

ClientEarth litigation against Shell's Board

FAQs

Why is ClientEarth taking legal action against Shell's Board of Directors?

Shell is one of the world's largest oil and gas companies. As a market leader in one of the most climate-exposed industries, Shell is exceptionally vulnerable to the physical and transitional impacts of climate change – including foreseeable risks that are material to its business.

Yet, ClientEarth believes that there are sufficient grounds to assert that the company's Board is fundamentally mismanaging those risks, leaving the company ill-prepared for the low-carbon transition. That not only threatens global climate goals, it puts the company's long-term commercial viability – and therefore its investors' capital, including people's pension funds – at risk. ClientEarth is taking legal action to compel Shell's Board to strengthen its climate transition plans, in the best interests of the company in the long-term.

What climate risks is Shell facing?

Shell faces a number of material climate-related risks arising from the physical impacts of the climate crisis, the effects of the energy transition, and the increased likelihood of litigation linked to regulatory compliance and climate inaction – all of which compound in the long term.

For example, Shell's facilities and other infrastructure are heavily exposed to extreme weather events and rising sea levels caused by climate breakdown. This is particularly true of its offshore drilling platforms, and its power stations or refineries located in coastal areas.

Even more fundamentally, the company is also exposed to the transition risk resulting from regulatory, market and societal shifts spurred by the energy transition. That means that many of the company's assets, which typically require huge capital expenditure and have decades-long operating lives, are at serious risk of becoming stranded in future. As the energy transition progresses, the company is facing potentially massive write-downs.

Shell's Board has long accepted the existence of this type of climate risk to the company, and now also readily accepts the materiality of that risk in its annual reports. Yet its transition strategy fails to adequately address it.

What is wrong with Shell's climate strategy?

In 2021, Shell announced “a target to become a net-zero emissions energy business by 2050”, an ‘Energy Transition Strategy’, and reduction targets to reduce its Scope 1 and Scope 2 absolute emissions by 50% by 2030. The Board says that its strategy is fully consistent with the goal of the Paris Agreement to limit the increase in average global temperature to 1.5°C above pre-industrial levels.

But there are a number of serious shortcomings in the company's plans, including:

- Its net zero emissions target is, by the Board's own admission, not reflected in its operating plans or budgets.
- Its ‘Energy Transition Strategy’ contains strikingly low short and medium-term reduction targets, which are not even targets to reduce its absolute greenhouse gas emissions. Instead, they are targets to reduce the so-called ‘carbon intensity’ of Shell's products – which the company could even do while increasing its emissions into the atmosphere.
- And its 50% Scope 1 and Scope 2 emissions reduction target accounts for less than 10% of the company's emissions.

Instead of preparing the company for the net zero transition, and reducing emissions in line with what scientists say is needed to avoid catastrophic climate change, analyst research from September 2022 shows that the Board's flagship strategy would result in just a 5% reduction in net emissions by 2030.

On the ground, Shell continues to proceed with the development of new oil and gas fields, directly contrary to what the International Energy Agency says is necessary to limit warming to 1.5°C, while investing only a very small percentage of its capital in renewable energy. And the Board has failed to put forward a meaningful strategy to fully comply with a recent judgment of a Dutch Court, which had ordered the company to reduce its net emissions – including those from the fossil fuel products it sells – by 45% by 2030 compared to 2019 levels.

The longer the Board delays, the more likely it is that the company will have to execute an abrupt ‘handbrake turn’ to retain commercial competitiveness as the energy transition accelerates.

Why does ClientEarth say that Shell's Board is acting unlawfully?

Under English law, company directors have a duty to assess, disclose and manage material risks to the company. ClientEarth's claim is that the Shell Board's mismanagement of climate risk puts it in breach of their duties under the UK Companies Act.

Section 172 of that Act requires company directors to act in a way that they consider will best promote the success of the company for the benefit of its members as a whole. In doing so, they are required to have regard to a range of factors that includes the likely consequences of any decision in the long term. Under the Act, Shell's Board is also legally required to exercise reasonable care, skill and diligence in the discharge of its duties.

How is ClientEarth taking legal action?

ClientEarth is taking ‘derivative action’ against Shell in the UK, filing the action in the High Court of England and Wales. A derivative action is a claim brought by a shareholder of the

company, ultimately on behalf of the company, in this case in relation to alleged breaches of duty by the Board.

In a derivative action, the shareholder bringing the claim is effectively seeking to step into the company's shoes, to pursue the Board for wrongs allegedly committed against the company. ClientEarth is able to bring legal action as it is a shareholder in Shell.

In March 2022, ClientEarth notified the Board of its claim in a pre-action letter.

Who is supporting the claim?

ClientEarth's claim has received the support of a group of institutional investors collectively holding more than 12 million shares in the company. The group, includes, among others, UK pension funds Nest and London CIV, Swedish national pension fund AP3, French asset manager Sanso IS, Degroof Petercam Asset Management (DPAM) in Belgium, as well as Danske Bank Asset Management and pension funds Danica Pension and AP Pension in Denmark.

The group of investors backing ClientEarth's claim say the case is also in their interests as shareholders.

ClientEarth has also received letters of support from shareholders who stated that their position is aligned with the arguments that ClientEarth makes, including from UK local government pension scheme, Brunel Pension Partnership.

AkademikerPension, a Danish pension fund, had divested from Shell amid concern with the Board's transition strategy. They too wrote to ClientEarth, saying that if ClientEarth's claim was successful and Shell's strategy was to become Paris-aligned, the company could become an attractive investment again.

Similarly, ACTIAM, a Dutch asset manager which divested from Shell in 2020, wrote that it expected Boards of energy companies to adopt credible energy transition strategies and demonstrate their long-term viability and ability to create long-term value for shareholders.

None of the investors who have written in support of ClientEarth's case are financially supporting the claim.

What makes this case a 'world-first'?

ClientEarth's claim is the first attempt to hold a company's Board of Directors personally liable for failing to properly prepare for the energy transition. It represents a milestone in climate litigation: company directors can – and will – be challenged to uphold their legal duties to manage climate risk, by preparing their companies for that transition.

What does ClientEarth aim to achieve with this case?

ClientEarth hopes to encourage or compel Shell's Board to strengthen its management of the material and foreseeable climate risk facing the company.

What happens next?

ClientEarth is asking the High Court for an Order which requires the Board to adopt a strategy to manage climate risk in line with their duties under the Companies Act, and in

compliance with the Dutch Court judgment. The Board has said that it will robustly defend the claim.

It is now up to the High Court to decide whether to grant ClientEarth permission to bring the claim.

Who is representing ClientEarth?

London-headquartered boutique litigation firm Pallas Partners, led by Partner William Hooker, is acting pro bono for ClientEarth on the claim. The firm specialises in high stakes litigation, international arbitration and investigations. The firm litigates cutting edge and complex cases, including securities litigation in the UK and Europe. Pallas launched in February 2022.

Edward Brown KC, Daniel Saoul KC, Judy Fu and Sam Goodman of counsel are also acting in the case.

Lawyer profiles:

Prior to joining ClientEarth, **Paul Benson** spent more than ten years in private practice, primarily at 'magic circle' law firm Freshfields Bruckhaus Deringer LLP. There, he specialised in commercial litigation and contentious environmental matters, acting for multinational companies on some of the most complex, high-profile disputes of the last decade.

Before joining ClientEarth, **Sophie Marjanac** was a senior lawyer in the environment and planning law practice of top-tier Australian law firm, Clayton Utz. There, she advised many of Australia's largest corporates, including in the energy and resources sector, on a range of contentious and regulatory issues.

Prior to joining ClientEarth, **April Williamson** worked in highly-regarded practices at the law firms DLA Piper and White & Case. While in private practice, her work primarily concerned environmental regulation, major infrastructure and energy issues, working with major corporations, financial organisations and government departments.

Miriam Boxberg leads our investor and stakeholder engagement on the case. She is qualified as a barrister and brings prior experience advising companies in the oil and gas sector, including three years in the renowned international arbitration group at WilmerHale LLP. She also has a strong background in international law and human rights, and has worked as a Judicial Assistant at the International Court of Justice in The Hague.