



LAW STUDENTS *for*  
CLIMATE ACCOUNTABILITY

# *The* **Carbon Circle:**

The UK Legal Industry's Ties to  
Fossil Fuel Companies



# Contributors & Acknowledgements

The Carbon Circle Report was developed and supported by:

## REPORT COORDINATORS & EDITORS

Camila Bustos, LSCA Co-Founder & Consultant  
Haley Czarnek, US LSCA National Director

## REPORT AUTHORS & RESEARCHERS

Vinod Aithal, *London Metropolitan University*  
Fatima Aziz, *University of Bristol*  
Elisabeth Doherty, *University of Cambridge*  
Eoin Jackson, *Harvard Law School*  
Runda Mana, *University of Bristol*  
Sitara Manoj, *University of Bristol*  
Joseph Teall, *BPP Law School*  
Gaia Bottazzi, *Queen Mary Law School*  
Chris McCay, *Trinity College Dublin*  
Phillip Hayden, *Blackhall College, Dublin*  
Maegan Watts, *University of Bristol*

## COMMUNICATIONS TEAM

Francesca Grandsden, *BPP Law School*  
Dunya Kamal, *BPP Law School*  
Clara Douglas, *University of Cambridge*

## LSCA EDITORS

Tim Hirschel-Burns, *Yale Law School*  
Alisa White, *Yale Law School*

## FURTHER ACKNOWLEDGEMENTS

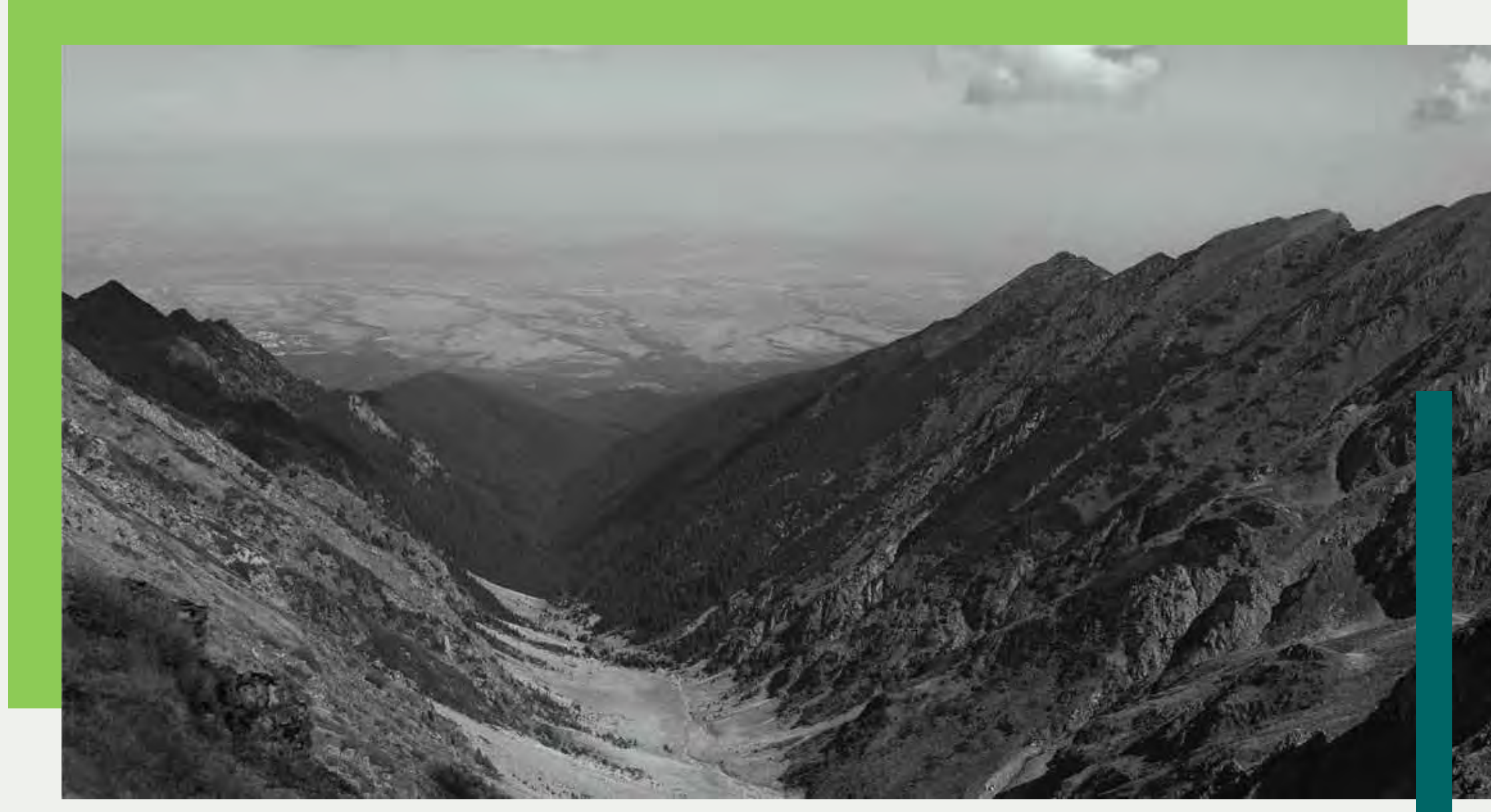
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LSCA would like to acknowledge the lineage of movement work dedicated to environmental justice which informs and has laid the groundwork for young organisers and budding legal workers to engage critically in a just transition. We hope to work alongside communities on the frontline of the climate crisis whose lives and livelihoods have been built around or affected by toxic and destructive industries in order to support sustainability and a liveable future.





# Executive Summary

Law firms play a substantial role in facilitating fossil fuel development. Behind every fossil fuel project, there is a lawyer representing the interests of a fossil fuel company. Legal providers make projects possible by arranging the financing for fossil fuel infrastructure, asset acquisition, company acquisition, refinancing, and privatisation. Furthermore, lawyers represent fossil fuel companies in litigation and arbitration matters, which may involve seeking injunctions against climate activists or defending companies' interests in expanding fossil fuel infrastructure.

Increasing public pressure, reputational costs, and looming regulatory risks have forced a number of international firms to pledge to reduce their greenhouse gas (GHG) emissions and implement sustainable practices internally. Yet there is a stark contrast between firms' rhetoric on environmental, social, and corporate governance (ESG) and the material impact of their work, particularly when their services are key to the existence and expansion of fossil fuel infrastructure.

Law firms overwhelmingly fail to align their "serviced emissions" or "advised emissions"<sup>1</sup> (i.e. indirect emissions stemming from provision of services) with their internal ESG goals, and the reality is that firms continue to uphold the global fossil fuel economy.

In light of the significant role of law firms in contributing to the climate crisis, law students across the globe are demanding greater accountability and shedding light on the legal industry's ties to the fossil fuel industry. Law Students for Climate Accountability (LSCA) is a student-led movement pushing the legal industry to phase out fossil fuel representation and to support a just, liveable future.

This report builds on the work of LSCA in the United States and is the first-ever report of its kind in the United Kingdom. Specifically, this report looks at (1) the work of top law firms operating in the UK (including the Magic and Silver Circle firms) in transactions involving oil, gas, and coal projects; and (2) arbitration cases where law firms have represented fossil fuel interests against national governments. This report documents the strong ties between law firms and fossil fuel companies, and the need for transformative change in the legal industry.

Our findings<sup>2</sup> indicate that:

- In the context of transactional work (e.g. drafting contracts and arranging financing), from 2018 to 2022, **55 firms facilitated £1.48 trillion in fossil fuel projects, more than 2.5 times the amount these firms facilitated for the renewable energy industry (£546 billion)**. We chose to analyse these 55 firms because each facilitated over £1 billion in fossil fuel transactions over the past five years (2018-2022).
  - Clifford Chance, Allen and Overy, Freshfields Bruckhaus Deringer, Linklaters and Slaughter and May, the elite quintet known as **the 'Magic Circle', are collectively responsible for over £285 billion worth of fossil fuel transactional work**. Five firms out of 55 make up almost 20% of the total fossil fuel transactional work, with 4 of those 5 firms placing in the top 15 of the list.
- In the context of Investor-State Dispute Settlement (ISDS), a legal mechanism by which companies can sue countries, **both Freshfields Bruckhaus Deringer and King & Spalding represented fossil fuel interests in more than 20% of all fossil fuel-related cases examined in this study**. Freshfields represented fossil fuel interests in the highest number of cases with 20 cases total, while King & Spalding ranked second with 18 cases. **These two firms play a disproportionate role in ensuring fossil fuel interests prevail in arbitration disputes, representing more than ten times the average number of cases across the 55 firms examined in the report.**

The UK legal industry must confront these uncomfortable truths. Will lawyers choose to maintain the status quo, representing the interests of polluters without question, or act meaningfully to tackle the climate crisis?



Beyond the moral imperative to preserve the habitability of our planet, firms should recognize they have a financial interest in becoming leaders in the fight for a just transition. Young people are increasingly making career decisions in line with their desire to have a liveable future. **Students are at the core of the talent pool that law firms need to continue operating. Both solicitor and barrister firms are at risk of losing valuable talent as prospective employees opt out of applying to a firm based on its climate record.** It is time for firms representing fossil fuel companies to reckon with a growing pool of students and lawyers across the UK who are demanding systemic change and a fossil fuel phase-out. LSCA believes there are clear steps students, associates, and firms can take to speed up this transition.

#### Law students can ask firms about:

- Their client selection processes, fossil fuel and renewable portfolio, and percentage of pro bono work;
- The firm's record on fossil fuel transactions, litigation, and arbitration work;
- Whether they will be expected to work on fossil fuel cases.

#### Associates at law firms that represent fossil fuel companies can:

- Request to opt out of representing fossil fuel clients;
- Start conversations internally about their firm's client base;
- Identify allies who can help with mapping out key internal decision-makers and developing strategies for convincing them to move away from fossil fuel clients;
- Incorporate thorough climate risk analyses into work for fossil fuel clients;
- Seek out renewable energy clients.

#### Law firms should:

- Phase out existing fossil fuel work( i.e. tackle serviced emissions);
- Decline to take new fossil fuel clients or work that seeks to expand fossil fuel infrastructure;
- Avoid misrepresentation or greenwashing by ensuring communications on sustainability and climate change are not misleading;
- Allow attorneys to opt out of representing fossil fuel clients.



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# Introduction

On 29 March 2023, a group of lawyers and advocates orchestrated a climate action at the Royal Courts of Justice in London. *Lawyers are Responsible* issued a ‘declaration of conscience’, sending a clear message that they projected directly onto the building that houses the Royal Courts: an urgent and radical transformation is needed to seriously tackle the climate crisis.<sup>3</sup> Yet law firms continue to represent fossil fuel companies across a range of activities, receiving millions of pounds every year to advocate on behalf of fossil fuel interests.

Climate change is arguably the single greatest threat humanity faces. Sea level rise, increased flooding, more frequent and intense hurricanes, and disruptions in weather patterns are already posing serious threats to our society, economy, and environment. Germany and Belgium experienced deadly floods in July 2021; these were significantly exacerbated by climate change, which is also making such extreme floods a more frequent occurrence.<sup>4</sup> Last summer, intense heat waves merged throughout Europe, killing over 20,000 people.<sup>5</sup> Temperatures reached an all-time record of 40.3°C in the UK and were even greater in countries such as France, Spain, and Portugal.<sup>6</sup> Meanwhile, Global South countries—and particularly low-income communities—have continued to suffer the worst effects of climate change. Increased heat waves and flooding have affected countries such as India<sup>7</sup> and Bangladesh,<sup>8</sup> where under-resourced communities have difficulty adapting and effectively responding to the disruption created by extreme weather events.

On 20 March 2023, the Intergovernmental Panel on Climate Change (IPCC) released its latest synthesis report,<sup>9</sup> which summarises the key climate science findings accumulated over the years. The IPCC is emphatic in its plea for a comprehensive, coordinated, and urgent response to the rapidly worsening climate crisis, declaring that ‘there is a rapidly closing window of opportunity to secure a liveable and sustainable future for all’.<sup>10</sup> Following its publication, UN Secretary-General António Guterres called the IPCC synthesis report:

[a] clarion call to massively fast-track climate efforts by every country and every sector and on every timeframe. In short, our world needs climate action on all fronts — everything, everywhere, all at once.<sup>11</sup>

**Secretary-General Guterres’s statement is clear: all sectors of society and the economy must mobilise to mitigate climate change.** Like banks, public relations agencies, and other professionals lending their services to fossil fuel companies, lawyers are a powerful force in shaping global climate policy, and must support a just transition away from fossil fuels.



## THE ROLE of LAWYERS in the CLIMATE CRISIS

In recent years, investigative journalists and climate advocates have unveiled the role of fossil fuel companies in not only creating the climate crisis through the production and expansion of fossil fuel projects, but also in deceiving the public about climate science and blocking regulatory efforts.<sup>12</sup>

Fossil fuel companies do not act alone. Law firms play a substantial role in facilitating fossil fuel development. Behind every fossil fuel project, there is a lawyer representing the interests of a fossil fuel company. Specifically, London-based law firms attract a large proportion of international commercial activity and provide key legal services for the fossil fuel industry.

Too many lawyers are willing to prioritise temporary financial gain and prestige over the health and well-being of the planet and its inhabitants. The legal industry has only recently begun to unpack the implications of the climate crisis on professional ethics.<sup>13</sup>

**Thus, it is essential for law firms to (1) take active steps to move their portfolio away from fossil fuels as quickly as possible and (2) advise carbon-intensive industries to mitigate their negative environmental impact.**<sup>14</sup>

Some lawyers have begun to recognize this imperative. Beyond the March 2023 action hosted at the Royal Courts of Justice in London, there have been other recent promising moves toward a climate just legal profession.



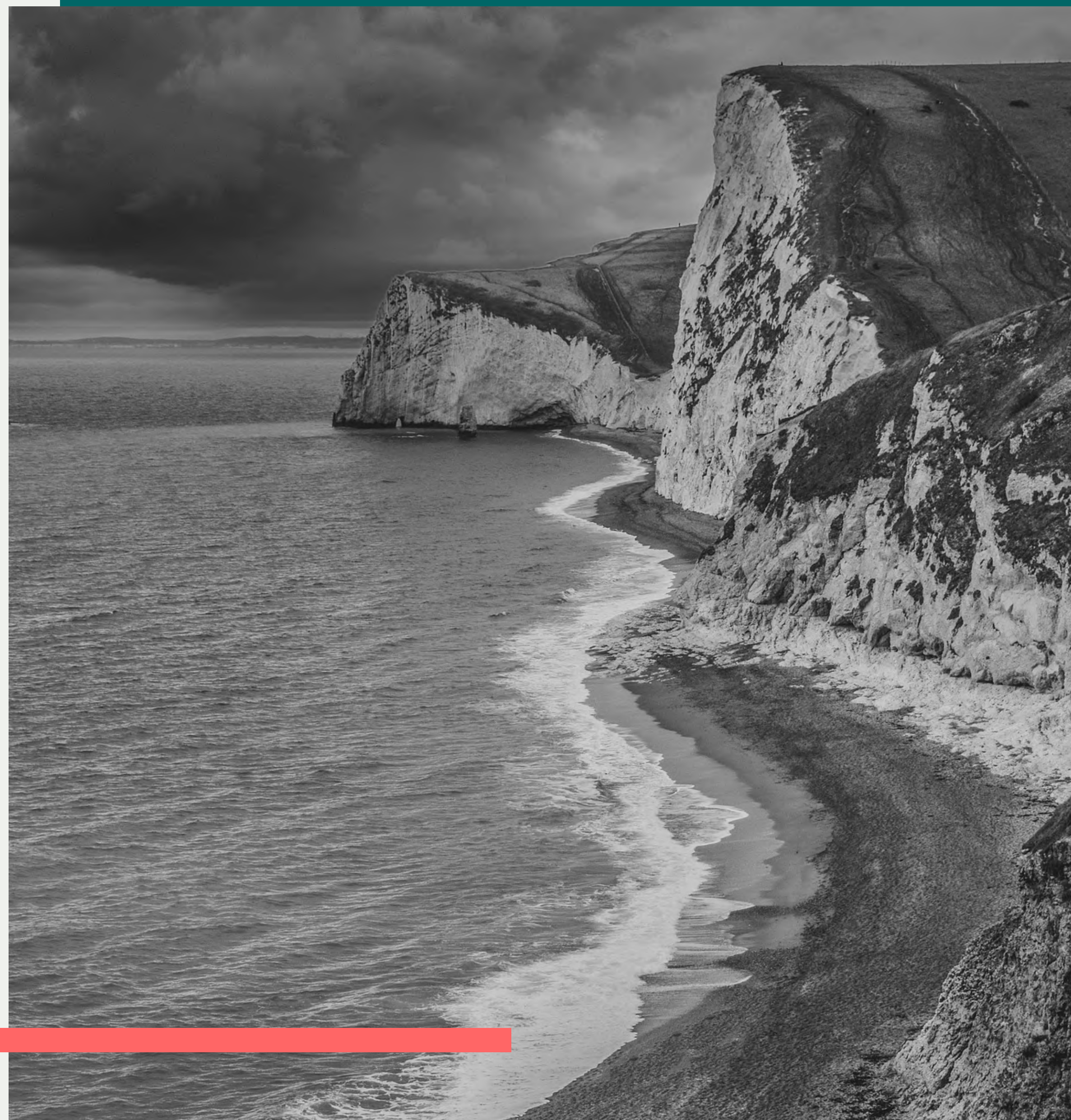
'Lawyers for 1.5° - Humanity's Lifeline',<sup>15</sup> an open letter signed by over 250 legal professionals, acknowledges that lawyers have contributed to the ongoing climate crisis by representing fossil fuel companies, and calls on lawyers to engage in more climate-conscious legal practice. The letter also suggests that any involvement in facilitating transactions for businesses and governments involved in activities which are not compatible with the 1.5°C limit is unacceptable.

The Law Society of England and Wales, the professional association that represents solicitors for the jurisdiction of England and Wales, also recently issued guidance for solicitors on climate change,<sup>16</sup> marking an important step towards integrating climate-related obligations into professional codes.

At the same time, law students across the globe are demanding greater accountability for firms that serve the interests of fossil fuel clients. LSCA was founded in the United States with the launch of the Climate Scorecard, the first-ever document grading the Vault 100 firms based on their contributions to the climate crisis.<sup>17</sup> LSCA also aims to empower students and lawyers to make conscious decisions about the firms they choose to work for (to the extent their personal circumstances allow), and to be aware of their impact on the environment and frontline communities.

**This report builds on the work of LSCA in the United States and is the first report of its kind in the United Kingdom. Specifically, this report looks at (1) the work of top law firms (including the Magic and Silver Circle firms) in transactions involving oil, gas, and coal projects; and (2) arbitration cases where law firms have represented fossil fuel interests against national governments.**

This report illustrates the strong ties between law firms and the fossil fuel industry and the need for transformative change. Emission reduction targets and ESG goals remain woefully inadequate as long as firms continue to uphold the fossil fuel industry.



## UK STUDENT ORGANIZING

This report builds on a rich history of student climate advocacy in the UK. As of February 2023, over one hundred universities in the UK have divested from fossil fuels, including the Universities of Cambridge, Exeter, and Bristol.<sup>18</sup> Progress is not perfect, and some universities, such as the University of Oxford, have only divested partially or have failed to fulfil their promises. But the divestment movement has nonetheless succeeded in pushing these institutions to take meaningful action in the right direction.<sup>19</sup>

Moreover, a growing number of student activists across universities are campaigning for a reduction in carbon emissions through reduced fossil fuel use,<sup>20</sup> and are encouraging their peers to steer away from fossil fuel careers.<sup>21</sup> For instance, People & Planet's Fossil Free Career campaign calls on UK universities to end relationships with oil, gas, and mining companies and to implement policies to prevent these companies from recruiting students. Thus far, the campaign has secured commitments from three universities. Another recent campaign, Fossil Free Research, seeks to eliminate the influence of fossil fuel money on climate research across universities.<sup>22</sup>

These examples are only a few of the many student-led campaigns across the UK exhibiting the younger generation's willingness to disrupt the status quo and demand real sustainable practices to pave the way for a better and just future. Students and recent graduates are now more aware than ever before of the critical role of the law in either derailing progress or moving society towards a more sustainable future. Law students, in particular, are making conscious decisions to select firms that align with their values.



# UK Legal Industry

## OVERVIEW of the UK LEGAL INDUSTRY

The United Kingdom's legal sector plays a key role not only in the British economy, but also in the global economy. A significant amount of international commercial activity is directed from London due to the perceived stability and predictability of English law.<sup>23</sup> The industry employs over 350,000 people,<sup>24</sup> and the sector is also highly lucrative—revenue for the UK's 100 largest firms in 2019-20 was £27.7 billion.<sup>25</sup> But the industry has grown by enabling the activities which have led the world into the climate crisis, getting rich by, in no small part, causing untold damage to the planet.

**The fossil fuel industry has made itself the most profitable industry on the planet while pushing the costs of climate catastrophe onto society.<sup>26</sup> Its products are embedded into every aspect of economic activity. And behind every oil well, fracking rig, and greenwashing advertisement, there is a lawyer that made profiting off of destructive extraction possible.**

Lawyers could make a different choice. As The Law Society's latest guidance on climate change indicates, 'solicitors are not obliged to provide advice to every prospective client that seeks it.'<sup>27</sup> In many cases, lawyers can refuse to perform work for fossil fuel companies on ethical grounds.

## TYPES of LEGAL PROFESSIONAL in the UK

In the UK, there are mainly two types of legal professionals: solicitors and barristers. When a client needs legal advice, their first step is to approach a solicitor. Solicitors often work for firms and provide services including initiating litigation, providing legal advice, and drafting contracts. If a case needs to go to a court or tribunal, clients will generally need a barrister to represent them.

Typically, a client's solicitor will engage a barrister to represent its case in court. Barristers work together in what is known as chambers, but are self-employed, providing specialist legal advice and advocacy services. Although all barristers have rights of audience (the right to appear and conduct proceedings) in both higher and lower courts, in higher courts, this right is available to only some solicitors.<sup>28</sup>

As a general rule, solicitors can choose who they work for as long as the decision does not discriminate based on protected characteristics, such as ethnicity or gender.<sup>29</sup> If they are approached by a client they do not want to serve on ethical grounds, solicitors can refuse to provide services

as long as they can offer a reasonable justification for the decision.<sup>30</sup> Indeed, solicitors often turn down clients if there is a conflict of interest.

Barristers, on the other hand, are bound by what is known as the 'cab rank' rule.<sup>31</sup> They cannot turn down work for a client based on their own beliefs or the subject matter of the case. This rule intends to ensure that everyone has access to representation in court. However, in practice, the 'cab rank' rule does not guarantee representation for people unable to afford legal fees. Barristers also do not have to accept cases that would require breaching their ethical obligations.<sup>32</sup> Arguably, climate change considerations could be a sufficient reason to decline representation.

In sum, there is nothing under professional responsibility requirements guaranteeing that fossil fuel projects receive legal services from solicitors, who frequently serve as the gateway to obtaining representation from a barrister. Unfortunately, solicitors' firms are more often than not willing to accept climate wreckers as clients as long as they are willing to pay their fees.

## SOLICITORS & BARRISTERS: THEIR ROLE and WHY THEY MATTER in the FIGHT AGAINST the CLIMATE CRISIS

### Solicitors

Since 2007, the conduct of solicitors has been regulated by the Solicitors Regulation Authority (SRA), which sets the rules on how solicitors should act.<sup>33</sup> Before 2007, The Law Society<sup>34</sup> regulated the profession, and it now plays an advisory role to protect access to justice and 'drive excellence in the profession'.<sup>35</sup>

None of the SRA's core principles<sup>36</sup> explicitly mention protecting the environment or the right to a stable climate system, although the SRA is currently working on ways to incorporate the environment and climate change into its regulation of solicitors.<sup>37</sup> The SRA's website offers limited discussion of the role that climate or environmental concerns should play in solicitors' practice, including, crucially, whether working on projects that contribute to climate breakdown is compatible with the need to uphold the rule of law. However, the SRA offers guidance on the obligations of solicitors and firms when a legal practitioner receives a criminal conviction related to matters of principle or social conscience, including exercising the right to protest over climate-related concerns.<sup>38</sup> Additionally, while the Law Society is not the regulatory body for solicitors in England and Wales, it does produce guidance and practice notes that outline best practices for all solicitors regulated by the SRA. These guides can inform the appropriate court where necessary.

In 2021, the Society published a climate change resolution,<sup>39</sup> which '[u]rges law firms and organisations that support the legal industry to operate in a way which restricts the increase in global warming to well below 2°C and to pursue efforts to limit the increase to above 1.5°C pre-industrial levels.'<sup>40</sup> The





resolution also acknowledges that solicitors ‘can lead in mitigating the climate crisis to avert its worst effects’ and calls solicitors to approach ‘any matter arising in the course of legal practice with regard to the likely impact of that matter upon the climate crisis.’<sup>41</sup>

More recently, in a landmark announcement the Law Society issued specific guidance (with SRA approval) on the impact of climate change on solicitors, explicitly recognizing that solicitors can refuse clients on climate change grounds. The guidance advised that:

Climate-related issues may be valid considerations in determining whether to act. 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.

For lawyers, the most significant GHG emissions associated with your organisation are likely to be emissions associated with the matters upon which they advise, rather than scope one-to-three emissions.

[...] advised emissions associated with matters on which a solicitor provides legal advice are 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. [...]

**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.**

This is a matter for individual solicitors and law firms, recognising solicitors' professional obligations.<sup>42</sup>

Recent academic work has considered whether solicitors should warn their clients of the future climate risks of their work,<sup>43</sup> including the risks of litigation from activities that damage the planet, as well as the increasing economic risk of carbon assets (e.g., coal deposits) becoming stranded.<sup>44</sup> The current consensus is that solicitors probably have a duty to warn clients of the climate risks of their work, but may not be bound by this.<sup>45</sup>

### Barristers

Barristers mainly provide legal advice and representation in court. They are typically self-employed and are often referred to as ‘advocates’ because their main role is to argue a client's case before a judge or jury.

When it comes to reducing emissions, barristers can play an important role by supporting relevant litigation and providing advice on environmental issues. For example, barristers may provide legal representation to clients who seek to hold governments or corporations accountable for

their role in causing climate change, or for failing to take sufficient action to mitigate its impacts. Barristers may also represent climate activists who are facing criminal charges due to their activism. Unfortunately, they often find themselves doing the opposite.

The websites of barristers' chambers working on energy matters often display significant cognitive dissonance between their stated ideals of sustainability and the real impact of their work. When chambers describe their expertise in oil and gas matters, they rarely mention providing advice on the risks of possible future climate-related litigation, which suggests that advising clients on the climate impacts of their work is, at best, a miniscule part of their fossil fuels practice.

Moreover, very little data, if any, is available on the exact amount of GHG emissions that the bar facilitates through fossil fuel-related litigation. One positive development on this front is that a number of firms— TaylorWessing, BatesWells, DWF, DLA Piper, Gowling WLG, Mishcon de Reya, and Osborne Clarke—have signed the Legal Charter 1.5°C.<sup>46</sup> Signatories commit to, among other things, support the development of a ‘robust methodology’ to measure the impact of their advice on global emissions and report progress annually.<sup>47</sup>

Barristers are regulated by the Bar Standards Board.<sup>48</sup> The professional body for barristers in England and Wales, the General Council of the Bar (commonly known as the Bar Council), represents their interests and conducts research into best practices.<sup>49</sup> As with the Law Society, the Bar Council has produced some professional guidance on how to align the profession with net zero, recognising that climate change ‘will bring increased global inequality and in turn an increased risk of conflict and global disruption, affecting access to justice and the rule of law,’ and that the Bar has a responsibility to mitigate and adapt to climate change. While there is no guidance from the Bar Council on whether acting for a polluter is contrary to barristers' professional obligation to uphold the rule of law, the Bar Council publicly declared its support for climate-conscious legal practice in 2021.<sup>50</sup>



# Cognitive Dissonance: Climate Rhetoric & Greenwashing

In light of the increasing pressure to take climate action, prominent UK law firms have publicly declared their climate commitments.

Slaughter and May boasts the highest profit per equity partner among UK firms, representing parties in some of the most high-profile transactions to date.<sup>52</sup> In 2020, Slaughter and May announced that it was ‘the first law firm to [approve] ambitious new targets to reduce the impact of climate change’,<sup>53</sup> which made reference to the firm’s goal to reduce its Scope 1, 2, and 3 emissions by 50% by 2030, using 2018 as a baseline.<sup>54</sup> Scope 1, 2, and 3 emissions refer to direct emissions, electricity indirect GHG emissions, and other indirect GHG emissions, respectively.<sup>55</sup> Notably, Slaughter and May’s pledge did not extend to reducing the emissions it facilitates through extensive work for fossil fuel companies.

Jeff Twentyman, former partner at Slaughter and May, made the following comments in relation to the firm’s climate targets:

I am proud that the firm has not only made this commitment, but that we are the first law firm to have our targets approved . . . [W]e are committed to setting science-based targets in line with the reductions required to limit global temperature increase to 1.5°C.<sup>56</sup>

Norton Rose Fulbright, a global law firm advising some of the largest corporations and financial institutions in the world,<sup>57</sup> has also declared its support for taking meaningful action towards a sustainable future:

We integrate sustainability best practice into all our decision-making and business activities. We recognize our responsibility to address environmental issues that jeopardise the earth’s ecosystems and the future of our communities and as a firm we work on reducing our environmental footprint and are active on many pro bono projects in the areas of sustainability.<sup>58</sup>

Clifford Chance, another leading international law firm, has similarly expressed support for climate action efforts:

Managing our footprint not only contributes to a more sustainable world, it motivates our clients and our people. We target net zero ambitions at the same time as helping our clients with theirs. We are also aligning our community work and resources with environment-focused initiatives and climate change solutions.<sup>59</sup>

Eversheds Sutherland, previously ranked among the top 10 legal practices in the world by Law360, has also expressed a commitment to sustainability:

[W]e understand that our operations have a local, regional and global impact. We are committed to promoting the conservation of natural resources, preventing environmental pollution and continuously improving our environmental performance. In 2020 we signed up to the Science Based Targets Initiative (SBTi) and will set time bound reduction targets which are in line with limiting rising global temperatures to well below 2 degrees.<sup>60</sup>

The Law Society makes it clear that firms issuing such statements should ‘ensure any such communications cannot give rise to claims of misrepresentation or greenwashing.’<sup>61</sup> Despite this guidance, firms’ sustainability claims do not line up with the material impact of their work. Pledges to reduce Scope 1, 2, and 3 emissions do not absolve firms from reckoning with their serviced emissions, which are typically orders of magnitude greater. Firms that make public climate commitments should also address how their work facilitates the existence and expansion of fossil fuel infrastructure.

## MATERIAL IMPACT of the LEGAL INDUSTRY’S ACTIVITIES ON CLIMATE

Undeterred by rain, protestors descended upon Slaughter and May’s London office on the morning of 28 February 2020, bringing with them a cacophony of banging drums and cowbells.<sup>62</sup> The action was organised by *Lawyers for Extinction Rebellion*, an international movement ‘that uses non-violent civil disobedience in an attempt to halt mass extinction and minimise the risk of social collapse.’<sup>63</sup> This protest took place in response to Slaughter and May’s decision to advise Premier Oil on its £600 million acquisition of North Sea oil fields from BP and Dana Petroleum.<sup>64</sup> The protestors derided the decision, claiming that the firm’s few renewable energy clients did not make up for the firm ‘going out and bidding for work’ from key players in the fossil fuel industry.<sup>65</sup>

Slaughter and May, which first publicly professed a commitment to science-based climate goals associated with the Paris Agreement in 2019,<sup>66</sup> is not alone in making such commitments while simultaneously continuing to pursue a fossil fuel portfolio. Clifford Chance, whose ‘net zero ambitions’ are highlighted above, joined Slaughter and May in advising Chrysaor and Premier Oil on a merger.<sup>67</sup> The newly merged company, Harbour Energy, described itself as ‘a global independent oil and gas company, producing over 200,000 barrels of oil equivalent per day from the North Sea and South East Asia’.<sup>68</sup> Harbour Energy is now the largest oil and gas producer in the British North Sea.<sup>69</sup>

As promising as firms’ sustainability pledges and ESG portfolios may sound, law firms’ legal services to fossil fuel clients have far-reaching negative effects on the climate.





THE MORE YOU  
TALK  
THE MORE WE  
SINK

### Prosecuting Climate Protesters

In addition to representing fossil fuel interests in commercial transactions, several firms have leveraged the law to protect fossil fuel corporations from those wishing to hold them accountable, including by supporting oil companies seeking injunctions to prevent protests against their activities. Last year, oil and gas supermajor Shell managed to secure injunctions to prevent protests at its facilities in the UK.<sup>70</sup>

Eversheds Sutherland, another law firm headquartered in London, was a recent target of protests by Extinction Rebellion (XR). On 28 February 2023, scores of protesters from XR and High Speed Two Rebellion—an alliance of groups and individuals campaigning against the High Speed 2 (HS2) railway project in England—assembled outside Eversheds Sutherland's offices in several locations to demand accountability for the firm's involvement with major polluters responsible for exacerbating the climate crisis.<sup>71</sup>

This protest responded to an October 2022 High Court ruling barring eco-activists from disrupting ongoing work on Esso's new aviation fuel pipeline.<sup>72</sup> The High Court's injunction includes activities such as damaging the property, entering the site, and facilitating sit-in protests.<sup>73</sup> Eversheds Sutherland represents Esso in this case.<sup>74</sup>

A high court judge also granted HS2 a route-wide injunction against protestors in September of the same year. The order has been characterised as 'one of the largest injunctions of its kind against protestors granted by a court.'<sup>75</sup> Eversheds Sutherland has represented HS2 in similar matters in the past.<sup>76</sup>

Groups such as XR and HS2 Rebellion provide a clear message to law firms: **by representing perpetrators of environmental destruction in cases involving the criminalisation of environmental protests, law firms are also contributing to the climate crisis and should not be allowed to evade accountability for their actions.**<sup>77</sup>

Evershed Sutherland's entanglement with the fossil fuel industry is not an exception. Scores of other UK firms have deals with these companies. For instance, Norton Rose Fulbright's clients include ExxonMobil, Shell, and BP.<sup>78</sup> Ashurst's clientele also includes familiar actors such as BP and Shell, as well as others like Tullow Oil, 'a leading independent oil and gas exploration and production company with interests in 80 licences across 15 countries.'<sup>79</sup>

DLA Piper, another firm headquartered in London, has been involved in multiple transactions concerning the development of pipelines, advising the Gas Interconnector Greece-Bulgaria (ICGB) AD gas pipeline, among others.<sup>80</sup> The development of these projects stands in stark contrast with climate science, as scientists have emphasised the devastating implications of expanded oil pipelines' emissions on climate.<sup>81</sup>



## CLIMATE CHANGE & LEGAL ETHICS

The legal industry and its regulators have long recognised that the climate crisis poses an existential threat to many aspects of life, as evidenced by the volume of statements, resolutions, pieces of guidance, and press releases generated by the industry. However, UK law firms not only facilitate projects that emit millions of tonnes of carbon dioxide into the atmosphere every year, but also support polluters who hope to silence and intimidate activists.

**Equality of access to the law is a cornerstone of the legal system, yet the system is anything but equal. Access to justice depends on who is able to access the most funds to pay for it, not who needs the representation most. Consequently, fossil fuel companies have consistently been able to afford high-priced and extraordinarily effective legal representation, while those who are harmed by their operations often have limited access to lawyers, if they are able to get representation at all.**

In a system where money dictates who is able to secure the most comprehensive legal representation, lawyers should question the idea that powerful and wealthy corporations have an automatic right to representation by top law firms while frontline communities are denied justice. **By defending fossil fuel interests—including resisting any form of regulation and circumventing accountability for the decades of lies many corporations spread about the real impact of burning fossil fuels—the legal industry demonstrates its refusal to move at the speed necessary to end our dependence on fossil fuels.**

Although building the legal profession's climate-consciousness is going to take time<sup>82</sup> and effort, some organisations and firms are already leading this work. At least one London law firm reportedly allows its lawyers to refuse to act for 'big emitters' of pollution,<sup>83</sup> and the advocacy group Lawyers Are Responsible has published a 'Declaration of Conscience', in which signatories both note their concern with recent restrictions on the right to protest, and commit to withholding their services with respect to (1) new fossil fuel projects and (2) action against climate protesters exercising their democratic right of peaceful protest.<sup>84</sup>

In addition, Net Zero Lawyers Alliance is working to 'mobilis[e] commercial lawyers, law firms and the law to accelerate the transition to net zero'. At the time of publication, over 30 member firms had committed to support the goal of Net Zero GHG emissions by 2050 or sooner, in line with global efforts to limit warming to 1.5°C. Some of these firms include Ashurst, Clifford Chance, DLA Piper, Eversheds Sutherland, Herbert Smith Freehills, Hogan Lovells, Pinsent Masons, and Slaughter and May. However, their support of millions of pounds in fossil fuel transactions is incompatible with a net zero goal.

**By carrying on with business as usual, lawyers will continue to push the world past its climate tipping points.**

Defenders of the status quo may echo the simplistic messages that everyone deserves representation, the world runs on fossil fuels, and there is no way to change the

system. The reality, however, is that there are a number of clear contemporary and historical examples where legal professionals hid behind the veneer of their profession to attorneys to argue in favour of the commercial need to uphold slavery despite fierce opposition from abolitionists, who campaigned for an end to the slave trade.<sup>85</sup> It took decades of organising before slavery was finally abolished in the British Empire, and although many lawyers were abolitionists, they had to contend with colleagues who promoted slave-holder interests in the courts. Beyond slavery, lawyers concerned about the ethics of representing questionable clients also fought against Big Tobacco's lies, and organised to end apartheid in South Africa.<sup>86</sup>

Moreover, law firms have withdrawn from representing controversial clients after public backlash. Kirkland & Ellis announced that it would no longer handle Second Amendment litigation in the United States after a wave of mass shootings across the country.<sup>87</sup> Mayer Brown refused to represent a Hong Kong university planning to remove a statue honouring Tiananmen Square protesters after public condemnation.<sup>88</sup>

Despite some lawyers' resistance to the possibility of phasing out or refusing to represent fossil fuel clients, a recent example demonstrates that firms can often act quickly when there is widespread regulatory and public pressure.

### Law Firms' Ties to Russia

For years, law firms helped prop up the Putin regime and associated oligarchs.<sup>89</sup> But after public attention turned to law firms representing Russian oil clients—whose profits have been key to funding the war in Ukraine—several major law firms quickly dropped their representation. For instance, DLA Piper was previously a prominent advisor to major state-owned companies in Russia, advising companies such as Gazprom, the world's third-largest emitter of industrial emissions over the 1988-2015 period.<sup>90</sup> DLA Piper has not been alone in this work. Other firms previously representing Russian state-owned or controlled energy corporations include Linklaters, which previously advised Gazprom,<sup>91</sup> and Latham & Watkins, who represented Rosneft.<sup>92</sup>

Moreover, Exxon has lent its expertise to Russian state-owned oil companies to help expand their production capabilities.<sup>93</sup> BP was involved in various projects facilitating the development of oil and gas fields in Russia, many of which have been classed as 'carbon bombs'<sup>94</sup> (massive oil and gas projects which are capable of drastically increasing carbon dioxide emissions).<sup>95</sup> Ashurst, Latham & Watkins, and other prominent firms represent major western oil companies such as Exxon and BP.

Regardless of present attempts to distance themselves from Russia, western law firms have played a key role in the development of Russia's booming oil and gas industry, which is now the largest contributor of methane from oil and gas production<sup>96</sup> and responsible for funding Putin's war machine,<sup>97</sup> with an estimated 40% of the Russian federal budget coming directly from oil and gas exports.<sup>98</sup> Most importantly, law firms' quick and decisive action to drop Russian oil clients make it clear that, if they have the will to do so, firms are perfectly capable of deciding that servicing fossil fuel clients is not in keeping with their values.



# Fossil Fuel Transactions

## METHODOLOGY

### Selecting Firms

LSCA's annual US scorecard focuses on the climate-related work of the Vault 100 firms, often called 'the 100 top-ranked firms' in the United States. Because there is not a comparable list of firms in the UK, our team included the 55 UK firms that facilitated over one billion in pounds in fossil fuel transactions between 2018 and 2022. These firms also have some of the highest total revenue per year and greatest prestige in the legal sector.

Many of the firms selected operate globally, but each of the firms included in our ranking have offices in the UK.

### Database & Collection

The IJGlobal Project Finance and Infrastructure Transaction database contains over 32,000 transactions. The database includes a variety of different types of transactions across a range of categories: additional facility construction, asset acquisition, company acquisition, design-build, portfolio financing, primary financing, privatisation, refinancing, and securitization. IJGlobal provides the total dollar value of these transactions, but it does not provide the amount of money that each law firm received in compensation for their work on each transaction. Due to the proprietary nature of the IJGlobal data, we are only able to publish aggregate amounts of transactional work. but the full dataset may be purchased via licence from IJGlobal. In March 2023, we downloaded the full dataset from the IJGlobal database for fossil fuel and renewable energy transactions from 2018-2022. We performed the following analysis on this dataset.

### Analysis

We divided the transactions in the dataset into two categories: fossil fuels and renewable energy transactions. Fossil fuel transactions included any transactions in the IJGlobal database where 'oil and gas' is listed as one of the primary transaction subsectors. The 2022 IJGlobal database also includes 'LNG' (liquified natural gas) and 'petrochemicals' as separate subsectors. We included these subsectors in the fossil fuel transactions category. We also included coal mining transactions in the fossil fuel category. Some of the transactions in the fossil fuel category have minor renewable energy components, like the acquisition of a company with largely fossil fuel holdings but some renewable energy holdings.

Renewable energy transactions included the following sources: large hydroelectric, small hydroelectric, geothermal energy, photovoltaic solar, off-shore wind, on-shore wind, and thermal solar. We recognise that biofuels and biomass are not universally sustainable. Thus, for renewable energy

transactions, we included those transactions involving biofuels, biomass, and/or waste-to-energy plants in conjunction with one or more other sources of renewable energy. We do not count transactions listed as power co-generation as either renewable or fossil fuel transactions, because we do not have information on whether the co-generation derives from the combustion of fossil fuels or from multiple sources of renewable energy.

Given the large number of entries in IJGlobal and the limited information included under each project, it is not easily discernible which transactions are inherently problematic in terms of their climate impact. In other words, it is possible that some of the fossil fuel transactions included are wind down projects.

We included transactions outside the UK because UK-based lawyers often arrange financing for global projects and advise on the associated legal risks, all of which results in enormous global contributions to GHG emissions. If multiple firms were listed on a particular transaction, the amount counted towards each firm's score was the total value of the project divided by the number of firms listed on the transaction, including firms not included in our ranking.

## FINDINGS

While litigation is often the most visible way in which lawyers contribute to the climate crisis, we cannot forget that the fine print of their transactional work can have equally devastating consequences on the climate and frontline communities. Lawyers make projects possible by arranging financing, asset acquisition, company acquisition, refinancing, and privatisation for fossil fuel companies. Lawyers could use these same skills to accelerate the transition to a sustainable, renewable economy. Instead, dozens of powerful UK law firms are supporting fossil fuel projects, many of which lock us into decades of global reliance on fossil fuel infrastructure.



## RANKINGS

From 2018 to 2022, 55 UK firms facilitated fossil fuel projects worth a gargantuan £1.48 trillion. To put this into perspective, this figure is more than 2.5 times the amount these firms transacted for the renewable energy industry, which amounted to £546 billion.

Although the processed data indicates that law firms are increasing their renewable energy portfolio, it is not enough to look at the sum of renewable projects to determine firms' climate impact. For instance, global megafirm White and Case facilitated £29.4 billion in renewable transactions over the five-year period surveyed in this report. This is only one fourth of the total fossil fuel transactions the firm facilitated in that same time period.

Similarly, Vinson and Elkins saw a 400% increase in its renewable energy transactional work from 2020-2021, bringing its total renewable transactions up to £4.2 billion between 2018-2022, but Vinson & Elkins is one of the most egregious offenders on our list. The firm's total fossil fuel transactions were worth a mind-boggling 24 times higher than their renewables transactions.

When we place the progress that these 55 firms have made in context, it's more than apparent that renewable work is not enough to offset firms' support of fossil fuel interests.

Top law firms  
facilitated  
**£1.48**  
**TRILLION**  
in fossil fuel projects  
between 2018-2022.

### TOP 5 WORST FIRMS for TRANSACTIONS

Amount in Fossil Fuel Transactions  
the Firm Facilitated

1. White & Case: £125.5 billion
2. Latham & Watkins:  
£118.4 billion
3. Vinson & Elkins: £100.5 billion
4. Allen & Overy: £89.6 billion
5. Simpson Thacher & Bartlett:  
£89.6 billion



## TOP 10 WORST FIRMS: TRANSACTIONAL WORK FOR THE FOSSIL FUEL INDUSTRY 2018-2022 (SUM GBP BILLION)



### IS *the* MAGIC CIRCLE LOSING *its* 'MAGIC'? NOT WHEN *it* COMES *to the* FOSSIL FUEL INDUSTRY.

**Clifford Chance, Allen and Overy, Freshfields Bruckhaus Deringer, Linklaters and Slaughter and May** make up the elite quintet known as the 'Magic Circle', which many consider the most prestigious firms across the UK legal industry. For this exclusive club, bigger is better. Bigger deals, bigger fees, bigger staff numbers. Corporate and finance work dominates these firms, which serve the wealthiest of international clients, often including the carbon majors.

Given their historic dominance in the UK legal sector, it should come as no surprise that the Magic Circle's fossil fuel work is substantial. **Collectively, they are responsible for over £285 billion worth of fossil fuel transactional work. Five firms out of 55 make up almost 20% of total fossil fuel transactional work, with 4 of those 5 firms placing in the top 15 of the list.**

However, not all Magic Circle firms are created equal as far as fossil fuel transactions are concerned. **Allen and**

**Overy (A&O) is by far the worst offender, conducting £89 billion worth of transactional work between 2018 and 2022.** This figure earns it a spot at number 4 on the list and represents 3.3 times the average.

Slaughter and May, by comparison, fares relatively better but is still responsible for £8.1 billion in fossil fuel transactions. Unlike A&O, the £2 billion in renewable transactions it facilitated is not terribly far off from its £8.1 billion in fossil fuel transactions. **Overall, A&O's transactional fossil fuel work amounts to seventy-four times that of Slaughter's.**

Linklaters and Clifford Chance both rank squarely within the top 10 firms enabling fossil fuel transactions, boasting £74.9 and £67 billion in fossil fuel transactions, respectively. However, the enormity of these figures is balanced out slightly by the fact that, amongst that same top 10, their track record in the realm of renewable energy is almost double the average and decidedly the highest amongst the group. Interestingly, while Freshfields' £45.5 billion in fossil fuel transactions does not quite earn it a spot amongst the top 10, the firm's almost six-to-one ratio of fossil fuels to renewables is by far the worst ratio among the Magic Circle firms.



# Case Studies

## Pinsent Masons: Hwange Coal-Fired Power Plant Expansion in Zimbabwe

Pinsent Masons was appointed as legal advisor for the Hwange Coal-Fired Power Plant expansion. The Hwange power station is Zimbabwe's largest coal-fired power facility and is being expanded by an additional 690 megawatts.

Coal is the most harmful fossil fuel, releasing more carbon dioxide than oil and gas.<sup>99</sup> Residents of Hwange have also reported the damage that coal has caused to their town, specifically highlighting dust pollution and water pollution on the Deka River.<sup>100</sup> Women have been significantly affected by the water pollution since they are most often in contact with the river.<sup>101</sup> Many have reported having to walk several kilometres to access clean water and find alternative food sources as fish in the Deka river and livestock drinking the water have been found dead.<sup>102</sup> The power plant expansion further threatens the residents of Hwange and the surrounding areas.

This expansion is one of many overseas coal projects funded by the Chinese Government, and is estimated to cost £1.1 billion.<sup>103</sup> Despite China's 2021 commitment to stop funding coal projects, the Hwange power plant expansion has continued.<sup>104</sup> Pinsent Masons' support of the project calls into question the firm's climate commitments.

## Clifford Chance: East Africa Crude Oil Pipeline

Clifford Chance advised on project financing for the East Africa Crude Oil Pipeline (EACOP). EACOP is a 1444 kilometre oil pipeline under construction in Tanzania and Uganda, led by French oil company Total and China National Offshore Oil Corporation (CNOOC).<sup>vi</sup> The crude oil obtained will be primarily exported, particularly to Europe.<sup>vi</sup>

EACOP has been widely criticised due to the detrimental impacts it would cause on nearby communities and ecosystems, as well as the global carbon budget.<sup>vii</sup> This project will produce 379 million tonnes of pollution, **which is more than 25 times the combined annual emissions of Uganda and Tanzania.**<sup>viii</sup> The construction of the project also threatens to displace thousands of residents.<sup>cix</sup> In addition, the water consumption of this project and the potential pollution that it would produce threaten essential water resources, including the Lake Victoria Basin, which over 40 million people rely on.<sup>cx</sup> The pipeline will do little to support energy access in Uganda and Tanzania, instead providing oil for export to higher-emitting countries.

The coordinator of the Stop EACOP campaign, Omar Elmawi, said, 'EACOP and the associated oilfields in Uganda are a climate bomb that is being camouflaged as an economic enabler to Uganda and Tanzania. It is for the benefit of people, nature and climate to stop this project.'<sup>cx</sup> In 2020, several civil society organisations filed suit against the governments of Tanzania and Uganda to stop EACOP on the basis of its environmental and human rights impact. The case is still pending.<sup>cxii</sup> Clifford Chance's backing of EACOP is incompatible with its climate rhetoric.





# Case Studies

## **Linklaters:** Acquisition of 66% Cerrejón Coal Mine (Colombia)

Linklaters, among other firms, advised on the acquisition of the Cerrejón coal mine. Located in Colombia, the Cerrejón coal mine is one of the largest surface coal mining operations in the world. Over the past two decades, there have been continuous reports of environmental and human rights abuses involving Cerrejón.<sup>113</sup> The mine's operation has displaced thousands of residents from the local indigenous Wayúu and Afro-Colombian communities.<sup>114</sup> In 2001, the residents of Tabaco, an Afro-Colombian town, were violently evicted from their homes to make way for the expansion of the mine.<sup>115</sup> While Cerrejón signed an agreement for the reconstruction of Tabaco in 2008, today, over two decades after their displacement, the community has not been resettled or compensated.

In addition to the global climate impact of coal emissions, the mine's operations have severely affected the local communities' access to water.<sup>116</sup> Whilst the Cerrejón mine uses over 17 million litres of water per day, the average person only has access to 0.7 litres.<sup>117</sup> The dust pollution also significantly affects the residents, many of whom claim it has caused them to develop respiratory problems.<sup>118</sup> In 2020, David Boyd, UN Special Rapporteur on human rights and the environment, called for a suspension of operations at the mine.<sup>119</sup> In 2021 several NGOs, led by Global Legal Action Network, collectively filed complaints before the Organisation for Economic Development and Cooperation (OECD) demanding the closure of Cerrejón coal mine. These complaints were submitted on the basis of 'serious human rights abuses and devastating environmental pollution'.<sup>120</sup> Linklaters' support of Cerrejón's acquisition contravenes its stated commitment to human rights and environmental governance.

## **Freshfields Brackhaus Deringer:** Acquisition of PetroChina's Midstream Assets

Freshfields Brackhaus Deringer represented PetroChina's acquisition of midstream assets. As China's main producer and distributor of oil and gas, PetroChina produces roughly 50% and 60% of the country's total oil and gas production, respectively.<sup>121</sup> The purchase of the company's midstream assets, which included the ownership of LNG terminals as well as oil and gas pipelines and storage facilities, was valued at £31.3.<sup>122</sup> As the company has the sixth largest footprint globally in terms of full supply chain GHG emissions, the acquisition could cause an increase in oil and gas production and jeopardise China's pledges to reduce emissions under the Paris Agreement.<sup>123</sup>

Supporting the acquisition of PetroChina's midstream assets shows the severe limitations of Freshfields Brackhaus Deringer's goals to reach a 100% renewable energy supply in all offices by 2030 and a 30% decrease in fuel and energy-related emissions. Despite PetroChina's status as one of the top seven producers of single-use plastics globally and its robust fossil fuel production, the firm decided to support this transaction.<sup>124</sup>



# Case Studies

## **Ashurst:** Saraburi-Khon Kaen Petroleum Underground Pipeline (Thailand)

Ashurst acted as the English law counsel for the Saraburi-Khon Kaen Petroleum Underground Pipeline. The project is located in Thailand, which is one of the most flood-prone nations in the world, and is thus particularly vulnerable to climate change impacts.<sup>125</sup> The project involves the construction of a 342 km pipeline that runs two metres underground, linking Thailand's northeastern province of Khon Kaen to an existing pipeline.<sup>126</sup> The government has advertised that the project will efficiently transport oil and lower oil prices. According to the Department of Environmental Quality Promotion, the project's development will cause significant flooding, severely impacting local residents and leading to chemical contamination of local groundwater.<sup>127</sup>

Ashurst champions a rapid shift to an energy transition economy despite its continued support of the Saraburi-Khon Kaen project.<sup>128</sup> Despite local resistance, centred on the pipeline's environmental and climate impacts, Ashurst ensured that the project obtained funding without any difficulties.<sup>129</sup>

## **Baker McKenzie:** Thabametsi Coal-Fired Power Plant (South Africa)

Baker McKenzie facilitated the transaction of the Thabametsi coal-fired plant. The plant was a proposed project to be located in the Limpopo province of South Africa,<sup>130</sup> one of the most climate-vulnerable countries in the world.<sup>131</sup> With the country's high susceptibility to droughts and floods, local communities and organisations have opposed the establishment of the 1,200 MW coal power plant. Non-profit organisation Earthlife Africa organised a march to the French consulate and demanded the company Engie divest from the coal plant. Engie subsequently decided to withdraw from the project.<sup>132</sup> Shortly after, all of the project's investors also withdrew their support, and the project has since been cancelled.<sup>133</sup>

Despite being the only Band I, i.e. highest ranked, firm for climate change according to Chambers 2020, Baker McKenzie continues to facilitate power plant projects such as Thabametsi.<sup>134</sup> Had the firm succeeded, it would have enabled the wastage of 720,000 cubic metres of water per annum for 30 years<sup>135</sup> due to the plant's need for direct water supply at every stage of its supply chain. This would have worsened water shortages in the area, which is already prone to droughts and suffers with high water insecurity.<sup>136</sup>



# Fossil Fuel Arbitrations

## INVESTOR STATE DISPUTE SETTLEMENT (ISDS)

Investor-State Dispute Settlement (ISDS) is a system through which a private investor can sue a state for actions that affect their investments within the state's jurisdiction.<sup>137</sup> ISDS takes the form of an international arbitration claim brought before an arbitration tribunal.<sup>138</sup> Unlike traditional litigation, arbitration tribunals usually take place outside the jurisdiction of the state in question.<sup>139</sup> They are not subject to the laws of the particular domestic court but rather have their own set of rules and obligations laid out by the relevant arbitration treaty, such as those found under the International Centre for Settlement of Investment Disputes (ICSID).<sup>140</sup>

An arbitration tribunal is made up of arbitrators who are appointed by the state and the investor to determine the outcome of the case.<sup>141</sup> In a practice known as double-hatting, arbitrators can act as counsel and as arbitrators in substantially similar cases, involving the same parties, treaty, or dispute.<sup>142</sup> A variety of stakeholders have raised concerns around the impartiality of the arbitration system.<sup>143</sup>

Arbitration tribunal proceedings can take place 'off the record.' There is no obligation to disclose the amount that may end up being awarded to investors, and investors cannot be ordered to pay states (except to cover litigation costs).<sup>144</sup> Arbitration tribunals also have looser procedural rules than traditional courts. For instance, investors do not have the same restrictions on the use of third party funding to bring a case.<sup>145</sup> This can potentially allow investors to rely on alternative sources of funding to challenge regulations that may have a wider impact on a concerned industry. For example, a coal company seeking to challenge new environmental regulations could seek funding to take its case, with a promise that the funder will receive a certain portion of the arbitration award that the state may be ordered to provide.<sup>146</sup> The Columbia Center on Sustainable Investment has noted that 'certain kinds of cases, such as disputes related to exploitation of mineral or fossil fuel reserves, or to long-term infrastructure deals, have the potential for significant expectation damages' and as such, third party funders may be more interested in pursuing fossil fuel related cases.<sup>147</sup>

There is also minimum recourse to appeal or annul these awards.

For all of these reasons, ISDS is often criticised for enabling 'corporate courts' that allow investors to take advantage of looser legal requirements and obtain millions in compensation from states seeking to implement improved environmental and social policies.<sup>148</sup>

## THE ROLE of ISDS in HINDERING the CLIMATE TRANSITION

ISDS has long been criticised for the 'regulatory chill' it can cause in states that seek to assert greater regulatory oversight over national resources. Many states fear that any efforts to encourage renewable energy development or impose environmental regulations will lead to arbitration claims from disaffected investors. Successful claims under ISDS have often resulted in payouts of millions or billions, rendering any transformational moves in the area of anti-fossil fuel proliferation prohibitively expensive for most states. The controversial Energy Charter Treaty (ECT) serves as a case study.

The ECT was first conceived following the declaration of the European Energy Charter, which sought to align the interests of Western investors with the needs of post-Cold War Eastern Europe.<sup>149</sup> The ECT that was eventually negotiated included a series of guarantees that investors would receive compensation in the event that shifts in energy policy led to a loss of investment.<sup>150</sup> This was designed to alleviate fears that political instability in Eastern Europe would lead to economic losses. Specifically, Article 26 of the ECT allows for investors to use arbitration proceedings where they believe there has been a breach of a state's obligations under the ECT and the dispute cannot be settled amicably.<sup>151</sup> This article has led to a host of claims and threatened claims from fossil fuel companies seeking to use ISDS to challenge Europe's green energy transition.

There have already been successful cases taken by fossil fuel companies via the ECT. In *Rockhopper Exploration PLC v. Italy*, for example,<sup>152</sup> Italy was ordered to pay the oil and gas company Rockhopper Exploration €190 million plus interest after declaring a ban on further oil and gas exploration within 12 nautical miles of the Italian coastline.<sup>153</sup> This is also one of the few cases that has had its award formally published, given that many of these proceedings remain confidential and there is no obligation to disclose the reasoning or nature of a decision.



German company RWE used the ECT to sue the Netherlands for €1.4 billion,<sup>154</sup> and coal company Uniper sought €1 billion due to the Netherlands' ambitious goal to phase out coal by 2030.<sup>155</sup> Less economically prosperous regions of Europe have also been affected. Gas giant Ascent Resources threatened to sue Slovenia for €500 million after it banned the company from exploring a gas field, resulting in Slovenia weakening its fracking regulations for fear of significant arbitration awards.<sup>156</sup> Such threats could impose a regulatory chill on clean energy policies and fossil fuel phaseouts, slowing down progress so that states can fulfil the demands of fossil fuel companies.<sup>157</sup> In response to threats of ISDS lawsuits, Denmark, New Zealand, and France have all withdrawn proposed oil and gas exploration bans.<sup>158</sup>

The Court of Justice of the European Union issued a decision to end ISDS within the EU. In *Slovak Republic v Achmea* (2018),<sup>159</sup> the Court ruled that intra-EU arbitration claims could not be taken within the European single market, and this ban was extended to apply to the ECT in *Moldova v Komstroy* (2021).<sup>160</sup> However, ISDS is not designed to be bound by a regional system like EU law, and has mechanisms to circumvent this prohibition. Investors from outside the EU can still sue EU states under ECT and other treaties, and vice versa.

## THE UK LEGAL SYSTEM'S ROLE *in* ISDS

London is one of the primary 'seats' of arbitration in the world.<sup>161</sup> Many UK law firms have offices all across Europe and engage with both UK and European law. Consequently, fossil fuel companies frequently turn to UK law firms for ISDS related claims and challenges. The UK is also a popular place for enforcing arbitration awards because the New York Convention allows arbitration awards to be enforced in any country that is a signatory of the Convention,<sup>162</sup> and post-Brexit the UK is no longer a member of the Treaty on the Functioning of the European Union, which has been 'said to be incompatible' with intra-EU investment treaty arbitrations.<sup>163</sup> Additionally, as a member of the Energy Charter Treaty, the UK remains one of the few places outside the EU where intra-EU awards could be enforced following a successful arbitration.<sup>164</sup> This makes it all the more likely that fossil fuel companies will look to the UK and its law firms to enforce awards handed out in ECT or other arbitration tribunals.



## METHODOLOGY

### Database & Collection

This section details the involvement of UK law firms in investor-state arbitration disputes involving fossil fuel companies. Our methodology builds on the work of Lea Di Salvatore, lead author of the report 'Investor-State Disputes in the Fossil Fuel Industry,' published by the International Institute for Sustainable Development in 2021. Di Salvatore's report analyses the extent to which investor-state disputes protect foreign investments in fossil fuel projects—and therefore obstruct climate action. The report includes an Annex of ISDS cases related to fossil fuels.<sup>165</sup> We used the data from the Annex to identify 165 cases between 2007-2022 involving the same 55 UK firms whose transactions are analysed earlier in the report.

### Analysis

After compiling the cases listed in the fossil fuel annex, we utilised the database IA Reporter to cross-reference each case and identify both the claimant (i.e., the firm representing the fossil fuel interest) and the respondent state involved in the dispute.<sup>166</sup> We did not include in our analysis (1) cases that were not listed in IA Reporter; (2) cases where no counsel appeared listed in IA Reporter; or (3) instances where sovereign states were represented by government or private counsel. The analysis also excludes



commercial arbitration, i.e., disputes between two companies rather than states.

We then counted the number of cases each firm participated in, focusing on whether the firm represented fossil fuel interests. While not all cases involve the development or expansion of fossil fuel infrastructure, they are all cases where law firms advocated on behalf of the fossil fuel industry and therefore can be seen as obstructing meaningful climate action.

If a law firm represented a fossil fuel company, energy or mining company with a fossil fuel portfolio, shareholders or investors of fossil fuel projects, or a fossil fuel contractor, we counted the case broadly as one where a firm served/represented fossil fuel interests.

Because we did not consult other databases (e.g., UNCTAD or ICSID), it is possible that the analysis may actually be underinclusive. It is also possible that at times, the counsel listed appears as an individual even though the attorney is affiliated with a firm.

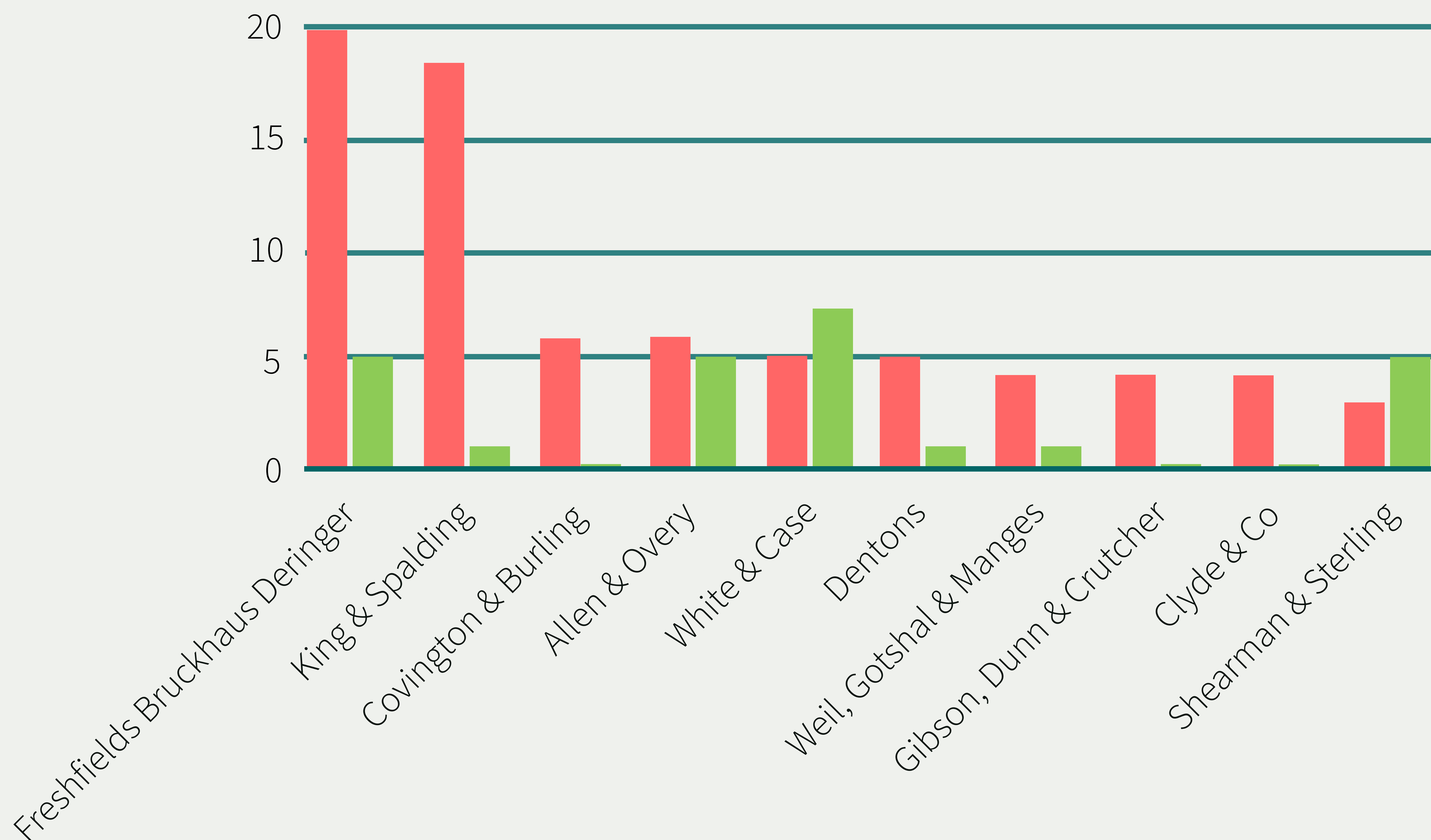
We recognise that the data analysis is limited by the availability of relevant information since in most cases, parties are not required to report the award granted.

## FINDINGS

The arbitration data reveals that Magic Circle firm **Freshfields Bruckhaus Deringer and King & Spalding** represented fossil fuel interests in more than 20% of all fossil fuel-related cases in the IISD database. **Freshfields represented fossil fuel interests in 20 cases, the highest number of any firm, while King & Spalding ranked second with 18 cases.** These two firms play a disproportionate role in ensuring fossil fuel interests prevail in arbitration disputes, representing more than ten times the average number of cases taken by the 55 firms analysed in the transactions section.

A few other names stand out as primarily representing fossil fuel interests: Covington & Burling and Allen & Overy (6 cases); Dentons (5 cases); Weil, Gotshal & Manges (4 cases); Gibson, Dunn, & Crutcher (4 cases) and Clyde & Co. (4 cases).

### TOP 10 WORST FIRMS: ARBITRATION WORK REPRESENTING FOSSIL FUEL INTERESTS vs. STATE INTERESTS



FIRM NAMES	NUMBER OF CASES WHERE THE FIRM REPRESENTED FOSSIL FUEL INTERESTS	NUMBER OF CASES WHERE THE FIRM REPRESENTED STATE INTERESTS
Freshfields Bruckhaus Deringer	20	4
King & Spalding	18	1
Covington & Burling	6	0
Allen & Overy	6	5
White & Case	5	7
Dentons	5	1
Weil, Gotshal & Manges	4	1
Gibson, Dunn & Crutcher	4	0
Clyde & Co	4	0
Shearman & Sterling	3	5
Linklaters	3	1
Herbert Smith Freehills	3	1
Clifford Chance	3	1
Skadden, Arps, Slate, Meagher & Flom	2	1
Sidley Austin	2	2
Norton Rose Fulbright	2	0
Jones Day	2	0
Eversheds Sutherland	2	1
Debevoise & Plimpton	2	5
Cleary Gottlieb Steen & Hamilton	2	3
Baker McKenzie	2	1
Vinson & Elkins	1	0
Reed Smith	1	5
Latham & Watkins	1	2
Hogan Lovells	1	0
Fieldfisher	1	0
Dechert	1	8
CMS	1	0
Baker Botts	1	2
Winston & Strawn	0	3
Squire Patton Boggs	0	3
Simmons & Simmons	0	1
Milbank, Tweed, Hadley & McCloy	0	2
Mayer Brown	0	2
King & Wood Mallesons	0	1
DLA Piper	0	2

Beyond the 55 firms that facilitated over one billion pounds in fossil fuel transactions between 2018 and 2022, three other firms stood out: **Curtis, Mallet-Prevost, Colt & Mosle** was involved in 24 cases representing sovereigns against fossil fuel interests, while **Three Crowns** and **Volterra Fietta** represented fossil fuel interests in eight and five cases, respectively.



# Case Studies

## King & Spaldings' Role in Protecting the Interests of Oil Companies

King & Spalding represented UK oil company Rockhopper against Italy after the country banned further offshore oil exploration within 12 nautical miles of its coast; as a result of this arbitration, Italy was ordered to pay almost €240 million in compensation to Rockhopper.<sup>167</sup> The secretive nature of arbitration tribunals meant that proceedings were carried out behind closed doors and the general public had no right of access.<sup>168</sup> King & Spalding's decision to represent Rockhopper before a private corporate court has increased the potential costs associated with climate change regulation<sup>169</sup> and could inspire other fossil fuel companies to take similar arbitration cases in response to state climate action.

## Freshfields Bruckhaus Deringer's Opposition to a Fossil Fuel Windfall Tax

In 2006 the government of Ecuador introduced a windfall tax to address the rapid rise in fossil fuel profits amidst a spike in oil prices.<sup>170</sup> The fossil fuel company Burlington used a bilateral investment treaty to sue Ecuador for introducing this tax. Freshfields was responsible for litigating this case, which led to Burlington being awarded almost £30 million plus interest in compensation.<sup>171</sup> The choice to pursue this litigation using ISDS acts as a deterrent to other states who may wish to introduce windfall taxes in response to record fossil fuel profits.



# The Talent Pool Considerations

Students across the world are galvanising for climate action. Environmental concerns are an increasingly important consideration for many prospective employees, including lawyers. As described earlier in this report, student and advocacy groups such as Fossil Free Research and Fossil Free Careers have launched related campaigns, both specifically targeting universities and employers. Fossil Free Careers, which advocates to reduce promotion of fossil fuel-related careers to students, has over 286,000 students in supporting organisations.<sup>172</sup>

The recruitment process can sometimes feel one-sided given the economic power that firms tend to hold over prospective applicants and the financial reasons students may choose a career at a law firm (e.g., economic incentives, student debt, family and other financial obligations). But students are at the core of the talent pool that law firms need to continue operating. Both solicitor firms and barrister's chambers are at risk of losing valuable talent as prospective employees opt out of applying to a firm based on its climate record. Students should be encouraged to ask the questions that are important to them during interviews and recruitment, and to remember the bargaining power they hold when they decide where to begin their career.

The industry's inaction on climate justice is already influencing the decisions of students and recent graduates applying to work for them. Unite Students—the largest provider of student housing in the UK—found that 76% of students surveyed indicated that their opinions on climate change will influence their career plans, with a fifth stating they would turn down a job offer with a high salary if the company's record on climate change was poor.<sup>173</sup> Similarly, research by PLAY—a digital product incubator and studio—found that 1 in 4 young people aged 18-24 won't work for an employer with poor 'green' practices.<sup>174</sup> The talent pool available to employers in the legal sector is demanding concrete action, and many students and recent graduates will not apply to work for firms that represent, greenwash, or facilitate the expansion of the fossil fuel industry.

Additionally, many current and future legal professionals do not wish to prosecute peaceful climate protestors or otherwise erode legal protections for activists. Recently, 120 lawyers, including 6 King's Counsel, committed to not prosecute peaceful climate protestors.<sup>175</sup> As a lawyer recently told The Guardian:

Young lawyers are being placed in an impossible position. We're being told by our firms and regulators it's a professional obligation to act for fossil fuel projects, knowing that doing so will poison our own future and all of life on Earth. That's wrong on every level. It's indefensible. If the profession doesn't look out for my generation, how does it expect to survive?<sup>176</sup>

It's time for firms representing fossil fuel companies to reckon with the growing pool of students and lawyers across the UK who are demanding systemic change and a fossil fuel phase-out. Students are already organising across the country, including in Cambridge, Oxford, London, and Bristol, and making it clear they are unwilling to work for firms or employers that may require them to defend the expansion of fossil fuel infrastructure, promote greenwashing, or prosecute those campaigning for a better future. It is essential that the legal sector responds to these concerns in meaningful ways. Firms must be transparent with prospective applicants, and engage students and recent graduates to identify areas for change and improvement.





## STAGES of ENGAGEMENT

There are also various points throughout the recruitment process where employers can engage students. Despite variations across the solicitor and barrister routes in the UK, there are common considerations to bear in mind.

### 1. Open days and insight schemes

This stage functions as a key introduction to the career as a whole, as well as the individual firms or chambers that are seeking to recruit. Students can use the workshops and sessions at these events as a chance to ask questions about the firm's record on climate justice and sustainability. Firms should consider organising sessions on sustainability and other potential areas of interest (i.e., work culture, gender equity, diversity and inclusion efforts) and ensure these sessions offer accurate information as opposed to further greenwashing the firm's operations and its clients. It is important that firms do not limit their sustainability efforts to in-house emissions and operations. Firms' portfolios and clients are an essential part of fully comprehending and assessing a firm's climate impact.



### 2. Vacation schemes/mini pupillages

At this stage, students spend a longer amount of time at the firm/chambers, usually from one to two weeks in total. This is a great opportunity to delve deeper into the firm's record, and consider whether the firm's practice matches the student's values and expectations on sustainability. The student can consider the type of work and practice areas the firm has, and the clients they may be representing or considering working with. This stage will usually inform which firm(s)/chamber(s) the student applies to, so it is important to ask as many questions as possible to make a fully informed decision. It is even more crucial for the firm to ensure transparency at this stage, and to genuinely respond to the concerns and values of prospective employees. Alongside the moral and societal imperative for these changes, this will ensure firms adapt to the new labour market and continue to attract the necessary talent.

### 3. Training contracts applications/pupillage applications

This is the final stage at which students will consider their career route, and where to apply. This is a highly competitive process, and many students will only apply to a small number of firms/chambers. Students should build on information gained throughout previous stages to make the best decision given their preferences, economic considerations, and career aspirations.

Throughout the recruitment process, it is vital for students to keep climate justice in mind, and for firms to be aware of the demands of the talent pool in this area. The following section offers specific recommendations for law firms, students, and universities to consider in the recruitment process.



## FOR STUDENTS

Remember you hold the power of your talent. Firms need prospective employees to continue their operations. If you decide to join a firm, be your best advocate and raise any questions that will help inform your decision-making process.

Some of the questions for employers you may explore at the various stages of the recruitment process include:

- How do you select your clients? What does the process usually look like and what criteria informs your decision? *This is particularly relevant for solicitors' firms, as it is worth bearing in mind that chambers and barristers are subject to the 'cab rank' rule.*
- Do you have an ethics policy regarding your work? If so, what does it involve?
- What projects/deals/transactions/cases has your firm been involved in in the following fields:
  - Fossil fuels, including oil, gas, and coal
  - Renewable energy
  - Public interest (e.g., worker and immigrant rights, human rights, etc).
- What percentage of your portfolio is devoted to pro bono work? *According to the Corporate Pro Bono Institute, pro bono work 'dropped from a paltry 6% in 2012 to an even more startling 2% in 2020.'*<sup>177</sup>
- If you have been involved in fossil fuel projects, what is the total value of projects that your firm has been involved in?
- I see the firm received a grade of X in the US Law Students' for Climate Accountability scorecard. What is the firm's response to this? *(if applicable)*
- I see your firm facilitated X amount of money in fossil fuel transactions / represented fossil fuel interests in X number of arbitration disputes. Do you think this work is consistent with a sustainable future?
- What are your plans for ensuring your work for clients—and not just internal firm operations (e.g., energy efficient buildings, recycling programs, etc.)—contributes to a sustainable and just transition?
- Would I be expected to work on cases or projects involving fossil fuel companies?
- What are your firm's plans for future work with fossil fuel companies?

Students should also watch out for greenwashing. Greenwashing is defined as 'behaviour or activities that make people believe that a company is doing more to protect the environment than it really is.'<sup>178</sup> Examples include oil companies advertising clean energy projects, while continuing to invest substantially more money in fossil fuel projects.<sup>179</sup>

Students can research firms' clients, and ask questions about them to ensure they are aware of any possible greenwashing, and to hold firms and their clients to account.



## FOR ASSOCIATES

Associates at law firms that represent fossil fuel companies can:

- Request to opt out of representing fossil fuel clients;
- Start conversations internally about their firm's client base;
- Identify allies who can help with mapping out key internal decision-makers and developing strategies for convincing them to move away from fossil fuel clients;
- Incorporate thorough climate risk analyses into work for fossil fuel clients;
- Seek out renewable energy clients.



## FOR LAW FIRMS

There are multiple ways that firms and chambers can begin to address the climate crisis in meaningful ways, including by:

- Refusing to accept work on new fossil fuel projects;
- Refusing to work on projects that seek to expand fossil fuel infrastructure;
- Integrating climate considerations into legal advice for clients when relevant, e.g. by explaining how a client's current or proposed activities (i) will exacerbate climate change, which poses a major threat to the rule of law; (ii) will expose the client to future climate liability and other legal risks; and/or (iii) may represent economic risks;
- Fostering conversations about the ethics of legal work that enables climate destruction, whether it be in the form of litigation, arbitration, or transactional activities;
- Proposing reforms to professional responsibility rules, including the 'cab rank' rule, to make it easier for solicitors (and primarily barristers) to refuse to engage in work that undermines a stable climate;
- Being transparent about the volume of emissions caused by the projects that they work on, and making sure that prospective employees know about these (such information could be provided and integrated to sites such as Chambers and Legal Cheek which provide profiles of firms and chambers);
- Increasing the amount of pro bono work they do towards a just transition, which may include criminal defence of climate protesters, supporting projects that reduce greenhouse gas emissions, or support frontline communities against polluters. Firms should be mindful, however, that pro bono work cannot undo the harms of fossil fuel representation;
- Allowing attorneys to opt out of representing fossil fuel clients.

Firms should also seek to eradicate greenwashing, and to be transparent about the nature of the clients they work with. Even if they have projects in clean energy, the firm should note and discuss their fossil fuel ties. Also, renewable energy projects may have negative socio-environmental impacts and are not inherently immune from potential critiques.



# Conclusion

The climate crisis has captured the attention of the legal industry, eliciting a broad range of responses from legal regulators, NGOs, and even law firms themselves. However, it is clear that there is a considerable gap between firms' stated climate commitments and the day-to-day work undertaken by actors in the legal industry. This cognitive dissonance is best illustrated by the continued involvement of law firms with prominent fossil fuel players, particularly across transactional and arbitration work. Law firms have adopted a very narrow understanding of sustainable legal practice, conveniently situating it within the bounds of relatively uncontested issues such as energy-efficient workplaces while ignoring the far-reaching effects of legal services on the climate. It's time for lawyers to reckon with the broader implications of their work and be conscious that the cases that they take and the clients they represent more often than not exacerbate climate change.



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