



# The Law Society's Guidance on the Impact of Climate Change on Solicitors

## A Summary Guide

# Executive Summary

On April 19<sup>th</sup> 2023, The Law Society of England and Wales published "[Guidance on the Impact of Climate Change on Solicitors](#)".

- The Law Society is the first professional legal organisation in the world to issue climate Guidance to its membership – 160,000 solicitors in private practice and in-house counsel in England and Wales.
- The Guidance follows on from the Law Society's Climate Change Resolution in 2021. It states that 'The Solicitors Regulation Authority (SRA) is supportive of this Guidance'. This is significant for regulatory and compliance purposes - it underscores the importance and status of the Guidance.
- The Guidance is essential reading for managing partners, compliance officers, and, in particular, real estate lawyers because the value of the assets being transacted may be significantly impacted by climate change.
- The Guidance is 29 pages long. It runs to some 4,500 words and is split into 3 parts.
- Part A of the Guidance concerns climate governance issues - how law firms operate in relation to climate change and how they can cut their carbon emissions. Solicitors will need to ensure that they understand the duties and take practical steps to discharge them.
- Part B of the Guidance concerns the climate legal duties which solicitors owe to their clients to advise, warn and disclose climate risks. The Guidance is intended in part to alert solicitors to the risk of professional negligence if they fail to understand and discharge their legal duties.
- Part C of the Guidance provides an explanation of the categorisation of climate risks (physical, transition and liability risks); examples of climate-related legal risks for specific practice areas, including real estate; and a checklist for legal practice, including suggested questions for specialist solicitors working in commercial, real estate, and dispute resolution.

# 1. Background to the Guidance

- The Guidance encourages solicitors to upskill to understand and apply the Guidance. It also encourages the use of the tools available to the profession, and references 'climate searches' which are explained below.
- Climate risk is already impacting the value of land and buildings in England and Wales and this is only going to increase.

This summary explores the key sections of the new Guidance. We will consider ways in which solicitors can protect themselves and their clients to ensure that they are compliance ready. We will not explore every element of the Guidance, but have picked out the pertinent sections relevant to lawyers and conveyancers working in residential and commercial property.

## 1. Background to the Guidance

In October 2021, The Law Society published its Resolution which committed it "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".

Prior to this, The Chancery Lane Project (TCLP) developed *Marni's clause* (February 2020), a reporting clause for lawyers and conveyancers to use in their Reports and Certificate on Title at a time when climate change risks searches were unavailable. The purpose of the clause was to improve transparency and reporting about the physical, transition and future liability risks of climate change for properties in the UK. TCLP is updating this clause to take account of the widespread use of climate searches, following the launch of Groundsure's ClimateIndex™ in June 2022. The clause was an early signal to solicitors that they may have a responsibility to make their clients aware of the risk that future climate change may affect the value and useability of the property being purchased.

To add further weight to the argument as to the existence of a duty of care to warn clients about climate risk, Professor Sarah de Gay published a paper on climate change and the rule of law for the *UCL Research Paper Series*. In an article published in August 2022, Professor de Gay asked "Can England and Wales qualified solicitors risk not advising their clients on climate-related risks", to which she concluded "my answer [is] a definite and resounding no."

## Background to the Guidance *(continued)*

This was followed by a [\*legal opinion\*](#) commissioned by Groundsure from the UK's leading environmental law practitioner, Stephen Tromans KC, on a 'Conveyancer's duty of care to advise clients about climate risk and how to discharge such duty'<sup>1</sup>. It was published in September 2022, following a Climate Change Conveyancing Conference hosted by Groundsure at The Law Society. The purpose was to bring clarity to bear on the extent of the legal duties owed by solicitors to their real estate clients.

**In summary, it was concluded that solicitors and licensed conveyancers owe a duty to clients to provide warning and advice as to risks which they are or should be aware of and which may adversely affect the property being purchased, including climate change.**

This is part of the general duty to exercise reasonable care and skill in carrying out their retainer. Failure by the solicitor/conveyancer to follow these practices may result in damages claims for professional negligence, increased insurance premiums and possible reputational damage.

This legal opinion and Groundsure's Climate Change Conference, contributed to The Law Society's plans to provide overarching guidance to the legal profession. The Guidance addresses how law firms in general should approach climate change - so, how they should become more climate conscious as businesses in their own right - and how they can advise clients about climate risks so as to avoid claims at a time of heightened ESG risk awareness.

<sup>1</sup> Please note that Mr. Stephen Tromans KC assumes no legal duty to any person to whom his legal opinion is communicated and is not endorsing Groundsure's ClimateIndex™ product. Conveyancers and others can check its suitability for their purposes.

## 2. Summary of the guidance

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The Guidance is in three parts - A, B and C.

#### 2.1 Part A - Business Governance and Ethics - Understanding and Reducing Climate Impact

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This sets out Guidance for law firms on how to manage their business in a manner which is consistent with the transition to Net Zero. There are a number of important factors for Managing Partners in particular to consider with how their firm manages its business operations in a sustainable way, including minimising its carbon footprint and implementing sustainable procurement. This is becoming a key governance factor for Compliance Officers for Legal Practice (COLPs), and to understand their legal responsibilities in relation to **climate change reporting**.

A significant issue that could expose firms is **greenwashing** - that is, advertising and making public statements (e.g. on the firm's website) on the firm's sustainability practices and operating principles and either not fulfilling these and/or advising clients that operate in carbon-intensive industries that are doing the opposite.

Greenwashing has come increasingly under public scrutiny, with high profile cases from the Competition and Markets Authority and the Advertising and Standards Authority. COLPs will wish to understand how their client base are increasing scrutiny and responsibilities of their professional advisors regarding climate change.

In recent years, boards of directors have come under litigatory pressure from activist shareholders and activist law firms which has drawn global attention to corporations engaging in highly polluting industries, such as fossil fuel extraction. **ClientEarth served a pre-action letter on Shell in 2022** and, with the support of a number of institutional investors and shareholders, is suing Shell's board for its alleged mismanagement of climate risk in breach of their duties under sections 172 and 174 of the Companies Act.

## 2. Summary of the guidance *(continued)*

ClientEarth make various criticisms of Shell's climate strategy, alleging that the board has failed to properly manage climate risk and failed to adopt and implement a climate strategy that aligns with the Paris Agreement goal in limiting the rise in average global temperature to 1.5°C.

ClientEarth alleges that Shell's directors have failed to act in a way that promotes Shell's success for the benefit of its shareholders as a whole and that the board has failed to exercise reasonable care, skill and diligence in the discharge of its duties.

With this and many more climate legal actions in the pipeline, in-house counsel as well as law firms that advise clients engaged in carbon intense activities, are now under increasing scrutiny.

While such litigation is focused on major corporations, it has heightened the risks for all law firms with regard to the effectiveness (or absence) of an Environmental and Social Governance (ESG) policy and how this translates to their conduct and engagement with clients - and the consequent impact on their wider business risks and liabilities.

### 2.2. Part B - Climate Change Risks

Part B relates to how climate change physical risks and 'climate legal risk' is relevant to client advice. This part is of the most significance to conveyancers and commercial real estate teams. It provides guidance on issues which may be relevant when considering:

- i. The interplay of legal advice, climate change and solicitors' professional duties;
- ii. The solicitor-client relationship in the context of climate change.

#### 2.2.1. Knowledge of Climate Risks

The Guidance states that "*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*".

## 2. Summary of the guidance *(continued)*

This is expected to include climate risk guidance for residential conveyancers and commercial property lawyers.

In terms of climate physical risks (see Part C below), the Guidance states *“Solicitors should not advise on climate change physical risks where it is outside their knowledge or qualification”*.

Clearly, there are a number of property-related matters which are outside a solicitor’s knowledge or qualification. Many solicitors are not tax, contaminated land or AML experts. That is why specialist products and services are available to allow them to protect their client’s interests and their firm against the risk of a claim. The same reasoning applies to climate change.

In his advice in the matter of Conveyancer’s Duty of Care to Advise Clients about Climate Risk and How to Discharge Such Duty, Stephen Tromans KC, is very clear that **“Solicitors and other conveyancers should make use of the commercial search tools where available”** and “advise their client on the need for such information”.

In Stephen Tromans KC’s view, “the emergence of search tools such as Groundsure’s ClimateIndex™ is a very important development, as it means that there is a clear practical step which the conveyancer can advise their client to take in respect of such risks”.

ClimateIndex™ is provided automatically in Groundsure’s main residential and commercial environmental searches. It has been designed to help lawyers to comply with the Law Society’s Guidance.



## 2. Summary of the guidance *(continued)*

### 2.2.2 The Key Duties and Climate Advice to Clients

In section 3 of Part B of the Guidance, four legal duties are identified that apply to solicitors when advising clients on the potential impact of climate change:

1. Duty of care;
2. Duty to warn;
3. Duty to disclose; and
4. Duty to uphold service and competence levels.

#### 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."*

The relevance of climate legal risk will need to be considered across the firm as a whole, and in respect of all transaction work.

#### Duty to warn

*"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 which the client may not appreciate (County Personnel (Employment Agency) v Alan R Pulver & Co [1987] 1 W.L.R. 916)."*

A solicitor should familiarise themselves with what constitutes a physical, transition or liability climate change risk. Such definitions are available in Part C of the Guidance, as well as publicly available online. As such, these should be obvious to the solicitor and they must warn their client of the potential climate change risks to the transaction.



## 2. Summary of the guidance *(continued)*

The Guidance states that *"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."*

The law firm has to meet a higher standard of care if it has made Net Zero commitments (e.g. in its environmental policies as detailed on its website), and promotes its expertise in environmental law, climate law or ESG.

The jurisprudence relating to climate duties is considered in detail in Professor Sarah de Gay's [\*UCL Research Paper Series: Climate Change and the Rule of Law\*](#). The application of the duties are fact specific. However, the more the lawyer knows about climate-change risks and the less informed the client is about them, the more the lawyer will have to do to discharge their climate legal duties.

### Duty to Disclose

The Guidance states:

*"Solicitors have a duty to disclose to their client, when acting on a matter, all information material to that matter of which they have actual knowledge (Rule 6.4 of the SRA Code of Conduct for Solicitors)."*

With the dissemination of the Guidance, solicitors will be deemed to have knowledge of climate change risks, including the search tools available to them.

### Duty to uphold service and competency levels

The SRA Code of Conduct for Solicitors, RELs and RFLs (SCCS) and the Code of Conduct for Firms (SCCF) (the SRA Code) provide that solicitors must ensure that they provide a proper standard of service to their clients. This means that, amongst other things, solicitors should be able to:

- *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;*

## 2. Summary of the guidance *(continued)*

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

COLPs and practice support lawyers will no doubt wish to review and strengthen how their real estate lawyers are trained to understand climate risk, how to evidence that training and how to use practical tools such as ClimateIndex™ to support property transactions. There is an increased likelihood of climate risk advice being added to law firms' risk registers and compliance reviews.

Groundsure provides ongoing climate change training for solicitors via [webinars and CPDs](#) and other resources, such as the use of climate risk [reporting clauses](#), so that solicitors can understand the extent and practical application of their climate legal duties and how to discharge them.

Groundsure is also developing training programmes with a range of CPD providers in order to ensure lawyers and conveyancers understand the climate legal duties in the Law Society's Guidance, as well as how to use climate analysis, climate reporting clauses and, the advice on specific climate perils. These courses help lawyers to better understand their SRA requirements. The SRA recently published its [progress report and action plan](#) to address the issue of ongoing competence in law firms.

The steps required to meet the above duties will to some extent depend on the nature and sophistication of the client. The standard of care will be higher for residential clients and lower for experienced commercial clients.

## 2. Summary of the guidance (continued)

### 2.2.4 The impact of climate change on the solicitor - client relationship in practice

#### How to approach a new instruction

The Guidance states: *"When presented with a new instruction, solicitors should consider whether climate legal risks may be material to their advice."*

This will almost always be the case with real estate and corporate transactions. Good practice may simply involve ensuring the client understands how such issues may be relevant by signposting the risks that could affect the transaction, and the level of advice given will depend on the sophistication of the client, as explained above. Predominantly physical and transitional risks will be relevant to every real estate transaction.

#### The scope of the retainer

The Guidance states: *"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, e.g. 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."*

*"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**".*

Attempts to limit/exclude the duty may not be looked at favourably by the SRA, and may in itself be a regulatory breach - see [SRA v Hayhurst](#).

## 2. Summary of the guidance *(continued)*

If the solicitor does exclude climate advice from the retainer, then 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.

Any changes to the retainer would be additional, unchargeable time for the solicitor, could cause possible reputational damage and impact upon PII renewals. Considering conveyancing/real estate is the costliest area of law to insure for professional indemnity risks, scoping out such services could have a negative impact upon the firm. Put simply, how can a law firm be climate conscious if it does not advise on climate risk?

### 2.2.4 Actions to take where there are gaps in your competence

The Guidance encourages solicitors to *consider professional training to develop their competence and/or that of their organisation*.

It states:

*“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”.*

Since the publication of Stephen Tromans KC’s legal opinion, many law firms have participated in training on climate change to better understand the climate search tools available. If a firm has received any such training whether this is online or in person, they can be expected to advise their clients on climate related risks as a matter of course.

Discharging the duty involves relatively simple steps: obtain the climate search, and advise the client about the risks by reporting the results using the climate reporting clauses available.

## 2. Summary of the guidance *(continued)*

### 2.3 Part C – Categorising Climate Risks; Checklists, Examples and Key Questions

Part C of the Guidance is 10 pages long. Each part of the Guidance is important, but solicitors are likely to be drawn to Part C because it contains handy checklists to understand how climate risks relate to specific practice areas.

#### 2.3.1 What are the different types of climate risk?

Part C of the Guidance starts by splitting climate change risks into three categories:

- **Physical risk** - environmental impacts that could affect the value of the asset or investment such as the site or property being acquired, e.g. from an enhanced risk of flooding, subsidence or coastal erosion due to climate change. Part C states that solicitors should advise on physical climate risks and how they impact real estate ownership and use, explaining that climate impacted sites could result in inaccessibility, uninsurability and unavailability of capital investment. These physical impacts are included in the existing environmental search due diligence that solicitors currently undertake.
- **Transition risk** - the impacts of policy or legislation that moves economic assets away from high carbon, energy intensive activity to Net Zero emissions. This includes changes to energy performance ratings, retrofitting to meet new standards and the risk of increased awareness of climate change e.g. from property buyers.
- **Liability risks** - a customer or company seeking damages (including a loss of value) suffered as a result of the physical or transitional risk related to climate change. This includes legal action against solicitors for failing to alert a client to a risk that was identifiable at the time of the transaction if an environmental search including climate analysis had been commissioned.

## 2. Summary of the guidance *(continued)*

### 2.3.2 How the Guidance relates to specific legal practice areas:

Climate change risks apply across a broad swathe of legal practice. Part C goes on to explain how it relates to lawyers working in the following areas: corporate governance and risk management; corporate reporting and due diligence disclosure obligations; disputes / potential challenges; real estate / asset-based transactions; commercial contracts and agreements; and human rights / social governance issues.

By way of example, Part C also includes specific guidance for residential property transactions and poses a series of questions, as follows:

*“Have you reviewed the physical and transition risks associated with the transaction? For example, is the property on a floodplain or in an area at high risk of damage owing to climate change?”*

*Will these risks affect the (i) finance available to purchase the asset (ii) refinancing in the future where refinancing is needed), (iii) insurance or (iv) value and marketability of the assets now or in the future?*

*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 floodproof”.*

The only practical way to answer these questions is to use climate analysis and searches and searches to understand the impact of climate risks at specific individual sites. As Stephen Tromans KC has commented, **“in the absence of search reports capable of objectively identifying and ranking specific individual properties in terms of such risks, conveyancers could do little but warn in general terms which would be of limited assistance to a client”.**

Groundsure’s Homebuyers, Avista, Screening and Review searches automatically contain ClimateIndex™ analysis and guidance. Hence, the solicitor will have actual knowledge on climate change risk for their client’s specific individual property.

## 3. Other Observations

This will need to be disclosed to the client. To assist solicitors with this [\*Groundsure has developed reporting clauses\*](#) to include in reports and certificates on title for commercial and residential properties.

By using these reports, clauses and signposting potential climate risks to their clients, solicitors will be able to discharge their duty. (The converse also applies).

If you are unsure as to the practical steps to take to discharge your duty, see [\*Stephen Tromans' advice "in the matter of Conveyancers' Duty of Care to Advise Clients about Climate Risk and How to Discharge Such Duty"\*](#)

Should a solicitor fail to discharge their climate legal duties, this could result in damage claims for professional negligence, increased PI premiums and reputational damage.

## 3. Other Observations

### 3.1 Educational materials and resources

The Guidance states:

*"This guidance has referenced the need for solicitors to source appropriate education 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."*

Groundsure provides ongoing training via [\*webinars and CPDs\*](#) and other resources such as [\*climate clauses\*](#) so solicitors can be clear on what they are advising their clients on.

### 3.2 Impact on professional indemnity insurance

The Guidance considers the risk of claims against solicitors for damage to assets related to climate change and states in Part C that the *"most likely claims relate to conveyancing, highlighting climate risks associated with the property or real assets"*.



### 3. Other Observations *(continued)*

It adds that: *"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."*

The most obvious way to demonstrate that you are able to advise on climate legal risks would be to obtain training to strengthen awareness, and to use search tools, such as ClimateIndex™ which are available to solicitors.

#### 3.3 Implications for conveyancing and real estate teams

COLPs and Managing Partners will need to understand the implications of incorrect or misleading climate change reporting and advice, particularly in relation to corporate and real estate due diligence.

Real Estate Lawyers and their marketing and communications teams have a very important role to play in ensuring that they do not expose their firm to accusations of greenwashing.

With ESG risk exposures rising, an overstatement of the firm's green / sustainability credentials could easily have a negative effect on PII renewals, a firm's operating policies, client retention and recruitment etc.

Given the already elevated PII risk of conveyancing relative to other legal work, it is inevitable that law firms providing property and transaction advice will need to upskill to include climate risk advice.

## 4. Further information

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- Do England & Wales Qualified Solicitors Have a Legal Duty to Advise Their Clients on Climate-Related Risks? Sarah de Gay - University College London - Faculty of Laws 8th August 2022 - [\*Research Paper No. 7/22\*](#)
- Conveyancers' Duty of Care to Advise Clients about Climate Risk. Stephen Tromans KC - Issued. September 2022:  
<https://content.groundsure.com/stephen-tromanskc-legal-opinion>
- The legal duty to advise and warn about client risk – developments for property lawyers - Stephen Sykes - March 2023 - first [\*published on Lexis Nexis\*](#).

### 4.1 Ensure your lawyers comply with Guidance

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Groundsure will be pleased to support you with comprehensive climate risk training and support as you embed the Guidance across your property and corporate teams.

Our training provides an expert explanation of how climate change is impacting UK land and buildings, the key elements of the Guidance, how you can discharge your climate legal duties using our ClimateIndex™ analysis climate reporting clauses to explain site specific climate risks to your clients.

For more information, please get in touch with us at [climate@groundsure.com](mailto:climate@groundsure.com) call us on 01273 257 755, or visit [www.groundsure.com/climateindex](http://www.groundsure.com/climateindex).



Groundsure is a leading UK environmental and climate data authority. We give land and property professionals expert information on risks including land contamination, flooding and ground stability, as well as forward guidance on potential climate risks, to advise their clients in the transaction. We provide high value, property-specific opinions and analysis of land use, turning data into practical, actionable insight.



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