

# Covernotes



## Insurance crime does not pay

**The insurance industry is increasingly taking what could be termed a 'lie detector' approach to both insurance claims and insurance proposal form submissions. It is using collaborative approaches and insurance 'forensics' to wheedle out and identify individuals and businesses either seeking to defraud insurers through false or exaggerated claims or pay lower premiums by deliberately lying about their risk.**

Since the Insurance Fraud Register launched in 2012, insurers have honed their skills in relation to fraudulent claim detection and the deliberate withholding of information during policy purchase. Insurance intelligence is readily available, with over 300 insurers, managing 90% of UK premiums, sharing information about those identified as insurance fraudsters.

The industry has a zero-tolerance policy in relation to the criminal offence of insurance fraud. Insurers – and the courts – are coming down hard on those whose nefarious actions result in honest policyholders having to pay more for their insurance – on average £50 each.

Some of the £1bn of fraud detected is carried out by organised crime rings running scams such as 'crash for cash'

– deliberately engineering motor crashes that then enable them to launch claims for injuries to the driver and to 'ghost' passengers who were never in the vehicle.

But there are also many fraudulent claims by individuals. A company director has recently received a 12-year bankruptcy restrictions order, having falsely claimed for the supposed theft of agricultural equipment worth £35,000, which had actually been seized by a creditor. As he had already spent the insurance payout prior to the fraud's detection, he could only repay £1100. Under the court order, severe financial and business restrictions will now be imposed on him until 2021.

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**Despite major advances in insurance fraud detection, an estimated £2bn is still undetected.**

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'Fronting' is another crime. Here, the policyholder takes out motor cover, knowing they will pay a much lower premium than the car's main intended driver, named on the policy as only an occasional additional driver.

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Some insurers are actively defending policyholders in court against fraudulent claims. Frequently, entire claims are repudiated and the fraudulent claimant obliged to pay legal costs, regularly amounting to sums of over £10,000.

Despite major advances in insurance fraud detection, an estimated £2bn is still undetected. New areas of fraudulent activity are also now emerging, often sparked by claims management companies encouraging consumers to claim for mis-sold pensions, noise-induced hearing loss and problems with cavity wall insulation. Around one-in-ten of those contacted by claims management companies have been found to then seek compensation for the reason put to them, despite often having suffered no loss.

Insurance fraud is taken extremely seriously by the police and law enforcement agencies, who recognise that it often funds other serious crimes, including money laundering. Taking a gamble on being caught out is not worth the risk. Prison sentences, bankruptcy notices, orders to pay court charges and blacklisting on the IFR register can all result, with the latter preventing access to insurance policies and many other financial services products besides.

The best way to reduce insurance premiums is not to break the law by lying when answering an insurer's questions, but to have an expert analyse your risk, suggest how to better manage it through what can be simple measures, and present your circumstances accurately and sympathetically. Getting the best cover, in this way, should also help prevent any temptation to try to claw money back from an insurer through a fraudulent claim.

If you need a broker to help you steer clear of investigation and possible criminal prosecution, by providing cover based on an honest appraisal of what needs to be protected, please get in touch.

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## Cyber Crime: who are you letting in through your door?

**Three-quarters of businesses are estimated to be unprepared for a cyber attack despite, in many cases, leaving the door open for cyber criminals to freely enter their systems. Furthermore, with the ever-growing number of connected devices available through the Internet of Things, the number of doors open to cyber criminals is snowballing. Even a connected fish tank has served as an attack entry point.**

Most UK businesses are simply not putting enough budget or effort behind cyber security to minimise the impact of a breach. Despite the added legal pressures to protect their data imposed by GDPR, businesses are seemingly unaware of how at-risk they are, despite many having already suffered an attack.

A Federation of Small Businesses (FSB) member survey in 2016 found 66% of small businesses were cyber crime

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victims. The Government's 2017 Cyber Security Breaches Survey highlighted that 45% of micro-businesses had been breached in the previous 12 months. Expert, Adam Bradley, Regional Vice President of security firm, Sophos, has said of cyber criminals: "With small businesses, it is not whether they are going to get in, but when."

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### **The Government's Cyber Security Breaches Survey 2019 showed just 11% of businesses have purchased specific cyber insurance policies.**

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Significant international names have also displayed cyber security Achilles heels. An attack in 2017, led to data theft from 143m Equifax customers. The WannaCry ransomware attack in May 2017 affected up to 300,000 computers in 150 countries.

The Government's Cyber Security Breaches Survey 2019 showed just 11% of businesses have purchased specific cyber insurance policies. 15% of businesses have considered cyber insurance, but not bought it. In 23% of cases this was due to lack of knowledge, whilst 22% of businesses considered themselves too low-risk.

Many businesses are unaware of how cyber criminals operate and their 'stepping stones' strategy. This is the law of the savannah, where a cyber criminal attacks weak prey, until they can feast on something bigger. The fish tank example is a good one. It had no cyber security and was networked to various systems. Once the criminals were swimming in the tank, they accessed everything else on the network. In such attacks, much larger frauds occur, with raids on bank accounts and data being lucrative and usually ramification-free for faceless cyber criminals. Police division, Action Fraud, says 85% of reported fraud is cyber-enabled.

Brokers are trying to ensure their clients do not become gullible guppies. Cyber criminals operate in key ways. Weak passwords are always vulnerable. Phishing emails and smishing SMS messages with malware-ridden attachments and links can infect computer systems within minutes.

Application attacks focus on software and system weaknesses with no anti-virus protection or sufficient firewalls. Public wifi zones can be insecure, or even hotspots set up by criminals, to catch out unwitting users. The means of committing cyber crime are numerous, as are the opportunities. The motive is often a cryptocurrency payment or the satisfaction of bringing an organisation to its knees, with significant reputational damage.

Social engineering – predicting human error – is something cyber criminals thrive upon. Companies must engage staff in robust cyber security programmes, ensuring they are prompted to think before clicking on a link, hover over an email address before trusting it and be dubious about requests from managers requesting big money transfers into their account.

Cyber insurance has a value beyond repairing the damage done to malware-infected systems, or financing website rebuilds. It can help deliver training, ensure key elements of protection exist and better manage a business's overall cyber risk. After a broker's assessment, key strategies can be employed, to avoid a business becoming yet another cyber statistic.

If you need help with cyber strategies, get in touch. Remember, it is not if you will be attacked, but when.

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## The staying power of bankruptcy and its insurance implications

**Q1 2019 has seen the highest underlying level of company insolvencies of any quarter since Q1 2014, with 4187 company insolvencies – a rise of 6.3% since Q4 2018 and an increase of 5.1% on the same quarter last year. Meanwhile, Q1 2019 has seen 31,257 individual insolvencies - up 15.9% on Q1 2018. But what does insolvency – corporate or individual – mean in insurance terms?**

The answer is to be found in the area of material facts – those things of which you should make your insurance provider aware at the time of taking out cover. Whilst crimes spent under the Rehabilitation of Offenders Act 1974 do not need to be mentioned to your insurer, bankruptcy, CCJs and insolvencies – whether of the individual(s) seeking the cover or of a business of which they were an owner or a director - do need to be declared and are never wiped off the slate so far as insurance is concerned.

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Whilst this may seem unfair, the thinking behind it is that a fraudulent claim could be made by someone seeking to pay off debts. However, insurance – in the form of employer and public liability insurance - is either legally required or an essential form of protection for an employer, or those conducting their work in the public domain.

Tradesmen also need to have relevant covers, in case they damage a customer's property and many need to protect valuable tools as well. Many professions require professional indemnity protection. And there are many other covers that may be required, according to the business being run.

In this scenario, it might be tempting to conveniently forget a bankruptcy, an insolvency, or a CCJ. Some people may, alternatively, try to hide behind a business as a shadow or de-facto director, registering their new business in a relative or friend's name, to gloss over their financial past. Neither will work. Should a claim be made, the insurer is more than likely to discover the individual or previous company's past, given the ease of access that is available to financial records. This will, in all probability, lead to them declining the claim, on the basis of failure to declare a material fact.

Yet, go without the cover and the financial ramifications are huge, particularly if the business's actions harm, or cause the death of, another person. So, what is the answer?

The best way forward is to be honest and frank about the financial past. From there, the person or business concerned should work with an insurance broker that has wide access to the insurance market and who can present their client's case sympathetically to an insurer.

Many insolvencies occur through no real fault of the company or individual suffering them. We have recently seen this with the liquidation of The Good Food Chain, cleared in the NHS sandwich listeria case, but still forced into liquidation, due to the business interruption and negative publicity that surrounded the outbreak. Insurers do often listen to brokers who can put forward reasons for a bankruptcy, or who can demonstrate that their client is committed to not experiencing déjà vu and going down the same road again.

If you need to insure your business but are struggling to do so because of your financial history, please get in touch and allow us to discuss the options with you. Cover may be available, if you get the right broking assistance.

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## Health & safety breaches: how the punishment fits the crime

**Punishments are not just fitting the crime but also the potential crime when it comes to health and safety. Additionally, the number of directors and managers prosecuted for breaches has more than doubled in recent years. And, in the last quarter of 2017 and Q1 last year, around one-in-ten prosecutions involved the personal prosecution of a director or senior manager.**

This is not all. In 2014/15, the Health and Safety Executive pursued 606 prosecutions, resulting in fines of £16.5m. In April 2017, 21 prosecutions, that month alone, resulted in fines of £8.3m, despite some being as low as £2000. The average fine in 2014/15 was £25,000. In April 2017, it was £398,000. In May 2018, £375,000.

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### 93% of HSE's proceedings in 2016/17 resulted in guilty verdicts.

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Why? Well, new HSE Sentencing Guidelines were introduced in February 2016, becoming the reference point for both Magistrate and Crown Court judges presiding over health and safety cases.

These guidelines now categorise health and safety breaches, allocating a suggested fine according to where the business sits within a matrix. Firstly, the defendant's company turnover can be in one of four brackets. Within each, there are levels of fine according to the degree of culpability – ranging from low for minor isolated incidents, to very high – where the law has been deliberately breached or disregarded.

Then there are four further determinants of fine, based on

the seriousness of the harm risked. Death is naturally in the highest bracket. But businesses should note boxes labelled high, medium and low “likelihood of harm”. In other words, a guilty verdict can be handed out, without actual injury or illness.

Once an apt level of fine is determined via the matrix, mitigating or aggravating circumstances are considered. Mitigation includes good cooperation with the investigation. Aggravation includes obstruction or deliberate incident concealment.

This can have a devastating financial impact. A £1.2m fine was imposed when an HCl burner exploded, resulting in a grazed knee for one worker and a minor caustic burn to another. A £1.9m fine punished a company when an agency worker suffered a friction burn whilst cleaning.

93% of HSE's proceedings in 2016/17 resulted in guilty verdicts. What businesses often fail to recognise, however, is that a custodial sentence for a director, or other person with authority over health and safety, is also a possibility. Neglecting legal duties, or deliberately not addressing poor health and safety scenarios, could lead to imprisonment.

In this new health and safety sentencing climate, we can proactively assist a business, in various ways. We can put the right level of protection in place through relevant insurance cover for your liability requirements, but also through Directors & Officers insurance, to assist with a defence, should you be prosecuted.

Our active risk management options include a Regulatory Defensibility Review – much more than an audit – to examine how your business might perform during a regulatory investigation.



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We can also provide access to a seminar-based Regulatory Mock Trial, highlighting how the judicial process works in health and safety cases, using real practising barristers and a jury. Another option is Accident/Incident Investigation Training, bespoke to your business and either focusing on a previous incident you have seen, or becoming a role play of a real-time incident at your work – a great dynamic to see how your staff might respond.

And then there is Contractor Management Training,

designed to manage the significant risk that most contractors present for a business.

Health and Safety crimes are being punished with eye-watering levels of fine and prison sentences. Contact us without delay and get your house in order.

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## Looking for insurance? Tell the complete story and see the benefits

**The 21st century world is flooded with 'personalisation' options; initials, embossed fashion items, must-guess-who-is-driving number plates, pizzas with just your choice of topping and nobody else's. Yet, whilst business owners are building their own burgers with zeal, they rarely appreciate that they can have a major influence when it comes to shaping their own insurance policy, by ensuring they thoroughly tell their own individual story.**

Conveying a business's story is the key to being offered a competitive premium and highly relevant levels of cover. Think of it in terms of Miss Congeniality. Insurers have thousands of entrants to their 'beauty pageant' and have to judge solely on what is in front of them - the visual evidence with which they

are supplied. The better and more complete the story, the easier it is to receive an accurate quote.

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**What were the reasons? What measures have been taken to prevent a repeat of this? How compliant is it? Does it train its employees to manage risk?**

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This takes the form of hard facts and figures relating to the business's risk performance. How many claims has it made?

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What were the reasons? What measures have been taken to prevent a repeat of this? How compliant is it? Does it train its employees to manage risk? A good broker will ask these probing questions, to ensure the full picture is built. To have not disclosed a fact because you were not asked a particular question, could invalidate a policy or even lead to a claim being turned down. Insurers want to have the full story, with no missing chapters.

A few years ago, the answers to these questions may have been enough for a business to be offered an insurance package that did the job. Now, thanks to less certainty in the economy amongst other things, beauty pageant candidates have to stand out from the crowd. The judges have become more critical, more demanding and more selective in providing terms.

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### **Presenting clients to an insurer in a positive manner is one of the skills of a good broker.**

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Businesses need to work with their broker to make proposals attractive, honestly appraising risks within their business and explaining as much as possible about them. Detailed analysis of their different exposure to risks is required, not just a broad brushstrokes overview.

Compelling narrative – becoming so important in marketing – is just as vital in insurer presentations. It is not all about demonstrating compliance – that should be a given. It is about going the extra mile, drilling right down into the data, the descriptions, the whys and the wherefores of risks and the

sub-plot - what everyone within the business is doing to keep risk at bay.

But most businesses do not have a command of the right language for this narrative. They often do not know how to engage the insurer with a strong first page, an appealing plot and what the insurer regards as the happy ending. This is where a broker really becomes worth their salt, if they are proactive and well aware of the required hook to get a particular insurer to sit up and positively 'want' to insure the risk.

Presenting clients to an insurer in a positive manner is one of the skills of a good broker. Having the insurer contacts to whom to sell the business's story is where the broker becomes the 'literary agent', securing a deal for their client. Having the understanding essential to all elements of this process comes from face-to-face client meetings, site visits, an ongoing dialogue and the ability to soak up detail like a sponge and translate it into a strategy are all other key strengths of a good broker, that you should look for.

Way before it comes to renewal, businesses need to be realistic and question whether they have really gone all out to become the winner of the 'beauty parade'. If the answer is 'no', they should question why their broker has not communicated their efforts to manage risk sufficiently well and, if needs be, seek out a broker who can. The prizes – significant insurance savings, better levels of cover for key areas, choice of insurer and a virtuous circle created by ever-improving risk management are well worth competing for.

To discover how we work to engage with insurers on your behalf, please get in touch.







## Wimbledon and the weather

**The Wimbledon Tennis Championships captivated tennis fans worldwide, whilst serving up around 54,000 balls, 140,000 bowls of strawberries, 10,000 litres of cream and even 5,000 bananas for players to munch on between games.**

**In 2006, when they faced a £1m payout due to rain, it was said that they were insured.**

What is less well-known is whether or not Wimbledon has event insurance (as featured in our spring 2019 edition), to protect itself against the unpredictable British weather. Back in 2004, it came to light that tournament organisers had stopped buying insurance to protect against poor weather. They chose instead to run the risk of having to pay out a full refund to ticket-holders, should they see less than an hour's play and refund half the ticket price should holders see less than 2.5 hours play.

In 2006, when they faced a £1m payout due to rain, it was said that they were insured. Since 2009, of course, Centre Court's retractable roof has reduced the likelihood of Sir Cliff Richard singing 'neath an umbrella, so the decision-making may again have reversed.

Not having insurance against the weather is something few less deep-pocketed or charitable events that are dependent on good weather can afford to even consider. This is why there is a range of event insurance options available for those not making a tidy profit from selling 140,000 bowls of strawberries and cream, amongst many other things.

If you wish to be certain you are protecting your event this summer, and have no retractable roof to which to turn, please get in touch to discuss our insurance options.

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