



Time to take a new path

Simone Potter & Sarah Hill-Smith from The Chancery Lane Project discuss pro bono pathways to using climate clauses

IN BRIEF

▶ Lawyers are producing new climate content for contracts that is easy to choose, use and perform in a range of contracts affecting high emitting sectors of the global economy.

The Chancery Lane Project (TCLP) empowers professionals to upskill on climate contracting as the climate crisis moves to the top of the agenda for all lawyers. The project has a number of resources that support lawyers to use climate positive, net zero aligned clauses in their contracts. Through practical workshops, the project also inspires participants to not only incorporate climate clauses in their own precedents, but to encourage their networks of clients and colleagues to do so, too. This article provides three case studies on the ways lawyers are using pro bono time to work collaboratively—together and with TCLP—to innovate contract clauses for the climate.

Pathway 1

Upskilling the next generation of lawyers in climate concepts, climate risk awareness and climate contracting

TCLP co-ordinated a short project with international law firm CMS involving their March 2022 intake of 29 trainees. The trainees were tasked with researching and writing 29 climate-related defined terms for use in climate contract clauses. The terms will be added to TCLP's Glossary, a bank of climate-related defined terms for contracts.

The project objectives were to:

- ▶ Engage junior lawyers with concepts of climate risk, environment law and climate science. As John Kerry augured, these concepts will permeate their future legal careers, irrespective of

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- chosen legal or commercial specialty.
- ▶ Encourage junior lawyers to collaborate when refining their practical research and contract drafting skills. Trainees were encouraged to think commercially about seemingly abstract or isolated climate terms and to consider the practical implications of adopting defined terms that could be applicable to contracts in a range of sectors.
- ▶ Connect juniors with qualified CMS lawyers who brought quality assurance and experienced practitioner perspective on substantive matters of climate risk and climate-related law.
- ▶ Enable TCLP to test a new model for creating climate content. This will distribute more editorial and quality assurance functions to the community of end users.

Trainees had a month to independently research and prepare a first draft outline of their chosen climate term. This involved writing:

- ▶ A definition of their term that can be used in a broad range of contracts.
- ▶ Accompanying drafting notes, guidance on how the term might be applied in different contracts and references.

TCLP gave initial feedback on the trainees' early drafts. Thereafter, the trainees' work was reviewed and assured by CMS associates and partners. Once the terms are published, the trainees will be responsible for monitoring and updating their defined term. Updates will ensure that terms reflect key developments in climate law, science or policy and will improve their general commerciality. The updating process enables trainees to remain focused on key climate concepts and climate risks during their training.

Advantages

The project helped trainees refine their technical legal skills and engage practically

with important climate risk and climate-related concepts that may shape law, litigation, policy, business and their careers in years to come. In particular:

- ▶ **Drafting**—trainees drafted comprehensive, functional terms for use in contracts across key sectors including finance, supply chains, logistics, real estate, construction, and policy.
- ▶ **Research**—trainees researched and engaged commercially with complex legal and climate concepts.
- ▶ **Leadership**—trainees independently led the research and drafting process.
- ▶ **Networking**—trainees built networks and professional relationships with senior colleagues at CMS and members of TCLP's climate community.
- ▶ **Fun and climate conscious work**—the project was a safe space for trainees to experiment and flex their muscles—legally, creatively and ambitiously—for the benefit of the environment.

Pathway 2

Growing & scaling climate contracting worldwide

TCLP's transpositions project extends the reach of TCLP's climate content to a global community of lawyers. It invites them to:

- ▶ **Transpose** existing TCLP clauses into another jurisdiction's law so that the clauses can be used in contracts governed by local law.
- ▶ **Adapt** TCLP clauses written for one sector for use in contracts in another sector.
- ▶ **Increase the climate ambition** of an existing TCLP clause for example, by re-writing an entry-level, low climate ambition (light green) clause so that it is a more ambitious, higher climate ambition (dark green) clause.

Lawyers form a transposition team locally to work collaboratively to research, draft and quality assure a transposition. TCLP supports transposition teams with resources, materials and project governance processes that make coordinating and organising the transposition time efficient and impactful. TCLP publishes the transposition on its website. The transposition team is responsible for ensuring that transpositions for their jurisdiction are

maintained and kept up to date to reflect changes in local law, policy, regulation and market practice.

Lawyers from Ireland, the US, Latin America, and Germany have already set up local transposition groups, with others soon to be underway. The level of synergy and vigour from those involved indicates the appetite for locally relevant climate drafting.

Advantages

- ▶ The project builds lawyer and client awareness of the power they have to drive down emissions through powerful, effective and enforceable contract levers.
- ▶ It expands the community of climate conscious lawyers and other professionals who consume and contribute to TCLP's climate contract content. In doing so, it helps to shift market norms and legal practice to a world where every contract enables solutions to the climate crisis.
- ▶ It empowers lawyers to identify the highest emitting sectors in their jurisdiction, the principal contracts that govern them and the clauses they need to reduce emissions flowing from that contract.
- ▶ It is an opportunity for lawyers worldwide to connect with their high emitting clients and clients who have joined Race to Zero, signed up to the Science Based Targets initiative (or other global standard) or otherwise set interim net zero targets. The parties can then work together to identify key contracts and the climate clauses to include in them that will deliver their net zero goals.

Pathway 3

Forming an expert legal consultancy group to drive climate clause use in carbon intensive sectors

Pro bono time? Join us today...

The Chancery Lane Project (TCLP) has expanded rapidly, providing a suite of resources to enable lawyers to draft contracts for the climate. The project facilitates workshops with lawyers and industry experts to create contract clauses to tackle climate change. Clauses are peer reviewed and then published as a free resource on its website at www.chancerylaneproject.org.

The key to the success of the project has been the generous donation of pro bono time from its volunteers and participants spanning private practitioners and in-house counsel and many talented industry experts such as construction engineers and procurement professionals. It is this interdisciplinary collaboration which is unique, along with the

simple offer that TCLP makes: the offer of using your specialist knowledge to contribute to stopping climate change.

The project now has over 110 climate clauses, a glossary of climate related defined terms and a net zero toolkit to upskill lawyers on climate drafting.

The clauses span diverse industries and practice areas from corporate governance and supply chains through to shipping and real estate. Several of the clauses are in use already, championed by law firms such as Bates Wells and TLT LLP, as well as organisations such as Vodafone and NatWest.

If you want to get involved as the project continues to grow and expand in 2022 and beyond then sign up at bit.ly/3Ch6Y1l.

In January 2022, TCLP launched its Built Environment project with the support of the Laudes Foundation. The project supports the sector's transition to net zero by working with leading organisations to develop and promote adoption of TCLP clauses at scale.

TCLP established a multidisciplinary advisory committee to advise its Built Environment project team on strategic project decisions, priority focus areas for using climate clauses in Built Environment sector contracts, technical law and commercial practice.

Committee members are Thomson Reuters' Practical Law, Fenwick Elliot LLP, Foot Anstey LLP, the Manufacturing Technology Centre, BRE Group and the United Nations Environment Programme (UNEP). TCLP expects the advisory committee to grow as the project develops but, for now, its composition reflects TCLP's immediate focus on specific project development and construction matters.

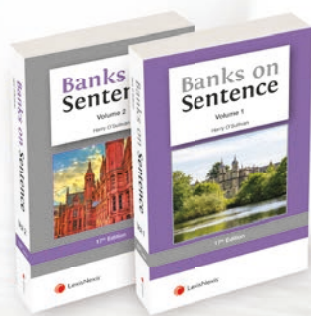
The committee plays an active consultancy role and is drafting a formal TCLP response to NEC's consultation on its new secondary option X29 to incentivise

carbon reduction in construction and engineering projects using the NEC4 contract suite (see bit.ly/39pSuMi).

Advantages

- ▶ Committee members have commented that it is refreshing to work in the advisory committee environment.
- ▶ The targeted nature of the project enables lawyers to have an immediate and direct impact on the extensive climate impact of the built environment.
- ▶ The committee offers a unique opportunity to collaborate with like-minded professionals who are equally passionate about climate. The team brings diverse expertise and direct practitioner experience of the decarbonisation challenges they face in their workday today. **NLJ**

Simone Potter, director of knowledge at TCLP, and **Sarah Hill-Smith**, secondee at TCLP from Clyde & Co. TCLP is a non-profit pro bono initiative that brings lawyers and other professionals together to rewrite contracts so that they enable solutions to the climate crisis (www.chancerylaneproject.org).



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