

LAWYERS ARE RESPONSIBLE

15 May 2023

Allen & Overy London

Dear Mr Wim Dejonghe, Senior Partner,
and Mr Gareth Price, Managing Partner,

Allen & Overy's responsibility to withhold its legal services in relation to any new projects to extract fossil fuels.

We write on behalf of a group called *Lawyers Are Responsible*. The group's members are lawyers – both solicitors and barristers – working to tackle the climate & ecological crises, principally by seeking to change the legal profession's role in enabling the current and future consequences of the actions of the fossil fuel industry. We have signed a Declaration of Conscience, open to all members of the legal profession, in which we commit, amongst other things, to withholding our services in respect of (1) supporting new fossil fuel projects and (2) action against peaceful climate protesters. So far 177 lawyers have signed the Declaration. The Declaration and further details can be found on our website at www.lar.earth.

We write to request that Allen & Overy does not accept any further instructions in relation to developing new, or the expansion of existing, fossil fuel infrastructure; that it refuses any such instructions for the foreseeable future and that it terminates the provision of its services to any clients in respect of any current instructions that will lead to developing new, or the expansion of existing, fossil fuel infrastructure.

The issue

The Law Society has recently confirmed that solicitors are not obliged to provide advice to every prospective client that seeks it. Solicitors have wide discretion in choosing whether to accept instructions. In April 2023, the Law Society issued guidance entitled: *The Impact of Climate Change on Solicitors*¹ (“**Law Society Guidance**”) which advised, “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 your values or your firm’s stated objectives” (at 4.3).

We also refer you to the recent report of Law Students for Climate Accountability published on 10th May 2023 *The Carbon Circle: The UK Legal Industry’s Ties to Fossil Fuel Companies*². The findings of the report include that in the context of transactional work between 2018 and 2022, 55 UK firms facilitated £1.48 trillion in fossil fuel projects, of which the report states that “Magic Circle” firms are responsible for over £285 billion worth of fossil fuel transactional work. We invite you to note at Chapter 4/page 33 that Allen & Overy is identified as “*by far the worst offender, conducting £89 billion worth of transactional work*”. Do you accept this finding of the research?

We assume that it is not necessary to make detailed reference in this letter to the extensive evidence of the gravity of the climate & ecological crises, since Allen & Overy will as a firm be well aware of it. We are confident that you are aware of the reports of the Intergovernmental Panel on Climate Change (“IPCC”), the most recent of which is dated March 2023.³ This report necessarily implies at B5 that expansion of fossil fuel infrastructure would be inconsistent with the 1.5°C limit set by the Paris Agreement, given that emissions from existing infrastructure will already exceed the carbon budget for this limit: “*Projected CO2 emissions from existing fossil fuel*

¹ Available at: <https://www.lawsociety.org.uk/topics/climate-change/impact-of-climate-change-on-solicitors>

² *The Carbon Circle: The UK Legal Industry’s Ties to Fossil Fuel Companies*, 10 May 2023, available at: <https://www.ls4ca.org/uk-carbon-circle>

³ *Synthesis Report of the IPCC Sixth Assessment Report (AR6)*, available at: https://report.ipcc.ch/ar6syр/pdf/IPCC_AR6_SYR_SPM.pdf

infrastructure without additional abatement would exceed the remaining carbon budget for 1.5°C” (see also at B.5.3).

The following is a brief summary of some relevant context:

- In 2019 and again in 2021, reports by the Stockholm Environment Institute concluded that, globally, we are on track to produce more than double the amount of fossil fuels in 2030 than would be consistent with limiting global warming to 1.5°C.⁴
- In December 2020, HM Treasury stated in its *Net Zero Review: Interim Report* that “*Climate change is an existential threat to humanity*”.⁵
- In May 2021, the International Energy Agency concluded that there could be no new oil or gas fields if the world was to reach net zero by 2050.⁶
- The climate & ecological crises represent the largest threat to human health that humanity has ever faced. In September 2021, over 200 health journals worldwide urged world leaders to tackle the “*catastrophic harm*” from climate change.⁷
- In April 2022, the UN Secretary General stated that “*investing in new fossil fuel infrastructure is moral and economic madness*”.⁸
- In October 2022, the International Institute for Sustainable Development concluded that developing any new oil and gas fields would prevent the world from limiting global warming to 1.5°C or create stranded assets.⁹
- Global carbon emissions from fossil fuels hit record levels in 2022.¹⁰

⁴ *The Production Gap*, 2021 Report, available at: https://productiongap.org/wp-content/uploads/2021/11/PGR2021_web_rev.pdf

⁵ Available at: <https://www.gov.uk/government/publications/net-zero-review-interim-report>

⁶ *Net Zero by 2050: A Roadmap for the Global Energy Sector*, May 2021, available at: <https://www.iea.org/reports/net-zero-by-2050>

⁷ *Climate crisis: Over 200 health journals urge world leaders to tackle “catastrophic harm”*, The BMJ, 6 Sept 2021, available at: <https://www.bmj.com/content/374/bmj.n2177>

⁸ *Secretary-General Warns of Climate Emergency, Calling Intergovernmental Panel’s Report ‘a File of Shame’, While Saying Leaders ‘Are Lying’, Fuelling Flames*, 4 April 2022, available at: <https://press.un.org/en/2022/sgsm21228.doc.htm>

⁹ *Navigating Energy Transitions: Mapping the road to 1.5°C*, October 2021, available at: <https://www.iisd.org/publications/report/navigating-energy-transitions>

¹⁰ *Analysis: Global CO2 emissions from fossil fuels hit record high in 2022*, 11 Nov 2022, available at: <https://www.carbonbrief.org/analysis-global-co2-emissions-from-fossil-fuels-hit-record-high-in-2022/#:~:text=Global%20carbon%20dioxide%20emissions%20from,by%20the%20Global%20Carbon%20Project.>

- Severe effects of the climate & ecological crises are already being felt around the globe.

We suggest that the scientific consensus is clear: the first essential step that needs to be taken, in order to avoid mass loss of life and other catastrophic harm to human health and to avert the existential threat to our society, is to stop any new fossil fuel projects that expand infrastructure hence productive capacity.

As lawyers, we all value the Rule of Law in ensuring that we have a fair, stable and prosperous society. In a world devastated by climate chaos, there would be a serious risk to the Rule of Law.

We understand that acceding to our request would require Allen & Overy to take actions which may be difficult, and which will conflict with a desire to maximise short-term profits. However, we hope you will respond positively to this letter, not least because we consider, and are confident you will agree, that this issue has potential ramifications for the firm in a number of areas:-

- Morality
- Reputational risk
- Regulatory risk
- Financial risk
- Ability to retain current and attract future potential employees
- Ability to retain clients which are not fossil fuel companies

Morality and reputational risk

It is convenient to consider these together. If Allen & Overy acts immorally by enabling new fossil fuel projects, which will cause large scale death and destruction, then it is obvious that, when this is exposed to public scrutiny, its reputation will be harmed.

Conversely, if Allen & Overy were to show moral leadership in relation to this issue, its reputation and standing both nationally and internationally would be enhanced.

We would invite you to consider our request to withhold your services in the broad context of similar requests made historically for law firms not to act for the apartheid regime in South Africa¹¹ or not to act for cigarette manufacturers.¹²

There is, we suggest, an overwhelming moral argument why law firms should not act in support of new fossil fuel projects and those that continue to do so will inevitably face significant (and deserved) reputational damage.

Regulatory risk

The Law Society Guidance highlights the importance of “advised emissions”. These are the emissions “*associated with the matters upon which [firms] advise*”. These “advised emissions” “*are coming under increased scrutiny from some clients and stakeholders across a variety of sectors in the context of organisations’ climate commitments*” (at 1.4).

The SRA Principles – see Law Society Guidance (at 3.6) - comprise the fundamental tenets of ethical behaviour expected of solicitors. They require that solicitors act:

1. in a way that upholds the constitutional principle of the rule of law, and the proper administration of justice
2. in a way that upholds public trust and confidence in the solicitors’ profession and in legal services provided by authorised persons
3. with independence
4. with honesty
5. with integrity
6. in a way that encourages equality, diversity and inclusion
7. in the best interests of each client

¹¹ *Law Firm Drops South Africa Client*, New York Times - 4 Oct 1985, available at: <https://www.nytimes.com/1985/10/04/business/law-firm-drops-south-africa-client.html>.

¹² For which also see: *Tobacco industry lawyers as “disease vectors”*, Tob Control. 2007; 16(4): 224–228, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2598535/>

Whenever the SRA Principles conflict, solicitors are expected to prioritise those that safeguard the wider public interest over the interests of an individual client.¹³

Enabling new fossil fuel projects, in the face of the scientific consensus, and applying the concept of “advised emissions” is, in our view, clearly in breach of the following principles: - 1, 2, 5 and 7.

We therefore consider it reasonably likely that the SRA will in the near future review transactional work supporting new fossil fuel projects in relation to whether it is a breach of your professional obligations.

Financial risk

We would invite Allen & Overy to consider more fully than it may have done hitherto the potentially significant financial risks to the firm of continuing to accept instructions on new fossil fuel projects.

There are significant systemic financial risks presented by the fossil fuel sector. The inevitable transition to a low-carbon economy will entail the rapid phase-out of fossil fuel production, in turn leading to the write-down of major capital assets and reserves reflected as assets on fossil fuel companies’ balance sheets, as noted in research published by the journal *Nature Climate Change*.¹⁴ The same research paper estimates that global stranded assets, as the present value of future lost profits in the upstream oil and gas sector, exceed US\$1 trillion under plausible changes in expectations about the effects of climate policy.

Allen & Overy is exposed to these financial risks in several ways. First, in its ability to recover monies on work billed to clients in the fossil fuel sector. Secondly, in its financial planning based on work-in-progress currently recorded and expected to be

¹³ As set out in the *Introduction to the SRA Principles* and in the *Guidance on Conduct in Disputes*, 4 March 2022, available at: <https://www.sra.org.uk/solicitors/guidance/conduct-disputes/>

¹⁴ *Stranded fossil-fuel assets translate to major losses for investors in advanced economies*, *Nature Climate Change* volume 12, pages 532–538 (2022), 26 May 2022, available at: <https://www.nature.com/articles/s41558-022-01356-y>

billed in due course, as well as in estimates and projections regarding the profitability of the law firm moving forwards, which (presumably) is based on continuing to accept instructions on new fossil fuel projects.

We also note that it appears from the aforementioned research in *Nature Climate Change* that most of the market risk arising will fall on private investors, including substantial exposure through pension funds and the financial market.

Current and potential employees

Allen & Overy's ability to attract and retain the brightest and best employees will be significantly impacted by its approach to the climate & ecological crises and the nature of the work that its employees are asked to do.

In particular, as is observed in the Law Society Guidance, young lawyers and law students increasingly consider the stance taken by firms on climate & ecological crises when choosing where to work. This is unsurprising; young lawyers today who will mature and retire into a nature-depleted and dangerous world should not have to choose between their careers and a liveable future.

See further, for example, the Financial Times' recent article "*Big law firms fall out of fashion with idealistic Generation Z*"¹⁵.

In relation to your current employees, Allen & Overy's associates may lawfully take the position of refusing to accept work on new fossil fuel projects and cannot be subjected to discrimination, harassment or victimisation. The Employment Appeals Tribunal (EAT) has given guidance on the definition of "philosophical belief" as a protected characteristic under equality legislation. The EAT (Burton J) concluded that commitment to tackling the climate & ecological crises could amount to a philosophical belief.¹⁶

¹⁵ Available at <https://www.ft.com/content/c4c8a5fb-bee7-4e9a-81da-cb6255285619>

¹⁶ *Grainger plc and others v Nicolson* [2009] UKEAT 0219_09_0311; [2010] ICR 360; [2010] 2 All ER 253, available at: https://www.bailii.org/uk/cases/UKEAT/2009/0219_09_0311.html

In any event, an employer's ethos in relation to the climate and ecological crises is likely to exert a significant influence on the retention rates of existing employees.

Clients who are not fossil fuel companies

As is noted in the Law Society Guidance (at 4.5), increasingly, clients are facing regulatory and market pressures to demonstrate that their suppliers (including professional advisers) are adopting responsible approaches to climate issues.

Allen & Overy's ability to attract and retain these other clients will, we suggest, come under increased scrutiny and pressure as a result of its work on new fossil fuel projects. This will no doubt be of concern to the equity partnership at large, particularly when considering the firm's business model as a whole and the relatively small part in it that this unsustainable work would represent moving forwards.

Next steps

Please acknowledge receipt of this letter within 7 days and at the same time advise us when you will be able to respond substantively.

We will be standing on the pavement outside your London office on a regular basis, handing out leaflets and seeking to engage employees arriving for work in a non-confrontational manner in discussions about these issues.

We would very much welcome meeting with you to discuss the above issues and our requests, and your responses to this letter, in particular (but not limited to) your proposals for action to address the above.

Yours faithfully,

Lawyers Are Responsible

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