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Climate change and professional exposures

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Once climate change becomes a defining issue for financial stability it may already be too late

Mark Carney, Then Governor of the Bank of England, 2015

Climate Risk

Physical

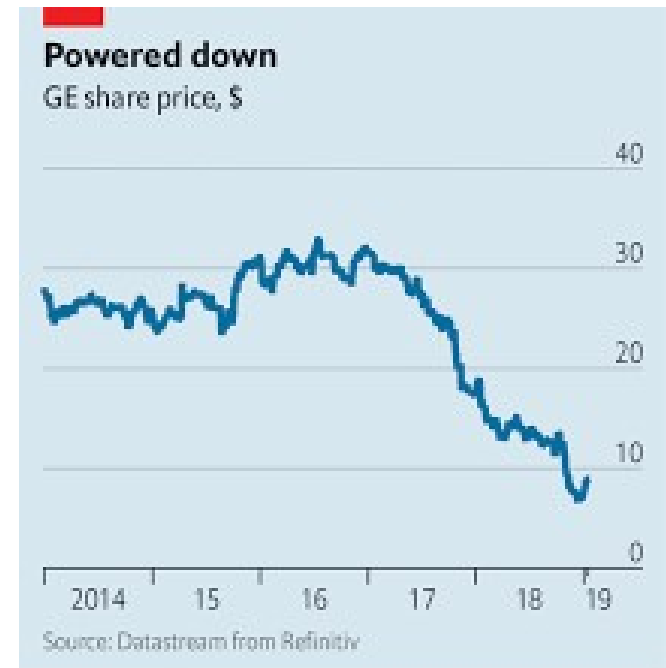
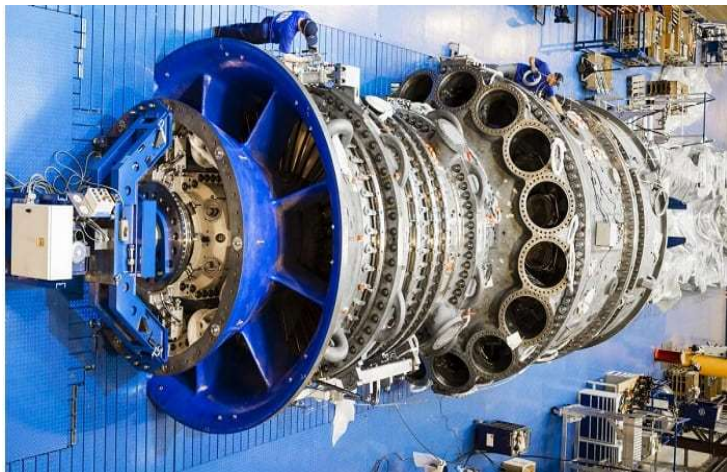
Transition

Liability



Navigating the transition to net zero

General Electric's acquisition of Alstom



The Economist



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Human rights and climate change

1789

1919

1948-9

1953

Court orders Royal Dutch Shell to cut carbon emissions by 45% by 2030

Oil giant told plans should be brought into line with Paris climate agreement



📷 Donald Pols, director of Milieudefensie, an environmental group, reacts after the verdict at the Hague. Photograph: Piroshka van de Wouw/Reuters



The number of 'strategic' cases is dramatically on the rise, suggesting that climate litigation as an activist strategy is becoming more popular than ever

LSE Grantham Research Institute on Climate Change and the Environment



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Climate change litigation

Climate change litigation statistics snapshot

2,033

As of 30 June 2022, there have been **2,033** climate change litigation cases worldwide since the first was filed in 1986 in the US.

288

Between 1 January 2021 and 30 June 2022, there were **288** new climate cases filed worldwide.

1,239

Between 1986 and 2014 there were 794* climate cases filed. **But since the Paris Agreement in 2015, there have been 1,239 cases filed.** Roughly one-quarter of the total cases filed since 1986 were filed between 2020 and 2022.

71% vs. 29%

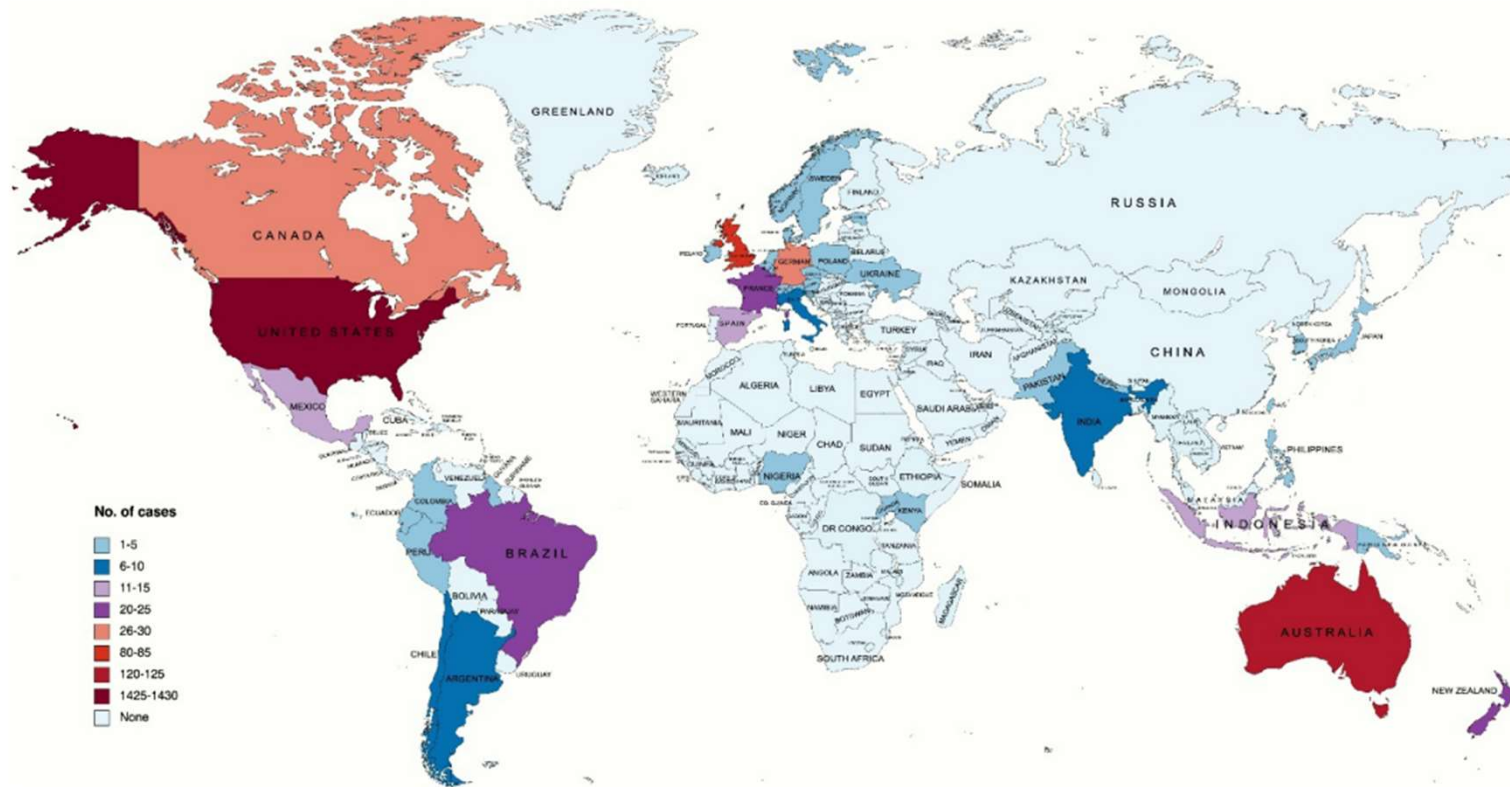
Of the 2,033 cases, **71%** of all climate cases were brought in the US (**1,443**), whilst **29%** were brought in the Rest of the World (**590**).

Source: The Sabin Centre for Climate Change Law

** Due to changes in categorisation of cases by the Sabin Centre, this figure is approximate*

Climate litigation landscape – trends

Figure 1.2. Number of climate litigation cases around the world, per jurisdiction (up to 31 May 2022)



Notes: Cumulative figures to May 2022. This figure only includes cases filed before national tribunals. The 103 cases filed before 15 international and regional bodies entities are not included.
Source: Map created with mapchart.net based on CCLW and Sabin Center data.

Drivers



Source: The Geneva Association

D&O

Fiduciary duty cases

- *ClientEarth v Enea* (Poland)
- *McVeigh v Retail Employees Superannuation Trust* (Australia)
- *Ramirez v ExxonMobil Corp.* (USA)
- *McGaughey et al v Universities Superannuation Scheme Ltd* (UK)
- *ClientEarth v Board of Directors of Shell*





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The Task Force on Climate Related Disclosures

TCFD Recommendations

Governance

Disclose the organization's governance around climate-related risks and opportunities.

Recommended Disclosures

- a) Describe the board's oversight of climate-related risks and opportunities.
- b) Describe management's role in assessing and managing climate-related risks and opportunities.

Strategy

Disclose the actual and potential impacts of climate-related risks and opportunities on the organization's businesses, strategy, and financial planning [where such information is material](#).

Recommended Disclosures

- a) Describe the climate-related risks and opportunities the organization has identified over the short, medium, and long term.
- b) Describe the impact of climate-related risks and opportunities on the organization's businesses, strategy, and financial planning.
- c) [Describe the resilience of the organization's strategy, taking into consideration different climate-related scenarios, including a 2°C or lower scenario.](#)

Risk Management

Disclose how the organization identifies, assesses, and manages climate-related risks.

Recommended Disclosures

- a) Describe the organization's processes for identifying and assessing climate-related risks.
- b) Describe the organization's processes for managing climate-related risks.
- c) Describe how processes for identifying, assessing, and managing climate-related risks are integrated into the organization's overall risk management.

Metrics and Targets

Disclose the metrics and targets used to assess and manage relevant climate-related risks and opportunities [where such information is material](#).

Recommended Disclosures

- a) Disclose the metrics used by the organization to assess climate-related risks and opportunities in line with its strategy and risk management process.
- b) Disclose Scope 1, Scope 2, and, if appropriate, Scope 3 greenhouse gas (GHG) emissions, and the related risks.
- c) Describe the targets used by the organization to manage climate-related risks and opportunities and performance against targets.

TCFD: The UK Perspective

UK leading the charge?

- Government announced intention to make it mandatory by 2025 for large UK companies and financial institutions to make TCFD aligned disclosures.
- New listing rule introduced to report in line with TCFD on a “comply or explain” basis applying to all UK incorporate and overseas commercial companies with a premium listing with effect from 01 January 2021 and to issuers of standard listed shares and standard listed global depository receipts representing equity shares from 01 January 2022.
- LLPs, publicly quoted and large private companies to make climate-related financial disclosures broadly aligning to TCFD in strategic company reports from 6 April 2022.
- Mandatory TCFD-aligned disclosure requirements applying to certain asset managers, life insurers and FCA-regulated pension providers with a phased introduction from 1 January 2022.
- New TCFD-aligned climate risk governance and reporting obligations on trustees of large occupational pension schemes from 1 October 2021.



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Climate Change and professional exposures

Climate change claims against professionals

Climate issues as a means of holding corporates and professionals to account?

Commonwealth of Massachusetts v McKinsey & Company Inc.
United States – professionals held to account due to professional services rendered to client held to have caused mass harm.



Climate change claims against professionals

- Scope for a “general” duty to advise?
- “Looser” scope of duty test post *Manchester Building Society v Grant Thornton UK LLP*?
- Duty to draw attention to issues of commercial significance to the client?

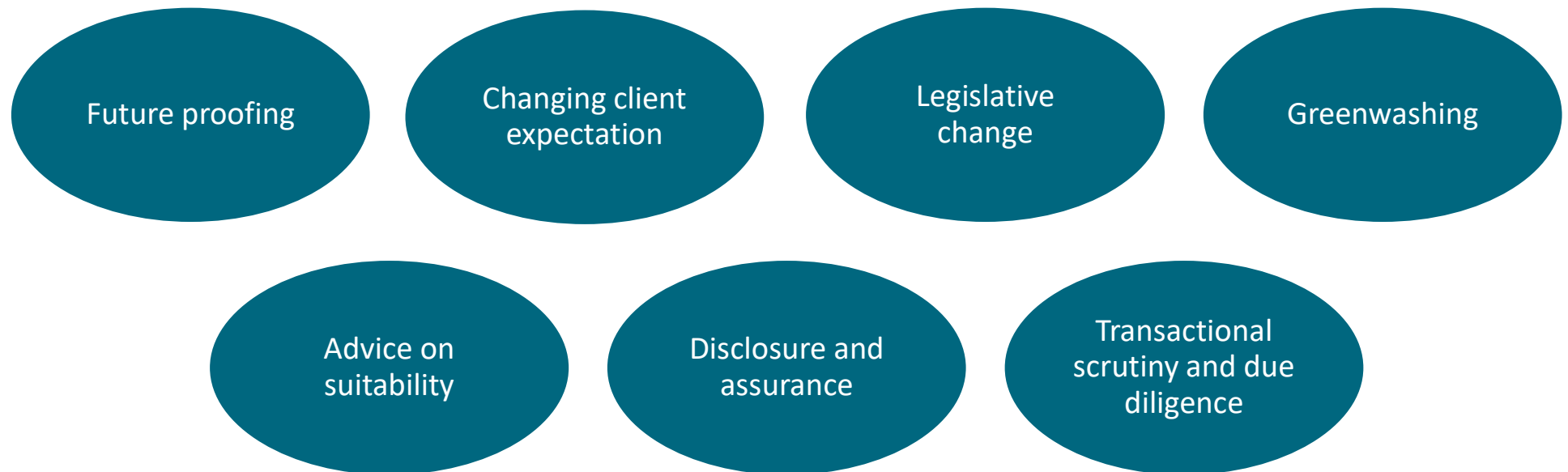
Green/Climate-washing

- ENI received first fine imposed by Competition and Market Authority (Italy)
- Complaint against BP in respect of violations of the OECD Guidelines (UK – OECD Contact Point)
- *Muto v Coca-Cola Co.* (California)
- ASA action on misleading advertisements.
- FCA feedback statement on climate change and green finance [FS 19/6].
- EU’s “Taxonomy Regulation”.
- SEC crackdown including fining BNY Mellon and proposal to standardise disclosures for ESG funds in May 2022.
- “Dieselgate” scandal.



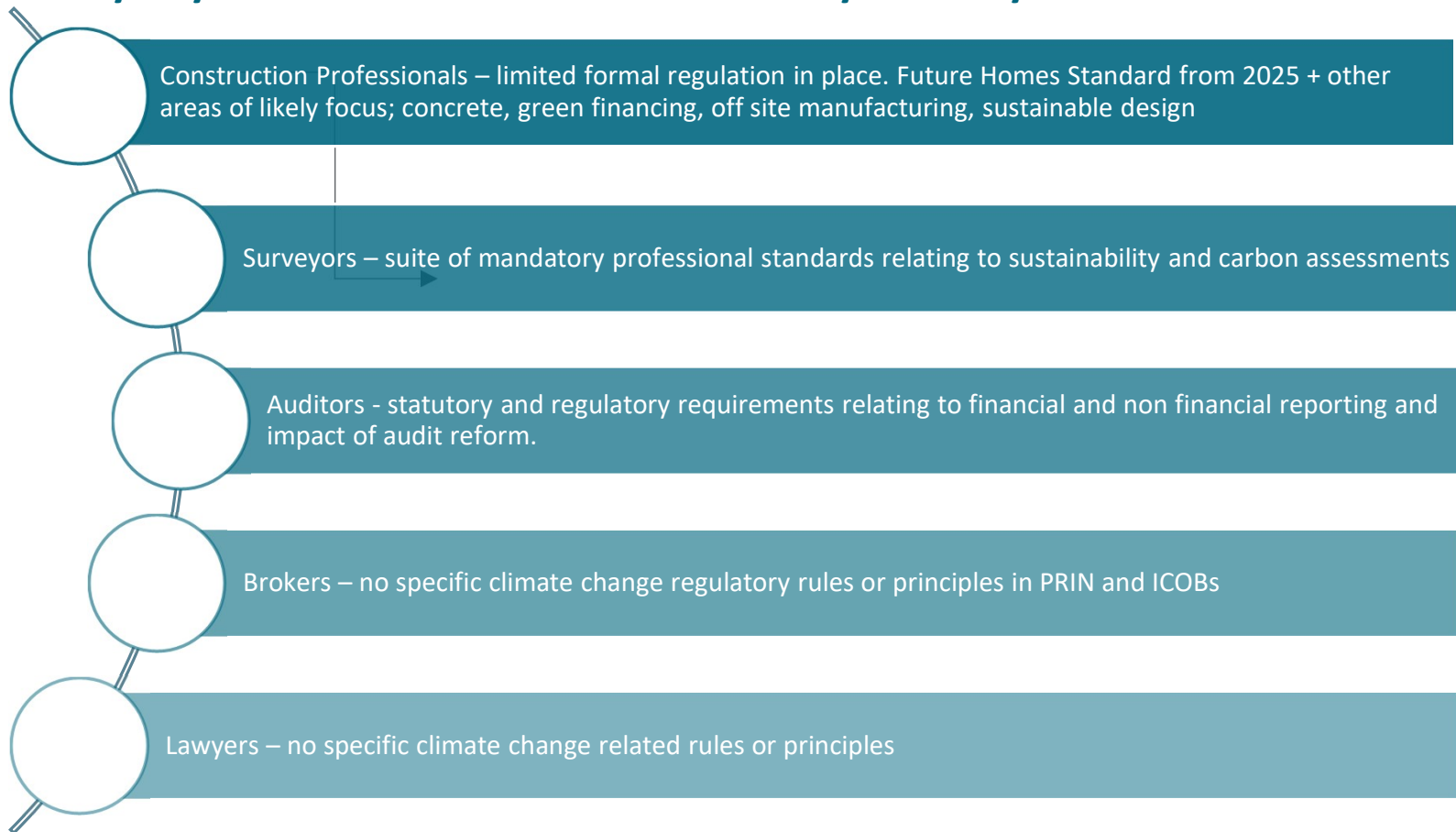
Climate change claims against professionals

Potential civil liability exposures – a snapshot



Climate change and the professional regulators

Early days but the direction of travel is only one way



Opportunities and challenges

How will the professional liability ecosystem adapt?

- Will the pace of change mean that market models will simply adapt?
- Renewables and clean tech present both opportunities and challenges.

440

Partners

1,800

Lawyers

4,000

Total staff

2,500

Legal professionals

50+

Offices worldwide*

*includes associated offices

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