

Competition & Markets Authority (CMA): Private Motor Insurance Market Investigation

Allianz Insurance Plc Response to the Notice of Further Consultation on Remedy 1C

Allianz Insurance Plc (Allianz) welcomes the opportunity to respond to the CMA's further consultation on Remedy 1C.

Executive Summary

- The CMA investigation is a unique opportunity to address the concerns that the OFT correctly identified.
- There is a risk that parties with vested interests will seek to argue reasons to prevent any effective change rather than finding ways of making effective change possible.
- Allianz notes Remedy 1C, as provisionally proposed, cannot be pursued further.
- Failing a decision to re-examine Remedy 1A Allianz supports the alternative proposal to Remedy 1C.
- The alternative approach would be an effective way in which to implement Remedy 1C. The question of how effective it would be in addressing the AEC will depend on the detail.
- Non-fault claimants are currently a unique rich source of income for CHCs. Only they are commoditised (bought for a referral fee) and provided with credit charged at excessive rates. The alternative Remedy 1C will reduce the current distortion between credit hire customers and retail customers.
- Allianz believes that the definition set out at 18a effectively captures the provision of credit hire vehicles to non-fault claimants. However, it should be considered by lawyers.
- Allianz does not believe that the remedy would create distortions between CHC/CMC provision and non-fault insurer provision of TRVs. However, if any concern exists that could easily be addressed by extending the remedy to include insurers.
- Allianz does not believe that the alternative Remedy 1C will affect the basis on which subrogated claims are made or assessed by the courts.
- TRVs, in the form of courtesy cars, are commonly provided by insurers.
- Many motor insurers offer cover for a higher grade hire cars as an add-on. We believe the availability of hire car cover will increase and the cost will reduce driven by natural competition.
- The alternative approach to Remedy 1C does not in itself create any unintended consequences.
- There is no merit in the suggestion that implementation of Remedy 1C would impact on the accessibility of TRVs.
- If the CMA decides not to pursue either Remedy 1A or 1C in reality it result in no remedy being implemented to address the detriment identified in respect of the cost of the providing TRVs.
- Allianz urges the CMA to address the market issues identified during the process.

1. Background

Allianz believes it is worth revisiting the genesis of this investigation. On 31st May 2012 the Office of Fair Trading issued a press release following its review of the private motor insurance market. That press release made the following statements:

- "... It [OFT] found evidence that insurers compete in a *dysfunctional* way that may push up premiums for drivers by £225 million a year."
- "... insurers of at-fault drivers have little control over *the* way in which these [the] repairs and vehicle replacement services are carried out or the associated costs."
- "Insurers of the not-at-fault driver and others, such as brokers, credit hire organisations and repairers, can take advantage of this lack of control as an opportunity to generate revenues through rebates and referral fees and so inflate the costs of insurers of at-fault drivers. This is an *inefficient* way for the sector to operate, raising the total costs for providing private motor insurance which drivers end up paying."
- "The market would work better if insurers competed primarily on the quality and value of the service each provides to insured drivers, rather than focussing on gaining the competitive edge through raising rival insurer's costs and increasing their own revenues."
- In summary John Fingleton, the Chief Executive of the OFT at the time, said: "Competition in this market does not appear to work well for drivers. We believe the focus on that insurers have on gaining the competitive edge through raising their rivals' costs means that drivers pay more than they need for their motor insurance policies."

Allianz, in common with many others, welcomed the referral to the Competition Commission. It is a unique opportunity to address the concerns that the OFT correctly identified. Allianz is concerned that if that opportunity is not properly seized the commoditisation of non-fault claims will not just continue but will increase exponentially after the investigation has concluded.

There is a risk that parties with vested interests will seek to argue reasons to prevent any effective change rather than finding ways of making effective change possible.

Allianz offers the view that the affordability of private motor insurance, together with the provision of services that meet consumers needs, must remain at the heart of the investigation and the remedies eventually implemented. That might mean that some business models either become extinct or require modification.

2. CMA consideration of concerns expressed by some respondents to provisional Remedy 1C

Allianz notes the CMA's conclusion that its powers under Schedule 8 of the Enterprise Act 2002 do not extend to enable it to cap the level of claims recoverable for temporary replacement vehicles (TRVs). Accordingly Remedy 1C, as provisionally proposed, cannot be pursued further.

3. Alternative proposal to Remedy 1C

The alternative proposal is that rather than capping the amount of the claim recoverable from the at-fault insurer the amount a TRV provider charges its customer is capped. In so doing the amount claimed from the at-fault insurer is effectively limited to the capped cost.

The insurer that initially suggested this alternative remedy said (PDR 2.62) *"this would mean that any claim made on behalf of the non-fault party against the at-fault insurer for a greater sum than this amount would not succeed because the claim was a consequential loss (loss of use) which might be mitigated by the hiring of a replacement vehicle. Where such a loss was mitigated, or action was taken which resulted in a substituted expense, the claimant was only entitled to recover the actual expense or liability which they had incurred."* This is a correct summary of the way in which the law of damages distinguishes between direct losses (i.e. of the chattel itself) and indirect losses (i.e. loss of use of the chattel). Allianz agrees that the claim would be limited to the amount paid by the claimant.

Allianz agrees that it would not be necessary to apply this remedy to non-fault insurers as, even if they provide cover for a TRV, they will not be charged on a credit basis. However, if there are any concerns regarding distortions between CHCs/CMCs and non-fault insurers they could be addressed effectively by extending the remedy to include insurers.

Allianz considered Remedy 1A to be the effective wholesale solution to the overprovision and overcosting of TRVs. It would, as the CMA stated (PDR 2.163) *"directly address the provisional AEC by removing the separation of cost liability and cost control in relation to the provision of replacement vehicles to non-fault claimants."* In the PDR (2.189(b)) the CMA advised: *"If we believed that the remedy [1A] was the only effective and proportionate remedy, we would pursue it and accept the delay [created by the need for legislative changes] but we believe that we have identified a more timely remedy package which is effective and proportionate."* It might be that, in light of the issues with Remedy 1C, that the CMA now wishes to revisit Remedy 1A. If so Allianz would support that decision.

Failing a decision to re-examine Remedy 1A Allianz supports the alternative proposal to Remedy 1C.

We suggest that a definition to whom and what the alternative Remedy 1C applies to should be restricted to the circumstances in which it applies. By definition anything else is excluded. There is no need to define both when it should and should not apply. Allianz believes the proposed definition set out at paragraph 18(a) of the Notice meets the requirements. However, the definition should be properly considered by lawyers to ensure it will fulfil the objective if tested in court.

Allianz does not believe that there is a possible distortion in the provision of TRVs between CHCs and non-fault insurers for the following reasons:

- The alternative Remedy 1C will only apply to TRVs provided on a credit basis. Where insurers actually provide a TRV (rather than refer a customer to a CHC) it is not funded on a credit basis.
- An insurer pursuing a subrogated claim cannot recover more than the claimant (their customer) is entitled to recover. The insurer steps into the shoes of the claimant. They have no greater right of claim. Therefore if the cost of a TRV to the claimant is capped an insurer will be limited to that amount.

If any concerns do exist regarding a possible distortion it would be effectively addressed by extending the remedy to apply to insurers.

4. Allianz's responses to the questions posed within the Notice (para. 21)

(a). The alternative approach would be an effective way in which to implement Remedy 1C. The question of how effective it would be in addressing the AEC will depend on the detail i.e. the level at which the cap is set, whether a dual cap is implemented and if so the differential between the lower and higher rates, and the time permitted to respond on liability.

(b). There is currently a distortion between the provision of credit hire vehicles to non-fault claimants and retail customers. Non-fault claimants are treated by TRV providers as a separate and distinct category of customer. Only those customers do CHCs currently purchase by way of a referral fee. And only those customers are provided with cars on a credit basis at inflated rates. Non-fault claimants are currently a rich source of income for CHCs. Implementation of the alternative Remedy 1C will reduce the current distortion between the two categories of TRV hirer.

In terms of distortion between non-fault claimants and retail customers there is no difference between the original Remedy 1C and the alternative proposal under consideration.

(c). Allianz believes that the definition set out at 18a does effectively capture the provision of credit hire vehicles to non-fault claimants. However, we recommend that the wording be properly considered by lawyers to ensure it will meet the intended objective if considered by a court.

(d). Allianz does not believe that the remedy would create distortions between CHC/CMC provision and non-fault insurer provision of TRVs. Firstly it will only apply to TRVs provided on a credit basis and insurers do not provide cars funded in that way. Secondly, an insurer has no better right of claim than the claimant. However, if any concern exists that could be addressed by extending the remedy to include insurers. However, any concerns could be addressed by extending the remedy to apply to insurers.

(e). Subrogated claims are those claims pursued by the non-fault insurer – subrogation is the contractual right to pursue a recovery of their outlay in the name of their customer (the claimant). In addition to the subrogated claim a claimant may be



pursuing their own personal claim for uninsured losses (those costs / losses incurred that are not covered by their motor insurance policy). Any claim pursued by a CMC or CHC is a claim on behalf of the claimant it is not a subrogated claim. For the purpose of this response we adopt the term "subrogation or subrogated claim" to mean the claim made by the non-fault insurer and the term "direct claim" to mean the claim pursued by the claimant or on behalf of them by a CMC or CHC.

The subrogated claim will include payments made by the non-fault insurer. Only payments made in respect of losses covered by the insurance contract are recoverable. Any other payments are outside the terms of the contract (ex gratia) and for the purposes of the recovery are considered a voluntary gift. As such they are not recoverable against the at-fault party. Motor insurance policies commonly provide for a Class A free courtesy car for the duration of repairs. Generally insurers do not attempt to claim for provision of those vehicles. Where a motor policy provides specific TRV cover (something above and beyond a courtesy car) insurers will generally make provision via a TRV supplier with which it has a commercial contract. The PDR made reference to such contracts operating on direct hire rates. A subrogated claim will be pursued for the recovery of the cost of providing the TRV at direct hire rate. Subject to liability and duration of hire the court will normally award damages on the basis of the direct hire rate agreed. Insurers do not provide TRVs on a credit hire basis although many currently refer non-fault customers to credit hire providers. Subrogated claims are therefore never on a credit hire basis. Allianz does not believe that the alternative Remedy 1C will affect the basis on which subrogated claims are made or assessed by the courts.

A direct claim will commonly include the cost of a TRV. Most claimants do not have the means to pay for a TRV. They therefore agree provision of a TRV on a credit hire basis. The alternative Remedy 1C would cap the amount the CHC could charge the claimant for provision of the TRV on that basis. The direct claim would be limited to that amount – they could not claim more than the actual cost. Subject to other arguments e.g. liability, duration of hire, need, etc a court would assess the direct claim for the cost of a TRV on the basis of the rate set by the CMA i.e. the rate charged by the CHC and credit liability incurred by the claimant.

A dual rate cap may cause ambiguity. Allianz believes the opportunity to charge a higher rate will incentivise CHCs to circumvent the remedy. This could be achieved by back dating letters, holding back letters, sending letters to the wrong office of an at-fault insurer, using second class post, etc. Unless insurers can prove otherwise the date appearing on the letter will be assumed correct and delivery assumed complete. In short the at-fault insurer will be vulnerable. We anticipate arguments relating to which cap applies. Allianz has previously suggested a single cap or a significantly reduced differential of 25% to reduce the incentive to adopt such practices.

(f). Allianz does not believe that the definition of TRV should automatically be the maximum legal entitlement.

Most non-fault claimants do not need or want a like for like TRV whilst theirs is being repaired – their full legal entitlement. Most are content with a courtesy car – a short term run around to avoid inconvenience. Some do not require a TRV at all due to ownership of other cars or a preference to use public transport. Most motor insurers



provide a free courtesy car (Class A vehicle) to their customers in the event of an accident (whether fault or non-fault). Therefore insurers do currently commonly provide TRVs. That practice will continue.

Many motor insurers offer cover for a hire car as an add-on. Such cover will provide for a TRV either above the Class A level or on a like for like basis. The motor insurance market is highly competitive and products are becoming more and more flexible. That will continue. Therefore we believe the availability of TRV cover will increase.

(g). The alternative approach to Remedy 1C does not in itself create any unintended consequences. There are risks that some other aspects of the original Remedy 1C as detailed in the PDR may have unintended consequences (such as circumvention behaviours) but those are addressed in Allianz's response to that document and will not be repeated here.

5. Other aspects of Remedy 1C

Accessibility of TRVs

We note that some parties have told the CMA that implementing this remedy "would lead to many non-fault claimants being left without access to the provision of a temporary replacement vehicle." We repeat our earlier concern that there is a risk that parties with vested interests will seek to argue reasons to prevent any effective change rather than finding ways of making effective change possible.

Such assertions are unfounded. Free courtesy cars are provided by the vast majority of motor insurers. Additionally at-fault insurers will provide non-fault parties with like for like replacement, which they arrange on a direct hire basis, if that is what they require. As we have previously observed not all non-fault claimants want a like for like replacement albeit that is what CHCs may prefer.

Remedy 1C only seeks to reduce the cost of the provision of TRVs. It has been suggested that the appropriate rate may be aligned with the direct hire rates. The same TRV suppliers with commercial contracts with insurers operating on a direct hire basis also offer credit hire facilities direct to claimants. The direct hire rates still provide the TRV suppliers with a healthy profit margin. There is no issue concerning the availability of the supply of TRV when paying direct rates.

Quite simply it is a falsehood to suggest that implementing Remedy 1C would adversely impact on the availability of TRVs. It may however, depending on the detail, reduce excessive profit margins and positively impact on premiums.

Possible decision not to pursue Remedy 1C

Allianz repeats its view that the CMA investigation is a unique opportunity to address the concerns that the OFT correctly identified. We are concerned that if the opportunity is not properly seized the commoditisation of non-fault claims will not just continue but will increase exponentially after the investigation has concluded.

The cost and impact of credit hire is the single biggest current detriment identified by both the OFT and CMA. The GTA has not proved an effective solution to date as evidenced by the findings of the OFT and CMA.



If the CMA decides not to pursue either Remedy 1A or 1C and to merely encourage the GTA to adopt aspects of Remedy 1C and 1F, and/or insurers to take action themselves to reduce frictional cost, it would in reality result in no remedy being implemented. The detriment to the consumer will have been recognised but not addressed. The only beneficiaries will be those parties that enjoy an income from excessively high claims.

If in conjunction with a decision not to pursue Remedy 1C the CMA maintains its provisional decision not to address:

1. Inflated repair costs which we believe has the potential to have the greatest detriment (1D),
2. suppressed salvage values (1E), or
3. increased use of credit hire / repair fuelled by referral fees (1G)

it will be a sadly missed opportunity to address the dysfunctional behaviours identified by the OFT and detriment to the consumer found by the CMA. The market which John Fingleton said "does not appear to work well for drivers" will persist, insurers will continue in his words "gaining competitive edge through raising their rivals costs", and his conclusion "that drivers pay more than they need for motor insurance policies" will remain the case.

Allianz urges the CMA to address the market issues identified during the process.