

RESILIENCE

Climate BCM  
Wildfires

SMART GUIDE

The Damages  
Claims Portal

HOW TO

Risk manage partner  
contract clauses

HORIZON SCANNING

Global insights and  
near term local risks

# stronger

THE  ALARM JOURNAL

April  
2024

## LAWS & RULINGS

*Automated Vehicles Bill*

*Data Protection and Digital Information Bill*

*Lifelong Learning Bill*

Third-party duties of care for child protection





# Wildfire STARTER

Wildfires impact local authorities, local governments and housing associations. Be aware of the legal implications, including liability, fraud and property damage.

AUTHOR: **Matthew Lowry**, Senior Associate, Clyde & Co

**T**he effects of climate change are becoming increasingly prominent. According to data released by the Met Office, 2022 was the hottest year on record with a mean temperature of 10.03°C. 2023 was marginally lower, with a mean temperature of 9.97°C. Global warming has resulted in changes in UK weather such as more frequent and intense heatwaves.

If climate change continues unabated, it is predicted that in 50 years winters will be between 1 and 4.5°C warmer and up to 30% wetter, and summers will be between 1 and 6°C warmer, and up to 60% drier<sup>1</sup>. This is a recipe for more regular flooding and wildfires.

Wildfires are a vicious circle; while climate change causes wildfires, the fires themselves in turn release CO<sub>2</sub> emissions, contributing further to the global warming effect that started them in the first place. The destruction of forests as a result of wildfires is a catalyst for further warming. Forests regulate the global climate. As forests disappear, global temperatures will rise; notwithstanding the human activity causing global warming already. The disappearance of trees also has a detrimental effect on animals as their habitats are destroyed, damaging ecosystems.

Wildfires have long been a problem in traditionally hotter European countries, but they have become a more regular feature of recent UK heatwaves too. Due to the ability of wildfires to spread rapidly, leaving behind vast areas of destruction, there is a potential for significant human casualties. This places yet further pressure on emergency services and the NHS, which is already suffering from lack of resource.

Wildfires can spread at a speed of 14.27 miles per hour<sup>2</sup>, meaning that areas of woodland can quickly become engulfed in flames and the fire can spread easily. This often results in fire services from the wider area being required



A firefighter at Morar in Scotland, attends a hillside grass fire

## Defining 'wildfire'

In the UK, the term wildfire is officially defined as: 'any uncontrolled vegetation fire which requires a decision, or action, regarding suppression' (Scottish Government, 2013). It includes not only vegetation fires occurring in woodland, grassland and shrubland areas but also smouldering fires common in peat, and fires in built-up areas with vegetation and gardens. This definition differs from the international term as a fire 'that occurs in a wildland' because the UK no longer has many true wildland areas<sup>5</sup>.

to assist in tackling the blaze and equipment such as helicopters may be used to assist.

During the heatwave which affected the UK in 2022, a large wildfire started in Wennington, East London. The fire spread across 40 hectares of land and affected 17 to 19 houses, 12 stables, and properties belonging to local businesses. The London Fire Brigade released a report in 2023 which concluded that the Wennington wildfire was likely to have started in a garden, but it could not reach a firm conclusion<sup>3</sup>.

Fire & rescue authorities are required to plan for the foreseeable risks in their area, such as wildfires, and produce an Integrated Risk Management Plan (IRMP). It's crucial these are kept up-to-date and the risk of wildfires in the area are accounted for. This will assist in ensuring that fire & rescue authorities have the appropriate resources to tackle wildfires.

### Risky behaviour

As the earth warms, and the UK warms with it, there are activities from local citizens and residents which could result in a greater risk of wildfires breaking out. **These include, but are not limited to:**

- A lack of maintenance in residential gardens and the wider local area resulting in dry wood, twigs, and combustible material being left exposed to the sun.
- A failure by local authorities, registered providers of social housing, or other residents, to prune evergreen trees on a regular basis.

- The use of fire pits or burning rubbish in the grounds of residential homes.
- Careless disposal of flammable/combustible waste in public areas for example, disposable BBQs in parks.
- Careless disposal of glass bottles which magnify the sun and can cause fire to start if left in or near dry grass.

Authorities will need to be more vigilant policing the activities of local populations to ensure their behaviour does not exacerbate the problems brought by drought and heatwaves.

### Challenges

Financial pressures mean that local authorities, emergency services, and providers of social housing are struggling to tackle the problem of climate change. These organisations face an increasing number of claims for housing disrepair, Japanese Knotweed, and subsidence. Such claims redirect funds away from the provision of services such as the trimming of trees in the local area, the clearance of refuse, and tackling property misuse.

To take preventative measure and to ensure efficient use of limited resources, local government and registered providers of social housing need to alter development and maintenance strategies. The location of new housing developments and the assessment of the risk posed by wildfires need to be more carefully considered. This includes ensuring property is not constructed using combustible material, and green areas such as parks are well maintained. ➤

The location of new housing developments and the assessment of the risk posed by wildfires need to be more carefully considered.



### Legal liability

With changes in climate come changes in risk facing local government, local authorities, and registered providers of social housing. Increasing attention must be given by police to deal with littering and fires in public places as the warming climate will make wildfires more likely.

Organisations have a duty to those on their land or premises to take such care as is reasonable to ensure their safety from personal injury. A failure to minimise the risk of fire due to human activity such as a failure to clear debris from communal areas could cause a rise in the number of personal injury claims faced by organisations. This will inevitably have a knock-on effect on an already overworked healthcare system.

Property damage claims resulting from wildfires are increasing for the reasons set out above. Wildfires can quickly consume large properties, leaving their owners out of pocket and facing a sizeable insurance claim. Recovery will be sought by insurers from those who are perceived to have caused the blaze, including any local authorities deemed to have failed to do enough to prevent the fire in the first place.

In 2022, LV=General Insurance dealt with claims worth £1.2 million after the heatwave that affected the UK between 17 and 20 July of that year<sup>4</sup>. Most of these cases relate to fires starting in open areas which spread to residential gardens, causing significant damage to people's homes, and in rare cases, the total loss of a home.

### Fraud

Dan Thomas of Clyde & Co's Fraud Team warns: "The increasing regularity of wildfires and risk to suburban locations, as open areas of woodland and heath shrink to accommodate the housing needs and risk factors associated with a growing population, will see an inevitable rise in damage to both commercial and residential properties resulting in local authorities and insurers facing more claims. This opens the door for opportunistic claimants to make fraudulent claims and provides a further avenue for exaggeration and exploitation by the claims industry".

While the wildfire event itself is likely to be genuine, save for those occasions when the fire may have been started deliberately, insurers and the organisations which they insure will need to be aware of the potential red flags that can suggest exaggeration on the part of claimants. Such indicators will include vague or conflicting

# 14.27mph

## Wildfires can spread at a speed of 14.27 miles per hour<sup>2</sup>

witness accounts of the damage, financial issues being experienced by those making the claim, and the claiming of an excessive or unusual sum for unusual or unexpected areas or items that have been damaged".

Should a claim for damage caused by a wildfire be received, it is important that investigations are undertaken by a forensic investigator or loss adjuster to determine its likely origin. We have dealt with claims in the past where an instructed loss adjuster was able

to determine that the fire was caused by an open firepit on the premises, rather than due to natural causes.

We also recommend gaining evidence from those in the vicinity of the fire who may have witnessed its origins. Nearby residents may be able to shed some light on the activities of those making

the claim. The damage (or lack thereof) to their property may also enable the insurer or loss adjuster to reach an informed conclusion about the mechanics of the fire and whether it was fortuitous. ●

**A failure to minimise the risk of fire due to human activity... could cause a rise in the number of personal injury claims faced by organisations.**

### References

- <sup>1</sup>What is climate change?, Met Office
- <sup>2</sup>How fast do wildfires spread? Western Fire Chiefs Association
- <sup>3</sup>Council welcomes release of London Fire Brigade Wennington fire report, London Borough of Havering
- <sup>4</sup>UK fire and subsidence claims will rise due to extreme heat, says insurer, The Guardian
- <sup>5</sup>UK wildfires and their climate challenges, UK Climate Risk

**Matthew Lowry** ([matthew.lowry@clydeco.com](mailto:matthew.lowry@clydeco.com)) is a Senior Associate at Clyde & Co. Matthew deals with litigated and pre-litigated claims of property damage, disrepair, cavity wall insulation, private nuisance, contractual disputes and subrogated recoveries.

**Clyde & Co.'s** work with public sector bodies including local authorities, housing associations, social care and educational institutions, focuses on managing and reducing risk. [clydeco.com](http://clydeco.com)