



Private Motor Insurance Market Investigation

Response to CMA Notice of further consultation on Remedy 1C

Royal & Sun Alliance Insurance Plc

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A. Executive Summary

- A.1. Royal & Sun Alliance Insurance Plc ("RSA") broadly welcomed the remedies package proposed by the Competition and Markets Authority ("CMA") in its original Provisional Decision on Remedies ("PDR").
- A.2. RSA has consistently urged the CMA to focus on ensuring that the investigation delivers tangible benefits to consumers by taking unnecessary costs out of the claims process. RSA continues to consider that the separation of cost control from liability for the supply of temporary replacement vehicles ("TRVs") represents a significant adverse effect on competition ("AEC") and hence that the CMA should continue to seek an effective means of addressing this.
- A.3. RSA does not consider that the CMA's proposal to 'do nothing' or to adopt the options outlined at paragraph 23 of the Notice will address the AEC. The options the CMA proposes to recommend have long been open to insurers and credit hire companies ("CHCs"), but to date have not been implemented on a sufficiently significant basis to counteract the harm the CMA has identified in respect of credit hire.
- A.4. RSA would broadly support the CMA's proposed alternative implementation proposal for Remedy 1C. Whilst there remain some concerns around the lack of detail we would expect that these could be dealt with via appropriate consultation during the implementation phase.
- A.5. Whilst not clear from the brief summary provided in the Notice, RSA understands that the alternative is intended to adopt the same principles as in the original Remedy 1C (i.e. a dual rate cap, depending on the speed of the liability decision), but with the cap applying to the CHCs directly (rather than indirectly limiting the claim). RSA would therefore expect that, properly implemented, the alternative remedy would address the identified AEC in the same way as the original proposal.
- A.6. It will be essential that the remedy is supported by strong and explicit judicial guidance to the courts who will ultimately determine what is 'reasonable' when assessing tort rights. One option might be to link this guidance with a rate cap which accords with what the courts have described as a 'basic hire rate' or 'spot rate'. That is the amount for which a retail customer could hire a vehicle on their credit/debit card, if acting independently and not pursuing a claim against an at-fault insurer.
- A.7. RSA looks forward to the CMA confirming a remedy that addresses the substantial consumer detriment arising from the present use of credit hire vehicles. We are supportive of the response of the ABI that the revised approach to Remedy 1C would address the AEC, although as set out above and in more detail below, we consider that the remedy would be simplified if the cap was set at the basic retail hire rate. This removes any potential for ambiguity and ensures that the amounts recoverable via subrogation or tort rights are fully aligned.
- A.8. Section B of this response addresses each of the specific questions raised by the CMA.

B. RSA's response to the CMA's specific questions on Remedy 1C

B.1. RSA has used the following definitions throughout:

Full Credit Hire rate: *the highest hire rate as currently pleaded on full credit hire claims*

Basic Hire Rate: *the current spot rate or true retail rate (and the amount for which a retail customer could hire a vehicle on their credit or debit card, acting independently)*

Direct Hire Rate: *the commercial rate negotiated between each insurer and its TRV provider.*

RSA notes that the GTA rate is only slightly lower than the current Full Credit Hire Rate, whereas RSA's Direct Hire Rate through Enterprise Rent-A-Car is lower than all of the above rates.

(a) Whether this alternative approach would be an effective way in which to implement Remedy 1C?

B.2. RSA broadly supports the alternative approach the CMA has proposed. We consider that, provided CHCs are limited in the amount they can charge a customer when they intend to recover the charge against an at-fault party, the courts will usually accept this capped amount as the rate the CHC can recover.

B.3. However, RSA considers that it may still be possible for a CHC to plead a general (as opposed to a special) damages claim for loss of use to circumvent the cap. In these circumstances, the courts may apply the Basic Hire Rate as the best proxy value for what is legally recoverable.

B.4. Currently, in a credit hire claim, if a claimant is found not to be impecunious the courts accept a claim for general damages for the Basic Hire Rate. This rate is often significantly lower than the Full Credit Hire Rate. Therefore, if the capped rate that the CMA applies is lower than the Basic Hire Rate (as it would be under Direct Hire Rates), the courts could continue to award the Basic Hire Rate. Strong and explicit judicial guidance will therefore be necessary to deal with this point.

B.5. For the alternative remedy to work, it will be important that the CMA clearly defines any additional items that can be added to the credit hire claim. This risk applies in the same way as it did to the original Remedy 1C and the CMA should note the detailed comments provided by RSA and the ABI on that remedy, which continue to apply.

(b) Whether the remedy would create distortions between the provision of temporary replacement vehicles to non-fault claimants and the provision of hire vehicles to retail customers?

B.6. There is a risk that CHCs will seek to create arrangements that encourage claimants to hire vehicles as retail customers in order to use the Basic Hire Rate. However, provided the wording of the order is clear, customers would be obliged to accept significant financial risk in this scenario, resulting in a low circumvention risk.

(c) Whether the definition in paragraph 18 would capture effectively the provision of credit hire vehicles to non-fault claimants or whether there are any further circumvention risks from this proposed wording?

- B.7. RSA considers that the proposed wording captures effectively the provision of credit hire TRVs to non-fault claimants. However, the CMA will need to consult further with the industry during the implementation phase to ensure that any remedies adopted are practical and effective.

(d) Whether the remedy would create distortions between CHC/CMC provision and non-fault insurer provision of temporary replacement vehicles?

- B.8. If the cap is set at a rate that is lower than the Basic Hire Rate (which would be the case if Direct Hire Rates were used), then there is a risk that insurers will set up commercial arrangements with CHCs in order to include the TRV claim as part of their subrogation claim.
- B.9. This may lead to greater provision of like-for-like hire as a policy entitlement – in other words, NAF drivers will see their tort entitlements 'internalised' as a policy benefit. To the extent this gives rise to more drivers seeing their claims handled by their own insurers this could be expected to give rise to improvements in the overall customer journey.

(e) Whether the courts would be likely to limit the sums recoverable in subrogated claims to the rate cap set by the CMA on the basis that this indicates the reasonable cost, or, if not, whether the cap for CHC/CMC provision would have to be set at a level which aligned with that currently allowed by the courts for subrogated claims for temporary replacement vehicles; and whether a dual-rate cap would create greater ambiguity for the courts in these circumstances?

- B.10. We noted in response to (a) above the risk that CHCs might plead general damages claims to seek to circumvent the cap. In addition, where benefits are (or become) an entitlement under the insurance policy, then the claimant would not actually have hired a vehicle and hence would be under no obligation to plead the claim as special damages
- B.11. When assessing general damages claims, the courts are likely to apply the price that a retail customer could obtain individually, namely the Basic Hire Rate.
- B.12. If the rate cap is set at Direct Hire Rates (i.e. below the Basic Hire Rate), RSA considers there is a risk that the courts would not limit credit hire (or subrogated) claims to this lower level. Direct Hire Rates will vary significantly as between different insurers and different TRV providers and hence is a rate that the courts are likely to find administratively complex to assess.
- B.13. Our understanding of the CMA's proposal is that the lower rate will apply where liability is agreed within three days. The simple rationale for a lower rate cap to apply is that once liability is agreed, the insurance companies will have agreed to pay the TRV costs and there will therefore be no need for the credit element of the hire. However, where liability is not agreed and there remains uncertainty over whether the TRV costs will be met, customers will be entitled to continue to receive TRVs at the Full Credit Hire Rate. Put simply, where there remains uncertainty over ultimate

recovery of costs, the use of credit is justified and there can be no suggestion that customers are not mitigating their loss by proceeding with credit hire.

B.14. Given the above, RSA considers there to be merit in setting the cap at the Basic Hire Rate:

- (i) It removes the potential for ambiguity by providing certainty on rates as it is a readily verifiable rate which will not differ as between different parties;
- (ii) It matches entitlement under tort law with the remedy;
- (iii) It will remove costs for the majority of claims where liability is agreed within an initial period, by removing the credit element, whilst recognising the customer's ability to use a credit solution where liability is uncertain; and
- (iv) It also matches the rate cap with the level that the courts have typically applied when assessing claims and can be supported by strong and explicit judicial guidance.

B.15. We note that if the CMA agreed with this proposal, further consultation would be required during the implementation phase to determine the appropriate length of the initial period (i.e. the period where the lower, Basic Hire Rate, would apply). This reflects the commercial reality that Basic Hire Rates will always be considerably higher than Direct Hire Rates.

(f) *Whether the remedy might be expected to lead to greater provision of temporary replacement vehicles by non-fault insurers under the terms of individuals' insurance policies, and the benefits and costs of this greater provision if it occurred?*

B.16. RSA agrees that the proposed remedy could lead to the wider offering of like-for-like TRVs as part of the policy cover given the dynamic and competitive nature of the motor insurance industry in the UK. It will therefore be important that the same cap applies both to claims for recovery of policy entitlements and claims under tort law. As explained above, setting the low rate cap at the Basic Hire Rate for both will align the remedy with existing court practice and restrict the excess payments due under the Full Credit Hire Rate to circumstances where liability issues are unresolved.

(g) *Whether this alternative approach creates any other unintended consequences, costs or benefits from those already expressed?*

B.17. RSA does not consider that the alternative would give rise to any other significant benefits or costs other than those highlighted above.



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