

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



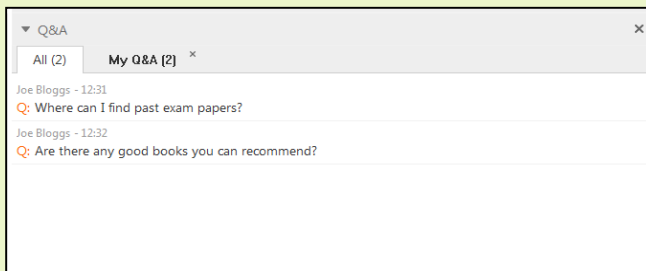
Notify colleagues that you will be in a training session



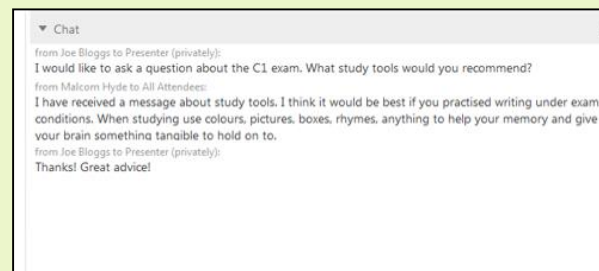
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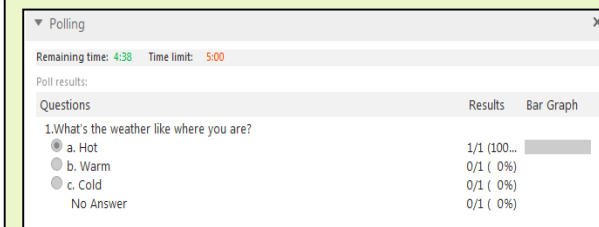
Q&A



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 2)

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



Everything connected?
Plugged in? Working?



Turn off Mobile Phone

Participate

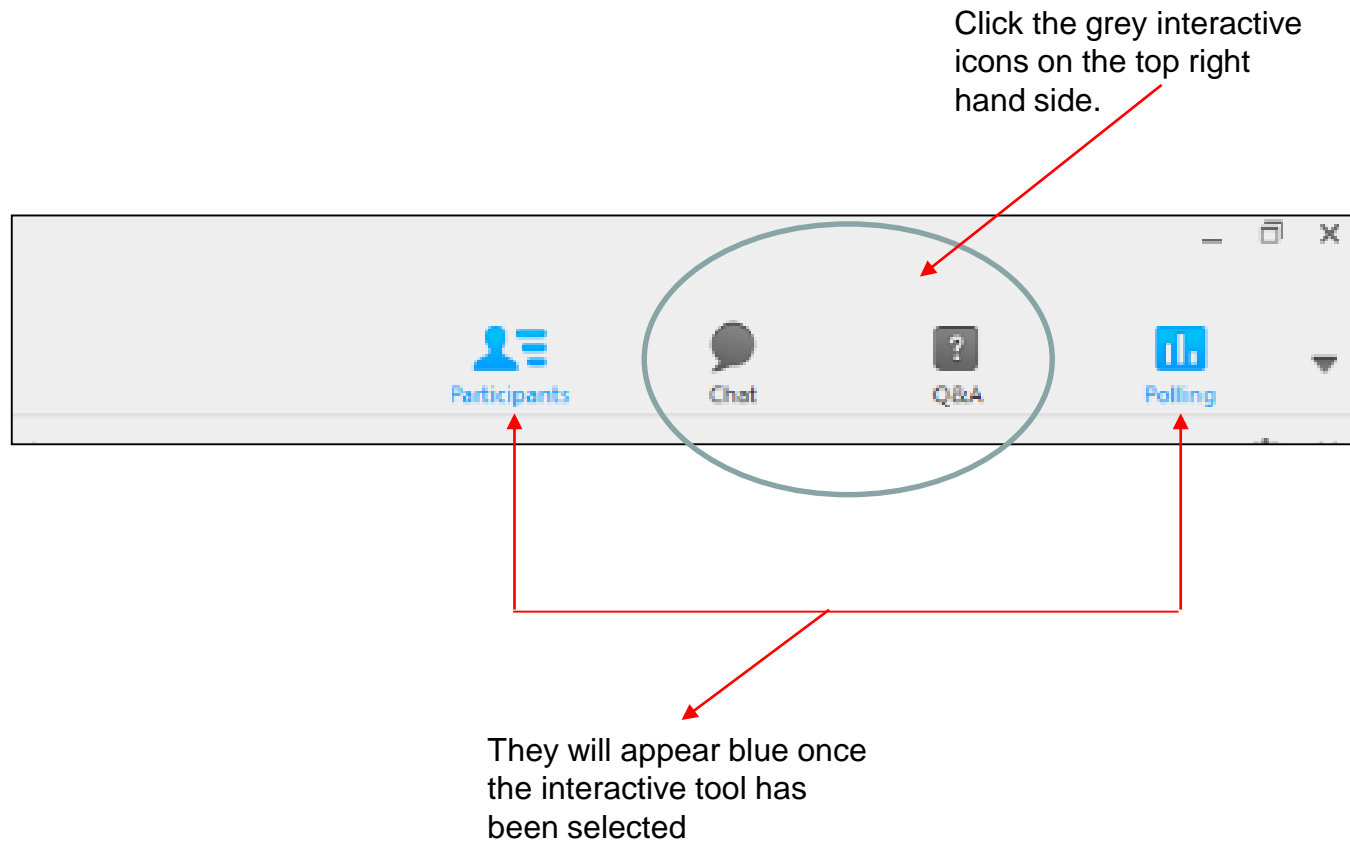


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Ignore distractions or signals for attention

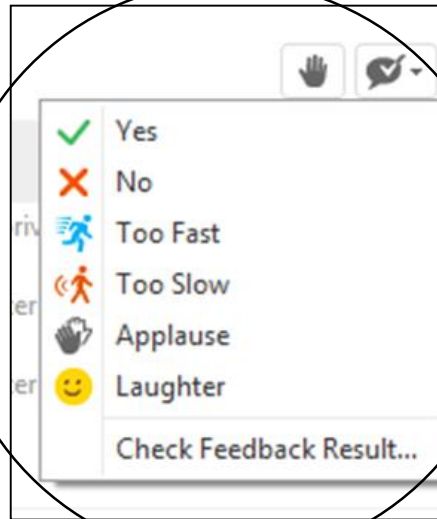
Selecting an interactive tool



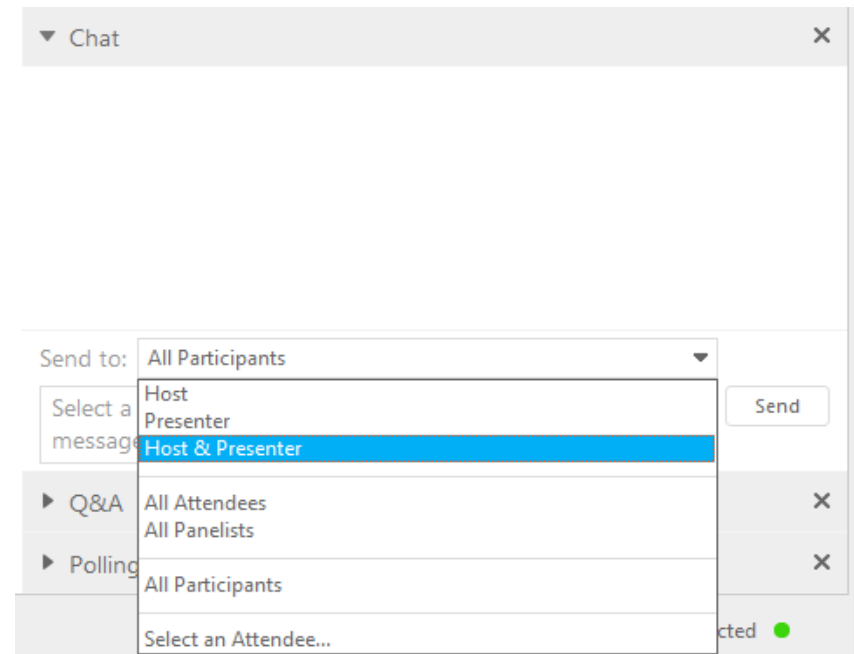
Once selected, the tool panels will appear on the right hand side of your screen by default

WebEx Interactive Tools

Feedback Panel



Chat



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

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CILA Webinar

Structure of presentation

4. Standard of proof
5. Investigation outcomes
6. Remedies available
7. Summary
 - Civil Law v Criminal Law





4. Standard of Proof

Interactive question

3/ What is the required standard of proof?

Use CHAT to comment



Don't forget to select
HOST & PRESENTER
from the drop-down
menu



Criminal Law

The evidence must prove the case **'beyond a reasonable doubt'**.



Civil Law

The standard of proof is determined on the
‘balance of probabilities’.



S and M Carpets Ltd v Cornhill
1981

*‘If a defendant or plaintiff is to allege fraud, then the
**standard of proof is somewhat higher than that
ordinarily applicable to civil matters, but not as
high as that relating to criminal matters’**.*





Financial Ombudsman's Service



The ombudsman decides cases on the **same basis as the court** – **the balance of probabilities**.

Like in the courts, an allegation of **fraud** requires **very persuasive evidence**.



Financial Ombudsman's Service



So it isn't sufficient simply to have some concerns about a claim or to think that it is unsatisfactory in some respects and reject it **without giving good reasons**.

You will need **evidence of fraud** or enough evidence to throw such doubt on the claim that the ombudsman will **dismiss it as better dealt with in court** where evidence can be given under oath and witnesses can be cross-examined.



Financial Ombudsman's Service



When looking at claims you have to be **realistic**.
The ombudsman may feel that it's **unreasonable**
to expect a consumer to hang on to receipts for
many years.

There can be other ways of establishing the
existence of an item – photographs for example.



Financial Ombudsman's Service



If someone has suffered a burglary or a catastrophic loss, through flooding for instance, it may be **unfair** to expect them to produce an immediate itemised list of what they've lost.

Remembering an item later doesn't necessarily mean that part of the claim is fraudulent.

Caroline Michell, Lead ombudsman

13 February 2017



5. Investigation Outcomes

Investigation outcomes

- Genuine claim
- Repudiation of claim
- Claim withdrawn
- Policy avoidance
- Fraudulent claim





6. Remedies Available



Typical policy wording

Fraudulent claims

If any claim on this policy is in any respect **fraudulent** or if **fraudulent means** are used by you or anyone acting on your behalf to obtain **benefit** under this policy all **benefit** under this policy shall be forfeited.

We retain the right to keep the premium and to **recover** any sums paid by way of benefit under the policy.





The Insurance Act 2015



12 Remedies for fraudulent claims

1. If the **insured** makes a **fraudulent claim** under a contract of insurance:
 - a) the insurer is **not liable** to **pay the claim**, and
 - b) the insurer may **recover** from the insured **any sums paid** by the insurer to the insured in respect of the claim, and
 - c) in addition, the insurer may by notice to the insured treat the contract as having been **terminated** with effect from the **time of the fraudulent act**.



The Insurance Act 2015



2. If the insurer does treat the contract as having been **terminated**:
 - a) it may **refuse all liability** to the insured under the contract in respect of a **relevant event occurring after the time** of the **fraudulent act**, and
 - b) it need not return any of the premiums paid under the contract.



The Insurance Act 2015



3. Treating a contract as having been terminated under this section **does not affect** the rights and obligations of the parties to the contract with respect to a **relevant event occurring before the time** of the fraudulent act.



Referral to the Insurance Fraud Register

Where **fraud is proven** placing the policyholder's details onto the **Insurance Fraud Register**, where their details will remain for **5 years** from the **date** the **Fraud Condition** is met.





Referral to local police



As part of the investigation process you should seek advice from insurers as to whether or not it is appropriate to refer the matter to the local police for investigation.



Referral to the Insurance Fraud Enforcement Department (IFED)

Where a **serious level of fraud** was discovered it may be appropriate to refer to the IFED and their **referral guide** and **referral form** should be used.



Bring an action under the tort of deceit

Insurers can bring an action to recover their outlay under the **tort of deceit** where insurers have been **deceived**.

In order to succeed in a **tort of deceit** the **test** that applies is the one set out in **Derry v Peek (1889)** which was set out in section A.





The Proceeds of Crime Act 2002



Confiscation Orders

Part 2: England and Wales

Parts 3 & 4: Scotland and Northern Ireland

A **confiscation order** may be made if the defendant is **convicted of an offence** and the court determines that the defendant has a '**criminal lifestyle**' and has **benefited** from his '**general criminal conduct**'.



The Proceeds of Crime Act 2002



Part 5: Civil Recovery, including cash seizure

Provides a scheme to **reclaim** the proceeds of crime through civil proceedings. It permits the recovery of criminal assets **where no conviction has been possible**, for example because individuals avoided conviction by remaining remote from the commission of the crimes from which they benefited or because they have fled abroad.



7. Summary

Summary

Civil Law

v

Criminal Law

What's the difference?



Summary

Definition of fraud



Civil Law

None

Criminal Law

None

Summary

How is 'fraud' decided?

Civil Law



'...it is for the Court to decide what amounts to a fraudulent claim.'

Para 117 Versloot v Gerling quoting from Law Commission Report

Section 12: Remedies for fraudulent claims

99. The section does not define 'fraud' or 'fraudulent claim'. The remedies will apply once fraud has been determined in accordance with common law principles.

For example, see the test for fraud in **Derry v Peek [1889] LR 14 App Cas 337**

Para 99 of the Explanatory Notes to the Insurance Act 2015.

Summary

How is 'fraud' decided?



Civil Law

What constitutes a fraudulent claim? **Three** possible situations were identified:

1. The whole claim may have been fabricated. In which case, the insurer would not be liable to pay the claim.
2. There may be a genuine claim, the amount of which has been dishonestly exaggerated. The insurer is not liable, even for that part of the claim which was justified.

‘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.’ (quote from Lord Hobhouse, The ‘Star Sea’)

Summary

How is 'fraud' decided?



Civil Law

3. The entire claim may be justified, but the information given in support of it may have dishonestly embellished. The fraudulent claim rules **does not apply** to justified claims supported by collateral lies. The claim should still be paid.

Paras 1,9 and 23 Versloot v Gerling [2014] EWCA Civ 1349

Summary

How is 'fraud' decided?



Criminal Law

Crown Prosecution Service Guidance:

The Fraud Act 2006

The Offences

(Section 1) Creates a general offence of fraud and introduces three ways of committing it set out in

(Section 2) Fraud by false representation;

(Section 3) Fraud by failure to disclose information when there is a legal duty to do so; and

(Section 4) Fraud by abuse of position.

Summary

How is 'fraud' decided?

Criminal Law

Crown Prosecution Service Guidance:

(Section 2) Fraud by false representation;

The defendant:

- made a false representation dishonestly
- knowing that the representation was or might be untrue or misleading
- with intent to make a gain for himself or another, to cause loss to another or to expose another to risk of loss.



Summary

How is 'fraud' decided?



Criminal Law

Crown Prosecution Service Guidance:

(Section 3) Fraud by failure to disclose information when there is a legal duty to do so;

The defendant:

- failed to disclose information to another person
- when he was under a legal duty to disclose that information
- dishonestly intending, by that failure, to make a gain or cause a loss.

Summary

How is 'fraud' decided?

Criminal Law

Crown Prosecution Service Guidance:

(Section 4) Fraud by abuse of position;

The defendant:

Occupies a position in which he was expected to safeguard, or not to act against, the financial interests of another person

- abused that position
- dishonestly
- intending by that abuse to make a gain/cause a loss



Summary

When is 'fraud' proved?



Civil Law

First, in order to sustain an action of deceit, there must be proof of fraud, and nothing short of that will suffice.

Secondly, 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

Derry v Peek [1889] LR14 App Cas 337

Summary

When is 'fraud' proved?



Criminal Law

Crown Prosecution Service Guidance:

In each case:

- the defendant's conduct must be dishonest;
- his/her intention must be to make a gain; or cause a loss or the risk of a loss to another.
- No gain or loss needs actually to have been made.

Summary

When is 'fraud' proved?



Criminal Law

Crown Prosecution Service Guidance:

Dishonestly

The definition in *R v Ghosh* [1982] 1QB 1053 applies:

- was what was done dishonest by the ordinary standards of reasonable and honest people?
- must the defendant have realised that what he/she was doing was, by those standards, dishonest?

The question of dishonesty' is one for the jury.

Summary

Standard of Proof



Civil Law

‘balance of probabilities’.

“If a defendant or plaintiff is to allege fraud, then the standard of proof is somewhat higher than that ordinarily applicable to civil matters, but not as high as that relating to criminal matters’.

S and M Carpets Ltd v Cornhill [1981] 1 Lloyd's Rep. 667

Criminal Law

‘beyond a reasonable doubt’.

Summary

Statement taking



Civil Law

Follow Guidance from the Ministry of Justice

‘Practice Direction 32 – Evidence’; para 17 – 25

Criminal Law

‘A person whom there are grounds to suspect of an offence must be cautioned before any questions about an offence,....., are put to them....’

PACE Code of Practice Code C (2012) 10.1

Summary

Main remedies



Civil Law

The Insurance Act 2015

If the claim is tainted by fraud, the policyholder forfeits the whole claim.

12 Remedies for fraudulent claims

1. If the insured makes a fraudulent claim under a contract of insurance:
 - a) the insurer is not liable to pay the claim,
 - b) the insurer may recover from the insured any sums paid by the insurer to the insured in respect of the claim, and
 - c) in addition, the insurer may by notice to the insured treat the contract as having been terminated with effect from the time of the fraudulent act.

Summary

Main remedies



Criminal Law

The Fraud Act 2006

The maximum sentence is 10 years' imprisonment



**Questions from
Last week**

Questions from last week



1. Fraud is as defined under the Fraud Act 2006?
2. Is that minimal as to the total value of the claim or in isolation?
3. What was the name of that case again? Sounds similar to the 'Guismar' v RSA case



Questions from last week



4. Do CILA have an example of a reservation of rights letter wording, or is this something that should be worded with input from the Insurer?
5. What level of proof do the police require?
6. What level of proof do the police require for an Appendix E application?



Questions from last week



7. The other thing with disclosure is that it tells you what was unspent at the date you make the application. You cannot go back to the start of the policy.
8. Do PACE regulations apply to loss adjusters statement taking, i.e. does the loss adjuster have to give an appropriate caution at that start of the statement, in the knowledge the statement is being taken to investigate potential fraud? I know there is divided opinion.



Questions from last week



9. Will the Versloot case give rise to the potential that more insured's believe they can lie on proposal or claim forms? Even though some may not be collateral lies.
10. Do the FCA guidelines on fraud define a "financial service" as the entire claims handling process, or just whether or not, and how soon, the pay-out is made?



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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Thanks for watching

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