

Climate change

Advising on property transactions

This Information Note takes you through key parts of the Law Society Guidance on Climate Change and provides suggested wording for your Client Care letter.



Properties across the UK are already at risk from weather events, resulting in issues such as flooding and ground instability. Climate change is expected to increase the frequency and nature of weather events, resulting in risks that may be detrimental to both homeowners and businesses.

Law Society Guidance

The Law Society Guidance on Climate Change was published on 19 April 2023. It is a wide ranging document and includes:

- What law firms need to do to reduce their own carbon footprint
- The role of property lawyers and their duty to warn and advise clients on the risks associated with climate change

In relation to property, the Guidance notes the increased risk that climate change brings to properties and refers to the use of climate searches in assessing these risks.

Effects on UK property

Climate change will affect UK properties in two main ways, by direct physical risks and by transition risks.

Physical risks

The main physical risks to property and their potential impacts on value or the availability of insurance are well established. Generally, these will be searched according to the risk they currently present. The severity of impacts over time will largely depend on how successfully global greenhouse gas emissions are reduced.

Flooding: Climate change is likely to impact the variability of rainfall causing extreme weather events, such as flooding from periods of heavy rainfall.

This may be exacerbated if following a period of drought where the ground is hard with less capacity to absorb the rain.

Subsidence: Climate change is likely to drive an increase in subsidence affecting properties. The most common cause of natural subsidence in the UK is the shrinking and swelling of clays. The soils swell, absorbing moisture in wet conditions, and contract when they dry out, which can result in ground movement.

Heat stress: Climate change is causing a rise in average summer temperatures. The increase in temperature can affect how people live and work. Changes in temperature will require adaptations to property. These may include: how development sites and buildings are designed, with changes to construction methods (including potentially changes to foundations, building materials, insulation, heating, cooling etc.). In June 2022, Part O of Schedule 1 to the Building Regulations 2010 came into effect, to help mitigate overheating.

Coastal erosion: Coastlines can be adversely affected by storms, high tides, and rising sea levels. All of these factors are likely to magnify due to climate change. For example, coastal erosion is likely to be accelerated in many seaside areas of the UK.

Transition risk

Transition risks arise as the UK continues to shift to a low carbon economy and new guidance and regulations are brought in to help with that transition process. This might require changes to the property such as increasing energy efficiency. At the moment, this is regulated through Minimum Energy Efficiency Standards (MEES).

Energy performance: Energy performance of buildings is a key transition risk factor. While only relating to the private rented sector (PRS) for both domestic and non-domestic properties, Minimum EPC rating requirements are due to be raised in order to meet the government's carbon reduction targets. For many properties this will require investment to improve a building's energy efficiency, or there may be a need to register with the PRS Exemption Register.

Advice to clients

The Guidance refers to consideration being given to carry out a climate change search. These searches can greatly assist in understanding the nature of the physical and transitional risks affecting a property and how those risks may change over time.

Some law firms are taking the position that they will do a climate search unless the client tells them not to do so. In some cases, clients may not wish to have such a search,

so it is important to write to your client to say that a climate change search is available and for the client to say whether they wish for the search to be carried out.

Client Care Letter

Landmark has therefore prepared the options below for insertion into your client care letter to enable you to adopt your firm's position.

NB. If a climate change search is commissioned, then the solicitor should review the search and report the findings to the client.

Option 1: We will include

For your protection, and the protection of your lender, it is our policy to undertake a (commercial / residential) climate change search as part of our standard package of searches.

The full impact of climate change is unknown and will be determined by global mitigation of greenhouse gas emissions. However, climate change is likely to have an impact to varying degrees on property across the UK.

The search will cover the following physical and transition risks from climate change:

- Flooding
- Natural subsidence
- Heat stress
- Coastal erosion
- Energy performance (transition risk)

A climate change search does not replace a standard environmental search and should be used to supplement the environmental search.

If you do not want us to undertake such a search, please confirm this in writing by return. In such circumstances, please note that my firm will not provide advice on any issues arising from climate change risks

NB. It may be necessary to disclose the results of this search to your prospective insurer.

Option 2: We can include

The full impact of climate change is unknown and will be determined by global mitigation of greenhouse gas emissions. However, climate change is likely to have an impact to varying degrees on property across the UK.

We recommend that you consider whether you would like to know more about the potential risks of climate change to the property. If so, we can undertake a desktop climate change search.

The search will cover the following physical and transition risks from climate change:

- Flooding
- Natural subsidence
- Heat stress
- Coastal erosion
- Energy performance (transition risk)

A climate change search does not replace a standard environmental search and should be used to supplement the environmental search.

Please confirm in writing whether you would or would not like us to undertake such a search.

NB. If you do commission a climate change search it may be necessary to disclose the results to your prospective insurer.

Option 3: We will not include

Whilst we understand that climate change is likely to have an impact to varying degrees on property across the UK, it is our practice policy not to undertake a climate change search as part of our standard package of searches.

However, if you do want us to undertake such a search to know more about the potential risks of climate change to the property, please confirm this in writing by return. We can then undertake a desktop climate change search.

The search will cover the following physical and transition risks from climate change:

- Flooding
- Natural subsidence
- Heat stress
- Coastal erosion
- Energy performance (transition risk)

A climate change search does not replace a standard environmental search and should be used to supplement the environmental search.

