

## **4. FRAUD AND MOTOR INSURANCE - THE LEGAL REMEDIES**

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### **i. INTRODUCTION**

Motor insurance is a major area of concern in the context of fraudulent claims. Some people think that the purchase of a motor insurance policy is an investment on which they should get a return, and unfortunately this sort of attitude has grown in the current hard economic time in which we are living. There are so many ways and means of making easy money out of insurers in this class. Insurers have known for a long time that motor frauds are costing them a great deal of money. Let me give you a few simple examples, so that you can appreciate the types of problems which are known to exist.

A motorist insures his car with, say, four companies, and then it is "written-off" by some means and claims are made against all of the insurers. Or, a vehicle is put into a crusher, or deliberately disposed of in a remote place such as a canal or a dock, it is then claimed as having been stolen. Another case is where a stolen registration document (or log book as it used to be called) is used by the person possessing the book, to claim that the vehicle has been stolen. A well-known type of case is where a wrecked vehicle is bought including the log book, then the vehicle is insured and parked on a road. A claim is made to the effect that the car has been written off in a road accident. It is examined by an insurance engineer, who quite accurately reports on the seriously damaged condition of the car, and a total loss claim is made upon the insurer for a much higher amount than the purchase price. These are all well documented cases, but then there are also the problems of garages and repairers who add extra items of work to insurance claims, which have to be paid for by insurers. This may seem to be a relatively minor matter to them but it is actually fraud and costs insurers a great deal of money. So the catalogue of cases could roll on, but I think that this gives you a brief insight into some of the problem areas.

Motor insurance generates premium income in the UK, in the order of £6,000 million, and with losses rising over the years to an alarming extent, culminating in an overall loss of 19% last year on the whole motor account, the problem of fraudulent claims has been one of real concern to insurers. It is variously estimated that somewhere between 5% to 10% of all motor vehicle claims upon insurers may be fraudulent. If this is so, and I emphasise that this is only an estimate, then we are talking about a total cost of fraudulent claims in the region of £500 million which is a staggering figure. If

these figures are accurate and, of course, it is difficult to say because it is not possible to document what is not known, then the problem is a massive one which represents a considerable burden on the premium pool of the honest motor policyholders.

It became clear many years ago that fraud was a huge problem and it prompted insurers to take action on motor insurance, in priority to other classes of insurance where it is also known that there are many fraudulent claims involving very high values and costs. Although it was believed at one time that fraud represented a relatively small proportion of the claims under the class, the problem of trying to find a means of making savings on such claims, against the possibility that fraud had become, in fact, much longer than originally believed, became of real significance.

## **ii. THE INSURANCE REGISTER CONCEPT**

As we all know, cars are people's second most important possession in most cases and motor insurance costs are seen as a necessary evil. Premiums in this class represent a very emotive area and get a very high profile as far as the press, government, consumer lobbies etc. are concerned. It is, after all, the premium paying policyholders who, in effect, make-up the cost of all fraudulent insurance claims. Any reduction of these crimes and costs must ultimately be to the benefit of the premium paying motorist in general. The conclusion was reached that any action would at least keep the level of premium increases down.

So in the mid-1980s, motor insurance representatives agreed that something should be done to combat the fraudulent claims problem, which the police insisted was far greater than we actually knew. They, therefore decided to take it on the chin no longer and that they would establish their own computer register, which they hoped would help identify frauds and also help to trace stolen vehicles.

A lot of people became involved in discussing whether the idea of a register was a practical proposition, including many police officers who were involved in the pursuit of vehicle crime. Motor insurers, in particular, work very closely with the police who advised us at that time, that the theft of vehicles was merely, to coin a useful phrase employed since that time, "the tip of the crimeberg" and that much of the problem resulted from the misuse of salvage of vehicles which insurers had written off. Clearly the message came across that they were aware that some of the purchasers of salvage of badly damaged cars, which was bought at a low price, was then insured as an undamaged car, the wreck then dumped, as I earlier explained, and a claim made on the insurer that the vehicle had been stolen. It was as a direct result of this, that the idea of a fraud and theft register should be extended into a total loss

register. The thinking being, that if every total loss claim was recorded, then further activity on salvage would be traceable and people prevented from making this type of fraudulent claim.

Agreement having been reached to establish such a Register, consideration was given then to the practical problems involved in doing so. What information should be kept on it for example? Which computer facility should be used? Was there a facility available within the insurance market or should an outside computer specialist organisation be employed? Would the Register and its use be operating legally within the Law, bearing in mind the constraints of the Data Protection Act of 1984? Insurers would, after all, be recording data provided to them for the sole purpose of motor insurance cover and then using it by exchanging such data for another purpose, namely combatting fraud.

Taking the first of these problems it was decided that the details to be recorded would have to be sufficient for matches to be identified and, therefore, the registration number and make and the model of vehicle were essential. It was also necessary, if an attempt was to be made to try and catch someone having made one fraudulent claim trying to do so again and, therefore, it was decided to record the name and address of the claimant. The details then grew and grew. It was thought necessary to have a claimant's date of birth and postcode, to help in establishing matches, as well the vehicle identification number. So it would also be necessary to have the name of the insurer and the insurer's claim number and other pieces of information, such as the type of vehicle, whether it was UK registered or foreign, new or unregistered. The date of loss and type of claim were also thought necessary. In addition, whether the loss was under a comprehensive, third party fire and theft policy etc. in order to identify new for old policies.

As to the facilities to be used, it was concluded that a ready made facility already existed for such a register or file of information, in that the ABI had a large computer with a capacity to accommodate the proposed arrangement. Although facilities were offered to us by an outside computer organisation, who had substantial computer capacity available, for reasons of cost control and the need to keep personal information of claimants "in house" and confidential bearing in mind the constraints of the Data Protection Act, insurers were convinced that they should maintain their own register.

So what of the legality of the agreement in terms of data protection?. Discussions were set up with the Data Protection Registrar and there was a lengthy exchange with him on the use of the personal information which was to be held on the anti-fraud

register. As a result of the discussions it was clearly established that the use to which the computer register was to be put would be acceptable under the Act and the following understandings were reached:-

(a) The ABI on behalf of its members should be registered as the data user and the exchange of information under the anti-fraud system between insurers was in order.

(b) The ABI would control the format of the information added to the register, and would therefore be able to prevent any information being used in a way which was considered improper.

(c) Personal data which would be kept on the Register would be held only for crime prevention purposes and, as a consequence, we would be able to make use of the qualified exemption for data subject access. In other words, data subjects had no automatic right of access to the information recorded on the anti-fraud register.

(d) It would be acceptable to use the personal data on the register to assist prevention or detection of possible offences under the Road Traffic Act 1988.

There was one concern, however, on the part of the Data Protection Registrar, in that proposers to individual insurers for motor insurance would not be notified of the fact that the data they supplied to their insurer might be passed on to the anti-fraud register.

Although he appreciated that such disclosures arose only in a minority of cases overall, and could be described as falling within the acceptable principle on motor insurance of disclosure to other insurance companies, he felt that at some stage, this aspect should be addressed by some form of notice on motor insurance documents given to policyholders. This point was duly noted and I shall provide details of the action taken by insurers since that time later in my presentation.

### **iii THE MIAFTR**

So, on 2 March 1987, the Motor Insurance Anti Fraud and Theft Register, now known simply as MIAFTR, was open for business. The system received almost full support from all UK motor insurers immediately and is now supported by all members of the ABI transacting motor insurance, as well as member of Lloyd's Motor Underwriters Association and other motor insurers, who are not members of these two bodies. There are well over 100 participants in all and the system, in effect, covers the whole of the motor insurance market.

It operates by insurers notifying MIAFTR of all potential total loss claims. Now as you will all know, total loss covers a range of situations, from unrepairable wrecks to those considered uneconomic to repair for a variety of reasons. Data is supplied to MIAFTR on a daily basis, either on paper forms, computer floppy disks or, in the case of those insurers who are able to provide information from their mainframe computers, on magnetic tape. This data input was considered necessary right from the outset, to ensure that maximum support was obtained. Any doubts on that score were quickly dispelled because the register was most enthusiastically welcomed by all insurers and fully supported as I have explained. Indeed, the feeling was generally held in the insurance market when it was launched, that the whole arrangement was long overdue.

Currently the information on MIAFTR is made available to the police. We have close liaison with them on the data we store on our register, and on specific claims where the circumstances arouse real suspicions of fraud.. Over the last 2 years we have also been involved in detailed discussions with police representatives, who have worked in conjunction with the London School of Economics, on a project which has been investigating the possibility of a direct link-up between MIAFTR and the Police National Computer. The report which has been produced recommends that such an arrangement would be beneficial to the Police, and it is now being considered within the Association of Chief Police Officers. Needless to say such a link-up would certainly be beneficial to motor insurers, and they are now hopeful that the recommendation will be approved, so that insurance industry can draw directly upon the stolen vehicle file stored within the PNC. This will obviously be a big step forward in enhancing the value of the MIAFTR database.

#### **iv. OPERATION OF THE REGISTER**

The operation of MIAFTR is relatively simple. As each new claim is added to the register, its details are checked against existing records. Searches are then made, on the name of the claimant, vehicle registration number, vehicle identification number or chassis number and the claimant's postcode. Any of these items which match generate a print-out of all matching claims, which is then sent to the inputting insurer for further investigation. Each insurer is geared up to receive the information and has a person nominated to contact, so that the matter can be dealt with expeditiously and efficiently. Primarily, the aim is to identify an individual who makes multiple insurance claims, or individuals who make repeated claims and which, therefore, warrant closer investigation. However, as a spin-off, MIAFTR has also provided a great deal of assistance in the area of the "ringing" of vehicles and this has become a useful adjunct to the register's primary function.

## **v. SUCCESSES AND ACHIEVEMENTS**

Obviously, when the register was in its infancy, and had little in the way of data, there was little expectation of it being able to achieve much in the way of success. However, quite remarkably within weeks, MIAFTR picked up a match on the registration number of a vehicle. A car was discovered as being reported stolen by two people who appeared to be entirely unconnected. Two different insurers were involved and they got together, and discovered that the two people were, in fact, husband and wife, with the wife using her maiden name and a separate address. Subsequent investigation revealed that this was not a first attempt by the two persons concerned. As a direct result of the information obtained from MIAFTR, it was possible to stop some further fraudulent claims by the individuals, which they were in the process of pursuing. An activity which would have netted them in the region of £30,000. The matter was placed in the hands of police and the couple confessed. After paying back the money they had fraudulently claimed from insurers, the couple were heavily fined.

MIAFTR never looked back from that first simple success. Other suspicious matches began to be found and shortly afterwards the register achieved what is still regarded as its most spectacular success in terms of a multiple claim. Forgive me if you have already heard of the case which has received quite a bit of publicity, but I would like to give brief details. The case involved an individual who claimed on no less than 11 different insurers, for the total loss of a single vehicle. The case began when a Fiat Uno was heavily damaged in an accident and the insurers of the vehicles dealt with the claim on a total loss basis. The policyholder was paid and the wreck disposed of in the normal way. Within days of the wreck being sold, it was bought by an individual who arranged for it to be delivered to his home. The purchaser of the salvage proceeded to take out insurance cover with several different insurers, mainly on a premium by instalment basis, so he did not have to pay the full annual premium up front. He filled in a claim form and submitted a fictitious claim. The individual arranged for the vehicle to be inspected by appointment at his home by an insurance engineer and he told his insurers, that he wished to keep the salvage for one of his relatives who wanted the spare parts. By doing this he did not then have to part with the registration document. He then made another claim on another insurer but as soon as the second of the claims was placed on the register, the matching process of MIAFTR worked. Insurer got together and the matter was put in the hands of the police. The individual concerned stood to gain somewhere in the region of £40,000 and his efforts were thwarted solely by the existence of MIAFTR.

## **vi. DETERRENT EFFECT**

To conclude on the details of MIAFTR, there are now approximately 3 million records on the register with between 1,000-2,000 new cases being added each day. It

has achieved known savings to motor insurers since its establishment in the region of £4 million, with minimal operating costs. This figure does not, of course, take into account any cases which go unreported, of which there must be many. MIAFTR obviously has a deterrent effect. The more publicity it is given then the greater the deterrent effect. Of course, in terms of financial savings, the deterrent factor makes it more difficult to assess. It is known that a lot of claims have evaporated after searching into them, prompted by MIAFTR matches.

I mentioned earlier that the Data Protection Registrar had expressed concern about policyholders, or prospective policyholders not knowing that the information they provide to insurers for motor insurance purposes might be used for other purposes. The Registrar ultimately suggested that the insurers, who are the "data users" of the MIAFTR, should include a notification clause in this respect, on motor insurance proposal forms. As a result, wording has been agreed for this purpose to comply with the request of the Registrar and is now being incorporated on such forms as well as, by some insurers, on motor claims forms. The wording states that "Insurers maintain a motor insurance anti-fraud and theft register and exchange information with each other to prevent fraudulent claims". Motor insurers have been very pleased at accepting this suggestion which, in their view, adds to the deterrent effect of the MIAFTR, to prospective fraudulent claimants.

## **vii. CONCLUSIONS AND THE FUTURE**

Obviously MIAFTR will continue with its good work on the present basis for the time being but I am sure that refinements to the system, which are constantly being looked at, will achieve even greater results. Whether or not the database will be expanded for other purposes which have been suggested, such as combatting fraudulent claims on vehicle plant and equipment, household and travel claims and even other classes which are currently being investigated, remains to be seen. Enhancement of the present arrangement is constantly taking place. Data from an insurer's submission to the register, to receipt back of any matching claims information, has been speeded up. Information and enquiries are now on line to the computer data file. Instant matching can be achieved.

We are spreading the message whenever we can, and the ABI is currently promoting a campaign against fraudulent claims with a view to encouraging prosecution of people making bogus or inflated claims. Our message is being conveyed very strongly that with our facilities, we can and will catch them - so prospective fraudulent claimants should beware!

I wish to convey the message to you all here today, that in any suspicious

circumstances or in any cases where there is doubt about the validity of a motor claim, you are now aware that there is a facility available for a check to be made through the MAIFTR and such a course is recommended. However, any checks must be undertaken through the relevant insurer because it is only the companies and syndicates which support the Register who are entitled to have direct access to the data on MIAFTR.

### **viii. INTERNATIONAL DEVELOPMENT**

Finally I would mention that MIAFTR now has developed an international connection. In brief terms, there are similar registers in existence in other European countries such as France, Holland, Sweden, Germany, with others currently being developed. Some of these registers are like our own relating to motor insurance only and others cover other classes of insurance as well. The development of crime on an international basis, and with an eye to closer ties with Europe in the near future, an International Agreement has been established between insurers linking up these registers in each country.

The links are not direct at this stage and are primarily concerned with the location and recovery of stolen vehicles in the interests of saving motor insurers money. However, the potential development in this area is clearly obvious. Direct links between these computer data bases with the cross-checking of information and beating fraudulent claims on a much wider basis, must be a strong possibility for the future. The police have already seen the merits of our arrangement and I believe are somewhat envious of what we have achieved so far. Again there are data protection problems not only from the UK standpoint, but also from the point of view of the different data protection laws in each of the European countries. I think, however, that we shall see a breakthrough in the future and a copying of such an arrangement by the police in the not too distant future.

## **THE 1992 AGM**

Minutes of the Annual General Meeting of the British Insurance Law Association held at University College, Gower Street, London WC1 at 12 noon on Tuesday 15th September 1992.

### **1. APOLOGIES**

Apologies for absence were received from Sir Denis Marshall, Sir Alexander Graham, Susan Greenwood, and Messrs Cowtan, Cockerell, Duffus, Harris and White.