Competition Commission
Private Motor Insurance Investigation
Response to Notice of Possible Remedies

Submitted by;

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We have pleasure in submitting our response to the deliberations of the Competition Commission as evidenced by the issuing of the Notice of Possible Remedies dated December 17th 2013

Should further information be required we would welcome the opportunity to meet with the Commission and discuss our views in more detail

Brad Hanson

Ros Hanson

January 8th 2014

Remedy A. Measures to improve claimants understanding of their legal entitlements

We broadly welcome any efforts to improve consumer understanding of their legal entitlements and believe that these should be communicated both in advance of a claim arising (via the insertion of appropriately worded sections of the policy document) and, more importantly, at the initial notification of a claim to those organisations and agencies tasked with receiving a First Notification of Loss

However, we are mindful of a number of practical and consequential matters that would inevitably arise from such practices and we would urge the Commission to take these into account when devising a remedy

Achieving consistency and accuracy of information provision at FNOL

For reasons of seeking competitive advantage, varying internal processes, and potential revenue identification, almost every FNOL operation will differ from another in their response to an initial notification of claim from a claimant.

This is not unusual and FNOL operators should not necessarily be restricted in their approach to this task as it serves to differentiate the standard of service being offered between FNOL operators, and also differentiates between those external suppliers who might seek to secure FNOL contracts from insurance companies and others

However, an inevitable consequence of this variability and the priorities of the FNOL service provider is that FNOL operators – no matter who they might be – will tend to emphasise those issues and information provision around the areas that are of most concern to the FNOL operator, and not necessarily focus on the issues that may be detrimental, peripheral or in the consumer's best interests

This seems likely to lead to a huge variability in the style, quality and detailed content of any information regarding legal entitlement that is provided to the consumer at the point of FNOL. Moreover, the claimant is not realistically able to compare and contrast the quality and accuracy of information being provided between different FNOL providers at the point of claim

Therefore, if this matter of information provision at the time of FNOL is entirely within the remit of the FNOL operator (subject to any guidelines on content that may be available) we suspect that the actual information provision will be biased towards the perceived requirements of the FNOL operator and not necessarily those of the claimant.

There may even be circumstances in which such bias is justifiable as being in the ultimate best interests of the claimant but, nevertheless, it seems clear that the aim of further informing and educating claimants as to their full legal entitlement will not be

met unless there is clear and unequivocal instruction to the FNOL operator on the exact content and delivery of the required information

Recommendation

We therefore believe that this role of information provision at the point of FNOL is best achieved by an agreement between the ABI and the FCA as to the exact content and delivery format and that all insurers be required to use the same methods. Insurers would also be responsible for ensuring that any external agencies to whom they sub-contract FNOL operations implement the same procedures

Given that every claim must be made against a valid insurance policy and the FCA also has a remit to protect the interests of consumers, we believe that these two bodies are sufficiently representative in themselves to achieve the desired aim of presenting comprehensive, accurate and unbiased information to claimants at FNOL

Where an agency is not necessarily an authorised contractor to an insurer (for example, a CHO, CMC or other entity that is seeking to independently 'capture' a claim) they too would be required to adopt the same procedures, wording and delivery methodologies as insurers given that claimants will require an absolute consistency of information provision from all potential sources of FNOL type operations

Information delivery methodologies will need to cover the spectrum of claims notification options available to consumers and include pre-recorded telephone messages when the initial FNOL call is made by the claimant, website announcements and written statements. Once agreed, the ABI and all other trade associations involved in the management of motor claims would be encouraged to display the agreed notices on websites and in relevant literature

Content of Information Provision to Consumers at FNOL

In this respect we have chosen to comment only on those matters highlighted in para 18 (c) and (d) in relation to choice of repairer and subsequent contractual rights of the claimant in the event of any dissatisfaction with repairs carried out

Informing claimants of their rights to choose a repairer is an appropriate measure to be taken in any statement of legal rights. However, should a claimant choose to exercise this right in respect of any repairer not pre-authorised and approved by the insurer, their agent or CMC then we believe that consumers cannot reasonably expect the same level of protection from their insurer as they might otherwise have enjoyed

It is an unreasonable burden to place on insurers (and/or their appointed agents) the obligation to monitor repair quality and service standards of repairer garages with whom they have no formal contractual arrangements

The same conditions would apply should a claimant choose to make their FNOL interaction with an 'independent' entity such as a CHO, CMC or other body not necessarily authorised by the insurer. Once again, these organisations cannot be legitimately burdened with the responsibility of managing and monitoring repairs at contractors with whom they have no formal relationship

Recommendation

Claimants informed of their rights to select their own repairing garage outside of the 'approved' network of repairers should also be informed of the potential extra risk that this choice carries with it in terms of the monitoring of the repair process and the support of the insurance company should there be any subsequent issues regarding dissatisfaction and any legal remedies to be taken by the claimant

Theory of Harm 1

Issues for Comment 1A (f)

In the event that the non fault insurer is charged with the responsibility for physically providing (and paying for) the replacement car then it is absolutely certain in our view that the non fault insurer would also seek to manage and control the non fault repair. This would be particularly so if the non fault insurer were able to subsequently 'mark up' the costs of those repairs to the 'at fault' insurer.

Even if this latter option were not available it would surely be in the claimant's best interest if the entire consequence of the incident (replacement car and repair) were to be managed from a single source – which in this case would be their own insurance company with whom they already have a contractual relationship

If the two functions of replacement car and repair were to be somehow separated then it is inevitable that the costs of replacements cars would be higher than would otherwise be the case, if for no other reason than the necessity of administrative liaison between two different organisations – which may, in reality, be two competing insurers with the at fault insurer controlling the repair having no financial incentive to minimise repair periods and thereby minimise car hire periods and costs for the non fault insurer

We can see no merit in requiring a claimant to effectively make two separate claims to different organisations for replacement car and repair and, in reality, we do not believe that this will occur to any great extent

Issues for Comment 1B

In considering the variants outlined in paragraphs 38 and 39 with the variants then outlined in paragraphs 40 and 41 we would comment as follows;

The practice of 'third party intervention' or 'third party capture' which is what is being considered here is driven solely by economic incentive. The at-fault insurer is able to reduce their costs by

'capturing' the third party and thereby providing replacement car and repairs at a lower costs than would otherwise be the case. Any new system would need to retain those core economic incentives for the at fault insurer or such a system will surely be ineffective

The Commission also needs to consider that third party capture activities are not driven solely by the need of the at fault insurer to manage replacement car and repair costs. A major incentive (although now slightly less to the fore following recent changes in legal fees) is the desire of at fault insurers to manage the financial consequences of non fault personal injury claims. This activity seems likely to continue no matter what recommendations the Commission might make in respect of replacement car and repair

The question of under-provision is currently resolved by the fact that the at fault insurer is competing against both the non fault insurer and, potentially, other agencies such as CHOs who are also seeking to capture the claim. The at fault insurer is required to make a comparable offer to the non fault claimant in order to secure the transaction

Removal of this element of competing potential suppliers will, in our view, substantially increase the danger of under provision by the at fault insurer. It would also remove from individual insurers the opportunity to gain competitive advantage over their rivals in the management of their cost base and we believe that this would have the unintended consequence of the 'best' insurers in this respect effectively subsidising the 'worst' insurers which would have a negative effect on overall insurance premiums

Removal of the stigma surrounding offers of third party assistance from insurers and their agents and encouraging this to become the 'norm' within the claims management industry will have the effect of helping to reduce non fault claimant costs

We do accept that where the non fault claimant retains the right to choose their service provider it is true that there is little, if any, financial incentive for them to choose any particular supplier. This has clearly proven to be the case where non fault claimants have consciously chosen CHO suppliers of replacement cars even where they have clear knowledge of the higher costs that this would incur for the at fault insurer. It also has to be said though that non fault claimants are most often not fully aware of the costs implications of their decisions even if they were minded to take these into account. However, we believe that establishing new 'norms' of third party assistance can work to offset these trends

A part of the offer to non fault claimants by at fault insurers is likely to be the cost savings that can be secured in the event that the claimant should accept the offer being made and thereby help to keep the overall cost of insurance premiums lower than they otherwise would be. Nor should there be censure of at fault insurers who might offer additional financial incentives to non fault claimants as we can correctly assume that such offers will only be made where the overall costs of claim would still remain lower than were the claim to be handled by the non fault insurer or an external agency such as a CHO

Recommendations

We do not believe that any of the variants outlined in the Commission report should be adopted. Instead, insurers and their agents should be encouraged to establish effective operations to 'capture' non fault claimants wherever possible and to compete on the basis of quality of service and supply.

It should also be mandatory on CHOs and other similar providers of replacement vehicles to require claimants to formally confirm their understanding that accepting an offer of a replacement vehicle from a CHO will result in higher costs to the at fault insurer than would otherwise be the case

Should the Commission determine that an element of compulsion on the part of the non fault party should be allowed or that at fault insurers should indeed have the right to make the 'first offer' to the non fault claimant then the replacement vehicle being offered should be broadly equivalent to that being driven by the claimant

Issues for Comment 1C

In considering the variant outlined in paragraph 45 (a) and the question posed in 48 (c) we would comment as follows;

Where a vehicle is still driveable following an incident there is no reason to believe that the provision of a replacement car is warranted until such time as the damaged vehicle is admitted for repair. In order not to inconvenience claimants and to aid the logistics of providers of replacement cars there could be some leeway granted whereby replacement vehicles could be supplied during a limited period prior to the damaged vehicle being removed from the claimant for repair

However, we do not view any delay between the start of repairs to a claimant's vehicle as being acceptable once the vehicle has arrived at the repairing garage. Driveable vehicles should only be delivered to a repairing garage when the garage is ready to commence repairs. In practice, vehicles delivered the prior day may be commenced on the following day simply to allow for the collection and delivery of damaged vehicles according to an effective schedule that does not incur unnecessary extra costs for the repairing garage.

Recommendation

Hire periods for replacement cars provided against driveable vehicles should not commence more than 24 hours before the damaged vehicle is admitted to the repairing garage. Repairs must commence within 24 hours of the damaged vehicle arriving at the repairing garage

Should the repairs commence on the same day as the damaged vehicle arrives at the repairing garage then hire periods must be calculated from that day with no additional 24 hour allowance

Hire periods can be monitored by the party responsible for meeting the costs of the replacement vehicle by the provision of information regarding the arrival and start dates of the repair – such information to be provided directly by the repairing garage on request

Issues for Comment 1D

If left unchallenged it would seem likely that all insurers will now adopt a financial model which will involve the 'mark up' of repair costs that are subsequently subrogated to an at fault insurer. This follows a recent ruling in the Court of Appeal

Whilst this is clearly injurious to the desire to reduce insurance premiums to the consumer it has to be said that insurers taking advantage of their commercial leverage in the marketplace is also an issue of legitimate competition between competing insurance providers. The Commission needs to be mindful of the balance to be struck between meeting consumer interests and allowing insurance companies to use (but not abuse) the market advantages that they have accrued to themselves

Regarding Remedy 1D(a)

We do not believe that repairers should be placed into a position where they are required to effectively compete for business from insurers by virtue of the referral fees (or similar mechanism) payable by them to the non fault insurer. Such a practice would undoubtedly lead to distortions in legitimate competitive practices between repairers, the payment of 'upfront' rebates by major repair groups and further moves away from the quality of service and repair standards that the Commission has expressed elsewhere as being a desirable objective that is in the consumer interest

Whilst there will be some market restrictions on the amount by which repairers might (at the insistence of the non fault insurer) inflate wholesale prices – given that these inflated sums then need to be recovered from the at fault insurer through the process of subrogation – we regard these market driven measures to be insufficient to exercise sufficient control and relieve repairers of the burden of supporting such a system

Should the payment of referral fees by repairers (in the form of rebates, discounts or some other mechanism) become the norm within the marketplace we are fearful that an unintended consequence will be a diminution in legitimate competition between repairers and those businesses most able to advance fund such arrangements will gain an unfair and structural advantage over their rivals in the marketplace

Recommendation

The payment of referral fees, the provision of excessive discounts, or other similar mechanisms by repairers to non fault insurers or their agents should be prohibited

Regarding Remedy 1D (b)

Should our recommendation regarding the prohibition of referral fee payments by repairers be accepted we can see no need for a system of standardised repair costs recoverable through subrogation methods. However, in the event that the Commission wishes to examine this option further we would comment as follows

We can see no merit in the adoption of this system given that the data input to any such calculations will inevitably be drawn from the then current market practices e.g. prevailing prices for labour, parts, paint and other elements of the repair. However, if those prices are themselves artificially inflated then any such measurement system will simply reinforce structural distortion in the 'real' price of repairs

Should attempts be made to determine the true underlying price of repairs at the time of data collection we can foresee a variety of methods being used to circumvent these enquiries by, for example, the provision of a greater range of 'free' services by repairers which, in turn, would again lead to erroneous assessment of the real state of affairs in repair pricing

We are also fearful that a move to standardised costs of all aspects of repairs will lead to demands from insurers, CMCs and others that repairing garages actually adopt these standardised costs as a part of the contractual arrangements. Any such move would severely distort fair competition between repairing garages who are able to offer lower price repairs because of their superior operational efficiencies. Whilst this may not be the intention of the Commission we regard it as a very likely consequence of any national system of cost benchmarking

At the same time, whilst standardised pricing is a legitimate concept when considering statistically significant numbers of items, for those individual garages repairing relatively few numbers of damaged vehicles the financial consequences of such a system could be severely adverse and lead to fewer repairing garages in the market because of an unwillingness to take such risks

Recommendation

That no such system of standardised pricing for repair elements be adopted

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

Issues for comment 2A

There has been considerable comment on the unrepresentative nature of the research study undertaken in respect of repair quality and we would broadly support those comments. Establishing whether there is indeed an issue of qualitative underprovision in the repair market requires considerably greater examination than has hitherto occurred

There have also been representations made which suggest that the insurer focus on the prices being paid for repairs, both fault and non fault, have led to a diminution in quality with a temptation of repairers to 'cut corners' in order to maintain profits

We can see no firm evidence of these supposed influences

It is true that there has been a substantial reduction in the number of repairing garages over the last 20 years and it is certain that many of the decisions regarding closure have been driven by financial pressures. However, the result has been a consolidated repair industry that is more able to cope with cyclical demand, the need for investment and the ever changing technology of vehicles. In this respect, whilst the number of suppliers has diminished, the quality of those remaining within the supply chain has undoubtedly improved. Consumers are therefore receiving a better standard of repair and service as a result of these changes which have been driven largely by insurer focus on their need to manage indemnity spend

There is always a danger that practitioners will indeed seek to 'cut corners' no matter what the prevailing financial circumstances are but we believe that any such tendencies are a matter for remedy between the client (insurer, CMC or others) and the supplier unless irreproachable evidence can be produced to suggest that there is widespread and endemic issue that needs to be addressed

Recommendation

That this matter not be actioned further until such time as further objective and statistically significant evidence is available for consideration