



Financial Rights

LEGAL CENTRE

FACT SHEET



CALL THE
INSURANCE
LAW SERVICE
ON
1300 663 464

Financial Rights Legal Centre Inc.
ABN 40 506 635 273

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WHAT CAN I DO IF I AM INVESTIGATED ON AN INSURANCE CLAIM?

This fact sheet is for information only. It is recommended that you get legal advice about your situation.

Investigations by insurers can be very upsetting and intimidating. This fact sheet gives you information about your rights and responsibilities. Also see our [Know Your Rights Checklist: Insurance Interviews](#).

CASE STUDY

Greg's car was stolen at night. He had parked his car outside a racecourse when he went to see the horse races. After the races, he went to find his car and his car had disappeared. After searching the area for the car, Greg contacted the Police to report the car stolen. Greg claimed on his insurance with BIG INSURANCE COMPANY.

BIG INSURANCE COMPANY is now asking Greg for a lot of personal information including phone records, TAB records, loan statements and permission to talk to Greg's family and friends. The investigator wants to meet with Greg at his home and the meeting could take 3 hours or more. Greg does not want an investigator in his home.

Insurers are always on the lookout for fraud. The insurer will usually not tell you they suspect you of fraud. Instead you will often be told that your claim is being investigated. If you are being investigated, get legal advice immediately.

WHAT DOES THE INSURER HAVE TO PROVE IN A FRAUD INVESTIGATION?

Fraud occurs when a person seeks to obtain a benefit under an insurance policy by deception. It may involve deliberately damaging insured property and then making a claim, the deliberate insertion of false information in a claim form, and/or knowingly making false statements to the insurer to mislead the insurer. A fraudulent claim may be made in a variety of ways so this is not an exhaustive list.

Fraud is a serious allegation and the onus of proof is on the insurer to prove the allegation. To establish fraud the insurer needs to prove that more likely than not that you intended to deceive the insurer or acted with reckless indifference as to whether or not the insurer was deceived.

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If fraud is established by the insurer then it can reject your insurance claim and void your policy. This means you no longer have insurance cover. In serious cases, the matter may be referred to the police to investigate and you may be charged with a criminal offence.

Both parties to an insurance contract have the obligation to act with utmost good faith towards each other. Where the insurer does not have sufficient evidence to prove fraud but they believe that you have provided inconsistent information they may try and reject your claim on the basis of a breach of the duty of utmost good faith.

According to section 56 of the *Insurance Contracts Act 1984*, the insurer cannot rely on fraud if the fraud was minor and it would be unfair for the insurer to reject the entire claim. The insurer can reject any part of the claim that is made fraudulently.

Similarly, Section 54 of the ICA says that the insurer cannot rely on an act or failure to act, or statement or misstatement on your part, if your words or conduct did not contribute to the loss or prejudice the insurer's interests.

REQUESTS FOR PERSONAL INFORMATION

Most insurance companies have subscribed to the General Insurance Code of Practice.

Under section 7.3 of General Insurance Code of Practice, insurers have agreed that they will only take into account "relevant information" when deciding on your claim.

The General Insurance Code of Practice is available at <http://www.codeofpractice.com.au/>

In the context of fraud "*relevant information*" can be interpreted very widely. When investigating fraud, it is normal for the insurer to request personal information such as:

- Financial records including bank statements, credit card statements, loan statements, lines of credit and mortgage documents;
- Telephone records; and;
- Criminal history.

If, for some reason, you are unable to provide information that the insurer has requested you should write to the insurer setting out why you are unable to provide the information and what attempts you have made to get it. You **do not** have an obligation to:

1. Obtain information held in another person's name
2. Get your friends and relatives to answer questions from an investigator

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You should complain in writing or verbally to the insurer's internal dispute resolution section if you think the information requested is excessive or irrelevant. If the internal dispute resolution section does not resolve your dispute you can lodge a dispute with the Financial Ombudsman Service.

IMPORTANT: If the insurer requests information and you refuse to provide it there is a risk that the insurer will reject your claim on the basis that you have not complied with the duty of utmost good faith.

WHAT IF THE INVESTIGATION IS TAKING TOO LONG?

The General Insurance Code of Practice sets out time limits that the insurer should comply with for resolving claims.

Section 7.16 through 7.18 General Insurance Code of Practice states:

7.16 Once we have all relevant information and have completed all enquiries, we will decide whether to accept or deny your claim and notify you of our decision within ten business days.

7.17 Our decision will be made within four months of receiving your claim, unless Exceptional Circumstances apply. If we do not make a decision within four months, we will provide details of our Complaints process.

7.18 Where exceptional circumstances apply, our decision will be made within 12 months of receiving your claim. If we do not make a decision within 12 months, we will provide details of our Complaints process. Exceptional circumstances are defined to include where there is fraud or where fraud is reasonably suspected. As a consequence the insurer may deem that the four month time limit is not applicable.

If you think an investigation is taking too long (as a guide longer than a month), you should complain to the insurer's internal dispute resolution section. You should say something like:

"I wish to raise a dispute about the delay in my claim. I want your internal dispute resolution department to review my claim and respond in writing"

If the internal dispute resolution section does not resolve your dispute within 45 days you can lodge a dispute with the Financial Ombudsman Service Australia (FOS) See [Factsheet: Dispute Resolution](#). FOS is a free dispute resolution service.

If you think the delay is unreasonable you can request that the insurer pay interest under section 57 of the Insurance Contracts Act from the date on which it became unreasonable for the insurer to withhold payment of the claim. FOS will decide whether or not the delay was unreasonable.



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INTERVIEWS

Where an insurer is investigating a claim they may request that you take part in an interview. You can request that the interview be held in a neutral location.

If you are being interviewed by an investigator, some tips include:

- Arrange for the interview to be somewhere private but not at your home. This makes it easier to leave if you need to.
- Set a maximum time for the interview in advance of say 1 hour. Once this time is up leave.
- Do not guess an answer – if you don't know the answer say "I don't know" or "I don't remember" (whichever applies)
- Try to remain calm.
- Take your time to think through questions before answering them.
- If you are unsure of your answer to a question make the investigator aware of this.
- Make it clear to the investigator if you are estimating times or other details.
- If English is your second language, or you feel more comfortable communicating in a language other than English, you can request an interpreter.
- You can bring a support person.
- Ask for a break if you need one.
- If your interview with the investigator is being recorded, ask for a digital copy or transcript of the interview. You can also record the interview.
- Do NOT sign anything you are unsure of.
- Seek legal advice before and after the interview.

Insurers may sometimes request that third parties, such as friends or family members, who aren't insured for the purposes of the claim, agree to be interviewed. Insurers cannot force third parties to agree to be interviewed. Insurers cannot rely on the refusal of a third party to be interviewed as a basis to reject your claim.

WHAT IF MY JOINT CO-INSURED MADE A FRAUDULENT CLAIM ON OUR POLICY BUT I WAS NOT AWARE OF THE FRAUD?

According to the common law the interests of joint co-insured are treated as one and the same. This means that the claim will be taken to have been made fraudulently even if you were not aware of the fraud.

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WHAT CAN YOU DO IF THE INSURER REJECTS YOUR CLAIM ON THE BASIS OF FRAUD (OR BREACH OF DUTY OF UTMOST GOOD FAITH)?

If the insurer rejects your claim on the basis of fraud, you should request their reasons in writing under section 7.19 of the General Insurance Code of Practice

You should also request a copy of all evidence the insurer is relying on including expert reports, transcripts, and audio recordings. If the insurer refuses to provide the evidence, you can rely on sections 7.19 and 14.2 of the General Insurance Code of Practice, and also on the duty of utmost good faith, to argue that they should provide it.

Under section 14.4 of the General Insurance Code of Practice, where a claim has been or is being investigated, an insurer may decline to release information and/or reports, but must not do so unreasonably. If you believe that an insurer is declining the release of information unreasonably, then you should request written reasons from the insurer and request a review of the decision.

If you wish to have the insurer's decision reviewed concerning your claim, you should make a written complaint to the insurer's Internal Dispute Resolution section. In your complaint you should try to address all of the concerns and inconsistencies that the insurer has set out in their letter rejecting the claim and point out any statements of yours that have been taken out of context by the investigator.

If your complaint to your insurer's Internal Dispute Resolution Department has been rejected, it is recommended that you then proceed with raising a dispute with the Financial Ombudsman Service because:

1. It is free
2. It is independent
3. It can make a determination that is binding on the insurer. This means if FOS decides the insurer has to pay then it has no choice.
4. You don't have to accept the determination if you don't want to. If the decision goes against you then you can still go to Court to pursue your case.

To lodge a claim call FOS on 1800 367 287 or visit their website www.fos.org.au to get the relevant forms.

IMPORTANT: YOUR TIME LIMIT TO LODGE A COMPLAINT IN FOS WILL EXPIRE ON THE EARLIEST OF;

- 2 years from the date of the response from the insurer's Internal Dispute Resolution Department; or
- 6 years from when you first became aware or should have reasonably



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become aware of your loss (e.g within 6 years from the date of the motor vehicle accident, theft or flood)

NOTE: If you have received a letter of rejection from the insurer's IDR department, the two year time limit will apply.

In FOS, a Referee decides all disputes where fraud has been alleged. The Referee may request additional information from you or the insurer and, where appropriate, interview you or other willing witnesses in person.

I HAVE LIED TO MY INSURANCE COMPANY

If you have not been truthful in providing information to your insurer, your ability to successfully claim on your insurance policy may be affected and your insurance policy may be cancelled. Depending on the extent of the deception, it may also have further implications, including criminal charges. The insurer can't initiate criminal proceedings against you but may refer it to the Police to take criminal action against you.

NEED SOME MORE HELP?

Need some more help? Call the [Insurance Law Service](#) on 1300 663 464 for free legal advice. See [Fact Sheet: Getting Help](#).

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