

UK lawyers' climate pledge reverberates around the world

A commitment by some UK lawyers not to work on fossil fuel schemes has sparked an ethical debate within the profession. While some see the pledge as problematic, however, it could be taken up by peers overseas.



A pledge by lawyers not to work on coal, oil or gas projects because of their climate change impacts has reverberated around the UK and beyond. Since the pledge publication on 29th March 2023, more than 170 lawyers have committed to refuse work supporting new fossil fuel projects or that takes action against climate protestors exercising their right to peaceful protest. Prominent UK signatories to the 'Declaration of Conscience' include Sir Geoffrey Bindman KC, chair of the British Institute of Human Rights, and Farhana Yamin, one of the architects of the 2015 Paris Agreement on climate change.

The declaration was coordinated by Tim Crosland, a lawyer who was disbarred by the Bar Standards Board earlier in the year for causing considerable reputational harm to the profession by leaking a Supreme Court ruling on Heathrow. He said the declaration was the first time in legal history that barristers had engaged in a collective act of civil disobedience, and there had been a "surge of support" for it following publication of the Intergovernmental Panel on Climate Change (IPCC)'s latest summary of climate science and the imprisonment of members of the campaign group Insulate Britain for contempt of court after talking about climate change in court.

The pledge proved controversial in the UK. Some saw it as a meaningless gesture, pointing out that not all of those signing it were able or likely to work in the fossil fuel field anyway. The main issue, however, was that the pledge clashes with the 'cab rank rule', which obliges barristers to accept work from any client if they have the time and the professional expertise.

Some of the signatories have already referred themselves to the Bar Standards Board, and face the prospect of disciplinary action.

Jolyon Maughan KC, founder of the Good Law Project which has brought many lawsuits against the UK government on environmental and social issues, signed the declaration but was surprised by the reaction. "I can understand somebody's weighing up the respective merits of the cab rank rule and the role that lawyers play as midwives to new fossil fuel projects," he said. "But to assert, as many did, that it is obviously more important than the role of the legal profession in tackling climate change I just think is bananas."

While many barristers defended the cab rank rule, seeing it as key to a fair and functioning justice system, others, such as Richard Moorhead, professor of law and professional ethics at Exeter University, suggested it was time for a more serious debate about the ethics of the legal profession. Such a debate may be about to get into full swing. Last week, Stephen Kenny KC, chair of the Bar Council's Ethics Committee, provocatively stated that barristers can refuse to take on cases as a matter of conscience, in extreme circumstances.

The declaration was less controversial among solicitors, who have no such professional restriction. A month after the launch of the declaration, the Law Society published long-awaited guidance on climate change for solicitors, which explains the kinds of risks it raises for solicitor firms and their clients, and what solicitors' legal responsibilities are when providing advice. It notes that organisations' targets to cut greenhouse gas emissions "vary hugely in scope, comprehensiveness

and ambition", but should only be considered 'science-based' if they are in line with what the latest climate science deems necessary to meet the 1.5°C Paris Agreement goal. The Law Society said that the effects of climate change "are wide-ranging and constantly evolving" and said it would be important for solicitors to be aware of this changing landscape "and its potential impact upon their organisation as well as their legal advice".

Meanwhile, academics working in the fields of criminology, penology, social harm, crime and policing have vowed to lend their full support to climate defenders "who are criminalised by the state". The declaration is also having an impact further afield. Melinda Janki is involved in several legal challenges against the Guyanese government seeking to block the country's incipient offshore oil industry on the grounds that it will harm the environment and human rights.

She has signed the declaration and is intending to invite fellow attorneys in Guyana to follow suit. "I beg my legal colleagues to join me and other lawyers who are on the frontline fighting to uphold the rule of law and protect our countries and planet from the killing effects of fossil fuels," she said.

Tim Hirschel-Burns, Bernstein international human rights fellow at Yale Law School and co-founder of Law Students for Climate Accountability, said he was excited to see growing attention on the role of lawyers and the climate crisis. Although he thinks the UK has been "a little slower" to have these conversations than the US, he said the Law Society guidance provides a powerful model for its American counterparts. Hirschel-Burns added that there was growing interest



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Lancet Planet Health 2023

Published Online

May 9, 2023

[https://doi.org/10.1016/S2542-5196\(23\)00105-5](https://doi.org/10.1016/S2542-5196(23)00105-5)

For the Declaration of Conscience see <https://planb.earth/wp-content/uploads/2023/01/DECLARATION-FINAL-LAR.pdf>

See IPCC AR6 synthesis report see <https://www.ipcc.ch/report/ar6/syr/>

For more on the Insulate Britain case see <https://www.theguardian.com/environment/2023/feb/07/insulate-britain-activist-david-nixon-jailed-for-eight-weeks-for-contempt-of-court>

For more on the ethics of the Taxi Rank Rule see <https://www.legalfutures.co.uk/blog/lights-out-at-the-rank>

For the Bar Council Ethics Committee discussion see <https://twitter.com/thebarcouncil/status/1650905464236916736>

For Law Society guidance on climate change see <https://www.lawsociety.org.uk/topics/climate-change/impact-of-climate-change-on-solicitors>

For the Centre for Climate Crime and Climate Justice statement see <https://twitter.com/cccjustice/status/1648608215129546752>

from UK law students to highlight the legal profession's climate-related responsibilities and declining interest in working for fossil fuel companies. Crosland is now in discussions with

lawyers in other countries, including the Netherlands and Italy, about setting up similar declarations.

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