

Climate change - extreme weather and shifting liability risks

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The forecast is gloomy, with the UK expected to see a 10 per cent increase in annual rainfall by 2100 compared to levels at the start of the century. We have already seen a pattern of significant flooding in the UK linked to climate change, with extreme weather events becoming ever more frequent.

The government has recognised flooding as one of the primary areas of inter-related climate change risks for the UK within the most recent Climate Change Risk Assessment committing to action to meet the challenge by:

- Ensuring long-term strategies are in place to address projected risks to people, communities and buildings; and
- Delivering more natural flood management and developing a more integrated approach in high-risk catchments.

As action is taken at a national level in an attempt to combat the risk posed by flooding, public bodies and local government commonly find themselves in the firing line when localised flooding occurs, often facing very substantial claims for the devastating damage that has been caused. The common law has evolved over the years in shaping the principles of civil liability resulting from flooding - might we now see further development in response to the shifting environmental challenges and if so, will that expand or restrict the potential liabilities?

Of particular significance to public bodies and local authorities as we move forward will be the application of the principle that a landowner owes a measured duty of care to prevent a "natural nuisance" on his land, such as floodwater, from causing damage to a neighbour.

Clarity would be welcomed on the nature and extent of that duty in ever more challenging circumstances.

That need for clarity is particularly important when we consider the wide-ranging liabilities that can attach: (i) a landowner can 'adopt' a nuisance even though they had not created it (*Sedleigh-Denfield v O'Callaghan* [1940]) and (ii) a foreseeable risk of flooding can shift over time and what might once have been considered reasonable may no longer be adequate in light of changing circumstances (*Bybrook Barn Garden Centre v Kent County Council* [2001]).

Guidance was provided by the Court of Appeal in the case of *Vernon Knight Associates v Cornwall Council* [2013], which concerned the liability of a local authority for floodwater that had escaped onto neighbouring land. Acknowledging that the court must consider what is fair, just and reasonable as between two neighbouring landowners, it was made clear that particular importance will be placed on:

1. The extent of the foreseeable risk;
2. The available preventive measures;
3. The costs of such measures; and
4. The resources of both parties.

It is recognised by the civil courts and specifically observed in *Vernon Knight* that, where a defendant is a public body with substantial resources, the competing demands on those resources must be taken into account. Nevertheless, the extent of the duty owed can remain onerous.

We are all on a steep learning curve to fully understand the ongoing impact of climate change and it will inevitably take time for organisations to adjust. However as we become more attuned to the increased risk posed by extreme weather conditions the challenge to the public sector will be ensuring the reasonable and proportionate steps continue to be taken in managing that risk – alongside that it is hoped there will be a pragmatic approach taken by the courts and unrealistic expectations are not imposed.

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