

RIOTING OUR WAY TO A CHANGE IN THE LAW...



Background

In the recent case of *Mitsui Sumitomo Insurance Co (Europe) Ltd & Ors. v Mayor's Office for Policing and Crime*¹, the English Court of Appeal considered the question of whether or not the Mayor of London's Office for Policing and Crime (MOPC) was liable under the *Riot Damages Act 1886* for losses suffered by the victims and their insurers as a result of a fire deliberately caused at a warehouse during the 2011 London riots by a gang of approximately 20-25 people. In particular, the issues for the court to consider on appeal were: (i) whether or not the original trial judge had been correct in his finding that the incident was within the scope of the 1886 Act; and (ii) whether or not liability under the 1886 Act extends to consequential losses and not just to the direct physical damage to the property in question.

In determining the first issue, the Court had to consider the kinds of circumstance to which the 1886 Act was intended to apply and in particular the meaning of the phrase "*persons riotously and tumultuously assembled*", which describes one of the key requirements for liability.

In determining the second issue, the Court considered the origins of the compensation scheme set out in the 1886 Act, having particular regard to the original intention of making the community as a whole (now limited to the police) responsible for the damage caused by rioters.

The judgment and what it means for the MOPC

The Court found against the MOPC on both issues, meaning that the MOPC is liable for the full extent of the losses caused by the warehouse fire (including liability to compensate insurers who have paid claims in respect of the damage).

The judgment is helpful in clarifying that the liability of a police authority in such circumstances extends to compensation for consequential as well as direct physical damages. The Court's finding on this issue was based on its conclusion that for the purposes of the 1886 Act, the police authority stands in the shoes of the trespasser,

1 [2013] EWHC 2734 (Comm)



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save to the extent that the 1886 Act otherwise provides. There being nothing in the 1886 Act to exclude the recovery of consequential losses, the MOPC was liable in respect of them in the same way that the trespassers themselves would have been. Two main issues for the MOPC and other police authorities arise out of this.

The first is the extent to which it will be possible to insure against such liability. In the 2009 case of *Bedfordshire Police Authority v Constable*², which followed a riot at the Yarl's Wood Immigration Detention Centre, the Court of Appeal held that compensation payable under the 1886 Act was "damages" for the purposes of the police authority's public liability insurance and that the police authority could therefore claim against its public

liability insurers in respect of its 1886 Act liability in connection with the riot. However, our understanding is that since that judgment, many public liability insurers of police authorities have placed clauses in their policies excluding liability under the 1886 Act. Even where cover is available for liability under the 1886 Act, issues may arise as to the extent to which liability for consequential losses is in any case within the cover provided.

The second is the need for police authorities to take all reasonable steps to make sure that damage of this kind, for which they will be liable under the 1886 Act, does not occur. It may appear obvious that the police should be trying to prevent riots, but in certain situations the position may be less clear cut. In the Yarl's Wood case, for example, the riot in question took place within a privately operated immigration detention centre and the relevant police authority was held liable despite the fact that the private security company operating the centre had its own public law responsibilities for security and order therein³. Thus, in any similar situations which may arise, the police authority will be concerned to make sure that the riot is controlled or prevented with the minimum possible damage, even if another public or quasi-public body appears to have some responsibility for the situation.

What are the wider implications of the judgment?

This is the first reported English case to establish that consequential losses are recoverable from the relevant police authority under the 1886 Act. Therefore, victims of riot damage and their insurers need to be aware that the scope of such claims is wider than many may previously have appreciated. Claimants should also be aware that in 2011, changes were made to the process for submitting claims under the 1886 Act. In particular, the prescribed form for claims was abolished and the time-limit for claims was increased from 14 to 42 days.

Generally speaking, there are concerns that the law in this area suffers as a result of its age and lack of clarity. These issues were thrown into focus following the London riots in August 2011.

Possible reform

Public liability for riot damages has been a feature of English law since as far back as the *Riot Act 1714*, which made the community as a whole liable to compensate the victims of riot, on the basis that communities should be encouraged to resist such activities and stand surety for one another's good behaviour. The principle has remained in place right through to the present day, albeit that the liability now rests not upon the community as a

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2 [2009] EWCA Civ 64

3 See *Yarl's Wood Immigration Ltd v Bedfordshire Police Authority* [2009] EWCA Civ 1110



whole, but upon the police as the body responsible for public order. Cases on these issues arise relatively rarely, although when they do the courts, as they are obliged to do, continue to apply the law, despite its somewhat archaic nature. An independent review recommending reform of the law in this area was published in November 2013 and the Home Office recently launched a consultation, the objectives of which include producing a modernised piece of legislation to replace the 1886 Act and to clarify which losses individuals and businesses can claim for in the event of a riot.

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