

# LAWYERS ARE RESPONSIBLE

7 October 2024  
One Essex Court, London

Dear Ms Sonia Tolaney KC and Daniel Toledano KC  
Joint Heads of Chambers,

## **One Essex Court's ethical responsibility in legal services in relation to the fossil fuel industry**

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 over 200 lawyers have signed the Declaration. The Declaration and further details can be found on our website at [www.lar.earth](http://www.lar.earth).

**We write to request that One Essex Court refrains from actively seeking or marketing its services for any new instructions related to the development or expansion of fossil fuel infrastructure. Additionally, we ask that One Essex Court takes certain steps, as set out in this letter, to demonstrate a commitment to addressing the climate crisis and mitigating the damage caused by the work of Chambers leading to the development or expansion of 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**

One Essex Court offers services that include advising on oil and gas operations, from upstream exploration and exploitation agreements to midstream transportation and distribution.<sup>1</sup> The Legal 500 ranks One Essex Court as ‘Tier 1’ for Energy describing it as “*the most prominent set for matters concerning oil and gas...*”<sup>2</sup>

The Chambers has represented major fossil fuel companies such as Shell, Esso and British Petroleum. These companies have been responsible for significant environmental damage. The connection between the fossil fuel industry and the climate emergency is clear, with these companies playing a key role in accelerating the damage to our planet.

The Bar Council acknowledges the overwhelming scientific consensus that limiting global heating to 1.5 degrees Celsius is essential to preventing the worst impacts of climate change. It also recognises the likelihood that this crisis will lead to increased global inequality, heightened risks of conflict, and disruptions to the rule of law. This disruption will inevitably affect access to justice, one of the pillars of the legal profession.<sup>3</sup>

For these reasons, the Bar Council has made it clear that the legal profession has a fundamental duty to join the global effort to mitigate and adapt to the effects of climate change. It recognises the profession’s central role in supporting its members in doing so and has called upon the profession to act with a sense of social responsibility.

## **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 One Essex Court will 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.<sup>4</sup> 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).

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<sup>1</sup> Energy and Natural Resources page, available at: <https://www.oeclaw.co.uk/our-expertise/energy-and-natural-resources>

<sup>2</sup> Legal 500 2024, <https://www.legal500.com/rankings/ranking/c-london-bar/energy/9327-one-essex-court>

<sup>3</sup> Bar Council’s Statement on the Climate, available at: <https://www.barcouncil.org.uk/policy-representation/policy-issues/climate.html>

<sup>4</sup> *Synthesis Report of the IPCC Sixth Assessment Report (AR6)*, available at: [https://report.ipcc.ch/ar6syр/pdf/IPCC\\_AR6\\_SYR\\_SPM.pdf](https://report.ipcc.ch/ar6syр/pdf/IPCC_AR6_SYR_SPM.pdf)

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.<sup>5</sup>
- In December 2020, HM Treasury stated in its *Net Zero Review: Interim Report* that “Climate change is an existential threat to humanity”.<sup>6</sup>
- 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.<sup>7</sup>
- 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.<sup>8</sup>
- In April 2022, the UN Secretary General stated that “investing in new fossil fuel infrastructure is moral and economic madness”.<sup>9</sup>
- 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.<sup>10</sup>
- Global carbon emissions from fossil fuels hit record levels in 2022.<sup>11</sup>
- 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.<sup>12</sup>

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<sup>5</sup> *The Production Gap*, 2021 Report, available at: [https://productiongap.org/wp-content/uploads/2021/11/PGR2021\\_web\\_rev.pdf](https://productiongap.org/wp-content/uploads/2021/11/PGR2021_web_rev.pdf)

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

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

<sup>8</sup> *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>

<sup>9</sup> *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>

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

<sup>11</sup> *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.>

<sup>12</sup> *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>

- World temperature records have repeatedly been broken during 2023, with temperatures the hottest they have been for 125,000 years.<sup>13</sup>
- Antarctic sea ice was 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.”*<sup>14</sup>

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 are not asking One Essex Court to breach the cab rank rule. We understand that barristers have a duty to accept work that is offered to them, and we respect this professional obligation. However, in light of the climate emergency, we believe that One Essex Court can take a more principled stance by reconsidering how it markets and positions itself with regard to the fossil fuel industry. We hope you will respond positively to this letter, particularly because we believe and are confident you will agree that this issue presents significant implications for the Chambers in several key areas:

- Morality
- Reputational risk
- Financial risk
- The ability to retain and attract future barristers and employees
- The ability to retain clients outside the fossil fuel sector

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<sup>13</sup> *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/>

<sup>14</sup> *Heatwaves, wildfires mark summer of extremes*, 25 July 2023, available at:

<https://public.wmo.int/en/media/news/heatwaves-wildfires-mark-summer-of-extremes>

## **Morality**

If One Essex Court 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.”<sup>15</sup>*

We urge you to consider our request to limit your services to the fossil fuel industry within the broader context of similar appeals made historically, such as those calling on lawyers not to act for the apartheid regime in South Africa<sup>16</sup> or not to act for cigarette manufacturers.<sup>17</sup>

## **Reputational risk**

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

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

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<sup>15</sup> *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>

<sup>16</sup> *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>.

<sup>17</sup> 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/>

## **Financial risk**

We would invite One Essex Court to consider more fully than it may have done hitherto the potentially significant financial risks to the individual members of Chambers of continuing to act 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*.<sup>18</sup> The same research paper estimates that global stranded assets, as the present value of future lost profits in the upstream oil and gas sector, exceed US\$1 trillion under plausible changes in expectations about the effects of climate policy.

This in turn, will lead to a potential substantial decline in the recoverability of fees billed to professional clients on work conducted for fossil fuel clients.

## **Current and future employees and barristers**

One Essex Court's ability to attract and retain the brightest and best employees and pupil barristers will be significantly impacted by its approach to the climate & ecological crises.

We would like to remind you that several leading barristers and juniors have already signed the Declaration of Conscience. This aligns with broader trends observed in the legal profession, where young lawyers and law students increasingly consider a Chambers' stance on climate and ecological issues prior to making applications. It is understandable that young legal professionals, who will face a world significantly impacted by climate change, should not have to choose between their careers and a liveable future.

Regarding your current employees and pupil barristers, these staff have the right to take a stance on refusing to accept work related to new fossil fuel projects without facing discrimination or victimisation. The Employment Appeals Tribunal (EAT) has given guidance on the definition of "philosophical belief" as a protected characteristic under equality legislation. The EAT (Burton J) concluded that commitment to tackling the climate & ecological crises could amount to a protected philosophical belief.<sup>19</sup>

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<sup>18</sup> *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>

<sup>19</sup> *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](https://www.bailii.org/uk/cases/UKEAT/2009/0219_09_0311.html)

Furthermore, in respect of Chambers' current members, speaking on a motion to discuss the cab-rank rule at the Bar Council Meeting on 25 April 2023, Stephen Kenny KC, who was the Chair of the Bar Council's Ethics Committee at the time stated,

*"There is an exception within our rules in rule 21(10), that you must not accept instructions to act in a particular matter if there is a real prospect you are not going to be able to maintain your independence. So, if you are genuinely afflicted by conscience, such that you cannot properly do your job as an advocate ... you do not have to act ... We do therefore have a safety valve, within our rules ... those who are genuinely afflicted by conscience can choose to rely on rule 21(10)."*<sup>20</sup>

Therefore, it should also be possible for individual barrister members of Chambers to refuse to conduct work for fossil fuel lay clients in certain circumstances, without breaching the cab-rank rule.

### **Clients who are not fossil fuel companies**

One Essex Court's ability to attract and retain these other clients will, we suggest, come under increased scrutiny and pressure as a result of its work on new fossil fuel projects. This will no doubt be of concern to other members of Chambers.

### **Next steps**

We understand the cab rank rule ordinarily requires barristers to accept work offered to them, and we do not ask One Essex Court to violate this rule. However, given the profound challenges posed by the climate and ecological emergencies, we are asking your Chambers to take a more proactive stance by reconsidering how you engage with the fossil fuel industry. Specifically, we request that you:

- **Stop all advertising and marketing, including legal directory listings, aimed at the fossil fuel industry. The promotion of legal services to companies engaged in fossil fuel extraction sends a message of support for their activities, at a time when the world needs to move away from reliance on fossil fuels.**
- **Release a statement condemning the environmental harm caused by the fossil fuel industry. A public acknowledgment of the damage these companies are doing would demonstrate a commitment to addressing the climate crisis.**

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<sup>20</sup> LAR website, at: <https://www.lar.earth/press/press-release-26th-april-fig-leaf-falls-from-legal-profession-as-bar-council-ethics-committee-chair-concedes-barristers-may-act-on-conscience/>

- **Pledge to donate pro bono time to climate crisis and anti-fossil fuel campaigners for every hour of work undertaken for the fossil fuel industry. This would be a meaningful contribution towards efforts to mitigate the damage caused by fossil fuel extraction.**
- **Commit to donating all fees earned from any fossil fuel-related work undertaken under the cab rank rule to environmental causes. This would further demonstrate that any engagement with the fossil fuel industry is a matter of professional obligation, not support for their activities.**
- **Commit to using all available influence on your professional clients (i.e. solicitors) to encourage them to transition away from fossil fuel work.**

You are, of course, under no obligation to take these steps, but we believe that by choosing not to, One Essex Court could give rise to the inference that it is supportive of companies involved in new fossil fuel extraction projects. In a time of climate crisis, silence or neutrality can be perceived as complicity.

**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 sincerely,

*Lawyers Are Responsible*

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