

TOO MUCH RAIN

Over the past decade, the UK has experienced incidents of flooding which have caused millions of pounds worth of damage. The rainfall in June and July 2007 was about 20% higher than experienced since records began in 1879 and the resulting floods represented the UK's largest peacetime emergency since 1945. It is impossible to say with certainty that this was caused by climate change, but experts predict that in the future, climate change will result in more extreme weather events such as flooding.

MAIN TYPES OF FLOODING

Flooding events can result from the following:

- **River or fluvial flooding:** where excessive rain causes overtopping of the natural river channel. This can take place at any point along a river, not necessarily where rain falls. Protection against river flooding is dependent on efficacy of flood defences (in 2007, 50% by length of flood defences were overtopped).
- **Coastal flooding:** which occurs when the sea level rises above the level of the coastal area. Prolonged strong winds, air pressure and/or astronomical high tides can cause sea water to rise above normal. Protection against coastal flooding is also dependent on the efficacy of flood defences.
- **Groundwater flooding:** which occurs when the groundwater level (water table) rises to the surface. This mainly occurs in areas with porous rocks, such as chalk or limestone (e.g. Eastbourne and Brighton). Flood defences are ineffective and groundwater flooding can take months to drain away.
- **Surface water flooding** (also known as pluvial, flash, urban or localised flooding): Surface water flooding accounts for half of all floods in any year and urban areas are generally at the greatest risk. Flood defences are ineffective against this type of flooding and may impede drainage.

The effect of a combination of causes or "coincident flooding" can be severe.

IMPLICATIONS OF FLOOD RISK

Where there is a risk of flooding, the immediate and long term consequences for property owners, buyers and tenants can include:

- Risk of increased cost of or difficulty in obtaining insurance cover against flood risk.
- Difficulty in obtaining mortgage finance because the risk of flooding is high and/or insurance against flood is not available at commercial rates.
- Adverse effect on property value and saleability – flood risk may lead to price reductions or even deter purchasers altogether.
- Restricted development potential – the susceptibility of land to flooding is a material planning consideration. Planning Policy Guidance 25 recommends that Local Authorities do not grant planning consent for new buildings in any area designated as a flood plain.
- Potential disruption to business and loss of profits resulting from a flood – access may be impeded, essential services and communications may be disrupted and goods damaged.
- Cost and disruption in relocating to alternative premises, even if only temporarily.

- Expenditure for repairs to structural damage to premises and replacement of stock and equipment;
- Adverse effect on the health of occupiers and employees—flooding can lead to both physical and mental health issues.

FUNDING AND INSURANCE

A standard condition in residential mortgages requires the borrower to take out buildings insurance, including flood cover. If flood cover is not available, then the property is unlikely to be mortgageable. Likewise, the usual loan agreement terms require commercial borrowers to maintain full comprehensive buildings insurance. If commercial borrowers cannot obtain flood cover (or the cost is prohibitive), the lender may call in the loan or be unwilling to lend in the first place.

The 2007 floods resulted in insurance claims for the highest ever amount (totalling £3bn) and, as a result, the insurance industry debated whether flood cover would continue to be available in the future. In June 2008, the Association of British Insurers (ABI) set out a statement of the principles which its members would adopt when deciding on whether to offer flood risk insurance.

The ABI Statement of Principles stipulates that insurers will continue to offer insurance against flood where the risk is moderate or low. Properties at significant risk may also be insurable provided that the Environment Agency has announced plans to carry out flood protection works within five years that will reduce the annual risk below a certain level. In such cases the insurer will continue to offer cover for domestic property, following a sale, and can choose whether or not to continue cover in relation to small businesses, in both cases dependant on various factors including the claims record of the policy holder. The ABI Statement applies only until 2013, after which insurers will be able to choose whether or not to offer insurance, and it does not cover:

- Commercial premises unless qualifying as a small business (although this is not defined);
- New buildings completed after January 2009;

- Properties in an area classified as at significant risk of flooding where the Environment Agency has no plans to carry out flood protection work which would reduce the risk to moderate or lower in the next five years.

Furthermore, the ABI reserves the right to withdraw from the Statement entirely if its members suffer significant losses due to flooding between 2008 and 2013, or flood reinsurance is reduced, or they consider that the Government is not making meaningful progress in relation to flood defence.

INFORMATION ON FLOOD RISK

Ways to obtain information concerning the flood risk profile of a property include:

- **Flood searches:** These are different types and levels of flood search, some appropriate for domestic property and others for commercial premises. This is the most reliable method of obtaining property specific flood data.
- **Flood maps:** There are available on the Environment Agency's website searchable by post code but the information is not accurate to the level of individual properties and it does not cover risk from ground water or surface water flooding.
- **Environmental desktop reports:** These reports often contain information from the Environment Agency, but this generally extends only to the data available on the flood map (see above) and the level of detail is variable.
- **Land Registry flood risk indicator:** This is based on the Environment Agency flood maps (see above) and is not suitable for commercial premises. It does not cover risk from ground water or surface water flooding and is only available to private individuals and where the title is registered at the Land Registry.
- **Aviva insurance risk rating:** In 2004 -2005 Aviva (formerly Norwich Union) adapted Environment Agency information to create its own flood map giving the real risk to properties by including additional local height information which discriminates between low lying premises and those in a more elevated position, which are therefore at less risk. Aviva has not, however, updated its data which therefore cannot be relied upon as an accurate indicator of current insurability.

- **Enquiries of the relevant water service company:**

Water service companies are required to maintain a register of all properties that are at risk of internal flooding from public foul, combined or surface water sewers due to overloading of the sewerage system. The register is not, however, comprehensive and properties at risk may not be included if past flooding incidents have not been reported to the relevant water service company.

- **Standard pre-contract enquiries:** In the case of both residential and commercial properties, these include questions about flooding history and also (in the case of commercial premises) insurance information, but in practice seller's replies are unhelpful and usually reveal very little useful information.

TO CONCLUDE

Flood risk, has increased over recent years with consequences for those who own, occupy, develop or fund real estate. According to an Environment Agency report published in June 2009, at present 2.3m homes and 185,000 businesses in England and Wales are currently at risk of flooding, representing property, land and assets worth over £200bn. Flood risk does not only depend on proximity to a river or the coast and properties now have increased vulnerability to ground and surface water flooding even if there is no prior history of flooding. Insurers are changing the way they assess flood risk and price premiums, which could in the long term could have an adverse effect on the mortgagability and value of some properties.

This article offers general guidance, it reflects the law as at December 2009. The circumstances of each case vary and this article should not be relied upon in place of specific legal advice.

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