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Riot claims: Disorderly conduct

The fallout from last summer's riot continues to rumble on, with consequential loss claims against the police relying on principles that can be traced back to the age of Robin Hood.

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Almost six months on from the summer riots in London, and other major UK cities, the impact on the nation and the insurance industry is still being felt.

An ancient statute was dusted off as hundreds of claims were brought by property owners, and their insurers, against the police authorities, forcing both parties to get to grips with the antiquated Riot (Damages) Act 1886. The government acted fast in August, passing extended new regulations to the time limit for claiming under the 1886 Act from 14 to 42 days and scrapped the mandatory claim form.

Claims were swiftly assessed and adjusted by insurers and submitted to the relevant police authority. Some claims have already been rejected, but most are awaiting determination by police authorities, who have requested further information from claimants. The outstanding claims have caused a growing controversy. Was all the claimed damage caused by rioters? Are consequential losses, particularly business interruption losses or rental losses, recoverable under the 1886 Act?

A question of principle
It is unclear what principles will be applied by the courts, with some questioning why the Act compels police to pay riot damages. The reasons take us to unrest in the 18th century and right back to an ancient story reminiscent of Robin Hood.

Under the 1886 Act, a building, or property within, has been damaged, stolen or destroyed by any persons "riotously and tumultuously assembled together", compensation must be paid by the local police authority. The rationale behind this is seen in the legal history of riots. Before the creation of the police service by Sir Robert Peel and the Metropolitan Police Act 1829, law and order was a communal responsibility.

When the Saxons of towns and villages in England refused to chase and capture the Robin Hoods of their time and return goods stolen from the Norman nobility, the King decided to make the community itself pay. It resulted in Edward I passing the Statute of Winchester 1285. This made the local community, then called the hundreds, liable if they failed to prevent felonies, including the burning of houses.

Magistrates were introduced by Edward III in the Justices of the Peace Act 1361 and had a dual role of policing the area on behalf of the community and punishing offenders. The law developed through the Elizabethan age bringing the Riot Act 1714. As well as introducing the phrase "reading the Riot Act" it provided the same statutory remedy for a spate of 18th century riots in towns and cities across the county. A plaintiff whose buildings were damaged by riot could bring a claim in court against the hundreds, city or town.

It was this provision that was consolidated and reformed, after the introduction of police forces, into the 1886 Act. The rationale behind the 1886 Act is not just public compensation but the historical concept that it is the entire community's duty to prevent riots. The Police Act 1996 requires each authority to maintain an efficient and effective police force. If a riot takes place, the police authority is strictly liable for the damage as it is presumed to have resulted from defective policing.

As Justice Lyell commented in 1967: "There is nothing secret or furtive about a crowd of people who are acting riotously and tumultuously. It seems to me that the right to compensation from public funds was given because the public authorities had failed to protect the public who were menaced by a threat which was, or ought to have been, obvious to the forces of law and order as they existed from time to time".

Time and place

The modern application is that a furtive robbery committed while the police were distracted by a nearby riot is unlikely to be covered by the 1886 Act, unless the perpetrators are regarded as acting as part of the riot. The proximity of time, place and purpose between the offenders and the other rioters is a good indicator.

If a house in a side street near a riot is damaged, would that be covered? The elements stated in a 1907 case need to be considered: Were 12 or more persons present? Was there use or threat of unlawful violence for a common purpose? Common purpose may be inferred from conduct – there needs to be an intent on the part of the number of persons to help one another (by force if necessary) against any person who may oppose them. Would the conduct cause a person of "reasonable firmness" at the scene to fear for his personal safety? And, was the disturbance noisy, agitated and excited so as to constitute "tumultuous" behaviour?

The substantial media coverage of the 2011 riots may provide documentation of the nature of the unrest in each area. Common purpose of the rioters may be proved by the text or Blackberry messages that galvanised and organised rioters.

It will be crucial to show that the riot extended beyond main streets where crowds were caught on camera, to back streets where houses were damaged or burgled.

An insured in a side street might be unable to show that more than 12 people were involved in the damaging of property, but if they were en route to the riot they may have been acting with common

purpose.

The historical context may help in deciding what the 1886 Act means by “such compensation as appears to them just”. Bedfordshire Police v Constable (2009) held that compensation payable is a sum which the police authority is “liable to pay as damages” and so was covered by the police authority’s public liability insurance policy.

The statutory obligation to pay damages extends to injury or destruction to a house, shop, building; property within the house, shop or building which has been injured, stolen or destroyed; and machinery fixed or movable involved in manufacture or agriculture.

Police position

It is likely that police authorities will take the initial position that only physical property will be compensated and not consequential losses arising from the damage. Section 4 of the 1886 Act allows a claimant to sue the police authority if dissatisfied with the amount and it will be the court that decides the level of compensation.

The general principle of the measure of damages is familiar to insurers — that sum of money which will put the party who has suffered loss in the same position as if the wrong had not occurred.

Direct consequential loss is well known to the law in property damage cases so that alternative accommodation while the damaged building is unusable can fall within damages, as can loss of production or business if the property is commercial in nature.

However the common law does not allow recovery of financial loss which is not the direct result of physical damage, holding that it is too remote.

Consequential loss claims for damage to chattels were known to the common law in the 19th century, therefore this may fall within the ambit of the 1886 Act.

Alternative accommodation is a loss which results directly from riot damage and is a reasonably foreseeable consequence. On the other hand pure economic loss does not fall within the ambit of the 1886 Act as it is regarded as too remote.

This debate means that claims for consequential loss of profits are likely to prove a controversial topic for 2012 and beyond.

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