



an introduction to the climate change  
services provided by

Blake Lapthorn

2009

the natural choice in law

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The impact of climate change regulation, legislation and policy now affects many aspects of business life. Increasing media coverage and stakeholder, donor and consumer awareness and pressure will only serve to push sustainability to the top of the commercial agenda.

As well as presenting the business community with a series of challenges, the climate change challenge also opens the door to many new opportunities for forward thinking companies.

The Climate Change team at Blake Laphorn has a true breadth of service offering and impressive credentials built over years of experience in providing advice on a wide range climate change related issues. These include:

- **corporate finance** - including buying, selling and investing in companies from start-ups to listed PLCs operating in the climate change arena, such as those involved with carbon off-setting, smart metering, clean and green technology, renewable energy, energy management, ecological and carbon consultancy
- **commercial contracts** - including carbon off-setting, energy management and ecological and carbon impact consultancy, renewable energy provision
- **construction** - including sustainable procurement and the implications of 'zero carbon' buildings
- **planning** - including green travel plans, reduced carbon or carbon neutral development, renewable energy strategies, carbon emission reduction strategies
- **intellectual property** - including IP strategy, protection and licensing
- **environmental law issues** - including green leases, wildlife and habitat issues, waste policies and emissions trading
- **rural affairs** - including forward harvesting contracts, renewable energy opportunities for landowners, bio-diversity issues and agri-environmental schemes
- **charities and the voluntary sector** - including compliance issues for trustees
- **banking** - including bespoke financing documents and the impact of climate change regulation on funding covenants
- **tax**
- **dispute resolution**

## corporate finance

In the *Legal 500*, our clients describe the services of the team as "absolutely outstanding" and "on a par with larger City firms".

For us to provide our clients with a truly professional service, the need to understand their business is essential and climate change is no exception. The Corporate lawyers in our Climate Change team regularly attend industry seminars and conferences so they gain a commercial understanding of the issues likely to arise during a transaction involving a company operating in this sector.

We regularly act for companies supplying services and products in the climate change arena including energy management, clean and green technology, ecological and carbon consultancy and carbon off setting.

The majority of our Corporate Finance team were trained and gained valuable experience in the City or at major regional firms. They offer a high level of corporate expertise as well as technical ability. Above all they are responsive, easy to deal with and commercial.

Typically, those areas where we can help include:

- the formation of companies
- drafting and negotiating shareholders agreements and Articles of Association
- management buy-outs, management buy-ins and the raising of venture capital
- advice on all aspects of debt and equity funding from start-up onwards
- the admission of companies to PLUS and AIM
- buying and selling shares or assets

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## commercial contracts

Our team has extensive experience in drafting business contracts in the climate change sector, whether acting for the suppliers or purchasers of climate change related services and products. Our extensive experience in this field means we understand the specialist requirements of these contracts. For example, we understand the difference between the various standards of carbon off set so that we can ensure that you get a genuine accredited emission reduction that stands up to scrutiny, rather than simply adopting a tree that has already been planted!

We can draft standard terms and conditions or bespoke commercial agreements that we know, through our sector expertise, reflect the unique structure of certain contracts in that particular climate change related industry.

We recognise that one size does not fit all. Our task is to provide what the client needs – a one-page letter with contractual effect, a comprehensive document covering a long-term and complex business arrangement, or terms and conditions that can be used as a marketing document.

We will advise on relevant UK and overseas legislation and how to achieve commercial objectives and legal compliance.

We understand the importance of bargaining strength, the commercial drivers of the business and the tactics to be employed. We seek to be an effective part of our clients' negotiating teams, helping to obtain the best result within their time and costs constraints.

We can advise on the following:

- carbon off setting agreements
  - energy management contracts
  - emission reduction project agreements
  - ecological, environmental or carbon consultancy contracts
  - agency
  - distribution
  - joint ventures
  - disclaimers
  - guarantees
  - terms and conditions
  - consumer protection
  - public procurement
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## construction

Buildings are responsible for almost half of the country's carbon emissions, half of its water consumption, about one third of landfill waste and one quarter of all raw materials used in the economy. Our Construction group is fully alive to the importance of sustainable construction. We act for a number of clients for whom the issues of sustainability and climate change feature highly on their business agenda. Recent examples include:

- acting for several local authorities on a number of flagship regeneration schemes in which sustainability in the method of construction was a key objective
- advising one of the country's leading suppliers of renewable timber (for whom sustainability and awareness of the issue is a benchmark by which its suppliers are measured) in relation to its standard terms of supply and sub-contracting on a wide range of projects
- advising a leading energy management company in relation to terms upon which they were undertaking work on a major refurbishment of a world-class hotel in central London

Members of the group are also active within the sector promoting awareness of the environmental impact of the construction process, such as by speaking at industry meetings and by holding events and seminars specifically focussing on the subject.

The group provides a complete legal service to those in the construction, engineering and technology industries and their customers, including cover advice, assistance and action on all of the following:

- building and engineering contracts
- consultants' appointments and warranties
- project structuring financing and PFI
- European regulation and public procurement
- litigation
- arbitration
- alternative dispute resolution
- adjudication
- construction insolvency
- construction employment
- intellectual property

## reputation management and intellectual property

In a world that is increasingly driven by information, intellectual property (IP) assets are an ever more significant component in the market strategies and valuations of climate change related businesses. As climate change is an increasingly high profile and fast moving sector you cannot afford to be complacent about securing brand protection, patenting your inventions, protecting confidential information, and protecting and exploiting copyrights, designs and database rights.

For many years we have been involved with the commercial value of brands, ideas, processes and creations in the climate change arena including carbon calculators, renewable energy innovations and clean tech and green tech products, services and solutions. Our IP team includes specialists in competition law and employment law, as well as lawyers with backgrounds in science and technology. Our European and international connections mean that we regularly advise on complex cross-border IP issues.

We act for a wide range of climate change clients, from technology start-ups to energy management companies, from inventors of carbon calculators to the suppliers of innovative renewable energy methodologies and processes. We work with patent and trademark agents and tax advisers to ensure our clients get the most out of their assets.

Our services include

- identifying what rights subsist
- advising as to means of protection, brand protection
- registration and review of registrations
- competition
- patent, trademark copyright and design licenses
- international licenses
- assignments, acquisitions and disposals
- VAR/distribution agreements
- development agents, software licensing
- bespoke software agreements
- maintenance
- encryption technology
- Escrow
- domain name protection and dispute resolution
- ASP, hosting and licensing

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## environment

Companies operating in the climate change sector are not immune from compliance with environmental law and regulation, which is rapidly increasing in both scope and complexity.

Organisations of all sizes in the climate change sector must grapple with an ever-developing maze of environmental legislation and regulation covering, for example, basic permission to operate, proper handling and disposal of the waste streams, emissions, liability for contamination, etc. The cost, and potential criminal penalties, of non-compliance can be very significant. This coupled with the potential loss of reputation means that all organisations need to be aware of their potential liabilities.

All organisations need to understand the implications of environmental law, operate in a way that is compliant with current legislation and be aware of and prepared for future legal developments to avoid unpleasant surprises, gaining, where possible, a competitive advantage.

Our services include advice on:

- contaminated land
- Green Leases
- water pollution and protection
- wildlife and habitat issues
- waste management licensing and permitting, duty of care obligations, storage, treatment and disposal issues
- obligations under the Packaging Waste Regulations and other producer responsibility legislation such as WEEE/RHOS and end of life vehicles
- Environmental Permits and other permitting issues, such as applications, compliance with permit conditions, permit transfer and site closure obligations
- responsibilities and liabilities in relation to the management of asbestos in buildings and the historic use of asbestos in industrial processes
- environmental nuisance issues such as noise, dust and odours
- the meaning and likely impact of forthcoming European and national environmental measures
- environmental litigation and dispute resolution
- appeals against regulatory decisions
- judicial review of administrative acts
- defending criminal investigations and prosecutions
- environmental insurance and other environmental risk management issues
- flooding
- emission trading
- appointment of environmental consultants

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## rural affairs

Climate change has, and will continue to have, a significant impact on rural affairs whether through bio-crops schemes, renewable energy opportunities, waste management issues or bio-diversity planning.

We have a dedicated Rural group whose clients include suppliers to the agricultural industry, owners of landed estates, landlords and tenants of agricultural land and those involved in country pursuits.

Within the Rural group we also have individuals who have qualifications in environmental science and associated subjects, a combination of rural legal expertise and environmental knowledge that makes them ideally placed to advise the rural community on the impact of climate change on the agricultural industry.

Typically, those areas where we are able to help include:

- environmental schemes and issues
- farm diversification and alternative land use
- common agricultural policies/subsidies/agri-environmental schemes
- statutory and non-statutory land designations
- forestry and woodlands

- waste management and contaminated land
  - planning
  - forward harvesting contracts for bio crops
  - renewable energy opportunities
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## charities and voluntary sector

Climate change legislation and regulation has a significant impact for charities and the voluntary sector. This is not only in respect of ongoing compliance issues, but also the sustainable credentials of an organisation are an increasing focus in attracting donors.

Our Charities group is acknowledged in key independent legal directories as one of the leading regional practices for the provision of charity law services and is ranked first in the south east, south and Thames Valley.

*Chambers UK, A Client's Guide to the Legal Profession 2009*, states that:

"this Charities team... never fails to give its all for clients."

Typically those areas where we are able to help include:

- advising trustees on the implications of climate change legislation and regulations and the discharge of their duties
  - the provision of commercial services to charities
  - the provision of charity law services to charities operating in the climate change sector
  - advising commercial organisations on contracts for not-for-profit entities
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## banking

We recognise the pivotal role that finance plays in the climate change sector. This can include:

- the borrowing arrangements of companies operating in the climate change sector
- the impact of climate change regulation and legislation on the terms of funding
- the financing options available for the implementation of certain sustainability initiatives by companies

Balancing the terms of the financial package on offer and the commercial objectives of the parties, whether lenders or borrowers, can be a delicate business, requiring expert input in order to achieve the optimum result. We regularly act for banks and financial institutions, as well as for corporate borrowers, in a field that is characterised by fast moving deals and the need to have up-to-the-minute knowledge of regulatory issues and the latest market practices.

We offer our climate change clients proactive advice based on sound understanding of their commercial objectives. We offer advice and assistance at every stage, which includes assisting in structuring transactions, the selection of the most appropriate solutions effecting introductions to service providers where necessary, as well as preparing and negotiating the documentation.

Our services include:

- negotiating bespoke lending and security documents
- guarantees and security
- independent advice to personal guarantors/spouses
- financing, guarantee and security arrangements for construction, PFI and other projects

- development lending and 'turnkey loans'
  - legal opinions
  - asset finance and leasing
  - international security and registration issues
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## planning

Planning law is undergoing considerable change not least in relation to the issue of climate change; technical up-to-date expertise is an ongoing requirement. Our Planning team is a highly specialised group with in depth knowledge of the workings of local planning authorities and we understand the political dimensions of the system so as to obtain the best results.

The team advises on all aspects of Town and Country Planning matters. We also provide expertise in sustainable development techniques and achieving carbon neutral development, minerals and waste issues, compulsory purchase, as well as advising on High Court appeals and judicial review.

Our planning services include:

- development work
  - drafting and negotiating s106, s38, s278 and all other planning related agreements
  - making and submitting planning applications and supporting planning statements
  - negotiating with planning officers
  - drafting and agreeing green travel plans and carbon emission reduction strategies
  - waste local management licenses
  - particular expertise with recycling centres
  - sustainable waste management
  - reduced carbon or carbon neutral development
  - renewable energy strategies
  - recycling strategies
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## tax

Our Tax team includes the co-author of the leading publication on environmental taxation and is very well placed to advise companies operating in the climate change sector on a wide variety of matters.

The team firmly believes that tax advice is not always about tax law and is able to deliver practical and commercial solutions to the case in hand.

The team is able to help with the following:

- advising on business structures
- the availability of tax breaks for research and development
- the tax implications of locating intellectual property in offshore locations
- funding/capital investment share relief
- the formation of employee share option schemes

## dispute resolution

Businesses will want to avoid disputes wherever possible. When disputes occur we work with our clients to provide solutions, using case analysis tools to allow management decisions to be made in conditions of uncertainty. We will then work to manage the litigation process to a mutually chosen result.

Our Dispute Resolution team has an impressive array of experience acting for businesses in the climate change sector in relation to disputes. Their knowledge of the sector in general enables them to provide a user-friendly service with a good understanding of technology and environmental issues when they arise.

*“Clients heap praise on the “well-trained and well-managed team” for its “accurate, expert advice...”*

*Chambers UK: A Client’s Guide to the Legal Profession 2008*

Examples of our recent work include:

- acting for a renewable energy start-up technology company in relation to a directors duties claim and shareholder dispute. Understanding the background to the dispute and the aims of the business going forward enabled us to give pro-active commercial as well as legal advice to enable the parties to seek to reach a pragmatic resolution to the dispute
- acting for an energy management company in a substantial multi-million pound claim from an acquisition involving in particular questions relating to the nature of the business, including the adequacy of energy management services share provided and accuracy of monitoring and measurement equipment
- acting for Cleantech, a company that organises conferences in the US and Europe for clean tech companies in relation to trademark registrations, passing off claims and unfair competition issues in the UK and Europe

## contact details

For information on any of the services detailed in this brochure, please contact:



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