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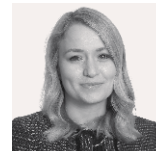
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Climate risk will be a focus for the PRA and Lloyd's in 2021^{1,2}

Stress testing resilience to climate risk

In June 2021 the Prudential Regulation Authority (**PRA**) will launch a stress test to assess UK insurers' resilience to climate risk.

Six UK general insurers and five UK life insurers will take part in the exercise, called the Climate Biennial Exploratory Scenario (**CBES**). According to the PRA, its aim is to test the *"resilience of the business models of the largest banks, insurers and the financial system to the physical and transition risks from climate change"*. Rather than assessing capital requirements, the focus will be on "sizing" risks in order to identify gaps in firms' data and to develop risk management processes.

In its December 2020 letter to CEOs³ the PRA listed financial risks arising from climate change among its top five supervision priorities for 2021 (the other priorities are financial resilience, credit risk, Covid-19 and Brexit-related risks). This followed the PRA's letter to CEOs in July 2020, in which it said that it expected firms to have "fully embedded" their approaches to managing climate-related financial risks by the end of 2021.

The PRA expects firms not participating in the CBES *"to assess the impact of climate risk on their balance sheets in different scenarios and, from these, identify any major risks"*.

Sustainability at Lloyd's

Lloyd's announced in its first environmental, social and governance report⁴ that it plans to phase out its involvement in coal and oil sands projects by 2030.

From the start of 2022 Lloyd's managing agents will be asked to stop writing new business relating to, and to stop investing in, thermal coal-fired power plants, thermal coal mines, oil sands, or new Arctic energy exploration activities. Lloyd's itself has committed to phase out its own investments in those activities by the end of 2025.

It is clear from this that the regulators and the insurance market alike are taking climate risk increasingly seriously.

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Footnotes

1 <https://www.i-law.com/ilaw/doc/view.htm?id=414637>

2 <https://www.i-law.com/ilaw/doc/view.htm?id=414758>

3 <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/letter/2020/insurance-supervision-2021-priorities.pdf>

4 [https://forrit-lol-beta-cdn.azureedge.net/media/d2820632-ccdb-4466-812c-c4f2a8be9cfc/Lloyds_ESGReport_2020%20\(1\).pdf](https://forrit-lol-beta-cdn.azureedge.net/media/d2820632-ccdb-4466-812c-c4f2a8be9cfc/Lloyds_ESGReport_2020%20(1).pdf)



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Court of Appeal considers Part VII transfer principles

This case concerned the approach that the court should adopt in dealing with applications to sanction transfers of insurance business under Part VII (Part VII) of the Financial Services and Markets Act 2000 (FSMA). It was the first time that this issue had been raised before the Court of Appeal.

At first instance, Snowden J had exercised his discretion under section 111(3) of FSMA to refuse an application by The Prudential Assurance Company Limited (PAC) and Rothesay Life Plc (Rothesay) for the court to sanction a scheme (the Scheme) providing for the transfer from PAC to Rothesay of some 370,000 annuity policies written by PAC.

This was for two main reasons. First, Rothesay did not have the same capital management policies as PAC or the backing of a large well-resourced group with a reputational imperative to support it over the lifetime of the annuity policies. Secondly, it had been reasonable, in the light of PAC's sales materials, age and reputation, for policyholders to have chosen PAC on the basis of an assumption that it would not seek to transfer their policies to a third party provider. PAC and Rothesay appealed against this decision.

In determining the appeal, the Court of Appeal held (amongst other things) that the paramount concern was to assess whether the transfer would have any material adverse effect on the receipt by the annuitants of their annuities, or any such effect on payments that were or might become due. The court should also consider any potential material adverse effect on service standards.

The Court of Appeal concluded that, applying these factors, the judge's exercise of discretion could not stand. The question of whether the scheme should be sanctioned was remitted to the High Court.

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Wider consequences of the Supreme Court judgment in the FCA test case

On 15 January, the English Supreme Court handed down its final judgment in the COVID-19 Business Interruption test case commenced by the FCA. HFW's Jonathan Bruce and Alex Walley explore in detail in [this article](#) the Supreme Court's decision and its wider ramifications for English insurance law (beyond COVID-19 business interruption claims), particularly with regard to causation and quantum.

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Footnote

<https://www.hfw.com/Wider-consequences-of-the-Supreme-Court-judgment-in-the-FCA-test-case-Jan-2021>



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Recent Court of Appeal judgment likely to increase the use of DBAs in English litigation

The recent decision of the English Court of Appeal in *Zuberi v Lexlaw* [2021]¹ will make the use of Damages Based Agreements (DBAs) more attractive and is therefore likely to widen the scope of funding and financing available to parties in English litigation.

The judgment held that termination provisions in a DBA, under which a solicitor recover its fees if its client terminates the DBA shortly before concluding a settlement, will not amount to a breach of the DBA Regulations 2013.² This is important as it overcomes a major issue with DBAs, namely the possibility of clients terminating the DBA shortly before finalising a settlement agreement, claiming it unenforceable, and consequently avoiding paying their legal fees, as was the case in *Zuberi v Lexlaw*.

The decision is explored in further detail in this [article](#)³.

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Footnotes

1 <https://www.hfw.com/Recent-Court-of-Appeal-judgment-likely-to-increase-the-use-of-DBAs-in-English-litigation>

2 [2021] EWCA Civ 16

3 <https://www.legislation.gov.uk/ukdsi/2013/978011533444>

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