



Guidance on the Impact of Climate Change on Solicitors

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Who should read this guidance?

This guidance is relevant to all members of the Law Society. Where the guidance uses the term 'organisation', this is a reference that will apply to solicitors' practices, legal firms and in-house employers unless stated otherwise.

The Law Society has developed this guidance for its members to consider the way that they practise in the context of climate change. The Solicitors Regulation Authority (SRA) is supportive of this guidance, but it should not be interpreted as the SRA's regulatory position on these matters. Any reference to the SRA Principles is designed to help solicitors and organisations understand their professional obligations. Regulatory queries should always be directed toward the SRA who can assist in providing guidance on the SRA Standards and Regulations. You can contact the SRA ethics helpline for advice on the interaction with the SRA's regulatory requirements.

The Law Society committed in its Climate Change Resolution dated 28th October 2021 (**The Law Society Resolution**),

"to provide guidance to solicitors on how, when approaching any matter arising in the course of legal practice, to take into account the likely impact of that matter upon the climate crisis in a way which is compatible with their professional duties and the administration of justice;"

This guidance is in two parts, as follows:

Part A - sets out guidance for organisations on how to manage their business in a manner which is consistent with the transition to net zero.

Part B - provides guidance for solicitors on:

- i. how climate change physical risks and climate legal risks may be relevant to client advice
- ii. issues which may be relevant when considering the interplay of legal advice, climate change and solicitors' professional duties
- iii. issues which may be relevant when considering the solicitor-client relationship in the context of climate change

Further sector-specific guidance on particular areas of law will be published by the Law Society addressing how solicitors should advise clients on climate change legal risks, as well as guidance on helping solicitors and law firms adopt and implement more sustainable operations in response to changing market conditions.

Background and Introduction

In 2016, the United Kingdom ratified the Paris Agreement to the United Nations Framework Convention on Climate Change, including the aim of holding the increase in global warming to "well below 2°C", and to pursue efforts to limit the increase to 1.5°C above pre-industrial levels.

The Climate Change Act 2008 commits the UK Government by law to reduce greenhouse gas emissions by 100% from their 1990 levels (net zero) by 2050. The Act requires the Government to set legally binding 'carbon budgets' to act as stepping stones towards the 2050 net zero target. This includes a legally binding target to reduce emissions by at least 68% by 2030 and 78% by 2035. These targets are being increasingly accompanied by implementing legislation to reach these goals.

This guidance assists solicitors to recognise where the impacts of climate change may affect their practice and/or their clients and offers guidance in terms of appropriate response. These will be context dependent and will vary for practitioners in differing roles, who are to apply the guidance to their own circumstances. This guidance covers a range of issues and does so intentionally as the effects of climate change are wide-ranging and constantly evolving and it will be important for solicitors to be aware of this changing landscape and its potential impact upon their organisation as well as their legal advice.

Part A

1. Understanding and reducing your client's and your organisation's climate impact

1.1. Greenhouse gas (GHG) emissions

Many organisations are involved or considering getting involved, in programmes to understand and reduce their climate impact.

To set targets and reduce the climate impact of your organisation, you will need to understand and measure the greenhouse gas (GHG) emissions associated with your business operations to identify the primary sources of emissions.

Table 1 below explains the categories of GHG emissions and provides some practical examples of how they may arise in the context of an organisation. The scopes set out in the table below are developed by the [Greenhouse Gas Protocol](#) which supplies the most common greenhouse gas accounting standard and are equally relevant to any organisation irrespective of its size. Organisations will need to take a proportionate approach to calculating their GHG emissions based on their size, operations and supply chains.

Table 1 – Emissions scopes (Greenhouse Gas protocol)

Scope	Explanation	In the context of a law firm's or organisation's carbon footprint
1	Direct emissions from the use of fuels	Fuel used to heat an organisation's offices.
2	Indirect emissions including purchased electricity or heat	Electricity used to light, heat and power an organisation's offices
3	All other indirect emissions relating to an organisation's value chain (including those relating to suppliers).	Other emissions such as those associated with business travel (including flying), catering or other purchased goods and services including IT, stationery, furniture and cleaning products

Scope 3 emissions are generally the primary source of emissions for law firms. Therefore, understanding GHG emissions will include an analysis of the impact of your organisation's procurement and supply chains.

Larger organisations may have complex supply chains and may wish to consider instructing technical or consulting services to help gather accurate and comprehensive data. Smaller organisations may find help from voluntary organisations or initiatives listed on [The Law Society Climate Change page](#) and/or listed below in section 1.2.

1.2. Science-based targets

GHG emissions reduction targets set by organisations vary hugely in their scope, comprehensiveness and ambition. Many include a commitment to achieve net-zero GHG emissions by a certain date. However, such targets are considered science-based only if they are in line with what the latest climate science deems necessary to meet the 1.5°C Paris Agreement goal. For further detail, see the Science-Based Targets Initiative ([SBTi](#)) or [1.5 C Business Playbook \(as part of UN Race to Zero\)](#).

Although the precise implications of climate science will vary for each sector and organisation, certain features are likely to be present in a robust science-based target. These include:

- coverage of all of the organisation's scope 1, 2 and 3 GHG emissions (see table 1 above), with no material exceptions
- commitment to short, medium and long-term emissions reductions, including steep emissions reductions before 2030. These should be consistent with what the latest climate science deems necessary, including the requirement for economy-wide emissions reductions of at least 90% by 2050, with any residual emissions being offset to achieve net zero
- not relying on offsets, carbon credits or avoided emissions to achieve the organisation's emissions reduction targets
- adhering to sector-specific emissions reduction pathways, where applicable

The SBTi offers a framework for validating organisations' science-based targets appropriate for some organisations, depending on their size, operating model and resources. A UN Expert Group has also recently provided [best practice guidance](#) on creating and implementing 'net zero' commitments.

A range of other organisations offer alternative frameworks to support and validate the setting of climate targets. Smaller organisations may consult publicly available materials on [science-based target setting and resources](#), the [1.5 C Business Playbook and SME Climate Hub \(UN Race to Zero\)](#), as well as [resources](#) provided on the Law Society's website on its [Climate Change page](#).

1.3. Climate Risk Disclosure Frameworks

Some large organisations may already be subject to mandatory GHG emissions or other climate-related reporting obligations, for example:

- Large companies and limited liability partnerships may need to comply with annual GHG emissions reporting requirements under the UK Streamlined Energy and Carbon Reporting (SECR) regime (see the [Companies \(Directors' Report\) and Limited Liability Partnerships \(Energy and Carbon Report\) Regulations 2018 \(SI 2018/1155\)](#)), and related [UK Environmental Reporting Guidance](#), including disclosure of UK energy use and associated GHG emissions.
- Large companies and LLPs may also need to provide climate-related financial disclosures for financial years beginning on or after 6th April 2022 under the

Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022 and the Limited Liability Partnerships (Climate-related Financial Disclosure) Regulations 2022 (as applicable) and [related guidance](#).

- In-house solicitors advising companies listed on the standard or premium segments of the London Stock Exchange should be aware of the Listing Rules (LR 9.8.6R(8) for premium listed commercial companies and LR 14.3.27R for certain standard listed companies). These require the companies they advise to include statements in their annual reports explaining whether the company has made climate-related financial disclosures consistent with the recommendations and [recommended disclosures of the Taskforce on Climate-Related Financial Disclosures](#), and where the relevant disclosures can be found. [Climate-related financial disclosures for companies \(CRFD\)](#) apply from April 2022 (under the Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022 and the Limited Liability Partnerships (Climate-related Financial Disclosure) Regulations 2022).
- Solicitors advising listed companies (either in private practice or in-house) may also need to follow the development and implementation of the sustainability disclosure standards produced by the International Sustainability Standards Board (ISSB) and the impact of the ISSB framework and other similar disclosure standards (such as those developed under the EU Corporate Sustainability Reporting Directive) on their clients.

Organisations may also need to align their reporting framework to any relevant voluntary target-setting or disclosure initiatives the organisation has adopted such as SBTi or [CDP](#), each of which has its own publicity and reporting requirements. Businesses that have endorsed the UN Race to Zero criteria through membership of a partnership network or initiative may also be required to report annually and publicly on actions taken and progress against their interim and long-term targets to meet the minimum criteria for membership of [Race to Zero](#).

Voluntary and mandatory frameworks such as those above may also be helpful sources of guidance for the development, adoption and communication of your organisation's climate targets, whether or not your organisation has adopted or is bound by the relevant framework.

1.4. Advised Emissions - Understanding and addressing the climate impact of your client work

For lawyers, the most significant GHG emissions associated with their organisation are likely to be emissions associated with the matters upon which they advise, rather than scope 1-3 emissions (see table 1). These downstream emissions are sometimes referred to as 'Scope 4' or 'advised emissions'. These and other similar terms are used differently by commentators, but in this guidance, we will reference 'advised emissions' to mean emissions associated with the matters on which solicitors advise, as a proxy for understanding whether these are reducing, alongside those of their clients, in line with the [IPCC recommendations](#).

Advised emissions are not currently included in the [GHG Protocol](#) (see Table 1 above). However, they are coming under increased scrutiny from some clients and stakeholders across a variety of sectors in the context of organisations' climate commitments. Advised emissions are discussed in more detail in section 4.3 below.

Therefore, firms that are committed to pursuing the 1.5°C Paris Agreement goal should also consider how they might be able to influence the reduction of advised emissions in line with their broader target setting. This might be by:

- understanding the climate change-related strategy, goals and transition plans of your organisation or clients to the same extent that you understand their commercial and financial position
- understanding the climate-related risks and opportunities that typically present themselves in your practice area and the matters you advise on
- advising clients of relevant climate legal risks and opportunities associated with the global transition to a net zero economy
- assisting clients who wish to reduce their emissions and engage in transition planning
- considering whether it is consistent to accept instruction and to advise on certain matters that the firm decides are incompatible with its climate change commitments (see section 4.3 for further detail)

Firms will need to decide on the approach which is most effective for their client base and practice areas.

1.5. Greenwashing

Marketing, pitch and other materials that communicate your organisation's approach to climate change should not mischaracterise or overstate your organisation's targets, or progress made against them, as this has the potential to leave your organisation open to accusations of greenwashing and may lead to breaches of the Competition & Markets Authority's Guidance on Environmental Claims (Green Claims Code) and/or the SRA's Standards and Regulations.

For example, the term "sustainable" is widely taken to mean "meeting the needs of the present without compromising the ability of future generations to meet their own needs" ([EU Brundtland Report, 1987](#); as quoted in the [Charity Commission's definition of sustainable development](#)). If a law firm describes itself as sustainable, or providing sustainable legal services, or makes similar claims relating to its response to climate change, it needs to consider whether those claims can stand up to external, objective scrutiny. Setting standards by reference to accepted scientific methodologies and measuring impacts using those methodologies is an established way of demonstrating this.

The Green Claims Code provides guidance for businesses on existing obligations under consumer protection law when making environmental claims in the UK. [See the relevant heading](#) 'Claims must be true and accurate'. The Code [states](#):

"Broader, more general or absolute claims are much more likely to be inaccurate and to mislead. Terms like 'green', 'sustainable' or 'eco-friendly,' especially if used without explanation, are likely to be seen as suggesting that a product, service, process, brand or business as a whole has a positive environmental impact, or at least no adverse impact. Unless a business can prove that, it risks falling short of its legal obligations."

1.6. Communicating your commitment

As with any other public statements made by you and your organisation, you should be mindful that your communications are accurate and not misleading to ensure any such communications cannot give rise to claims of misrepresentation or greenwashing. It is also important that you have consideration of the SRA's regulatory requirements (see paragraph 1.4 of the SRA Code of Conduct for Firms and paragraph 8.8 of the SRA Code of Conduct for Individuals).

1.7. Issues to consider for firms as employers

As with clients, your firm's ability to attract and retain employees may be significantly influenced by its approach to climate change and, for some, the nature of the work they are asked to do. In particular, young lawyers and law students increasingly consider the stance taken by firms on climate change when choosing where to work.

The Employment Appeals Tribunal (EAT) recently gave guidance on the definition of 'philosophical belief' as a protected characteristic under the Equality Act 2010. The EAT concluded that commitment to climate change could be a recognised philosophical belief. Firms may wish to consider whether and to what extent they would be prepared to consider employees identifying climate change as a philosophical belief and to accommodate this stance within their practice. This might become relevant in making decisions about the firm's approach to advised emissions (see sections 1.4 and 4.1-.4.3) and work allocation. Transparency in relation to the firm's position on this issue (and that of the solicitor) and consistency in the implementation of that position is likely to be relevant to how any dispute on this topic might be resolved. x

Part B

2. Climate Change Risks

2.1. Climate change risks and climate legal risks

Climate change gives rise to a huge range of risks (and opportunities) for organisations and solicitors. Climate change risk is now recognised as one of the main global risks ranked by severity leading up to 2050 (for example, [World Economic Forum 2023 Global Risks Report](#)).

Climate-related risks can be split into three categories: physical risks, transition risks, and liability risks (as identified by the Bank of England [here](#)) which give rise to a range of associated legal issues. Please see Annex I for examples.

In this guidance, we address climate legal risks, however, climate change transition and climate change physical risks will impact upon a solicitors' consideration of climate legal risks. Climate-related risks will affect most clients and nearly all areas of legal practice. The examples in Annex II attached highlight some of the climate legal risks that lawyers may need to consider in common transactions (they are for illustrative purposes only and are not intended to be comprehensive and may change over time).

Solicitors may take account of climate legal risks for several reasons, including amongst others, the following:

- **Physical risks** - Extreme weather events may impact the built and natural environment, for example: infrastructure, transport, the built environment and agriculture. These may have a significant impact on commercial and corporate transactions affecting asset resilience, value and insurability and generating climate legal risks. Solicitors should not advise on climate change physical risks where it is outside their knowledge or qualification. Consideration should be given to whether technical or scientific expertise may be needed in addition to legal advice (see section 3 for more detail). Where climate change physical risks arise, they may be broadly relevant to the legal advice you should give to clients (for examples, see Annex I).
- **New climate-related legislation or regulation** - which include disclosure and reporting requirements, greenwashing regulation, minimum energy efficiency standards, investment labels, ultra-low emission zones, advertising and marketing standards, and electric vehicles.
- **Alteration of existing legislative or regulatory requirements** - including fiduciary duties, human rights compliance, competition law, marketing and advertising standards.
- **Shifting client expectations, duties of care, and competency requirements** - evolving standards mean that continuing to advise clients without taking climate legal risk into account could create risks for solicitors, their organisations and/or their clients.
- **Target setting** - may impact the approach taken to the transactions and matters you advise on and client's disclosure and reporting obligations.

Annex 3 attached provides a specimen checklist which may be of assistance for general practitioners and sector specialists.

2.2.

3. The impact of climate change legal risks on solicitors' professional duties

The expanding scope of climate legal risks may impact your professional duties to your client. This section examines this in more detail.

3.1. Duty of care

Solicitors have a general legal duty to exercise reasonable care and skill. The standard is that of a reasonably competent practitioner (Per Oliver J in *Midland Bank Trust Co Ltd v Hett Stubbs and Kemp* [1979] Ch 384 at 403.)

Climate change will impact different areas of the law, businesses, and wider society to varying degrees (directly and/or indirectly). Consequently, solicitors may have to look beyond the narrow scope of an instruction by a client to consider whether and to what extent climate legal risks are relevant (see section 2.1).

3.2. Duty to warn

Advising on matters often requires solicitors to make judgements on complex issues and uncertain outcomes. This analysis may be impacted by climate change. A solicitor has a duty to warn a client about potential risks by pointing out hazards of a kind which should be obvious to the solicitor but that the client may not appreciate (*County Personnel (Employment Agency) v Alan R Pulver & Co* [1987] 1 W.L.R. 916).

This may extend to information obtained while fulfilling the solicitor's retainer, whether or not the matter in question is itself expressly within the scope of the retainer (*Minkin v Landsberg* [2015] EWCA Civ 1152; [2016] 1 W.L.R. 1489 at [38]).

Presently, climate change may have an impact on a solicitor's duty to warn clients of the legal risks in certain contexts. The steps involved in fulfilling your duty to warn will be fact and context dependant but should be addressed by a solicitor at all stages of their advice.

The character and experience of the client are among the relevant circumstances to be considered in determining the extent of a solicitor's duty to offer advice or information or warnings that are reasonably incidental to the work being carried out ("*an experienced businessman will not wish to pay for being told that which he/she already knows. An impoverished client will not wish to pay for advice which he/she cannot afford. An inexperienced client will expect to be warned of risks which are (or should be) apparent to the solicitor but not to the client.*" (*Minkin v Landsberg* [2015] WL 6966258 at [38])).

Such an expectation may arise more readily in respect of larger organisations that have made their own net zero commitments and/or independent public commitments to climate change and human rights standards such as the UN Global Compact and the UN Guiding Principles on Business and Human Rights, such that they may be deemed to have specialist knowledge of the area (given the widespread recognition of climate change as a

human rights concern, which may also have implications for organisations' own human rights due diligence processes). This may enhance the duty to warn.

The level of risk the client wishes to take after being warned of relevant climate legal risks will be a matter for the client. However, this does not include a solicitor condoning any breaches of law where solicitors' professional conduct rules will apply as usual.

3.3. Duty to disclose

When acting on a matter, solicitors have a duty to disclose to their client all information material to that matter of which they have actual knowledge.

In the context of climate change, this means that a solicitor who becomes aware in the course of acting on a retainer that there are climate legal risks which might impact the client's interests in-scope of the retainer, a solicitor then they should disclose such risks to their client in a clear and understandable way. Regard should also be given to relevant regulatory obligations (see Rule 6.4 of the SRA Code of Conduct for Solicitors).

3.4. Duty to uphold service and competence levels

The SRA Code of Conduct for Solicitors, RELs and RFLs (SCCS) and the Code of Conduct for Firms (SCCF) (the SRA Codes) each require that "*you ensure that the service you provide to clients is competent and delivered in a timely manner*" and that the service takes account of clients' attributes, needs and circumstances.

Solicitors must ensure that they provide a proper standard of service to their clients. In doing so you should have regard to the SRA's regulatory requirements, including those relating to the [continuing competencies](#) that it expects solicitors to demonstrate. Solicitors should also refer to the SRA's [statement of solicitor competence](#), which defines the continuing competencies that the SRA requires from all solicitors.

This means, among other things, that solicitors should be able to:

- understand and apply the ethical concepts which govern their roles and behaviour as a lawyer
- maintain the level of competence and legal knowledge needed to practise effectively, taking into account changes in their role and/or practice context and developments in the law
- work within the limits of their competence and the supervision which they need, including disclosing when work is beyond their personal capacity and knowing when to seek expert or additional advice
- develop and advise on relevant options, strategies and solutions, including identifying the consequences of different options
- establish and maintain effective and professional relations with clients, including providing information in a way clients can understand (taking into account their personal circumstances)

- inform clients in a timely way of key facts and issues, including risks and mitigation strategies.

3.5. Actions to take where there are gaps in your competence

You may need to be able to discuss climate-related legal issues competently with your client and potentially encourage certain clients to engage with climate issues where they are relevant or material to the particular client or matter. Parallels may be drawn with tax or competition law, which may not be central to a specific retainer but are still of relevance and should be in a practitioner's mind when considering the scope of instructions.

Not all solicitors have expertise or training in matters relating to climate legal risks. However, as solicitors undertake training as part of their professional development, widespread awareness and acknowledgement will grow over time. This may intensify the expectation that a reasonably competent solicitor should be aware of the impact and the relevance of climate change to their practice area and be able to advise clients accordingly. Therefore, the general standards that solicitors are required to meet to discharge their duty of care to clients in this area may shift accordingly.

A solicitor who does not have the relevant knowledge of the impact of climate change on the legal area they are advising on should not advise if it is outside their knowledge or competence. In such circumstances, you may wish to consider professional training to develop your competence and/or that of your organisation. Alternatively, when you have identified a relevant legal risk on which you feel unable to advise you should liaise with your client about seeking specialist third-party assistance, such as technical consultants (*Hurlingham Estates Limited v. Wilde Partners* [1997] 1 Lloyds Rep 525).

Even where solicitors elect to advise on climate change, they may wish to include a provision in their retainer reserving the right to instruct specialists where appropriate (along with the right to charge the client the fees incurred in doing so). Solicitors may wish to discuss and/or document the prospect of any specialist instruction with their client.

See section 4.4 for guidance on how this section might impact a solicitors retainer.

3.6. The SRA Principles

The SRA Principles, which comprise the fundamental tenets of ethical behaviour expected of solicitors, will also be relevant when considering your professional obligations.

The Principles require that "you act:

- I. in a way that upholds the constitutional principle of the rule of law, and the proper administration of justice
- II. in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons
- III. with independence
- IV. with honesty
- V. with integrity
- VI. in a way that encourages equality, diversity and inclusion
- VII. in the best interests of each client"

In your day to day work, you will need to apply your professional judgement and take a balanced approach to meeting all of the duties set out in these Principles. However,

should the Principles conflict, you are expected to prioritise those which safeguard the wider public interest (such as the rule of law, public confidence in a trustworthy solicitors' profession and a safe and effective market for regulated legal services) over the interests of an individual client.

The interpretation of the SRA Principles in the context of climate change is likely to evolve over time as the former Secretary General of the Law Society Sir Thomas Lund, wrote in 1960:

"I should point out at once that standards of professional conduct change as time passes. What is entirely proper for one generation may be slightly irregular for the succeeding generation and highly improper for the next." (A Guide to the Professional Conduct and Etiquette of Solicitors, The Law Society, 1960)

Global social issues interact with these solicitors' regulatory duties and the way the regulator enforces those duties, for example, including the recent treatment of Strategic Lawsuits Against Public Participation persons (SLAPPs) and/or sexual harassment claims against members of the profession. How solicitors interact with climate-related issues is likely to change as the narrative on climate change develops.

I. Duty to maintain public trust and confidence

In all aspects of your practice, solicitors and their organisations will be expected to have considered whether they are conducting themselves in a way that is likely to maintain public trust in the profession.

This duty is one that you may wish to consider when assessing client instructions that may give rise to climate legal risks or impacts. Over time, this duty may fall under closer scrutiny as climate change becomes more pronounced.

Solicitors and their organisations may need to consider developing expertise in relation to climate change and/or its impacts on the areas of law on which they offer advice to their clients or organisation.

II. Duty to act with integrity

There may be some client matters where solicitors decide that they cannot act (or continue to act) for a certain client as this is incompatible with a duty of integrity ([see the SRA's guidance on acting with integrity](#)). For example, if the clients are wilfully, recklessly, or negligently making misleading claims about their organisation's climate impacts or established climate science. Note, however, that a solicitor is not generally responsible for their client's actions providing they have advised correctly and competently and explained the implications of any breaches unless they have contributed or colluded in any breach.

You should also be sure that you or your organisation do not mislead the public with claims made about the climate change credentials of your organisation, either intentionally or inadvertently ('greenwashing').

4. The impact of climate change on the solicitor – client relationship in practice

4.1. How to present to prospective clients and the public

As the impacts of climate change reach further into more areas of society and the law, solicitors may be expected to guide and support clients as they navigate these challenges.

Solicitors should therefore adopt a proportionate approach to climate change. Relevant factors to consider when advising are:

- the nature of the client's operations and interests
- the specifics of the matters
- the legal services offered
- the impact of the issue on the clients, the transaction, the climate, and public

You and your organisation should communicate your approach to providing legal advice in the context of climate change to clients, prospective clients, and the public (where appropriate, see section 1.6).

4.2. How to approach a new instruction

When presented with a new instruction, solicitors should consider whether climate legal risks may be material to their advice (section 2.1). The same factors identified at the start of section 4.1 are relevant here also.

In some cases (for example where climate-related legal issues are marginal to the subject matter of the potential instruction), good practice may involve simply ensuring the client understands how such issues may be relevant. Like all matters you advise on, you should be clear about what advice falls within and outside your retainer and also how this relates to your fee proposal.

4.3. How to decide whether or not to advise

The principle of access to justice and the right to legal representation are fundamental aspects of our legal system. There are established examples:

- ensuring parties charged with criminal offences have representation
- that you do not refuse to provide a service due to discrimination on the grounds of protected characteristics such as age, race and religion or belief under the Equality Act 2010 (for example, environmental regulatory breaches on criminal grounds)

However, solicitors are not obliged to provide advice to every prospective client that seeks it. Solicitors have wide discretion in choosing whether to accept instructions. Climate-related issues may be valid considerations in determining whether to act (see section 3.6).

Considerations may include:

- the ability to advise competently
- the client's willingness to engage on such issues
- any potential impact on your own organisation's reputation
- any apparent conflict with the client organisation's stated values and the potential impact on climate change generally

Some law firms are evaluating risks to their commitments in this area and some are placing limitations on the instructions they will accept citing their own organisation's climate change commitments. If organisations decide not to accept an instruction, they should provide the reasoning to their prospective clients in writing.

As outlined in section 1.4., advised emissions associated with matters on which a solicitor provides legal advice is attracting increased attention in relation to professional services, including legal services.

Such scrutiny is an area that lawyers should be aware of and monitor, particularly when advising potential 'greenwashing' clients in relation to any statements made or advice given.

This might also involve identifying and measuring such emissions and seeking to work with clients to promote the just transition so that these advised emissions reduce over time in a manner which is consistent with scientifically supported targets. It may be achieved by working with clients proactively engaged in transition planning, and who value legal advisors who are aligned with such business approaches, both in terms of the advice they give and their corporate practices.

Some solicitors may also choose to decline to advise on matters that are incompatible with the 1.5°C goal, or for clients actively working against that goal if it conflicts with their values or their law firm's stated objectives. This is a matter for individual solicitors and law firms, recognising solicitors' professional obligations.

4.4. The scope of the retainer

If a client wishes to engage a solicitor who is offering legal services, then a retainer arises when that solicitor is instructed. This retainer is governed by the terms upon which the solicitor agrees to act and by the duties imposed by law and regulation upon the solicitor.

A solicitor and client may, by agreement, limit the terms of the retainer which may limit the solicitor's duties. In certain circumstances, it may be possible to exclude climate issues specifically from your retainer, for instance: where you are not competent to advise or where the client is directed to more expert technical advice.

As a matter of good practice, you should confirm any such agreement in writing. If you do not do so, a court may not accept that any such restriction was agreed upon. (See *Sharon Minkin v Lesley Landsberg (Practising as Barnet Family Law)* [2015] EWCA Civ 1152, para 38.)

The informed consent of the client should be obtained to any such exclusions from the retainer where there are, or could be, material climate legal risks beyond the competence of the relevant solicitor. This is not straightforward, requiring an explanation of the significance of the relevant issues to the client and the risks that you will not be advising upon, overlapping with the residual duty to warn the client of these issues and that they will need to obtain specialist advice. See *Bolam* for relevant considerations concerning the scope of the retainer in such circumstances (*Bolam v Friern Hospital Management Committee* [1957] 1 WLR 583).

However, where climate legal risks are relevant, it is becoming less realistic in practice to exclude consideration of such matters from the instruction completely, given that they impact so many areas of activity (see section 2.1 and annexures).

Increasingly, clients are facing regulatory and market pressures to demonstrate that their suppliers (including professional advisers) are adopting responsible approaches to climate issues. They may impose their requirements on legal and other advisors reflecting those pressures. This may make it undesirable, competitively and/or reputationally, for some firms to try to carve out climate legal risks from the retainer other than in narrow and specialised circumstances.

Further sector-specific guidance on climate legal risks will cover how the scope of the retainer is impacted in different contexts.

4.5. Impact on professional indemnity insurance

Insurers are also giving greater attention to climate issues and the risks they pose to their business. Solicitors should be mindful of current and prospective requirements of professional indemnity insurers so that solicitors can obtain affordable cover for the areas of practice upon which they wish to advise (for example, ensuring that pollution risks are covered as appropriate). To obtain PII cover, in the future solicitors may need to demonstrate how they are equipping themselves to be able to advise on climate legal risks and identify when they are not competent to advise.

4.6. In-house lawyers (including public sector and academia)

If solicitors practise in-house they may face particular additional challenges in advising upon climate legal risks. Often in-house lawyers are closer to the commercial objectives of their organisation and can therefore be a driver of change in an organisation's strategy and operations. General Counsel in particular are often trusted advisers to the Board on matters related to good governance, reputation and integrity in the context of, for example, environmental, social and governance, commonly referred to as ESG.

As in-house lawyers cannot limit their advice to the scope of a retainer, they may need to be proactive in raising questions about the sustainability of business models and alignment to any climate pledges made by their organisations. The employer may be more exposed to the commercial consequences of climate change impacts (including climate legal risk) if their in-house lawyer does not warn of climate legal risks. Therefore, in-house lawyers may need to develop a broad understanding of climate risks and climate legal risks to provide holistic advice to the organisation.

General Counsel are in a position to advise on the impacts of climate risks on the commercial function of their organisation, including impending policy, legal and regulatory changes which may present opportunities and/or risks for their organisations.

In-house lawyers may need to consider and seek educational resources as needed for this role and also to consider if external legal advisors have the relevant skills for their retainer.

4.7. Education materials and resources

This guidance has referenced the need for solicitors to source appropriate educational resources to equip solicitors to be able to provide competent advice on relevant climate legal risks and also to be aware of other relevant professionals whose skills may be needed.

There are a multiplicity of resources, and these will continue to grow. In the first instance, it is recommended that solicitors visit [The Law Society's Climate Change page](#) and [Law Society Learning](#). These resources are not exhaustive but are intended to provide initial assistance to solicitors considering this guidance and will be continually updated.

Part C

5. Annexes

5.1. Annex 1 - Categorisation of climate risks

Risk type	Examples	Potential impacts on Solicitors legal practice	Potential climate legal risks created and impacts on client advice
Physical risks	More severe and more frequent extreme weather events (storms, floods, droughts and heatwaves) will impact on commercial and residential buildings, transport infrastructure and business operations (such as supply chains), agricultural output and more broadly can lead to loss of life and migration.	<ol style="list-style-type: none"> 1. Consider impacts of extreme weather events on office locations and staff. Scenario planning and contingency measures to address them such as remote working plans that can be activated if these events occur. 2. Impact of climate events on staff health and wellbeing. 3. Depending on office locations, potential impact on insurance premiums or availability. 	<ol style="list-style-type: none"> 1. Consider the impact of physical events on clients' businesses (when advising on acquisitions and asset purchases, for example). How will climate events affect the business' supply chain and outputs? Will this affect financing of transactions? How will the client mitigate their GHG emissions and adapt to be climate resilient? 2. Advice on an acquisition or asset purchase should consider how it will affect the client's emission reduction targets and also what adaptation of the asset may be needed to improve climate resilience. Associated risks and costs should be flagged. 3. Consider impact on asset values and potential commercial

			<p>impacts, for example insurance, directors' duties, share price.</p> <p>4. Consider the impact of physical events on conveyancing transactions. Is a climate search needed? Address the impact of climate events on the property within your advice (for instance, if the property is on a flood plain address increasing flood risk incidence, cost and availability of insurance and how this affects the decision to buy and the price).</p>
<p>Transition risks</p>	<p>Policy, legislative, regulatory and market changes to support the just transition to a net zero economy. This could include legislation requiring mandatory carbon reporting, to report on carbon footprints or a requirement to produce climate transition plans.</p>	<ol style="list-style-type: none"> 1. Compliance with emerging climate legislation(mandatory climate reporting, for example). 2. Ensuring lawyers across all practice areas are trained on emerging policy, legislation and regulation or understand where that advice may be obtained from third party specialists. 3. Follow Law Society and other potential SRA guidance as it emerges. 	<ol style="list-style-type: none"> 1. Factor emerging climate regulation (on climate reporting, for example) into advice so that client is aware of upcoming requirements. 2. Be aware of how changes in client demand or stakeholder sentiment could affect asset values and operating costs. For example, sale value of company with a high carbon footprint could change rapidly as

			<p>market tolerance for fossil fuel shifts.</p> <ol style="list-style-type: none"> 3. Be aware of potential additional commercial contracts, such as increased PI or other insurance premiums 4. Be aware of how changes in consumer demand or stakeholder sentiment could affect asset values and operating costs. For example, in conveyancing be aware of how changes to homeowners' views. 5. Take account of the risk that certain properties become uninsurable or ones for which mortgage finance cannot be obtained.
<p>Liability risks</p>	<p>Legal liabilities for law firms, governments and organisations from people or businesses seeking compensation for losses arising in relation to physical or transition risks. Businesses may be sued by those impacted by climate change for their contribution to climate damage.</p>	<ol style="list-style-type: none"> 1. Monitor risks of climate litigation from clients who consider advice did not adequately cover climate risks. 2. Training staff to identify climate risks. 3. Affects availability or cost of professional indemnity insurance if advising in high risks areas (such as clients likely to be heavily impacted by climate risks). 	<ol style="list-style-type: none"> 1. Most likely claims relate to conveyancing highlighting climate risks associated with the property or real assets. 2. Client exposure to greenwashing challenges or litigation. 3. Client exposure to regulatory action for breaches of disclosure obligations.

		<ol style="list-style-type: none"> 4. Risk of greenwashing claims or NGO challenge. 5. Potential risk of negligence claims in the event of inaccurate advice or failure to warn of upcoming legal requirements. 6. Client exposure to greenwashing challenges or litigation.
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5.2. Annex 2 – Examples of climate-related legal risks for specific practice area

Practice area	Relevant legal advice and services
Corporate governance and risk management	<p>Advice on corporate governance and risk management structures should include oversight and management of the risks and opportunities presented by climate change.</p> <p>You should understand, where relevant, the implications of climate change for your clients, the transition to a zero carbon economy, and any related claims and commitments made by your clients, together with emerging governance, risk management and disclosure frameworks and best practice standards (such as the recommendations of the Taskforce on Climate Financial Disclosures (TCFD), and developing standards for transition planning). For corporate clients, this includes directors’ duties and liabilities in relation to the management of climate change risk.</p>
Corporate reporting and due diligence directive disclosure obligations	<p>If you advise companies on disclosure and reporting, you should understand the rapidly evolving international and national policy and regulatory regimes with attendant disclosure requirements and how your clients are affected.</p>

<p>Disputes / potential challenges</p>	<p>If you are a disputes lawyer, you should understand and advise clients on:</p> <ul style="list-style-type: none"> • Global developments in climate litigation and the increasing likelihood of litigation in relation to climate change (including strategic climate litigation) • the variety and innovation in the nature of claims brought in relation to climate change, (greenwashing, biodiversity damage, protected species), and the parties bringing them (shareholders challenging boards, NGOs (and future generations), challenging governments, and governments challenging corporations) <p>You should advise clients on climate litigation risk, including developing appropriate mitigation and oversight mechanisms and avoiding misrepresentation</p>
<p>Real estate / Asset based transactions</p>	<p>You should advise on physical climate risks and how they impact real estate ownership and use, such as flooding, fire, inaccessibility, uninsurability and availability of capital investment.</p>
<p>Commercial contracts and agreements</p>	<p>You should address the climate impact and risk of a transaction in the relevant commercial agreement to ensure that the impacts are reduced or avoided and the risks are adequately managed so that liability risks are avoided. Model climate clauses for a wide variety of agreements are available from several sources, including The Chancery Lane Project</p>
<p>Human rights / social governance issues</p>	<p>Climate change has been directly linked to the International Covenant on Civil and Political Rights (ICCPR) and human rights by the UN Human Rights Council and domestic and international courts.</p> <p>You should be aware of the growing recognition of climate change as a human rights concern (including concerning its impacts on other fundamental human rights), including a just transition in developing economies, and how such standards may enhance clients’ responsibilities in relation to climate change, including related due diligence requirements and obligations to mitigate any adverse human rights impacts identified.</p>

5.3. Annex 3 – Checklist for climate-conscious legal practice

The checklist attached below will assist you in implementing this guidance, and is divided into the following sections:

- Section 1: Issues for advice
- Section 2: Issues for retainer
- Section 3: Suggested questions for specialist solicitors (commercial, real estate, and M&A)

Issues for advice	Relevant section of LS climate change guidance
Do you have an understanding of how climate legal risks impact your practice areas and clients, and how developing expertise in these areas may help you to win work?	Section 2
Do you know the most effective areas for impact on climate action in your practice areas? What action are you taking to use these areas for impact to deliver you and your clients' net zero targets?	Section 1 and 2
How can you help carbon-intensive clients to transition to net zero?	Section 4
Do you have sufficient expertise on ESG and climate legal risk within the firm to advise clients on the impacts of their business and relevant transactions? If not, can you partner with other law firms to access this expertise?	Section 3
Are fee earners trained on climate legal risk in their practice areas?	Section 2 and 3
Do you understand your clients' sustainability targets and position to the same extent that you understand their commercial position?	Section 1 and 4
Has your organisation considered the use of climate clauses (such as those of The Chancery Lane Project) within its precedents and client agreements?	Section 1, 3 and 4

Do you consider the climate risks and impacts of each transaction? Do you routinely include this information in your advice?

Section 2 and 3

Retainer

Relevant section of LS climate change guidance

When accepting instructions, do you consider the following criteria:

Section 1-4

(i) The impact of the work on your firm's potential net zero targets. If your practice has not set any net zero targets is that compatible with acceptance of the client's retainer?

(ii) Whether taking on the client or the work brings opportunities to mitigate or adapt to climate change?

(iii) Whether the work could lead to a conflict with the SRA's Standards and Regulations?

(iv) Whether the work could lead to a client conflict? For example, if one set of clients (impact investors, for instance) require you not to advise on fossil fuel transactions or clients with a negative environmental impact, otherwise they will withdraw the retainer. Do you have a policy setting out how you:

- Assess instructions against these climate related criteria and decide whether to accept them?
- Respond in the event that conflicts arise concerning existing clients or work?

If not, you should consider implementation.

Is your retainer letter clear as to how your firm will take account of climate legal risks and climate impacts when providing your advice, if appropriate and relevant?

Section 2 and 3

Where a client has requested your advice specifically excludes climate legal risks, do you:

<ol style="list-style-type: none"> 1. warn the client (and document the same) of the dangers of failing to properly take climate legal risks into account highlighting the specific risks you consider relevant? 2. explain climate change can be an important legal risk that cannot be excluded from your advice where it affects whether you can advise competently and act in the client's best interests. Where climate legal risk is core to the transaction and the client refuses this advice you may decide it is best to decline to act. 	
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<p>Taking into account matters such as the size of your practice, do your procedures allow individuals within your firm to decline to act on matters they consider contribute to the climate change? How do you ensure that such individuals are not subject to discrimination for taking that stance (for example, do you have human resource policies and procedures to cover this situation)?</p>	Section 3
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Firms climate impact and action	Relevant section of LS climate change guidance
Does your organisation report its carbon footprint? Has your firm assessed its climate risk profile?	Section 1
Do you have a plan for how you will deliver your firm's net zero target if it has one? Is it SBTi compliant?	Section 1
Are the management team and other staff set individual targets to help deliver your net zero target? Is this linked to pay or other KPI's?	Section 1
What learning and development is given to staff on advising clients on climate legal risks?	Section 1 and 4
Does your firm or organisation have a climate change, sustainability or ESG committee? Are senior members of the organisation on the committee?	Section 1

How do you review and report on your net zero target and climate action?	Section 1
Does the work that you do actively work against your climate targets? Do you also disclose work that might exacerbate the climate change to clients and internally?	
Is your firm a member or affiliate of trade associations or other bodies that lobby against climate action?	Section 1

The table below sets out key questions to consider when advising on commercial or real estate transactions and when advising on dispute resolution.

Commercial transaction involving supply chains	Relevant section of guidance
Does your firm include climate clauses (such as those of The Chancery Lane Project) within its precedents and client agreements?	Section 1 and 4
Does your advice on climate risks consider the need for a just transition? In particular, how are obligations and capabilities to mitigate climate impacts shared appropriately with supply chain partners?	Section 1 and 4
Domestic real estate	Relevant section of guidance
Have you reviewed the physical and transition risks associated with the transaction? For example, is the property on a flood plain or in an area as high risk of damage owing to climate change?	Section 2 and 3

Will these risks affect the finance available to purchase the asset now or in the future (where refinancing is needed)?	Section 2 and 3
Will these risks affect the insurance for the asset now or in the future?	Section 2 and 3
Will these risks affect the value and marketability of the asset now or in the future?	Section 2 and 3
Will these risks mean that the use of the property is restricted? For example, climate risk may prevent further development of a property on a flood plain or may mean that onerous planning conditions are imposed to make the development flood proof.	Section 2 and 3
Climate Litigation	Relevant section of guidance
Are your client's actions and transactions inconsistent with the transition to net zero?	Section 4
Is your retainer consistent with your client's mandatory or voluntary climate risk disclosures?	Section 4