7 September 2018

Complaint to the FRC Conduct Committee

EnQuest PLC

ClientEarth

ClientEarth

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ClientEarth

1 Summary of complaint

1. EnQuest PLC (**EnQuest**) is a company carrying on an oil and gas production and development business. It is listed on the main market of the London Stock Exchange and has a secondary listing on Nasdaq OMX Stockholm. The purpose of this complaint (**Complaint**) is to bring a number of possible breaches of EnQuest's legal duties to the attention of the Financial Reporting Council (**FRC**) Conduct Committee (**Conduct Committee**).

2. As an international oil and gas production and development business, EnQuest'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 a majority of EnQuest's peers. An analysis of these trends and risks is presented in section (3) of this Complaint.

3. Under the relevant laws, EnQuest 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. EnQuest's Annual Report (as defined below) includes the mandatory disclosure of GHG emissions for which the company is responsible. Other than that, EnQuest makes no mention of the term 'climate change' at all. Furthermore, the Annual Report makes no reference to any risks or trends 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, EnQuest 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 EnQuest 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 EnQuest PLC

10. EnQuest is a public limited company with company number 07140891, listed on the main market of the London Stock Exchange and with a secondary listing on Nasdaq OMX Stockholm. EnQuest's registered office address is 5th Floor Cunard House, 15 Regent Street, London, SW1Y 4LR. Enquest was admitted to trading on the main market of the London Stock Exchange on 6 April 2010 and has a premium listing.

11. EnQuest carries on an oil and gas production and development business. The principal activities of the company and its subsidiaries are the exploration for, and extraction and production of, oil and gas in the UK Continental Shelf and Malaysia. EnQuest's stated strategy is to use 'its differential capabilities to enhance hydrocarbon recovery and extend the useful lives of mature and underdeveloped assets and associated infrastructure in a profitable and responsible manner.'[1]

12. EnQuest is now one of the largest UK independent oil producers in the North Sea. At the end of December 2017, EnQuest had interests in 25 UK production licences and was the operator of 23 of these licences. EnQuest is aiming to replicate its existing UK North Sea model by targeting previously underdeveloped assets in a small number of other maturing regions, most notably Malaysia.[2]

13. The market capitalisation of the London listed element of Enquest is approximately £493,41 million (as at 24 August 2018).[3] Each of EnQuest's directors is a person 'discharging managerial responsibilities' within EnQuest for the purposes of Schedule 10A of the Financial Services and Markets Act 2000. We have sent a courtesy copy of this Complaint to EnQuest.

[1] See EnQuest PLC Annual Report and Accounts 2017.
[2] See EnQuest PLC Annual Report and Accounts 2017.
[3] See summary of information for EnQuest on London Stock Exchange website.

2.3 EnQuest's annual report and accounts

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

15. Other than the mandatory disclosure of GHG emissions for which the company is responsible, the Annual Report does not mention the term 'climate change' (or anything similar). Furthermore, the Annual Report makes no reference to the company facing any risks, uncertainties, trends or factors associated with climate change or the low carbon transition.

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 EnQuest's directors would consider that a particular risk, uncertainty, trend or factor is 'material' to EnQuest. 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 EnQuest, in order to substantiate the subsequent submissions made in this Complaint regarding EnQuest'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.[4] 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.[5]

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

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[4] 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).
[5] 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).

the transition to a low-carbon economy.[6] 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.[7]

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.[8] 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 oil and gas sector, such as EnQuest, 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.

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

Physical risks

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 wildfires[9].

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 companies such as EnQuest which are engaged in oil and gas production and development these implications have been identified to include: increased extreme weather events that could damage oil and gas exploration or installations; sea level rises that could impact coastal infrastructure; and water scarcity that could impact exploration activities and power generation.[10]

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[6] 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).
[7] 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.
[8] See Task Force on Climate-related Financial Disclosures, 'Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures' (June 2017).
[9] See 'IPCC Fifth Assessment Report - Climate Change 2014: Synthesis Report', section 2.
[10] See Investor Group on Climate Change, 'Assessing climate change risks and opportunities for investors: oil and gas sector' (2016).

26. 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. [11] 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.'*[12]

27. As a case study in a recent report commissioned by Deutsche Asset Management notes:

> *'Energy assets are long-lived, high value capital assets that cannot be easily moved. Oil platforms and exploration wells, power plants, and other energy infrastructure will require protection from rising seas, or will be decommissioned or moved well before the water reaches the facilities. This creates, at the very least, uncertainty over the long-term viability of such assets, and signals a risk of costly relocation or decommission efforts for the parent companies.'*[13]

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 EnQuest 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.[14]

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. For many oil and gas companies, this combination of pressures is combining to place upward pressure on operating costs, while at the same time, placing significant downward pressure on the demand for oil and other hydrocarbon products.

Policy risks

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[11] See EBRD and Global Centre for Climate Excellence, 'Advancing TCFD Guidance on Physical Climate Risks and Opportunities (2018), 17.
[12] Standard & Poor's, 'Climate Change Will Likely Test The Resilience Of Corporates' Creditworthiness To Natural Catastrophes', (2015) p 8.
[13] Deutsche Asset Management, 'Measuring Physical Climate Risk in Equity Portfolios' (2017).
[14] See further examples, EBRD and Global Centre for Climate Excellence, 'Advancing TCFD Guidance on Physical Climate Risks and Opportunities (2018).

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'*.[15] This led to calls for a global treaty to curb GHG emissions in order to limit global temperature rises.

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**).[16]

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.[17]

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 EnQuest 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;[18]

    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.[19]

    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

[15] Intergovernmental Panel on Climate Change, 'Climate Change The IPCC Scientific Assessment' (1990) p.xi.
[16] United Nations Framework Convention on Climate Change "The Paris Agreement," December 2015.
[17] E3G, 'The Paris Agreement Ambition Mechanism' (2016).
[18] European Council, '2030 Climate and Energy Policy Framework' (2014).
[19] See UK Committee on Climate Change, 'The Climate Change Act'.

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.[20]

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.[21]

36. This continuing upwards trend in GHG emissions regulation around the world, combined with the rise in the use of renewable energy sources, has significant implications for oil and gas companies like EnQuest. The process of oil and gas extraction involves the emission of substantial quantities of GHGs (meaning that carbon taxes etc. will hit operating costs). At the same time, the products they sell emit substantial quantities of GHGs (so GHG emissions regulation will impact demand and prices for those products).

37. Taken together, these policy trends represent clear headwinds for companies, such as EnQuest, with business models which are highly GHG intensive.

Legal risks

38. Recent years have seen an increase in climate change-related litigation claims being brought before the courts by property owners, municipalities, states, insurers, shareholders, and public interest organisations.[22] Reasons for such litigation include the failure of organisations to mitigate impacts of climate change, failure to adapt to climate change, and the insufficiency of disclosure around material financial risks. As the value of loss and damage arising from climate change grows, litigation risk is also likely to increase, placing increased pressure on companies, such as EnQuest, with highly GHG-intensive business models.

Technology and market pressures

39. Oil companies, such as EnQuest, also face significant pressures related to technological changes and broader market trends. Today, nearly all mainstream market analysts forecast that oil demand will peak within the near-to-medium-term future, due to a combination of improving efficiency; pressure on investors and companies to reduce emissions and improve urban air quality; changing consumer preferences; and the rapidly accelerating electrification of the transport sector driven by cost reductions in electric vehicles and associated technologies.[23]

40. As noted in a recent paper by Spencer Dale (Group Chief Economist, BP) and Bassam Fattouh (Director, Oxford Institute for Energy Studies):

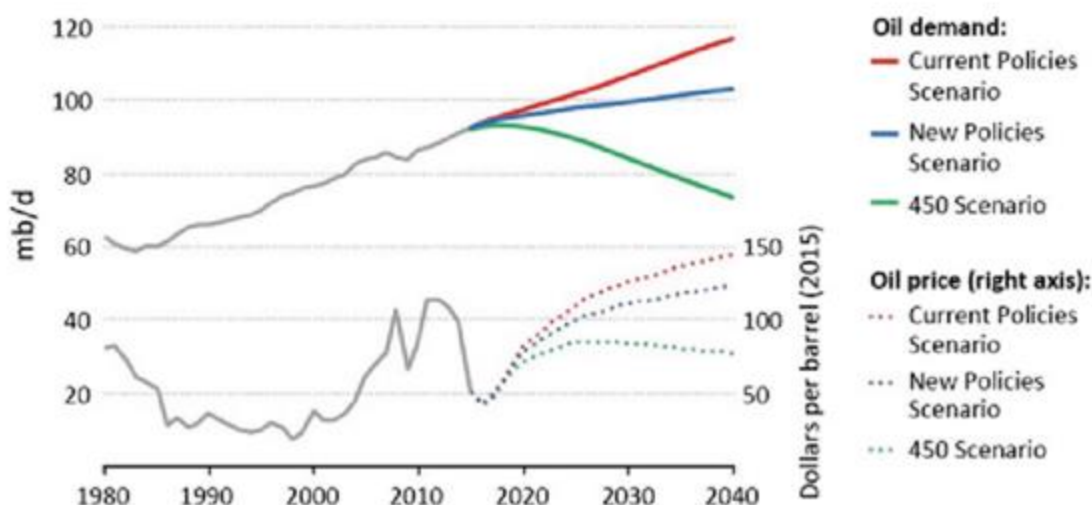
[20] See Climate Action Tracker.
[21] See, eg, C40 Cities Initiative.
[22] See, eg, Minter Ellison, 'The Carbon Boomerang: Litigation Risk as a Driver and Consequence of the Energy Transition' (September 2017).
[23] See, eg, James Arbib and Tony Seba, 'Rethinking Transportation 2020-2030', May 2017; Reda Cherif, Fuad Hasanov, and Aditya Pande, 'Riding the Energy Transition: Oil Beyond 2040', IMF Working Paper, May 2017; Bloomberg, 'Energy Giant Shell Says Oil Demand Could Peak in Just Five Years', 2 November 2016; Financial Times, 'Big energy fears peak oil demand is looming', March 15, 2017.

> *'Global oil markets are changing dramatically. The advent of electric vehicles and the growing pressures to decarbonise the transportation sector means that oil is facing significant competition for the first time within its core source of demand'.*[24]

41. Not surprisingly, there is significant disagreement and uncertainty about exactly how demand and prices for oil and other hydrocarbon products will respond to these dynamics. According to some analysts and commentators, peak oil demand may occur within the next 5 years or sooner.[25] Others, however, project the peak occurring 10,[26] or even 20 years away[27] under a business as usual scenario. Regardless, nearly all analysts now predict a flattening out of demand with high levels of uncertainty about price implications and significant downside risks.

42. In their 'World Energy Outlook' the International Energy Agency sets out a range of projections for the global energy system, known as 'scenarios'. Chart 1 below provides an illustration of the IEA's projections for oil demand and price based on its 2016 Outlook.

43. In this chart, the Current Policies Scenario assumes no changes in existing national policies. The New Policies Scenario takes account of broad policy commitments, even if these plans have not yet been implemented, including countries' NDC commitments under the Paris Agreement. The 450 Scenario corresponds to a scenario which the IEA considers provides a 50% chance of keeping global warming within 2 degrees.



44. As is illustrated here, even under the IEA's New Policies Scenario there are clearly significant implications of existing climate change-related policies for oil demand and prices over directly relevant time horizons. Under the 450 Scenario, these implications are significantly amplified. Notably, a number of third party analysts now question the extent to which the IEA scenarios may actually be over-stating the demand and prices for oil and

[24] Spencer Dale and Bassam Fattouh, 'Peak Oil Demand and Long-Run Oil Prices' (January 2018).
[25] See, eg, DNV, 'Oil and Gas Forecast to 2050' (2017) p19; Carbon Tracker, 'Expect the Unexpected: The Disruptive Power of Low-carbon Technology (2017), p28.
[26] Reuters, 'Shell sees oil demand peaking by late 2020s as electric car sales grow' (July 2, 2017).
[27] See, eg, BP, BP Energy Outlook' (2017).

highlight the even greater reductions necessary if more credible policy measures are introduced to meet the Paris Agreement objectives.[28] In a recent article, Asset Management firm Sarasin & Partners suggests that in light of these trends oil and gas companies may be overstating their position in their financial accounts based on over optimistic demand and price forecasts.[29]

45. Independent credit ratings agency, Moody's, has also separately identified that the oil and gas industry faces significant credit risks from the low-carbon transition even under its baseline scenario.[30] Numerous third party analysts have also expressed similar concerns.[31]

46. As a result of the implications of these transition risks, there is, at the very least, a reasonably foreseeable risk that EnQuest will be exposed to material financial risks, including: increased operating costs; increased costs of capital; increased compliance and litigation costs; adverse effects on revenue, margins, profitability and cash flows; constraints on production and supply and access to new reserves; and the potential for assets (e.g. exploration licences, oil and gas reserves or infrastructure and equipment required to develop these oil and gas reserves) to become 'stranded'.[32]

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:

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[28] See, eg,Oil Change International and the Institute for Energy Economics and Financial Analysis, 'Off Track, 'How the International Energy Agency Guides energy Decisions Towards Fossil Fuel Dependence and Climate Change' (April 2018).
[29] See Sarasin & Partners, 'Are oil and gas companies overstating their position?' (2018).
[30] Moody's, 'Oil and Gas Industry Faces Significant Credit Risks from Carbon Transition' (26 April 2017).
[31] See, eg, Carbon Tracker '2 Degrees of Separation: Transition risk for oil and gas in a low carbon world' June 2017); Boston Consulting Group, 'Are oil and gas companies ready for the next energy transition in the US?' (2018); Cornerstone Capital Group. 'Peak Uncertainty: Evaluating oil company governance at the dawn of the electric transport age' (December 2017); EY, 'Are your climate disclosures revealing the true risks of your business?' (September 2017); International Renewable Energy Agency, 'Stranded assets and renewables: How the energy transition affects the value of energy reserves, buildings and capital stock' (2017)'; KPMG, 'Are you ready for climate related risk management? How the TFCD final recommendations affects oil and gas companies' (2017); International Monetary Fund, 'Riding the Energy Transition: Oil Beyond 2040' (2017); London School of Economics, 'Climate value at risk of global financial assets' Nature Climate Change (2016); Ben Caldecott et al. 'Evaluating Capex Risk: New Metrics to Assess Extractive Industry Project Portfolios' (2015); The Economist, 'The cost of inaction: Recognising the value at risk from climate change' (2015)
[32] "Stranded assets are assets that have suffered from unanticipated or premature write-downs, devaluations, or conversion to liabilities and they can be caused by a variety of risks. Increasingly risk factors related to the environment are stranding assets and this trend is accelerating, potentially representing a discontinuity able to profoundly alter asset values across a wide range of sectors." (Smith School of Enterprise and the Environment, 'What are Stranded Assets?', 2016).

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**."*[33]

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*."[34]

49. 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.[35] 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 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.*'[36]

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

50. 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.[37]

51. 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

[33] FRC, Annual Reviews of Corporate Reporting 2015/2016, p. 50.
[34] FRC, Annual Reviews of Corporate Reporting 2016/2017, p. 22.
[35] FRC, Draft amendments to Guidance on the Strategic Report, Non-financial reporting dated August 2017, pgs. 26 & 28.
[36] FRC, 'Guidance on the Strategic Report' (July 2018).
[37] See Mark Carney, 'Breaking the tragedy of the horizon - climate change and financial stability', speech at Lloyds of London (29 September 2015).

disclosures that would be useful to investors, lenders, and insurance underwriters in understanding material risks facing business from climate change.

52. 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 oil and gas sector.[38]

53. 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'*

54. 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[39] 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.[40]
   - **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.[41]
   - **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. [42]

55. 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

[38] TCFD, Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures (June 2017), p52.
[39] Taskforce on Climate-related Financial Disclosures, 'TCFD Supporters'.
[40] See A4S, Supporting the recommendations of the FSB taskforce on climate-related financial disclosures.
[41] See IIGCC, Nearly 400 global investors with over $22 trillion in assets urge G20 to stand by Paris Agreement.
[42] WBCSD, 'CEO Guide to Climate-related Financial Disclosures' (2017).

56. 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.'*[43]

Financial Conduct Authority

57. The FCA has recently discussed climate change risks as part of its response to a Law Commission report on pension funds and social investment.[44] 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*".[45]

58. 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.*"[46]

3.3 Relevant peer comparisons

59. For a number of years, many companies in the oil and gas sector with UK listings 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**)[47] or the Climate Disclosures Standards Board (**CDSB**).[48]

60. By way of example, brief extracts from disclosures included within the 2017 annual reports of EnQuest's UK-based oil and gas sector peers, include the following:

- **Royal Dutch Shell plc** - *'Rising climate change concerns have led and could lead to additional legal and/or regulatory measures which could result in project delays or cancellations, a decrease in demand for fossil fuels, potential litigation and additional compliance obligations.'*[49]

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[43] https://www.gov.uk/government/news/uk-government-launches-plan-to-accelerate-growth-of-green-finance
[44] Law Commission (2017). "Pension Funds and Social Investment" Law Comm No. 374 printed 22 June 2017.
45 Department for Work & Pensions (2018). "Pension funds and social investment: the Government's final response" June 2018.
46 Letter from David Geale, Director of Policy at the FCA, to Mary Creagh MP, Chair of the Environmental Audit Committee, dated 6 July 2018.
[47] https://www.cdp.net/en
[48] https://www.cdsb.net/
[49] Royal Dutch Shell, 'Annual Report and Accounts 2017', p 13,

- **BP plc** - *'Policy, legal, regulatory, technology and market change related to the issue of climate change could increase costs, reduce demand for our products, reduce revenue and limit certain growth opportunities.'*[50]
- **Cairn Energy plc** - *'The Paris Agreement on climate change of November 2016 set a framework for limiting carbon emissions from fossil fuels. This is one of a number of policy and regulatory developments that will increasingly play a part in determining the outlook for energy demand and how energy suppliers operate in the future.'*[51]
- **Soco International plc** - *'Global transition to a lower carbon intensity economy in response to climate change could result in reduced demand and increased operating cost, capital cost, regulation and taxation. Accordingly, it is a factor that impacts many of the Group's principal risks set out herein, including those associated with commodity price, reserves, operations, political, stakeholder and reputational.'*[52]

61. Annex 1 to this complaint includes a more substantial summary of disclosures included in the annual reports and accounts of significant other UK listed oil and gas companies, which are subject to the same disclosure requirements as EnQuest. As is evident from these examples, EnQuest is a clear outlier among peers in its sector for providing no mention at all about climate change or the low carbon transition in its Annual Report.

3.4 Evidence of investor expectations

62. 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.

63. Survey data published in 2018 by UKSIF and The Climate Change Collaboration found that fund managers who responded agreed that transition risk will significantly affect oil company valuations in the next 5 years, while 90% expected at least one risk to significantly impact valuation within 2 years.[53]

64. Over the past few years there have been numerous shareholder resolutions passed at companies across a range of sectors, and particularly in oil and gas, demanding disclosures about climate change related risks.[54]

65. 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.[55] By way of example, in its statement of engagement priorities for 2017-2018, BlackRock, the world's largest fund manager, states that:

[50] BP plc 'Annual Report and Accounts 2017', p 57.
[51] Cairn Energy plc, 'Annual Report and Accounts 2017', p 18.
[52] SOCO International plc, 'Annual Report and Accounts 2017', p 32.
[53] UKSIF and The Climate Change Collaboration 'Not long now: Survey of fund managers' responses to climate-related risks facing fossil fuel companies' (2018).
[54] Ceres, Four Mutual Fund Giants Begin to Address Climate Change Risks in Proxy Votes: How About Your Funds?
[55] IIGCC et al. Letter form global investors to governments of the G20 nations (3 July 2017).

> *'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.'*[56]

66. 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.'*[57]

67. 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'.[58]

68. 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.[59] 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.[60] 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.[61]

69. Specifically in relation to physical climate change related trends and risks, many investors, including Schroders[62] and Deutsche Asset Management,[63] are already mapping company assets and calculating vulnerability profiles to physical climate change risks and impacts – and are demanding better company disclosures accordingly

70. 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.[64] This letter provides strong evidence that investors also consider that climate change-related risks have significant implications for many companies' long-term viability.

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

71. 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 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

72. 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**).

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

74. 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)

75. Under section 414A(1) of the Companies Act, the directors of EnQuest 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.[65]

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

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

77. 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.

78. 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. "*

79. While EnQuest'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,[66] the directors' general duties under the Companies Act[67] and the requirements of the UK Corporate Governance Code.[68] In particular, in complying with section 414C(2)(b), EnQuest'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]

80. 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 EnQuest's directors would identify and consider could influence the economic decisions shareholders take on the basis of the annual report as a whole.

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

82. Accordingly, in light of EnQuest'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 EnQuest has beached s 414C(2)(b) of the Companies Act (**Breach 1**).

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

83. As already identified at paragraph 75 of this Complaint, under section 414A(1) of the Companies Act, the directors of EnQuest are required to prepare a Strategic Report. Section 414C of the Companies Act sets out the requirements for the contents of the Strategic Report.[70]

84. 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*

[66] See Companies Act, ss 414C(1), 172.
[67] See, in particular, Companies Act, ss 174(1)-(2).
[68] See, in particular, UK Corporate Governance Code, [C.2], [C.1.1], [C.2.1].
[69] Companies Act, ss 174(1)-(2).
[70] Further requirements for the contents of the Strategic Report are also set out under other sections of the Companies Act, including s 414CB.

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, …"

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

86. 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 phrase and on that basis it is appropriate to look to secondary sources for guidance, and, in particular, the FRC Guidance. In addition to the paragraphs extracted at paragraph 78 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."*

87. Again, while EnQuest's directors will retain a certain amount of discretion in how they apply this guidance to the requirements of section 414C(7), EnQuest'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.[71]

88. 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

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

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 EnQuest'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.

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

90. Accordingly, in light of EnQuest'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 EnQuest is in breach of section 414C(7) (**Breach 2**).

4.3 Breach 3 - DTR 4.1.8R

91. 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, EnQuest is an 'issuer' for the purposes of the FCA Handbook[72] and is therefore required to comply with section 4 of the DTRs contained in the FCA Handbook.[73]

92. Under DTR 4.1.3 R, EnQuest 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 EnQuest's Strategic Report in its Annual Report constitutes its Management Report for the purposes of DTR 4.1.5 R.[74]

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

[72] See DTR 4.1.1.
[73] See DTR 4.1.1.
[74] See also, 'FRC Guidance on the Strategic Report' (2014).

94. 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.

95. Again, while EnQuest’s directors will retain a certain amount of discretion in how they apply this guidance to the requirements of DTR 4.1.8 R, EnQuest’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.

96. Accordingly, based on the relevant paragraphs of the FRC Guidance extracted at paragraph 78 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 EnQuest’s directors would identify and consider could influence the economic decisions shareholders take on the basis of the annual report as a whole.

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

98. Accordingly, in light of EnQuest'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 EnQuest is in breach of DTR 4.1.8 R (**Breach 3**).

4.4 Breach 4 – LR 9.8.6 R

99. 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. EnQuest has a premium listing on the London Stock Exchange.

100. 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';[75]

101. 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."

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

103. 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."*

104. 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, EnQuest's viability statement must:

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

[75] 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).

105. 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 EnQuest's investment and planning periods, and that a prudent director in the position of EnQuest's directors would have considered this to be the case.

106. Accordingly, in light of EnQuest'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 EnQuest is in breach of LR 9.8.1 R (**Breach 4**).

4.5 Breach 5 - DTR 1A.3.2R

107. As a company with a premium listing on the London Stock Exchange, EnQuest is required to comply with section 1A of the DTRs contained in the FCA Handbook.[76]

108. 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',*[77] 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.

109. Under DTR 6.3.3, EnQuest must entrust a RIS with the disclosure of 'regulated information' to the public. EnQuest's Annual Report is 'regulated information' for the purpose of this requirement.[78]

110. In light of these requirements, it is ClientEarth's submission that in order to satisfy DTR 1A.3.2 R, EnQuest's directors are required to take all reasonable care to ensure that information included in EnQuest'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.

111. Sections (4.1), (4.2), (4.3) and (4.4) of this Complaint, provide ClientEarth's submissions as to why EnQuest'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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[76] DTR 1.1.1.
[77] 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.'
[78] See DTR 6.3.

112. 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 EnQuest is in breach of DTR 1A.3.2 R.

5 Requests of the FRC Conduct Committee

113. The Annual Report is a key resource which enables investors to assess the position and performance of a particular business. EnQuest'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.

114. The FRC's stated mission is to promote transparency and integrity in business.[79] 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.[80] 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,[81] 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.

115. 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.[82]

116. In the alternative, we request that the FRC enter into an agreement with EnQuest that EnQuest will revise its Annual Report to ensure compliance with the requirements of the Companies Act and take necessary steps to correct the public record.[83]

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[79] See FRC website.
[80] See, FRC, 'FRC Roles and Responsibilities Schedule of Functions and Powers' (June 2017).
[81] 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.
[82] See FRC, 'The Conduct Committee: Operating procedures for reviewing corporate reporting' (1 April 2017) [38].
[83] See FRC, 'The Conduct Committee: Operating procedures for reviewing corporate reporting' (1 April 2017), [41]-[42].

117. 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.[84]

118. In ClientEarth's view, clear and decisive action from the FRC on these matters is vital to ensure that investors have adequate information on EnQuest'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.

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

6 Reservation of rights

120. 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.

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

[84] 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

Royal Dutch Shell plc (Shell) Annual Report and Accounts 2017
Shell's annual report includes extensive discussion of climate change and the low carbon transition. These issues feature prominently in both the chair's message and the CEO's review. The Strategic Report includes five dedicated pages specifically discussing trends and factors related to climate change and the low carbon transition, the risks that this is creating for Shell's business and how it is managing them. It also includes an extended discussion about climate change in its section on principal risks and mentions climate change and the energy transition in its viability statement. The relevant section on principal risks is copied below: *'Rising climate change concerns have led and could lead to additional legal and/or regulatory measures which could result in project delays or cancellations, a decrease in demand for fossil fuels, potential litigation and additional compliance obligations.* *In December 2015, 195 nations adopted the Paris Agreement, which we fully support. The Paris Agreement aims to limit increases in global temperatures to well below two degrees Celsius. As a result, we expect continued and increased attention to climate change from all sectors of society. This attention has led, and we expect it to continue to lead, to additional regulations designed to reduce greenhouse gas (GHG) emissions.* *We expect that a growing share of our GHG emissions will be subject to regulation, resulting in increased compliance costs and operational restrictions. If our GHG emissions rise alongside our ambitions to increase the scale of our business, our regulatory burden will increase proportionally. We also expect that GHG regulation will focus more on suppressing demand for fossil fuels, either through taxes, fees, incentives to promote the sale of electric vehicles or even through the future prohibition of sales of new diesel or gasoline vehicles. This could result in lower revenue and, in the long term, potential impairment of certain assets.* *Additionally, some groups are pressuring certain investors to divest their investments in fossil fuel companies. If this were to continue, it could have a material adverse effect on the price of our securities and our ability to access equity capital markets. The World Bank has also announced plans to stop financing upstream oil and gas projects in 2019. Similarly, according to press reports, other financial institutions also appear to be considering limiting their exposure to certain fossil fuel projects. Accordingly, our ability to use financing for future projects may be adversely impacted. This could also adversely impact our potential partners' ability to finance their portion of costs, either through equity or debt.* *Further, in some countries, governments and regulators have filed lawsuits seeking to hold fossil fuel companies liable for costs associated with climate change. While we believe these lawsuits to be without merit, losing any of these lawsuits could have a material adverse effect on our earnings, cash flows and financial condition.'* (p 13)
BP plc (BP) Annual Report and Accounts 2017
BP's annual report includes extensive discussion of climate change and the low carbon transition. These issues feature prominently in both the chair's message and the CEO's review. The Strategic Report includes an entire dedicated page specifically discussing trends and factors related to climate change and the low carbon transition, the risks that this is creating for Shell's business and how it is managing them. The relevant section on principal risks is copied below: *'Climate change and the transition to a lower carbon economy*

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Policy, legal, regulatory, technology and market change related to the issue of climate change could increase costs, reduce demand for our products, reduce revenue and limit certain growth opportunities. *Changes in laws, regulations, policies, obligations, social attitudes and customer preferences relating to the transition to a lower carbon economy could have a cost impact on our business, including increasing compliance and litigation costs, and could impact our strategy. Such changes could lead to constraints on production and supply and access to new reserves. Technological improvements or innovations that support the transition to a lower carbon economy, and customer preferences or regulatory incentives related to such changes that alter fuel or power choices, such as towards low emission energy sources, could impact demand for oil and gas. Depending on the nature and speed of any such changes and our response, this could adversely affect the demand for our products, investor sentiment, our financial performance and our competitiveness.'* (p 50)
Cairn Energy plc (Cairn) Annual Report and Accounts 2017
Cairn'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. *'Improved energy efficiency and the potential for electric vehicles to capture market share from the internal combustion engine are two big factors that may lead to demand from the transportation sector peaking around 2030…* *The Paris Agreement on climate change of November 2016 set a framework for limiting carbon emissions from fossil fuels. This is one of a number of policy and regulatory developments that will increasingly play a part in determining the outlook for energy demand and how energy suppliers operate in the future.* *Exploration and production activity is coming under increased scrutiny in all spheres of operation and environmentally sensitive regions in particular. Providers of capital will become more selective in financing fossil fuel developments with a risk of environmental impact or which have a high carbon footprint.* *Successful oil and gas companies of the future will need to adapt to tightening regulations and observe the highest standards of corporate and social responsibility. Among the challenges will be cutting emissions from operations, reducing the carbon intensity of portfolios, and minimising the impact of investment on the wider environment…* (p 18) ***Climate change risk and reporting*** *We continued to monitor and assess developments in relation to climate change in 2017 and will do so on an ongoing basis. This included understanding positions taken by significant contributors such as the USA and China as well as those countries in which we have activities. We conducted a review which looked at our risks in the context of the position taken by our key investors and peer companies in order to benchmark our own….* *Overall the risk profile of climate change within the business and materiality assessment have left this issue unchanged since 2016 we remain conscious of the potential for this to increase risk associated with access to debt markets and funding (see Economics and Funding). We looked at risks overall and in new country entry situations including specific risk reviews in our Investment Proposal summaries to the Board. With our partners, we started to consider climate change issues which may arise for potential development in Senegal, This includes particular requirements in relation to gas management and funding….*

In 2018 our focus will be to maintain our efforts to track and understand the risks and developments around climate change and we will perform a portfolio 'resilience' assessment.' (p 71)
SOCO International plc (SOCO) Annual Report and Accounts 2017
SOCO'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. '***Climate Change*** *SOCO acknowledges that both oil and gas exploration and production activities and the consumption of the produced hydrocarbons lead to greenhouse gas emissions. Climate change is high on the international agenda with nations committing themselves to combating climate change, moving towards fossil fuel alternatives and planning to adjust to the consequences of global warming.* *The risks to business posed by climate change are included in the Company's risk assessment processes as an underlying factor contributing to the principal risks. The physical risks generally associated with climate change (sea level rises, extreme weather and water scarcity) are managed largely through established management processes, including the application of industry best practice.* ***Climate change risk*** *Global transition to a lower carbon intensity economy in response to climate change could result in reduced demand and increased operating cost, capital cost, regulation and taxation. Accordingly, it is a factor that impacts many of the Group's principal risks set out herein, including those associated with commodity price, reserves, operations, political, stakeholder and reputational.* ***Mitigation*** *This report sets out the manner in which the Group seeks to mitigate each of its principal risks, including those that may be impacted by a global transition to a lower carbon intensity economy. In applying the mitigation measures for each of the Group's principal risks, SOCO seeks to monitor and apply the most current and evolving information on trends and factors that may impact on its current projects and as may be applicable to proposed future projects and the strategy for developing the business. Further details on climate change can also be found in the CSR Report on pages 34 to 45.'* (p32)
Tullow Oil plc (**Tullow**) **Annual Report and Accounts 2017**
Tullow'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. *'CLIMATE CHANGE REGULATION Governments are putting in place taxes, carbon trading schemes and other measures to limit greenhouse gas (GHG) emissions. We are currently undertaking a review of how many of our countries of operation will be subject to emissions and carbon policies by 2020. To help anticipate greater regulatory requirements for GHG emissions, we factor a shadow carbon cost into our own investment decisions for large new projects to ensure that the rate of return on investment for these projects is still viable in the event of carbon taxes being imposed. Further information on our position on climate change can be found on page 37, but our*

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aim is to minimise the GHG emissions potential of our activities and implement appropriate reduction initiatives, taking into account the overall stability of our operations. We also work to ensure that our business is responsive to applicable legal and regulatory developments designed to address climate change, and maintain transparency in our performance reporting and openness in our engagement about climate change.' (p15)

*'**Principal risks** - 1. strategy not fully achievable in sustained low oil price environment*
***Causes** - Low oil price environment due to global supply/demand balances and shift to alternative energy sources as a result of climate change*
***Potential impact** - • inability to deleverage the business • Inability to monetise chosen assets • Capital committed to suboptimal projects • Overheads not matched to asset base • Portfolio not optimised to sustain long-term strategy'* (p 44)

*'**Principal risks** - 5. failure to manage oil price risk*
***Causes** - Low oil price environment due to global supply/demand balances and shift to alternative energy sources as a result of climate change*
***Potential impact** - •Reduced cash flows, evenue, EBITDA, asset value and debt capacity • Insufficient funding to support investment programme'* (p46)