

## Lead local flood authorities and liability for flood damages

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**Environment analysis:** Camilla Lamont, barrister at Landmark Chambers, discusses a recent case concerning the impact of the underlying power of Yorkshire's East Riding Council's role as lead local flood authority when redirecting floodwater on to farmland and therefore causing consequent crop damage.

### Original news

*Robert Lindley Ltd v East Riding of Yorkshire Council* [2016] UKUT 6 (LC)

### What is the background to the case?

On Christmas Eve 2012, serious flooding occurred when a watercourse running through Burton Fleming in Yorkshire over-topped. In order to protect the village, flood water was pumped onto a nearby field as a part of a multi-agency response involving the East Riding Council, the Environment Agency (EA), and the Fire Service. The field was farmed by the claimant and as a consequence of the redirection of flood water a portion of the claimant's carrot crop was destroyed. The claimant applied to the Upper Tribunal (Lands Chamber) (UT) for compensation from the council in respect of the crop losses under section 14A(11) of the Land Drainage Act 1991 (LDA 1991).

### What did the UT find?

The UT found for the claimant and awarded compensation in an agreed sum.

The council had contended that it was not liable to compensate the claimant at all because at the time when the crop was damaged the pumping had been carried out by the EA and the Fire Service rather than by it.

The UT concluded however that the underlying power to redirect the flood water on to the claimant's field was that of the council, as lead local flood authority. Such acts amounted to 'flood risk management work' under LDA 1991, s 14A(9)(g) and it was as a consequence of those powers being exercised that the claimant had suffered loss. The EA was simply cooperating with the council in the exercise of its flood risk management functions as it was under a duty to do so. If it were not for the council's statutory power to carry out flood risk management work, the redirection of flood water onto the claimant's field would have constituted nuisance at common law. Therefore the claimant was entitled to compensation. The UT did not have to consider the impact on the quantification of damages of the involvement of the Fire Service as the parties had reached an agreement.

### What are the responsibilities of lead local flood authorities?

Under the Flood and Water Management Act 2010 a lead local flood authority must develop, maintain and apply, and monitor a strategy for local flood risk management in its area, and is to play a lead role in emergency planning and recovery after a flood event. Its duties extend to surface runoff, groundwater, and ordinary watercourses. On becoming aware of a flood in its area it has to investigate, so far as necessary or appropriate, which risk management authorities have relevant flood risk management functions, and whether each of those authorities has exercised, or is proposing to exercise those functions in response to the flood. It must publish the results of its investigation and notify any relevant risk management authorities. It will also, amongst other things, bear responsibility for maintaining a register of physical features that have a significant effect on flooding in its area.

### Are flooding claims becoming more frequent?

Robert Lindley's claim was said to be in the nature of a test case. The UT's decision has been hailed as a landmark decision by the farming community and it is thought that it could impose a considerable financial burden on local authorities by reason of claims by thousands of farmers who have suffered crop losses during recent floods.

It was perhaps inevitable, given the sheer number and scale of flooding incidents witnessed over the past few years that flooding claims would become more prevalent. In another decision that has attracted much commentary, *Vernon Knight Associates v Cornwall Council* [2013] EWCA Civ 950, [2013] All ER (D) 408 (Jul), the Court of Appeal held that a local highway authority was liable in nuisance for flooding caused to a local holiday park by reason of its failure to clear a gully at a notorious flooding hotspot.

### What should lawyers take from this case?

The case underlines the importance of examining in detail the precise basis upon which any person or body is claimed to be liable for flood damage. In this case, there was a statutory provision entitling the claimant to compensation. It is perhaps unsurprising that occupiers of land sacrificed for the greater good in this way should be fairly compensated.

Potential claims against other agencies, bodies or persons will be far less straightforward, particularly so far as the complaint is that the proposed defendant has failed to take steps to alleviate flood risk, such as by dredging. Most cases involving flooding will require detailed consideration of the common law principles of nuisance and negligence as well as the potential application of the common enemy doctrine.

*Camilla Lamont undertakes work in all areas of property litigation, including real property and related chancery work, and landlord and tenant, both commercial and residential. Camilla also has experience of property-related environmental and professional negligence work.*

*Interviewed by Tracey Clarkson-Donnelly.*

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