

MOJ countdown

Update

With the Ministry of Justice reforms now in force Stuart Smith looks at fraudulent claims, the concerns for the new process, the strategies being implemented by insurers and the factors that are likely to be most important in defeating fraud.

One of the primary concerns for some insurers arising out of the MOJ reforms is the extent to which they will facilitate an increase in fraud. This concern is very real in light of what I consider to have been a sea change over recently times. Fraudsters appear to be submitting a higher volume of fraudulent claims knowing that whilst there will be a number that are not successful many will slip through the net. To some fraudsters it is a numbers game. If this proposition is right then fraudsters are likely to view the reforms as an opportunity to increase the number of claims being submitted.

This being the case Insurers and compensators are rightly looking at their approach to the reforms and how they can properly protect themselves from fraudulent claims.

In dealing with the threat there is not a common approach. This depends on the extent to which the insurer is affected by fraud, the type of risk covered and the assessment of the threat moving forward. Some are more worried than others and some have not substantially changed their processes, waiting to see how matters develop.

Identification of suspect claims within the 15 day deadline for admissions of liability is a key area for insurers (subject to ways in which admissions can be withdrawn later on in the process; see below). With this in mind some insurers are increasing the number of experienced staff at the front end of the claims handling process to assess the facts of the case and deal with data analysis. The aim is to increase in the number of suspect cases where no admission is made early on in the case. This objective will be helped by an increase in the compulsory information to be supplied by the Claimant at the outset. Greater fraud awareness at front end is high up on many insurers' agenda.

Investment in early identification alone however will not entirely address the threat. Fraudulent claims will of course be designed to look straight forward and appropriate for admissions of liability and many cases will only take on a different complexion later on in the case. With this in mind it is important for Insurers and their case handlers to be aware of the ways in which admissions of liability can be withdrawn and the case exited from the new process. Following late changes to the proposed Civil Procedure Rules the situation regards withdrawing admissions of liability remains broadly unchanged from the position prior to the reforms. The Court has a broad discretion to allow Insurers to withdraw an admission and will consider each case on it's facts. However, an admission made in good faith before genuine suspicion arises is likely to be able to be withdrawn.

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Whilst some fraudsters will see the reforms as part of a numbers game Insurers will also be keen to measure the effectiveness of their MOJ strategy. The basis of a strategy is therefore crucial. A strategy that gets suspicious cases out of the process will clearly result in a short term loss i.e. the cost of investigation, legal spend and delay. In the longer term the aim will be a saving in claims costs and a deterrent to those looking to defraud them.

Too few cases brought out of the process could result in a susceptibility to fraud claims in the future. On the other hand too many cases being brought out could bring about an increase in costs investigating claims which are not ultimately repudiated and result in increased costs.

Accordingly the effectiveness of a strategy is important but will not be seen for some time. It should be high on the list of priorities for insurers to measure the cost of cases that come out of the process and compare it against what it would have cost to deal with the claims within the process. An effective strategy should show significant savings in addition to an effective deterrent to those aiming to defraud that insurer. If the MI shows a different outcome however this can help drive a more effective approach in the future.

Having some means of measuring deterrent will prove useful however problematic. Deterring a number of cases that the insurer never sees will not result in a paper saving however in real terms will be of huge benefit. Insurers are likely to increase their reliance on deterrent measures to send the appropriate messages to those looking to defraud them.

The effect of the MOJ reforms on fraud will not be entirely clear for some time. However, the strategies implemented by insurers that have an emphasis on effective detection, proactive handling and robust sanctions are likely to provide the greatest protection and results in the future.

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Those clients requiring advice on fraud detection, case handling issues, deterrent, management information issues or the effect of the MOJ reforms generally should contact Stuart Smith on 0151 242 7948 email: stuart.smith@weightmans.com or Bavita Rai, Partner on 0121 200 3499 email: bavita.ra@weightmans.com