



St James'  
SQUARE  
LAW FIRM

**Our Guide to Environmental Matters**

Some of the main causes of concern for buyers of residential property are:

- **Land Contamination**
- **Flooding**
- **Landfill**
- **Mining/subsidence**
- **The existence of Radon (a naturally occurring radioactive gas)**

## Contamination

The law relating to contaminated land is now largely covered by legislation and government orders issued in 2000. It applies to all landowners (and others e.g. developers) and covers existing and future contamination. Local Authorities are required to inspect and identify contaminated sites and issue notices requiring the contamination to be remedied. Local Authority Registers of contaminated sites are to be assembled but this is not yet complete. Our search in the Local Authority Registers may indicate there is nothing in the Registers but that does not necessarily mean that there is no contamination. It may be because the site has not been inspected.

Liability for remedial action (often expensive) falls primarily on persons who 'cause or knowingly permit contamination' – hence the phrase "the polluter pays". However, if the polluter cannot be identified, liability falls onto the current owner or occupier. You for your part will want neither the contamination nor the obligation to remedy it. Incidentally, it is possible to cover this cost by specialist insurance.

Please note that, as solicitors, we are not able or competent to advise whether contamination exists. If we are formally advised of it by chance during the course of the legal work on the transaction then we will advise you on the law as it relates to that particular contamination. We will in any event ask the Local Authority if there is any entry on the Authority's Contaminated Land Register but that check is of limited value as explained above.

Do, of course, let us know if you have any cause for concern e.g. you believe the house may have been built on land formerly used for some industrial purpose (such as a chemical plant, gas holder or petrol filling station) and we can assist you in making further detailed enquiries.

## Flooding

Flooding is a growing risk for British property. As a result of recent climate changes, flooding has become more common and severe. Aside from physical damage caused by floods, if a property is – or becomes – at risk of flooding it may be difficult to:

- Obtain a mortgage
- Obtain suitable insurance cover, or
- Sell the property

These issues are likely to affect the value of the property.

The Environment Agency estimates that one in six homes in England is at risk from flooding. It may not always be obvious that a property is at risk of flooding. Properties at risk do not need to be close to a river or the sea or on low lying ground to be exposed to flood risk. Surface water, groundwater and overflowing sewers and drains are increasingly common causes of flooding. It is not only older properties that are affected. In recent years many new properties have been built on flood plains.

## Insurance

It is imperative that before you exchange contracts you ascertain from your proposed insurers that they will be prepared to insure the property under the terms of a normal domestic policy – to include flood risk cover – at a premium and on such other terms as are acceptable to you. Making enquiries of a number of different insurers is advisable and may help you to assess the likely level of flood risk.

Note that even if the property is leasehold, and the landlord arranges the buildings insurance, if flooding becomes an uninsured risk you may be required to make good any flood damage depending on the wording of the lease.

## Flood Re Insurance Scheme

The government's Flood Re Scheme is designed to ensure that homeowners whose properties are at high flood risk can obtain affordable flood insurance with cover at a set price. Flood Re takes the flood risk element of home insurance away from participating insurance companies so that those companies can offer more affordable premiums to homeowners in areas with a high risk of flooding. You can find more information about Flood Re and a list of participating insurance companies by visiting [www.floodre.co.uk/industry/customer-info](http://www.floodre.co.uk/industry/customer-info)

The Scheme is only available to normal household premises, not businesses nor most buy-to-let properties. If you have any doubt whether your home qualifies you can consult the relevant regulations at [www.legislation.gov.uk/ukdsi/2015/9780111137307/contents](http://www.legislation.gov.uk/ukdsi/2015/9780111137307/contents) or you can view a simpler explanation at [www.floodre.co.uk/industry/eligibility](http://www.floodre.co.uk/industry/eligibility)

## Searches and Enquiries

The main ways of learning more about the risk of flooding are:

- **Conducting searches;**
- **Instructing your valuer to carry out physical inspection, or a specialist survey or valuation and to provide advice on the impact of flood risk.**

The Environment Agency provides a free online postcode search for the general public which gives limited information on flood risk based on their Flood Map.

The Environment Agency will also offer a risk assessment on your property. If you wish us to make the enquiry we will do so and report to you but we will ask you to put us in funds to pay the fee.

We are also able to order for you other specialised flood searches at an extra cost. We thoroughly recommend this and if you would like further information or if you would like us to put one in hand please let us know as soon as possible.

Please note that we are not qualified to give advice on flood risk or interpret technical flood reports. We recommend that you discuss the level or risk to which the property is exposed, and the results of any specialised flood searches or specialist surveys, with your surveyor or a flood risk assessment consultant.

Please be aware that it is your responsibility to instigate and carry out investigations into flood risks, obtain advice from appropriate experts and ensure that you have insurance covering flood risk in place at exchange of contracts. We cannot advise you on these matters and, in the event that they are not properly addressed, will not be liable to you for any loss incurred.

## Landfill

If you are having a survey (particularly if you are using a local surveyor), he may know the history of the land on which the property is built. Ensure that you ask if the house is built on a landfill site or if one exists nearby.

Otherwise, if you are unsure or have cause for concern, we suggest you inspect the old planning records at the Planning Authority (normally the Local Authority).

## Mining/Subsidence

If you are buying in an area in which you know there is a history of coal, tin or other mining please advise us and we will carry out an appropriate search. We will ask you to put us in funds to pay the fee. The fee varies depending on the precise search. If you are having a mortgage, the Lender will require any relevant search to be carried out and we will institute it accordingly.

## Radon Gas

Our Local Authority Search will reveal whether or not Radon is an issue in the area of the purchase property. If Radon is an issue new homes will have design features to alleviate the risk. Older homes can be tested to see if Radon build-up is high but this process takes about 6 months. We can if you wish search and find out whether the purchase property has been tested and if so, the results of the tests.

## Combined Environmental Search

Search agencies exist who offer a combined report on most major environmental risks. The agencies draw their information from reputable bodies such as the Environment Agency, British Geological Survey, Coal Authority, National Radiological Protection Board and the Department of Environment. However, do remember that whilst those bodies might reasonably be expected to offer the best information currently available even they may not have full data on your particular property.

If we consider before examining the contract papers that it is appropriate to institute a combined report then we will have included this cost in our fees/disbursements quotation. If we have not included the cost but you would like us to institute the combined search, do please let us know and we will ask you to let us have the current fee.

# Investigation

## Our Position

The existence, extent or effect on the Property of adverse environment matters do not fall within the extent of the advice to be offered to you by ourselves as part of this conveyancing transaction at the agreed fee. It is a matter for you to establish whether the property is affected or at risk.

As mentioned, if we consider it appropriate and have quoted to include it or if you request us to do so, we are happy to assist you by instituting a Search with a reputable search agency. However, we are not able or competent to advise you on the result of any such search report. It will largely be self-explanatory but it will be a matter for you along to assess the result and take further specialist advice where appropriate before committing to the purchase.


## Next Step


If you do wish some form of search carried out for which we have not already quoted, please telephone us now to assess the correct fee and then let us have the appropriate remittance. We will be pleased to institute the Search and forward the report to you.

The amount to be paid can, of course, be added to the funds already requested on account in respect of disbursements.

# Results that move you

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