



Competition Commission's Private Motor Insurance Market Investigation **Notice of Possible Remedies**

Response of the Association of British Insurers

The ABI

The Association of British Insurers (ABI) is the voice of the insurance and investment industry. Its members constitute over 90 per cent of the insurance market in the UK and 20 per cent across the EU. Employing more than 300,000 people in the UK alone, it is an important contributor to the UK economy and manages investments of £1.8 trillion, over 26% of the UK's total net worth.

Chapters

	<u>Page</u>
1. Executive Summary	2
2. Introduction	4
3. Remedy A: Measures to improve claimants' understanding of their legal entitlements	6
4. Theory of Harm 1: Separation of cost liability and cost control	11
5. Theory of Harm 2: Possible under provision of service to those involved in accidents	36
6. Theory of Harm 4: Add-ons	41
7. Theory of Harm 5: Most favoured nation clauses in PCW and insurer contracts	46

1. **Executive Summary**

- 1.1 The ABI believes that the Competition Commission (CC) has rightly identified the issues that lead to an adverse effect on competition (AEC) in relation to Theory of Harm (TOH) 1: Separation of cost liability and cost control. The CC has proposed seven remedies to address its concerns, some of which, it is proposed, would work as a standalone remedy and others would work in combination with other remedies.
- 1.2 In relation to Remedy A under TOH1, the insurance industry recognises the importance of providing consumers with clear and concise information. Insurers would welcome the opportunity to work with the CC, under the auspices of the ABI, to prepare wording that would better inform and educate customers about their rights and entitlements both at the point of sale of a private motor insurance (PMI) policy and at the First Notification of Loss (FNOL).
- 1.3 Of the two main remedies proposed under TOH1, Remedy 1A (first party insurance for replacement cars) and 1B (at-fault insurers to be given the first option to handle non-fault claims), the ABI considers that only Remedy 1A has the potential to be a workable solution. The CC needs to give careful consideration to how Remedy 1A would work in practice and whether the current proposals, which would require a change in legislation and for the non-fault insurer to settle only the mobility claim without subrogation, are achievable.
- 1.4 It is the ABI's submission that there is scope for variations of Remedy 1A to be developed which have the potential to provide workable solutions. The ABI believes that the CC should consider variations of Remedy 1A which could be supported by other proposed remedies (except Remedy 1B). Remedy 1B poses a significant risk of introducing unnecessary delay into the claims process and, given that a non-fault claimant, given a choice over which provider to use following an accident would, in all likelihood, choose their own insurer, there are doubts about the effectiveness of the proposed remedy.
- 1.5 The ABI believes that Remedy 1C would be helpful in supporting either Remedy 1A or 1B. Furthermore, given the likely length of time it would take to fully implement Remedy 1A, the ABI believes that Remedy 1C has the potential to be implemented in the interim, helping to cap the unnecessary cost of credit hire. If Remedy 1C were to be the main remedy introduced, however, the ABI would view this as a missed opportunity by the CC to positively reform the way Temporary Replacement Vehicle (TRV) claims are handled with a consequent missed opportunity to improve outcomes for customers.
- 1.6 The ABI has significant concerns over the CC's work in relation to TOH2: Possible under provision of service to those involved in accidents. We note that the CC is requesting responses to a potential remedy before the industry has had an opportunity to adequately analyse the data in the MSXI report or comment on the CC's provisional findings. These findings were based on an MSXI report which had serious deficiencies both in relation to the sample size of vehicles used and in terms of the research methodology adopted which make the results unreliable at best and, in fact, potentially misleading. The questionable quality of the supporting evidence for the CC's views on an AEC in relation to TOH2 leaves serious doubts as to the appropriateness or proportionality of the potential remedy the CC has consulted on. The industry does, however, consider that the quality of repair outcomes for consumers might be enhanced by improving audits of the repair process through the wider use of PAS 125 or similar accreditation frameworks.
- 1.7 We agree with the CC's aim in TOH4: Add-ons, that consumers should have a good understanding of the add-ons that they may purchase alongside their PMI policies. The CC needs to take into account, however, the significant practical and competitive

challenges associated with agreeing consistent descriptions of add-ons given the differences between PMI providers' offerings of both 'basic' motor cover and the availability/shape of add-ons.

- 1.8 The ABI believes that price comparison websites (PCWs) have a key role to play in delivering the CC's aim of ensuring customers have a good understanding of the price, benefits and limitations of the add-on products they may purchase alongside their PMI policies. In our submission, the CC has underestimated the role and responsibilities of PCWs in delivering the proposed remedies. Overall, we believe time is required for the industry, Financial Conduct Authority (FCA) and consumer groups to thoroughly assess how best to develop the remedies for TOH4 in a way that is most useful for customers. Furthermore, we believe that the delivery of these remedies should be led by the FCA as it is best placed to monitor the implementation of the proposed remedies given that it already supervises insurers, PCWs and other distributors.
- 1.9 In relation to TOH5: Most Favoured Nation Clauses, the ABI strongly agrees with the CC's proposed ban on 'wide' MFN clauses. We would also support a ban on 'narrow' MFN clauses given that they prevent insurers from pricing optimally and discourage innovation and competition in direct business models. The PCW distribution channel is well established and is an important outlet for sales of insurance policies. As a result, we question why it should require extra protection through the continued use of anti-competitive MFNs. A full ban on MFNs would make circumvention more difficult and would increase competitive constraints on commission levels, to the benefit of consumers. We also recommend that the FCA considers the implications from this investigation for its thematic review on PCWs across other general insurance markets.

2. Introduction

2.1 The ABI welcomes the opportunity to respond to the CC's notice of possible remedies on its PMI market investigation.

2.2 The insurance industry welcomes the work of the CC to date and strongly supported the Office of Fair Trading (OFT) referring the market to the CC for investigation. In general, we agree with the analysis that the CC has undertaken to date in identifying the core issues leading to inflated costs and unnecessary frictional costs across the PMI market. What the insurance industry wants to see emerge from the CC's work is a market that functions efficiently and effectively for consumers, in particular through:

- a reduction in the inflationary pressure put on the price paid by consumers for PMI;
- an increase in the control an at-fault insurer has over the claims they are paying;
- increased certainty for consumers on the handling of their claims;
- an improvement in the levels of quality and service insurers are able to offer their customers; and
- continued incentives for insurers to invest in product differentiation and improving customer service.

Competition Commission's timetable

2.3 The ABI has significant concerns over the timetable imposed by the CC in asking for responses to its possible remedies notice. From the date of release of the consultation material until the time the consultation closed on Friday 17 January, there were merely two full working weeks to prepare submissions, at a time when the majority of people were taking long-planned annual leave. The CC has extended its own administrative timetable at the expense of the time allowed for stakeholders to prepare their responses.

2.4 The insurance industry has always been, and continues to be, committed to providing the CC investigation with high-quality, considered and informed input. The timeframes provided by the CC in this consultation have meant that the industry has not had sufficient time to fully consider the complex set of remedies proposed, especially given the lack of availability of the data room for the MSXI report until the final week before submissions were due with the CC on the possible remedies consultation. The industry wants to continue to actively engage with the CC to help develop beneficial outcomes for consumers and, in order for us to do so, the CC needs to set appropriate and reasonable timeframes for participants to provide considered input.

2.5 We are also concerned that stakeholders have been asked to provide feedback to the CC on the possible remedies proposed before stakeholders have commented on the CC's provisional findings.

Scope of the Competition Commission's investigation

2.6 For any remedies to be truly effective, they should apply to the whole of the motor insurance market, not just the PMI market. Although we recognise the scope of the CC investigation is limited to PMI, failure to effectively apply the remedies across the motor insurance market has the potential to undermine the effectiveness of the specific remedies proposed and the outcomes of the investigation as a whole. According to ABI data, there were 3.7 million commercial vehicles insured in the UK in 2013, accounting for around 1 in 7 of all vehicles on UK roads, so the application of possible remedies solely to the PMI market is not an issue that can be ignored.

- 2.7 In this context, there are significant risks that remedies which only apply to PMI have the potential to generate confusion amongst customers about their entitlements and obligations in the event of an accident. This does not sit well with the CC's stated objectives and possible remedies. For example, it is not clear how the possible remedies would work, in practice, if a party to the accident is not insured, is a motorcyclist or is insured under a commercial motor insurance policy. In addition, if credit hire firms are prevented from charging excessive prices for TRV hire in the PMI market, an unintended consequence of a failure to apply remedies across the whole motor insurance market may be that credit hire firms look to recover their losses elsewhere, such as in relation to commercial vehicles or motorcycles, which are not covered by the scope of the CC's investigation or possible remedies.

Implementation of Remedies

- 2.8 The CC has proposed a number of remedies and, depending on the final remedies adopted, it will be necessary for the CC and the industry to identify which remedies need to be implemented as a package of reform and which could be implemented as a temporary solution pending implementation of the whole package. There is a risk that, implementing some of the CC's remedies at a different time to other final remedies has the potential to lead to perverse incentives, drive sub-optimal behavioural outcomes from participants in the market and fail to deliver an improved PMI market for consumers.
- 2.9 The ABI notes that a number of the possible remedies proposed by the CC could prove costly for the entire PMI market to implement. In order to ensure that the final remedies developed by the CC will improve consumer outcomes, it will be critical to undertake a robust cost-benefit analysis in order to ensure that the final cost of the interlocking package of remedies is proportionate to the consumer harm identified.
- 2.10 The ABI notes that a number of the possible remedies proposed by the CC are already the subject of work being undertaken by the FCA. It will be important for the CC to ensure that it coordinates with the FCA in terms of the two organisations' respective work given that having two separate and uncoordinated reviews by two regulators, not only undermines the ability of the PMI industry to engage effectively with each, but also has the potential to result in conflicting analysis, inconsistent conclusions and inconsistent and disproportionate regulatory responses which could undermine the delivery of positive consumer outcomes.

3. **Remedy A: Measures to improve claimants' understanding of their legal entitlements**

Overview

- 3.1 The CC found that consumers have a poor understanding of their legal entitlements following a road traffic accident (RTA). The CC's proposed remedy is to require insurers to set out to policyholders in the annual insurance policy documentation better information about their legal entitlements in the event of an RTA. In addition, or in the alternative, insurers, CMCs and any party to which the claimant makes a FNOL would be required to provide claimants at that point with information on their legal entitlements following an RTA.

Information provided to consumers at the point of PMI sale

- 3.2 It should be noted that customers are already provided information at the point of sale of a PMI policy and there are a number of FCA rules governing the nature of the information that must be provided. The insurance industry has undertaken significant work in recent years to improve communication with both policyholders and claimants in terms of making the information provided clearer and easier to understand. There remains an open question about the extent to which the information provided to policyholders is, in fact, read by them. The industry would caution, therefore, against the provision of *more* information when the focus should be on *clearer* information. The Better Regulation Executive and the National Consumer Council have undertaken work to examine the information provided to consumers and found that although it can be a powerful tool, it is neither failsafe nor costless¹. The focus of any intervention by the CC should be on ensuring that all consumers receive the best quality information and the best service at the time that is most appropriate for them and in a way that best meets their needs.
- 3.3 The insurance industry recognises the concern expressed by the CC, however, that the information provided could be made clearer for policyholders in terms of their rights and entitlements under the current regulatory framework, the provisions of the contract of insurance and under the law of tort (and it will be even more important to improve the information provided to consumers if any of these were to change as a result of the final outcome of the CC's investigation into the PMI market). Insurers would welcome the opportunity to work with the CC, under the auspices of the ABI, to prepare wording that will inform and educate customers as to their rights and options so that consumers are able to make informed choices as to the policy that best suits their needs (as we would with the information to be provided at FNOL, see paragraph 3.5 below). Firms should not be permitted to develop their own wording as this would be likely to lead to further confusion for consumers, especially in an environment where switching levels are high, i.e. consumers may become even more confused than they currently are if in one year they receive information from an insurer on their rights but when switching the following year receive slightly different information from their new insurer².
- 3.4 It should be noted though that, as found by the CC, the market for PMI is highly price sensitive. Most consumers are focussed on securing the cheapest car insurance premium rather than carefully considering a PMI policy's scope and the consumer's legal entitlements under it³. For this reason, it is likely to deliver better outcomes for consumers if additional information is provided to consumers at the point of FNOL.

¹ *Warning: Too Much Information Can Harm*, report by the Better Regulation Executive and the National Consumer Council on maximising the positive impact of regulated information for consumers and markets (November 2007) Available at: <http://www.berr.gov.uk/files/file44588.pdf>. Accessed: 14 January 2013.

² See paragraph 5.14 of the Commission's Provisional Findings Report

³ See paragraphs 5.12-5.14 of the Commission's Provisional Findings Report

Information provided to consumers at the point of FNOL

- 3.5 Although it is important that clear and accurate information is provided to consumers at the point of PMI sale, it is even more important that clear and accurate information is provided to consumers at the point of FNOL as it is at this point that the consumer will be required to exercise their choices in an informed way. Again, it will be important to ensure that the additional information that is provided is brief and does not overwhelm the consumer who may be in a distressed state having been involved in an RTA regardless of whether it was their fault or not. Therefore, the information provided should be short, clear and concise given that consumers will want a quick and efficient FNOL process. The ABI notes that although the CC discuss the importance of the provision of information at point of sale, the CC has set out specifically the information it expects to see included in the information provided to consumers at FNOL⁴.
- 3.6 Given the wide range of FNOL providers, including but not limited to insurers, insurance brokers, solicitors, TRV providers, vehicle repair providers and claims management companies (CMCs), for the CC's information remedy to be effective it is *essential* that all FNOL providers provide the same agreed wording to consumers.
- 3.7 The standard information that is provided to consumers at the point of FNOL should also be made prominently available by all firms on their respective websites, in addition to the websites of key industry trade associations and consumer groups. It will be important to ensure that the telephone scripts firms use in their call centres are consistent with the documentation provided to consumers. It will also be important to ensure that the information provided to consumers can be provided in an electronic format given the number of consumers who purchase their insurance online, although consumers should be able to request the information in a hard copy format if that better suits their needs.

The involvement of the ABI in preparing information to be provided to consumers

- 3.8 It would be possible for the ABI to lead the preparation of the information to be provided to consumers at the point of FNOL. This remedy could not be achieved, or would not be effective, if the ABI were to design standardised information with member insurance companies without the support of an enforcement order from the CC. Aside from the competition law challenges of such an exercise, as indicated above, all those entities who might receive FNOL would need to be included in the development exercise and there would be no means of effective enforcement against firms who failed to provide the information agreed upon. Furthermore, although the ABI represents a significant number of providers by PMI gross written premium, we do not represent all PMI providers that would have an interest in being involved in the development of the information to be provided to consumers.
- 3.9 It is also important for other stakeholders to be involved in the development of the information to be provided to consumers in order that there is cross-sector agreement on the wording. Given the potential for disagreement amongst these stakeholders, the CC should provide clear strategic direction on what it expects to see contained in any information to be developed and also to approve a final version. Whether provided to consumers at the point of PMI sale and/or provided to consumers at the point of FNOL, it will be important to draft the information carefully in order to ensure that firms do not unwittingly start to provide advice as opposed to information. Consideration also needs to be given to what can/should be said in answer to any questions asked by consumers arising from the provision of that information. Insurers (and others dealing with consumers at FNOL) are neither authorised nor regulated to provide legal advice to consumers on their

⁴ See: paragraph 18 of the Commission's Notice of Possible Remedies paper.

rights and entitlements. In order to manage this risk, appropriate legal advice will need to be commissioned. If the CC were to require that only technically or legally qualified staff could provide this information, this is likely to add potential delay and cost to the FNOL process as consumers are transferred to suitably qualified teams to provide the necessary information. This has the potential to lead to an increase in consumer confusion and add unnecessary costs to the FNOL process.

Costs, timing and implementation

- 3.10 The insurance industry does not envisage that the costs associated with *developing* the additional information that the CC considers necessary will be significant. However, there are likely to be significant additional costs to insurers resulting from the *provision* of that information in terms of IT changes and distribution costs. It is possible that handling times for FNOL calls may increase as insurers provide additional information to consumers on their legal rights and entitlements. In order to maintain call service levels, firms may be required to take on additional staff which is likely to add additional cost. These factors should be taken into account as part of the cost / benefit analysis the CC should develop before making a final recommendation.
- 3.11 In the current legal framework, the non-fault party has a legal right to make a claim against the at-fault party if he chooses to do so in tort. A number of the CC's potential remedies, or variants thereon, involve amending that right. This means that the CC should conclude – and implement – the appropriate legal framework before work is commenced to determine the appropriate information to provide to consumers at point of sale or at FNOL.
- 3.12 An enforcement order by the CC is the preferred option to implement this remedy. This would enable the ABI to lead this piece of work both with confidence that it has a mandate from the CC to do so from a competition law perspective but also because the enforcement order should apply to all market participants who provide information to consumers on their legal rights and entitlements at FNOL. The CC might also consider combining an enforcement order with a recommendation that relevant regulators monitor market participants to ensure that information is, in fact, being provided to consumers. If regulators are to take responsibility for ensuring enforcement and monitoring compliance as part of their regulatory functions, it will be important for the CC to consider how non-regulated entities, including providers of TRVs, will be monitored.
- 3.13 Although it would be possible to implement this remedy in isolation from the other potential remedies the CC is considering, it would not serve any purpose. To do so, would require firms to describe the status quo of a market with the inherent problems that the CC has identified in relation to the separation of cost control from cost liability. This reinforces the desirability of the CC addressing the AEC in relation to TOH1 and implementing any necessary changes to the legal framework, whether through regulatory intervention, enforcement orders or otherwise, before work commences to develop the appropriate information to provide to consumers.

Driving test

- 3.14 In principle, the insurance industry supports information about motor insurance and how the insurance claims process works in practice being included as part of the driving test. Before determining whether doing so is likely to increase consumer understanding of what to do in the event of an accident and how the insurance claims process works, we recommend that the CC consult with those stakeholders with expertise in increasing consumers' financial literacy and understanding. It will be especially important for the CC

to engage with groups representing young drivers, given that younger people are more likely to be undertaking new driver testing and training.

Answers to the specific questions

(a) What information should be provided to consumers?

3.15 The information that should be provided to policyholders at the point of sale and the information that should be provided to consumers at the point of FNOL is not necessarily the same. The CC should implement any necessary changes to the legal framework resulting from the PMI investigation as a whole before determining what information should be provided to consumers and we recommend that a group of relevant stakeholders be commissioned to develop that information under the auspices of the ABI and the leadership of the CC.

(b) When is this information best provided to consumers—with annual insurance policies, at the first notification of loss, or at some other point? Should this information be available on insurers' websites?

3.16 The information that should be provided to policyholders at the point of sale and the information that should be provided to consumers at the point of FNOL is not necessarily the same. Information on PMI policies should be available to consumers on an insurer's website, as it is currently. Information on FNOL should be provided on the websites of all FNOL providers, including but not limited to insurers, insurance brokers, solicitors, vehicle replacement providers, vehicle repair providers and CMCs.

(c) Would it be more effective for consumers to be provided with a general statement of consumers' rights prepared and periodically updated by a body such as the Association of British Insurers or are there any examples of existing best practice in relation to information given to consumers by insurers?

3.17 Consumers, whether customers at the point of sale or claimants at the point of FNOL, should be provided with a consistent statement of consumer rights that has been carefully developed by all stakeholders and is updated periodically. However, the proportionality of the cost of distribution of this information should be considered against its anticipated effectiveness at addressing any AEC.

(d) Would this remedy give rise to distortions or have any other unintended consequences?

3.18 No. Although it is essential that all FNOL providers provide the same agreed wording to consumers otherwise different wording could be developed which is likely to result in further consumer confusion.

(e) What circumvention risks would this remedy pose and how could these be addressed?

3.19 See para 3.3 above.

(f) How would this remedy best be monitored, particularly in relation to a statement of rights at the first notification of loss?

3.20 See para 3.5-3.7 above.

(g) How much would it cost to implement this remedy?

3.21 See para 3.10 above.

(h) Is there any reason why this remedy should not be implemented through an enforcement order?

3.22 See para 3.12 above.

(i) Is this remedy more likely to be effective in combination with other remedies than alone and, if so, which combinations of remedy options would be likely to be effective in addressing the AECs that we have provisionally found?

3.23 See para 3.13 above.

(j) Would the additional measure set out in paragraph 20 be likely to be effective in enhancing consumers' understanding of their legal entitlements?

3.24 See para 3.14 above.

4. Theory of Harm 1: Separation of cost liability and cost control

Remedy 1A: First party insurance for replacement cars

Overview

- 4.1 The CC has proposed a first party model for TRVs. Under the first party model proposed, TRVs, but not repairs, would be insured on a first party basis such that a policyholder is provided with a TRV by the policyholder's own insurer in the event of an accident, whether the policyholder is at fault or not. Under the CC's proposals, there would be no subrogation and consumers would have the ability to opt out of, select a more basic level of TRV coverage or choose a TRV which was not equivalent to their damaged vehicle in return for a lower premium.
- 4.2 The CC's proposed remedy has the potential to go some way in addressing the insurance industry's concerns about the ability to effectively manage the cost of credit hire vehicles. Under this proposed remedy, the cost of credit hire would be mitigated as the non-fault insurer would supply a TRV at a direct hire rate. The frequency of claims also has the potential to fall as consumers may seek to trade off their current legal entitlements in return for a reduced premium.
- 4.3 However, the remedy raises a number of key issues which the CC needs to consider carefully, including:
- This proposed remedy would require changes to primary legislation. Even if Government were to be convinced of the need to progress primary legislation through Parliament, when combined with the necessary consultation processes, the timeframe for completing this work is likely to mean that consumers are unlikely to benefit from the proposed remedies for a number of years. The CC would also need to consider whether the potential cost savings that have been identified justify such a fundamental legislative change.
 - As a first party model does not allow for subrogation, it is likely that the proposed remedy would have a detrimental impact on underwriting for safer drivers. Lower risk drivers, and by extension insurers with lower risk customers, would be faced with a greater number of (irrecoverable) non-fault claims than is currently the case and those drivers with a low frequency of fault accidents will not benefit in terms of a lower premium for their risk profile and will cross-subsidise the premiums of higher risk drivers. This is an undesirable outcome in terms of providing the incentives for safer driving.
 - This proposed remedy would create the need for a new opt out/add-on or product choice where a consumer would be able to choose cover for varying degrees of TRV coverage. There would need to be very clear guidelines to ensure the consumer understood this significant new change on current entitlements and a framework would need to be developed to ensure that the consumer makes a properly informed decision about the policy coverage they choose to purchase.
- 4.4 The issues outlined above, while not insurmountable, do significantly impact on the ability for the remedy to be introduced and for it to be effective. The ABI believes that there are variants of the model which could potentially overcome some of the issues outlined above. While the industry has not had the opportunity to assess the impact of these variations in full, the ABI believes that the CC should give careful thought and consideration to:

- The need for a change in primary legislation could potentially be overcome by an enforcement order that would oblige insurers to provide cover for a similar size of TRV or a like for like TRV for all PMI policies regardless of fault. Practical issues such as specifications of the vehicle need to be clarified to the consumer i.e. a true 'like for like' replacement is very difficult to achieve, however a minimum specification that is included in the policy might be defined more easily.
- Enabling the non-fault insurer to subrogate the cost of providing the TRV, but with appropriate controls on that cost. We would envisage this working in a way similar to the CC's proposed Remedy 1C. Rather than an agreement on hire rates between CHOs and insurers, however, there would be an agreement on what could be subrogated between insurers, which should be significantly closer to direct hire rates.

Answers to specific questions

(a) What aspects of the law would need to be changed?

- 4.5 The ABI believes that the remedy as proposed by the CC could only be implemented by primary legislation. This is because of the removal of the right to claim for this element of compensation from the at-fault driver/insurer. This remedy would have effects that go significantly beyond participants in the market that is the subject of the CC's investigation.
- 4.6 This proposed remedy would raise a host of issues which would need to be considered before it could be implemented, including:
- The scope of the proposed remedy as outlined in paragraphs 2.6 and 2.7 above. The CC's investigation is limited to PMI and related sectors. The CC will need to carefully consider claims arising from an accident with, amongst others, a commercial vehicle or a public utility vehicle, an uninsured non-fault driver or a foreign registered and insured non-fault driver;
 - The extent of any standard policy requirements relating to any new opt-out / add-on product where a consumer would be able to obtain cover for varying degrees of TRV coverage, the impact of claims on no claims discounts, etc. There would need to be great clarity about the idea of allowing consumers the option to "purchase a level of cover equivalent to their current entitlement under tort law or to trade off their entitlement with a lower premium". The concept of a consumer "purchasing" their existing free entitlement is likely to be controversial;
 - The impact of claims against this type of first party cover on underwriting, including no claims discounts, would need to be addressed;
 - Differences in the current legal systems of England and Wales, Northern Ireland and Scotland would need to be considered when determining the manner of implementation of this remedy.
 - The implications for the Road Traffic Act 1988 and the EU Directive relating to insurance against civil liability in respect of the use of motor vehicles.
- 4.7 However, as discussed in para 4.4, the ABI believes that there is the potential for an alternative route to legislative change which the CC might consider exploring. Under Schedule 8 (10) of the Enterprise Act 2002, the CC has power to order that goods or services are supplied to a particular standard or manner. As such, there is the potential for the CC to deliver a variant of proposed Remedy 1A by requiring, as part of an enforcement order, that all insurers should provide cover for a similar size TRV or a like for like TRV in all PMI policies regardless of fault.

(b) How should policyholders be given a choice as to the extent of replacement car cover?

- 4.8 If a new framework were to be implemented where the consumer is required to select a level of TRV cover when purchasing their PMI policy, the ABI envisages that the cover would be sold in a way similar to other add-on products. This raises a question about the situation where some providers might already provide this type of cover in their standard PMI policy. Given that consumers would now be required to purchase cover for an item which they could previously have obtained for free pursuant to an existing legal entitlement, effective customer education of this fundamental change would be extremely important.
- 4.9 While the ABI does not have a position on how policyholders should be given a choice about coverage for TRV, we imagine this remedy would mean that policyholders would be given a choice at the point of sale of the policy and at the renewal of the policy of three broad options:
- No TRV cover required
 - Replacement vehicle of some specified standard but not necessarily like for like
 - Like for like replacement
- 4.10 Currently, one of the main problems with credit hire claims, is that the TRV provided does not generally reflect the customer's need but rather reflects what the customer is sold by the CMC or CHO managing the non-fault claim. Too often, the consumer is "up-sold" or is provided with a TRV over and above their needs by the CMC or CHO and the customer usually has little, if any, knowledge that this is taking place or the consequences of that. While a like for like replacement arguably reflects the claimant's entitlement at law against the at fault driver, the provision of a vehicle of a standard above that which gets the claimant mobile (as they would have had if the accident had not deprived them of their vehicle), the cost of that superior vehicle increases the amount of the claim on an at-fault insurer and, ultimately, increases PMI premiums.
- 4.11 By making consumers opt in to the appropriate level of TRV cover for their needs; this could help bring the situation back in line with the original intention of the Road Traffic Act, to ensure consumers are put back to their original position rather than being oversold a TRV option as often happens in credit hire claims. The CC's proposed remedy 1A has the potential to overcome this problem and should enable consumers to make informed choices in advance about the TRV they are likely to require in the event of an accident.

(c) To what extent would the need for consumers to pay a premium for replacement car cover be offset by the effect on premiums of the overall reduction in replacement car costs that would occur as a result of this remedy?

- 4.12 Estimating the contrasting cost impact of this remedy is challenging, particularly given the timeframe the CC has provided in seeking responses from stakeholders to the possible remedies. The impact on costs, and ultimately PMI premiums, will be dependent on the framing of the options available and consumer uptake of them. Furthermore, the impact on insurers will vary depending on their individual underwriting profile as well as their own efficiencies in providing TRV cover as an add-on product.
- 4.13 It is likely that there would be a significant decrease in the cost of credit hire TRVs, although this is likely to be partially offset a likely increase in the uptake of direct hire TRVs.

(d) How might this remedy affect NCBs and the premiums of non-fault claimants? Would non-fault claimants have to pay an excess when provided with a replacement car under their own policy? If so, would this be treated as an uninsured loss which should be recoverable from the at-fault insurer?

- 4.14 Unless prescribed in the remedy adopted by the CC, it would be up to individual insurers to determine the impact, if any; a claim against any TRV cover would have on their NCB offering. At this stage, it is far too early to provide any indication of the possible impact the CC's proposed first party model might have on insurers' NCB offering. However, the highly competitive nature of the market is likely to result in offerings that provide demonstrable benefits to the consumer. Insurers' failure to compete effectively will ultimately impact on their customer retention and acquisition, which no insurer can afford.
- 4.15 Once again, unless a given response is prescribed by the CC, it will be a commercial decision for insurers whether excesses are applied to the TRV cover where non-fault claimants choose to take up their entitlement to a TRV under their policy.
- 4.16 It is important to note that, if excesses are permitted and recoverable by the non-fault driver from the at fault driver/insurer then high excesses could lead to effective subrogation of the entire hire amount in most cases and circumvent the intention of this remedy.

(e) How would this remedy affect the credit hire and direct hire activities of vehicle hire companies? How might the quality of service in the provision of replacement cars be affected if replacement car provision is contractually specified in motor insurance policies?

- 4.17 Where policyholders are given an option to choose cover for a TRV, it is likely that there would be a reduction in the overall take up of TRVs as non-fault customers are likely to trade off their legal entitlements for a reduced PMI premium.
- 4.18 Insurers need for direct TRVs is likely to increase, although this will vary amongst insurers due to their appetite for risk and the profile of the customers they insure. While direct TRV operators are likely to be given the opportunity to compete for higher volume contracts with an ensuing downward pressure on prices, it is possible that the decline in the overall volume of TRVs results in an increase in the unit price of TRVs and no net decline in the claims cost overall.
- 4.19 The quality of service in the provision of TRVs is unlikely to be adversely affected. As the CC has found through its investigation, the motor insurance market is highly competitive and insurers compete both on price and customer satisfaction. Given that non-fault insurers would be offering a TRV to one of their own customers, insurers are likely to require their suppliers through contract to adhere to service level standards to ensure their customers are satisfied. If customers are not satisfied with the level of service they receive, they are likely to switch insurer when they renew their policy.
- 4.20 Greater competition between direct TRV providers is likely to result in greater efficiencies and levels of service, improving consumer outcomes and leading to reductions in PMI premiums.

(f) Would it be likely that the non-fault insurer providing the replacement car would also handle the repair of the non-fault claimant's vehicle? What would be the consequences of this? Would complexities and costs arise if the replacement car is provided by the non-fault insurer and the repair is carried out by a different service provider?

- 4.21 In part, the likelihood of the non-fault insurer handling the repair will be determined by what other remedies the CC chooses to implement. If a different insurer has control over the repair, the length the TRV is provided for is out of the control of the insurer paying for that element of cover. The length of hire has a direct impact on the cost of providing TRVs.
- 4.22 Having one insurer deal with both aspects of the claim will enable that insurer to better coordinate the suppliers of both the vehicle repair and the TRV in an effort to ensure that the customer's needs and expectations are met.
- 4.23 It is likely that unnecessary costs and complexity would be added into the system if different insurers handle the TRV and repair aspects of a claim. This would require coordination between different suppliers who would have been instructed by different insurers. Having different insurers deal with the provision of a TRV and the vehicle repair is likely to lead to delay, frictional cost and runs the risk of over provision of the TRV given that the repair period has a direct impact on the hire period.

(g) Would this remedy give rise to distortions or have any other unintended consequences?

- 4.24 A first party model would have the effect that safe drivers subsidise more dangerous drivers. Under the model proposed, at-fault drivers would suffer fewer consequences for causing an accident in respect of the resulting claims for the provision of TRVs. As such, the impact on their premium is unlikely to be substantial. The non-fault claimant's premium, however, is likely to increase as a result of them having made a claim.
- 4.25 However, assuming this proposal envisages the non-fault repair/total loss cost could still be recovered as a subrogated claim, it would continue to affect the at-fault driver's premium as would any third party injury claim.

(h) How long would it take to implement this remedy? What administrative changes would need to be made?

- 4.26 It is probable that implementing this remedy would take some time due to the likely requirement to amend primary legislation. In addition, insurers would need considerable time to educate consumers on the introduction of a new add-on product, to enable consumers to purchase varying degrees of TRV cover and change their IT systems, distribution arrangements and policy documentation to deliver these changes.

(i) Would this remedy need any supporting measures? If so, what are those measures?

- 4.27 If this remedy were to be implemented, then consideration would need to be given to combining it with Remedy A but also Remedies 1C, 1D and 1E would be required to manage the costs incurred for the provision of a TRV.

Remedy 1B: At-fault insurers to be given the first option to handle non-fault claims

Overview

- 4.28 Under the CC's proposed Remedy 1B, at-fault insurers would be given the first option to handle either the whole of the claim or only the TRV element of the claim. The CC provides five variants of this remedy, all with the purpose of giving greater control to the at-fault insurer.
- 4.29 The variants have differing degrees of potential effectiveness and practicality. Although a number of these variants would address the key AEC found by the CC in terms of the separation of cost control from cost liability, the ABI does not believe that the options proposed would provide workable solutions for the following reasons:
- There is clear risk of significant delay in the claims process, even if the final choice of provider remained with the non-fault claimant, given that the non-fault claimant would potentially be passed between the at-fault insurer and the FNOL provider. Where roadside assistance is needed and a TRV is required immediately, there are greater concerns over customers experiencing unnecessary delays in their claims being effectively handled.
 - It is difficult to see how this remedy would work where there is either a dispute about liability or liability is split.
 - If a non-fault claimant is given a choice over which provider to use following an accident, they would in all likelihood choose their own insurer, thereby substantially impacting on the effectiveness of the proposed remedy.
 - It is likely to lead to additional frictional cost as insurers would need to establish teams and processes to ensure that they can respond in a timely manner to non-fault notifications.

Answer to specific questions

(a) Which of the variants in paragraphs 38 and 39 are likely to be most effective:

(i) If the non-fault claimant retains the right to choose who handles the claim, what incentive would they have to choose to have claims handled by the at-fault insurer? Would this remedy favour larger insurers with stronger brands?

- 4.30 There is little incentive for the non-fault claimant to choose that their claim is handled by the at-fault insurer. Claimants are more likely to prefer their own insurer, a brand that they will recognise and with whom they have chosen to enter into a contractual relationship, rather than an insurer they may not know and have no existing relationship with, or indeed that the consumer had actively chosen *not* to have a relationship with.

(ii) If the at-fault insurer is able to capture the claim should it wish to do so, what incentive would the at-fault insurer have to provide the standard of service to which the non-fault claimant is entitled? What measures need to be put in place to safeguard against this risk (see, for example, Remedy 2A)?

- 4.31 Insurers will always strive to offer high levels of customer care, regardless of fault. The potential for the non-fault claimant to be a future customer should they receive a high level of customer service from the at-fault insurer will act as an incentive for the non-fault insurer to manage the claim with high levels of customer service. However, non-fault claimants have less bargaining power to enforce standards against the at-fault insurer and their service providers.

4.32 This Remedy might be supported by the CC's proposed Remedy A which is designed to ensure that consumers are made more aware of their legal rights and entitlements.

(b) What are the implications of the non-fault claimant having the right to choose an alternative service provider?

4.33 It is not clear whether this question concerns the implications of the claimant retaining the ultimate decision about whether his own or the at-fault insurer handles their claim or whether the question asks whether the claimant should still retain a right to reject both and choose their own service provider.

4.34 If a non-fault claimant had the right to choose either their own or the at fault insurer's service provider, as discussed above, in all likelihood they would choose their own insurer's (as the CC highlighted in their potential remedies paper, the non-fault claimant is unlikely to consider cost when choosing a provider of a service they are ultimately not required to pay for) Therefore, if this proposed remedy were to be implemented, but the non-fault policyholder retained the right to decide which insurer's service provider to use, then the remedy would be largely ineffective.

4.35 The ineffectiveness of this remedy would be further exacerbated if the claimant retained a third option; to instruct a third party service provider of their own choosing.

4.36 If the CC concludes that it is appropriate to remove the separation between cost control and cost liability, any remedy which allows the claimant ultimate freedom to choose is likely to undermine the achievement of the CC's objective.

(c) To what extent might this remedy inconvenience non-fault claimants, for example if they have to wait for the at-fault insurer to make contact? How long should the fault insurer be given to contact the non-fault claimant?

4.37 The ABI believes it would not be possible to strike an appropriate balance between, on the one hand, giving the at-fault insurer sufficient time to make an informed decision on liability and, on the other hand, meeting any immediate needs of a non-fault claimant in terms of the provision of a TRV and undertaking repair of the claimant's vehicle. The biggest inconvenience for the non-fault claimant would undoubtedly be delay, given their need to communicate with the at-fault insurer. Any delay from a customer view point is unacceptable, particularly when the need for assistance and/or a TRV is urgent.

4.38 Given the involvement of brokers, CMCs and other non-insurers within the FNOL process, it is challenging to prescribe a time period which would both avoid inconvenience to the non-fault claimant and enable effective communication, decision making and communication of the decision to take place between the at-fault insurer and other parties. Under Remedy 1B, this problem would be exacerbated given that the at-fault insurer may not have a report of the incident or be able to contact their policyholder in a timely way to establish the circumstances of the accident in order to reach a decision on liability.

(d) Should non-fault claimants who make the first notification of loss to their own insurer, broker or CMC have to wait for an offer from the at-fault insurer before deciding who to appoint to handle the claim even if they want their own insurer or CMC to do so?

4.39 This is likely to be neither practical nor would it be optimal from a customer perspective. It would be more practical to allow the non-fault claimant's insurer or service provider to deal with the claim whilst ensuring that the appropriate cost controls are in place, as envisaged in the CC's other supporting proposed remedies.

(e) Are there any advantages or disadvantages to the variant applying this only to replacement cars (see paragraphs 40 and 41) compared with applying this to both replacement cars and repairs? What might be the consequences of a replacement car being provided by the at-fault insurer but the repair being managed by the non-fault insurer?

4.40 As previously discussed, complexities, delays and unnecessary costs are likely to arise if the TRV is provided by the non-fault insurer but the vehicle repair is carried out by another provider. Although the at-fault insurer would supply the TRV directly to the non-fault claimant, and therefore would have control over the daily rate, they would have no control over the duration of vehicle repair which has a direct impact on the hire period and therefore the overall cost of the claim.

4.41 If the provision of a TRV and vehicle repair are separated, this would require co-ordination between the two providers which would likely lead to additional frictional costs and potential delays. This is because it is unlikely that the communication times between repairers and TRV providers would be instantaneous and there would be delay while the providers pass information between themselves to ensure the commencement of the vehicle repair and provision of a TRV coincide.

(f) Would this remedy give rise to distortions or have any other unintended consequences?

4.42 Individual insurers' distribution models are likely to impact on the effectiveness of the model. Those insurers with a greater number of customers who have bought their PMI policy directly from the insurer are more likely to get early notification of a claim. Whereas, those insurers with a greater number of customers who have purchased their PMI policy through an intermediary are likely to be required to hire additional staff to contact their customers to ensure that they are getting the service that they require. This has the potential to make intermediated distribution of PMI policies more expensive relative to policies sold directly.

(g) How might this remedy be circumvented? How could this circumvention be avoided?

4.43 Due to the complexity of this remedy there are a number of opportunities for the process to be established in ways that result in delays, unnecessary costs and a poor customer journey. Without stringent rules in place, it is likely that CMCs and CHOs would seek to find ways to manipulate the period in which the at-fault insurer has to make an offer to handle the claim and therefore supply a more expensive credit hire TRV.

(h) How should insurers, brokers and CMCs be monitored to ensure that claimants are properly informed of their rights when making the first notification of loss? How should non-fault insurers and CMCs be monitored to ensure that the at-fault insurer is informed of the claim? Who should undertake this monitoring? What additional costs would arise as a result of monitoring?

4.44 For this remedy to be effective, all parties involved in FNOL would need to be appropriately regulated, including but not limited to insurers, insurance brokers, solicitors, vehicle replacement providers, vehicle repair providers and CMCs. At present there is no regulation of some FNOL providers. Regulation of these entities could be assumed by existing regulators as an extension of their regulatory functions. If regulators are to take responsibility for providing enforcement and monitoring compliance of those they currently regulate as part of their existing regulatory functions, it will be important for the CC to consider how non-regulated entities, including providers of TRVs, will be monitored. Any form of third party audit or monitoring would need to be funded appropriately and there is

potential for this cost to be imposed on the current system and passed on to insurers, and subsequently consumers, through higher PMI premiums.

(i) How long would it take to implement this remedy? What administrative or legal changes would need to be made?

4.45 Depending on which variation of the proposed remedy the CC ultimately adopts, if any, changes to the Road Traffic Act are likely to be required. We consider that any effective implementation of this remedy would require a regulatory framework to be created for currently unregulated participants in the claims handling process.

Remedy 1C: Measures to control the cost of providing a replacement car to non-fault claimants

Overview

- 4.46 This remedy would effectively replace the current General Terms of Agreement (GTA) and under the CC's proposals this could comprise three elements:
- Guidance on the duration of hire periods for replacement cars;
 - A cap on daily hire rates of each category of replacement car; and
 - An allowance for administrative costs.
- 4.47 The ABI believes that, although there could be some benefit to this remedy, particularly in relation to a reduction in credit hire rates, it does not offer a complete solution to the AEC that the CC has identified. Although the GTA has been helpful in limiting costs, it has not proved to be fully effective. The voluntary nature of the agreement means that GTA rates are set at a level that is artificially high as the closer the GTA rates get to direct hire rates, the more likely CHOs are to withdraw from the agreement.
- 4.48 The ABI believes that Remedy 1C could helpfully support either Remedy 1A or 1B. Furthermore, given the likely length of time it would take to fully implement Remedy 1A, the ABI believes that Remedy 1C has the potential to be implemented in the interim, helping to cap the unnecessarily high cost of credit hire pending the implementation of a longer-term solution.
- 4.49 However, if Remedy 1C were to be the main remedy introduced, the ABI would view this as a missed opportunity by the CC to positively reform how TRV claims are handled with a consequent missed opportunity to improve outcomes for customers.
- 4.50 This solution would only serve to reduce daily credit hire rates, and it is uncertain how close these rates would be to the direct hire rates that insurers would achieve under either Remedy 1A or 1B. It is also unclear how practical or enforceable guidance on duration periods would be. Furthermore, while a portal may be helpful in reducing some frictional costs, this remedy would still leave much frictional cost in place as insurers would still be largely dealing with a CHO rather than directly with TRV providers.
- 4.51 It is important to note that, in relation to the last sentence of paragraph 47 in the CC's possible remedies paper, the CC mischaracterises the GTA. The CC states: "... the measures ... propose that daily hire rates would be set by an independent body, *rather than through collective agreement between motor insurance providers and credit hire organisations as under the GTA*. The GTA does not represent a collective agreement between PMI providers and CHOs and does not set daily hire rates. The GTA is a voluntary protocol which subscribers elect (i.e. agree) to join and are free to withdraw from unilaterally. It does not create a binding relationship in the sense of a contract. It also does not set the daily credit hire rates (which CHOs specify in contracts with their customers), but provides for the maximum amounts that subscribing insurers will actually pay in settlement of a claim for reimbursement of those rates, provided the associated procedures are followed.

Answers to specific questions

- (a) What would be the most effective way of implementing this type of remedy? Possible ways could be an enforcement order made by the CC, an under-taking to replace the GTA, or (in relation to the hire costs of TRVs subject to dispute) a recommendation for**

judicial guidance on the level of hire costs recoverable from at-fault insurers by non-fault insurers and other providers of replacement cars.

- 4.52 An enforcement order would be the only effective way of implementing this proposed remedy. In relation to the other implementation suggestions:
- 4.52.1 An undertaking to replace the GTA would presumably require specific motor insurers and specific CHOs (those subscribing to the GTA) to adapt the GTA to provide for the measures set out in paragraphs 45(a) to (c) of the CC's possible remedies paper. This would not provide a solution, for precisely the same reasons that were previously argued in the ABI's successful appeal when the OFT sought to require similar changes (see Case No. 1036/1/1/04 in the Competition Appeal Tribunal and the summary of the appeal at <http://www.catribunal.org.uk/239-601/1036-1-1-04-Association-of-British-Insurers.html>). If the GTA remains a voluntary protocol, firms would be free to withdraw for whatever reason. If the solution imposed did not apply to the whole market, competition would be distorted as some credit hire firms would be operating under controlled rates and others would not.
 - 4.52.2 Judicial guidance is likely to require reference to some sort of index of TRV hire rates but this is also an undesirable solution. It is not clear whether the CC proposes that judicial guidance would complement the existing GTA (which takes account of a wide range of factors in addition to the level of credit hire costs recoverable, meaning that judicial guidance would still not give a clear indication of the appropriate settlement rate) or whether it is intended that judicial guidance would prescribe the appropriate settlement rate in every case. If the latter, this would suggest that there would be no ongoing incentive for motor insurers and CHOs to co-operate in relation to the wider aspects of the management of a claim as they currently do under the GTA. For example, there would be little, if any, incentive for an insurer not to intervene at the earliest opportunity if they could save money by doing so.
- 4.53 The key difference between the measures proposed by the CC and the measures in the GTA is that the CC's proposal for an enforcement order would make the measures and the associated credit hire rates legally binding on all parties. This would be welcome because:
- 4.53.1 This would remove all of the competition law concerns that have long affected the GTA, which arise because insurers cannot collectively agree to only manage claims under the auspices of the GTA and CHOs cannot collectively agree, either with themselves or with insurers to do likewise; and CHOs cannot collectively agree, either with themselves or with insurers, to only charge certain credit hire rates for TRVs or for repair. Any such collective agreement, notwithstanding its benefits, would infringe competition law, which is why the GTA was established as a voluntary protocol and that each subscriber elects to join for as long as they wish to do so. Furthermore, the rates under the GTA are not the rates for TRV hire or repair (which CHOs can set at any rate), but rather are the rates at which subscribing insurers will settle a claim. In the absence of the possibility to collectively agree TRV hire or repair rates (that are acceptable to insurers for settlement), the GTA has been the best solution available.
- 4.54 In relation to the GTA, insurers have previously been concerned that rates could not be set or imposed by a third party. This concern stems from the fact that the GTA has to date been a voluntary protocol. If unattractive rates were imposed by a third party on

subscribers to the GTA, the subscribers would be at a competitive disadvantage relative to their non-subscribing competitors. In those circumstances, it is likely that firms would withdraw from the GTA, hence the need, in practice, for GTA rates to always reflect a genuine overall consensus about the benefits of the arrangement for each type of subscriber and the balance of interests between CHOs and insurers. This has been something that subscribers have needed to determine for themselves as part of their overall business strategy. As such, for Remedy 1C to be effective it would need to be compulsory for all TRV market participants.

(b) Which parties should be covered by this remedy?

4.55 The remedy must apply to all industry participants, including insurers, brokers, CMCs and TRV providers and must extend beyond the PMI industry to include commercial motor insurers.

(c) What is the appropriate time period in which repairs should commence once a replacement car has been provided? How should the hire period be monitored and by whom?

4.56 There is no standard or appropriate time period in which repairs should commence once a replacement car has been provided. The time to commence repairs will depend on the make and model of the damaged vehicle, the availability of parts and a number of other factors. However, it is important that repairs have an immediacy to them as delays have an adverse effect on the cost of the TRV.

4.57 If this remedy were to work as a standalone solution, then it should be the responsibility of the non-fault insurer to inform the at-fault insurer of the extent of the repairs being undertaken and the time estimates for completion of those repairs and for the at fault insurer to assess the reasonableness of those times.

(d) What is the most appropriate mechanism for setting hire rates for replacement cars? Who should determine the hire rates?

4.58 It would be appropriate for an independent body to set the rates. In doing so, the independent body would need to consider, at a minimum:

- The direct rates currently paid by insurers who are able to negotiate more competitive rates than credit hire or GTA rates given the volume of TRVs they hire
- The category of vehicles
- Discounts for prompt payment

4.59 A critical element of this would be removing incentives for any party to circumvent whatever process or cost regime is applied. This means that, in the event of a claim coming before a court, the court should apply the rates that have been determined by the outcomes of the process proposed by Remedy 1C and not the rates a claimant could reasonably achieve in person.

(e) What administrative costs should be allowed? At what level should administrative costs be capped?

4.60 Administrative costs should not be allowed. They are a cost of doing business and they should be included in the daily hire rates for TRVs. As such, we do not believe that it is appropriate that administration costs should be built into any remedy.

4.61 If a portal were introduced to support this remedy, along with a ban on referral fees as proposed in Remedy 1G, the need for administrative costs to be included as a component of the rates set under the existing GTA would be reduced given that some of the cost of administering a claim would be eliminated.

(f) Is it practicable for the relevant documentation to be exchanged through a web portal rather than in paper form?

4.62 A number of insurers already use a portal-type format to assist with the management of credit hire claims. As such, it is more than practicable for the relevant documentation to be exchanged through a web portal rather than in paper form.

(g) What costs would the measures in this remedy entail?

4.63 The only way for Remedy 1C to work effectively would be through the establishment of an independent body to set and enforce daily hire rates, which are binding on all market participants. Furthermore, CHOs would need to be subject to a regulatory framework in order to ensure their compliance and that the desired policy objectives are achieved. All of this is likely lead to additional costs. It will be important for the CC to ensure, through a rigorous cost / benefit analysis, that these costs do not outweigh the potential savings a reformed market could deliver.

4.64 Although there may be some reduction in frictional costs associated with the introduction of a credit hire portal, the vast majority of frictional costs, e.g. credit hire teams, litigation etc. are likely to remain.

(h) Would this remedy give rise to distortions or have any other unintended consequences?

4.65 Although it is envisaged that there would be guidance on hire duration provided as a result of the process proposed in Remedy 1C, it is possible that vehicle repair could be delayed for a number of reasons which is likely to lead to the hire period being extended, adding additional cost. Furthermore, non-fault claimants, who may have been satisfied with a free courtesy car, may be encouraged by CMCs or CHOs to take a more expensive like for like TRV instead.

(i) To what extent is there a risk that this remedy could be circumvented by the evolution of new business models that are not subject to it? How could this risk be avoided?

4.66 In the timeframes set by the CC, we have not been able to see how this remedy (independent of any ban on referral fees) causes any greater incentive to vertically integrate with TRV providers than under the current system. However, we believe that the CC needs to give further consideration to this question.

Remedy 1D: Measures to control non-fault repair costs

Overview

- 4.67 The aim of this proposed remedy is to prevent subrogated claims for repair costs being inflated or marked up. This remedy would also aim to reduce the frictional costs associated with disputes over repair claims. The CC considered two possible ways in which these aims could be achieved through an enforcement order:
- 4.67.1 *Remedy 1D(a)* - Non-fault insurers would only be able to recover from at-fault insurers the wholesale price they pay to repairers, plus an allowance for an administration charge.
 - 4.67.2 *Remedy 1D(b)* - The repair costs recoverable through subrogated claims would be limited to standardised costs. If the actual repair cost was higher than the standardised cost, then the non-fault insurer would not be able to recover that additional cost. Conversely, if the actual repair cost were lower than the standardised cost, the benefit could be retained by the non-fault insurer. It is not proposed that the standardised costs would be used for any purpose other than in relation to subrogated claims.
- 4.68 The industry supports the principle of having greater controls over the repair costs that can be subrogated. However, there are practical difficulties in determining and applying what the appropriate "wholesale price" or "standardised cost" should be in any given claim. A clearer indication of what is intended by these concepts needs to be set out by the CC before it is possible for us to consider the appropriateness, or otherwise, of either method of controlling non-fault repair costs.
- 4.69 The ABI is also concerned that both variants of Remedy 1D appear to only focus on non-fault insurers. This remedy should also address the similar practices of other organisations which manage non-fault claims on behalf of customers, including brokers, CHOs and CMCs.

Answers to specific questions

(a) What would be the most effective way of implementing this remedy?

- 4.70 The ABI believes that either variant of Remedy 1D could be implemented via an enforcement order. If the CC decided to move ahead with Remedy 1D (a), the CC would need to give careful consideration to the issues identified in our response to question (c) below. However, if the CC decided to implement Remedy 1D (b) then careful consideration needs to be given to what is meant by "standardisation".

(b) Would either variant of this remedy give rise to distortions or have any other unintended consequences?

- 4.71 See answers to (d) and (e) below.

Regarding Remedy 1D (a)

(c) How could repairers be prevented from inflating the wholesale prices they charge to non-fault insurers and passing excess profit to non-fault insurers through referral fees, discounts or other payments?

- 4.72 It would be very important that any remedy of this kind carefully considered the description of the “wholesale price” which could be recovered from the at-fault insurer. For instance, is it intended that by “wholesale price” recovery would be limited to the price actually paid by the non-fault insurer to the actual repairer? The Court of Appeal decision in *Coles v Hetherington [2013] EWCA Civ 1704* would need to be considered in this context. Also, any definition of the costs recoverable would need to capture the possibility that a price charged by a repairer to an insurer could include elements of profit share, commission, discounts, rebates, referral fees or other benefits which mean that the “real” wholesale price is different.
- 4.73 A further issue that the CC will need to consider carefully is the reduction in incentives on insurers to either effectively negotiate price reductions from suppliers or introduce efficiencies into their claims supply chain. This might be capable of being addressed if an appropriate definition of “wholesale prices” is determined.

(d) Could this remedy be circumvented by insurers vertically integrating with repairers?

- 4.74 This possibility would need to be considered in any framing of remedy 1(D)(a). Alternative business structures are being adopted between insurers and legal service providers and it is possible that this model could be extended to repairers. The wholesale price of repair would need to be defined and incorporated into such models.

(e) Is it practicable to set standardised costs for all aspects of repairs in subrogated claims? If not, what are the potential problems?

Market level repair tariff applied to light, medium and heavy repair

- 4.75 It is not clear from the CC’s proposed remedies what is meant by “standardised costs”. If it is defined as a *market level repair tariff applied to light, medium and heavy repair* scenario, then it is likely to result in major differences between the tariff and the actual cost of the repair.
- 4.76 A standardised tariff has the potential to be detrimental to the accurate assessment and safe repair of policyholders’ vehicles because it:
- removes the clear transparency of the cost of repair that the current sophisticated assessment systems provide;
 - may encourage some insurers to adopt an approach where they refuse to offer insurance cover for those vehicles that are more expensive to repair; and
 - could lead to repairers and CMCs sacrificing safety and quality in order to provide the repair in a way that does not exceed the tariff price.
- 4.77 Furthermore, a tariff set at such a high level may give rise to numerous distortions and introduce frictional costs that are not present in the current system, including:
- A standardised cost would need to be agreed/arbitrated between multiple stakeholders.
 - Keeping a standardised cost fair and equitable to all parties would require those costs to be regularly reviewed and updated, potentially leading to incremental costs.

- Regional variations on labour rates may result in a distorted compensation model which could adversely affect the ability of bodyshops in certain locations to invest in equipment and training.
- The pricing of vehicle parts is largely undertaken by vehicle manufacturers and is subject to regular change. A standardised cost would be difficult to establish due to the wide variation in similar parts pricing across manufacturers from time to time. For example:
 - Mercedes Citan (LCV) side panel: £1209
 - Renault Kangoo (LCV) side panel: £378
- Thatcham's Repair Technology Centre report that these appear in fact to be the same panel. Additionally, the availability and range of non-original equipment manufacturer parts would need to be carefully considered given that an increase in the use of these parts is likely to affect any standardised cost model and potentially affect the market for original equipment manufacturer parts.
- Rapid changes in vehicle technology and design challenges need to be factored into the time allocated to undertake a repair and the labour rate charged in order to account for the additional investment in machinery and equipment and/or skilled technicians. This is likely to result in large variations in the actual repair cost by vehicle make and model.
- The application of standardised costs would also need to take account of the age of the damaged vehicle and any warranty implications.
- Not all repairs are carried out by approved insurer appointed repairers. Consumers' ability to choose to have their vehicle repaired at such repairers increases the complexity of a standardised cost matrix.
- Incorrect allocation of claims and identification of the severity of damage. There may be a temptation to do this which could lead to more disputes, a delay in the repair process and extended key to key time, thereby adding frictional cost over and above the standardised cost. For example, without the use of a model-specific method and repair time, damage identified as a low severity bumper repair may in fact be a more complex repair due to the existence of collision avoidance technology within a bumper system.

Vehicle repair specific standardised cost model

- 4.78 By retaining the sophisticated repair assessment and estimating systems currently deployed in the accident damage processes, a form of standardised cost could be introduced for insurers to set the cost of subrogated repairs.
- 4.79 This solution would avoid the numerous issues identified with a market tariff, as the standardised cost would be a combination of a precise vehicle and repair specific calculation, e.g. it would calculate the cost of repairing a front wing to a Golf Mk 7 SE model, but would use market average labour and paint costs, together with the retail price of the specific vehicle parts required. This would avoid the potentially large variances in a market tariff based standardised cost.
- 4.80 There are three main estimating systems currently used by insurers in the UK market. However, the most common repair assessment system used by insurers and repairers is *escribe*, which contains aligned Thatcham times and methods. Limited additional cost would be incurred if *escribe* were to become the de facto system, given that it is already funded by the majority of UK PMI insurers and can be easily enhanced.
- 4.81 *escribe* could therefore form the basis of a vehicle repair specific standardised cost model used by insurers/CMCs in order to settle subrogated repair claims.

4.82 Thatcham also maintains a representative database of estimates from all the main UK estimating systems which could be used to determine the average labour cost. This could be used to finalise a representative standardised price - based on the vehicle and repair specific time. So an example scenario would be, to repair a wing on a Golf Mk7 SE:

	<i>escribe</i> based standardised repair price	Derived from
Labour	£200	Time for specific repair x average labour rate
Parts	£800	RRP
Paint	£300	Average paint cost
Total	£1300	This would be the standardised price

4.83 By adopting the vehicle repair specific model recommended, the calculated standardised cost would include all the major cost components given that *escribe* can calculate:

- a single panel price or a combination of panels specific to that repair scenario;
- an accurate assessment of the severity of the damage;
- the type and make of paint and associated costs;
- the required parts and their retail price

4.84 Opinion time would not form part of the standardised cost, as this is highly specific to the individual repair scenario and would be for negotiation between the insurer/CMC and repairer.

(f) What are appropriate benchmarks for inputs into the price control? To what extent are cost estimation systems helpful? What other indices would need to be used?

4.85 As highlighted above, Thatcham maintain a representative database of estimates from all three of the main UK estimating systems used by insurers and CMCs. This could be used to determine the average labour cost, which would be used to finalise a representative standardised price. This calculation could be refreshed on a six monthly basis.

4.86 *escribe* is based on fully researched model specific repair times which are combined with Thatcham's repair methods. These times and methods are developed to ensure safe, quality repairs and provide highly accurate repair assessments and costs which are trusted by insurers and repairers alike.

4.87 The role of estimating systems would not change, and would continue to be used by the insurer/CMC in their negotiation with their repairers. There would be a strong incentive for the insurer or CMC carrying out the repair to negotiate improved terms for the completion of a repair within their bodyshop network and with their parts and paint suppliers. Those terms would still be built into the estimating system used by the insurer and their repairer, to enable them to benefit from any efficiencies, as follows:

	<i>escribe</i> standardised repair price	Insurer to supplier actual cost	Efficiency margin
Labour	£200	£180	
Parts	£800	£720	
Paint	£300	£270	
Total	£1,300	£1,170	£130

4.88 So this remedy would have the dual benefit of establishing a fair, transparent repair and vehicle specific standardised cost between insurers/CMCs, whilst providing the party carrying out the repair, the scope to reduce costs through their own efficiencies.

(g) What would be the costs of implementing this arrangement?

4.89 The costs of implementing the recommended remedy are not likely to be substantial as the systems, processes and database required for the solution are already in place and funded.

(h) How would monitoring of this remedy work?

4.90 ABI members and CMCs could be requested to report on a regular basis at an aggregate level the differences between the standardised and actual cost of their repairs, and these results would be reviewed against pre-defined tolerance levels. Revisions to any elements of the standardised costs could be submitted via the ABI Motor Committee for approval prior to adoption.

(i) What would be the most appropriate organization to review the inputs into the price control on a regular basis?

4.91 Thatcham's *escribe* system is regularly updated with accurate parts prices and it updates its paint prices annually. These inputs, and the labour rate it calculates from its estimating database, could be reviewed by the ABI on a regular basis to ensure it is meeting its objectives.

(j) What measures would be required to ensure that the price control arrangements would not have adverse consequences for the quality of repairs?

4.92 It would be essential to ensure that any base data that is used to construct the standardised cost is defensible, transparent and fit for purpose. Failure to ensure this could lead to repairers sacrificing safety and quality to provide the repair within defined cost parameters.

4.93 *escribe* is based on fully researched model specific repair times which are combined with Thatcham's repair methods. These times and methods are developed to ensure safe, quality repairs and are utilised by all leading motor insurers and their body shop networks.

4.94 Given that it is a methods-led system, the accuracy of the repair assessment within *escribe* will prevent major distortions between the standardised and actual cost of repair, which will mitigate the risk of poor quality repairs being undertaken.

Remedy 1E: Measures to control non-fault write-off costs

Overview

- 4.95 The CC provisionally found that when a non-fault claimant's vehicle is written off, and the claim subrogated to the at-fault insurer is calculated using an estimated salvage value for the vehicle from the salvage company acting for the non-fault insurer, the estimated salvage value is sometimes set too low, which results in a higher claim on the at-fault insurer (as the claim is the difference between the pre-accident value and the estimated salvage value).
- 4.96 The aim of the CC's remedy would be to ensure that subrogated claims for a vehicle loss reflect actual salvage proceeds. The CC considers two possible ways in which this could be achieved through an enforcement order:
- Remedy 1E(a): Require that the at-fault insurer be given the option to handle the salvage of the non-fault vehicle write-off (but only once the pre-accident value of the vehicle has been agreed by the claimant/ non-fault insurer).
 - Remedy 1E(b): Require that all insurers use actual salvage proceeds (including any referral fee paid by the salvage company to the insurer) or that the amount of the subrogated claim on the at-fault insurer based on the estimated salvage value is adjusted (up or down) once the actual salvage proceeds (and any referral fee) have been received from the salvage company.
- 4.97 Of the CC's two proposed remedies, the ABI believes that the proposed remedy 1E(b) has the greater potential to address the identified theory of harm. There would be too many variables associated with 1E(a) that would require at-fault insurers to be given the option to handle the salvage of non-fault vehicle write-offs. Under this proposal, there is the potential to increase the cost of a claim due to delays associated with the transfer of ownership, storage fees and a consequent depreciation in salvage value. In addition, the Motor Insurers Anti-Fraud and Theft Register (MIAFTR) notification process (which in turn notifies the DVLA) would be undermined because there would be delays in registering the salvage. This has the potential to lead to an increase in fraud given that there would be a window when the vehicle would not be on any recognised database which provides an opportunity for the vehicle to be dismantled and to reappear on the road without going through the appropriate checks.
- 4.98 The ABI believes that the CC's proposed remedy 1E(b) would be the most practical solution, ensuring that the value of salvage is at the appropriate level. In addition, it would ensure that the handling insurer added the vehicle to MIAFTR at the earliest opportunity. However, correct salvage categorisation would be key to the successful implementation of this option.

Answers to specific questions

(a) Would either variant of this remedy give rise to distortions or have any other unintended consequences?

- 4.99 The CC's proposed remedy 1E(a) could result in a potentially, unnecessarily lengthy claims process which would result in increasing costs. The sale of salvage following the settlement of a claim with a customer is not an automatic procedure and involves a number of processes. For example, should an at-fault insurer handle the salvage of a non-fault vehicle write-off, they may inherit outstanding finance on the vehicle. As a result, the vehicle must remain in storage until this is resolved given that ownership of the vehicle

salvage rests with the finance company. This may increase costs as insurers negotiate with each other over which is responsible for inherited storage charges.

- 4.100 In addition, under the Road Vehicles (Registration and Licensing) Regulations 2002, the insurer handling the salvage is required to notify the DVLA and ensure that the registration certificate (V5C) is surrendered or destroyed. Notification is carried out via the MIAFTR database. MIAFTR requires that the insurer handling the salvage enters the vehicle's details when the vehicle is declared a total loss and not when the claim has been paid. To transfer responsibility for the legal registration of a write-off until after the claim is settled would result in significant delays at the DVLA.
- 4.101 Remedy 1E(a) might work better if there was a time-limited window in place in which the at-fault insurer was given the option to handle the salvage of non-fault vehicle write-offs. This would avoid both storage costs and unnecessary delays to entering data on the MIAFTR database. However, the other problems we have identified with this variant remain.

Regarding Remedy 1E(a)

(b) Would at-fault insurers be likely to take up the option of handling the salvage?

- 4.102 At fault insurers could take up the option of handling the salvage if this remedy was adopted. It would, however, cause areas of additional frictional cost (and thus detriment to consumers) because of the delays associated with the transfer of ownership, keys, personalised number plates and salvage storage fees from one owner to another. The preferred option 1E (b) is for subrogated claims to be offered on a net cost basis rather than inheriting the salvage and the consequent responsibility for disposal.

(c) At what point in the claims process should at-fault insurers be given this option?

- 4.103 If this proposed remedy were adopted, at-fault insurers would need to be provided this option as early in the claim process as possible and before notification to MIAFTR and the DVLA.

Regarding Remedy 1E(b)

(d) What impact would this remedy have on salvage companies? To what extent would this proposal reduce the incentives for insurers to get the best salvage value from salvage companies?

- 4.104 Remedy 1E(b) largely reflects the present position of most insurers. There is likely to be a limited impact on salvage companies as they normally pay the actual salvage value to the insurer. The CC should ensure that the non-fault insurer presents the subrogated claim once the actual salvage value is known. A standardised salvage process may assist to counteract the possibility of the non-fault insurer selling salvage at an artificially low figure.

(e) What administrative costs would the adjustment mechanism have? What evidence would need to be provided to verify the salvage proceeds (and any referral fee)?

- 4.105 Some insurers are of the view that in order to produce accurate evidence of the actual salvage proceeds, a standardised format would be required. The subrogated salvage claims should take account of the actual cost of handling and selling the salvage by the non-fault insurer. The claims could, for instance, take into account commissions, clawbacks and volume discounts.

4.106 On the other hand, other insurers suggest that claims handling costs need to be removed from the process, in line with some of the other remedies proposed by the CC. Correct salvage categorisation remains critical. The ABI Salvage Code provides for some consistency of salvage processes and might be reviewed in conjunction with any remedy, adopted by the CC.

Remedy 1F: Improved mitigation in relation to the provision of replacement cars to non-fault claimants

Overview

- 4.107 This remedy is aimed at improving the obligation on the not-fault insurer (or third party handling the claim) of managing mitigation in relation to the need for a TRV. In the current market, mitigation statements are often only provided at the point of delivery of the TRV and the ABI would welcome a remedy that sought to address the issue earlier in the claims process, with the intention of meeting the customer's actual TRV needs.
- 4.108 The ABI supports the right of an at-fault insurer to request evidence of the mitigation declaration. However, we do not believe there is a need to allow the at-fault insurer to request the call records. Such a solution is likely to raise data protection issues, would be administratively burdensome and would lead to additional costs. We believe that the provision of a completed mitigation statement which has been agreed by the customer should be sufficient to address this issue.

Answers to specific questions

(a) Could this remedy operate on a stand-alone basis?

- 4.109 This remedy alone would be of limited effect in addressing the AEC the CC has identified. However, mitigation is a common law principle and all claims ought to be mitigated, where possible.
- 4.110 As it stands, this remedy does not cover instances where a claimant's needs change during the period they have a TRV. To provide for that, there should be a corresponding duty on claimants to advise the at-fault insurer of a change in need so that consumers also play their part in mitigating overall cost for the benefit of all consumers.

(b) Which other remedies would benefit from this remedy as a supporting measure?

- 4.111 This provision would enhance other proposed remedies relating to TRVs (though it would not complement a first party solution). If mitigation of loss can be improved then this would help to make any final remedy proposed by the CC more effective.

(c) What questions should the non-fault insurer or CMC ask non-fault claimants in order to assess the need for a replacement car, the appropriate type of replacement car and to demonstrate that the provision of a replacement car had been appropriately mitigated? Should the cover provided by the claimant's own insurance policy be considered in assessing the claimant's need: for example, if the claimant's own policy included provision of a replacement car in the event of an at-fault claim, would that be sufficient evidence of need for a replacement car in the event of a non-fault accident?

- 4.112 The appropriate establishment of need is essential given that this is the basis of the legal framework in this area. The questions should focus on:
- Why was the replacement vehicle offered by the at-fault insurer not acceptable and is there proof that policy cover has been checked?
 - Is there an actual need for a replacement vehicle at all?
 - What uses was the original vehicle was put to?
 - What was the frequency of use of original vehicle?
 - What is the actual need and necessity of the type and model of vehicle?

4.113 The ABI believes that if a claimant's own policy provides cover for a TRV that is adequate for their actual need at the relevant time, there should be a (rebuttable) presumption that the claimant has failed to mitigate their loss if they take out a credit hire TRV.

(d) Would the right of the at-fault insurer to challenge the non-fault insurer or CMC and to see the 'mitigation declaration' and call record be sufficient for this remedy to be self-enforcing without additional monitoring? Would giving the at-fault insurer access to the non-fault insurer's or CMC's call records give rise to any data protection issues?

4.114 The proposal for the at-fault insurer to review the call recording is not practical and is likely to lead to additional and unnecessary costs. Not all insurers currently operate call recording systems. Furthermore, accessing call records where they exist is time consuming and costly and there are data protection issues in giving access to the call record which would require the permission of both the claimant and the call handler.

(e) How much would it cost to implement this remedy?

4.115 This remedy should be limited to the production of a set of answers to an agreed set of questions and the format of the mitigation declaration. If insurers were required to supply the call record, this is likely to lead to costs that would be disproportionate to the effectiveness of this remedy in addressing the AEC identified by the CC.

(f) Would this remedy give rise to distortions or have any other unintended consequences?

4.116 The insurance and credit hire industries have a long history of engaging in costly litigation battles around the minutiae of credit agreements, process, etc including arguments about mitigation. There is a risk that the implementation of this proposed remedy by the CC would merely provide another subject on which these industries would continue to litigate. We agree that this could be a supporting measure for other remedies, but overall we feel this remedy, of itself, does not sufficiently address the AEC that the CC has identified.

Remedy 1G: Prohibition of referral fees

Overview

- 4.117 Given the nature of the market, most industry participants in the PMI market, including but not limited to insurers, insurance brokers, solicitors, TRV providers, vehicle repair providers and CMCs have sought to derive additional revenue from non-fault claims. Referral fees are a symptom of an underlying problem rather than being the problem itself. This means that a ban on referral fees is not a remedy in itself. The underlying problem – the high cost of credit hire vehicles – is what needs to be addressed. A ban on referral fees is, however, essential in order to underpin the measures set out in the other potential remedies the CC has proposed. If referral fees are not banned, the overall effectiveness of the other proposed remedies is likely to be compromised.
- 4.118 A ban on referral fees poses significant definitional issues and circumvention risks. A careful balance would need to be struck between capturing within the scope of any ban all forms of consideration that are considered inappropriate but enabling, and indeed incentivising, insurers to exploit the benefit of their efficiencies of scale and purchasing power to deliver reduced premiums for consumers.
- 4.119 There are a number of participants in the market whose business model relies on the payment / receipt of referral fees so the risk of attempted circumvention is high. If regulators are to take responsibility for ensuring enforcement and monitoring compliance as part of their regulatory functions, it would be important for the CC to consider how currently non-regulated entities, including providers of TRVs, would be monitored.
- 4.120 Given the recent prohibition on the payment and receipt of referral fees in personal injury claims in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the ABI recommends that the CC consult with the Financial Conduct Authority, Solicitors' Regulation Authority and the Bar Council to understand the effect of the ban in practice and the extent to which regulators have seen evidence, anecdotal or otherwise, of firms circumventing, or seeking to circumvent, the prohibition.

Answers to specific questions

(a) Could this remedy operate on a stand-alone basis?

- 4.121 This remedy could operate on a stand-alone basis but to implement a ban on referral fees in isolation would fail to address the fundamental issue in the PMI market which the CC has identified, i.e. the separation at cost control from cost liability. A ban on referral fees supports a number of the other potential remedies the CC has proposed rather than being a remedy in and of itself.

(b) Would remedies 1A to 1F benefit from a prohibition of referral fees as a supportive measure? Or would remedies 1A to 1F have the effect of reducing referral fees in any event?

- 4.122 Remedies 1A to 1F would benefit from a prohibition of referral fees for the reasons set out above. Remedies 1A to 1F are likely to reduce the amount of money available in the PMI market to pay referral fees but, in the absence of banning referral fees explicitly, they are likely to continue to exist, adding unnecessary costs.

(c) What would be the impact on premiums if referral fees were prohibited?

- 4.123 It is unlikely that a reduction in PMI premiums would result if referral fees were banned on a stand-alone basis, as the unnecessarily high cost of credit hire vehicles would remain.
- 4.124 Many insurers are likely to see a reduction in revenue if referral fees are banned although this is likely to be off-set by a consequent reduction in claims costs if the referral fee ban is implemented in combination with the other remedies proposed by the CC in Remedies 1A - 1F. If this is delivered, it is likely that the reduction in premiums will be larger given that the separation of cost control from cost liability will have been addressed, although it would be difficult to determine the extent of the premium reduction attributable specifically to the ban on referral fees.

(d) Would this remedy give rise to distortions or have any other unintended consequences? In particular, would a prohibition on referral fees create a greater incentive for insurers to vertically integrate?

- 4.125 In the absence of effective implementation of a ban on referral fees in combination with the other remedies proposed by the CC in Remedies 1A - 1F, it is possible that a referral fee ban could give rise to firms seeking to substitute their lost referral fee income with other sources of income, for example, increased commission rates or increased repair bills. It is unlikely that a ban on referral fees would provide a greater incentive to insurers to vertically integrate if the high cost of credit hire TRVs were also to be addressed.

(e) What circumvention risks would this remedy pose and how could these be mitigated? In particular, how could other monetary transfers (eg discounts) having the same effect as referral fees be prevented?

- 4.126 As stated in paragraph 4.118 above, there are significant definitional issues that the CC would need to address in order for a ban on referral fees to be effective. Failure to capture discounted rates, rebates, profit sharing arrangements or other models within the scope of a referral fee ban is likely to lead to circumvention risks as referral fees would re-emerge as another form of charge to be passed on to the at-fault insurer to pay.

(f) How could this remedy best be monitored and what costs would be incurred in doing so?

- 4.127 Monitoring of compliance with, and enforcement of, a ban on referral fees and other forms of consideration could be undertaken by existing regulators as part of their regulatory functions and it is unlikely that there will be significant additional costs in them doing so. It will be important for the CC to consider how non-regulated entities, including providers of TRVs, will be monitored.

5. Theory of harm 2: Possible underprovision of service to those involved in accidents

Remedy 2A: Compulsory audits of the quality of vehicle repairs

Overview

- 5.1 Remedy 2A, which would provide for compulsory audits on the quality of vehicle repairs, is intended to address the CC's concerns that, at present, repair audits generally focus on the methods and cost of repairs rather than on repair quality.
- 5.2 The ABI notes that the CC's concerns about the quality of vehicle repair originate from the conclusions of MSXI report. In our view, this report does not provide a fair or accurate indication of the quality of repairs conducted by insurers, the sample size for which the CC itself accepts to be "small and not representative"⁵. The industry has significant concerns with the report, which we will address further in our response to CC's consultation on their provisional findings and which we have already addressed in response to the publication of the MSXI report. We also note with disappointment that the MSXI data room was only available the week that responses to the CC's potential remedies consultation were due, a situation which has further inhibited the industry from effectively engaging in the CC's investigation.
- 5.3 The poor quality of the report and lack of evidence aside, the ABI does not consider that a new audit remedy would be effective or proportionate given that there is already a system for auditing repairs through PAS 125.
- 5.4 Recognising that the majority of insurers already conduct audits on the quality of repairs undertaken on their behalf, the ABI believes that, if there is clear evidence of an AEC in relation to the quality of repair, a variant of the remedy proposed could deliver an enhanced approach to the current technical and quality audit. By combining an existing technical audit such as PAS 125 (or equivalent vehicle manufacturer standard), with a new defined quality standard, all stages of the repair process would become subject to regular inspection, the results of which could be made available to consumers.
- 5.5 By combining current audit programmes with some enhancements, additional cost and disruption to the repair market would be kept to a minimum. With over 60% of insurer approved repair networks currently PAS 125 compliant, when combined with manufacturer approved repair processes, this proposal provides a solution which could be swiftly implemented. However, for this to be effective, all insurers and CMCs would be required to have repairs undertaken by a bodyshop that has in place a recognised technical and quality audit programme.

Answer to specific questions

(a) What costs would be involved in auditing the quality of repairs?

- 5.6 The cost of this remedy would be driven by the scope and scale of the intended audit. The ABI believes that much of this cost can be mitigated by building on current practices. Currently insurers and CMCs conduct audits on the overall quality of repairs undertaken on behalf of their policyholders, as well as reviewing the cost element of the repair. Additionally technical repair process audits are covered by PAS 125 or alternatively a vehicle manufacturer specific standard may be used.

⁵ Provisional Findings, paragraph 7.38

- 5.7 PAS 125 (Automotive Services-Specification for Vehicle Damage Repair Processes) provides a recognised, unannounced audit programme for over 900 bodyshops and results in a Kitemark status, which is a recognised independent quality mark. This technical audit of the repair process has been conducted since 2007 and has resulted in a more formalised process driven approach to accident damage assessment and rectification. The majority of insurers either mandate PAS 125 from their approved repairers or require evidence of working towards achieving that status.
- 5.8 Currently in transition to a British Standard, the PAS 125 audit programme concentrates on the technical aspects of repair and requires proof of compliance in the use of methods, that correct materials are used and maintained equipment is available, all for use by competency tested technicians. The programme ensures that vehicles are properly repaired in a manner consistent with the assessment of damage and to the parameters laid out in the job card.
- 5.9 While PAS 125 does not necessarily assess the completed repair, it does allow access to the vehicle during the repair process and therefore provides information on the compliance of the repair with the job plan derived from the estimating system and *escribe* method⁶.
- 5.10 At this early stage in the CC's consideration of potential remedies, it is difficult to quantify the duration and cost of a quality audit and the subsequent reporting that would be required. If this were to be aligned with the existing PAS 125 technical review, however, disruption to the repair process would be minimised. The quality audits which insurers and CMCs already conduct could be formalised into an industry standard which would limit incremental costs.
- 5.11 For bodyshops not adhering to PAS 125, the audit process would take longer and involve additional cost as process and compliance would not be readily demonstrable. In addition, the audit process would need to be considered in conjunction with the quality of the audit. Therefore, there is potential for the CC to require that PAS 125 and a quality audit should be adopted by all bodyshops who wish to carry out accident repairs on insurers' behalf.

(b) How frequently should audits of repair quality be undertaken?

- 5.12 The 900 Kitemarked bodyshops represent approximately 60% of the insurer approved network, therefore around 1.5 million repairs are currently undertaken within the scope of the 1800 PAS 125 unannounced bodyshop audits conducted annually in the UK. The addition of a defined post repair vehicle inspection focusing on the quality of the repair, in conjunction with the PAS 125 technical inspection, would provide a comprehensive assessment of a bodyshop's ability to deliver repairs that are safe and of a high quality.
- 5.13 This combined approach would suggest that around 2400 quality inspections per annum would be required if all 1200 insurance approved bodyshops were PAS compliant and, if the post-repair inspection and PAS 125 audit were undertaken at the same time, this would minimise cost and disruption to the repair sector.

⁶ *escribe* methods provide a step-by-step workflow for each repair process and are developed by Thatcham, the Motor Insurance Repair Research Centre.

(c) Should audits of repair quality be undertaken by insurers and CMCs or an independent body? Is it necessary for the audits to be standardised and be performed by an independent body for the results to be comparable and credible? How would an independent body be funded?

- 5.14 Thatcham could develop a repair quality audit programme. Although Thatcham is funded by the motor insurance sector, it is an independent expert in vehicle repair (and is recognised internationally as such) and was established for this specific purpose in 1969. Thatcham was the driving force behind the introduction of PAS 125 in 2007 and continues to be involved in the evolution of the PAS 125 standard to meet the increasing challenges facing repairers from advanced vehicle technology.
- 5.15 Thatcham's activities, depending on the scope of the final CC's recommendations, could potentially be funded from their existing insurer levy. However, non-Thatcham members, including insurers and CMCs, should be required to contribute to the costs of running the programme on a pro-rata basis. It would be important for there to be careful control on overall costs to ensure that they are proportionate; otherwise this would lead to an increase in overall repair costs which could lead to higher PMI premiums for consumers.
- 5.16 Having established a repair quality and audit programme under the auspices of Thatcham, this could subsequently move to an auditing function which could be undertaken by independent UKAS accredited audit bodies. Auditors should be required to demonstrate that they have an in-depth knowledge of the repair process, including how to repair modern vehicles, materials and equipment, and be independent from insurers or CMCs.

(d) If the results of repair quality audits were to be published, who should collate the results? Should the results be categorised by repairer or insurer?

- 5.17 As part of the quality audit programme, reporting of the results could be part of Thatcham's remit. This information could then be passed to the ABI for publication. This would mirror the process by which Thatcham provide the technical input into the Group Rating scheme, used for the risk assessment of every new vehicle launched in the UK. The use of a voluntary Steering Committee, similar to that likely to be employed by BSI to develop BS10125, to monitor the audit scheme should also ensure acceptability by all relevant stakeholders.
- 5.18 If the results are to be used to highlight compliance to a quality audit programme, then the results, combined with Kitemark status, could be reported by the insurer to the ABI for publication. This is a practical way to inform the consumer given that most opt to be guided by their insurer to the repairer in the claims handling process. Given that many repairers undertake work for multiple insurers, it is almost inevitable that these firms will feature on more than one insurer's published list of insurer repairers.
- 5.19 The repairer could also use their rating to attract local and retail (non-insurer) work and could display a quality mark alongside their Kitemark licence. It should be noted that only bodyshops audited by BSI are able to display the Kitemark logo.

(e) If audits are carried out by insurers, how would consistent standards be achieved?

- 5.20 Thatcham could define and provide consistent application of the quality audit programme. Using various data, combined with Thatcham's expertise, methods and skills, this would ensure standards are applied in a consistent manner. If this remedy were to be implemented through expanding the scope of PAS 125 and the scope of audits undertaken in relation to those standards, it would be necessary for these or equivalent manufacturer

standard accreditations to be made mandatory for all repairers undertaking insurance-related work.

- 5.21 As outlined above, the benefit of all insurer and CMC approved networks achieving PAS 125, either by Kitemark accreditation or through other auditing bodies, would provide:
- a consistent base standard for the repair process;
 - an aligned technical and quality standard; and
 - cost savings, given that a combined audit would result in less disruption to the repair process and lifecycle.
- 5.22 Over 60% of insurer approved networks are PAS 125 compliant, with some franchised bodyshops compliant to PAS 125 and/or a vehicle manufacturer specific standard. Therefore it should not be a major challenge to move to 100% compliance with PAS 125 and/or equivalent vehicle manufacturer standard, combined with the proposed quality audit programme. We estimate that this could be achieved in around 12 months and adoption in this timeframe would be consistent with the move to BS10125 in 2014.
- 5.23 There are likely to be some additional costs for those bodyshops which are not currently PAS 125 or vehicle manufacturer compliant and also for overall compliance to the proposed quality audit programme.

(f) Would this remedy give rise to distortions or have any other unintended consequences?

- 5.24 Added cost to the current audit provision would be the main consequence. If the independent vehicle engineers currently used by insurers to conduct audits were utilised, supplemented by additional Thatcham resources as necessary, this approach would be likely to help to mitigate any increase in the cost of the audit programme overall.
- 5.25 The timing of the introduction of the aligned technical and quality audit programme would need to be well documented and communicated. This would avoid a situation where there are insufficient repairers who have the necessary accreditation to meet repair job demand, e.g. following seasonal bad weather like snow/ice, leading to delays in repair and consequently increased repair costs.

(g) Whether this remedy is best made by the CC through an enforcement order or whether the CC should make recommendations to another party to implement the remedy, and if so who that party should be.

- 5.26 The current CC investigation is similar to the the issue of the Super Complaint against the whole motor industry in 2007 which prompted the repair sector, including insurers, repairers, and product, equipment and training suppliers to voluntarily introduce PAS 125 and Kitemark compliance. This precedent demonstrates that, a self-regulated solution devised and agreed by all repair sector stakeholders improve consumer outcomes and why the option outlined above should be seriously considered by the CC. However, to ensure any standard is universally applied, the CC would need to issue an enforcement order given the competition constraints on insurers/CMCs agreeing that they will insist upon any particular standard.
- 5.27 As the CC report highlighted, insurers and CMCs already undertake audits and customer surveys themselves, which demonstrate high satisfaction rates and low complaint levels. As such, recommendations to a party such as Thatcham to implement the remedies would be a proportionate response by the CC to the AEC identified. Thatcham has the expertise and resource in place to deliver an effective self-regulated system, which could be established quickly.

(h) Whether this remedy is likely to be more effective in combination with other remedies than alone and, if so, what particular combinations of remedy options would be likely to be effective in addressing the AEC we have provisionally found

- 5.28 As outlined above, the opportunity to link this remedy to the new 2014 British Standard BS10125 for Vehicle Body Repair is very timely. The revised technical standard, combined with greater insurer/CMC insistence on the use of repair methods, should ensure the quality of repair is focused on defined standards which support claims costs, rather than simply on unaligned cost parameters.

6. Theories of Harm 4: Add-ons

Overview

- 6.1 The ABI agrees with the CC's overall aim to ensure customers have a good understanding of the price, benefits and limitations of the add-on products they may purchase alongside their PMI policies. Furthermore, the insurance industry agrees with the proposition that the description of add-ons should be clear and easy to understand and that customers should be able to easily compare selected add-ons alongside basic PMI policies to help them make a more informed decision about the total cost of their preferred policy.
- 6.2 The CC needs to carefully consider, however, the significant practical and competitive challenges associated with agreeing consistent descriptions of add-ons. Given the differences in both 'basic' PMI cover and the availability and scope of the add-on products offered by insurers, it will take some time to develop summary descriptions of add-ons which can be displayed in a meaningful and clear manner on PCWs.
- 6.3 Furthermore, the ABI believes that the CC has underestimated the role and responsibilities of PCWs in delivering the proposed remedies. The proposed remedies currently place the onus on insurers to deliver the objective of ensuring customers can meaningfully compare add-ons alongside their PMI policies. It is important to note, however, that around 60% of new PMI policies are sold via PCWs. Therefore PCWs, they have a vital role to play in implementing the proposed remedies, which is why we urge the CC to revise their remedies to reflect the shared responsibility between insurers and PCWs.
- 6.4 It is also important to note the risk of unintended consequences arising from these proposed remedies. For example, the drive to agree common definitions for add-ons, may leave the customer with a reduced choice in product offerings and there is a danger that standardised products in the market for add-ons could stifle the high levels of competition and innovation which characterise the current market.
- 6.5 Overall, we believe some time is required for the industry, FCA and consumer groups to thoroughly assess how best to develop the CC's proposed remedies in a way that is most useful for customers. In particular, more consumer research needs to be carried out to ensure the information requirements meet customer needs. As the FCA has often highlighted, it is important to equip the customer with the key information rather than too much information.
- 6.6 Finally, we suggest that the delivery of these remedies should be led by the FCA. As the supervisor of insurers, PCWs and other distributors of PMI policies, it already regulates many of the product information areas that the CC has raised concerns about. Furthermore, the proposed remedies need to be appropriately aligned with the FCA's current market study on general insurance add-ons and their thematic review of comparison websites. We believe that the FCA and CC should be more aligned in this area given the extent of the cross-over in work being carried out by both bodies.

Answers to specific questions

(a) Whether the possible remedies under ToH 4 are likely to be more effective in combination with other remedies than alone and, if so, what particular combinations of remedy options would be likely to be effective in addressing the AEC we have provisionally found

6.7 We believe there should be a further remedy that applies specifically to PCWs to ensure that they allow customers to compare add-ons effectively on their sites. PCWs play a key role in delivering the proposed remedies the majority of new PMI policies are sold via their sites. As stated in the CC's possible remedies paper, PCWs currently have no incentive to sell add-on products. Therefore, in our submission, the CC should consider a remedy that requires websites to provide good pricing and product information on add-on products as part of the overall comparison between PMI policies sold.

(b) Whether the possible remedies under ToH 4 are best made by the CC through an enforcement order or whether the CC should make recommendations to another party to implement the remedies, and if so who that party should be.

6.8 Remedies under this section should be led and implemented by the FCA as it already has a supervisory role over the key parties that are affected by these remedies (insurers, brokers and PCWs). As the conduct regulator of the insurance industry, the FCA already has existing rules in place within the Insurance Conduct of Business Source Book (ICOBS) requiring the customer to be provided with clear information to help them make an informed decision. Therefore, the CC's proposed remedies complement current FCA regulation. Furthermore, the FCA is currently conducting both a market study on general insurance add-on products and a comparison website thematic review which are likely to overlap with the CC's possible remedies.

Remedy 4A: Provision of all add-on pricing from insurers to PCWs

(a) Should PCWs be required to enable consumers to compare the policies offered by different insurers including all add-ons on their websites or are they sufficiently incentivized to do so without such a requirement?

6.9 Within their possible remedies paper, the CC indicates that PCWs are not incentivised to sell add-ons, as their income is generated from selling the primary PMI policy. We believe that PCWs should be required to give consumers the option of including key add-on products when comparing PMI policies so that customers can then compare (like for like) which provider offers them the best combined policy to meet their needs. This will require PCWs to make changes to their initial question sets to allow consumers to set the parameters of their search. Insurers would welcome this method of providing pricing information as it would allow the customer the opportunity to consider each add-on product on its own merits before they compare and purchase the whole policy.

(b) Should the remedy be extended to brokers?

6.10 Yes, we believe that the remedy should be extended to brokers as that would help to achieve the overall objective of the remedy which is to improve customer understanding of the pricing of add-on products. Customers should be able to access the same level of information about add-on products regardless of the distribution channel.

(c) Should the remedy apply to all add-ons?

6.11 The CC's own analysis indicates that some add-on products are more popular with customers than others, e.g. foreign extended cover and key loss cover have low take up rates. Therefore, we believe that although the overall principle should apply to all add-on products (ensuring add-on products provide customers with sufficient information to help them make an informed decision about purchasing that particular product), the requirement to display the pricing and product information within initial PCW comparison searches should only apply to the most common add-on products.

(d) How long would it take for insurers to prepare the pricing information to pass to PCWs and for PCWs to alter the design of their websites to accommodate this change?

6.12 The preparation of pricing information by insurers is likely to be simpler than agreeing common product descriptions. However, given that some add-on products are risk-priced, we urge the CC to be flexible around timescales when implementing these possible remedies given that there are practical issues that both websites and insurers will need to work through.

6.13 For example, more consumer research first needs to be undertaken to establish the type of information customers find most it most useful to have displayed. Furthermore, the websites will need time to re-format their sites to ensure the customer can compare their add-on products alongside their chosen policy in a way that is user friendly and useful.

(e) How much would it cost to make these changes?

6.14 In the short time available we have not been able to estimate the cost of these changes, but we do not anticipate that the cost to insurers of providing pricing information would be prohibitive.

(f) What circumvention risks would this remedy pose and how could these be mitigated?

6.15 We have not identified any circumvention risks.

(g) Would this remedy give rise to distortions or have any other unintended consequences?

6.16 There is a risk that this proposed remedy could lead to reduced cover within add-on products if the consumer is encouraged to focus exclusively on price. The market currently offers different features within add-on products that have differing levels of benefits attached to them. The possible remedy could lead to a reduction in the unique type of features that currently exist within the market, thereby reducing choice and benefits for customers. Additionally, this might lead to standardised add-on products which would limit competition and innovation in the market.

Remedy 4B: Transparent information concerning no-claims bonus

(a) Is it necessary for consumers to be given the NCB scales both when choosing whether to take out NCB protection and when receiving their policy quotation?

6.17 The ABI does not consider that providing NCB scales would add any value to the customer making an informed choice about NCB protection. Producing the scales will result in more complexity and the customer will be left more confused about the value of their policy. The FCA has often highlighted that many consumers struggle with percentages and any such scales would need to be heavily caveated given that the scales are often changed. Instead, we believe it is more beneficial for customers to know how

much their NCB protection contributes to their overall PMI premium and what the key benefits and limitations of their NCB protection policy are before they decide to purchase this add-on product, i.e. that their premium can be affected following an accident.

6.18 The ABI would welcome the opportunity to work with the FCA to establish the type of information that will help customers better understand their NCB policies.

(b) What wording could best be used to help consumers that NCB protection does not prevent premiums rising following an accident?

6.19 The ABI agrees that this is a key factor that customers should be made aware of before they decide to purchase this add-on product. However, we believe that the CC should allow insurers the flexibility to adopt the language that best fits with their current policy wording. Furthermore, ICOBS 6.1.5⁷ already requires firms to provide customers with adequate information before they purchase the policy. We believe effective supervision of this FCA requirement is preferable to the prescriptive remedy being considered by the CC.

(c) Are there any obstacles to effective implementation of this remedy?

6.20 Although the ABI agrees with the principle of this possible remedy, we believe that the CC should consider other ways to increase transparency around NCB protection. The key aim is to help customers understand the benefits and limitations of this add-on product. Therefore, in our submission, the industry and the FCA should undertake consumer research to establish what key information customers need when purchasing this add-on product. The provision of case study examples may be more helpful to the customer. Insurers could then work with PCWs to ensure customers are made aware of the benefits and limitations of the NCB protection option during the journey of purchasing their main PMI policy.

(d) How long would it take for insurers to prepare the NCB scales?

6.21 As stated above, we do not believe that producing scales will address the issue of a lack of transparency around NCB protection.

(e) What circumvention risks would this remedy pose and how could these be mitigated?

6.22 It is difficult to anticipate the circumvention risks for this remedy as we do not believe it would address the consumer requirement for information.

(f) Would this remedy give rise to distortions or have any other unintended consequences?

6.23 A potential unintended consequence of this remedy is that it could lead to further complexity and reduce consumer understanding of the value of NCB protection. The scales will do little to help customers to make a decision on whether the option best suits their needs.

⁷ 6.1.5 - A *firm* must take reasonable steps to ensure a *customer* is given appropriate information about a *policy* in good time and in a comprehensible form so that the *customer* can make an informed decision about the arrangements proposed.

Remedy 4C: Clearer descriptions of add-ons

(a) What are the key aspects of each add-on product that need to be explained in such descriptions and how should the quality of these descriptions best be established?

6.24 A more thorough consumer research exercise needs to take place to establish the common features and differences for each of the offerings in the market for each add-on product and the key features of each add-on product that customers need to know before they make a purchasing decision. Different descriptions would then need to be tested to establish which are best understood by consumers. The second stage of achieving this objective would be for PCWs to have a leading role in displaying the information as part of the initial question set when consumers are comparing their main PMI policy. Effective development of clear descriptions for add-ons is therefore likely to take some time and will require the FCA to work closely with insurers, PCWs and consumer groups.

(b) How should these descriptions be provided to consumers—for example, in the insurance policy documentation, on insurers' websites or on PCWs?

6.25 The information should be provided to customers on all distributor sites (including insurers' direct sales) to ensure customers receive consistent and accurate information about these policies regardless of which distribution channel they purchase their policy through. There is a danger, however, of information overload if consumers are presented with too much detail upfront on the PCW. More detailed product information should be stated clearly within the policy documentation (this is, however, already a requirement under ICOBS 6.3⁸).

(c) How would this remedy best be monitored—both for initial approval of descriptions and ongoing approval?

6.26 As stated in section 4(a), we believe that the FCA should develop and monitor the implementation of the CC's remedies as it already has a supervisory role over affected firms. Furthermore under current FCA regulation, there are specific ICOBS rules that require firms to provide customers with clear, fair and not misleading information to help them make an informed decision about their product.

⁸ ICOBS 6.3 - The information must be communicated in a clear and accurate manner, in writing, and in an official language of the *State of the commitment* or in another language agreed by the parties

7. Theory of Harm 5 – Most Favoured Nation clauses

Overview

- 7.1 The CC provisionally found an AEC in relation to Most Favoured Nation (MFN) clauses in contracts between PCWs and insurers.
- 7.2 The ABI strongly agrees with the CC's proposed ban on 'wide' MFN clauses and agrees with the evidence and analysis that 'wide' MFN clauses are anti-competitive, protect the market power of the incumbent PCWs and restrict price competition across other distribution channels for insurance products.
- 7.3 We recognise the important role that PCWs have played in reducing consumers' search and distribution costs for insurance products through increased price transparency. We question, however, the CC's provisional decision to limit the proposed ban to 'wide' MFN clauses only. 'Narrow' MFNs are also distortionary as they can prevent an insurer from lowering the price on its own website to its optimal level. As a result, consumers are faced with higher premiums and restrictions on competition outside the PCW channel.
- 7.4 Furthermore, we are concerned about the practical difficulties of implementing a partial ban on MFNs. It would require a clear and precise definition of what is, and is not, permitted. If the ban is restricted to 'wide' MFNs, we urge the CC to specify as narrow a definition as possible for remaining 'narrow' MFNs. A ban that is restricted to 'wide' MFN clauses would still allow a PCW to use circumvention measures such as restrictions on pricing through other non-PCW distribution channels.
- 7.5 The ABI is not persuaded by the CC's view that 'narrow' MFNs have a limited effect on firms looking to build and innovate through their direct offering because there are few insurers within this bracket. We suggest that it is possible that few insurers currently fall into this category primarily because, under an MFN, their website can never be the cheapest distribution channel. If insurers had the freedom to set their direct prices independently they would have a greater incentive to innovate in their direct proposition e.g. high-profile time limited price reductions.
- 7.6 We also question the CC's concern that the removal of MFNs would lead to insurers abandoning this distribution channel. The PCW channel is a very cost effective and established way of distributing insurance products and will continue to be so given that it is a channel favoured by millions of consumers. The private motor market is highly competitive with a large number of players with small market shares, many of which find the PCW channel a vital way of reaching the consumer. This is likely to continue to be the case in the absence of MFN clauses.
- 7.7 We draw the CC's attention to the level of advertising spend in the market. MFNs have allowed PCWs to move away from price competition towards brand advertising. This heavy advertising has led to around 60% of new PMI business coming through the PCW channel. This new business is primarily concentrated in the hands of four PCWs, with the sunk costs of advertising presenting a barrier to entry. While the PMI market itself is competitive, we question whether such a concentrated and ubiquitous distribution channel still requires extra protection in the form of anti-competitive restrictions on pricing in the form of MFN clauses.
- 7.8 In addition, we suggest that circumvention would be more difficult if MFN clauses were banned entirely. The complications arise because a ban on 'wide' MFNs is a half measure.

- 7.9 Finally, we note that the conclusions reached on the use of MFNs by PCWs do not appear to be specific to the PMI market, so we suggest the FCA should consider the implications for its current thematic review on PCWs in other general insurance markets.

Answers to the specific questions

(a) How would this remedy be best specified? Would the prohibition be best described in relation to all MFN clauses except those in relation to insurers' own websites?

- 7.10 We believe that MFN clauses are anti-competitive and that their restrictive effects outweigh any associated benefits. We believe that the remedy would be best specified through a ban on all MFN clauses, including those in relation to insurers' own websites. As set out below, a partial ban on MFN clauses allows more room for circumvention and also prevents insurers from innovating on their direct website offering.
- 7.11 If the ban is restricted to 'wide' MFN clauses we agree it would be best described in terms of permitting only a tightly defined 'narrow' MFN clause, rather than specifying a ban on 'wide' clauses as this would be more loosely defined and so would increase the possibility of successful circumvention by PCWs e.g. MFNs that restrict insurers entering into pricing deals with other major non-PCW distribution partner.
- 7.12 Although we appreciate that the scope of the CC's investigation is limited to PMI, we see no obvious rationale for limiting a ban on MFNs to the PMI market. PCWs operate across other general insurance markets and ostensibly provide their services using the same model in each. Consequently, we suggest that the CC liaise with the FCA which is conducting a thematic review of PCWs.

(b) Could this remedy take effect immediately (or within a short period to remove the clauses) or would an adjustment period be required?

- 7.13 We can see no reason why a ban on MFNs, both 'wide' and 'narrow', cannot be put into effect very quickly with a small addendum to relevant insurer/PCW contracts. This would bring the benefit to consumers within a short timescale.

(c) What circumvention risks would this remedy pose and how could these be mitigated?

- 7.14 PCWs might use their market power to include clauses that block insurers from circumventing MFN clauses such as preventing them from offering the product through cashback sites or offering free gifts if the consumer goes direct. However if the CC were to ban MFN clauses completely this would reduce the scope that PCWs have to restrict the strategies of insurers and there would be greater choice for consumers.
- 7.15 We would also repeat the importance of the definition of a 'narrow' MFN being as tight as possible. In this case we would recommend that the CC consider future-proofing its definition to avoid the circumvention risk that PCWs may describe new distribution channels as falling within the scope of a 'narrow' MFN.

(d) In addition to threatening to delist an insurer, what other actions could a PCW take that might have the same effect as a 'wide' MFN? How could the risk of a PCW taking these actions be effectively mitigated?

- 7.16 PCWs have a few options open to them that might have the same impact as a 'wide' MFN or the delisting of an insurer, the threat of which would have the equivalent effect of a 'wide' MFN. These include: selective quoting, where the PCW chooses not to display the insurer's more competitive quotes; actively highlighting quotes from other insurers and

brokers who do not offer products more cheaply on other PCWs; and, ranking policies in a different way that would place the dissenting insurer's products at the bottom of the listings.

- 7.17 Given their new remit to promote competition, we suggest the FCA should more actively monitor PCWs in order to prevent this kind of behaviour. The threat of a fine or legal action should suffice in terms of a disincentive to engage in these actions, although we have not had enough time to sufficiently consider the most effective solutions for this issue.

(e) Would this remedy give rise to distortions or have any other unintended consequences?

- 7.18 Although we accept that excessive regulation can lead to market distortions, we would expect the market to be comfortable with the level of regulation required.

Remedy 5B: Prohibition on all MFN clauses

- 7.19 The CC has indicated that it is not minded to consider further a remedy which prohibits all MFN clauses.
- 7.20 The ABI believes a ban on all MFNs should be re-considered for a number of reasons. Firstly, incumbent PCWs using 'narrow' MFNs know that only the few brands that are not on PCWs can undercut them, so commission payments are likely to be higher in a market with 'narrow' MFNs. In addition, a ban on all MFN clauses would remove one of the barriers to listing on PCWs so might encourage some of the remaining 'non-PCW' insurers to list on some of the sites.
- 7.21 A 'narrow' MFN limits the insurer's incentive to price differently if they have – or would like to develop – a strong direct brand. This could be particularly important if the direct consumers have a different risk profile to those coming through a PCW as the insurer will be prevented from pricing this risk.
- 7.22 Furthermore, PCWs are a dominant distribution channel in the PMI market and so MFNs are no longer required to make them viable. The CC uses the example of the Italian insurance market to suggest that PCWs struggle to establish their credibility with consumers without using MFNs. While this argument may be relevant in terms of establishing the channel, we suggest it is weaker in the current UK market where there is a strongly established PCW channel. In addition, the CC has already identified solutions to the 'free riding' problem. Market dynamics mean that insurers retain an incentive to price competitively through PCWs as they are an important and cost effective sales channel, particularly as most PMI providers have a small share of the overall market.
- 7.23 If 'narrow' MFNs continue to be permitted, it is possible that the main incumbent PCWs will retain/introduce 'narrow' MFNs with all insurers. The outcome of this would be that the insurer's own price would be the same as the least competitive PCW. This may create an unintended consequence of insurers charging the same price through all PCWs, so the 'narrow' MFN clause becomes a de facto 'wide' MFN clause.
- 7.24 Finally, the CC has placed great importance on PCW market entry and has demonstrated how 'wide' MFNs act as a constraint on market entry. However, the ABI believes that all MFNs can harm the prospect of a new PCW entering the market. Single-homing is common (and increasing) in the PCW channel and is aided by MFNs as the incentive to look elsewhere is reduced. If consumers frequently buy their PMI through just one PCW it makes new entry difficult especially with the high initial outlay currently required to advertise the brand. The removal of all MFNs would place more impetus on PCWs to compete with each other to offer the lowest price. As a result, competition between PCWs might shift away from the levels of brand advertising currently seen and towards targeting lower premiums through reduced commission levels and greater levels of innovation, which would benefit consumers.
- 7.25 If consumers were aware that they could attain lower prices on different PCWs, this would reduce single-homing levels. A reduction in both the level of single-homing and the sunk costs of advertising required by a new entrant would encourage entry into the market and reduce the power of the incumbent PCWs. In summary, allowing a greater level of competition through different channels would benefit consumers as there would be a more effective constraint on the level of commission charged by the PCWs which in turn could help in reducing PMI premiums.