Implications of the proposed rule changes on fraud….what does this mean for you?

Background

The effect of the MoJ reforms on tackling fraud has attracted fresh debate following speculation as to the content of the forthcoming amendments to the Civil Procedure Rules. It is understood that these Rules will apply to all cases covered by the Reforms.

The speculation concerns the extent to which insurers will be able to withdraw a previous admission of liability when a case subsequently becomes suspicious.

Under the terms of the MoJ reforms, an insurer will be able to take a case out of the process either by making an allegation of fraud or by a number of additional methods.

Whilst we await formal release of the proposed amendment, it is suspected that the draft amendments to the CPR have the potential to plug these additional ways of leaving the process by stating that any admission of liability will be binding in cases that subsequently fall out of the process save where there is a specific allegation of fraud.

This would mean a significant departure from the present rules .Rule 14.1A (3) (b) gives the court a discretion to allow a defendant to withdraw an admission of liability where there is a good reason to be suspicious of the case. There is no need to make an actual allegation of fraud.

So the proposed change is significant because:

- Most defences to fraudulent claims require a claimant to prove the existence of the accident and their involvement in it.
- These defences do not include a specific allegation that the claim is fraudulent (or that the claimant is a fraudster).

Implications

Accordingly, if the amendments were to be implemented:

- Insurers would face significant difficulties dealing with cases they know or suspect are fraudulent but where there is no blockbusting evidence to justify a fraud allegation.
- Provide a potential green light to fraudsters to submit seemingly straightforward cases knowing that an Insurer can only withdraw an admission made earlier in this case by making a formal allegation of fraud
- The cost to insurers could be astronomical and / or lead to a situation where they will not make any admissions of liability for fear of being held to it even where there is a subsequent reasonable suspicion of fraud

Either way this would lead to a completely unsatisfactory and unsustainable outcome.

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