



---

## ARSON CONTROL FORUM

---

Research Bulletin no. **5**

---

### Arson Terminology: Research Findings

---

#### Foreword

The agencies involved in the prevention and control of arson have been hindered from working more effectively together by their different perspectives on the size and impact of the problem. These differences have been exacerbated by disparate recording and measurement practices and the different terminology used by the police and the fire and rescue service.

This report explores the current recording practices and resultant levels of firesetting that are recorded by the police and the fire and rescue services and looks at the specific problems raised by the current terminology and how they impact on key areas of performance.

Understanding precisely what we mean when we talk about arson or deliberate firesetting is the first step in developing effective measures to tackle it. I welcome this report and commend it to all those who have an interest in reducing deliberate fires.

JIM FITZPATRICK  
Parliamentary Under Secretary of State  
Office of the Deputy Prime Minister



### Arson Terminology: Research Findings version

1. There is a disparity between police and fire service measures of arson. The police record around 60,000 arsons each year in England and Wales compared to 100,000 deliberate primary fires attended by the Fire and Rescue Service in 2003/04.
2. The problem of lack of a common measure of arson is compounded by difficulties caused by the terminology used by the Fire and Rescue Service, as laid out in the Fire Data Report (FDR1) form. The FDR1 form currently includes three categories of cause which, when combined, make up the arson measure: **deliberate**, **doubtful** and **malicious**. The Arson Scoping Study<sup>1</sup> and the Joint Review of Arson Reduction Partnerships<sup>2</sup> showed that these terms can create confusion at a local level.
3. The two issues of arson terminology and finding a common measure are inter-related: differences in the terminology used by Fire and Rescue Services and police forces and, perhaps more importantly, a failure to understand what the terms actually mean, may be hindering a common understanding of the true extent of arson – particularly in the eyes of the police – and, in consequence, the issue may not receive the publicity and the resources that it should. *Crime Concern* was commissioned to provide more systematic evidence of the problems caused by current terminology and to provide alternatives.
4. This report is in four parts:
  - An overview of the current recording practices, and the resultant levels of arson that are recorded, and explanation of why the levels recorded by the police and fire and rescue services differ.
  - This is followed by specific problems raised regarding the current terminology.
  - Part 3 considers alternative terminologies.
  - Part 4 considers a range of issues raised during the interviews on more general issues related to partnership working and data sharing at local level.
5. A longer version of this report is available on the Arson Control Forum Website ([www.arsoncontrolforum.gov.uk](http://www.arsoncontrolforum.gov.uk)).

#### 1. Overview

6. This section describes the current recording practices of the police and fire and rescue services in relation to 'arson'<sup>3</sup> fires.

#### Fire and Rescue Service recording

7. United Kingdom Fire and Rescue Services collect data on primary fires using a 'Fire Data Report 1' (FDR1) form. A primary fire is one which involves property, non-derelect vehicles, and/or casualties and/or involves five or more fire appliances. This form is used to collect detailed information on each primary fire including most likely cause, materials ignited, the extent of damage and any casualties. Fire and Rescue services also collect less detailed information on secondary fires (including derelect vehicles), many of which will have been started deliberately.
8. The FDR1 form includes five categories under which a fire's cause may be recorded: 'accidental', 'deliberate', 'malicious', 'doubtful' and 'not known'. For analytical purposes, 'deliberate/malicious/doubtful' are grouped together to form the 'deliberate' total which appears in ODPM publications.
9. Following the publication of the 'safer communities' report in 1999, which highlighted the potential difficulties of the terms 'malicious' and 'doubtful' in court proceedings, Fire Service Circular No. 21/2000 (which was repeated as Home Office Circular No 44/2000) was issued, advising that Fire and Rescue Services may avoid problems associated with these terms by recording such fires as 'deliberate'. Additionally, Fire and Rescue Services were advised to not indicate a percentage likelihood of cause where a supposed cause is 'deliberate', and to base any information given solely on factual evidence.
10. Nonetheless, it is apparent that some Fire and Rescue Services are continuing to use the terms 'malicious' and 'doubtful'. This is borne out by an analysis of the 2003 statistics, which showed that, 3 years after the circular was published, 'malicious' was used to describe 20,100 'arson'

<sup>1</sup> *Safer Communities: towards effective arson control, the report of the arson scoping study*, Home Office, 1999.

<sup>2</sup> *Arresting Arson: a review of arson reduction partnerships*, ODPM 2003.

<sup>3</sup> The term 'arson' is used in the report to describe any illegal/anti-social firesetting activity, and will therefore include incidents not covered by the Criminal Damage Act 1971 such as fires in vehicles with no registered owners and fires in derelect building.

fires, a fifth of the total; with 14 Fire and Rescue Services in England and Wales using the term to describe more than half of their deliberate primary fires.

11. It should be noted that, at the time of writing, the FDR forms are being reviewed as part of a wide-ranging ODPM review of incident recording<sup>4</sup>. It is likely that the review will recommend the terms 'deliberate, accidental, not known', removing 'malicious' and 'doubtful'. To an extent then, the problems highlighted in this study are associated with a fire recording system which is about to be replaced.

### Police recording

12. The police record arson as it is defined by the Criminal Damage Act 1971. Section 1(1) of the Act states that it is an offence to damage or destroy property belonging to someone else without lawful excuse. Section 1(2) covers damage to property that also endangers the life of somebody else. Section 1(3) specifies that when the damage to property has been done by fire, the offence shall be charged as arson. For more details see the arson toolkit on the crime reduction website, [www.crimereduction.gov.uk](http://www.crimereduction.gov.uk).

### How many 'arsons'?

13. Table 1, below, shows that the police in England and Wales record around half the number of deliberate primary fires recorded by the Fire and Rescue Services. Furthermore, the two data sets are currently moving in opposite directions – Fire and Rescue Services recorded primary deliberate fires fell by 8% compared to an 8% rise in police recorded arsons.
14. Fire and Rescue Services attend over 200,000 suspected deliberate secondary fires annually, few of which the police currently record as arson. This

may be for a number of reasons – with secondary fires it may be harder to establish recklessness or intent, or the fire may not involve property as defined by the 1971 Act. Nonetheless, secondary fires can and do occur in locations<sup>6</sup> where, if intent or recklessness are established, the arson should be recorded by the police. Secondary fire incidents should therefore be reported to the police to ensure appropriate investigation and accurate crime recording

15. The Home Office's Crime Reduction Toolkit, and some interviewees for this study, noted the possibility that the police may charge criminal damage without specifying arson, thus further exacerbating the 'gap' between 'arson' as measured by the police compared with the fire and rescue service.
16. It might be tempting to relate the differences between the two data sources to the differences in terminology the two main agencies use. However, the differences are mainly due to the Home Office counting rules, particularly in relation to vehicle fires (which make up about two-thirds of all deliberate fires attended by the Fire and Rescue Service).
17. The overriding principle of crime recording is "one victim, one crime" – where an individual is the victim of two separate crimes during one criminal incident, only the 'more serious' will be recorded. Where vehicle 'arsons' occur in stolen vehicles only the theft will be recorded, since this is the more serious offence in terms of maximum possible sentence<sup>5</sup>. Only where a vehicle is 'burnt out' by a person unconnected with the theft should the police record both the arson and the theft. Recent research (Merrall & Chenery, 2005) estimated that about half of FDR1 deliberate vehicle fires – and therefore about a third of all FDR1 fires – occur in stolen vehicles. Where a vehicle has not been reported stolen it should not be crimed as arson since no property has been involved.

England and Wales				
	Fire and Rescue Service deliberate primary fires	Police recorded 'arsons'	Difference	Deliberate secondary fires recorded by Fire and Rescue Service
2002/3	108,000	53,200	-54,800 (51%)	209,100
2003/4	99,500	57,200	-42,300 (43%)	256,000

4 'Incident data to be collected from Local Authority Fire and Rescue Services' Consultation period 14th March – 30th May 2005.

5 Home Office counting rules (April 2004) state that although 'arson' carries a maximum life sentence, compared to a maximum of 7 years for 'theft of vehicle', 'arson – of vehicle only' is regarded as a lesser offence than theft of vehicle.

6 Secondary fires include "outdoor structures" such as shop signs, road furniture & refuse containers, all of which are tangible items of property. Furthermore many grassland fires will be property fires in that there is an owner. For the full list see introduction to FDR1(94) Guidance Notes (Issue 7/95), Home Office (1995)

## 2. Terminology: problems

18. Those interviewed for this research confirmed that the current terminology used by the Fire and Rescue Service is problematic both in terms of legal proceedings and in local understanding of the arson problem.

### Legal context

19. Following the publication of the 'safer communities' review, the 2000 Fire Service/Home Office Circular recommended that *"the terms 'malicious' and 'doubtful' should be avoided and the term 'deliberate' used"*.

20. Legal representatives interviewed for this study confirm that the advice in the circular is prudent because the term 'malicious' has a particular meaning legal meaning<sup>7</sup>.

21. To act "maliciously" means that a defendant has *mens rea* (a guilty mind) by intending all the circumstances and consequences comprising the non-mental elements of the crime he or she is charged with; or being reckless as to the occurrence of the crime. It follows, therefore, that for a person to be 'malicious', as generally understood in law, he/she must have foresight of the circumstances and consequences of the crime in question, and either intend them or be reckless about whether they occurred.

22. The fire investigator who uses "deliberate" instead of "malicious" would still be a valuable witness in arson cases, since the Fire Investigator's evidence would be that objective matters such as number of seats of fire, use of accelerant et cetera still demonstrated deliberate conduct.

23. One legal representative interviewed was critical of the HO/FRS circular, particularly in relation to its advice regarding 'expert witnesses':

*"There are no hard and fast rules but it should be clearly understood that it is unrealistic to proceed on the basis that training courses for fire or police officers can provide a level of qualified scientific expertise equal to that possessed by a forensic scientist. In particular, such training does not equip fire or police officers to give interpretive evidence in Court as "expert" witnesses*

*and they should not seek to give, or be drawn into giving, such evidence unless they have relevant expertise."*, paragraph 11 (emphasis added)

24. It is quite correct that Fire and Rescue Service Officers should not regard themselves as experts – but they can be treated as experts if the *Judge's consider they are*<sup>8</sup>. In the opinion of some legal representatives interviewed for this study, the consequence of being automatically treated as non-experts *could* seriously effect the value of Fire Service evidence in arson cases. According to the lawyer interviewed for this study, defence experts have used this circular to attempt to have Fire and Rescue Service investigators ruled out as experts in important criminal cases.

25. Although these interviews confirm that the terminology can be problematic in a court context, it should be borne in mind that the actual number of criminal cases that have been affected in practise is likely to have been small. Previous research shows that once an arson case reaches court it is as likely – or as unlikely – to result in a successful conviction as any other offence type (ACF Bulletin No. 1, 2003). The low detection rates for arson – 8% of 57,200 police recorded arsons in 2003 were detected – is due to difficulties in obtaining evidence, rather than cases collapsing during trials.

### Local understanding of fire trends

26. Some interviewees have encountered problems at the level of Crime and Disorder Reduction Partnerships (CDRPs). It has been suggested by Fire and Rescue Service officers sitting on local level partnerships that groups are experiencing difficulties with the terminology that the fire and rescue service uses (e.g. secondary fires, deliberate secondary fires, malicious primary fires) which can lead to a lack of understanding amongst non-Fire and Rescue Services partners regarding the true extent of deliberate firesetting locally.

## 3. Terminology: solutions

27. A number of alternative terminologies were proposed that would avoid the problems discussed above. The most common suggestions were "deliberate, accidental and not known",

7 By the mid 19th Century, cases such as Fordham (1839) 4 JP 397 and Prestney (1849) 3 Cox CC 505 indicate that the term had developed a legal meaning.

8 There are a number of relevant precedents: In R.v. Oakley (1979) RTR 417, a police officer has served 15 years in a traffic division and attended more than 400 road accidents was allowed to give expert opinion about his theories and conclusions regarding an accident. It can be seen that trained experienced Fire Investigators could be treated as experts.

those suggested in the earlier circular and also likely to be used in the new fire and rescue service incident recording system. The legal representatives interviewed confirmed that 'deliberate' would not be problematic in court proceedings.

28. Other, arguably less practical suggestions included "accidental" and "potentially criminal"; and "accidental" and "deliberate" where "deliberate" is split into two, (i) "with intent" and (ii) "without intent", the latter being used to describe situations where, for example, a bonfire is left unsupervised and causes further damage. The terms "potential criminal" and "with intent" would trigger further investigation. The rationale for these suggestions was that it would lead to increased police recognition and understanding of the issues. The difficulty with these suggestions is that these terms would be open to the same legal challenge as the terms "malicious" and "doubtful".

#### 4. Related issues: partnership working and fire investigation

##### *Partnership working*

29. The interviews confirmed the dominant role played by the Fire and Rescue Services in local arson reduction partnerships, often with central funding, and the significant role now played in Crime and Disorder Reduction Partnerships (CDRPs, also known as community safety partnerships).
30. The interviews shed light on the extent and quality of partnership working. Some interviewees recognised that the inclusion of secondary fires within anti-social behaviour audits/strategies have been helpful in raising awareness of the arson problem, however most Fire and Rescues reported that in partnership working secondary fire data was not utilised or shared with partnerships.
31. One of the most frequently quoted issues regarding partnership working is the lack of analytical capacity, not only within fire and rescue services but also within CDRPs. It was felt that an Arson Task Force in each district/area would provide guidance and help fire and rescue services by having a dedicated resource unit specifically to deal with arson fires. Some Fire and Rescue Services also felt that, depending on resources, seconding officers to local CST/CDRPs would be beneficial in tackling arson. The recent evaluation of the ACF New Projects Initiative confirmed that many ATFs viewed capacity building activities, such as improving analysis, as key early priorities (Brown et al, 2004).
32. In terms of engaging partners more fully, all fire services made the point that deliberate firesetting, whether classified as primary or secondary, is anti-social behaviour and, as such, should be a priority for the police. Some interviewees discussed ways of engaging police. Suggestions included making arson reduction a priority for police forces, probably as a key performance indicator. The fact that Fire and Rescue Services are now statutory partners may be a good opportunity to help ensure Fire and Rescue data, including secondary fires data, are shared with all partners, including the police, to ensure that they all have a more accurate understanding of the true extent of anti-social fire setting.

##### *Fire Investigation*

33. In discussing the recording and use of data, a common theme emerged relating to better data for the purposes of fire investigation.
34. The consensus of all parties was that better local intelligence will lead to more accurate recording of arson by providing a backdrop against which coding decisions can be taken. In particular, respondents felt it would be useful to know the following about a fire scene:
- the previous history of the building/occupier
  - Patterns of activity in the area, for example, actual fires, community tension or anti-social behaviour.
35. In general terms, both the fire and rescue service and the police felt that the FDR1 should be changed from a recording tool to an intelligence tool. However, this probably reflects a misunderstanding of the role of the FDR1 form, which is to provide statistical information to monitor local, regional and national trends in fire, rather than to provide detailed investigative information for specific fires. Nonetheless, such comments do reflect a need for central guidance regarding the collection of fire investigation data.
36. Following the introduction of the Fire and Rescue Services Act 2004, services now have the power to investigate fires. The Arson Control Forum is currently working on protocols for different levels of fire investigation. National Occupational Standards for fire investigation are also being developed with introduction planned for 2005.

## Conclusion

37. This research has been somewhat overtaken by events – the ODPM Review of Incident recording is likely to conclude that the terminology that was causing problems and confusing (e.g. malicious, doubtful) will be removed from the incident recording system. The most likely terms to be adopted following the review (deliberate, accidental) do not, in the opinion of legal representatives interviewed, present the same difficulties.
38. On the wider question of “*how many arsons*”, it is not possible for there to be a single, common figure because the police and fire service record incidents according to different criteria and, in the case of the police, in relation to specific legislation (i.e. Criminal Damage Act 1971). However, it is possible for the different agencies and individuals involved to understand why the figures differ and, more importantly, to understand that the deliberate fires attended by Fire and Rescue Services are a more accurate reflection of illegal/anti-social fire setting activity. This message can reach partners through Crime and Disorder Reduction Partnerships, of which Fire and Rescue Services are statutory partners, and from the Arson Control Forum, who can bring together and publish the available statistics. Fire Rescue Services can share data so that a truer reflection of fire crime can be included in crime and disorder audits<sup>9</sup>.
39. In 2000 the Home Office issued Fire Service No. 21/2000 (repeated as Home Office Circular No. 44/2000) on the ‘*Investigation of Fires where the supposed cause is not accidental*’. This research suggests the guidance should be re-issued and updated, to include:
- information on the 2004 Fire and Rescue Services Act, which now gives Fire and Rescue Services the power to investigate fires
  - linked to the new legislation, information on new protocols and occupational standards for fire investigation
  - Clarify the status of fire investigators within court hearings with regard to ‘expert witness’ status
  - Inform Fire and Rescue Services that, following the review of incident recording, new terms have/will be used for recording of suspicious fires.
- Information on why fire and police statistics in relation to probable illegal firesetting differ, and make clear that for purposes such as crime and disorder audits the more comprehensive Fire Rescue Services figures should be used.

## References

- FDR (94) Guidance notes and self study material*, Home Office 1994.
- Safer Communities: towards effective arson control, the report of the arson scoping study*, Home Office, 1999.
- The investigation of fires where the supposed cause is not accidental*, Fire Service Circular No. 21/2000/ Home Office Circular 44/2000, Home Office 2000.
- Crime in England and Wales 2003-4*, Home Office 2004.
- Home Office counting rules for recorded crime*, Home Office 2004.
- Arson: from reporting to conviction*, Arson Control Forum Research Bulletin No. 1, ODPM 2003.
- Arresting Arson: a review of arson reduction partnerships*, ODPM 2003.
- Evaluation of the Arson Control Forum’s New Projects Initiative*, Brown, R et al, ODPM 2004.
- Fire Statistics monitor: quarter one 2004*, ODPM 2004.
- Vehicle fires: explaining the rise in vehicle arson*, Merrall, S and Chenery, C, ODPM 2005.

Further copies are available from:

**Office of the Deputy Prime Minister**  
**PO Box 236**  
**Wetherby**  
**West Yorkshire**  
**LS23 7NB**

**Tel: 0870 1226 236**  
**Fax: 0870 1226 237**  
**Textphone: 0870 1207 405**  
**E-mail: odpm@twoten.press.net**

Published by the Office of the Deputy Prime Minister. Printed in the UK, June 2005 on material containing 75% post-consumer waste and 25% ECF pulp.  
 Product code 04 LRGG 02881 RB5

© Crown copyright 2005.

<sup>9</sup> The Home Office included Fire & Rescues Service Statistics in its most recent annual crime statistics publication. See ‘*Crime in England and Wales 2003-4*’, section 4.5, Home Office, 2004.