

Rising tide

Fraud could become even more a problem in Personal Injury despite the Jackson reforms. **Andrew Mckie**, a barrister specialising in the area, tells **Marek Handzel** why

Barristers are constantly accused of having the commercial nous of Derek and Rodney Trotter.

But this over-cooked generalisation ignores the growing breed of counsel who are tuned into the needs of solicitors and clients alike. They are rapidly re-drawing the stereotypical image of chambers and their tenants.

Andrew Mckie, a former solicitor, forms part of this new stock. After practising on both the claimant and defendant side dealing with allegations of fraud (at Keoghs and Weightmans among others), Mckie pursued a career at the Bar with a firm eye on a gap in the market.

"Having worked on both sides of the fence, I felt that there was a gap in the market for specialist fraud counsel, certainly on the claims side," he says. "Many chambers had specialist teams dealing with insurance fraud cases on the defendant side, but for many years very few – if any – had a specialist team on the claimant side," he says.

As a consequence, the barristers he worked with were mainly PI specialists who carried out a little extra credit hire and fraud work when they could.

The growth in fraudulent claims has risen sharply over the past few years, allowing him to build a practice in the field over the last 12 months, supported in chambers by over ten barristers doing the same type of work, sent in from some 50 firms up and down the country. To date, he has worked on well over 500 allegations of fraud cases.

"95% of my practice deals with allegations of fraud from claimant law firms," he says.

Although there is a lot of insurance fraud in the UK, Mckie says that it is clear, in his experience, that there are many innocent claimants who are accused of fraud.

"Insurers usually have concerns about claims that come from the same address, or an accident management company where there was concern about a previous claim. But I've often seen cases that don't look great on paper,

however when I've spoken to the client they come across well.

"And often cases will turn on the credibility of the claimant, particularly where the insurer is alleging that it is staged or contrived," he says.

He concedes that some claimants do exaggerate traffic accidents or credit hire costs, but the vast majority of fraud is carried out by criminal gangs. And Mckie is concerned that too many claimants are being caught up in the same net, with many unsubstantiated allegations being thrown at them.

Given the elimination of the old CFA arrangement where losing insurers had to pay a 100% uplift on a claimant's costs, fighting many more claims may now become affordable for insurers.

"There will be a lot more trial work, I believe, and the courts becoming more clogged up because of trials. The system we had before was that the majority of cases would be settled to avoid trial costs.

"QOCS means that if an insurer chooses to investigate a fraud case it could spend a lot of money in doing so and it may be that insurers want to plead fraud in order to recover their costs when a case goes to trial and ultimately try and recover it from the claimant, where such an allegation is justified on the evidence."

Concerns

But who will the insurer's lawyer meet in court? The amount of time and money needed to run allegations of fraud cases is considerable. Under the insurance industry's proposed new fee regime, Mckie fears that it will be very hard for firms to run such cases.

He describes the attempts to raise the small claims limit to £10,000 for personal injury cases as "frankly unacceptable".

"It potentially leaves claimants accused of fraud by insurance companies having to represent themselves in court without a solicitor or barrister in court," he says.

“A better way of tackling the problem of fraud would be to seek a path of collaboration

will still be a good number of claimant law firms that pick up allegations of fraud work.

Caring and sharing

A better way of tackling the problem of fraud, says Mckie, would have been to seek a path of better collaboration between the claimant and defendant communities.

The distinct absence of information sharing is a difficulty for all parties, he argues. "It would take legislation for collaboration to take place," he says, "but then maybe that would result in more cases being disposed of earlier for both the insurers and the claimant law firms."

"I'm sure claimant law firms would welcome it because it would mean they would spend less time investigating cases that were going to go nowhere. Often they have to issue proceedings to find out what the case against their client is going to be and sometimes the proper allegations are not received until late in the day and it costs the insurance industry more money as everything at the moment is being litigated," he says.

"In terms of interest of justice that can never be a fair situation. I have a number of cases at the moment where there is potential fraud. Sometimes a case looks like it could be a fraud but someone has been caught up in it as an innocent victim. Should those people be denied representation? Absolutely not.

"But that is what this Justice Secretary intends to do."

Despite the expected drop off in claimant firms dealing with these cases from 31 July when the new fixed recoverable costs system comes into effect, Mckie is confident that there

Next on the Government's hit list

Mckie is an expert on credit hire as well, and believes that the area will become more prominent in the coming months as costs are scrutinised to the last digit.

One tactic used recently by insurers playing tactics with a claim, is to use the Consumer Credit Act to question whether or not the payment of high interest charges renders the credit hire agreements involved in an RTA claim as enforceable. Although the issue fades before it gets to trial, it has served to raise credit hire above the parapets.

"Credit hire will probably be on the Government's hit list, as we move towards proportionality in RTA cases. It's often not the case that takes up the money for the insurer. When you have £30-£40,000 worth of credit hire on an average case, then often it's not the litigants benefitting the most from the litigation, it's the CMCs and storage companies, who have sat behind the referral fees and have been drawing money out of the system." ●

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