

Arson Detection - The Loss Adjuster's Central Role

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October 1994

The law views arson as a very serious act. In England, Wales and Northern Ireland malicious fire raising - arson - is covered by the Criminal Damage Act 1971. In Scotland the offence is termed 'deliberate fire raising'. Section 1 (3) of the Criminal Damage Act 1971 states that:

(3) An offence committed under this section by destroying or damaging property by fire shall be charged as arson.

The sentence on indictment under s. 1 is up to 10 years imprisonment but in the case of arson (under s. 1 (3)) the sentence can be up to life imprisonment because arson is considered capable of destroying property and putting life at risk. As an aside, it is interesting to note that in the Japanese criminal Code, arson is still among the most serious of crimes and entails the death penalty, based on the grounds that fire can cause serious loss of life. This penalty has not been applied in recent years although during the Edo period, which preceded modern Japan, the penalty for arson was always burning at the stake!

Fraudulent arson

There are many reasons why fires are set deliberately but the one of potentially greatest interest to the loss adjuster is fraudulent arson. Fraudulent arson, or arson for gain, is where a claim is submitted to insurers following a fire caused deliberately by the insured. The ABI has stated that fraudulent fire claims are thought to represent between 10% and 20% of all fire claims.

Unfortunately, there is a little evidence to prove or disprove the percentage of fire claims thought by the ABI to be fraudulent. Applying the 20% estimate to the latest ABI figures suggests that fraudulent arson over the past 5 years has cost insurers £862 million calculated as shown in Table 1.

The chartered loss adjuster.

The Chartered Institute of Loss Adjusters (CILA) is the sole professional body representing individual qualified loss adjusters in the UK. The Institute provides technical support to practising adjusters and an examination structure offering specialisations in the disciplines of the building, finance, misappropriation, liability and contractors. The Associateship qualification (ACILA) is essentially a demanding second career examination as the minimum entry for admission to the finals is a professional qualification from one of a number of related institutes. CILA also has a code of conduct in which the impartial, independent approach of the loss adjuster is a fundamental rule.

On the basis that 10-20% of fire claims are thought to be the result of a deliberate act of connivance by the insured then conversely 80-90% are not the result of any deliberate act by the insured. Insurers must therefore be sensitive in their approach to the investigation given that a large proportion of arson claims are thought to involve innocent insureds.

An adjuster's approach also involves the exercise of impartial scepticism, keeping an open mind and constantly re-assessing all the information coming from the investigation.

The adjuster should show professional concern and courtesy while pursuing all necessary enquiries and be aware that claims handling is a customer service.

During the claim assignment there are essentially two questions that an adjuster needs to answer:

- Is the loss covered by the policy? And if so
- How much should be paid?

Other considerations such as possible recovery aspects are involved but for the purposes of fraudulent arson it is the first question which must be addressed.

Conflicts at the scene

There is a heavy responsibility placed on the adjuster during a fire investigation. The results of the investigation depend on site preservation and evidence integrity but these factors often conflict with the demands forthcoming from the insured in terms of agreeing to salvaging operations and debris removal. There will also be requests for payment on account and business interruption considerations - at a time when the adjuster is still not in a position to confirm that the insured had no involvement in the fire.

To do this it is vital to properly identify the cause of a fire, although there is a tendency for some arson fires to be incorrectly attributed to 'smokers materials', 'electrical appliances and installations', 'unknown'. The adjuster's initial assessment of the cause should involve a close consideration of all the natural and common causes of fire. If it is difficult to decide upon the cause or if the fire appears to have been started deliberately, the adjuster should call in a forensic scientist immediately.

Conflict can also arise when dealing with other people at fire scenes. The number of interested parties can be considerable and the adjuster may be involved with all or some of the following:

- The insured, insured's customers, insured's broker, and insured's suppliers
- Fire brigade and police
- Tenants and landlord
- Forensic scientist and forensic accountant
- Health and Safety Inspectorate
- Bankers and shareholders
- Third parties, their insurers and adjusters
- Utilities
- The VAT inspector

Reservation of insurer's rights

From the moment they are instructed to deal with a claim, adjusters are pressured from all directions. The insurers will want to know whether the claim is genuine and what reserve should be established, while the insured will be pressing for advice on salvaging and interim payments. Until the investigations produce an indication of the cause and discount or confirm involvement of the insured, the insured should be advised in writing that the adjuster's involvement does not affect or waive insurers' rights under policy.

For it is for the insurer to prove that the insured started the fire or caused it to be started. *Slattery v. Mance* (1962) held that once it was shown that loss was caused by fire, the plaintiff had made out 'a prima facie' case on the onus was therefore upon the insurer to show that, on balance of probabilities, the fire was caused or connived by the plaintiff.

Whereas the police in their investigations are obliged to satisfy the criminal onus of proof, ie 'beyond reasonable doubt', insurers only need to prove on a 'balance of probability' basis. However, there is a 'heavy burden of proof which rests on the insureds', according to J. Neill, who said, in *Watkins v. Legal and General* (1981):

'I should not make a finding that Mr Watkins deliberately set fire to this

warehouse unless I am satisfied that there is a high degree of probability that he did so.'

Fire brigade and police involvement

The fire brigade's primary duty is to protect life and property so occasions must therefore arise when the extent of fire damage increases because the fire brigade is concentrating on saving life or protecting adjacent high value property. Unfortunately evidence at the scene may also be disturbed during damping down and post fire activities.

After a fire the fire brigade is required to produce a report which should include the supposed cause. However, in general, the fire brigade does not:

- Assess the state of a business at the time of a fire
- Have an obligation to co-operate with insurers
- Have adequate resources to salvage property and preserve evidence

If the fire brigade suspects arson the police will be involve. Arson is a criminal offence and the police are the only organisation empowered to investigate and prosecute. However, the police are not trained in fire science and need to rely on reports either from scenes-of-crimes officers or forensic investigators. Again, there is no obligation on the police to assist or co-operate with insurers and in many cases the police have a policy of non-response to enquiries from insurers and loss adjusters. This follows guidelines issued by the Association of Chief Police Officers in 1982 which recommended that no action should be taken on a wide range of routine enquiries from insurance companies or loss adjusters, while enquiries relating to non-routine matters or possible fraudulent claims should be 'dealt with as necessary'.

Co-operation with brigade and police

It is vital for the adjuster to seek a close and confidential working relationship with the officers involved. However, it should be recognised that even though criminal charges may have failed against the insured it may still be possible for insurers to successfully defend the civil case. For example, in *Blackmans Glass v. New Zealand Insurance* (1991) the insurers alleged that the fire had been started deliberately by two members of the insured company. This allegation was made despite the fact that criminal charges against both men of conspiracy to commit arson had been dismissed by magistrates at the committal in January 1990.

The earliest case of *S & M Carpets v. Cornhill* (1982) also resulted in a successful defence for the insurers despite the fact that the CID decided not to prosecute two key suspects, one of whom was the insured company's managing director.

Adjuster's investigations

Investigations by the adjuster can be briefly considered under the headings of cause, motive, opportunity, means of investigation and extent of loss.

Cause

Early in the cause investigation the adjuster will decide whether a forensic investigation should take place but the adjuster should retain control of the cause investigation. A team approach with the adjuster and the forensic scientist working closely together will enable the forensic scientist to gain the information required while at the same time enabling the loss adjuster to maintain full awareness of the cause investigation.

Motive

Possible motives with regard to arson by the insured include:

- Reduced performance of business
- Requirement to upgrade machinery
- Requirement to change and modernise premises

Loss adjusters must secure the accounting records as soon as possible, along with the insured company's insurance files, not only for the current period of insurance but also for the previous 3 years or so. These files will reveal the insurance history and the extent of the coverage so any discrepancies between the insured's copy of the current policy and the information from insurers will be identified early in the investigation. Previous correspondence and policies will also assist in producing information relating to sum insured levels and claims history.

Opportunity

The adjuster's investigations into the insured's opportunity to commit arson can be of vital importance not only in terms of the insurance claim but also to support the police investigation. Careful questioning of all parties together with detailed enquiries into any significant changes in behaviour must be conducted.

The following can provide information to assist a reconstruction of events, verification of fire development and spread, timings in general and security in particular:

- Alarm devices and circuitry
- Clocks, flexitime/clock card systems
- Vehicle tachographs
- Premises and mobile telephone call sheets
- Electrical wiring and fuses
- Memory chips in alarm and other control panels
- Debris and partly damaged property
- Fire brigade, police and central station records

Care should be taken to avoid prejudicing the integrity of anything that might be used in evidence.

The police may be able to assist with their records and knowledge. This issue is extremely sensitive but potential fraudulent arsonists should be aware that if they are already known to the police that information may well enter the domain of the adjuster's knowledge. It is clearly of paramount importance that any information received in such a fashion is dealt with confidentially by the adjuster in the right direction rather than form the basis for rash comments or premature and unsound policy repudiation.

Means of investigation

The means used should serve the detection as well as resolution aspects. A full photographic record should be made shortly after arrival at the site but this information should not be relied on to the detriment of scene preservation. This is especially important where minute objects of considerable significance such as electrical wiring and items contaminated with accelerant may still be in the debris.

If possible, a video recording should be made at the earliest opportunity. At the time of recording the significance of the areas being recorded may not be clear. However, if a full video record is prepared it can be referred to as other information becomes available during the investigation. Statements recorded in writing at the scene as soon as possible after the incident with careful attention to timings and whereabouts should also prove helpful.

Extent of loss

Site preservation will not only enable a comprehensive forensic investigation to proceed but also produce valuable information relating to the quantities and quality of property destroyed or damaged in the fire. As a forensic investigation proceeds the adjuster should 'shadow' the forensic scientist and produce a plan indicating the identity, potential quantity and any identifying features of the

debris. A particular characteristic of some fraudulent arson fires is that sub-standard or out-of-date stock has been laced in the building and quite often sufficient debris is available to reveal inconsistencies against the claim submitted.

Financial aspects

If the policy also covers business interruption then it is likely that the adjuster will be looking closer at the insured's financial history and potential, supplemented by independent financial analysis and comment if necessary. However, the involvement of specialist forensic accountants can give the insured the impression that the claim is suspect. This is especially so if the accounting personnel are not sensitive to the fact that many claimants are genuine. Therefore enquiries need to be conducted in a sensitive and courteous manner. As with all outside specialists the brief for the accountant should be clearly set at the time of instruction to avoid unnecessary activities, duplication and cost and there should be regular meetings with the loss adjuster.

In addition to the micro financial aspects the adjuster should consider the macro issues relating to the insured's markets and competitors. It is often future prospects of a business that are of more significance than historical accounts.

The following accounting and management information can prove useful in determining the financial health of the business:

- Audited accounts, auditors reports and correspondence
- Bank statements, debentures and guarantees
- Board meeting minutes
- Budgets, cashbooks, cashflow forecasts, cheque book counterfoils and paying in book counterfoils
- Company register
- Correspondence with authorities over corporation tax, PAYE and VA
- Payroll summaries and record
- Stock check papers

Simple accounting ratio analysis can give indication of trends such as rate of stock turnover and solvency. If the insured refuses to provide information considered necessary by the adjuster the policy condition often termed 'insurer's rights following a claim' can be referred to. The reason for this condition is generally explained as being to the benefit of both the insured and insurers in terms of damage minimisation, salvaging etc. However, an important purpose as far as the adjuster is concerned is that this condition can be used to support action to:

- Secure the premises
- Gain access to all such property that is required for a full and objective investigation
- Establish any involvement of the insured

The relationship between the insured company and its bankers should be looked at, especially with regard to the provision of overdraft, finance, capital and security requirements during the previous years. Experience in recent years has shown that banks have not always exercised their traditional prudence. Lending has sometimes been to excess and often at levels well beyond the ability of a business to meet repayment and interest charges. The basis of asset valuation as security for finance should be checked for authenticity and accuracy. The way in which the bank's interest has been noted in the policy should also be examined.

The situation where the bank has become a named insured on the policy is of particular concern where a claim appears to result from arson by the insured. The case of *Samuel & Co. v. Dumas* (1924) held that:

'...if two persons insured under the one policy had interests that were separate and distinct, the wilful misconduct on one would not affect the rights of the other.'

Therefore, if a bank becomes a named insured on the customer's policy, it is regarded as a co-insured and would not suffer from the wilful misconduct of its customer.

Adjuster's central role

Responses to a survey of UK insurance and re-insurance companies conducted by the writer confirmed that the loss adjuster continues to be regarded as fulfilling a central role in the investigation of claims. However, recognising the need for continuous improvement, the CILA examination syllabus is to be extended to include arson and fraud topics.

The CILA has recently decided to encourage qualified members to participate in the activities of their local fire liaison panel. Hopefully this initiative will help to improve levels of communication between adjusters, fire brigade and the police and provide opportunities to disseminate information to CILA members.

The early formation of a multi-disciplinary team with the adjuster co-ordinating and working closely with the forensic scientist, accountant and solicitor helps to efficiently conclude genuine claims. Fraudulent arson claims can be identified at an early stage and evidence properly collected. This should benefit not only the defence of a fraudulent claim by insurers but could also assist police in the prosecution.

A prompt and co-ordinated approach, including close liaison with the fire brigade and police, should become the norm as it can only be of benefit to genuine policyholders and insurance companies.