

Property Transaction Precedents - Climate Change & Climate Search Results

Introduction

In July 2022 Groundsure instructed Stephen Tromans KC In The Matter Of Conveyancers Duty Of Care To Advise Clients About Climate Risk And How To Discharge This Duty. Stephen is the UK's foremost environmental law practitioner. His advice is available to download here: <https://bit.ly/3CY7Ynm>

Section F of Stephen's advice¹ relates to the practical steps which property lawyers can take to discharge their duty to advise clients on climate risks. The advice provided is as follows:

Given the existence of a duty to advise on climate risks, what practical steps should conveyancers take to discharge that duty?

The first step seems to me to become familiar with what search services are available and then to advise the client on the need for such a report. Obviously then if the client does not wish to incur the cost, that is their decision, but the conveyancer should in my view state clearly the risks (both physical and transactional) in not doing so – and should record that advice in writing.

Assuming a report is obtained, it is not enough simply to pass over the results to the client – these need to be explained and the risk put in context. For example for a coastal property it may be necessary to explain the risk that whilst coastal defences may now be in place and maintained by an authority, that will not necessarily continue to be the case in the medium or long term.

If there are issues arising outside the conveyancer's own professional expertise, such as valuation or insurance or flood risk, it may be necessary to recommend the client considers taking such professional advice. This would of course depend to a large extent on the size and nature of the transaction.

It is very important in order for the conveyancer to protect their own position to ensure that all this advice is clearly recorded in writing. The Report on Title would seem the most obvious place to do this.

Point of Information

The following clauses are provided for illustrative purposes. They are intended to help commercial and residential property lawyers to consider how the increasing use of climate searches may justify making some changes to their standard conveyancing enquiries, certificates and reports. Property lawyers may wish to develop their own clauses or to modify the illustrative clauses. Please note that Groundsure assumes no legal duty to any person who uses or otherwise relies upon any of the following clauses.

¹Stephen Tromans KC assumes no legal duty to any person to whom a summary of his advice is provided. Furthermore, Mr. Tromans does not endorse any particular climate search product. Conveyancers and others can check the suitability of Groundsure's ClimateIndex™ and other climate searches for their purposes.

Climate Search Result – Further Action - D, E and F

Certificate of Title For Lenders

The Property did not pass a climate search dated [insert date]. The search is attached.

The impact of climate change is likely to exacerbate the risks to this property. This is due to [insert risk(s) here].

Report on Title

TCLP’s Marni's Clause (Amended)

1. Interpretation

The following terms are used in this report:

Climate Change means the long-term and material changes in global or regional weather patterns including, temperature, humidity, precipitation, or wind which is predicted by the Met Office, British Geological Survey and other climate specialists to bring about increased flooding, increased subsidence, increased coastal erosion and other physical impacts to land and buildings.

2. Scope of the Review and Limitation of Liability

A climate search [is / is not] available for the Property to assess it for certain future physical impacts arising from Climate Change.

Physical risk	Included in the Climate Search for the Property	Not included in the Climate Search for the Property
Subsidence	Y	
Coastal erosion (with active intervention – creation or maintenance of coastal defences)	Y	
Coastal erosion (without active intervention)	Y	

Physical risk	Included in the Climate Search for the Property	Not included in the Climate Search for the Property
Fluvial (river) flooding	Y	
Pluvial (surface) flooding	Y	
Coastal (tidal) flooding	Y	
Groundwater flooding		N
Heat stress (excessive heat in buildings)		N
Risk to potable water supplies including private wells		N

Please note that the climate searches do not currently cover all of the above climate risks. We have summarised the the findings of the climate search:

The Property did not pass a climate search dated [insert date]. The search is attached.

The property has [moderate (D) /significant (E) /severe (F)] risks due to [insert risk(s) here]. This means you may experience issues obtaining insurance and mortgage lending in the coming years.

We are not qualified to comment on the technical aspects of climate change risk. We recommend the following:

Insert [recommendations](#) based on the identified risk(s).

Shorter reporting clause for Report on Title

The Property did not pass the climate search dated [insert date]. The search is attached.

The property has significant risks due to [insert risk(s) here]. This means you may experience issues obtaining insurance and mortgage lending in the coming years.

Insert [recommendations](#) based on the identified risk(s).

Recommendations

Flooding:

Climate change is likely to increase the risk of flooding on this property over time. To best protect the property, and your investment, against this risk we recommend the following:

- Investigate the insurance on offer for the property to ensure any implications on premiums are fully understood before completion, and take into consideration premiums could be impacted in the future if the risk increases due to climate change;
- Investigate the possibility of obtaining parametric insurance or business interruption insurance;
- Sign up for flood warnings <https://www.gov.uk/sign-up-for-flood-warnings>
- Investigate the various forms of flood [resistance](#) and [resilience](#) measures that will help protect your property in the event of a flood.

Ground instability:

Over time, this property is susceptible to an increased risk of ground stability due to the impact of climate change. To protect your property against this risk, we recommend the following next steps:

- If no survey has been undertaken, consider commissioning a building survey carried out by a suitably qualified person which considers ground instability, and how the conditions may become more extreme (more extreme wet and dry periods) with climate change;
- If the property has clay drainage pipes, consideration should be given to replacing these with a modern equivalent;
- Seek specialist advice before any of the following: starting major building work; removing any mature trees that pre-date the construction of the property or planting any new trees near the property. The safe planting distance is dependent on the tree species, foundation type and soil composition. A guide can be found [here](#);
- Ensure foundations of new constructions or extensions are designed with shrink-swell clay soil conditions in mind, particularly how these could become more extreme with climate change;
- Ensure the property has adequate insurance covering subsidence. Premiums may be higher where subsidence has occurred, or the property is at an increased risk. We recommend speaking to an [insurance broker](#) for specialist advice.

Coastal erosion:

Climate change is expected to cause more frequent and more extreme erosion events over time. Buying a property in very close proximity to a vulnerable coastal area may have a significant impact on the availability of both a mortgage and insurance for the property. In worst case scenarios the property may even become uninhabitable in the near future.

For more information about the potential risk to your property, we recommend:

- Climate change is expected to cause more frequent and extreme erosion events. Buying a property in very close proximity to a vulnerable coastal area, may have a significant impact upon the availability of a mortgage and insurance, and the property may become uninhabitable in the near future;
- Investigate the [Shoreline Management Plan](#) for the area for further details on sea defences and maintenance;
- Consider that essential infrastructure in proximity to the property (roads, paths, utilities etc) may be impacted by coastal erosion, which could restrict access and full use of the property.

If you are purchasing the property as an investor or business, the potential physical and transitional risks should be reported to your investors, shareholders or funders, so that the climate change related financial risks have been adequately disclosed.

