

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 – Passed A & B

Certificate of Title For Lenders

The Property passed a climate search dated [insert date]. The search is attached.

If the property is in commercial use, as climate models are continually evolving we recommend carrying out a new climate search in 10 years or when a significant change in the business is proposed (either moving premises/selling off assets etc), whichever is sooner.

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 passed the climate search dated [insert date]. The search is attached.

If the property is in commercial use, as climate models are continually evolving we recommend carrying out a new climate search in 10 years or when a significant change in the business is proposed (either moving premises/selling off assets etc), whichever is sooner.

Shorter reporting clause for Report on Title

The Property passed the climate search dated [insert date]. The search is attached.

As climate models are continually evolving we recommend carrying out a new climate search in 10 years or when a significant change in the business is proposed (either moving premises/selling off assets etc), whichever is sooner. We are not qualified to advise any further on this search result.