
Courts, contracts, and commercial law: A new frontier for climate action?

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The Chancery Law Project is bringing together all sections of the legal profession to try and drill climate action into contracts, regulation and national laws

As awareness of climate change and its impacts grows, a question frequently asked by many is: what can I do to help?

The answer, even if it sounds like a cop out, is at its root a simple one: each of us must do what we can and should probably focus on what we are good at. For some that means developing the game-changing clean technologies of the future, or educating the citizens of tomorrow to provide them with the skills to both help build and thrive in a net zero economy. Others may have unique oratory talents to lecture world leaders on the case for urgent climate action, and occasionally someone might have an incredible capacity for presenting inspiring *BBC* nature documentaries.

Meanwhile, many existing professions will have to adjust, adapt, and skill-up for the net zero transition. This is particularly true for the legal profession - in the battle against climate change there is a lot of plain old admin and legal oversight to do. Climate action needs an organised framework.

Fortunately, there are a lot of lawyers with just the right skills sets and experience, who are it turns out volunteering their time to join the climate fight in increasing numbers. And not just environmental or public justice

lawyers, it seems, but commercial lawyers, in-house corporate legal teams, and even Supreme Court Justices.

Indeed, many different facets and levels of the legal profession have lent their support the Chancery Lane Project, a new initiative started last year which is gearing up to officially unleash two major reports next week looking at what the law - national, local, corporate and contractual - can do to address the climate emergency. And one of many high profile figures backing the initiative is Lord Robert Carnwath, one of UK's Supreme Court Justices.

"The role for commercial lawyers to help tackle the climate crisis has been largely overlooked," he explains. "Lawyers who draft the contracts that shape the economic relationships of our society must use these arrangements to enable rather than hinder the transition to net zero."

Much of the work came together late last year when the Project held a 'hackathon', at which 120 solicitors, barristers, and academics from across 63 firms and organisations came together to crowdsource ideas for new green laws, amendments, and contract stipulations which could be taken on by politicians and companies. According to Ben Metz, project coordinator for the initiative, all have worked on the project on a pro-bono basis in their spare time, and while he and his team are looking for funding to take it further, he claims that to date the only expenditure of the Chancery Lane Project - in addition to goodwill gestures received - has been around £450 on printing costs.

"The passion that I'm seeing on the ground, not just from environmental lawyers, not just from social justice campaigners, not from the public law sector - all of whom are on board already - but from top, mainstream multinational law firms is remarkable," Metz tells *BusinessGreen*. "It feels like something has shifted significantly in the legal profession, and we've been inundated with interest."

The first of the two resulting reports - dubbed the Climate Contract Playbook - contains 16 precedent clauses aimed at helping businesses

and lawyers looking to include environmental improvement obligations in their supply chain contracts, switch to more climate-friendly suppliers, drive climate action their investments, and even facilitate voluntary work on climate solutions by offering contractual sabbaticals to staff.

There is evidence that some of these sorts of actions are increasingly being taken on by corporates - **BT's inclusion of a carbon target in its contract with Chinese technology giant Huawei** in 2016 springs to mind - and the report includes a number of precedents and examples for companies to draw upon.

"Businesses wanting to take the lead can use contracts to bridge the gap in the transition to net zero until the necessary legislation is enacted," it states. "Once enacted, contracts will be required in almost every aspect of transitioning our economy towards net zero emissions. Further, contracts can help amplify positive environmental behaviour through the economy by passing on obligations to others."

It is a crucial framework. Many lawyers never venture to court and regard it as a failure if they end up there having to contest a case. Effective contracts can provide a legal framework to drive climate action and cut emissions without waiting for policymakers to pass laws.

The second of the Chancery Lane Project's forthcoming reports, meanwhile, focuses more on that legislative and regulatory action that will also prove essential. The Green Paper sets out seven suggested model laws designed to help accelerate the transition to net zero, including a proposal to change planning regulations to favour sustainable developments and another aimed at incentivising large-scale investment in tree planting.

Laws can accelerate and enable the net zero transition, the Green Paper report argues. "This will involve both enacting new laws to incentivise transition but also the amendment of existing laws which currently create barriers to green solutions," it states. "Drafted correctly new laws

can help amplify positive environmental behaviour through the economy and our communities."

Both Chancery Law Project's reports are intended as a "menu of tools" for potential development by lawyers and policymakers, Metz explains, and not every single law, amendment or contractual obligation may be taken up by companies and governments. As the Green Paper report states: "They are intended to inspire, not divide."

Even so, the move to harness law for climate action could scarcely come at a more politically opportune time. Amid trade wars between the US and China **that have affected the solar panel industry**, global leaders such as French President Emmanuel Macron **calling for Paris Agreement commitments to be included in EU trade agreements**, and the **UK on a path to 'take back control' of its laws** and regulations outside the EU, environmental regulations are high on the political agenda.

Notwithstanding, of course, **the growing numbers of major economies setting net zero emissions targets in law** and the increasing use of the courts to challenge environmentally damaging policies from governments and businesses. ClientEarth's tireless pursuit of more ambitious action from the UK government on air pollution **being a case in point**, alongside **the landmark case led by the group Urgenda** in taking the Dutch government to court over greenhouse gas obligations.

That last groundbreaking court case in the Netherlands, in fact, has also helped inspire separate efforts this week from the International Bar Association (IBA) - the leading organisation for global legal practitioners - to try and remove legal obstacles for citizens using the courts to enforce environmental action from authorities. On Tuesday the IBA launched **a blueprint for an international 'Model Statute' on climate change**, setting out 23 specific reforms recommended for adoption by courts or legislatures which it believes can help enable "citizens to ask for judicial review of the sufficiency of their government's climate measures".

"The adoption of some or all of the Model Statute by judges, rules of court or policy-makers will help ensure a critical and timely reduction in greenhouse gas emissions in pursuit of climate justice," it states.

In the UK, such recommendations are likely to receive short shrift from a government currently drawing up plans to reform, or limit, the use of judicial review. Metz, however, is at pains to stress that the Chancery Lane Project is staunchly politically neutral, although he agrees that politically and across the legal profession, there is a growing groundswell of interest in utilising the law, trade, contracts, and the legal profession in general to drive climate action.

The level of support and interest the project has continued to attract from all corners and levels of the profession has blown him away, he says, fuelling huge confidence that a sea change the role of law and the legal profession in tackling climate change could be underway.

"We've got people from the Law Society, the London Sustainability Alliance, Norton Rose Fulbright, Clive & Co, Pinsent Masons - they're all just digging down for us, and I'm just gobsmacked," says Metz. "There's a massive upsurge of passion and interest to engage and rewire whatever we can within the legal profession to fight climate change."

When the Chancery Lane Project's reports are officially released on next Wednesday, they will surely be required reading not just for the legal profession, but for any green business or policy maker who is serious about utilising every tool at their disposal to tackle the climate emergency. Admin, contracts, and legal documentation rarely spark such excitement, but with such clear the opportunities to enact massive change, they are opening up a new frontier for environmental activism. To adapt the old political truism, perhaps when it comes to climate action, it's the law, stupid.