**What role can the practice of law in the 21st century play in achieving sustainability for the common good and how could a Charter for Trees, Woods and People support this?**

**Introduction**

The practice of law, led by commercial law firms in partnership with environmental campaigning organisations and individuals, should be used as a sword to promote sustainability of the Earth for the common good. Relying on government and the policy that they advance is an inadequate mechanism for environmental protection. Whilst governments may now be moving in the right direction, their policy does not go far enough to ensure preservation. For example, the Paris Agreement of this year may have been the fastest ratified international treaty ever, but it has been considered inadequate by climate experts: it only comes into force in 2020, it has a weak enforcement mechanism and it gives the impression that climate change diplomacy is finished and concluded.

We must then ask ourselves how the practice of law, supported by commercial law firms, may address this gap. First, they can assist in checking and balancing existing laws and government institutions through expanding their pro bono practice to support applicants challenging dangerous environmental decisions at a domestic level through judicial review. Second, the principle of sustainability should be at the centre of firms’ practice of law. Lawyers have access to some of the biggest companies in the world through their work with them. This access should inform the way that they advise their clients to take sustainable options for the common good, as well as for their business future. Third, by supporting budding initiatives such as the Woodland Trust’s Tree Charter, law firms can indicate their commitment to the preservation of the environment they operate from, and they can therefore help to increase the effectiveness of these ideas.

**Pro Bono Practice**

In *Walton v Scottish Ministers*, Lord Hope aphorised that ‘the quality of the natural environment is of legitimate concern to everyone. […] If its interests are to be protected, someone has to be allowed to speak up on its behalf.’ The case exemplifies the value of judicial review as the principal route to challenging policy which may harm the environment. Yet the procedure remains inaccessible and expensive. Therefore, one of the key ways in which the legal profession can help to further the sustainable ambitions of our generation is through proactive pro bono practice.

The judicial review procedure is set out in the Senior Courts Act, as complemented by the Civil Procedure Rules. To be granted standing, section 31(3) of the former requires the applicant to demonstrate ‘sufficient interest’. However, a high standard of sufficiency has been established in jurisprudence such as the *Rose Theatre Trust* case. Judicial review has been further inhibited by reforms to Part 54 of the Civil Procedure Rules. For example, r54.5(5) and 5(6) have reduced the time limit for challenges to planning decisions and public procurement contracts. Law practitioners thus play an important role in ensuring that applicants understand and comply with these procedural technicalities.
Moreover, even if locus standi is obtained, the cost of the process is still extremely onerous. This was an issue addressed by article 9(4) of the Aarhus Convention 2005, which stipulates that access to environmental justice must not be ‘prohibitively expensive’. Nevertheless, shortly after its declaration, the UK was found in breach by the ECJ for failing to remove financial obstacles. It is true that this decision led to cost protection amendments to r45.41 to 44, meaning that adverse costs are now limited to £5,000 for individuals and £10,000 for other applicants, with a cross-cap of £35,000. However, the 2014 Meeting of the Parties to the Convention found that the UK was still not meeting its obligations in this regard. This was corroborated by the Compliance Committee’s first progress review in October 2015. To suppress this deterrent and mitigate the financial risk, pro bono practice by law firms is imperative.

It is notable that legal organisations, such as ClientEarth, are making remarkable headway in this area: the recent judicial review brought before the High Court on NO2 emissions in London was a landmark victory. But their resources are limited; their caseload is numbered. When attending the European Pro Bono Forum in Amsterdam this November, I was incredibly disappointed to see that the session on climate change was so poorly attended. Other causes, such as human rights, were deemed to be more pertinent, more accessible and more attractive to law firms. But let’s not forget that a safe and sustainable environment is a precondition to the right to life and other fundamental freedoms.

**Individual Firm Commitments**

While the legal profession may achieve sustainability at a macro scale, through access to justice, the practice of law on an individual firm level can also encourage sustainable practices on a micro level.

One way in which this is accomplished is through the commitment made by law firms to promote sustainability through the course of their business practice. For example, firms that are part of the Legal Sustainability Alliance (LSA) are all committed to the LSA’s broad principles; which range from measuring, managing and reducing the impact of their operations, to working collaboratively with each other to engage in public debate. These principles call for individual firms to work towards sustainability for the common good.

Furthermore, it is worth noting that firms are in the position to advise clients on the opportunities and obligations arising from and under environmental law. For example, Linklaters advises clients such as National Grid and BP which are undoubtedly impacted by the opportunities and obligations arising from environmental law because of their business sector and industry. Commercial lawyers are in a position to support clients and advise them about the ramifications and potential liabilities involved in any particular business transaction. This client access similarly allows firms to ascertain advice and knowledge of risk. Lawyers are in a position to highlight the need to comply with regulatory measures and to make clients aware of the potential financial risks and liabilities involved if they were found to be in breach of environmental regulation.

In reality, clients are often profit-driven: cost pressures take priority over environmental concerns stemming from their transactions or projects. Lawyers play a role in highlighting how the risks could entail large financial penalties that ultimately affect their clients’ bottom lines. For example, BP eventually agreed to pay $18.7 billion following the Deepwater Horizon Oil Spill, which was the largest corporate settlement in the history of the United States (U.S.). The U.S. Environmental Protection Agency (EPA) also announced that BP would be temporarily banned from new contracts.
with the government. This had a short-term impact on the firm’s bottom line, while also having long-term ramifications. It is clear that clients do indeed face substantial financial risk and lawyers are in a position to advise them on such risk. This would make clients aware of their obligations as well as opportunities arising from environmental law.

Law firms are thus in the best position to advise clients on the opportunities and obligations that stem from environmental regulations, effectively achieving sustainability for the common good on a micro level.

The Woodland Trust Tree Charter

To this end, despite not having a legally binding effect, documents like the Woodland Trust’s Charter for Trees, Woods and People can be advocated or supported by law firms and other organisations in order to increase public awareness of the importance of sustainability in society. Notably, these documents are capable of encouraging government to enact sustainability-friendly legislation in areas which are not always the subject of public attention. This particular Charter focuses on the preservation of trees and woodland, which are frequently portrayed as our guardians and protectors in British folklore and literature. On a practical level, trees in London remove 2.4 million tonnes of polluting CO2 emissions from the atmosphere. The Charter thus seeks to ensure the protection of ancient woodlands and to highlight the general contribution of trees to a healthy environment. By supporting the Charter implicitly through adjusting business practices, law firms within the affiliated LSA network could additionally assist with the drafting process of the various articles using their legal expertise.

Closing Comments

There are evidently a number of methods that law firms can employ to ensure that sustainability is achieved for the common good; from pro bono support of judicial review claims, to ensuring sustainability lies at the heart of their practice. Law firms can employ their corporate social outreach goals in order to protect the environment for future generations. The practice of law must attempt to fill the gap left by government for the continued sustainability and survival of the earth.