7 September 2018

Complaint to the FRC Conduct Committee

Bodycote PLC

ClientEarth

Contents

1 Summary of complaint

1. Bodycote PLC (**Bodycote**) is a company carrying on business as an engineering services provider and industrial manufacturer. It is listed on the main market of the London Stock Exchange. The purpose of this complaint (**Complaint**) is to bring a number of possible breaches of Bodycote's legal duties to the attention of the Financial Reporting Council (**FRC**) Conduct Committee (**Conduct Committee**).

2. As an international engineering services provider and industrial manufacturer with an energy intensive business model, Bodycote's business is materially exposed to the trends and risks associated with climate change and the low carbon transition. Such trends and risks have now been widely recognised by investors, governments, regulators and many of Bodycote's peers. An analysis of these trends and risks is presented in section (3) of this Complaint.

3. Under the relevant laws, Bodycote is required to disclose in its annual report and accounts: the principal risks and uncertainties facing its business; the main trends and factors likely to affect the future development, performance and position of its business; and the long term viability and prospects of the company in light of these risks and trends. A detailed discussion of the relevant legal provisions is given in section (4) of this Complaint.

4. Bodycote's Annual Report (as defined below) includes the mandatory disclosure of GHG emissions for which the company is responsible, and a brief discussion of efforts to reduce its carbon emissions. Other than that, Bodycote does not mention the term 'climate change', or anything similar, at all. Furthermore, the Annual Report makes no reference to any risks, uncertainties, trends or factors associated with climate change or the low carbon transition.

5. Accordingly, it is ClientEarth's submission that by failing to discuss climate change or the low carbon transition in relevant sections of its Annual Report, Bodycote has breached its legal duties under: sections 414C(2)(b) and 414C(7)(a) of the Companies Act 2006 (**Companies Act**); DTR 1A.3.2 R and DTR 4.1.8 R of the Disclosure Guidance and Transparency Rules (**DTRs**); and LR 9.8.6 R (3)(b) of the Listing Rules (**LRs**). Details are given in section (4) of this Complaint.

6. The Conduct Committee is responsible for ensuring that the provision of financial information by public companies complies with relevant reporting requirements. Accordingly, as detailed in section (5) of this Complaint, in relation to the breaches of the Companies Act, ClientEarth requests that the Conduct Committee:

   a. appoint a review group to consider these matters and to apply to court for (i) a declaration that the Annual Report does not comply with the relevant requirements of the Companies Act; and (ii) an order requiring the directors of the company to prepare a revised report; or

   b. enter into an agreement with Bodycote that it will revise its Annual Report to ensure compliance with the requirements of the Companies Act and take necessary steps to correct the public record.

7. In relation to the breaches of the DTRs and LRs, ClientEarth requests that the Conduct Committee appoint a review group to consider these matters and/or refer them to the FCA.

2 Factual background

2.1 ClientEarth

8. ClientEarth is a non-profit environmental law organisation based in London, Brussels, Berlin and Warsaw. ClientEarth's Climate Finance Initiative analyses the legal implications of climate change-related financial risks for a wide spectrum of market participants, including companies, investors, company directors, their professional advisers and regulators.

9. In the UK, ClientEarth operates through a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE.

2.2 Bodycote PLC

10. Bodycote PLC (**Bodycote**) is a public limited company with company number 00519057 listed on the main market of the London Stock Exchange. Bodycote's registered office address is Springwood Court, Springwood Close, Tytherington Business Park, Macclesfield, Cheshire SK10 2XF. Bodycote was admitted to trading on the main market of the London Stock Exchange on 28 January 1972 and has a premium listing.

11. Bodycote carries on business as an industrial manufacturer and engineering services provider, providing heat treatment and specialist thermal processing services. These services encompass a variety of techniques and specialist engineering processes which improve the properties of metals and alloys and extend the life of components. Bodycote operates from over 180 separate locations in 23 different countries. [1]

12. Bodycote's divides its work into two broad, customer focussed divisions: 1) the ADE Division, primarily focussed on aerospace, defense and energy customers; and 2) the AGI division, primarily focussed on automotive and general industrial customers.[2] Bodycote's business model is highly energy intensive, and it publicly reports that energy costs are its second largest operating cost.[3]

13. The market capitalisation of the London listed element of Bodycote is approximately £1929.88 million (as at 13 August 2018).[4] Each of Bodycote's directors is a person 'discharging managerial responsibilities' within Bodycote for the purposes of Schedule 10A of the Financial Services and Markets Act 2000. We have sent a courtesy copy of this Complaint to Bodycote.

[1] See Bodycote PLC Annual Report and Accounts 2017.
[2] See Bodycote PLC Annual Report and Accounts 2017.
[3] See CDP, Bodycote climate change 2017.
[4] See summary of information for Bodycote on London Stock Exchange website.

2.3 Bodycote's annual report and accounts

14. This Complaint relates to the Bodycote Annual Report and Accounts 2017, which cover the financial year ending 31 December 2017 (**Annual Report**).

15. The Annual Report makes no reference to 'climate change'. Bodycote's Annual Report does however include a discussion about its carbon emissions and its efforts, targets and strategies to reduce them, under a section titled 'Corporate Responsibility and Sustainability'. This includes the following relevant statements:

- *'At every stage where Bodycote is involved in the manufacturing cycle, our operational aim is to reduce the overall impact on the environment, not just in our own operations, but also those of our customers. Bodycote operates modern, efficient equipment, which is operated around the clock so as to optimise treatment processing cycles. Without Bodycote, many companies would be using older in-house technology and running their equipment at reduced capacity, both of which drain energy resources. Working with Bodycote enables our customers to commit more easily to carbon reduction initiatives.*

  Bodycote also reduces the carbon footprint of our customers' activities by increasing the lifespan of their products, by improving metallurgical properties and by enhancing corrosion resistance. For example, surface treatment technology is widely used in the reclamation of damaged and worn components, offering a cost effective and energy-efficient alternative to the need to manufacture new replacement parts. The treated parts often last up to twenty times longer than the original.

  Whilst thermal processing is an energy-intensive business, it is a vital part of the manufacturing supply chain and its use saves the energy it consumes many times over.'[5]
- *'Bodycote uses established systems to develop best practice at specific sites and across the wider Group. Examples of 2017 projects undertaken across Bodycote sites are discussed below.*

  The continued replacement of traditional lighting with LED for environmental and improved safety has resulted in further CO2 reductions. Our sites at Sprockhövel, Otterfing, Esslingen, Korntal, Wehingen, Gothenburg and Warsaw will benefit from projected total savings of 192.4Te CO2 annually.

  At the Lüdenscheid plant the second phase of a heat recovery project will save a further 171.6Te CO2 each year in addition to the 69.1Te from phase 1. At Langenfeld 133.6Te CO2 savings will be achieved from new furnace insulation.

  A new heat exchange system in Gothenburg for both cooling water and process ventilation has resulted in 10.6Te CO2 savings and means that no additional energy is required to heat the production area and the main offices.

  Meanwhile in Denmark our Ejby plant will reduce CO2 emissions by 60.3Te through the new air coolers. These replace evaporative water cooling towers and, in addition to the energy savings, eliminate the potential risk of Legionella and associated chemical treatment.

  In addition to process efficiency improvements some sites have upgraded the building fabric to improve energy efficiency. At our Haag site a project to replace windows and improve insulation resulted in a 10Te per annum saving of CO2 emissions.

[5] Bodycote PLC Annual Report and Accounts 2017, p 34.

Since 2013 Bodycote has submitted data on CO2 usage to the Carbon Disclosure Project, one of the leading carbon reporting and verification bodies. Each year the Company has improved its standing in the league tables and is now a "C" relative to general business groups and is rated significantly higher on verification of data.'[6]

16. Climate change and the low carbon transition are notably absent from the sections of the Annual Report entitled: 'Principal Risks and Uncertainties' (p 25); 'Business Review' (p 18), which appears to address key trends facing the business; and 'Viability Statement' (p 29).

3 The materiality of climate change

17. A fundamental element of all of the relevant legal requirements that are the subject of this Complaint is whether or not a reasonable director in the position of Bodycote's directors would consider that a particular risk, uncertainty, trend or factor is 'material' to Bodycote. A detailed discussion of the relevant legal provisions is given in section (4) of this Complaint.

18. Accordingly, this section sets out evidence about the materiality of climate change and the low carbon transition to Bodycote, in order to substantiate the subsequent submissions made in this Complaint regarding Bodycote's possible breaches of its legal duties. This evidence includes:

- an overview of physical and transition risks related to climate change;
- relevant government and regulatory guidance;
- relevant peer comparisons; and
- evidence of investor expectations.

3.1 Overview of physical and transition risks related to climate change

19. It is now widely accepted that climate change will create physical, social and economic disruption on an unprecedented scale. With roughly 1°C of global warming already driven by human activity, the physical impacts of climate change are being felt now.[7] Droughts are becoming more extreme, storms are increasing in severity and sea levels are rising. These impacts are widely projected to increase dramatically into the future, even under the most optimistic scenarios.[8]

20. For businesses and other economic actors, the impacts of climate change are not just physical. Efforts to address and adjust to its effects are fundamentally reshaping economies. Decisive actions by governments, companies and civil society, combined with sharply declining renewable energy costs and shifting consumer preferences are rapidly accelerating the transition to a low-carbon economy.[9] These trends too are widely projected to accelerate

[6] Bodycote PLC Annual Report and Accounts 2017, p 35.
[7] NASA, 'Global Temperature', (accessed 14 August 2017); UK Met Office, 'Global climate in context as the world approaches 1°C above pre-industrial for the first time', (2015).
[8] See Intergovernmental Panel on Climate Change (IPCC), 'IPCC Fifth Assessment Report - Climate Change 2014: Synthesis Report' (2014); Christiana Figueres et al. 'Three Years to Safeguard our Climate', *Nature* (28 June 2017).
[9] See Task Force on Climate-related Financial Disclosures, 'Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures' (June 2017); Bank of England, 'The Bank of England's Response to Climate Change' (June 2017).

over the coming years, with significant potential for dramatic step changes in government policy as urgency to address the physical impacts increases.[10]

21. Numerous studies have now identified how the combination of these physical, political and macro-economic trends represent clearly foreseeable risk factors that will affect companies across nearly all sectors.[11] Inevitably, the financial impacts of climate-related issues on a business will be driven by the specific climate-related risks and opportunities to which the business is exposed and the strategic and risk management decisions it takes in response.

22. Because of the high intensity of the greenhouse gas (**GHG**) emissions associated with their business, companies in manufacturing and industrial sectors with energy intensive business models, such as Bodycote, have been identified as being particularly exposed to climate change-related financial risks. In order to facilitate further analyses, these risks can be divided into two broad categories:

    a. physical risks; and

    b. transition risks.

23. These categories are addressed in further detail separately below.

Physical risks

24. Physical risks refer to risks arising from the direct physical impacts of climate change. These may be driven by specific events, including increased severity of extreme weather events, or by longer-term shifts in climate patterns, including sea level rise or chronic heat waves.

25. The Intergovernmental Panel on Climate Change (**IPCC**) is the preeminent global scientific authority on climate change. The IPCC anticipates that the impacts of climate change will include: extreme precipitation events intensifying and becoming more frequent; a continued rise in global sea levels leading to coastal flooding; and intensification of heat waves over longer durations, leading to increased prevalence of drought and wildfires[12].

26. There is also a significant body of work which draws a direct link between these trends in physical climate change impacts and implications for corporate value chains. For companies such as Bodycote which are relatively capital intensive and require high investments in property, plant and equipment these implications have been identified to include: increased extreme weather events that could damage fixed assets and manufacturing facilities, or disrupt operations and supply chains; sea level rises that could impact coastal infrastructure; rising mean temperatures that could lead to higher operating costs and negatively impact the health and safety of the workforce; and water scarcity that could impact operations.[13]

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[10] See, eg, Mark Carney, Governor of the Bank of England, 'Resolving the Climate Paradox', Speech given at the Arthur Burns Memorial Lecture, 22 September 2016.
[11] See Task Force on Climate-related Financial Disclosures, 'Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures' (June 2017).
[12] See 'IPCC Fifth Assessment Report - Climate Change 2014: Synthesis Report', section 2.
[13] See Investor Group on Climate Change, 'Assessing climate change risks and opportunities for investors: oil and gas sector' (2016).

27. Often, these extreme weather events are part of what businesses may already experience occasionally and have historically managed as part of their enterprise risk-management process. However, climate change brings an important difference because these events become more frequent and/or more intense and therefore the probability that they will have a material financial effect also increases.[14] As a recent report by credit rating agency Standard & Poor's notes, *'[b]ecause we expect the frequency of natural catastrophes, along with their economic effects, to increase in the future, companies will in our view need to improve their level of disclosure about their exposure to such events*.'[15]

28. Importantly, the physical risks associated with climate change are also understood to be highly regionally and locally specific. Adequate assessment may require a detailed understanding of regional asset level vulnerabilities and resilience.[16] Notably, Bodycote has a highly distributed network of facilities with a concentration of operations in Europe and North America as well as extensive supply chains and a distributed customer base. Across both these regions, significant climate-related impacts have already been observed and are projected to increase under all plausible scenarios.[17]

29. Accordingly, as a result of the implications of these physical climate change-related risks, in ClientEarth's view there is, at the very least, a reasonably foreseeable risk that Bodycote will be exposed to: increased operational and capital expenditure costs; loss of revenues; increased exposure to health and safety risks for employees and/or sub-contractors; increased disruption to sourcing of raw materials, supply chain and logistics (e.g. supply of water, energy and materials, resilience on vulnerable transport networks); increased costs of capital and more restricted access to credit markets; and increased insurance premiums and potential for reduced availability of insurance on assets in 'high-risk' locations.[18]

Transition risks

30. Transition risks, generally, refer to risks arising from the transition to a low-carbon economy. Extensive policy, legal, technology, and market changes to address mitigation and adaptation requirements related to climate change are well underway. Fundamental to these activities are steps being taken by governments, investors, companies and consumers to reduce GHG emissions responsible for causing climate change.

31. Policy actions around climate change continue to evolve. Climate change and GHG emissions have been on the global political agenda for increased regulation for many years. In November 1990 the Intergovernmental Panel on Climate Change (**IPCC**) released its first assessment report stating that *'emissions resulting from human activities are substantially increasing the atmospheric concentrations of greenhouse gases'*.[19] This led to calls for a global treaty to curb GHG emissions in order to limit global temperature rises.

[14] See EBRD and Global Centre for Climate Excellence, 'Advancing TCFD Guidance on Physical Climate Risks and Opportunities (2018), 17.
[15] Standard & Poor's, 'Climate Change Will Likely Test The Resilience Of Corporates' Creditworthiness To Natural Catastrophes', (2015) p 8.
[16] See CICERO, 'Shades of climate risk: categorizing climate risk for investors' (2017).
[17] See CICERO, 'Shades of climate risk: categorizing climate risk for investors' (2017), 16.
[18] See further examples, EBRD and Global Centre for Climate Excellence, 'Advancing TCFD Guidance on Physical Climate Risks and Opportunities (2018).
[19] Intergovernmental Panel on Climate Change, 'Climate Change The IPCC Scientific Assessment' (1990) p.xi.

32. Since then, world leaders have participated in the United Nations Framework Convention on Climate Change (**UNFCC**) process, meeting regularly to agree a series of protocols, commitments and agreements with a view to reducing global GHG emissions. In December 2015, at the Conference of the Parties to the UNFCCC, nearly 200 governments entered into a landmark agreement to strengthen the global response to the threat of climate change by "*holding the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels"* (**Paris Agreement**).[20]

33. In order to meet this objective, all parties to the Paris Agreement are required to set and implement a Nationally Determined Contribution (**NDC**), which sets out that country's national GHG emissions limit or reduction target. While the current commitments made by countries under the NDCs are not yet sufficient to meet the objectives of the Paris Agreement, the design of the Agreement includes a ratcheting mechanism and expectation that countries will increase the ambition of their NDCs over time.[21]

34. Both before and following the Paris Agreement, the majority of the world's countries have now taken steps to put in place their own policies, laws and regulations aimed at reducing GHG emissions. This includes the key regions in which Bodycote operates, as well as key end-markets for its products. For example:

    a. In 2014, the European Union agreed a 2030 Climate and Energy Policy Framework which endorsed a binding emissions reduction target of 40% below 1990 levels by 2030, 60% by 2040 and 80% by 2050;[22]

    b. In the UK, the Climate Change Act 2008 sets a legally binding target for reducing UK GHG emissions to 80% below 1990 levels by 2050 – a level based upon an assessment of the UK's pro rata share of emissions reductions necessary to limit warming to 2ºC.[23]

    c. The United States and China have both pledged GHG emissions reductions. The United States NDC (which it is still formally committed too) involves an economy-wide target of reducing its emissions by 26%-28% below its 2005 level in 2025, while China has targeted a peaking of emissions in 2030 and an increase in non-fossil fuel use in primary energy consumption to 20% by 2030.[24]

35. In addition to policies at the national level, many subnational actors, like states, cities and municipalities are also taking steps to implement policy measures aimed at improving energy efficiency, and reducing GHG emissions and air pollution.[25]

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[20] United Nations Framework Convention on Climate Change "The Paris Agreement," December 2015.
[21] E3G, 'The Paris Agreement Ambition Mechanism' (2016).
[22] European Council, '2030 Climate and Energy Policy Framework' (2014).
[23] See UK Committee on Climate Change, 'The Climate Change Act'.
[24] See Climate Action Tracker.
[25] See, eg, C40 Cities Initiative.

36. Globally, the industrial sector as a whole accounts for about 30% of GHG emissions and an equivalent share of global energy use. Most industrial emissions – typically between 60–80% depending on definitions – originate from the energy-intensive production of basic materials.[26] The continuing upwards trend in GHG emissions regulation around the world, combined with the rise of the use renewable energy sources, therefore has significant implications for companies in industrial and manufacturing services sectors.

37. In order to meet relevant emission reduction targets, both in Europe and globally, GHG emissions within the industrial sector will need to be reduced dramatically. According to the IPCC, an absolute reduction in emissions from the industrial sector will require deployment of a broad set of mitigation options beyond just energy efficiency measures. Among other things, this is projected to require switching of energy sources, greater recycling and re-use of materials and potentially significant demand reductions for material end products.[27]

Implications for Bodycote

38. As for many businesses in the manufacturing and industrial processes sector, Bodycote's business is highly energy intensive. According to its own disclosures to CDP (a voluntary climate change reporting platform), energy is the company's second largest cost.[28]

39. Likely reflecting the energy intensive nature of its business, even within the industrials sector, Bodycote's business is also very GHG intensive. According to Bodycote's Annual Report, in 2017 it was responsible for approximately 493.1 tonnes of GHG emissions per million GB£ of sales.[29] According to a recent report by Engaged Tracking, a specialist provider of climate-related data, the average GHG intensity in the 'industrials' sector from a sample of the world's 800 largest companies was approximately 122 tonnes of GHG emissions per million US$ of revenue.[30]

40. As is evident from these statistics, Bodycote's GHG intensity is around four times higher than this industry average. In itself, this indicates a significant exposure to developments associated with the costs of GHG emissions. Recent trends in core jurisdictions where Bodycote operates, such as the EU, also indicate potential exposure to specific regulatory developments.

41. To take just one example, current developments in relation to the EU Emissions Trading Scheme (**EU ETS**) provide clear signal of likely implications. The EU ETS currently operates in 31 countries across Europe and effectively limits emissions from more than 11,000 heavy

[26] See IPCC, 'Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change' (2014), 743.
[27] See IPCC, 'Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change' (2014), 743.
[28] See CDP, Climate Change 2017 – Bodycote.
[29] See CDP, Climate Change 2017 – Bodycote. Bodycote calculates CO2 equivalent emissions by taking electricity and gas usage in kilowatt hours and multiplying by country specific conversion factors provided by the International Energy Agency (IEA). It includes both Scope 1 and scope 2 emissions.
[30] ET Index Research, '2016 ET Carbon Rankings Report', 25. The sector referred to in the report is the 'resource transformation' sector, which includes both chemicals and industrials sub-sectors. Engaged Tracking bases its analysis on scope 1 and scope 2 C02 equivalent emissions disclosed as publicly disclosed by relevant companies.

energy-using installations (power stations and industrial plants) and airlines operating between these countries. It covers around 45% of the EU GHG emissions and aims to incentivise a reduction by imposing a price on these emissions through a cap and trade permit system.[31]

42. As a recent report by financial think tank, Carbon Tracker notes, reforms to the EU ETS have already seen the price of carbon allowances triple in the last 18 months, from a low of €4.38 per tonne in May 2017 to €13.82 per tonne in April 2018. The report finds that prices are on course for €25-€30 per tonne by 2020-21 as reforms squeeze out surplus supply. It also suggests that the EU would need to implement a much tighter squeeze and drive prices still higher in order to align the EU-wide 2030-emissions target — and hence the EU-ETS cap — with the Paris Agreement.[32]

43. From a review of relevant sources, it does not appear that Bodycote is currently required to participate in the EU ETS directly. Nonetheless, where it is a purchaser of energy from companies that are, then it will likely have significant exposure to any increases in costs as energy utilities and distributors seek to pass these through to customers. Such costs may affect separate facilities differently and could also have implications for Bodycote's competitiveness if it in turn is unable to pass any increased operational costs onto customers.[33]

44. Alongside these EU wide measures, many jurisdictions may also introduce or increase regulations or costs designed to reduce GHG emissions, which may also impose costs on Bodycote directly.[34] As countries introduce further policies to implement their commitments under the Paris Agreement, such regulations and costs will necessarily increase.

45. In light of these developments, it is notable that Bodycote does observe the possible implications of some regulatory risks in its voluntary disclosure to CDP, where it identifies that fuel/energy taxes and carbon taxes are a 'likely' risk driver over a 3-6 year time frame, with 'medium-high' impact. It further identifies potential impact as including 'increased operational cost, increased capital cost, reduction in capital availability'.[35] A discussion of these trends and risks is noticeably absent from Bodycote's Annual Report.

46. In summary, as a result of the implications of these market trends and policy-related risks, there is, at the very least, a reasonably foreseeable risk that Bodycote will be exposed to material financial risks, including: increased operating costs; increased costs of capital; increased compliance and litigation costs; and adverse effects on revenue, margins, profitability and cash flows.

[31] See European Commission, 'EU Emissions Trading Scheme'.
[32] See Carbon Tracker, 'Carbon Clampdown Closing the Gap to a Paris-compliant EU-ETS' (April 2018).
[33] For a discussion of firms' capacity to pass through costs associated with the EU ETS, see Grantham Research Institute on Climate Change and Environment, 'Assessing the effectiveness of the EU Emissions Trading System' (2013).
[34] See, eg., UK Government, 'Climate change levy'.
[35] See CDP, Climate Change 2017 – Bodycote.

3.2 Relevant government and regulatory guidance

47. In light of the substantial risks associated with climate change, numerous government and other regulatory bodies both in the UK and internationally have now emphasised the need for companies, particularly those in exposed sectors, to disclose these risks to their shareholders and broader stakeholders, including as part of their existing mandatory disclosure obligations. Examples of this government and regulatory guidance and commentary are set out below.

Financial Reporting Council

48. In recent years the FRC and/or its representatives have provided significant further commentary on the FRC's expectations in relation to the contents of the Strategic Report, including explicit references to climate change-related risks. Relevant examples include the following:

   a. In Stephen Haddrill's (CEO of the FRC) December 2015 letter to Audit Committee Chairmen, he states that: *"**Companies are required to consider materiality in reporting their 'principal' risks as part of their Strategic Report**. We and investors encourage companies to disclose how the risk specifically affects them and the steps they are taking in mitigation. Investors certainly do not seek a long list of all possible risks, however, they have recently expressed surprise that risks relating to data protection in IT systems/ cyber risk **and risks from climate change** are not reported more often as principal risks. "*

   b. In the 2015/2016 Annual Reviews of Corporate Reporting, the FRC states that: *"We encourage companies to consider a broad range of factors when determining the principal risks and uncertainties facing the business, for example cyber-crime and **climate change***."[36]

   c. In the 2016/2017 Annual Reviews of Corporate Reporting, the FRC states that "*we expect reference to be made to the impact **of climate change** where relevant for an understanding of the company's activities*."[37]

   d. In 2017, the FRC published a draft of proposed amendments to the FRC Guidance, which specifically highlights climate change as an example of the type of risk that entities should be considering.[38] This updated guidance has now been released and includes an extended discussion of climate change elated risks, including the following example:

   '*Risks arising from climate change could include the risks and opportunities facing the entity's operations from a transition to a low carbon economy, the physical risks to the entity's operations posed by climate change, for instance direct damage to*

[36] FRC, Annual Reviews of Corporate Reporting 2015/2016, p. 50.
[37] FRC, Annual Reviews of Corporate Reporting 2016/2017, p. 22.
[38] FRC, Draft amendments to Guidance on the Strategic Report, Non-financial reporting dated August 2017, pgs. 26 & 28.

assets or supply chain disruption, and could also include the risks that the entity's operations contribute to climate change risk. These different types of risk may not be relevant for every entity, but directors should consider each category and report on those that constitute principal risks.'[39]

Financial Stability Board - Task Force on Climate-related Financial Disclosures

49. In recent years, G20 Finance Ministers and Central Bank Governors have become concerned that the financial implications of climate change are not being adequately disclosed by companies to the market. The concern for these actors is that insufficient disclosure hinders the capital markets from making well-informed asset allocation and risk pricing decisions, and could ultimately pose a financial stability problem.[40]

50. In light of these concerns, in December 2015, Mark Carney, chair of the G20 Financial Stability Board (**FSB**), established the industry-led Task Force on Climate-related Financial Disclosures (**TCFD**). Chaired by Michael Bloomberg and consisting of 32 industry leaders, the TCFD was asked to develop recommendations for consistent climate related financial disclosures that would be useful to investors, lenders, and insurance underwriters in understanding material risks facing business from climate change.

51. In June 2017, the TCFD released its Final Report, which contains detailed disclosure recommendations and a framework to assist companies to consider the financial implications of climate change-related risks which they might face. Relevantly, in light of concern over heightened exposure, the TCFD has also published specific guidance for companies in the materials and metals sector.[41]

52. While these disclosure recommendations are framed as being voluntary, relevantly, the TCFD emphasised that:

    'climate-related issues are or could be material for many organizations, and its recommendations should be useful to organizations in complying more effectively with existing disclosure obligations'

53. In addition to the members of the TCFD itself, the TCFD Recommendations have now received widespread support from across industry. Over 100 of the world's largest companies have signed up to a statement of support for the recommendations[42] Aside from this statement business leaders have expressed widespread support for climate risk disclosures and the TCFD recommendations through other initiatives and organisations, including the following:

    - **A4S** – The Prince's Accounting for Sustainability Project obtained a statement of support from 34 CFOs, 13 CEOs of Accounting Bodies and 17 Chairs of Pension Funds to affirm

[39] FRC, 'Guidance on the Strategic Report' (July 2018).
[40] See Mark Carney, 'Breaking the tragedy of the horizon - climate change and financial stability', speech at Lloyds of London (29 September 2015).
[41] TCFD, Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures (June 2017), p52.
[42] Taskforce on Climate-related Financial Disclosures, 'TCFD Supporters'.

their commitment to support and work towards adoption of the TCFD recommendations.[43]

- **AIGCC, CDP, Ceres, IGCC, IIGCC and PRI** - Over 390 investors representing more than USD $22 trillion in assets signed a letter called upon G20 leaders to support the TCFD recommendations.[44]
- **WBCSD** - The World Business Council for Sustainable Development (**WBCSD**) has convened 25 global CEOs to support the TCFD recommendations and encourage other business leaders to join them in their support efforts. Along with these supporters the WBCSD has published a climate-related financial disclosure guide for CEOs.[45]

54. In light of this widespread support, it is increasingly clear that the TCFD Recommendations represent a clear affirmation of the materiality of climate change-related risks to business and investors generally. In addition they also provide a clear and accepted framework through which companies can consider, manage and disclose their climate change-related risks and opportunities.

UK Government: Department for Business Energy and Industrial Strategy

55. The UK Government has now also expressed its expectations in relation to climate change-related risks and associated disclosures. In September 2017, the UK government officially endorsed recommendations published by the TCFD and stated that:

> *The government has also officially endorsed recommendations published by the Financial Stability Board's Task Force on Climate-related Financial Disclosures and encourages all listed companies to implement this new, voluntary framework to align climate-related risk management and financial governance. These recommendations represent a key milestone in the global low carbon transition, and have been backed by over 100 businesses worldwide with a market capitalisation of more than $3 trillion.*'[46]

Financial Conduct Authority

56. The FCA has recently discussed climate change risks as part of its response to a Law Commission report on pension funds and social investment.[47] In its response, it confirmed that "*the FCA consider that financially material ESG risks, including climate change risks, should be incorporated into investment decision making*".[48]

57. The FCA also recently responded to the Environmental Audit Committee's Green Finance report. They listed a number of proactive steps which they are taking with regard to climate change-related disclosures. As part of this, the FCA stated it will "*highlight to issuers the need to make adequate disclosures regarding materially important information, including information that allows investors to understand how ESG matters affect the valuation of a listed company's securities and how these matters are managed by the company.*"[49]

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[43] See A4S, Supporting the recommendations of the FSB taskforce on climate-related financial disclosures.
[44] See IIGCC, Nearly 400 global investors with over $22 trillion in assets urge G20 to stand by Paris Agreement.
[45] WBCSD, 'CEO Guide to Climate-related Financial Disclosures' (2017).
[46] https://www.gov.uk/government/news/uk-government-launches-plan-to-accelerate-growth-of-green-finance
[47] Law Commission (2017). "Pension Funds and Social Investment" Law Comm No. 374 printed 22 June 2017.
48 Department for Work & Pensions (2018). "Pension funds and social investment: the Government's final response" June 2018.
49 Letter from David Geale, Director of Policy at the FCA, to Mary Creagh MP, Chair of the Environmental Audit Committee, dated 6 July 2018.

3.3 Relevant peer comparisons

58. For a number of years, many companies, in the UK and elsewhere, have been disclosing information in their annual reports and accounts about climate change-related trends, factors, risks and uncertainties. Many of these companies also publish significant further information outside of their mainstream financial filings, for example in sustainability reports or through disclosures to third party information providers, such as the Climate Disclosure Project (**CDP**)[50] or the Climate Disclosures Standards Board (**CDSB**).[51]

59. To a certain extent Bodycote has a relatively unique business model, which makes direct peer analysis somewhat difficult. Nonetheless, many other industrial manufacturers with energy and GHG intensive business models will likely face analogous climate change-related physical risks and regulatory and market dynamics to Bodycote. By way of example, brief extracts from disclosures included within the 2017 annual reports of a number of companies in related industrial manufacturing sectors, include the following:

- **CRH Group plc** (cement and construction materials company) - *'The impact of climate change may over time affect the operations of the Group and the markets in which the Group operates. This could include acute and chronic changes in weather, technological development, policy and regulatory change, and market and economic responses. Efforts to address climate change through laws and regulations, for example by requiring reductions in emissions of greenhouse gases (GHGs), can create economic risks and uncertainties for the Group's businesses. Such risks could include the cost of purchasing allowances or credits to meet GHG emission caps, the cost of installing equipment to reduce emissions to comply with GHG limits or required technological standards, decreased profits or losses arising from decreased demand for the Group's goods and higher production costs resulting directly or indirectly from the imposition of legislative or regulatory controls'*
- **Mondi plc** (paper and packaging company) – *'Mondi is a significant consumer of electricity which is generated internally and purchased from external suppliers. Where we do not generate electricity from biomass and by-products of our production processes, we are dependent on external suppliers for raw materials such as gas, oil and coal. Increasing energy costs contribute significantly to increasing chemical, fuel, and transportation costs which are often difficult to pass on to customers. As an energy-intensive business, we face potential physical and regulatory risks related to climate change.'*
- **Thyssenkrupp** (German industrial engineering and steel production company) – *'As an energy-intensive industrial and services group, we face earnings risks on the global markets if additional costs are imposed under energy- and climate-related rules which we are not able to pass onto our customers, or only to a limited extent.'*
- **Norsk Hydro** (Norwegian energy and aluminum business) – '*Implementation of EU energy and climate regulations has and will continue to have a significant influence on energy prices and energy and climate policy in all EU/EEA countries. Emission trading has increased electricity prices by up to 50 percent in periods with high emission allowance cost in Europe, including the Nordic market where electricity is predominantly generated by non-emitting sources. There is, however, an ongoing EU legislative*

[50] https://www.cdp.net/en
[51] https://www.cdsb.net/

process aimed at reducing emissions and consequently increasing future allowance prices.'

- **ArcelorMittal SA** (Luxembourgian integrated mining and steel manufacturing company) – *'…obligations, whether in the form of a national or international cap-and trade emissions permit system, a carbon tax or acquisition of emission rights at market prices, emissions controls, reporting requirements, or other regulatory initiatives, could have a negative effect on ArcelorMittal's production levels, income and cash flows. Such regulations could also have a negative effect on the Company's suppliers and customers, which could result in higher costs and lower sales. Moreover, the EU Commission's decision to further reduce the allocation of CO2 emission rights to companies could negatively impact the global industry, as the amount of such rights is currently at the edge of covering technically achievable operating conditions. ArcelorMittal currently expects that CO2 emissions regulations will result in increased costs in Europe starting in 2020.'*

60. Annex 1 to this complaint includes a more substantial summary of disclosures included in the annual reports and accounts of other energy and GHG intensive industrial manufacturing companies, which are subject to the same or equivalent disclosure requirements as Bodycote. As is evident from these examples, Bodycote is a clear outlier among peers in these sectors for providing no mention at all about climate change or the low carbon transition in the risks and trends sections of its Annual Report.

3.4 Evidence of investor expectations

61. In light of the significant risks that climate change and the energy transition are creating for companies, there are now clear signals from a wide variety of investors that they consider the risks associated with climate change to be financially material to their investment and stewardship decision making.

62. Over the past few years there have been numerous shareholder resolutions passed at companies across a range of sectors demanding disclosures about climate change related risks.[52]

63. Investors are also increasingly making clear statements about the extent to which they consider that information about climate change-related risks is material for their investment decision making.[53] By way of example, in its statement of engagement priorities for 2017-2018, BlackRock, the world's largest fund manager, states that:

   'For directors of companies in sectors that are significantly exposed to climate risk, BlackRock expects the whole board to have demonstrable fluency in how climate risk affects the business and management's approach to adapting the long-term strategy and mitigating the risk.'[54]

64. Similarly, in 2017, Bill McNabb, CEO of Vanguard, the world's largest mutual fund provider, published an open letter to directors of public companies in which he stated that:

[52] Ceres, Four Mutual Fund Giants Begin to Address Climate Change Risks in Proxy Votes: How About Your Funds?
[53] IIGCC et al. Letter form global investors to governments of the G20 nations (3 July 2017).
[54] BlackRock, Statement of engagement priorities for 2017-2018.

> *'‘Climate risk is an example of a slowly developing and highly uncertain risk—the kind that tests the strength of a board’s oversight and risk governance. Our evolving position on climate risk (much like our stance on gender diversity) is based on the economic bottom line for Vanguard investors. As significant long-term owners of many companies in industries vulnerable to climate risk, Vanguard investors have substantial value at stake.’*[55]

65. Legal and General Investment Management (**LGIM**), the UK’s largest asset manager, has also made clear its expectations about how companies in which it invests should manage and disclose climate change-related trends and risks. In 2016, LGIM published its ‘climate impact pledge’, making clear to its investee companies that ‘ignoring climate change is a financial risk’.[56]

66. Subsequently, LGIM has engaged with many of the largest companies in its portfolio and publicly declared that it would vote against company boards which fail to manage and report climate change-related risks to their business transparently.[57] At the 2017/18 AGM season LGIM voted to remove the board chairs at eight of the worst performing companies worldwide, which it identified had failed to adequately confront the threats posed by climate change.[58] LGIM has also indicated that for companies that fail to address its concerns after a period of engagement, it will reduce its holdings or divest the company from certain funds.[59]

67. Specifically in relation to physical climate change related trends and risks, many investors, including Schroders[60] and Deutsche Asset Management[61] are already mapping company assets and calculating vulnerability profiles to physical climate change risks and impacts – and are demanding better company disclosures accordingly.

68. In relation to the requirements of the viability statement, in January 2016, a group of investors with assets under management (**AUM**) of around £1.8 trillion, wrote a public letter to the FRC setting out their expectations that fossil fuel dependent companies should address climate-related risks in their viability statements.[62] This letter provides strong evidence that investors also consider that climate change-related risks have significant implications for many companies’ long-term viability.

69. As is clear from these statements, some of the world's largest investors have made clear that they consider information about climate change-related trends and risks for companies in exposed sectors to be highly financially material and have made this a key engagement issue. Investors clearly believe this information is relevant to their economic, stewardship and investment decision-making.

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[55] Bill McNabb, 'An open letter to directors of public companies worldwide' 31 August 2017.
[56] LGIM, ‘Time to act on climate change: engagement with consequences’ (2016).
[57] LGIM, ‘Climate impact pledge: the results so far’ (2018).
[58] See, Reuters, ‘Investor LGIM seeks removal of eight company chairs over climate change inaction’ (11 June 2018).
[59] LGIM, ‘Climate impact pledge: the results so far’ (2018).
[60] Schroders, ‘Climate change: the forgotten physical risks’ (July 2018)
[61] Deutsche Asset Management, ‘Measuring physical climate risk in equity portfolios’ (November 2017).
[62] See Sarasin & Partners et al., 'Investors expect fossil fuel companies’ viability statements to address climate risk' (29 January 2016).

4 The law

70. The law relevant to this complaint includes requirements under the Companies Act 2006 (**Companies Act**); the Disclosure Guidance and Transparency Rules (**DTRs**) and Listing Rules (**LRs**) contained in the Financial Conduct Authority (**FCA**) Handbook (**FCA Handbook**); and the UK Corporate Governance Code (together, **Relevant Laws**).

71. This Complaint submits that by failing to refer to climate change or the low carbon transition in relevant sections of its Annual Report, Bodycote has breached a number of requirements under the Relevant Laws. In particular, it is ClientEarth's submission that Bodycote has:

    a. failed to provide a description of a principal risk and/or uncertainty facing the company, as required by section 414C(2)(b) of the Companies Act (**Breach 1**);

    b. failed to include a main trend and/or factor likely to affect the future development, performance and position of the company's business, as required by section 414C(7)(a) of the Companies Act (**Breach 2**);

    c. failed to provide a description of a principal risk and/or uncertainty facing the issuer, as required by DTR 4.1.8R (**Breach 3**).

    d. failed to provide a proper account of the long term viability and prospects of the company, as required by paragraph C.2.2 of the Corporate Governance Code and LR 9.8.6 (**Breach 4**); and

    e. failed to take reasonable care to ensure that any information it notifies to a regulatory information service (**RIS**) is not misleading, false or deceptive and does not omit anything likely to affect the import of the information, as required by DTR 1A.3.2R (**Breach 5**).

72. Further particulars in relation to each of these alleged breaches of the law are set out below.

4.1 Breach 1 - Companies Act, s 414C(2)(b)

73. Under section 414A(1) of the Companies Act, the directors of Bodycote are required to prepare a strategic report for each financial year of the company (**Strategic Report**). Section 414C of the Companies Act sets out the requirements for the contents of the Strategic Report.[63]

74. Under section 414C(2)(b) of the Companies Act, Bodycote's Strategic Report must contain, among other things, *'a description of the principal risks and uncertainties facing the company'.*

75. The Companies Act itself does not provide a definition of the term 'principal risks and uncertainties'. ClientEarth has not identified any relevant case law that considers the term.

[63] Further requirements for the contents of the Strategic Report are also set out under other sections of the Companies Act, including s 414CB.

On that basis it is appropriate to look to secondary sources (such as regulatory guidance) for guidance on this term.

76. Relevantly, in 2014, the FRC published its Guidance on the Strategic Report (**FRC Guidance**). This guidance is described by the FRC as being persuasive although not mandatory. As such, the following paragraphs of the FRC Guidance provide an authoritative indication as to what constitutes a principal risk or uncertainty. Relevant paragraphs include the following:

   a. Paragraph 5.1 states *that "Information is material if its omission or misrepresentation could influence the economic decisions shareholders take on the basis of the annual report as a whole."*

   b. Paragraph 5.3 states that *"Materiality is an entity-specific aspect of relevance based on the nature or magnitude (or both) of the actual or potential effect of the matter to which the information relates in the context of an entity's annual report. It requires directors to apply judgement based on their assessment of the relative importance of the matter to the entity's development, performance, position or future prospects."*

   c. Paragraph 5.4 states that: *"Materiality in the context of the strategic report will depend on the nature of the matter and magnitude of its effect, judged in the particular circumstances of the case."*

   d. Paragraph 5.7 states that *"the terms 'key' … and 'principal' … refer to facts or circumstances that are (or should be) considered material to a shareholder's understanding of the development, performance, position or future prospects of the business."*

   e. Paragraph 7.24 provides that *"The risks and uncertainties included in the strategic report should be limited to those considered by the entity's management to be material to the development, performance, position or future prospects of the entity."*

   f. Paragraph 7.25 provides that "Directors should consider the full range of business risks, including both those that are financial in nature and those that are non-financial. Principal risks should be disclosed and described irrespective of how they are classified or whether they result from strategic decisions, operations, organisation or behaviour, or from external factors over which the board may have little or no direct control. "

77. While Bodycote's directors will retain a certain amount of discretion in how they apply this guidance to the requirements of section 414C(2)(b), it is ClientEarth's view that this discretion is not absolute. Section 414C(2)(b) of the Companies Act does not sit in a vacuum and must be interpreted in light of the purpose of the strategic report,[64] the directors' general duties under the Companies Act[65] and the requirements of the UK Corporate Governance

[64] See Companies Act, ss 414C(1), 172.
[65] See, in particular, Companies Act, ss 174(1)-(2).

Code.[66] In particular, in complying with section 414C(2)(b), Bodycote's directors must *'exercise reasonable care, skill and diligence'* and perform their duties at least to the standard which a reasonable director in the same position would do so.[67]

78. In light of the FRC Guidance and the relevant further legal context, it is ClientEarth's submission that:

   a. in order to satisfy s 414C(2)(b) of the Companies Act, the Strategic Report must include a description of all the 'principal risks and uncertainties facing the company';

   b. for the purpose of s 414C(2)(b) of the Companies Act, 'principal risks and uncertainties facing the company' includes facts or circumstances that are (or should be) considered material to a shareholder's understanding of the development, performance, position or future prospects of the business;

   c. for the purpose of s 414C(2)(b) of the Companies Act, 'material' facts or circumstances are facts or circumstances which a reasonable director in the position of Bodycote's directors would identify and consider could influence the economic decisions shareholders take on the basis of the annual report as a whole.

79. Evidence was provided in section (3) above to show that the risks and uncertainties related to climate change and the low carbon transition are material to Bodycote and that a reasonable director in the position of Bodycote's directors would have considered this to be the case.

80. Accordingly, in light of Bodycote's failure to disclose any information in relation to climate change or the low carbon transition in the risks and uncertainties section of its Annual Report it is ClientEarth's submission that Bodycote has breached s 414C(2)(b) of the Companies Act (**Breach 1**).

4.2 Breach 2 - Companies Act, s 414C(7)(a)

81. As already identified at paragraph 73 of this Complaint, under section 414A(1) of the Companies Act, the directors of Bodycote are required to prepare a Strategic Report. Section 414C of the Companies Act sets out the requirements for the contents of the Strategic Report.[68]

82. Under section 414C(7) of the Companies Act, "*In the case of a quoted company the strategic report must, to the extent necessary for an understanding of the development, performance or position of the company's business, include (a) the main trends and factors likely to affect the future development, performance and position of the company's business, …*"

[66] See, in particular, UK Corporate Governance Code, [C.2], [C.1.1], [C.2.1].
[67] Companies Act, ss 174(1)-(2).
[68] Further requirements for the contents of the Strategic Report are also set out under other sections of the Companies Act, including s 414CB.

83. As a company with a premium listing on the main market of the London Stock Exchange, Bodycote is a 'quoted company' for the purposes of section 414C(7) of the Companies Act.

84. The Companies Act itself does not provide a definition of the phrase 'the main trends and factors likely to affect the future development, performance and position of the company's business'. Again, ClientEarth has not identified any relevant case law that considers this specific phrase and on that basis it is appropriate to look to secondary sources for guidance, and, in particular, the FRC Guidance.

85. In addition to the paragraphs extracted at paragraph 76 of this Complaint, further relevant paragraphs of the FRC Guidance include the following:

   a. Paragraph 5.6 states that: "*Although the [Companies] Act does not use the term 'material', the concept is implicit in many of its requirements. For example, the disclosure of trends and factors (described in paragraph 7.17) is only required to be included in the strategic report '...to the extent necessary for an understanding of the development, performance or position of the company's business'. Where information is required 'to the extent necessary for an understanding', it should be included in the strategic report when it is material to shareholders.*"

   b. Paragraph 6.12 states that: "*Where relevant to an understanding of the development, performance, position or future prospects of the entity, the strategic report should give due regard to the short-, medium- and long-term implications of the fact or circumstance being described.*"

   c. Paragraph 7.18 states that: "*Trends and factors affecting the business may arise either as a result of the external environment in which the entity operates or from internal sources. They may have affected the development, performance or position of the entity in the year under review, or may give rise to opportunities or risks that may affect the entity's future prospects.*"

   d. Paragraph 7.19 states that "*The strategic report … should … cover … significant features of its external environment (e.g. the legal regulatory, macro-economic and social environment) and how those influence the business.*"

86. Again, while Bodycote's directors will retain a certain amount of discretion in how they apply this guidance to the requirements of section 414C(7), Bodycote's directors must '*exercise reasonable care, skill and diligence*' and perform their duties at least to the standard which a reasonable director in the same position would do so. [69]

87. In light of the FRC Guidance and the relevant further legal context, it is ClientEarth's submission that:

   a. in order to satisfy s 414C(7) of the Companies Act, the Strategic Report must to the extent necessary for an understanding of the development, performance or position

[69] Companies Act, ss 174(1)-(2).

of the company's business, include the all main trends and factors likely to affect the future development, performance and position of the company's business;

b. for the purpose of s 414C(7) of the Companies Act, the phrase 'main trends and factors likely to affect the future development, performance and position of the company's business' includes facts or circumstances that are (or should be) considered material to a shareholder's understanding of the development, performance, position or future prospects of the business;

c. for the purpose of s 414C(7) of the Companies Act, 'material' trends and factors are includes all trends and factors which a reasonable director in the position of Bodycote's directors would identify and consider could influence the economic decisions shareholders take on the basis of the annual report as a whole; and

d. for the purpose of s 414C(7) of the Companies Act, these 'material' trends and factors should specifically address long term implications and legal, regulatory and macro-economic trends.

88. Evidence was provided in section (3) above to show that the trends and factors related to climate change and the low carbon transition are material to Bodycote and that a reasonable director in the position of Bodycote's directors would have considered this to be the case.

89. Accordingly, in light of Bodycote's failure to disclose any information in relation to climate change or the low carbon transition in the section of its Annual Report discussing trends and factors facing its business, it is ClientEarth's submission that Bodycote is in breach of s 414C(7) (**Breach 2**).

4.3 Breach 3 - DTR 4.1.8R

90. In addition to the requirements under the Companies Act, as a company incorporated in the UK with a premium listing on the London Stock Exchange, Bodycote is an 'issuer' for the purposes of the FCA Handbook[70] and is therefore required to comply with section 4 of the DTRs contained in the FCA Handbook.[71]

91. Under DTR 4.1.3 R, Bodycote must make public its annual financial report at the latest four months after the end of each financial year. Under DTR 4.1.5 R, among other things, the annual financial report must include a management report (**Management Report**). It is ClientEarth's understanding that Bodycote's Strategic Report in its Annual Report constitutes its Management Report for the purposes of DTR 4.1.5 R.

92. Under DTR 4.1.8 R, Bodycote's Management Report must contain, among other things, *'a description of the principal risks and uncertainties facing the issuer.*"

[70] See DTR 4.1.1.
[71] See DTR 4.1.1.

93. As for the equivalent requirements under the Companies Act, the DTRs do not provide a definition of the term “principal risks and uncertainties”. However, these requirements appear to be synonymous with section 414C(2)(b) of the Companies Act. In these circumstances it is appropriate to apply the same analysis based on the FRC Guidance.

94. Again, while Bodycote’s directors will retain a certain amount of discretion in how they apply this guidance to the requirements of DTR 4.1.8 R, Bodycote’s directors must *'exercise reasonable care, skill and diligence'* and perform their duties at least to the standard which a reasonable director in the same position would do so.

95. Accordingly, based on the relevant paragraphs of the FRC Guidance extracted at paragraph 76 above, and relevant further legal context it is ClientEarth's submission that:

   a. in order to satisfy DTR 4.1.8 R, the Management Report must include a description of all the principal risks and uncertainties facing the company;

   b. for the purpose of DTR 4.1.8 R, 'principal risks and uncertainties facing the company' includes facts or circumstances that are (or should be) considered material to a shareholder's understanding of the development, performance, position or future prospects of the business;

   c. for the purpose of DTR 4.1.8 R of the Companies Act, 'material' facts or circumstances are facts or circumstances which a reasonable director in the position of Bodycote’s directors would identify and consider could influence the economic decisions shareholders take on the basis of the annual report as a whole.

96. Evidence was provided in section (3) above to show that the risks and uncertainties related to climate change and the low carbon transition are material to Bodycote and that a reasonable director in the position of Bodycote's directors would have considered this to be the case.

97. Accordingly, in light of Bodycote's failure to disclose any information in relation to climate change or the low carbon transition in the risks and uncertainties section of its Annual Report it is ClientEarth's submission that Bodycote is in breach of DTR 4.1.8 R (**Breach 3**).

4.4 Breach 4 – LR 9.8.6 R

98. The listing rules are a set of regulations that apply to listed companies in the United Kingdom. Under LR 9.8.1 R, all companies with a premium listing on the London Stock Exchange must comply with the continuing obligations contained in section 9 of the Listing Rules. Bodycote has a premium listing on the London Stock Exchange.

99. Under LR 9.8.6 R (3)(b), a listed company incorporated in the United Kingdom must, among other things, include in its annual financial report a statement by the directors on:

'their assessment of the prospects of the company (containing the information set out in provision C.2.2 of the UK Corporate Governance Code); prepared in accordance with the 'Guidance on Risk Management, Internal Control and Related Financial and Business Reporting' published by the Financial Reporting Council in September 2014';[72]

100. Relevantly, Code Provision C.2.2 of the UK Corporate Governance Code states that:

"Taking account of the company's current position and principal risks, the directors should explain in the annual report how they have assessed the prospects of the company, over what period they have done so and why they consider that period to be appropriate. The directors should state whether they have a reasonable expectation that the company will be able to continue in operation and meet its liabilities as they fall due over the period of their assessment, drawing attention to any qualifications or assumptions as necessary."

101. The statement required under LR 9.8.1 R and Code Provision C.2.2 is commonly referred to as the 'viability statement'.

102. Appendix B to the FRC's *Guidance on Risk Management, Internal Control and Related Financial and Business Reporting'* FRC (**Guidance on Risk Management**), provides further details about the required contents of the statement. Relevant paragraphs include the following:

a. Paragraph 3 provides that: *"The length of the period should be determined, taking account of a number of factors, including without limitation: the board's stewardship responsibilities; previous statements they have made, especially in raising capital; the nature of the business and its stage of development; and its investment and planning periods."*

b. Paragraph 4 provides *that: "The statement should be based on a robust assessment of those risks that would threaten the business model, future performance, solvency or liquidity of the company, including its resilience to the threats to its viability posed by those risks in severe but plausible scenarios."*

c. Paragraph 5 provides that: *"The directors should consider the individual circumstances of the company in tailoring appropriate analysis best suited to its position and performance, business model, strategy and principal risks. These should be undertaken with an appropriate level of prudence, i.e. weighting downside risks more heavily than upside opportunities."*

103. In light of these requirements, it is ClientEarth's submission that in order to satisfy the requirements of LR 9.8.1 R and paragraph C.2.2 of the UK Corporate Governance Code, Bodycote's viability statement must:

a. address a time frame that is aligned with Bodycote's investment and planning periods;

[72] LR 9.8.6 R (3)(b).

b. be based on a robust assessment of risks, including risks in severe but plausible scenarios;

c. reflect an analysis which uses an appropriate level of prudence (i.e. weighing downside risks more heavily than upside opportunities).

104. Evidence was provided in section (3), above, to show that the risks and trends related to climate change and the low carbon transition are material risks and trends that could threaten the business model, future performance, solvency or liquidity of the company, over a time frame aligned with Bodycote's investment and planning periods, and that a prudent director in the position of Bodycote's directors would have considered this to be the case.

105. Accordingly, in light of Bodycote's failure to disclose any information in relation to climate change or the low carbon transition in the viability statement section of its Annual Report, it is ClientEarth's submission that Bodycote is in breach of LR 9.8.1 R (**Breach 4**).

4.5 Breach 5 - DTR 1A.3.2R

106. As a company with a premium listing on the London Stock Exchange, Bodycote is required to comply with section 1A of the DTRs contained in the FCA Handbook.[73]

107. Relevantly, DTR 1A.3.2 R requires that "*an issuer must take all reasonable care to ensure that any information it notifies to a RIS is not misleading, false or deceptive and does not omit anything likely to affect the import of the information.*" The FCA Handbook defines a 'RIS' as a '*primary information provider*',[74] which in turn is defined as '*a person approved by the FCA under section 89P of the [FSMA].*' The FCA has approved a number of information service providers for this purpose.

108. Under DTR 6.3.3, Bodycote must entrust a RIS with the disclosure of 'regulated information' to the public. Bodycote's Annual Report is 'regulated information' for the purpose of this requirement.[75]

109. In light of these requirements, it is ClientEarth's submission that in order to satisfy DTR 1A.3.2 R, Bodycote's directors are required to take all reasonable care to ensure that the information included in Bodycote's Annual Report is prepared in accordance with the requirements of the Companies Act and the FCA Handbook and does not omit anything likely to affect the import of the information.

110. Sections (4.1), (4.2), (4.3) and (4.4) of this Complaint, provide ClientEarth's submissions as to why Bodycote's failures to disclose any information in relation to climate change or the low carbon transition in relevant sections of its Annual Report are breaches of relevant requirements of the Companies Act and FCA Handbook.

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[73] DTR 1.1.1.
[74] Or 'An incoming information society service, established in an EEA state other than the UK that disseminates regulated information in accordance with the minimum standards set out in Article 12 of the TD implementing Directive.'
[75] See DTR 6.3.

111. Accordingly, in light of the breaches set out in sections (4.1), (4.2), (4.3) and (4.4) of this Complaint, it is ClientEarth's submission that Bodycote is in breach of DTR 1A.3.2 R.

5 Requests of the FRC Conduct Committee

112. The Annual Report is a key resource which enables investors to assess the position and performance of a particular business. Bodycote's failure to adequately disclose the risks and trends associated with climate change and the low carbon transition may therefore hamper existing and prospective investors' ability to make informed assessments of these matters.

113. The FRC's stated mission is to promote transparency and integrity in business.[76] The FRC and its Conduct Committee have been provided with specific statutory powers to monitor and take action to promote the quality of corporate reporting.[77] These powers include the following:

a. The Conduct Committee has been authorised by the Supervision of Accounts and Reports (Prescribed Body) and Companies (Defective Accounts and Directors' Reports) (Authorised Person) Order 2012/1439, for the purposes of section 456 of the Companies Act, to make an application to court for a declaration that the strategic report of a company does not comply with the requirements of the Companies Act and for an order requiring the directors of the company to prepare a revised report.

b. Under section 14 of the Companies (Audit, Investigations etc) Act 2004, the Conduct Committee is also responsible for keeping under review periodic accounts and reports that are produced by issuers of transferable securities and are required to comply with any accounting requirements imposed by Part 6 rules,[78] and if the Conduct committee thinks fit, informing the Financial Conduct Authority of any conclusions reached by the body in relation to any such accounts or report.

114. Accordingly, in relation to the breaches of the Companies Act set out in sections (4.1) and (4.2), above, ClientEarth requests that the Conduct Committee appoint a review group to consider these matters and to apply to Court for (i) a declaration that the Annual Report does not comply with the relevant requirements of the Companies Act; and (ii) an order requiring the directors of the company to prepare a revised report.[79]

115. In the alternative, we request that the FRC enter into an agreement with Bodycote that Bodycote will revise its Annual Report to ensure compliance with the requirements of the Companies Act and take necessary steps to correct the public record.[80]

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[76] See FRC website.
[77] See, FRC, 'FRC Roles and Responsibilities Schedule of Functions and Powers' (June 2017).
[78] Relevantly, Part 6 rules include the Disclosure Guidance and Transparency Rules (DTRs) and Listing Rules (LRs) contained in the FCA Handbook. Section 14(12) of the Companies (Audit, Investigations etc) Act 2004 states that 'Part 6 rules" has the meaning given by section 103(1) of the Financial Services and Markets Act 2000'; section 103(1) of the Financial Services and Markets Act 2000 states that '"Part 6 rules" has the meaning given in section 73A; section 103(1) of the Financial Services and Markets Act 2000 states that, 'the FCA, may make rules ('Pat 6 rules' for the purpose of this Part'; the relevant rules made by the FCA include the DTRs and LRs contained in the FCA Handbook.
[79] See FRC, 'The Conduct Committee: Operating procedures for reviewing corporate reporting' (1 April 2017) [38].
[80] See FRC, 'The Conduct Committee: Operating procedures for reviewing corporate reporting' (1 April 2017), [41]-[42].

116. In relation to the breaches of the DTRs and LRs set out in sections (4.3), (4.4) and (4.5), above, ClientEarth requests that the Conduct Committee appoint a review group to consider these matters and/or to refer them to the FCA.[81]

117. In ClientEarth's view, clear and decisive action from the FRC on these matters is vital to ensure that investors have adequate information on Bodycote's exposure to financially material climate change-related risks and that confidence in the quality of the UK's corporate reporting framework is properly maintained.

118. Please do not hesitate to contact us if we can be of any further assistance in relation to this complaint.

6 Reservation of rights

119. As the body with primary responsibility for overseeing and enforcing the quality of information provided in annual reports and accounts, it appears to ClientEarth that the FRC Conduct Committee is the most appropriate body to consider and take action, in the first instance, with respect to this Complaint.

120. Without limitation, should the Conduct Committee consider that it is not competent to address the matters raised in this Complaint, ClientEarth reserves its rights.

[81] See FRC, 'The Conduct Committee: Operating procedures for reviewing corporate reporting' (1 April 2017), [23], [36], [39].

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ClientEarth is a non-profit environmental law organisation based in London, Brussels and Warsaw. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

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Annex 1 - Examples of peer disclosure on climate change

CRH plc Annual Report 2017 (concrete and construction materials company)
'The impact of climate change may over time affect the operations of the Group and the markets in which the Group operates. This could include acute and chronic changes in weather, technological development, policy and regulatory change, and market and economic responses. Efforts to address climate change through laws and regulations, for example by requiring reductions in emissions of greenhouse gases (GHGs), can create economic risks and uncertainties for the Group's businesses. Such risks could include the cost of purchasing allowances or credits to meet GHG emission caps, the cost of installing equipment to reduce emissions to comply with GHG limits or required technological standards, decreased profits or losses arising from decreased demand for the Group's goods and higher production costs resulting directly or indirectly from the imposition of legislative or regulatory controls. To the extent that financial markets view the impact of climate change emissions as a financial risk, this could have a material adverse effect on the cost of and access to capital.' (p. 222)
Weir Group plc Annual Report 2017 (industrial engineering company)
Climate-driven change - Concerns over climate change has led a number of countries to set long-term targets to ban the sale of cars powered only by fossil fuels. The UK and France have said any ban would take place after 2040, while China has not set a specific date. *Moves to reduce emissions and increase the use of electric vehicles is likely to have a long-term impact on commodities such as oil, while also increasing demand on other sources of energy, from natural gas to wind and solar.* *Our response - The Group operates in a diverse range of markets that have the potential to be impacted in different ways by the growth in electric transportation and efforts to tackle climate change.* *While there is uncertainty about when demand for oil may peak, it is likely to play a major role in the global energy mix for decades to come. Meanwhile, natural gas, which produces significantly lower emissions of carbon dioxide than coal, is becoming an increasingly popular source of energy in both advanced and emerging markets. Increased use of solar energy and electric vehicle adoption will also increase demand for metals such as copper, with solar energy and electric vehicles requiring significantly more copper, lithium and cobalt than traditional alternatives.* (p. 4)
ArcelorMittal SA Annual Report 2017 (Luxembourgian integrated mining and steel manufacturing company)
Laws and regulations restricting emissions of greenhouse gases could force ArcelorMittal to incur increased capital and operating costs and could have a material adverse effect on ArcelorMittal's results of operations and financial condition. Compliance with new and more stringent environmental obligations relating to greenhouse gas emissions may require additional capital expenditures or modifications in operating practices, as well as additional reporting obligations. The integrated steel process involves carbon and creates carbon dioxide ("CO2"), which distinguishes integrated steel producers from mini-mills and many other industries where CO2 generation is primarily linked to energy use. The EU has established greenhouse gas regulations and is revising its emission trading system for the period after 2020 in a manner that may require ArcelorMittal to incur additional costs to acquire emissions allowances. In Kazakhstan the government has installed a domestic trading system which currently is in a pilot

phase but would be similar to the EU system. South Africa envisages to start with a CO2 tax system in 2018. The United States required reporting of greenhouse gas emissions from certain large sources beginning in 2011. Although at the federal level the current administration is seeking to delay further regulation of greenhouse gas emissions, emissions trading regimes and other initiatives are continuing to be pursued at the state and regional level. Various regulations are in consideration or recently implemented in Argentina, Ukraine and Canada. Further measures may be enacted in the future. In particular, in December 2015, the 195 countries participating in the United National Framework Convention on Climate Change reached an international agreement, the Paris Agreement. The Paris Agreement aims to implement the necessary drivers to achieve drastic reductions of carbon emissions. The Company takes this message seriously and investigates its possibilities to contribute to this by developing research and development programs, investigating its technical possibilities to reduce emissions (the Company's emission footprint in 2016 was approximately 200 million tonnes) and following the state of knowledge on climate change closely. Such obligations, whether in the form of a national or international cap-and trade emissions permit system, a carbon tax or acquisition of emission rights at market prices, emissions controls, reporting requirements, or other regulatory initiatives, could have a negative effect on ArcelorMittal's production levels, income and cash flows. Such regulations could also have a negative effect on the Company's suppliers and customers, which could result in higher costs and lower sales. Moreover, the EU Commission's decision to further reduce the allocation of CO2 emission rights to companies could negatively impact the global industry, as the amount of such rights is currently at the edge of covering technically achievable operating conditions. ArcelorMittal currently expects that CO2 emissions regulations will result in increased costs in Europe starting in 2020 Furthermore, many developing nations have not yet instituted significant greenhouse gas regulations, and the Paris Agreement specifically recognized that peaking of greenhouse gas emissions will occur later in developing countries. As the Paris Agreement recognizes that the Intended Nationally Determined Contributions ("INDC") for developing nations may be less stringent in light of different national circumstances, ArcelorMittal may be at a competitive disadvantage relative to steelmakers having more or all of their production in such countries. Depending on the extent of the difference between the requirements in developed regions (such as Europe) and developing regions (such as China or the CIS), this competitive disadvantage could be severe and render production in the developed region structurally unprofitable. (p 263)
Thyssenkrupp Annual Report 2017 (German industrial engineering and steel production company)
The goals of the Paris Climate Agreement provide both opportunities and risks for thyssenkrupp. The member countries aim to limit the increase in global average temperature to below two degrees and achieve net greenhouse gas neutrality in the second half of the century. To meet these goals thyssenkrupp intends to apply its engineering expertise to two main approaches: enhanced efficiency and innovative solutions for our own processes and our customers. (p 87) … Regulatory risks - New laws and other changes in the legal framework at national and international level could entail risks for our business activities if they lead to higher costs or other disadvantages for thyssenkrupp compared with our competitors directly or in respect of our value chain. Overall the regulatory risks for thyssenkrupp are classified as medium. As an energy-intensive industrial and services group, we face earnings risks on the global markets if additional costs are imposed under energy- and climate-related rules which we are not able to

pass onto our customers, or only to a limited extent. thyssenkrupp supports effective climate protection efforts and a sustainable energy transition in which climate protection, security of supply, and competitiveness are equal priorities. We support the relevant discussion processes on (p 111)
Sandvik Annual Report 2017 (Swedish industrial and metals manufacturing company)
Risk category: Environmental demands/climate change effects Risk Description: Managing increased demand of more environmentally conscious products and services by our customers. Increased demand to understand climate change effect on both internal operations and other stakeholders, such as suppliers, customers and society Risk consequences: Risk of losing customers and market shares due to: changes in the demand of products and services - not being able to meet customer expectations on our internal operations and/or products and services with regards to environmental performance, including mitigation of climate change impact - tarnished reputation - not being able to comply with new or changed legislation Risk mitigation: Keep high awareness in the organization regarding market demands, customer expectations, business development and legislation. Follow the development in society and the market to be able to adapt products and services according to changed preconditions. Focus on improved efficiency to minimize environmental impact in our own operations, including in the supply chain (p 133)
Norsk Hydro Annual Report 2017 (Norwegian aluminium and renewable energy company)
Implementation of EU energy and climate regulations has and will continue to have a significant influence on energy prices and energy and climate policy in all EU/EEA countries. Emission trading has increased electricity prices by up to 50 percent in periods with high emission allowance cost in Europe, including the Nordic market where electricity is predominantly generated by non-emitting sources. There is, however, an ongoing EU legislative process aimed at reducing emissions and consequently increasing future allowance prices. In order to prevent carbon leakage, the EU established guidelines in 2012 allowing national governments to support industries exposed to global competition. Actual compensation, which is dependent on national implementation, is established in Norway and Germany with conditions corresponding closely to the EU guidelines (p 68) Environmental regulations have continued to tighten in various jurisdictions over the last years due to higher ambitions for national and international environmental targets. In the mining industry, recent major incidents (e.g. Samarco) have increased public awareness and pressure towards authorities and politicians to impose further restrictions. In this context, Hydro and its joint ventures, face the risk of further tightening of environmental regulation requiring further resources to maintain our operations and avoid restrictions or delay in obtaining new licenses in the future. Hydro is, directly and indirectly, exposed to increasingly demanding legislation on reducing greenhouse gas emissions. Hydro has substantial smelter operations located in Europe and other regions as well as alumina refining operations located in Brazil. Aluminium production is an energy intensive process that potentially leads to significant environmental emissions, especially emissions to air, including CO2. An increasing number of countries have introduced, or are likely to introduce in the near future, legislation with the objective of reducing greenhouse gas emissions. Due to the Paris climate accord conference in December 2015, there is a general belief that the political framework for regulating emissions of greenhouse gases will accelerate. There is also expected to be a focus on technology improvements leading to lower emissions. A new directive on EU/ETS is now being discussed in the EU. The outcome can affect the level of CO2 price, the level of free allowances for direct emissions and compensation regime for indirect CO2 cost. (p 127)

In addition, the potential physical impacts of climate change on our facilities and operations is highly uncertain and may cause disruptions in our operations. Effects of climate changes may include changes in rainfall patterns, flooding, shortages of water or other natural resources, changing sea levels, changing storm patterns and intensities, and changing temperature levels. (p 131)
Lafarge Holcim Annual Report 2017 (French industrial and building materials company)
LONG-TERM TRENDS AFFECTING OUR BUSINES CLIMATE CHANGE AND SUSTAINABLE RESOURCE MANAGEMENT The earth's climate is changing. The 2015 UNFCCC COP21 conference in Paris marked a turning point in the global consensus, achieving broad agreement that society must reduce its carbon emissions to help limit warming to a tolerable level (the '2 degree scenario'). This deliberate reduction will have significant consequences for building and infrastructure designers, developers and owners, the construction industry and the construction materials industry. Most notably, sustainability criteria are becoming an increasingly critical decision factor when choosing building materials. (p22) Sustainability risk - The risk that the Group is not effectively managing its commitments to sustainability and corporate social responsibility. The cement industry is associated with significant negative externalities, notably high CO2 emissions, thus reducing our attractiveness to some stakeholders. The 2030 Plan, which includes commitments to reducing net CO2/tonne of cement by 40 percent compared to 1990, is one reason we are considered a sustainability leader in our sector. Increasingly our business is aimed toward sustainable products and solutions. We actively promote industry and regulatory measures that can mitigate environmental harm, including advocating a carbon price, as well as those that promote sustainable construction and infrastructure development.
Mondi plc Annual Report 2017 (paper and packaging company)
Energy security and related input costs **Potential impact -** Mondi is a significant consumer of electricity which is generated internally and purchased from external suppliers. Where we do not generate electricity from biomass and by-products of our production processes, we are dependent on external suppliers for raw materials such as gas, oil and coal. Increasing energy costs contribute significantly to increasing chemical, fuel, and transportation costs which are often difficult to pass on to customers. As an energy-intensive business, we face potential physical and regulatory risks related to climate change. **Monitoring, mitigation and independent assurance activities** - We monitor our electricity usage, carbon emission levels and use of renewable energy. Most of our larger operations have high levels of electricity self-sufficiency. We focus on improving the energy efficiency of our operations by investing in improvements to our energy profile and increased electricity self-sufficiency, while reducing ongoing operating costs and carbon emission levels. Where we generate electricity surplus to our own requirements, we may sell such surplus externally. We also generate income from the sale of green energy credits in certain of our operations at prices determined in the open market. We focus on optimising the use of biomass-based fuels in order to reduce our use of fossil-based energy sources. **Environmental Impact** **Potential impact** - We operate in an environmentally high-impact sector and need to manage the associated risks and responsibilities. Our operations are water, carbon and energy intensive; consume materials such as fibre, polymers, metals and chemicals; and generate emissions to air, water and land. We are the custodian of more than two million hectares of forested land. We

consider potential impacts on constrained resources, loss of biodiversity and ecosystems negatively impacted by our forestry and manufacturing operations. We are subject to a wide range of international, national and local environmental laws and regulations, as well as the requirements of our customers and expectations of our broader stakeholders. Costs of continuing compliance, potential restoration and clean-up activities, and increasing costs from the effects of emissions have an adverse impact on our profitability. The impacts of climate change such as rising frequency and intensity of water shortages, floods and storms worldwide and pests and diseases also have the potential to impact on our operations and forests. (p 39)

Risks and opportunities Climate change can adversely impact our operations and disrupt our supply chain through increased frequency and intensity of water shortages, floods, storms and rising sea levels, as well as forest fires, pests and diseases that impact on our forest assets and fibre sourcing. The price of carbon and uncertainties over future carbon regulation and taxation, as well as energy availability and affordability, can also affect our industry. We believe that a strategic climate approach delivers wider business benefits. By prioritising investments in technology and equipment, we increase energy efficiency, renewable energy generation and energy self-sufficiency across our operations. This, in turn, reduces our dependency on external power suppliers and associated risks. Other opportunities and benefits of reducing our carbon intensity and increasing our use of biomass-based renewable energy include financial savings and additional revenue from the sale of green electricity to local communities and municipalities in the areas where our pulp and paper mills operate. Eight of our pulp and paper mills are located in the EU and are covered by the EU Emissions Trading Scheme (EU ETS). We are currently reviewing the recommendations of the Task Force on Climate-related Financial Disclosures and will respond to the recommendations as part of our annual carbon disclosure to CDP5 and in our annual Sustainable Development and Integrated Reports. This includes evaluating the scenario analysis requirements for quantifying the financial impacts and benefits of climate related risks and opportunities. (p 50)