



# The Law Society Climate Risk and Conveyancing Practice Note Consultation

The Law Society published its [climate change guidance](#) (19<sup>th</sup> April 2023) which applies to all solicitors and law firms. Part B provides details on solicitors' duties in relation to growing climate related legal risks. It also outlines that the Law Society will be providing further sector specific guidance for different practice areas on how these duties apply in more detail.

The Law Society are currently developing a climate risk and conveyancing practice note. This will sit alongside an updated [flood risk](#) and [contaminated land](#) practice notes.

The purpose of this consultation is we want your suggestions to ensure that the practice note accounts for the broad range of considerations to promote best practice for conveyancers and account for growing climate risk and its impact upon the UK property stock.

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response. We may also use it to contact you about related matters. It will only be shared confidentially internally and not issued publicly.

If you wish to respond, please fill out the information and questions below and send to [Alasdair.cameron@lawsociety.org.uk](mailto:Alasdair.cameron@lawsociety.org.uk) by Friday 6<sup>th</sup> September

**Name of organisation: Surrey Law Society**

**Type of body: Membership Organisation**

**Location: Surrey**

**Number of members/size of firm: approx. 850**

**Practice area: residential or commercial**

Question	Answer
What key issues would you like to be covered in a PN on conveyancing and climate change?	<ol style="list-style-type: none"><li>1. What is a solicitor supposed to do, other than simply pass through information to their client - outline solicitors' duties setting clear boundaries within which a solicitor would be expected to advise clients in the context of climate change the scope and depth of reporting requirements/ expectations would be helpful. Potentially also a list of other organisations that clients can be directed to for further advice and more detailed information for various risks.</li><li>2. Role of solicitor acting for a seller in disclosing climate related risks</li><li>3. Impact of exposure to risk of professional negligence due to failure to advise on PI insurance</li><li>4. Failure to interpret technical information in a commissioned report- extent of solicitors obligation and conflict with other practice notes</li><li>5. advising clients on Emission Scopes given the transition risk including mandatory energy efficiency improvements, or phasing out of fossil fuel heating systems which would have significant relevance in an average house purchase.</li></ol>

<p>What aspects, if any, of the conveyancing process and climate change have you or your members encountered difficulties with or confusion over?</p>	<ul style="list-style-type: none"> <li>• Flooding was a distinct issue a few years back, this seems to have settled now, but we appreciate that more flooding is expected to occur in future as part of climate change</li> <li>• recommending climate change reports as a means of protection against future negligence claims- what kind of report, how advanced should such searches be , what type of search, reporting to the lender</li> </ul>
<p>Have you (or your members) used climate searches in transactions in the past 12 months? If so, which type of transaction and in what context and how often?</p> <ul style="list-style-type: none"> <li>• Never</li> <li>• Rarely</li> <li>• Sometimes</li> <li>• Often</li> <li>• Always</li> </ul>	<p>Some of our members have been ordering environment search with climate risk index included in purchase transactions in the last year since the guidance came out. Some are looking into this at present.</p>
<p>In the last 12 months, have you advised your members (if organisational body) or clients on climate risk and if so what advice have you provided?</p>	<p>Surrey Law Society collaborated with our patron Landmark and organised a webinar on understanding the Law Society Guidance and implementing the due diligence in practice. Information was also shared in the Surrey Lawyer Magazine and the SLS website.</p> <p>Members advise their clients on the EPC results (potential for restrictions on letting etc) /flooding / subsidence/ coastal erosion etc subject to the property's location and based on their environment search reports.</p>
<p>Have your members been using the Law Society's climate change guidance and if so, are you aware of any changes they have made to their practice?</p>	<p>Not aware beyond the firms of the subcommittee, which have so far changed to obtain climate risk information in searches</p>
<p>Is there a need for the practice note to cover commercial transactions? If so, would it be appropriate for the Law Society to cover both residential and commercial in the same practice note?</p>	<p>Yes. There is a need to cover commercial transactions considering the range of property use and client activities and the likely risk such use may generate.</p> <p>Ideally two separate practice note as the residential client and commercial client needs are different and have different risk profiles</p>
<p>In your experience (or your members' experience), what are the key climate related risks that should be considered during the conveyancing process?</p>	<p>Physical change risk and Transition risk</p> <ul style="list-style-type: none"> <li>• Impact of climate related risk in a house purchase by an average family for example EPC ratings. Flooding , use of fossil fuel, etc</li> <li>• Existing stock of houses in UK range from 1930s onwards - impact of climate change risk reports on house value</li> <li>• Purchasing a new built -should the solicitor consider the climate risk caused by the construction/ materials and whether adaptations have been included in the design that might reduce the damage suffered.</li> <li>• Acting for a developer in a new build- is the solicitor expected to be responsible for advising how it is constructed or the materials that should be used and whether adaptations have been included in the design that might reduce climate related risks</li> </ul>

	<ul style="list-style-type: none"> <li>concerned about not being able to match the risks identified in climate change reports with recommendations for how their client can mitigate the risk, other than simply not proceeding with the transaction.</li> <li>solicitors commissioning a specialist report will need to understand what products are available and how to select what is appropriate in the circumstances</li> </ul>
<p>Do you think that insurance providers should play a role in assessing and managing climate risk within the conveyancing process? If so, what and in what context?</p>	<p>Yes particularly in case of an adverse search report or potential for elevated future risks Effect on the continued ability to insure against property damage at an affordable premium Also, in terms of how locality of properties may affect subject properties, solar and other green energy provision, and likely effects on the building (overloading etc), flooding, potential costs for reinstatement in the event a property is adversely affected by climate issues. E.G agricultural insurance for instance is particularly relevant, climate change is widely acknowledged to be affecting weather patterns which in turn affects crops, feed etc, thus affecting cash flow which could reduce money available for general maintenance etc which could result in buildings and property quickly falling into disrepair affecting value/ resulting in contamination etc</p>
<p>Have you (or your members) excluded climate change or considered excluding climate change from their retainer? If so, what would be the legal rationale for doing so?</p>	<p>It is recognised that solicitor cannot ignore the climate change related risks if its identified during the course of a matter and will need to bring any such matter to the clients attention but it would need to be limited to passing the information and generic advice given by conveyancers with no specialism re climate control based on guidance from the Law Society and sign posting clients to seek advice from professionally qualified bodies due to lack of resources, technical knowledge and competency to advise on this specialist area.</p>
<p>Outside of potentially commissioning a search, what else (if anything) should a conveyancer be doing to discharge their duty of care with regards to climate related risks</p>	<p>To set out from the outset in the retainer that specialist advice might be required in respect of climate change and that the firm cannot be held responsible for any such commissioned advice. Advise the client the need for such a report if required in the context of the transaction and record such advice in writing. Be able to direct their client needing specialist advice to such competent bodies who would be able to give specialist advice to the clients if they require it. Identify the possibility of indemnity insurance to cover the risk of climate related risk .</p>
<p>Do you have any ideas as to how the Law Society might promote awareness and usage of the practice note post publication?</p>	<p>Conduct training sessions, workshops, include it as part of the CQS training and assessment Engage with stakeholders to consider search products/ mandate a seller commissioned climate change risk report as part of the sale like the EPC create client targeted resources to promote awareness amongst clients. Coach the practice note in terms of making the support firms provide to clients regarding assisting clients with climate change risk 'more consistent' rather than something wholly new.</p>

	if the advice is succinct and contains a guidance note, suggested information for provision to clients , a list of competent bodies providing specialist advice, it is more likely to be utilised and rolled out more quickly.
Would transition period after release of the practice note be needed or helpful?	Would be helpful