

LAWYERS ARE RESPONSIBLE

27 July 2023

Freshfields Bruckhaus Deringer, London

Dear Ms Georgia Dawson, Senior Partner,
and Mr Mark Sansom, London Managing Partner,

Freshfields Bruckhaus Deringer's ("Freshfields") 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 182 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 Freshfields 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 consensus of global climate scientists, including the International Energy Agency, is clear: no new exploration and development of oil and gas fields around the world should now take place if the world is to limit global temperature rises to 1.5C above pre-industrial levels.

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 published on 10th May 2023 entitled *The Carbon Circle: The UK Legal Industry’s Ties to Fossil Fuel Companies*² (“**Carbon Circle report**”). The findings of the Carbon Circle 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.

The Carbon Circle report (at page 14) notes that Freshfields was responsible for £45.5 billion in fossil fuel transactions in the period 2018 – 2022. The report also refers to the fact that Freshfields has represented PetroChina.

Furthermore, the Carbon Circle report (at page 20) shows that Freshfields is the leading UK based firm representing fossil fuel interests in the Investor-State Dispute

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>

Settlement (ISDS) system. This system has been much criticised for making it far more difficult for states to take the steps necessary to tackle the climate crisis.

Please inform us if you do not accept the contents of the Carbon Circle report in relation to Freshfields.

The Law Society Guidance (at 1.4) refers to “advised emissions”. These emissions – also known as “Scope 4” emissions - are the greenhouse gas (GHG) emissions associated with the matters on which solicitors advise, rather than the GHG emissions relating to the solicitors’ own business, which are known as Scopes 1, 2 and 3 GHG emissions.

We note what you say on your website (under the heading *Environment: Protecting What’s Precious*) in relation to decreasing GHG emissions “*which will allow us to develop a long term net zero strategy*”. However, this only relates to Scopes 1, 2 and 3 emissions. These emissions are miniscule in comparison to the Scope 4 emissions resulting from and enabled by the matters on which Freshfields advises.

You also say on your website (under the same heading) that Freshfields has “*committed to a number of green initiatives that are helping to drive positive change.*” However, the firm is simultaneously continuing to enable new oil and gas projects. This makes a mockery of any claim to be acting responsibly in relation to the climate crisis. We believe that Freshfields is engaged in greenwashing, a practice which the Law Society Guidance (at 1.5) warns firms against.

We note that Freshfields has not signed up to or supported the recent development of the *Legal Charter 1.5*,³ which commits the signatory law firms to take steps towards recognising and mitigating the impact of Scope 4 emissions.

³ <https://legalcharter1point5.com/>

The Factual Context

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 Freshfields 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 2023.⁴ 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 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.⁵
- In December 2020, HM Treasury stated in its *Net Zero Review: Interim Report* that *“Climate change is an existential threat to humanity”*.⁶
- 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 2050.⁷
- 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.⁸

⁴ *Synthesis Report of the IPCC Sixth Assessment Report (AR6)*, available at: https://report.ipcc.ch/ar6syr/pdf/IPCC_AR6_SYR_SPM.pdf

⁵ *The Production Gap*, 2021 Report, available at: https://productiongap.org/wp-content/uploads/2021/11/PGR2021_web_rev.pdf

⁶ Available at: <https://www.gov.uk/government/publications/net-zero-review-interim-report>

⁷ *Net Zero by 2050: A Roadmap for the Global Energy Sector*, May 2021, available at: <https://www.iea.org/reports/net-zero-by-2050>

⁸ *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>

- In April 2022, the UN Secretary General stated that “*investing in new fossil fuel infrastructure is moral and economic madness*”.⁹
- 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.¹⁰
- Global carbon emissions from fossil fuels hit record levels in 2022.¹¹
- In March 2023, more than 700 leading climate scientists wrote to the Prime Minister warning that there must be no developments of oil and gas, for the world to limit global heating to 1.5°C.¹²
- World temperature records have repeatedly been broken during July 2023, with temperatures the hottest they have been for 125,000 years.¹³
- Antarctic sea ice is at the lowest extent ever recorded in July 2023 and sea temperatures in the Atlantic have also reached a record high. Forest fires are burning with increased reach, intensity and longevity. Heavy rains and flash floods are causing devastation in the US, China, India and Japan.
- The Secretary General of the World Meteorological Organisation said in July 2023, “*The extreme weather – an increasingly frequent occurrence in our warming climate – is having a major impact on human health, ecosystems, economies, agriculture, energy and water supplies. This underlines the increasing urgency of cutting greenhouse gas emissions as quickly and as deeply as possible.*”¹⁴

⁹ *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>

¹⁰ *Navigating Energy Transitions: Mapping the road to 1.5°C*, October 2021, available at: <https://www.iisd.org/publications/report/navigating-energy-transitions>

¹¹ *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.>

¹² *Hundreds of UK scientists and academics urge Prime Minister Rishi Sunak to prevent any new oil and gas field development*, by Cambridge Zero on 28 March 2023, available at: <https://www.zero.cam.ac.uk/who-we-are/blog/news/hundreds-uk-scientists-and-academics-urge-prime-minister-rishi-sunak-prevent>

¹³ *This July 4 was hot. Earth’s hottest day on record, in fact* by *The Washington Post*, 5 July 2023, available at: <https://www.washingtonpost.com/climate-environment/2023/07/05/hottest-day-ever-recorded/>

¹⁴ *Heatwaves, wildfires mark summer of extremes*, 25 July 2023, available at: <https://public.wmo.int/en/media/news/heatwaves-wildfires-mark-summer-of-extremes>

The evidence is clear – we are not facing a climate emergency, *we are in one*.

The scientific consensus is also 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 Freshfields 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

If Freshfields enables new fossil fuel projects, which will cause large scale death and destruction, it is without doubt acting immorally.

As noted above, we are confident that you know the gravity of the climate crisis.

In light of colonial, historic discriminatory practices and ongoing discriminatory distribution of wealth, the climate crisis already adversely impacts the Global South and will disproportionately impact racial minorities across the world. Without any

concrete attempts to address legacy and ongoing racism in society, this crisis is equally a racial justice crisis. In her report to the General Assembly of the United Nations, Tendayi Achiume (UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance) stated:

*“The ongoing destruction of our planet affects everyone. But what experts also make clear is that race, ethnicity and national origin continue to result in the unjust enrichment of some, and the utter exploitation, abuse and even death of others on account of the discrimination at the core of environmental and climate injustice.”*¹⁵

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 Africa¹⁶ or not to act for cigarette manufacturers.¹⁷

Reputational risk

Law firms which act in support of new fossil fuel projects will inevitably face significant (and deserved) reputational damage.

Conversely, if Freshfields showed moral leadership in relation to this issue, its reputation and standing both nationally and internationally would be enhanced.

Regulatory risk

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

¹⁵ *The global climate crisis is a racial justice crisis: UN expert*, 31 October 2022, available at: <https://www.ohchr.org/en/press-releases/2022/11/global-climate-crisis-racial-justice-crisis-un-expert>

¹⁶ *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>.

¹⁷ 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/>

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

Whenever the SRA Principles conflict, solicitors are expected to prioritise those that safeguard the wider public interest over the interests of an individual client.¹⁸

Enabling new fossil fuel projects, in the face of the scientific consensus, and taking into account 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 Freshfields 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*.¹⁹ The same research paper

¹⁸ 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/>

¹⁹ *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>

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.

Freshfields 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 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

Freshfields' 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*"²⁰.

In relation to your current employees, Freshfields' solicitors 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

²⁰ Available at <https://www.ft.com/content/c4c8a5fb-bee7-4e9a-81da-cb6255285619>

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 protected philosophical belief.²¹

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.

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

Yours faithfully,

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²¹ *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