The fact that insurers' interests are not aligned with their customers interests is indirectly noted in para 72 where the CMA said:

> *We noted that the most important ULR service provided by CHCs tended to be helping clients recover their excess. We noted too that the need for this service often arose because **some non-fault insurers were failing to provide customers** with their entitlements under tort law, for example by **deducting the excess** when subrogating repair bills to the at-fault insurer. We found **it difficult to understand why insurers adopted this practice which appeared to disadvantage their own customers**.*

We also note that the CMA reserves what happens next, by saying the points will be taken into account when considering the proportionality of remedies. However, from the PDR, we are *not* satisfied that the benefits of CHCs are properly recognised, for example from reading the idea that the CMA wants its lower remedy 1C cap to be half current GTA rates, that appears totally disproportionate. It could be disastrous for CHCs to work within such an impossible cost/revenue structure. It would also tilt the claims landscape totally towards insurers, and could drive CHCs out of this sector. None of this is a good outcome for consumers. Accordingly, we expect the CMA will add our comments to its updated work.

Para 43 – *bullet point 1 addressed by CMA in paras 92 - 107*

We deal with these points in paras 92 to 98 below [re *the impact of CHCs on the resolution of liability]*, and generally, we disagree with what the CMA has written on this.

Paras 44 – 46 – *alternative estimates*

The comments by CISGIL and Axa are noted, as well as the CMA's conclusion that their estimates were overstated.

Paras 47 - Quality *differences between direct and credit hire and the cost of additional services*

In terms of overview,

- We believe the GTA classifications are correct and relevant, whereas what the CMA describes as direct hire classifications are arbitrary groupings, adopted by Enterprise to suit its business model. The Enterprise classifications are irrelevant and should not be a benchmark, especially because they don't enable a like-for-like provision of

a TRV. The CMA may not appreciate that consumers want to drive something similar to what they are used to already. It seems illogical to change a rating structure which has been developed over 15 years which both parties to a claim have adopted and embraced to then use a completely new band of rates utilised by one hire company. The CMA's reasoning for this should be questioned,

- Our experience is that direct hire providers in the main do not deliver cars to customers, nor collect them. The customer will often be collected by a direct hire representative and taken to the nearest depot. Once at the depot they would then be offered a range of upsell options. In our view, this is an issue where the CMA did not need any assurances from direct hire providers, but this subject could have tested, by for example looking at invoices to customers, and contacting samples of direct hire customers who obtained this service. Has this necessary work been done? It is our legitimate expectation that the CMA will fully test these assertions.

- As noted above, direct hire rates (as used by the CMA) are not comparable to CH rates because many costs incurred by CHCs are carried by insurers, and therefore are hidden from the direct hire rate quoted, e.g. in Table 10. The CMA has erred in relying on such misleading information as a benchmark. And we don't think enough work was done on this issue, since our hearing in March 2014, where we raised these concerns before the Panel.

Paras 48 to 54 - *different categorisations for 'bracketed rates'*

Regarding para 48, we noted already that we dispute the CMA's use of Enterprise classifications as a grouping to supersede GTA car classifications. The GTA groupings have been developed over the past 15 years, with the insurers, to ensure that cars can be matched to consumers need, on a like-for-like basis. The CMA has noted that Enterprise uses groupings that cover several GTA categories, so clearly, reliance on Enterprise data and groupings is wrong in principle, for this exercise. We insist that the CMA uses GTA rates as the driver for comparisons to insurer sponsored direct hire.

- The Enterprise categorizations are irrelevant, and we note that we have had difficulty trying to link Table 10 data to the previous Table 6 direct hire data. We believe the link between the tables should be published, and explained. The departure from the Table 6 structure in Appendix 6.1 is not explained, it is arbitrary, and we object to this change in approach without any consultation.

Regarding para 49, we do not accept that broad groupings is a suitable and proper solution for replacement car provision, where hundreds of thousands of people need their particular needs to be satisfied. [REDACTED]

In this connection, we need more information, which if the CMA can not make public disclosure, should then be provided within the confidentiality ring. But we note that Kindertons as experts, are better able to understand this information, than advisers acting on our behalf.

- [REDACTED].
- [REDACTED].
- We think an outcome of this investigation is to force insurers to ensure their direct hire operator must work within GTA classifications, and not their own convenient groupings. The issue of cost to insurer **is secondary to ensuring consumers receive their entitlement under the law**, and the CMA appears to have missed this.

Given our comments above, we don't agree with the CMA's comments in para 51 and 52 that their work has eliminated cost differences on this quality issue. Nor do we believe the cost/detriment analysis in Appendix E has trapped all the insurers' costs that are hidden from direct hire rates, to make a like-for-like comparison. It follows that the CMA's detriment is exaggerated and wrong, in terms of details and quantum.

Para 51 clearly shows the CMA failed to match Enterprise's classifications with the GTA, and the conclusion is highly relevant. The CMA wrote:

> *Unfortunately, we could not get the numbers of cars provided under direct hire according to the GTA classification. Therefore we have estimated the maximum size of the problem, **assuming** that Enterprise always provides the **cheapest car** within each of its classes. Looking at the cars provided under credit hire in 2012, we computed the total fraction of hire days for GTA classes which do not correspond to the cheapest models within one of Enterprise's classes. We have found that a **quality difference may potentially arise in at most 20% of cases**. The potential mismatches between GTA classes and direct hire vehicles are mostly concentrated in the 'premium' and 'sport' segments.*

The above suggests to us that the CMA's alleged detriment is **overstated by a**

considerable percentage because of this quality issue, whereby GTA providers offer a better and more suitable car to claimants (around 20%), than the Direct Hire offering from the insurer. This gap is so significant that the CMA needs to realise that insurers are not suitable to look after the needs of non-fault claimants. This quality gap is a further reason why the competition to serve claimants from CHCs needs to be recognised, and protected in any remedies that the CMA may wish to implement. We believe an adjustment is needed for this factor, to reduce the alleged detriment, and we hope the CMA will look more into this with all interested CHCs, once our submission is received.

We object to the CMA's suggestion that the GTA classifications are more granular, in a pejorative way, as if they are not needed. It gives the reader the false impression that the GTA classifications are unnecessary embellishments. The truth is the opposite, i.e. insurers and direct hire providers have cut corners in terms of offering like-for-like cars, and the consumer is likely to be short-changed by this. We hope this objection will appear in the CMA's revised work. The GTA classifications make it easier for insurers to pass a claim, without a dispute over the type of car provided.

We have concerns over the way the CMA has used the survey results **selectively** to downplay consumers rights to like-for-like replacement cars. Consumers in a behavioural survey are not likely to recall the upset or grievances they were under at the time of need, or report this after the event in a reliable way.

- [REDACTED].
- [REDACTED].

[REDACTED]:

> … However, the higher proportion [19%] for captured claimants [**complaining over replacement cars**] may be for other reasons, not just because the GTA classification is more granular than the Enterprise classification (eg it could be because captured claimants received a lower class of car even under the Enterprise classification, or because of other aspects of service).

We don't think the CMA should guess why claimants are short-changed and downplay this detriment, noted by 19% of claimants. That is not fair. Accordingly, the narrative in para 55 is wrong and misleading – it needs to be redone properly.

We also think that because the PDR now seems to recognise the importance and value of the GTA, the CMA should request that insurers demand that their direct hire suppliers provide cars in accordance with current GTA classifications, and not vice versa.

Paras 55 to 57 - *delivery and collection*

Para 56 is interesting – here the CMA says:

> Enterprise told us that it **always offered delivery and collection** to non-fault direct hire customers. Enterprise said that **many of its customers chose to pick up the replacement vehicle at the site of the rental company** instead of having it delivered to their own premises because they could obtain the car **more quickly**. [~]

We note its statement that delivery and collection is offered, but it is strange that in practice, in most cases, that customers pick-up and return the vehicles. [✂].

Moreover, the CMA should have asked how quickly does Enterprise provide its cars after FNOL. In effect, this could be days after equivalent CHCs could have got mobility. Where is any of this evaluated? And assuming a gap arises, i.e. CHC customers get their mobility on the same day as FNOL, compared with direct hire customers waiting several days for the insurer approval processes to get their TRV, then this requires an adjustment to reduce the alleged detriment from separation. So are this is missing from the CMA's work.

Worryingly, the CMA has failed to recognise that, as well as price, businesses in this sphere of activity compete on service, quality and choice. We do not accept that the direct hire rates adopted by the CMA represent a "market determined measure of daily cost " (i.e. price). However, even if it were, any analysis as to whether the direct hire offering represents the "market determined measure" of service, quality and choice is totally absent from the CMA's work to date. The only conclusion we can draw is that direct hire is the wrong benchmark.

Paras 58 to 64 - *additional charges*

[REDACTED].

[REDACTED].

Para 58 says there is no need to adjust for additional charges – but the footnote 16 says:

> *We note that there **could still be an effect on the comparison of credit and direct***

> ***hire rates if*** *the* ***frequency*** *with which additional charges were applied differed between credit and direct hire customers.*
>
> [REDACTED].

We note that table 4 results in the CMA **increasing** average daily hire rates by around £2.60. This only deals with the like-for-like extras that CHC's also provide, it does not account for the other range of upsell techniques carried out by direct hire providers **on the consumer directly**

Para 63 refers to Collision Damage Waver. We understand this is some £2.50 per day for direct hire, which can equate to extra charges of some £20 to £30 if the provision of a TRV is up to 2 weeks.

Regarding Accident Exchange, because it provides this service to consumers, at no charge, and has a large share of the 301,000 non-fault claims a year, perhaps the detriment calculation requires a downward adjustment for its free service. Interestingly, the CMA noted Enterprise's prices include this cover, for some but not all insurers, but without reason. We are not sure whether the effects offset each other, and the CMA has given no evidence to assist. We think the adjustment could be in favour of CHCs, and another reason to reduce the alleged detriment by several £millions. We request that this work is undertaken prior to its final report.

Paras 65 – 72 – ***uninsured loss recovery (ULR)***

This is clearly a very important benefit for consumers, who use CHCs compared with the insurer's direct hire path, where this service is not provided. The only way then for consumers to recover their losses would be by having a Legal Expenses Policy (at a cost of say £25 a year), or doing the work to recover these losses themselves, with consequent opportunity costs and recovery costs.

So in our view, this is a significant benefit of separation, and could be worth £millions as a downward adjustment to the CMA's alleged detriment calculation. For example, the excess recovered could range from £100 to £1,000 a claim and other recoveries for some claimants would be similar amounts. As this is done for free, and enables the consumers to do other things with their own time, it is a benefit that arises from separation. It can not be down-played or ignored in any fair assessment of separation issue.

If consumers have to try to personally recover the excess from insurers (because they are non-fault), they could be forced into lots of correspondence, and phone calls; or they might give up. However CHC systems and procedures enable this service to be done as a one-stop shop, at no charge. The superior nature of the CHC offering is demonstrated here because direct hire operators simply **don't have the skill or expertise to provide this service, even at a charge to consumers**. These qualitative distinctions between CHCs and DH providers (i.e. Enterprise), are still not recognised in the latest WP23.

We also think that Appendix C understates the scale and scope of this ULR benefit. If the CMA recognises there are 25 million private drivers, then another way of looking at this issue, is to imagine that any one of these millions could be faced with a non-fault accident, and then have ULR situations to resolve. CHCs will provide this service at no charge to this large population of people. And as noted, the 300,000 CHC claimants a year, obtain this service for free.

- Accordingly, the CMA understates the scale of this benefit. We note footnote 22, which says that MLEI take-up is some **76%** in 2012. This implies that this additional cover yields huge revenues for insurers. But 24% of 25 million drivers without MLEI, is still a huge consumer population, who don't have this cover, and could benefit from the free ULR service offered by CHCs to non-fault claimants. Clearly this means the offset for this needs to be assessed in £millions when the cost of this cover is around £25 a year, per person. 6 million people, who don't buy this cover **save around £150 million** a year, but **any of them** will still get this benefit for free when they use the services of CHCs. This is surely a valuable **direct benefit**, which the CMA should not want them to lose! How does the CMA intend to evaluate this externality benefit from CHCs in its detriment analysis?

    - For example, imagine 100,000 people purchased the MLEI at £25 a year. This is a direct cost to these consumers of some £25 million a year – and it is a benchmark to get an idea of the value of the benefit (or potential saving to this number of people from having the service of CHCs), **even if** only say 12,000 people had need of this benefit from CHCs in a year.

Or, if 100,000 people tried to recover their excess of up to £100, at several hours of work each, this could be say half a million hours wasted to recover say £75 million in excess charges. This time has a value or opportunity cost. Where is any of this thinking reflected in the CMA's narrative in this section, or Appendix C? We recognise this is tricky work, but it

can not be down-played when consumers get real benefits at no charge, at their point of need. Ignoring this will distort the CMA's findings on the separation issue, to the detriment of consumers.

- The numbers (used by the CMA) do not show the true population who are qualified to get this service when needed. That dimension of savings is missing from the CMA's analysis, and we therefore don't agree that this is evaluated as a saving of £0.5m a year. We think this alleged answer is simply wrong for reasons given above.

- Moreover, we note that if remedies arise, which threaten the viability of CHCs, several hundred thousand consumers a year will be left to bear this loss, or need to pay for the extra MLEI cover, or have to do the work themselves. On balance, we think the alleged detriment should be adjusted **down by many millions of £s**, and not £0.5 million. We therefore think the narrative in para 70 is inadequate, as follows:

  *The information available to us (see Appendix C) suggests that ULR services are provided to no more than 12,000 claimants in a year, while CHCs' estimates of the cost of providing the service varied between an unspecified 'small value' and £45 per claim. We **do not have information on the opportunity cost to claimants without MLE**I of claiming uninsured losses themselves, but it seems to us the average opportunity cost is unlikely to exceed £45 per ULR claim." On this basis, the impact of CHCs' ULR recovery is to reduce our calculation of the net detriment by no more than £1.60 per credit hire claim, or £0.5 million in total.*

  - It is not fair to ignore this issue with speculative comments as noted above. We add that if this benefit is so insignificant, as the CMA suggests, then insurers would not be selling MLEI at perhaps £25 additional cover per year. As we noted above, the premiums yielded from this cover are significant, so the externality benefit of CHCs providing this service at no charge to a population of hundreds of thousands of people, is correspondingly significant and much larger than £0.5m a year.

We remind the CMA that we did work on the **opportunity costs of consumers**, from getting the free service of CHCs in our response to remedies – i.e. see pages 63 to 65. We also specifically referred to this subject at our private hearing in March 2014. Yet we don't see any of the opportunity costs thinking appearing in the RCB section of the PDR, nor in WP23. So this subject too should be properly considered and not left open for debate.

Paras 73 – 80 – *profitability of direct hire services*

[REDACTED].

Clearly we don't agree with the CMA's conclusion in para 80. In our view, this section needs to be reworked with better information for readers. It is currently defective and below what we think is acceptable for an investigation of this importance, with potential remedies on our business, which restricts our freedom to conduct business.

We also refer the CMA to Article 16 of the EU Charter of Fundamental Rights. This refers to the freedom to conduct and run a business. The commentary to this Article is given at: http://www.eucharter.org/home.php?page_id=91

Please can the CMA give their response, [✂]:-

(a) on how they understand this freedom,

(b) to what extent can they interfere with this freedom,

(c) is there anything in UK law that modifies or restricts this freedom, or limits the CMA's options for remedies in the circumstances of this investigation.

In other words, this investigation is about insurance to private motorists, and not the services of CHCs, which the CMA noted don't make excess profits. We therefore can not see why our business, and the interests of consumers we serve, should be harmed; in order to promote the interests of insurers and direct hire providers. The CMA may be acting outside its powers in this case, where the alleged detriment is not something arising from competition, but rather reflects how the law of tort operates in the UK.

Paras 81 – 84 – *VAT on hire services*

This section is drafted in a way that we dispute.

We note the erratum, as mentioned in para 81. We have previously communicated about this. As the CMA will recall, our hand-out at the hearing took account of this information in order to provide our alternative to the CMA's detriment calculation. Page 9 showed our version, where we thought there was not any detriment, based on our assumptions.

Excluding VAT from credit hire average charges was a necessary adjustment. We comment further below.

As we are in disagreement with the CMA, we note the narrative below, so that our comments can be seen in context:

> 82. Some CHCs told us that the correct approach would be to exclude VAT from all hire rates. The difference so computed would be significantly smaller than the one we have determined. However, we believe that VAT should be included since motor insurance is VAT-exempt, and insurers consequently cannot reclaim from HMRC the VAT paid on hire services.
>
> 83. Insurers pay the full VAT on hires unless the claimants are VAT registered. In this case, however, credit and direct hires may be treated differently. For credit hire, if the claimant is VAT registered, CHCs do not invoice the full VAT to the at-fault insurer. Rather, the VAT is paid by the claimant who then can reclaim it, at 100% for vehicles that are solely for business use and at 50% for a standard company car. Some insurers pay the percentage of the VAT cost which the customer is unable to deduct. The same can in principle happen under direct hire. However, it appears that at least some insurers pay VAT for direct hires even if the claimant is VAT registered. For example, [~].
>
> 84. It appears to us that the proportion of PMI replacement vehicle cases in which VAT is not paid by the insurer is small. Zurich estimated that this happened in [~] of hires. Therefore it seems that, in the estimation of the detriment, it is correct for us to consider payments for replacement vehicles inclusive of VAT.

First, we think para 84 is irrelevant. What the insurers do regarding VAT, or the proportion of claimants who can claim VAT back is not relevant to the issue of the alleged detriment. We don't know why Zurich is picked-out as a source when there are several insurers, and the CMA, if it has a valid argument should be referring to all insurers as a group.

Second, as the CMA wants to inflate its estimate of the detriment by VAT, it looks like we are in a deadlock position. Para 117 shows the effect of this (if we understand your work correctly without making our adjustments) as follows:

> 117. Dividing the total revenues for the CHCs in our sample by the total number of credit hire claims managed by them, we estimated the average credit hire revenue to be **approximately £1,105**. Since credit hire rates are about **2.05 times higher** than direct hire rates, we estimated that under direct hire the same services could be provided for about £539. The average cost difference is approximately **£566** per claim.

So the CMA says there is an alleged starting difference of £566 from separation, and this

includes VAT. The above narrative hides this important fact, and we object. One way round this is for the CMA's alleged detriment calculation (in Table 4) to be shown both on an inclusive VAT, and exclusive basis. This will show the size of the difference that is made by this one item of contention.[20]

If we adjust the above, to exclude VAT, the Credit Hire average per claim would then go down to 100/120 * £1,105 = £920. Then dividing by 2.05 (which we also dispute) gives a figure of imputed like-for-like Direct Hire costs, of £448 ex VAT. Accordingly, £920 less £448 gives an alleged **net difference (ex VAT) of £472** and not £566 as the start point. This is a material difference which reduces the conclusions on the alleged detriment by £millions[21]. We say it is wrong and misleading to include this item in the alleged detriment, both on fact and principle.

- This adjustment reduces the detriment, even before further reductions to take account of the direct hire upselling income from consumers (which we noted is also needed). Then, when the referral fee income is offset against this result, and we make reductions for costs that insurers incur to support the direct hire provider, etc. the alleged detriment comes down to a very low figure. So we believe the CMA needs to disclose *all the alternatives* in its final report, so that if this is disputed after the report, all the relevant evidence is on the record.

Third, other reasons why VAT must be disregarded from the CMA's detriment calculation is because this is a **tax of government**, and whether insurers pay this or not, including it in your calculations is a deliberate **distortion** that works against CHCs, and is not fair. If the CMA thinks VAT on credit hire needs to go into its conclusions, as a problem from the

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[20] We note that para 7 of the Erratum said:

> *'Both average credit hire bill (£1,085) and average credit hire daily rates (second numerical column of Table 6 of Appendix 6.1)* ***include VAT****. However, the insurer direct hire daily rates (third numerical column of Table 6 of Appendix 6.1)* ***exclude VAT and are not on a consistent basis to the credit hire daily rates****. Adjusting to remove this inconsistency shows that credit hire rates are about twice as high as direct hire rates and that the average cost difference is* ***£555 per hire*** *(instead of £640). An* ***amended version*** *of Table 6 of Appendix 6.1 of the report is set out in Annex A to this Notice.'*
>
> **NOTE to CMA - We show this amended Table 6 as Annex E with this response.**

[21] £566-472 equals £94. Applying this to some 301,000 claims handled by CHCs a year, equates to a **reduction in the alleged detriment of around £30 million**. Compared with the CMA's low estimate of £70 million, this is some 40 per cent lower. But it shows why both forms of calculation are needed in the CMA's final report, assuming this issue remains unresolved at time of the final report.

- This issue is clearly important when it comes to considering the proportionality of remedies, and could mean for example, that remedy 1C is disproportionate. That is our conclusion, which we hope the CMA notes.

existing market structure for non-fault claims settlement, then the more direct remedy is to recommend that the government *changes VAT tax treatment for insurers*, but not penalise CHCs with an inflated estimate of a detriment that we dispute. We request this argument is included in the reworked text in the CMA's report.

Fourth, CHCs don't retain the VAT embedded in the alleged VAT inclusive detriment of £566 noted in para 117. So we believe the CMA are being selective, arbitrary, and biased in its analysis to artificially ***include*** a cost to insurers, which does not benefit CHCs, but is used to inflate the alleged detriment in a false and misleading manner. We think our logic is strong and persuasive to informed parties reading our comments. In any event, as CHCs don't cause this aspect of the detriment, they can not lawfully be subjected to remedies for this distortion. Only the government should be lobbied to consider this anomaly.

Fifth, if our logic is taken as sound, then the CMA's start figure of £539 is clearly wrong, and embeds a significant distortion into its alleged £83 million baseline detriment.

Sixth, the CMA's reasoning may indicate that because the at-fault insurer has to pay the VAT then that is a detriment to the consumer, however the VAT that CHC's have to pay on their invoice is paid **to the Government Treasury** i.e. goes into public funds to benefit the consumer and therefore any detriment is offset. We urge the CMA to revisit this point and conclude that our reasoning is sound.

Paras 85 – 91 – *benefits to insurers from the delayed payment of credit hire and repair services*

We note the CMA's methodology for this section.

We note para 87 and Figure 1 suggests an improvement in settlement times, within the first 60 days has happened over the last year. Specifically, settlements in 30 days are around 38%, compared with 44% in 2013; and settlements in 60 days were 57% in 2012 compared with 60% in 2013.

Clearly para 87 indicated there are improved efficiencies in 2013 settlement of claims, which we suggest was from the GTA being even more effective, and bilateral agreements between CHCs and insurers becoming more significant. As payment times have improved subsequent frictional or transactional costs would also come down, so the CMA could easily conclude that its concerns from separation are being resolved, without need for any intrusive remedies, such as 1C. We think this thought needs to be taken forward in the CMA's final decisions and publication of its final report.

We note para 90 and Table 7, where the CMA suggests that the delayed payments to CHCs compared with Direct Hire, implies a **penalty of 2.2 per cent**, which the CMA has discounted from the average credit hire rates (used in its detriment calculation).

We note that Table 7 does not show the period used, which we assume is 2013

Paras 92 – 98 – *the impact of CHCs on the resolution of liability*

This is an important section, so we may refer to the CMA's text as needed, in order to help understand our comments.

Para 92 says:

> Some CHCs told us that the presence of credit hire caused liability to be resolved more often and more quickly. Their point was that a prompt and accurate assessment of liability was essential in reducing the risks of non-recovery of the costs incurred in the provision of replacement vehicles. **Insurers disagreed, arguing that the assessment of liability depended on the nature of the accident and not on the presence of CHCs.**

First, looking at the success of CHCs, even with direct hire being available, we note this section does not mention the key fact that insurers currently capture only say **30% of claims**, leaving around 70% for CHCs to handle because we do provide a no-cost highly valuable service to consumers at point of need. Also, as the CMA notes, some 77% of these claims are settled within the GTA framework[22], demonstrating that we handle the claims settlement efficiently, within agreed prices with the insurers.

- The GTA rates, as approved with insurers, provide certainty and clarity in claims resolution. We believe these statistics need to be noted here, in order that this section is properly understood. The insurers objections should be supported by evidence or dropped when they are generic disagreements.

Second, the CMA needs to recognise that insurers are *slow* to agree liability for many reasons. That inherent weakness means that without the skill and expertise of CHCs, drivers in non-fault claims might not get a TRV on the same day of making a FNOL, e.g.

[22] see para 2.57 of the PDR which says currently around **23% of credit hire claims** are handled either outside of the GTA or initially within the GTA but then 'fall out' of it.
Source: Provisional findings, Appendix 6.1, paragraph 7

because the insurers/brokers have not been able to verify facts with the at-fault insurer, or for other reasons causing delay and frustration. This friction on consumers/claimants needs to be recognised, but we think is ignored so far. This makes it hard for consumers to get an immediate mobility solution, and is why CHCs developed their expertise over the past 20 years to serve the public.

- CHCs specialise in having the expertise and skill to make a risk assessment, and offer a no-charge solution to potential claimants, who we deem to be bona fide. Kindertons, as we mentioned at our private hearing, have a 7-day guarantee which means we supply a TRV immediately at our own risk, so that if the claim is refused, we bear the loss of income. Insurers can not match this service, either directly or by using their direct hire contractor.

- All these procedures and features mean we can efficiently handle the claim process from day 1, and provide immediate skilled services, organise repairs, and provide TRVs on a like-for-like basis, without delay or interference from the insurer. Over a number of days, we resolve the disagreements, and if all goes well, the claim ideally **can be settled within 30 days, with a settlement pack**. We object that none of this is mentioned in the above narrative.

  Para 2.78 covers incentives for prompt liability determination.[23] The weakness of

[23] Para 2.78 says:

Therefore, we have considered ways in which we can link the cost of replacement vehicles to the speed of liability determination. We propose the following:

(a) If the at-fault insurer accepts liability within a short period (we propose a **period of three days** from being informed that a replacement vehicle is being provided to the non-fault claimant) a low rate cap will apply (see paragraphs 2.84 to 2.93 below for discussion of the appropriate rate). In this scenario, the at-fault insurer is committed to paying for the replacement vehicle regardless of any subsequent change to liability (eg with relevance to a repairs claim or a personal injury claim).

(b) If the at-fault insurer does not accept liability within the short period, a high rate cap will apply (even if the at-fault insurer **accepts liability on day 4**). This cut-off point is required to provide incentives for insurers to **accept liability swiftly and to give replacement vehicle providers sufficient incentive to provide a replacement vehicle** when liability is **not admitted within the time period**. In this scenario, the at-fault insurer will only pay the costs if the claimant being provided with a temporary replacement vehicle is found to be non-fault, but the costs will be higher than if the at-fault insurer had accepted liability early (see *(a)* above).

(c) The at-fault insurer can withdraw an acceptance of liability, eg as a result of receiving new information, but this would only affect future hire charges, not any hire charges already incurred. So if the at-fault insurer withdraws its acceptance of liability, the low rate cap and the commitment to pay

> the CMA's proposals as shown in the footnote, is that they don't guarantee the legitimate claimants will get a TRV on day 1. That advantage can only arise if CHCs are involved, **where we take a risk and apply our skills** to provide a car, because we believe the claim will be agreed.

Instead of recognising the value of what we do for the consumer, the CMA notes some vague comments in para 92 that insurers disagree because they say assessment of liability depends on the nature of the accident. That is obvious and something we are geared to resolve to a high standard that can come before a Court.

However, ordinary consumers cannot do this, especially the impecunious, who could easily be turned away, or accused of being fully or partly at fault, if we did not exist. Or they would be forced to claim under their policy, as for example noted in the text of Appendix 2.2 under Remedy A.

Additional argument showing failings in the insurer-controlled direct hire service:

- **The insurers argument to justify delay, can be interpreted against them and in favour of the CHC's.** The logic is as follows. If as we know, insurers account for some 30% of all non-fault claims, at around 500,000 a year, then in the absence of CHC, they would continue their arguments and disagreements with claimants. Why should they change? Accordingly, in the absence of CHCs, a large proportion of the current 300,000 claims a year, as handled by CHC's would (a) be rejected for one reason or another, or (b) turned into split liability claims, or (c) the parties would be told to claim under their policies (with knock-on effects on premiums). It follows that consumers would suffer significantly by this loss of separation for recovery of their tort claims.

- As the CMA's detriment doesn't include any adjustment for this *externality factor* arising from separation, how does it propose to deal with this issue? We think this is more than saying it comes into the assessment of remedies – it actually is a real benefit from the existing structure of separation that should be considered when considering the financial effect of separation.

(regardless of the final liability assessment) would apply up to the end of the next working day after the changed view, and the high rate cap, with a risk of non-payment, would apply thereafter.

- Or, if the CMA says higher costs are passed-on in premiums to motorists, then that argument should be offset by this *externality argument* that impecunious claimants recover their legitimate losses, **only because of the presence of CHCs**. We would be interested to know how the insurers would respond to this argument. It needs to go into the CMA's final report.

For the avoidance of doubt, we say that without the valuable role provided by CHCs, we suggest that insurers would do a poor job in claims' settlement, and not even bother about a direct hire service (even at the current inferior level). If the current level of CHC managed claims is say 300,000 a year, without our involvement this **could fall to below 100,000** with severe detriment to the consumers involved, and their extended friends and families. This is something which the CMA should expect, on a *balance of probabilities basis*, taking account of the insurer's conduct generally to date, including taking excess payments from their own non-fault customers (see para 72 of WP23).

To conclude, large CHCs need liability to be agreed quickly, and we have processes in place to make this happen, with minimal 'friction' or dispute. The GTA portal will add even more efficiency to this process.

Para 93 says:

> *93. Testing these two contrasting views is not straightforward. Most insurers do not record the **time needed** for the resolution of liability; and CHCs only hold data for the claims in which they were involved. Moreover, it would not be informative to compare the claims in which CHCs provided a replacement vehicle with those in which they were not involved. Since CHCs have to minimise the risk of non-recovery, they tend to **accept relatively more clear-cut cases**, in which the determination of liability is less problematic. Therefore, we would expect the cases where a CHC is involved to show a lower proportion of split liability settlements and a quicker resolution of liability. The difference in such cases, though, cannot be attributed to the presence of the CHC.*

Our comments dealing with para 92 pick-up the complications noted here. Of course, CHCs will handle claims where we believe they are genuine, based on our expertise, and technologies. What can not be disputed is we have more and better resources to ensure such legitimate claims are accepted, and claimants **get their mobility** immediately from point of need, at our risk.

- If this settlement process were left to individuals, as we have noted above, the 300,000 or so claims that CHCs handles would mostly be rejected, not on merit, but

> because of the power and ability of insurers to treat claimants unfairly.

We accordingly don't agree with the CMA expectation comment ie *cases where a CHC is involved to show a lower proportion of split liability settlements and a quicker resolution of liability.* As we demonstrated at our private hearing (see our handout), our involvement is a skilled service, and effectively, if there is a dispute that arises because there are opposing views on evidence. It is not because the cases we accepted were easier, whatever this is meant to mean? It is an absurd expectation. The conclusion that differences in cases is not due to the presence of CHCs **is prejudicial**.

- We request the CMA to be specific on what it means, and what data or methodology is applied to rebut our comments under para 92 above. We will be happy to respond. If the CMA's conclusion is our success on behalf of claimants is random and unskilled, that is a false presentation of evidence; and contrary to reality where insurers capture only around 30% of all non-fault claims.

We ask the CMA to insert here, or cross-refer all the detailed evidence we provided in our private hearing on how we deploy our skill and technology to win claims, on behalf of claimants, without recourse to Courts. This is not friction, but application of our view of evidence that our client was non-fault. That is what the law of tort is meant to achieve, not give insurers an opportunity to avoid claims liability. **Accordingly, we object to the above biased drafting seeking to play down our valuable role, in order to impose improper price control remedies on our competitive sector.**

To conclude, the final sentence is wrong in fact, given the success of CHCs to date i.e. *The difference in such cases, though, cannot be attributed to the presence of the CHC.* We object and request this is removed, or properly justified with credible evidence.

Para 94 says:

> *More interesting results can be obtained when comparing claims in which CHCs may decide to intervene with those for which this possibility is absent. The latter is the case when the insurers involved in a claim have signed a bilateral agreement for the provision of replacement vehicles. In this case, the non-fault insurer **does not refer the claimant to a CHC**, but directly provides the vehicle through direct hire. By comparing claims in which bilaterals are applicable with those in which they do not apply, we sought to observe the differences in the frequency and timing of the resolution of liability due to the presence of the CHC.*

This idea of using bilaterals as a proxy for CHC activities looks bizarre – where did this idea come from and why was it not discussed with CHCs, or the CHO as our representative body? When was this work done, and why was it done without reference to Kindertons?

If we understand the above, which is not clear and logical, the CMA is taking the approximate 30% of claims that insurers capture, and then imputing these alleged results of settlement, as a surrogate for what CHCs do. That seems absurd manipulation of facts and evidence in a misleading manner. Insurers agreeing between themselves on how to settle claims of their respective policy-holders is not the way to consider the value and effectiveness of CHCs. Is the CMA suggesting that insurers agree each other's claims without dispute or friction – if so, it is a naïve idea that makes no sense. Please can the CMA explain its logic in the narrative?

We say the only way to evaluate our success, viz a viz the at-fault insurers is noting the actual **numbers and value of claims where the insurers had a genuine dispute with us**, specifically over:

(a) our role or conduct, or

(b) analysis of facts in the accident, or

(c) the CMA should look at records of legal disputes between CHCs and insurers, and the outcome of Court proceedings i.e. who was right or wrong, or

(d) the number and percentage of cases where insurers lost cases in Court for disputing facts of accidents, etc.,

All this is relevant to show that CHCs act in a pro-consumer manner. Applying these types of test show we are extremely skilled in providing our service for free, on behalf of legitimate claimants.

If there is potential friction or delay, affecting insurers, that can only be in the category of the **23 per cent of claims which fall outside the GTA, a proportion of which will be from CHC's whom do not subscribe to it** . If this is where the friction and additional costs arise for insurers from inappropriate claims, it is easy to resolve by making the GTA mandatory for all firms claiming to act as CHCs/CMCs, as a condition to represent non-fault claimants.

Paras 95 to 97 say:

> *95. We asked each of the ten insurers in our sample to provide information on all its claims with more than one vehicle involved, divided into three categories:*
>
> *(a) claims in which all vehicles were insured by it;*
>
> *(b) claims involving another insurer, but not where it had a bilateral agreement with the other insurer; and*
>
> *(c) claims involving one of the insurers with which it had a bilateral agreement for the provision of replacement vehicles to non-fault claimants.*
>
> *96. Insurers were asked their total number of claims for each category and their corresponding number of claims which resulted in split liability. The comparison between categories (b) and (c) would show the **impact of the presence of CHCs** on the **frequency of resolution of liability**.*
>
> *97. The figures for the [~] insurers in our sample which have bilateral agreements are shown in Table 8. The percentage of cases with split liability is similar under categories (b) and (c) and even slightly lower in the case of bilateral agreements. In other words, the presence of CHCs does not seem to have any impact on the frequency of resolution of liability.*

TABLE 8 **Percentage of split liability in the 'same insurer', 'no bilateral' and 'bilateral' scenarios**

			%
	Same insurer	*No bilateral*	*Bilateral*
[XI	[XI	[XI	[XI
Weighted average	13.76	15.66	13.63

Source: Insurers.

Note: Aviva's data is relative to liability assessment at FNOL.

We object to the above methodology because it does not relate to CHCs at all. Moreover, it does not show the speed or time taken to admit liability, nor time for settlement and resolution of the claims. It is meaningless information that tells us nothing. And we are experts in dealing with claims and getting them agreed with insurers.

Equally important, where does the table bring out the fact that CHCs screen out fraudulent claims before we decide which to take forward to insurers? As we informed the CC at our private hearing, we get say around 3,500 inquiries a month, of which around 2,100 become claims that we think are fair and reasonable. That process requires time, skill and resources. Insurers don't pay for this ***externality benefit*** of CHCs, and it is simply ignored in the above analysis, which we say is irrelevant.

- The table 8, shown above, referring to 'same insurer', 'no bilateral' and 'bilateral', are **intra-insurer relationships**, with no link to CHCs. So what has any of this got to do with CHCs or the nature of our activities? It seems like someone has manufactured data to suit a pre-judged conclusion and we object. To support us, we note that there is no narrative explaining how to interpret the above meaningless percentages. We do not know what this table proves?

We also object that the CMA has never raised this methodology with us, and the CMA was aware since our private hearing that we wanted to engage on its work to develop the AEC and PDR. We were refused continuously, and all this is in writing for the record.

For the avoidance of doubt, what is the missing line, hidden in Table 8, and what do the percentages around 15 per cent inform the minds of the CHC panel? We simply don't know what to say more than we believe this approach is **meaningless**.

To conclude, the above methodology is wholly flawed and we reject any conclusions which are pejorative to the value of CHCs. It is logical to conclude that if insurers operated towards the public in a more pro-consumer manner, they would achieve a higher captured share than the 30 per cent or so noted in the provisional findings. That is the key number which is omitted from this section of WP23. We request that this whole section is removed and reworked in a way that we can recognise, based on our response above.

Moreover, we do not agree with Para 98, which says:

> *98. With regards to the speed of resolution of liability, only one insurer ([~]) was able to provide data on the timing of liability determination. [~]'s average length of liability determination was lower under bilateral agreements. While this observation needs to be treated with caution, we have seen no evidence to suggest that a higher speed of liability resolution is currently associated with separation.*

The above para relies on 1 insurer, out of some 10 large insurers. How therefore can the CMA trust its work is reliable and fair to CHCs? Again as this paragraph has nothing to do with CHCs, per se, we can not understand its relevance to this section which purports to discuss *'the impact of CHCs on the resolution of liability'*. Our objections should go into this section of the CMA's report if this work is taken further, and we must reserve our position.

To conclude, if insurers don't even bother to keep adequate records of their relationship with CHCs, this leads to the logical inference that we do an excellent, timely and skilled job for which we should be commended. It also leads to the conclusion that insurers run very lax and inefficient systems which cause friction, are therefore capable of yielding savings to

benefit motorists in lower premiums. We ask for this logic to go into the CMA's reworking of this section. As said, we are happy to meet the CMA to discuss our comments further on this section

Paras 99 – 107 – *the impact of bilateral agreements on the quality of service*

We noted the narrative of paras 99 to 101. The CMA notes the point made by CHCs that bilaterals enable insurers to provide a TRV service below what non-fault claimants are legally entitled i.e. they don't necessarily get a like-for-like vehicle.

In para 100, the CMA sets out ideas on how this lower provision may occur, i.e.:

(a) settling a larger fraction of claims with split liability;

(b) providing replacement vehicles to a smaller proportion of non-fault claimants; and

(c) providing replacement vehicles of a lower category or with an inferior service.

Para 101 then states, inter alia that: *No agreement [between insurers] requires the adoption of practices with the aim of denying non-fault claimants the services to which they are entitled.*

- We would not expect to see such conditions in any bilateral agreement. As they would be potentially illegal and prejudiced against claimants, we wonder **why** the CMA writes-up this odd narrative. It is like saying we asked the insurers to tell us whether they collude against consumers, and we found no agreements. That is the wrong way to carry out this type of performance investigation.

Para 102, is without a single statistic that we can understand, and is incomprehensible. We ask that the CMA informs us of exactly what it means, its logic, and the numbers it has relied upon to reach its conclusions. For the avoidance of doubt on our difficulties, it says:

> *We have already seen that the frequency of resolution of liability is not much different in the two cases. In fact, split liability cases are slightly more common when bilateral agreements do not apply. A similar comparison is also relevant to point (b). Table 9 shows the proportion of non-fault claimants receiving a replacement vehicle (excluding courtesy cars) in the three categories of claims described above: 'same insurer', 'no bilateral', and 'bilateral'*

TABLE 9 **Provision of replacement vehicles in the 'same insurer, 'no bilateral' and 'bilateral' scenarios**

			%
	Same insurer	*No bilateral*	*Bilateral*
[XI	[XI	[XI	[XI
Weighted average	51.85	49.65	55.04

Source: Insurers.

[hidden footnotes XXX]

Please can the CMA inform us what we are supposed to understand from the above table, and why this is not explained in the narrative noted above? What does a 49% figure mean, and by implication what does the balance of 51% mean? When did the claimants get the replacement vehicle e.g. day 1 or day 5, or whenever? How many days did it take before the claim was accepted, and was it within the 3 day rule noted in the PDR for future remedies. Also, how long did it take for the claims in these samples to be settled, and what levels of friction arose? We need to see such information, if the CMA's work is of any relevance.

- Moreover, if insurers say it took on average 8 days to agree the claims noted in the above table, when then did the consumer get the TRV to which they were entitled. Every day of delay from FNOL will prove they get a worse service than what CHCs could provide.

- Alternatively, did insurers provide the TRV on the same day of FNOL or within a few hours of FNOL as is the practice for CHCs (once we evaluate the facts of their claim)? How often does this happen? These are all relevant pieces of evidence which are missing from the CMA's work, as noted above. That needs to be done.

Our confusion gets worse, when we read the next paragraphs from 103 to 106. The lack of clear narrative is so serious that we are noting it for the record, with highlights of the meaningless text, as follows:

> *103. The evidence on **this aspect is difficult to interpret**. It appears that for some insurers ([~]) the proportion of non-fault claimants provided with a replacement vehicle is significantly lower under bilateral agreements than for other claims. Other insurers, however, show different patterns, with a **small difference** for [~], and a **higher provision rate** under bilaterals for [~].*

> *104. With regard to point (c) in paragraph 100, it appears to us that, individually, insurers do not have an incentive to under-provide in the service they give their non-fault claimants. In arranging a replacement vehicle, they are providing a service to their own customer, while subrogating the cost to the fault insurer. On the other hand, if both parties to a bilateral agree to reduce provision, they can both gain through lower costs.*[30]
>
> *105. [~] told us that its higher provision of replacement cars under its bilateral agreements was driven by the following factors: [~].*
>
> *Footnote 30 says: Such implicit agreements may be easier to negotiate between insurers of similar size, which can get similar cost benefits from the other insurer's under-provision. On the other hand, a large insurer might be more reluctant to agree on these terms with a much smaller competitor, as the smaller insurer has more to gain from the agreement.*

What does the CMA expect us to say, from reading the above? It looks **irrelevant** to the questions at the top of this section. And the conclusions in para 104 and footnote 30 look like assertions, with nothing credible to support them. Para 105 does not need to be secret, and again tells us nothing. We object to this style of narrative that seeks to make insurers look better than what we believe is the case. Our suspicion is confirmed by para 106 which says the evidence is unclear:

> *106. Overall, much of the evidence is **unclear** regarding the provision of replacement vehicles under bilaterals compared with when no bilateral agreement is in place.*

Para 107 further says that the CMA got nowhere with its efforts on whether lower quality vehicles are provided to claimants. Why did this aspect of its investigation fail? We therefore are not happy with the following:

> *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.*

Why can not insurers provide evidence to show they do a good job for claimants. The failure to show this, is evidence that insurers **don't care about the quality of their service** to claimants, and hence they don't seek to get any information to confirm consumer satisfaction, or service. Or para 107 demonstrates a failure in this investigation process to do a satisfactory job under the CC/CMA's terms of reference.

- In the case of CHCs, we remind the CMA that we provide insurers with a ***settlement pack, and mitigation statements under the GTA***. Only then do we get paid, and Kindertons has good relationships with all insurers, for obvious reasons. Our service is consumer-centred, because we are paid by results. It should therefore be apparent that CHCs are incentivised to act efficiently, and in the best interest of

claimants. We expect the CMA to accept our conclusions on this, or state where it disagrees.

Paras 108 – 111 – *summary of the adjustments to the detriment*

This is an important section, so we note the paragraphs as needed to help you understand our comments.

Para 108 says:

> *Following our analysis in response to the parties' comments, we have made the following changes to our estimation model:*
>
> *(a) Direct hire rates are now based on the total revenues of four large providers ([~]). They include extras for additional services and cover a large proportion of the insurance market.*
>
> *(b) The cost of ULR services is added to the revenues obtained by non-fault insurers and brokers, increasing the average referral fees for credit hires.*
>
> *(c) Credit hire rates and credit repair bills are discounted by 2.2% to compensate for the difference in the timeliness of payments between credit and direct hires.*

Above points are noted – we comment further in the sections where this work is presented. We do not agree with the CMA's approach as discussed at the relevant places in WP23. We object that the CMA has apparently ignored adjustments that we (and possibly other parties) brought to its attention, with no explanation. This artificially deflates the direct hire rates. For example, direct hire providers earn extra **upselling income** from non-fault claimants, and is a material issue, which we raised in February/March 2014. But we see nothing about this in the detriment calculation, or the text in WP23.

- Any income that direct hire providers earns from this activity is prima facie evidence that the non-fault claimants were getting a worse service than CHCs provide for free i.e. they were persuaded to pay for extras. It will, in our view, significantly inflate the direct hire revenues which are not fully reflected by the CMA in its Table 10 workings. So the text in para (a) above is not satisfactory, because it does not mention that consumers of direct hire providers can be asked to pay for extras or upgrades to improved vehicles.

The ULR issue is discussed above, and we say this free service provides a highly valuable saving to consumers, especially those millions of drivers who have not purchased MLEI. But the CMA has failed to appreciate this in its narrative – see for example, pages [32] to [34] above. Specifically we noted above that some 6 million drivers a year, who use CHCs, might

forego needing to buy MLEI, saving them collectively £150m a year. Therefore, direct hire rates are not strictly comparable with credit hire rates because our services are different. However the CMA has failed to make the necessary allowance in its calculation of detriment.

Regarding (c), we accept this adjustment of 2.2% to account for this timing factor.

Para 109 says:

> *109. In addition, we use new estimates of fault insurers' costs to separately compute the detriment from credit hires, credit repairs and write-offs, and insurer-managed repairs and write-offs. Details on these estimates are provided in Appendix E.*

We have looked at the CMA cost allocations, and results of this work, e.g. in Table 1 in the PDR (on page 60 therein). We think the allocation work has been done with bias to insert inflated costs against the CH service, or to minimise the set-off for insurer savings. So the work done is unsatisfactory. We discuss problems with Table 1 from page 76 below. It appears that this work needs to be redone, in a fair and transparent way.

Kindertons advisers joined the CMA's confidentiality ring, and are not at liberty to share the results of their review with us, but we understand they will be preparing a separate report to the CMA panel with their findings. They are not satisfied with the CMA's cost allocations, or the figures derived from this exercise. Clearly we will need to take this further with the CMA once it receives this report.

Para 110 says:

> *110. As discussed in our provisional findings, our survey results suggest that separation is associated with a **small proportion of consumers receiving a higher quality of replacement vehicle**. Our calculations control for the most obvious sources of quality difference (see paragraph 26), though there are some aspects for which we have not been able to control (see paragraph 52). In any event, the quality difference appears to be small relative to the net detriment associated with replacement vehicles.*

We refer the CMA back to our comments on its para 51 above. There, we noted the CMA recognised a quality difference arose in some **20% of cases**, in favour of GTA supplied vehicles. In our view, this factor accordingly reduces the detriment, and it is for the CMA to evaluate this further.

If we recognise that 300,000 claims a year are dealt with under the GTA, then potentially 10 per cent of such hires could be subject to this issue, and clearly needs to be picked-up as an offset to the detriment noted..

- We insist that the CMA uses the GTA groupings, which ensures consumers get a fair like-for-like equivalent when making a non-fault claim.

It should be obvious that we also dispute the CMA's throw-away comment at the end of the above para that "*the quality difference appears to be small relative to the net detriment associated with replacement vehicles."* The CMA will also note that we disputed its thinking under para 53 above on this, so this needs to be properly evaluated. It is not sufficient for the CMA not to make appropriate adjustments to reflect the differences in what is offered between the 2 services. Even if individually they may be small (which is not accepted) in combination with other issues that the CMA has failed to control for, they have a significant impact on the detriment.

Para 111 says:

> *111. We included in our calculations all the hire claims managed by our sample of CHCs in 2012 but only the actual or expected revenue associated with those claims. Thus our figures allow for the fact that CHCs recover only a proportion of the amount billed as they settle some claims for less than the amount billed, for example when they accept that their customer was partially or fully liable. Therefore the risks to CHCs of providing replacement vehicles when liability is unclear are reflected in our figures as the average revenue per credit hire is lower than the billed revenue per hire.*

We think this narrative appears may not be the full story, and reserve our position, as looking at the data in Table 10 seems to over-state average credit hire charges (inclusive of VAT). In other words, although the CMA's narrative mentions that it discounts average charges to remove discounts and other factors, we think the actual averages for the car categories shown appear too high, and does include penalty income (based on our advisers looking at the confidentiality ring supporting data).

- In this connection, our advisers were permitted to join the confidentiality ring and examine how the CMA constructed its credit hire average data in Table 10. We believe these figures are overstated from penalty income that is the fault of insurers, and is not part of this comparative exercise. Our advisers will take this up, with the CMA in their separate private report. If the CMA needs our assistance we will be happy to provide additional help.

- We add that because the CMA arbitrarily used Enterprise's broad and non-consumer friendly categories, instead of GTA car categories, the averages shown for credit hire groupings looks wrong for some vehicle types, especially when GTA car types are grouped to match an Enterprise classification.

- Specifically we are concerned that the averages shown might even be higher than GTA rates (inclusive of VAT). Within the PF (see Appendix 6.1 para 44 and Table 8) it is noted that CHCs on average provided a settlement discount, around 18% on GTA, 30% on non-GTA and a combined discount of 20%. This fact suggests the CMA's data for credit hire is significantly inflated, and needs to be corrected.

- By definition, CHCs should not receive more than GTA levels, unless penalties due to insurers' faults have been added to the CH revenues. Accordingly the CMA CH averages in Table 10 must be inflated. We can not estimate the size of this over-statement because access to the underlying data was restricted by confidentiality ring procedures, to make this almost impossible.

- We also believe that non-GTA data is included with the credit hire groupings. We can not however estimate the potential distortion from this factor, without access to this data in the confidentiality bundle.

We also believe that all data for the direct hire v credit hire comparison should be shown ex-VAT because this is the real comparison, when the VAT distortion is excluded. As we noted above, VAT goes to government, which in turn provides consumer benefits such as welfare, policing, road and transport improvements etc. So VAT should not be double-counted in the alleged detriment estimate.

- If VAT is considered, it should be separated from the alleged CH detriment, and brought to the Government's attention as a feature arising from the law of tort and European tax legislation – any remedy on CHCs for this money is hitting the wrong target. We hope this appears in the CMA's updated analysis, or final report.

In addition, by adopting the methodology it has, the CMA includes frictional costs incurred by CHCs on behalf of non-fault drivers in the credit hire rate. When attempting to calculate the frictional costs incurred in a direct hire scenario, the CMA has relied on estimates from insurers. We seriously doubt the accuracy of these insurer-submitted figures, and do not believe the CMA can rely on them.

- In addition, the CMA does not appear to have controlled for the fact that in a direct hire scenario, the claim will have been captured and liability accepted upfront. It is self evident that frictional costs in these circumstances would be lower than in a credit hire scenario (in terms of disputing facts and extent of work required for repairs and time needed for the loan car), and therefore the CMA has failed to compare like with like.

To conclude this summary section, we think the CMA has made serious errors of judgement and analysis. The confidentiality ring process (where we participated in July 2014) was not wholly satisfactory to enable the errors to get proper open and transparent review, and correction. The errors are still buried in the CMA's work, but we hope this response helps to get the identified errors and omissions corrected in good time before the report is finalised. We think they are material.

Para 112 – *Updated estimate of the detriment [**and our concerns over unfair procedures**]*

We note the CMA's comments here. Our objections will be apparent however from reading this response. In our view, there is no material detriment, when the correct adjustments are made. And we think the benefits and externalities from the good work that CHCs do for consumers at no charge, produce numerous offsets to the CMA' alleged detriment, which turn it into a huge consumer surplus. We wish to engage with the CMA so that it can confirm our view.

Our current estimate based on our assumptions, is shown in **Annex B** is provided with this response. Our work should supersede the CMA's estimates because we believe the evidence supports our position

We acknowledge with thanks that we were permitted to join the confidentiality ring, and the deadline for our response to the PDR and WP23 was extended from 4 July 2014 to 8 July. However, because our expert's time and resources were constrained, we did not have enough time to properly deal with the confidentiality ring process, and that is something which should never have been left to mid June to start this process. We asked to engage with the CMA from April 2014 and each time we were refused.

We add that the confidentiality ring procedure also made it extremely hard to engage properly in this process, because of the rules on downloading material that should be encrypted and pass-worded to preserve its safety. Moreover, formulas in spread-sheets should not be part of the confidentiality ring process, but provided for scrutiny. And more data could have been anonymised and distributed before June so we could see how the CMA was taking forward matters from our hearings in March. None of this happened, and our position may be prejudiced.

- We also believe that items in the confidentiality ring should be broken down into real confidential issues for advisers, and other matter which can be shown to parties because we are better placed to interpret data in our sector, and compare this to

direct hire. We are experts in what we do.

- Moreover, we think the process of downloading data to our experts' systems could be more user-friendly without dire warnings of consequences in draconian undertakings, which don't even allow the advisers **to have a record of what they saw and inspected**. That is a ridiculous state of affairs, where advisers have no audit trail of what they did. Our advisers had to sign the undertakings as presented so no more time was wasted at this critical juncture, but we note the process was not proper.

Fortunately our financial adviser was able to get hard copies of the confidential data, and some time on a borrowed laptop to inspect the CMA's data at their office. But the process can be made more effective, without opening the advisers to uncontrollable risk.

- We add that we did raise similar concerns back in February 2014 [✂].

- Most significantly, we understand that there was certain data which was critical to our advisers' analysis of the CMA's detriment work that was **excised** from the confidentiality ring (specifically direct hire rates). Given the nature of the undertakings required by the CMA and the fact that we understand that data was provided on an individual (anonymised) basis for the CHC, we can see NO justification for such a stance.

- It may be that the information concealed from the confidentiality ring needs to be removed from the CMA's final report as inherently unreliable. We think the CMA's legal advisers should consider this, and explain why the data hidden from our advisers, nevertheless is considered sound enough to remain in the report. It is possible that in an Appeal, this concealed data could be a cause of Appeal, and struck out of the report on the grounds that it was not verified, and parties expert's were not allowed to test this, in private with the CMA.

Paras 113 - 118 – *Updated estimate of the detriment*

In view of our opposition to the CMA's methodology, we think it is necessary to note the CMA's text here. Paras 113 and 114 say:

> *113. We used the revenues earned by direct car hire providers ([~]) to estimate direct hire rates. In order to compare rates, we aggregated the data* ***into the standard car hire classes used by Enterprise*** *(see paragraphs 48 to 54). We excluded the most* ***prestigious*** *vehicles (GTA classes F9, P11, P12, P13, SP11, SP12, and SP13) because several insurers have specially contracted or on-demand rates. For the purpose of the calculation, we assumed that there is no difference between credit and direct hire rates for these classes of vehicles.*
>
> *114. Table 10 shows the* ***average credit hire rates*** *for a sample of seven large CHCs and the* ***average direct hire rates for our sample of providers****. As in our provisional findings, the rates are obtained by dividing the providers' total revenues by the number of hire days. To compute overall averages, the classes of vehicles are* ***weighted*** *according to the respective numbers of credit hire days in 2012, so that the distribution of vehicles provided under credit hire is also used to compute the average direct hire rate. With this adjustment, credit hire rates are 2.1 times higher than direct hire rates.*

First, we object to the CMA's use of Enterprise's direct hire categories. They are not a benchmark, and only produce generalised car categories which are inferior to the detailed GTA classification of cars. There is no narrative on why and how Enterprise developed its categories, which are considerably *at variance* with the GTA classifications, as will be apparent from inspection of the CMA's Table 10.

This CMA analysis [on table 10] should follow the groupings of the GTA. Accordingly, the Enterprise groupings need to be adapted in this table to fit the GTA grouping, (as was done in Table 6 at the PF stage) and to accord with its membership of the GTA as a credit hire business. The GTA groupings were established over 15 years, with the insurers' involvement, in serving non-fault claimants fairly. These groupings ensure hundreds of thousands of people obtain a suitable like-for-like car when needed.

As the CMA used the GTA classifications in Table 6, which was its first attempt at trying to allege a detriment from separation, we do not know why this change happened. No-one to our knowledge told the CMA that it should abandon the GTA categories, and this issue was not raised in any questions at the multi-lateral hearings in late February 2014 with insurers, brokers, and CHCs over several days.

- Accordingly, the abandonment of this GTA grouping, in work as important as Table 10 is an arbitrary and distorting factor that can create a detriment when none

exist. In our view, it inflates the alleged CH detriment with artificially lower costs for direct hire, or higher alleged average credit hire costs. All this should have been discussed in open forums or in updated working papers prior to the PDR. The failure to do this was, in our view, an unacceptable failure on the CMA's part.

As said above, when quality of GTA cars were considered in WP23 we noted that users recognised that GTA provided cars are some **20% superior** to those in the equivalent Enterprise grouping. Indeed, the 'prestige' nature of some CH cars (in terms of marque, model or specification) may not be available to direct hire consumers – this is all lost in the CMA's data in Table 10.

The CMA noted Enterprise's approach could cause consumers to suffer delay in mobility (as direct hire agent) if they don't attend their premises to collect cars. These factors effecting consumer service, and wasting their time, are also ignored in the CMA's detriment analysis. They go into the question of the costs of separation, which are not just the insurers' costs but the hidden costs of consumers i.e. direct losses, and time, and money. Tort law is designed to ensure consumers don't bear these losses, when innocent. We believe this is all ignored, and lost in Table 10's methodology.

- We also believe that the GTA process is a better mechanism to ensure consumers receive their best like-for-like car, based on need, and quickly after the incident. Enterprise's approach is to provide whatever is available, and only after approval is given by the insurer. Again, this delay can be days, so how is the relative higher value from the CH offering taken into account i.e. immediate versus delayed provision of a car. These issues can not be ignored.

- And, the CMA noted that most of Enterprise's customers collect and return cars, because this is the only way they get their car quickly (after the insurer gives approval). These factors alone will significantly reduce the CMA's alleged detriment, implied in Table 10. But because of the way this table is constructed, such inherent overstatements of difference between CH and DH costs are concealed from the reader.

- We request these factors are corrected when the table is represented on the same lines as Table 6 in the Erratum.

Next, we note that we requested engagement with the CMA after our hearing in March 2014, specifically on this updated work on this detriment. We even provided our own working showing no detriment at the hearing. All our requests were rejected, and we were told to

wait until the PDR was published. The failure to engage with us has put us at a disadvantage in having to meet a very short deadline for response, together with putting advisers' time aside to look at confidential ring material in haste. These procedural failings need noting for the record.

To summarise, we object that Table 10 was changed from the earlier Table 6 format, wholly arbitrarily, behind closed doors and with no consultation with us, or other interested parties. For the record, we attach a copy of the revised Table 6 from the Erratum document as **Annex E**. We request full reasons on how and why these changes came about?

- We add that we received no warning that this important **Table 6** might change fundamentally in a way to harm the legitimate interests of CHCs.

- For completeness here, and because this detriment issue is not resolved, we also note that we objected to the information in Table 6 (see our response to Appendix 6 of the Provisional Findings for details.) Our numerous challenges on that methodology were some 30 pages in February 2014, which has never answered, and nor explained in WP23. We would like to know what happened to our objections regarding Table 6, which we hope will go into the final report.

We also note that Table 10 is misleading. For example, it hides the fact that the figures include VAT, and this important fact is not mentioned on the table. We already noted above that CHCs don't hold onto VAT, which goes to the Government as a tax for the benefit of consumers. Hence to include this extraneous factor in an alleged detriment which CHCs will have to pay-for, and not apportion the costs to the government, **is manipulating unfairly this information**. We hope this false presentation will be corrected in an Erratum without delay. Or the table should be produced, on a VAT inclusive and exclusive basis, so that the magnitude of this distortion is apparent, and not attributed to CHCs. This factor could take-out many £million from the alleged detriment shown under CHCs credit hire.

We also dispute most of the assumptions in para 114 (noted above). For example:

- It says the CMA used the average of direct hire rates for its sample of providers. This should be explained more with both data and narration. How can we trust what the CMA has done, or the weighting? Equally interesting, in Table 10, whilst the credit hire rates are publicly shown (and which we dispute as inflated), **we see that the direct hire rates are hidden i.e. secret**. If the direct hire rates are a credible benchmark, why are they not transparent and open? This alone tells us the data is artificial and should be dismissed as unreliable.

- In contrast to the opaque direct hire data noted in para 114, we see the CMA's narrative fails to mention that car hire is a transparent service that can be compared to credit hire rates in Table 10. We informed the CMA that it should use basic hire rates as the benchmark here, one reason being that they are public benchmarks from what we understand is a competitive market. But cleverly, WP23 has nothing on this argument, and why such data is not shown in Table 10.

- We say that if basic hire rates were shown on Table 10 as an objective and transparent comparator, it would reveal that credit hire is supplied at a discount to the basic hire rates (that are available to the public). This distinction becomes important because para 2.59 of the PDR **allows individuals to recover their losses directly from insurers at the higher basic hire rate**, and not the imputed ***lower*** GTA rate. It follows that forcing consumers to recover their car hire losses under remedy 1C at the wholly artificial low direct hire rates is an impediment to their rights against the tortfeasor.

So as para 2.59 of the PDR endorses basic hire rates, it follows that the GTA rates, at a substantial discount to basic hire (or spot rates) are also fair and reasonable, especially as the CMA found CHCs don't make excess profits and compete fairly.[24]

> This logic leads to a further deduction. If consumers know that insurers can obtain cars much cheaper from CH suppliers, then they can legitimately ask why then do they pay more for basic hire for social or business reasons. The answer is CHCs pass on efficiencies in their lower prices to insurers, as based on the GTA framework. This reasoning is **important**.

In addition, we note the CMA weights its data according to credit hire days in 2012, but provides nothing about how it did this? In table 10, percentages are shown in the last column with no explanation on what they mean, or how they were derived, and whether they distort the final results.

- The CMA notes the distribution of vehicles provided under credit hire as something to compute average direct hire rates. Exactly what does this mean to any reader?

[24] See provisional findings – para 6.17 which said inter alia:

> … We note that we have **not seen evidence that CHCs earn more than normal profits**. Indeed, as we found that barriers to entry were low and CHCs **compete** to obtain referrals by offering high referral fees, we consider it **unlikely that CHCs earn more than normal profits**.

What were the calculations, and how was this verified?

The CMA then says it thinks there is a scaling factor of **2.1** between credit hire average charges per claim, and some hypothetical direct hire equivalent. We think this is **too high**. At our hearing in March 2014, page 4 of our hand-out showed our methodology which receives no comment in WP23. There, we noted this scaling factor was no more than 1.8 times.

The CMA never came back to us, to discuss or challenge our estimate of 1.8, as shown on page 9 of the hand-out. Nor is our methodology even indicated and discussed in the narrative. What the CMA has done afresh with no prior warning has been inserted as a fait-accomplit. Incorrect conclusions can arise because the direct hire averages are understated, whilst the CH averages are overstated. In effect this work was not transparent and lacked the consultation Kindertons was promised. We object.

NOTE to the CMA:

We recall that the CMA requested in FP1 (27 March 2014) question 4

Please complete the attached spreadsheet with the average daily hire rate for 2012 and 2013 for each car category for (i) credit hire provided under the GTA; (ii) credit hire provided under bilateral agreements with insurers; and (iii) direct hire provided to insurers. Please provide the basic daily hire rate (ie excluding additional charges for optional extras). Please include VAT. In each case please set out the daily rates for additional elements offered over and above the daily hire rate at an extra cost?

We believe this recent data would reduce the average credit hire rates shown in Table 10 because as requested, it did not take account of late penalty payments.

Assuming our critique and the implications are recognised, we now reproduce the table for closer examination.

TABLE 10 **Comparison of credit hire and direct hire daily rates**

Vehicle class	*GTA class*	*Credit hire average £*	*Direct hire average £*	*Credit hire to direct hire ratio*	***Weights** (number of credit hire days) %*
A	**S1**	39.87	[X]	[X]	4.83
B	**S2**	42.90	[X]	[X]	17.77
C	**S3**	46.45	[X]	[X]	14.23
0	**S4**	47.95	[X]	[X]	13.88
E	**S5, P1, SP1**	59.90	[X]	[X]	9.85
F	**S6, S7, P2, SP2**	63.82	[X]	[X]	13.57
MMPV	**M, M1, M2**	65.70	[X]	[X]	7.28
MPV	M3-M6	89.05	[X]	[X]	1.47
SPREM	P3-P5, SP3-SP6	130.86	[X]	[X]	9.37
MPREM	P6, P7, SP7, SP8	204.88	[X]	[X]	1.96
EPREM	P8-P10, SP9, SP10	274.02	[X]	[X]	0.66
S4X4	F1, F2	107.78	[X]	[X]	2.38
L4X4	F3-F5	154.83	[X]	[X]	2.00
E4X4	F6-F8	229.19	[X]	[X]	0.61
F9, P11-P13, SP11-SP13		492.97	492.97	1	0.15
Weighted average		69.37	33.09	**x2.10**	[100%]

Source: CHCs and direct hire companies.

NOTE to CMA – why are the direct hire averages concealed – no explanation is given?

As noted above, there are numerous logic errors and assumptions which we say are unfair to bias the above data against CHCs, and hide the fact that basic hire (available to consumers) is more expensive than anything shown in the above table. That is the true benchmark for this new analysis.

The secret nature of the so-called [artificial] benchmark called 'direct hire average' is clearly proof that the CMA's work is built on questionable data that has no public comparator. In other words, we note that all this information is concealed in this table, **and was also concealed from the confidentiality ring disclosure**. In other words, our advisers looked at this source information, and saw [blanks]. What should this revelation inform an impartial reader?

- We say that if this data had any merit, it should be public, and the historic trend over the past **5 years** should be shown as well. And **forecasts** for the next 5 years should also be made, as well as a note from review of forward contracts with the

alleged direct hire contractor(s). All this is missing, and shows the work done was poor and ineffective, and below expected standards. There is also no explanation why this work was even accepted for inclusion in Table 10.

We also think the **credit hire averages** in the above table are too high – in other words, the data still includes penalty income which does not form part of the actual daily rate of hire. It is as a result of the at-fault insurer failing to pay the claim in the correct timeframe.

We also think the table is misleading because it does not mention the above data includes VAT, which we say needs to be ***excluded*** because it distorts the alleged detriment. VAT is something for which CHCs have no control, nor do we benefit from this revenue.

As we are unclear where the direct hire averages are derived? We also don't know whether they are on a like-for-like basis with the credit hire categories for each line in the Table?

The above table should also show **to whom the parties have their contractual obligation**. If that factor is noted, column 3 for credit hire will show CHCs are contractually bound to the non-fault claimant, and our service is free. And in column 4, the DH contractor will be shown as bound to the insurer, and not to the non-fault claimant. The lack of contractual obligations enables the direct hire operator to get upselling income from these claimants. This difference in obligations and the route to getting customers [i.e. need for marketing costs] is **wholly missed** from the CMA's selective narrative.

- We noted earlier in our response to the CMA after the private hearing that if there is a so-called difference between direct hire prices and credit hire prices, or anything else, this difference in obligations is important. Effectively we say that any alleged difference from separation is not from competition, but arises from the law of tort. In other words, CHCs have to recover our costs in serving and finding non-fault claimants because if they were left in the hands of insurers, they would find inequality of arms and be forced to bear their losses directly, or via higher premiums because more claims are needed against their insurer and payment of excess, or loss of NCBs, and many other externality costs. All this is excised in the CMA's narrative so readers would not know the adjustments needed to get the alleged 2.1 scaling factor to a proper like-for-like comparison.

The direct hire averages exclude extra income to direct hire providers, such as upselling, as well as all costs which CHCs incur, but are subsidised and shielded by insurers. The direct hire numbers need to be increased for this factor.

We think the above critique shows the CMA's work is below par. Table 10 and its

conclusions need to be abandoned as flawed, unreasonable, illogical, misleading and wrong. If the CMA can challenge our logic and arguments, we will be happy to add further comments.

Para 115 notes the CMA made a 2.2% adjustment for timing factors in settlement of credit hire bills, we accept this adjustment, and note it reduces the scaling difference by 0.05. If our comments as noted above are considered, however, we think the scaling factor will fall substantially below 2.05 times. And in any event, we think this benchmark is wrong in principle. So if any informed reader accepts our logic, they will conclude that any opening difference from separation is a lot less that £566 a claim, contrary to what the CMA writes in para 117 (discussed below).

> Moreover, we noted separately in our submissions that **if** insurers can obtain discounts from self-supply, that is irrelevant to this separation question because the **at-fault insurers** can not be relied upon to look after the interests of legitimate non-fault claimants who plainly don't have any contractual rights, but only the power to exercise their tortious rights of redress. This is the legal situation that created the need for CHCs, and which the CMA's work misses widely. Insurers, as the CMA admitted have no incentive, without the pressure of CHCs to treat non-fault claimants fairly. Indeed the CMA added that insurers don't even treat their own policy-holders fairly when they recover excess charges.

- In effect the **law of tort** gives claimants rights to recover losses from at-fault insurers, and CHCs meet this need, and hence GTA prices were established with the insurers' support to ensure fairness and optimal costs/recovery for claimants and insurers. All this is played-down in the CMA's flawed narrative. So if there is any detriment, the root cause to consider is the law of tort. Separation is an effect of the law of tort. To the extent that the CMA does not propose to change the law of tort (which we think would be undesirable as it would leave consumers at the mercy of insurers whose only incentive would be to minimise cost), we believe it is utterly unfair of the CMA to include the costs of **dealing with disputes** in its calculation of the starting point.

- These costs are **significant** and the CMA has failed to adjust properly for them – it cannot simply rely of insurers estimates of the costs of management – we hope the figures will be revised in the light of our comments.

We hope the above is clear so the CMA decision-makers can reflect again on these arguments. Given our comments above, we think the CMA needs to abandon its narrative in paras 116 to 118 as noted below:

> ***116**. We noted that hire periods are on average shorter under direct hire than credit hire. Since the daily cost of hire tends to be lower the longer is the hire period, applying current direct hire rates to the number of credit hire days may slightly **overestimate** the cost of direct hire. In other words, if the average length of direct hires was the same as for credit hire, direct hire rates would be lower than those used in our calculation. However, we have not been able to adjust for this.*
>
> ***117**. Dividing the total revenues for the CHCs in our sample by the total number of credit hire claims managed by them, we estimated the average credit hire revenue to be approximately £1,105. Since credit hire rates are about 2.05 times higher than direct hire rates, we estimated that under direct hire the same services could be provided for about £539. The average cost difference is approximately **£566 per claim**.*
>
> ***118**. We compared our estimate of credit hire and direct hire bills with that provided by a CHC (Helphire), see Appendix D. The CHC's figures showed [~].*

Para 116 is a convoluted way of trying to say the CMA's alleged 2.1 scaling difference is bona-fide. We object, and if it has data, such should be shown to support its narrative. But there is a point not made in favour of CHCs. This is that direct hire is shorter than credit hire because it usually arises from captured claims where the insurers realised they could not dispute the claim i.e. the more easier dispute situations. As we know, captured claims are only around a third of all claims.

- So the reason credit hire is longer is because it relates to the more complex claims e.g. multiple cars, or cases where split liability is disputed, or where there may be personal injury implications so insurers are slower or reluctant to admit liability. Where is any of this in the CMA's thinking or narrative? Where do CHCs get any credit for their work being done for free on behalf of claimants?

- Nor does the externality benefit to insurers from CHCs screening perhaps 200,000 questionable, false or fraudulent claims a year get taken into the CMA's narrative.

[REDACTED].

- [REDACTED].

Again we must say [✂]. Clearly, the above should inform the CMA that we strongly **dispute** its alleged cost difference in para 117 at £566 a claim. It makes no sense. And this figure is inclusive of VAT to which we also object. We now start our alternative calculation as follows:

- Hypothetically, if we start with the CMA's number of £1,105 as the inclusive VAT

average cost of credit hire claims, we then say this needs to be reduced by VAT to **£921 ex VAT**.

- If we then use our scaling factor of 1.8 (on our methodology in February 2014 which the CMA has not challenged and appears right as discussed above), we get an imputed direct hire, ex VAT equivalent of **£511**. Them £921 less £511 equals **£410**, which compares with the inflated CMA estimate of £566 which should be rejected.

Next, without adjusting at this stage, for many factors in CHCs favour, such as:

(a) upselling revenues, which direct hire providers achieve from non-fault claimants, nor

(b) adjusting for the positive quality difference from CH vehicles under GTA classifications being better than then TRV offerings from Enterprise – assuming 10 per cent of cars are subject to this factor, clearly a significant adjustment would be needed.

(c) any externalities benefits to insurers from the work of CHCs, nor

(d) benefits to millions of consumers from the avoidance of having to buy MLEI (when they use CHCs) and getting ULR and excess costs recovery for free, nor

(e) the opportunity costs to non-fault claimants from getting a credit hire and credit repair service for free from CHCs at point of need, nor

(f) any insurer costs which subsidise the direct hire contractor.

(g) significant savings on transport infrastructure as not offering collection/delivery.

We take the £410 and deduct the £328[25] average revenue to non-fault insurer (passed back in premiums), to get **£81** potential excess costs, a claim (excluding the adjustments noted above).

£81 times 301,000 claims a year equals some £24 million. We are sure all the 6 classes of adjustments noted above, when evaluated will wipe out this £24 million. The conclusion is therefore that separation, when properly evaluated does not lead to any detriment to consumers, but promotes massive consumer gains (which would not happen in the absence of CHCs).

It follows that any idea of lower caps under remedy 1C should be abandoned, but the CMA

[25] £328 average revenue from referral fees per claim times 301K claims = £98.7m

should support the GTA price setting process between insurers and CHCs because this leads to a fair outcome, which is lower than basic hire rates. And basic retail hire rates are the best, most transparent and objective counterfactual for benchmark.

We say the arbitrary shadow prices hidden in Table 10 and called direct hire, are simply a convenient conclusion to form a pre-determined view, and we have demonstrated above, that even using this data, there is no material detriment, when the correct assumptions and adjustments (a) to (g) are made. We think the CMA can not refute this logic. Interestingly we noted the Chairman on Sky news (when the PDR was issued) mentioned that CHCs' prices are 'artificially high' – we clearly disagree and hope this issue will be properly resolved.

We also note the CMA makes comments in para 118 about Helphire, but we can not comment more. We would like the narrative to give better information on this argument, especially if the CMA's comments are not consistent with our objections and arguments, as stated above.

Our views on Table 1 on page 60 of the PDR

To close off our comments on the CMA's alleged detriment work, we note Table 1 from the PDR shows **very important information**. We think Table 1 is too important to hide, and it should have been shown at the start of the PDR because it summarises the CMA's detriment analysis over 5 categories.

Although we say it is useful, that is so that our objections are seen more clearly as correct. We object to most of the information therein, as being wrong or misleading, or misallocated. We reproduce this Table below, with high-lighted text because it shows how the CMA has allocated its alleged detriments across various groupings, involving insurer managed claims credit repair, and credit hire.

The last column in Table 1 deals with credit hire. As will be clear from our comments above, we do not accept the £87m alleged detriment as true, or fair. It is based on flawed assumptions which need to be modified, in the light of our comments above.

- But we now address lines 2 and 3 in this table, where for Credit Hire, the CMA notes £78 in line 2, and an offsetting saving of £27 in line 3. We say these numbers are wrong, and discuss this further in the paragraphs below.

TABLE 1 **Summary of detriment calculations: repair, write-off and credit hire** [in PDR]

	Insurer-manage repair	*Credit repair*	*Insurer-managed write-off*	*Credit write-off*	*Credit hire*
Average bill less cost to at-fault insurer of captured claim (£)	95	290	53	125	566
At-fault insurer's average transactional/ frictional costs (£ per claim)	**32**	**45**	**32**	**45**	78
At-fault insurer's average management costs saved (£)	(111)	(111)	(111)	(111)	(27)
Average cost of separation to at-fault insurer (£ per claim)	17	224	(25)	59	618
Average revenue to non-fault insurer (referral fees etc, £ per claim)	20	(53)	62	(53)	(328)
Net detriment (£ per claim)*	37	170	37	6	289
Number of claims (thousand)	240	85	64	21	301
Net detriment (£ million) *	9	15	2	0	87
Source: CMA calculations.					

- Net detriment is average cost of separation to non-fault insurer less average revenue to non-fault insurer.

KINDERTONS' NOTE: the total of all the alleged detriments, sums to **£113 million** (inclusive of VAT), and without taking account of other adjustments and corrections that we explain in this response. When our adjustments are made with our methodology, we believe this £113m would not arise, and could be de-minimis,

Note 1 to CMA – the 5th line above refers to Average revenue to non-fault insurer i.e. referral fees, etc. per claim). We understand the source of the off-setting entries £328 and £53 for credit hire, and credit repair and write-offs respectively. However the cost items (i.e. narrative and size) under insurer-managed repairs, and insurer-managed write-offs at £20 and £62 are not sufficiently explained.

Note 2 to CMA – the 3rd line showing an alleged saving in the first 4 columns of some **£111 per claim**, compared with only **£27 a claim under the credit hire column** is disputed. The scale is 4 times less, with no explanation. This **under-allocation** of savings to CH activities is wrong, and makes no sense. In this response, we have queried this and give our own estimates, many times this level. As CHCs do all the claimant-related work, with no impact on insurers, the savings to insurers from our activities is empirically and logically much more than £27 a claim.

- Indeed the CMA's own narrative in para 4 of Appendix G informs us that the CMA has either made mistakes in this allocation process, or picked numbers to produce a biased result. Whichever reason is the cause of this, it is an issue that needs to be resolved with our involvement. Or we recommend that our alternatives, as suggested in this response are

adopted. See further comments below. In order to try to see the scale of spending and misallocations, which are concealed in Table 1, we reworked this data per claim, to show overall information in £m, per category.

TABLE K1 **Summary of detriment calculations: repair, write-off and credit hire in £m to show how costs allocated by category** [based on Table 1on page 60 the PDR]

					£m	
	Insurer-managed repair	*Credit repair*	*Insurer-managed write-off*	*Credit write-off*	*Credit hire*	***Overall total***
Average bill less cost to at-fault insurer of captured claim (£m)	22.8	24.7	3.4	2.6	**170.4**	223.8
At-fault insurer's average transactional/ frictional costs (£m)	**7.7**	**3.8**	**2.0**	**.9**	**23.5**	38.0
At-fault insurer's average management costs saved (£m)	**-26.6**	**-9.4**	**-7.1**	**-2.3**	**-8.1**	-53.6
Average cost of separation to at-fault insurer (£m)	4.1	19.0	-1.6	1.2	**186.0**	208.8
Average revenue to non-(fault insurer referral fees etc, £m)	4.8	-4.5	4.0	-1.1	**-98.7**	-113.1
Net detriment (£m)*	8.9	14.5	2.4	.1	**87.0**	112.8
Number of claims (thousand)	240	85	64	21	**301**	301

Source: Kindertons, based on CMA calculations in Table 1 of PDR

The above table shows massive **over-allocation of costs to Credit Hire** i.e. £23.5m, with very low offset savings of £8.1 million. Yet, most of the £53m of insurers' costs have been allocated to their own groupings **as savings**, in order to make credit hire look expensive. It seems that the data has been manipulated to produce an alleged detriment which is not true, in fact or circumstance. We hope the CMA will reflect on this presentation to note its many errors, and adopt our alternative.

As a further sense-test, we ask the CMA to look at column 1 i.e. insurer managed repairs. If the income difference is only £22.8m (which is not explained), **why is there a saving in this column amounting to some £26.6m, which is more than the starting figure?** Surely,

most of this saving should relate to Credit Hire, where the highest starting revenue difference is shown at £170.4m, and which we say does save massive costs of insurers, because we deal with the claimant i.e. consumer. Hence, for a like for like comparison with direct hire (which is subsidised by insurers), all the savings need to be allocated to our credit hire column. None of this is properly explained in the relevant text, nor in the section below, described as ***insurers costs*** from para 119 to 121. We think all this work has not been done satisfactorily.

Paras 119 - 121 – *estimate of insurers' costs*

Para 119 says:

> *119. We estimated the costs incurred by insurers in managing hires and repairs/ write-offs and in dealing with the third party insurer and/or CMC/CHC, and with their own customers. Table 11 show the estimates relevant for our calculation of the detriment (see Appendix E for further details).*

TABLE 11 **Insurers' management and frictional costs** [in App E]

Credit hires	**Frictional costs incurred by the fault insurer**	**£78**
	Management costs saved by the fault insurer	**£27**
Credit repairs and write-offs	Frictional costs incurred by the fault insurer	£45
	Management costs saved by the fault insurer	£111
Insurer-managed repairs and write-offs:	Management and frictional costs incurred by the non-fault insurer	£115
	Frictional costs incurred by the fault insurer	£32
	Management costs saved by the fault insurer	£111

Source: CMA (with high-lighting by Kindertons).

We have struggled to understand the above data, and how it leads to the numbers shown especially for credit hire in Table 1, of e.g. £78 and £27 savings. The CMA will note we think all this work is wrong, as explained above.

When we look at Table 1 noted above, the CMA will see it has allocated £78 in line 2 to CH, but **£32 to £45 in the four other columns**. We don't understand why CH should incur £78 costs. We do all the work for insurers, once a non-fault client appoints us to act for them. So what do these costs represent on first principles?

- The only work done by insurers is to approve our GTA approved 'settlement pack', or take note of the work we do for the client once the claim is agreed. In Table 7 (para 90) the CMA state that nearly 40% of claims are paid within 30 days, this follows the assumption above that it is merely a "box ticking exercise". We know from our own perspective that with the advent of enhanced bi-lateral agreements with insurers any admin costs associated with claims have been significantly reduced.

- If we overcharge, we will damage our reputation and relationship with the insurer. We note the CMA has not noted the success of insurers in challenging CHCs. Accordingly, this is proof that we do a good job with minimal dispute situations leading to legal action on either side.

- So we say the £78 imputed to CH is wrong. Clearly, more costs should be allocated to the insurer-managed repair or other column. We hope the CMA notes this objection and changes its allocation. These are insurer costs, so it is unfair to load them falsely on the CH independent service. It is a fiction, and we object.

Second, we do not understand why the CMA thinks insurers save a **mere £27** from CHCs acting for clients. We think all the capture team costs, and the costs that the insurers spend in **subsidising** the direct car hire service (on their behalf) i.e. (a) dealing with captured claimants, and (b) time in supervising their direct hire contractor, or (c) noting disputes referred back to them from treating claimants badly, must amount to significantly more costs. In other words, the savings to Direct Hire contractors from insurers doing the work we do, needs to be factored into this separation analysis as an addition to the direct hire costs, which exclude such costs. If these adjustments are made, they alone would have a large impact on the alleged detriment. Please can the CMA take forward this objection, or give reasons why it is refused.

To further our view on this, we believe that in fact the cost incurred by insurers when dealing with a CHC and a credit hire claim is probably the same cost they incur when identifying and managing a direct hire claim. It is agreed that the type of costs are different, i.e.

- For direct hire they are front-loaded with FNOL, claims screening, capture teams,

hire allocation, subsequent repair/total loss management, and final invoices still have to be checked, approved and payment made.

- Where credit hire is concerned this admin costs is more skewed towards the **assessment of the submitted claim**, **i.e. those 77% of claims settled within the GTA** will have each had on-going monitoring carried out by the CHC; and so it is a straightforward case of reviewing the claim and the hire details including rate, need and duration.

Comparing the two scenarios in our opinion suggests that the costs would be very similar and therefore, for simplicity now, there seems to be no requirement to make any adjustment to the AEC calculation. Data with which the CMA have collated and relied on we believe to be misleading and further quantification work clearly needs to be done on this

To summarise, we think it is useful to compare our comments above, with the CMA's CH column in Table 1. **Table K2** below shows the results, hypothetically at this stage.

- Here, the CMA's detriment falls to only £24m (from £87m), which equates roughly above the level for credit repair, as shown in Table 1 above. And we say there are many other advantages and valuable benefits of credit hire, not captured in our revised calculation below.

- As the CMA will note, there are 6 categories of adjustments [**noted in footnotes as (a) to (f)**] to further reduce the £24m net detriment, which will probably turn into a surplus from separation.

- For simplicity because there is such a strong challenge over the CMA's estimates of £78 and £27 a claim, we show £50 neutrally, in the table against these items, as our equivalent for now. But we hope our comments show direct hire prices are just one small part of the detriment calculation. All the insurers' hidden costs need to be added because direct hire can not operate, without the insurer's infrastructure to capture claims and direct people to them

- As the CMA will note, we also think direct hire prices are lower than they should be to ensure like-for-like comparison with what is on offer under the CHC equivalent GTA car groupings. This means the detriment shown below is upwardly distorted. Our Annex D considers this problem is detail, but the CMA must evaluate this issue before the report is finalised.

TABLE K2: ***Kindertons alternative thinking on estimates*** ***used by CMA for alleged credit hire detriment,*** *based on above commentary but without making further adjustments noted in sub-paras (a) to (e) several pages back**

£m

	CMA	***Kindertons***
	Credit hire	*Credit hire*
Average bill less cost to at-fault insurer of captured claim (£)	566	409
At-fault insurer's average transactional/ frictional costs (£ per claim)	78	50
At-fault insurer's average management costs saved (£)	-27	-50
Average cost of separation to at-fault insurer (£ per claim)	618	409
Average revenue to non-fault insurer (referral fees etc, £ per claim)	-328	-328
Net detriment (£ per claim)*	289	81
Number of claims (thousand)	301	301
Net detriment (£ million) *	**87**	**24**
Source: CMA and Kindertons		

- Net detriment is average cost of separation to non-fault insurer less average revenue to non-fault insurer. This is shown before further adjustments, discussed in preceding pages, and summarised in sub-paras as follows:

  (a) upselling revenues, which direct hire providers achieves from non-fault claimants, nor

  (b) adjusting for the positive quality difference from CH vehicles under GTA classifications being better than then TRV offerings from direct hire providers, nor

  (c) any externalities benefits to insurers from the work of CHCs eg fraudulent claim screening, nor

  (d) benefits to consumers from the avoidance of having to buy MLEI (when they use CHCs) and getting ULR and excess costs recovery for free, nor

  (e) the opportunity costs to non-fault claimants from getting a credit hire and credit repair service for free from CHCs at point of need, and more quickly that direct hire providers.

  (f) significant transport infrastructure savings made by direct hire providers in

comparison to CHC's investment in people, vehicle transporters, fuel, servicing & maintenance

The above should inform the CMA that its thinking has not developed in a way we can accept, since the Provisional Findings. We believe the above result shows that Remedy 1C and any question of caps on CH charges is vastly disproportionate to any alleged detriment, which we say is de-minimis. It would be illegal, and vastly disproportionate if they are imposed at levels below the industry-agreed GTA rates.

To summarise, the above analysis should inform the CMA that its work has produced results which don't reconcile with our understanding of our sector, nor the value of what we do. In this connection, we were granted limited access to the CMA's confidentiality ring data i.e. hard copies, for which we thank the CMA for this concession. But even without going through the secret information in the confidentiality ring, it seems self-evident that the secret information has been misused, or misapplied to produce **wrong allocations of insurer costs**, or to produce low direct hire costs (which have been concealed from us), to compare with wrongly inflated credit hire costs. That conclusion that massive errors sit in the CMAs work should be obvious to any intelligent reader of this response.

The above should explain **why** we don't accept the CMA's text in paras 120 and 121 as follows:

120. Although there is some uncertainty around these figures, it was clear to us that:

(a) the frictional costs incurred by the fault insurer are highest in the case of credit hire;

(b) credit repairs and write-offs involve lower frictional costs, but they are still higher than for insurer-managed repairs and write-offs; and

(c) the costs at-fault insurers incur in managing a repair (or write-off) for a captured claim are higher than those of managing a hire.[32]

*Footnote 32 says: The difference is affected by the allocation of **'other' claim handling costs** not driven by the number of repairs/write-offs or replacement vehicles (see Appendix E, paragraph 6).*

*121. We have estimated that the costs incurred by a **non-fault insurer** when managing a repair are higher than the costs an at-fault insurer incurs when managing a captured claim. These two types of claim involve different costs. In the case of at-fault insurers, **capturing the claim is costly**, but there is no need for subrogation and no additional frictional costs. In contrast, non-fault insurers can gain control of a claim at a much lower cost but incur the costs of subrogating the bill and defending it.*

We think the language in para 121 is opaque with jargon e.g. subrogation, capture costs, frictional costs, etc. Please can the CMA expand this narrative with supporting data? But in a few words, we say these conclusions don't reconcile with our understanding of these situations. We note capturing a claim is stated as being costly – can we see the number in the minds of the CMA decision-makers.

We don't understand why the above comment refers to defending subrogated bills? To what extent does the CMA think subrogated bills are leading to disputes where the CHC/CMC was the cause of creating higher costs? We would request this narrative is cross-referred to the analysis, because we do not think it is accurate, and rather is misleading and biased. Once we know what underpins these comments, we reserve our right to comment further.

In the meantime, such conclusions should be withdrawn, and the CMA should get back to us with its further supporting evidence to justify these sweeping statements. As said, our analysis above also needs to get into the CMA's narrative. When done, it will further recognize that its conclusions as stated above are wrong.

Paragraph 123 - ***CMA overall conclusions on alleged Credit Hire detriment:***

If the CMA now recognises the areas of disagreement in WP23, it will appreciate that we dispute the contents and results of information shown in its Table 12, which we reproduce below.

- For example, our notes 1 and 2 mention items in this table that we dispute. In addition, the alleged saved management costs of £27 a claim, makes no sense as we have discussed above. It is wrong, and savings (including costs incurred by insurers to subsidise direct hire car rental charges) are many times what the CMA includes. .

Many other adjustments that we have noted above, in detail are missing from this Table. So we must say the CMA's presentation of data and results are wrong, misleading and the Table is built on mistaken assumptions, and judgments. It should be replaced.

To emphasise our value, CHCs provide our service to claimants at no-charge, and at our risks. Payments are only made when the claim is finished, so we have to be efficient. CHCs charge at rates agreed with the insurers under the GTA protocol, so when claims are resolved under the GTA framework, the process is and should be fair to both sides, disputes should be minimized, and **alleged friction** should also be controllable and minimised. The

CMA has missed or played down these dynamics, which are hidden from the presentation in Table 12.

- We must object and request the work behind table 12 is redone and presented fairly. Our notes at the bottom of the table are to assist in any re-presentation of this, once the data is corrected and expanded

TABLE 12 **[Alleged] Detriment for credit hire** [in WP23]

	Profits to non-fault insurers	*Higher costs to fault insurers [**disputed**]*				
	Referral fees	*Difference between credit and direct hire bills*	*Frictional costs*	*Saved manage ment costs*	***disputed*** ***Total costs***	*Net [**alleged**] detriment (costs less profits)*
Average values (£ **per claim**)	**328***	**566**	**78**	**-27**	618	290
Total values **(£m)**	98.8	170.3	23.5	-8	185.9	87

Source: CMA [**but reproduced by Kindertons with notes below**]

*See provisional findings, Appendix 6.6; cost of ULR has been added (see paragraph 71).
Note: we think this adjustment does not take account of the full value of this benefit.

Note 1 £566 above - See paragraph 117 - but Kindertons disputes this.

Note 2 £78 above for frictional costs - See Table 11 - but Kindertons disputes this.

Note 3 We dispute the inclusion of VAT in the above data, which distorts the results. The CMA knows that Kindertons pays VAT to the government, which in turn provides services for the public.

Note 4 Many alleged extra cost in the above table do not arise from separation. They are applications of the law of tort, which is the root cause for consideration. A lot of taught is public policy, not competition policy

Paras 124 - 128 – *credit repair, credit write-off, and insurer-managed repair and write-offs*

- Given our comments above, relating to credit hire, and the costs allocation processes adopted by the CMA (*which we protest was done without any involvement by CHCs*), the effect is to distort the tables shown in this section.

- But as no remedies are being adopted under credit repair, or credit write-offs, we have no further comments. But our critique under the CMA's credit hire methodology

should be extended to these activities, where appropriate.

Paras 129 - 131 – *Overall net detriment*

We note the CMA's overall net detriment is the sum of the components, totalling **£113m** (as can be seen by referring to Table 1 discussed above, from the PDR). For reasons given above, we do not agree with this alleged total detriment. In our view, once our adjustments and corrections are properly evaluated and taken into account, this detriment may disappear. Alternatively, even if costs arise from separation, and specifically alleged extra costs incurred by insurers, we say this is simply an application of the law of tort (and public policy) rather than there being an AEC requiring remedies.

But, whilst discussing issues of competition, we note the CMA has not picked-up the issue of **wasted or avoidable costs** which insurers incur through poor procedures, or failures to be more efficient. Why has this been dropped?

Regarding para 130, we note the CMA makes a small admission: *"There is some evidence that separation is associated with **better quality** of service on replacement vehicles (see paragraph 110)."* We do not agree that the issue is small. The CMA has not adjusted for this better or superior quality of car, when comparing the GTA categories with the generalised inferior categories used by Enterprise (or any other party providing direct hire cars). We believe this adjustment is material and needs to be re-evaluated as many £millions.

We also note from para 131 that turnover for all CHCs in 2013 was some **£373m** for credit hire, and **£123m** for credit repairs. Clearly, CHCs have been doing a very important job for years, to the benefit of consumers across the UK. This figure gives an idea of the scale of harm that could arise, if remedies such as 1C are applied, when not needed, or before a prior change of tort law.

- In this connection, we remind the CMA that recent evidence shows that insurance premiums to motorists have fallen in 2014. So this evidence (currently omitted from the PDR and WP23) demonstrates that intrusive remedies are not needed, and market forces are working well to bring down prices, without any CMA intervention. This is a fact that needs to be dealt with in the CMA's final report.

Additional Points when evaluating the CMA's alleged detriment

[REDACTED].

[REDACTED]..

- Hence we recommended that it is abandoned, and the CMA uses a more transparent benchmark for this separation issue, i.e. the **basic hire rates** for consumer and business car rental. If this is used, the CMA would easily conclude that GTA rates charged to insurers are discounted from these publicly visible higher car hire rates. This whole area of analysis is totally omitted from the PDR and WP23. We object to this obscurity.

- Given that the PDR narrative in para 2.59 will allow non-fault claimants to recover their TRV costs at basic car hire rates under remedy 1C, it is not consistent for the CMA to adopt any remedies that take away these rights, e.g. when the individuals decide to enforce these rights of settlement more easily via the services and skills of a CHC/CMC. To do so, in our view requires a change of the law of tort.

Finally, we don't think any price cap remedy is appropriate or proportionate in circumstances where we believe that no net detriment arises from separation. But even if identified, it could first be due to VAT causation (which goes to Government), and/or insurers inefficiencies, or from causes such as the law of tort. Only after these steps can the CMA say the alleged detriment arises from separation.

Moreover, we believe that any price control that diminishes the opportunity for CHCs to provide their free service to consumers, at point of need, will produce wholly disproportionate harm to consumers, which we say the CMA has not properly evaluated in the RCB and loss of RCB sections of the PDR. We ask that all this work is reconsidered.

We also believe our comments from our hearing in March should have been taken forward, in discussion with us (and other CHCs). Had this level of engagement continued, we don't think the many errors and omissions, which we note above, would have arisen in the PDR and WP23. Unfortunately, this opportunity was rejected, and the CMA's work was done, without reference to us, or any CHC to our knowledge.

Paras 132 - 133 – *Distributional effects*

We note para 132 and broadly agree with the comments. We believe the high-risk drivers causing the accidents ***should*** pay a higher premium for the losses they cause, but such premiums are not caused from CHCs inflating settlements beyond the GTA framework. For firms operating outside the GTA, it may be right to bring them into the framework under a remedy, but the CMA needs to recognise that some firms remain outside the GTA because they deal with non-reference motor claims. We don't think the current balance of premiums between high-risk and low-risk premiums are distorted from the conduct and existence of CHCs operating in a pro-consumer manner in the sector.

Para 133 is too dense to comment clearly. To keep this response down in length, we comment only on the last sentence saying: *' … However, there are clear distributional effects in relation to credit hire, since there is both a cost to at-fault insurers and a profit to non-fault insurers (from the receipt of referral fees).'* We understand this dynamic, but what is the conclusion of this narrative? Who are the perceived winners and losers, and what are the sums involved? The narrative does not make this clear, and as we note above in this response, we don't think there is any net detriment from separation, when this subject is properly evaluated.

Paras 134 - 133 – *sensitivity analysis*

We appreciate the comment in para 134 that there were uncertainties in the CMA's work. But doing sensitivity analysis with inherently unreliable information, or wrong assumptions, or failure to appreciate the big picture, does not mean the results get better. Indeed the results get worse, or less reliable. So we caution the CMA on not drawing the wrong conclusions form its work.

Regarding para 134(a), from our comments above, it should be clear that we dispute the CMA's view that the baseline £87m net detriment (shown in Table 1) for credit hire, might fall to a low of £78m. If follows that any higher estimate for this issue is wrong.

Para 134(b) apparently produces no great change to the CMA estimates, so we have no comment,

Para 134(c) regarding VAT is not accepted. The CMA underplays this issue by suggesting it

would only affect its baseline detriment by a reduction of £3m. As we noted above, this VAT is embedded in the average CH bill used to drive its detriment calculation. The fact that CHC don't retain VAT means this distorting issue needs to be removed 100% from the alleged detriment calculation. It should be put into another category, where the root cause is either the Government (or the EU responsible for VAT legislation), or the application of the law of tort (another aspect of public policy under the control of Government). So the CMA under-plays this issue. We will object if this issue is not resolved by the time the report is finalised, It is a significant distortion amounting to many £million, and needs to be separated from the alleged detriment. Readers are misled by it being embedded in the numbers being quoted by the CMA.

Regarding para 134(d), the CMA is aware that quality advantages of CH vehicles over their so-called direct hire equivalents produce significant gains for consumers. Specifically, the CMA notes complaints over the quality of vehicles provided by Direct Hire providers. And without taking account of upselling, where consumers could have been charged more to get an equivalent to the CH car, the CMA plays down this issue. We think the reduction in the alleged detriment is many £millions, as discussed above, in the relevant section of WP23. So we say the CMA's text is wrong, misleading and needs to be corrected.

Regarding para 134(e), the CMA is aware that captured claims are only around 30% of all claims. This means that the more complicated claims are usually challenged by insurers, or forced to go away at FNOL stage. It is the intervention of CHCs which brings back a sense of fairness for the claimant. Our cases as was noted in the provisional findings are more complicated and therefore take longer to settle. Why this factor allegedly increases the CMA's detriment by £25 million makes no sense. But it shows the CMA's analysis is flawed because, we think separation produces no detriment (as shown in Table K2 above). On our assumptions, the CMA's conclusion here would be impossible.

Regarding para 134(f) we again have difficultly with this assumption about distribution effects of CH cars and DH cars. We have not had time to look carefully at this, but given our baseline estimate for an alleged detriment is de-minimis (see Table K2), then this so-called adjustment can not worsen the situation. We will be happy to discuss this further with the CMA.

Para 134(g) is interesting. Here the CMA considers the impact of the virtuous circle, whereby non-fault insurers get a referral fee for introducing claimants to CHCs/CMCs, and pass back this income, in lower premiums to consumers (because there is competition to sell

as many motor premiums as possible to millions of drivers. The CMA naturally says that if insurers hold onto this money and don't pass it back, then their alleged detriment will increase. The logic is right, but the risk of this happening is low. What is missing is the potential for insurers being able to permanently hold the gains from referral fees. In our view, insurers that allow their prices to consumers to drift above competitors could be subject to losing renewals, and itinerant drivers looking for low quotes. It is a strategy that might not work, over the medium term. So any suggestion that this virtuous circle fails is something which the CMA should have explored with the insurers. We see nothing in the PDR or WP23 on how this was evaluated. Our evidence that premiums have fallen in 2014 (i.e. before any remedies kick in) demonstrates market forces have brought down premiums (without need for remedy 1C). All this important narrative is missing. Again we object to partial and misleading thinking – it is not true, hence the alleged fear that the detriment increases is not built on proper evaluation of risks and facts.

We hope our views, as noted above assists the Panel in evaluating WP23. This leads us to the CMA's final para, where it shows Table 17 (shown below) to demonstrate its alleged range of detriments.

TABLE 17 **Ranges of possible net detriment values**

£m

	High estimate	*Low estimate*
Credit hire	181.4	70.4
Credit repair	17.9	14.6
Credit write-off	1	0.1
Insurer-managed repair	20.4	8.9
Insurer-managed write-off	4.9	2.4
Total	216.9	104.6

Source: CMA.

From our comments above, it should be apparent that we dispute the high range for the alleged credit hire detriment. We note the low estimate of £70m leading to a scale of 2.6 times to reach the high point – this shows lots of uncontrolled variables in the CMA's work, even without correcting for the errors and issues noted in this response. This response informs us that the CMA's detriment work is wrong.

> The variation is so wide around the so-called baseline number of £83m, that the CMA should have commented more. But the CMA is silent. We can only request at this late stage of this investigation that the flaws in the CMA's methodology are

acknowledged, our points as explained above are accepted, and our view of the alleged detriment is accepted as being a closer representation of reality and the sector in which we operate.

As we noted at the provisional findings stage, CHCs operate in a pro-competition and pro-consumer manner. Our service faces the consumer, rather than the insurer. And we don't make excess profits. We compete for referrals by the most efficient process, from parties who are close to the claimant. Our sector operates in a virtuous circle with insurers.

If most insurers are able to enjoy *arrangements* with one car hire supplier (Enterprise), then that is an opportunity [✂]. The CMA has failed to explain why other large car hire businesses like Avis, Hertz or Europcar don't have any serious share of this direct hire agency service. Our view is they can not provide cars on any scale, profitably at the insurers' demanded or tendered prices. That conclusion informs us that the CMA's benchmark data as shown in Table 10 is a wholly unreliable and poor source for credible information. The CMA has therefore misled itself for months.

- And Table 10 should be reconstructed on the lines of Table 6 – why this change happened without consultation is a serious failure in this process because Kindertons (and we are sure other large parties) invested huge amounts of time dealing with Table 6 **to discover in late June 2014 that this work was abandoned, the erratum of February 2014 was abandoned, and there was not a word of explanation**. All this appears unsound on what was going on, at the CMA since our hearing in March 2014. [✂].

If a true benchmark, which is open and transparent is needed to demonstrate that GTA prices are fair and reasonable, the CMA simply needed to take a survey of car hire prices (basic hire) available to the public or small businesses. Our prices will be below these competitive benchmarks, at a good discount. That work was not done – why?

We don't think any further comments are needed on the other alleged detriments shown in Table 17 because they have not led the CMA to suggest remedies, as acknowledged in the PDR. We agree that no remedies are needed.

Conclusion

We believe the above is a comprehensive response to WP23, and trust it assists the CMA.

There are numerous issues of dispute, and we hope to see progress by engagement with us.

We look forward to updated versions of WP23 and the final report sections, taking forward what we saw in the provisional findings. We expect our comments are noted and understood and that the additional work identified as being required will be undertaken so that later disputes will not arise.

Kindertons 8 July 2014

--- end ---

Comments regarding Appendix A to WP23 - ie

The benchmark for assessing separation of cost liability and cost control

Rebuttals re CMA's Appendix A on its benchmark theories

We note the Appendix discusses some conceptual issues, which we found interesting. We note the CMA referred to its guidelines as follows:

> 319. Having considered evidence of all kinds, the CC comes to a rounded judgement on what may be causing any adverse effects on competition. This judgement entails the CC reaching a finding on whether there is a feature, or combination of features, of a relevant market that **prevents, restricts or distorts competition** in connection with the supply or acquisition of any goods or services in the UK or part of the UK. If so, it will find that there is an AEC. In forming its judgement the CC will apply a 'balance of probabilities' threshold to its analysis, ie it addresses the question: is it more likely than not that features or a combination of features lead to an AEC?
>
> 320. In identifying some features or combination of features of the market that may give rise to an AEC, the CC has to **find a benchmark against which to determine how the market may be judged to be performing.** In the absence of a statutory benchmark, the CC defines such a benchmark as **'a well-functioning market'** (see paragraph 30) -ie one that displays the **beneficial aspects of competition** as set out in paragraphs 10 to 12 but not an idealized perfectly competitive market. The benchmark will generally be the market envisioned without the features. But there may sometimes be reasons to depart from that general concept, …

The CMA then explained its thinking and said:

> 9. Ultimately, we provisionally found two features that in combination had AEC: separation and the practices and conduct of other parties managing non-fault drivers' claims which gave rise to ***an inefficient supply chain***. This was reflected in the **benchmark**, which assumed consumers received their legal entitlements.

It added the following from its provisional findings:

> 6.3 In assessing the effect on competition, we considered a benchmark 'well-functioning market' to be a market which delivered **consumers' legal entitlements in an efficient way**. We therefore looked at two dimensions:
> (a) how separation affects insurers' costs and revenue streams and ultimately its effect on the price paid by consumers; and
> (b) differences in the quality of service received by claimants that were associated with separation to understand any impact of separation on the quality of service received by consumers.

We took both into account in reaching our provisional view on the effect on competition.

Our comments:

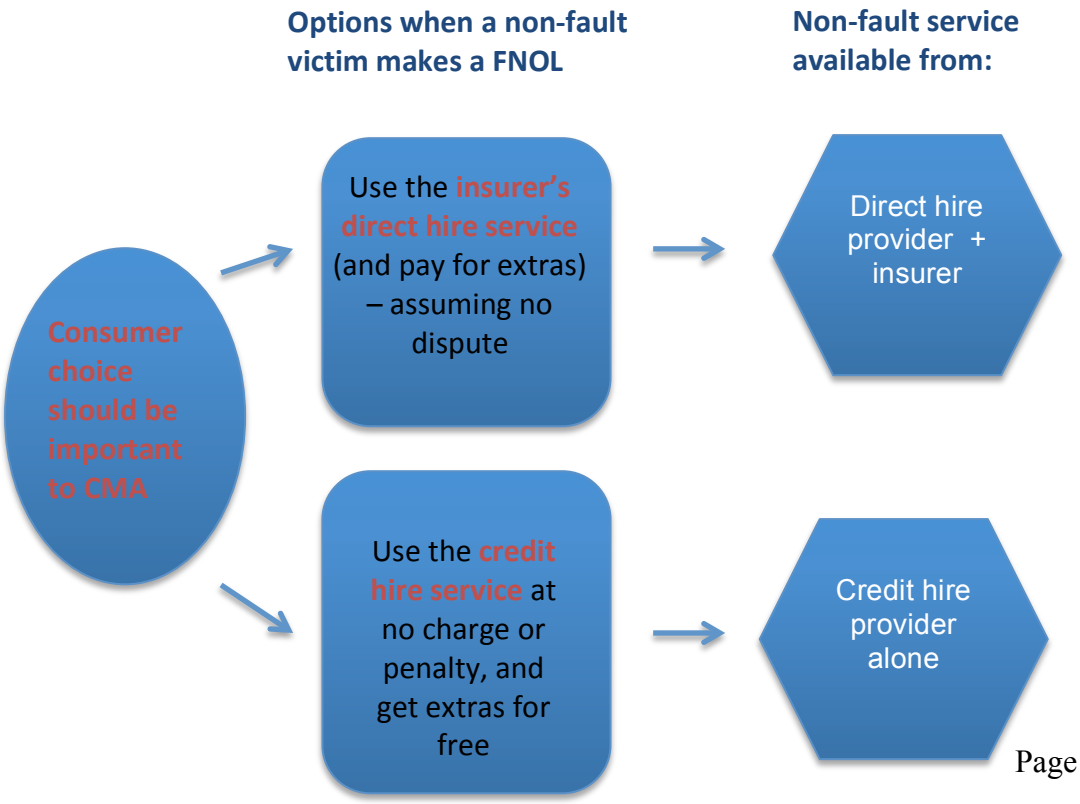
We already noted (and believe the CMA has now accepted) that it is only because of the existence of CHCs (and a well functioning GTA framework) that insurers are able to provide consumers with their legal entitlement. In other words, without CHCs, both insurers and direct hire providers would not provide consumers with their legal entitlements under tort law. So the CMA's assumption in using Direct Hire as a benchmark is wrong in principle.

It follows, that the CMA's benchmark is artificial and this needs to be recognized in any consideration of the cost/benefits of remedies, and the proportionality, or adverse effects on consumers.

We also think the CMA's logic, as noted in Appendix A and the paragraphs quoted fails to appreciate the importance of consumer choice for good competitive outcomes. The CMA's guide is full of situations where choice is important, in any good competition analysis. And we show diagrammatically below, how we see the importance of choice to hundreds of thousands of consumers a year, from this separation issue. It is more than a simple costing exercise.

We note that the CMA plays down the quality differences in favour of the CHC path, but whether this is recognized or not, there is no denying that the CHC service is provided to consumers at no cost, and there are many extra services provided for free, which are payable services for captured claimants. All this is omitted or downplayed in the CMA's recent work, but is covered in our response to WP23.

Diagram showing options for perhaps half a million non-fault victims a year



1. Comments on the implications of the above diagram

We believe that when there is good consumer choice (in a given market situation), other benefits such as **better service and innovation are possible**. The above diagram shows the choices available to some half a million non-fault claimants a year, of which currently around 300,000 are served by CHCs. Once the consumer needs to make a FNOL claim, the value of this choice to consumers is as important as a straight cost comparison between (a) the insurance controlled direct hire path, and (b) the independent and GTA controlled credit hire path.

We believe WP23 [see para 51] also shows CHCs provide better quality cars, on a like for like basis, which is some 20% better than what may be available under the direct hire path. Consumers don't realise how much worse the service might be, if CHCs and their influence in the market did not exist.

The benefit to consumers from getting a TRV on the same day as the accident are significant – and without CHCs, this option of mobility in a few hours after the non-fault accident, may never happen. We note that [REDACTED].

2. Negative effects if bad remedy decisions are made:

Our concern is the lower price cap under Remedy 1C may jeopardise the viability of the independent credit hire path (as shown in the above diagram). That reality and detrimental impact on consumers is not recognised in both the PDR narrative, nor in the narrative in WP23 where the CMA attempted to put a value on the cost of separation which we dispute as wrong and exaggerated.

This aspect of ignoring the **value of choice**, for example appeared when the CMA understated the value of CHCs providing ULR services for free. It noted this yielded for consumers some £0.5m so was of little importance for its considerations. We said this was flawed thinking because 300,000 claimants a year can benefit from this free service. If it yields in a year up to £1m for a group of these claimants, who used the free service of CHCs, this is a direct and valuable service to these people. For the people involved, the recovered sums might be up to £1000, so it is valuable on an individual basis, especially for people who did not pay for MLEI cover. Under the direct hire path, this option would be lost (without the claimants even knowing this).

- An alternative way of thinking is for the CMA to ask why insurers claim excess costs from non-fault claimants. Or why they charge say £25 for additional MLEI cover, when perhaps this should be free, and part of the policy. We note these thoughts are absent from the PDR – why? The omissions illustrates flaws in thinking, in favour of insurers, at the expense of consumers, and CHCs who operate in a pro-consumer manner.

[REDACTED].

In terms of direct hire choices for consumers, para 74 of WP23 notes [REDACTED]. That reality should raise alarm bells for insurers but is ignored.

- In para 75, the CMA noted it **could not understand why** this has occurred – our response on this section discusses this further.

- Worse, [direct hire providers] are judged as the benchmark to attack pro-consumer and pro-competition services by CHCs, by the allegation which we dispute that separation increases costs to motorists.

All this one-sided analysis looks very odd as a conceptual framework for sound competition decisions. We therefore think we should draw the CMA's attention to the significance of consumer and supplier choice, as shown in its own Guide for market investigations. We hope the implications of these thoughts go into the CMA's discussions on remedies, and the final decisions make sense to us.

We also point out that if price caps under Remedy 1C are too onerous, and threaten the continued viability of large CHCs, it is clear that the remedy does not complement the objectives of Remedy A, which are to give consumers more power to make better choices at point of need, when at the FNOL stage.

So the inherent contradictions in the current CMA's thinking on remedies are quite serious, and need to be explained or resolved. Perhaps the CMA should consider a hierarchy of choices, in deciding how or whether Remedy 1C is needed? In our view, Remedy 1C seems disproportionate.

3. The importance of choice, as demonstrated in the CMA's CC3 guide

As we noted above, we think the CMA's conceptual framework is flawed when the benefits of consumer choice (ie a non price indicator of competition) from the current status quo are either played-down or ignored. This myopic approach will become even worse, **if remedies are imposed** which worsen existing consumer choice, or impose an effective oligopoly situation on non-fault victims, in favour insurers (and their direct hire provider) as their favoured contractor.

CC3 revised – April 2013 - Guidelines for market investigations:

– para 16 - ... *Economic regulation of certain sectors involves* measures to assist customers to make **informed choices** and to encourage new entry and investment, promoting the emergence of competition in markets where it has been historically weak.

Quality, innovation and other ***non-price indicators***

128. In the investigation into Northern Irish personal banking, the CC chose a range of indicators on which information was readily obtainable and readily comparable and, analysing responses to questionnaires, made a comparison between banks within Northern Ireland and some of the large banks based in

Great Britain. This evidence indicated several non-price indicators of a lack of competition between Northern Irish banks in relation to branch opening hours, functionality of Internet banking and product innovation.[69] In its investigation into PPI, the CC considered evidence it had obtained so as 'to identify: any new PPI policies which had been introduced, whether there had been any innovations within existing policies, the rationale for product change or innovation, and whether, and if so how, distributors advertised and marketed their policies'. The CC concluded that there was less choice (and possibly less innovation), as well as higher prices, 'than would be expected in a well-functioning market'.

Choice is needed in transport and *mobility* decisions **because time has a premium value for consumers**.

Indicators of unilateral market power

180. The CC may sometimes observe indicators of unilateral market power, such as high profits (see paragraphs 114 to 126), high price-cost margins (see paragraph 112), low single-firm demand elasticities (see paragraph 179) or other evidence of adverse effects in the form of high prices, low quality and **limited choice** (see paragraphs 127 to 129).

Choice is critical to competition tests eg in being able to apply a diversion ratio test.

Barriers to entry

206. Firms can enter a market or expand within it in several ways. Firms coming into a market may build new capacity or take over existing capacity to use it in new or more productive ways. Incumbent firms may expand by building new plants or capacity, developing new products or expanding into neighbouring markets. Incumbent firms may invest in upstream or downstream companies to suppy materials and process their output, respectively (see paragraph 50). Entry or expansion, or just the threat of it, can: ….

• lead to more competitive prices as well as greater choice and quality to the benefit of customers.

Impact of coordinated conduct

243. However, in many cases coordination between rivals has harmful effects on both competition and customers. Prices may be higher than they would have been if firms had taken unilateral decisions. In other cases, coordination may involve limiting production or innovation. Firms may divide up the market between them, for example by geographic area or customer characteristics, or by allocating contracts between themselves. Joint action may be taken to foreclose access to markets, inputs or customers. In these ways, coordination between

rivals can worsen the terms on which products are offered to customers, **reduce customer choice and hold back efficiency and innovation**.

Exclusive purchasing obligations

282. The existence of exclusive purchasing arrangements in a market does not necessarily suggest that competition is harmed. For example, when an upstream supplier faces significant inter-brand competition, it may need to compensate buyers, in whole or in part, **for the loss in choice resulting from** the possible foreclosure. Such compensation could, for instance, take the form of lower prices or other benefits.

290. The factors the CC considers in assessing the extent of the foreclosure effect of tying and bundling in a market, include: the nature of the restriction applied, eg whether tying or bundling, and **its effects on the choices of customers and the commercial strategies of firms;** the tied percentage of total sales on the tied market; the overall strength of the tying firm on both the tying and the tied markets; the identity of the tied customers; the level of sales of the tied product to customers not buying the tying product and, in the case of bundling, the extent to which a firm is bundling goods, and whether the items within the bundle may also be purchased separately. In considering whether foreclosure of the tying market had deterred market entry, the CC may examine previous attempts to enter it.

Aftermarket arrangements

293. The extent to which competition in the primary market may constrain market power in the secondary market is determined by: **(b)** Whether the suppliers, even if customers have not based their choice on accurate life-cycle calculations, make their own assessment of the profitability of a customer relationship over the life cycle of a product and compete vigorously in the primary market so as to enjoy profits on subsequent aftermarket sales.[156] The CC may consider the extent to which customers benefit from lower prices of the primary product as part of its assessment of RCBs (see paragraphs 355 to 366).[157]

Impacts and assessment of weak customer response

297. Theories of harm that competition is adversely affected by weak customer response are therefore generally examined in relation to these three issues so as to establish what may be restricting customers from exercising effective choice

Impacts and assessment of weak customer response

(a) Barriers to accessing information

303. Firms may sometimes engage in practices that increase search costs so as to obtain market power (or fail to engage in practices that would reduce search

costs). They may do so, for example, by:
(c) failing to make available all the product information needed by customers to make an informed choice, in particular of one-off purchases.

Behavioural bias
307. There are many explanations of the biases customers apply when making purchasing decisions. The main biases identified in the literature on the subject[163]
(a) Processing power biases including: choice overload (faced with too many choices, customers have difficulties making a purchasing decision); representational biases (customers use visible value as a reliable indicator of hidden value); and rules of thumb (for example, customers imitate what other customers do rather than make their own decisions).

(b) Framing biases including: relative utility (a customer's choice is affected by reference points such as past actions); default biases (customers adopt the default option); and placement biases (customers' choices depend on where goods are placed on a list—for example, they may tend to choose the first).

Information asymmetries
• Potential adverse effects on competition
314. A related issue (the so called **'principal-agent'** problem) arises where a provider (the agent) acts on behalf of another party (the principal), thereby providing a service to it. If the agent has better information than the principal about how well it is providing the service, the principal may be prevented from exercising effective choice. Moreover, where the two parties' interests are not aligned, the agent may act against the interests of the principal if information asymmetries allow it to do so undetected by the principal.[166]

326. A detrimental effect on customers is defined as one taking the form of:[176]
(a) higher prices, lower quality or **less choice of goods or services** in any market in the UK (whether or not the market to which the feature or features concerned relate); or
(b) **less innovation** in relation to such goods or services.

331. AECs are likely to result in costs to the UK economy in general and to customers in particular. Remedies that are effective in generating competition are likely to deliver substantial benefits, by driving down prices and costs and increasing innovation and productivity, thereby facilitating economic growth and increasing the choice available to customers.

341. Fourthly, where more than one measure is being introduced as part of a remedy package, the CC will consider the way in which the measures are

expected to interact with each other. As a general rule, measures which have a shared aim of introducing, or strengthening competition within a market will tend to be mutually reinforcing. For example, where market-opening measures are being introduced that increase customer choice by facilitating entry or removing barriers to switching, these may be accompanied by information remedies that help customers choose the best product available to them.[186]

Relevant customer benefits

356. RCBs are limited to benefits to relevant customers in the form of: [194]
(a) lower prices, higher quality or greater choice of goods or services in any market in the UK (whether or not the market to which the feature or features concerned relate); or

(c) greater innovation in relation to such goods or services.

Possible relevant customer benefits

362. Aspects of market structure that could adversely affect competition, such as a high level of concentration, might enable economies of scale and/or scope to be obtained that would not be available if there were a larger number of firms in the market.

Whether scale or scope economies would constitute an RCB in a particular case would depend partly on the extent to which, in practice, any cost economies were being passed on to customers as lower prices, improved quality, greater innovation or more choice.

Market-wide measures to reduce barriers to entry, expansion and switching

59. A further potential source of incumbency advantage, which may sometimes require intervention, is the 'point-of-sale advantage'. This occurs when a particular supplier has systematically better access to customers than potential rivals. A range of possible approaches might be taken to remedying competition problems resulting from a point-of-sale advantage.

For example:
• providers who **enjoy a point-of-sale advantage** may be required to offer customers a **choice of products** at the point of sale.

NOTE to the CMA – we hope the above illustrates our concerns over the CMA's latest thinking, which we still think is flawed.

--- end ---

Please note the following is hypothetical updated workings for discussion

The CMA should also read our response to WP23, notably from page [64] dealing with the CMA's Para 117 for the source of its figures below

The information in the table below for Kindertons comes from our comments leading up to Table K2 on page 82 of our response to WP23

AEC workings - subject to revision and engagement with CC as at 8 July 2014

Overview based on current CC analysis - credit hire alone	*formula*	*CMA's latest workings*		*Kindertons latest workings*	
Average CH Invoice [note 3]	a	**£1,105**		**£921**	
DH implied cost - using 2.05 factor for CMA or 1.8 for Kindertons	b	**-£539**		**-£511**	
Implied detriment	a-b = c	**£566**		**£410**	
At Fault Insurer Frictional Cost [with CHCs]	d	**£78**		**£50**	
At Fault Insurer Saved Management Costs - e.g. offset [note 4] this covers capture teams + costs to manage DH claims	e	**-£27**		**-£50**	
Revised Detriment Per Claim	c+d-e = f	**£617**		**£410**	
Gross detriment for 301k policies	g	**£185.7**	m	**£123.4**	m
Referral fee revenue offset - table 1 of PDR @ £328 a claim	h	**£98.7**	m	**£98.7**	m
Net detriment for 301k polices	g-h	**£87.0**	m	**£24.7**	m
Annual policy potential extra cost - for 25.7 million drivers [note 2]	i	**£3.38**		**£0.96**	
Annual policy potential extra cost - for 35 million drivers	j	**£2.49**		**£0.71**	

Notes:

1. Regarding lines d and e above, there is much debate about these entries e.g., the CMA's figures of £78 and -£27. We do not agree with them, but to keep this discussion neutral, we have inserted £50 a claim and £50 as a saving.
   The CMA needs to resolve this, with CHCs by the end of this investigation.

2. The impact of our suggested workings (see line f), are around £1 extra in insurance premiums a year, compared with average premiums of £440.

3. The Kindertons starting figure of £921 follows the CMA's approach for now, but after a reduction for VAT and our scaling factor of 1.8 - this is discussed on page [72] of our response to WP23

Continued …

4. Adjustment e is because DH has no costs to manage claims, or to capture claimants - the insurers do this work. Hence to make a fair comparison, we need to **add** these costs to the DH implied costs.

5. **On page [72] of our response to WP23, we list a range of further adjustments**:

(a) upselling revenues, which direct hire providers achieves from non-fault claimants, nor

(b) adjusting for the positive quality difference from CH vehicles under GTA classifications being better than then TRV offerings from direct hire providers, nor

(c) any externalities benefits to insurers from the work of CHCs eg fraudulent claim screening, nor

(d) benefits to consumers from the avoidance of having to buy MLEI (when they use CHCs) and getting ULR and excess costs recovery for free, nor

(e) the opportunity costs to non-fault claimants from getting a credit hire and credit repair service for free from CHCs at point of need, and more quickly that direct hire providers.

(f) significant transport infrastructure savings made by direct hire providers in comparison to CHC's investment in people, vehicle transporters, fuel, servicing & maintenance

NOTE - additional allowance for marketing which DH does not need as it is an in-house service. However this is needed for a viable independent credit hire sector.

---- end ----

NOTE: These documents are REDACTED in full.

Table 6 from CC/CMA's erratum document in February 2014 showing GTA classifications were the basis for the CC/CMA's analysis because this **ensures** consumers get a like-for-like TRV, and not something more inferior under the direct hire insurer option

Revised Table 6 of Appendix 6.1 of the report

GTA car category	*Example car*	*GTA credit hire daily rate £ (VAT excluded)*	*Average insurer direct hire daily rate £* (VAT excluded)*	*Overall implied credit hire daily rate £ (VAT included)*	*Average insurer direct hire daily rate £* (VAT included)*	*Multiple of GTA rate over average insurer direct hire rate*	*Multiple of implied credit hire rate over average insurer direct hire rate*
Standard							
S1	Peugeot 107	30.28	14.18	39.79	17.01	2.1x	2.3x
S2	Ford Fiesta	34.33	14.95	43.09	17.94	2.3x	2.4x
S3	Ford Focus 1.4	36.62	17.83	46.63	21.40	2.1x	2.2x
S4	Ford Focus 1.6	39.26	19.55	48.49	23.46	2.0x	2.1x
S5	Ford Mondeo 1.8	41.54	21.93	50.81	26.32	1.9x	1.9x
S6	Ford Mondeo 2.0	44.25	23.52	54.76	28.22	1.9x	1.9x
S7	Peugeot 607	62.06	28.09	70.79	33.71	2.2x	2.1x
Weighted average						2.1x	2.1x
MPV							
M	Vauxhall Meriva	48.38	27.99	59.30	33.59	1.7x	1.8x
M1	Ford Focus C-Max 1.4/1.6	55.91	30.63	64.43	36.75	1.8x	1.8x
M2	Ford Focus C-Max 2.0	63.75	33.70	74.37	40.44	1.9x	1.8x
M3	Ford Galaxy	74.94	31.53	84.27	37.83	2.4x	2.2x
M4	Mercedes Benz Viano 2.0	95.07	44.90	101.29	53.88	2.1x	1.9x
M5	Mercedes Benz Viano 2.2	142.59	49.33	148.06	59.19	2.9x	2.5x
M6	Mercedes Benz Viano 3.5	180.62	55.87	162.92	67.04	3.2x	2.4x
Weighted average						1.9x	1.8x
4x4							
F1	Toyota RAV4 (2.0)	93.94	50.07	106.21	60.09	1.9x	1.8x
F2	Toyota RAV4 (2.2)	100.66	51.12	110.26	61.34	2.0x	1.8x
F3	BMW X3 (2.0)	108.49	52.30	130.09	62.76	2.1x	2.1x
F4	BMW X3 (2.5)	133.10	63.32	149.14	75.98	2.1x	2.0x
F5	BMW X5 (3.0)	178.93	67.72	196.22	81.26	2.6x	2.4x
F6	BMW X5 (Xdrive40d)	201.31	77.80	216.85	93.36	2.6x	2.3x
F7	BMW X5 (V8 4.4)	234.86	96.51	254.22	115.81	2.4x	2.2x
F8	BMW X5 (4.8 Sport 5 door auto)	251.64	89.37	265.22	107.24	2.8x	2.5x
F9	Porsche Cayenne Turbo (4.5)	307.56	141.49	310.01	169.79	2.2x	1.8x
Weighted average						2.2x	2.0x
Prestige							
P1	BMW 116 (1.6)	78.28	37.37	86.71	44.85	2.1x	1.9x
P2	BMW 118 (1.8)	87.24	40.39	94.82	48.46	2.2x	2.0x
P3	BMW 120 (2.0)	92.82	47.93	105.05	57.52	1.9x	1.8x
P4	BMW 320 (2.0)	112.95	54.32	126.19	65.18	2.1x	1.9x
P5	BMW 520 (2.0)	140.92	58.58	151.76	70.30	2.4x	2.2x
P6	BMW 525 (2.5)	167.76	70.28	174.79	84.33	2.4x	2.1x
P7	BMW 530 (3.0)	195.72	79.38	208.03	95.26	2.5x	2.2x
P8	BMW 730 (3.0)	223.66	104.62	235.04	125.55	2.1x	1.9x
P9	BMW 735/740 (3.5/4.0)	257.23	109.74	290.84	131.68	2.3x	2.2x
P10	BMW 750 (5.0)	316.51	118.78	249.53	142.54	2.7x	1.8x
P11	Bentley Continental	444.55	204.19	495.82	245.03	2.2x	2.0x
P12	Bentley Flying Spur	665.44	305.25	590.92	366.30	2.2x	1.6x
P13	Rolls Royce Phantom	964.88	n/a	1,050.81	N/A	N/A	N/A
Weighted average						2.2x	2.0x
Sports							
SP1	Mini Cooper (1.6)	75.36	33.76	88.87	40.51	2.2x	2.19
SP2	Mini Cooper S (1.6)	88.08	39.97	97.25	47.96	2.2x	2.0x
SP3	Mini Cooper S (1.6) Cabriolet	98.41	58.80	107.50	70.55	1.7x	1.5x
SP4	Audi TT Coupe 1.8T	120.79	58.05	128.61	69.65	2.1x	1.8x
SP5	Audi TT Roadster 1.8T	131.97	60.61	149.60	72.73	2.2x	2.1x
SP6	Audi TT Roadster 1.8T Quattro	184.54	77.72	189.84	93.26	2.4x	2.0x
SP7	Audi TT Roadster 3.2T	206.91	93.41	216.82	112.09	2.2x	1.9x