



**Competition and Markets Authority Investigation into the Motor Insurance Industry –  
Formal Consultation of the Implementing order and Explanatory Notes (Dated 7  
January 2015)**

**Response of the Association of British Insurers**

**1. The ABI**

1.1. The ABI is the voice of insurance, representing the general insurance, investment and long term savings industry. It was formed in 1985 to represent the whole of the industry and today has over 300 members accounting for some 90% of premiums in the UK.

1.2. The ABI's role is to:

- be the voice of the UK insurance industry, leading debate and speaking up for insurers;
- represent the UK insurance industry to government, regulators and policy makers in the UK, EU and internationally, driving effective public policy regulation;
- advocate high standards of customer service within the industry and provide useful information to the public about insurance;
- promote the benefits of insurance to the government, regulators, policy makers and the public.

**2. Executive Summary**

2.1. Please note that unless stated otherwise, defined terms stated within this response are to have the same definition as stipulated in the CMA Private Motor Insurance Investigation Draft Order.

2.2. We note that the CMA has taken on board some of the points raised in our response dated 11 December 2014. However there are still a number of areas which remain unclear and/or to which the CMA has not provided a response, and it is crucial that the CMA provides clarity when publishing the final Order. Given the significant

concerns expressed by insurers, brokers and other stakeholders, it is disappointing that the CMA's general position is unchanged.

- 2.3. Insurers are concerned that the implementation deadline has remained as 1 September 2015, although we are relieved to note that the CMA are open to discussion regarding this point. Software houses (SWHs) have a fundamental role in implementing the changes for many insurers, and have made clear that they will not be in a position to implement the changes for around 18 months from the publication of the final order. As such full compliance with the current deadline of 1 September 2015 is not merely a challenge for many insurers and brokers; it is impossible. It is vital that the CMA meets with SWHs to understand the complex and time-consuming processes which are necessary to ensure full compliance with the Order. At the very least, the CMA should take note of the responses from the individual SWHs which set out the likely timescales for implementation.
- 2.4. We note that there is no provision for flexibility regarding the wording of the NCB Protection statement. By providing consumers with a rigid wording, they are less likely to take in the information being provided to them. In addition, insurers each have different ways and styles of presenting information, through a variety of sales channels. The CMA's insistence that all insurers repeat the NCB Protection statement verbatim, without the ability to tailor the wording to best fit the customer's journey, will not enhance the consumer's experience.
- 2.5. Clarification is required on the situation regarding the products which provide the consumer with a guaranteed NCB i.e. a benefit which, irrespective of the number of claims submitted, ensures that the NCB entitlement is not affected. We cannot see that this has been dealt with in either the order or in the explanatory notes.
- 2.6. Insurers strongly remain of the view that the responsibility for the proposed NCB protection remedy should be given to the Financial Conduct Authority (FCA).
- 2.7. The ABI is supportive of the MFN proposals and implementations timetable as set out in the order and explanatory note.

### **3. Implementation Deadline for the NCB provisions**

- 3.1. The ABI and its members are grateful that the CMA has requested additional information/evidence regarding the implementation timeframe put forward in the report with regard to the NCB provisions in the order.
- 3.2. As we stated in our response to the draft order, we suspect that the September 2015 deadline was based on over-simplified assumptions about the number of processes that will have to be completed by different parties before implementation can be achieved.
- 3.3. In the intermediary market, it is the SWHs which largely dictate the timescale for implementation of the new (or providing upgrades to existing) IT systems and therefore the insurers and brokers must implement the changes through the SWHs timescales.
- 3.4. We repeat the likely processes which will need to be undertaken before PMI Providers are able to comply with the requirements in relation to NCB Information. The SWHs cannot begin to consider any changes until each has its final specification (based on the CMA's final detailed published requirements). PMI Providers will first need to consider exactly how their solution will look (which will vary for each website as they will have their own interpretations). Until all PMI Providers have done this, the SWHs may not be able to start their work. This phase alone is likely to take several months.
- 3.5. Once individual PMI Provider specifications have been finalised, the SWHs will need to design an infrastructures which can make the whole process work. This is likely to fundamentally change their IT infrastructures. For example, they may well need to call each insurer's rating engine twice just to calculate the implied price of the Protected NCB.
- 3.6. SWHs will also need to build and test each PMI Provider's solution. They will need to test this for each PMI Provider individually, as well as ensuring the correct Protected NCB price, wording and documents are flowing through the process correctly. They will also need to test, for example, changes to the NCB tables and verify the process updates correctly. Again, this is likely to take several months.

- 3.7. We have been informed by our members that SWHs currently estimate that it will take 18 months from the publication of the final order for PMI Providers to be able to comply with the order. It is unclear whether the CMA has engaged with SWHs in relation to timings which brings the original cost impact analysis into question given, the significant development requirements.
- 3.8. It is vital that the CMA meets with SWHs to understand the complex and time-consuming processes which are necessary to ensure full compliance with the Order. At the very least, the CMA should take note of the responses from the individual SWHs which set out the likely timescales for implementation.
- 3.9. In addition, the implementation deadline will be affected by the decision made by the CMA that the order will apply to insurance renewals as well as to new business. Again, existing IT systems will need to be updated, scripts updated and staff trained.
- 3.10. We have been provided with time estimates from several PMI Insurers for completing the above stages of implementation which range from 12 to 18 months. You will recall the discussions which took place during the face-to-face meeting on 21<sup>st</sup> January 2015 in which it was indicated by BIBA that their discussions with SWHs had produced similar timescales.
- 3.11. Additionally, there are already a number of general insurance (GI) industry changes that are to be implemented in 2015 including Flood Re and My License. These changes run through large parts of internal and external e-trading systems and processes and represent a large change investment for all GI insurers, brokers and SWHs. The CMA should also be aware that many PMI Insurers will need to implement these changes across numerous brands of insurance which will inevitably take additional time. The recommendation to extend the deadline is underpinned by the desire to ensure the changes are implemented correctly and comprehensively and that full end-to-end testing can take place.
- 3.12. Given the above information, **it is vital that the deadline for implementation is pushed back**. If the deadline is not extended, there is a very strong risk that some insurers/intermediaries may cease to offer NCB protection or withdraw products if they cannot comply with the order, leading to market shrinkage, which in turn would clearly be detrimental to the consumer. **The ABI suggests that the deadline be extended to 1 March 2017 which is 18 months from the current implementation**

**date.** The ABI suggests that the CMA meet with the SWHs to ensure that the full situation regarding implementation can be explained.

3.13. In addition to the deadline provided for the implementation of the NCB provisions, insurers have also raised issues with the timescale provided to calculate and distribute the average NCB table. Under Schedule 2 section 4 the order allows insurers 1 month to provide brokers (in the case of business written through intermediaries) to calculate and provide the 'average discounts' for the previous calendar year. This time period is not sufficient to allow:

- Insurers to calculate the average discount
- Brokers or SWHs to receive the discount tables from all insurers and implement onto their sales platforms and documentation.
- Brokers or SWHs to test that the discount tables appear correctly.

The deadline should be extended by two months to 1 April to allow all calculations and distribution to be completed accurately.

#### **4. Definitions**

4.1. Our members are pleased that the CMA has confirmed that the order applies to PMI Brokers as well as PMI Insurers. However, it is concerning that the definition of PMI Brokers is not fully compliant with the definition of insurance intermediaries from the Insurance Mediation Directive (IMD).

4.2. This definition is slightly wider than the definition provided in the order<sup>1</sup> in that brokers also conclude contracts of insurance. This is an important part of the definition of a broker which is not included in the definition contained within the order.

4.3. The ABI considers that the definition of PMI Broker in the order should be amended so that it is more in line with the IMD.

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<sup>1</sup> "insurance intermediary" means any natural or legal person who, for remuneration, takes up or pursues insurance mediation;

"insurance mediation" means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

Both definitions from the IMD - <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32002L0092>

4.4. Under the definition of 'PMI Product' the CMA explain 'privately owned motor cars' as vehicles which are subject to the Road Traffic Act (RTA) but then specifically exclude Motorcycles, which are also within scope of the RTA. Could the CMA confirm that 'privately owned motor cars' should be any privately owned vehicle which is subject to the RTA specifically excluding motorcycles?

4.5. The definition of NCB Years states that for the purposes of the calculation of NCB discount, the number of years a person is deemed 'not to have made a Claim'. This is not correct as a person may have, for example 5 years NCB, but could have made a claim the previous year and their NCB entitlement been subject to the step-back procedure. This should be amended to read "the number of years which a person has, for the purposes of the calculation of the NCB Discount, accumulated whether by not making a Claim on their policy, or by taking advantage of their NCB Protection."

## **5. Flexibility of PMI Protection Statement Wording and NCB Protection Information/Presentation of additional information**

5.1. We note that contrary to the suggestions in our previous response to the draft order and explanatory notes, there have been no concessions regarding the flexibility of the wording of the NCB Protection statements.

5.2. It is not clear why the CMA continues to insist on the use of prescribed wording. By allowing insurers flexibility, it will provide the consumer with a better experience as the wording will be tailored to the specific product being sold. In addition, allowing insurers the flexibility to deliver tailored wording in line with the customer's journey is more aligned with FCA's outcomes-based approach to regulation.

5.3. As we have previously stated, insurers find the wording put forward in schedules 1(a), 1(b) and 2 of the order unnecessarily complicated and are of the opinion that as such will not aid consumers in understanding what effect the NCB Protection will have on their policies.

5.4. The wording itself is not clear in its meaning. The wording states "*the price of your insurance policy may increase following an accident even if you were not at fault.*" This seems to imply that without an accident (whether fault or non-fault) the cost of

premiums would remain the same. This is misleading as insurance policy premiums may increase in any event.

- 5.5. We believe a paragraph should be added to schedules 1a, 1b and 2 which states that the exact wording may be amended to allow insurers to apply the wording to their own products, as long as the prescribed outcome remains the same.
- 5.6. Alternatively, by way of a compromise, PMI Providers could draft their own wordings regarding NCB Protection and forward them to the CMA/FCA for their approval before being introduced. This way the PMI Providers will be able to ensure that the wordings are in keeping with their own house styles, and the CMA will have comfort that they achieve the desired outcome from its perspective.
- 5.7. Our members not only have concerns about the wording of the NCB Protection statement, but also the flexibility they are permitted to use when displaying the information (the only time a link is permitted is when PMI Insurers display the step-back information). Our members are concerned that the limited options of presenting the information may have a negative impact on the customer journey.
- 5.8. We request clarification within the order/explanatory notes on whether the order allows insurers to display the NCB Protection statement (as required by schedule 1a of the order) and the NCB Protection Information (as required by schedule 2 of the order) in a way which is in keeping with their current customer journey.

## **6. Guaranteed NCB**

- 6.1. We have previously highlighted that some insurers may offer a guaranteed NCB which means that, irrespective of the number of claims submitted, the consumer's level of NCB entitlement will not be affected even if they are involved in an accident. Insurers may also offer a product whereby the consumer's premium will not increase if they have an accident. In these instances, there is no 'step-back procedure' which is required to be described under schedule 1a of the draft order. In the first example, the NCB would not be affected and in the second, neither the NCB nor premium would be. To explain to the consumer that their premium may be affected without explaining the product fully would only cause unnecessary confusion.
- 6.2. This situation needs to be clarified within the order/explanatory notes.

## **7. Compliance and Monitoring of NCBs**

- 7.1. We understand that the decision has been made that the CMA will monitor the compliance of PMI Providers with the requirements surrounding the provision of information to the consumer regarding NCBs. We understand that this decision was made as the FCA will be commencing a review of the implementation of the order within the next two years.
- 7.2. The ABI is strongly of the view that the FCA should have conduct of implementing the order. Given the level of regulation undertaken by the FCA regarding NCBs already, it would be more appropriate for the FCA to take control of the compliance reporting for the NCBs, but for the CMA to retain control of reporting regarding the MFN clauses.
- 7.3. The FCA are in a better position to monitor the information being provided to consumers to ensure that they are not being provided with too much information, creating a purchase process which is difficult for consumers to understand.

## **8. MFN Clauses**

- 8.1. The ABI is supportive of the MFN proposals and implementations timetable as set out in the order and explanatory note.
- 8.2. One issue which was raised previously regards the wording on equivalent behaviours. This was discussed at the meeting of 21 January 2015 and we reiterate our point previously made that the wording should be expanded to include object "or effect", mirroring the competition law expression we presume it intends to refer to.

## **9. Areas for Clarification**

- 9.1. At paragraph 1.2 of the order, it states that the order will apply to "the supply or acquisition of PMI and related goods and services in the UK." There is no mention elsewhere of "related goods and services", only "PMI" and therefore the ABI believes that this may lead to confusion. The CMA is required to clarify this point.



- 9.2. At pages 4 and 5, references to 'Protection' should qualify whether requirements also extend to 'Guaranteed' NCB.
- 9.3. We note that in the explanatory notes the NCB tables are referred to as 'generic' and we understand from the ABI's meeting with the CMA on 21 January 2015 that the same annually calculated table can be provided to every consumer. This should be made clear in the explanatory note.
- 9.4. We have previously requested clarification regarding the NCB Protection statement (as required by schedule 1a of the order) and the NCB Protection Information (as required by schedule 2 of the order) and when this needs to be supplied to the consumer. The ABI notes that the CMA have provided further clarification in this area, however there is still no clear definition as to whether a pop-up window or 'link' can be interchanged. It now appears that the CMA would prefer the NCB Protection statement (as required by schedule 1a of the order) and the NCB Protection Information (as required by schedule 2 of the order) to be provided via a 'link' which the customer must click to view. Clarification is required as to whether a pop-up window (opened by the customer) would comply with the order.
- 9.5. In addition to the above paragraph, we request clarification regarding the process when a product is being sold orally. The wording contained within the explanatory note at paragraph 24 states *"When the PMI Product is being purchased orally (e.g. by telesales or in a branch), the NCB Protection Offer is made by the PMI Provider asking whether the prospective purchaser wishes to include NCB Protection in the PMI Product for an additional premium. The NCB Protection Statement and NCB Protection Information must be given clearly and prominently at the time NCB Protection Offer is made."* It should be made clear within the order/explanatory note at which point in the customer journey the PMI Protection information should be provided, and whether it needs to be at the same point for both oral and online sales.
- 9.6. With regard to the NCB Protection information, whilst further detail has been added to the explanatory note at paragraphs 32 and 33, our members remain unclear as to how the calculation of the Implied Price will work in practice. As the wording currently stands, the Implied Price of NCB Protections and two generic tables are to be prepared by the PMI Insurers and then provided to the PMI Brokers. However at paragraph 33, the explanatory notes state that the Implied Price of NCB Protection

is to be calculated by the PMI Brokers as well as the PMI Insurers. Further clarity is required as to how the Implied Price of NCB Protection should be dealt with.

9.7. We also note that there is no clarification regarding how the order and explanatory note will apply in a situation whereby a PMI Broker has created its own terms and conditions which are underwritten by one or more PMI Insurer.

9.8. One point which has not been raised thus far is regarding the date that PMI Providers will have to comply with the order in relation to provision of the NCB Protection statement and average NCB tables. Insurers have raised the issue that renewal notices are sent out to customers in advance of their renewal date, sometimes by as much as 2 months. By way of an example, let's assume the implementation date remains at 1 September 2015. Insurers require clarification on whether the need to provide the NCB Protection statement/average NCB tables for customers whose renewal date falls after 1 September 2015, or when their renewal papers are sent to them in August 2015.

9.9. In addition to the above regarding the calculation date of the average NCB tables. If we take the current date of 1 February 2016, would a customer whose renewal date is in February be expected to receive the new 2016 average NCB table or the old 2015 table? This will also apply to new business in that a customer who received a quote in January 2016 for a policy that starts in February will need to be furnished with the tables, but which tables should be provided? The CMA needs to make clear how such nuances should be dealt with and needs to guard against in effect bringing forward the deadlines under the Order.

9.10. The information which PMI Providers are required to send to the insured person are all based on the assumption that the insured person is only insuring one vehicle. Some insurers offer multi car policies and therefore the information currently required to be sent regarding NCB may not be sufficient.

9.11. An example of the possible wording which could be used for a multi-car policy is as follows:

"You have purchased NCD protection on the following vehicles. This has increased your premium as shown: "

Vehicle	Premium for NCB Protection	Number of NCB Years
XX14YYY	£23.12	5
AA14BBB	£15.99	6
RR14SSS	£25.44	8

9.12. Our members request that the CMA clarify whether further research has been commissioned to test the effectiveness of the prescribed NCB Information for consumers. For example, the CMA's final report referenced GfK research; specifically, that consumers did not understand the meaning of 'typical' NCB when challenged - CMA subsequently changed to 'average' NCB, but it is still not clear if GfK have revisited this.

9.13. It is unclear as to whether the CMA has mapped out the various consumer journeys by channel and media, which will differ significantly, to understand the full impact.

## 10. Typographical Errors

10.1. In the explanatory notes paragraph 12(a), it states that "...only where a person suppliers, arranges or administers PMI Products..." The ABI believes this should read "...only where a person supplies, arranges or administers PMI Products..."

10.2. In addition, paragraph 43 of the explanatory notes begins with a reference to paragraph 5 of schedule 2. The numbering of schedule 2 has been amended and the ABI believes that the CMA intended to refer to paragraph 6 of schedule 2 instead.

10.3. Under Schedule 2 section 1a the wording states "You have a current NCB of..." We believe this could suggest the insurer is accepting the declared NCB which is not the case until validated. We believe that this should state "You have declared a current NCB of..."

10.4. Under Schedule 1b section 1a the text states "...on the insurer's website". In the cases where the insurer is not the distributor/provider of the product (business written through intermediaries) this will not be the case. We believe that this should state "...on the provider's website".