

# Summary of the Law Society Guidance on Climate Change

*With expert advice from Landmark consultants*



On 19 April 2023 the Law Society issued its Guidance on the Impact of Climate Change upon Solicitors which signals the future direction of this topic as it becomes ever more relevant to legal responsibilities.

Its reach and significance is perhaps best illustrated by the statement: 'climate-related risks will affect most clients and nearly all areas of legal practice' and the fact that 'solicitors may have to look beyond the narrow scope of an instruction by a client to consider whether and to what extent climate legal risks are relevant'.

Interpretation and implementation of such far-reaching guidance is a significant challenge for solicitors, who will no doubt welcome further sector specific support as has been promised by the Law Society. Nonetheless, in the interim, the present Guidance is now issued and therefore needs to be taken into account.

## ***The Guidance divides into two main parts.***

**Part A** is about reducing the climate change impact of their clients and of the law firm itself.

For the law firms, this involves assessing the annual Greenhouse Gas (GHG) emissions that the firm makes and then setting targets to drive down those emissions with the ultimate goal of reaching Net Zero by 2050 or earlier.

Mandatory reporting on GHG emissions may apply to the larger law firms by virtue of:

- **UK Streamlined Energy and Carbon Reporting (SECR) regime.** This sets out the annual GHG emissions reporting requirements. This focuses on Scope 1 and 2 emissions. For Scope 3 the only requirement is to report on fuel for business travel.

- **Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022 and Limited Liability Partnerships (Climate-related Financial Disclosure) Regulations 2022.** These are based on Task Force on Climate Related Financial Disclosures (TCFD) and require businesses to assess and report on how climate change risks could affect their business.

Landmark has a Sustainability Team with Net Zero and Climate Change advisors, consultants and environmental lawyers. Our experts can provide all necessary support to assist law firms in reaching Net Zero, build suitable client service packages and to comply with all climate change reporting requirements. Our sustainability team is responsible for Landmark's own Net Zero strategy, commitments and delivery.

**Part B** of the Guidance looks at climate change risks (physical and transitional) and how solicitors should advise clients on those risks.

The Guidance sets out the types of duties that apply to lawyers: the duty of care, the duty to warn, the duty to disclose and the duty to uphold service and competence levels. These duties are well established, and the Guidance is simply restating these in the context of the additional risks that climate change raises.

Lawyers will likely already be aware that climate change can bring additional physical and transition risks to assets. The types of physical risks may be readily understood by property lawyers and most of these risks are not new, but climate change increases the magnitude or frequency of such risks. The increased evidence of flooding across the UK is probably the best example of this.

Property lawyers will always want to give practical advice but as the Guidance warns in section 2.1, solicitors should not advise on climate change risks where it is outside their knowledge or qualification.

However, this statement should be considered alongside other parts of the Guidance which confirm: 'you may need to be able to discuss climate-related legal issues competently with your client and potentially encourage certain clients to engage with climate issues where they are relevant or material to the particular client or matter.'

What is clear from Part B of the Guidance is that education and knowledge is key to inform a position, decision or policy on whether climate change advice or assistance is needed and in which scenarios (either by transaction type, sector or client) such work may arise.

Beyond the need for education and knowledge this part of the Guidance also refers to consideration being given to carry out a climate change search. These searches can greatly assist in understanding the nature of the physical and transitional risks affecting a property and how those risks may change over time. If a climate change search is commissioned, then the solicitor should read and understand the search and report the findings to the client.

Ultimately it will be a matter of professional judgement of the solicitor on whether they should commission a climate change report for any given property transaction, best informing this judgement and keeping it current become essential.

Landmark has therefore created a suite of Advisory and Consulting services to support and enables any of the following positions that a solicitor may wish to adopt in line with their client retainers:

- 1. We will include a climate change search.**  
Please instruct us in writing if you do not want us to undertake this search.
- 2. We can include a climate change search.**  
Please confirm whether you would or would not like us to undertake this search.
- 3. We will not include a climate change search.**  
Please instruct us if you would like us to undertake a search.



Landmark has not yet included climate change information within its standard environmental reports, as solicitors may not wish to report on climate change risk as standard, at least for the immediate future, particularly while waiting for sector specific guidance to be published by the Law Society. There is also a danger that busy practitioners may overlook any additional climate change information and fail to advise their client on the implications of this search information. This could give rise to risk of a negligence claim against the law firm.

In the event that solicitors do decide to order a Landmark Climate Change search (either alongside an existing environmental search, or as a stand-alone search) then they will have an assessment that:

- Clearly identifies and analyses all four main physical risks
- Clearly identifies and analyses the main transitional risk - the EPC rating for the building with indicative upgrade costings
- Has a clear and transparent methodology
- Has been built with input from the UK's top law firms
- Is backed by a wider Sustainability Team who are on hand to support and advise

Our aim is to provide solicitors with the choice of when and how they consider climate change risks and subsequently choose to commission a climate change search. This position reflects the essence of the Guidance and supports the industry at all stages of adoption or consideration of climate change risks. The Guidance states: 'a solicitor who does not have the relevant knowledge of the impact of climate change on the legal area they are advising on should not advise if it is outside their knowledge or competence'. This reinforces the fundamental requirement of choice, and how a broader view on climate change risks is required, starting with knowledge and education, and growing from there.

Landmark offers a range of supporting services, including sustainability training, online webinars, regional Law Society events, and the Landmark Academy. The latter contains highly informative content to help lawyers build knowledge and competency on climate change and to understand how best to act on the published Guidance using Landmark Climate Change reports.

***Click here to visit the Landmark Academy***

Learn more about Landmark's Climate Change Risk Management **here**.

May 2023