

The Chartered Institute of Loss Adjusters



Welcome

While you are waiting for the session to start please prepare your learning environment.



Headset instead of speakerphone



Everything connected?
Plugged in? Working?



Turn off Mobile Phone



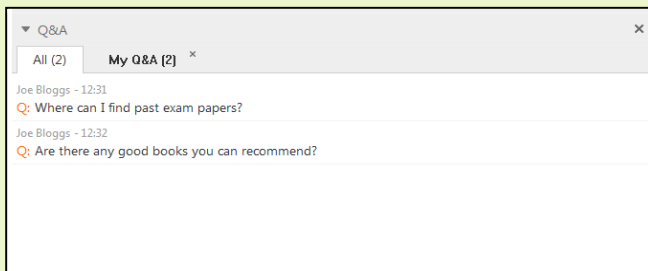
Notify colleagues that you will be in a training session



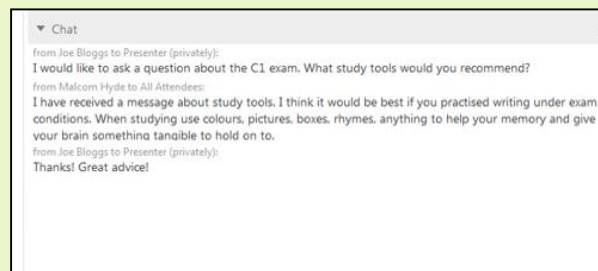
Ignore distractions or signals for attention

You may also wish to try out some of the WebEx Interaction Tools

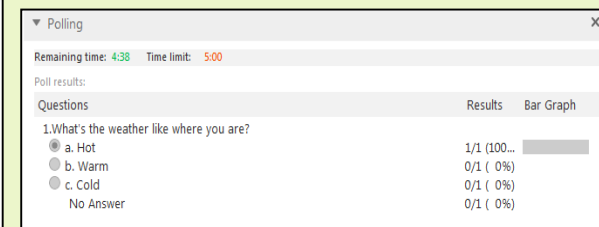
Q&A



Chat



Polling



Click the grey chat, Q&A and polling icons on the top right hand side. They will appear blue once the interactive tool has been selected

The tool panels will appear on the right hand side of your screen by default



*The Chartered Institute
of Loss Adjusters*



Fraud and Property Claims (Part 1)

by the Anti-Fraud SIG

Speaker:

*Neal Davies-Fletcher, Loss Adjuster and Overseer Fraud
Investigations at Quadra Claims*



CILA Webinar

Introductions



Neal Davies-Fletcher ACII ACILA ACFTech
Quadra Claims Services Ltd

On behalf of the
CILA Anti-Fraud Special Interest Group



Adeola Daramola BSc (Hons)
Events Co-Ordinator

The Chartered Institute of Loss Adjusters



Creating a successful learning environment



Headset instead of speakerphone



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Turn off Mobile Phone

Participate

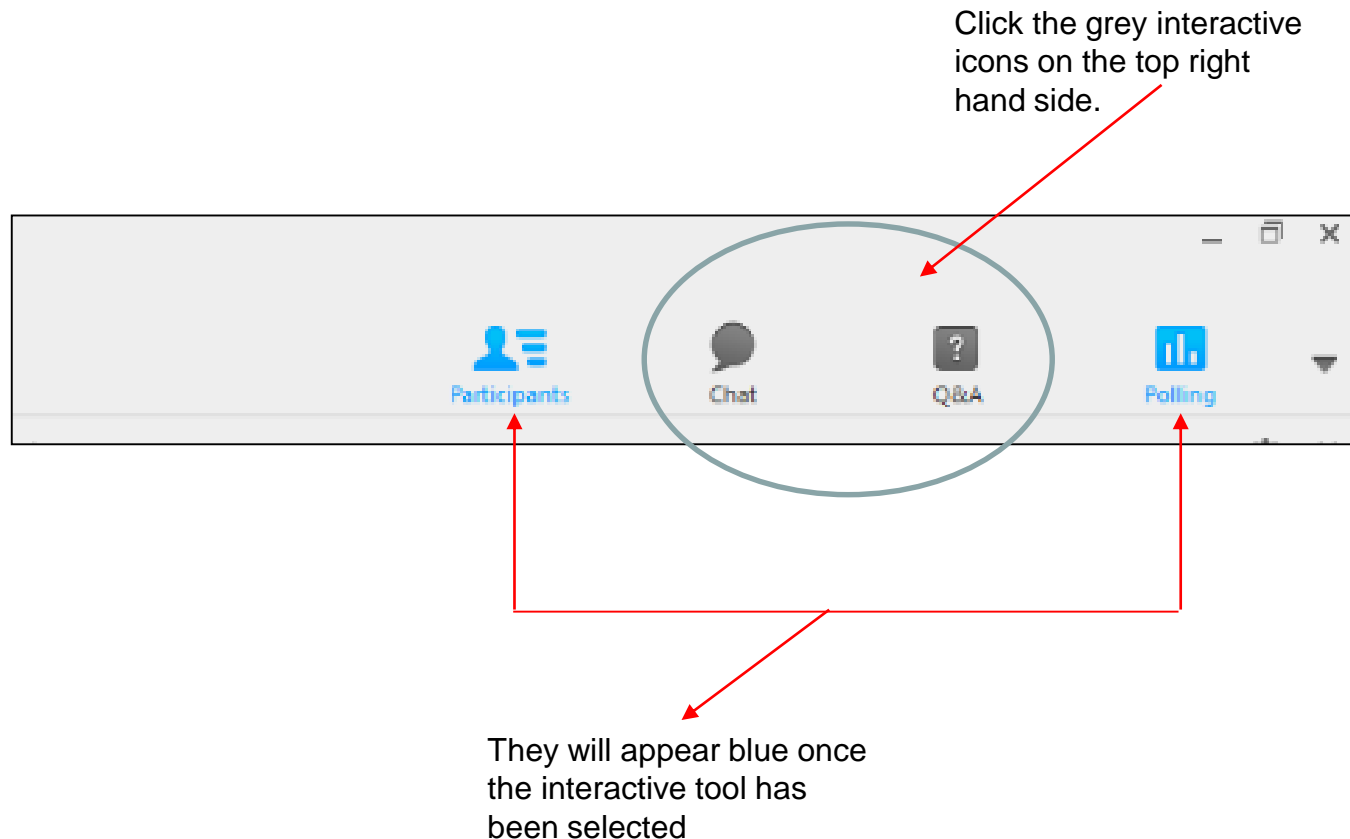


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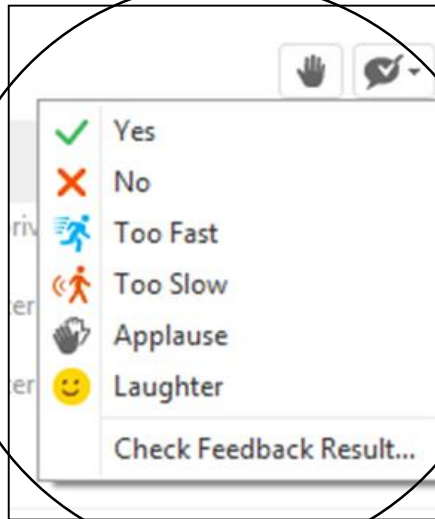
Selecting an interactive tool



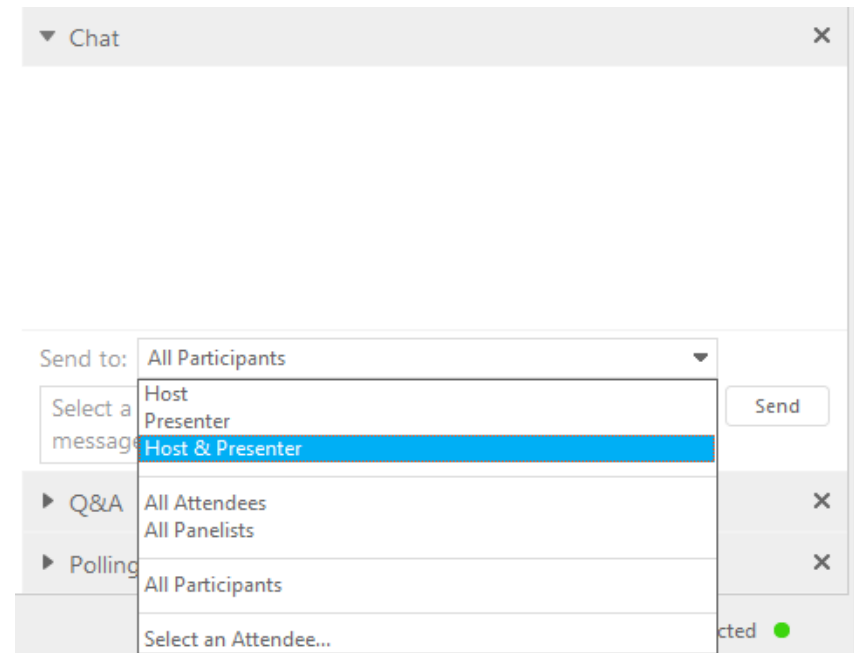
Once selected, the tool panels will appear on the right hand side of your screen by default

WebEx Interactive Tools

Feedback Panel



Chat



Send private messages to the **Host & Presenter**

WebEx Interactive Tools

Polling

▼ Polling

Time elapsed: 0:20 Time limit: 5:00

Poll Questions:

1. What's the weather like where you are?

☒ a. Hot

☐ b. Warm

☐ c. Cold

Submit

Your answer may be recorded.

Connected ●

Q&A

▼ Q&A

All (2) My Q&A (2) x

Joe Bloggs - 12:31

Q: Where can I find past exam papers?

Joe Bloggs - 12:32

Q: Are there any good books you can recommend?

Send **ALL** questions to the **Host & Presenter**

Don't forget
to click
"submit"



TECHNICAL DIFFICULTIES



If you experience any technical difficulties during the presentation, please **contact Adeola**



The **quickest method** is to simply **send a message via chat** to the **HOST** (not the presenter).

Although this is in Malcolm Hyde's name (the CILA Executive Director), it will be Adeola "hosting" the event.

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Events Co-Ordinator

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CIL A Webinar

Structure of presentation

1. Introduction
2. What is fraud?
3. Claims investigation
 - a) Underlying principles
 - b) Practical aspects



1. Introduction



CIL A Advanced Diploma candidates

General property **adjusters** and **claims handlers**

Always refer to your own **employers guidelines**
on fraud investigation

2. What is fraud?



Interactive question

1/ Give a definition of fraud

Use CHAT to comment



2. What is fraud?

Wrongful or criminal deception intended to result in financial or personal gain.

Online Oxford English Dictionary

Insurance fraud is when someone invents or exaggerates a claim, or does not tell the truth in order to obtain cheaper cover.

ABI





Derry v Peek 1889

Fraud is proved when it is shown that a **false representation** has been made

- 1. knowingly, or**
- 2. without belief in its truth, or**
- 3. recklessly, careless as to whether**
it be true or false





Fraud Act 2006 section 1



It does not **define fraud**

Creates a new **general offence of fraud** and introduces **3 possible ways of committing it**

Extends to **England, Wales and Northern Ireland**

It does not extend to **Scotland**



Fraud Act – Section 2

Fraud by false representation

- (1) A **person** is in breach of this section if he:
- (a) **Dishonestly** makes a **false representation**, and
 - (b) **Intends**, by making the representation
 - (i) to **make a gain** for himself or another, or
 - (ii) to **cause loss** to another or to **expose another to a risk of loss**



(2) A representation is false if

- (a) it is untrue or misleading, and**
- (b) the person making it knows that it is, or might be, untrue or misleading.**





Fraud Act – Section 3

Fraud by failure to disclose information

A **person** is in breach of this section if he:

(a) **Dishonestly** fails to disclose to another person **information** which he is under a **legal duty to disclose**, and

(b) **Intends** by failing to disclose the information

- (i) to **make a gain** or
- (ii) to **cause loss to another**





Fraud Act – Section 4

Fraud by abuse of position

A **person** is in breach of this section if he:

- (a) **Occupies** a position of trust, and
- (b) **Dishonestly abuses** that position, and
- (c) **Intends** by means of the abuse of that position
 - (i) to **make a gain** or
 - (ii) to **cause loss to another**



Definition of dishonesty



R v Ghosh
1982



Two stage test

- 1/ Whether a **defendant's** behaviour would be regarded as **dishonest** by the **ordinary standards of reasonable** and honest people, and if so
- 2/ Whether the **defendant** was **aware** that his conduct was **dishonest** and would be **regarded** as dishonest

Scotland

- Common law fraud
- Uttering
- Civil fraud



3. Claims Investigation

UNDERLINING PRINCIPLES





CILA

Role of the Loss Adjuster

- 1/ Verify whether the policy **covers** the loss or damage
- 2/ Verify the **amount** (if any) the policy should pay out.



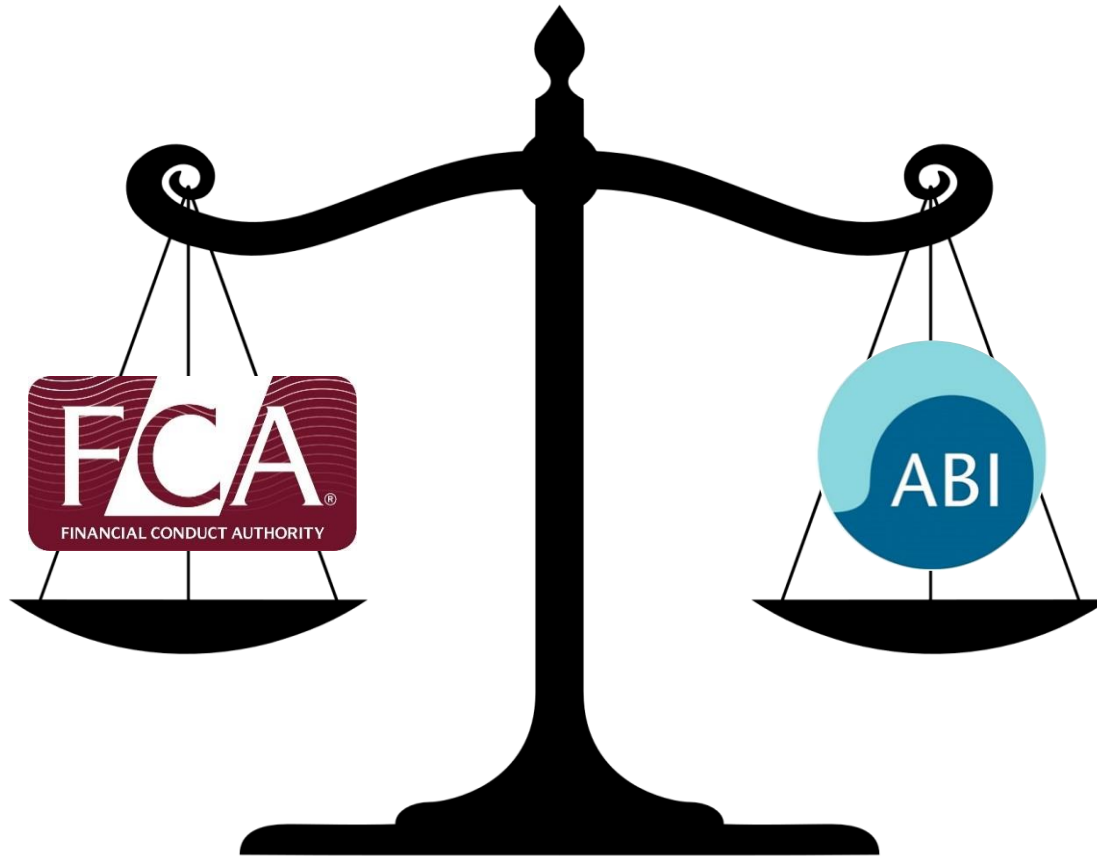


Policy requirements



To provide at **their expense** all **reasonable details** and **evidence** which may be asked for

The Chartered Institute of Loss Adjusters





FCA rules on claims handling

- 1/ Handle claims **promptly** and **fairly**;
- 2/ Provide **reasonable** guidance to help a policyholder make a claim and appropriate information on its progress;
- 3/ Not **unreasonably** reject a claim, terminate or avoid a policy;
- 4/ Settle claims **promptly** once settlement terms are agreed.





FCA complaint definition

*Any expression of **dissatisfaction**, whether oral or written, and **whether justified or not**, from or on behalf of an eligible complainant about the firms **provision** of, or **failure to provide**, a financial service.*





ABI

objectives on fraud



Reducing and deterring fraud** remains a priority for the insurance industry. Our industry has a **zero tolerance** approach to **weeding out the cheats.



The Enterprise Act 2016

Amends the Insurance Act 2015

It is an **Implied term** of every **contract of insurance** that if the insured makes a claim the insurer must **pay any sums due** in respect of the claim within a **reasonable** time.

Clause 4

Insurer **not in breach** if '**reasonable grounds for disputing the claim**'

While the dispute is continuing



3. Claims Investigation

PRACTICAL ASPECTS OF CLAIMS INVESTIGATION



Interactive question

2/ Suggest two different types of fraud

Use CHAT to comment



When fraud can occur

- Policy inception
- Mid term or renewal
- Claim stage
- Later discovery that a loss had not occurred or was substantially smaller



Types of fraud

- No loss
- Deliberate loss
- Fraudulent exaggeration
- Fraudulent means or devices



Fraudulent exaggeration

Deliberately inflating a claim is fraud but case law determines that the **dishonest element** must be **substantial** either in proportion to the claim or in isolation.

Substantial means the dishonest part must be **more than minimal**.

Case law suggests a small degree of exaggeration for the purpose of claim negotiation is permitted.



Fraudulent means or device



Agapitos v Agnew 2002

*‘.....only apply the fraudulent claim rule to the use of **fraudulent devices or means** which would, **if believed**, have tended,, to yield a **not insignificant improvement** in the Insured’s prospects - whether they be prospects of obtaining a **settlement**, or a **better settlement**,.....’*



Fraudulent means or device



Agapitos v Agnew 2002

1. The device must be **directly related to the claim, and**
2. Must have been **intended to promote** his prospect of success, **and**
3. If believed **would have** yielded a not insignificant improvement in prospects of success



Fraudulent means or device



Veersloot Dredging v HDI Gerling 2016

Question at issue – What constitutes fraud?

1. **The whole claim may have been fabricated.** In which case, irrespective of whether a fraudulent device has been used, the insurer would **not be** liable to pay the claim



Fraudulent means or device



Veersloot Dredging v HDI Gerling 2016

2. There may be a genuine claim, the amount of which has been dishonestly exaggerated. This is a typical case for the application of the rule. The insurer in **not liable**, even for that part of the claim which was justified.



Fraudulent means or device



Veersloot Dredging v HDI Gerling 2016

3. **The entire claim may be justified**, but the information given in support of it may have been **dishonestly embellished**, either because the insured was unaware of the strength of his case or else with a view to obtaining payment faster and with less hassle.



Fraudulent means or device



Veersloot Dredging v HDI Gerling 2016

The question being considered was ‘whether the insurer is entitled to repudiate a claim supported by a false statement, **if the statement was irrelevant**, in the sense that the claim would have been equally recoverable whether it was true or false.

Fraudulent means or device



Veersloot Dredging v HDI Gerling 2016

Lord Sumpton, concluded 'that the rule does not apply to such claims'.



‘Fake invoices’

FOS Decision – December 2016



In summary, RSA paid the claim at £1,900.00 and agreed that in addition they would pay the VAT element on submission of a VAT invoice.

The insured then submitted a ‘fake invoice’.

Even though part of the claim was genuine the fraud ‘**taints**’ the whole claim and so RSA **doesn’t have to pay any of it** and are entitled to **recover the money already paid**

Fraud indicators

- Gaps in insurance history
- Policy alteration to subject matter of claim prior to claim intimation
- Altered documentation
- Loss incompatible with life style
- Circumstances inconsistent/incompatible with damage/loss



Waiver

Where an insurer, either by **words** or **action**, **indicates** to a policyholder that it **does not intend to enforce its legal rights** even though it has a right to avoid the policy or decline indemnity and is aware that it has such a right.



Estoppel

Is where even though insurers were **unaware** that they had grounds to avoid the policy or decline the claim, but again by either it **words** or **actions**, or those of its appointed representative e.g. the loss adjuster, give the policyholder **reason to believe** that the claim would be **accepted** under the policy and the policyholder acted upon that information to its detriment.



Reservation of rights letter

To avoid the effects of '**waiver**' or '**estoppel**' you may issue a '**reservation of rights**' letter which clearly states that insurers **rights are reserved and none of their statements or actions should be understood as waiving its rights generally** including their right to rely on any further matters that might arise during the course of any further investigations.





ACPO (now NPCC) / ABI Memorandum of Understanding



Appendix D (a)

Is used to obtain confirmation of the information regarding **lost property, crime reference numbers, date/time when offence was reported, details of persons involved**. The police will charge a fee for this.





ACPO (now NPCC)/ ABI Memorandum of Understanding



Appendix D (b)

Is used when the insurer requires **additional information** to the above and the **consent form** should be supplied. The police will charge a fee for this.





ACPO (now NPCC) / ABI Memorandum of Understanding



Appendix E

Is used to request information held by police where there is **evidence to suspect a fraudulent insurance claim** under Section 5.

No consent form required. There is no charge for requests made under this section.





ABI Guidelines on the instruction and use of Private Investigators



Prior to instruction a **due diligence** exercise should be undertaken including performing an **impact assessment** and a '**reason for instruction note**'.

ico. ICO Guidance:

Information Commissioner's Office



When can I disclose information to a private investigator?

The **Data Protection Act 1998** regulates the processing of **personal information** and requires organisations to keep it **secure**. It general restricts disclosure of personal information to third parties **unless an exemption applies**.



The Rehabilitation of Offenders Act 1974

For most purposes the 1974 Act treats a **rehabilitated person** as if he or she had **never committed**,the offence and, as such, they are **not required** to **declare** their **spent** caution(s) or **conviction(s)**, for example, when applying for most jobs or **insurance**, some educational courses and housing applications.





Data Protection Act 1998



Section 56 *Outlaws enforced subject access*

- ABI Guidance August 2015
- CILA Technical Bulletin 38 July 2015

Statement taking

- First person
- Full name and address
- Chronological sequence – numbered paragraphs
- Made from the **witness's own knowledge**
- **Include a statement by the witness that he believes that the facts stated in it are true**
- Must be signed and dated
- Any alterations initialed by the witness



Insurance Fraud Bureau



The Insurance Fraud Bureau (IFB), is a not-for-profit company established to lead the insurance industry's collective fight against insurance fraud.

They act as a central hub for sharing insurance fraud data and intelligence, to detect and disrupt **organised fraud networks.**

The Chartered Institute of Loss Adjusters





CIL A

This session has now **finished**.



After the session you will receive:

1. A **Survey Monkey feedback request**. Please complete and return.
2. A **copy of the PowerPoint** presentation for this webinar.

Thank you for your participation.

If you have any further questions, contact the Chartered Institute of Loss Adjusters at **info@cila.co.uk**



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