

**Summary of Stephen Tromans KC's Advice to Groundsure *In the matter of Conveyancers' Duty of Care to Advise Clients about Climate Risk and How to Discharge Such Duty, July 2022 ('the Groundsure Advice')***

1. **DUTY OF CARE:** Solicitors and licenced conveyancers owe a duty to clients to provide warning and advice as to risks which they are or should be aware of and which may adversely affect the property being purchased. This is part of the general duty to exercise reasonable care and skill in carrying out their retainer.
2. **RISKS:** Climate change presents two types of risk to property purchasers:
  - a. **Physical risks** – future damage by surface water flooding from extreme storm events, sea level rise and coastal erosion, and subsidence from extreme heat. These impacts are set to worsen in scale and frequency in the coming years, and may result in costs and damage to property, devaluation of property, and at worst complete loss of property and associated risk to life.
  - b. **Transition risks** - from the transition to a lower carbon economy. This includes changes in regulation and guidance from financial and other regulators (e.g. Bank of England, PRA, Law Society and SRA), market practices of insurers and lenders and, ultimately, the attitudes of more informed and risk averse purchasers, resulting in reduced market values.
3. **CLIENTS:** The conveyancer's duty depends on the nature and sophistication of the client. It will be higher for residential clients and lower for experienced commercial clients. For commercial clients generally the key principles apply and would be followed by prudent conveyancers.
4. **LENDERS:** The attitude of lenders to climate change risks is especially important. Conveyancers acting for lenders owe a duty to pass on to them information which may affect their security. If the lender requires an assessment of climate change risk in the letter of instruction this is a contractual responsibility for conveyancers.
5. **CONVEYANCERS:** Climate risks are much more likely to be apparent to a conveyancer than to a lay client. A conveyancer should be aware of these risks and should as part of their retainer take steps to warn their clients and advise on steps to respond to the risk.
6. **CLIMATE DATA:** The emergence of search tools such as Groundsure's ClimateIndex™ is a very important development. It means that there is a clear practical step which the conveyancer can advise their client to take in respect of such risks.
7. **DISCHARGING THE DUTY:** Conveyancers should make use of the commercial search tools which are available. The conveyancer's duty is to undertake such searches for the client and communicating the results and their implications to clients in the Report on Title.
8. **RISKS FOR LAWYERS:** Failure by the conveyancer to follow these practices may result in damages claims for professional negligence, increased insurance premiums, and possible reputational damage.
9. **RETAINER:** Conveyancers can exclude matters from the retainer, but this would be a very unattractive course to take for climate risk. The client's fully informed consent would be required. That would necessitate a full and clear explanation of climate risk, including physical damage, possible future risks on insurance, acceptability of the property as lending security, and effects on market value.