Thompsons Solicitors' response to the interim report of the Insurance Fraud Taskforce
May 2015

Introduction

This document sets out Thompsons Solicitors' response to the interim report of the Insurance Fraud Taskforce.

Crisis? What crisis?

At the outset Thompsons expresses concern at the absence of a much-needed counterpoint to the prevailing tone of the Taskforce, which appears to accept and then perpetuate a number of myths surrounding fraud put out by the insurance industry.

It is often said, and we accept that, the insurance industry's contribution to the UK economy is significant. But it is in fact worth the Taskforce bearing in mind that motor and Employer's Liability insurance are compulsory purchases and the working capital, and ultimately the profit, of the industry comes from the policy holders' premiums. The policy holders (the consumers) are ill-served if a crisis around fraud is overblown or exaggerated.

If fraud is such a great problem, and such an impediment to insurers doing business, then how can they continue to make such strong profits?

Two examples, of Admiral and Direct Line, show that the UK market is actually very conducive to insurers making profits. 2014's annual results saw Direct Line paying out a dividend of £407m - 32% higher per share than in 2013 - on an operating profit of £497m (up 14%). Indeed, the Direct Line annual report told readers that profits had been boosted by 'favourable experience on bodily injury claims...as well as the government's Legal Aid, Sentencing and Punishment of Offenders Act'. Similarly, Admiral delivered a profit of £398m in 2014 and a dividend worth £135m.

Whose figures?

In her Foreword to the Interim Report, the then City Minister states as fact that: "fraud adds an extra £50 to every household's annual insurance bill"; that the insurance industry "faces £1.3bn of detected fraud" and "£2.1bn undetected"; and she refers to a programme of reform to tackle "fraudulent personal injury claims" and to focus on "spurious whiplash claims".

The combined £3.4bn figure for fraud is provided by the industry, with no independent verification. It is so large a percentage of total written premium value that it suggests the industry finds fraud far more frequently than their activity in refusing to pay out, challenging claims for fraud, or passing details to the police, implies.

Where are the figures of the number of cases refused, or the number of cases taken to trial and successfully defended? How many cases are reported to the police and how many do the police accept as worthy of prosecution?

It would be unacceptable in any other sphere for a provider of a consumer service to effectively allege that a large percentage of the British public are dishonest, and for that unsubstantiated

allegation to become ‘fact’. The fundamental question that we would suggest the Taskforce asks is: why do insurers pay out in cases they consider to be fraudulent?

We fear that this Foreword sets the scene to justify a programme that will tilt the market even further in the favour of insurers.

Thompsons seeks to put the other point of view, one barely represented on the Taskforce - that of claimant solicitors and those people injured in no-fault accidents in whose best interests we work.

General Comments

Taskforce Membership

We are concerned at the domination of the Taskforce by individuals and organisations with strong ties to the insurance industry. We note the limited representation of claimant lawyers and victims of accidents.

We note David Hertzell’s long background of working with insurers in a legal capacity. Other representative organisations, aside from Citizens Advice (and APIL and NAH who we understand are on a sub-committee), include the Association of British Insurers - as representatives for over 90% of the UK insurance industry one might have thought that their presence precludes the need for any more insurance industry representatives on the Taskforce - and yet there is also the Insurance Fraud Bureau (the whole raison d’être of whom is to investigate insurance fraud so they would hardly question 'facts and figures' which do not justify their existence), and the British Insurers' Brokers Association.

We do not seek to suggest intentional bias on the part of the individuals concerned, but if there were to be true representation of all parties the Taskforce’s membership would look radically different.

Definition of ‘fraud’: scale, impact, measurement

This part of the response relates to questions 1 to 5 in the Interim Report (‘Mapping the problem’).

The interim report is correct to state that measuring the scale of fraud is not simple and that not all fraud is clear cut (2.2). But the way to get to grips with this is not to simply rely on the figures from the ABI, which the report blindly does (2.4 & 2.5). For an independent taskforce to rely on data from the membership body for the insurance industry, which has actively perpetuated fear over an epidemic of fraud and false whiplash claims, is, we suggest, entirely inappropriate.

It would be wrong to base recommendations to government on information that cannot claim to be independent. There is a fundamental need for independent data.

If there is no genuinely independent and authoritative data available to the Taskforce then it must make collecting such data a priority.

When Thompsons questioned the IFB's figures for 'crash for cash' we received a letter threatening defamation proceedings. Within the correspondence the IFB solicitors sought to explain how fraud was analysed. They explained that fraud figures "encompass those [cases] that are successfully defended as well as those that do not result in any enforcement action being taken but that are identified through a number of fraud indicators".

The IFB insisted that "publication of the specific fraud indicators utilised…would be counterproductive to [our] objectives".

We have had it confirmed to us that the insurance industry identifies claims they deem to be 'suspicious'. This can be based on something as simple as an applicant withdrawing an application after being asked to provide additional information or clarify details of the claim. There could be a whole range of reasonable explanations why this happens, and the fact that an application is withdrawn some time after questions are asked does not imply cause and effect. That such unsubstantiated suspicions are codified as 'fraud' is reason enough for the ABI's figures to be deemed unreliable.

Indeed, the investigation into motor insurance fraud by the Transport Select Committee last Parliament issued a challenge to the validity of the ABI statistic which said fraud adds on average £50 to every household's annual insurance bill. After the Committee's intervention, the ABI and the government back-tracked on saying their data was 'proof' of fraud to say that the figures do not provide "anything more than an indication" of the level of fraud. And yet, sadly, we see these same statistics still being used (in the Foreword and at 2.5) in this interim report, without any qualification.

The Financial Ombudsman has also recently reprimanded insurers for using mistakes made by policy holders to allege fraud in order to escape paying claims. We agree with the Ombudsman's view that alleging fraud is a serious matter and that the consumer should be given an opportunity to explain any inconsistencies in their account of what happened.

If an insurer has a strong and well-founded belief that a particular claim is potentially fraudulent, it should act upon this in accordance with the law. Fraud is wrong, is criminal behaviour and should not be ignored.

Whilst insurance firms take action to log applications as 'fraudulent' there is little evidence that they bring this potentially criminal activity to the attention of the police. Indeed - and worse still - insurers often continue to settle claims even in cases where there are suspicions.

At a House of Commons launch of an AXA report into insurance fraud, 'Compensation Culture 2014'[1], a Thompsons representative challenged why, if fraud was such a significant issue, so few claims are reported to the police. The answer received was that AXA has no control over the police or their decisions over prosecution which, while that may be correct, does not excuse or explain away why so few have been reported in the first place.

[1] Launched on 29 April 2014.

T THOMPSONS SOLICITORS
STANDING UP FOR YOU

Surely it is for the police to consider whether a prosecution is taken to the CPS, and it is for the CPS to decide whether to accept the police recommendation. It should not be for the insurers to make the decision and fail to give the police the chance to consider the evidence.

If fraud is a criminal activity why shouldn't police measurements of fraud levels be regarded as a good source of information? We encourage the Taskforce to consider as wide a range of sources as possible and not rely exclusively on ABI figures.

The Taskforce should inspect insurers' books to validate (or otherwise) their statements on fraud levels.

Thompsons would also encourage the Taskforce to work with the claimant industry to examine law firms' experience of fraud in their cases. Across the country, there is a huge pool of experience and information which it would be remiss of the Taskforce to not tap into.

Thompsons has carried out a survey of its own lawyers' experience of fraud. The findings are set out below and we believe they should be of interest to the Taskforce.

Thompsons' survey of lawyers' experience of fraud

Thompsons' survey, carried out in April and May 2015, prompted 142 responses from across its offices in England and Wales. While the sample, being small, may not be not statistically representative, Thompsons suggests that the clear points of difference with the ABI and the Taskforce statistics should prompt the Taskforce to instruct an independent expert.

Our survey found:

A. That, in our lawyers' experience, the allegation of fraud pre-issue or during a hearing is very rare.

B. Even in cases where fraud was alleged by the insurers, our lawyers' experience was that this allegation was never substantiated by a judge.

C. Over two-thirds of the Thompsons lawyers who responded had dealt with defendant pre-med offers. We agree with David Hertzell that "the settling of claims without medical evidence is an encouragement to people to chance their arm. You can understand economically why insurers do that, but you are creating an environment where the dishonest might flourish."[2]

D. The Thompsons lawyers' experience was that pre-med offers often (and in the experience of some lawyers always) undervalue the claim.

E. The majority of lawyers responding saw the use of video evidence in less than 5% of their cases, and where it was used it rarely proved fraudulent behaviour. The anecdotal evidence - that the defendant side very often obtains surveillance evidence but more-often-than-not does not rely on it - was substantiated by the comments of Steve Parry, Head of UK and Ireland Claims at ACE European Group at a March 2014 panel discussion. Mr Parry told the audience

[2] http://www.postonline.co.uk/post/news/2397259/cold-calling-and-claims-regulation-on-taskforce-agenda

that, until recently, standing instructions have been in place to use video surveillance in every higher value case[3].

The survey[4] of 142 lawyers found that:

1. An allegation of fraud was only made pre-issue in 1% of cases according to 96% of respondents.

2. An allegation of fraud was only made pre-issue in 1% of cases according to over 95% of respondents.

3. In no case since April 2012 has a lawyer had a finding of fraud by a judge.

4. 67% of respondents had experienced insurers seeking to settle with pre-med offers in at least one case since April 2012.

5. 25 respondents revealed that the pre-med offer undervalued the claim in every case.

6. The defendants only used surveillance evidence in less than 5% of cases according to 98% of respondents.

8. The use of surveillance evidence has proven fraud in less than 1% of cases according to 56% of respondents.

Contact

For further information, please contact:

Tom Jones
Head of Policy, Thompsons Solicitors
Congress House
Great Russell Street
London
WC1B 3LW

TomJones@thompsons.law.co.uk

[3] Hill Dickinson breakfast briefing, Old Library, Lloyd's, 27 March 2014
[4] The full data set is available upon request.