



Climate Change and the Insurance Sector

Issue 2, November 2020

Welcome to the second of our monthly news bulletins, providing you with the latest updates on climate change developments as relevant to the insurance market.

November has certainly been a busy month for developments in the climate change space. It started with the settlement of the Mark McVeigh case in Australia, which centred around allegations by Mr McVeigh that his pension fund, Rest, was failing to adequately manage his investments with a view to the risks posed by climate change. When announcing the settlement, Rest acknowledged the risks of climate change and set out detailed initiatives to address the wide-spread risks posed by climate change (details of which are set out below). The phrase which I often refer to, namely 'agenda setting' litigation, could perhaps not be more true in this case, where again, it took a promised change in behaviour to allow the case to settle; this is the strategic goal of such litigation, with a view to encouraging similar behaviour across the sector.

In the UK at least, this month has demonstrated the government's and regulators' desire to ensure detailed and consistent reporting across the financial sector, with the implementation of mandatory reporting across some sectors from next year, in line with the TCFD. There is clearly a sense from both investors and regulators such as the FRC that current levels of reporting are not sufficient, and that needs to be remedied sooner rather than later. The month ended with the headline grabbing news of the UK Government's 'Ten Point Plan' for a Green Industrial Revolution, with a drive towards ensuring the delivery of net-zero emissions by 2050.

We hope you find this bulletin useful, and please do get in touch if there are any areas you would like to discuss in more detail.

Michelle Radcliffe, Senior Associate, CMS



Hot off the press



UK Government's 'Ten Point Plan' for a Green Industrial Revolution

This month, the UK government published a Policy paper entitled "The ten-point plan for a green industrial resolution", designed to assist with the transition to net zero emissions by 2050. The Ten Point Plan will mobilise £12bn of government investment, and potentially three times as much from the private sector, with the aim of turning the UK into "the world's number one centre for green technology and finance, laying the foundations for decades of economic growth by delivering net zero emissions in a way that creates jobs and allows us to carry on living our lives". The Policy references the plan to quadruple offshore wind capacity by 2030; develop 5GW of low carbon hydrogen production capacity by 2030; the pursuit of large-scale new nuclear projects subject to value-for-money; the end to the sale of new petrol and diesel cars and vans



by 2030 (10 year earlier than planned); investment in public transport; investment in 'green ships and planes'; the future-proofing of buildings; investment in carbon capture, usage and storage; protection of the natural environment; and the commitment to raising total R&D investment to 2.4% GDP by 2027 and in July pushing forward the next phase of green innovation, launching the £1bn Net Zero Innovation Portfolio. Mr Johnson referred to the plan as a "global template for delivering net-zero emissions", ahead of the UK hosting the UN climate change conference, COP26, in Glasgow this time next year. What will now follow is the publication of additional strategies including the Energy White Paper, Transport Decarbonisation Plan, the Industrial Decarbonation Strategy, the Heat & Building Strategy and the National Infrastructure Strategy.

<https://www.gov.uk/government/publications/the-ten-point-plan-for-a-green-industrial-revolution>



UNFCC Technology Executive Committee

The Committee met this month to focus on key areas of development to support countries in achieving the objectives of the Paris Agreement. The focus of the group is on technology, in areas such as climate-smart cooling solutions for sustainable buildings and technologies for coastal zones (including, for example, mangroves which provide effective natural defences against the risk of flood risk and damage), and looking at how countries determine their climate technology priorities. This again emphasises the focus on innovative climate technology, so as to promote economic growth and sustainable development.



Investor Pressure

The Institutional Investors Group on Climate Change (IIGCC) is the European membership body for investor collaboration on climate change, with the aim of mobilising capital for "low carbon transition and to ensure resilience to the impacts of a changing climate by collaborating with business, policy makers and fellow investors". Through the IIGCC, a group of 38 institutional investors overseeing more than \$9.3trn in assets, have written to 36 of Europe's largest companies (selected due to their exposure to decarbonisation risks) to call on them to properly reflect the implications of global commitments to limit temperature increase to well below 2°C and ideally below 1.5°C in their financial statements, providing them with a copy of 'Investor Expectations for Paris-aligned Accounts' published by the IIGCC. This document sets out details on the steps investors require companies to take on the issue. Where such expectations are not met, three courses of investor action are identified: engagement, voting and divestment. Audit Committee directors and auditors are identified as being accountable for delivering on investor expectations – "...accounts are key to how capital is deployed by management as well as investors. If the accounts leave out material climate risks, too much capital will go towards activities that put shareholders capital at risk. Worse still, this puts all our futures at risk".

<https://www.iigcc.org/news/leading-investors-call-on-europes-largest-companies-to-address-missing-climate-change-costs-in-financial-accounts/>

<https://www.iigcc.org/resource/investor-expectations-for-paris-aligned-accounts/>



PE firms launch One Planet Private Equity Funds (OPPEF) initiative

Five global private equity firms have launched the OPPEF initiative, with the aim of meeting the goals of the Paris Agreement. The founding members of OPPEF will collaborate with One Planet Sovereign Wealth Fund (SWF) Working Group, an international coalition established in 2017. The group of SWFs have been seeking to implement a framework on how to take account of climate change in their decision-making process, looking at how to integrate climate change analysis in the management of their assets.

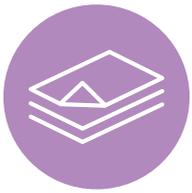
<https://oneplanetwfs.org/>





FCA speech highlights what insurers can do for the economy

On 22 September 2020, Ms Anna Sweeney (executive director) gave a [speech](#) at the Bank of America 25th European Financial CEO Conference titled “Ask not what the economy can do for insurers – ask what insurers can do for the economy”. The speech explored insurers’ role in economic recovery from Covid-19 and highlighted three things that insurers can do for the wider economy: (i) provide protection for significant financial losses; (ii) channel investment into a wide range of assets; and (iii) provide security of retirement income in the form of saving and annuities. Ms Sweeney stressed that although Covid-19 caused new financial risks, it also created opportunities for insurers as investors in long-term high quality liquid assets such as infrastructure, and could extend to the “*even bigger structural change of transition to a zero carbon economy necessary to avoid the worst impact of climate change*”, for example, financial low carbon alternative technologies.



Guidance/Consultations



Investment Association publishes Position Paper: Climate Change

The Investment Association (IA) is the trade body and industry voice for UK investment managers. This month, it published a paper confirming climate change as “*one of the biggest and systemic risks facing society and the planet today*”, outlining the industry’s commitment to climate change. Reference is made to the investment management industry as a “*global force*”, highlighting its role in assisting in the transition to a sustainable future, referencing the responsibility of investment managers to “*act in the best interests of clients and a major part of this is the generation of long-term returns*”, thereby requiring the consideration of material risks, including climate change as a systemic risk in the investment process. The paper includes seven commitments from the industry, and makes three requests of the government:

Commitments:

- a) Engage with investee companies on climate-related disclosures;
- b) Work with pension fund clients to help them meet their climate-related disclosure requirements;
- c) Develop investment managers’ TCFD disclosures;
- d) At fund level, support the improvement of sustainability-related disclosures;
- e) Work with initiatives to support Disclosures of Paris-Alignment of Portfolios;
- f) Support the FCA-PRA Climate Financial risk forum work; and
- g) Support the creation of investable opportunities.

Requests are made for large private companies to be required to report in line with TCFD (the UK government amending company law to require all large UK incorporated companies, public and private, to report in line with TCFD); the following through of the UK government’s announcement that it will issue its first sovereign green bond in 2021; and the facilitation by the UK government of sector-specific pathways to transition.

https://www.theia.org/sites/default/files/2020-11/IA%20Climate%20Change%20Position%2011.11.20%20_0.pdf





FRC Climate Thematic

During the course of 2020, the FRC undertook a thematic review of climate-related considerations by boards, companies, auditors, professional bodies and investors, the results of which were published this month in the “FRC Climate Thematic, Governance – How are boards taking account of climate-related challenges?”. The report summarises the findings by noting that *“It is the board’s responsibility to consider climate-related issues, but there is little evidence that business models and company strategy are influenced by integrating climate considerations into governance frameworks”*. The FRC assessed the Code-related reporting on a random selection of 60 premium-listed companies, its key finding that *“More companies are disclosing approaches to climate governance, but it is often unclear how consideration of climate-related issues informs key decisions or the business model or strategy. This consideration is even less obvious amongst smaller cap companies”*.

<https://www.frc.org.uk/getattachment/1b770484-d81e-4dca-8565-2c88415e801d/Governance-FINAL.pdf>



FRC Dear CEOs, CFOs and Audit Committee Chairs

In their 12 November 2020 letter, the FRC sets out key matters relevant to the 2020/21 financial reporting season, which includes reference to the expectation that users expect companies to provide full information about the future impact of climate change on the business and how the company’s activities affect the environment. The FRC refer to their recent thematic review, noting that *“...although reports usually comply with Companies Act requirements for narrative reporting of environmental matters, including climate change, most are not meeting investor needs...some statements did not mention climate change”*. The FRC sets out guidance to companies how to address climate change within their reports.

[https://www.frc.org.uk/getattachment/d0448212-fe6c-4752-8abb-aeb414510fec/FRC Year End Letter Nov 2020 Final.pdf](https://www.frc.org.uk/getattachment/d0448212-fe6c-4752-8abb-aeb414510fec/FRC%20Year%20End%20Letter%20Nov%202020%20Final.pdf)



UK joint regulator and government TCFD Taskforce: Interim Report and Roadmap

This month, HM Treasury published a report and roadmap outlining the UK’s approach to the implementation of TCFD recommendations, announcing its intention to make TCFD-disclosures mandatory across the economy by 2025, with a significant portion of mandatory requirements in place by 2023.

The Roadmap sets out an indicative path for the introduction of regulatory rules and legislative requirements over the next five years, presenting a coordinated strategy for seven categories of organisation: listed commercial companies; UK-registered companies; banks and building societies; insurance companies; asset managers; life insurers and FCA-regulated pension schemes; and occupational pension schemes. The aim is to allow a coordinated approach across these categories, so as to ensure the right information on climate-related risks and opportunities is available across the investment chain.

As to next steps, the UK regulators and government departments will progress the strategies set out in the Roadmap, subject to consultation and other statutory requirements, with a view to providing an update on progress in the 2022 refresh of the Green Finance Strategy. Reference is also made to the need to ensure a high level of comparability across jurisdictions, such that consistent disclosure is required, noting its support of the International Financial Reporting Standards (IFRS) Foundation’s proposal to create a new, global Sustainability Standards Board, in addition to the ongoing work on harmonisation by an alliance of voluntary standard-setting organisations.

<https://www.gov.uk/government/publications/uk-joint-regulator-and-government-tcfd-taskforce-interim-report-and-roadmap>





New disclosure rules for premium listed companies

As per the recommendations of the TCFD, the FCA announced this month that as of 1 January 2021, a new listing rule will be introduced requiring prominent listed companies to make better disclosures about how climate change is affecting their business, consistent with the recommendations of the TCFD. The rule will be introduced on a 'comply or explain' basis; the full Policy Statement and final rules to follow by the end of the year. In the first half of next year, the FCA intends to follow up with proposals to extend the rule to a wider scope of listed issuers, and consider enforcing mandatory disclosure as opposed to 'comply and explain'. The start of 2021 will also see the release of TCFD implementation measures for asset managers, life insurers and FCA-regulated pension providers, with the aim of bringing in rules for the largest firms by 2022.

<https://www.fca.org.uk/news/speeches/green-horizon-summit-rising-climate-challenge>



Introduction of due diligence on forest risk commodities

The Department for Environment Food & Rural Affairs this month published the responses and Government's response to its consultation on the introduction of due diligence on forest risk commodities. The consultation had centred around 3 main proposals, namely to prohibit larger companies from using agricultural commodities that have not been produced in line with laws in which they originate, require companies to undertake due diligence to check for risks of illegal deforestation in their supply chains, and require companies to publish information about their due diligence exercise – failure to comply with such rules resulting in fines. The consultation indicated strong support for these proposals, such that the Government will introduce an amendment to the Environment Bill, thereby placing new responsibilities on larger businesses using forest risk commodities in their supply chains.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/933985/due-diligence-forest-risk-commodities-government-response.pdf



Claims



Mark McVeigh

We reported on the Mark McVeigh case in last month's bulletin, which has this month settled just before the start of the trial. By way of a reminder, in 2018, Mark McVeigh sued his pension fund, Retail Employees Superannuation Trust (Rest), for allegedly failing to adequately manage the risks that climate change poses to its investments. When announcing the settlement, Rest acknowledges that "climate change could lead to catastrophic economic and social consequences and is an important concern of Rest's members. The superannuation industry is a cornerstone of the Australian economy – an economy that is exposed to the financial, physical and transition impacts associated with climate change". Rest acknowledge that climate change is a material, direct and current financial risk across many risk categories, including investment, market, reputation, strategic, governance and third-party risks. As well as taking steps to ensure that investment managers take active steps to consider, measure and manage financial risk posed by climate change and other relevant Rest risks, as a trustee, Rest will also require compliance with these efforts be reported back to it. The settlement announcement goes on to note Mr McVeigh's support of the following Rest initiatives:

1. "implement a long-term objective to achieve a net zero carbon footprint for the fund by 2050;
2. measure, monitoring and reporting outcomes on its climate related progress and actions in line with the recommendations of the TCFD;



3. *encourage its investee companies to disclose in line with the TCFD recommendations;*
4. *publicly disclose the fund's portfolio holdings;*
5. *enhance its consideration of climate change risks when setting its investment strategy and asset allocation positions, including by undertaking scenario analysis in respect of at least two climate change scenarios (including one scenario consistent with a lower-carbon economy well below 2°C this century);*
6. *actively consider all climate change related shareholder resolutions of investee companies and otherwise continue to engage with investee companies and industry associations to promote business plans and government policies to be effective and reflect the climate goals of the Paris Agreement;*
7. *conduct due diligence and monitoring of investment managers and their approach to climate risk;*
8. *continue to develop its management processes and implementing changes to its climate change policy and internal risk framework, which apply to all of the fund's investments, to reflect the above; and*
9. *seek to require that its investment managers and advisers comply with the above".*

Whilst not binding judicial authority, the settlement reached in this case is of great importance to the investment community, and provides a marker against which other asset and investment managers can judge their own approach to climate risks, not least to ensure they are not on the receiving end of a similar claim. In the UK, as set out above, the direction of travel is towards mandatory reporting in line with TCFD requirements, and the expectation would be that, coupled with investor pressure, this will ensure that investment managers are held to account on how they manage climate related risks. Full consideration will, however, need to be given as to what reassurance can be given to investors, so as to ensure that the commitments made are validated, thereby avoiding any reputational damage, or indeed allegations of 'green washing'.

<https://rest.com.au/why-rest/about-rest/news/rest-reaches-settlement-with-mark-mcveigh>



Kathleen O'Donnell v Commonwealth of Australia

The lawyer representing Mr McVeigh is now representing Ms O'Donnell in her claim against the Commonwealth of Australia, the Secretary of the Department of the Treasury and the CEO of the Australian Office of Financial Management. In her claim, she asserts that Australia is materially exposed and susceptible to the risks of climate change, and hence such risks are material to an investor's decision to trade in government bonds. Her claim centres around an alleged failure by the Commonwealth to disclose information about Australia's climate change risks that can influence the investor's decision to acquire such bonds. The claim seeks to represent other holders and investors of such bonds who have a similar interest in the proceedings, seeking a declaration that the Commonwealth has breached its duty of disclosure, and an injunction restraining the Commonwealth from further promoting such bonds until it complies with its duty of disclosure.

Like the McVeigh case, this matter again centres around the issue of disclosure, and demonstrates the focus on disclosure failures as a way to challenge behaviours, with the aim of ensuring adequate commitments on climate change risk, and transparency going forwards.

It will be interesting to see the extent to which this case provides any commentary on the duty of public entity directors to consider climate risk as part of their statutory duties; we will keep you updated with developments.



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