

## Is Terrorism Cover Required?

As you're no doubt aware, terrorism cover is an integral part of many Property Owners arrangements. It is not automatically included as standard and policyholders must carefully consider their needs.

This is emphasised in recent case law where it was concluded that, where a lease detailed the need for 'explosion' to be covered, this does include explosion as a result of acts of terrorism.

It is often a requirement in leases and mortgage agreements that insurance cover includes 'explosion', or sometimes 'all risks' or 'comprehensive' cover which would also mean terrorism cover is required.

Overleaf are details of the important case law, however there are different ways to secure protection.

### So What Are My Options?

Terrorism cover is traditionally placed with Pool Reinsurance Company Ltd (issued via the property insurer i.e. Aviva, AXA etc.) who provide cover for the peril of explosion and act as a government backed reinsurance facility for the provision of terrorism cover. However there is another option for the purchase of terrorism cover which provides the extension of explosion cover to satisfy the contractual requirements outlined earlier.

In addition to obtaining renewals terms/quotations from Pool-Re, we will also provide an attractively priced alternative quotation and renewal terms via the Lloyd's market.

Detailed below are the main differences between the two offerings you should consider before selecting your desired option.

Pool Re Cover	Lloyd's Cover
Provides cover for chemical, biological, radiological or nuclear terrorism following <b>damage</b> to the building.	Excludes chemical, biological, radiological or nuclear terrorism.
The act has to be carried out on behalf or in connection with an organisation.	There does not need to be a connection to any organisation.
Implies that more than one person needs to be involved in acts of Terrorism.	A person can be acting alone (lone wolf) or with others.
The organisation has to be aimed at influencing or overthrowing the government.	The act does not need to be aimed at influencing or overthrowing the government – its purpose can just be to put the public in fear.

Please note that with both Pool Re and Lloyd's, the coverage provided is designed to satisfy both lending and lease obligations but please feel free to contact one of our property experts for a more detailed review on the most suitable terrorism cover for your requirements.

### About CLEAR

CLEAR is a Chartered Broker and proud to be a Top 10 Independent Insurance Broker in the UK.

Our considerable experience in the property sector gives us the capacity to design bespoke and exclusive insurance solutions for the whole property market.

## The Consequences If Not Purchasing Terrorism Cover

If you act as an individual or as a collective (i.e. Right to Manage Company) and the decision is taken not to purchase full explosion cover then this could have wider implications. For example, if a management committee member elects not to purchase full explosion cover then the management firm must ensure they are not contravening any contractual arrangements they hold, including with third parties who may have a financial interest in the property. In the case of a block of flats, this could include a fellow tenant's mortgage agreement and so, if a terrorist incident happens and damages the property, the individual on the board who made the decision not to purchase the cover could be liable for the repairs.

## Legal Precedent For The Purchase Of Terrorism Cover

In the case of; QDIME Ltd v (1) Bath Building (Swindon) Management Company Ltd (2) Various Leaseholders, June 2014, The Upper Tribunal (Lands Chamber) held that terrorism insurance is required in order to comply with a covenant to obtain insurance covering "usual comprehensive risks in accordance with the [Council of Mortgage Lenders] recommendations." It has also held that public law principles on the use of, and compliance with, statutory guidance apply with equal force to the RICS Service Charge Code.

Under the terms of the lease, the plaintiff was obliged to

"...keep the Building including the Demised Premises insured to its full reinstatement value against loss or damage by fire and the usual comprehensive risks in accordance with the [Council of Mortgage Lenders] recommendations in that respect from time to time and such other risks as the Landlord may in its reasonable discretion think fit to insure against..."

The Management Company, together with 11 of the Leaseholders, issued proceedings in the LVT disputing, amongst other things, part of the cost of the insurance policy. In particular, they disputed the "terrorism insurance" element of the policy, which they asserted was unreasonable.

The LVT, in their decision, found that there was no express responsibility to insure against terrorism. Further, if that interpretation was incorrect, then they found it was not a reasonable exercise of discretion to insure against terrorism given that there was no evidence that the building itself was exposed to terrorism, or the area in which the building was situated is exposed to terrorism

In reaching his decision, his HHJ Cousins concluded that the crux of the matter is that the obligation to insure against explosion includes insuring against a terrorist attack, and that the word "explosion" should be given its ordinary meaning. The Upper Tribunal therefore agreed with the Landlord that the ordinary meaning of the word explosion includes explosions caused by terrorism. The Tribunal also agreed that the obligation is to insure against explosion, but not against any particular method by which an explosion might be caused.

## How can CLEAR assist?

Obtaining a quotation for Terrorism insurance is a straightforward process, so please contact us:

Chris Nobbs    020 7280 3461 or 07717 774987  
[chris.nobbs@thecleargroup.com](mailto:chris.nobbs@thecleargroup.com)

James King    020 7280 3488 or 07940 273135  
[james.king@thecleargroup.com](mailto:james.king@thecleargroup.com)

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