CII CLAIMS FACULTY

MAKING A DIFFERENCE

IMPROVING INTER-INSURER RELATIONSHIPS FOR THE BENEFIT OF THE CUSTOMER:

A NEW APPROACH TO MOTOR THIRD PARTY DAMAGE CLAIMS

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EXECUTIVE SUMMARY

The UK insurance industry is the third largest in the world and with over 1,000 insurers able to carry out general insurance business in the UK (ABI, 2011), it is an extremely competitive marketplace. Whilst the focus on competitive pricing, aided by the arrival of price comparison websites, is arguably of some value to customers, it has also created collateral issues with insurers becoming more segregated in their behaviours and litigation and credit hire costs rising.

In the motor insurance environment, insurers frequently need to interact to resolve the issue of liability on behalf of their customers. It has been identified that motor Third Party Damage (TPD) claims are, across the insurance industry, taking longer than necessary to resolve and as a result negatively impacting on the customer experience, claims cost and insurers' operational efficiency. This can only be of detriment to the reputation of the industry.

Following the successful implementation of numerous protocols, models and approaches in the personal injury claims arena, we believe it is time to address this challenge. We have investigated a wide range of possible initiatives and following extensive discussions with industry bodies and motor claims practitioners, this report proposes a new approach to motor TPD claims.

The report proposes a formalised, structured and widely adopted Protocol for the handling of motor TPD claims, incorporating strict timescales supported by pendulum adjudication where required. This will encourage a behavioural shift towards collaboration and deliver rapid resolutions, with a view to entirely removing the need for costly litigation.

The benefits of adopting the Protocol include:

- Simpler, fairer and more transparent process
- Improved industry reputation
- Baseline market savings in excess of £216m
- Additional efficiency benefits of £15m-£30m
- Guaranteed resolution of liability within a maximum of 72 days (including adjudication if required)

In the long-term, it is suggested that the Protocol be incorporated into the existing Ministry of Justice (MoJ) RTA Claims Portal, however we have ensured that it could be implemented in the short-term without requiring a specific IT solution.

INTRODUCTION

The New Generation initiative is part of a CII Claims Faculty strategy designed to support the retention of talent and the development of tomorrow's leaders. It aims to complement existing company talent programmes and give exposure to market issues and tools to equip its participants for future leadership opportunities and enable them to make a positive contribution to their profession by being involved in a project of their own choosing.

We were tasked to identify a project or initiative that would enable us to make a difference for the benefit of customers and the reputation of the industry, within the claims environment.

We identified the key area we wanted to focus on as improving inter-insurer relationships, whilst incorporating the following as important considerations:

- Reputation
- Customer service
- Claim cost

We sought to identify a specific project that could produce a tangible and beneficial outcome. Within the New Generation Claims Group we have a variety of specialisms, however we recognised that motor is high profile for both customers and the industry and that there is an appetite for change.

The insurance industry is an increasingly competitive, price-driven marketplace, as evidenced by the arrival of price comparison websites. As a result every insurer is now under enduring pressure to seek out competitive advantage in order to maximise their business. Whilst such price competition is of some (arguably superficial) value to customers, it has also over time created collateral issues with insurers becoming more segregated in their behaviours.

This segregation has created a deficiency in inter-insurer cooperation and engagement, creating a void between insurers. This void has unfortunately been filled with such activity as credit hire and litigation; both of which only detract from the viability of commercial enterprise for insurers and as a result have a detrimental impact on the cost of insurance products for customers. This matter is highlighted by the Transport Select Committee's recent investigation into the rising costs of motor insurance, which cites litigation and credit hire costs as principal causes.

In our view the issues inherent with motor TPD claims are being overlooked, in stark contrast to the wealth of high profile initiatives and proposals (from insurers, consumer groups and politicians) concerning personal injury claims. There is therefore real potential to prompt debate of this issue and make a difference.

THE CASE FOR CHANGE

Following a motor vehicle accident it is important to assess quickly and easily whether there has been any negligence on the part of the drivers involved and hence who is responsible. However, this process can become entrenched due to the often inevitable 'he says/she says' situation. In addition, for many insurers the process of discussion is correspondence driven, which can result in extensive delays before agreement is reached on even low value, damage-only cases.

These often protracted discussions cause a number of issues for insurers, consuming extensive resource, impacting on reputation and increasing costs.

INTERVIEW FEEDBACK

In order to ascertain how practitioners view the current handling of motor TPD claims, we conducted interviews with an array of claims personnel from various insurers and service providers, including companies not represented by the New Generation Claims Group. In summary we found that[1]:

- There is a lack of consistency in the extent of information shared between insurers.
- Insurers are duplicating efforts in obtaining the same information.

"too many different approaches and tactics" [2]

"There's a lack of trust within the industry." [2]

- Proactivity is key to settling claims early.
- An extension of the MoJ Portal may be suitable for TPD claims.
- An agreed format for information sharing would aid the process of settling claims more promptly.

DATA ANALYSIS

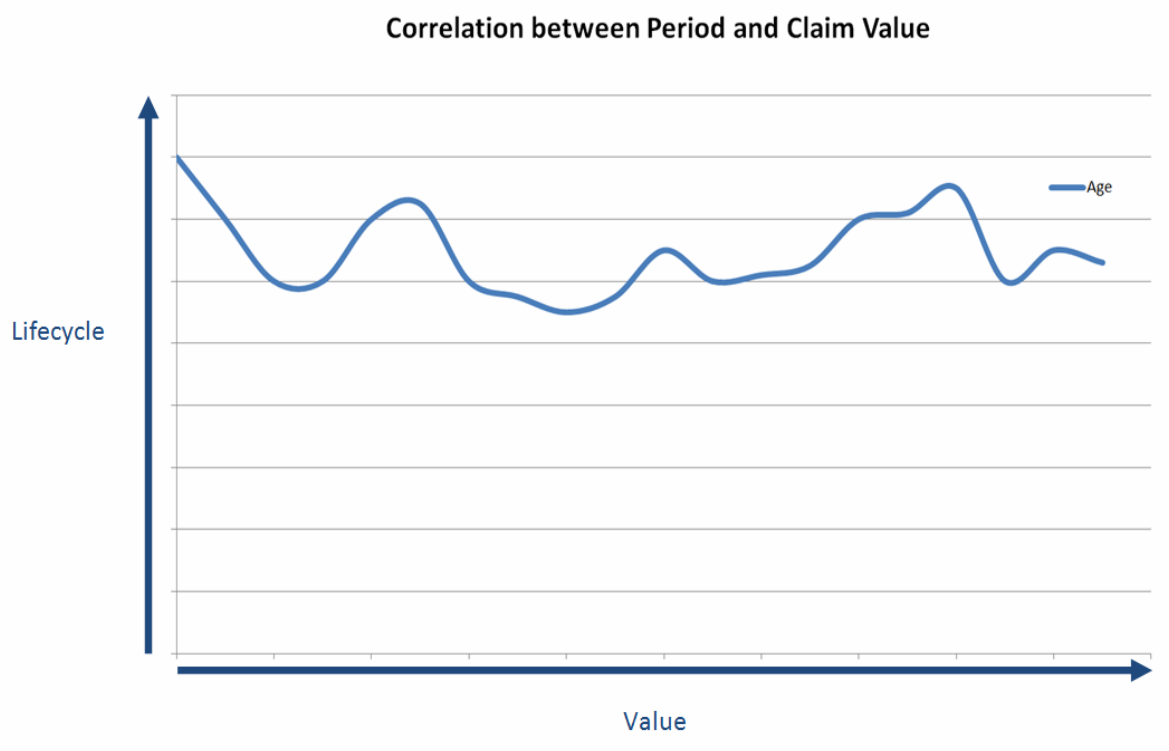
Our data demonstrated that the distribution of age of claim at settlement peaks at 600-700 days, some two years. Some of these cases will have remained fault (no recovery) and others will have involved partial or full recoveries, all of which could contain irrecoverable costs caused by the need for legal intervention and/or arbitration.

"Insurers create what they hate." (credit hire) [2]

In addition, data extracts on open stock (almost 17,000 samples) show that there is little correlation between the value of a claim and how long it takes to resolve. Please see the following graph:

[1] Please refer to appendix 1 for interview responses.

[2] Quotation from contributor to market research interviews carried out by New Generation Claims Group



Low value claims take just as long as high value claims, thereby suggesting that the issue is located within the discussion/decision making process as opposed to the complexity of a claim.

The current approach negatively impacts the following aspects of a claim:

- Customer experience
- Inter-insurer relations
- Industry reputation
- Response times
- Claim lifecycle times
- Litigation spend
- Operating costs
- Claims settlement costs
- Reserving accuracy
- Premium accuracy

CUSTOMER IMPACT

An article in Insurance Times in January 2012 gives insight into customers' opinions of the insurance industry and motor in particular. It is clear that the industry has ground to make up if it is to improve its image.

- On the overarching question of individuals' experience of the insurance industry, nearly two-thirds (60%) of the survey's 1,680 respondents answered that it was neutral, with a further 23% considering it to be negative.

"Let's get the focus back onto looking after the customers." [3]

- 39% of respondents said that their opinion of the motor insurance industry had become less favourable in the last 12 months.
- 91% of respondents considered motor premium costs too high, with 85% blaming insurers.

WIDER CONTEXT & ANALYSIS

In this section we detail our consideration of various previous, existing and new initiatives and agreements that impact upon the motor TPD dispute process, with a view to identifying potential solutions to the issues highlighted above.

MOJ RTA CLAIMS PORTAL

The system supports the Road Traffic Act (RTA) personal injury claims process for low value personal injury claims (up to £10,000). It provides a secure medium for the electronic transfer of information between claimant representatives and defendant insurers/compensators in order for personal injury claims arising from road traffic accidents to be processed.

The system has been designed in partnership with claimant and defendant stakeholders to take account of the internal working practices of both, whilst remaining fully compliant with the agreed reform protocols. It manages communications at every stage defined by the protocols, validates mandatory data, monitors adherence to agreed timescales and provides reminders to avoid them being exceeded.

Intended benefits:

- Swift, electronic exchange of all relevant claim information and related documentation between claimant lawyers and insurers/compensators (including medical reports) enabling key decisions to be communicated quickly and reducing duplication.
- Streamlined flow of agreed information on both liability and quantum between parties helping to reduce operational costs and enable the insurer/compensator to agree settlement more quickly.

[3] Quotation from contributor to market research interviews carried out by New Generation Claims Group

- New timelines built into the process speed up liability decisions and eventual agreement on quantum leading to an improved customer experience.
- Validation checks on claim information ensure that all required data is exchanged.

Issues faced:

- Open to abuse by third party solicitors:
    - Some send a Court Proceedings Pack before they are entitled to do so, i.e. before the end of the 35 day negotiation period.
    - Others refuse to use the Portal and believe that any form of electronic communication will suffice.
    - Others use the Portal but try to remove claims from the process wherever they identify possible cost benefits for them in doing so.

It is evident that there are many positive features of the MoJ Portal, particularly in terms of driving operational workflows for defendants/insurers, enabling them to manage the cost of their claims. However, it is currently specifically designed for injury claims and so widening its scope to include motor TPD claims would require development time and the buy-in of the MoJ, meaning it is unlikely to provide an appropriate short-term solution to the challenges identified above. However, it does have potential to offer a solution in the longer term.

KNOCK FOR KNOCK

These were agreements established between any two insurers whereby, when both companies' customers incurred losses in the same insured event, each insurer paid the losses sustained by its own customer, if covered by the policy, regardless of legal liability. Recovery from the negligent party or insurer was not sought on the basis that across all claims a fair balance of costs would be achieved. Such agreements ceased in the mid-1990s when some insurers felt that knock for knock did not provide an equitable solution.

Intended benefits:

- Simple, fast process
- Lower administrative costs
- Made litigation a rarity
- Faster cycle times
- Kept uninsured loss recoveries separate
- Ensured a relatively even distribution of claims costs among insurers over time

Issues faced:

- Unfair impact on non-fault customers' claims histories and premiums
- Not all insurers participated

- Gave an unfair financial advantage to insurers with predominantly third party only books of business. "They only had to pay for at-fault damage claims if the other driver had comprehensive cover. A like-for-like agreement was in force for a while where it only applied if both parties had comprehensive cover, and then it was abolished."[3]

> "Much has happened since the mid-90s, with the abolition of legal aid, the legalisation of advertising and the growth of a no-win no-fee culture, but I can't help wondering that if the knock for knock agreement had stayed in force, many of the current problems could have been avoided. Insurance costs would be much lower and far less of the premiums would go to those parasites who feed off the sector", *Tony Cornell.* [4]

Disparity between insurers' motor books means that a knock for knock model would continue to result in unfair results for some insurers and competitive disadvantage and therefore it does not provide a suitable solution for motor TPD claims.

PRE-ACTION PROTOCOLS

These codes of practice set out the guidelines which parties are expected to follow when faced with the prospect of litigation. They were established in the UK in 1999 following Lord Woolf's 1996 Access to Justice Report, which identified the need to enable a resolution to a liability claim without starting litigation proceedings.

There are currently ten specific pre-action protocols in the UK. Each encourage the exchange of sufficient information to enable each party to understand the other's position, providing specific guidance on the nature and extent of information to be exchanged and timescales in which to do so.

Intended benefits:

- Encourages cooperation and settlement before litigation
- Mandatory for all parties
- Reduces burden on the courts
- Narrows down issues on cases that do reach trial
- Encourages use of Alternative Dispute Resolution (ADR), therefore cheaper than litigation for cases capable of early settlement

Issues faced:

- Front-loading of costs on complex cases

[4] http://www.insuranceage.co.uk/insurance-age/opinion/2156399/life-s-little-knock-knocks#ixzz1sYyKCXPM

- Can delay process in cases which are unlikely to reach early settlement
- Has not led to a significant use of ADR

Pre-action protocols are proving successful within their current scope but we do not feel that the requirements they contain are prescriptive enough for our purposes, particularly where non-injury claims are concerned.

REDUCTION IN PAPER EVIDENCE (RIPE)

These agreements establish that outlay of subrogated claims can be advised verbally and agreed on the basis of trust rather than having to submit documentary evidence. Several high profile agreements failed in mid-2011.

Intended benefits:

- Lower administrative costs
- Faster cycle times
- Improved reputation of industry

Issues faced:

- Rely on trust and honesty so open to abuse
- Not all insurers participate
- A number of insurers have withdrawn due to a high profile breakdown of trust.

In our view, the appropriate use of RIPE continues to be of benefit to the insurance industry and it is unfortunate that it has proven to be so prone to misuse.

IT SOLUTIONS CURRENTLY IN DEVELOPMENT

We have established that the following technological solutions for motor claims are being developed:

- **Credit Hire Portal:** A new initiative led by the ABI to create an industry level portal which supports the existing credit hire general terms of agreement (GTA). It streamlines the process of communication between insurers and credit hire organisations (CHOs) in order to improve settlement times.
- **Online Resolution Tool:** An online facility to aid the resolution of motor liability claims. The system allows users to collate all relevant details including road layouts, vehicles, people and UK road signs. When liability is disputed, it gathers all parties' perspectives online in a single location and recommends an outcome. It also stores each party's agreement of accident circumstances in order to avoid any later disputes.
- **Claims Portal:** A communication platform through which claims data is electronically submitted and both parties collaborate to ensure that claims are being monitored and managed efficiently. It provides the ability to create specific protocols between insurers and third party representatives. It is typically designed to be used in conjunction with the Online Resolution Tool detailed above.

Whilst these solutions could prove very useful in supporting any new protocol, they would potentially create a barrier to entry for some insurers given that costs are incurred for their use. They are currently being designed with the management of credit hire in mind so we would suggest that they are reviewed further once established for this purpose.

ANALYSIS OF PREVIOUS & EXISTING APPROACHES

While a number of agreements, models and IT solutions have been introduced over recent years to tackle the challenges inherent within both motor and liability claims processes, none provide an immediate solution for motor TPD claims. However, there are a number of learnings we can take from them, such as:

- All participating insurers must believe that they can equally benefit.
- Clear and strict requirements, rather than guidelines or suggestions, lead to a more consistent adherence to what is originally intended.
- Insurers are willing to work together for the improvement of the claims experience, for the benefit of both customers and themselves. Agreements break down where these benefits are lost or reduced.

INTERNATIONAL MODELS

During the course of our enquiries we considered other countries' legal systems and approaches to motor TPD claims and found that the most noteworthy and relevant to our project was Malta.

In Malta, wardens attend all road traffic accidents (other than those involving a 'hit in rear' scenario, where instead a bumper to bumper form is completed by the drivers before leaving the scene). The warden reports on the accident, draws a sketch, takes photographs and obtains statements from the drivers involved and any witnesses.

All insurance companies in Malta adhere to a Handbook of Best Practice for Third Party Motor Liability Claims issued by the Malta Insurance Association. The Handbook applies whenever an insurer deals with a third party who claims damages against its customer.

In determining liability the insurer applies the rules established in the Drivers' Fault Chart[5].

Intended benefits:

- Contemporaneous investigation by reliable persons
- Prompt agreement of liability and speedy settlement for customers and insurers

Issues faced:

- Wardens have faced threats of violence
- Costs incurred for implementation and maintenance of approach

[5] http://www.maltainsurance.org/userfiles/File/COLLISION_FAULT_CHART.pdf

Although this model is known to work well in Malta, the size of the island makes it viable and it is logistically and economically less feasible for the UK. However, the introduction in the UK of an agreed document, such as the aforementioned Drivers' Fault Chart, may lead to swifter decision making and could be incorporated into any future protocol.

ALTERNATIVE DISPUTE RESOLUTION

From our investigations we believe that any solution for motor TPD claims needs to incorporate a process for disputes to go to ADR, rather than litigation, in order to resolve the apparent challenges of the current process. There are a number of approaches to ADR and these are detailed in appendix 2.

We have identified that whilst there are a number of options for ADR within the market they are not being appropriately utilised to aid the avoidance of additional costs associated with legal proceedings.

Any dispute resolution process used for solving motor liability claim disputes needs to have the following key elements:

- It needs to be respected and considered to be adding real value.
- It needs to avoid further lengthy and costly litigation.
- It needs to be easily accessible and flexible.
- It needs to be cost-effective.
- Its decisions need to be binding.

Setting up an ombudsman is time-consuming and complex and is best suited to resolving complaints or issues relating to process and behaviours rather than the resolution of liability. Typically ombudsman decisions are also slow and therefore in our view not an ideal model here.

With regards mediation, government-published research following a scheme carried out at the Central London County Court in 2007, showed that mediation is not always a quicker or cheaper alternative to litigation[6]. Clearly, where mediation is successful it is quicker and cheaper than going to court, however when it fails it adds time and cost. Indeed, research suggests that settlements are reached at mediation in only 30-60% of cases, the reason often being that the parties are not willing to negotiate or compromise. Given that agreement needs to be reached between the parties involved and the mediator has no power to make a decision, this is not an ideal solution in motor liability claim disputes which require an effective, quick and cost-effective solution providing some timescale and decision certainty.

Both adjudication and arbitration provide certainty of decision (by leading to a binding result). The main difference between adjudication and arbitration is that arbitration is a formal process governed by statute and decisions are legally binding, whereas adjudications are not always (although one can choose to make them so).

It is unlikely that insurers will willingly sign up to any legally binding form of ADR, given that the outcome of motor TPD claims will influence any future personal injury claims arising from the same incident.

[6] http://www.adrnow.org.uk/go/SubPage_134.html

PROPOSED SOLUTION

As a result of our investigations and understanding of the existing approaches taken by individual insurers, we believe that a new method needs to be identified for use across the industry whereby the settlement of motor TPD claims is streamlined within an agreed framework.

It appears that there is no existing solution which has been specifically designed for motor TPD claims, nor one which can easily be adapted to adequately fulfil this requirement.

An appropriate solution which will resolve all challenges experienced within the current process will need to encompass the following:

- Agreed process for inter-insurer document submission and liability resolution
- Dispute resolution process/forum
- Response time protocols
- Specific communication channels for inter-insurer issues

> "If the industry had an agreed format for information sharing which was applied in a consistent manner, this would make decision making much more efficient and cut down on chasing gaps in information." [7]

Our proposal offers a standardised step by step process for resolving liability disputes on motor damage cases within a maximum of 72 days.

Our model does not seek to alter insurers' approaches in interpreting case law, nor any internal strategies they may have; it simply sets out to place insurers in a position where they are able to make an informed decision promptly.

This decision can either be one of settlement [agreement], or alternatively an agreed dispute and subsequent fast track into ADR. Either way, reaching a clear outcome within 72 days will assist in case management, retention of evidence and will further facilitate claims being resolved within the policy term, thereby not impacting the non-fault customer at renewal.

Given that we are looking for a binding but not legally binding form of ADR, we believe adjudication is the way forward. In order to drive the right behaviours towards early resolution we propose creating a pendulum adjudication process.

OUT OF SCOPE

It has been necessary to limit the scope of our enquiries by removing the following types of claim:

- Claims exceeding £10,000 (this eliminates fewer than 10% of motor damage-only claims)
- Personal injury (already under review elsewhere and only eliminates approximately 30% of motor claims)
- Fraud (due to inherent complexities)
- Uninsured losses (as we are considering an insurer to insurer protocol)

[7] Quotation from contributor to market research interviews carried out by New Generation Claims Group

PROCESS

STAGE 1 (ASSESSMENT)

Insurer (A) notifies Insurer (B) of claim for liability and requests in the absence of an acceptance of liability that this case should now enter the Liability Protocol ("the Protocol").

Insurer B is required to respond to this initial contact within 15 calendar days confirming that liability is either accepted or denied and therefore the applicability of the Protocol.

If liability is accepted, the respective insurer reimburses settled costs in line with the decision. This agreement does not impact or prejudice the uninsured loss claims of either party and is done so under the auspices of the current Memorandum of Understanding (MOU).

If liability remains disputed, the case enters Stage 2 (Negotiation).

STAGE 2 (NEGOTIATION)

The respective insurers now have 21 days to prepare their case on liability in preparation for disclosure of the liability pack, such as obtaining statements, case law, engineering evidence and customer input/agreement.

On expiration of this 21 day period insurers are required to arrange a mutual exchange of documentation.

The precise format for exchange will be dependant on the bilateral agreements in place between insurers, but it is envisaged that a live list of contacts within each firm will be utilised in line with efficient exchange arrangements such as email or, in the longer-term, electronic portals.

Insurers will now have received their counterparts' liability pack and will enter into a period of 15 days for assessment, discussion and agreement.

Each party will now be able to assess the information from each side and consider the common truth.

The liability pack is a prescribed format and list of documentation to facilitate a common and equal sharing of data, thus ensuring parity of arms between insurers. The specifics of this pack are detailed within the Protocol.

In cases of multiple collisions it is recommended that telephone conferences or other online exchange platforms are utilised to maximise the opportunity for all parties to discuss the mechanics of the accident in order to reach a common agreement on the liability of the loss.

The conclusion of this stage will be one of two outcomes:

a) Liability now agreed and settlement will follow in line with the decision

Or

b) Liability remains disputed and the case now proceeds immediately to Stage 3 (Adjudication).

STAGE 3 (ADJUDICATION)

There are a number of formats for Alternative Dispute Resolution (ADR); however the Protocol (which establishes the umbrella agreement) recommends pendulum adjudication by an approved partner.

This type of adjudication is proposed as it provides the best opportunity for settlement, given the effect that the pendulum has on reaching agreement.

The costs for the adjudication service are provisionally estimated at £575+VAT per party. This represents a cost-effective and fast method of dispute resolution for insurers, reducing the additional frictional costs associated with litigation.

These costs are not recoverable and are borne by each party.

The adjudication process will conclude the matter of liability between insurers thereby achieving the overriding objective.

Please find attached appendix 3 for the full Liability Protocol.

BENEFITS

Our proposal provides the following benefits:

- Shorter timescales and quicker resolution for the benefit of insurers and customers. We expect that, by following the Protocol, average lifecycles for motor TPD claims will reduce to a maximum of 72 days.
- Agreed timescales will provide customers with greater certainty around when a decision on liability can be expected and avoid unfairly affecting customers who are not at fault when their policy comes to renewal.
- Clearer process, cutting through the complications of liability decision making and enabling greater transparency for the customer with provision of expectation around process and service levels
- Less inconvenience to the customer as the need for considerable levels of evidence and investigation over extended periods will be avoided
- Reduction in legal and credit hire costs which can be passed onto customers in the form of reduced premiums
- Improved Combined Operating Ratio (COR) results. With increasing premiums being restricted by strong competition within the market there is growing pressure on insurers to introduce cost cutting measures to improve their COR and so see a return to profitability. Our proposal allows a cut in costs without a negative impact on customers.
- A more predictable claims process allows for easier resource planning.
- No significant economic barriers to entry
- Greater cooperation and agreement amongst insurers will lead to improvement in other areas where insurers must work together, for example in collection of recoveries.

- Positive PR and message to deliver to customers showing cooperation between insurers to deliver benefit to customers
- A more joined-up industry approach delivering a more professional service

BUSINESS CASE

- ABI market data indicates that in excess of 1.5m claims for motor accident damage are reported annually. For the basis of this assessment it is taken that 75% will involve a liability of some description thereby requiring insurer to insurer interaction.
- The average cost per claim has been assessed as £1,250.
- Aggregated data from the New Generation Claims Group indicates that 20% of all motor accident damage cases require the use of legal support to resolve.
- It has been identified from data collated by the New Generation Claims Group that where litigation (or legal support) is required, the value of a claim doubles.
- A basic assessment can be arrived at to forecast the cost incurred through this frictional behaviour between insurers:
    - 75% of 1.5m equates to 1.12m claims per annum
    - 20% of which require litigation to resolve which equates to 224,000 claims per annum
    - The index value of claims is taken as £1,250 and it is accepted that where litigation occurs the value of these claims doubles.
    - It is therefore approximated that the additional costs attributed to these frictional issues can be expressed as:
        - 224,000 claims x £1,250[8] = £280m
- It is therefore proposed that the current absence of an effective inter-insurer framework is resulting in arguably unnecessary litigation costing in excess of £280m per year.
- The proposed Protocol seeks to remove the need for such a high % of cases needing dispute resolution through a pragmatic and formalised process of information exchange and negotiation.
- In addition, the costs of Stage 3 (which replaces litigation) will be limited to £575, a 54% reduction in general costs.
    - Even if the level of dispute resolution remains at 20%, the Protocol creates a potential saving of £151m, by reducing the level of total costs to £128m.
    - However, the Protocol should reduce the number of cases requiring dispute resolution to an estimated 10%. As such it has the potential to reduce the level of costs caused by disputes to £64m, a saving across the market of £216m.

[8] The approximate level of litigation cost given the doubling of claim value, i.e. £1,250 average claim value x 100%

- Further savings will be realised due to the shorter period of time between notification and liability agreement, impacting on time-sensitive claims such as credit hire.
- In order to capitalise completely on these benefits, the Protocol also has the potential to be opened up to CHOs, capturing those cases where an individual is not utilising their own policy coverage.
    - In terms of calculating a saving from this aspect, it is accepted that any protocol agreements between insurers and CHOs would be limited to Industry GTA Credit Hire Subscribers. Market data indicates that annually 600,000 claims for credit hire are received, 86% from GTA-approved CHOs.
    - This equates to 516,000 cases being capable of capture.
    - Credit hire claims are time-sensitive and as such there is a direct correlation between the time taken to resolve, or in this case admit liability, and the cost of the claim. Any reduction to the length of time this takes reduces the cost.
    - The Protocol offers a formalised process which is tied together with specific points of timed activity, which prevents cases from stagnating.
    - Whilst it is difficult to assess specifically, if we consider a credit hire claim where hire is being provided at £30 per day and an insurer is able to resolve liability just 5 days sooner, this results in an individual file saving of £150.
        - This level of reduction will not be achievable in all credit hire cases; however it is conservatively estimated that in at least 20% of GTA claims it is feasible. This equates to 103,200 claims:
            - 103,200 x £150 = £15.5m approximate saving

CONCLUSIONS

Using ABI market data on current average claim values, it is estimated that the Protocol will deliver baseline savings in the region of £200m.

Given the intrinsic value of time-sensitive claims, the Protocol also carries the potential to further reduce ABI average claim values, potentially realising additional savings of £15.5m.

Both assessments are based on highly conservative estimates. Far greater gains are arguably possible however further, more detailed statistical modelling is required to provide more accurate forecasts.

Aside from the formation of a Technical Committee and legal approval of the Protocol, no additional investment is required on the part of participating insurers. As such there is a compelling case for adoption for all concerned.

RISKS

There are a number of potential risks to the industry and individual insurers which need to be considered:

- Competition Law
    - In the UK two sets of competition rules apply in parallel. Anti-competitive behaviour which may affect trade within the UK is specifically prohibited by Chapters I and II of the Competition Act 1998 and the Enterprise Act 2002. Where the effect of anti-competitive behaviour extends beyond the UK to other EU-member states, it is prohibited by Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU).
    - UK and EU competition law prohibit two main types of anti-competitive activity:
        1. Anti-competitive agreements (under the Chapter I and Article 101 prohibitions)
        2. Abuse of dominant market position (under the Chapter II / Article 102 prohibitions)
    - There are strict guidelines concerning insurer collaboration. In order to avoid any issues arising in this respect the participating insurers must:
        - Prove that a benefit is being delivered to the customer
        - Ensure that no practicable alternative methods of working exist
        - Ensure that no future pricing, product or underwriting proposals are discussed
- If insurers believe they currently receive competitive advantage through already efficient management of motor TPD claims they may negatively view the implementation of the Protocol.
- Insurers may lose operational flexibility as a result of the strict requirements of the Protocol.
- The requirement to provide the specifics of an information pack could in some instances slow down insurers' processes and increase timelines.
- The constantly changing structure of the motor insurance industry could represent a barrier in the future. For example, changes in the personal injury motor sector may result in a lack of resource for implementation of an additional change.
- If 'inverse liability' arrangements are more broadly adopted they could render the Protocol unnecessary, as compensation could no longer be claimed against third parties.[9]
- Individual approaches by claim handlers can vary from company strategy. Without penalties for failure to comply with the Protocol, consistency of process may prove difficult.

[9] http://www.cii.co.uk/media/2123691/inverse_liability_insurance.pdf

- Finite resourcing may lead to initial teething problems, which could result in non-Protocol, e.g. damage-only, claims taking longer to resolve. However, over time this would be balanced by reduced lifecycles from the Protocol releasing resource from longer term claims.

NEXT STEPS

This report outlines a proposed solution to an issue which is having a significant impact on both insurers and customers. There are a number of further actions which we believe should follow to move the proposal forward:

- Liaise with the other New Generation Groups to identify potential synergies
- Handover the project to an appropriate working group
- Gain buy-in from ABI technical committees and other relevant bodies and groups, e.g. the MoJ
- Complete the final details of the Protocol with contribution from subject experts
- Pilot the Protocol between two selected insurers, for wider roll out if successful
- Lobby the MoJ for incorporation of the Protocol into the MoJ Portal

CONTRIBUTORS

Throughout this project we have worked with a wide number of organisations and individuals from across the claims profession.

- James Deuz – Validus
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- Steve Leslie - Co-operative Insurance

- Bec Jones - RSA
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- Kevin Bould – RBSi
- Jacqueline Harvey – Broker Direct
- Amanda Parkin – QBE
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- Mike Noonan – QBE
- Alexandra von Westernhagn - DAC
- CII Claims Faculty Board

APPENDICES

APPENDIX 1: COLLATION OF INTERVIEWS CARRIED OUT WITH CLAIMS PRACTITIONERS FROM ACROSS THE INDUSTRY

What are the current perceptions of inter-insurer information sharing?

- No uniform set procedures
- Some good, some are reluctant to provide information
- Information is shared when it is in the company's favour
- Lack of trust in information sharing
- Cooperation is "watered down"
- Companies don't follow the pre-action protocol
- Behaviours differ greatly – some companies are predisposed to litigate
- When not clear cut an element of "ping pong"
- Work states largely influence behaviour
- "Insurers create what they hate" (credit hire)
- Duplicated effort, e.g. joint statements
- Traditional written communication rather than telephone
- Complicated with the need to involve brokers – "30% of time taking updating and liaising with the broker", "telling the broker what we have already done"
- Cheap resource and down skilling of claims staff
- Off shoring of process can add complications
- Some insurers are resistant
- Push to court – scare tactics
- Generally most are reasonable and cooperative
- But "too many different approaches and tactics" which requires further management and wasted energy
- Some follow RIPE, some don't – lack of consistency
- Lack of general consensus and approach does necessitate more man hours devoted to chasing information and ensuring a proactive approach to drive closures
- Individuals work to their own rules rather than the company strategy
- Varies from insurer to insurer: "different approaches and levels of openness"
- Issue with standard letters. "One liners are not the most effective form of initial communication", e.g. letters communicating that insurer A has taken in a claim where they deem insurer B to be at fault. However, limited information supplied (sometimes not even including the location of the loss or the circumstances).
- Perhaps due to the high turnover of staff at FNOL and the lack of experience in place to prepare a fuller and more informed style of communication.
- Compared with other insurers where a full and detailed initial communication of liability is provided including witness details, report on vehicle damage and detailed circumstances. "Allows you on day one of notification to make an informed judgement on whether to defend fault or consider acceptance".

What is the current process to gain resolution of these claims?

- Telephone, vehicle diagram, Google Earth, locus reports, ARFs to make informed decision
- If insurer concerned does not provide information 'NOI' and files may need to go into litigation. 72 days when files go to solicitors
- Peer review
- Using intelligence to look at particular behaviours

- Industry resolution appears to be litigation
- Formal escalation between insurers
- Recovery department – they send documents to responsible party – no response in 12 – 16 weeks we send an RTA notice
- Not straightforward – stays in claims department – in the mix
- Claims come in via fleet managers or brokers – more protracted and document based "25% on phone, 75% paper"
- Instruct a claim investigator to inspect
- General approach is with intelligence gathering
- Team setup with specialisms including repairs, total loss and vehicle theft
- Generally attempt to take a pragmatic/commercial approach
- "We attempt to gather as much information as possible at the outset as a means to establishing which cases are worth defending and which on the basis of evidence we accept."
- Mainly through the use of the telephone as opposed to email (which can get caught in a backlog).
- Getting information from an insurer which brings about better decisions

<u>What could be done to reach earlier settlements of these claims?</u>

- Audit file more to check that it is received in good time
- Non-obstructive
- Effective day 1 means less time taken later in the process
- More use of phone
- Better use of technology to get more information at early stages, more seamless
- Formal escalation points within companies
- Escalation review meetings
- Information disclosure agreement – need to have some teeth
- Industry wide agreement
- Rather than generating fee income, direct to third party insurer – takes away from solicitors/credit hire, etc.
- Picking right case – economics of the claim
- Generally improving the speed of evidence and gathering – straight away
- MoJ Portal for damage claims
- More use of case law as a means of coming to agreed liability decisions earlier. Reference to the use of a case law book which handlers can refer too.
- "If the industry had an agreed format for information sharing which was applied in a consistent manner, this would make decision making much more efficient and cut down on chasing gaps in information."
- Not claim against your own insurer (third party)
- Important to agree Without Prejudice payments up front so customers get their money earlier
- Empower the claims handlers to make decisions
- More review of documents to review findings without explanation
- Be more realistic from the outset

<u>What will be the key benefits of improving this process?</u>

- Reduction in settlement time
- Less frustration
- Improved customer service
- Reduction in litigation
- Less complaints
- Improved reputation
- Reduced caseloads and more individual focus on customers
- Reduced claim cost
    - Credit hire

    - Claimant solicitors
    - Own solicitors
- Reduced claim handling expenses
- A more predictable process means you can better manage customer expectations
- Prudential savings
- Less operational friction
- Potential for reducing fraud
- Accurate reserving
- Premium settings
- Sharing market intelligence
- Better customer experience - "let's get the focus back onto looking after the customers"

What are the key issues / challenges with agreeing liability with another insurer?

- "An industry which exists to make money"
- Getting through on phone
- Policyholders' timescales and reluctance to respond
- Claims operations outsourced to another country
- Work states causing delays
- Other insurer setups
- Call centre setup
- Getting hold of the decision maker
- Lack of trust within the industry

Would agreed timescales and a staged process bring benefit? Please expand

- Yes
- Backlogs in house will however occur and will effect adherence to the protocol
- But difference in commercial motor world where numerous parties involved including broker, fleet office, fleet manager, transport manager. All need to buy into this protocol. Particularly on commercial fleet where their premium is measured against the total cost of their claims, i.e. they have an incentive to keep this cost down.

How do you think we could learn from our competitors?

- Better decision making based on economics
- Use of phone
- Simplicity of process
- Use of technology
- Collation and utilisation of market intelligence

APPENDIX 2: SUMMARY AND ANALYSIS OF ADR MODELS

There are a number of approaches to ADR and the following is a précis of the options.

ADJUDICATION

Adjudication involves an independent third party, also known as an adjudicator, who considers the claims of both sides and makes a decision. This is usually a paper exercise with both sides sending in written details of their argument and copies of any letters, reports or other evidence. The adjudicator then makes a decision based on this information and on what is generally considered to be good practice in the business concerned. The adjudicator is usually an expert in the subject matter under dispute.

Adjudication is relatively informal and is commonly used by consumer organisations, such as CISAS (the Communications and Internet Services Adjudication Scheme) and Qualitas (the furniture ombudsman). Whether or not the decision of an adjudicator is binding (legally and outcome) on either or both parties is subject to the agreement of the parties. Adjudication is not a legally defined process.

ARBITRATION

Like adjudication, arbitration involves an independent third party who considers the claims of both sides and makes a decision that resolves the dispute. Known as an arbitrator, he or she is impartial and does not take sides. Arbitration is generally more formal that adjudication and has a legally defined process. The arbitrator's decision is legally binding on both sides, so it is not possible to further refer the dispute to court.

The Arbitration Act 1996, which applies to disputes in England, Wales and Northern Ireland, lays down strict rules for how arbitration should work. However, arbitration is intended to be less expensive, less formal and more flexible than court, so the rules of evidence are not as strict and parties can usually have a say in how they want the hearing to be conducted. Parties can choose a single arbitrator with relevant experience or select an arbitral panel of three or five arbitrators. The larger the panel, the more expensive the process is.

Some providers, such as the Association of British Travel Agents (ABTA), offer an internet-based arbitration service so that all documents can be submitted by email.

After considering the parties' submissions, the arbitrator issues a final and binding 'award' based on good practice, reasonableness and law. The award usually includes reasons for the decision and can take the form of a compromise rather than necessarily identifying a winner or loser (unlike pendulum arbitration – see below).

Under the 1996 Act there is very limited scope for appeal against an arbitrator's award. Usually, appeals can only be made where an arbitrator is deemed to have behaved unfairly.

Pendulum arbitration, otherwise known as final offer arbitration, is where the arbitrator chooses one of the parties' proposals on each (or all) disputed issues and makes a final decision. There are no compromise settlements, which can drive the parties to adopt the right behaviours from the outset in order to reach agreement.

Most arbitration schemes charge a fee and the costs vary depending on the method of arbitration and the arbitrator. Most claims under the ABTA arbitration scheme for holiday disputes currently have a registration fee of £108.

EARLY NEUTRAL EVALUATION

In early neutral evaluation a judge or QC carries out an evaluation and makes a non-binding decision. Given the evaluator's expertise, the decision is considered very persuasive and a strong indicator of the likely outcome should the matter progress to trial.

Both parties can agree the process and the evaluator, however as it can be expensive it is usually only used where the costs of trial are likely to be excessive and an early indication of how the case is likely to be decided is desired.

MEDIATION

In mediation, an independent, impartial third party, a mediator, helps parties try to reach an agreement. The people with the dispute, not the mediator, decide whether they can resolve things and what the outcome should be.

Mediation is a carefully staged process and the mediator is there to manage the process and help discussions run smoothly. Mediation is private and confidential so cannot be discussed in subsequent court proceedings unless agreed by both parties. Agreements reached are not automatically legally binding.

The cost of mediation varies drastically. Small claims mediation is free when provided by a court-based mediation officer. However, beyond that hourly rates of £50-£3,425 can be expected, depending on the value of the case, the agreed process and the mediator.

CONCILIATION

Conciliation is much the same as mediation and there is little to distinguish the two save for some of the terminology. In conciliation an independent person, a conciliator, tries to help the parties in dispute to resolve their problem. The conciliator should be impartial and not take sides. The parties in dispute are responsible for deciding how to resolve the dispute, not the conciliator.

Conciliation agreements can be made legally binding if both parties agree.

OMBUDSMEN

Ombudsmen investigate and resolve complaints about organisations and government bodies. They also encourage good practice in the way that complaints are handled.

Ombudsmen are expected to be user-friendly and help complainants in making their complaint. Many of them run helplines and have staff who will discuss problems informally over the telephone before a formal complaint is made.

However, ombudsmen do not give advice and their decisions are not binding on complainants unless the complainant accepts the decision. Therefore, unlike arbitrated decisions, the option to go to court remains. Ombudsman schemes are free to use.

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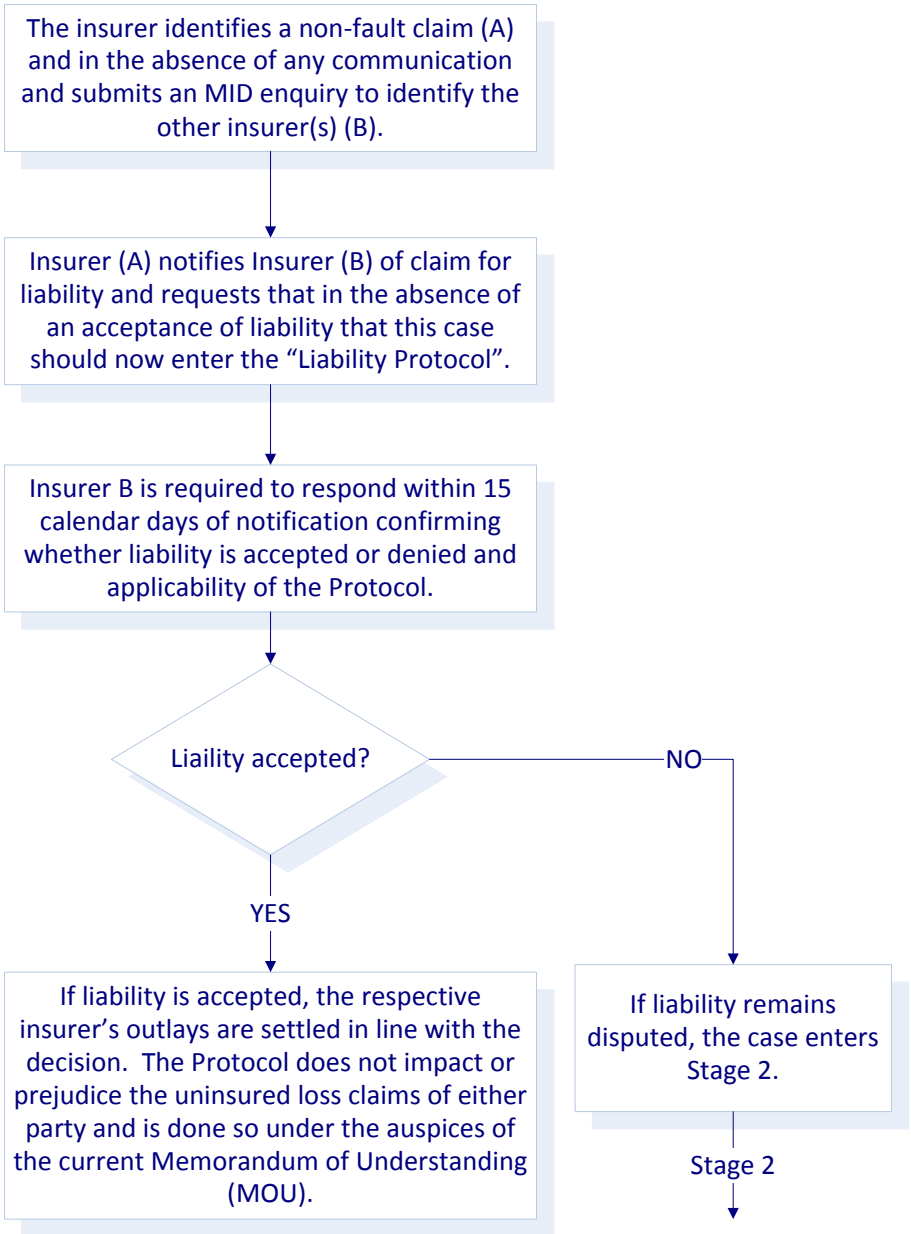
Resolving Liability Disputes

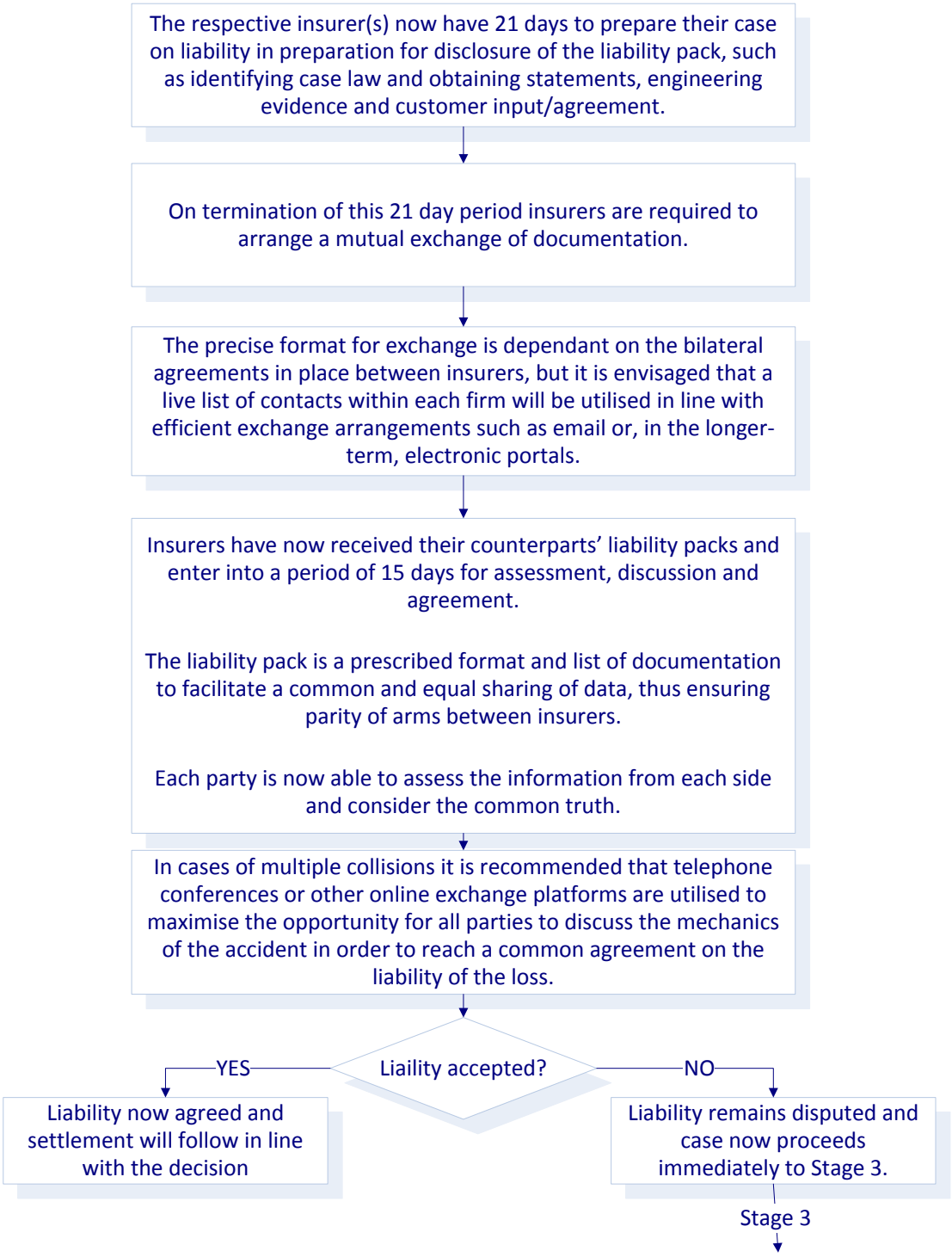
Protocol

A-N-A

Stage 1 (Assessment)



Stage 2 (Negotiation)



Stage 3 (Adjudication)

In the absence of agreement under Stage 2, Insurers are now each bound to engage in and accept the costs of Pendulum Adjudication in which the Adjudicator will resolve the dispute by selection of one of the insurer's positions.

↓

Each insurer will provide an offer pack detailing their position, the liability pack (under stage 2) and rationale.

↓

An approved partner will be selected for adjudication, and the relevant administrative arrangements will be agreed as part of the protocol, including and not limited to virtual networking such as online conferencing.

↓

The adjudicator will now be able to assess the dispute, discuss and under the conditions of the pendulum approach the adjudicator's duty is to select one of the insurer's positions, thus resolving the dispute.

↓

The liability position is now concluded and insurers will now apportion any payments for vehicle damage as per the position of the agreement. Such payments and acceptance is purely without prejudice to any uninsured losses.

↓

The insurers as per the conditions of the adjudication will now each bear the costs of the hearing, thereby reinforcing and driving behaviour to reach earlier resolution at stage 1 and 2.

Resolving Liability Disputes

Protocol

A-N-A

CONTENTS:

1. INTRODUCTION

This document ("the Protocol") sets out a preliminary framework proposed by the CII Claims Faculty Group for inter-insurer working to facilitate the resolution of disputed motor liability claims.

It should be noted that the Protocol has not yet been approved either by nominated legal experts or formally agreed by insurers and as such is provided to formulate a discussion framework that will ultimately see significant revision, additions and amendment depending on the requirements of the insurers concerned, prior to formal implementation or pilot.

The process envisaged is one in which insurers will follow a set pattern of communication, controlled by timescales to facilitate information exchange (Stage 1) and negotiation and agreement (Stage 2). This will be further supported by, where required, a service of ADR (Stage 3), thereby completely eliminating the need for litigation and other frictional costs created under current arrangements.

It is envisaged that the vast majority of cases will be resolved within Stages 1 and 2 given the benefits that will be created through effective information exchange. This will enable a common truth to be arrived at earlier without recourse to costly litigation.

Those minority cases that require transfer to Stage 3 will be undertaken through ADR at a significantly reduced cost than previous legal process and produce a defined outcome for insurers. Outcomes will not be binding for claimants; they will merely enable insurers to reach resolution in line with previous Memorandum of Understanding arrangements.

The Protocol will require a Technical Committee for steering, guidance and document version control, the terms of which are detailed in Section (11).

It is envisaged that control of the Protocol will sit with the Association of British Insurers and the terms have been laid out with this in mind.

The Protocol sets out Objective, Scope, Process: Stage (1 Assessment), (2 Negotiation) and (3 Adjudication), followed by Exceptions and rules of both Adjudication and Administration.

2. OBJECTIVE

The Protocol is intended to help parties involved in disputed motor liability claims to resolve liability in the quickest, most efficient and cost effective way possible.

By putting in place an agreement supported by specific timescales, it aims to change insurer behaviours which will improve the customer experience and enhance the reputation of the insurance industry.

This overriding objective will be achieved through a commitment from subscribers to resolve liability by agreement or if necessary adjudication, with a view to it being dealt with in a maximum period of 72 days from date of first notification.

3. SCOPE

- The value of the claim is less than £10,000.
- The claim involves motor damage only.
- The legal jurisdiction of all parties is England and Wales.
- The claim is under management by insurers subscribing to the Protocol.

4. PROTOCOL

The Protocol is subdivided into three steps and follows a methodology not unlike that of the Ministry of Justice (MoJ) RTA Claims Portal. This is a tried and tested format and one with which insurers are familiar.

The process has been developed to offer a formalised mechanism for insurer interaction, supported by an adjudication facility where a dispute exists between insurers.

The process is divided into three stages: (1) Assessment, (2) Negotiation and (3) Adjudication.

It is envisaged that only 10% of all claims will require the services of adjudication under Stage 3, with the majority of cases being agreed at Stage 1 or 2.

There exists as part of the Protocol a general condition requiring insurers to be proactive in dealing with matters of dispute, in accordance with the overriding objective for inter-insurer engagement.

5. STAGE 1 (ASSESSMENT)

As in (4.5), there is an expectation that where an insurer identifies clear responsibility for another party, proactive effort is made using the Motor Insurers Database (MID) to identify and notify the insurer of the innocent party.

The insurer identifies a non-fault claim (A) and in the absence of any communication as in (5.1), submits an MID enquiry to identify the other insurer(s) (B).

Insurer (A) notifies Insurer (B) of claim for liability and requests that in the absence of an acceptance of liability that this case should now enter the “Liability Protocol”.

Insurer B is required to respond within 15 calendar days of notification confirming whether liability is accepted or denied and applicability of the Protocol.

If liability is accepted, the respective insurer’s outlays are settled in line with the decision. The Protocol does not impact or prejudice the uninsured loss claims of either party and is done so under the auspices of the current Memorandum of Understanding (MOU).

If liability remains disputed, the case enters Stage 2.

6. STAGE 2 (NEGOTIATION)

The respective insurer(s) now have 21 days to prepare their case on liability in preparation for disclosure of the liability pack, such as identifying case law and obtaining statements, engineering evidence and customer input/agreement.

On termination of this 21 day period insurers are required to arrange a mutual exchange of documentation.

The precise format for exchange is dependant on the bilateral agreements in place between insurers, but it is envisaged that a live list of contacts within each firm will be utilised in line with efficient exchange arrangements such as email or, in the longer-term, electronic portals.

Insurers have now received their counterparts' liability packs and enter into a period of 15 days for assessment, discussion and agreement.

Each party is now able to assess the information from each side and consider the common truth.

The liability pack is a prescribed format and list of documentation to facilitate a common and equal sharing of data, thus ensuring parity of arms between insurers. The specifics of this pack are provided in more detail under Section 12.

In cases of multiple collisions it is recommended that telephone conferences or other online exchange platforms are utilised to maximise the opportunity for all parties to discuss the mechanics of the accident in order to reach a common agreement on the liability of the loss.

The conclusion of this stage will be one of two outcomes:

a) Liability now agreed and settlement will follow in line with the decision

Or

b) Liability remains disputed and case now proceeds immediately to Stage 3.

7. STAGE 3 (ADJUDICATION)

There are a number of formats for Alternative Dispute Resolution (ADR); however this Protocol which establishes the umbrella agreement recommends a format of pendulum adjudication by an approved partner.

This format of adjudication has been recommended as it provides the best opportunity for settlement, given the effect the pendulum has on reaching agreement.

An approved partner for the provision of this service subject to inter-insurer agreement is [NAME].

The costs for the adjudication service are provisionally estimated at £575+VAT per party. This represents a cost-effective and speedy method of dispute resolution for insurers, whilst reducing the additional frictional costs associated with litigation.

These costs are not recoverable and are borne by each party.

In failing to agree a dispute during Stage 2, the participants by so doing accept that it automatically proceeds to Stage 3 Adjudication.

Adjudication will conclude the matter of liability between insurers thereby achieving the overriding objective.

The Participants and the Independent Adjudicator agree that the Adjudication shall only take place in accordance with the Protocol and that they will be bound by and will follow the Adjudication Rules ("the Rules") which are deemed to be incorporated herein.

The Participants, in person or by their representatives signing this Agreement, agree that the following are the fundamental principles that govern how the Participants and the Adjudicator will act before, at and after the Adjudication:

The Adjudication will be strictly private and confidential.

Any and all concessions, offers, discussions, comments, words, proposals or other matters written or said at or during the Adjudication shall be without prejudice.

Nothing said or done at or during the Adjudication will be referred to, described, mentioned or relied upon outside the Adjudication by anyone present at the Adjudication including the Adjudicator unless:

(i) It is embodied in the terms of a settlement agreement which is written and signed at the Adjudication, or

(ii) Quite exceptionally, the High Court or Crown Court orders disclosure to investigate criminal or other serious misconduct.

The Adjudication will terminate after four hours unless the Participants and the Adjudicator agree to extend it or the Adjudicator decides to terminate it at any other time under the Adjudicator's absolute discretion.

The Participants (jointly or severally) shall not call, or seek to have called, the Adjudicator to be a witness in any proceedings relating to the Adjudication or any settlement agreement reached at or following the Adjudication, nor shall the Participants (jointly or severally) sue the Adjudicator or ask the Adjudicator to disclose or to attempt to recall anything said or done at the Adjudication.

If, exceptionally or contrary to (7.15) the Adjudicator receives a summons or is in some way ordered by a Court or Tribunal to deal with any matter, the Participants agree that they shall jointly and severally wholly indemnify the Adjudicator in respect of any and all costs, fees, expenses, and disbursements reasonably incurred by the Adjudicator in so acting, and the Participants shall further jointly and severally be liable promptly to pay on presentation of a fee note for the Adjudicator's time reasonably engaged on the matter, in any event, regardless of the outcome; and

The matter will be conducted as pendulum Adjudication, and the adjudicator will not advise the Participants and the Participants acknowledge and agree that nothing said or done, mentioned or asked, by the Adjudicator shall be taken to be, relied upon or construed as legal or other advice of any sort. Participants agree that in signing the Settlement Agreement at the end of the Adjudication, they will be taken to have wholly and exclusively on their own judgment and/or the advice of their chosen advisers or representatives.

8. POTENTIAL CRIMINAL PROCEEDINGS

The Protocol recognises the seriousness of criminal proceedings against a potential defendant and the need to ensure that no action is taken which compromises a defendant's defence.

It is also recognised that valuable information which is material to the assessment of civil liability may not become available until criminal proceedings (potential or otherwise) are completed. In such circumstances, the defendant (or insurer) may not be able to complete liability enquiries until that time.

Those considerations aside, insurers undertake not to regard the existence of outstanding criminal prosecutions as a bar to making early decisions on liability so that progress can be made to resolve a valid claim from an injured claimant.

Insurers should conduct a realistic assessment of the facts. Should the outcome of a criminal prosecution be irrelevant to the validity of the claim, then the insurer will make known their views to that effect at the earliest time.

In any case where an insurer is not able to progress liability pending completion of criminal prosecutions, the reasons for this will be explained to the other party. This will not prevent the taking of any further steps necessary to move the claim forward, to the extent that it is reasonable to do so.

The insurer should where practical comply with disclosure obligations as agreed within this Protocol.

This approach applies to inquest proceedings as well as criminal prosecutions.

9. EXCEPTIONS

- Claims made in respect of a breach of duty owed to a road user by a person who is not a road user
- Claims made to the MIB pursuant to the Untraced Drivers' Agreement 2003 or any subsequent or supplementary Untraced Drivers' Agreements
- Claims whereby any of the vehicles insured are registered outside the United Kingdom
- Claims were fraud is suspected or other concerns exist over whether an accidental loss has occurred

10. RULES OF ADJUDICATION

These are the Rules for Adjudication and are to be applied by the Adjudicator and adhered to by the Participants to ensure that the Adjudication is set up, undertaken and concluded in an effective and appropriate manner.

The Rules also deal with the Participants' responsibility for fees and conduct after the Adjudication and all Participants should ensure that they take legal advice as to their meaning and effect.

INTERPRETATION

Definitions

In these Rules, the following terms shall have the following meanings:

(a) "[NAME]" means NAME of the Approved Party.

(b) "Director" means the designated voluntary director of [NAME] responsible for the overall administration of the corporation.

(c) "Agreement" means an oral or written agreement between the Participants.

(d) "Adjudication" means an adjudication scheduled by the Participants on a specific date and time with [NAME].

(e) "Registrar" means the designated individual at [NAME], in charge of booking Adjudication(s), of dealing with fees, and all administration.

(f) "Confirmation Form" means the form confirming the adjudication.

(g) "Adjudicator" means a member of [NAME] panel of adjudicators, appointed by the Participants as a neutral to conduct the adjudication. The Adjudicator is an independent contractor chosen by or agreed to by the Participants with whom they contract for services rendered.

(h) "Agreement to Adjudicate" means a contract to adjudicate, prepared by [NAME] for the Participants, their Representatives, the Adjudicator and Non- Participants attending the Adjudication, to be executed prior to the commencement of the Adjudication, containing various provisions relating to the process of Adjudication, confidentiality, privilege, without prejudice, liability, duties and obligations of the Participants to each other, to the Adjudicator and to [NAME]. The Rules are attached to the Agreement to Adjudicate.

(i) "Participant" means a Participant to a dispute, controversy, claim, or action.

(j) "Representative" means an authorised representative of the Participant.

(k) "Settlement Agreement" means a document signed by the Participants or their Representatives at the conclusion of the adjudication.

AGREEMENT OF PARTICIPANTS

These Rules and all amendments to them, shall be deemed to have been made a part of the Agreement to Adjudicate which provides for Adjudication with [NAME].

Subject to approval by the Technical Committee, these Rules may be amended by the Adjudicator by written agreement.

ADJUDICATION PAPERS, BRIEFS, AND SUMMARIES

The Participants shall normally agree and prepare an Adjudication Brief with relevant information.

Each Participant may also prepare a confidential summary to be supplied to the Adjudicator which will not be disclosed to the other Participant.

ATTENDANCE AT THE ADJUDICATION

The Adjudication may either be in person, web based or over the telephone as to be agreed by the parties or unilateral agreement. The Adjudication may be attended by any person provided all Participants and the Adjudicator agree. Such agreement shall not unreasonably be withheld.

Any person who is not a Participant or a legal representative of a Participant shall sign a confidentiality agreement by which in consideration of their being permitted to attend the

Adjudication, they solemnly undertake and agree to keep all matters they see and hear strictly confidential.

PRIVACY AND CONFIDENTIALITY OF THE ADJUDICATION

(1) All Adjudications held with [NAME] are private.

(2) At the Adjudication, each Participant should be prepared to make a brief oral statement explaining his or her perspective. Each Participant shall participate in the structured explanation of their case with the active assistance of the Adjudicator. Each Participant should bring any documents needed in order effectively to conclude.

(3) The Adjudicator may meet privately with each Participant and Representative during the Adjudication. Any Participant and Representative may request a private meeting with the Adjudicator at any time.

(4) Each Participant shall cooperate and negotiate with the Adjudicator in good faith. All Representatives agree that they shall continue to abide by their profession's applicable Code of Conduct during the adjudication.

(5) Evidence that is otherwise admissible shall not be rendered inadmissible simply because it has been used in an Adjudication with [NAME].

(6) There shall be no electronic recording, stenographic or other transcribed record made or reconstructed of the whole or any part of the Adjudication.

SETTLEMENT AGREEMENT

No agreement reached at the Adjudication shall be binding in law or deemed as intended to be binding in law unless it is reduced to writing (or printed text) in some suitable form (which may for example include heads of agreement, a minute, a draft order, a note, or a contract) and signed by all of the Participants who intend to be bound by it before the Adjudication has been terminated.

Nothing in (10.15) shall stop Participants agreeing during the adjudication to settle or agree to anything on any unrecorded or unsigned basis, always providing they accept and appreciate that such a settlement or agreement reached between insurers shall be capable of being relied upon at a later date.

AFTER THE ADJUDICATION

Neither the Adjudicator, nor any representative of [NAME], shall be compelled to appear as a witness or expert in any pending or future adversarial or judicial proceeding involving any one or more of the Participants or relating in any way to the subject matter of the Adjudication.

Any notes of the Adjudicator are confidential to the Adjudicator and shall be destroyed by the Adjudicator immediately after the Adjudication. They shall not be available to the Participants at any time, nor shall they be subject to subpoena for production as evidence in any arbitration, judicial or other proceeding.

TERMINATION OF ADJUDICATION

(1) Adjudications with [NAME] shall be terminated:

(a) By agreement between the Participants; or

(b) If an early Settlement Agreement is concluded by the Participants; or

(c) at any time if in the Adjudicator's absolute discretion the Adjudicator believes it ought to be terminated: in such an event the Adjudicator shall not give any reason for the termination of the Adjudication and the Participants hereby undertake not to ask or to pursue the Adjudicator for the reason at any time or by any means.

EXCLUSION OF LIABILITY

(1) [NAME] representatives, including the Adjudicator, shall not be liable to any Participant or Representative for any act or omission howsoever arising in connection with any Adjudication conducted by the Adjudicator or as booked by [NAME] for the Participants. The Participants accordingly hereby agree and acknowledge that no claim action or proceedings can be brought against the Adjudicator and that the Adjudicator is not a compellable witness or Participant in any matter.

(2) The Insurers ensure that they have made any or all necessary disclosures relevant to the Proceeds of Crime Act 2002 and they indemnify the Adjudicator in such respect.

FEES FOR SERVICES

[NAME] has a standard fee of £575 plus applicable VAT.

(1) VAT at the current rate is payable on the Adjudication fee where the Adjudicator or the Adjudicator's firm or company is registered for VAT.

	£
Adjudication fee	575.00
VAT	115.00
Total fees and vat	690.00

(2) The standard fees must be paid in advance unless otherwise agreed.

(3) The Participants shall also, unless they agree some other arrangement with [NAME], pay the due fees in equal shares by cheques drawn in favour of [NAME].

(4) The fee covers a period of up to four hours from the beginning of the Adjudication although at the discretion of the Adjudicator this can be extended to five hours without additional charge.

COSTS AS BETWEEN PARTICIPANTS

(1) The Participants agree that their joint and several liabilities to [NAME] do not purport to determine the responsibility as between the Participants themselves as to the costs either of the claim or of the adjudication.

(2) The Participants shall therefore be deemed to intend in any reference to "costs" set out in any Settlement Agreement, draft order or other minute of agreement concluding the Adjudication, that "costs" shall be taken to include the costs of the Adjudication including any associated disbursements, fees, and expenses, unless some other arrangement is expressly stated.

11. GENERAL TERMS OF AGREEMENT AND ADMINISTRATION

These general terms of agreement, hereafter known as the GTA, set out the arrangements and administration of the Protocol between subscribing insurers for the management and resolution of disputed motor liability cases.

The Protocol should be seen as the umbrella agreement, under which insurers will ultimately form bilateral agreements between approved subscribers.

This DRAFT version of the Protocol has been developed by representatives of insurers involved within the CII Claims Faculty's New Generation Group, with reference to other potential subscribing insurers. Prior to implementation, consultation with the wider market will need to be undertaken.

The Protocol is only intended to apply to situations where both subscribing insurers are in agreement to the inclusion of a case and have a dispute as defined by the terms of the Protocol. All subscribers are required to follow the Protocol in such cases and in all other cases (i.e. those which fall out of scope) the subscribers may elect to follow the same principles, provided that they comply with the spirit and terms of the Protocol, including the application of the relevant time periods and information exchange.

Neither the respective trade associations of insurers and their members, nor those representing insurers (as individuals or the employers of those engaged in the development of the Protocol), are to be held accountable for the terms of the Protocol. If any subscribers use the terms of the Protocol as the basis for bilateral agreements, it will be their responsibility to ensure that such terms remain appropriate. Neither the respective trade associations of insurers and their members, nor those representing insurers in the development of the Protocol through the Technical Committee (whether as individuals or through their employers) may be held accountable by any such subscriber for the terms of the Protocol.

Subscribers will be approved by an appropriate person(s) nominated by the Technical Committee and their documentation, scripts and work processes will have been deemed to be acceptable.

Subscribing insurers should be listed on the ABI's website (http://www.abi.org.uk - "the ABI website").

All subscribers are required to have an up to date nominated contact(s) who will act as the contact point for the subscriber. Their names and contact details will be listed on the ABI website and within the master contact data list.

Responsibility for the operation and wording of the Protocol will rest with the Technical Committee. This will comprise an equal number of representatives of subscribing insurers, nominated from the ABI Focus Group of insurers, plus an independent Chairman and Secretary agreed by the Technical Committee. The Secretary shall not have any vote in the Technical Committee.

The purpose of the Technical Committee will be to oversee the smooth running of the Protocol, including issues arising from its wording, operation, dispute resolution and adherence to its terms and spirit.

The Technical Committee will operate a dispute resolution facility to settle disputes arising between individual subscribers on issues of principle or interpretation of operation or wording of the Protocol.

Formal complaints should be sent to the Secretary, Joint Technical Committee (Email: XXXX) with supporting documentation and confirmation of the issue. The Secretary will check the complaint, ensure it is relevant to the Protocol and refine it as necessary. He/she will indicate to the complainant if they consider it does not raise issues of principle or interpretation of operation or wording of the Protocol. Such indication about the nature of the complaint will not be binding on the complainant who, having taking into account the views of the Secretary, may decide to proceed with the referral of the complaint.

The Secretary will agree a final version with the complainant and then send it to the subscriber being complained about with a request for a detailed, rational response in writing within 30 days. The Secretary will use his/her best endeavours to resolve the complaint with advice or views to either party within that 30 day period. Either that will resolve the complaint or it will be clear there is no agreement between the two parties. They will be informed if this is the case and told it will then be sent to the Technical Committee for consideration. In the absence of information or a response from the subscriber to which a complaint is being made within that 30 day period, the complaining subscriber's complaint will still be considered by the Technical Committee.

If a complaint is sent to the Technical Committee, the complaint and any response will be sent to the insurer on the Technical Committee for views with the subscriber names omitted. Technical Committee members will be asked to use their best endeavours to give their comments (including as to whether the complaint raises an issue of principle or interpretation of operation or wording of the Protocol) within a set period, usually 30 days. If there is no clear view the complaint will go to the next meeting of the Technical Committee to consider.

If the Technical Committee unanimously reaches a conclusion, then both subscribers will be informed of the decision and, if appropriate, the decision reached will be publicised to subscribers for information (with the subscriber names omitted). If the Technical Committee is not able to reach a unanimous view, then the Chairman will be required to make a decision on behalf of the Technical Committee that will be communicated to both subscribers. If the Chairman is required to make a decision in this manner, the following additional provisions shall apply:

(i) Subject to the following provisions, the Chairman will in his absolute discretion decide the procedure to be adopted to determine the matter and the timetable for the same.

(ii) The Chairman will be required to take into account the debates of the Technical Committee and any submissions made by insurers at the Technical Committee.

(iii) The Chairman will have the power to conduct such investigations as he reasonably believes appropriate or to request further information or submissions from the Technical Committee or subscribers.

(iv) The Chairman will make his decision in writing to the parties to the dispute, setting out what he has considered and taken into account in reaching his conclusion. He will not be required, however, to give reasons for his decision. In so doing, the Chairman will not be acting as

arbitrator and the provisions of the Arbitration Act 1996 (or any subsequent modification or replacement of that Act) will not apply.

Any decisions taken by the Chairman are open to challenge by non-binding determination which shall proceed if at least one of the relevant subscribers requests such a determination. Within 30 days of a subscriber notifying the Secretary of the Technical Committee of its request for a determination, the Technical Committee shall appoint an independent adjudicator from the Chartered Institute of Arbitrators. The subscribers will be required to lodge with the Secretary of the Technical Committee the full amount of the independent adjudicator's costs before the non-binding determination proceeds. The Secretary of the Technical Committee will hold such advances until the independent adjudicator has reached his/her determination. The successful party will have their advance repaid and the Secretary of the Technical Committee will pay to the adjudicator the advance paid by the 'losing' subscriber. The decision of the independent adjudicator will then be published to subscribers for information (with the subscriber names omitted).

If one subscriber fails to agree to or to lodge the advance required for the non-binding determination then, in the absence of insurer agreeing to act or to fund the advance for them, and provided that the other subscriber has lodged the advance required, there will be a presumption that the other subscriber is correct without the need for the non-binding determination to take place. In such event, the advance lodged by the other subscriber will immediately be repaid. This will then be publicised to subscribers for information (with the subscriber names omitted).

Any conclusion reached by the Technical Committee, Chairman or independent adjudicator will apply, albeit in a non-binding manner, as between only those subscribers that have referred the dispute and in respect only of that particular dispute as referred. Without prejudice to the generality of the foregoing, any such conclusion will not apply to any similar claims, whether past or present, between those same subscribers or to any similar claims, whether past or present, between any other subscribers, all of which would need to be separately referred to the Technical Committee under this dispute resolution mechanism.

Whether the complaint is resolved by the Technical Committee, Chairman or by an independent adjudicator and whether or not it is pursued by the relevant subscribers outside the scope of the Protocol, if the Technical Committee considers that a "FAQ" (as published on the ABI website) or other change to the GTA is required to clarify the issue that was in dispute between the relevant subscribers for the future, they may take appropriate steps to issue a FAQ and/or amend the Protocol

Changes will only be made to the terms of the protocol (including "FAQs" to be published on the ABI website) following discussions in the Technical Committee and, where required or agreed desirable by the Technical Committee, comments invited from all subscribers on any significant changes. Subscribers may agree separate arrangements in relation to the acceptance of all such changes on a bilateral basis.

Changes to the terms of the Protocol will be introduced if they are unanimously endorsed by the Technical Committee. Where the Technical Committee is not unanimous, the Chairman will use his/her best endeavours to seek an agreed view, taking into account the views of all parties and, if necessary, adjudicate back and forth between the parties to assist in reaching an agreed resolution. If unanimity proves impossible, the Chairman will be empowered to make a decision on behalf of the Technical Committee that will be binding on the Technical Committee and all subscribers. If the Chairman is required to make a binding decision in this manner, the following additional provisions shall apply:

(i) Subject to the following provisions, the Chairman will in his absolute discretion decide the procedure to be adopted to determine the matter and the timetable for the same.

(ii) The Chairman will be required to take into account the debates of the Technical Committee and any submissions made by insurers.

(iii) The Chairman will have the power to conduct such surveys, tests and/or investigations as he reasonably believes appropriate or to request further information or submissions from the Technical Committee or subscribers.

(iv) The Chairman will make his determination in writing to the parties, setting out what he has considered and taken into account in reaching his conclusion. He will not be required, however, to give reasons for his determination. In so doing, the Chairman will not be acting as arbitrator and the provisions of the Arbitration Act 1996 (or any subsequent modification or replacement of that Act) will not apply.

(v) The Chairman may on his own initiative or at the written request of either party, correct any clerical mistake, error or ambiguity within his determination. Any corrections will be made within 3 days of any such request.

(vi) The Chairman will receive no additional or special remuneration for making this decision, and any costs incurred by the subscribers and their representatives on the Technical Committee shall be borne by them. Any costs incurred by any third parties required to participate pursuant to sub-paragraph (iii) above shall be borne by the subscribers collectively or by the representatives on the Technical Committee.

Any decisions taken by the Chairman are open to challenge where the challenge is supported by a minimum of 25% of insurer (by number of subscribers). The challenge must be set out in writing with clear reasons set out. The decision will then be referred to independent arbitration that will be paid for by the insurers making the challenge. The decision of the arbitrator will be binding. The arbitrator appointed must be independent and not involved in the insurance industry.

The Technical Committee will take appropriate account of all applicable legislation, including competition law and regulations and will take legal advice where it considers it appropriate. The Chairman will have the power to seek legal or other professional advice in his/her own right on any matter within his/her terms of reference.

The Technical Committee will have the right to arrange periodic insurer audits of adherence to the Protocol by an appropriate person nominated by the Technical Committee, provided that such right of audit will only extend to matters concerning liability dispute resolution.

Applications from insurers to subscribe to the Protocol should be addressed to the ABI by email (motor@abi.org.uk) or by fax (0207 696 8995). Notices from any subscriber of its decision to unsubscribe from the Protocol should be addressed to the ABI at the same email or fax number and will take effect immediately. The withdrawal will be publicised on the ABI website as soon as possible.

12. REQUIREMENTS OF THE LIABILITY PACK

Engineering Evidence

Full repair documentation to include a clear and full breakdown of works required/completed, such as repair invoices, estimates, photographs etc. where available/appropriate

Copy of reported version of events, e.g. Accident Report Form/computerised notes

Witness statements, both customer and independent

Disclosure of all witness details

Any other evidence or documentation intended to be relied upon