

CMA MARKET INVESTIGATION INTO PRIVATE MOTOR INSURANCE

AGEAS UK'S COMMENTS ON THE CMA'S FURTHER CONSULTATION ON REMEDY 1C

This document sets out Ageas UK's¹ comments on the Notice of Further Consultation on Remedy 1C, which the CMA published on 18 July 2014.

1 EXECUTIVE SUMMARY

- 1.1 Whilst disappointed with the outcome, Ageas UK accepts the CMA's decision not to pursue Remedy 1C.
- 1.2 The fact remains however that the CMA has identified a significant consumer detriment arising from the provision of temporary replacement vehicles and that a sizeable proportion of that detriment relates to the credit hire sector.
- 1.3 Ageas UK considers that the CMA should now, as a matter of urgency, seek to identify a viable alternative to Remedy 1C. In this regard, Ageas UK considers that:
 - 1.3.1 The CMA's proposed new version of Remedy 1C (which would cap the prices that providers of temporary replacement vehicles could charge customers for vehicles) would, in principle, go a long way towards addressing the issues that Remedy 1C (as originally proposed) sought to address. Ageas UK strongly encourages the CMA to make vigorous efforts to explore fully the practical implications of this proposed remedy and to identify a way in which it can be implemented effectively.
 - 1.3.2 The alternative remedies set out in paragraph 23 of the Notice of Further Consultation on Remedy 1C (namely, encouragement by the CMA to improve the GTA and encouragement to insurers to take action themselves to reduce frictional costs) would in practice achieve very little and would be widely perceived as a missed opportunity by the CMA to address the issues that it has been investigating. Further:
 - a) Insurers are already widely supportive of lower GTA rates, but the voluntary nature of the GTA (and the conflicting commercial interests of insurers and CMCs/CHCs) means that the rates have remained stubbornly high. It is simply not tenable to expect that encouragement by the CMA will lead to meaningfully lower rates (or, indeed, to an acceptable dual-rate system or an improved mitigation declaration statement).
 - b) Ageas UK agrees that there may be scope to enhance the efficient operation of the GTA through the introduction of an on-line portal. This could lead to cost savings for all participants and, potentially, may create scope for securing lower GTA rates. However, any cost savings in this regard are likely to be negligible compared to the overall consumer detriment that the CMA has identified. Further, the incentives for participants to improve the operation of the GTA should already exist, regardless of any encouragement by the CMA.
 - c) The CMA encouraging insurers to take action themselves to reduce frictional costs is unlikely to have any material effect. The implication of this proposed remedy appears to be that insurers are currently missing opportunities to

¹ In this submission, references to "Ageas UK" mean Ageas (UK) Limited and, where applicable, its subsidiaries, excluding Tesco Underwriting Limited. Tesco Underwriting Limited is a joint arrangement with Tesco Bank and its views do not form part of this response.

reduce frictional costs. Insurers would strongly dispute that and, indeed, Ageas UK strives to reduce frictional costs in the claims handling process as much as it can. It is very unlikely that encouragement by the CMA will have any material impact (or, indeed, any impact at all) in this regard.

- 1.4 As the CMA itself has concluded, the annual consumer detriment relating to credit hire is significant. The detriment is likely to increase over time if the CMA fails to stop, and therefore effectively legitimises, conduct that may lead to consumer detriment. It would be unfortunate if, following a two year market investigation, the CMA were to miss the opportunity to take meaningful steps to address the concerns that it has identified.
- 1.5 Ageas UK remains available to assist the CMA in considering these issues further with a view to identifying appropriate remedies.

2 THE CMA'S REJECTION OF REMEDY 1C

- 2.1 As it has commented previously, Ageas UK is supportive of efforts to reduce the cost of replacement vehicle provision to non-fault claimants.
- 2.2 Ageas UK was therefore in principle supportive of Remedy 1C although, as flagged in its response to the Provisional Decision on Remedies, it felt that the CMA needed to explore further how the remedy could be applied to claims handled by CHC/CMCs which, it appeared, were not subrogated.
- 2.3 It is, for obvious reasons, disappointing that the CMA has now concluded that implementing Remedy 1C in the way proposed in the Provisional Decision on Remedies would exceed the CMA's powers under Schedule 8 of the Enterprise Act 2002.
- 2.4 However, Ageas UK does not seek to challenge the CMA's reasoning in that regard and, accordingly, Ageas UK accepts the CMA's intention not to pursue further the possibility of applying the remedy as originally proposed.

3 THE PROPOSED NEW VERSION OF REMEDY 1C

- 3.1 The proposed new version of Remedy 1C would involve the imposition of a cap on the amount that a replacement vehicle provider can charge a customer for vehicle hire. The intention would be that the cap would have the effect of capping the amount that a non-fault claimant could claim in tort from the fault insurer.
- 3.2 In principle, Ageas UK is supportive of this remedy. In this regard:
 - 3.2.1 The remedy would seek to tackle the main element of harm that the CMA has identified, namely the (unduly high) prices that are notionally charged to non-fault claimants for credit hire vehicles but which in reality are borne by at-fault insurers.
 - 3.2.2 Logically, one would anticipate that the price paid (or owed) by a non-fault claimant for their temporary replacement vehicle would establish a maximum amount that the claimant could recover from the at-fault insurer. The CMA will need to assess whether the courts would be likely to accept this proposition (and there may be merit in the CMA providing guidance for the courts on the issue) but, assuming they would, the remedy would have the effect of capping claims without interfering with claimants' rights under the law of tort.
 - 3.2.3 As the CMA has itself noted, the proposed cap could not apply to non-fault insurers since, in such cases, there is no charge for the temporary replacement vehicle

provided. Where non-fault insurers provide vehicles and seek to recover the costs from at-fault insurers, it is possible that courts will in practice limit claims to the amount that a replacement vehicle provider can charge a customer for vehicle hire (ie that claims will be capped at the amounts established under this remedy) and, indeed, the CMA should explore what steps it might take to encourage courts to adopt this approach. However, even if courts were to allow non-fault insurers to recover reasonable retail hire rates (ie as the case-law currently allows), that would not undermine the value of the remedy². Importantly, the remedy would tackle the main consumer detriment identified by the CMA and would lead to a significantly better outcome than any of the alternatives that the CMA appears to be considering.

- 3.3 The key challenge with this remedy appears to relate to defining the claims to which the price cap would apply (and, correspondingly, ensuring that any risk of circumvention is minimised).
- 3.4 Conceptually, the remedy should apply in all cases in which a temporary replacement vehicle is being provided following an accident where the cost of that vehicle will (or is likely to be) ultimately borne by an at-fault insurer.
- 3.5 In the time available, Ageas UK has not sought to propose a definition that would capture the above concept. With regard to the CMA's suggested approaches in paragraph 18 of its Notice of Further Consultation on Remedy 1C, Ageas UK observes that:
 - 3.5.1 Linking the definition to circumstances in which "credit hire" is provided (paragraph 18(a)) could risk creating scope for circumvention through vehicle providers establishing alternative payment mechanisms that technically fall outside the definition of credit hire.
 - 3.5.2 Linking the definition to circumstances in which the vehicle provider "assists" the claimant in recovering the costs of the vehicle from the at-fault insurer (paragraph 18(b)) could lead to a risk of circumvention (or, at least, scope for argument and, therefore, litigation) regarding whether the vehicle provider is indeed "assisting" the claimant.
- 3.6 A simpler approach might be to link the application of the remedy to circumstances in which a vehicle is being provided as a temporary replacement vehicle following an accident (which is a fact that could readily be established by asking the individual concerned).
- 3.7 Alternatively, the remedy could be limited to the provision of temporary replacement vehicles following an accident in circumstances where the claimant subsequently claims the cost of the vehicle from an at-fault insurer.

4 ALTERNATIVE APPROACHES IF REMEDY 1C IS NOT PURSUED IN ANY FORM

- 4.1 The CMA notes that, in principle, it could decide not to pursue Remedy 1C in any form. The CMA has indicated that, if it were to do that, it might instead:
 - 4.1.1 encourage the GTA to adopt aspects of Remedies 1C and 1F that are not already part of the GTA; and/or
 - 4.1.2 encourage insurers to take action to reduce frictional costs.

² In particular, insurers would retain incentives to limit temporary replacement vehicle costs and, to the extent that insurers might nevertheless claim (higher) reasonable retail rates that are above their actual costs, as permitted by the case-law, any additional revenues are likely to be passed on by the insurers to consumers, given the highly competitive nature of the private motor insurance market.

- 4.2 Ageas UK has no objection to the CMA encouraging the insurance industry to operate efficiently. Indeed, there may be merit in the CMA incorporating such sentiments into its final decision, regardless of what other remedies it adopts.
- 4.3 However, Ageas UK vigorously rejects the suggestion that “encouragements” of the type contemplated by the CMA could in any sense be a “remedy” to the very real and sizeable concerns that the CMA has identified. Such action would achieve very little (if anything) in terms of meaningfully addressing the considerable consumer detriment that the CMA has identified.
- 4.4 Addressing each of the CMA’s suggestions in turn:

4.4.1 Encouraging improvements to the GTA

It is widely accepted that, whilst the GTA has been helpful in limiting costs, it has not proved to be a fully effective solution to the over-costing of temporary replacement vehicles.

The weaknesses of the current GTA include that it is not compulsory on all players in the industry, hire rates remain too high and it does not limit hire durations.

There is no reason to expect that “encouragement” by the CMA to improve the way in which the GTA operates (and the rates that it applies) will lead to any material difference from the current position.

As the CMA is aware, the GTA is a voluntary arrangement. Insurers and CMC/CHCs are free to decide for themselves whether or not they wish to participate in the GTA. Businesses will use the GTA only if they consider it in their commercial interests to do so. The CMA has indicated that the voluntary nature of the GTA would remain under any remedy.

Insurers already have every incentive to ensure that GTA rates are appropriately low. Most, if not all, insurers consider that the current GTA rates are too high. However, the voluntary nature of the GTA is such that any changes (including to rates) in effect need to be agreeable to all participants, otherwise participants who object to the changes will simply withdraw from the arrangements. This leads to an inevitable tension between insurers and credit hire operators and, despite insurers’ desire for lower rates, they have been unable to secure them. There is no reason whatsoever to suggest that encouragement by the CMA would lead to a consensus within the GTA that rates should be lowered to more appropriate levels. It is also unlikely that there would be agreement on a dual-rate system or even on a meaningfully improved mitigation declaration statement.³

Ageas UK does however accept that there may be scope for improving the efficiency of the GTA, in particular through the creation of an online portal. In principle, a portal should allow claims (particularly undisputed claims, which most claims are) to be handled more efficiently than at present. This in turn may create scope for costs savings for participants and could even lead to CMCs/CHCs accepting the argument that GTA rates should fall. Whilst the incentives for the creation of such a portal should already exist (and any non-binding statements by the CMA will not formally affect the position one way or the other), Ageas UK would not object to the CMA

³ Indeed, Ageas UK anticipates that the discussions at the Working Group session organised by the CMA to discuss Remedy 1F on 30 July 2014 will have underlined to the CMA the clear disparity of views between insurers on the one hand and CMCs/CHCs on the other regarding mitigation declaration statements, let alone hire rates.

encouraging the GTA to implement such a portal. However, whilst a portal would be welcomed and would achieve some cost savings, any resulting cost savings are likely to be very small indeed in the overall context of the consumer detriment that the CMA has identified.

4.4.2 Encourage insurers to take action to reduce frictional costs

Insurers are large, sophisticated organisations that already have every incentive to minimise frictional costs in the claims process. Like other insurers, Ageas UK strives to ensure that the claims process is handled in a manner that exposes it to as little frictional cost as possible. It is extremely unlikely that encouragement by the CMA will have any impact on the extent to which insurers seek to, or are able to, reduce frictional costs.