COMPETITION AND MARKETS AUTHORITY
PRIVATE MOTOR INSURANCE MARKET INVESTIGATION

Notes of a joint hearing with ABI and BIBA
held at Competition and Markets Authority, Southampton Row, London
on Wednesday, 21 January 2015

PRESENT:

FOR THE CMA STAFF

Colin Garland	- Director, Remedies, Financial and Business Analysis
James Hampson	- Legal Adviser
James Jamieson	- Economic Adviser
Pietro Menis	- Assistant Director, Legal
Bernard Mew	- Assistant Director, Remedies, Financial and Business Analysis

FOR ABI

Chris Armistead	- Legal Affairs Adviser
Emily Eastwood	- Legal Adviser (BLM Secondee)
Michael Hall	- Head of Product (Aviva)
Gus Park	- Commercial Director (DLG)
Hugh Savill	- Director of Regulation

FOR BIBA

Mark Hammond	- AA
Toby Hughes	- Director of Business Development (Saga)
Gerald McLarnon	- Marketing Director (Swinton)
David Newman	- Chief Executive (Carole Nash)
Nik Springthorpe	- Managing Director (One Call Direct)
Graeme Trudgill	- Executive Director BIBA

FOR FCA

Alex Hughes	- Associate, General Insurance Policy Team (FCA)

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Q. (Mr Garland) We are okay to start. Thank you for coming in and thank you for the responses you have provided to the informal consultation. We found those very helpful. Hopefully you will have seen we have sought to address those comments in moving to the formal consultation and have reflected them in the draft we have put out.

This meeting is being transcribed and the transcript of the meeting will be circulated to the group as part of their decision-making together with the written responses to the formal consultation.

We will start with introductions because there are a lot of new faces. I am Colin Garland. I am the Director of Remedies, Business and Financial Analysis at the CMA. I am responsible for the implementation of the remedies contained in the report.

Q. (Mr Mew) I am Bernard Mew and I am an assistant director of Remedies, Business and Financial Analysis.

Q. (Mr Jamieson) James Jamieson, Economic Adviser.

Q. (Mr Menis) I am Pietro Menis. I am a lawyer.

Q. (Mr Hampson) James Hampson. I am a lawyer.

A. (Mr Savill) Hugh Savill. I am Director of Regulation at the ABI.

A. (Mr Armistead) Chris Armistead. I am a legal affairs adviser at the ABI.

A. (Ms Eastwood) Emily Eastwood. I am a BLM Secondee at the ABI.

A. (Mr Hall) Michael Hall. I am the Head of Product at Aviva.

A. (Mr Park) Gus Park, Commercial Director for the Motor Insurance at the Direct Line Group.

A. (Mr Trudgill) Graeme Trudgill, Executive Director at BIBA.

A. (Mr Springthorpe) Nik Springthorpe, MD at One Call Insurance.

A. (Mr McLarnon) I am Gerald McLarnon. I am the Marketing Director at Swinton

Insurance.

A. (Mr T Hughes) Toby Hughes. I am the Director of Product Development at Saga.

A. (Mr Hall) Mark Hammond. I am the Senior Product Manager at The AA.

A. (Mr Newman) David Newman, CEO of Carole Nash and also Non-Executive Director at the Insurance Fraud Bureau.

A. (Ms A Hughes) I am Alex Hughes, GI Policy at the FCA.

Q. (Mr Garland) Before we get into the meat of the issues I thought it would be worthwhile setting out where we are in the process of the inquiry. We are at the stage where we are implementing the decisions that were contained within the final report. That final report, as I think you know, set out the findings of the group in relation to the adverse effects on competition and the remedies they decided to adopt to remedy those adverse effects.

Section 138 of the Enterprise Act now requires the CMA to implement those remedies and, within that context, we are hoping to explore the issues around implementation and how they can most reasonably and practically be implemented.

We understand there might be some issues with how we are going about implementing it so we really want to hear how the implementation of the remedies can be improved. We would appreciate your written responses as part of the formal consultation in addition to the meeting today.

If, following the responses and this meeting, the group thinks there are parts of the implementation that should be amended in any material way we will then go out to a further short consultation on those specific issues. The statutory deadline for implementation of the remedies is 24 March2015. We are hoping to have the remedies implement by 1 March 2015 and orders to come into effect

by then.

Today we are principally in listening mode. We will take your comments back to the group for their consideration. Therefore, there may be some questions we, as staff, are unable to answer, however, if there are such questions we will take them away to the group and then those should be reflected in the future decisions on implementation.

As you know, today is a joint meeting with yourselves, ABI and BIBA, therefore we have about 90 minutes. I do not think I have to remind you of this, but I will, it is your responsibility to ensure you do not provide information that would be inappropriate for you to share in this forum with your competitors present. Therefore, we are not expecting there to be any confidential information presented in this meeting. To the extent there is confidential information you feel you have to provide to us then please do so in your written responses.

We also have the FCA here so Alex has kindly come along. The FCA is here as an observer. The decision was the CMA's implementation of the remedies and it is the CMA's responsibility. We thought it would be useful to have the FCA here so they can hear your comments firsthand. As you know, they are going to be responsible for conducting a review of the remedies in around two years after implementation, therefore, again, it is useful for them to be present at this meeting.

Q. (Mr Mew) Specifically the remedy on NCB Protection.

Q. (Mr Garland) Yes. As I said, the meeting is being transcribed. That will be shared with the group members. We also intend to publish the transcript on our website. Prior to doing that we will share a copy of that with you so you can check whether it accurately reflects comments and whether there needs to be any redactions. However, as I said, we are not expecting confidential

information to be shared here so we would not expect any redactions.

In the preparation for the meeting we invited each of you, ABI and BIBA, to present a five-minute opening statement. Therefore, that will be how we will start the meeting. However, finally, before we get into that, I have been asked to remind you it is a criminal offence under Section 117 of the Enterprise Act 2002 to knowingly or recklessly provide false or misleading information to the CMA at any time, and that includes this meeting.

Therefore, if we could start with ABI's opening statement.

A. (Mr Savill) Thank you. I shall be, I hope, briefer than the five minutes you have offered. I have three points to put forward. The first question is on compliance and monitoring. As far as the compliance and monitoring of the no claims bonus aspect is concerned, it makes more sense for this to be done by the FCA along with the many other regulatory returns we do for the FCA than by the CMA.

My second point is on the wording of the information to be provided. To be honest, we really do not understand why you have insisted on a prescriptive wording for this. There is a long history of the FCA's predecessor, the FSA, prescribing scripts that have to be read out over the telephone or notices that have to be provided in full. All of the evidence shows people do not read them. Therefore, we do not understand why you are going down this route now. We think it would be greatly preferable if you should set out an outcome and leave it to companies to choose how that outcome is met in terms of wording, taking in account the different nature of the channels that might be used. For instance, what you look at on a website could be effective, might be very different from what you look at on a mobile phone or face-to-face.

Third point, and we will go to this in more detail, is one of timetable. It is not possible effectively to implement this in the timescale suggested, particularly

when you have to provide information that goes from the carrier, through the broker, possibly back again, and then to the website. Therefore, we will doubtless say more about this later but further time is required. Thank you.

Q. (Mr Garland) Thank you very much. BIBA, could we have your statement?

A. (Mr Trudgill) Thank you. I think it is also safe to say we agree with these points from the ABI.

The FCA are here, which we welcome. Just to start with a point about article 6, which is supply of information to the CMA. BIBA would strongly prefer any reporting information is supplied to the FCA as part of our existing statutory RMAR reporting system, rather than create a separate reporting system to the CMA that would add to the burden of UK firms.

Regarding article 3, and the accompanying schedules, BIBA acknowledge the need to provide information to assist customers in understanding and assessing the value of NCB Protection but our concerns below could lead some brokers to stop selling NCB Protection and distort competition, as they cannot comply with the timescales.

I would also like to refer to the speech made by Gabriel Bernodino, the Chairman do the European super regulator EIOPA on 19 November where he said:

"A balance needs to be struck on the amount of information given and on the capacity of customers to digest and use appropriately that information. Too much information kills information."

The draft order, as it stands, will, in BIBA's view, tip the balance towards information overload and, in addition, will add substantial cost to the industry to implement the changes, which are ultimately borne by the customer.

We are pleased the FCA has started a working group entitled "The provision of

timely and appropriate information in the general insurance sector" and their remit will cover the CMA inquiry. We would suggest this FCA working group and the FCA Behavioural Economics team assist in refining this order and the information disclosure requirements to customers.

Regarding Schedule 1a: NCB Protection Statement to be provided by PMI Providers, 1(A) we believe this statement should be principles-based but, if a set wording has to be used, we will submit refinements in our written submission. BIBA welcome the apparent progress the step back information can be included in the policy booklet and a confusing and costly requirement for a PMI provider to create a separate document, showing step back formulas outside of the policy document, is not required.

On Schedule 2: NCD Protection Information to be provided by PMI Providers including the area of implied price, when members approached their panel of insurers and asked them to articulate their NCD and step-back rules, a number of insurers informed them they have very complex rules that cannot easily be laid out and the discount varied according to the age of the driver with some insurers. Therefore, it has become evident on our member research insurers do not typically use the NCD scales and step-back rules that were the norm ten years ago, but instead they use two- and three-way tables to calculate percentages. Therefore, to try to show a calculation as proposed in the draft order, could potentially lead to customer confusion and would, therefore, not provide the clarity that the CMA are seeking. BIBA believe the CMA should consider the FCA principle-based rules rather than requiring PMI providers to follow a CMA-prescribed format. This could then accommodate the variety of NCD systems. Also, BIBA believe it will prove inaccurate, potentially misleading and difficult - and, therefore, costly - for PMI providers to be able to

calculate an average NCB discount.

BIBA's main concern with the draft order is the timescales laid down for article 3. The insurance industry's Electronic Trading Practices Group, ETPG, has put together a working party to consider the draft order and their main concern is the timescale. Now, ETPG are run by Polaris, who are the organisation who develop the industry's e-trading standards that are used by most insurers/software houses for the majority of brokers-based products, they have stated that it is likely to take up to 16 months for the changes to be implemented in the broker channel in full.

ETPG have said from the time these final changes are published insurers and software houses need to make the following six step changes.

Steps 1 to 4 will take 3 to 4 months to implement and steps 5 and 6 up to a further 12 months to implement. This suggests that it will take up to 16 months to implement for the broker channel. Step 1 is about insurers considering the new step-back rules once they are finalised; step 2: insurers drafting the new NCD template for the software houses, highlighting the dynamic fields; step 3 is the insurers who then have to draft the rules for populating the dynamic fields and do scenario-based; step 4: insurers have to raise the changes with each software house; step 5: the software house has to make the changes across all the products, and this is the main thing that will take the most time; and then the insurer testing of products is step 6. We have all the details of this, which we are very happy to submit in our written submission.

The first item on the critical path is technical standards. BIBA has instructed the Electronic Trading Practices Group to proceed. The first draft of these was published only recently. However, the technical standards cannot be finalised until the final order is actually made.

We also wanted to seek your guidance in regard to guaranteed no-claims bonus because it does not have a step-back procedure, however, people are still paying extra to preserve their no-claims bonus. Therefore, was this to be included in the order? Our members wanted some clarification.

On article 4: price comparison websites. The continued existence of narrow MFNs means that a broker has to show the highest price of those prices shown on PCWs on their own website, rather than the lowest price. This is clearly to the detriment of the consumer and anti-competitive and we believe fails the stated aims on the CMA website stating:

"We work to promote competition for the benefit of consumers, both within and outside the UK. Our aim is to make markets work well for consumers, businesses and the economy."

BIBA do believe the retention of narrow MFNs is solely to the anti-competitive benefit of price comparison websites, so not the consumer. In the interest of a level playing field, we would like to make the key point as all insurance brokers are subject to compliance no matter their size, a price comparison website of any size should also comply. Therefore, it is incongruous to us a price comparison website with a quarter of a million customers is not included.

In summary, we would request the CMA please take into consideration these five requests. Firstly, the timescales for implementation to be more realistic to allow a 16-month implementation period following the evidence from Polaris and ETPG. That could put brokers at an unfair position when compared to direct insurers who do not use software houses. Secondly, that the annual compliance statement is sent with the FCA RMAR reporting that already exists. Thirdly, that the CMA consider our request for greater flexibility in the NCB statement. Fourthly, that disclosure requirements be referred to the FCA

Behavioural Economics team and the information working group that Alex sits on. Finally, that the CMA consider our unlevel playing field points on comparison sites. Thank you.

Q. (Mr Garland) Thank you very much. I think in initial response to those comments I will go back to the introductory points. Today we are primarily looking at the issues around implementation of the remedies that were included in the report. I think a lot of those comments are about implementation, but I think some of the comments expanded into the decisions around what the remedies are and what the remedies should look like. It is quite difficult for us to go back and revise the decisions that are in the report.

In our invitation email we set out the four areas where we thought there would be particular remit in exploring a bit further, and you have touched on these in your introductory comments. Therefore, we talked about article 3 and the requirement to provide information so good to hear more detailed thoughts on that; the implementation date of the information remedy; the prohibition of wide MFNs and equivalent behaviour; and issues around monitoring arrangements, which you touched on.

We are holding this meeting at your request and we would like you to think of this as your opportunity to make representations to us on the implementation of these remedies we can pass to the group. In order to get the discussion going I think it would be useful to ask a general question, which could, maybe, supplement your opening statements, and that is: where do you think we have some things right, which I think you touched on in your opening statement, and, in particular, where do you think we have things wrong? Clearly, your opening statements did touch on this. Therefore, if there are any additions to your opening statements in those general terms of rights and wrongs, it would be

good to hear that before we get to the specifics of the issues.

A. (Mr McLarnon) We were pleased with the outcome in regard to the banning of the wide MFN, although concerns were, obviously, raised in regard to the MFN. That was a matter for the final report, which you have now passed.

The recognition of equivalent is an important part of the wide MFN and I think it is something that is going to be very important for us as an industry and I know Toby and some of my colleagues here have some points they would like to make around that in regards to how to make that most effective. I think making the effective is really the point.

As Graeme and the ABI have said, I think the most pressing thing is going to be around the implementation timelines. The ETPG have set a 16-month timeline and that is about a year longer than you are probably thinking it was going to take.

I believe it is worth just going back for a minute to talk about that timeline and why, because I think it is important you make an order the industry can comply with. Why is it important you do that? Well, it is important you do so you achieve your objective in improving competition. We, obviously, want an industry that complies with your orders. The consequences of non-compliance for the insurance firms and the broker firms are high. Not only are we open to civil wrongs but we are open to your own enforcement and enforcement activity from the FCA from a control point of view. I think in regards to the only viable alternative to compliance is withdrawing from the market until such time as compliance can be made. I think what that does is reduces competition. What it also does is it, potentially, creates customer confusion because you will be in the situation where a customer who had previously transacted with a firm and protected no-claims discount is no longer able to transact with that firm. What

that does then is that risks distorting competition and creating customer confusion. Therefore I think it is very important for you to try to come up with an order the vast majority of our industry can comply with. I think you probably want to do that as well.

I think the problem that is coming is in regard to timelines, although there will be a lot of specific points that will be made in the written submissions. The point on timelines that is really important to remember is we have taken this seriously as an industry and we have already published a specification for how brokers are going to interact with insurers on this point, but this timeline that has been prepared by this independent body, Polaris, is telling us it is 16 months by taking soundings from across our industry. While it is definitely the case some insurers who are selling direct may be able to comply more quickly than that, I cannot speak on that from knowledge. In the broker industry the supply chain is much longer, we start with the insurer, then we have the software house, then we have all the systems the broker has as well and all of those need to be changed in coordination. We may talk about what those systems are later or that may come in the written submission. There is quite a lot of heavy lifting that needs doing on the systems. That is why it is probably going to take longer.

In the final report there was a suggestion to say, "Well, look, you have this information already, just take two quotes and subtract," that sounds very simple. In a world where everything was done manually in an industry that would be very simple. We have a highly automated industry so there are many systems, such as people buying on websites, people getting automated renewal letters, and if we want to make sure firms can comply, the idea of simply taking a couple of quotes and subtracting on a calculator and saving the

difference does not work. If we want to maintain an automated industry then it is very important for us we are given the time to amend our automation to comply with your order.

A. (Mr Trudgill) One point on that being one software house does not have the ability to give more than one quote. It has one field for the price and so they would have to fundamentally change their system to create that second field. Therefore, that takes time to redesign and reengineer that.

A. (Mr McLarnon) My final point is, as the order stands today what do you risk doing? What you risk doing is you risk locking people out of the market, you risk distorting competition because of that and, with some intended hyperbole, you probably risk creating customer pandemonium for the wide range of firms that will not be compliant but want to access this product. I do not think that benefits any of us.

I think your solution is very simple. Your solution is to give us more time. I think it is about a year longer than your date, the ETPG are saying 16 months. I think there needs to be some work around that and you have to look at the submissions and the ETPG work will be further refined, et cetera, but it is not a few months. It is a year longer than you were thinking. Therefore, I think it will take that to make an orderly transition for a market. I think in regards to the timing on PNCB I think the key point you need to hear from us is it is going to take longer, we are acting seriously, we want to do this, but it is going to take us longer than you had hoped because of the way we are structured.

Q. (Mr Garland) On the ETPG work, is that something you had envisaged submitting to us as part of your response to the consultation?

A. (Mr Trudgill) Yes. We can give you more detail on the step backs we mentioned earlier on. We have timelines and charts. There is a meeting of the

ETPG tomorrow and we have spoken to Polaris again this morning about it just to double-check everything they have said and that it is all correct. If you would like us to help create a meeting where you could meet Polaris then we are very happy to do that so they can explain these technical standards and systems and routes they have to go through. They have already had to do some major engineering for other sectors like for flood insurance; the gender changes, where you no longer differentiate pricing on gender. Therefore, those procedures take time so they have some experience as to how much lead time all of this takes. Therefore, I am sure they will be very, very happy to talk to you or to answer specific questions. As I say, there is a meeting tomorrow - probably a little bit soon - but they are available at any time if we can help.

Q. (Mr Menis) Are the comments you have just made really to both the calculation of the average NCB discount and the implied price, or are they more specific to one of the two aspects of the remedy?

A. (Mr McLarnon) I am relative close to the way the industry is proposing to implement this. Therefore, the way the industry is proposing to implement this to ensure that customers get accurate information is the insurer, in the messages they send to the broker, will contain all the information you are requiring. Therefore, the insurer will produce what is the price, what is the implied price, what are the step-back scales, and what are the discount levels. That information will be sent through from what they call these quoting engines or in the EDI messages to the broker, and then that information, via the systems house to the broker, is populated in the scripts, on the websites and in the renewal letters. It is not a matter of some information is available earlier than other information, because all the information will come through at the same time all in the same thing. Therefore, it is a not phased implementation, which

could be someone saying, "Look, why do we not do half of it now and half of it later." I do not know whether would work or not, but I do not think for brokers, who have to provide all of this information, that would be an appropriate way of setting timelines. I think you have to give us time to all of it at the same time, if that was what your question was about.

Q. (Mr Garland) Is this a single piece of work across the whole industry or are there other pieces of work going on to explore implementation timescales?

A. (Mr Park) Obviously, the direct insurers have a slightly different issue to deal with, not quite as much complexity thankfully but still some challenges. I would say the draft timescale is very challenging even for a direct insurer; not impossible but very challenging.

The changes a direct insurer would need to make are less complex but, equally, they are not flat. It is not simply brochureware. If all you were talking about was a need for an extra piece of disclosure you could plug into your website or add to your policy documents, that is generally something we can do within six months. There is a degree of intelligence that is being required and dynamism that is being required here both in terms of the display of, effectively, the implied price of the Protected NCB. Also, the suggestion in the order is for a slightly dynamic approach to step-back information rather than a table that would apply to absolutely everyone.

Therefore, those two features do add a degree of complexity into the mix even for a direct insurer. I am not saying it is an 18-month job but 6 months would be very challenging given we would need to change it across every single distribution channel we have. There is web, there is mobile, there is phone and, you know, multiple brands, and so on. That is hard.

I would also just like to add I hope you will take seriously the comments about

conflicting regulation. It is not just information overload. I think as an insurer we are feeling very acutely the risk of dual regulation here. My first point is this is dual regulation, therefore, we are already regulated by the FCA in this area - the way in which we sell protected no claim bonus is regulated - we have to comply with our standards of conduct under FCA regulation, under ICOBS and, as both Hugh and Graeme were describing, the generic approach the FCA has been taking to that is, A, big improvement and, B, very radically different from what is being proposed here. It is not just it would overlap, it would directly conflict.

One thing you have given some scope for under the order is for us to provide alternative information if we believe there is a conflict --

Q. (Mr Garland) When you say directly conflicts does mean what it means or does it mean it is implementing an approach that is different? Conflict to me means if you do what we are requesting that would cause a compliance breach on the FCA regulation.

A. (Mr Park) It is a valid question because a technical compliance breach may not be what I am talking about. The approach to regulation from the FCA has been very much to challenge us in terms of are we communicating things in a way that enables customers to make good decisions, therefore, are the customer outcomes good. If we use a form of words that is confusing to customers we, therefore, feel that we have an obligation, under our regulatory obligations to the FCA, to improve that. Now, is it the case if I have a bad form of words that is slightly confusing to the customer I would go and say I am in breaching of ICOBS? I probably would not say that, but the approach to regulation is very much to put the onus on us to adapt that wording and adapt that disclosure in order to deliver better customer outcomes.

Therefore, there is a direct conflict in the sense we would be being required to stick to a form of words that we have evidence was confusing to our customers. Or in the example of the average no claims discount, if, for example, we knew the historic discounts were not reflective of what we were charging now or expecting to charge in the future, my compliance team would be advising me that was potentially in breach of ICOBS because it was misleading to the customer. Therefore, I would absolutely be expecting to have to change that disclosure. Therefore, to find myself in a position where I was faced with the choice between not complying with a CMA order or not improving something I knew was misleading I think would be a very uncomfortable position to be in.

Q. (Mr Garland) Therefore, it is more of a tension than a --

A. (Mr Park) It is a tension that could lead to a direct conflict. If it led to direct conflict we would clearly seek to make use of the alternative information provision. I think what I am saying is I am fully expecting to use the alternative information provision because I think it is highly likely the disclosure will turn out to be misleading and confusing once we actually deliver it.

Q. (Mr Garland) On the precise wording I think we have been open we have talked to the FCA about that and they have engaged in our consultation process. We have asked the specific question about the conflict with ICOBS and the clear message we have been getting is that does not cause a conflict as such. However, I think what you are saying is there is an interpretation: is it against the spirit of the ICOBS order?

A. (Mr Park) I would not expect the FCA to say there is a direct conflict but I think the expectations of an insurer, in terms of how the FCA Is regulating, would lead you down a very different path.

Q. (Mr Garland) Okay. You started by talking about the implementation issues for

direct insurers were slightly less complex than for brokers. My understanding is when the report was being finalised these points were made in submissions and it was something the group had taken into account when coming to its decision on the timelines for implementation. Have you been doing further work to explore what the practical timelines will be you could provide to us?

A. (Mr Park) Yes, bearing in mind even small changes to the detail of the order could change that. I mentioned dynamism and I mentioned the fact there is a difference between a single step-back table and a piece of step-back information that is correct for the individual customer. It is obvious the more detail you need to provide the more granular that detail is and actually the more prescriptive you are in the requirement the longer it is likely to take. There is inevitably going to be a trade-off. If we had some flexibility then we may be able to get things in quicker because we build on what we already have rather than having to build something new.

Therefore, we have taken the view we are worried about pressing the button on starting the project until the precise wording has been finalised so we have been doing contingent planning.

A. (Mr Trudgill) As is everybody.

A. (Mr Park) The reason why I was slightly vague in terms of whether six months was deliverable was because the truth is we could probably deliver something in six months, but we would not be delivering it with the level of control we would normally have on a change project involving multiple distribution channels, multiple brands and multiple points of disclosure. Therefore, if we were planning this change internally in order to deliver a business benefit we would be putting a longer timescale on it.

A. (Mr Trudgill) Just to say on your point earlier, the Electronic Trading Practices

Group is made up of Polaris; all the software house, of which there are half a dozen; brokers; and insurers, and the ABI and BIBA usually attend as well. Therefore, it is cross industry.

A. (Mr McLarnon) I would like to add an additional point. In regard to the cost of implementation one of the things we have concluded during our contingent planning at Swinton is if the deadline of 1 September 2015 does not move there may be things we could do at Swinton to try to generate partial compliance, work around stopping selling in certain channels - activities like that - that would add in extra cost - the cost of a partial transitional arrangement - which we would then, as the industry standards evolve, have to redo to comply with the industry standards. Therefore, by giving a false implementation deadline the larger firms, like Swinton, will be able to try to comply partially or in some parts of our business with the order to try to minimise the damage to us. That will be throw-away work.

However, by giving the industry more time what you do is you allow everyone to comply because in the short timeline smaller firms may find it difficult to adopt transitional arrangements because they may not have the in-house IT skills and they may not have access to the same systems we would have. Therefore, I think it is, in regards to the industry timeline, which we are speaking about from a broker point of view, important to consider if the timeline is not relaxed then what will that do in regards to who is able to comply and you will get partial compliance. However, in some respects, that partial compliance will be throw-away, which will bring extra cost into the industry, and, as one would often argue, the extra cost - at least in part - will end up with the customers. Again, I think it is not the type of outcome you are hoping for. Therefore, that would remove some firms from the market for a while and create extra cost for the

firms that remain. Therefore, again, I think there is an additional argument in thinking about the timelines to allow people to do the work properly, allow them to do it once, keeps all the firms in the market and keeps the cost of implementation down.

A. (Mr Trudgill) BIBA has had other well-known brands who are members that are not here today who are saying, "We cannot make that. We are just going to have to drop selling the protected option," which is not the right thing because ultimately customers who do have claims will then be paying more.

Q. (Mr Garland) Thanks for that. We have had quite a bit of discussion on timelines. Are there any additional points we need to make before we move on to another area? I think in general that was useful.

Moving on to the next area then. Is it worthwhile just touching on article 3 and the provision of the information and the wording of the information to be provided?

A. (Mr Savill) Yes. I have already made the point about the need for more flexible wording, though I suspect that may fall into the category of decisions already made. It would be quite helpful if you could be clear whether that is a decision that is already made or whether this is something you are still interested in hearing about.

Q. (Mr Garland) Yes. As you know, the CMA consulted on forms of information that should be provided to help customers better understand the position. There were various responses and in response to that consultation the group did make the decision it would take quite a prescriptive approach to the provision of information and what that should look like. I think in that regard it is quite important to bear in mind the FCA's review of the information remedy and the operation of that. They will be looking at this in a two-year window to

see how it is operating and then they could make recommendations to the CMA to amend or vary that.

It is a decision that I think will be quite difficult for us to change.

Q. (Mr Hampson) It is worth mentioning we have given some flexibility in schedules around making sure the wording of how you describe a no-claim discount matches the rest of the documentation. Therefore, in a sense we have been prescriptive but have tried to allow some flexibility to make sure it is related to the broader product descriptions.

A. (Mr Park) Does that mean the only flexibility relates to the alternative information clause, ie, if we believe we would be in breach of the regulation by using that wording?

Q. (Mr Garland) I think there is if you think you are going to be in breach of something else. However, the information we are requiring from providers will be a bit of a minimum. Therefore, you have to provide that, but if you want to provide additional information on top then there is nothing stopping that being provided and then --

A. (Mr Park) I am more talking about if the wording is misleading or confusing.

Q. (Mr Garland) If the precise wording is misleading from a particular circumstance or causes a breach of other regulations then the alternative mechanism is there.

A. (Mr Park) The breach is most likely to be a breach of the general requirement not to mislead customers. It is not likely to be a breach of any other specific regulation, hence, that is often slightly subjective.

Q. (Mr Garland) As I said, we have engaged on this question and the advice we have received is it would not cause a breach of those requirements.

A. (Mr Park) Can I ask a question as an example? In Schedule 1a, paragraph 1a:

"No claims bonus protection does not protect the overall price of your insurance policy."

That is pretty clear and I do not think anyone has a major problem with that. The second half of it says:

"The price of you insurance policy may increase following an accident even if you were not at fault."

Aside from not being totally clear what that clause is trying to achieve, what I think it is getting at is that many insurers will load a price because the customer has had a claim independently of retaining their no claims discount. That is what it is getting at.

What happens if you are talking to an insurer that, for whatever reason, decides not to load for having a claim? Do they have the flexibility to remove that statement because it would be misleading in their case? However, that is a subjective point because it is partially true in their case, because what the customer is protecting is a tradable asset so they can take it to someone else. It is not a black and white question and, again, if I were going to my own compliance department for advice they may well advise me in that instance, if I were not loading for claims, it would be misleading to include that sentence. Is that an absolute breach of ICOBS? I do not know, but it is those sorts of conflicts I think are very real.

Q. (Mr Hampson) As you said, that might reflect the broader market position. Could you add a further sentence: "However, our policy is great. We will not …" If that is the offer, could you not make that clear with the additional information you can provide?

A. (Mr Park) That was just one example. You could add further, further and further disclosure in order to undo the misleading effect of the required disclosure, yes.

A. (Mr Trudgill) This is why we suggested the FCA, the information working group and the Behavioural Economics team at the FCA, who look at what customers understand, would benefit if they were to have a look at this. We did submit just before Christmas a slightly refined wording - I did not read it all out today - just to make it a little bit clearer. 1a says what no claims bonus does not do, it does not say what it does do. 1b sort of says what it does do but I think, as Gus has said, it is difficult to put a square peg in a round hole and it just could be refined and widened out a bit.

What Hugh said at the very beginning about it is more about the outcomes that the customer is getting something the regulator would think probably explained it. That is the place where we need to be for the customer, but to suggest this way for us to fit everything for every customer and for every policy is a very difficult thing. Certainly, when we in our technical team went through the wording as it stands we felt it was slightly imperfect, shall we say. Therefore, if there is any way to still revisit that we would welcome that and we would send you some further ideas in our written submissions.

Q. (Mr Garland) Please tell me if I am wrong, but I think where we are in terms of refinements to the prescription of the information to customers, as long as it still achieves the effect of the decision, we are certainly open to hearing those such suggestions with explanations of what the problem is that exists in this version and why the refinements would address that problem.

I think what we would have difficulty in is taking a more principles-based approach and removing the prescription. These issues were discussed by the group in coming to its decision. Therefore, it is quite difficult to go back and change that because the time for changing a decision has, if you like, passed.

A. (Mr Savill) I have seven questions of clarification. Before I embark on what is

necessarily some other detailed points, and they are points of detail and clarification, do you want me to embark on that or would you prefer, which may be simpler, to wait until you get our written response to this?

Q. (Mr Garland) If they are relatively short I think embark on them; no promises we will be able to answer them. However, if they are quite easy to respond to - -

A. (Mr Savill) No, I quite understand. I will go through them really quickly so you can note them down and if you have any questions about them then I can answer them, but otherwise they will, of course, be written down.

Firstly, there is a question of guaranteed no claims bonuses. I think we have raised this before. If you have a guaranteed no claims bonus that means the consumer's premium is not affected, even if they are involved in an accident, we are looking for some clarification on how that is handled in the step-back procedures.

Second point is about whether these tables are talking about generic tables or tables that apply to the circumstances of the individual customer. I think the context implies these are generic tables but, equally, the way it is calculated begins to move into the realm of something that will require information from individual customers. Therefore, it might be helpful to look at that language also.

Third point is on pop-up windows and links. Again, you have helpfully clarified where these might be permitted. Generally there is a preference for links among our members as being less intrusive. However, we are not actually quite certain whether these can be used interchangeably or whether, in particular cases, you want a pop-up window and in others you particularly want a link, because the words are used in different contexts.

The fourth point is on calculation. Again, thank you, there is a lot, particularly in the explanatory note, that makes it clearer how this is to be calculated. There is still some uncertainty about how this might work in practice because, as the wording currently stands, the implied price of protection and the two generic tables are to be prepared by the carriers and then provided to the brokers, but in the next paragraph of the note it states the implied price of protection is to be calculated by the brokers as well as the insurers. Therefore, there is a certain element of confusion there.

Fifth point is on terms and conditions. Sometimes the broker creates their own terms and conditions so it is the broker that creates those and not the carrier. Therefore, a little clarification of that eventuality would be helpful.

Sixthly, we look at the definition of PMI broker. It is not the same as the one in the insurance mediation directive. You might want to look into whether you wish to use deliberately a different definition to the one that is in the major European Union directive on this issue.

Seventhly, and thank you very much for your patience, it is a question of the definition of the products that are covered. At the moment you excluded motorcycles but everything else that false under the Act is included. I am just looking for clarification whether that is the case, for instance, my members say, "What about vans?" Some vans are private vehicles, some of them are fleet vehicles. In a way, the same sort of question as motorcycles. I will shut up there and that is the list.

I really would not expect a detailed answer on all of them, even for a lawyer!

Q. (Mr Garland) Maybe I will start with a couple and, again, tell me if I am speaking out of turn. The pop-ups and links. I think our general approach is they are interchangeable, but there might be certain places where we do have a

preference for a link, but I think to the extent that is the case we should try to make that clearer in the final version.

I think the point on the broker versus insurer and the implied price is it is for the insurer to do the calculation but then in the provision of the information to the customer - so the insurer will provide the information to the broker - because the broker is selling to the customer they then have their own fee, for some reason, which changes the insurer's implied price. Therefore, the implied price to the customer is different than it would be if there was not that additional fee. Then they should add that on and calculate a new implied price.

I do not think it is anything more complex than that

Q. (Mr Menis) Yes, it really depends on the arrangements at the broker's end. Depending on the model, the responsibility for calculating the implied price might change. We might need to clarify this.

A. (Mr Park) Can I just go back to the links and pop-ups? Sorry. I would like to request we show a degree of flexibility here because various people have mentioned before different mediums and different channels of communication. Obviously, a website on a large PC is a very different thing from a mobile phone, so I think the more we avoid specific prescription on links versus pop-ups and more we focus on the outcomes the better. I think you have done wording in, for example, part two, paragraph 3.4, which is actually quite good because it is talking about outcomes:

"In this Article 'prominently' means providing the requisite information: (i) in a manner that ensures, so far as reasonably practicable, that when the prospective purchaser assesses the NCB Protection Offer as a whole, it is reasonable to expect that the prospective purchaser's attention will be drawn to the information."

That is the sort of thing that is about the outcome but it may well be how you deliver that, whether technically through a link, a pop-up or whatever else might come in between it, that will evolve over time and that really should be for us to determine what is the best way of delivering it.

A. (Mr Hall) I would just add, given the amount of online journeys and the extent of user experience testing that goes through various websites, the notion of having something that just does not fit through that yet it is suddenly just forced in just does not fit from a customer perspective. Therefore, I would entirely agree the outcome is what we are after and try not to be prescriptive it has to be this, because there could be implications on a journey that has been planned.

Q. (Mr Garland) I think that is generally where we are trying to come from this, unless there is a specific reason we feel we need to be more prescriptive. I think you are right that sometimes we are using the word link where it does not have to be a link.

Q. (Mr Mew) There was one stage before publication of the final report when we were trying to think through how do we do this. We were being asked to think should we be prescribing the exact font and size and colour and all the rest of it because if you do not then the insurance companies will say, "We do not know if we are complying or not," and we thought, "No, that is just ridiculous." Therefore, we have tried to move away from that.

A. (Mr Park) To back that up, having sought to interpret the consumer credit directive, the danger of the word prominently without defining it, in terms of the outcome, actually leads to a very, very difficult situation to comply with because you do start looking at font sizes and no one actually really knows whether they are compliant or not, frankly.

Q. (Mr Garland) Apart from the seven things that were there, is there anything else we can provide initial feedback on?

Q. (Mr Hampson) Yes, you are right, the tables are generic. You are right that you can either be calculating the average across all premiums underwritten or on particular subsets, therefore, there may be different tables, and the level of detail you go into will increase the level of tables, or even the number of tables. However, no, it is on a generic basis.

Q. (Mr Menis) Under the terms and conditions, if they are created by the broker, this probably implies the responsibility then falls on the broker because it is the entity that controls that part of the information.

Q. (Mr Garland) We will have to check the one on the vans point.

A. (Mr Savill) We can send you a picture of one!

Q. (Mr Hampson) What was question six? Sorry.

Q. (Mr Garland) The definition of PMI broker different from --

A. (Mr Savill) Yes, it is the definition of the PMI broker which is not the same as in the insurance --

Q. (Mr Hampson) It is something we thought about. We think there are some brokers who are caught by the directive we might not want to capture given the scope of our inquiry; so someone purely providing advice. We will keep thinking about whether that is quite right.

A. (Mr Park) Can I ask an eighth question? Sorry. In 3.5 the alternative information says insurers must provide and notify the CMA and may apply for a direction. Is that meant to mean we do not need explicit permission to provide alternative information, we just must tell you what we are doing and why we are doing it, and confirm we are still complying? Is the distinction between must and may very deliberate there?

Q. (Mr Hampson) Yes.

A. (Mr Park) Yes. Thank you. By applying for a direction we are effectively asking for your views on whether or not we have interpreted this appropriately. In other words, it would be advisable, possibly, for us to check before we implement something with alternative information because if you were to deem us to be non-compliant we would, therefore, be in breach. Is that right?

Q. (Mr Hampson) Yes. If you submit information to us and we look at it and think you are in breach - I am sure we will let you know.

Q. (Mr Garland) We have spent, again, a bit of time on article 3 and I think we have --

A. (Mr Trudgill) Could I just ask what was the guaranteed bonus answer? We have asked that in our opening statement and Hugh asked it as well.

Q. (Mr Hampson) We have talked about it quite a lot. It seems as if there are two different products here, a product that guarantees the premium is the same, is that the one we are talking about?

A. (Mr Trudgill) No, it guarantees your number of years and percentage discount. It does not get stepped back. Therefore, it means a step back does not start but the premium could still go up because you have a claimed experience loading.

Q. (Mr Hampson) In that case you are effectively describing a model where there is no step back.

A. (Mr Trudgill) Therefore, you still have to do the different pricing disclosures?

Q. (Mr Hampson) It is something we will take away and think about.

Q. (Mr Garland) Yes. I think we have about half an hour left. Of the areas we have set out in our invitation we still have a couple of points. One is on the prohibition of wide MFNs and equivalent behaviour and then monitoring.

Therefore, shall we move on to MFNs?

A. (Mr Trudgill) Yes, I think we have some members here that were particularly concerned about MFNs. Chaps, do you want to come in?

A. (Mr Hammond) Yes, we are particularly concerned with the definition of equivalent behaviour and that it is kept wide enough to encompass behaviours that may be forthcoming from price comparison websites who are keen to exercise greater control on pricing.

A. (Mr T Hughes) I think I would reiterate that point. I had a couple of questions in terms of the explanatory note. One was actually about number 50 where it essentially says, "The Report identified …" we wondered if it could be a bit more prescriptive in the sense of has identified in the report and then equivalent behaviour can include. We also wondered if we could have as many examples as possible of equivalent behaviour within that.

The other question I had was on section 54 within that where you talk about that you may publish guidance on equivalent behaviour. I wondered if there was going to be any formality around that or regularity as to how that might appear.

Q. (Mr Garland) In terms of the purpose of the equivalent behaviours, certainly the approach was we could have your MFNs on price but then you could do other things to generate the same outcome and we were aware of that. Therefore, that is why we have put the equivalent behaviours in there. Our intention is to have quite a wide interpretation of that. We can certainly think about the extent to which we can put more information in the explanatory note and more examples of what those equivalent behaviours may include.

On guidance I think I am right in saying our current position is we will keep that under review. We are not intending to publish guidance in advance of the order

coming into effect, but we would keep that under review and see if it is something that would be useful to the industry once the prohibitions come into effect. I think it would be largely driven by the extent to which equivalent behaviours are being used when coming into practice. We might want to put something out there.

A. (Mr Park) Therefore, you might be open for us coming to you and saying, "These types of equivalent behaviours are still going on," and would you might consider putting guidance out using those examples of the sorts of things you are trying to capture?

Q. (Mr Garland) Yes, in some sense the explanatory note and the decision provides some guidance on what equivalent behaviours are and what is and is not allowed. The question is: do we go into more detail on that? If equivalent behaviours, or complaints of equivalent behaviours, are coming up, well, I think in the first instance we will have to investigate those to see if it is a breach of the order and consider whether there will be merit in putting some guidance out there for parties.

A. (Mr Park) Is there a formal complaint mechanism? One of the issues here is the compliance burden falls primarily on the price comparison website. They need to self-declare their compliance and there will, I am sure, be instances where we believe they are indulging in equivalent behaviours and they do not. Now, the benefit of having those examples listed is we can simply turn round to them in negotiations and saying, "I am sorry, that is an equivalent behaviour, we cannot even talk about that," but there will still be instances where opinions differ but the burden upon them is upon them to declare compliance. Is there a formalised route for us to suggest you investigate or is that an informal mechanism?

Q. (Mr Menis) Well, we have a team for the monitoring of remedies so you can contact this team.

A. (Mr Park) it is an informal "get in touch and tell you what is going on".

Q. (Mr Menis) Yes.

Q. (Mr Garland) Yes. To the extent to which any of the orders or undertakings that the Competition Commission or the OFT have put in place, if somebody suspects somebody who is subject to those regulations breaching them, the process is they write to the CMA, inform them of the suspected breach and provide evidence of that. Then the CMA would inquire further, talk to parties if necessary or go back and request any further evidence and information. Then they would start to investigate. It is a formal process but it is not so much there is a form to fill in.

Q. (Mr Hampson) On the point on paragraph 50 of the explanatory note, as you said, we have chosen to repeat effectively what is in the report. We heard the request before to go further and give a longer list. I guess it is a legal point that the longer you make the list the more prescriptive it looks and the more behaviour outside that list appears as a presumption we have decided it is okay. On the counterfactual there is something to be said for having what is in the report and that wide interpretation available.

Q. (Mr Jamieson) I think the report allows for the same right to give directions on compliance. Therefore, in response to queries about compliance, we can give directions if appropriate.

Q. (Mr Garland) Anything else on MFNs?

A. (Mr Springthorpe) If I can just add something. There obviously comes a CPA with trading on comparison sites. Do you feel it prevents brokers being able to market themselves from a direct perspective and, therefore, provide a more

competitive rate? I am interested in your views on that.

Also, are you aware there are certain schemes offered by insurers that we are, as a broker, unable to display on comparison sites for various reasons, which, therefore, then prevents us from being able to offer the best price? The only way in which we can do that as a broker is offline via the telephone, which, again, comes at costs and, obviously, does not enable us to be as competitive as we perhaps can do on our own direct websites.

Q. (Mr Jamieson) In terms of your first point a lot of the issue is covered in our report. We had to balance out the difference between inter-brand and intra-brand competition and that was a decision which was made, ultimately, in the final report. Therefore, in that sense it is not we have ignored the issue, it is one where a decision has been on the final report trying to balance out different considerations. Sorry, could you repeat your second point?

A. (Mr Springthorpe) As a broker we will represent a panel of different insurers and certain insurers may offer bespoke schemes to us as a broker to promote. These schemes will be, maybe, competitive dependent on the risk. What they may say is we are not able to present those prices through comparison sites and, ultimately, it would be far beneficial for the consumer to be able to look at a wider network. They obviously go to direct writers but also brokers can have more competitive rating through these schemes. Therefore, what I am trying to say is the only way they can access that rating, if we follow the ruling, is by offering that rating over the telephone.

Q. (Mr Jamieson) Therefore, this is a rate that is because the underwriter is unwilling to write it on PCW business? Your price on your websites would be, by definition, different to the one on the PCW because it includes a different underwriter, for instance.

A. (Mr Springthorpe) Essentially, yes. From a consumer's perspective, we are all clear 70 per cent of the retail insurance consumer prefer to purchase online. Therefore, we are excluding those people.

Q. (Mr Jamieson) Can we go away and think about that? However, in certain respects, I think the point about the decision made in the report did consider the different considerations of inter-brand and intra-brand competition, so we are trying to balance the issues of competition between channels and competition between products. That is essentially what the report looked at. Therefore, in one sense, it is quite similar to considerations we have made.

A. (Mr Park) Can I ask one more question on MFNs? We fed back previously a question about article 5, paragraph 5.1, says:

"A Designated PCW must not engage in any course of action (including entering into contractual terms or engaging in unilateral conduct) which has the object of replicating any of the anti-competitive effects of a Wide MFN Clause (Equivalent Behaviour)."

I do not know whether this is true legally but 'object', to me, has an implication of intent and I would have thought 'effect' would be a far more powerful word, because presumably a PCW said, "It was not my intent to replicate these," "My object was not to replicate those effects," and it may be the effective way of doing it is exactly that. I do not know whether you have considered that.

Q. (Mr Garland) We very much considered it. Why did we come out with 'object'? Maybe James can add to this, and correct me if I mislead. It was considered whether it should be object or object and effect. Where we came out of it was we thought there were some things the PCWs could do that were perfectly rational and competitive that might have an effect, which, in another area, was anti-competitive in effect, but did not have that as a subject because its object

was something else in a different area and it was pro-competitive there. Therefore, it was very much weighing up whether to try to shut down behaviours that were overall good.

Q. (Mr Menis) We considered this at the time of the report and we used a slightly different wording in the report – “to seek to replicate the effect of a wider MFN clause” – and seek, again, has an element of intent. This is a decision we have made at the report stage.

A. (Mr Park) I would worry that softens the effect of the clause quite considerably and gives a pretty easy get-out. I understand the point, although I cannot quite think of the circumstance you are talking about.

Q. (Mr Jamieson) For instance, let us say a PCW delists an insurer who is being non-complaint for, let us say, a narrow MFN. Now, it could be argued it might be the insurer decided her particular way of operating meant they ended up pricing the same on different PCWs. If that is the insurer's choice then it may be that it looks like it was replicating the effect. Actually, the object was, in this particular instance, the narrow MFN because the insurers were not complying with another clause, which is actually legitimate for the PCW to enforce.

We are not trying to get involved in every area of contract negotiation between an insurer and PCW, but if there are things in the existing contract between an insurer and PCW that the PCW has the right for redress from the insurer, we would not want to intervene in that sense. That is why we went for object rather than effect because the object might be another part of the contract and it has an effect in this way. We were not trying to target that type of behaviour. We were trying to target the wide MFN.

A. (Mr Park) Therefore, if they were to say, "My object clearly was not to have an anti-competitive effect but my object was to maximise the value propositions for

my consumers," which is a line they may well use, you could quite easily imagine a PCW saying, "The value proposition to my consumers is supported by having the best prices in the market, therefore, I demand price parity."

Q. (Mr Menis) The type of assessment we would carry out would not be based on what the PCW is saying, or not explicitly, we would try to pierce the veil of the relationship between the insurer and the PCW and try to understand what is the real reason behind the behaviour of the PCW. That will require us, or a court, to make a more complex assessment.

A. (Mr Park) Yes, indeed. We would hope, though, for this clause to have effect without you needing to intervene, and my concern is the combination of the softening of this wording and the compliance requirement - the burden falling on the PCW primarily - is it makes it very easy for them to say, "I am complying. I did not intend anything different," and we would actually have to actively approach you in order to challenge that, which immediately already is a very dangerous thing for us to do from a commercial perspective. That is a last resort from a commercial perspective as you can imagine these are our distribution partners we are trying to work with and we need them to cooperate with us in multiple ways in order to update things, do promotions to customers, whatever it might be.

Q. (Mr Menis) We understand that, but this is a discussion we had with the group when we decided on the report and this is what we came out with. Therefore, we did not want to have very strict rules that would ban certain behaviour as such.

Q. (Mr Garland) I would not classify it as a softening of the language. I think it is a slight change in the rough plan, which, as Pietro said, the previous language in the report was talking about behaviours that sought to replicate, which we

thought we would try to clarify to make it about object rather than just creating effect.

A. (Mr Trudgill) While we are on comparison sites, could we just raise that point about the designated PCW? We have in here the requirement to have 300,000 sales before they have to comply with this. Now, PCWs have the same FCA insurance intermediary permissions as insurance brokers do so they are considered insurance intermediary. The FCA do not have any different definition for a PCW. A broker is an insurance intermediary; there is no FCA definition of a broker. Therefore, they have the same permissions.

If a few customers have to comply, why does a firm with the same FCA permissions not have to comply unless they have 300,000 customers because that is a very big number? It just seems to be an unlevel playing field and, bearing in mind your remit, it just seems to be a strange decision. I do not know what the thought process was to get to that and why these firms with these permissions are getting an exemption.

Does it create some sort of conflict because they are considered insurance intermediaries? Are they not automatically caught?

Q. (Mr Jamieson) Sorry, are you wanting all brokers as well as other PCWs to be --

A. (Mr Trudgill) Not that. As we understood it brokers were caught --

Q. (Mr Jamieson) By the designated PCW?

A. (Mr Trudgill) Are you saying all brokers, no matter what business they transacted, were caught by this or are you saying brokers --

Q. (Mr Jamieson) The intention was not for brokers to be caught by the designated PCW.

Q. (Mr Hampson) We are not saying brokers are PCWs.

A. (Mr Trudgill) No, we are not. Sorry, let us start again. At the moment any broker that sells one policy is caught by everything you want in here, yes?

Q. (Mr Hampson) Yes.

A. (Mr Trudgill) However, a comparison site is not. The comparison site has to sell 300,000 --

Q. (Mr Jamieson) No, the ban on wide MFNs is across the industry. The prohibition on equivalent behaviour is specifically targeted at the larger PCWs, those with sales over 300,000.

A. (Mr Trudgill) Why?

Q. (Mr Jamieson) Why? Because when we looked at modelling, which is in the report, we found the threat of delisting was almost gone once sales were below a certain level. Therefore, the threat of delisting is not anywhere near as credible when you get to that stage. When you have a larger PCW our modelling exercise actually found it looked like a significant problem, hence, why this is only targeted at the largest PCWs not every PCW.

Now, if there is a current PCW that has a number of sales that goes and goes over 300,000 then they start to get caught by this. Therefore, what we are trying to do is trying to look at where the problem is likely to arise. We thought MFNs were likely to be a problem across the industry for the reasons set out in the report. The equivalent behaviours, whether those would be effective, we thought actually insurance providers would have a degree of negotiation power when it comes to a smaller PCW and then threatening to delist did not seem anywhere near as credible a threat.

That was what our modelling exercise found. It was that for the larger PCWs there was a problem; for smaller PCWs we could not quite see where the problem would lie. Therefore, it was trying to be proportionate in that sense.

Q. (Mr Garland) Therefore, the distinction here is only in part three of the order. The prohibition and wide MFN clauses apply across all price comparison websites. It is only this equivalent behaviour that applies to the larger ones but not the smaller ones.

Q. (Mr Mew) In part three the PCW compliance statement is only for designated PCWs.

Q. (Mr Garland) Yes, and the compliance statement was only for the designated as well.

A. (Mr Trudgill) Okay. It is just those 300,000 is a significant number of customers, so if you had 250,000 you would not be caught but it is still a massive number of customers.

Q. (Mr Garland) However, by the equivalent behaviours. I think what James is saying the modelling around that was thinking about the incentives on those smaller PCWs. We do not think those equivalent behaviours will materialise or become an incentive to start delisting. We have a duty to be proportionate in where we put in place our remedies. Therefore, if we have a set of firms in a market that we propose to put a remedy on but that does not have any impact on them, then we have to take that into account. If those smaller PCWs grow to above 300,000 then that would start to apply.

Shall we move on to the monitoring? Again, I think this came up in one or both opening statements.

A. (Mr Savill) Yes, it is quite simple. I think we prefer the monitoring of the NCB aspect of this order to be direct to the FCA on the grounds they have a lot of other reporting that goes to them; it makes sense this is integrated. The MFN reporting logically comes to you.

A. (Mr Trudgill) Absolutely. The architecture is already in place, it is well proven

and it dictates where the FCA feel they need to take any action by what comes on the RMAR reporting so it seems a sensible home for this rather than to have a whole separate reporting system to a separate organisation, that it is all managed in the existing regime.

Q. (Mr Garland) I think on this the group did consider where the right place for the monitoring to go to, whether it was the FCA or the CMA, and I understand when we were having those discussions with the FCA about that, the decision was the best place at this point in time is for that monitoring to come to the CMA. Part of the reasoning for that is because we are asking the FCA to undertake a review we thought it would be best in the initial period the monitoring comes to the CMA. We can then engage with the FCA in its review of the operation and then it would be open to the FCA, if they thought it appropriate, to then take over the monitoring on an ongoing basis.

Could that have been done differently? Well, clearly, it could have started off at the FCA but the group's decision was at the initial stages at least the CMA should take on the monitoring requirements.

A. (Mr Trudgill) Maybe it is too late but could it be the FCA gather the information in the way we currently do it and then report it to you? It is only the burden of having a whole separate reporting system. It seems unnecessary red tape when we have a red-tape challenge from Government and --

Q. (Mr Garland) Right. Where I am is I do not understand what the red tape additions are from sending a report to us versus sending it to the FCA. I think if you could set that out in your formal report then that could be helpful. Others might be able to help because that might have been discussed prior to the decision, as in the mechanics of the reporting, or was it not?

Q. (Mr Menis) Possibly.

Q. (Mr Garland) Did you make submissions on that prior to the --

A. (Mr Trudgill) We had stated we had felt it was the easiest thing for everybody that it did go to the existing regulator, the regulator that is there to deal with the insurance industry, the super regulator. To then have one particular area to report to someone else is a whole new area of responsibility, new reminders, new timescales, it just seems unnecessary when it could just fit in to the system that works and the industry is experienced in doing it. Therefore, just cost effective. When we look at what the regulator John Griffith-Jones has said, he has called for smarter value-for-money regulation and it just seems that would be a sensible thing to do rather than have another separate regulatory reporting line.

Q. (Mr Menis) Just one point, it is the CMA's remedy and, as such, we have an obligation to keep it under review and to monitor it. Therefore, we could not simply wash our hands and pass on the entire remedy to the FCA. We can certainly take your views on how to alleviate the process but, in the end, we need to have access to this information as well.

A. (Mr Trudgill) I understand.

A. (Mr McLarnon) Do you know how many firms fall within the scope of the remedy? Just out of curiosity.

Q. (Mr Menis) Well, certainly more than 100 of the insurers.

A. (Mr McLarnon) I would have thought around 5,000, I guess. How many brokers are there?

A. (Mr Trudgill) Probably about 3,500 insurance brokers.

A. (Mr McLarnon) Therefore, another few hundred insurers.

A. (Mr Trudgill) 500 insurers and then you have car dealers that would be selling this, all sorts of other intermediaries with FCA permission, so you could be

having a lot of work and greater cost.

A. (Mr McLarnon) It is a lot of envelopes to open!

Q. (Mr Garland) I am sure one of our colleagues will be okay with that!

Therefore, going back to the opening statements, I think I am right in saying we have covered everything you have raised and we have also covered everything we have set out in our email. Is there anything else you think we need to be aware of?

A. (Mr Park) We only very briefly touched on the calculation of average discounts, but I do not think we should underestimate how difficult it is and how many choices actually you have to make in saying what an average discount actually is. Graeme mentioned in his opening statement many insurers will not just have a single NCD scale, they will have a range of two-way interactions, possibly three-way interactions. There is also the complexity that in theory this appears to apply to your whole book - your renewal business and your new business - but the complexity in calculating what a no-claims discount was on the renewal book is pretty extreme, particularly where insurers apply floors-and-ceilings or caps-and-collars to protect customers from volatility in their pricing in the year-on-year changes. it is actually not a simple technical question to answer: what is the discount that was applied in that case?

A. (Mr Trudgill) The risk of us getting it wrong.

A. (Mr Park) So, I would be concerned about signing a compliance statement saying, "This number I have provided you with is accurate," not because I it was not or because I was trying to mislead but simply because there were a lot of subjective decisions to make in how you would interpret that. Actually, technically, it may even be impossible to provide an accurate answer to that question, particularly on renewals. Therefore, I would like to think a bit more

about that and put something in our response. However, either a bit more flexibility, again, with the outcome being a meaningful and not misleading set of numbers for the customer, either that or a narrowed scope in some sort of way, for example, so it would apply only to the business prices so you would remove the challenge of trying to work out how to calculate the renewal discounts. Sorry, did that make sense because it is a bit of an intricate subject?

Q. (Mr Mew) I am not quite sure I understand what the technical difficulty is because maybe I am being overly simplistic. However, if you think on any policy in any one year there is a percentage no claims discount --

A. (Mr Park) Well, no, there is not one. This is why. Number one, there may be several different ones that apply to different people because of interactions of different things --

Q. (Mr Mew) No, for any one individual policy. For one driver there is one percentage no claims discount that he or she receives.

A. (Mr Park) Yes, but even if you were to ask me what that was for my renewals last week I do not think I would be able to tell you the answer.

A. (Mr Trudgill) It might change throughout the year as you --

A. (Mr Park) Because not only is it different for everybody but it interacts with other things so you cannot get to the answer of exactly what the actual discount was. Then we would apply the floors-and-ceilings which could change the answer further, but that is applied to the whole premium, not just to the no claims discount component of it.

A. (Mr Trudgill) Therefore, for a broker to consider the three tables, the different ages and the different discounts from 30 or 40 insurers to get an average is quite a task, and they will change those factors over time as well. Therefore, the ability to be accurate is a very difficult one to be certain of and we do not

want to fall fowl of someone saying, "Well, we do not feel that average amount you have given is accurate," and it is a risk of getting it wrong.

Q. (Mr Mew) When you send us your written submission I think you need to explain in detail what the technical difficulties are because I think the way we were looking at it is - and I appreciate you have different no claims discounts - 35-year-old drivers can have different NCDs for loads of different reasons, and I understand that, but an individual 35-year-old driver will have one NCD on his policy in a particular year --

A. (Mr Park) However, that implies you are able to calculate what his premium would have been without it. That is technically what we would not be able to do particularly on the renewal business. We will explain in writing why and we are happy to have another interaction about it.

Q. (Mr Mew) Forget the renewal for a moment, on his existing policy that is in force there is one figure for the NCD he is enjoying that year. All we are saying is you add those up and divide by the total number of policies you sold in that year to create the historic average. Yes, there may be collars on the premium you are willing to charge on renewal but we are just asking you to give the historic average NCD discount for a driver with that number of years of NCD.

A. (Mr Park) Which is exactly why it would be much simpler and more accurate to do that for new business because I do not have the complexity of the floors-and-ceilings and caps-and-collars influencing that equation. You are absolutely right, and I am agreeing with you, you could divide out the average of exactly what was applied to each individual, even if it is different for different individuals, on new business. It is doing that on the renewal book where our ability to do that accurately is compromised by the floors-and-ceilings.

Maybe I am trying to be too accurate. I am concerned I want to be compliant,

if we have to be complaint, and I am just concerned about my ability to say with 100 per cent truthfulness this is the exact figure as opposed to something that is correct, in the sense we have taken it out of the model, but subject to various other things, which I cannot necessarily measure.

Q. (Mr Garland) I think it would be useful if you could put that in your written response so we could consider it.

Are there any other issues we need to cover before we wrap up? No?

Therefore, as I mentioned, this meeting was to discuss the implementation issues. Personally, I think it has been a good discussion and I certainly have got a lot out of it so thank you for your time and contributions.

We will take these issues back to the group and, as I said, we will share the transcript with them. We will then have your written submissions to the consultation and we will discuss with the group how to take this forward.

Depending on the points, and any material changes we need to make, if there are no material changes we would seek to have the order in place by 1 March 2015. If there are material changes required we would hold a short further consultation, which may delay some of the implementation dates. However, we will keep you informed of that as we go along. Therefore, thank you very much.

A. (Mr Savill) I would like to thank you because I think we requested this meeting, so it is for us to thank you very much for making the time available with such a broad spread of your experts here. Therefore, thank you very much for that.

Q. (Mr Garland) Thank you.

Key to punctuation used in transcript

--	Double dashes are used at the end of a line to indicate that the person's speech was cut off by someone else speaking
…	Ellipsis is used at the end of a line to indicate that the person tailed off their speech and did not finish the sentence.
-- xx xx xx --	A pair of single dashes are used to separate strong interruptions from the rest of the sentence e.g. An honest politician – if such a creature exists – would never agree to such a plan. These are unlike commas, which only separate off a weak interruption.
-	Single dashes are used when the strong interruption comes at the end of the sentence, e.g. There was no other way – or was there?