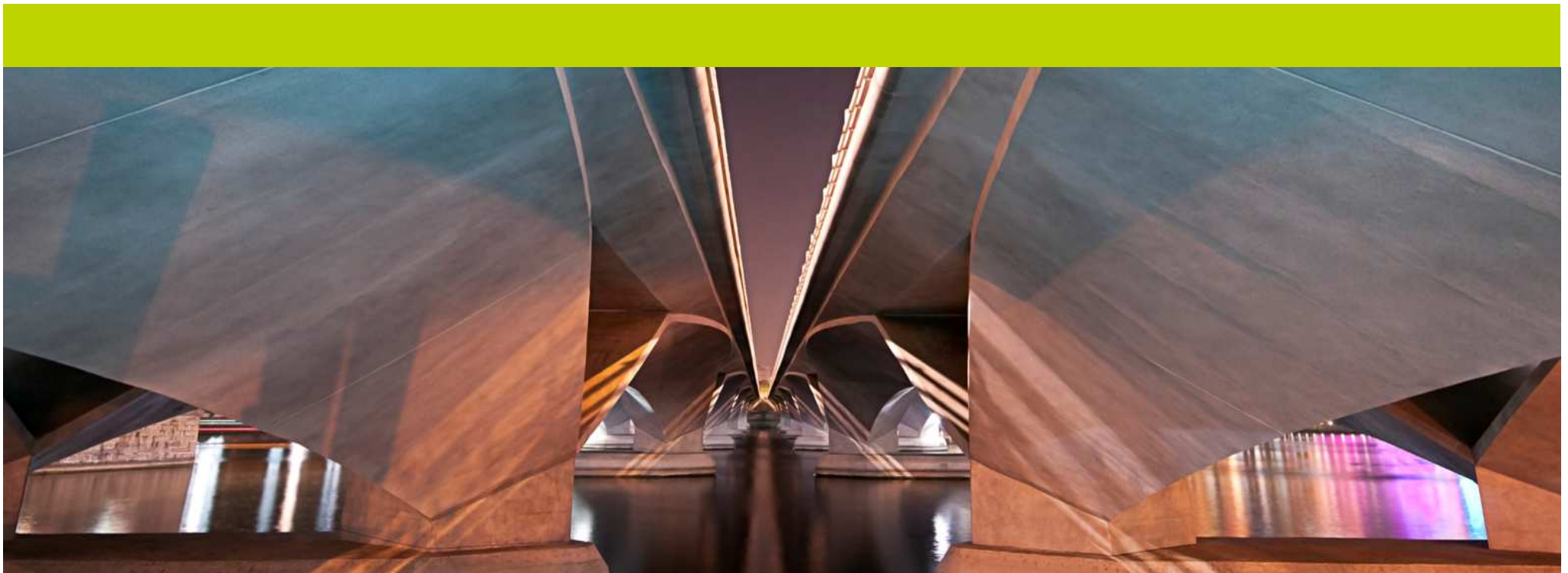


# Fraudulent Insurance Claims

## A Mucky Present and a Murky Future

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12 February 2013



# The fraud epidemic

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- Economic landscape
- Losses to fraud in 2012
  - £70 billion to the UK as a whole
  - £2 billion in UK insurance sector alone
- Where are these claims coming from?
  - exaggerated home insurance
  - dishonest motor insurance
    - "crash for cash"
    - "claims farming"
  - employer liability
  - public liability
- Who are the "fraudsters"?
- The impact
  - insurance sector
  - policyholders

# Fraudulent claims by the insured

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- What is fraud?
  - deliberate deception to gain advantage
- The many faces of a fraudulent claim
  - where there is no loss at all
  - where a genuine loss is fraudulently exaggerated
  - genuine claim but supported by "*fraudulent means and devices*"
- Common law principles
  - no man should profit from his own wrong
  - the whole claim is forfeit (even the genuine part of an exaggerated claim)
  - punitive element
  - impact on other claims and status of contract
    - claims arising before the fraud still valid
    - treatment of subsequent claims depends on the terms of the contract
    - right to terminate not automatic
    - contractual right to terminate?
    - insurer entitled to keep all premium
    - avoidance *ab initio* should not be the consequence of fraud

# Fraudulently exaggerated claims by the insured

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- Whole fraudulent claim is forfeit
- Contractual remedies
  - check how fraud impacts on other claims and the status of the policy
  - terminated?
- Evidential requirements
  - substantial
    - not related to quantum
    - small exaggeration is enough
    - blameworthiness not proportion
  - material
    - impacts the readiness of the insurer to pay the claim
  - wilful
    - insured trying to gain an advantage
    - what about "*honest exaggeration*"?

# Fraudulently exaggerated claims against the insured

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- Claims by third party for damages against insured
  - growing problem for EL and PL policies
  - contract of insurance is responding but the fraudulently exaggerated claim is not a claim under the insurance policy itself
- Long established principle for civil claims
  - no power to reject a claim on the basis of fraudulent exaggeration
  - Court of Appeal precedent authority
    - *UI-Haq v Shah* [2009] EWCA 542
  - genuine element of an exaggerated claim still payable
- The puzzle
  - *when a small exaggeration by the insured is enough to forfeit an entire claim under an insurance policy, why should insurers still face paying (indirectly) the genuine element of a vastly exaggerated civil claim for damages against the insured?*

# Summers v Fairclough Homes Ltd (1)

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- Claim against employer
  - ankle injury sustained on building site
  - claim for £800k
    - permanent disability
    - chronic pain
    - constant need for crutches
    - unable to work
- EL policy responds (Zurich)
- Court of first instance
  - liability of employer established
  - revelations under surveillance
  - employer amends defence to say “*deliberate, gross & dishonest exaggeration*” of claim and requests strike out
  - court finds:
    - claim substantially fraudulent
    - bound by *Ul-Haq v Shah*
    - had to award damages to extent they were genuine (£90k of the £800k claimed)
- Court of Appeal also refuses to strike out

# *Summers v Fairclough* (2)

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- Supreme Court
  - overrules *Ul-Haq v Shah*
  - court does have the power to strike out the entire claim
  - but only when "*just and proportionate*" to do so
  - rare circumstances
  - Summers claim not struck out
- Other means for addressing fraudulent claim
  - costs order against claimant
  - reduce interest on honest part of claim
  - committal proceedings
  - refer to CPS

# Response to *Summers v Fairclough*

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- Underwhelming
- Court has power to strike out the entire claim
- Exceptional circumstances
  - Summers not exceptional enough
- When will it be just and proportionate to strike out?
  - *Homes for Haringey v Fari*
    - personal injury tripping over paving slab
    - public liability policy
    - £750k claim
    - genuine element only £1,500
    - struck out
- Other means for addressing fraudulent claims
  - application for contempt (*Fari*)
  - referral to CPS (*Summers*)



# Abandoned by the law?

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- Existing remedies are robust
- Distinction between claims by insured and third party claims for damages is unfortunate
  - *but Summers'* decision moving in the right direction
  - uncertainty as "just and proportionate" is tested in litigation
- Law Commission
  - Consultation Paper 201
    - fraud does not avoid the policy
    - fraudster forfeits whole claim and all subsequent claims
    - damages for costs of investigating a fraudulent claim
- Public perception
  - shifting perception
  - changing motivations
- Self help for the industry
  - data sharing
  - marketing
  - getting the message across to the public – there is something to lose

# Contact

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Doc ref: 3686185