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## ENFORCING FLOOD RISK MANAGEMENT



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The Flood and Water Management Act 2010 placed new powers, duties and responsibilities on Oxfordshire County Council as a Lead Local Flood Authority (LLFA).

The LLFA is required to investigate all ‘significant flooding incidents’ such as the internal flooding of properties, or those affecting important buildings or structures, or main routes used by emergency vehicles.

### **After a Flood**

One of the LLFA’s duties is to investigate flooding events when considered necessary.

They will take in to account any historic records of flooding that they have, as well as the information gathered from an investigation to determine:

- Which authorities and individuals have relevant flood risk management functions
- Whether each of those authorities, or individuals has exercised, or is proposing to exercise, those functions in response to the flood.

The results of an investigation will be used to inform the relevant authorities and individuals that they are required to prepare and undertake solutions to prevent reoccurrence.

If a stretch of watercourse (including a ditch or culvert) is found to have had an effect on a flooding incident, then the LLFA will:

- Inform and advise the landowner of their legal responsibilities as a ‘riparian owner’
- Advise what work is required and a time frame for its completion.

### **Resolution**

Every effort will be made by the LLFA to resolve the situation by means of negotiation with the landowner(s), in order to obtain compliance with a request to undertake the work required in a satisfactory manner.

Where it is considered that further action is needed, the following steps will be taken:

- The person responsible will be contacted by the LLFA, the problem explained and remedial action requested
- Details of the relevant points of the matter will be provided in writing, in accordance with the Land Drainage Act, 1991. It will explain the problem and the reason for the action being required, as well as detailing the corrective work needing to be carried out
- The aim will be to ensure that corrective work is carried out within the timeframe specified (between 7 and 21 days from the date of the letter).

Agreements on the work to be carried out and written quotes covering all costs should be sought before work is undertaken. It is possible to allow the LLFA to carry out the work required, but the landowner will be charged for the work done.

There are occasions when it is necessary to extend the period of compliance for more complex matters and/or to accommodate exceptional circumstances. Also practicalities may not allow for works to be done within the timeframe specified in the letter. The LLFA will assess these circumstances.

If, after the given time, nothing has been done to resolve the problem and no further correspondence has been received, the LLFA and/or persons involved will then need to take the case to the First Tier Tribunal as a Negligence or Nuisance case.

### **The First Tier Tribunal**

This is a legal court that has powers under the Land Drainage Act 1991 to order a landowner to maintain or re-excavate drainage ditches.

The Tribunal can have specialists in the matters involved sitting on the judicial panel (for instance, the nuisance of run-off from agricultural land is likely to have specialists in drainage and agricultural management). It deals with all types of land, not just agricultural.

The Tribunal can also authorise individuals to carry out work on a neighbour's land in order to protect their own property.

Although the service itself is free, there are likely to be some costs involved (providing maps and other information, and hiring legal representation if needed).

### **Negligence or Nuisance**

If a landowner is found guilty of causing a nuisance to another party, they could be fined for the cost of the damages, as well as being placed under an order preventing the repeat of the offence.

These are the type of cases that could be brought against a landowner if they cause flooding due to neglecting their riparian or designated responsibilities, as specified by the relevant legislation:

- Flood and Water Management Act 2010
- Land Drainage Act 1991
- Water Resources Act 1991
- Environment Act 1995.

Cases can be brought about for reasons including (amongst others):

- The land was not used reasonably
- There is a likely risk of actual damage if the item (land, ditch, flood defence structure) remains in its current condition
- The owner did not take steps to prevent damage.

## Further Information & Contacts

Oxfordshire County Council

Email: [floodmanagement@oxfordshire.gov.uk](mailto:floodmanagement@oxfordshire.gov.uk)

Web: <http://www.oxfordshirefloodtoolkit.com>

Tribunal forms and legal advice are available from:

[http://hmctsformfinder.justice.gov.uk/HMCTS/GetForms.do?court\\_forms\\_category=Agricultural%20Lands%20and%20Drainage](http://hmctsformfinder.justice.gov.uk/HMCTS/GetForms.do?court_forms_category=Agricultural%20Lands%20and%20Drainage)



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