Competition & Markets Authority:

Private Motor Insurance Market Investigation
Provisional Decision on Remedies

Response from the Motor Accident Solicitors Society

July 2014

Introduction

This response is prepared on behalf of the Motor Accident Solicitors Society (MASS) and submitted by the Chairman, Craig Budsworth.

MASS is a Society of solicitors acting for the victims of motor accidents, including those involving personal injury (PI). MASS has 150 solicitor firm Members, representing over 2000 claims handlers. We estimate that member firms conduct upwards of 500,000 PI motor accident claims annually on behalf of the victims of those accidents. The Society's membership is spread throughout the United Kingdom.

The objective of the Society is to promote the best interests of the motor accident victim. This is central, and core to our activity. We seek to promote only those policy and other objectives which are consistent with the best interests of the accident victim. We seek to set aside any self interest in promoting these arguments, recognising that we are in a position of trust, and best placed to observe the best interests of motor accident PI victims first hand. We are a not for profit organisation, which requires specialism in motor accident claimant work as a pre-requisite for membership. We also have a Code of Conduct which member firms are required to abide by, which is directed to the best interests of the motor accident victim.

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Executive Summary

We would be grateful if this response is read in conjunction with the two previous submissions from MASS in January and February 2014.

MASS is particularly concerned that the Authority is not understanding the impact that some of the suggestions will have on a personal injury claim that is for the owner of the vehicle related damages aspect of the claim. Whilst stating that the Authority is not seeking to change the law, clearly, the suggestion on being able to resile from the liability admission will be a distinct change from the Civil Procedure Rule 14B and consideration must be given before proceeding any further as to how this rule will be changed, indeed if it is capable of change.

Other areas of the law that also seem to being overlooked include the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 which states the hirers rights and the hire companies obligations. Also, Article 6 of the Human Rights Act in respect of access to the court and a right to a fair hearing, particularly as there seems to be no suggested notification to a claimant of their right to access legal advice when involved in an accident.

We would strongly suggest that as the savings purported to be achieved by this consultation as so small, that it would not be proportionate to introduce the proposed remedies.

Remedies to address - Theory of Harm 1

Providing better information to Consumers at two points:

1) *Annual Policy Documentation Renewal*
2) *At FNOL following an accident*

Questions:
When should the information be provided to Consumers?
What information should be provided to Consumers?
Which parties should be required to comply with the remedy?

PART A – Your responsibilities following an accident:

Point 2 – Consumers are not required by law to report the accident to your insurer – they are required in accordance to their policy conditions as a contractual requirement and not legal one.

Point 3 – this suggests that it is the insurers who determine liability where as in fact, the final determination as to who is responsible for the accident would be done by a Court of law and not necessarily by either parties insurer if agreement on fault cannot be achieved. We would therefore suggest replacing the words *"determine who is"* with *"assess who they consider is"* is, whilst a little longer, clearer and more accurate.

APPENDIX 2.2
Point 11 – Claims are also handled by a solicitor whom you can choose or may be nominated by your insurer. Quite clearly, at the very least, provision needs to be made to notify a claimant of their right to independent legal advice through a solicitor. Failure to do this would, in our opinion, be a breach of Article 6 of the Human Rights Act. This is a major failing contained with the proposed remedies as there appears to be no mention anywhere of this right.

Our primary concern is that the Authority have identified that it would be unwise to try and change the law of Tort, however, if an individual hires, as identified in paragraph 2.60, then bringing a claim through a solicitor should not be considered a way of escaping the proposed remedy but actually the legal right of that person. As such, there is a strong risk that more would seek this alternative, through a solicitor presenting the claim on the behaviour of the individual, that the remedy would not stop.

Also, there is clearly going to be an issue where the claimant starts hiring himself, then comes to a solicitor, and there would be issue over how that type of claim would proceed. For instance, are solicitors to be left with advising the claimant that they should stop hiring immediately and contact a firm who is subject to the enforcement order? This is just going to be more frictional costs and clearly will impact the law of Tort as the recoverability of the initial hire will be in jeopardy for potentially not mitigating their losses sooner.

Write-off Payments whereby the rule means that the vehicle hire ends after 7 days
MASS would propose an exception to this rule when a claimant can substantiate that a replacement vehicle cannot be found or supplied within the 7 days.

This has to happen on a number of scenarios. The first, and perhaps most regular, is with taxis that are also used for personal use and therefore could be captured under the proposed remedy. A claimant receives their right off value, they replace the vehicle but a licensing authority does not have time to license the vehicle until 2-3 weeks later. Therefore, it would be unreasonable to expect that person to cease hiring.

Another example would be when a vehicle is less than 12 months old, it is written off and the insurance policy provides for a replacement. We have experience where this was a Range Rover and the wait was nearly 6 months for a new vehicle. Obviously, it would be completely unreasonable for that person to be out of hire just because the at-fault insurer has paid the replacement value but the vehicle has not yet been received.

PART C – First notification of loss statements
Point 1 – You are required by law to report the accident to your insurer – this is not correct as mentioned above.

Point 3 – 3(c) MASS suggests that rehabilitation losses are included in personal injury losses.

Issues for Comment -Measures to address features relating to replacement vehicles (Remedies 1C and 1F) – (Paragraph 2.63). We invite views on whether this alternative approach would be more effective and capable of working with the proposed remedy.

To control the cost of providing a replacement vehicle to non-fault claimants (Remedy 1C). We said that these measures could replace the relevant parts of the General Terms of Agreement (GTA)[22] and would include:

(a) guidance on the duration of hire periods for replacement vehicles; and

(b) a cap on daily hire rates for each category of replacement vehicle.

MASS does not have a formal position on this issue. However, we would query whether or not this would also result in a change to the law which may conflict with the Consumer Credit Act 1974 and the Consumer Credit Act (Exempts Agreements) Order.

Issues for Comment - We invite views on the extent of these costs and who typically incurs them (eg whether those CHCs which do not own their own fleets incur different costs). In our view these costs should be recoverable (paragraph 2.68)

This is outside of the experience of MASS.

Issues for Comment – Direct Hire rates or Average Retail rates for benchmarking (paragraph 2.75). We therefore invite views on the use of average retail rates as an alternative benchmark.

The Authority quotes '50%' of the GTA rate. This is clearly not consistent with established case law which the Authority has noted, specifically in the case of Bent v Highways Authority and so again, some considerable understanding of what a 'local' basic hire rate will need to be investigated further.

Issues for Comment - We would anticipate using a publicly available index such as RPI or CPI but we invite views on this (paragraph 2.96)

MASS is concerned that the Authority is not taking account of the GTA's Technical Committee in understanding how these rates should be set.

Issues for Comment - GTA Principle 'first to a customer'(paragraphs 2.120 – 2.122) - On balance, we decided to adopt this principle in order to retain the benefits described in paragraph 2.120, but we invite views on whether parties believe it is necessary.

MASS's view is that when an accident victim has been involved in an accident, they do not wish to be passed from pillar to post. As such, we would strongly suggest that this remains to avoid the accident victim not having to change hire cars for very little benefit.

Remedies to address Theory of Harm 4

MASS has no further comments to add to our previous response.

Remedies to address Theory of Harm 5

MASS has no further comments to add to our previous response.

Other Comments

MASS's primary concern is the impact on an insurer being able to withdraw an admission of liability and how this would affect an accident victim.

Currently, this is dealt with under the Civil Procedure Rules, Part 14B. Specifically, the relevant part of the rule is:-

> *(2) The defendant may, by giving notice in writing withdraw an admission of causation –*
> *(a) before commencement of proceedings –*
> *(i) during the initial consideration period (or any extension to that period) as defined in the relevant Protocol; or*
> *(ii) at any time if the person to whom the admission was made agrees; or*

This shows that the withdrawal of admission can only be made within the first 15 workings days, unless the person bringing the claims agrees to do so. As such, with the current proposal of the admission being given within 3 working days then clearly this rule will have to be changed which seems to contradict the desire of the Authority not to change the law.

This is a specific problem in being to explain the rules to the accident victim who has also sustained a personal injury. The Authority is no doubt aware that currently insurers have 15 working days to deal with liability and the Portal MI suggests that around 25% fall out at this stage. For an accident victim who has an admission within 3 working days for his hire but has no admission for his injury, will undoubtedly confuse matters.

This could also impact in a number of other unforeseen ways. In trying to anticipate these, we suggest that a few may be about other losses that have started to be incurred on the presumption of liability. Such things as treatment that may be started after an admission of liability would then be impacted after the admission is withdrawn.

Another element to consider would be in respect of injured passengers. With the proposed changes, the injured passengers claim may not have an admission whereas the driver would. This would again potentially impact access to treatment for that person.