Redde plc (formerly Helphire Group plc)

Response to the Notice of Further Consultation on Remedy 1C (Notice)

Summary

Redde plc (Redde) endorses the CMA's recognition of the true legal position of the credit hire industry and, more particularly, the legal status and rights of its customers.

Further, Redde strongly supports the CMA's tentative conclusion that the better view is to recognise that market practice has moved on and that the credit hire and insurance industries have reached sensible working relationships under the GTA and, in the case of Redde and others, insurer/CHC arrangements or 'protocols' that address many of the perceived problems with this aspect of the market. These proportionate arrangements reduce frictional and other costs while preserving a high level of consumer service and protection.

Redde strongly recommends that the CMA abandons further consideration of a rate cap remedy, whether as outlined in its revised version of Remedy 1C in the Notice or at all. In Redde's view, irrespective of whether such a remedy could be implemented legally (some of the difficulties of which are highlighted in this response), it could give rise to the most serious adverse consequences for consumers. Any dual rate cap remedy as envisaged by the CMA would not, for the reasons outlined in this response, be effective, it would create enormous confusion for consumers [REDACTED].

The AEC and the proportionality of a dual rate cap remedy

Irrespective of Redde's concerns with the adverse consequences of Remedy 1C, price regulation of the type envisaged by this remedy is not a proportionate response to an AEC which, by reference to any reasonable measure, is negligible. Indeed, the very existence of an AEC at all is still a central question of the investigation, which the CMA has not answered adequately and must recognise in any decision taken on remedies.

As Redde has previously outlined to the CMA, the AEC must be subject to :

- an immediate and unarguable 25% reduction in quantum - to take into account commercially insured drivers which bear no relevance to the cost of PMI and in respect of which no analysis by the CMA has been undertaken;
- material doubt as to whether commercial hires have been included in insurer data;
- artificially low direct hire rates in the CMA's calculation of the AEC; and
- artificially high credit hire rates in the CMA's calculation of the AEC.

At less than £2.67 per policy per annum the AEC is negligible, particularly when measured against the value added services and benefits to consumers represented by credit hire. The high risk of unintended consequences (as the CMA now seems to recognise) means that there can surely be no justification for any rate cap remedy of a type envisaged by Remedy 1C (whether in its current or previous form).

Revised Remedy 1C

Placing a cap on the amount charged to the customer as envisaged by Remedy 1C is hazardous in terms of its consequences and fraught with difficulty, for example:

- First, it may not be effective. Insurers and/or customers could still pursue the difference between the capped rate and BHR because it is the BHR that is the true valuation of the client's claim.
- Second, in a similar vein, the 'reasonableness' of any CMA-set rate cap is strongly in doubt, when contrasted against established case law, such as Bent-v-Highway Utilities, which references BHR.
- Third, it exposes the consumer to bills that will lead to confusion and worry (particularly in the context of a dual rate dependent on the TPI's admission of liability).
- Fourth, it is open to abuse by insurers and will expose CHCs to arguments about unenforceability (see below) that will increase frictional costs [REDACTED]. This would, in turn, dramatically reduce customer choice and negate the driving force that has brought to the consumer the benefits of a TRV.
- Fifth, the benefits that the CMA may believe it has identified in respect of the remedy are, in any event, based on a deeply flawed comparison of credit hire and direct hire costs (and which, if implemented, has the potential to compromise in the most serious way the quality and cover provided by CHCs to consumers).
- Sixth, it could result in a concentration of TRV providers adopting the direct hire model, who could then, quite feasibly, exercise their increased market power to reduce service provision and quality further and apply onerous terms to vulnerable consumers.

It follows that the only rational decision the CMA can reach is to abandon Remedy 1C.

A more effective and proportionate solution

To the extent that the CMA is minded to implement changes to the industry that are far more likely to reduce costs and improve the customer's experience without resulting in any unintended consequences, the CMA should look to the ABI GTA. In particular, the CMA might wish to consider:

1. Issuing an enforcement order requiring insurers:

   (a) to put all credit hire and credit repair claims (not the subject of a protocol with a CHC) through the ABI GTA;
   (b) to be bound by the GTA and not refuse to pay claims that have been correctly presented without good reason i.e. not, as they do now, to 'cherry pick'.

2. Requiring an RTA portal to be set up and (except where cases are covered by a bilateral agreement or protocol) that rates for cases that are paid within the portal are at a discount to the existing GTA tariff.

3. Requiring that the GTA be made available to non-insurers (such as large fleets, government agencies, emergency services and passenger transport companies) provided that they agree to abide by its terms and processes .

In Redde's view, these simple measures would significantly reduce costs without compromising cover, continue to enable the flexible use of 'protocols' and achieve the majority of the benefits that the CMA seeks for insurers and consumers. Most importantly, the consumer would stay central to the whole process and retain all of its benefits.

Detailed response to the further consultation

Paragraph 14. Applying the dual-cap rating process to the bill raised by the TRV supplier to the client is fraught with difficulties. Some of the most obvious issues are set out below.

1. Any solicitor presented with a client with a liability to a hire company could present the loss of use claim to the third party insurer without reference to the TRV supply. It is ***'res inter alios acta'***; in other words, none of the TPI's business. The claim presented would be loss of use at BHR. The solicitor, by entering a 'damages based agreement', could share the proceeds with the customer after paying off the hire company.
2. The client is presented with a hire agreement. It says "The rate we are intending to charge you is £X per day, plus this administration fee of £Y. If the third party does not admit liability, then your debt to us doubles; if the third party does not pay in 30 days, the amount goes up by 15%; if they do not pay in 60 days, the amount goes up another 5%". It is not difficult to predict the reaction of most consumers to this arrangement – utter confusion - particularly at a time when they are vulnerable and under stress.
    a. It would take an inordinate amount of time to explain to the customer the ramifications of what he or she would be signing up to; even then, the scope for confusion and concern are very real.
    b. Further, agreements used by CHCs tend to be 'exempt' not 'regulated' agreements[1]. Regulations brought in 2011[2] in response to EU Directive 2011/90/EU mean that no exempt agreement can levy additional charges, whether interest, arrangement fees or anything that looks like either of them. Late payment penalties, the uplift for liability, the administration fee all would raise serious questions as to their compliance with the Regulations.
    c. Further, more recent changes to consumer regulations have been introduced and came into force in July 2014[3]. These lay out in some detail the way charges have to be laid out. Complying with these regulations with the dual rate mechanism would not be an easy task. Failure to comply has consequences and the insurance industry's legal advisors have shown themselves adept and willing to take any technical defence

[1] Exempt - repayable in no more than 4 instalments, exist for no more that 1 year, in the case of car hire, period of hire no more than 90 days. The Consumer Credit (Exempt Agreements) Order 1989.
[2] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/34687/12-1264-consumer-credit-directive-guidance.pdf
[3] The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

available to allow them to escape from paying for a TRV. This would lead to increased frictional costs.

3. One of the aims of the CMA is to reduce frictional costs, such costs comprising a substantial part of the purported AEC. The rate cap remedy will not be effective in addressing friction. For example, any insurer that has not admitted liability, either because they could not raise their policyholder or owing to administration issues and where the hire has not been paid in 60 days faces no other penalty, unless the customer litigates, and the rate recovered will be no more than the capped rate. Insurers could (and would) wait until the 'letter before action' was received, then offer to pay the hire, less the late payment penalties, leaving the CHC exposed. The CHC is then in a situation where, despite any right to a higher rate, it has to accept the offer or litigate, the latter being an unattractive prospect because the TPI can then throw need, liability, enforceability etc into the mix. In a number of cases, the customer will not wish to be bothered with litigation, leaving the CHC without ANY route to recovery because any loss of use claim is the customer's. [REDACTED].
4. The process is open to fraud. For example, a not at fault driver might choose to hire a vehicle from his friend at BHR rates. The third party is compelled to pay the BHR rate; later the not at fault driver and his friend share the spoils. This is not, of course, a major consideration but it underlines the impracticality of the remedy as proposed. Similarly;
5. Daily rental companies and CHCs could be faced with abuse by unscrupulous customers. For example, a customer might present themselves at the desk of a daily rental company claiming "I have had a non-fault accident, the third party insurer has admitted liability, I would like a vehicle at the lower dual-cap rate please". After the hire, the customer returns the vehicle and informs the rental company "Sorry, the accident was my fault after all, but here's the rental fee (lower rate)".

Paragraph 17

1. The reference to "average retail rates" in respect of insurer subrogated claims is a surprise. It appears to point again to the CMA's lack of understanding of Credit Hire, its processes and its customers' rights. The use of average rates was originally discounted in the Court of Appeal in a series of test cases of which the lead case was Clark-v-Ardington. In a more recent case, Bent-v-Highway Utilities, the Court settled on a description 'Basic Hire Rate' for the true measure of loss replacing the previously used description 'spot rate'. The abbreviation BHR is now commonplace and familiar to the Inquiry team.
2. From statistical perspective the reasoning is obvious. The validity of any average depends upon the standard deviation from the mean in a population, the sample size and how the sample is collected. Unless the sample is truly random, the mean and the standard deviation has no validity. Under the circumstances of gathering a sample of rates offered to customers, the variability is so big, and the sampling difficulty so massive, and the effects of location, seasonality, additional charges, CDW and other Terms and Conditions so enormous that any average has no meaning whatsoever.

3. It also displays a misunderstanding of the so called ‘duty’ to mitigate losses. The insurance industry would have unsuspecting motorists believe that it is a duty (significant obligation) and that it requires them to find the cheapest (or near it) form of expenditure for the insurer’s benefit. The Courts have, for many years, sought to explain that the ‘duty’ is no more than an expectation that claimants will act reasonably and that its aim is not to reduce costs for the party at fault (in whose shoes insurers stand). Applying this doctrine there is no reason for an average rate to be applied. Very often, the not at fault party will be acting reasonably even if they do take a more expensive route.

Paragraph 18

1. A TRV need not be provided under a credit agreement. The TRV supplier could simply invoice the client and provide 'commercial indulgence' until such time as the client recovers the charges.
2. A non-PMI insurer (LEI/ULR) provider could provide the TRV as an 'insured benefit' then recover at BHR.
3. A CMC could advertise for clients who are prepared to hire for themselves and put them in touch with a solicitor and a 'friendly' hire company.
4. What the Courts would do faced with the cap depends on the precise wording and implementation of the cap. As it stands, when a claim is (truly) subrogated the party subrogating 'steps into the claimant's shoes' and the nature of the claim itself is unaffected. A direct parallel is the Court's response to the GTA. This was, like the cap, a set of agreed rates but the courts looked at the **claim**. This belongs to the customer and mitigation is looked at in the light of his rights. Another direct parallel is Coles-v-Hetherton. Here the insurer was clearly the genesis of the repair invoice, but the claim was valued with regard to the client's repair costs. It is hard to see the judiciary stepping away from the oft repeated '***ratio***'.

Paragraph 22

[REDACTED]

1. [REDACTED] condemning consumers to 'class A' replacements.

Paragraph 23

Redde and other CHCs have repeatedly reminded the CMA that the ABI GTA is no accident. It has evolved as a sensible and workable solution to exactly the issues that the CMA was tasked to address and, with relatively few changes, could be even more effective.

1. The ABI GTA balances the rights of consumers against the power of the insurers
2. A discounted rate 'in portal' is a logical development. It would be valuable to the consumer to require TRV providers to join the GTA and be subject to censure, even dismissal, for poor behaviours; however, this may be beyond the power of the CMA to resolve.
3. Insurers could push TRV providers to join the GTA through their claims handling processes.
4. The CMA could also require insurers to provide indications of fraud to the CHCs, reducing frictional costs and creating a less confrontational environment.

This GTA remedy is far more suited to the UK PMI market than a system of dual price regulation, which will be open to abuse, create confusion and fail to address the issues that the CMA wishes to resolve.

[REDACTED].

For the reasons set out above, Redde would encourage the CMA to pursue an enhanced GTA model (without prejudicing the adoption of CHC/insurer protocols) and discontinue the dual price capping remedy envisaged by Remedy 1C, whether in its revised form or otherwise.