

## Critical Analysis

### A Major Fire Loss

3,000 words

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## Introduction

This critical analysis provides an overview of a claim managed by the Writer, from the point of instruction to final settlement, it will also provide the rationale for going beyond the Policy cover.

**Commented [J3]:** Nicely concise, provides a clear picture of the claim 😊.

This critical analysis will explain the nature of the loss, the type and degree of cover available, two significant policy liability issues and an example of a justified rationale for going beyond the Policy cover. It will explain options that were considered to resolve the issues and the rationale for the final approach taken.

**Commented [J4]:** In the introduction it is useful to clearly state why this case was chosen I assume that this is because of the significant liability issues (what are they?)? It would be best to state 'this case was chosen because ...' I think this also helps to focus the writers mind on the key theme of the report

Finally there is a critique of the handling of the claim and a brief mention of other matters of complexity that arose.

## The Instruction

Our Head Office were notified by telephone by an insurer client of a serious household fire where the policy covered Buildings, Contents and Alternative Accommodation. Arson was specified as being the cause of the fire.

Full policy details were sent electronically and I was to be allocated the loss.

The cover was detailed as follows:

Buildings	£1 Million
Contents	£125,000
Alternative Accommodation	£100,000

**Commented [J5]:** Good, succinct 😊

The precise policy wording was notified, but for the purposes of this analysis it is sufficient to say that the cover was a typical UK Household Policy covering expected perils, including Fire. There were policy limitations with regard to Valuables and a schedule of Specified items. Following consideration of the loss it was ascertained that neither the limits nor the schedule of Specified Items were material to this claim.

## The Magnitude of the risk, loss and of the settlement

The risk address was a large detached five bedroom house built circa 1852 with three reception rooms, kitchen, utility room and three bathrooms. The entire house was affected by fire and or smoke. The sums insured were adequate and represented the overall size of the risk. The house was occupied by a married couple (the Policyholders) and their two sons.

Building repairs were in the order of £182,000 and the Contents loss was in the region of £102,000. Alternative Accommodation costs were £25,000.

## Significant Issues

The initial instructions highlighted that the fire was caused by arson. The Insurers advised that they wished to reserve their rights on Policy liability. The issue faced was the suspicion that the Fire had been deliberately set by the Policyholder or someone acting on their behalf. Indeed, from my initial inspection it was clear from the pattern of burning that a fire accelerant had likely been used and indeed this was highlighted by the Policyholder.

I identified that the reservation of rights was of critical importance because the family urgently required accommodation and clothing. The Policyholders' fourteen year old son

had suffered a broken leg as a result of the incident and the family were well known in the area. There was local media interest including a community radio.

The Policyholders were clearly in shock, disturbed by the events and would need reassurance and advice. In such circumstances it is important to consider the Policyholders' mental capacity. Someone in shock may be temporarily lacking mental capacity. Requiring information and decisions from people lacking temporary mental capacity would not be treating them in a just and fair manner. I therefore took discrete steps to ensure I was satisfied both of the Policyholders were not prejudiced by a temporary lack of mental capacity.

**Commented [J6]:** This provides a good opportunity to demonstrate your knowledge. Can you provide a supporting reference to evidence this, ie shock and mental capacity. The FCA Occasional paper No. 8 on vulnerable consumers may help? Or could this be linked to treating customer fairly.

**Commented [J7]:** You could expand briefly to say what steps and why they were appropriate and perhaps evidence?

### Issue One: Insurers Rights

The first significant issue was, how to reconcile the need to reserve the rights of the insurer - not confirming policy liability - whilst maintaining a positive relationship with the Policyholders.

#### Option One and rationale for rejection

The first option in relation to this was to explain to the Policyholders that Insurers would need to consider my report prior to admitting policy liability and require the policyholder to make emergency arrangements for accommodation and clothing.

The Insurers had highlighted arson as the reason for the reservation of rights. The Policy did not exclude arson per se, it excluded arson by the "Policyholders or anyone acting on their behalf". Further, my enquiries indicated that the Policyholders were not implicated in the arson. If the Policyholders nor anyone acting on their behalf were responsible for the arson, the exclusion would not apply.

**Commented [J8]:** Good use of policy wordings as evidence

This option was dismissed on the basis that the Policyholders had been traumatised considerably by the event and clearly required and deserved greater support than this. There was readily available evidence that they were not implicated.

#### Option Two and rationale for rejection

The second option was to explain openly and clearly why Insurers could not admit policy liability at this stage and promise to resolve the issues as quickly as possible. By explaining the issues, i.e. the fact that arson was being highlighted as the cause by the Fire Brigade and the fact that fire accelerants had been in evidence, might prompt the Policyholders to cooperate with investigations and provide evidence and information that would ultimately eliminate the possibility of their involvement. The idea was that in this way, the issue would be proved one way or another and any delay short lived. It was decided that this option whilst realistic did not extend to provide as much assistance to the Policyholders as was possible.

#### Option Three and rationale for supporting

The third option was to expedite investigations and enquiries but at the same time secure an interim payment on account to help the Policyholders, but on a without prejudice basis. This was the option adopted, with the intention as soon as possible of recommending and obtaining Insurers agreement to making an emergency interim payment. I was able to identify certain features that indicated that whilst this was a case of arson, there were clear signs that the loss was fortuitous as far as the Policyholders were concerned. These enquiries provided evidence to support a claim against the person alleged to have set the fire.

**Commented [J9]:** Add why it was adopted

**Commented [J10]:** I would start a new paragraph here as this evidence seems to relate to all the options.

**Commented [J11]:** What enquiries?

Evidence that the fire had been deliberately set included signs of the use of liquid accelerant, probably paraffin. The police were also conducting enquiries and whilst I was not privy to the detail, the nature of the enquiries was beyond those for a typical accidental house fire, in my experience.

Commented [J12]: good reflection, you could give an example of what it included

Evidence that the Policyholders were not implicated included the facts that their son had suffered a broken leg during the fire, he had escaped via a first floor window after being trapped by the flames. There were items of sentimental value severely damaged this included school photographs of their children and wedding photographs.

In addition the Policyholders' cat was missing and was feared dead. (In fact the cat was found three days later.)

I discussed the circumstances of the fire with the Policyholders. It transpired that the Policyholders ran a business and had an ongoing dispute with a supplier who had made threats. I was able, with the Policyholders' consent to gain confirmation that this perceived threat had been reported to the police.

It was important to gain Insurers faith too. I telephoned the Claims Manager and explained my proposal and my intent to expedite enquiries that day. I was able to gauge the reaction of the Insurer and control the expectations of the Policyholders. I convinced Insurers that any emergency payment would be limited and that it should be made entirely "without prejudice" to Policy liability.

I ascertained the Policyholders' immediate needs. These were alternative accommodation and around £1,000 in cash for food and clothing.

I was able to secure a £1,000 immediate payment. In fact the payment, I ensured that this was made electronically as immediate cleared funds. Alternative Accommodation too was secured on a temporary basis. Both on a "without prejudice" basis.

### Issue Two: Kitchen reinstatement

The Policyholder had installed an expensive bespoke kitchen at a cost of £60,000 and part of this had been damaged by the effects of heat whereas the remainder was affected only by the effects of smoke. The issue was that the Policyholder expected the entire kitchen to be replaced as the original bespoke units could not be sourced. The Insurer had a strict policy of paying for damaged items only - those affected by heat and a maximum of 50% of the replacement cost of those unaffected or in this case those that could be cleaned.

Neither the Policy nor the supporting Policy information pack was clear on the issue of "matching items". Insurers relied on the fact the Policy excluded "Consequential Loss" and the previous Financial Ombudsman Service's decision as guideline for the basis of settlement.

Commented [J13]: can this be referenced?  
[http://www.financial-ombudsman.org.uk/publications/technical\\_notes/household-insurance-repairs.html](http://www.financial-ombudsman.org.uk/publications/technical_notes/household-insurance-repairs.html)

#### Option One and rationale for rejection

The first option was to accept the claim for the damaged items in full and pay fifty percent of the costs of replacing the remainder of the kitchen units plus the cleaning costs.

This option would have met the approval of Insurers it would have been likely that I could have negotiated this with them. However, I could see that there was an alternative that too might meet with the approval of all parties and was in both parties' best interests.

#### Option Two and rationale for supporting

My second option was to engage the services of a joiner who could re-make the damaged units and then simply have the remainder of the units cleaned to the satisfaction of the Policyholder. Firstly however I needed to ascertain the cost of the build of the unit to ensure this was economically viable.

It was important to ensure that the Policyholder was willing to explore this second option.

The Policyholders initial reaction was typical in that they expected Insurers to pay for the full reinstatement of the kitchen units. The compromise at this point was to investigate option two before any dispute arose. An expert joiner was invited to inspect and provide an estimate. The cost of the replacing the destroyed units was proportionately well in excess of the cost of replacing the kitchen in its entirety. However, the cost of replacing the destroyed units plus the cleaning of the remainder was marginally less than the cost of the replacement of the destroyed unit plus 50% of the cost of the remainder of the kitchen.

The Policyholder saw the benefit of this as did insurers and the kitchen was restored in this way.

#### Issue Three: Going beyond the Policy

The final issue came at the conclusion of the claim. An arrest had been made for the arson attack. The person apprehended and charged was a business supplier to the Policyholders. I recognised the considerable trauma felt by the Policyholders and their family and gained the impression that the Insurer might give sympathetic consideration to go beyond the policy coverage to provide something of benefit to the family. I gained Insurers consent to explore options.

#### Option One and rationale for rejection

The Insurers had recognised that this had been a traumatic and life changing incident for the Policyholders and their family. Whilst the house and contents had been refurbished and replaced the mental scars could not be healed. There is no "indemnity" for trauma and of course the policy does not promise this.

As I highlighted this to Insurers they asked for my views as to what could be meaningfully undertaken.

The options that I considered fell into two categories. The first was a payment beyond the indemnity provided by the policy. This could for example have been for a weekend break, for flowers or a basket of fruit by way of examples.

The option to propose this was not selected by me. I concluded that this would seem, however well intended, to be an effort to compensate the policyholders for the trauma. However, the trauma was such that any effort to financial compensate them risked appearing trivial compared to the horror they had encountered.

#### Option two and rationale for supporting

The second option was to propose counselling for the Policyholders and their family. Counselling could go some way to healing the mental damage that this had inflicted on the family. I believed that the family would most likely recognise this as a true effort to provide broader support.

The offer of counselling was made and taken up by the family. Clearly the outcome of the counselling was confidential as far as the counsellor and Policyholders' family were concerned but the reaction to the proposal from the family was that it was indeed very much appreciated.

To protect Insurers from an open ended promise the Policyholders and their two children were offered ten one hour counselling sessions each.

### Critical Reflections

In this section I will explore my performance on the management of this claim and settlement. To achieve benefit from this I have recognised my personal bias - I am after all analysing my own performance.

Commented [J14]: Good point 😊

Further, for the sake of objectivity I have reviewed the performance from two stakeholder perspectives:

- The Policyholders
- The Insurers

The intention is to recognise the differing interests and evaluate how well the objectives of each of the interests were met. I recognise that these are my interpretations of each of the stakeholders' objectives.

The Policyholders' objectives were to obtain security and reassurance in the first instance and a fair settlement under the Policy.

The Insurers objectives were to secure an outcome whereby the Policyholder would become a promoter of their business whilst maintaining an economic settlement in accordance with the Policy liability.

This review considers the actual outcomes of the issues raised above and my understanding of the perception that the relevant stakeholders had.

#### The Policyholders' perspective

The first issue - the reserving of the Insurers rights was crucial to the whole claim. The Policyholders' perception from my view was that having suffered a traumatic event they really wanted certainty in the eventual outcome. At the time of the initial site meeting the family felt very vulnerable.

Commented [J15]: This section raises good points but you could also reflect on what you have learned – what you will do next time.

The objective was to gain trust and part of the trust gaining was to obtain sufficient evidence at an early stage to be able to convince Insurers that an early interim payment was in all parties' best interests. The Policyholders too had to be convinced that a payment in the absence of confirmation of insurers' liability was sufficient for me to earn their trust.

Commented [J16]: I like the focus on trust here 😊

The open negotiation, explanations and demonstration of a focussed approach based on a plan to resolve issues paid dividends and built a strong connection with the Policyholders.

Turning to the kitchen this was an important issue which I recognised, the family liked to entertain at home and the kitchen was a feature they enjoyed. Obtaining purpose built units fitted in with their desire of a bespoke kitchen.

Finally, the payment for counselling went beyond expectations and the Policyholders were not expecting this. The correct addition payment was important as doing the wrong thing even with the best intentions could have sullied relationships. The relationship built up was an important aid in ensuring that the Insurers' good intentions were well received.

From the Policyholders' perspective their needs had been recognised and acted upon.

#### The Insurers' perspective

Reservation of rights - The Insurer client wanted to be seen to do the correct thing. However, it was important that any settlement was appropriate. Finding a means of balancing their rights and interests was fundamental. Having a practical solution with alternatives put to them at an early stage encouraged them to make a speedy decision so as not to lose momentum.

The kitchen - again the economics were important and the solution was seen as proactive and positive.

Going beyond the Policy - Insurers wanted to leave a lasting good impression, asking guidance from me as a person who had got to know the Policyholders well was a sign that they had recognised the positive relationship.

From the Insurers' perspective they had met their obligations and had gained a proponent of their services.

**Commented [J17]:** As above – what lessons were learnt?

### Final Conclusions

On conclusion of a claim a fee is submitted to the Insurer and paid. The Policyholder goes back to everyday life and the loss adjuster moves on to other cases. However, when a person suffers a significant loss whereby a loss adjuster is involved it is likely to be an event that is remembered for considerable time.

This was a life changing event for the Policyholders. The gravity of the situation had to be recognised and seen to be recognised.

The trust and relationship built up in the first encounter is fundamental, this can be gained by an open and honest approach with sufficient empathy and regard for the loss suffered. In addition it is important that the adjuster remains professional with all parties concerned.

**Commented [J18]:** Lessons learnt?

It is also worth highlighting, that whilst not part of this critical analysis other issues of complexity arose. These included:

**Commented [J19]:** I'm not sure that this section is needed. You could mention them briefly at the beginning and then explain why you chose the ones that you did.

- Insurable interest - Some damaged goods belonged to the Policyholders' company and the Policyholders had no Insurable Interest.
- There was a recovery pursued against the supplier who had been arrested and charged with arson. She was likely to receive a custodial sentence and at the time of writing her pecuniary situation and indeed guilt has yet to be tested in Court. I have however been requested to provide evidence of the extent of the damages to the Court.
- When the staircase was reinstated I ascertained the original did not meet with the Local Authority requirements.



During the life of a claim many issues arise. That is to be expected. I learnt that by dealing swiftly and openly with issues I could maintain progress with all parties. Each issue has to be addressed appropriately and at each stage the objectives of each stakeholder recognised.

**Commented [J20]:** Good reflection