

What does climate-conscious lawyering/insuring/broking look like and what should it look like in the future?

This was one of three questions the City of London Solicitors' Company ("City Solicitors") and the Worshipful Company of Insurers ("WCI") asked its diners to consider at their joint Sustainability Dinner, held on 14 June 2022 at the Old Bailey. It was a livery dinner like no other, and an exemplar of what livery companies can do when they combine forces and promote collaboration among their members. This note explains how and why the event was different and summarises some of the key themes coming out of the evening's table conversations.

We hope it will be of value not just to those members and potential members of our companies who enjoyed our "Food for Thought, with Food", but to the wider livery movement including the Livery Climate Action Group ("LCAG"). Both the City Solicitors and WCI are proud to be members of the LCAG and to support its efforts in assisting livery companies in their journeys toward net-zero emissions.

A Livery Dinner like No Other



Although our setting (the Grand Hall at the Old Bailey) was unique and both our food (chosen to be vegetarian) and wine (selected for its organic credentials) were excellent, this was not "just" another livery dinner centred on eating and drinking in a historic setting. We aimed instead to make the topic of climate change our focus, and to host an event which was not only content-rich but idea-generating too.

To achieve this, we began with two "fire starter" speeches, from Jeff Twentyman (long-term Partner of Slaughter and May and its Head of Sustainability) and Nick Dunlop (Managing Director and Insurance Lead in the Climate and Resilience Hub at WTW, as well as Senior Warden of the WCI). We then asked our guests (a mix of solicitors, insurers and brokers) to consider (on their mixed profession tables) to appoint a table Rapporteur whilst enjoying their starter. Once done, three questions were circulated to the tables and debate and discussion of these was encouraged over our main course. Lubna Shuja (Vice President of the Law Society of England and Wales) then took the microphone to act as our Chief Rapporteur, skilfully collecting thoughts from all our tables on the three questions posed. The evening was opened and closed by our (very generous) host, Alison Gowman (Alderman and Sheriff of the City of London) whilst Tony King (Senior Warden then but now Master of the City Solicitors) acted as our Master of Ceremonies.

So what was said? We agreed at the outset that the Chatham House Rule would apply, to facilitate an open and honest dialogue between us, so we can only share so much. (Note to readers: attendance at our events really does deliver more! Please be sure to join us next time!) What follows, therefore, can only be a short summary of some of the key themes identified. Nevertheless, we hope it is interesting and informative and contributes to the important debate within our professions about what being climate-conscious in our work involves and might involve.

The overriding sentiment of those who attended seemed to be that, whilst it is a challenging area in many respects, we can and should do more as professional advisers, and at times "risk enablers", and should raise our ambitions, with an appropriate sense of urgency, accordingly.

Our “Fire starters”

Some thoughts from a solicitor: Jeff Twentyman set the mood for the evening by positing that “sustainability is a whole business proposition”. He proceeded to make a number of observations about how City and commercial solicitors might put climate thinking into a legal service.

His diagnosis was, in summary, this:

1. Climate-conscious lawyering will not present solicitors with many moments of decisive influence, even if at the margins solicitors can inform choices.
2. The rule of law (and associated concepts like the administration of justice, and rights to representation) can cast a long shadow under which commercial solicitors occasionally and conveniently shelter from daylight. In reality, most client/business acceptance decisions made by commercial law firms are influenced by profit-related motives rather than the social value of the work.
3. In the main, commercial law firms are not acting in the realm of individual rights and there is no applicable cab rule principle. Firms choose who they engage with and seek credit through association with their clients when it is positive.
4. Such firms are only “neutral” when it suits them, and often it suits them to assert neutrality when the actions of a client have the potential to affect their firm’s reputation. Neutrality can therefore be claimed in an attempt to side-step responsibility for the impact of acts which flow from the delivery of legal services.



As to how solicitors might be climate-conscious lawyers who make a positive contribution to the climate crisis, Jeff’s thoughts included these:

1. Joining the Net Zero Lawyers Alliance (and making the commitments in relation to a firm’s own operations, capacity-building among its lawyers and assisting clients to transition their processes towards their own net zero trajectory) would be a great way to start.
2. As would joining the group of “High Ambition Law Firms” committed to evolving their practice, through business selection (more on this to be announced during London Climate Action Week), and supporting the IBA’s work on its newly announced project (“The Gatekeepers Project”) examining the role of lawyers as ethical gatekeepers within wider society.
3. Allocating your resources to the businesses that are contributing to people and planet, as opposed to those who distract from it, is likely to have the biggest impact and adopting a pro-climate “purpose” could be enormously engaging and motivating. Whilst it might be harder for an established law firm to do this than a new firm, it is not impossible. It would, however, require courage, conviction and a long-term view.
4. Like all businesses, law firms have a social licence to operate. There is no carve-out for law firms (regardless of what some of them may say about neutrality). One of the terms of a social licence is transparency, and so firms might be more transparent about, for example, what proportion of their income comes from what activity.
5. Individual lawyers might reflect on and recall their personal motivation for being a lawyer. The climate crisis is above all a challenge of climate justice and social justice. If we remember that we are humans first, this may rekindle an interest in the law to support

outcomes which favour people and planet, and to help to change a “system” which isn’t delivering.

Jeff’s talk ended on the topic of leadership, asserting that society currently has more faith in business leaders than public leaders and politicians. Law firms are businesses, and so should, he thinks, take a position. He quoted John Amaechi OBE - “If you abstain from taking a position about incivility or corruption, you are not magically absolved of responsibility, you are complicit” - and finished on this powerful note of his own:

“Law firms are businesses. Leadership is hard, we are not magically absolved of responsibility, we must not be complicit.”

Some thoughts from an insurer: Nick Dunlop then spoke about the historic role the insurance industry has played and continues to play in setting standards of risk management which enable us all to go about our day-to-day lives in safety. An example of this was the risk management and prevention of urban fires, with entire cities being laid out safely and protected by fire brigades because fire risk was understood, codified and mitigated by the insurance industry.



With the climate crisis front of mind, Nick wondered whether it might be time for insurers to rise to the challenge of taking a leading role again.

As to how insurers and brokers might codify and manage climate risk, he asserted that “We do it already” because the industry leads in blending climate science and financial models to price and allocate capital, in order to deliver a financial system that is resilient to extreme shocks from natural catastrophe. This capability is exactly what is being demanded now, he thought, by the real economy so that businesses can plan for a sustainable future and optimise how they are structured to be successful in a low carbon economy.

Nick therefore called upon the insurance sector to use this expertise, perhaps something that’s more traditionally been tucked away at the back of their businesses, and to place it at the centre of its offering going forward.

He added that climate is fundamentally a risk issue. The whole climate debate should focus more on reducing risk to the system, rather than curbing emissions. We know have to reduce emissions, but this doesn’t necessarily equate to reduced risk to business. These are non-correlated things. As the risk experts, insurers can therefore add significant value. They should be more comfortable in quantifying and managing this risk and creating de-risking solutions than any other industry - insurers can articulate and measure what the climate issue means in terms of business risks and business opportunity. “They who own the risk agenda own the climate agenda”, he suggested.

In terms of what climate-conscious insuring might look like, Nick made the following observations:

1. Insurers need to open up to what he called “extreme innovation”, in attitude as well as products.
2. Insurers must collaborate in new ways, perhaps in ways which might be viewed by some, including regulators, as anti-competitive. Climate change is a huge problem which demands all the ideas we can collectively muster to solve.

3. Coming up with agreed common ways of measuring things would greatly assist. There aren't any now and this is wasting time.
4. Insurers might think more about how to incentivise and differentiate good risk quality from bad.
5. A focus for the sector might be on how to fill the "climate protection gap". Not only is there insufficient insurance protection against disaster risk for many highly exposed emerging economies, but very many large organisations are unaware of the risks they face due to climate change.
6. Insurers and brokers might reflect more and together about their collective responsibility to influence the trajectory to a low carbon economy, and how best to pull the very huge lever in their hands.

Nick concluded by sharing that a client had recently told him that insurers need to do far more influencing when it comes to climate. Given the great depths of their climate knowledge, analytics and risk insights, the client thought that insurers were best placed to be a supporter of their clients, to help them optimise their businesses through transition. To really advise them.

Nick challenged the insurance industry to do this and step away from its comfortable position of "just taking instructions". This would, he was certain, enable the insurance industry to be a pivotal player in the City of London as it grows its role of being the global centre of financing green.



The Three Questions

We are incredibly grateful to Jeff and Nick for being prepared to act as "rabble rousers" at our dinner, to excite our diners to tackle their table "homework" with vigour. Which is exactly what they did next.

We asked our tables to consider these three questions, reporting back to us all through their Rapporteurs:

1. **What does climate-conscious lawyering/insuring/broking look like now, in practice, and what do you think it should look like in the future?**
2. **Both solicitors and insurers are to some extent "risk enablers". Do you think there should be any limits to this when it comes to climate-related matters, and, if so, where should the line be drawn?**
3. **In the light of what you have heard this evening, what issue do you think should be at the top of the agenda for those solicitors/insurers/brokers wishing to advise their clients proactively on climate-related matters?**

Themes from Table Discussions



A lively and engaged debate followed on the tables and the table Rapporteurs, facilitated by Lubna, help us to identify these common themes:

1. It's hard, but that doesn't mean we shouldn't try

It is far from clear, currently, who draws the line when it comes to climate-conscious lawyering, insuring and broking. Is it lawyers, insurers and brokers themselves or their regulators? And do a range of other stakeholders (such as a business's clients, insurers, talent and even its competitors) all have a view which counts? There was a feeling among some that lawyers, insurers and brokers might themselves "try harder" through a number of initiatives, ranging from upskilling their people to spot climate-related risks in their work through to seeking to define what best practice looks for their organisation/profession.

2. Talking to each other is good, we need to share cross-sector

Critical mass is needed to support climate-conscious lawyering, insuring and broking. Whilst for example, few insurers would now cover Arctic drilling, this is an instance of something easy to identify as being inherently "bad" in climate-related terms whereas, in day-to-day practice, there are many grey areas. Businesses may decide, quite properly, to help clients who use but are transitioning from a heavy reliance on coal in their operations, but judging who is genuinely committed to achieving such a transition, with appropriate speed, is more difficult for professional services firms. Better metrics would assist with making client/matter acceptance decisions which can better take climate-related impacts into account.



3. We should push for and adopt common metrics

The lack of an agreed taxonomy may be holding back the efforts of solicitors, insurers and brokers to make informed decisions around climate-conscious lawyering, insuring and broking, as it is difficult to make good risk assessments without the right data and, further, to devise risk assessments policies/procedures to form part of an ERM programme. We might therefore push for more consistent and commonly understood ways of measuring the climate impact of a client or counter-party. This would help, for example, professional advisers to be more confident about a potential client's commitment to transitioning.

4. Are individual solicitors quieter than insurers/brokers when it comes to climate?

There was a sense in the room from some that lawyers may not be as outspoken as insurers, as individuals in the workplace, when it comes to climate-related matters. Some insurance brokers noted, for example, that they are seeing a growing amount of employee activism in relation to climate-related matters. This might suggest that, in the world of insurance broking at least, employees expect to see a greater alignment between their personal values and those of their employer. That said, there was a general acknowledgement that interviewees are increasingly asking, at interview, about the climate related credentials of their potential employer, not just in relation to the organisation’s own operations and how “green” their offices and immediate footprint are, but in relation to the work they choose to do and who they choose to do work for. Both solicitors and insurers are, of course, people-driven businesses and so it was acknowledged that what the talent of the future thinks and wants on climate-related matters has the potential to be impactful.



5. Better understanding your own risk exposure might be a driver

Whether, for example, solicitors have a duty to advise their clients on climate-related issues, as a legal or regulatory obligation or demanded by professional ethics, was thought to be an important factor. To the extent that such a duty exists, and is complied with, clients would have to listen to what their lawyers might say and this could be influential. Further, the risk of being sued for giving negligent advice compels most to comply – meaning that the existence of a legal or regulatory duty to advise on climate-related risks would ultimately be more effective than a duty which is felt to be “simply” moral or ethical, and possibly subjective and personal.

6. Eat what you don’t kill?

In crude terms, a remuneration policy which is heavily weighted towards how much revenue an individual generates for a business tends to motivate individuals to bring in and do work, regardless of whether the client or job in question is “good” or “bad” from a climate-related perspective. This, coupled with cash in/cash out models, can drive short-term decision-making around the type of work to be done. Might both solicitors and insurers pay more attention to clients and work turned down, and why, and give appropriate credit for declining the “wrong” kind of client or work? As a first step, it was suggested that solicitors and insurers might develop better internal systems for measuring how often and why they say “No” to new business.

7. Regulators can play a part

Tackling any/all barriers to greater sector collaboration to help to solve climate-related problems collectively might, for example, be an appropriate agenda item for regulators. Competition law should not hold us back.

8. Create a sense of urgency

Whilst subtle techniques with clients, like nudging, might assist, the legal and insurance sectors can afford to and should be braver when it comes to helping to tackle the climate crisis. And do so with an appropriate sense of urgency in order to have a meaningful impact.



What Next

The strong consensus of those attending our Sustainability Dinner was that it was extremely valuable and motivating to talk about the issues surrounding climate-conscious lawyering, insuring and broking. This conversation should continue, and ways should be found of doing that.

Attendees were grateful to their livery companies for facilitating the beginnings of this important and timely debate about what in essence it means to be a professional adviser working in the City, at a time when issues of people and planet are becoming more pressing than ever. And we are very grateful to everyone who attended this event and who, without exception, participated in it so very fully.

As a very last word, we were pleased to hear Alison say that for anyone questioning the relevance of the City Solicitors, the WCI or indeed other livery companies, this was it. Events like our Sustainability Dinner answer that very question.

Sarah de Gay (then Junior Warden and now Senior Warden of City Solicitors), 23.6.22

