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Private Motor Insurance market investigation
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Response to the Notice of Further Consultation on Remedy 1C relating to the CMA Private Motor Insurance Market Investigation

Submitted by



Email to: PMI@cma.gsi.gov.uk

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NAB Response to CMA's Notice of further consultation on Remedy 1C: Issued July 14

The National Association of Bodyshops (NAB) is the leading not-for-profit trade association representing the UK body repair sector.

NAB submits the following responses to the CMA's Notice of Further Consultation on Remedy 1C:

1] NAB notes that at 23, the CMA has considered the possibility of making the GTA mandatory, as put forward by some respondents to the PDR, but does not consider this to be a practicable option because they "cannot require another body to set rates and to require an industry body to do so would be in breach of the Competition Act 1998".

2] As a consequence of this legal clarification, NAB submits that Remedies that are proposed henceforth are incapable of delivering meaningful consumer benefit, as they cannot require binding governance by any of the stakeholders.

In various submissions previously made to the PMI investigation, the insurance industry has provided an insight into past voluntary attempts to mitigate excesses that have subsequently failed (See Appendix 1).

Throughout the PMI investigation, the submissions by various insurers has highlighted market polarisation and distortion operating within the insurance industry between those insurers who proactively pursue circumvention measures through:

- Differential experiences between first party and third-party claims
- Disposal of write-off vehicles
- Referral fees
- Earning rent from cost of claims
- Overcosting of repairs
- Operating SLA requirements that create potential for future repair quality issues
- VAT avoidance

and those insurers who, through either lack of scale or because of a highly moral/ethical outlook, have been unwilling to engage in creative and opportunistic behaviour.

NAB contends that the insurer and associated sectors are highly conflicted and are therefore incapable of operating in a self-regulated structure. We are of the opinion that the behaviour of some insurers represents a barrier to entry for new entrants and thus affects competitive pricing of motor insurance; it is therefore detrimental to consumers

NAB's submissions to the PMI investigation have consistently called for the appointment of a pan-industry adjudicator to uphold legal, ethical and moral behaviour in the sector. NAB has amplified its vision through proposals submitted for the establishment of "The Motor Insurance Conduct Adjudicator (MICA)"

3] NAB suggests that unless legislative reform to provide a root and branch review of the entire motor insurance market including PI & the UK compensation culture is enacted, then circumvention and distortion measures that have been highlighted by NAB throughout this investigation will continue and, in our opinion, will result in ongoing consumer detriment.

Appendix 1

Comments from insurers and their trade association relating to the effectiveness of voluntary agreements operating in the sector:

Association of British Insurers: Response to the Annotated Issues Statement and Working Papers

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7. The industry has made various attempts to mitigate the unnecessary costs it faces in relation to the provision of replacement vehicles on a credit hire basis, including the General Terms of Agreement (GTA), bilateral agreements and third party assistance, which have had varying but limited degrees of success:

o The GTA is a negotiated outcome between insurers and CHOs which sets rates for the settlement of claims for hire of replacement vehicles but at a rate far above what can be achieved between insurers bilaterally. Although this helped bring a degree of certainty to the market, daily settlement rates have continued to increase at unsustainable rates.

o Bilateral agreements between insurers are limited because insurers often do not have complete control of the end-to-end claims process. Also a very large number of such agreements would need to be in place to cover the whole industry.

8. These initiatives are limited in their ability to help reduce unnecessary costs in the market because they can only go so far to address the 'leakage' of money to non-insurers. This is particularly the case for the GTA. While the working paper "ToH 1: Overcosting and overprovision of TRVs" recognises that the GTA allows for recovery of fees at a rate less than those that CHOs would be able to recover through the courts, it is at a rate far above that which can be achieved between insurers engaged in bilateral agreements, where the potential for cost control is substantially greater.

AGEAS UK Submission: Response to the Provisional Decision on Remedies

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2.11 The CMA will need to take care to ensure that the remedy is binding on all relevant players and that it is appropriately enforced. It is not immediately obvious to Ageas UK that the obligation to submit annual compliance statements will guarantee compliance with this remedy, given the number and range of parties who handle FNOL. Indeed, simply identifying which businesses should submit a compliance statement will, in the absence of any register of FNOL providers, prove challenging.

Allianz Insurance Plc Submission: Response to the Provisional Decision on Remedies

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• Unless the over-costing of repairs is properly addressed Allianz predicts a fundamental shift in market practice. Rather than agreeing or maintaining existing wholesale bi-laterals (e.g. RIPE),

which are not binding and have been shown to be unreliable (Coles & Others v Hetherton & Others – see comments on Remedy 1D(a)) , insurers will withdraw from such existing agreements and set up retail repair cost models that will be engineered solely to produce the maximum profit margin.

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Bi-lateral agreements have proven themselves as being incapable of properly addressing the detriment as they are voluntary, non-binding, and rely on trust.

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- *Monitoring and enforcement*

If this Remedy is implemented we agree with the CMAs provisional decision that monitoring should be performed by an independent panel within the CMA

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The CMA has provisionally concluded that the remedy is effectively self-monitoring. Allianz has set out its concerns regarding the possible circumvention of this remedy. Taking those concerns into account we do believe that some form of monitoring is necessary.

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Bi-lateral agreements may have been hailed by some quarters in the market as a new solution to the AEC created by “some, but not all [our emphasis], non-fault insurers charging at-fault insurers more than the cost of repairs incurred” and in doing so “earning a rent from the control of claims rather than competing on the merits”. However, Allianz wishes to strongly express the view based on the market evidence that:

- 1) They are not new. Indeed there are longstanding commonly used bi-laterals i.e. RIPE, that were intended to address this very issue.*
- 2) They have not always been operated conscionably by both parties i.e. complied with on the basis of the known common assumption.*
- 3) Trust cannot be relied upon wholesale.*
- 4) Bi-laterals have been seen to fail to address the issue and therefore cannot be relied upon as the remedy.*
- 5) Bi-laterals are labour intensive requiring management and audit controls. Those operational costs erode the financial benefit of a bi-lateral model.*

AXA UK Plc submission: Response to the Provisional Decision on Remedies

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4.2.6 In essence, AXA is concerned that this remedy simply represents another version of the GTA, which has proven to be largely unsuccessful at controlling the costs of replacement vehicle hire.

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4.10 To be effective, this remedy requires careful monitoring, particularly in the early stages of implementation where parties try and find ways to circumvent the rate caps.

Although this would come with a cost to the industry, AXA believes that any monitoring role must be conducted by an independent body, and AXA believes that the CMA can play an effective role arbitrating between competing views.

LV= submission: Response to the Provisional Decision on Remedies

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Additionally there are the 20% plus of credit hire cases which are currently not presented by CHOs who are signatories to the GTA who are even less likely in the new environment to want to take part.

Submitted to CMA August 2014