

~THE 2011 LONDON RIOTS~

The cost of damage caused by the recent riots in England is likely to exceed £200 million, according to a statement this week by the Association of British Insurers (ABI). Individuals and businesses who have suffered damage to their property will be looking to their insurance to pay for the necessary repairs. Home insurance policies are likely to include cover for fire, looting, and damage, as well as accommodation costs for those whose homes have been destroyed.

Commercial insurance policies will also cover businesses for damage to their premises, and may also extend to business interruption. Insurers, as well as individuals and businesses who are uninsured, or whose damages are not covered by insurance, will be looking to the Riot (Damages) Act 1886 (the Act) for compensation. The Act provides that where a house, shop, or building, or the property therein has been insured or destroyed, by any persons "riotously and tumultuously assembled together", the person who has sustained loss by such injury, stealing or destruction can claim compensation.

The Act does not provide any compensation for personal injury or business interruption. Nor does it cover compensation for damage to possessions not within homes, shops or buildings, or damage to cars. Compensation under the Act is paid out from police authority funds, and police authorities are usually expected to meet the cost from their reserves. However, David Cameron has confirmed in a statement made on 11 August 2011, that the government will ensure that the police have the funds they need to meet the cost of any legitimate claims. Mr Cameron also confirmed that the usual time limit of 14 days for bringing a claim under the Act will be extended to 42 days.

Those looking to bring a claim under an insurance policy would be advised to do so as quickly as possible so that should the claim prove not to be covered by insurance, they still have time to seek compensation under the Act. One possible avenue that insurers may elect to pursue to avoid liability relates to commonly found policy exclusions for "acts of terrorism". Such clause are widely drafted and typically exclude loss or damage caused by way of revolution, civil commotion, or "acts of terrorism", which are defined as acts committed by a person or group of persons for "political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear".

The meaning and application of these terms may not always be clear-cut. The meaning of "civil commotion" in particular can be wider than one might imagine – albeit it seems unlikely that insurers will take this point in the context of the London riots. If this exclusion is invoked, as it has been by insurers in relation to claims for damage arising out of a number of riots in recent times including those that took place in Indonesia in 1998 and in Thailand in 2010, the issue therefore then becomes whether the act in question can be regarded as being a political act. Not only is this not necessarily an easy question to answer, potentially requiring a complex factual inquiry into the circumstances surrounding the riot, but the burden for proving this falls on the insured.

This is an exception to the usual rule that puts the burden of proving that a loss falls within the terms of an exclusion clause on the insurer, and arises because of "reverse burden of proof" wording included within standard terrorism exclusion clauses.

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With regard to the recent London riots, whether the specific damage in question was caused by individuals whose motivations were political or ideological, as opposed to merely criminal is clearly a matter of debate. Arguably some of the early protests relating to the police shooting that sparked the riots could be said to be political, but equally some of the looting directed at specific stores selling desirable consumer goods would be difficult to define as motivated by anything other than greed.

At present, the line being taken by the ABI is that insurers will be paying out under home and business insurance policies that include coverage for riot damage. However, policy holders would be advised to check the wording of their policies carefully and to contact their insurer to clarify the position before the expiry of the 42 day deadline for bringing a claim under the Act.

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