2023 AGM and reporting season: what to expect

ASHURST LONDON

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Contents

INTRODUCTION

This briefing summarises key developments to be aware of when preparing for 2023 annual general meetings and compiling the narrative aspects of annual reports.

It is aimed principally at premium listed companies. It also covers material developments for standard listed companies, AIM companies and large private companies. It may also be useful for those who choose voluntarily to comply with the UK Corporate Governance Code and any other legal or regulatory requirements.

CONSIDERATIONS FOR 2023 AGMS

On AGMs, we:

- Consider the updated 2022 Statement of Principles and Template Resolutions published by the Pre-Emption Group.
- Note the need for some companies to put a resolution on remuneration policy in 2023.
- Take a brief look at resolutions and practice in 2022.
- Consider the Financial Reporting Council 'Good Practice Guidance for Company Meetings'.
- Note key points from various updated voting guidelines including those of the Investment Association, Institutional Shareholder Services/ISS and Glass Lewis, which may impact 2023 AGMs.

CONSIDERATIONS FOR 2023 NARRATIVE REPORTING

On narrative reporting, we:

- Note climate-related reporting developments, in particular the TCFD aligned reporting that is now in force for a wider range of companies and LLPs.
- Look at the new rules on diversity reporting from the Financial Conduct Authority for which early adoption is encouraged.
- Consider remuneration reporting which always remains of interest to investors.
- Note publications from the FCA, FRC and others including their reports analysing the quality of climate related disclosures, the quality of corporate governance reporting and areas of supervisory focus for 2023/2024.
- Review progress on a variety of other developments that will affect reporting in the future including: government proposals for net zero transition plans; progress towards standards from the International Sustainability Standards Board; and the government's proposals to restore trust in audit and corporate governance.

At the end of this briefing, we also set out and link to key documents published in 2022.

We considered many of these issues at our recent AGC conference: 'Planning your 2023 AGM and reporting agenda'. Click here to go to the event landing page where you will find the session materials and a recording of proceedings, as well as links to other useful information.

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A. CONSIDERATIONS FOR 2023 AGMs

CONSIDERATIONS FOR 2023 AGMS: *WHAT WE COVER*
1. Pre-emption disapplication resolutions.
2. Remuneration policy resolutions.
3. A retrospective on practice and resolutions in 2022.
4. FRC good practice guidance for company meetings.
5. Updated voting guidelines: ISS, Glass Lewis and other.
6. Effect of further postal strikes on notice periods.

1. PRE-EMPTION DISAPPLICATION RESOLUTIONS

On 4 November 2022, hot on the heels of the UK Secondary Capital Raising Review, the Pre-Emption Group revised its Statement of Principles on the disapplication of pre-emption rights and its template resolutions, effective immediately.

Key changes include: (i) increased disapplication thresholds - now potentially 10 per cent plus 10 per cent of issued share capital; (ii) a new concept of a 'follow-on offer';(iii) strengthened conditions for use of the authorities; and (iv) a special regime for 'capital-hungry' companies. See the table below and our client briefing here for more detail.

PRE-EMPTION DISAPPLICATION: *UPDATED PEG STATEMENT AND TEMPLATE RESOLUTIONS*	
Increased disapplication thresholds	• Up to 10% of issued ordinary share capital (IOSC) (previously 5%) for use in relation to offers of shares for cash on an unrestricted basis – i.e. for general purposes. • Up to 10% of IOSC (previously 5%) for use in connection with an acquisition or a specified capital investment announced at the same time as the issue or which took place in the previous 12 months (changed from 6 months). Resolutions should still be put to shareholders separately.
Follow-on offers	• Companies may seek further authority to disapply pre-emption rights for follow-on offers in relation to each of the above thresholds up to an additional 2% of IOSC. • Follow on offers should be made to retail investors and existing shareholders and must contain prescribed 'expected features'. • 'Expected features' include: qualifying shareholders subscription limit of no more than £30,000; and the number of shares issued not to exceed 20% of those placed.
Conditions for use of up to 20% disapplication authority	• Various conditions must be fulfilled before the authorities are used. These include: consulting with major shareholders; undertaking any placing on a 'soft pre-emptive' basis; involving management in the share allocation process; considering retail investors and existing investors for follow-on offers; and making a post-transaction report and RNS announcement.
Additional flexibility for 'capital-hungry' companies	• 'Capital hungry' companies, such as those in the technology or life sciences sectors, may seek additional disapplication authority and/or for a longer period if, at the time of the request for the general disapplication, they specifically highlight the reason for doing so.

The revised PEG statement is supported by the Investment Association and the Pensions and Lifetime Savings Association. In terms of proxy advisers, Glass Lewis has indicated its support and also set out the factors it will consider when 'capital hungry' companies seek enlarged disapplication resolutions. ISS is similarly supportive. PIRC has not yet stated its position. No doubt, institutional shareholders will form their own views.

It remains to be seen whether the additional flexibility afforded by the revised Statement of Principles is sought in practice. Should a company wish to take the fullest extent of the authorities permissible, engagement with shareholders will be key. In terms of drafting, care must be taken when updating resolutions, particularly where companies have not mirrored the previous PEG template resolutions.

2. RESOLUTIONS TO APPROVE DIRECTORS' REMUNERATION POLICY

A binding shareholder vote on the directors' remuneration policy must be put to shareholders at least every three years. As the first such votes were put in 2014, any company that has remained on the original three year policy cycle will need to hold such a vote again in 2023. Of course, that entails considering what the new policy should contain. The Investment Association states in its 2023 Principles of Remuneration that, given the external environment, IA members will expect companies to show restraint on increases to variable pay opportunity in any new policy. Any increases should be carefully explained in the context of the business and delivery of strategy.

It is also worth remembering that IA members consider that pension contributions for executive directors should be aligned with those available to the majority of the company's workforce by the end of 2022. Therefore, for 2023, IVIS will Red Top any remuneration policy or report where executive pension contributions are not so aligned.

For more on the IA's views, see section B.3 below.

3. A RETROSPECTIVE ON PRACTICE AND RESOLUTIONS IN 2022

The main theme of the 2022 AGM season was a return to the physical meeting, although with a significant number of hybrid meetings held by those in the FTSE 100 and a few by those in the FTSE 250. Engagement with shareholders remains high on the agenda of companies, regulators and others. Some AGMs in 2022 encountered significant disruption by activists. These issues are reviewed in turn below.

Meeting format

According to PLC's 2022 What's Market insight and trends report, the most common meeting format is, once again, the physical meeting. See the table below for detail.

<table>
<tr><th colspan="4">2022 AGMS: MEETING FORMAT</th></tr>
<tr><th colspan="2">FTSE 100 (95 company sample)</th><th colspan="2">FTSE 250 (173 company sample)</th></tr>
<tr><td>• 35/95 companies held a physical meeting (37%)</td><td rowspan="2">57% held physical meetings in total</td><td>• 113/173 companies held a physical meeting (65%)</td><td rowspan="2">81% held physical meetings in total</td></tr>
<tr><td>• 19/95 companies held a physical meeting with live webcast/dial-in facility (20%)</td><td>• 27/173 companies held a physical meeting with live webcast/dial-in facility (16%)</td></tr>
<tr><td>• 40/95 companies held a hybrid meeting (42%)</td><td rowspan="2">43% held electronic meetings in total</td><td>• 29/173 companies held a hybrid meeting (17%)</td><td rowspan="2">19% held electronic meetings in total</td></tr>
<tr><td>• 1/95 company held a virtual meeting (1%)</td><td>• 4/173 companies held a virtual meeting (2%)</td></tr>
</table>

Whilst a significant number of the FTSE 100 held hybrid AGMs in 2022, the number of companies holding hybrid meetings overall is perhaps lower than might have been expected. As we mentioned in our 2022 AGM season briefing, it remains the case that for many companies the cost benefit analysis of hybrid meetings is yet to become compelling.

Engagement with shareholders

Questions in advance of AGMs. Many companies are still facilitating questions in advance of the AGM, although slightly less than in 2021. The PLC What's Market 2022 insight and trends report shows that nearly 75 per cent of the companies surveyed (made up of 79 per cent FTSE 100 and 72 per cent FTSE 250)) allowed questions in advance of the meeting (cf. 85 per cent in 2021).

Live Q&A facilities. The PLC What's Market 2022 insight and trends report shows that for hybrid meetings and those physical meetings where dial-in facilities were provided, live Q&A facilities were frequently offered to remote attendees (in 88 per cent of such meetings held by FTSE 100 companies and in 76 per cent of such meetings held by FTSE 250 companies).

Disruption at AGMs

In the GC 100 Poll of the 2022 AGM season, 19 companies reported shareholder activists attended their AGM with one third of them saying activists dominated the Q&A session. The press also reported several companies as having encountered issues or disruption at their AGMs in 2022. These include: Aviva (sexist comments); Lloyds of London, UK Oil & Gas, Shell, Standard Chartered and Barclays (climate protesters); and HSBC (climate and pensions related protests).

If companies are concerned that there may be disruption at their AGMs, various steps can help them to be as prepared as possible. See the table below for some suggestions.

AGMS: *PREPARING FOR DISRUPTION*
• Enhanced security arrangements.
• Fulsome chairman's scripts noting and explaining powers in articles of association on which reliance may be placed.
• Rehearsals of possible scenarios, including disruption and motions from the floor.
• Reminders in the AGM notice and/or at the start of meeting as to expectations on conduct.

Say on Climate resolutions

We are aware of 23 SoC resolutions being put at AGMs in 2022 (cf 13 in 2021). Of these 20 were put at FTSE 100 company meetings and three were at FTSE 250 company meetings. Most resolutions were board-proposed and, where that was the case, all passed. Three were shareholder proposed and all failed. As in 2021, most SoC resolutions were proposed at oil and gas, mining, utilities and financial services companies.

Although increasing slightly, SoC resolutions remain few in number and, as we noted in last year's briefing, this may be because of the views of some proxy advisers. It may also be because companies await the outcome of government proposals on net zero transition plans, for which see section B.5 below for more.

Glass Lewis sets out its position on environmental, social and governance issues it its ESG Initiatives Policy Guidelines. On SoC resolutions, its 2023 guidelines remain unchanged from 2022.

ISS sets outs its policy on SoC resolutions in its Proxy Voting Guidelines for the UK and Ireland. Its 2023 guidelines contain no policy changes on SoC resolutions.

A summary of the Glass Lewis and ISS approaches to SoC resolutions was included in our 2022 briefing here. See section A.4 below for the other changes to each agency's guidelines.

Other resolutions

Articles of association. Fewer companies changed their articles this years than in the previous two years. Common changes made by those which did included: to allow electronic meetings or tweak existing provisions which deal with them; to allow companies greater flexibility as regards the treatment of untraced shareholders, unclaimed dividends and the payment of dividends; and to increase non-executive director fees.

Requisitioned resolutions. Other than SoC resolutions, there were very few requisitioned resolutions. We are aware of requisitioned resolutions at HSBC (pension issue) and J Sainsbury (living wage issue). Both failed. We are also aware of press reports of a requisitioned resolution related to increasing the proportion of sales from healthier products at Unilever, which was withdrawn.

4. FRC GOOD PRACTICE GUIDANCE FOR COMPANY MEETINGS

In July 2022, the FRC published 'Good Practice Guidance for Company Meetings'. It is aimed at listed companies with a view to enhancing effective shareholder participation when planning and conducting AGMs and other general meetings.

The guidance states that companies should seek to maximise the participation and engagement of all types of shareholders on the register and, where appropriate, take advantage of the use of technology to do so. That said, the guidance recognises the principle of flexibility, that all companies are different and that not all aspects of the guidance will apply to, or be appropriate for, all companies. It notes that companies will take different approaches and use different technologies and methods with regards to shareholder engagement depending on their circumstances.

The guidance sets out seven principles under four broad headings of 'Before', 'During' and 'After the meeting' as well as 'Engagement throughout the year'. Each principle is accompanied by suggested actions and advice. Many companies will already do much of what is suggested and it is open for companies to decide that certain aspects of the guidance are not for them at this point or at all.

The principles are (with selected actions/advice) summarised in the table below.

FRC GOOD PRACTICE GUIDANCE FOR COMPANY MEETINGS: ***PRINCIPLES AND SELECTED ACTIONS***
Before the meeting: Information disseminated prior to the meeting must offer clear instructions on how to attend the meeting and participate, in order to enable effective shareholder engagement. It should clarify the form and scope of any electronic meeting facilities. Notices should make clear that unacceptable behaviour will not be tolerated.
Before the meeting: Whether meetings are physical, hybrid or virtual (if possible), shareholders should, as far as practicable, be able to engage in the business of the meeting. Details and a clear timeframe for submitting questions and how they will be answered should be given well in advance. Companies should consider reminding shareholders who have opted for e-comms of their ability to vote one or two business days prior to the proxy deadline.
During the meeting: The board should provide an update on matters raised by stakeholder groups that are considered by the board to materially affect the company's strategy, performance and culture. This could be covered as a separate agenda item at the AGM or included in the opening statements made by the chair or CEO.
During the meeting: Companies should seek the broadest access to and participation in meetings by a diverse range of shareholders. Whether attending virtually or in person, shareholders should have the opportunity to raise questions pertinent to the meeting agenda. Companies should consider opening the Q&A function for written/electronic questions from the start of the meeting.
During the meeting: Shareholders should be able to cast their votes in real-time, or submit a voting instruction in advance via the appointment of a proxy, depending on the meeting format. Appropriate technology should be used to ensure that shareholders have the ability to appoint proxies before the meeting. The need to download specific software to participate should be avoided.
After the meeting: Companies should be as transparent as possible in relation to matters discussed and raised by shareholders at the meeting. Shareholders should be able to follow up on any answer to a question via a specific email address. Consideration should be given to making recordings of hybrid (or virtual) meetings available to shareholders for a period after meetings.
Engagement throughout the year: Effective and transparent engagement should not be limited to an annual event. Opportunities to update shareholders on company matters should be offered throughout the year, with an emphasis on ensuring all shareholders have access to similar information. Summaries of previous shareholder events could be made available prior to meetings on company websites. Consideration should be given to inviting shareholders to observe non-confidential meetings with wider stakeholders.

5. UPDATED VOTING GUIDELINES

In this section, we look at the Investment Association 2022 shareholder priorities and the ISS and Glass Lewis 2023 voting guidelines. (At the time of writing, neither the Pensions and Lifetime Savings Association nor Pensions Investment Research Consultants has published their updated voting guidelines.)

IA shareholder priorities 2022

At the time of writing, the Investment Association is yet to publish its 2023 shareholder priorities. When it does so, we will cover them in an Ashurst Governance and Compliance update.

Its shareholder priorities for 2022, published in March 2022, set out the approach that its voting arm, IVIS, will take on various issues. As in previous years, the priorities include: climate change, audit quality, diversity and stakeholder engagement. The table below sets out more detail.

By way of reminder, IVIS issues colour-coded ('Topped') reports. The colour showing its strongest level of concern is Red, followed by Amber which raises awareness of particular issues. A Blue 'Topped' report indicates no major areas of concern, while a Green 'Topped' report indicates that an issue has now been resolved. The issue which drives the colour coding will be outlined in the 'Key Issues' section of each IVIS report.

IA SHAREHOLDER PRIORITIES 2022: *SOME KEY POINTS*
1. **Climate change**. In 2022 IVIS stated that it would Amber Top companies that do not make disclosures against all four pillars of the TCFD recommendations. Companies should state in the annual report that directors have considered the relevance of the risks of climate change and transition risks associated with achieving the goals of the Paris Agreement.
2. **Audit quality**. IVIS continue to monitor whether audit committees have demonstrated how they assess the quality of the audit and how they challenge management's judgements.
3. **Diversity**. IVIS will:
• Red Top FTSE 100 companies that have not met the Parker Review target of one director from a minority ethnic group. • Amber Top FTSE 250 companies that do not disclose either the ethnic diversity of their board or a credible action plan to achieve the Parker Review targets by 2024. • Red Top FTSE 350 companies where women represent: 33% or less of the board; or 28% or less of the Executive Committee and its direct reports. • Red Top FTSE Small Cap companies where women represent: 25% or less of the board; or 25% or less of the Executive Committee.
4. **Stakeholder engagement**. Investors expect stakeholder disclosures to include the impact of increases to the cost of living and inflationary pressures in the economy on consumers and suppliers, as well as the impact of the COVID-19 pandemic. Disclosures should set out how the board reflected the stakeholder views in key decisions.
For more on the IA views on executive remuneration, see section B.3 below.

ISS 2023 proxy voting guidelines

In December 2022, ISS published its 'Benchmark Policy Updates' for 2023. Its updates will generally be applied for shareholder meetings taking place on or after 1 February 2023. Key policy changes relate to executive remuneration, board diversity, audit committees and climate accountability. These are summarised in the table below.

ISS: *KEY 2023 POLICY UPDATES*
• **Executive remuneration**. ISS considers it good market practice to keep directors' annual salary increases low, and ideally "*lower proportionally*" than increases awarded to the wider workforce.
• **Board diversity**. For listed companies for financial years beginning on or after 1 April 2022, ISS may consider recommending a vote against the nomination committee chair (or other directors on a case-by-case basis) if a listed company has not achieved new board diversity targets set by the Listing Rules (see section B.2 below for more on the new FCA diversity reporting rules).
• **Audit committees**. For FTSE 350 companies, ISS will note where four or fewer audit committee meetings have been held during the reporting period. For FTSE All-Share companies (excluding investment companies), ISS will draw attention to cases where three or fewer meetings are held.
• **Climate accountability**. ISS has made its expectations more rigorous. 'Appropriate GHG emissions reductions targets' will be considered to be medium term GHG reduction targets or Net Zero-by-2050 GHG reduction targets for a company's operations (Scope 1) and electricity use (Scope 2). Targets should cover the vast majority of the company's direct emissions.

GL 2023 guidelines

In November 2022, Glass Lewis published its 2023 'Policy Guidelines' for the UK. Its updates will generally be applied for shareholder meetings taking place on or after 1 January 2023. Key policy changes relate to external commitments of directors and director accountability for climate-related issues. These are summarised in the table below.

GLASS LEWIS: *KEY 2023 UPDATES*
• **External commitments**. Glass Lewis has amended and extended its guidelines for when a director may be potentially 'overboarded'. For example, it considers a director to be potentially over-committed if, amongst other situations, (s)he serves as an executive officer of a public company while serving on more than one (previously two) external public company boards. As Glass Lewis generally counts non-executive board chair positions at UK companies as two board seats, it would generally consider an executive officer of a public company to be over-committed should they also serve as a non-executive chair of another UK or European company.
• **Director accountability for climate-related issues**. In a new section of the guidelines, Glass Lewis states that for companies with increased climate risk exposure which have not provided thorough TCFD-aligned disclosures and/or have not explicitly and clearly defined board oversight responsibilities for climate-related issues, it may recommend voting against a responsible member of the board or other relevant agenda item(s).
• **Cyber risk oversight**. In a new section of the guidelines, Glass Lewis notes that while it will generally not make recommendations on the basis of a company's oversight of or disclosure on cyber-related issues, it may recommend against appropriate directors where cyber-attacks have caused material risk to shareholders and it finds the disclosure or oversight to be insufficient.
• **Board diversity**. As regards the new Listing Rules 'targets' for diversity reporting (see detail below in section B.2), Glass Lewis will simply monitor progress for 2023. In subsequent years, it will consider recommending against the nomination committee chair where a board has made insufficient progress, and has not disclosed any cogent explanation or plan to address the issue.

6. EFFECT OF FURTHER POSTAL STRIKES ON NOTICE PERIODS

A final practical point should be considered if postal strikes continue into the New Year (see Royal Mail Latest News on its website for information on industrial action/strikes). If that is the case, ideally more time should be allowed for mailing hard copy notices of meetings and a strike day should not be counted either as a day on which a notice is considered to have been posted or delivered/received.

B. CONSIDERATIONS FOR 2023 NARRATIVE REPORTING

CONSIDERATIONS FOR 2023 NARRATIVE REPORTING: *WHAT WE COVER*
1. Climate-related reporting: more businesses now caught.
2. Diversity reporting: new FCA rules now in force.
3. Remuneration reporting: a perennial concern.
4. Corporate reporting: areas for improvement.
5. Future developments affecting annual reports.
6. Other reporting developments.

The key legal and regulatory development that will affect annual reports published in 2023 and which shareholders and regulators are most interested in continues to centre around climate-related financial reporting. Companies will also need to prepare for new FCA rules on diversity reporting. Remuneration reporting, as ever, remains on the radar. Reports from the FCA and FRC show how they consider companies should improve their reporting. Future developments such as transition plans and sustainability reporting will affect annual reporting in the near term. We look at each of these in turn.

1. CLIMATE-RELATED REPORTING: MORE BUSINESSES NOW CAUGHT

As covered in last year's briefing, climate related reporting is already required, currently on a 'limited comply or explain basis', by premium and standard listed companies. Similar requirements, in the Companies Act 2006, have subsequently come into force requiring mandatory climate-related reporting by a wider range of businesses. The table below provides a reminder of the overall position.

CLIMATE RELATED FINANCIAL REPORTING: *AT A GLANCE*	
TCFD reporting: premium listed companies: **IN FORCE**	Listing Rules apply to premium listed companies for accounting periods beginning on or after 1 January 2021. The first TCFD reports in compliance with these requirements were published in 2022.
TCFD reporting: standard listed companies: **IN FORCE**	New Listing Rules are in force for standard listed companies for accounting periods beginning on or after 1 January 2022. The first reports in compliance will be published in 2023.
TCFD-aligned reporting: publicly quoted companies, large private companies, and LLPs: **IN FORCE**	Regulations are in force for publicly quoted companies, large private companies, and LLPs for accounting periods beginning on or after 6 April 2022. The first reports in compliance will be published in 2023 (see more detail below).

In January 2022, the Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022 were made. They came into force on 6 April 2022 for in-scope entities with financial years beginning on or after that date.

Those in scope for the new disclosures are broadly:

- all companies that are currently required to produce a non-financial information statement (NFIS), being UK companies that have more than 500 employees and have either transferable securities admitted to trading on a UK regulated market (such as the main market of the London Stock Exchange), or are banking companies or insurance companies;
- UK companies with securities admitted to AIM with more than 500 employees; and
- UK companies, not included in the above categories, which have more than 500 employees and more than a £500 million turnover.

The Limited Liability Partnerships (Climate-related Financial Disclosure) Regulations 2022 introduce similar reporting requirements for UK LLPs which are non-traded or banking LLPs and have more than 500 employees and more than a £500 million turnover as well as for traded LLPs and banking LLPs which have more than 500 employees.

In-scope companies and LLPs must disclose climate-related financial information (which is in line with the four overarching pillars of the TCFD recommendations) as set out in the table below:

CLIMATE RELATED FINANCIAL REPORTING FOR PUBLICLY QUOTED COMPANIES, LARGE PRIVATE COMPANIES AND LLPS: *BASIC DISCLOSURES*
• A description of the company's **governance arrangements** for assessing and managing climate-related risks and opportunities.
• A description of how the company **identifies, assesses, and manages climate-related risks and opportunities.**
• A description of how processes for identifying, assessing, and managing climate-related risks are integrated into the company's **overall risk management process**.
• A description of the **principal climate-related risks and opportunities** connected with the company's operations, and the **time periods** by reference to which those risks and opportunities are assessed.
• A description of the **actual and potential impacts** of the principal climate-related risks and opportunities on the company's business model and strategy.*
• An analysis of the **resilience of the company's business model and strategy**, taking into consideration different climate-related scenarios.*
• A description of the **targets used** to manage climate-related risks and to realise climate-related opportunities and of **performance** against those targets.*
• A description of the **key performance indicators used to assess progress against targets** for managing climate-related risks and realising climate-related opportunities and of the **calculations** on which those KPIs are based.*

Companies will be required to report climate-related financial information in their Strategic Report in a newly named **'Non-Financial and Sustainability Information Statement'**. LLPs will be required to report this information in either their Strategic Report or their Energy and Carbon Report, which form part of their annual report.

The regulations contemplate that directors can omit climate-related disclosures if they reasonably believe that, having regard to the nature of the company's business, and the manner in which it is carried on, the whole or a part of a climate-related financial disclosure required by the asterisked paragraphs in the table above is **not** necessary for an understanding of the company's business. In doing so, a company will have to provide a **clear and reasoned explanation** of the directors' reasonable belief as to why the omitted information is not necessary.

Government guidance

In February 2022, the Department of Business, Energy and Industrial Strategy published non-binding guidance for companies and LLPs on TCFD-aligned climate-related financial reporting and in light of the regulations. The guidance includes:

- An overview of the new climate-related financial disclosure requirements and the purpose behind their introduction, which is to support investment decisions as the economy moves towards a low-carbon economy.
- A reminder of: which companies are caught; how the requirements operate, for example in a group and/or global context; and the extent to which third party information can be relied upon to make the disclosures.
- Q&A on the operation of the regulations; what happens if a company or LLP within scope does not comply with the disclosure requirements; and the responsibilities of auditors.
- Suggestions on what entities should disclose relative to each element of the reporting requirements and the appropriate level of detail. In summary, disclosures should enable a reader to understand the effect of climate-related financial risks on, and opportunities for, the business, without needing to refer to other sources of information; and how those risks and opportunities relate to the other information presented in the annual report.

- An overview of how the regulations interact with other requirements, regulations and frameworks, including the rules mandated for premium and standard listed issuers by the FCA.

Disclosures should cover how climate change is addressed in corporate governance; the impacts on strategy; how climate related risks and opportunities are managed; and the performance measures and targets applied in managing these issues.

As to the level of detail required, the guidance mentions in various places that disclosures should enable an user of the accounts "*to understand the risk or opportunity posed by climate change and to understand the potential effect of that risk or opportunity on the business*". Disclosures should also describe the actual and potential impacts on the business in a way that is "*specific*" and "*as granular as is necessary to understand the impact of crystallisation of that risk*". The guidance also talks of the need to perform at least qualitative scenario analysis that "*uses narratives to explore implications of different possible climate impacts*" with assumptions and estimates disclosed and any targets properly explained. Reporters should "*disclose the resilience of their business model and strategy according to the scenarios used*".

As regards how the regulations interact with the FCA's Listing Rules on TCFD reporting for premium and standard listed companies, the guidance states that the main difference is that the FCA's Listing Rules directly reference the TCFD's recommendations, recommended disclosures and specified TCFD-published guidance materials, whist the regulations set out specific climate-related disclosure requirements that are ***aligned with*** the TCFD's recommendations but do not directly reference them. Where a UK-registered listed company is subject to both sets of requirements, "*disclosure in a manner consistent with all of the TCFD recommendations and recommended disclosures for the purposes of the FCA's listing rule……is likely to involve use of similar information to the disclosures required by these regulations; therefore, it is normally likely to meet the requirements of these regulations*".

> *"The preparation by businesses of disclosures on what the changing climate will mean for them, its impacts, risks, and opportunities, may help them gauge what they need to do to address these for their organisation, operations, and people."*
> **BEIS GUIDANCE**

For more on the government's plans for net zero transition plans to be prepared by listed companies and regulated firms, see section B.5 below.

FCA and FRC reports on climate related reported to date

Both the FCA and the FRC have reported their view of climate related disclosures published to date.

FRC report. In July 2022, the FRC issued its 'Thematic review of TCFD disclosures and climate in the financial statements'. This was based on its review of 25 larger companies which it considers are more impacted by climate change. While noting a significant increase in the quantity and quality of climate-related disclosures, the FRC discusses several areas where companies will need to raise the quality of their disclosures in future years. Key messages from its review are set out in the table below.

FRC REPORT ON CLIMATE RELATED DISCLOSURES: *AREAS FOR IMPROVEMENT*	
Granularity and specificity	Companies should provide more granular and specific information about the effect of climate change on their different businesses, sectors and geographies. The FRC also expects the link with financial planning to become clearer and more quantified over time.
Balance	The discussion by companies of climate-related risks and opportunities needs to be appropriately balanced. For example, disclosures should consider linking the description of climate-related opportunities to any technological dependencies.
Linkage with other narrative disclosures	TCFD disclosures need to be well integrated with other elements of companies' narrative reporting. For example, companies may need to consider the output of climate-related scenario analysis in discussion elsewhere in the strategic report concerning the company's business model and strategy, or may need to explain how climate-related risks have been assessed and prioritised compared to other risks.
Materiality	Companies should explain how they applied materiality to their TCFD disclosures. This links to the issue of companies not making it clear whether or how they had taken into account the TCFD all-sector guidance and (where relevant) the supplemental guidance for financial and non-financial companies: in many cases, when a company did not include some elements from this guidance in its disclosures, it was unclear whether it had been decided that it was not relevant/material, or whether the company had done so for another reason, including a lack of robust data.
Connectivity between TCFD narrative disclosures and financial statements	Companies should consider the connectivity between TCFD disclosures and the financial statements, and provide explanations where necessary For example, explanations should address whether: the emphasis on climate change risks and uncertainties in the narrative disclosures is consistent with how those uncertainties are reflected in judgements and estimates applied in the financial statements; emissions reduction commitments and strategies described in the narrative reporting are appropriately reflected in the financial statements; and discussion of matters which may have an adverse effect on asset values or useful lives in the narrative reporting is consistent with positions taken in the financial statements. The FRC may challenge companies which disclose significant climate risks or net zero transition plans in narrative reporting, but do not appear to adequately explain how this has been taken into account in their financial statements.
Sufficient detail	The FRC may challenge companies that claim consistency with a recommended disclosure where it is not clear that all relevant and material elements of the recommended TCFD disclosures (including relevant guidance) have been addressed.

FCA report. Also in July 2022, the FCA issued its 'Review of TCFD-aligned disclosures by premium listed commercial companies', having reviewed 171 companies at a high level and 31 companies in more detail. The sample considered a range of company sizes and sectors, but was weighted towards larger companies in climate-intensive sectors. While the FCA states that it is encouraged by the overall improvement in the completeness and accuracy of disclosures, it has also issued a reminder of its expectations (of application to both premium and standard-listed issuers) including the following.

- Listed companies should refer to the guidance in LR 9.8.6E G(1) and G(2) which states that the FCA would ordinarily expect a listed company to comply with its rules, except where it faced certain "*transitional challenges*" in obtaining relevant data or embedding relevant modelling or analytical capabilities. This means that the FCA would expect a listed company to comply with the recommended disclosures under the Governance and Risk Management pillars, as well as recommended disclosures a) and b) under the Strategy pillar.
- Listed companies should undertake a detailed assessment of their disclosures which takes

into account the TCFD Guidance for All Sectors (per LR 9.8.6B G) and also refer to the guidance documents listed in LR 9.8.6C G.

- When making net zero commitments, listed companies are encouraged to consider the TCFD's guidance on 'Metrics, Targets and Transition Plans', and to ensure that disclosures are not misleading.
- Listed companies are encouraged to consider the Sustainability Accounting Standards Board metrics relevant to their sector when making disclosures against the TCFD's recommendations, and to consider the SASB metrics for other sustainability topics when making wider sustainability-related financial disclosures.
- Listed companies should note that Listing Principle 1 (the requirement to take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations (LR 7.2.1 R)) extends to establishing and embedding climate reporting procedures, systems and controls.
- Listed companies are expected to retain records to support both the statement made in the annual report and the detailed assessment of the company's disclosures against the TCFD's recommendations and recommended disclosures.
- Some companies indicated that they had made disclosures consistent with the recommended disclosures, but the disclosures themselves appeared to be very limited in content. The FCA is considering these reports in more detail and may take action as appropriate.
- Listed companies should review Primary Market Bulletin 36 and Technical Note 802.1 which sets out the FCA's supervisory approach and disclosure expectations.

The FCA also sets out the steps it expects listed companies to have considered/consider in preparation for making TCFD-aligned climate-related disclosures. These are set out in the table below.

TCFD REPORTING: FCA SUGGESTED *STEPS TO PREPARE*
• Review your governance arrangements.
• Refresh your corporate strategy to incorporate climate change.
• Know your compliance framework – existing and new rules.
• Assess your existing public narrative and financial reporting of climate matters.
• Identify physical and transition risks and opportunities and their impact.
• Adapt your corporate wide risk management processes.
• Assess your company against various climate scenarios.
• Identify relevant metrics and targets.
• Set up compliance review and assurance processes.
• Focus on training and capabilities at all levels of your company.
• Engage with your investors to understand their disclosure expectations.

FCA Primary Market Bulletin 42

In December 2022, the FCA published 'Primary Market Bulletin 42'. In a section devoted to climate-related financial disclosures it covers, amongst other things:

- **Building capabilities**. The FCA reiterates the importance of building capabilities now to make relevant disclosures as and when required, and reminds standard listed companies and others of the steps set out in the table above.
- **Detailed assessment of guidance**. Companies must assess all relevant guidance in detail and carry out an assessment to ascertain the appropriate level of detail to be included in their climate-related financial disclosures including Sustainability Accounting

Standards Board metrics as well as all relevant TCFD guidance.

- **Areas for improvement**. Following on from its July 2022 report, the FCA has further observed that some companies within the TCFD Non-Financial Groups (Energy; Transportation; Materials and Buildings; and Agriculture, Food, and Forest Products) had either: not identified climate change to be an applicable or material risk to their business; or had identified climate change to be a principal risk but had not made disclosures under the Strategy or Metrics and Targets pillars of the TCFD framework that were consistent with the TCFD's Supplemental Guidance for Non-Financial Groups.

  The FCA also felt that several types of disclosures (scenario analysis and metrics and targets) were not forward-looking enough and that failure to apply forward-looking assumptions may provide insufficient information for market participants to assess climate-related risks and opportunities.

- **Climate change in financial statements.** As a result of further observations since its July 2022 report, the FCA notes that the extent to which material climate-related risks identified in the narrative sections of companies' disclosures are reflected in the financial statements is not often clear.

- **Net zero and transition planning**. While most companies are making net zero commitments, the content of some of those commitments was often not clear and in some cases risked being misleading.

  Additionally, although the TCFD's 'Guidance on Metrics, Targets and Transition Plans' did not apply to disclosures made for the 2021 reporting period, an explicit reference to it was added to the Listing Rules (by PS 21/23) and so is relevant when companies make their disclosures for the 2022 reporting period.

- **Next steps.** The FCA will continue to monitor listed companies' climate-related financial disclosures under the Listing Rules.

  It will build on its TCFD-aligned disclosure rules in line with domestic and international developments, to meet investors' information needs. In particular, it has committed to consult on adapting its climate-related financial reporting rules once the International Sustainability Standards Board has finalised its standards, as well as giving consideration to moving to a mandatory basis for reporting (as opposed to the current 'limited comply and explain basis').

  The FCA also intends to consult on strengthening its disclosure expectations for transition plans, drawing on the outputs of the Transition Plan Taskforce (TPT), once finalised. In the meantime, the FCA encourages early engagement with the TPT's proposed Disclosure Framework and Implementation Guidance (see section B.5 below or more on the TPT.)

2. DIVERSITY REPORTING: FCA FINAL RULES NOW IN FORCE

The new FCA final rules on diversity reporting are required to feature in reports of in scope companies for financial years beginning on or after 1 April 2022. The FRC also encourages early adoption in particular for companies with accounting periods starting on or after 1 January 2022.

In April 2022, the FCA published its response (PS 22/3) to its 2021 consultation (CP21/24) proposing significant changes to the Listing Rules and Disclosure Guidance and Transparency Rules (DTRs), on the issue of board and senior management diversity. New Listing Rules and guidance have been added at LR 9.8.6(9)-(11) and LR 9.8.6 G-J; DTR 7.2.8A has been updated.

Broadly, the Listing Rules set new diversity targets that listed companies must report on and also a requirement for standardised diversity data tables to be disclosed. The DTRs have been updated to reflect broader diversity aspects. The tables below look at the new and revised Listing Rules and DTRs in turn.

(It is worth briefly noting that the long awaited EU Directive on Gender Balance on Corporate Boards is now in force, with targets similar to those of the UK.)

<table>
<tr><th colspan="2">NEW LISTING RULES ON DIVERSITY: KEY ASPECTS</th></tr>
<tr><td>What is the purpose of the rules?</td><td>The FCA is seeking to increase transparency for investors on the diversity of boards and executive management. By setting targets it also aims to create a positive reporting benchmark to encourage progress on diversity in listed companies.</td></tr>
<tr><td>Which companies are in scope?</td><td>UK and overseas companies with equity shares, or certificates representing equity shares, with either a premium or standard listing.

Open-ended investment companies, shell companies, issuers of debt securities and securities derivatives are not caught. Dispensations from certain aspects of the rules exist for certain companies.</td></tr>
<tr><td>When do the rules apply?</td><td>The new rules apply to financial periods of in scope companies beginning on or after 1 April 2022. Early adoption is encouraged.</td></tr>
<tr><td>What do the rules require?</td><td>Comply or explain disclosures on diversity targets

The new rules in Chapters 9 and 14 of the Listing Rules require in scope companies to include a statement in their annual reports setting out whether they have met specific board diversity targets.

The targets operate on a 'comply or explain' basis as at a chosen reference date within an in scope company's accounting reference period: if a company has not met the targets on the specified date, it must explain why not. The targets are:
At least 40% of the board should be women.
At least one senior board position (Chair, CEO, CFO or SID) should be a woman.
At least one member of the board should be from a minority ethnic background (as defined by the Office for National Statistics excluding those listed by the ONS as coming from a 'white ethnic background').
Companies will also have to set out:
The reference date used and, where this is different from the reference date used in respect of the previous accounting period, an explanation of why.
Any changes to the board which have occurred between the reference date and the date on which the annual report is approved that have affected the company's ability to meet one or more of the targets.</td></tr>
<tr><td></td><td>Numerical diversity data in standardised table format

Alongside the 'comply or explain' disclosures, in scope companies will also have to publish numerical data on the sex or gender identity and ethnic diversity of their board, senior board positions (i.e. Chair, SID, CEO, CFO) and executive management. The data should be reported in a standardised table format as at the same reference date used for the 'comply or explain' statement.

Executive management means the executive committee or most senior executive or managerial body below the board, including the company secretary but excluding administrative or support staff. If there is no executive committee or body, it means the most senior level of managers reporting to the chief executive.</td></tr>
<tr><td>What voluntary disclosures could be made?</td><td>Guidance states the further information that in scope companies may choose to disclose. This includes: key policies, procedures and processes, and any wider context that contributes to improving the diversity of its board and executive management; any mitigating factors or circumstances which make achieving diversity more challenging; any risks it foresees in being able to meet or continue to meet the diversity targets in the next accounting period; or any plans it has to improve the diversity of the board.</td></tr>
</table>

UPDATED DTRS ON DIVERSITY: *KEY ASPECTS*	
What is the purpose of the new rules?	The FCA is seeking to improve consideration of broader diversity characteristics within diversity policies and related disclosures by reporting companies. In turn, this should provide additional information for investors to consider as part of their investment decisions.
Which companies are in scope?	Companies in scope are certain UK issuers admitted to UK regulated markets, such as the main market of the London Stock Exchange and, through the Listing Rules, certain overseas listed companies, subject to existing size exemptions.
When do the rules apply?	The new rules apply to financial periods of in scope companies beginning on or after 1 April 2022. Early adoption is encouraged.
What do the rules require?	The changes augment existing DTR requirements as regards board diversity policy disclosures so as to: • Expand the disclosure obligation beyond the board and require a description of how any policy applies to the board's key committees – e.g. the audit, remuneration and nomination committees. • Clarify that the aspects of diversity to which any such diversity policy may apply could consider wider diversity characteristics (added references are to: ethnicity; sexual orientation; disability; and socio-economic background). New guidance also encourages companies to add numerical data on the diversity of members of the board and its committees when discharging their existing obligation to describe the results of the implementation of their diversity policy during the reporting period.

3. REMUNERATION REPORTING

Executive remuneration is likely to be an area of investor and stakeholder focus and attention this year, particularly in light of the ever increasing cost of living. Recent ISS, Glass Lewis and Investment Association guidance has highlighted the following topics as specific areas of focus.

ESG metrics

The alignment of executive pay with ESG strategy is expected to continue to be a hot topic in 2023. As the IA highlights in its 2023 Principles of Remuneration, there is an increasing trend for companies to incorporate ESG performance metrics into executive pay, and indeed 90 per cent of FTSE 100 companies now incorporate ESG measures into their executive incentive plans. Investors and stakeholders are keen for companies to prove they take ESG matters seriously, and incorporating ESG measures into annual bonus plans and/or LTIPs demonstrates this. The type of ESG metric that should be used for each plan will be fact dependent, but in general terms, investor guidance sets out that ESG metrics should be clearly linked to company strategy, clear, quantifiable and avoid unnecessary complexity.

Executive pay

In the context of the rising cost of living, executive pay and bonuses will be scrutinised very carefully this year. Companies should be careful to ensure that executive remuneration is not out of step with company performance. A detailed explanation should be provided if there are any significant increases in executive remuneration. The IA has noted in its 2023 Principles of Remuneration the need for restraint when contemplating executive salary increases as well as the need to balance the incentivisation of executives with the impact of the cost of living crisis and its impact on a company's stakeholders.

Disclosure and discretion

Investors are expecting companies to disclose as much information as possible as to how and why their incentive arrangements are structured in a particular way. Remuneration committees are also expected to disclose how they have used discretion to ensure executive pay properly reflects overall company performance. Investors are looking for as much substance and transparency as possible, and how committees have considered the experience of stakeholders and the general market when making decisions. Glass Lewis has specifically noted the importance of the remuneration committee's ability to exercise discretion over pay outcomes to account for significant events that would otherwise be excluded from performance results of selected metrics in incentive programmes. In such circumstances, detailed disclosure is expected of how a decision has been made.

Windfall gains

The IA has noted in its 2023 Principles of Remuneration that vesting decisions regarding LTIP grants awarded to executives in 2020 will be made this year. Grants made in 2020 followed significant falls in share prices as a result of COVID-19, and therefore to ensure executives do not benefit from these substantially lower share prices, remuneration committees are expected to explain clearly how they have considered the impact of potential windfall gains when determining vesting outcomes. The remuneration report should also set out the reasons for any reduction in the number of shares vested or the rationale behind a decision not to adjust awards.

Malus & clawback

Companies should consider a more expansive list of malus & clawback triggers, beyond misstatement and misconduct.

Combined incentive plans

Combined incentive plans (also known as 'omnibus plans') are plans that have a short-term performance period immediately after grant, after which a portion of the award is paid out and the remaining portion is deferred, subject to time-vesting restrictions or other performance criteria. Glass Lewis is generally sceptical of combined incentive plans, and has clarified that such plans should generally have a minimum vesting period of three years, at least part of the award should be in the form of equity or equity-based instruments, quantitative underpins/gateway conditions should apply to deferred awards, and there should be some strategic rationale provided for the plan. Further, where a company is amending its incentive structure to adopt a combined incentive plan while removing existing variable incentive plans, there should be a substantial reduction in the total target and maximum award opportunity, appropriately reflecting the reduction in the risk profile of the plan.

4. FRC AND CORPORATE REPORTING

We now look at new FRC publications covering: (i) areas of supervisory focus; (ii) key matters for reports and accounts; (iii) its annual review of corporate reporting; (iv) its annual review of corporate governance reporting; (iv) its guidance on the strategic report; and (v) its view of what makes a good annual report and accounts. These documents evidence those areas that are likely to be monitored closely by the FRC in 2023 and so are aspects of reporting for companies to consider carefully.

FRC priority sectors

In December 2022, the FRC announced its areas of supervisory focus for 2023/24. Priority sectors are: travel, hospitality and leisure; retail and personal goods; construction and materials; and industrial transportation. Audit quality inspections will pay particular attention to auditor work in areas including: going concern; fraud risks and climate-related risks, including the linkage between the audited financial statements; and climate-related disclosures elsewhere in the annual report.

FRC key matters for annual reports

In October 2022, the FRC published its 'Key matters for 2022/23 reports and accounts'. This sets out key findings and expectations of the FRC Corporate Reporting Review team for the coming year and links to other relevant FRC publications.

The FRC highlights heightened uncertainty and the many economic and geo-political challenges that businesses face. It states that, in the coming year, its monitoring work will take account of these risks and uncertainties including rising inflation, slowing economic growth, an energy crisis, increasing interest rates, stresses in supply chains, labour shortages, and changes in consumer behaviour, as well as the increasingly significant effects of climate change.

FRC annual review of corporate reporting

Also in October 2022, the FRC published its 'Annual review of corporate reporting'. The FRC notes improvements in companies' reporting in the areas of: judgements and estimation uncertainty; impairment of non-financial assets; alternative performance measures; and revenue recognition (which improvements it expects to be maintained).

However, it also notes scope for improvement in disclosure, particularly in relation to: the use of financial instruments; deferred tax; and cash flow statements. The number of restatements prompted by FRC reviews nearly doubled in 2021/22 (27) compared with the previous period (15). Most restatements related to cash flow statements where the FRC believes that many errors could have been picked up by robust checking.

The annual review also looks at the top ten areas on which the FRC questioned companies. In relation to narrative reporting, these issues included strategic reporting and other Companies Act matters. Specifically, the FRC notes that companies should ensure that the strategic report, among other things: articulates the effect of economic and other risks and uncertainties facing the business (including inflation, rising interest rates, supply chain issues and labour relations in the current inflationary environment); explains mitigation strategies; and where relevant, links to the discussion of the entity's strategy and business model, and also to information disclosed in the financial statements.

FRC annual review of corporate governance reporting

In November 2022, the FRC published its 'Annual review of corporate governance reporting'. The report includes sections on: (i) reporting expectations; and (ii) main findings and areas for improvement.

As regards reporting expectations, the review contains a reminder of the principal characteristics of good reporting highlighted by the FRC last year. These include clear and consistent explanations, supported by real-life examples of application and cross-referencing between related initiatives and sections. The FRC notes that only certain companies have taken this on board and disclosed the outcomes and impacts of the governance policies that they have put in place. The FRC's key messages and reporting expectations are set out in the table below.

FRC REPORTING EXPECTATIONS: *KEY MESSAGES*
• Avoid duplication and repetition as well as declaratory or boilerplate statements. These offer little insight into company governance. Provide more specific disclosures.
• Avoid restating extracts from the Code and previous years' drafting with minimal updating.
• Give clear and meaningful explanations when departing from the Code.
• Demonstrate how the company's culture is aligned to its purpose, values and strategy.
• Report on engagement with shareholders and stakeholders, and how their views have been considered.
• Make clear links in the report to policies or disclosures that relate to stakeholder matters.
• Report on diversity, including in senior leadership beyond the recommended external targets disclosing objectives and targets.
• Explain how the board or a committee has reviewed the effectiveness of risk management and internal control systems.
• Report on how executive remuneration arrangements align with purpose, values and strategy.

As regards the FRC's main findings and areas for improvement, the gist of the FRC report is that, while there have been improvements in corporate governance reporting, there is still room for more. Some areas where improvements are expected are set out below.

FRC REVIEW OF CORPORATE GOVERNANCE REPORTING: *AREAS FOR IMPROVEMENT*	
Explanations of Code non-compliance	Some companies fail to provide any explanation for non-compliance with a Provision of the UK Corporate Governance Code, whereas many others give boilerplate or vague ones.
Actions and outcomes from governance activities	Better disclosures in relation to governance activities included specific examples and case studies, although these were generally in the minority.
Outcomes of stakeholder engagement	More disclosure is needed on the outcomes of any engagement, including feedback received, or commentary on whether the board acted on any of the issues raised and how decisions align with company strategy, or culture, purpose and values.
Board engagement with major shareholders	There was minimal disclosure of specific board members' engagement with major shareholders. The FRC expects to see more and better reporting on engagement by the chair and committee chairs. It considers that where engagement is reported, it offers little insight.
Diversity	Although the majority of companies have met or are on track to meet external diversity targets, progress has yet to translate into senior roles, for example, those of the CEO or CFO. There is also a lack of transparency in relation to diversity policies and targets, so that it is not clear how many companies strive to go beyond external targets.
Risk management and internal control	Although over half of companies confirmed that their risk management and internal control systems are effective or that no weaknesses or inefficiencies have been identified, many do not explain how they assessed the effectiveness of these systems to justify their confirmation.

FRC updated strategic report guidance

In June 2022, the FRC published an updated version of its 'Guidance on the strategic report'.

It incorporates changes to reflect developments since the guidance was last published in 2018 such as the new mandatory climate-related financial disclosures and the streamlined energy and carbon reporting requirements.

FRC What makes a good annual report and accounts

In December 2022, the FRC published its 'What makes a good annual report and accounts' publication, describing high quality annual reports as the cornerstone of corporate reporting.

The document: sets out the FRC's view on the attributes of a good annual report and accounts; considers materiality; and looks at each of its corporate reporting principles and effective communication principles, giving examples of good reporting in each case. It acknowledges that every business is different and, as a result, what a good annual report looks like will vary accordingly.

The FRC states that a high quality annual report:

- complies with relevant accounting standards, laws and regulations, and codes;
- is responsive to the needs of stakeholders in an accessible way; and
- demonstrates the FRC's corporate reporting principles and effective communication characteristics.

The table below sets out the headline corporate reporting and communications principles.

FRC WHAT MAKES A GOOD ANNUAL REPORT AND ACCOUNTS: *KEY PRINCIPLES*	
Corporate Reporting Principles	**Effective communication principles: 'The 4 Cs'**
• **A**ccurate	**C**ompany specific
• **C**onnected and consistent	**C**lear, concise and understandable
• **C**omplete	**C**lutter free and relevant
• **O**n-time	**C**omparable
• **U**nbiased	
• **N**avigable	
• **T**ransparent	

The document also includes a process map for preparing annual reports involving four stages:

- **Planning the project.** This includes, for example: assigning accountability both for individual sections and overall quality and consistency; speaking to advisers about 'best practice'; understanding the time needed by those undertaking electronic tagging; re-thinking the use of paper and considering how to make the most of 'the digital opportunity'; and engaging to understand what investors want.
- **Managing the process.** This includes, for example: setting the overall aim (e.g. high quality reporting with no unnecessary content); securing early agreement from the board on key elements, such as the business model and strategy, to help focus the document; and ensuring there is agreement on the governance process to be followed including who needs to sign off on each step.
- **Fulfilling the plan.** This includes, for example: developing a common understanding of materiality; building in time for proper review; challenging the emphasis of narrative reporting to ensure that it clearly reflects the company's significant developments and is consistent with other material the company has released; and ensuring that, when read as a whole, the annual report reflects the corporate reporting and effective communication principles.
- **Improving the process.** This includes, for example: debriefing on the process while the experience is fresh to capture good quality feedback; noting any analyst questions which often give an indication of where information is not clear or where further information could be useful; considering what peers have done; and preparing learning points for next time.

5. FUTURE DEVELOPMENTS AFFECTING ANNUAL REPORTS

In this section we consider net zero transition plans, review progress to date by the International Sustainability Standards Board, and briefly note key proposed changes arising out of the government's reforms to restore trust in audit and corporate governance.

Net zero transition plans

FCA guidance. We mentioned transition plans in our AGM season briefing last year, noting that the FCA had introduced guidance on the disclosure of them for premium and standard listed companies. This states that, when making disclosures on transition plans as part of strategy disclosures under the TCFD requirements, a listed company that is headquartered in, or operates in, a country that has made a commitment to a net zero economy (such as the UK's commitment under the Climate Change Act 2008 (2050 Target Amendment) Order 2019) is encouraged to assess the extent to which it has considered that commitment in developing and disclosing its transition plan. Where it has not done so, it is encouraged to explain why. This guidance is applicable for financial years beginning on or after 1 January 2022.

Transition Plan Taskforce. In April 2022, the Transition Plan Taskforce (TPT) was launched with the aim of developing the gold standard for high quality private sector climate transition plans, seen as being crucial for the transition to net zero

> *A transition plan is integral to an entity's overall strategy, setting out its plan to contribute to and prepare for a rapid global transition towards a low GHG-emissions economy.*
>
> **SOURCE: TPT SUMMARY RECOMMENDATIONS**

In November 2022, the TPT published a consultation on its draft Disclosure Framework and Implementation Guidance. The TPT Disclosure Framework makes recommendations for companies and financial institutions to develop high quality transition plans. The TPT Implementation Guidance sets out the steps to develop a transition plan, as well as when, where and how to disclose it.

The TPT recommends, amongst other things, that entities publish standalone transition plans at least every three years, and sooner when there are significant changes to the plan. Progress against the plan and material updates should be reported annually. A good practice transition plan should cover:

- an entity's high-level ambitions to mitigate, manage and respond to the changing climate and to leverage opportunities of the transition to a low GHG and climate resilient economy. This includes an entity's GHG reduction targets (e.g. a net zero commitment);
- short, medium and long-term actions the entity plans to take to achieve its strategic ambition, alongside details on how those steps will be financed;
- governance and accountability mechanisms which support delivery of the plan and plans for robust periodic reporting; and
- measures to address material risks to, and leverage opportunities for, the natural environment and stakeholders (such as the workforce, supply-chains, communities and customers) which arise as part of these actions.

TRANSITION PLANS: *TPT NEXT STEPS*

- **28 February 2023**. Consultation closes.
- **Summer 2023.** Final Disclosure Framework and Implementation Guidance to be published.
- **Autumn/Winter 2023.** Detailed sector guidance to be published.
- **2023 - 2024.** FCA to strengthen disclosure rules for listed companies and regulated firms with a requirement for transition plans, also referencing the final ISSB standards (see below) and the TPT's outputs. In the meantime, the FRC encourages *early engagement* by companies with the TPT's proposals.

FR Lab 'net zero disclosures report'. In October 2022, the FR Lab published its 'net zero disclosures report' together with an example bank providing practical examples of current good practice. The report and example bank aim to assist company reporting teams as they prepare disclosures on net zero and other GHG emission reduction commitments.

The FRC identified three elements of net zero commitments that investors want to understand from disclosures in this area:

- **Commitments**: the level of ambition, scope, nature and timing of the commitment, and what is included and excluded.
- **Impacts**: how the commitment impacts strategy and business model, including information on transition plans, assumptions, uncertainties, and risks and opportunities.
- **Performance**: how performance is measured in the short, medium and long term. How high-quality data and accountability is ensured, and actions management takes to respond to changes.

For more on this see Ashurst Governance and Compliance update, Issue 27, 28 October 2022.

ISSB progress

As mentioned in last year's briefing, the International Sustainability Standards Board was created to deliver a comprehensive global baseline of sustainability-related disclosure standards to inform investors and others about companies' sustainability-related risks and opportunities. In March 2022, the ISSB published exposure drafts of its first two sustainability disclosure standards. One concerns general sustainability-related disclosure requirements and the other climate-related disclosure requirements. The consultation ended on 29 July 2022. The ISSB aims to publish the Standards by the end of 2022.

In November 2022 the Corporate Sustainability Reporting Directive (CSRD) received final approval from the European Council and it has now been published in the EU Official Journal. Briefly, CSRD will amend the Non-Financial Reporting Directive (NFRD) and lead to more extensive non-financial reporting requirements for a larger number of companies. Specifically, CSRD provides for more detailed disclosures regarding the impact of a company's business on the environment, human rights and social standards. It will apply not only to companies incorporated in EU member states but also businesses incorporated elsewhere but which undertake significant business in the EU. For more detail, see Ashurst Governance and Compliance update, Issue 29, 21 November 2022. Similarly, the EU's Corporate Sustainability Due Diligence Directive continues to make legislative progress.

Restoring trust in audit and corporate governance: Government and FRC develop proposals

Government reforms intended to restore trust in audit and corporate governance moved forward slowly in 2022. The principal development was the publication of the government's response to its original White Paper. Ashurst Governance and Compliance update, Issue 20, 2 June 2022 contains more detail. Key changes which will affect narrative reporting are set out in the table below. Some changes will proceed as part of the FRC's review of the UK Corporate Governance Code; whilst others will require legislation and only take effect once the FRC's successor body, the Audit, Reporting and Governance Authority (ARGA), is created. Perhaps most significantly, many of the new narrative reporting requirements will only apply to a new category of Public Interest Entity (PIE): an entity, which is either public or private, and which both has 750 or more employees and an annual turnover of more than £750m ('750/750 PIEs').

CORPORATE GOVERNANCE REFORM: *KEY PROPOSALS FOR CORPORATE REPORTING*	
Strengthening internal control reporting	The government is not proceeding with US-style internal control reporting requirements (so called 'Sarbanes-Oxley lite'). Instead it has tasked the FRC to consult on strengthening the Provisions of the UK Corporate Governance Code which deal with internal control to require an explicit statement from the board about their view of the effectiveness of the internal control systems (financial, operational and compliance) and the basis for that assessment. 750/750 PIEs will also have to consider and disclose whether or not they plan to seek external assurance of the company's reporting on internal controls.
Resilience Statement and Audit and Assurance Policy	To improve the available information about risks faced by 750/750 PIEs and make the degree of assurance used by such companies clearer, the government will introduce legislation to require: (i) a new statutory Resilience Statement (replacing in part going concern and viability reporting); and (ii) the development and disclosure of a new statutory Audit and Assurance Policy.
Fraud reporting	750/750 PIEs will be required to report on the actions they have taken to prevent and detect fraud.
Reporting on distributable reserves	750/750 PIEs will be required to disclose their distributable reserves, to explain the board's long-term approach to the amount and timing of shareholder returns; and to make an explicit statement confirming the legality of dividends.
Strengthening supervision of corporate reporting	ARGA will be empowered to direct changes to company reports and accounts (rather than needing a court order). Its jurisdiction will extend to the entirety of the annual report including corporate governance statements.
Directors' duties	ARGA will be given powers to investigate and sanction directors for breaches of their corporate reporting and audit-related duties and responsibilities.

In July 2022, the FRC issued a Position Paper on how it will support the government's reforms.

As regards corporate reporting, this will include revising the Code, standards and guidance, with a formal consultation on the relevant areas of the Code (not a wholescale review) expected in April 2023 and a new Code published by the end of 2023. The FRC will also develop new standards in shadow form to allow for voluntary adoption ahead of legislation – for example, minimum standards for audit committees (currently out for consultation); and guidance on making a Resilience Statement and meeting other disclosure requirements.

Ashurst Governance and Compliance update, Issue 22, 18 July 2022 contains more detail on the FRC Position Paper.

6. OTHER REPORTING DEVELOPMENTS

In this section we look briefly at reporting on: modern slavery; payment practices; gender pay; and structured electronic reporting.

Annual modern slavery reporting

We reported in our 2021 season briefing that the government has confirmed plans to bring forward reforms to the modern slavery reporting regime contained in the Modern Slavery Act 2015. However, draft legislation remains to be published.

Nevertheless, in scope companies would be well advised to plan ahead and consider what systems and processes they will need to put in place to ensure they are able to comply with the new requirements when the time comes. See our 2020 client briefing here for more detail.

In April 2022, the FRC issued a report entitled: 'Modern Slavery Reporting Practices in the UK - Evidence from Modern Slavery Statements and Annual Reports'. In it, the FRC states that while there is no legal requirement to report on modern slavery in annual reports, there should be "*a more joined-up approach to modern slavery disclosures*" when companies consider their obligations under the MSA 2015 and the UK Corporate Governance Code.

For more detail, see our Ashurst Governance and Compliance update, Issue 19, 12 May 2022.

Payment practices reporting

In April 2022, the government issued its 'Statutory Review of the Reporting on Payment Practices and Performance Regulations 2017 and the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017'. It has concluded that the regulations should remain in place as they are delivering their objectives of bringing greater transparency and symmetry to the payment practices and performance of large businesses and continuing to shine a light on businesses that are responsible for poor payment practices. A further consultation will be undertaken to enable ministers to decide whether the regulations should be extended beyond their statutory expiry date of 6 April 2024.

For more detail, see our Ashurst Governance and Compliance update, Issue 17, 21 April 2022.

Structured electronic reporting

As mentioned in previous briefings, the requirements (DTR 4.1.14R) for listed issuers to produce their consolidated annual financial reports (i.e. those required for listed companies under the FCA's rules) in machine-readable (XHTML) format and to tag basic information in accordance with a taxonomy apply in relation to financial periods beginning on or after 1 January 2021. The requirement for the tagging of notes to the accounts applies to financial years of in-scope companies beginning on or after 1 January 2022.

The detail of the requirements is beyond the scope of this briefing, nevertheless during 2022 there have been various publications and updates which may assist in-scope reporters. These include:

- **FRC report** on: 'Structured digital reporting: improving quality and usability, September 2022.
- **FCA update reference pages** dealing with: company annual financial reporting in ESEF (last updated December 2022) and filing of

structured annual financial reports (last updated December 2022).

Annual gender pay reporting

Private and voluntary sector employers with 250 or more employees have to publish data on their gender pay gap by 4 April each year. 2022 marked the return to this deadline after disruption caused by the COVID-19 pandemic. Although the government was required to review the current gender pay gap reporting regime this year, no report has yet been published.

The government has, however, launched a pay transparency pilot scheme to level up employment opportunities for women and to explore how to support employers in showing salary information on job adverts and removing gender bias from the recruitment process. The government is working with participating employers to develop and pilot a methodology which can be adopted more widely so that employers who have ambiguous pay policies and variable pay scales can also participate.

APPENDIX - KEY PUBLICATIONS

A non-exhaustive list of publications (with links), which may be useful during the 2023 AGM and reporting season and more generally.

Title	Date
The Department for Business, Energy and Industrial Strategy	
Government response to the consultation on strengthening the UK's audit, corporate reporting and corporate governance systems	6/22
The Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022	
The Limited Liability Partnerships (Climate-related Financial Disclosure) Regulations 2022	
Guidance: Mandatory climate-related financial disclosures by publicly quoted companies, large private companies and LLPs	2/22
Financial Conduct Authority	
Primary Market Bulletin 42	12/22
Review of TCFD-aligned disclosures by premium listed commercial companies	7/22
PS 22/3 - Diversity and inclusion on company boards and executive management	4/22
Financial Reporting Council and FR Lab	
Areas of supervisory focus for 2023/2024	12/22
A focus on the year end	12/22
What makes a good annual report and accounts	12/22
Annual review of corporate governance reporting	11/22
Annual review of corporate reporting 2021/2022 and highlights document	10/22
Key matters for 2022/23 reports and accounts	10/22
Digital security risk disclosure	8/22
Good practice guidance for company meeting	7/22
Position Paper: Restoring trust in audit and corporate governance	7/22
Thematic review of TCFD disclosures and climate in the financial statements	7/22
Guidance on the Strategic Report	6/22
Modern Slavery Reporting Practices - Evidence from MSA statements and annual reports	4/22
The Wates corporate governance principles for large private companies: the extent, coverage and quality of corporate governance reporting	2/22
Investment Association	
Principles of Remuneration and accompanying letter	11/22

Title	Date
IA Shareholder Priorities and IVIS approach for 2022	3/22
Pre-Emption Group	
Statement of Principles and Template Resolutions	11/22
Voting guidelines	
ISS UK and Ireland Proxy Voting Guidelines and Benchmark policy updates	11/22
Glass Lewis 2023 Policy Guidelines	11/22
PLSA Stewardship and Voting Guidelines 2022	2/22
Miscellaneous	
LSE Dividend Procedures Timetable 2023	8/22
Transition Plan Taskforce consultation on Disclosure Framework and Implementation Guidance	11/22
2022 TCFD Status Report	10/22
UK Secondary Capital Raising Review	7/22
ICAEW TECH 01/22 FRF on disclosure of auditor remuneration	4/22

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