



Department
for Environment
Food & Rural Affairs

helpline@defra.gsi.gov.uk
www.gov.uk/defra

Your ref: 527/14
Our ref: RFI6379
Date: 28th March 2014

Dear [Name of Requester REDACTED]

REQUEST FOR INFORMATION: INFORMATION ON RESIDENTIAL LEASEHOLD PROPERTIES

Thank you for your request for information about the impact of the proposed scope of Flood Re on the affordability of buildings insurance for the residential leasehold sector, which we received on 28th February 2014. As you know, we are handling your request under the Freedom of Information Act 2000 (FOIA).

In keeping with the spirit and effect of the FOIA, and the Government's Transparency Agenda, all information is assumed to be releasable to the public unless exempt. Therefore, the information released to you will now be published on www.gov.uk together with any related information that will provide a key to its wider context. Please note that this will not include your personal data.

You requested information in several parts and I will respond to each part in turn. You requested information on "*DEFRA's work on Flood Re and evidence it has on a) the impact of flooding on the residential leasehold sector, and b) on the impact of flooding on buildings insurance premiums in that sector.*" I can confirm that Defra does not hold data that specifically relates to the impact of flooding on the residential leasehold sector, nor specifically on the impact of flooding on buildings insurance premiums in the residential leasehold sector. The Government has asked the residential property industry to come forward with evidence and to date has received one case study that your organisation provided to the Minister via correspondence on 10th February 2014. Since the information released pertaining to this request will be published, we have made available the full details of this case study at **Annex A**. At **Annex B** we have listed evidence that is not in scope of this current request, but has been provided in the interests of responding in a helpful and comprehensive manner.

You also asked for "*any correspondence between DEFRA and the Association of British Insurers on those two subjects.*" I enclose a copy of the correspondence which Defra holds that is in scope of your request and can be disclosed. There are eight emails between the Association of British Insurers (ABI) and Defra that contain information which is in scope of your request. One further email primarily contained information that is out of scope for your



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request, except for a short paragraph, a copy of which we have extracted and made available to you at **Annex C**.

For each item of correspondence, in line with Departmental policy, the names of junior officials below the Senior Civil Service have been withheld under section 40(2) of the FOIA because the information constitutes personal data relating to third parties. We consider that disclosure of this information is likely to breach the first data protection principle in Schedule 1 to the Data Protection Act, which relates to the fair and lawful processing of personal data, in two ways. First, disclosure would not constitute 'fair' processing of the personal data and, second, disclosure would not satisfy any of the conditions for data processing set out in Schedule 2 to that Act. We have applied the same principles to names of ABI staff members.

The remainder of the information requested is being withheld as it falls under the exemption in section 35(1)(a) of the Freedom of Information Act 2000. In applying this exemption, we have had to balance whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Section 35(1)(a) of the FOIA provides that information held by a Government department is exempt if it relates to the formulation of Government policy. We recognise that there is a general public interest in understanding how Government works and that there is a public interest in public authorities being accountable for the quality of their decision making. On the other hand, there is a powerful public interest in ensuring that there is a space within which Ministers, officials and interested parties are able to discuss policy options and delivery, freely and frankly.

For specific information held about the process of the formulation of Government policy on the types of leasehold property that are eligible for Flood Re and those that are out of scope, we considered that there could be a public interest in disclosure of information and we also recognise there is an interest in this policy from those in the property market and mortgage sector. However, as you know, we have recently published a briefing note, "Scope of Flood Re", which provides a detailed explanation of the proposed scope of Flood Re and includes information on the types of leasehold properties that would be eligible for Flood Re. Given this information is already in the public domain, we judged that there was a far weaker public interest in releasing drafts of documents and communications concerned with refining drafting. Therefore, we believe that on balance, there is a stronger public interest in withholding information pertaining to its development, which is no longer current. Therefore, we have concluded that the information pertaining to the development of the publically available "Scope of Flood Re" note should be withheld.

In developing policy on Flood Re, Government must be able to assure its stakeholders that conversations that are held in private, on the operations or practice of its industry, will remain private. The information held on the policy position of the insurance industry on the proposed eligibility of the leasehold sector to Flood Re, including the rationale was provided as confidential advice for the purposes of developing policy. We consider that the disclosure of the information disclosed by the ABI, as part of the policy development process, would have a detrimental effect on the Government's ability to work constructively with the ABI in delivering the Flood Re scheme which is intended to operate over 25 years starting from 2015. We have therefore concluded that the public interest in maintaining the exemption outweighs the public interest in disclosure and, as such, this information should be withheld.

Finally, you asked for *“the number of meetings that DEFRA has had on Flood Re since 1st January 2013 where a representative of the following organisations has been present: The Association of British Insurers (ABI); The Federation of Private Residents Associations (FPRA); The Leasehold Knowledge Partnership (LKP); The Association of Managing Agents (ARMA).”* Our records indicate that no such meetings have been held¹.

I attach **Annex D**, which explains the copyright that applies to the information being released to you. I also attach **Annex E** giving contact details should you be unhappy with the service you have received. If you have any queries about this letter, please contact me.

Yours sincerely

[Name of Defra official REDACTED]

¹ In the original response, the number of meetings was indicated as one. Following information from the British Property Federation on 29 March 2014, a correction was issued.

Annex A Copy of letter from the British Property Federation

From: [REDACTED (BPF)]
Date: 10 February 2014 11:07:35 GMT
To: <demauley@parliament.uk<mailto:demauley@parliament.uk>>
Subject: Flood Re: leasehold property case study

Dear Lord De Mauley

I hope this email finds you well. I'm emailing from the British Property Federation with regard to the Water Bill, ahead of the consideration of its flood insurance provisions in Committee tomorrow.

I thought you might be interested in the following Telegraph article (below), which details the case of a couple living in a leasehold property near the River Swale that flooded in 2012. Their flood insurance premiums have since risen by nearly 500% and they are unable to obtain coverage elsewhere. The property will not receive buildings cover from Flood Re under the current proposals.

I hope you find the article of interest, and should you have any questions or thoughts, please don't hesitate to contact my colleague [REDACTED (BPF)].

Kind regards,

[REDACTED (BPF)]

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Flood victims abandoned by the insurance lifeboat Premiums rose 500pc for Beverley Morris after the last floods. Now she will miss out on the 2015 safety net scheme

Beverley Morris (pictured) and her husband Steve were victims of severe flooding in September 2012

By Dan Hyde<<http://www.telegraph.co.uk/journalists/dan-hyde/>>

8:12AM GMT 08 Feb 2014

Beverley and Steve Morris are one of thousands of families on tenterhooks as the Government wrangles over details of an insurance scheme designed to protect houses at risk of flooding. Their property is a leasehold block of apartments – and it is unclear whether the plans will offer them, buy-to-let investors and larger houses an insurance lifeline.

Mr and Mrs Morris were victims of severe flooding in September 2012 when the River Swale burst its banks and engulfed the surrounding North Yorkshire plains.

The fire brigade arrived by boat to rescue all the residents in their converted 19th century mill in Topcliffe, where the couple have lived for a decade.

Like the households evacuated this week from the ravaged south-west coastline, the Morrises were forced into temporary accommodation while workmen repaired the water damage.

Mrs Morris, 56, said the flash floods came as a shock: despite living on the banks of the Swale, they had been unaffected by the stronger storms of summer 2007, when 48,000 homes in Britain suffered £3.2bn worth of flood destruction.

As the months passed, the families, pensioners and couples from the old Topcliffe mill were gradually able to return home and put the upheaval behind them.

However, they hadn't bargained for a final blow. In February 2013, they were handed a near-500pc increase to their buildings insurance premiums, which were due for renewal. The floods had pushed the annual bill across the 12 properties in the converted mill from £4,916 to a staggering £23,750 – or nearly £2,000 each.

Beverley and Steve Morris' 19th century mill in Topcliffe was severely flooded

Mrs Morris, who works for a local engineering company, said: "It took our breath away. Steve and I are ordinary working people, and did not know where to turn for help.

"As residents, we all researched but found no alternatives – underwriters were not willing to insure the property. The existing insurers know that no other company will touch us and it appears that they have carte blanche to charge whatever they please."

It is exactly this type of disturbing story that the Government and insurance industry is trying to tackle by introducing Flood Re. From the summer of 2015 this scheme will ensure houses at high risk of flooding can access affordable cover. Every household in the UK will pay £10.50 to cover the extra cost of insuring homes in flood plains, with the premiums for those at risk capped at a price varying by council tax band.

But there is a catch: properties such as the old Topcliffe mill will be excluded from this vital protection. This is because the apartments in the building are owned leasehold. Crucially, the freeholder, a management company, pays the buildings insurance and passes the cost to residents such as the Morrises. As the freeholder is a business, the vital Flood Re protection is void. The same goes for farms and bed & breakfast accommodation. An industry source said this was a "political" decision to prevent home owners subsidising businesses.

For the Topcliffe mill residents, it is a bitter blow. While Flood Re will cap their contents insurance costs, the chances of reversing last year's increases in buildings cover premiums are fading.

Mrs Morris said: "It seems grossly unfair. We can't even go to the ombudsman because the insurance contract is not ours."

The exact number of properties excluded from Flood Re is unclear. The deal, an agreement between the Government and insurance industry, will also leave out around 3,000 larger, more expensive properties in flood plains, and all those built after 2009. Ian Crowder of The AA said thousands of properties in areas that flood are deemed "lower risk" and so will be left at the mercy of the insurance market. He warned of "discrimination" against families whose wealth is mostly tied in larger homes.

The only hope is an eleventh hour amendment to the Water Bill, which ratifies Flood Re and is currently going through Parliament.

Ian Fletcher, director of policy at the British Property Federation, said: "The Morrises case is a prime example of how innocent home owners will be affected if they are arbitrarily excluded from government proposals for Flood Re. The cover must be extended or others will face enormous increases in renewal quotes and the inability to find another insurer.

"We are talking to ministers in an effort to extend Flood Re to leasehold flats. Insurers claim their IT systems can't cope but a 'computer says no' excuse isn't much comfort to a family if their home is destroyed."

Jonathan Evans MP, chairman of the All Party Parliamentary Group on Insurance and Financial Services, has concerns over the impact on small business, especially where “residential and business accommodation is mixed within the same property”. He said: “We believe that these properties should be included in the scheme. Some at the very top end will be able to obtain insurance in highly specialised markets but others will not and it seems unfair to exclude them.”

A spokesman for the Association of British Insurers said: “Excluded properties should still get insurance, it’s just the cost won’t be capped. Flood Re is designed to focus on areas where the lack of affordable and available cover is most acute. We have to draw the line somewhere.” Tom Woolgrove of Direct Line said increasing the breadth of Flood Re cover would push costs up for all households.

Annex B Summary of evidence examined by Defra (not in scope)

1. Defra has examined a number of sources of evidence to understand the size and nature of the residential leasehold sector:
 - The English Housing Survey: Table FT2231 (S322)
 - The 2011 Census: (Tables 101, 104, 106).
 - Leasehold Knowledge Partnership briefing note on the size and structure of the residential leasehold property sector: <http://www.leaseholdknowledge.com/wp-content/uploads/2014/02/LKP-leasehold-market-evaluation-final.1.pdf>
2. Defra looked into several options for establishing the profile of flood risk for leasehold properties. It found that there was currently no robust data on the residential leasehold sector that was in a format that could be mapped against the Environment Agency’s data on flood risk (the National Flood Risk Assessment, or NaFRA dataset).
3. As part of the process of developing policy on flood insurance more widely, Defra has conducted an analysis using industry data on the potential cost of the flood risk element of domestic policy premiums in a risk reflective market. This data was sampled from insurers’ domestic portfolios, and therefore it can be expected that it broadly reflects the current proposals for eligibility to Flood Re. The data does not distinguish whether or not the properties within the sample were freehold or leasehold.

Please note that this data was shared on a confidential basis, and is market-sensitive information. If this information were to be requested under the FOIA then it is likely that the exemption that relates to ‘*breach of confidence*’, section 41(1) of the FOIA, would apply. It provides that information is exempt information if it was obtained from another person and the information in question was provided on the understanding that it would be kept confidential. We would of course consider each request on a case by case basis.

4. Defra has committed to undertake long-term monitoring of the insurance market. As part of this process, Defra commissioned JBA Consulting to conduct a baseline

study of the current insurance market. We plan to publish this research in 2014 when it is completed.

If this information were to be requested under the FOIA then it is likely that the exemption that relates to 'information intended for future publication', section 22 of the FOIA, would apply. It provides that information is exempt information if it was not in the public interest to publish the information in response to the requester because the information is planned to be released in due course. We would of course consider each request on a case by case basis.

5. Defra contacted LEASE² in January 2014 to gain a better understanding of issues raised by leaseholders about insurance. The following email was sent from LEASE to Defra on 5th February 2014:

"I said I would see what information we might hold on LEASE customers who have a leasehold house and have contacted us with questions about insurance. I attach a table, below. From scanning the notes, the insurance enquiry is almost always about the typical covenant requiring the leaseholder to purchase building insurance cover from a provider nominated by the landlord. As I am sure you are aware, the Commonhold and Leasehold Reform Act 2002 makes provision for leaseholders of houses to place insurance with their own insurer – with certain conditions – and that is often the substance of the advice notes in this sample.

While the numbers may not seem very significant (out of 40,000 + enquiries pa received by LEASE in recent years), it is clearly a concern for this section of leaseholders. I'm sorry we can't be more help but if you have any other questions that we might be able to assist with please don't hesitate to come back to me.

Kind regards

[REDACTED (LEASE)]

Calendar year	Enquiries leasehold house/ insurance
2009	70
2010	85
2011	95
2012	123
2013	108
2014	6

[REDACTED]
The Leasehold Advisory Service

² A Non Departmental Public Body funded by Government to provide free advice on the law affecting residential leasehold property in England and Wales.

www.lease-advice.org

Maple House
149 Tottenham Court Road | London W1T 7BN
Tel: [REDACTED]
Email: [REDACTED]

Annex C Email extract

Extract from attachment to email sent from Defra to ABI on 24th February 2014 at 19:35h

"Exclusion of leaseholders

Can the ABI provide a strong and short statement to supplement the No.10 Press Notice about there being no evidence of there being market failure, that freeholders buying insurance on behalf of leaseholders will continue to be able to access flood insurance, and that given the strength of the market, competition will ensure prices are competitive? What assurances about monitoring can be provided?"

Annex D Copyright

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Annex E Complaints

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision under section 17(7) of the FOIA or under regulation 18 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to Mike Kaye, Head of Information Standards, Area 4D, Nobel House, 17 Smith Square, London, SW1P 3JR (email: requestforinfo@defra.gsi.gov.uk) and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our [website](#).

If you are not content with the outcome of the internal review, section 50 of the FOIA and regulation 18 of the EIRs gives you the right to apply directly to the Information Commissioner for a decision. Please note that generally the Information Commissioner cannot make a decision unless you have first exhausted Defra's own complaints procedure. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

