

Transition plan requirements consultation

ClientEarth response

Background

ClientEarth is an international non-profit environmental law organisation headquartered in London. Our Accountable Finance team focuses on the legal implications of climate change and other environmental issues for a wide spectrum of market participants, including banks, companies, investors, directors, professional advisers, stock exchanges and regulators.

This document responds to the Department for Energy Security & Net Zero (**DESNZ**) consultation paper on transition plan requirements.¹ Our response focuses on certain legal considerations relevant to transition planning regulation and does not attempt to answer all aspects of all questions raised in the consultation. Among other things, our response builds on the conclusions of the *Legal opinion on potential liability for climate-related transition plan disclosures* produced by Erskine Chambers in June 2025 (the **Legal Opinion**).²

We welcome further discussion on any of the topics included in our response. For any follow up questions, please contact Robert Clarke (rclarke@clientearth.org), Catriona Glascott (cglascott@clientearth.org) and Megan Clay (mclay@clientearth.org).

¹ [Transition plan requirements consultation](#).

² [ClientEarth opinion on potential liability for climate-related transition plan disclosures](#). - Erskine Chambers.

Top Lines

- ClientEarth supports the introduction of **mandatory** requirements for companies and firms in scope to develop, disclose **and implement** transition plans **aligned with** the temperature goal of the Paris Agreement.
- In our view, this option:
 - is necessary to deliver the Government's policy objectives, particularly to support an orderly transition in line with global climate goals;
 - is best aligned with the UK's responsibilities under international law to regulate the emissions of private actors in within its jurisdiction, which are clearer than ever following the ICJ's recent Advisory Opinion;
 - will deliver the full range of legal benefits available to companies from the transition planning exercise, over and above the benefits available from simply disclosing a transition plan (which may or may not be aligned with the Paris Agreement and / or implemented in practice); and
 - can be established without generating unacceptably heightened legal risk for reporting entities and their directors, including through the use of best / reasonable efforts qualifiers, where appropriate. Liability concerns do not justify the wholesale omission of alignment and implementation requirements.
- A 'comply or explain' framework would not be sufficient to deliver the stated objectives of the policy. It would perpetuate market failure and may not result in consistent transition plan disclosures – a central failing of the policy.
- Omitting an implementation requirement would send mixed messages to firms, undermine private sector transition in practice and leave firms exposed to greenwashing allegations associated with any 'say-do gap'.
- Omitting a Paris-alignment anchor altogether would undermine the contribution of the policy to the UK's climate commitments and international climate goals, and leave firms (especially high-emitting firms) exposed to the significant legal risk associated with excess emissions and failure to transition in line with the Paris Agreement.
- In our view, this analysis is supported by the Legal Opinion and a supplemental legal opinion from Erskine Chambers (forthcoming), which suggest that the legal risks associated with transition plan disclosure are often overstated, and that the legal benefits of transition plan disclosure (including in relation to compliance with pre-existing corporate disclosure requirements, mitigation of greenwashing risk, and compliance with directors' duties to the company) are underappreciated.

Responses to specific consultation questions

Q1: To what extent do you agree with the assessment of the benefits and use cases of transition planning set out in Section A? Are there any additional benefits or use cases for transition plans? Do you have any further insights and evidence on the purpose, benefits and use cases of increased and improved transition planning—including economy-wide impacts?

We broadly agree with the benefits and use cases identified in the Consultation, particularly those reflected in the Government's stated policy objectives, including support for an orderly transition in line with global climate goals.³ We note, however, that many of these benefits can only be delivered by a policy that is anchored in the Paris Agreement temperature goal (and the UK's own climate commitments, to the extent those can be considered aligned with the Paris goal). This is particularly true of the policy objective noted above and the ambition for transition planning to contribute to economy-wide transition, support global efforts to tackle the climate crisis, help the UK meet its domestic and international climate obligations and help regulators understand and act on systemic risks. An ambition neutral approach would not suffice to deliver these benefits.

The listed benefits are not exhaustive. In our view, the legal benefits available to companies from disclosing a well-prepared transition plan are often under appreciated. As explained in more detail in the Legal Opinion and in our response to Question 11 below, this includes benefits in relation to: compliance with pre-existing corporate disclosure requirements, mitigation of greenwashing risk, and compliance with directors' duties to the company.⁴ In this sense, the preparation and disclosure of a transition plan can reduce legal risk, rather than increase it. In our view, further legal benefits may flow from compliance with requirements to disclose and implement a transition plan that is aligned with the Paris Agreement, in that implementing a Paris-aligned corporate transition is the only way to effectively mitigate certain types of legal risk, particularly for high-emitting companies. This is also what is required to address a company's contribution to the human rights impacts of climate change under frameworks governing the human rights responsibilities of businesses, including the UN Guiding Principles on Business and Human Rights (**UNGPs**)

We would add further that a Paris-aligned transition planning requirement would best help the UK comply with its obligations under international law in relation to climate change. These obligations are clearer than ever following the International Court of Justice's (**ICJ's**) landmark 2025 Advisory Opinion on the obligations of states in respect of climate change, including the obligation on states to take the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction.⁵ Establishing a Paris-aligned transition planning requirement is one way in which the UK may begin to discharge these obligations. Such a requirement would help drive Paris-aligned transition in the private sector directly, and also provide transparency on progress towards it and any limitations or dependencies that are stalling progress. In turn this information will enable to Government

³ Page 14 of the Consultation.

⁴ See paras. 138 to 156 of the Legal Opinion: [pdf-200625-legal-opinion-on-transition-plan-disclosures.pdf](#).

⁵ Para. 428.

to adjust its policy response and ensure that it is adequately regulating private sector emissions in line with international law.

Finally, we note that specific transition planning requirements are capable of delivering benefits over and above those provided by sustainability related disclosure in general. Many of those benefits are related to the strategic and forward-looking nature of the exercise. Dedicated transition plan requirements would also help improve the quality and comparability of transition-related information that companies are already starting to disclose.⁶

Q4: Do you have any reflections on the additional costs and challenges of using transition plans? Please provide evidence where available to support your answer.

We are aware of concern in some quarters that producing and disclosing a transition plan may expose companies and their directors to an unacceptably heightened level of legal liability, particularly in circumstances where the company is unable to deliver on climate targets and commitments made in the transition plan for reasons beyond its control (e.g. where dependent on a change in government policy that does not materialise). This may be considered a cost or challenge of developing / using transition plans.

The Legal Opinion examines the legal standards which govern companies' and directors' liability for misstatements under English law. It concludes that:

- a regulatory requirement for companies to disclose a transition plan is not likely to result in materially heightened liability risk for companies or their directors;
- there are likely to be legal advantages for directors and companies from disclosing a well-prepared transition plan;
- from a liability perspective, there is no need to introduce new legal 'safe-harbours' for transition plan disclosure; and
- there are clear, practical steps directors and companies can take to minimise the risk of liability in respect of transition plan disclosures.⁷

The detailed analysis in the Legal Opinion is important and helpful – we urge Government to consider it in full and ask the Government to take the Legal Opinion into account as if it were incorporated into these submissions.

The key point for this Question 4 is that liability concerns do not appear to be well-founded in the applicable law. Under most of the relevant rules considered in the Legal Opinion, a 'dishonesty standard'⁸ applies, creating a high bar to liability for companies and their directors. Consequently, the Legal Opinion finds that *"companies whose directors act honestly and reasonably are unlikely to be*

⁶ EFRAG's *State of Play 2025* analysis of reporting under CSRD, for instance, found that transition plans are not highly detailed or standardised and that maturity levels in relation to transition planning and disclosure vary greatly between sectors and countries. See p.19 of [EFRAG State of Play 2025 Report 0.pdf](#).

⁷ See para. 12, p.4-5 and para. 170, p.45 of the Legal Opinion: [pdf-200625-legal-opinion-on-transition-plan-disclosures.pdf](#).

⁸ Meaning that a relevant person knew the relevant statement was untrue or misleading or was reckless in that regard. See para. 44, p.12 of the Legal Opinion: [pdf-200625-legal-opinion-on-transition-plan-disclosures.pdf](#).

liable and, in any event, well directed disclaimers may limit the risk of any liability even when directors do not live up to that standard.”⁹ Later, applying this analysis to specific liability concerns, the Legal Opinion notes that “liability will not arise simply because the targets and expectations provided for in a CRTP adopted in good faith are not met. Nor will liability arise simply from the fact that the steps identified in the plan are not in fact implemented. A board which acts honestly and which adopts appropriate processes in relation to the production of the CRTP will, in our view, have robust defences available to them in the event that a claim is brought or liability is alleged.”¹⁰

In light of this clarifying analysis, misplaced liability concerns should not impede the introduction of effective tools the drive private sector through the Government’s transition planning policy. In other words, such concerns should not be given undue weight as a “challenge” to the use of transition plans.

Q5: Do you have any reflections on how best to align transition plan requirements with other relevant jurisdictions?

International consistency is important to deliver the benefits of transition plan regulation while minimising the reporting burden for entities exposed to requirements in multiple jurisdictions (e.g. through operations or value chain). We support the UK’s moves to endorse the use of UK SRS S2 / IFRS S2, which is essential to ensure the UK’s framework does not fall short of the global baseline.

However, the need for consistency does not create a ceiling on what is required for effective transition plan regulation which contributes to an orderly transition and helps the UK discharge its obligations under international law. It’s important that the UK uses its leadership position to build on the UK SRS S2 / IFRS S2 baseline by making the disclosure and implementation of Paris-aligned transition plans mandatory, continuing to shape global norms that will determine the pace of private sector transition. UK SRS S2 / IFRS S2 can be built on in this way without sacrificing consistency and comparability – and efforts have been made on many fronts to demonstrate the potential for interoperability here.¹¹

Q7: [Climate mitigation] To what extent do the requirements in the draft UK SRS S2 provide useful information regarding the contents of a transition plan and how an entity is preparing for the transition to net zero? If you believe the draft UK SRS S2 does not provide sufficient information, please explain what further information you would like to see.

UK SRS S2 requires a range of disclosures related to climate risks and opportunities which cover information likely to feature in a transition plan, as well as the disclosure of information about any transition plan an entity has, if it has one. A debate can be had as to whether, if an entity has a transition plan in place, this information is sufficient to meet the needs of users of information disclosed by the entity. This, however, misses the obvious fundamental point (acknowledged in the consultation) that nothing in UK SRS S2 requires companies to develop a transition plan. As we explain in other responses

⁹ See para. 118, p.31 of the Legal Opinion: [pdf-200625-legal-opinion-on-transition-plan-disclosures.pdf](#).

¹⁰ See para. 167, p.44 of the Legal Opinion: [pdf-200625-legal-opinion-on-transition-plan-disclosures.pdf](#).

¹¹ See, for example, [Disclosing information about an entity's climate-related transition, including information about transition plans, in accordance with IFRS S2](#).

(particularly in our response to Question 10), a voluntary approach to transition planning will not be sufficient to meet the Government's stated policy objectives, to contribute meaningfully to an orderly transition or to provide consistent comparable data to investors and other users of transition plan information. The limits of voluntarism are well rehearsed and are not repeated in response to this Question 7. Relying on a voluntary approach would compound existing market failures.

In addition, we note that a key contribution of the TPT Disclosure Framework is the recommendation for a "strategic and rounded approach" which covers:

- i. the decarbonisation of the reporting entity / group;
- ii. the entity's response to climate-related risks and opportunities; and
- iii. the entity's contribution to economy-wide transition.¹²

The specific recommended disclosures track back to these organising principles. UK SRS S2 focuses almost exclusively on the entity's response to climate-related risks and opportunities, without specifically requiring entities to plan for decarbonisation and articulate their contribution to economy-wide transition. As a result, relying on UK SRS S2 alone would deprive the regulatory requirements of the key ingredients that would ensure that this policy contributes to the Government's stated policy objectives.

Q10: Please state whether or not you support Option 1, which would require entities to explain why they have not disclosed a transition plan or transition plan-related information. Please explain the advantages and disadvantages of this option.

ClientEarth does not support Option 1. A 'comply or explain' basis is not sufficient to meet the Government's stated policy objectives. By making the development and disclosure of a transition plan (or information about it) voluntary¹³, this approach would compound the central limitation of the ISSB S2 / UK SRS S2 approach to transition planning. To meet the Government's policy objectives, it must be mandatory for companies to develop and disclose a transition plan.

At this point, the limits of voluntarism and the need for mandatory requirements to deliver climate mitigation and risk management are extremely well-rehearsed. In 2024, for example, a report by academics at the University of Oxford highlighted the 'implementation gap' between climate pledges and corresponding action, calling for legally enforceable 'ground rules' to help deliver a just climate transition, and highlighting the benefits for business of a stable, certain legal enabling environment. Among other things, the report authors emphasised that mandatory rules are harder to reverse (and so prevent corporate backtracking), and level the playing field between leaders and laggards.¹⁴ Given the need for

¹² See p.17 of [disclosure-framework-oct-2023.pdf](#).

¹³ This is how DESNZ describe the effect of a 'comply or explain' requirement: "*Under this option, the government would not require companies to produce distinct transition plan documents separate from annual reporting, but entities would be free to produce transition plan documents **on a voluntary basis** if they choose to do so. Companies that have not published a transition plan, or disclosed transition plan-related information in accordance with UK SRS S2, would be compelled to explain why that is the case*" (**emphasis added**). See p.27 of the consultation.

¹⁴ See [Enforce net zero with global 'ground rules,' say Oxford academics | University of Oxford](#) and [Turning a groundswell of climate action into ground rules for net zero | Nature Climate Change](#). See also: [2021-11 Hale Net Zero Policy Memo.pdf](#).

rapid transition across the whole economy, this is essential to prevent ‘leakage’ of high emitting activities to actors that resist transition (and/or the provision of related disclosures). Similar calls have been echoed by expert bodies including the UN Climate Change High Level Champions¹⁵ and the UN High-Level Expert Group (**UN HLEG**) on the Net Zero Emissions Commitments of Non-State Entities.¹⁶

More specifically, independent assessments of corporate climate pledges provide evidence of continued market failure, showing that voluntary approaches cannot deliver the consistent, ambitious and high-integrity climate strategies we need to see from the private sector in order to deliver an orderly transition. For example, the New Climate Institute’s 2025 *Corporate Climate Responsibility Monitor* report¹⁷ found, despite growing awareness of what constitutes a credible corporate climate strategy, that the climate strategies of the companies assessed lacked integrity and that GHG emission reduction targets alone are no longer fit for purpose – they are dogged by accounting malpractices and transparency issues, making it hard to assess progress. An earlier study by EY in 2023 found that while 80% of UK listed firms claimed to be committed to becoming Net Zero by 2050, just 5% had publicly disclosed detailed, actionable transition plans, highlighting a significant ‘say-do’ gap.¹⁸

TCFD-aligned disclosure rules are the precursor for transition plan disclosure requirements and provide a relevant comparison. For UK listed companies, the disclosure requirements were introduced on a ‘comply or explain’ basis.¹⁹ For large UK companies, the standard is an enhanced form of ‘comply or explain’: there is a mandatory requirement to include climate-related disclosures in the non-financial and sustainability information statement²⁰, but companies may omit the whole or part of one of the required disclosures where the directors reasonably believe that such disclosure is not necessary for an understanding of the company’s business, in which case they must provide a clear and reasoned explanation of their reasonable belief.²¹ As explained below, the FRC’s own assessments of reporting under these requirements illustrate the limitations of these variations on a comply or explain approach, and a warning of the issues to avoid in relation to transition planning:

- The FRC reviewed compliance with the Companies Act requirements in a 2025 *Thematic Review*, finding that the quality of reporting was highly inconsistent. For example, the Review found that some companies failed to report all of the required information (such as climate targets), some governance disclosures were unstructured, some failed to provide any analysis of the resilience of the company’s business model in different climate scenarios, and some failed to explain how climate-related risks and opportunities were identified.²²

¹⁵ See the 2022 UN Race to Zero *Pivot Point* report: [r2z-pivot-point-report-4.pdf](#): “Voluntary action by non-state actors has had an enormous impact, but alone, it is not enough to achieve the goals of the Paris Agreement alone. We need to treat alignment to the goals of the Paris Agreement for states and non-state actors alike as a fundamental guardrail for the economy overall” (p.5).

¹⁶ See the 2022 *Integrity Matters* report: [high-level_expert_group_n7b.pdf](#), Recommendation 10: “Voluntary commitments can only take us so far. Two-thirds of the largest listed businesses still lack a net zero pledge, and of the one-third that do, only a portion have committed to an independent voluntary initiative. The majority of privately-listed businesses and state-owned enterprises have no net zero target at all. Regulation is therefore needed to level the playing field and transform the groundswell of voluntary commitments into ground rules for the economy overall” (p.33).

¹⁷ Available here: [Corporate Climate Responsibility Monitor 2025 | NewClimate Institute](#).

¹⁸ [EY Analyses Published FTSE 100 Transition Plan Material | EY - UK](#).

¹⁹ See UK Listing Rule 14.3.24R: [UKLR 14 - FCA Handbook](#).

²⁰ See Companies Act 2006 s.414CB(A1).

²¹ See Companies Act 2006 s.414CB(4A) and (4B).

²² See [Climate-related Financial Disclosures by AIM and Large Private Companies](#).

- In an earlier 2022 *Thematic Review*, the FRC reviewed climate reporting under the Listing Rules requirements. The review identified various issues. Some companies provided only high-level, generic information, climate disclosures were often disconnected from other elements of narrative and financial reporting, and some companies failed to explain how they had applied materiality to their climate disclosures and taken into account the guidance documents pointed to in the FCA's rules.²³

In both cases, these are issues that the Government should seek to pre-empt and address via a well-designed mandatory transition plan disclosure requirement.

Additionally, the limitations of comply or explain have been well-documented in other contexts. For example, a 2023 study on Canadian comply or explain disclosure rules in relation to corporate governance and gender equality warns that the effectiveness of comply or explain rules can be compromised when firms produce weak, thin or otherwise sub-optimal explanations for non-compliance and that, without appropriate engagement by oversight bodies, such rules may give firms too much discretion to define what it means to comply, making compliance performative. The study also suggests that comply or explain rules may provide a false comfort that slows substantive progress, if stakeholders reduce their attention on the relevant issues on the mistaken belief that regulators “have them covered”.²⁴ Replicating this in transition plan regulation would greatly undermine the Government's policy objectives.

As a result, we do not support the comply or explain basis and we are pleased to see Government acknowledge that “*this option may not result in consistent transition plan disclosures*”²⁵ – which would clearly be a major failing of the policy.

Q11: Please state whether or not you support Option 2, which would require entities to develop a transition plan and disclose this. Please further specify whether and how frequently you think a standalone transition plan should be disclosed, in addition to transition plan-related disclosure as part of annual reporting? When responding, please explain the advantages and disadvantages of this option.

Yes, ClientEarth supports Option 2 in that the development and disclosure of transition plans should be mandatory. This is subject to our further responses below in relation to the design of the regulatory requirement – specifically our support for explicit alignment and implementation requirements.

²³ See FRC TCFD disclosures and climate in the financial statements July 2022. For completeness, the FRC also conducted a *Thematic Review* on climate-related metrics and targets in 2023. This identified a series of related failings and areas for improvement – in summary, a “broad range of maturity” in the companies reviewed, with many struggling to present a clear message to investors. See [CRR Thematic review of climate-related metrics and targets](#).

²⁴ See [Corporate Governance and Gender Equality: A Study of Comply-or-Explain Disclosure Regulation](#) by Aaron A. Dhir, Sarah Kaplan, Maria Arabella Robles :: SSRN.

²⁵ See p.27 of the Consultation.

For all of the reasons given above in relation to Question 10, a comply or explain basis is not sufficient and the requirement to develop and disclose a transition plan (or at least the disclosure of information about the transition plan) should be mandatory.

As noted above in response to Question 4, the Legal Opinion concludes that there are likely to be legal advantages for directors and companies from disclosing a well-prepared transition plan. This includes the following:

- the discipline of having to prepare and disclose a transition plan is likely to promote better compliance with pre-existing less specific disclosure requirements which require the identification and disclosure of climate risks and opportunities, and reduce the prospect of liability arising under the ‘dishonesty standard’ for related statements made pursuant to those rules or otherwise;
- disclosure of a transition plan is likely to go some way towards protecting companies from allegations of greenwashing in relation to their responses to climate change under a range of legal rules by helping to substantiate any claims the company has made; and
- the “*enforced rigour*” of having to prepare and disclose a transition plan is likely to increase compliance by directors with the duties they owe to the company in relation to climate-related risks and opportunities, and reduce the overall risk of liabilities for breach of such duties arising.²⁶

In this sense, the preparation and disclosure of a transition plan can reduce legal risk, rather than increasing it. Introducing transition planning on a mandatory basis would help ensure that these legal benefits are available to a larger number of reporting companies.

In addition, a mandatory disclosure requirement would offer some protection to companies from politically motivated ‘ESG backlash’ cases, in that if they are legally bound to prepare and disclose a transition plan, they cannot be accused of acting out of a partial concern for climate change over other factors relevant to the business. Rather, the company is acting to comply with its legal obligations in the UK. For completeness, legal analysis commissioned by the TPT has confirmed that the disclosure of a transition plan prepared according to the TPT Disclosure Framework does not override or compromise the directors’ duties applicable under UK or EU law.²⁷ Concerns of that nature should be no impediment to the development and disclosure of a transition plan or the introduction of a mandatory disclosure requirement.

Q13: How do you think any new transition plan requirements should integrate with the existing requirements in UK law for some larger [pension] schemes to produce TCFD reports and to calculate the portfolio alignment metric?

Trustees’ transition plan requirements should build on existing disclosure rules and relevant guidance²⁸ by requiring these additional elements:

- a) strategic ambition and interim targets with a Paris-alignment anchor, and

²⁶ See paras. 138 to 156 of the Legal Opinion: [pdf-200625-legal-opinion-on-transition-plan-disclosures.pdf](#).

²⁷ See [itpn.global/wp-content/uploads/2024/11/TPT-Legal-considerations-for-transition-plan-preparers-1.pdf](#).

²⁸ Including TCFD reporting requirements, [TPT sector guidance for asset owners](#), and requirements stemming from pension schemes’ fiduciary duties as discussed in subsequent paragraphs of the response to this Q13

- b) mandatory forward-looking public disclosure and accountability.

In order to build effectively on existing requirements, the new transition plan rules should incorporate and emphasise the following key elements of those requirements:

- c) identification, assessment and management of the threat of climate change to whole portfolio value over the time-horizon of the scheme, including through use of appropriate climate scenario analyses, and
- d) explicit implementation actions to address this threat to retirement savings, reporting the outcomes of the actions and the theory of change behind them.

We will detail the reasons for each of these in turn.

a) Strategic ambition and interim targets with a Paris-alignment anchor.

New transition plan requirements present a critical opportunity to help spur pension schemes' fulfilment of their role in addressing the energy transition in line with the Paris Agreement. As the Consultation acknowledges, there are currently no legal obligations for pension funds in the UK to align their activities with net zero by 2050.²⁹ However, in order to deliver the Government's stated policy objectives³⁰ and to help meet the UK's obligations under international law in relation to climate change³¹ there must be requirements that steer action towards the targets set in the Paris Agreement, in the form of a 'Paris-alignment anchor' of some kind, as discussed in detail in our response to Q17 below.

The Paris-alignment anchor should be used to set strategic ambition, in line with the "strategic and rounded" approach recommended in the TPT Disclosure Framework,³² as well as to ground interim targets that provide clear, Paris-aligned stepping stones for transition. Without a Paris-alignment anchor, there is no guarantee that pension schemes will work towards transition at the pace required to meet the Government's national and international climate commitments, mitigate the worst risks of the climate crisis, and seize the opportunities presented by transition. A Paris-alignment anchor is also required to deliver the information investors need to make fully informed decisions. The transition plan requirements should provide this anchor, as we set out in our response to Q17.

b) Mandatory forward-looking public disclosure and accountability.

In our response to Q10 we have discussed the limits of voluntarism and the need for mandatory requirements to deliver climate mitigation and risk management, and we therefore support the application of Option 2 mandatory disclosure to pension schemes, as per our answer to Q11. We would suggest that for pension schemes, it would be appropriate for the TPR to issue penalties for failures to

²⁹ See page 32 of the [Consultation](#)

³⁰ Including support for an orderly transition in line with global climate goals, and the Labour manifesto commitment to "[mandate] UK-regulated financial institutions – including banks, asset managers, pension funds, and insurers – and FTSE 100 companies to develop and implement credible transition plans that **align with the 1.5°C goal of the Paris Agreement**" (emphasis added): [Change-Labour-Party-Manifesto-2024-large-print.pdf](#), p.58.

³¹ Including following the International Court of Justice [Advisory Opinion of 23 July 2025](#), notably at paras. 427 and 445

³² See [TPT sector guidance for asset owners](#), including at p.16, where it recommends a strategic and rounded approach that covers 1. Decarbonisation, 2. Responding to climate-related risks and opportunities, and 3. Contributing to whole of economy transition.

meet the transition plan requirements, as it does with other reporting or disclosure failures,³³ in order to ensure accountability.

It is important that pension schemes develop and disclose forward-looking transition plans that show how they will take practical measures to transition in line with the Government's national and international commitments, in addition to backwards-looking risk management disclosures that are currently required under existing rules for some schemes.

The public transition plan disclosures should also be accessible to savers: high integrity information on transition should be along the investment chain and not stop at pension schemes. Current TCFD reports, although published on scheme websites, are not generally aimed at savers and can be long, jargon-heavy and hard for savers to digest. TPR noted in 2024 that some schemes' climate-related disclosures had plain English summaries that were aimed at members and allowed the remainder of the report to be written with a more technical reader in mind.³⁴ Transition plan requirements should require similar good practice, with summaries or full disclosures in accessible language and format as well as being on scheme websites, in order to fulfil the requirement of being truly 'public'.

c) Identification, assessment and management of the threat of climate change to whole portfolio value over the time-horizon of the scheme, including through use of appropriate climate scenario analyses.

As the Consultation states, *"Pension schemes are exposed to climate-related risks, regardless of their size, the nature of their investments or their time horizons. When considering the financial implications of climate change, trustees and investment managers should understand the different implications of transition risks and physical risks for their portfolios."*³⁵ We agree, and indeed highlight that not only understanding these risks but also acting to manage them is well within the existing duties of pension scheme trustees.

Pension scheme trustees are bound by decision-making duties in respect of their investment powers, often referred to as 'fiduciary duties'³⁶, which are founded in case law, statute and regulatory guidance.³⁷ It is well understood that climate risk poses a financial risk^{38,39} to pension schemes, which makes it a

³³ TPR can issue a penalty notice and fine a scheme where it has failed to publish a climate change report on time, under Reg 9 of The Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021. In 2024, such penalties were issued to J.P Morgan Staff Pension Plan and the University of Oxford Staff Pension Scheme. [Penalty notices | fines | The Pensions Regulator](#)

³⁴ [Review of climate-related disclosures by occupational pension schemes 2024 | The Pensions Regulator](#)

³⁵ See page 16 of the [Consultation](#)

³⁶ We use 'fiduciary duties' in this Consultation response to refer to the basket of legal duties to which pension trustees are subject though – in a strict legal sense – these duties are not all fiduciary in nature.

³⁷ Of particular relevance to pension schemes is the clear imperative set down in The Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021 for trustees to assess, manage and disclose climate-related risks relevant to the scheme over the short, medium, and long term (see Schedule, Part 1, para. 1, 3, 12 and 13)

³⁸ See DWP, [Governance and Reporting of Climate Change Risk: guidance for trustees of occupational schemes](#), June 2021 at para.111; Bank of England [Climate change](#), as updated 22 November 2023; The Network for Greening the Financial System (NGFS) [Climate Scenarios for Central Banks and Supervisors](#), September 2022 and the November 2024 Phase V updates to the long-term scenarios provided by the NGFS, in which the anticipated GDP losses by 2050 under current policies were increased threefold from 5% to 15%. See: [NGFS publishes latest long-term climate macro-financial scenarios for climate risks assessment | Network for Greening the Financial System](#). Note also that these scenarios may still significantly underestimate the financial risks associated with the current trajectory of warming: [NGFS Scenarios and the Damage Done - Carbon Tracker Initiative](#); and [New NGFS Short-Term Scenarios For Central Banks & Supervisors - Carbon Tracker Initiative](#).

³⁹ The Institute and Faculty of Actuaries report, co-authored by an actuary from the Government Actuary's Department [Planetary Solvency – finding our balance with nature](#), warns that *"the global economy could face a*

critical consideration under each of the three broad pillars of fiduciary duties: duties to exercise the scheme's investment powers for their proper purpose,⁴⁰ duties to consider relevant factors,⁴¹ and duties to act in accordance with the prudent person test.⁴² Overlaid on these duties, statute and guidance already set out explicit requirements for trustees to identify, assess and manage the physical and transitional risks of climate change,⁴³ as we explained in detail in our letter to the 12 largest trust-based schemes in the UK⁴⁴ and in our subsequent Evidence to the Work and Pensions Select Committee on fiduciary duties.⁴⁵

Global warming is accelerating at an unprecedented rate⁴⁶, and physical climate impacts are increasing: the world has already reached at least 1.1°C of warming and climate change impacts (and associated financial risks) are crystallising around the world as weather and climate extremes create widespread adverse impacts and related loss and damage.⁴⁷ Impacts on the worst affected areas are expected to have a ripple effect across geographies and economies, from supply chain impacts to mass migration. This has grave implications for the health of the global economy and for asset and portfolio value. The Institute and Faculty of Actuaries has warned of a 50% loss in GDP by 2070 to 2090.⁴⁸ One recent report from the Risk Climate Impact Institute of leading French Business School Ecole des hautes études commerciales warns of a 40% hit to global equity valuations in the absence of robust emission abatement.⁴⁹ The impetus to act for pension schemes and the Governments alike is strong; to protect portfolio value for beneficiaries, to mitigate system-level risk, and to protect against the human impacts of climate change. A recent blog published by The Pensions Regulator (TPR) emphasises that managing such systemic risk is core to trusteeship.⁵⁰

However, despite their duties and increasing systemic risk, UK schemes continue to contribute to planetary breakdown. UK pension funds continue to invest in high emitting sectors, including, for

50% loss in GDP between 2070 and 2090, unless immediate policy action on risks posed by the climate crisis is taken.”

⁴⁰ This principle stems from the case of *Cowan v Scargill* [1985] 1 Ch 270, as framed in Law Commission report *The Fiduciary Duties of Investment Intermediaries* (LC2014), p. 109, consistent with case law including *Re Courage Group Pension Scheme* [1987] All ER 528 at 538, and *Hillsdown Holdings v Pensions Ombudsman* [1997] 1 All ER 862 at 879 and 880 (Knox J). For contemporary discussion see Lewis, A., *Sustainable Investing by Occupational Pension Scheme Trustees: Reframing the Fiduciary Duty*, Trust Law International, Vol. 36, No.3 2022

⁴¹ *Edge v Pensions Ombudsman* [2000] Ch 602 at [50] (Chadwick LJ), *Braganza v BP Shipping Ltd* [2015] UKSC 17.

⁴² Trustee investment powers must be exercised with the “care, skill and diligence” a prudent person would exercise when dealing with investments for someone else for whom they feel morally bound to provide. See *Re Whiteley* (1886) 33 Ch D 347 at 355, as applied in *Cowan v Scargill* at [50], where it was noted that good faith and sincerity are not sufficient: “Honesty and sincerity are not the same as prudence and reasonableness.” See also Pollard, D, “The “prudence” test for trustees in pension scheme investment: just a shorthand for “take care””, (2021) 34 TLI 215.

⁴³ DWP, *Governance and Reporting of Climate Change Risk: guidance for trustees of occupational schemes*, June 2021, at para. 96

⁴⁴ ClientEarth Evidence for the Work and Pensions Select Committee - February 2024 | ClientEarth

⁴⁵ ClientEarth's *letter to the UK's 12 largest trust-based pension schemes*, 6 December 2023, at para. 1.

⁴⁶ Full article: *Global Warming Has Accelerated: Are the United Nations and the Public Well-Informed?: “Global warming has accelerated since 2010 by more than 50% over the 1970-2010 warming rate of 0.18 °C per decade”*.

⁴⁷ Widespread and rapid changes are occurring in the atmosphere, ocean and ice caps, while weather and climate extremes in every region across the globe are leading to extensive adverse impacts and related losses and damages to nature and people, as reported in *IPCC AR6 Synthesis Report 2023, Observed Changes and Impacts*

⁴⁸ *Planetary Solvency – finding our balance with nature*.

⁴⁹ See *ercij publication how does climate risk affect equity valuations 0.pdf*.

⁵⁰ *Why managing systemic risk is core to trusteeship*

example, providing fresh capital to energy companies through bond investments.⁵¹ There is a reason that environmental campaigners are preoccupied with fossil fuel production; the scientific consensus is clear: projected CO₂ emissions from existing fossil fuel infrastructure without additional abatement would exceed the remaining carbon budget for 1.5°C. With every increment of global warming above 1.5°C multiple and concurrent hazards are intensified⁵² and therefore give rise to increased systemic risk and increased financial risk for the scheme portfolio. Schemes thus continue to facilitate activities that, according to the best available science, will push the world over the threshold of 1.5°C warming. This suggests that, at least in this crucial respect, schemes may be failing to properly manage climate risks to their portfolios.

Climate change represents a clear risk to a pension scheme's ability to provide for members' retirement over the time horizon of the scheme.⁵³ It is therefore in the best interests of beneficiaries that trustees take the actions within their power to influence carbon-intensive companies to transition in order to mitigate: (i) the negative financial consequences to the whole portfolio (i.e. across all investee companies) arising from climate change impacts; and (ii) the risks posed in particular to carbon-intensive energy sector companies by the transition.⁵⁴ Although both types of risk are required to be addressed in order to protect the value of the fund (and there is no bright line between the two), it is apparent that trustees may be focusing on the idiosyncratic risks attached to particular investments rather than the systemic risk across all investee companies. The new transition plan requirements present an opportunity to emphasise the necessity to manage system-level considerations in order to protect the value of the whole portfolio. This is in line with the "strategic and rounded" approach recommended in the TPT Disclosure Framework⁵⁵ (which includes contribution to whole-of-economy transition) and largely missing from UK SRS S2.

On a practical level, it follows that the trustees must consider whether the scheme's investment portfolio as a whole is best served by continuing to provide capital to economic activities that contribute to climate change impacts that will adversely affect the performance of other investee companies over the time-horizon of the fund.

⁵¹ While there is a lack of transparency in relation to occupational pension scheme investments, available data, including from Local Government Pension Schemes is indicative: Local Government Chronicle, *LGPS's £10bn fossil fuel investments sparks new divestment call*, 23 February 2021; Friends of the Earth et al., *Polluted Pensions? Clearing the air around UK Pensions and Fossil Fuels*, October 2021. See also Make My Money Matter *Fossil Fuels in UK Pensions report* (makemymoneymatter.co.uk), June 2023 at page 5, "UK pension funds are estimated to invest over £88 billion into the fossil fuel industry".

⁵² See *1.5°C: what it means and why it matters* | United Nations, in which it states, "every fraction of a degree of warming matters" because with "with every additional increment of global warming, changes in extremes and risks become larger", and The World Resources Institute, *Half a Degree and a World Apart: The Difference in Climate Impacts Between 1.5°C and 2°C*, 7 October 2018. See also McKay et al. *Exceeding 1.5°C global warming could trigger multiple climate tipping points*, 9 September 2022

⁵³ Department for Work and Pensions, *Governance and reporting of climate change risk: guidance for trustees of occupational schemes*, including at para. 29

⁵⁴ Even where schemes are aiming for buyout, a diligent analysis of fiduciary duty confirms that the appropriate time horizon for the scheme (and thus its risk management activities, including stewardship) remains one that takes into account the payment of benefits over the lifetime of the scheme's members. At the very least, this must remain the case for the trustees until any contemplated buyout is concluded, since to take any other approach would be inappropriate when a transaction may not reach a successful conclusion.

⁵⁵ See *TPT sector guidance for asset owners*, including at p.16, where it recommends a strategic and rounded approach that covers 1. Decarbonisation, 2. Responding to climate-related risks and opportunities, and 3. Contributing to whole of economy transition

Current regulation and guidance already provide explicit requirements for trustees to identify, assess and manage the physical and transitional risks of climate change.⁵⁶ It is essential that, in accordance with existing duties on trustees, the new transition plan requirements direct pension schemes to assess and understand the threat of climate change to overall portfolio value, including by interrogating appropriate and up-to-date climate scenario analyses,⁵⁷ and that trustees should be required to explain how they will manage this threat.

This explanation should comprise forward-looking disclosure about transition and decarbonisation actions in line with a Paris-aligned anchor, and set out any relevant resourcing required. Consideration of the actions to be taken and the resourcing involved will help to ensure that the necessary actions are considered at both a strategic and operational level, while a Paris-alignment anchor will help to ensure that these actions take place at the pace required to mitigate the systemic risks to the portfolio and for the Government to meet its national and international commitments. Such a requirement builds on TCFD requirements by incorporating a Paris-alignment anchor which will support and direct pension schemes' contribution to the transition and the Government's fulfilment of its commitments.

d) explicit implementation actions to address this threat to retirement savings, reporting the outcomes of the actions and the theory of change behind them.

Pension trustees' existing legal duties, the distinctive characteristics⁵⁸ and "unhedgeable" nature of climate risk,⁵⁹ as well as the urgency and scale of transition needed to mitigate the worst impacts (including financial impacts) of climate change, require effective stewardship actions to steer investee companies towards transition and protect financial returns.⁶⁰ Numerous stewardship tools are at pension schemes' disposal, including rules-based denial of capital and the use of robust investment conditions, which can be deployed with a Paris-alignment anchor. The new transition plan rules should require that trustees consider and deploy the most effective stewardship tools at their disposal, and that they justify that selection with an explanation of their theory of change.

These tools included in trustee deliberations should include both equity and bond engagement and investment tools and should incorporate (amongst other things): Paris-aligned investment conditions that are communicated to investee companies; rules-based denial of primary financing for investments that are not compatible with the Paris-aligned investment conditions, to help incentivise transition; and the use of covenants and other contractually binding mechanisms to make transition-related financing conditions legally binding where investment is provided on a conditional basis.

⁵⁶ The Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021, Schedule, Part 1 at para. 3, 5 and 13; and DWP, *Governance and Reporting of Climate Change Risk: guidance for trustees of occupational schemes*, June 2021, at para. 96

⁵⁷ The Institute and Faculty of Actuaries have found that many climate-scenario models in financial services are significantly underestimating climate risk: *Emperor's New Climate Scenarios – a warning for financial services*.

⁵⁸ As acknowledged by financial regulators globally and in the UK. See for example the Pensions Regulator in its *Climate Adaptation report*, October 2021

⁵⁹ See the Cambridge Institute for Sustainability Leadership, *Unhedgeable risk: How climate change sentiment impacts investment*, November 2015, at p. 30

⁶⁰ See the Institutional Investor Group on Climate Change (IIGCC), *Net Zero Bondholder Stewardship Guidance* at p. 2 and 19, The Department for Work and Pensions, *Reporting on Stewardship and Other Topics through the Statement of Investment Principles and the Implementation Statement: Statutory and Non-Statutory Guidance*, at paragraph 44, UN PRI *A Legal Framework for Impact*, p.80 para.44-45, and The Pensions Regulator *DB investment guidance* and *DC investment governance guidance* in which it is noted that, "it is up to the trustees to exercise stewardship and ensure, as far as they are able, that this is done through the whole length of the investment chain" and that this "is particularly relevant for the management of macroeconomic, systemic risks such as climate change, which cannot be sufficiently hedged through portfolio construction and asset allocation alone."

Shareholder engagement based on dialogue has, to date, proven less effective than hoped in pushing major companies in the fossil fuel sector to transition, with pension funds such as the Church of England taking the decision to divest after years advocating for engagement with the sector.^{61,62} It is therefore essential in relation to engagement that pension scheme transition plans are required to include: escalation strategies beyond dialogue, including voting, litigation and/or denial of capital; and the use of bondholder stewardship tools. Bondholder stewardship provides powerful tools for risk mitigation that many investors have yet to deploy, and fossil fuel financing in particular typically draws significantly greater sums from bonds than equities.⁶³ However, in ClientEarth's experience, there is little work being done to implement effective engagement and stewardship strategies in the bond market compared to the equity market.⁶⁴

The strongest voice for bond investors in the lifecycle of a bond comes at the point of financing or refinancing, with threat of denial of debt being a key lever.⁶⁵ In order to comply with their existing legal duties in relation to managing climate change risk and to act in the best interests of their beneficiaries, trustees should be communicating investment conditions in line with a Paris-alignment anchor to all relevant current and prospective investee companies, in order to provide the opportunity for those companies to adapt their activities and secure investment. Investment conditions can be imposed through various mechanisms including: (for passive debt portfolios) the use of rules-based index products integrating transition-related criteria⁶⁶; or via bond covenants requiring implementation of the issuer's transition plan so the issuer is incentivised to implement its transition plan over the lifetime of the bond.⁶⁷

For stewardship to be effective, it is also essential that the trustees integrate transition-related considerations in asset manager selection and require any asset manager investing on their behalf to act in the best interests of the scheme's beneficiaries,⁶⁸ and investment conditions used by the trustees should therefore be required to form part of the scheme's Investment Management Agreement or equivalent mandate / agreement with its asset managers to ensure alignment.

⁶¹ Reclaim Finance, The Sunrise Project and the Sierra Club, *Who's Managing Your Future?*, June 2023

⁶² Mooney A and Wilson T, *Church of England dumps oil majors over climate concerns*, Financial Times, 22 June 2023

⁶³ Cojoianu et. al., *Does the fossil fuel divestment movement impact new oil and gas fundraising?* Journal of Economic Geography, Volume 21, Issue 1, January 2021, p. 141–164, "Bank loans were the preferred means of fundraising for the oil and gas sector (c. 64% of total fundraising over the 2000–2015 period), followed by bonds (26%) and equities (10%)"

⁶⁴ Including researching the recent TCFD and sustainability reports of the UK's 12 largest trust-based pension schemes in preparation for the letters above.

⁶⁵ Hoepner A and Schneider F, *Exit vs. Voice vs. Denial of (re)Entry*, August 2022, including at p.12: "threatening to Deny Debt when a firm is looking to refinance provides for the strongest Voice power."

⁶⁶ Such as the global bond index developed by the University of Cambridge and Bloomberg Index Services Limited. See: [Cambridge research: First global bond index to address fossil fuel expansion | University of Cambridge](#) and as to uptake: [Asset owners throw weight behind bond index aimed at driving decarbonisation | News | IPE](#). The index rules exclude companies engaged in fossil fuel expansion while allowing for companies to re-enter the index if they change their behaviour to align with its rules.

⁶⁷ The Institutional Investor Group on Climate Change (IIGCC) and Paris Aligned Investment Initiative have recommended the use of issuer covenants to provide such an accountability mechanism. See: the IIGCC *Net Zero Bondholder Stewardship Guidance* discusses the use of climate covenants in bond documentation, including at p. 2, 16 and 17; and the Paris Aligned Investment Initiative's *Net Zero Investment Framework*, at p.18, refers to the use of covenants and KPI linked bonds as mechanisms to ensure alignment criteria are met during the lifetime of the bond

⁶⁸ The scheme's trustees cannot delegate responsibility in this regard to asset managers. See The Department for Work and Pensions, *Governance and Reporting of Climate Change Risk: guidance for trustees of occupational schemes*, June 2021, at para. 28

The requirements we recommend at a) to d) above should not be onerous for schemes: they build on existing requirements and are in line with statutory disclosure rules,⁶⁹ Transition Plan Taskforce guidance,⁷⁰ and pension schemes' fiduciary duties. The “*enforced rigour*” of preparing and disclosing a transition plan meeting these requirements may help trustees comply with their fiduciary duties⁷¹, including to consider fairness to beneficiaries in the near and longer term, because trustees will have to appraise and address climate risk to the portfolio and the viable actions available for addressing that risk.

Q15: To what extent do you support the government mandating transition plan implementation and why? When responding, please provide any views on the advantages and disadvantages of this approach.

ClientEarth supports the introduction of an explicit requirement for companies to implement their transition plans. We consider that:

- this approach is necessary to deliver against the Government's stated policy objectives
- a clear implementation requirement would contribute to legal certainty and help mitigate company legal risk associated with a 'say-do gap';
- this approach would drive higher quality dependency disclosures; and
- the challenges associated with implementation (and the legal risk such a requirement might entail) are navigable through the calibration of an appropriate conduct standard (e.g. best / reasonable endeavours).

These points are explained further below.

Transition plans are more than a reporting tool – they are a key lever to deliver real-world decarbonisation. This is reflected in the Government's stated policy objectives, particularly that transition planning requirements should “*support an orderly transition in line with global climate goals*”⁷². The risk here is that a 'disclosure-only' regime (even if that disclosure is mandatory) fails to level the playing field between companies already leaning into transition and others, and leads to 'transition on paper only' that does not translate into real world decarbonisation and progress towards a just transition. In other words, such an approach could exacerbate the 'say-do gap' between a company's stated plans and their actions. This approach would create an unhelpful 'rolling amnesia' in the sense that companies are considered compliant with regulation as long as they disclose targets and action plans, but are not tested on their implementation over time – failure to deliver would simply be overlooked and forgotten. On this point, it is worth noting that the original impact assessment for the EU's Corporate Sustainability Due Diligence Directive (**CSDDD**) highlighted, in relation to pre-existing due diligence requirements, the limitations of a disclosure-only regime: “*Voluntary action by companies [is] not leading to a level playing*

⁶⁹ As per Part 2 of the Schedule to The Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021, including at para. 27(a),(d) to (i), and (k)

⁷⁰ See TPT sector guidance for asset owners, including at p.16, where it recommends a strategic and rounded approach that covers 1. Decarbonisation, 2. Responding to climate-related risks and opportunities, and 3. Contributing to whole of economy transition.

⁷¹ Extending the logic of the Legal Opinion, which considered the legal benefits of preparing a transition plan in relation to corporate director duties: pdf-200625-legal-opinion-on-transition-plan-disclosures.pdf.

⁷² See p. 14 of the Consultation.

*field for the sustainability transition:...a voluntary approach to due diligence has not been fully effective in mainstreaming due diligence practices and creating level playing field. Reporting rules have proven in the past to incentivise frontrunner companies only*⁷³.

Clearly, this would not deliver against the Government's own objectives or contribute in practice to meeting global climate goals. It would also be a source of legal risk for firms in the sense that stakeholders may resort to court and quasi-judicial processes to hold companies to their targets and challenge perceived greenwashing. The 'say-do' gap has been described as the primary contributor to greenwashing risk⁷⁴, and Sacha Sadan, the FCA's Director of Sustainable Finance has said that "closing the say-do gap is key to tackling greenwashing"⁷⁵. In the context of CSDDD / the EU Omnibus proposals, legal scholars have warned that removing the implementation obligation would create "*a risk of encouraging empty promises and greenwashing. Outcomes which would increase the liability exposure of companies*"⁷⁶.

Meanwhile, the legal risk associated with greenwashing in general is increasing, particularly in relation to climate change. The number of climate-washing⁷⁷ cases filed against corporate actors has increased sharply in recent years. In 2024 at least 25 climate-washing cases were filed, and a further 53 were filed in 2023. This brings the total number of climate-washing cases to 160. This is in a broader climate litigation context in which an estimated 2,967 climate cases have been filed to date, the majority since the Paris Agreement.⁷⁸ Moreover, climate-washing cases have a relatively high success rate and can result in significant financial penalties. For instance, in 2024, the Australian Securities and Investments Commission (**ASIC**) brought a successful court case against Mercer Superannuation for misleading marketing of its funds, which falsely claimed to exclude fossil fuels, alcohol and gambling investments. The court ordered Mercer to pay a financial penalty of AUS\$11.3 million.⁷⁹ Although this example is from another jurisdiction, there have been a significant number of such challenges in the UK, with recent interventions by the Advertising Standards Authority being particularly worthy of note.

Despite the relatively narrow circumstances (explained in the Legal Opinion) in which corporate or director liability for misleading statements about transition might be expected to arise, a regulatory regime that requires companies to disclose climate targets and plans but not implement them leaves companies open to this type of greenwashing risk. It also does little to help companies address the fundamental legal risks (discussed in our response to Question 17) which are associated with excess emissions and failure to transition in line with the Paris Agreement – to which a disclosed but not implemented transition plan would provide little defence. As has been pointed out in relation to the transition planning obligation in the Corporate Sustainability Due Diligence Directive, an incomplete requirement like this would also send dissonant mixed messages to companies about the expectations

⁷³ See para. 5.1.1 of [EUR-Lex - 52022SC0042 - EN - EUR-Lex](#).

⁷⁴ [How to avoid disputes as scrutiny of bank's ESG claims rises](#).

⁷⁵ [Finance for positive, sustainable change | FCA](#).

⁷⁶ [Letter Legal Scholars EU Art 22 CSDDD 2025.pdf](#).

⁷⁷ i.e. a climate-related subset of greenwashing.

⁷⁸ See [Global-Trends-in-Climate-Change-Litigation-2025-Snapshot.pdf](#). Note that the LSE Snapshot report refers specifically to "climate-washing" rather than "greenwashing" cases. The number of greenwashing cases not limited to climate change would be higher.

⁷⁹ See p.40 of [Global-Trends-in-Climate-Change-Litigation-2025-Snapshot.pdf](#), [Australian and Pacific Climate Change Litigation](#), and [24-173MR ASIC's first greenwashing case results in landmark \\$11.3 million penalty for Mercer | ASIC](#). Also in 2024, ASIC secured a similar financial penalty of AUS\$12.9 million against Vanguard Investments Australia Ltd in relation to false claims about the application of ESG screening criteria to its funds: [Australian and Pacific Climate Change Litigation](#).

to which they are subject, undermining legal certainty about what they are being asked to do.⁸⁰ A coherent regime in which the disclosure requirement is backed up by a clear implementation expectation would help companies mitigate their greenwashing risk insofar as it would nudge them to reduce the ‘say-do’ gap. This would also align and support compliance with the requirement under IFRS S2 / UK SRS S2 for companies to report quantitative and qualitative information about the progress they have made against disclosed climate plans.⁸¹

We would also expect an implementation requirement to drive higher quality disclosure by companies of the limitations and dependencies which hold back full implementation, providing Government with information necessary to develop better policies to drive climate mitigation and address climate risk. The implementation obligation pushes companies to confront these hard truths and disclose them, reinforcing the positive feedback loop which a robust transition planning regime can deliver between Government and private sector action. Without such a requirement, companies would lack the incentive to grapple with the reality of implementation challenges and may make thinner, more superficial disclosures.

We agree with Government that the implementation requirement would need to be flexible enough to recognise good faith efforts which are limited by uncertainties, dependencies or circumstances beyond the company’s control, while delivering an appropriate level of accountability for implementation failures. In our view, this balance can be achieved, and concerns about undue legal liability can be allayed, through careful calibration of the conduct standard which conditions the implementation obligation. The key point is that this requirement need not be absolute.

Subject to the progress of the omnibus package, the EU’s CSDDD included an obligation on firms to *“adopt and put into effect a transition plan for climate change mitigation which aims to ensure, through best efforts, that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1,5°C in line with the Paris Agreement and the objective of achieving [the EU’s climate neutrality objectives].”*⁸² The recitals to the CSDDD and independent commentary⁸³ make clear that the implementation duty should be understood as an *“obligation of means and not of results”*. As explained in recital 73 to the CSDDD, this means that *“due account should be given to the progress companies make, and the complexity and evolving nature of climate transitioning. While companies should strive to achieve the greenhouse gas emission reduction targets contained in their plans, specific circumstances may lead to companies not being able to reach these targets, where this is no longer reasonable.”*⁸⁴ The use of “best efforts” further softens the obligation in relation to the goal of ensuring compatibility with the Paris Agreement, recognising the considerations that weigh against making this absolute.

⁸⁰ See The Shell Case and the Corporate Climate Transition Plan Obligation: *“Under the proposed Omnibus Simplification Package, this plan obligation will be weakened. The most significant proposed change in this regard is the removal of the obligation to put into effect the transition plan. This removal creates legal uncertainty and the risk that the adaptation of a transition plan becomes an exercise on paper, without any real-life improvement [...] Unfortunately, the Omnibus proposal and the removal of the obligation to put the transition plan into effect even create more ambiguity and uncertainty. This all could seriously undermine the effectiveness of the transition plan obligation, which is far from a reassuring conclusion”*.

⁸¹ See IFRS S2 para. 14(c). See also Disclosing information about an entity’s climate-related transition, including information about transition plans, in accordance with IFRS S2, p.56 on *Quantification*.

⁸² Article 22: Directive - EU - 2024/1760 - EN - EUR-Lex.

⁸³ See Section E of the legal analysis of CSDDD produced by NGOs Frank Bold and ClientEarth: 66ebddf2732e0635b15528b4_FrankBold-CSDDD-report-20240917-v4.pdf.

⁸⁴ Recital 73: Directive - EU - 2024/1760 - EN - EUR-Lex.

In the UK context, a best or reasonable efforts / endeavours qualifier could be used to introduce flexibility into the requirement to implement, alongside explicit provision for disclosures of the uncertainties and dependencies that have limited the company's ability to implement fully, or the reasons for a change in approach. These concepts have specific meaning in English law. Best endeavours is a higher standard, while reasonable endeavours provides more scope for commercial interests, cost etc. to be taken into account. Much commentary and guidance is available on these concepts⁸⁵ and the Government should consider the full spectrum of the possible strength for the implementation obligation. For present purposes the key point is that it is not necessary to avoid the implementation obligation altogether to address any concerns about the liability risk that such an obligation might entail.

Of course, the extent of accountability for non-implementation would also depend hugely on the design of the implementation obligation, the means through which it is introduced into law, and the provision made for its enforcement. As the Government acknowledges in the consultation, this is complex and would take time to design and implement. Conscious that the Government is "*not seeking stakeholder views on the accountability mechanisms for any future requirements*"⁸⁶ at this stage, we simply urge Government to consider this carefully. Given the urgency of climate mitigation, it may be that a phased approach is the best way to introduce the mandatory development and disclosure of plans as soon as possible, while allowing time for subsequent consultation on the shape of the implementation requirement. Any significant delay, however, would be accompanied by significant risk.

The link between effective transition plan regulation and the UK's obligations in relation to climate change under international law is considered in light of the ICJ's landmark 2025 Advisory Opinion on the obligations of states in respect of climate change in our response to Question 17, below. As a final brief comment in response to this Question 15, we note the requirement under international law for states to put in place appropriate rules and measures to regulate the emission of private actors within their jurisdiction or control, accompanied by appropriate enforcement and monitoring to ensure their implementation.⁸⁷ We question whether a regulatory framework that does not require transition plans to be implemented (on a basis that recognises genuine limitations and dependencies) is consistent with this principle.

Q16: In the absence of a legal requirement for companies to implement a plan, to what extent would market mechanisms be effective mechanisms to ensure that companies are delivering upon their plan?

Although mandatory disclosure may provide a limited incentive for leading firms, absent a legal requirement for companies to implement their plans, market mechanisms will not in our view be effective to ensure that companies deliver upon their plans. As noted under Question 15, this could result in a 'transition on paper only', without commensurate reductions in real world emissions or progress towards whole-of-economy transition, undermining the Government's policy objectives and the benefits of the transition planning requirement. The Government must therefore consider how to introduce requirements and accountability mechanisms that ensure implementation.

⁸⁵ See, purely for example: "[No guarantees but I promise to try](#)" – what do endeavours obligations mean? | Inside Disputes | Global law firm | Norton Rose Fulbright.

⁸⁶ Page 14 of the Consultation.

⁸⁷ See paras. 282 and 428.

For the purposes of this question, we interpret ‘market mechanisms’ in two ways:

1. Market or investor-driven legal scrutiny of transition plan disclosures made by companies; and
2. Market mechanisms in the usual sense, meaning disclosure, investor decision-making and engagement, market pricing, consumer choices and the like.

As to 1, it is clear from the Legal Opinion that the potential liability of companies and directors for misleading disclosure does not introduce an obligation to implement ‘by the back door’. The Legal Opinion shows that the circumstances in which liability may arise for companies and their directors are relatively narrow. It clarifies that there is no liability simply for turning out to be wrong or for failing to achieve a target because of factors beyond the company’s control – the applicable legal tests are far more nuanced and demanding than that, generally requiring dishonesty or recklessness at the time the statement was made. As noted in relation to Question 4, above, the authors of the opinion comment specifically that:

While the [transition plan] will inevitably include forward-looking statements, liability does not arise just because those forward-looking statements prove in the future to have been inaccurate – that is, if targets and expectations are not met or steps not taken. In a nutshell, liability could arise only if a factual statement made at the outset in relation to those forward-looking statements was wrong at the time the statements were made. Further, as also explained above, even if such a factual statement made at that time was wrong, liability does not follow automatically. On the contrary, in many instances, liability will arise only if that inaccurate factual statement was made dishonestly by virtue of the legal rules which we have described above.

[...]

The consequence of our analysis is that liability will not arise simply because the targets and expectations provided for in a [transition plan] adopted in good faith are not met. Nor will liability arise simply from the fact that the steps identified in the plan are not in fact implemented. A board which acts honestly and which adopts appropriate processes in relation to the production of the [transition plan] will, in our view, have robust defences available to them in the event that a claim is brought or liability is alleged.⁸⁸

Consequently, it would be wrong to assume that the disclosure of targets and implementing actions, combined with the prospect of liability for misleading disclosure, create a *de facto* obligation to implement the transition plan. These rules do not plug the gap that an explicit obligation to implement would leave. Relying upon them to deliver accountability for those companies that fail to implement their plans would be a false comfort, and if Government decides against introducing an obligation to implement, it will need to put forward clear alternative reasons for that decision.

As to 2, it is clear from experience that market mechanisms in the usual sense should not be relied upon to ensure that companies deliver upon their transition plans either. As explained in detail in response to Question 10, there is ample evidence of the uneven quality of voluntary climate commitments, transition planning, and the related disclosure to market. The need for mandatory regulation has been well-established.

⁸⁸ See paras. 165 and 167, p.43-44 of the Legal Opinion: [pdf-200625-legal-opinion-on-transition-plan-disclosures.pdf](#).

As might be expected, this translates into a lack of accountability (market, legal or otherwise) for companies that renege on or otherwise fail to meet their climate targets, which has been helpfully documented in a 2025 study titled *Limited accountability and awareness of corporate emissions target outcomes*.⁸⁹ This study identified 1,041 firms with emissions targets ending in 2020, of which 88 (9%) failed and 320 (31%) disappeared. As summarised in the report abstract, the authors found that “*Only three of the failed firms are covered by the media. After a firm fails its 2020 emissions target, we do not observe significant market reaction, changes in media sentiment, environmental scores and environment-related shareholder proposals. In contrast, initial announcements of these 2020 emissions targets are rewarded with significant improvements in media sentiment and environmental scores. Our findings raise concerns for the accountability of emissions targets ending in 2030 and 2050.*”

It is clear from the comments above that neither market mechanisms nor market / investor legal challenge to misleading disclosure is a substitute for a legal obligation on companies to implement their transition plans. For the reasons noted in response to Question 15, we support such a requirement.

Q17: What do you see as the potential benefits, costs and challenges of government mandating requirements for transition plans that align with Net Zero by 2050, including the setting of interim targets aligned with 1.5°C pathways? Where challenges are identified, what steps could government take to help mitigate these?

In order to deliver the Government’s stated policy objectives – particularly support for an orderly transition in line with global climate goals⁹⁰ – the transition planning requirement must include a ‘Paris-alignment anchor’ of some kind. Making this policy neutral or silent on ambition and alignment is simply not viable.

We explain in this response that this is:

- essential to guarantee that the private sector will work towards transition at the pace required to meet the Government’s national and international climate commitments, mitigate the worst risks of the climate crisis, and seize the opportunities presented by transition;
 - in line with the UK’s obligations under international law in relation to climate change; and
 - delivers the full range of potential legal benefits available to companies from this policy.
- Moreover, it is clearer than ever that Paris-alignment is necessary to meet the UK’s obligations under international law in relation to climate change.

We also suggest that Government can reduce the challenges associated with an alignment obligation by providing guidance on the use of acceptable reference pathways and calibrating the legal standard appropriately (e.g. through best / reasonable endeavours).

⁸⁹ [Limited accountability and awareness of corporate emissions target outcomes | Nature Climate Change](#).

⁹⁰ Not to mention the Labour manifesto commitment to “[mandate] UK-regulated financial institutions – including banks, asset managers, pension funds, and insurers – and FTSE 100 companies to develop and implement credible transition plans that **align with the 1.5°C goal of the Paris Agreement**” (emphasis added): [Change-Labour-Party-Manifesto-2024-large-print.pdf](#), p.58.

Essential to deliver orderly transition in line with global climate goals, and the associated benefits

As noted in the Consultation, the UK is committed as a signatory to the Paris Agreement temperature goal to “*hold the increase in the global average temperature to well below 2°C above pre-industrial levels and pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels.*”⁹¹ It has recognised the need to work towards 1.5°C to avert the worst impacts of climate change, as a signatory of the Glasgow Climate Pact, which “*underscores that the impacts of climate change will be much lower at the temperature increase of 1.5°C compared with 2°C and resolves to pursue efforts to limit the temperature increase to 1.5°C.*”⁹²

The Glasgow Climate Pact recognises that “*limiting global warming to 1.5°C requires rapid, deep and sustained reductions in global greenhouse gas emissions, including reducing global carbon dioxide emissions by 45 per cent by 2030 relative to the 2010 level and to net zero around mid-century, as well as deep reductions in other greenhouse gases...[and]... that this requires accelerated action in this critical decade.*”⁹³ The Consultation notes how this has been translated into the commitments made in the UK’s 2035 Nationally Determined Contribution (NDC)⁹⁴ which is considered Paris-aligned by the Climate Change Committee⁹⁵ and in the independent assessment provided by Climate Action Tracker.⁹⁶

The environmental, human, social, geopolitical and economic costs and risks of global heating in excess of 1.5°C have been extensively examined and documented. The benefits that flow from averting these impacts are commensurately huge. Purely as an indication of the potential financial risks involved:

- the Institute and Faculty of Actuaries have warned that “*the global economy could face a 50% loss in GDP between 2070 and 2090, unless immediate policy action on risks posed by the climate crisis is taken. Populations are already impacted by food system shocks, water insecurity, heat stress and infectious diseases. If unchecked, mass mortality, mass displacement, severe economic contraction and conflict become more likely.*”⁹⁷
- In light of the current unprecedented levels of global heating, the Office for Budget Responsibility’s (OBR’s) 2025 *Fiscal Risks and Sustainability* report⁹⁸ concludes that, while highly uncertain, the costs of climate change “*represent a significant risk to the public finances in all the scenarios explored*”, with climate damage representing a “*more significant fiscal cost*” than the cost of transitioning the economy to next zero emissions⁹⁹. The OBR’s central estimate for a below 3°C scenario suggests that climate damage could reduce UK GDP by 8% by the early 2070s. A high GDP damage scenario could see GDP reduced by 15.7% by 2073-75.¹⁰⁰ Notably,

⁹¹ Paris Agreement, Article 2(1)(a): [ADOPTION OF THE PARIS AGREEMENT - Paris Agreement text English](#).

⁹² Glasgow Climate Pact, para. 16: [Glasgow Climate Pact | UNFCCC](#).

⁹³ Glasgow Climate Pact, paras. 17-18: [Glasgow Climate Pact | UNFCCC](#).

⁹⁴ At p.31 of the Consultation.

⁹⁵ [Letter: Advice on the UK’s 2035 Nationally Determined Contribution \(NDC\) - Climate Change Committee](#).

⁹⁶ See [2035 NDC | Climate Action Tracker](#).

⁹⁷ [Planetary Solvency – finding our balance with nature](#).

⁹⁸ [CP 1343 – Office for Budget Responsibility – Fiscal risks and sustainability](#).

⁹⁹ Para. 4.42 of [CP 1343 – Office for Budget Responsibility – Fiscal risks and sustainability](#).

¹⁰⁰ Para. 4.41 of [CP 1343 – Office for Budget Responsibility – Fiscal risks and sustainability](#).

the impact of tipping points (where climatic events cause large and irreversible changes to global climate) is missing from these estimates.¹⁰¹

For averting these risks and costs, and securing the commensurate benefits, “every fraction of a degree of warming matters” because with “with every additional increment of global warming, changes in extremes and risks become larger”¹⁰².

The world is not, however, on track to meet the Paris Agreement goal. Global warming is accelerating and current policies are predicted to lead to a catastrophic temperature rise of up to 3.1 degrees this century.¹⁰³ Nevertheless, the 1.5°C temperature goal remains a critical and urgent benchmark against which to measure progress globally and (through the use of pathways aligned with the global goal) for particular sectors and companies. It is also deeply embedded in international and national climate law and numerous international and national judicial decisions, and remains legally relevant in the sense that many legal obligations and risks intensify as the 1.5°C temperature threshold is approached and exceeded and the associated climate impacts intensify and cascade.¹⁰⁴ The continued relevance of the 1.5°C has been emphatically confirmed by the ICJ in its recent Advisory Opinion¹⁰⁵.

Government cannot deliver on its commitments without transition in the private sector. It is therefore critical that UK businesses transition their global value chain emissions urgently in line with the Paris Agreement goal. In order to ensure this happens, the transition planning must have a ‘Paris-alignment anchor’ of some kind. The effectiveness of a policy that is untethered from these broader commitments will be limited and the benefits of rapid, orderly transition will be lost.

New research from the TPI Global Transition Centre shows that the transition plans of publicly listed companies currently lack credibility and are generally not aligned with the Paris Agreement across long-, short- and medium-term. Of over 2,000 publicly listed companies covered in the research (representing three quarters of total publicly listed equities worldwide), 98% have not disclosed plans to shift capital away from carbon-intensive assets or to align spending with their long-term decarbonisation goals; and publicly listed companies in high-emitting sectors are on track to exceed the global emissions intensity budget for 1.5°C by 61% between 2020 and 2050.¹⁰⁶ It’s clear from this research that companies must cut emissions far more rapidly than they currently are to deliver a Paris-aligned transition, and that rules that allow companies to self-select the level of benchmark ambition for their transition plans will fall drastically short of what is required – making a Paris-alignment anchor essential.

At the same time, individual business that transition out of step with global climate goals, or don’t transition at all ultimately risk being left with stranded assets¹⁰⁷ and losing competitive advantage, market

¹⁰¹ See the uncertainties disclosed in para. 1.37 of [CP 1343 – Office for Budget Responsibility – Fiscal risks and sustainability](#).

¹⁰² [1.5°C: what it means and why it matters | United Nations](#).

¹⁰³ [UNEP, Nations must close huge emissions gap in new climate pledges and deliver immediate action, or 1.5°C lost](#).

¹⁰⁴ For a discussion on this see [The pursuit of 1.5°C endures as a legal and ethical imperative in a changing world | Science](#).

¹⁰⁵ See para. 224.

¹⁰⁶ See [2025-state-of-the-corporate-transition-2025.pdf](#) and [Publicly-listed companies lack credible climate transition plans as emissions intensity set to overshoot, report warns - Transition Pathway Initiative](#).

¹⁰⁷ The UK Sustainable Investment and Finance Associations has estimated that the UK economy see losses of \$141 billion by 2040 from stranded fossil fuel assets alone, while highlighting that this pales in comparison to the global costs of climate in action. In a warming scenario of between 2.5°C and 2.9°C, climate-intensified natural disasters could cause \$12.5 trillion in economic losses by 2050: [UK Economy Heading for \\$141 Billion Loss](#)

share and jobs as the world decarbonises. A ‘Paris alignment anchor’ in transition planning policy would make sure businesses and directors turn their minds to these commercial risks and help remove barriers to transition-aligned investment in decarbonising industries and soften the overall impact of these risks on business and the financial sector.

While there are undeniably complexities involved in defining what Paris-alignment means for a particular sector or company, these complexities cannot justify the omission of a Paris-alignment anchor altogether – a link to global and national climate commitments and goals is essential to the coherence and effectiveness of the regulatory regime.

In line with obligations under international law

Moreover, it is now clearer than ever that a Paris-aligned approach is consistent with the UK’s obligations under international law. The ICJ’s landmark 2025 Advisory Opinion on the obligations of states in respect of climate change¹⁰⁸ confirmed that all states have obligations to protect the climate system and wider environment from the effects of GHG emissions under multiple sources of international law, noting that the questions referred to it “*concern an existential problem of planetary proportions that imperils all forms of life and the very health of our planet*”¹⁰⁹.

In doing so, the Court clarified that:

- The discretion of parties to the Paris Agreement in the preparation of their NDCs is limited – states must exercise a stringent level of due diligence and ensure that their NDCs are capable, when taken together, of limiting global warming to 1.5°C above pre-industrial levels.¹¹⁰
- States party to the Paris Agreement are also required to exercise stringent due diligence in taking the necessary measures to achieve the objectives set out in their NDCs, including in relation to the activities carried out by private actors.¹¹¹
- Similarly, the customary international law duty to prevent significant harm to the environment applies to the climate system¹¹² and requires states to act with due diligence, using all the means at their disposal to avoid activities which take place in their territory, or in any area under their jurisdiction, causing significant damage to the environment of another State.¹¹³
- This requires states to put in place appropriate rules and measures including, but not limited to “*regulatory mitigation mechanisms that are designed to achieve the deep, rapid, and sustained reductions of GHG emissions that are necessary for the prevention of significant harm to the climate system*”. Specifically, “*these rules and measures **must regulate the conduct of public and private operators** within the States’ jurisdiction or control and be accompanied by effective enforcement and monitoring mechanisms to ensure their implementation*”¹¹⁴ (**emphasis added**). Similarly, States are required to take necessary measures, including the regulation of the

Caused by Stranded Fossil Fuel Assets, With Pension Funds on Track to Lose \$19 Billion – UKSIF; and UKSIF-Stranded-Assets-Report-March-2025.pdf.

¹⁰⁸ Advisory Opinion of 23 July 2025.

¹⁰⁹ Para. 456.

¹¹⁰ Paras. 245 to 249.

¹¹¹ Paras. 252 to 254.

¹¹² Para. 273.

¹¹³ Para. 281.

¹¹⁴ Para. 282.

activities of private actors, to protect the climate system in order to guarantee the effective enjoyment of human rights.¹¹⁵

- A precautionary approach is an integral part of the general obligation of due diligence under the duty to prevent harm to the environment. This means that scientific information about the probability and seriousness of possible harm informs the standard of due diligence, and that state would not meet its obligation of due diligence if it disregarded plausible indications of potential risks.¹¹⁶
- Failure by a state to take appropriate action to protect the climate system from GHG emissions may constitute an internationally wrongful act attributable to that state, potentially giving rise to the full range of legal consequences provided for under the law of state responsibility, including obligations of cessation, non-repetition and reparation / compensation.¹¹⁷ Specifically, *“a State may be responsible where, for example, it has failed to exercise due **diligence by not taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction**”*¹¹⁸ (emphasis added).

It follows from the ICJ’s Advisory Opinion that, to meet its international law obligations, the UK’s regulation of corporate transition must align with not only its NDC, but with the temperature goal of the Paris Agreement. A policy option tethered to the Paris Agreement goal would help the UK to discharge its international law obligations in these terms and help curb the emissions of UK companies – both through driving transition in the private sector directly and through the flow of high integrity information to Government about the pace of transition and any structural limitations on progress which will enable Government to better tailor its policy response in line with international law obligations. Failure to take appropriate regulatory and legislative measures would be a clear source of legal risk for the UK.

Delivers additional legal benefits

The Legal Opinion explains that, in many cases, the disclosure of a well-prepared transition plan would have legal benefits for companies and their directors. As explained in more detail in the Legal Opinion and in our response to Question 11 above, this includes benefits in relation to: compliance with pre-existing corporate disclosure requirements, mitigation of greenwashing risk, and compliance with directors’ duties to the company.¹¹⁹ In this sense, the preparation and disclosure of a transition plan can reduce legal risk, rather than increasing it.

For high-emitting companies, however, legal risk ultimately tracks: (a) emissions; and (b) failure to transition in line with science-based pathways aligned with the Paris Agreement temperature goal.¹²⁰ This is apparent from a review of the climate-related legal risk companies currently face. As noted above

¹¹⁵ Para. 403.

¹¹⁶ Para. 293 and 294.

¹¹⁷ Paras. 427 and 445.

¹¹⁸ Para. 428.

¹¹⁹ See paras. 138 to 156 of the Legal Opinion: [pdf-200625-legal-opinion-on-transition-plan-disclosures.pdf](#).

¹²⁰ See generally [Banks-climate-liability-what-to-learn-from-states-and-oil-majors.pdf](#). In particular, p. 548: “Based on the general notions of the climate liability of states, large CO₂ -intensive companies are also increasingly the subject of climate liability cases aiming for corporate emission reductions. This seems an obvious development, considering such companies’ control of enormous emission volumes related to their activities and sold products, which often exceed those of industrialised states.”

in response to Question 15, a huge number of climate cases have been filed since the Paris Agreement, many against high-emitting companies and the financial institutions that support them. These include¹²¹:

- ‘Polluter pays’ cases seeking damages from companies for their contribution to climate change, including its localised effects;
- ‘Corporate framework’ cases seeking to compel companies to change their strategies to align with global climate goals on a forward-looking basis, often through requests for injunctive relief requiring Paris-aligned emissions reductions; and
- ‘Transition risk’ litigation, including challenges based on breach of directors’ or fiduciary duty in relation to the management of climate-related risk (such as the risk of stranded assets).

Polluter pays and **corporate framework** cases are often rooted in fundamental human rights principles and tortious duties of care. They are significant and unpredictable sources of legal and financial risk for high emitting companies, and this risk is intensifying as jurisprudence develops globally and the impacts of climate change are felt. For example:

- In *Lliuya v RWE*¹²² in May 2025, the German regional court dismissed a Peruvian farmer’s case against German energy company RWE on the facts, but found that major emitters can, in principle, be held liable under German civil law (the claim was based in nuisance) for climate-related harm linked to their contribution to global emissions. Lliuya had demanded that RWE pay its share of costs for measures to protect his property from the risk of flooding caused by glacial retreat associated with rising temperatures. This was the first climate damages case in Europe to reach the evidential stage and establishes a number of important principles, leaving the door open to similar cases where a greater risk of imminent damage can be established on the facts, potentially including other pending cases such as *Asmania v Holcim*¹²³ and *Falys v Total*¹²⁴.
- In *Milieudefensie v Shell*¹²⁵ in November 2024, the Dutch Court of Appeal overturned the District Court’s 2021 order that Shell reduce emissions across its entire value chain, including its Scope 3 emissions, by net 45% by 2030. However, in doing so, the Court reaffirmed that a standard of care applied under Dutch law, informed by international soft law and aligned with the Paris Agreement, requiring Shell to reduce its emissions. The Court felt unable to impose a specific percentage reduction requirement for Shell’s Scope 3 emissions, but clarified the general principle and warned that Shell’s planned investments in new oil and gas projects “may be at odds” with the applicable standard of care, leaving the door open to litigation in relation to such investments and the emergence of a new legal norm. Milieudefensie has since filed an appeal to the Dutch Supreme Court and launched a new case in May 2025 directly challenging Shell’s

¹²¹ Adopting the taxonomy of case-types used in the annual LSE climate litigation snapshot reports. See [Global-Trends-in-Climate-Change-Litigation-2025-Snapshot.pdf](#).

¹²² See [Luciano Lliuya v. RWE AG - Climate Change Litigation](#) and p. 27 of [Global-Trends-in-Climate-Change-Litigation-2025-Snapshot.pdf](#). See [Luciano Lliuya v. RWE: a major step forward for climate justice](#) - Grantham Research Institute on climate change and the environment for a commentary on the impact of the case as “a powerful legal precedent that can be replicated in courts worldwide and will shape the trajectory for future climate litigation”.

¹²³ [Asmania et al. vs Holcim - Climate Change Litigation](#).

¹²⁴ [Hugues Falys, FIAN, Greenpeace, Ligue des droits humains v. TotalEnergies \(The Farmer Case\) - Climate Change Litigation](#).

¹²⁵ See [Milieudefensie et al. v. Royal Dutch Shell plc. - Climate Change Litigation](#) and p. 37 of [Global-Trends-in-Climate-Change-Litigation-2025-Snapshot.pdf](#). For an example of commentary on the impact of the case, see [Shell v Milieudefensie: What are the implications for corporates? | Travers Smith](#).

planned investments in 700 new oil and gas projects, demanding that Shell stop developing new fossil fuel fields and adopt emissions reduction targets (for Scopes 1–3) aligned with a 1.5°C pathway from 2035 to 2050.¹²⁶

Because these cases are rooted in a company’s proportionate contribution to global emissions, the only real defence is to urgently reduce emissions and adopt and implement a plan to transition the business and its value chain in a manner compatible with the Paris Agreement goal. Indeed this is what claimants explicitly demand that companies do in climate cases seeking injunctions regarding a change to business strategy.¹²⁷ These actions also match what is required to address a company’s contribution to the human rights impacts of climate change under frameworks governing the human rights responsibilities of businesses, including the UNGPs.¹²⁸

Transition risk cases concern the mis-management of climate-related transition risk by company directors and investment fiduciaries. They relate to global and national climate goals in that failing to operate a business in step with current or foreseeable transition-related policies or market dynamics may indicate a failure to meet the standard required of a prudent director or fiduciary. As a result, albeit to a lesser extent than polluter pays and corporate framework cases, this type of legal risk tracks excess emissions and investments and business operations incompatible with Paris-aligned transition.

To take one example, in December 2023, Polish energy company Enea sued several former directors who had supported the company’s investments into the controversial Ostrołęka C coal-fired power station and their D&O insurers, seeking over PLN 656 million in damages¹²⁹. The case alleges that the directors breached their fiduciary duties by approving the high-risk coal investment in 2018 despite financial and climate risk warnings. The project had been abandoned mid-construction in 2020, with Enea writing off nearly PLN 1 billion of investment. This followed an earlier legal action by ClientEarth in 2018 alleging the investment breached directors’ duties, resulting in a court decision ruling that the AGM

¹²⁶ See [Milieudefensie launches new Climate Case against Shell: no new oil and gas fields — Milieudefensie](#).

¹²⁷ See [Banks-climate-liability what-to-learn-from-states-and-oil-majors.pdf](#), p. 548-9: “Cases seeking climate liability as discussed in this article typically demand states and companies to commit to targets representing their fair share in effecting the absolute emission reductions necessary to achieve the global temperature goal of the Paris Agreement...For companies, the most appropriate instrument for this is a “transition plan”. In general, such a transition plan must include appropriate absolute emission reduction targets for a company’s activities and sold products, the so-called scope 1, 2 and 3 emissions, in line with a 1.5 °C scenario (time-bound from 2030 or earlier). A transition plan also needs to indicate how the company will implement the climate targets in its business models, strategy and governance. Clearly, only adopting a transition plan does not suffice; the company will have to actually and effectively implement it.”

¹²⁸ There is a vast and growing commentary on the human rights impacts of climate change and the implications for business human rights responsibilities. In 2023 the UN Human Rights Special Procedures Working Group on Business and Human Rights published an *Information Note on Climate Change* which addresses these issues. The note clarifies that business human rights responsibilities extend to climate change impacts (para. 16) and states that businesses should “phase out both the use of fossil fuels and the production of greenhouse gas emissions, avoid contributing to deforestation, and not use carbon offsets” (para. 19(b)) and “ensure their value chains and practices are in line with the goal of achieving a just transition to a zero-carbon economy” (para. 19(d)) to comply with the UNGPs. See [Information-Note-Climate-Change-and-UNGPs.pdf](#). See also the discussion of how this applies to banks in [letter-from-clientearth-to-10-banks-regarding-their-human-rights-responsibilities-and-legal-duties-with-respect-to-energy-sector-clients.pdf](#).

¹²⁹ See [Enea v. Former Board Members and D&O Insurers - Climate Change Litigation](#) and p. 39 of [Global-Trends-in-Climate-Change-Litigation-2025-Snapshot.pdf](#).

resolution approving the project was invalid. In 2021, Poland's Supreme Audit office found failures in the company's risk management and recommended accountability for the project's losses.¹³⁰

Such cases add weight to the wealth of legal commentary covering many jurisdictions including the UK which clarifies the legal duties of company directors to adequately identify, assess and manage climate-related risks.¹³¹ In far more general terms, the UK SIF report cited above shows the extent of the damage stranded assets could do to the UK economy, giving some indication of the potential for transition risk cases against UK companies that are left behind as the world transitions.¹³²

The key point to note here is that, as legal risk in these types of cases tracks excess emissions and failure to transition, the enforced rigour of preparing and disclosing a transition plan that is aligned with the Paris Agreement goal (or at least involves an assessment and disclosure of the extent of alignment and the reasons for any failure of alignment) would help companies and directors assess and mitigate their legal risk. Preparing a transition plan without any regard for the Paris goal and the requirements science-based pathways to meet it, while it may provide some legal benefits (see the Legal Opinion), only takes companies and directors so far. It would not require directors to turn their minds to the (in)compatibility of the company's activities or investments with global climate goals – the ultimate driver of significant and uncapped legal risk in this area. Therefore it would leave additional legal benefits of a well-designed transition planning requirement on the table.

How could government mitigate challenges?

Once the primary decision to include a Paris-alignment anchor in regulation has been taken, there are things Government could do to address challenges associated with defining Paris-alignment in practice and to alleviate concerns about the additional legal risk that might be thought to attach to an alignment requirement. These include the following:

Reference pathways

As recognised in the findings of the Transition Finance Market Review (TFMR)¹³³ amongst other places, the lack of nationally / regionally and sectorally tailored, Paris-aligned emissions reduction pathways is often cited as a challenge to the preparation of a Paris-aligned transition plan and / or the provision of transition finance, particularly in relation to hard-to-abate sectors and countries or regions with specific development needs and constraints.¹³⁴ The development and use of such pathways would support Paris-aligned private sector transition by providing *“the link between the science of the remaining carbon*

¹³⁰ See [ClientEarth v. Enea - Climate Change Litigation](#), [Polish energy giant sues former directors and insurer over failed coal power plant investment | ClientEarth](#), and [Major court win shows power of corporate law to fight climate change | ClientEarth](#).

¹³¹ See, for example, the 2019 Debevoise & Plimpton note on this ([here](#)) and the 2018 Commonwealth Climate and Law Initiative paper on directors' liability and climate risk ([here](#)).

¹³² We note that the case brought by ClientEarth against Shell's board of directors in 2023 ([ClientEarth v. Shell's Board of Directors - Climate Change Litigation](#)) is also relevant here, together with Lord Carnwath's commentary on the judgment dismissing the claim ([ClientEarth-v-Shell-what-future-for-derivative-claims.pdf](#)). For present purposes we simply reiterate the comment in the Legal Opinion that this case is unlikely to be the last word on derivative claims in the UK in relation to climate change and that this area of jurisprudence is developing (footnote 94, p. 41).

¹³³ See TFMR, [Scaling Transition Finance Report](#).

¹³⁴ For a commentary on this issue, see [guardrails-to-address-greenwashing-of-climate-transition-finance-clientearth.pdf](#). See also p.48-50 of [OECD Guidance on Transition Finance \(EN\)](#); and p. 16 of [Transition-Finance-in-the-Debt-Capital-Market-paper-ICMA-14022024.pdf](#): “Nonetheless, sectoral pathways and roadmaps catering to the diversity of developed and developing economies are not yet widely available or sufficiently comprehensive in coverage.”

*budget and the detailed steps that a specific sector could take to reduce GHG emissions to a particular level in a specified timeframe.*¹³⁵ The development of such pathways has begun, and helpful attempts have been made to catalogue, analyse and classify available pathways.¹³⁶

At the same time, giving firms too free a choice of the transition pathway against which they benchmark their conduct (irrespective of the scientific credibility of such pathways) could become a barrier to moving the private sector towards Paris-alignment.¹³⁷ This risk is heightened if regional or sectoral pathways are misaligned with the best available climate science, compromised by corporate lobby or local political concerns, or otherwise deficient in the scheme of global decarbonisation needs.

This creates a need for ‘meta criteria’ to select credible, science-based pathways from among the total pool of relevant available pathways. Some guidance already exists for transition plan assessors¹³⁸ and financial institutions¹³⁹ seeking to use and review transition plan disclosures. For example, the World Benchmarking Alliance convened Assessing Transition Plans Collective (**ATP-col**) has produced a set of 9 criteria for selecting a credible science-based benchmark¹⁴⁰:

- “1. It is consistent with a carbon budget that limits the global mean temperature rise to 1.5°C with a 50% probability with low or no overshoot;*
- 2. It may be global or regional but in either case it has been derived from and is consistent with climate modelling where the global carbon budget is allocated across time and to different regions and sectors – typically via an Integrated Assessment Model. For example, derived from IEA climate scenarios;*
- 3. Ideally it is sector specific. If it is not sector specific only the SBTi’s Cross Sectoral Pathway is recognised under these principles and use of that benchmark is subject to the guidance set by SBTi;*
- 4. It includes all material scopes and types of emissions for that sector/activity;*
- 5. It covers the full timeline to net zero/to only residual emissions, as long as any residual emissions are clearly identified;*
- 6. It does not incorporate the use of offsets i.e., it does not assume the corporate will need to use offsets to meet the benchmark;*
- 7. If the benchmark uses emissions intensity metrics, these may be product or physical emissions intensity only (e.g. tCO₂e/tonne of cement) not economic intensity (e.g. cCO₂e/\$ revenue). If it uses absolute emissions, the benchmark should only go down over time, never up;*
- 8. It has been produced by an independent third party, not by the corporate themselves, with climate science expert input to the process and has been subject to public review;*
- 9. Its technical documentation confirms that it meets principles 1-7.”*

¹³⁵ See p.i of GFANZ [Guidance-on-Use-of-Sectoral-Pathways-for-Financial-Institutions June2022.pdf](#).

¹³⁶ See, for example, New Climate Institute’s [A repository of sector-specific decarbonisation benchmarks informing 1.5°C-aligned corporate climate action](#).

¹³⁷ See p.8 of [guardrails-to-address-greenwashing-of-climate-transition-finance-clientearth.pdf](#) for commentary.

¹³⁸ [ATP-Col-guidance-and-framework-document.pdf](#).

¹³⁹ GFANZ [Guidance-on-Use-of-Sectoral-Pathways-for-Financial-Institutions June2022.pdf](#).

¹⁴⁰ See pages 14-15 of [ATP-Col-guidance-and-framework-document.pdf](#) for the full list.

The Government should support the introduction of transition plan requirements by developing guidance on the selection and use of credible national, sectoral pathways aligned with the Paris Agreement.¹⁴¹ Where it is not possible to credibly apply available benchmarks to particular segments of the UK economy, the Government should consider whether there is a need to develop and publish national pathways that guide those segments towards Paris-alignment. Transition plans would then be required to align with the best available pathway with an explanation provided as to the dependencies and limitations that create a gap between the company's targets / progress and the relevant pathway(s), if there is one. The selection and / or development of acceptable reference pathways should be backstopped by criteria such as those outlined by the ATP-col above, to ensure pathways have a robust basis in science and are aligned with the Paris-agreement goal.¹⁴²

We note that this would be consistent with recommendations for the development of *national* transition planning to create a cohesive transition planning environment across government and the private sector. The LSE CETEx centre has suggested that a national level 'strategic ambition' could be translated into sectoral pathways that inform the design of sector-specific Government policy, orient private sector transition plans and help investors and stakeholders evaluate those plans and hold companies to account for progress against them. In line with the comments above, LSE CETEx suggest that sectoral pathways should be consistent with internationally developed pathways and scenarios such as the IEA NZE 2050 scenario.¹⁴³

We note that the TPT Disclosure Framework already contains several disclosures that would accommodate a discussion on pathway selection by reporting companies, including a disclosure as to how GHG reduction targets have been informed by the latest international agreement on climate change and jurisdictional climate commitments. These concepts could be built upon to create appropriate safeguards around the selection and use of Paris-aligned pathways.

Calibrating the legal standard to recognised dependencies and limitations

We understand that there may be anxieties about the legal risk that might face companies unable to meet an alignment requirement based on sectoral or cross-sectoral decarbonisation pathways because of limitations or dependencies on, for example, government enabling policy that has yet to materialise. In our view, such legal risks could, as Government suggest in the consultation *"be mitigated through the design and implementation of alignment requirements by the government, without undermining the efficacy of transition planning requirements as a whole."*¹⁴⁴

As suggested above in relation to the proposed implementation requirement, this could be achieved by introducing a best or reasonable efforts / endeavours qualifier to introduce sufficient flexibility into the alignment requirement, alongside explicit provision for disclosures of the uncertainties and dependencies that have limited the company's ability to align fully with the relevant pathway or achieve the implied emissions reductions. As with the implementation requirement, accountability for non-alignment would also depend on the design of the obligation and the provision made for its oversight and enforcement (which the Government has excluded from the scope of this phase of the consultation). Our comments align with the first and second bullet point options put forward on pages 32-33 of the consultation, particularly the second option, which already contemplates *"best efforts' or 'reasonable efforts' for*

¹⁴¹ Consistent with the recommendations of the TFMR. See Chapter 2 of [Scaling Transition Finance Report](#).

¹⁴² Note that the European Commission is committed to a similar exercise to develop sectoral transition pathways as part of the Clean Industrial Deal. See [EUR-Lex - 52025DC0085 - EN - EUR-Lex](#), Section 8.

¹⁴³ See [Taking the lead on climate action and sustainable development - CETEx](#), particularly p.20.

¹⁴⁴ See page 32 of the Consultation.

delivering on commitments set out in the transition plan...[to]...provide some flexibility to reflect the practical limitations that may be faced by some entities when creating and implementing targets and plans aligned with net zero by 2050." The key point is that concerns of this nature would not justify abandoning the alignment requirement altogether.

Q21. What is your view on the role of climate adaptation in transition plans? Is there a role for government to ensure that companies make sufficient progress to adapt, through the use of transition plan requirements?

Adaptation and the transition to a climate-resilient economy rightly feature prominently in the TPT Disclosure Framework alongside mitigation, supported by the further work of the TPT's Adaptation Working Group, including in a dedicated advisory paper¹⁴⁵. Given what we know about the current warming trajectory and its devastating impacts (which are routinely underestimated as sources of systemic financial risk), it is essential that this focus is preserved and that adaptation considerations feature in transition plans produced under the new regulatory requirement.

In considering this topic further, we suggest that the Government take into account the guidance already available on linking transition planning and adaptation and resilience, including for instance:

- The TPT Adaptation Working Group paper referred to above;
- The 2024 paper from the Adaptation Working Group of the Climate Financial Risk Forum (**CFRF**) on *Mobilising Adaptation Finance to Build Resilience*¹⁴⁶; and
- The 2025 NGFS G20 input paper on *Integrating adaptation and resilience into transition plans*¹⁴⁷.

We note also that failure to adapt adequately to the impacts of climate change is an emerging source of legal risk for companies¹⁴⁸ and governments¹⁴⁹, as documented comprehensively in the 2025 *Global Trends in Climate Change Litigation* report produced by the LSE Grantham Research Institute.¹⁵⁰ Provision for adaptation considerations in the transition planning requirement will assist companies in confronting, assessing and taking action to mitigate the associated liability risks, and support Government in achieving its own adaptation goals.

¹⁴⁵ See [Adaptation-1.pdf](#).

¹⁴⁶ [Mobilising Adaptation Finance to Build Resilience](#).

¹⁴⁷ Available here: [NGFS Input paper on Integrating Adaptation and Resilience into Transition plans | Network for Greening the Financial System](#).

¹⁴⁸ See [Assad v. Seu - Climate Change Litigation](#) and [Conservation Law Foundation v. ExxonMobil Corp. - Climate Change Litigation](#).

¹⁴⁹ See [R\(Friends of the Earth Ltd, Mr Kevin Jordan and Mr Doug Paulley\) v Secretary of State for Environment, Food & Rural Affairs \(challenge to the Third National Adaptation Programme\) - Climate Change Litigation](#), the unsuccessful challenge of the UK Government's Third National Adaptation Programme; and [Two Britons to challenge UK's 'weak' response to climate crisis in Strasbourg court | Climate crisis | The Guardian](#).

¹⁵⁰ [Global-Trends-in-Climate-Change-Litigation-2025-Snapshot.pdf](#).

Q22. How can companies be supported to undertake enhanced risk planning in line with a 2°C and 4°C global warming scenario? Are these the right scenarios? To what extent are these scenarios already being applied within company risk analysis and how helpful are they in supporting companies in their transition to climate resilience?

In relation to the financial sector, we note the growing body of commentary illustrating that the financial models most commonly used in the financial system significantly underestimate the financial risks associated with climate change and project overly benign impacts from even higher degrees of warming, in jarring contrast to the warnings of climate scientists. This includes:

- Carbon Tracker, *Loading the DICE against pension funds: Flawed economic thinking on climate has put your pension at risk* (July 2023)¹⁵¹;
- IFOA and the University of Exeter, *The Emperor's New Climate Scenarios: Limitations and assumptions of commonly used climate-change scenarios in financial services* (July 2023)¹⁵²;
- IFOA and the University of Exeter, *Climate Scorpion – the sting is in the tail: Introducing planetary solvency* (March 2024)¹⁵³; and
- IFOA and the University of Exeter, *Planetary Solvency – finding our balance with nature: Global risk management for human prosperity* (January 2025)¹⁵⁴.

To illustrate the extent of this issue, we note the IFOA's conclusion that "*the global economy could face a 50% loss in GDP between 2070 and 2090, unless immediate policy action on risks posed by the climate crisis is taken. Populations are already impacted by food system shocks, water insecurity, heat stress and infectious diseases. If unchecked, mass mortality, mass displacement, severe economic contraction and conflict become more likely.*"¹⁵⁵ In contrast, many peer-reviewed economic studies suggest relatively mild financial impacts from global warming. When the IPCC summarised this literature in 2022, it noted that "*with historically observed levels of adaptation, warming of ~4°C may cause a 10–23% decline in annual global GDP by 2100 relative to global GDP without warming*". It also notes that "*smaller effects (1–8%) are found when using alternative methodologies*".¹⁵⁶ As the IPCC noted though, "*Impacts at high levels of warming are particularly uncertain, as all methodologies require extrapolation and insufficiently incorporate possible tipping elements in the climate system*" (emphasis added)¹⁵⁷.

Unless such projections are adequately interrogated and balanced with consideration of worst case scenarios, risk narratives and qualitative scenario analysis, the divergence between economic modelling and climate science is a source of false comfort which distorts the perception of climate risk and dulls the reaction of the financial sector, regulators and Government to it, making it hard for firms to discharge their legal duties to adequately consider and manage climate-related risk. Pension funds and financial sector firms must address these issues head on in their transition planning, and account for their oversight and interrogation of climate financial modelling and investment advice based on it,

¹⁵¹ Available here: [Loading the DICE Against Pensions - Carbon Tracker Initiative](#).

¹⁵² [the-emperor-s-new-climate-scenarios.pdf](#).

¹⁵³ [climate-scorpion.pdf](#).

¹⁵⁴ [planetary-solvency-finding-our-balance-with-nature.pdf](#)

¹⁵⁵ [Planetary Solvency – finding our balance with nature](#).

¹⁵⁶ See p.2459 of IPCC AR6 WGII Full Report: [IPCC AR6 WGII FullReport.pdf](#).

¹⁵⁷ Ibid.

demonstrating how they apply adequate scrutiny and incorporate high end risk projections into their decision-making and take concrete actions to address identified risks.

There is a similar need for oversight and rigour in local hazard and asset level analysis, which feeds into company and investment decision-making around adaptation and resilience. We support the encouragement of enhanced risk planning and the consideration of a range of scenarios to improve practice in this area, but do not provide specific comments on this.

Q23: To what extent do you think that nature should be considered in the government's transition plan policy? What do you see as the potential advantages and disadvantages? Do you have any views on the potential steps outlined in this section to facilitate organisations transitioning to become nature positive?

We do not provide detailed comments in response to this question. However, we welcome the Government's consideration of nature in Section B5 of the Consultation and strongly agree with the aim that nature is considered holistically alongside climate in transition plans.¹⁵⁸ There is growing recognition of the interrelationships between climate mitigation and adaptation and nature restoration, and of the significant dependence of the global economy on nature, while nature degradation remains an externality that is seldom adequately accounted for in business or investment decision-making. This makes the consideration of nature in the context of transition planning essential.

Within the "longer time horizon" exercise suggested in the Consultation, we suggest that Government takes into account the great deal of work that has already been done on this issue such as the following (among many others):

- WWF's 2023 report on *Nature in Transition Plans*¹⁵⁹ and 2024 report on *The Urgent Need for Nature Transition Plans*¹⁶⁰;
- The 2024 advisory paper from the TPT's Nature Working Group¹⁶¹; and
- The work of the Taskforce on Nature-related Financial Disclosures generally, including the 2024 report on *Nature Transition Plans*¹⁶².

We note the growing understanding of nature-related financial risks¹⁶³ has been accompanied by growing understanding of the legal risks for companies and directors that fail to adequately consider and manage nature-related risks arising from a company's dependencies and impacts on nature. A legal opinion published in 2024 explained how board directors could breach their duties under sections 172 and 174 of the Companies Act 2006 if they fail to identify and (where appropriate) mitigate latent financial risks arising from a company's unaddressed nature-related impacts and dependencies which, in turn, could expose directors to increased shareholder scrutiny and legal consequences.¹⁶⁴ Similar

¹⁵⁸ Page 34 of the Consultation.

¹⁵⁹ [Nature in Transition Plans: Why and How.](#)

¹⁶⁰ See [wwf_ntp_2024_v04_compressed.pdf](#).

¹⁶¹ [The-Future-for-Nature-1.pdf](#).

¹⁶² [Discussion-paper-on-nature-transition-plans.pdf](#).

¹⁶³ [ngfs_conceptual-framework-on-nature-related-risks.pdf](#).

¹⁶⁴ See [Company directors should consider company's nature-related risks \(including climate risks\): landmark English law legal opinion – CCLI](#) and the legal opinion [here](#).

opinions have been issued in Australia and New Zealand and similar analysis could be relevant under many other company law frameworks. Similarly, a growth in strategic nature-related litigation has been observed, with such cases adding to the longer history of site-specific 'traditional' environmental litigation as a source of legal risk for firms.¹⁶⁵ Unless companies address their impacts and dependencies on nature, they will be exposed to these types of legal risk, the significance of which will only grow as nature degradation continues and scrutiny intensifies.

Q24: Do you have any views on the factors the government should consider when determining the scope of any future transition plan requirements?

We do not provide detailed comments in response to this question but we do join other respondents in questioning the use of the FTSE100 index as the scope criterion for the new requirements. We suggest that government consider alternative scope criteria that deliver greater coverage of firms and emissions across all sectors (particularly avoiding unintentional underweighting of key transition sectors) and provide a more level playing field between listed and private firms (avoiding unintentional barriers to listing / incentives to delist). One option would be a repeat of TCFD rollout to cover listed companies, large private companies and LLPs, regulated financial firms and occupational pension schemes.

Q26: Do you have any views on how the government could redefine the scope to protect the competitiveness of the UK's public markets?

See our response to Question 24.

Q27: Do you have views on the legal implications for entities in relation to any of the implementation options and considerations as set out in sections B1-B4 in this consultation?

As explained in more detail in response to Question 4, the Legal Opinion demonstrates that, under English law, concerns that the disclosure of a transition plan may expose companies and their directors to an unacceptably heightened level of liability do not appear to be well founded. There is generally a high bar to liability (based on the application of a 'dishonesty standard' and other conditions that have to be met for liability to arise) companies and directors are unlikely to be liable where directors have acted honestly and reasonably in the preparation of the transition plan. There is no liability simply for being wrong, and liability will not arise simply because targets made in good faith are not met in practice.¹⁶⁶ Such concerns should not, therefore, hold the Government back from making the development and disclosure of transition plans mandatory, and adopting Option 2.

On the contrary, a 'comply or explain' basis in line with Option 1 would be inadequate to deliver the Government's stated policy objectives – including support for an orderly transition. As explained in more detail in our response to Question 10, a voluntary basis of disclosure is likely to yield inconsistent

¹⁶⁵ See [report-nature-related-litigation-emerging-trends-lessons-climate.pdf](#).

¹⁶⁶ See [pdf-200625-legal-opinion-on-transition-plan-disclosures.pdf](#).

disclosures of uneven quality, which are hard to compare and act on. The limits of a voluntary approach to transition are well understood. There is a clear need for mandatory rules in this space.

As noted in our response to Question 11, the Legal Opinion explains the legal benefits that are likely to flow to companies and directors from the disclosure of a well-prepared transition plan, including benefits in relation to: compliance with pre-existing corporate disclosure requirements, mitigation of greenwashing risk, and compliance with directors' duties to the company.¹⁶⁷ In this sense, the preparation and disclosure of a transition plan can reduce legal risk, rather than increasing it.

As explained in our response to Question 17, there are additional legal benefits available to companies and directors from the preparation, disclosure *and implementation* of a transition plan which is *aligned with* the Paris Agreement temperature goal. This is because, ultimately, climate-related legal risk for high-emitting companies tracks: (a) emissions; and (b) failure to transition in line with science-based pathways aligned with the Paris Agreement temperature goal. This is true of 'polluter pays' cases such as *Lliuya v RWE*, 'corporate framework' cases such as *Milieudefensie v Shell* and, to an extent, 'transition risk' cases such as *Enea v. Former Board Members and D&O Insurers*. It is only by having and implementing a science-based transition plan aligned with the Paris Agreement that companies can address these legal risks. Disclosing a transition plan which is out of step with Paris-aligned transition will leave companies exposed to legal risks of this nature, especially if the transition plan is not implemented, creating a 'say-do gap'. Mitigation of these fundamental legal risks is a legal benefit. Although the Legal Opinion shows that, in general, there are benefits to the disclosure of a well-prepared transition plan, a policy option which does not require implementation or alignment leaves these additional legal benefits on the table. In other words, an incomplete policy pathway which allows for a proliferation of non-aligned and non-implemented plans ultimately sets companies up to fail, and leaves them exposed to serious climate litigation risk.

In our view, nervousness about the difficulty of complying with both the implementation and alignment requirement could be alleviated through the calibration of the legal standard which applies – i.e. through the introduction of a best / reasonable efforts qualifier into the rules. These requirements would of course need further thought and development from Government. The key point for now is that the complete abandonment of requirements to align and implement the transition plan would be an unnecessary and unhelpful capitulation.

Another type of legal concern that we have not addressed elsewhere in our response is the concern that preparing and disclosing a transition plan may expose companies to 'anti-ESG' litigation risk in other jurisdictions. In the current environment, the obvious focus for such concerns is the US. While the current trend for politically motivated 'anti-ESG' litigation clearly makes decision-making and communication about transition more difficult for companies with a US nexus, it is important that this is seen in its full context. Over recent years numerous cases have been brought by municipal and state entities against polluting corporations. In 2025, for example, Hawaii's attorney general filed a lawsuit against oil companies including BP, Shell and Exxon covering eight causes of action and challenging alleged deception by the defendant companies regarding fossil fuels. Over the past eight years, at least 10 states and a dozen cities have filed similar complaints targeting fossil fuel companies, plastics producers and manufacturers of PFAS 'forever chemicals'.¹⁶⁸ This is in addition to cases brought by

¹⁶⁷ See paras. 138 to 156 of the Legal Opinion: [pdf-200625-legal-opinion-on-transition-plan-disclosures.pdf](#).

¹⁶⁸ See *State of Hawai'i v. BP p.l.c. - Climate Change Litigation*, *Hawaii's Lawsuit Against Oil Companies Alleges "Harm to Public Trust Resources"* | State Court Report and *Center for Climate Integrity's Archive of Climate Accountability Lawsuits Against Big Oil* | Center for Climate Integrity.

private entities challenging companies for failure to mitigate or adapt to the impacts of climate change.¹⁶⁹ These examples illustrate that the litigation risk for companies with a US nexus is not one sided. There remains significant legal risk associated with excess emissions, environmental impact, failure to manage transition risk and deceptive or misleading conduct relating to the same. In a broad sense and without commenting on the specifics of US state or federal law, developing and implementing a Paris-aligned transition plan may help companies mitigate these types of legal risk in the US and other jurisdictions. The benefits of doing so weigh against the risks associated with an ‘anti-ESG’ response to the disclosure of a transition plan in line with applicable UK law. As noted above, making such disclosure mandatory may in itself provide an additional defence to companies seeking to demonstrate that they have not given climate change undue weight over the financial interests of the company and its shareholders. It goes without saying that, whatever the political headwinds, transparently managing financially material climate-related risk remains part and parcel of fundamental director duties and investor protection rules.

Q28: In the UK’s wider legal framework what – if any - changes would be necessary to support entities disclosing transition plans and forward-looking information?

The Legal Opinion concluded that *“given the “safe harbours” that already exist under the current law - that we assume are likely to apply to CRTD disclosures - as well as the existing legal requirements which would need to be met in order for liability on the part of companies and directors to arise, there is **no compelling reason from a liability perspective to introduce any further or additional specific “safe harbour” regime in relation to CRTD disclosures**” (emphasis added).*¹⁷⁰ This conclusion was reached on the assumption that section 463 of the Company’s Act 2006 (which severely limits the liability of directors in relation to misleading statements in specified reports or statements¹⁷¹) would apply to transition plan disclosures – because the transition plan disclosures will form part of the strategic report or will otherwise be one of the reports falling within section 463.¹⁷²

Section 463, which already applies to the strategic report and the non-financial and TCFD-aligned climate disclosures therein, confers a very wide protection on directors. Where it applies, section 463 protects the director from liability to any person other than the company, so that only the company can be liable to third parties for reliance on the reports covered by section 463. In addition, the director will only be liable to compensate the company for loss it suffers if they are dishonest, meaning that they knew or were reckless that the relevant statement(s) in the report were untrue.¹⁷³ When the Government decides whether to explicitly extend the section 463 protections to transition plan disclosures, it should take account of how significantly this would narrow the potential liability of directors for the disclosures made in transition plans, and balance this against the need for accountability in an effective policy

¹⁶⁹ See for example [Assad v. Seu - Climate Change Litigation](#) and p. 38 of [Global-Trends-in-Climate-Change-Litigation-2025-Snapshot.pdf](#). The claimants in this shareholder derivative action argued that the directors of a Hawaiian utility company had breached their duties and misled shareholders by reporting on the management of climate risk since 2021 without in fact adequately planning for the foreseeable impacts of wildfires like those experienced in 2023. See also [Leon v. Exxon Mobil Corp. - Climate Change Litigation](#) and [CCI-BigOilAccountabilityLawsuits.pdf](#). The daughter of a victim of the 2021 Pacific Northwest heat dome is suing oil majors for fuelling the extreme heat that caused her mother’s death.

¹⁷⁰ See p.4 and Section H of [pdf-200625-legal-opinion-on-transition-plan-disclosures.pdf](#).

¹⁷¹ The strategic report, the directors’ report, the directors’ remuneration report and any separate corporate governance statement.

¹⁷² See para. 74 of [pdf-200625-legal-opinion-on-transition-plan-disclosures.pdf](#).

¹⁷³ See sections 65 to 70 of [pdf-200625-legal-opinion-on-transition-plan-disclosures.pdf](#).

framework.¹⁷⁴ The Government should also take the high degree of protection conferred on directors under section 463 into account when considering the need for any further safe-harbours, liability holidays, phase-ins and the like which would further dilute accountability for accurate transition plan disclosure. Our view, corroborated by the analysis in the Legal Opinion, is that no further safe-harbours are required.

In July, the FCA announced changes to the prospectus liability regime to introduce protection for certain forward-looking statements (including those in or about transition plans) with the aim of encouraging disclosures that help investors make better informed decisions. We note that this protection is achieved by applying the same “dishonesty standard” that applies to periodic disclosures and is examined in the Legal Opinion to certain forward-looking statements, relaxing the more stringent negligence-based liability regime that applies to other statements in the prospectus. This reflects the FCA’s view that the “dishonesty standard” provides an appropriate balance between incentivising the disclosure of useful information and accountability for misleading statements. We suggest that the Government need go no further than the FCA in providing an adequate degree of protection for statements made in or about transition plans.

Further changes to the legal framework (e.g. the Companies Act 2006) will depend on the implementation route chosen and the legislative delivery route for the new requirements. Although the topic was largely excluded from the ambit of this consultation, we urge the Government to think about the regulatory infrastructure and accountability for the new requirements, including the expertise and legislative footing a regulator would need to ensure that Paris-aligned transition plans are published and implemented in practice.

29. What role could high integrity carbon credits play in transition plans? Would further guidance from government on the appropriate use of credits and how to identify or purchase high quality credits be helpful, if so, what could that look like?

The use of carbon credits is one of the main threats to the integrity of transition plans. This has been recognised by the UN HLEG (defined above), which noted that “*a system to define and ensure standards for both the integrity of the credits themselves and how non-state actors claim them is not yet in place.*”¹⁷⁵ There is a risk that the use of carbon credits provides actors with a functional and acceptable alternative to emissions reductions, displacing essential, urgent and deep reductions in absolute value chain emissions. This risk is known as ‘mitigation deterrence’. More generally, current use of carbon credits for ‘offsetting’ drives public distrust in corporate transition and transition concepts generally.

Legally, the concept of ‘offsetting’ will always carry material legal risk, because of the fundamental non-equivalence between carbon credits and GHG emissions. In recent years, there has been a rapid increase in Court judgments finding that various types of ‘offsetting’ claim breach consumer protection legal requirements. Offsetting claims give the impression that GHG emissions have been addressed (for the purposes of climate change) through carbon credits. Specific terms used include compensate,

¹⁷⁴ For the avoidance of doubt, though it is beyond the scope of this consultation, we do not support the blanket application of section 463 to all disclosures made under UK SRS S2, which contains a mixture of forward-looking and backward looking / snapshot disclosures about things like Scope 1-3 emissions which are more closely analogous to accounting disclosures and in relation to which the a different level of accountability may be optimum.

¹⁷⁵ See p.19 of [high-level-expert-group-update7.pdf](#).

neutral, zero, net, positive, etc. Many judgments cite the national implementing legislation of the EU Unfair Commercial Practices Directive, which remains the applicable law in the UK (as set out the Consumer Protection from Unfair Trading Regulations 2008, and now the Digital Markets Competition and Consumers Act 2024).¹⁷⁶ At the time of writing, coordinated EU-wide consumer regulatory action is pending regarding offsetting claims.¹⁷⁷ Settlements and regulatory rulings and guidance also implicate the Australian Consumer Law and Corporations Act, and the requirements governing listed company reporting.¹⁷⁸

The regulatory and jurisprudence developments, and the factual non-equivalence of carbon credits and emissions, are reflected in new EU legislation. The EU's Empowering Consumers for the Green Transition (**ECGT**) directive prohibits all product marketing claims based on emissions 'offsetting' schemes. The directive states that offsetting *"claims should only be allowed when they are based on the actual lifecycle impact of the product in question, and not based on the offsetting of greenhouse gas emissions outside the product's value chain, as the former and the latter are not equivalent. Such a prohibition should not prevent companies from advertising their investments in environmental initiatives, including carbon credit projects"* (emphasis added). The prohibition will be in force EU-wide from September 2026.

Beyond product claims, the non-equivalence of carbon credits and emissions is also leading to adverse judgments in relation to corporate transition plan statements. For example, in March 2025, German NGO DUH won a case against Adidas in the Nuremberg-Fürth Regional Court, challenging statements by the company that it would be climate neutral by 2050 in the absence of concrete steps showing how this would be achieved beyond 2030. The Court found that the company's reliance on 'compensating' for its emissions by purchasing green electricity certificates made this statement misleading and ordered the company to withdraw the statement.¹⁷⁹ The financial and securities regulator in Australia has concluded similar enforcement action on corporate transition plan offsetting misstatements, and the Dutch financial regulator has issued aligned guidance to the market.¹⁸⁰

Avoiding this legal risk requires avoiding offsetting, which falsely asserts equivalence between emissions and carbon credits. Any 'use' of (or statement regarding) carbon credits which treats them as counterbalancing emissions suffers from this problem. In contrast, the accurate treatment of carbon credits as a contribution on top of – and separate from – absolute emissions reductions¹⁸¹ is consistent

¹⁷⁶ See [Breaking: Court judgment in first Dutch greenwashing class action - marketing claims KLM are considered to be misleading | Loyens & Loeff](#); [Swedish court bans Arla's net-zero advertising claim; Deutsche Umwelthilfe siegt vor Gericht: HelloFresh darf sich nicht mehr „klimaneutral“ nennen – Deutsche Umwelthilfe e.V.](#); [German court bans Lufthansa's alleged 'greenwashing' ads. Marketing & Advertising News, ET BrandEquity; Apple Watch not a 'CO2-neutral product,' German court finds | Reuters](#).

¹⁷⁷ See Press corner | European Commission.

¹⁷⁸ [EnergyAustralia apologises over claims of 'greenwashing' with Go Neutral products - ABC News](#).

¹⁷⁹ See [NGO wins greenwashing lawsuits against German airline, apparel company | Clean Energy Wire](#) and [Press release 14/2025 - Bavarian State Ministry of Justice](#).

¹⁸⁰ See [AFM annual report 2022: a call to keep an eye on the long term](#) and [REP 763 ASIC's recent greenwashing interventions | ASIC](#).

¹⁸¹ Similarly, SBTi suggests that while carbon credits cannot be used to meet entity-level reduction targets, they could be used to "take accountability" for underperformance against those targets: [Deep Dive: The Role of Carbon Credits in SBTi Corporate Net-Zero Standard V2 - Science Based Targets Initiative](#).

with the guidance provided by UN HLEG, the reporting requirements set out in ESRS E1¹⁸², the TPT's guidance¹⁸³.

From an investor and market standpoint, offsetting emissions through carbon credits does not mitigate transition risk, nor systemic/physical risk for companies. The purchase of carbon credits cannot protect a fossil fuel company from the business risks of waning fossil fuel demand as the world decarbonises, and carbon credits cannot replace absolute emissions reductions as a tool to mitigate climate change and avert its worst impacts¹⁸⁴. An overly permissive approach in the UK's transition planning rules would allow companies to perpetuate the damaging fiction that it is possible to offset their way out of transition, climate damage and the financial and legal risks each brings.

If and to extent offsetting is permitted (as well as reporting non-offsetting "contribution" claims), there must be a strict and limited role for it, which addresses (and is seen by stakeholders to address) risk of mitigation deterrence. The VCMI Code does not suffice to meet this requirement - it allows a company to fail to cut emissions substantially in the near-term and offset instead. Hence it is already under criticism as a non-credible approach¹⁸⁵. A permissive role for offsetting will predictably lead to continued lack of integrity in corporate transition and will perpetuate the 'integrity crisis' in the carbon credit markets.

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¹⁸² See paragraph 34(b) of ESRS E1: "*The GHG emission reduction targets shall be gross targets, meaning that the undertaking shall not include GHG removals, carbon credits or avoided emissions as a means of achieving the GHG emission reduction targets*": [ESRS E1 Delegated-act-2023-5303-annex-1_en.pdf](#).

¹⁸³ The TPT Disclosure Framework states that "*good practice transition plans should...prioritise decarbonisation through direct abatement over purchasing carbon credits*". See p.19 of [disclosure-framework-oct-2023.pdf](#).

¹⁸⁴ See ClientEarth's briefing on the legal risks of carbon offsets: [Briefing](#).

¹⁸⁵ See, for example: [New VCMI guidance risks justifying carbon offsetting and delaying real corporate climate action, NGOs say - ECOS](#).