



**Fraud in the legal  
services sector**

The Association of Consumer Support  
Organisations (ACSO)

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## Foreword

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*Fraud, and insurance fraud in particular, are of particular concern to ACSO and its members. It is a growing issue, with fraudsters employing increasingly sophisticated techniques and moving between target areas as circumstances dictate. The cost of this criminal behaviour is borne by all consumers, and may disproportionately affect the most vulnerable in our society.*

*As this report sets out, there are ways that awareness can be raised about this and efforts made to inform consumers of what is being done to protect them. Above all, it calls for our wider sector to work together more to tackle what is a shared burden.*

*This includes through the formation of the successor body recommended by the 2016 Insurance Fraud Taskforce report, and ensuring that it is genuinely representative of the industry as a whole. The failure to date for this to happen should no longer be tolerated if consumers are to have full confidence in our ability to work co-operatively to ensure they are receiving the protection and support they require.*

*We have included at the end of this report both some fraud 'top tips' and a proposed joint fraud charter. By setting out what fraud is, what measures and endeavours are already in place to tackle it and how these can be built upon that we hope that we are making a positive and constructive contribution to this important debate.*

*We look forward to your feedback and to working pragmatically with others to help stamp out fraud.*

- **Matthew Maxwell Scott, Executive Director, ACSO**



## About ACSO

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*The Association of Consumer Support Organisations (ACSO) represents the interests of consumers in the UK's civil justice systems. Its members and partners include organisations from across the legal and insurance sectors who provide the highest standards of service and support to consumers when they need it the most.*

*ACSO engages positively with government policymakers, regulators and the media to help ensure there is a properly functioning, competitive and effective civil justice system for all. Addressing the issues of fraud which affect the wider insurance and legal services sectors is therefore of direct relevance to our members and to our work.*



## Executive summary

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Cases of fraud have been increasing over recent years, but the covid-19 pandemic has led to a worrying increase in fraudulent activity.

Fraud affects everyone and has a knock-on effect on the economy in various ways, ultimately making products more expensive for consumers as businesses seek to maintain their margins, including insurers having to increase insurance premiums.

There have been and exist significant efforts to combat fraud. The Insurance Fraud Taskforce (IFT), for example, was set up in January 2015 to consider how best to tackle insurance fraud. The IFT produced a report in January 2016 making 26 recommendations to the insurance industry and wider stakeholders. A final update report was provided in 2017 identifying action taken in light of these recommendations.

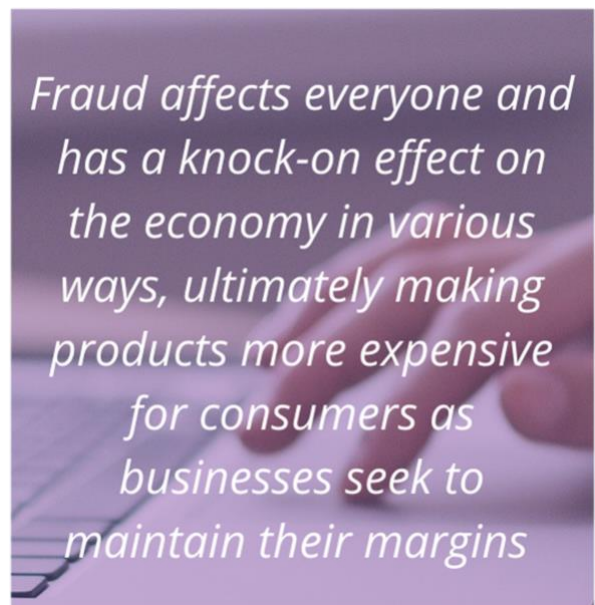
Since the work of the IFT was completed, however, there has been no successor body or further review for five years, despite this being one of the recommendations of the original report.

The civil justice system and the environment it operates in have changed since as a result of continuing technological advances as well as the impact of legislation such as the Civil Liability Act 2018 (CLA) and the Official Injury Claim (OIC) portal it created. Factors such as the Online Advertising Programme (OAP) and the Online Safety Bill (OSB) could have further impacts.

Meanwhile the global pandemic and war in Ukraine have brought supply and demand issues and soaring energy prices, leading to a cost-of-living crisis in the UK as inflation has reached double digits and consumers' pockets are being squeezed harder than for many years.

Being aware of fraud and knowing how to tackle it is therefore vital. While many consumers and consumer support organisations have a basic understanding of what fraud is, they perhaps do not appreciate its full impact.

This report seeks to examine fraud by exploring what it is, how it occurs, and provide an assessment of developments over recent years. The report makes recommendations to help consumers and those who work to support them, including ACSO members.



Our thanks to the following individuals for their comments and assistance during the preparation of this report:

**Andrew Kay** – Director of Operations, First 4 Lawyers.

**Anthony Terry** – Director of Technology, Fletchers Solicitors.

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**Dave Johnson** – Partner, True Law.

**Matthew Jarvis** – Chief Commercial and Insurance Services Officer, Slater and Gordon.

## Key recommendations

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**Raise awareness** – consumers and consumer support organisations need to be aware of the scale of fraud and the importance of being alert to how they can be victims of, and also contribute to, the incidence of fraud.

**Education and training** – our digital age poses an increasingly sophisticated fraud threat. This should be reflected in how we educate children and others, but consumer support organisations must also consider the training they provide their staff.

**Sharing data** – fraud data should be collated, independently verified and shared across sectors to help combat fraud. Fraud should not be a competitive differentiator between businesses, but should be an area where co-operation is essential.

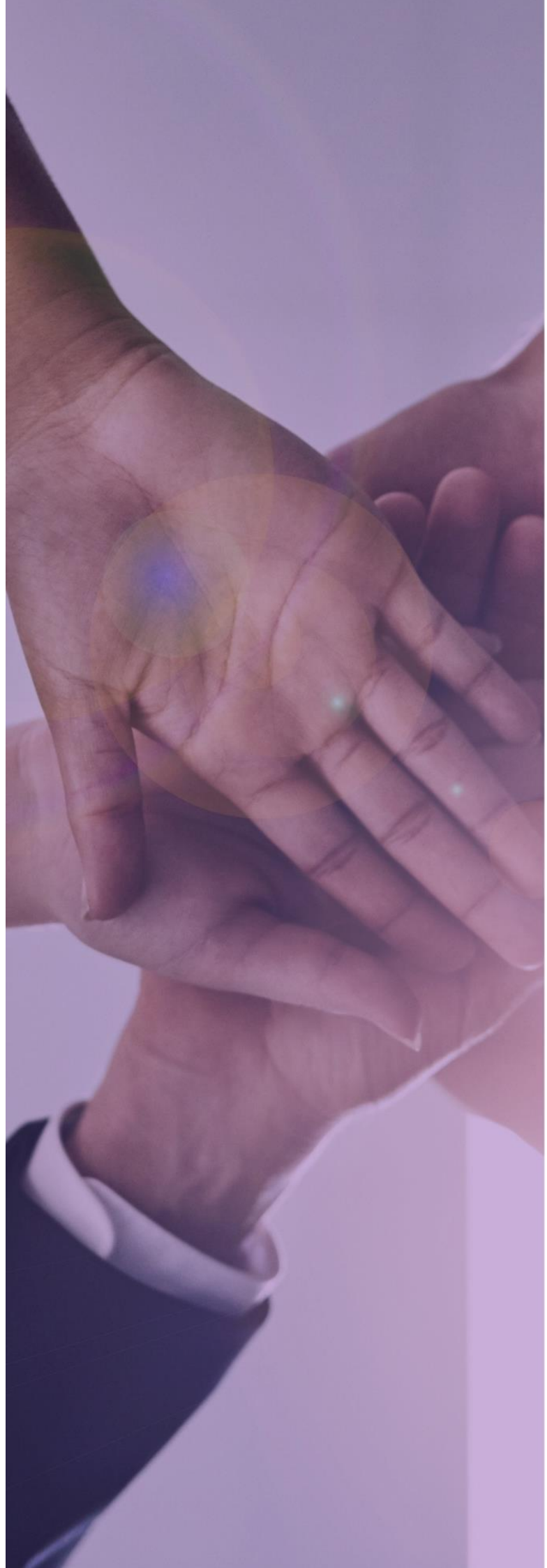
**Improve cybersecurity** - consumers and consumer support organisations need to be aware of the protective measures they can take to combat fraud by using appropriate cybersecurity measures such as firewalls and up-to-date anti-virus software.

**Risk management** - consumer support organisations should have fraud policies which are widely understood by employees. They should also regularly review their fraud susceptibility by assessing weaknesses within their businesses and rectifying them.

**Reporting** – consumer support organisations should always report instances of fraud to relevant regulators to assist wider anti-fraud campaigns and strategies. Individuals should know how to report fraud to affected organisations directly as well as to the police via Action Fraud.

**Improved customer checks** – consumer support organisations need to consider their initial client due diligence to assess whether there is room for improvement, for example, by using identification-checking software.

**Cross-industry collaboration** – co-operation in tackling fraud needs to be an absolute priority, not least through a new body charged with taking the wider sector's response to this challenge forward.



## The scale of fraud

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Overall, the numbers on fraud are striking.

In 2017, annual UK fraud losses were reported to cost £190 billion.<sup>1</sup>

In the 2018/19 financial year, fraud against the government was estimated to cost the taxpayer somewhere between £29 billion and £52 billion.<sup>2</sup>

In 2020, it was estimated that the value of detected fraudulent insurance claims alone in the UK was £1.1 billion, with the average value of each fraud being £12,000.<sup>3</sup>

The number of customers asking the Financial Ombudsman Service for help with fraud and scam complaints increased by 66 per cent in the first quarter of the 2021/22 financial year, going up to 5,025 cases compared with 3,028 in the same period during the previous year.<sup>4</sup>

One insurer recently reported that the proportion of claims 'tainted with fraud' grew by 13 per cent in 2021, with these claims being worth more than £122 million, and motor fraud accounting for 60 per cent of all claims fraud detected.<sup>5</sup>

The same insurer reported that, following the implementation of the 2018 Civil Liability Act (CLA) – introduced, in part, to reduce the number and cost of low-value personal injury claims - the number of bogus home insurance claims detected rose by a remarkable 45 per cent, to its highest level in seven years. This suggests fraudsters will target other areas when other methods become less fruitful.



It equally demonstrates the importance of continuing to invest in fraud defences to protect customers and to prevent further increases to their premiums.<sup>6</sup>

The covid-19 pandemic saw the prevalence of fraud and computer misuse offences generally rise by 54 per cent.<sup>7</sup> Further, 45 million people were targeted by scam calls and texts in the summer of 2021 alone. Over the same period, one in fifty people reported following scammers' instructions in a message or call. This equates to almost a million consumers risking financial loss and emotional distress to scams.<sup>8</sup>

UK Finance reports that the under-25s experience the highest rate of fraud attack, followed by the over-75s,<sup>9</sup> underlining that susceptibility to fraud is universal and not age-specific.

As well as the financial impact on individuals and businesses from fraud, there is reputational damage to consider. In July 2022, the Information Commissioner's Office (ICO) and the National Cyber Security Centre (NCSC) wrote a joint letter to the legal profession noting the worrying prominence of ransomware attacks on law firms, and encouraging co-operation between parties to tackle it.<sup>10</sup>

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<sup>1</sup> UK Fraud Costs Measurement Committee, [Annual Fraud Indicator 2017](#).

<sup>2</sup> House of Commons, The Committee of Public Accounts: [Fraud and Error](#), 30 June 2021.

<sup>3</sup> Association of British Insurers, [No Time to Lie – the average fraudulent insurance claim rises to £12,000 as insurers continue protecting honest customers](#), 6 October 2021.

<sup>4</sup> Financial Ombudsman Service, [Dramatic rise in fraud and complaints](#), 24 September 2021.

<sup>5</sup> Aviva, [Insurance Claims Fraud up by 13% in 2021](#), 25 May 2022.

<sup>6</sup> *Ibid.*

<sup>7</sup> Office for National Statistics, [Crime in England and Wales: year ending December 2021](#), 28 April 2022.

<sup>8</sup> Ofcom, [45 million people targeted by scam calls and texts this summer](#), 20 October 2021.

<sup>9</sup> UK Finance, [Fraud: The Facts 2021](#), 25 March 2021, p. 7.

<sup>10</sup> <https://ico.org.uk/media/about-the-ico/documents/4020874/ico-ncsc-joint-letter-ransomware-202207.pdf>

## Defining fraud

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### What is 'fraud'?

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The Fraud Act 2006 stipulates different fraud offences.

*Fraud by false representation<sup>11</sup> – dishonest, false representations made by individuals which are intended to bring about a gain or to cause loss to another.*

*Fraud by abuse of position<sup>12</sup> – individuals who occupy positions in which they are expected to safeguard, or not to act against, the financial interests of another person, and they dishonestly abuse their position to bring about a gain or cause loss to another.*

*Possession etc. of articles of use in frauds<sup>13</sup> – having possession or control of any article for use in the course of or in connection with any fraud.*

*Making or supplying articles for use in frauds<sup>14</sup> – making, adapting, supplying or offering to supply any article with knowledge and intention that the article will be used to commit fraud.*

*Participating in fraudulent business carried on by sole traders and such<sup>15</sup> – individuals who carry on their businesses with the intention to defraud creditors, or any other fraudulent purpose.*

### What is 'claims fraud'?

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For many consumers and consumer support organisations, claims fraud is very important..

*Typically, the offence of fraud by false representation is the most likely offence to be committed via claims fraud, for example through fraudsters providing incorrect information and/or fabricating evidence or events. More will be discussed later in the report about the distinction between honest mistakes and genuine fraud.*

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<sup>11</sup> [Fraud Act 2006](#), s 2.

<sup>12</sup> *Ibid*, s 4.

<sup>13</sup> *Ibid*, s 6.

<sup>14</sup> *Ibid*, s 7.

<sup>15</sup> *Ibid*, s 9.



*Application stage – many frauds occur at the earliest stages of the insurance cycle, during the initial application stage, mainly by people falsifying information and their personal circumstances when looking to purchase insurance policies.*

*Claims – once valid insurance is in place, people can make false or exaggerated claims. Slight exaggerations are unlikely to be deemed as fraud, though individual insurers will have varying internal procedures to decide this.*

*Usually, fraudsters will have a valid policy in place which they use in an attempt to make dishonest claims by falsifying the facts of the claims and the consequential loss and damage. Insurance companies usually require evidence of losses in order to make a payout, and may intercept fraud at this stage.*

*In some situations, insurance policies are forged by ‘ghost brokers’. Ghost brokers create fake insurance policies or purchase them with fake details, and sell them on to unknowing consumers.*

*In extreme circumstances, some criminals work together in ‘cash for crash’ or similar schemes. They simulate road traffic or other accidents and make fraudulent personal injury and credit hire/repair claims. The fraudulent activity aside, this can also create a very dangerous environment for other road users.<sup>16</sup>*



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<sup>16</sup> Sky News, [‘Crash for cash’ scammers using new tactics to cause road traffic collisions – bringing ‘pain and strife’ to drivers](#), 26 June 2022.





## **Law firms**

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*Claims – for law firms, the primary cause for concern is fraudulent claims. Historically, low-value personal injury claims such as road-traffic accidents involving whiplash-style injuries have been targeted by fraudsters. Such injuries tend to be difficult to prove medically except at disproportionate cost.*

*It can therefore be difficult for firms to know if clients are exaggerating claims or acting dishonestly. They will carry out due diligence including ID checks, but firms often have to take their client's word at face value unless there is reasonable cause not to do so.*

*Another area of the legal sector where fraud is prevalent is in residential property, due to the high value, transactional nature of property deals. Fraudsters target the money and assets involved in property purchases and re-direct it to themselves.*

*Property fraud is also on the rise, a likely result of increasing house prices and a decreased reliance on face-to-face meetings during the offer-to-completion process.<sup>17 18</sup>*

*Ways in which fraudsters commit property fraud include identity theft and impersonation, title fraud and registration fraud, and mortgage fraud.<sup>19</sup>*

## **Others**

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*There are many other businesses associated with the insurance and legal sectors who are both directly and indirectly affected by claims fraud such as medical reporting organisations, credit hire/repair firms and rehabilitation providers.*

<sup>17</sup> Express, [Property fraud is on the rise – how to avoid falling victim to ‘sophisticated’ scammers](#), 29 January 2022.

<sup>18</sup> Zurich, [Cost of living crisis fuels 25% rise in insurance fraud](#), 21 July 2022.

<sup>19</sup> Law Society, [Property fraud: guide](#), 22 October 2021.

## External fraud

The specific prevalence of claims fraud is an important consideration, but external fraud is a significant concern too, especially for support organisations.

**Phishing (and smishing/vishing)** – this is the most likely form of external attack for fraudsters. It involves criminals sending e-mails (phishing), text messages (smishing) or videos (vishing) which usually contain harmful links. If these are clicked on, they can install harmful malware to a device and give fraudsters access to personal data. This affects consumers directly but also employees of businesses including law firms and insurance companies given the significant sums of money and sensitive information up for grabs if fraudsters are successful.

Fraudsters can send e-mails to employees of businesses, seemingly from senior members such as CEOs and directors, asking for sensitive information or arrangement of payments. Fraudsters will create a sense of urgency in the tone of their e-mails tricking employees into acting before thinking. Such e-mails sometimes include harmful links which, if clicked on, allow fraudsters to manipulate firms' data and assets.

**Direct impersonation** – here, fraudsters intervene during the claims process, usually pretending to be a client and asking for sensitive information or redirection of funds/assets to themselves. Which? has said that impersonation scams accounts for the majority of reports to them (69 per cent), with fraudsters most commonly pretending to be from banks, household brands, the NHS and government departments. Phone, text and email are the preferred methods used by scammers to con victims.<sup>20</sup>

**Ransomware attacks** – linked to phishing and data theft, fraudsters encrypt data they have accessed and demand a ransom payment for its release. Cyber criminals were quick to capitalise on the move to remote working during the pandemic: ransomware attacks grew dramatically, increasing 400 per cent from the first quarter of 2018 to the fourth quarter of 2020. It is estimated that business costs associated with ransomware attacks will reach £20 billion in 2022.<sup>21</sup>

**Cyber-attacks/hacking** – here, fraudsters directly attempt to infiltrate the systems of a company so they can access and manipulate data and assets. It is often much easier for fraudsters to infiltrate companies through their staff, who can be the weakest link in the firm's chain of defence.<sup>22</sup>



<sup>20</sup> WHICH? [Five biggest scams of 2021](#), 9 February 2022.

<sup>21</sup> British Insurance Brokers' Association, [Manifesto 2022](#), p. 6.

<sup>22</sup> Solicitors Regulation Authority, [Cybersecurity: A Thematic Review](#), September 2020, p. 3.

## Where is the line drawn between criminal fraud and honest mistakes?

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### Fraudulent exaggeration of insurance claims

Not all mistakes or errors made by individuals are fraudulent. Honest mistakes often happen, so it is important to know when an action will be deemed to be fraud and what the implications might be.

For example, if an individual purchased an item several years ago for £2,000 and since then misplaced the receipt but told their insurer it was purchased for £4,000, it is likely that this would be classified as attempted fraud.

There are situations when determining fraud is more difficult. There are no set rules but case law provides some insight. Certain cases have not been deemed fraudulent where the 'percentage extent of exaggeration' was only 0.3 per cent. On the other hand, in cases where the 'percentage extent of exaggeration' was 11 per cent or more, the whole insurance claim is seen to be tainted and therefore defined as fraudulent.<sup>23</sup>

Where fraudulent exaggeration is found, insurers can:

- Decline to pay the entire claim, including any genuine elements;
- Void and cancel the insurance policy from the date of the fraudulent act (i.e. the date the insured started exaggerating the claim);
- Retain the premium paid; and
- Recover any sums previously paid out indemnifying the insured for their claim.<sup>24</sup>

### Fundamental dishonesty

In personal injury claims, Qualified One-Way Cost Shifting (QOCS), implemented following the Jackson Reforms in 2013, generally provides that people who bring personal injury claims are protected against having to pay costs in the event their case is not successful.

Where there is fundamental dishonesty found against the claimant, however, there is an exception and the claimant loses their QOCS protection, meaning that they can be ordered to pay the defendant's costs by the court.<sup>25</sup>

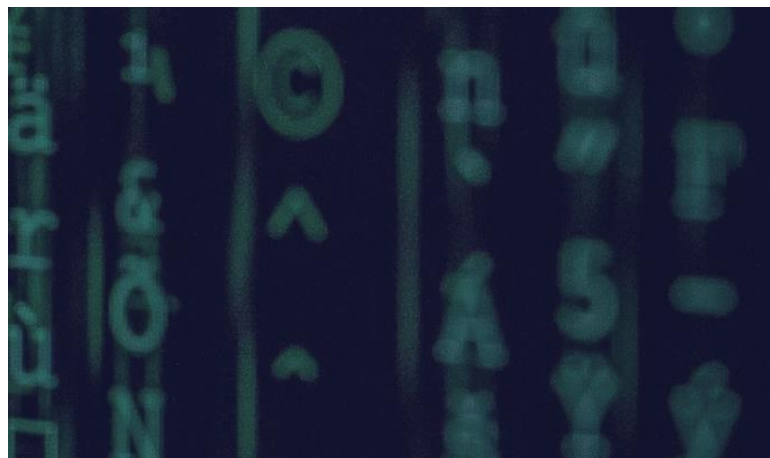
Related to provisions of QOCS, section 57 of the Criminal Justice and Courts Act 2015 permits the court to dismiss personal injury claims which, on the balance of probability, are fundamentally dishonest. Defendants can make an application for the dismissal of a claim where the court has already made an award of damages to a claimant. Dismissal of the claim is mandatory unless the court is satisfied that the claimant would suffer substantial injustice as a result.

Fundamental dishonesty and the implications of such a finding are important considerations for insurers and law firms.

From the claimant law firm point of view, fundamental dishonesty is a concern because if a client is deemed to be fundamentally dishonest by the court, the claimant is likely to be made to pay for the defendant's costs. The law firm will receive nothing for the work it has carried out. In addition, the reputational damage that firms suffer within the industry for taking such a case to court can be significant.

From the insurer's perspective, they clearly do not want to pay out for claims where the claimant is fundamentally dishonest. For this reason, insurers take significant measures to investigate claims thoroughly, assessing the evidence and making sure claims made are legitimate and there are no heads of claim that are grossly exaggerated or dishonest.

In the past, there was some evidence that the public perceived it to be acceptable to exaggerate an insurance claim, on the basis that it is a victimless crime, but this appears to have shifted in recent years.<sup>26</sup>



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<sup>23</sup> Allianz, [Claims Exaggeration](#), 14 June 2021.

<sup>24</sup> *Ibid.*

<sup>25</sup> [Civil Procedure Rules](#), para 44.16(1); PD 44, para 12.4.

<sup>26</sup> Allianz, [Claims exaggeration](#), 14 June 2021.

## **Who monitors claims fraud?**

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### **Insurance Fraud Bureau (IFB)**

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*The IFB acts as a central hub for sharing insurance fraud data and intelligence. Its two primary objectives are to:*

- *help insurers identify fraud and avoid the financial consequences of it; and*
- *support the police, regulators and other law-enforcement agencies in finding fraudsters and bringing them to justice.*

*The IFB also tries to raise public awareness of insurance fraud scams, how they work and how to spot them.*

### **Insurance Fraud Register (IFR)**

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*The IFR has been developed by the insurance industry to help prevent and detect fraudsters. Being on the IFR makes it harder to take out essential financial services, such as a mortgage. It is the first industry-wide database of known insurance fraudsters.*

*The Association of British Insurers (ABI) is the sponsor of the IFR on behalf of its members. The IFR is managed by the IFB in partnership with the ABI.*

### **General Insurance Fraud Committee (GIFC)**

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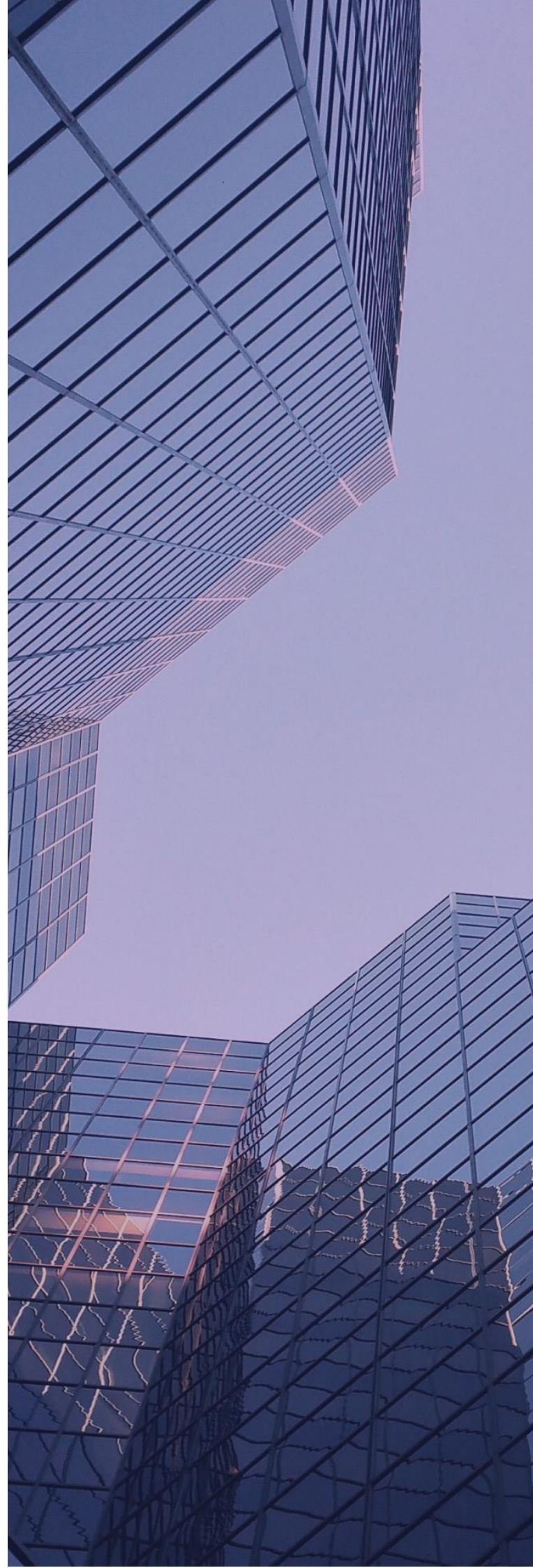
*The GIFC is the UK's largest group of insurers working together to tackle insurance fraud by sharing intelligence and best practice across organisations in order to solve complex fraud challenges.*

*One of the GIFC's commitments for 2022 is to work with the industry and the Ministry of Justice (MoJ) following the recently introduced whiplash reforms to ensure that data sharing evolves to protect against future frauds.*

### **National Cyber Security Centre**

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*Serious issues of national security/public concern can be reported to the NCSC.*



## **Action Fraud**

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*Action Fraud is the UK's national reporting centre for fraud and cybercrime. It is where consumers and businesses alike can report fraud if they believe they have been scammed, defrauded or experienced cybercrime. It is run by the City of London Police working alongside the National Fraud Intelligence Bureau (NFIB), which is responsible for assessment of the reports and to ensure fraud reports reach the right place. The City of London Police is the national policing lead for economic crime.*

*Although the police cannot investigate every report individually, the information provided to them does help. The police use information it receives to build up intelligence about fraud, including who is committing what fraud and against whom. This contributes to making the UK a more hostile place for fraudsters to operate in and helps to keep other potential victims safe.*

## **Solicitors Regulation Authority (SRA)**

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*Law firms can report frauds to the SRA, and the SRA regularly releases updates on its website informing users about the latest fraud trends and prevalent issues.*

## **Financial Conduct Authority (FCA)**

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*The FCA, recognising that many scammers pretend to work for legitimate firms, has a financial services register which lists all the firms and individuals that are involved with FCA-regulated activities. This provides a useful tool for checking suspicions of fraud, for examples, on receipt of unexpected correspondence about a lucrative opportunity.<sup>27</sup>*

*It also monitors financial services fraud and welcomes reports of potential scams regarding, amongst others, claims management and insurance and warranty products.*



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<sup>27</sup> Financial Conduct Authority, [Financial Services Register](#).

## What has been done to combat claims fraud?

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The IFT was introduced by the government in 2015 to review and provide recommendations to relevant stakeholders in light of concerns regarding fraud within the insurance sector. Its membership included the British Insurance Brokers' Association (BIBA), the MoJ and the ABI. There was also a personal injury working group where claimant and defendant sides of the personal injury market discussed ways to tackle fraud.<sup>28</sup>

The IFT prepared an interim report in 2015,<sup>29</sup> a final report making recommendations in 2016<sup>30</sup> and a progress report providing update on the recommendations in 2017.<sup>31</sup>

Of particular note, the recommendations involved:

- Promoting anti-fraud messaging;
- Striving to improve the quality and quantity of data in fraud databases and data sharing;
- Developing and promoting voluntary 'best practice' guidance on what the most effective firms are doing to tackle fraud;
- Ensuring board-level ownership of counter fraud activity;
- Discouraging the use of pre-medical offers (note that this was brought in for whiplash claims with the introduction of the CLA and arguably should be introduced across personal injury on the same basis that it was introduced for whiplash claims);
- Encouraging the insurance industry to remain vigilant to emerging fraud;
- Considering the fining powers of the SRA;



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<sup>28</sup> Gov.uk, [Personal Injury Working Group recommendations](#), July 2015.

<sup>29</sup> Gov.uk, [Insurance Fraud Taskforce: March 2015 interim report](#).

<sup>30</sup> Gov.uk, [Insurance Fraud Taskforce: 2016 final report](#).

<sup>31</sup> Gov.uk, [Insurance Fraud Taskforce: 2017 progress report](#).

- *Claimant and defendant representatives should work together to produce a standard letter in conjunction with the SRA and IFB for insurers to send to claimants directly to verify whether they have instructed a firm to represent them;*
- *The government should establish a stronger regime for claims management company (CMC) regulation and ensure that it has adequate resources and powers to do its job effectively;*
- *The government should establish a legacy vehicle to ensure the taskforce recommendations are implemented.*

*Given the scale of fraud and the ever-increasing move to digitisation of the civil justice system, setting up a working group of relevant cross-industry stakeholders to discuss important contemporary issues would appear to be essential*

*While the government accepted the recommendations and the majority of the recommendations were put into effect as a result of the IFT, no legacy vehicle was established, meaning ongoing analysis of progress towards the recommendations and of new challenges is not possible.*

*Furthermore, given the scale of fraud and the ever-increasing move to digitisation of the civil justice system, setting up a working group of relevant cross-industry stakeholders to discuss important contemporary issues would appear to be essential.*

*It also highlights that the need to harvest and share data is as important as ever. While the IFT made recommendations about the need for fraud data, there was no clear framework as to how such data would be shared between the relevant stakeholders. This is something that is missing and needs addressing.*



## **Joint Fraud Taskforce (JFT)**

*In October 2021, Priti Patel, Secretary of State for the Home Department, launched the JFT to tackle the concerning rise of fraud and cybercrime during the pandemic. The launch of the JFT saw the introduction of Accountancy,<sup>32</sup> Retail Banking<sup>33</sup> and Telecommunications<sup>34</sup> charters respectively.*

*While the Law Society and ABI are members of the JFT, there is no specific insurance charter or legal charter. Such charters should have a place in the JFT's plans given the impact the legal and insurance industries have on the economy, not to mention the vast number of consumers directly affected by these industries.*

## **Civil Liability Act 2018 (CLA)**

*The CLA was introduced with an aim to limit compensation for whiplash claims by introducing a tariff system which determines the amount of compensation applicable for whiplash injuries.*

*In addition, secondary legislation enacted on 31 May 2021 increased the small claims track limit from £1,000 to £5,000 for road traffic accident personal injury claims for those driving or a passenger in a motor vehicle (excluding motorcycles), meaning that injuries valued at this level do not attract recoverable legal costs.*

*The so-called 'compensation culture' was one of the reasons for the policy changes, with an attempt to reduce claim numbers by making low-value road traffic accidents claims less attractive for injured parties and their legal representatives; and thus reduce exaggerated and fraudulent claims.*

*While it may be the case that the previous system had suffered some abuse from such claims, it now means that genuinely injured claimants recover less than they previously would have and may struggle to obtain high-quality legal representation.*



<sup>32</sup> Gov.uk, [Fraud sector charter: accountancy](#), 26 October 2021.

Gov.uk, [Fraud sector charter: retail banking](#), 26 October 2021.

<sup>34</sup> Gov.uk, [Fraud sector charter: telecommunications](#), 26 October 2021.



## Official Injury Claim (OIC) portal

With injured parties less likely to obtain legal representation for claims within the new small claims track limit, the MoJ was tasked with creating a new portal to facilitate litigants-in-person bringing their own claims online without the need of legal assistance. The OIC portal went live on 31 May 2021 and has been publishing quarterly claims data since.

The CLA reforms are expected to reduce compensation payouts for minor injuries and therefore insurance premiums, although the analysis of this by the FCA is not expected before June 2024 at the very earliest, and there are signs that other cost pressures could more than outweigh any benefits in the meantime.<sup>35</sup>

### Official Injury Claim Portal

*"Between 2021 and 2022, quarterly motor claims recorded by the Compensation Recovery Unit have been below 100,000. As the three-month average before the pandemic was around 160,000, this means some quarter of a million claims we might have expected to be registered have disappeared."*

*"While people's driving habits have changed, most of the explanation must be that genuinely injured people are not claiming when they could. This might be because the new Official Injury Claims process is too complex, or simply because they don't know about it"*

*- Matthew Maxwell Scott, Executive Director, ACSO*



<sup>35</sup> Association of British Insurers, [Cost of motor insurance in 2021 was at a six-year low, but signs that](#)

[cost pressures could be starting to bite according to the ABI](#), 5 February 2022.

The latest OIC data<sup>36</sup> suggest that:

- The overall number of claims going through the portal has fallen more than was envisaged, indicating low public awareness of the OIC;
- Only 8.6 per cent of claims are made by litigants-in-person, indicating that consumers do not understand the system and feel they need legal representation;
- Fraud/dishonesty allegations led to 11 per cent of represented claims and 8 per cent of unrepresented claims exiting the portal, although, such allegations have reduced by 2 per cent among all claims since the last dataset. The basis on which claims are suspected as fraudulent is not clear, so it is incumbent on the MoJ to give some insight as to why this is, so that the industry can work together to combat it. The GIFC, for example, wants to explore what else can be done to protect insurers from those looking to exploit the new service.<sup>37</sup> This is to be welcomed, however, simply reviewing instances of fraud and avoiding the assessment of significant access to justice concerns must be avoided. The OIC's whole functioning should be carefully assessed to ensure it is fit for purpose; and
- Only 0.2 per cent of represented claims were brought by way of claims management companies (CMCs). Prior to the introduction of the OIC, CMCs had built a negative reputation in some circles for being a breeding ground for claims fraud, and it was believed by some industry commentators that the new portal would be 'a fraud charter'. The latest data suggest otherwise.

However, the OIC requires monitoring to ensure it is not being manipulated by fraudsters. National security concerns have also led to fears of potentially hostile foreign powers identifying weaknesses, in turn flooding the portal with fraudulent claims.<sup>38</sup>



<sup>36</sup> Official Injury Claim, [data 1 April – 30 June 2022](#).

<sup>37</sup> General Insurance Fraud Committee, [Business Plan 2022](#), p.9.

<sup>38</sup> Insurance Times, [Anti-fraud focused OIC portal amendments are vital for the future](#), 23 May 2022.

## Online Safety Bill (OSB)

Under the current draft of the OSB, search engines and platforms which host user-generated content, video-sharing or live streaming will have a duty of care to protect users of their services from fraud committed by other users. This includes 'catfishing' romance scams and fake stock market tips posted by people in images, comments or videos.

The government, following intervention by certain stakeholders,<sup>39</sup> has added a new duty to the OSB which will bring fraudulent paid-for adverts on social media and search engines into scope, whether they are controlled by the platform itself or an advertising intermediary. These companies will need to put in place proportionate systems and processes to prevent

(or minimise in the case of search engines) the publication and/or hosting of fraudulent advertising on their service and remove it when they are made aware of it.

It will mean companies

have to clamp down on ads with unlicensed financial promotions, fraudsters impersonating legitimate businesses and ads for fake companies. It includes 'boosted' social media posts by users which they pay to have promoted more widely.

Ofcom will be tasked with setting out further details on what platforms will need to do to fulfil its new duty in future codes of practice. This could include making firms scan for scam adverts before they are uploaded to their systems, measures such as checking the identity of those who wish to publish advertisements, and ensuring financial promotions are only made by firms authorised by the FCA.

### Online Safety Bill

The Online Safety Bill is a proposed Act of the Parliament of the United Kingdom intended to improve internet safety

Subject to Parliamentary approval, the Bill aims to address a wide range of potentially harmful content, including online trolling, illegal pornography and internet fraud.

The Bill would create a new duty of care for online platforms towards their users, requiring them to take action against both illegal and legal but harmful content. Platforms failing this duty would be liable to fines of up to £18 million or 10% of their annual turnover, whichever is higher.



<sup>39</sup> Association of British Insurers, [Government rethink needed on Online Safety Bill to protect consumers from](#)

[scammers](#), 20 July 2021; see also ABI, [ABI welcomes changes to Online Safety Bill](#), 9 March 2022.

*Ofcom will oversee whether companies have adequate measures in place to fulfil the duty, but will not assess individual pieces of content, in keeping with the approach taken in the rest of the OSB. It will have the power to hold companies to account by blocking their services in the UK or issuing heavy fines of up to £18 million or ten per cent of annual turnover.*

*The OSB should be a positive step in combatting fraud. It should place more responsibility on large companies such as Google by reducing fraudsters' access to consumers through scam advertisements that currently clog-up search results in disguise as insurers and seemingly helpful intermediaries.*

*It is unclear, however, to what extent search engines will be able to prevent fraud on such a scale or whether fraudsters will simply move to other areas to carry out their activities.*

*The OSB stipulates that all adult users must be offered the option to verify their identity. The issue with this is that identity verification is not required, it just needs to be offered. The implications this will have therefore appear unclear and perhaps minimal.*

*The government also recently consulted on its Online Advertisement Programme (OAP).<sup>40</sup> The main focus of this is to monitor the content of advertisements and protect vulnerable parties. It may have been prudent to carry out this consultation before drafting the OSB.*



<sup>40</sup> Gov.uk, [Online Advertisement Programme: consultation](#), 9 March – 8 June 22.

## **What are the best practices for managing fraud?**

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*While fraud is always likely to be a societal issue, there is room for improving our understanding of it and adopting best practices to deal with and tackle the issues surrounding it.*

*The following considerations and recommendations are a useful guide for best practice.*

### **Raise awareness**

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*Consumers need to be aware of claims fraud and how it is committed.*

*Businesses, particularly smaller businesses who have less resources, need to be aware of the scale of fraud and what they need to look out for to avoid being a vessel for illegitimate claims.*

### **Education and training**

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*This ties in with awareness raising, but more specifically:*

- *The curriculum needs to reflect the digital age in which we live. Are children being taught enough about online safety, cybercrime and fraud? These are all serious issues which affect our society and way of life. Failing to provide children with the skills to stay safe and flourish in a digitised world is an active choice which must be avoided.*
- *For businesses, staff must be trained about how they can be prime targets for fraudsters, primarily through phishing attacks and impersonation scams. It is often much easier for fraudsters to send phishing emails and try to infiltrate systems via them as opposed to direct approaches such as impersonation. As mentioned previously, this makes staff the weakest link in the chain for fraudsters.*
- *Fraud should be given attention at senior levels in all businesses, with effective fraud strategies in place as appropriate.*



## Sharing data

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*Trends and patterns of fraudulent behaviour should be monitored and shared between relevant parties. Consumer support organisations should focus on: Supporting cross-industry senior stakeholder engagement, with bodies such as ACSO providing insights and engagement on their behalf; Sharing best practice and improving communications. For example, if there was more transparency from insurers at early stages of claims about evidence of fraud, it would be in everyone's interest to help law firms to review the position and advise their clients accordingly, stopping acting for them where necessary. This would save time and money for all involved*

*Producing and sharing agreed and reliable data. Insurers and law firms should work together to consider the data individually shared, and what data would be of value to the other side. A large amount of the data in relation to fraud, and claims fraud specifically, is published by insurance companies. It is vital that any data produced is independently verified by a neutral organisation such as the Office for National Statistics (ONS) to make sure it is fully fit the purpose when being used to shape anti-fraud policy.*

## Reporting

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*Consumer support organisations should comply with their industry obligations to report fraud to relevant bodies. For example, law firms should report to the SRA where an attack has occurred and is considered to be reportable or where there is a legal obligation to report the breach involving personal data to the ICO, where deemed appropriate. Meanwhile insurers should report to the IFB, and individual consumers should report to the impersonated firm where applicable and also to the police via Action Fraud.*



## *Improve cybersecurity*

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*For individuals, small things like having virus defence software on devices and regularly updating passwords are helpful.*

*For businesses, there are a number of ways to improve cybersecurity and try to stay one step ahead of fraudsters:*

- *Anti-virus software – installing a reputable brand of security software and ensuring its regular maintenance is prudent to help sieve out fraudulent content online;*
- *IT support – having a well-functioning IT team is of paramount importance. Smaller firms may benefit from outsourcing third-party IT support to assist them with technical issues, tips and updates on what they should be doing to protect themselves; along with providing advice on technical issues and concerns;*
- *Receiving alerts - establishing links with relevant organisations such as the IFB, SRA and the NCSC to get updates on the latest fraud trends is useful. This could simply involve subscribing to relevant websites to receive relevant updates on the latest fraud scams which are circulating;*

*The covid-19 pandemic has seen the prevalence of fraud and computer misuse offences generally rise by 54 per cent*



- *Cyber insurance – the idea being that businesses can be insured against, and receive significant assistance in the event of damage to, or loss of information from, IT systems and networks. Many will not have heard of cyber insurance, however it is available. It has been estimated that around 11 per cent of UK businesses have standalone cyber insurance policies,<sup>41</sup> with premiums varying greatly depending on the size of the business and its exposure to risk. Larger firms are much more likely to have cyber insurance, with 35 per cent having it compared to just 1.2 per cent of small/micro entities.<sup>42</sup> In the coming years, cyber insurance policies are likely to become more prevalent given increased awareness and ongoing risks to businesses. This may not take off however, as insurance tends to be reactive than proactive to the issue of fraud;*

*Just 11 per cent of UK businesses have standalone cyber insurance policies.*

- *E-mail software – it is quite common for businesses to have software which checks incoming e-mails and flags whether e-mails originated internally or externally, and also on receipt of e-mails from new or unusual e-mail address. This can be useful for sieving out fraudulent content in e-mails but can also be time-consuming as such software can also flag alerts in many entirely innocent situations.*



<sup>41</sup> Oxera Consulting LLP research commissioned by the Association of British Insurers, [The value of cyber insurance to the UK economy](#), November 2020, p. 9.

<sup>42</sup> *Ibid.*



## **Risk management**

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Many firms benefit from carrying out regular simulated phishing attacks on their own staff to assess any weaknesses and identify areas for improvement. In addition, firms also contract third-party companies to carry out penetration tests, or 'pen tests'. This is where a firm hires an external company to try and infiltrate its systems to check the business's security and then give recommendations on ways to improve their defences and improve any weaknesses.

## **Improved customer checks**

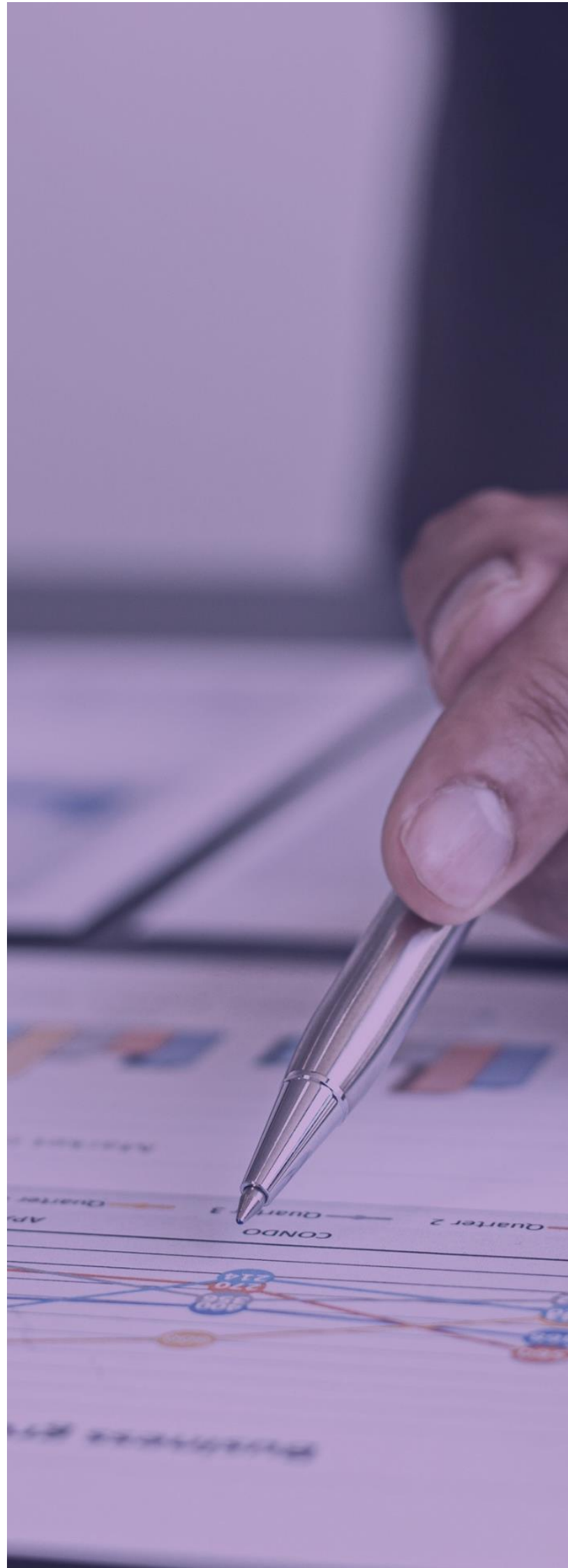
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Most firms will already carry out significant client due diligence, particularly at the early stages of client interactions. This often consists of taking copies of photo ID such as a driving license/passport and proof of residence. Some firms also use this information to carry out further checks through third-party software such as 'Smartsearch' to run further enhanced anti-money laundering checks.

## **Cross-industry collaboration**

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As fraud has a negative impact on a variety of stakeholders, it would make sense for legal and insurance firms to be involved in groups such as the JFT. They will then be better placed to identify areas of improvement, develop strategies to better work together to combat fraud and address areas where fraud is rife. With data from the relevant parties aggregated and independently verified, everyone should benefit for the shared insights.



**Take Care**

*Fraud and computer misuse offences increased 54 per cent during the pandemic. It is the time to be vigilant. Many fraudsters use 'phishing' attacks which are emails or text messages which contain links which, when clicked on, give certain permissions and access to your information. This can then also be used against you in ransom attacks where your data is held by criminals who demand payment for release of it.*



**Be Aware**

*Care needs to be taken when making applications for insurance products or making legal claims. As businesses are on high alert, they are on the lookout for fraud and may suspect fraud even where it is not necessarily taking place. This makes it important to take sufficient time to consider the details you are providing and ensure it is a true and accurate reflection of your situation. Honest mistakes do happen, and businesses do not strive to insinuate fraud where this is not*



**It's Fair**

*At the start of claims (and at stages throughout the process), many businesses such as law firms and insurance companies will require a significant amount of personal information from you to carry out identity checks. This is usually part of regulatory obligations which are in place to make sure firms are taking instructions from the right person and to carry out background checks on individuals which flag alerts in certain situations e.g. if someone is a politically exposed person or on certain criminal registers.*

*Many firms run initial 'Know Your Client' checks. Working in this way can sieve out potential fraudsters with the general aim of removing these for the benefit of the vast majority of honest consumers, and so co-operation is appreciated.*

## Fraud Top Tips

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**1** **Expect the unexpected.** Double-check all correspondence received and particularly avoid clicking any links you are unsure about.

**2** **Protect your personal devices** by installing anti-virus software on them and storing them in a safe place, such as locked rooms, lockers or at home.

**3** **Use strong passwords** and avoid using the same password for different sites.

**4** **Be prepared to provide identity information** and go through security checks with legitimate companies.

Many companies now inform their clients at the outset of any work or engagement of the methods in which they will contact you. It is also becoming increasingly common for businesses to explicitly inform its clients about the way in which they will never contact them.

**5** **Honesty** is the best policy when applying for insurance and making legal claims. This allows representatives to advise appropriately and in your best interests.

**6** **Report suspected fraud.** Suspected fraud can be reported to the firm who is being impersonated. It can also be reported directly to the police via Action Fraud. This helps detect trends in fraudulent behaviour and creates greater public awareness.

## **Recommendations to Insurance and Legal sectors re: Joint Fraud Charter on Claims Fraud**

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- 1** *Increased collaboration between insurance and legal sectors should be encouraged to monitor and discuss contemporary issues relating to fraud, particularly claims fraud, which should culminate in a cross-industry alliance to tackle fraud.*
- 2** *Working together, the cross-industry alliance should decide individually what information and/or action they require from other parties, before discussing this together and working on ways in which those needs can be met for the interest of all parties involved, including consumers. ACSO's Fraud Working Group can facilitate this.*
- 3** *Consideration should be had of the relevant data sets held by the parties and decipher where data could be analysed and shared between them.*
- 4** *Consumers are ultimately the ones who lose most due to fraud as all losses are passed onto them eventually. They therefore need to be made aware of fraud issues, how they could commit it, how they spot it, how they help to prevent it. Joint PR/messaging is envisaged which ACSO can help with.*
- 5** *The parties should be alert to the key legal/regulatory framework and contribute to positive change via consultation reviews and engaging with policymakers where appropriate.*

*ACSO considers itself well-placed to facilitate cross-industry fraud discussions given its connections with stakeholders across the insurance and legal sectors.*



## **Conclusion**

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*Fraud is on the rise. Its impact may grow because of the current, global cost-of-living crisis and increased digitisation of the civil justice system. It is also a complex issue which requires an active, shared effort to tackle before further serious damage is done to damage the trust in and viability of the civil justice system.*

*While certain steps have been taken, including the formation and recommendations made by the IFT, more can be done.*

*The IFT proved that collaboration can work, but a genuinely cross-sector successor body is urgently needed.*

*Consumers need the knowledge and tips to protect themselves and to aid their understanding when dealing with insurers and law firms. Transparency and mutual respect on this can only serve to improve things.*

*ACSO recommends that its members consider this report and the recommendations made.*

*The report's 'Fraud Information Leaflet & Fraud Top Tips' is aimed at consumers of insurers and law firms, while the 'Recommendations to Insurance and Legal sectors re: Joint Fraud Charter on Claims Fraud' provides the basis for what ACSO hopes will be new and lasting collaboration.*

## **Further information**

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