

# **Afternoon Session**

## **Fraud and Insurance - The Legal Remedies**

### **1. "FRAUDULENT ARSON AND THE IMPACT ON INSURANCE**

**by C. Douglas Woodward, The Arson Prevention Bureau**

I will attempt to give you an outline of the current situation in respect of fraudulent arson and to suggest ways in which the insurance industry, with help from others, can halt its rising incidence.

First of all one has to say that the statistical information on fraudulent arson - indeed arson in general - is scanty in the extreme.

Almost the only reliable arson statistics we have are that fires attended by fire brigades and believed by them to have been started deliberately have been rising year by year from the middle of the 1960's to reach a peak of some 24,000 incidents in the UK in 1990.

These figures are for arson fires in general and we believe that the majority are associated with vandalism and theft. Children and adolescents are frequently involved.

Until recently we have been saying that fraudulent arson could possibly account for around 10 per cent of all arson. This estimate was never based on accurate data but it accorded with the belief of insurers and bore some relationship to the 14 per cent figure believed to be the proportion of arson for gain in the United States with its probably worse record of this kind of arson.

To help correct the statistical gap the Arson Prevention Bureau has enlisted the aid of loss adjusters throughout the UK to send us reports on all the arson fires they attend on behalf of insurance companies and from the limited returns we now have it would appear that the percentage of fraudulent arson fires compared with all arson is substantially higher - at least 20 per cent and probably more than that.

The Association of British Insurers estimated that arson fires as a whole accounted for half of last year's billion-plus pay-out on fire claims. That is £500 million of property destroyed deliberately and, based on our latest information, at least £100 million of that went in fraudulent claims.

Arson also kills or seriously injures more than 2000 people a year.

If our statistics are thin, those in most other countries are worse. As the President of the European Arson Prevention Institute I work closely with other countries on the European mainland and in Scandinavia and while they can all provide a total figure for their annual fire losses, few can give a breakdown for arson, let alone for the fraudulent element of it.

However, the Munich Re, in a report issued in 1982, said that between a quarter and a half of all the insurance fire losses worldwide were attributable to arson and all the signs are that the position has deteriorated since then. My associates in Europe tend to believe that fraud is a substantial element in their arson losses.

It is reasonable to assume that in a period of economic recession there is likely to be some increase in the number of fraudulent arson fires. It seems more than likely that today we not only have the problem of the hardened professional fraudster but that fraudulent claims are now also being made by individuals who would otherwise appear to be honest members of the business community. Since we learn that the number of bankruptcies is still at a very high level we need to take all the steps available to us to counter the threat which the future certainly continues to hold.

The kinds of fraud against which insurers have to protect themselves and their honest policyholders include the deliberate criminal act on the part of the policyholder or his agent of setting fire to his insured building; the fraudulent spreading of an accidental fire, for example by introducing a flammable liquid or even by delaying a call to the fire brigade; increasing the value of the claim by exaggerating the value or amount of property destroyed or including items that were not present in the fire; combinations of these different aspects of fraud.

The Arson Prevention Bureau was set up as a joint initiative by the Home Office and the ABI some 18 months ago. We identified a number of areas for urgent attention, one of which was that of fraudulent fires. We brought together a group of experts: solicitors specializing in this subject, insurers and loss adjusters, fire service, police, and forensic accountants.

The main fruit of their labours has been the compilation of a detailed guide for insurers on how to prevent and resist fraudulent fire claims. This document will be published very shortly under the title of "Fraudulent Arson: Insurers' Considerations".

The introduction makes the point that the economic climate may place financial pressure on many businesses and that accordingly an assessment of the financial position of a business and its future viability can indicate whether an insured business may be at risk from arson by the policyholder.

The guide thus addresses the problems first from the underwriting point of view - that is to assess whether the business is acceptable, and then goes on to outline a programme of action for dealing with suspect claims.

I will say no more about this document because to do so would lessen the impact of what we hope will be a high-profile launch.

We do have a secondary motive in producing and publicizing our guide.

For too long, I believe, insurers have been sensitive to criticism that they are slow to pay out on some claims. One might describe this situation as the Esther Rantzen neurosis. To be accused in the media, particularly on a popular TV show, was something strenuously to be avoided. Now that fraudulent arson has become such a large problem and an important factor in the higher premiums insurers are having to charge, the insurance companies have necessarily to take a stronger line and this they are already doing.

For its part the Bureau feels that one of its tasks is to make government, the judiciary, the police and the media more aware of the threat which fraudulent arson presents to all of us and, as a consequence of this, to make them more ready to support insurers in efforts to resist fraudulent claims. So an important side-issue to all this is to effect a change in the climate of public opinion.

English law imposes a positive obligation on the insured (and the insurer) to reveal to the other party all the facts and circumstances of which they are aware; a policy is voidable in the event of misrepresentation or non-disclosure. All benefit under a policy is forfeited if a claim by the insured is in any way fraudulent. In that respect the law is clearly on the side of the insurer in the case of a possibly fraudulent claim.

Against that one has to say that insurers have fared badly in the criminal courts over the years. This appears to result from a number of difficulties. One is that if fraudulent arson is to be proved it has to be "beyond reasonable doubt". Another problem is that it is far from easy with a jury to present complicated evidence in a form they can understand. A third factor is that juries tend to be hostile to both police and insurers.

For these reasons it is not surprising that insurers prefer to face fraud claims in the civil courts where the standard of proof, although still high, is based on "balance of probabilities".

In working towards a reduction in the number of fraudulent arson cases it is important that insurers should have access to the best possible advice from an experienced loss adjuster, aided as necessary by forensic scientists, forensic accountants and lawyers. While there is always a hope that the police will bring a criminal prosecution it has to be remembered that even when the police do become involved in investigating a fire it may not lead to criminal proceedings and even if it does, the task of obtaining a conviction is far from easy.

I mentioned earlier that there were at least 24,000 cases of arson a year. The number of people prosecuted in the courts is around 2,500 - so fewer than 10 per cent of arsonists are prosecuted although a further 1000 or so are cautioned for these offences. Of the 2,500 prosecutions some 600 are sentenced to a term of imprisonment. We cannot tell from these figures how many of the arsonists are fraudsters. We do have a press cutting service giving details of the arsonists who are convicted and the sentences meted out to them. Few of these cases involve fraud.

As far as possible insurers should, where they and loss adjusters suspect fraud, carry out a thorough investigation themselves into the civil liability aspect - if possible, of course, in cooperation with the police. That way if the police investigation comes to nothing the insurer may still have a reasonable fraud defence at the ready. There are some good examples of such cases where insurers have successfully defended their position and it is the Bureau's intention to publish such examples as an encouragement and aid to other insurers.

Another line of action which the Bureau is pursuing is to encourage higher overall standards in the investigation of fires on the part of the official agencies entrusted with this task - that is the fire service and the police.

Part of the fire officer's responsibility is to be able to attribute a cause to the fire which he has been in charge of fighting. In only two fire brigades at the present time are there officers who are solely employed as fire investigators with no other responsibilities, their help being available to the officer in charge of fighting the fire. In 12 other brigades there are investigators on call who also have other duties. Fourteen brigades have told us they have fire investigation teams. It would appear that some 20 brigades (out of 66 in the UK) have a reasonably good system for the investigation of fire. In the case of many others the level could be improved.

Once a fire is thought by the fire officer to have been begun deliberately, then the police are called in to pursue an investigation and, hopefully, to catch the person responsible.

It is the Bureau's hope that fire brigades will be able more effectively to help the police by preserving any evidence that exists on the fire scene and we have been assured that the majority of fire brigades do provide training to that end. We will encourage them to do the best they can in this respect. The Home Office will shortly be issuing a "Circular" to all Chief Fire Officers and Chief Constables reminding them of the importance of fire investigation and drawing to their attention examples of good practice.

Another important issue is the way in which the knowledge held by loss adjusters can be utilized. Loss adjusters tend to complain that they are kept at arm's length by fire officers and police. On the other hand it has been suggested to me that few loss adjusters are particularly knowledgeable about fire investigation. There is the additional problem that fire officers and police do not always differentiate between adjusters and assessors.

The Bureau is setting up a meeting at the Home Office with a view to improving the liaison between loss adjusters and the official agencies. In the case of fraudulent arson the adjusters may well possess information of significant value to the police. In turn it would be helpful if the police were able to communicate information they may have to the insurer - something which is not at present the case.

To cope with the educational issue we are talking to C.I.L.A. about setting up some instruction for loss adjusters in the techniques of fire investigation.

I am hopeful that as a result of the various efforts now in train - particularly the tougher stance which insurers are now having to take - the incidence of fraudulent arson will be contained.

## **2. MORTGAGE FRAUD**

**by Robert Goldspink, Denton Hall Burgin and Warren**

### **Introduction**

Mortgage fraud has been attracting an increasing amount of media attention over the last 12 months. Research carried out by one consultancy group suggested that one in 20 mortgages is fraudulent. This figure has been rejected as a considerable overstate-