BILA COLLOQUIUM: INSURANCE FRAUD

Nicholas Broomfield*

Introduction

The British Insurance Law Association was founded on 25 February 1964 as the UK Chapter of AIDA. In 2014 BILA celebrated 50 years with its Colloquium on 15 May 2014. Amongst the topics under discussion on 15 May 2014 was insurance fraud. Whilst not a new phenomenon, fraud has plagued the insurance industry since its inception and it remains a serious problem. It was therefore far from surprising, and indeed quite fitting, for a discussion on Insurance Fraud to conclude the BILA Colloquium.

Those fortunate enough to attend the event on 15 May 2014 heard lectures on insurance fraud by Scott Clayton of Zurich Plc[1], Detective Chief Inspector Wood[2] and Graham Eklund QC[3] of 4 New Square. The discussion was brought to a close with a question and answer session and panel discussion, chaired by Lord Thomas, Lord Chief Justice of England and Wales. This article looks, briefly, at the themes that arose from those lectures, the industry's approach, and the law's approach, to insurance fraud and asks whether the recent obiter comments of Popplewell J in *Versloot Dredging BV v HDI Gerling Industrye Verisherung AG*[4] would help further those public policy ends.

Insurance Fraud: an industry perspective

Insurance is a growing market. It also occupies a unique position in society; it is one of the few private arrangements into which the law *requires* private individuals to enter into – i.e. in the form of motor insurance. It is also both rife for exploitation, and on a first blush this appears to be supported by the statistics; recent figures published by the Association of British Insurers indicated that insurance fraud had increased by 18% on the previous year (compared to a 5% rise in 2010), which at appears to represent an unwelcome, if not unsurprising, trend.[5]

The courts are alive to the level of insurance fraud. The President of the Queen's Bench Division recently remarked upon the level of fraud in *Liverpool Victoria Insurance Company v Bashir*[6] and HHJ Hawkesworth QC[7] has described fraudulent car claims as "legion". The effect of this fraud is twofold: (a) it affects premiums across the industry; and (b) it affects the courts' ability to deal with genuine claims justly and proportionately. In the face of public sector cuts and the apparent rise in fraud levels, it is now more imperative than ever that the industry moves to protect itself.

One of the key methods of fighting the ingenuity of insurance fraudsters is the sharing of information within the industry, a solution discussed by Scott Clayton on 15 May 2014. In a commercial market consumers (and businesses) regularly change insurers and it is becoming increasingly necessary for insurers to exchange information in order to stay ahead of the fraudsters. Now more than ever there is a need for the industry to unite. There is no doubt that there have been concerted steps in this direction. Evidence of that cooperation is borne out in the dedicated fraud unit referred to by the President of the Queen's Bench Division in *Victoria Insurance*; the Insurance Fraud Enforcement Department ("IFED"). IFED was launched in January 2012 and is a specialist police unit operating out of the City of London Police funded by the insurance industry and has been established solely to tackle insurance fraud across the UK.

DCI Wood spoke about the unit's work. In its first year IFED investigated £12 million of insurance fraud and, in the process, made 260 arrests and secured 76 cautions and 11 convictions. Shortly before its second anniversary IFED made its 400th arrest and its enforcement action resulted in 118 fraudsters being handed a police caution

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* 4 New Square

1 "*Current Issues with First Party and Third Party Fraud and How Insurers are Tackling Them.*"

2 "*Insurance crime and enforcement: cooperating with industry and dealing with organised fraudsters.*"

3 "*Where now fraudulent claims and devices – will regulation or law reform change their ways?*"

4 [2013] EWHC 1666 (Comm).

5 An increase in reported fraud and an increasing ability to detect fraud has been suggested as an explanation for the increase in figures, although this is unlikely to be a complete answer.

6 [2012] EWHC 895 (Admin).

7 Quoted in *Shah v Ul-Haq* [2010] Lloyd's Rep IR 84 at paragraph 13..

and 49 being convicted at court. It has also obtained court orders in the region of £117,911 against insurance fraudsters under the Proceeds of Crime Act 2002 and has hundreds of thousands of pounds under restraint pending the outcome of criminal investigations.

It was apparent from listening to both Scott Clayton and DCI Wood that the industry is committed to combatting insurance fraud, and this commitment is illustrated by the forthcoming expansion of IFED. There is no doubt that this has already had, and will continue to have, a positive effect on policing, and preventing, fraud in the future. This news will no doubt be welcomed by policyholders nationwide.

Insurance Fraud: the law

As was apparent from the lectures of Scott Clayton and DCI Wood the insurance industry is faced with innumerable types of fraud. The IFED website lists no fewer than 13 "types of fraud". However, the law adopts the following, simpler analysis: (a) frauds in which the insured suffered no loss or has deliberately caused the loss himself; (b) frauds in which the insured peril was genuine but the claim was exaggerated; and (c) frauds in which a fraudulent device is used to promote the clam.[8] This was the distinction drawn by Mance LJ in *Agapitos v Agnew*:[9]

> *"A fraudulent claim exists where the insured claims, knowing that he has suffered no loss, or only a lesser loss than that which he is claims (or is reckless as to whether that is the case). A fraudulent device is used if the insured believes that he has suffered the loss claimed by seeks to improve or embellish the facts surrounding the claim by some lie. There may however be intermediate factual situations, where the lies become so significant that they may be viewed as changing the nature of the claim being advanced."*

Good examples of fraudulent claims include cases in which the crew of a vessel scuttle it, or a homeowner sets fire to his own house in order to claim the insurance monies and are referred to as "fraudulent claims". It is well established that where there is a fraudulent claim the law forfeits not only that which is known to be untrue but also any genuine part of the claim. This is a consequence of a rule of public policy that the courts will not allow such a person to recover damages. That is well summed up by Willes J in *Britton v Royal Insurance Co*[10]:

> *"Of course, if the assured set fire to his house, he could not recover. That is clear. But it is not less clear that, even supposing if it were not wilful, yet as it is a contract of indemnity only, that is … if the claim is fraudulent, it is defeated altogether…The law upon such a case is in accordance with justice, and also with sound policy. The law is, that a person who has made such a fraudulent claim could not be permitted to recover at all…It would be most dangerous to permit parties to practice such frauds and then, notwithstanding their falsehood and fraud, to recoverthe real value of the goods consumed. And if there is wilful falsehood and fraud in the claim, the insured forfeits all claim whatever upon the policy."*

The same policy considerations apply to exaggerated claims, although it has been said that some exaggeration is permissible and does not amount to fraud. As Mance LJ made clear at paragraph 30 of *Agapitos*, if a claim is advanced in circumstances where the insured knows that he has suffered a lesser loss than the claim advanced, that amounts to a fraudulent claim. The rationale for the rule was repeated at paragraph 62 of Lord Hobhouse's opinion in *The Star Sea*[11] and has previously been emphasised by Lord Woolf MR and Millet LJ in *Galloway's case*.[12] In *The Star Sea* Lord Hobhouse made clear that fraudsters should not be able to make fraudulent claims without the fear of repercussions in the event that they were unsuccessful; they should not be allowed to think that in the event they are successful they would obtain a gain but suffer no loss in the event that they were unsuccessful.

[8] The seminal exposition of "fraud" is set out in *Derry v Peek* (1889) 14 A.C. 337, per Lord Herschell at 374.
[9] [2003] QB 556.
[10] (1866) 4 F & F. 905
[11] [2003] 1 AC 469.
[12] [1999] Lloyd's Rep IR 209, per Millet LJ at 214.

The law surrounding the third category, fraudulent devices, is less certain. A "sub-species" of the rule has been held to apply to dishonest devices used to promote a claim for which the assured has a good cause of action, such as the concealment of facts which provide the insurer with a defence to the claim, or such as a breach of warranty or a failure to disclose material facts. Three cases involving Aviva Insurance (UK) Ltd act as good examples:

(a) In *Sharon's Bakery (Europe) Ltd v Axa Insurance UK Plc & Aviva Insurance Ltd*[13] the insured concocted an invoice for non-existent equipment and sought to claim the same under its insurance policy following a fire at his premises. Blair J held that the invoice had materially affected the insured's prospects of succeeding at trial when considered in the round and allowed the insurers to reject the claim.[14]

(b) Secondly, in *Bate v Aviva Insurance (UK) Ltd*[15] an accidental fire broke out at the insured's property causing significant damage. However, the insured had failed to disclose various material facts to Aviva, including that there had been a previous fire at the property and that both a construction company and loss assessing company were being operated from the insured premises. In the course of the trial it also transpired that the insured had concocted various documents[16] in an attempt to convince the Court that Aviva had in fact been notified of the previous fire.[17]

(c) Thirdly, in *Aviva Insurance Limited v Brown*[18] the insured claimed under his insurance policy in relation to subsidence at his property. He sought to recover alternative accommodation costs from the insurer. However, upon investigation it transpired that Mr Brown had proposed a property which could be rented in which he in fact had an interest. Blair J was satisfied that it did not matter that Mr Brown did not in fact take up the option of this accommodation because his wife did not want to live there.

Bate v Aviva, *Sharon's Bakery* and *Brown* involved genuine claims, in so far as none were cases in which the insured had deliberately caused the insured peril to arise, or where the insured peril had not in fact occurred. They involved fraudulent devices in different ways: in *Bate* the insured sought to use a fraudulent device to convince the Court that he had disclosed material facts that he had in fact concealed; in *Sharon's Bakery* the latter concerned the exaggeration, or bolstering, of an otherwise genuine claim for loss arising from the fire; and in *Brown* a proposed rental arrangement which involved property the Claimant had an interest in.

The court has applied the same rules and the same public policy considerations to fraudulent devices as it has to fraudulent claims. This was considered at some length by Mance LJ in *Agapitos*. The following extracts from paragraphs 38 and 45 are indicative of the approach adopted by the courts:

> *"38. [Where] fraudulent devices or means have been used to promote a claim, that by itself is sufficient to justify the application of the sanction of forfeiture. The insured's own perception of the value of the lie would suffice. Probably, however, some limited objective element is also required. The requirement, where a claim includes a non-existent or exaggerated element of loss, that that element must not be immaterial, "substantial" or insignificant in itself offers a parallel. In the context of fraudulent devices and means, one can contemplate the possibility of an obviously irrelevant lie – one which, whatever insured may have thought, could not sensibly have had any impact on any insurer or judge. Tentatively I would suggest that the courts should only apply the fraudulent claim rule to the use of fraudulent devices or means which would, if believed, have tended, objectively but prior to any final determination at trial of the parties' rights, to yield a not insignificant improvement in the insured's prospects – whether they be prospects of obtaining a settlement, or a better settlement, or of*

[13] [2011] EWHC 210 (Comm).
[14] The claim was also rejected on the grounds of non-disclosure of material facts, relating to moral hazard.
[15] [2012] EWHC 1687 (Comm).
[16] Including a purported fax to his broker, a letter from his broker informing him that Aviva had been advised of the previous fire and a telephone attendance note recording a conversation with Aviva in which Aviva had been informed of the previous fire.
[17]. Mr Bate was unsuccessful in his appeal against the decision of HHJ Mackie QC, see [2014] EWCA Civ 334, per Tomlinson LJ.
[18] [2011] EWHC 362 (QB).

winning at trial. Courts are used enough to considering prospects, eg when assessing damages for failure by a solicitor to issue a claim form within a limitation period.

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45. In the present imperfect state of the law, fettered as it is by section 17, my tentative view of an acceptable solution would be: (a) to recognise that the fraudulent claim rule applies as much to the fraudulent maintenance of an initially honest claim as to a claim which the insured knows from the outset to be exaggerated; (b) to treat the use of fraudulent devices as a sub-species of making a fraudulent claim – at least as regards forfeiture of the claim itself in relation to which the fraudulent device or mean is used (the fraudulent claim rule may have a prospective aspect in respect of future, and perhaps current, claims, but it is unnecessary to consider that aspect or its application to cases of use of fraudulent devices); (c) to treat as relevant for this purpose any lie, directly related to the claim to which the fraudulent device relates, which is intended to improve the insured's prospects of obtaining a settlement or winning the case, and which would, if believed, tend, objectively, prior to any determination at trial of the parties' rights, to yield a not insignificant improvement in the insured's prospects – whether they be prospects of obtaining a settlement, or a better settlement, or of winning at trial…"

Although the preponderance of authority is that the fraudulent part of the claim had to be substantial, i.e. not immaterial or de minimis, this is not a high hurdle. It is evident from these passages that the hurdle has been set by reference to the same public policy concerns that have informed the Court in relation to fraudulent claims.

However, the law has recently been reconsidered by Popplewell J in *Versloot Dredging BV v HDI Gerling Industrye Verisherung AG*, in which the judge was critical of the approach adopted by the courts in respect of fraudulent devices. The leading judgment of Mance LJ in the Court of Appeal was not appealed to the House of Lords, but in *Versloot Dredging v HDI Gerling* Popplewell J took the opportunity to make what Mr Eklund QC referred to as Popplewell J's "submissions" to the Supreme Court (as it is now) on law reform, albeit from the other side of the bench.

***Versloot Dredging BV v HDI Gerling Industrye Verisherung AG*: An alternative approach?**

The facts of *Versloot Dredging* can be summarised as follows. The owners of a vessel known as the *DC Werwestone* claimed under their insurance policy following ingress of water, which was a peril of the sea under the terms of the policy. However, insurers rejected the claim on the grounds that the ingress had arisen as a result of the crew's negligence in relation to the emergency fire pumps on board and there was no cover due to the owner's failure to have various procedures in place. In the alternative, the insurers alleged that the owners had sought to support their claim using fraudulent devices. It was alleged that false information was given to the underwriters concerning the circumstances in which the ingress occurred.

In a thorough judgment Popplewell J found that whilst the owners had a genuine claim under the policy, that claim had been lost by reason of the use of a fraudulent device. Having found for the insurers he proceeded to comment, obiter, on the law surrounding fraudulent devices. He expressed his concerns that the application of the law in relation to fraudulent devices as expounded by Mance LJ in *Agapitos*, and as developed thereafter, may lead to injustice.

At paragraph 171 Popplewell J stated that he *"would be strongly attracted to a materiality test which permitted the court to look at whether it was just and proportionate to deprive the assured of his substantive rights, taking into account all of the circumstances of the case. The blunt instrument of a relatively inflexible test of materiality, reminiscent of the old latin tag "fraus omnia corrumpit", must surely be capable of yielding to a more proportionate response, which can meet the varying circumstances of each case.*" The purpose of this was to avoid the potential injustice caused by the avoidance of an entire claim as a result of a slight embellishment arising from the use of a fraudulent device.

There is undoubtedly some attraction to Popplewell J's proposal, which is consistent with the introduction of pro-consumer legislation and the slow reform arising therefrom. It is also, sadly, reflective of how society perceives (or is deemed to perceive) insurance fraud; whilst Popplewell J noted at paragraphs 164 and 165 that all fraud rightly attracts condemnation, the thrust of Popplewell J's thinking is that some fraud should attract less condemnation than others, or at least carry less grave consequences. Even if this represents feeling "on the ground" (and taking into consideration the comments of the courts referred to above, this does not seem to be

the case), one question that requires serious consideration is whether the law should promote good public policy in preference to merely reflecting the perceptions of the populace.

Popplewell J's proposed reforms carry with them a number of difficulties, a number of which were the subject of Mr Eklund QC's lecture. Firstly, the introduction of a test of "justice and proportionality" would cause the law of fraudulent devices and fraudulent claims to diverge. As the law stands, there is a direct parallel between the "not insignificant improvement" test in relation to fraudulent devices and the "not insubstantial" test in relation to fraudulent claims. Once the court has reached the conclusion that the fraudulent aspect of a fraudulent claim is "not insubstantial" it dismisses the claim. It does not then go on to consider the justice and proportionality of doing so. A divergence in the manner suggested by Popplewell J in *Versloot Dredging* is undesirable; it ignores, or seeks to depart from, the dicta of Mance LJ in *Agapitos* that the law in relation to fraudulent devices is a "sub-species" of the law of fraudulent clams.

The analysis of the law relating to fraudulent devices as a sub-species of the law of fraudulent claims must be right; both concern claims based on false premises (one being that an insured peril occurred when in fact it did not, and the other that a claim is evidenced by documentation when in fact it is not). Both are underpinned by the same policy considerations, namely that fraud should be condemned and that as a matter of public policy fraudsters should not benefit from their wrongdoing. As Mance LJ noted at paragraph 37 of *Agapitos*:

> *"On the basis (which the cases show and I would endorse) that the policy behind the fraudulent claim rule remains as powerful today as ever, there is, in my view, force in Mr Popplewell's submission that it either applies, or should be matched by an equivalent rule, in the case of a fraudulent device to promote a claim – even though at the end of a trial it may be shown that the claim was all along in all other respects valid."*

Mance LJ's comment remains true. The public policy considerations remain the same and the law should condemn fraudsters for their wrongdoing, irrespective of the assured's motives. Contrary to this, a test of justice and proportionality as proposed in *Versloot Dredging* would establish a subjective test which comparatively assessed the degree of fraud and the outcome without enforcing the straightforward public policy of discouraging fraudulent claims.

Secondly, the materiality test adopted by Mance LJ in *Agapito*s already incorporates a test of proportionality when considering whether a fraudulent device is "not insignificant", "not insubstantial" or "not de minimis". If a fraudulent device is significant (in the context of an attempt to improve the insured's position), it is difficult to see why it would nevertheless be proportionate to ignore what would then have been found to be a fraudulent device. Any test of "proportionality" would appear to be no different to the "significant" or "not substantial" tests already applied.

Popplewell J's proposal is to adopt a middle ground in the vein of section 56 of the Australian Insurance Contracts Act 1984 which allows a court, in relation to claim which are partly false and fraudulent, to order payment of an amount which it thinks just and convenient where forfeiture of the part of the claim which is valid would be harsh and unfair.

Whilst one can see how this approach might work in the case of a fire in which a man forges an invoice for a £2,000 computer genuinely lost as part of an otherwise genuine and evidenced £50,000 claim, it is difficult to establish how the just and proportionate test would be applied in a case like *Sharon's Bakery*. Blair J expressly found that the case was one in which the fraudulent device rule and not the fraudulent claims rule applied, notwithstanding that the value of the claim had been increased by the value of the forged invoice. Blair J found that the overall prospects of the claim succeeding as a whole were significantly increased by the submission of the fraudulent invoice. If the just and proportionate test were applied it is difficult to see how a principled approach could be adopted to establishing what deduction, if any, should have been applied to the damages recoverable by the assured.

In cases such as *Sharon's Bakery* there is a risk that the Courts will have to apply loss of a chance type principles to damages calculations in order to establish what, if any, damages should be awarded to the insured. This is undesirable; Courts would be asked to establish, absent the fraudulent device, whether they would have been prepared to find for the insured and to what extent, when the *fact* of the fraudulent device may have resulted in the Court disregarding other evidence given by the assured as to his losses. This is simply unrealistic in such a fact sensitive area of law.

Thirdly, both the proposed "proportionality" test and the proposal to adopt a system akin to that in Australia fails to deal with the public policy issues raised by the House of Lords in *The Star Sea*. At paragraphs 62 - 67 Lord Hobhouse considered the relevant authorities concerning the consequences of fraud. At paragraph 62, he stated:

> *"Just as the law will not allow an insured to commit a crime and then use it for the basis of recovering an indemnity (Beresford v Royal Insurance Co Ltd [1937] 2 KB 197), so it will not allow an insured who has made a fraudulent claim to recover. The logic is simple. The fraudulent insured must not be allowed to think: if the fraud is successful, then I will gain; if it is unsuccessful, I will lose nothing."*

As Popplewell J accepted in his judgment, fraud should be condemned. An approach which did not punish those who brought claims based upon fraudulent documents or evidence runs the risk of encouraging the thinking feared by Lord Hobhouse; all a fraudster might lose would be something to which he was not entitled in any event. This is neither sufficient punishment nor sufficient deterrence. Without consequences there would be nothing to stop any insured chancing their arm with a partially fraudulent claim.

However, is it the role of the civil courts to promote morality and deter insured persons from bringing fraudulent claims? Whilst this is not usually the purpose of the civil law, deterrence (or punishment for wrongdoing) is not outside its usual ambit. The civil courts and courts of equity have historically prevented wrongdoers from benefitting from their crimes or wrongs. By way of example, a legatee who murders the testator under whose will he is to inherit is prevented from doing so. Further, the law renders unenforceable contracts for illegal purposes and prevents a plaintiff from relying on his own wrongdoing to found a claim for breach of contract. In this regard, the law relating to fraudulent devices is no different if one deems it to be punishment for a wrong opposed to deterrence.

Fourthly, the criticism at paragraph 162 that the insurance contracts are treated unjustifiably differently by the courts from other contracts can be answered by reference to the nature of the contract. One has to consider the distribution of the risk between the insured and the insurer. Further, the information that the insured has to provide has been tempered by recent consumer legislation, including the Insurance Conduct of Business Sourcebook and its predecessor, ICOBs. Consumers are now afforded protection by way of statute; they are required to disclose only those matters that they could reasonably be deemed to find material. Insurers are now at a disadvantage; they may not be provided with material information and yet be unable to avoid the claim. To prevent an insurer avoiding a claim where the insured has deliberately told untruths or acted fraudulently further reduces an insurer's rights and places further undue risk on the insurer.

Fifthly, it is difficult to reconcile the approach proposed by Popplewell J and the wide ranging consumer reforms introduced by Parliament, including the Insurance Conduct of Business Source Book ("the Sourcebook"), which replaced the old ICOB rules. Rule 7.3.6 of ICOB (now rule 8.1.2 of the Sourcebook) restricts an insurer's right to reject a claim to cases in which there has been: (a) non-disclosure of facts that a retail customer could reasonably have been expected to disclose, and (b) *negligent* misrepresentation of a material fact.

However, the aforementioned limitations are subject to an exception, namely where there has been "evidence of fraud."[19] The wording of rule 7.3.6 of ICOB was recently considered by HHJ Mackie QC at first instance and the Court of Appeal in *Bate v Aviva*. Tomlinson LJ, handing down the judgment of the court with which the other judges agreed, concluded at paragraph 49 that:

> *"[T]he language of ICOB 7.3.6 draws a distinction between a claim, which might be fraudulent, and evidence of fraud. A fraudulent claim is perhaps ordinarily thought of as a claim which dishonestly asserts that an insured peril has occurred, when it has not, such as a claim in respect of a ship which has been scuttled by, or with the connivance of, her owners asserting a loss by perils of the sea. There is no doubt that Mr Bate's*

[19] The wording of rule 8.1.2 of the Sourcebook is as follows: *"A rejection of a consumer policyholder's claim is unreasonable, except where there is evidence of fraud, if it is: (1) in relation to contracts entered into or variations agreed on or before 5 April 2013 for: (a) non-disclosure of a fact material to the risk which the policyholder could not reasonably be expected to have disclosed; or (b) non-negligent misrepresentation of a fact material to the risk …"*

> *claim relates to an accidental fire and is in that sense genuine. However "evidence of fraud" is apt in the context to denote, or certainly to include, fraud used in making or pursuing a claim. That is exactly what has here occurred. The second letter dated 4 April 2005 was a fraudulent device by which the claim was sought to be supported."*

It is apparent from the Court of Appeal's interpretation of the Sourcebook that Parliament intended both "fraudulent claims" and cases involving fraudulent devices to be treated equally. Parliament has chosen to elide fraudulent claims and fraudulent devices, notwithstanding the protection afforded to retail customers (i.e. consumers) by the Sourcebook. Popplewell J's proposals would directly contradict the will of Parliament by separating "fraudulent claims" and "fraudulent devices" when it is apparent that the exception provided for in r8.1.2 applies to both. Had Parliament intended to further protect consumers by changing the law in relation to fraudulent devices the introduction of the Sourcebook would have been the opportunity to do so, and it was an opportunity that Parliament declined to take.

Whether the Supreme Court, or Parliament, is willing to consider the "submissions" of Popplewell J is as of yet unknown. However, for the reasons set out above the author would pray in aid of caution. The public policy considerations that led to the formulation of the law as it stands are still important and there is a risk that an erosion of the law will result in an erosion of those principles. There is a real risk that a change in the law in the manner suggested will do little more than give rise to less certainty.

Conclusions

Looking back, as is appropriate on BILA's 50th anniversary, it is apparent that the industry faces new challenges when combatting the age old problem of insurance fraud. Not only do fraudsters continue to invent novel and ingenuous ways of trying to defraud their insurers, but the increased use of technology, and an increase in the tolerance of "minor" frauds are just some of the challenges facing the industry going forwards.

However, it is clear from what was said by Scott Clayton and DCI Wood that the industry is not only alive to the challenges it faces but it is taking active steps to counter them. An increase in funding for IFED and the pooling of resources and information between insurers demonstrates a commitment to tackling insurance fraud by the industry that should be applauded by policy holders across the UK.

Further, the law as it stands jealously guards and upholds settled and long standing public policy, namely that a fraudster should not be entitled to make a fraudulent claim consequence free. Whilst there is no doubt that there will be those attracted to a "materiality" test as suggested by Popplewell J, the courts, and Parliament, need to ensure that policy is upheld.