

Flood Risk and Financial Costs – Case Study

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Introduction to Me

Good afternoon, my name is Peter Webster. A bit about me: I have a Master of Arts degree in Classics and Modern Languages from Cambridge University; I got my Diplomas in Law and Legal Practice from the College of Law in Central London; I trained as a solicitor in the City of London with Penningtons; after qualifying, I worked for Masons (now Pinsent Masons), Fenwick Elliott, and Capsticks in different parts of London before setting up my own practice, Thea Limited, in 2007. Although I have specialised in construction and engineering law since I qualified, I do not pretend to be in any way technical: my job is to help people define their commercial relationships, or redefine them where something unexpected has happened. My desire to qualify into a construction and engineering legal practice stemmed from the many alternatives to court available to members of the construction industry to resolve their disputes. I am also a mediator qualified to mediate commercial, family, neighbour, and workplace disputes, and spent three years as project manager of a conciliation project for Rwanda after the 1994 genocide.

Introduction to Talk

All of us have many commercial relationships with others. Many of them appear straightforward enough. The sandwich we buy for our lunch; the ticket we buy for our train: we pay our money; obtain our purchase; and consume whatever it is.

Complexities in these apparently straightforward relationships appear, however, when something goes wrong.

The sandwich that makes us seriously ill. The cancelled train service that makes us miss a vital meeting. Suddenly we are casting around to know what other rights we have beyond the simple receipt of our sandwich or ticket in exchange for our money.

A flood is something that has gone wrong. Water, or to be precise too much water, has arrived in a place where it is not wanted. The user or occupier of that place cannot enjoy their rights there in the same way as before. They will look for redress for the damage they have suffered.

My contribution today is a case study of efforts to obtain that redress after coastal flooding during the winter of 2013-2014.

It was said by some that the financial crisis of 2008 onwards was beneficial in that it exposed those who were operating recklessly or unlawfully in that sector. Unusually severe flooding has the potential to do the same in the construction sector. It can do this by exposing the weakness of questionable building techniques. It can also bring into sharp definition property management obligations which may be overlooked, deliberately or accidentally, in more “normal” times by those charged with carrying them out.

1. West Bay Esplanade, Dorset

- 1.1 The Old Shipyard Centre is a former commercial centre which has been converted into seafront flats. (Figure 1)



Figure 1

- 1.2 In 2013 works were instructed by the management company to repair the pillars and ceilings above the walkways.
- 1.3 The grates for the drains were very close to the pillars, and became blocked with building debris. (Figure 2)
- 1.4 The ground floor flat owners drew the attention of the management company to the blockage of the drains. The problem was compounded by the guttering being rendered ineffective by repairs to the main roof. Rain water was sheeting down onto the walkway where it was not draining away, and was instead causing a flood outside the window of the flat.

Figure 2



- 1.5 In February 2014, a freak wave took off the roof of the building. Other roofs along the esplanade were also swept off, and double-glazed windows broken. The ground floor flats were flooded with water seeping down through the other flats after entering through the roof, and with water penetrating the damp course when it was unable to escape through the drains.
- 1.6 The flat-owners, many of whom were only occasional, seasonal occupants of their properties, had to set about addressing the flood damage before matters got worse.

2. The Surveyors and Loss Adjusters

- 2.1 One set of ground-floor flat owners arrived to find the floors of the two sea-facing rooms of their flat soaked. The carpets were saturated. Newly laid laminate floor was also damaged.
- 2.2 The local surveyor inspected the damage. He advised raking out the exterior walls and repointing them. He inspected the interior walls with a hygrometer and advised that they were damp to a height of about two feet, and that it would be necessary to take off the plaster to check the studwork behind it for rot.
- 2.3 The surveyor indicated to these flat-owners however that the damage to the roof was a far more pressing problem for the management company of the block. If they wanted to have the work done quickly, therefore, they were best advised to arrange for it to be done themselves. The flat-owners secured two quotes for the work relatively quickly, but the third company wanted to speak to the surveyor, who had now also been retained as loss adjuster for the insurers of the building.
- 2.4 This quote took a long time to secure. When it eventually came, the surveyor advised the flat-owner to accept the quote of the company who had quoted first. This builder was now wary of the appointment, and wanted clarity on whether he would be paid by the flat-owners, the management company, or the insurers.

3. The Insurers

- 3.1 The insurers had been very prompt in settling the flat-owners' claims for their saturated carpets.
- 3.2 They denied liability for the laminate floor, however, on the basis that it was fastened down.
- 3.3 More significantly, they refused to pay for the investigative work to the interior walls, on the basis that the blocked drains and not the freak wave were responsible for any damp problem that might have built up, and any remedial measures that might be required.
- 3.4 The flat-owners sought legal advice. They were told that there was no essential difference between the laminate floor and the carpets, and that the insurers should meet both claims. The pre-existing problem with the drains did however create difficulties.

4. The Managing Agents

- 4.1 The flat-owners had shares in a resident-run management company which appointed directors from amongst their number and retained local managing agents to discharge the management company's day-to-day responsibilities.
- 4.2 The managing agents in place had decided that this was a good moment for them to resign and hand over responsibilities to another local company.
- 4.3 The flat-owners turn to a local solicitor who had previously been company secretary for the management company. He advises that initial contact should be made with the directors of the management company individually. He further advises sending a second letter if no reply is received within 7 days saying that the flat-owners will have the works done themselves and sue for the cost.

5. The Management Company

- 5.1 The directors of the management company had understandably prioritised the repairs to the roof required as a result of the freak wave.
- 5.2 They had also had some issues with the flat-owners over the construction of a porch in front of the back door to the flat, which in the view of one director, encroached upon the common parts of the development.
- 5.3 Most of the directors had principal addresses away from the development. The flat-owners could not be sure where in the development they all owned flats. It seemed likely, however, that most of them did not have flats on the ground floor, and as a result were more concerned about damage and threats to the upper part of the building rather than the lower part.
- 5.4 The flat-owners received no response to their letters, and so had to formulate a plan of action for themselves to safeguard the structure and internal fabric of their property.

6. The Construction

- 6.1 One of the flat-owners chanced to engage in conversation with a builder who was inspecting the walkways with a senior member of the loss adjusters' firm.
- 6.2 The builder pointed out that the damp course on the exterior wall of the frontage to the flat was far too close to the ground. (Figure 3)
- 6.3 The builder's off-the-cuff suggestion to deal with the problem was to build a second wall in front of the damp course to divert the water.
- 6.4 The loss adjusters' representative looked decidedly unhappy at this suggestion.

- 6.5 The flat-owners sought legal advice again. They were given an ominous warning about what might lie ahead. If the damp course had not in fact been built so low, but had subsided to its current level, then the whole exterior wall might have to be rebuilt.



Figure 3

7. Flood Risk and Financial Costs

- 7.1 Winter is approaching again, and with it, the prospect of more storms bringing rain, river and sea water in unwelcome quantities to undesirable destinations.
- 7.2 As I hope this simple case study has shown, however, flood risk is not so much the likelihood or otherwise of floods occurring, as the readiness of the land, its structures, and the people charged with taking care of them to face the flood.
- 7.3 The risks do not lie ahead, they are already there:
- 7.3.1 The ease or otherwise with which any water arriving on the land drains away. Whether the solution involves removing the water from the land via pipes or channels, or enabling the ground to absorb the water without becoming

waterlogged, it must work. No solution can be fully proof against the most exceptional events, but if its ability to perform has been in some way impaired, then it may fail in the face of an event it could have been expected to cope with.

- 7.3.2 The strength or lack of it in the secondary lines of defence. If the damp course is too low, or out of place for whatever reason, then water on the ground from either heavy rain or large waves will penetrate if the capacity of the drains is overwhelmed. If it was sufficient when it was constructed, but has since ceased to be fit for purpose, it is clearly prudent to have a remedial plan in place well ahead of any possible danger.
- 7.3.3 The vulnerabilities of the property or site itself to water damage if its flood defences are breached. If plaster has to be removed or whole walls dismantled to protect the structure and fabric of the building, this is a serious cost for someone. If this cannot be anticipated and the vulnerabilities removed, then at least the knowledge of the nature of the risk will allow provision to be made.
- 7.3.4 The extent of insurance cover. The ability to obtain insurance in the first place at competitive rates, and then make a successful claim under the policy, will be influenced by the flood defences and inherent vulnerabilities of the land or property. Loss adjusters are there to make sure that the insurance company pays out only for insured risks, and full advantage will be taken of any fault by the policyholder or third parties which lets the insurers off the hook.
- 7.3.5 The organisation of those who have to respond to a flood. In a multi-occupancy building, like the one in our example, the leases will normally give the responsibility for the integrity of the building as a whole to a management company. This management company will have to set priorities for spending the funds available to it on remedial works, and if it is resident-led, may well be influenced by the immediate needs of those who run it.
- 7.3.6 The availability of construction professionals and contractors locally. If there is a serious flood, then there will be a lot of people simultaneously seeking the services of members of the construction industry. In such a market, the members of the industry can name their prices and other terms for those who want the fastest response.

8. Managing the Risk and Allocating the Costs

- 8.1 There is national legislation, such as the Flood and Water Management Act 2010 under which national standards are to be set in 2015, which addresses the risk posed by floods.
- 8.2 The focus of the legislation, however, tends to be upon making sure that the risks of a flood occurring are taken into account in planning policy and permissions for new developments.

- 8.3 In the case of an existing development, such as the one in our case study, decisions need to be taken by the owners about suitable preventative measures, and the advice of surveyors, engineers, architects, and other members of the construction industry is likely to be sought in this regard.
- 8.4 In the aftermath of a flood, the advice and active intervention of members of the construction industry will certainly be sought. But if it was also sought previously, and either failed to mitigate the financial impact of the flood or actually made it worse, then the owners are likely to start seeking legal advice as well. Claims for breach of contract or negligence may then follow.
- 8.5 In my last talk for Local Surveyors Direct CPD Conferences, I described six disputes in the construction industry which I had handled, and drew out the lessons to be learned by the professionals involved under three headings. I will conclude this case study also with the same three headings. I hope that they are of some help to you in managing the risk posed by floods.
- 8.5.1 Manage clients' expectations adequately. Coastal properties cannot be rendered immune from the impact of gigantic waves. But their flood defences can be inspected, analysed, and potentially be improved upon. The client should be able to make an informed choice based upon the vulnerabilities of their property, and the budget that they would need to find to protect it better.
- 8.5.2 Mitigate damage. Make sure if you are administering a building contract that the builder does not store up trouble in the event of flooding by blocking the drains with building debris. Try to come up with solutions for structural weaknesses before the flood arrives, and be seen to be encouraging their implementation.
- 8.5.3 Know your stuff. Clients, be they individual owners or a management company, rely upon your professional expertise to take decisions about protecting their property. Do not assume that this is done simply by putting a policy of insurance in place. In the case of a serious flood, the insurers may well turn to you to find ways to limit their exposure, and you do not want to find the residents looking to your professional indemnity insurers for compensation because of some earlier failure by you which has let their buildings and contents insurers off the hook.

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