

DERBYSHIRE - LEAD LOCAL FLOOD AUTHORITY

The Duty to “Investigate Flooding Incidents”, Section 19 - Flood and Water Management Act 2010

1. Introduction

In his review of the Summer 2007 floods, Sir Michael Pitt made a range of recommendations, including the following:

Recommendation 15: Local authorities should positively tackle local problems of flooding by working with all relevant parties, establishing ownership and legal responsibilities.

The above recommendation was a result of evidence received during his review which concluded as follows:

“We believe that local authorities, as part of their leadership role, should investigate [these] local flooding problems and work with the Environment Agency, water companies, the Highways Agency, internal drainage boards, riparian owners and other relevant parties to establish the source of the problems and where the responsibility lies for addressing them.”

The recommendation was accepted by Government and included in the Flood and Water Management Act 2010 as a duty placed on newly formed **Lead Local Flood Authorities**. This duty came into force on 1 April 2011.

Section 19 Local Authorities: Investigations

1. On becoming aware of a flood in its area, a Lead Local Flood Authority must, to the extent it considers necessary or appropriate, investigate:
 - (a) which Risk Management Authorities have relevant flood risk management functions, and
 - (b) whether each of those Risk Management Authorities has exercised, or is proposing to exercise, those functions in response to the flood.

2. Where an authority carries out an investigation under subsection (1) it must:
 - (a) publish the results of its investigations, and
 - (b) notify any relevant Risk Management Authorities.

The “explanatory notes” to the Act, prepared by Defra went on to say:

“While the management responsibility for a flood may be clear in many cases, there may be occasions where this is not so and the purpose of this provision is to require the Lead Local Flood Authority to investigate where appropriate, so as to try and ascertain where responsibility for managing the flood risk lies and what is being done about it.”

2. Necessary or Appropriate?

During the passage of the Bill, the precise wording of the duty included the term “to the extent that it considers it necessary or appropriate”.

As a result, Lead Local Flood Authorities have scope to define a threshold or criteria that will determine whether or not a formal investigation of a flood is required.

As such, the Derbyshire Strategic Flood Board should establish a policy framework within which officers can implement this duty to best serve local residents, within the resources available.

3. Investigations Policy Framework - Derbyshire Lead Local Flood Authority

A framework within which investigations can be carried out to meet the statutory duty will need to be cognisant of the following points:

- The characteristics of a flood which might influence the decision to investigate formally.
- The thresholds that might be considered appropriate in relation to the flood characteristics.
- The initial process and information required to determine whether a formal investigation should take place.
- Things to consider when undertaking a formal investigation.
- The potential actions that might be considered in circumstances where a formal investigation is not required.
- The risks associated with a decision not to undertake a formal investigation.

4. Flood Characteristics

The following “characteristics of a flood” have been identified which should be used as a basis to determine whether a formal S19 investigation should be instigated by the Lead Local Flood Authority:

- Number of properties internally flooded.
- The frequency of flooding in a given location.
- The depth, area or velocity of flooding reported.
- The demographic nature of the flooded community and ratio of vulnerable people.
- The nature or extent of critical infrastructure impacted by the flood.
- The nature of assets of key local essential services or access to them (emergency services, NHS etc) impacted by the flood.
- Whether the flood relates to a known cause, outside the responsibility of the Lead Local Flood Authority (eg well documented flooding caused by a main river).

5. Thresholds for Flood Characteristics

It is important that the thresholds that the Strategic Flood Board set on behalf of the Lead Local Flood Authority reflect local priorities but also meet public expectations and the spirit of Sir Michael Pitt’s original recommendation which was driven by public frustration during the 2007 floods.

Whilst accepting that a flood event must be seen as “significant” both by the Authority and the community affected, to set the threshold too **high** would simply be seen as a method of avoiding the responsibility of carrying out investigations. Setting the threshold too **low** could well lead to a burden that the Authority and other Risk Management Authorities could not meet.

As such the threshold ranges given below will be subject to review by the Strategic Flood Board after two years of practice.

- (a) **Number of properties internally flooded** - An event where records or anecdotal evidence shows that five or more residential properties, or two or more non-residential properties (industrial/commercial) affecting employment, have been internally flooded.
- (b) **The frequency of flooding in a given location** - Where a flooding problem is recurring and is supported by records or anecdotal evidence as having occurred more than once in a ten year return period or flooding has occurred to “new build” property built within that period, then a lower property threshold of two or more residential properties or one non-residential property affecting employment should be adopted.

(NB: The above thresholds have been adopted by the Derbyshire Lead Local Flood Authority for the purpose of the Preliminary Flood Risk Assessments Report, approved in May 2011. The rationale in relation to “new build” property is that the approved development is likely to have taken place with the benefit of referral to a SFRA and as such flooding should not be expected.)

- (c) **Depth, area or velocity of flooding** - An event where threat to life and/or threat of injury or harm has occurred will always lead to a formal investigation to establish the cause. A request from the emergency services, particularly Derbyshire Fire and Rescue Service will be formally referred to the Strategic Flood Board for a decision.
- (d) **Demographic nature of flooded communities** - an event which affects an area or community with a concentration or high proportion of vulnerable people eg an area of social housing for older people. Consultations with Social Care Departments, Community Health Services and the voluntary sector will be key in establishing a community profile.
- (e) **Critical infrastructure impacted by the flood** - An event which leads to a protracted impact on a key utility service (water, sewage treatment, electricity distribution, gas distribution, telecommunications, rail network, strategic road network) in excess of 12 hours before restoration of the service.
- (f) **Key local essential services impacted by the flood** - An event which leads to a protracted impact to essential services or access to their facilities (emergency services, NHS, Local or Central Government services) particularly if the services relate to vulnerable communities or individuals (identified as Priority 1 functions within statutory business continuity plans), in excess of 12 hours before restoration of the service or access to it.
- (g) **Floods with a “known” cause** - An event where the flood is perceived as a “known” cause and a Risk Management Authority acknowledges that cause, **no** formal further investigation will be undertaken.

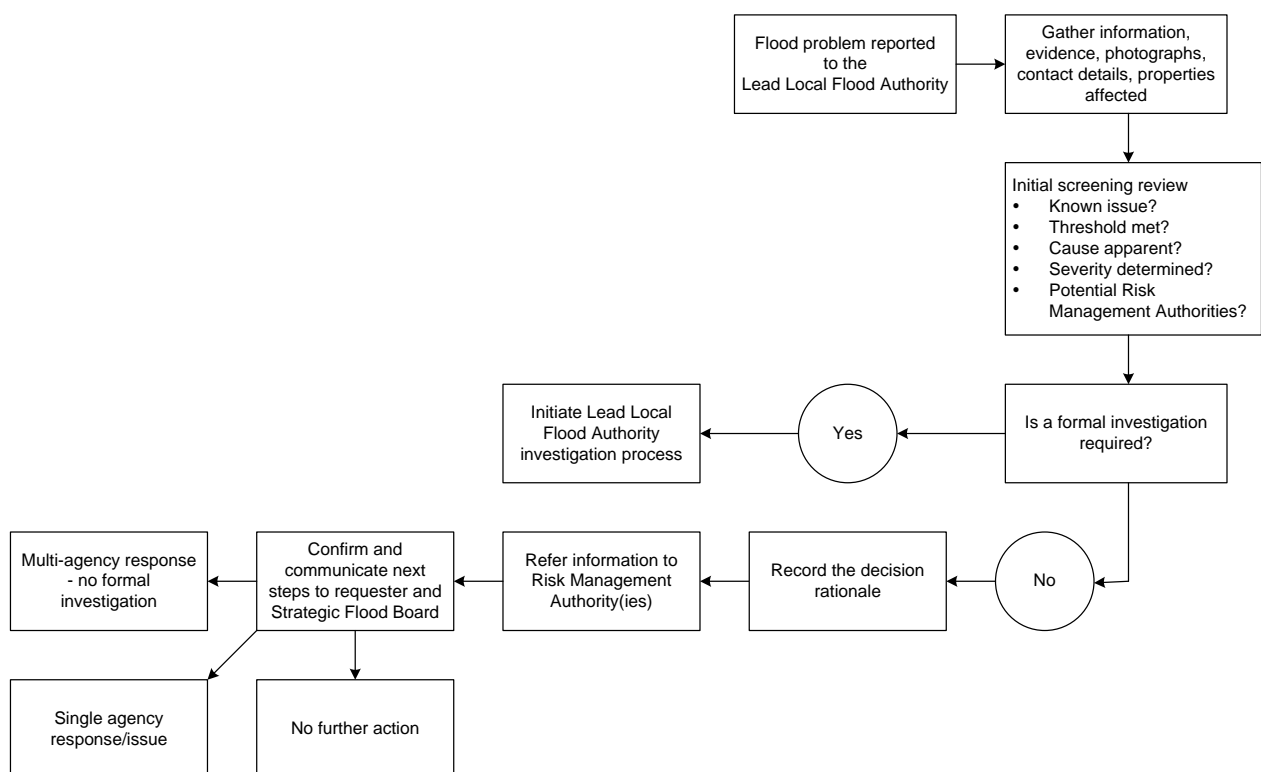
6. The Process for Determining Whether a Formal Investigation is Appropriate

There are several pathways which could lead to the Lead Local Flood Authority considering whether a formal investigation into a flooding problem would be the most appropriate course of action. These could include:

- The Lead Local Flood Authority's own records accumulated over several years in responding to incidents and/or collation of historical data to inform the flood risk assessment process, identifying locations with flood risk problems which meet the characteristics and thresholds as agreed.
- A request supported by records and supporting evidence from a member of the public.
- A request supported by records and supporting evidence from another Risk Management Authority.
- A request supported by records and supporting evidence from one of the Authority's professional partners.
- A request supported by records and supporting evidence from an elected member and/or parish council.

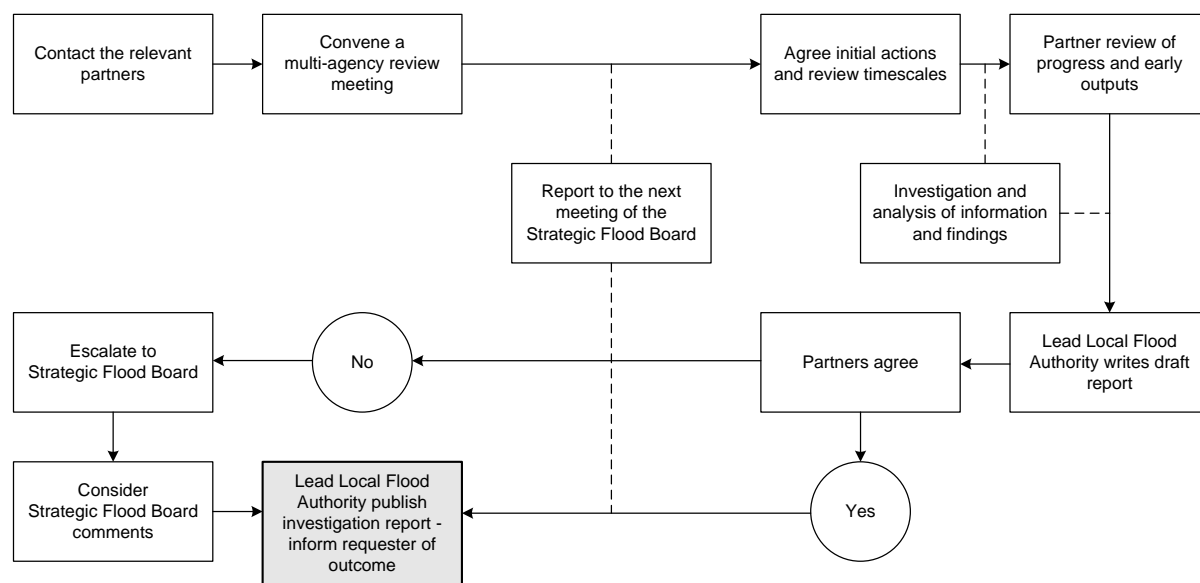
Every event considered for formal investigation will be screened by the **Emergency Planning Division** of the County Council in consultation with the **Environmental Services Department**. Outlined below is the process which will be followed for each potential investigation.

Diagram 1: Process for determining whether a formal investigation is appropriate



Should the screening process lead to a decision that a formal investigation is the appropriate course of action, the **Emergency Planning Division** will facilitate the investigation process as follows:

Diagram 2: Investigation process



7. Things to Consider When Planning a Formal Investigation

It should be borne in mind at all times that the statutory requirement of the output of a formal investigation is relatively simple:

- To identify which Risk Management Authorities have relevant Flood Risk Management functions.
- To establish if those functions have been exercised or are intended to be.
- To publish the results and notify relevant Risk Management Authorities.

The Council as Lead Local Flood Authority will endeavour to set good practice in carrying out formal investigations and prior to publication of the final results will have ensured the following:

- Where necessary formal investigations will be carried out according to prioritisation, based on best information available and endorsed by the Strategic Flood Board (in some cases retrospectively).
- Relevant partners have been engaged throughout the process.
- As far as possible, consensus is reached on the conclusions drawn and information gathered is validated as far as reasonably practicable.
- Issues of disagreement are referred to the Strategic Flood Board.
- Local elected members, including County, district and parish councils are informed of flood investigations underway within their divisions/wards/parish.
- Improvement and Scrutiny Panel are kept informed of investigations and conclusions as a quarterly report.
- Formal investigations will be carried out within a timescale that would meet reasonable public expectation, not exceeding six months.
- Formal investigation to be signed off by the Director of Environmental Services (Chair of the Strategic Flood Board).
- Several means of publication will be used including the Council's website, Derbyshire Prepared website and appropriate district council websites. Access for public to view the full information related to the investigation will be arranged on request to the Emergency Planning Division.

8. Where a Formal Investigation is Not Required

There are likely to be a number of requests for formal investigations of the cause of flooding, particularly after a widespread flooding event affecting many communities. As stated previously it will be necessary to prioritise investigations and also address concerns that do not meet the appropriate thresholds for formal review. These can be addressed using the existing mechanisms available to the Authority and/or referring to the agency most likely to be in a position to offer assistance.

All requests for investigation will be logged and records kept as to the actions taken. Such records will include a GIS version on the Flood Risk Assessment dataset.

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