

QBE Business Insurance

PROPERTY MATTERS

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Made possible



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Introduction

The weather continued to hit the headlines this month

On the same day that Manchester City's Champions League game had to be postponed following a torrential thunderstorm, most of the country had been soaking up the sun on the hottest day of the year. Heavy rain and flash flooding caused the city's tram network to be suspended.

Other parts of Britain had been basking in sunshine as the thermometer hit 34.4C in Gravesend in Kent - the hottest September day for 105 years. But, severe storms caused widespread disruption across North West England. In Lancashire, 20,000 homes were left without power throughout Tuesday night.

Then 3 days later, flash flooding hit the south of England and caused travel chaos. A train derailed near Watford Junction station after striking a landslip, caused by torrential rain. There were reports of roads and properties being inundated across Surrey, Hampshire, Hertfordshire and Greater London as a band of torrential rain moved in, prompting the Environment Agency to issue a series of flood warnings.

The extreme weather coincided with the publication of two reports, which reviewed the winter floods of 2015/16 and examined what needs to be done with regard to improved defences and flood resilience measures. Both reports highlight the scale of the task faced and the need for key stakeholders to work together in the short, medium and long term.

We also take a look at a product liability claim, which followed a very significant factory fire. It is an interesting case, as the Court of Appeal had to consider the effect of knowledge of a defective product, with regard to the manufacturer's potential liability. This may be relevant to the prospects of an insurer's subrogated recovery claim.

Report no.1 - The Property Flood Resilience Action Plan

The report was commissioned by the Department for Environment, Food & Rural Affairs (DEFRA) and brought together key business interests, setting them the challenge of contributing to bring about significant change.

The Action Plan considers what can be done to reduce flood related disruption, by better preparing homes and businesses for future floods, recognising the importance of prevention and recovery.

A copy of the report can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551590/flood-resilience-bonfield-action-plan-2016.pdf

Some of the numbers:

- Significant flood events over the last 10 years - 2007, 2009, 2012, 2013, 2014 & 2015/6
- December 2015 was the wettest December on record and wettest calendar month since records began in 1910
- 17000+ properties were flooded, including 4000+ businesses, during the recent winter floods.

A series of roundtable meetings were chaired by Dr Peter Bonfield (OBE), to determine what could be done to address the numerous challenges faced. Task groups were established to support the development and implantation of the recommendations of the Action Plan. Contributions from private sector representatives included; charity, insurance, loss adjusting, business services, products, legal, surveying and flood recovery industries.

The report highlights the importance of practical outcomes, which would lead to a more property level resilient sector. A vital part of the solution to reduce the costs of repairs, and disruption, is the installation of property level resilient measures into the building. These measures can help prevent flood water ingress into a building and/or aid rapid recovery.

Recommendations and outcomes to drive uptake:

- Exploration of Building Regulations to meet the needs of flood risk
- Output from Flood Re to provide evidence base relating to resilience, risk and cost of claims
- Flood product certification to increase consumer confidence
- Online portal to inform consumers - one-stop-shop site
- Cross-industry partnerships to drive behaviours and preparation for future flood events .

The government commitment and contribution includes an extra £700m in funding to 2021, in addition to £2.3bn capital funding already committed. The Flood Re scheme ensures that domestic homes at risk of flood will have access to affordable home insurance.

QBE attended a number of meetings and contributed to the Task Group dealing with, Embedding Resilience in Small Businesses. A key output was the need for a clearer understanding of the impact of different types of flood resilience measures and how this flows through to reducing risk exposure. There are a number of barriers in place, but now is the time for the whole sector to engage with the process and encourage the uptake of flood resilient measures.



Report no.2 – National Flood Resilience Review – September 2016

The report details the government's response to the widespread December floods, which severely affected cities, communities and caused significant disruption to businesses and livelihoods. The government recognise the likelihood of further events and the need to take action to improve protection.

A copy of the full report can be found at: <https://www.gov.uk/government/publications/national-flood-resilience-review>

A fundamental part of the government's response is to provide the necessary support to impacted communities. The report sets out the need for a suitably robust recovery package for homes, businesses and farms in rural areas. The key contributors are:

- 1 The need to strengthen flood defences**
- 2 Flood Re. to provide affordable home insurance**
- 3 Reconsider the approach to assessing the risk of flooding**
- 4 Reduce the likelihood of flooding and increase resilience measures**
- 5 Better management of rainfall, by slowing the flow of water into rivers**
- 6 A 25 year plan to address river catchments, with a pilot in Cumbria**

The report highlights the need to move away from traditional terms of describing flood risk – 1% risk or 1 in a 100 year event. The government challenged the Met Office to develop new plausible extreme rainfall scenarios, which has led to additional uplifts of between 20-30% for each of the 6 climatological regions of England & Wales.

The Environmental Agency has mapped areas of risk of flooding and has used "Extreme Flood Outlines" which constitute good representation of plausible severe fluvial and tidal flooding. The use of Extreme Flood Outlines will allow the Environmental Agency to test the resilience of key local infrastructure assets – energy, water, health, transport and telecommunications.

The next part of the review focused on making key infrastructure resilient to the level of flooding expected. The government will look at temporary defences and improvements to resilience for winter of 2016. Longer term plans are to be implemented and part of this will focus on Core Cities, and other communities, to ensure all decisions regarding flood defence investment are taken on the best possible evidence. Work is already underway with Sheffield in the first instance

The final part relates to the lessons learnt from prior emergency response and flood recovery. The report challenges and considers how the government can be ready to respond more swiftly next time.

Both reports contain a significant amount of flood related information and reflection on the recent flood events, with some comparison between the UK and other countries (France, Netherlands, Australia, Japan and USA). The underlying message being: this is the beginning of the journey towards a more flood resilient nation and that all stakeholders will need to play their part.

Knowledge of product defect.

Howmet Ltd v Economy Devices Ltd

[2016]

On 12 February 2007, a fire broke out at Howmet's factory (the claimant), causing over £20m worth of damage.

Before the fire, the claimant had installed a "thermolevel" made by the defendant manufacturer, Economy Devices Ltd. The device was designed to avert the risk of fire by switching off the heater. One of its functions was to detect when the liquid level fell below the appropriate depth, because if the heater remained on when the tank was empty or nearly empty there was a high risk of fire.

Unfortunately, the thermolevel was defective. Indeed, prior to 12 February 2007, there had been two incidents where the device had failed to switch off the heater. On both occasions, a fire had started, but Howmet's employees had managed to put it out. Yet, instead of notifying the manufacturer and getting the device repaired, Howmet put its own system in place to stop the tank catching fire.

The claimant claimed damages and it was agreed that, had the device worked properly, the fire would not have occurred. The judge

at first instance decided that the thermolevels did have some shortcomings, although it was not clear whether those were due to defective design and manufacture or defective components (which had been bought in) and it was clear that there was no satisfactory test regime.

However, following the fire in January 2007, the claimant was not relying on the thermolevel in tank 6 to work properly and act as a reliable safety device and was instead relying on operator vigilance and a new procedure. On that basis the claim failed.

The claimant unsuccessfully appealed to the Court of Appeal, who unanimously held that the claimant had been aware that the thermolevel was defective and that there was a risk of fire. The effective cause of the fire was not the defective device, but the failure of the system the claimant had put in place. Alternatively the Court of Appeal decided that, given that the claimant had discovered the defect before the damage took place, the defendant did not owe Howmet a continuing duty of care in respect of the safety of the device.

This is an important decision regarding the discovery of a defect and the steps which should be taken to protect your position. The risk of fire could, and should, have been addressed, mitigated and avoided by simply acting with sufficient care at the outset. Thereafter, any failure to act in such a way will inevitably put any claim "on the back foot" and may well result in failure, despite the existence of a defective product.



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