

7 September 2018

Complaint to the FRC Conduct Committee

EasyJet PLC

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1 Summary of complaint

1. EasyJet PLC (**EasyJet**) is a company carrying on business as an airline, operating in the European short-haul aviation market. 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 EasyJet's legal duties to the attention of the Financial Reporting Council (**FRC**) Conduct Committee (**Conduct Committee**).
2. As an international airline business, EasyJet'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 EasyJet's peers. An analysis of these trends and risks is provided in section (3) of this Complaint.
3. Under the relevant laws, EasyJet 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. EasyJet'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, EasyJet does not mention the term 'climate change' 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, EasyJet 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 EasyJet 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 EasyJet PLC

10. EasyJet is a public limited company with company number 3959649 listed on the London Stock Exchange. EasyJet's registered office address is Hangar 89, London Luton Airport, Luton, Bedfordshire LU2 9PF. EasyJet was admitted to trading on the main market of the London Stock Exchange on 22 November 2000 and has a premium listing.
11. EasyJet carries on business as an airline, operating in the European short-haul aviation market. It operates domestic and international scheduled airline services on over 820 routes in more than 30 countries.¹ The market capitalisation of the London listed element of EasyJet is approximately £6,347.39 million (as at 31 July 2018).²
12. Each of EasyJet's directors is a person 'discharging managerial responsibilities' within EasyJet for the purposes of Schedule 10A of the Financial Services and Markets Act 2000. We have sent a courtesy copy of this Complaint to EasyJet.

2.3 EasyJet's annual report and accounts

13. This Complaint relates to the EasyJet Annual Report and Accounts 2017, which cover the financial year ending 31 December 2017 (**Annual Report**).
14. The Annual Report makes no reference to 'climate change'. EasyJet'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'. This includes the following relevant statements:
 - **'Why does this matter?'**
'easyJet's biggest impact on the environment is its fuel consumption and the associated carbon emissions. easyJet is continuing to make more efficient use of fuel and to further reduce emissions per passenger kilometre on its flights.'

¹ See [EasyJet PLC Annual Report and Accounts 2017](#).

² See summary of information for EasyJet on [London Stock Exchange website](#).

- **Carbon emissions**

easyJet's aircraft CO2 emissions in the 2017 financial year were 7.1 million tonnes, compared to 6.5 million tonnes in the 2016 financial year. easyJet's calculation of emissions is based on fuel burn measurement, which is verified to comply with the European Union's Emission Trading System requirements. The increase in overall emissions has been due to the continued expansion of easyJet's operations. In this financial year easyJet's passenger numbers increased by 9.7% compared to the 2016 financial year.'

- **Carbon emissions per passenger kilometre**

Since 2000 easyJet has reduced its carbon emissions per passenger, per kilometre by over 32%. Its current target is a 10% reduction from its 2016 financial year performance by 2022, which would be a 38% improvement from 2000. In the 2017 financial year easyJet's carbon emissions per passenger kilometre (km) were 78.62 grams (g), down from 79.98g per passenger km in the prior financial year.

- **Efficient aircraft**

easyJet operates an efficient fleet of Airbus A320 family aircraft mainly equipped with CFM56 engines. This year easyJet started to operate the new generation Airbus A320neo aircraft. There will be 100 of these aircraft in the fleet by the end of 2022. These aircraft, equipped with CFM LEAP-1A engines and wingtip 'Sharklets', are expected to be 15% more fuel efficient than current generation aircraft. From summer 2018 easyJet will also start to receive 30 A321neo aircraft, with 235 seats compared to 186 seats on the A320neo aircraft. This will also contribute to easyJet's carbon reduction target by reducing the amount of fuel used to carry each passenger.

- **Operating efficiently**

easyJet continues to use operational measures to reduce fuel usage and carbon emissions. This includes the use of one engine taxiing, installation of lightweight Recaro seats, and the use of electronic devices rather than numerous paper documents in the flight deck.'

15. Climate change and the low carbon transition are notably absent from the sections of the Annual Report headed 'Principal risks and uncertainties' (pp.34-40); 'Our markets' (p 18), which appears to address key trends facing the business; and 'viability statement' (p 31).

3 The materiality of climate change

16. 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 EasyJet's directors would consider that a particular risk, uncertainty, trend or factor is 'material' to EasyJet. A detailed discussion of the relevant legal provisions is given in section (4) of this Complaint.
17. Accordingly, this section sets out evidence about the materiality of climate change and the low carbon transition to EasyJet, in order to substantiate the subsequent submissions made in this Complaint regarding EasyJet's 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

18. 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.³ 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.⁴
19. 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.⁵ These trends too are widely projected to accelerate over the coming years, with significant potential for dramatic step changes in government policy as urgency to address the physical impacts increases.⁶
20. Numerous studies have 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.⁷ 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.
21. Because of the high intensity of the greenhouse gas (**GHG**) emissions associated with their business, companies in the air transport sector, such as EasyJet, have been identified as being particularly exposed to climate change-related financial risks.⁸ In order to facilitate further analyses, these risks can be divided into two broad categories:
- a. physical risks; and
 - b. transition risks.
22. These categories are addressed in further detail separately below.

Physical risks

³ NASA, 'Global Temperature', <https://climate.nasa.gov/vital-signs/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).

⁴ See Intergovernmental Panel on Climate Change, 'IPCC Fifth Assessment Report - Climate Change 2014: Synthesis Report' (2014); Christiana Figueres et al. 'Three Years to Safeguard our Climate', *Nature* (28 June 2017).

⁵ 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).

⁶ See, eg, Mark Carney, Governor of the Bank of England, 'Resolving the Climate Paradox' (2016), Speech given at the Arthur Burns Memorial Lecture, 22 September 2016.

⁷ See, eg, Annex 1.

⁸ See, eg., TCFD, 'Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures' (June 2017), 56.

23. 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.
24. 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 wildfires⁹.
25. 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 airline businesses such as EasyJet, these implications have been identified to include:
- a. increased frequency of extreme weather events, including extreme cycles of precipitation/flooding, drought, and high-intensity tropical storms, which can directly impact flight operations, reduce the handling capacity of airports, close airports, increase flight diversions and increase operating costs;
 - b. increased sea level rise, leading to loss of airport capacity, impacts to en-route capacity due to lack of ground capacity, loss of airport infrastructure and loss of ground transport access;
 - c. wind pattern changes and jet stream disruption, leading to disruptions to route patterns and increases in en-route turbulence; and
 - d. increased incidence of high temperatures at airports affecting aerodynamic performance of aircraft, leading to requirements on airlines to limit passenger and cargo weights.¹⁰
26. By way of example, in its 2017 CDP climate disclosure response, the International Airlines Group (also listed on the London Stock Exchange), identifies the following risk as being very likely over a 1-3 year time frame:
- 'Operational disruption arising from severe and changing weather patterns could result in a significant cost increase to IAG of over £50M per year. In winter 2010-11, for example, severe winter weather disruptions cost British Airways an estimated £50 million.'*¹¹
27. Similarly, in its 2017 ESG Report, jetBlue, a US-based low-cost airline service provider identifies the following risks:
- *'More intense weather could lead to an increase in flight disruptions and cancellations. More cancelled or disrupted flights increase costs in the form of operational strain, customer compensation, and crewmember overtime pay.'*

⁹ See 'IPCC Fifth Assessment Report - Climate Change 2014: Synthesis Report', section 2.

¹⁰ See International Civil Aviation Organization (ICAO), Environmental Report 2016, (p 208); see also EUROCONTROL, 'Adapting Aviation to a Changing Climate' (2014).

¹¹ See CDP 2017 climate change disclosure for International Consolidated Airlines Group S.A.

- *'Damage from extreme weather, along with rising sea levels near coastal airports where JetBlue operates ... could damage airport infrastructure and disrupt JetBlue's ability to service that airport.'*
- *'As a result of storm damage, tourism demand could shift to new destinations, requiring airlines to plan for and manage new and/or different routes.'*¹²

28. Accordingly, as a result of the implications of these physical climate change-related risks, there is, at the very least, a reasonably foreseeable risk that EasyJet 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 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.¹³

Transition risks

29. 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.

30. Aviation is a heavily GHG intensive business and is one of the fastest-growing sources of GHG emissions globally.¹⁴ Currently, direct emissions from aviation account for about 3% of the EU's total GHG emissions and more than 2% of global emissions. By 2020, global international aviation emissions are projected to be around 70% higher than in 2005 and the International Civil Aviation Organization (ICAO) forecasts that by 2050 they could grow by a further 200-360%.¹⁵

31. In light of these trends, the sector as a whole faces significant challenges related to policy developments aimed at limiting GHG emissions in the sector. Many airline businesses are already adopting technological and operational innovations to pre-emptively reduce emissions across their business. Evidence indicates however that the deep emissions reductions necessary to meet globally agreed climate change targets will be costly and challenging for the sector, with potential impacts varying significantly between airlines.¹⁶

32. According to some studies, achieving sufficient reductions in aviation emissions will require reductions in the rate of growth of travel activity through demand management alongside incentivising technological advances.¹⁷ Such measures would have clear financial ramifications for the sector and individual airlines.

¹² jetBlue '2017 Environmental Social Governance Report', pp 34-35.

¹³ See further examples, EBRD and Global Centre for Climate Excellence, 'Advancing TCFD Guidance on Physical Climate Risks and Opportunities (2018).

¹⁴ See OECD, 'Green Growth and the Future of Aviation' (2012), p 4.

¹⁵ See International Civil Aviation Organization (ICAO), 'Environmental Report 2016', p 19.

¹⁶ See, eg, Moody's, 'Passenger Airlines -- Global: Pricing power, route mix to determine credit implications of carbon transition' (2018).

¹⁷ See OECD, 'Green Growth and the Future of Aviation' (2012), p 4.

Policy risks

33. 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'*.¹⁸ This led to calls for a global treaty to curb GHG emissions in order to limit global temperature rises.
34. Since then, world leaders have participated in the United Nations Framework Convention on Climate Change (**UNFCCC**) 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**).¹⁹
35. 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.
36. Emissions from domestic flights are generally included within countries NDCs and must be accounted for and managed accordingly. In the UK, for example, under the Climate Change Act 2008, emissions must be reduced by 80% on 1990 levels by 2050.²⁰ In order to give effect to this objective, the UK government has committed to publish a new Aviation Strategy in 2019. In line with previous policy commitments, this will need to include a plan to limit UK domestic aviation emissions to around 2005 levels by 2050 (based on an assumption of a 60% increase in demand over that period).²¹ Notably, in light of these requirements, the UK's Climate Change Committee has already expressed concern about failures by the UK government to factor GHG implications into its plan to build a new runway at Heathrow Airport.²²
37. Currently, emissions from international flights are generally not formally included in countries NDCs under the Paris Agreement. Although, in some countries (such as the UK) emissions from international flights may be informally included within existing budgets and policies.
38. Nevertheless, CO₂ emissions from intra-European aviation have been included in the EU emissions trading system (**EU ETS**) since 2012.²³ Under the EU ETS, all airlines operating in

¹⁸ Intergovernmental Panel on Climate Change, 1990. [Climate Change The IPCC Scientific Assessment](#), p.xi.

¹⁹ United Nations Framework Convention on Climate Change, "The Paris Agreement," December 2015.

²⁰ Climate Change Act 2008.

²¹ Committee on Climate Change, ['Reducing UK Emissions, 2018 Progress Report to Parliament'](#) (June 2018), p 172.

²² Committee on Climate Change, ['Department for Transport's assessment of the case for a third runway at Heathrow'](#) (22 November 2016).

²³ See European Commission, [EU Emissions Trading Scheme](#).

Europe are required to monitor, report and verify their emissions, and to surrender allowances against those emissions.²⁴ They receive tradeable allowances covering a certain level of emissions from their flights per year.²⁵ According to a report by advocacy group Transport & Environment, over the three years, 2012-2015, total costs for airline operators in complying with these requirements were over €480,000,000.²⁶

39. 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, 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.²⁷ In either case, these trends indicate significant potential cost increases for airlines operating in the EU that are required to purchase allowances.
40. In addition to the requirements under the EU ETS, in October 2016, the International Civil Aviation Organization (ICAO) agreed on a resolution for a global market-based measure to address CO₂ emissions from international aviation from 2021.²⁸ The Carbon Offsetting and Reduction Scheme for International Aviation (CORSA), aims to stabilise CO₂ emissions at 2020 levels by requiring airlines to offset the growth of their emissions after 2020.
41. While many of the implementation details are yet to be finalised, CORSA adopts an offsetting approach to constraining aviation emissions. Starting from 2021, airlines that have opted into the measure will have to purchase offsets to balance their emissions growth above 2020 levels. More than 65 countries representing over 85% of global air traffic have said they will participate from the outset. More countries can opt to join after 2024 or 2027, by which point the scheme will be mandatory for all but the smallest countries. The scheme will be reviewed every three years.²⁹
42. According to international credit rating agency Moody's, these new compliance requirements are likely to have significant financial implications for airlines. In a recent report assessing potential credit rating impacts it suggests that *'growing carbon offset costs have the potential to become significant relative to operating profit'* and that *'carbon costs have the potential to lower operating income by between 4% and 15% by 2025, and by between 7% and 35% by 2030, all else equal'*.³⁰

Technology and market pressures

43. It is widely accepted that reducing GHG emissions from the aviation sector on an absolute basis will be a difficult challenge. Under pressure from governments and others, some airlines are already investigating options to electrify their fleets. The Norwegian government,

²⁴ See European Commission, '[Monitoring, reporting and verification of EU ETS emissions](#)'.

²⁵ See European Commission, '[Reducing emissions from aviation](#)'.

²⁶ See Transport & Environment, '[Aviation ETS – gaining altitude: An analysis of the aviation EU ETS 2013-2015](#)' (September 2016), p 27.

²⁷ See Carbon Tracker, '[Carbon Clampdown Closing the Gap to a Paris-compliant EU-ETS](#)' (April 2018).

²⁸ ICAO, '[Carbon Offsetting and Reduction Scheme for International Aviation \(CORSA\)](#)'.

²⁹ ICAO, '[Carbon Offsetting and Reduction Scheme for International Aviation \(CORSA\)](#)'.

³⁰ See Moody's '[Passenger Airlines -- Global: Pricing power, route mix to determine credit implications of carbon transition](#)' (April 2018).

for example, has announced targets for all of Norway's short-haul airlines to be entirely electric by 2040.³¹ Nonetheless, clear difficulties remain.

44. As a recent report by the OECD notes:

*'Although airlines have a large range of operational and technical options open to them to reduce their greenhouse gas emissions, all of these abatement opportunities will be overwhelmed if the predicted growth in airline travel eventuates'. The expected growth in Asia alone will mean efforts to improve flight paths, the addition of winglets to the tips of aircraft wings, more efficient taxiing of aircraft and ongoing improvements to the fuel efficiency of jet engines will all be overtaken by the dramatic increase in flights and passenger miles. It appears that the only greenhouse gas abatement opportunities available with the potential scale to address the enormous expected growth in airline travel may be the extensive use of offsets and the large-scale production and use of aviation biofuels.'*³²

45. While CORSIA adopts just such a market-based offset program, it is clear that significant challenges remain. Accordingly, some sectoral studies suggest that achieving significant reductions in aviation emissions may require active reductions in the rate of growth of travel activity through demand management alongside technological advances.³³ Others in the industry have already expressed real concern that the airline industry could be forced to stop growing if its commitments on emissions reduction proved unattainable.³⁴

46. As a result of the implications of these policy and technology-related risks, there is, at the very least, a reasonably foreseeable risk that EasyJet 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.

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,

³¹ Reuters, [Norway plans to buy electric planes, mimicking green car success](#) (22 March 2018).

³² OECD, ['Green Growth and the Future of Aviation'](#) (2012), p 4.

³³ OECD, ['Green Growth and the Future of Aviation'](#) (2012), p 4.

³⁴ Airportwatch, ['Willie Walsh says aviation climate goals through CORSIA insufficient'](#) (4 December 2017).

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**."³⁵
- 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."³⁶
- 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.³⁷ This updated guidance has now been released and includes an extended discussion of climate change related 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 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.'*³⁸

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.³⁹

³⁵ FRC, Annual Reviews of Corporate Reporting 2015/2016, p. 50.

³⁶ FRC, Annual Reviews of Corporate Reporting 2016/2017, p. 22.

³⁷ FRC, Draft amendments to Guidance on the Strategic Report, Non-financial reporting dated August 2017, pgs. 26 & 28.

³⁸ FRC, 'Guidance on the Strategic Report' (July 2018).

³⁹ See Mark Carney, 'Breaking the tragedy of the horizon - climate change and financial stability', speech at Lloyds of London (29 September 2015).

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 transport sector.⁴⁰
52. While these disclosure recommendations are framed as being voluntary, relevantly, the TCFD noted 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 recommendations⁴¹ 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 their commitment to support and work towards adoption of the TCFD recommendations.⁴²
 - **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.⁴³
 - **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.⁴⁴
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

⁴⁰ TCFD, Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures (June 2017), p52.

⁴¹ <https://www.fsb-tcdf.org/statement-support-supporting-companies-june-2017/>

⁴² <https://www.accountingforsustainability.org/en/activities/tcdf.html>

⁴³ <http://www.iigcc.org/press/press-release/nearly-400-global-investors-with-over-22-trillion-in-assets-urge-g20-to-sta>

⁴⁴ WBCSD, 'CEO Guide to Climate-related Financial Disclosures' (2017).

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.*⁴⁵

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.⁴⁶ 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”.⁴⁷

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.”⁴⁸

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)⁴⁹ or the Climate Disclosures Standards Board (CDSB).⁵⁰

59. By way of example, brief extracts from disclosures included within the 2017 annual reports of a number of EasyJet's sector peers, include the following:

⁴⁵ <https://www.gov.uk/government/news/uk-government-launches-plan-to-accelerate-growth-of-green-finance>

⁴⁶ Law Commission (2017). “Pension Funds and Social Investment” Law Comm No. 374 printed 22 June 2017.

⁴⁷ Department for Work & Pensions (2018). “Pension funds and social investment: the Government's final response” June 2018.

⁴⁸ Letter from David Geale, Director of Policy at the FCA, to Mary Creagh MP, Chair of the Environmental Audit Committee, dated 6 July 2018.

⁴⁹ <https://www.cdp.net/en>

⁵⁰ <https://www.cdsb.net/>

- **TUI Group** - '*... if TUI Group falls short of achieving its sustainable development targets and at the same time the objectives of the UN Paris Climate Change Agreement (December 2015) are not met, this could lead to sustained long-term damage to certain of the TUI Groups current and future destinations, which could also have a material adverse affect on demand for our products and services.*'⁵¹
- **International Airlines Group** - '*Climate regulation – regional application risk [of] CORSIA has been agreed internationally however the risk remains of regional regulatory duplication and/or inconsistent application of agreed Monitoring Reporting and Verification (MRV) requirements and eligible offsets which would create inequitable costs and competitive distortion.*'⁵²
- **QANTAS** - '*Climate change: The Qantas Group is subject to short and long-term climate-related physical, regulatory and transition risks. These risks are an inherent part of the operations of an airline and are managed by strengthening governance, technology, operational and market-based controls, including proactive consideration of how changing factors (including global climate politics) impact the proximity of climate-related risks*'⁵³
- **JetBlue** - '*We may be affected by global climate change or by legal, regulatory or market responses to such change. Concern over climate change, including the impact of global warming, has led to significant U.S. and international legislative and regulatory efforts to limit greenhouse gas ("GHG") emissions, including our aircraft emissions.*'⁵⁴

60. Annex 1 to this complaint includes a more substantial summary of disclosures included in the annual reports and accounts of other airline companies, which are subject to the same or equivalent disclosure requirements as EasyJet. As is evident from these examples, EasyJet is a clear outlier among peers in its sector for providing no mention of 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.⁵⁵

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

⁵¹ Tui Group plc, Annual Report and Accounts, 2017, p 42.

⁵² International Airlines Group, Annual Report and Accounts 2017, p 49.

⁵³ QANTAS, Annual Report and Accounts 2017, p 23.

⁵⁴ JetBlue Annual Report 2017, p 20.

⁵⁵ Ceres, [Four Mutual Fund Giants Begin to Address Climate Change Risks in Proxy Votes: How About Your Funds?](#)

decision making.⁵⁶ 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.'*⁵⁷

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:

*"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."*⁵⁸

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'.⁵⁹

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.⁶⁰ 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.⁶¹ 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.⁶²

67. Specifically in relation to physical climate change related trends and risks, many investors, including Schroders⁶³ and Deutsche Asset Management,⁶⁴ 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

⁵⁶ IIGCC et al. [Letter from global investors to governments of the G20 nations](#) (3 July 2017).

⁵⁷ BlackRock, [Statement of engagement priorities for 2017-2018](#).

⁵⁸ Bill McNabb, ['An open letter to directors of public companies worldwide'](#) 31 August 2017.

⁵⁹ LGIM, ['Time to act on climate change: engagement with consequences'](#) (2016).

⁶⁰ LGIM, ['Climate impact pledge: the results so far'](#) (2018).

⁶¹ See, Reuters, ['Investor LGIM seeks removal of eight company chairs over climate change inaction'](#) (11 June 2018).

⁶² LGIM, ['Climate impact pledge: the results so far'](#) (2018).

⁶³ Schroders, ['Climate change: the forgotten physical risks'](#) (July 2018).

⁶⁴ Deutsche Asset Management, ['Measuring physical climate risk in equity portfolios'](#) (November 2017).

to the FRC setting out their expectations that fossil fuel dependent companies should address climate-related risks in their viability statements.⁶⁵ 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.

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, EasyJet has breached a number of requirements under the Relevant Laws. In particular, it is ClientEarth's submission that EasyJet 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.

⁶⁵ See Sarasin & Partners et al., '[Investors expect fossil fuel companies' viability statements to address climate risk](#)' (29 January 2016).

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

73. Under section 414A(1) of the Companies Act, the directors of EasyJet 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.⁶⁶
74. Under section 414C(2)(b) of the Companies Act, EasyJet'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. 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."*

⁶⁶ Further requirements for the contents of the Strategic Report are also set out under other sections of the Companies Act, including s 414CB.

- 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 EasyJet'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,⁶⁷ the directors' general duties under the Companies Act⁶⁸ and the requirements of the UK Corporate Governance Code.⁶⁹ In particular, in complying with section 414C(2)(b), EasyJet'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.⁷⁰

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 EasyJet'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 EasyJet and that a reasonable director in the position of EasyJet's directors would have considered this to be the case.

80. Accordingly, in light of EasyJet'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 EasyJet has breached s 414C(2)(b) of the Companies Act (**Breach 1**).

⁶⁷ See Companies Act, ss 414C(1), 172.

⁶⁸ See, in particular, Companies Act, ss 174(1)-(2).

⁶⁹ See, in particular, UK Corporate Governance Code, [C.2], [C.1.1], [C.2.1].

⁷⁰ Companies Act, ss 174(1)-(2).

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

81. As already identified at paragraph 71 of this Complaint, under section 414A(1) of the Companies Act, the directors of EasyJet are required to prepare a Strategic Report. Section 414C of the Companies Act sets out the requirements for the contents of the Strategic Report.⁷¹
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, ...*"
83. As a company with a premium listing on the main market of the London Stock Exchange, EasyJet 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 specific 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.*"

⁷¹ Further requirements for the contents of the Strategic Report are also set out under other sections of the Companies Act, including s 414CB.

- 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 EasyJet's directors will retain a certain amount of discretion in how they apply this guidance to the requirements of section 414C(7), EasyJet'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.⁷²

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 of the company's business, include all the 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 includes all trends and factors which a reasonable director in the position of EasyJet'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 EasyJet and that a reasonable director in the position of EasyJet's directors would have considered this to be the case.

89. Accordingly, in light of EasyJet'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 EasyJet is in breach of s 414C(7) (**Breach 2**).

⁷² Companies Act, ss 174(1)-(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, EasyJet is an 'issuer' for the purposes of the FCA Handbook⁷³ and is therefore required to comply with section 4 of the DTRs contained in the FCA Handbook.⁷⁴
91. Under DTR 4.1.3 R, EasyJet 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 EasyJet's Strategic Report in its Annual Report constitutes its Management Report for the purposes of DTR 4.1.5 R.⁷⁵
92. Under DTR 4.1.8 R, EasyJet's Management Report must contain, among other things, 'a description of the principal risks and uncertainties facing the issuer.'
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 EasyJet's directors will retain a certain amount of discretion in how they apply this guidance to the requirements of DTR 4.1.8 R, EasyJet'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 EasyJet'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 EasyJet and that a

⁷³ See DTR 4.1.1.

⁷⁴ See DTR 4.1.1.

⁷⁵ See also, 'FRC Guidance on the Strategic Report' (2014).

reasonable director in the position of EasyJet's directors would have considered this to be the case.

97. Accordingly, in light of EasyJet'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 EasyJet 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. EasyJet 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';⁷⁶

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."*

⁷⁶ LR 9.8.6 R (3)(b).

- 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, EasyJet's viability statement must:
- a. address a time frame that is aligned with EasyJet's investment and planning periods;
 - 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 EasyJet's investment and planning periods, and that a prudent director in the position of EasyJet's directors would have considered this to be the case.
105. Accordingly, in light of EasyJet'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 EasyJet 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, EasyJet is required to comply with section 1A of the DTRs contained in the FCA Handbook.⁷⁷
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'*,⁷⁸ which in turn is defined as *'a person approved*

⁷⁷ DTR 1.1.1.

⁷⁸ 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.'

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, EasyJet must entrust a RIS with the disclosure of 'regulated information' to the public. EasyJet's Annual Report is 'regulated information' for the purpose of this requirement.⁷⁹
109. In light of these requirements, it is ClientEarth's submission that in order to satisfy DTR 1A.3.2 R, EasyJet's directors are required to take all reasonable care to ensure that the information included in EasyJet'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 EasyJet'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.
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 EasyJet 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. EasyJet'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.⁸⁰ 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.⁸¹ 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,⁸² and if the

⁷⁹ See DTR 6.3.

⁸⁰ See <https://www.frc.org.uk/>

⁸¹ See, FRC, 'FRC Roles and Responsibilities Schedule of Functions and Powers' (June 2017).

⁸² 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

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.⁸³
115. In the alternative, we request that the FRC enter into an agreement with EasyJet that EasyJet will revise its Annual Report to ensure compliance with the requirements of the Companies Act and take necessary steps to correct the public record.⁸⁴
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.⁸⁵
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 EasyJet'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.

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.

⁸³ See FRC, ['The Conduct Committee: Operating procedures for reviewing corporate reporting'](#) (1 April 2017) [38].

⁸⁴ See FRC, ['The Conduct Committee: Operating procedures for reviewing corporate reporting'](#) (1 April 2017), [41]-[42].

⁸⁵ 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

Tui Group Annual Report 2017

Tui Group's annual report includes a significant discussion of climate change and the low carbon transition throughout its annual report, including a discussion of relevant trends, factors, risks and uncertainties. Climate change is also identified as the fifth most relevant risk on its stakeholder survey (p 74). Relevant sections are copied below.

'... if TUI Group falls short of achieving its sustainable development targets and at the same time the objectives of the UN Paris Climate Change Agreement (December 2015) are not met, this could lead to sustained long-term damage to certain of the TUI Groups current and future destinations, which could also have a material adverse affect on demand for our products and services.'
(Principal Risks section, p 42)

'As a company with a substantial carbon footprint - a total of 7,556,457 tonnes of carbon dioxide in 2017 - we acknowledge the necessity to transition to a lower carbon economy and we will continue to strive to reduce the carbon intensity of our operation. In the long term, combating climate change will be critical for our industry as a whole. We need to continue to sell quality holiday experiences, which rely on beautiful and biodiverse destinations, thriving communities and stable weather systems. All of these are threatened by climate change' (p 75).

International Airlines Group (IAG) Annual Report and Accounts 2017

IAG's annual report includes a significant discussion of climate change and the low carbon transition throughout its annual report, including a discussion of relevant trends, factors, risks and uncertainties. Relevant sections are copied below.

'We are determined to lead our industry in tackling climate change, recognising that it is a major component in our work to create a truly sustainable business. We were the first airline group in the world to set its own emissions targets, which we are steadily moving towards meeting. We also played an important role in securing the first global carbon offsetting scheme allowing the industry to cut emissions in half by 2050 and grow in a carbon-neutral way from 2020' (Chairman's letter, p 3)

'Our industry-leading work on climate change was recognised in October when we achieved the Carbon Disclosure Project (CDP) 'A' List for our Climate disclosures, placing us amongst the top 5 per cent of global leading companies. We were also named as the UK's Most Improved company. These are fantastic achievements. We believe that disclosure is an important driver of any organisation's climate protection efforts. To strengthen our focus we are pleased to have signed up to support the Task Force on Climate Related Financial Disclosure, which matches up with and builds on the CDP framework.' (Sustainability section, p 47)

'Climate regulation – regional application risk CORSIA has been agreed internationally however the risk remains of regional regulatory duplication and/or inconsistent application of agreed Monitoring Reporting and Verification (MRV) requirements and eligible offsets which would create inequitable costs and competitive distortion.

How we manage it - CORSIA has been agreed internationally however the risk remains of regional regulatory duplication and/or inconsistent application of agreed Monitoring Reporting and Verification (MRV) requirements and eligible offsets which would create inequitable costs and competitive distortion.

• Supporting implementation of CORSIA through IATA and ICAO and mentoring other airlines to ensure CORSIA can be adopted successfully. • Supporting development of robust rules for CORSIA on Monitoring Reporting and Verification and emissions unit eligibility criteria. • IAG lobbying for single tier adoption of CORSIA directly with UK and EU governments as well as through industry groups IATA, A4E2 and Sustainable Aviation. (Sustainability risk section, p 49)

Qantas Annual Report 2017 (Australian company)

Qantas refers to climate change as one of its top 5 material business risks. The relevant section is copied below:

'Climate change: The Qantas Group is subject to short and long-term climate-related physical, regulatory and transition risks. These risks are an inherent part of the operations of an airline and are managed by strengthening governance, technology, operational and market-based controls, including proactive consideration of how changing factors (including global climate politics) impact the proximity of climate-related risks' (p 23).

jetBlue 2017 Annual Report (US company)

jetBlue's annual report includes a significant discussion of climate change and the low carbon transition throughout its annual report, including a discussion of relevant trends, factors, risks and uncertainties. Relevant sections are copied below.

'Compliance with future environmental regulations may harm our business. Many aspects of airlines' operations are subject to increasingly stringent environmental regulations, and growing concerns about climate change may result in the imposition of additional regulation. Since the domestic airline industry is increasingly price sensitive, we may not be able to recover the cost of compliance with new or more stringent environmental laws and regulations from our Customers, which could adversely affect our business. Although it is not expected the costs of complying with current environmental regulations will have a material adverse effect on our financial position, results of operations or cash flows, no assurance can be made the costs of complying with environmental regulations in the future will not have such an effect.

We may be affected by global climate change or by legal, regulatory or market responses to such change. Concern over climate change, including the impact of global warming, has led to significant U.S. and international legislative and regulatory efforts to limit greenhouse gas ("GHG") emissions, including our aircraft emissions. In October 2016, the ICAO passed a resolution adopting the Carbon Offsetting and Reduction Scheme for International Aviation ("CORSIA"), which is a global, market-based emissions offset program to encourage carbon-neutral growth beyond 2020. CORSIA is scheduled to take effect by 2021. ICAO continues to develop details regarding implementation, but we believe compliance with CORSIA will increase our operating costs.' (p 20)

Southwest Airlines Co. 2017 Annual Report (US Company)

Southwest's annual report includes a significant discussion of climate change and the low carbon transition throughout its annual report, including a discussion of relevant trends, factors, risks and uncertainties. Relevant sections are copied below.

'The federal government, as well as several state and local governments, the governments of other countries, and the United Nations' International Civil Aviation Organization ("ICAO") are considering legislative and regulatory proposals and voluntary measures to address climate change by reducing greenhouse gas emissions. At the federal level, in July 2016, the Environmental Protection Agency (the "EPA") issued a final endangerment finding for greenhouse gas emissions from certain types of

aircraft engines, which the agency determined contribute to the pollution that causes climate change and endangers public health and the environment. Following this endangerment finding, per the federal Clean Air Act, the EPA is required to promulgate new regulations for controlling greenhouse gas emissions from aircraft, including potential new carbon-efficiency standards on aircraft and engine manufacturers.

The EPA's endangerment finding preceded adoption by the ICAO Assembly of a new "global market-based measure" framework in an effort to control carbon dioxide emissions from international aviation. The focal point of this framework is a future carbon offsetting system on aircraft operators designed to cap the growth of emissions related to international aviation emissions. Details of this system are expected to be further developed in 2018 and, assuming the U.S. Government remains committed to the ICAO framework agreement and adopts terms for implementing it into U.S. law, this system is scheduled to be phased-in beginning in 2021. Regardless of the method of regulation, policy changes with regard to climate change are possible, which could significantly increase operating costs in the airline industry and, as a result, adversely affect operations.' (p 15)