

INSURANCE CONTRACT LAW: POST CONTRACT DUTIES AND OTHER ISSUES

INSURERS' REMEDIES FOR FRAUDULENT CLAIMS

RESPONSE TO QUESTIONS

YOUR DETAILS

This document lists the provisional proposals and questions, as set out in Part 22 of the Consultation Paper. It is designed to help you in responding.

Name of respondent: British Vehicle Rental & Leasing Association

Type (for example trader, lawyer, judge or academic): Trade Association

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Responses are normally treated as public documents and copies may be provided under Freedom of Information legislation. If you want the information that you provide to be treated as confidential, please explain to us why you regard the information as confidential. If we receive a request for disclosure of the information we will take full account of your explanation but cannot give an assurance that confidentiality will be maintained in all circumstances. Should you wish to submit a confidential response we would suggest that you contact us in advance.

I wish to keep this response confidential for the following reasons:

This is response form 2 of 4 for this Consultation Paper. Response forms for the other topics covered by this paper can be found on the websites of the Law Commission and Scottish Law Commission.

Insurers' remedies for fraudulent claims

1.1 Do consultees agree that a policyholder who commits a fraud should:

(1) forfeit the whole claim to which the fraud relates?

Agree:	<input checked="" type="checkbox"/>	Disagree:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Comment:					
Yes, the whole claim should be forfeited in the event of the policyholder committing fraud.					

(2) also forfeit any claim where the loss arises after the date of the fraud?

Agree:	<input checked="" type="checkbox"/>	Disagree:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Comment:					
All subsequent claims after the fraud has been committed should be forfeited.					

(3) be entitled to be paid for any previous valid claim which arose before the fraud took place? (8.17)

Agree:	<input checked="" type="checkbox"/>	Disagree:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Comment:					
We believe a policyholder who makes a valid claim under a valid policy should not be penalised for a subsequent fraudulent claim.					

1.2 Do consultees agree that the definition of “the whole claim” should be left to the courts? (8.18)

Agree:	<input checked="" type="checkbox"/>	Disagree:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Comment:					
We note that the definition of ‘fraud’ and ‘dishonesty’ are not covered by this consultation and has been left to the courts to interpret. We therefore believe the same approach should be adopted for the definition of “the whole claim”.					

1.3 Do consultees agree that the costs of investigating proven fraud should be recoverable if the insurer can show that the costs were:

(1) actually incurred?

Agree:	<input checked="" type="checkbox"/>	Disagree:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Comment:					
We believe that as a crime has been committed, the victim of the crime should be compensated for any costs actually incurred.					

(2) reasonable and proportionate in the circumstances?

Agree:	<input checked="" type="checkbox"/>	Disagree:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Comment:					
It would seem that insurer's should be entitled to recoup the costs of investigating claims as long as they are reasonable and proportionate as suggested.					

(3) not offset by any saving from legitimate, forfeited claims? (8.23)

Agree:	<input checked="" type="checkbox"/>	Disagree:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Comment:					
This may be a possibility, as it entitles the insurer to recoup the difference in the costs of investigating minus the monies not paid out for the legitimate claim.					

Express terms

Business insurance

1.4 Do consultees agree that in business insurance:

- (1) the remedies for fraud should be subject to an express term of the contract?

Agree:	<input checked="" type="checkbox"/>	Disagree:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Comment:					
This is common market practice and allows businesses to extend their remedies for fraud.					

- (2) a clause which changes the statutory remedies, should be written in clear, unambiguous terms and specifically brought to the attention of the other party? (8.27)

Agree:	<input checked="" type="checkbox"/>	Disagree:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Comment:					
We do not believe there is an issue with including such clauses into a contract. The problem arises when the other party is unaware that such clauses are in the contract. Businesses should be able to identify such a clause, but not always have the resources to do so. Therefore, it should be " <i>specifically brought to the attention of the other party.</i> "					

Consumer insurance

1.5 Do consultees agree that in consumer insurance, any term which purports to give the insurer greater rights in relation to fraudulent claims than those set out in statute would be of no effect? (8.30)

Agree:	<input checked="" type="checkbox"/>	Disagree:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Comment:					
The consumer is unlikely to understand the effect of the addition of a clause which gives the insurer greater rights. Therefore, any term that gives the insurer greater rights than are provided by statute should have little or no effect.					

Insurers' remedies for fraud: co-insurance and group insurance

- 1.6 Do consultees have evidence that the law of fraudulent claims by joint insureds causes problems in practice? If so, we would be grateful if consultees could provide us with such evidence or examples, and also provide us with information on how these issues were dealt with (either by the firm concerned or by any other body). (9.21)

Agree: Disagree: Other:

Comment: We are unable to provide evidence on this matter.

- 1.7 Do consultees agree that there is no need to legislate on the effect of fraud by one joint insured on the other joint insured's claim? (9.22)

Agree: Disagree: Other:

Comment:

The law needs to be brought in line with policies for individuals, so that the same sanctions can be applied to a group member who commits a fraudulent claim. The current penalty, that the group member would not receive the fraudulent element of the claim is an insufficient sanction.

- 1.8 Do consultees agree that a fraudulent act by one or more group members should be treated as if the group member concerned was a party to the contract? (9.30)

Agree: Disagree: Other:

Comment:

This would align the law for group insurance policies and individuals. This would make group members responsible for their fraudulent actions and allow insurers to take action and recoup monies.

ASSESSING THE IMPACT OF REFORM

Insurers' remedies for fraudulent claims

- 1.9 Do consultees agree that the proposed reforms to insurers' remedies for fraudulent claims will provide benefits in terms of improved deterrence and reduced legal costs? (21.33)

It seems that the proposals will simplify the law and provide insurer's with realistic remedies for fraudulent claims. In simplifying the law this in itself should be a deterrent against making fraudulent claims. With less complexity of the relevant law, there should be less litigation and legal costs.

- 1.10 We invite comments on the view that reforms (when combined with effective publicity) would reduce fraud, leading to savings of around £2 million to £5 million a year. (21.34)

If implemented the proposals outlined in the consultation paper should clarify the law surrounding insurer's remedies for fraudulent claims, thus making it easier to understand for all. It will provide insurers with realistic and effective remedies for fraudulent claims such as forfeiting subsequent claims and recoup reasonable costs of investigation. Hopefully, this will in turn help to deter potential fraudulent claims being made if they understand the consequences.

Transitional costs

- 1.11 What are the likely transitional costs of our proposals on insurers' remedies for fraudulent claims, in terms of training and familiarisation?

We are unable to provide evidence on this matter.

OTHER COMMENTS

We are unable to provide evidence on this matter.